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TOWARD DEMOCRATIC POLICE REFORM: A VISION FOR “COMMUNITY ENGAGEMENT” PROVISIONS IN DOJ CONSENT DECREES

*Sunita Patel**

INTRODUCTION

The shooting of Trayvon Martin, an unarmed Black teenager in Florida, led three Black women to create #BlackLivesMatter.¹ That hashtag has since become synonymous with a movement that condemns police violence² and stands for the dignity and value of Black lives.³ Black Lives Matter has renewed discussion amongst academics, policy makers, think tanks, law enforcement professionals, activists, and advocates about the problem of police violence. President Obama created the Task Force on 21st Century Policing to identify best practices and offer recommendations on how

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1. *A Herstory of the #BlackLivesMatter Movement*, BLACK LIVES MATTER, <http://blacklivesmatter.com/herstory/> (last visited Oct. 22, 2016).

2. Ronald S. Sullivan, Jr., *Black Lives Matter Occupies an Important Space*, BOS. GLOBE (Sept. 1, 2015), <https://www.bostonglobe.com/opinion/2015/09/01/the-message-black-lives-matter/EPjIfUd95BeSHyXGthJ9KM/story.html>. As of October 22, 2016, police have shot and killed 865 individuals in 2016. *The Counted: People Killed by Police in the US*, GUARDIAN, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> (last visited Oct. 22, 2016).

3. Brittany Packnett, *Black Lives Matter Isn't Going Anywhere*, TIME (Jan. 18, 2016), <http://time.com/4178280/black-lives-matter-2016/>.

police agencies can promote crime reduction while building public trust.⁴ These efforts have led to several common recommendations: improving data collection; requiring police body-worn cameras; diversifying police agencies; providing implicit bias training and other forms of improved training to officers; adopting de-escalation policies; and strengthening law enforcement's community relationships.⁵ This general, suggested approach to reform is largely based on community policing or legitimacy theory, meaning it hinges on inclusivity in decision making to build trust and develop a law-abiding citizenry.⁶

Coinciding with these common responses has been a request for the Civil Rights Division of the U.S. Department of Justice ("DOJ") to investigate more police shootings. Furthermore, critical incidents across the country have led to a call for the DOJ to examine police departments' racially disparate practices.⁷ In response, the Obama administration has invigorated the Civil Rights Division of the Department of Justice, with particular emphasis placed on the Special Litigation Section's involvement in police reform. The Special Litigation Section has opened thirty-six investigations and signed approximately twenty-one agreements or intent to reach agreements with various localities.⁸ Research reviewing the efficacy of these consent decrees has generally demonstrated their success in

4. See Exec. Order No. 13,684, 79 Fed. Reg. 76,865 (Dec. 23, 2014). The Task Force issued its report in May 2015. See PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

5. See generally PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 4 (organizing police-reform suggestions into six main "pillars"); U.S. DEP'T OF JUSTICE & EQUAL EMP'T OPPORTUNITY COMM'N, ADVANCING DIVERSITY IN LAW ENFORCEMENT (2016) (advocating increasing the diversity in law enforcement, proposing practices to do so, and noting the benefits of a diverse police force).

6. See Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 671–72 (2016) (noting that policing's ability to embrace "[i]nclusivity may be particularly important over time," as an inclusive police force "will be less distracted by changing public perceptions" about minority groups "and better able to focus on its mission").

7. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 49 (2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf; CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 69–70 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

8. *Special Litigation Section Cases and Matters*, JUSTICE.GOV, <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#police> (last visited, Oct. 22, 2016).

reforming recalcitrant police departments.⁹ Empirical evidence shows the DOJ consent decrees have been an “effective tool for reducing misconduct in several police agencies.”¹⁰ This research has also demonstrated that the DOJ has been successful in securing additional resources for local jurisdictions to implement police reforms.¹¹ This evidence suggests the DOJ’s role has been positive and that consent decrees offer a potentially valuable method of addressing police violence in the United States.¹²

All of this considered, existing scholarship has largely been silent on whether or how the DOJ’s reform process can improve relationships between police and highly policed communities¹³ (typically Black and Latino neighborhoods). Under the Obama administration, almost all consent decrees signed with a police department include a “community engagement” section.¹⁴ These provisions, numbering anywhere from seven to forty paragraphs, require community engagement as part of the respective police department’s reform process.¹⁵ Of the twenty agreements signed under the current administration, twelve include such sections.¹⁶ No research to date, however, has examined the communities’ actual participation in the consent-decree-driven reforms.

9. See Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1422 (2015).

10. *Id.*; see Joshua M. Chanin, *Examining the Sustainability of Pattern or Practice Police Misconduct Reform*, 18 POLICE Q. 163, 185 (2015); Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3216 (2014).

11. Rushin, *supra* note 9, at 1422.

12. *Id.* at 1349.

13. The term “community” has many definitions. In the context of this Article, community means marginalized individuals, neighborhoods, and other targets of law enforcement operations.

14. See Settlement Agreement at 78–79, *United States v. City of Albuquerque*, No. 14-cv-01025-RB-SMV (D.N.M. Nov. 14, 2014), ECF No. 9-1 [hereinafter *Albuquerque Settlement Agreement*]; Consent Decree Regarding the New Orleans Police Department at 107–08, *United States v. City of New Orleans*, No. 12-cv-01924-SM-JCW (E.D. La. Jan. 11, 2013), ECF No. 159-1 [hereinafter *New Orleans Consent Decree*] (creating “Police Community Advisory Board” and “Community-Based Restorative Justice Project”); Settlement Agreement Pursuant to Fed. R. Civ. P. 41(a)(2) at 51, *United States v. City of Portland*, No. 12-cv-02265-SI (D. Or. Dec. 17, 2012), ECF No. 4-1 [hereinafter *Portland Consent Decree*] (creating “Community Oversight Advisory Board”); Settlement Agreement and Stipulated [Proposed] Order of Resolution at 2–4, *United States v. City of Seattle*, No. 12-CV-1282 (W.D. Wash. July 27, 2012), ECF No. 3-1 [hereinafter *Seattle Consent Decree*] (creating “Community Police Commission”).

15. See, e.g., *Albuquerque Settlement Agreement*, *supra* note 14, at 78–87; Settlement Agreement and [Proposed] Order at 42–43, *United States v. Town of East Haven*, No. 12-CV-01652-AWT (D. Conn. Nov. 20, 2012), ECF No. 2-1.

16. *Special Litigation Section Cases and Matters*, *supra* note 8.

Community engagement may take several forms and include different actors, objectives, and means to achieve improved community relationships. Community engagement permits the parties to acknowledge the importance of community trust and police departments to strengthen relationships with community members. Several of the reform agreements include additional requirements for the city and/or police department to create structures with a community engagement mission. Sometimes these structures are headed by police departments and serve core community policing objectives, such as improving community relationships to aid in criminal investigations and crime fighting. But other community engagement structures are external to police agencies and consent decrees. These external structures generally involve a more robust role for community involvement in the consent decree process. The structures allow for involvement with the process in any one of three stages: development of reforms, implementation of reforms, and monitoring or evaluation of the reform process. In cities such as Cleveland and Seattle, the consent decrees create “community police commissions” composed of members from a variety of interest groups, including representatives from those communities most affected by police practices.¹⁷ The importance of such external structures cannot be overstated—without party status, those harmed by police practices have no other direct seat at the table.

Community engagement has increased transparency and developed a broader oversight method for consent-decree-driven reform. This is not surprising based on the text of the agreements. In this politically charged moment, however, my research indicates the current levels of transparency and oversight are unsatisfying to harmed communities where the DOJ is attempting to reform police departments. Research conducted by court appointed monitors (or hired consultants) in a few jurisdictions does indicate a general improvement in the image of police departments in those jurisdictions, yet other events and challenges between the parties and community advocates involved in community engagement highlight the limitations of currently available research. This Article aims to examine a number of jurisdictions with consent decrees, illustrating what has occurred within the community engagement ambit since the signing of the agreements.

17. See Settlement Agreement at 4, *United States v. City of Cleveland*, No. 15-cv-01046 (N.D. Ohio May 26, 2015) [hereinafter *Cleveland Settlement Agreement*], https://www.justice.gov/sites/default/files/crt/legacy/2015/05/27/cleveland_agreement_5-26-15.pdf; Memorandum of Understanding Between the United States and the City of Seattle at 1–2 (July 27, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/07/27/spd_mou_7-27-12.pdf.

Certain patterns and narratives emerge in multiple jurisdictions. In many cases, there is apparent tension between the DOJ and some (though not all) community groups involving questions of role, expertise, inclusion, and outcomes. In other jurisdictions, the community engagement structures seem to have stalled or developed in an altogether different way than intended. Community enthusiasm for reform varies widely as well. Advocates in the cities the DOJ first engaged appeared more optimistic that community engagement would lead to a shift in power between police and the policed. Yet in other jurisdictions, before the ink was dry on the agreement, press statements and letters became critical of the reform processes, citing a lack of community inclusion. Most recently, following the deaths in Baton Rouge and Minnesota, advocates have even suggested that the DOJ is unable to fix the long-standing problems of policing.¹⁸ This Article explores a new, important, and developing area of police accountability and democracy. As the practices detailed in this Article become more widespread—through both DOJ consent decrees and private injunction cases—qualitative studies will be able to identify even clearer patterns.¹⁹

In the final months of the Obama administration, and in the wake of ongoing fatal interactions between Black Americans and police, the DOJ, advocates, and city officials are under pressure to finalize the terms of various consent decrees and settlement agreements. Across the country, advocates, faith leaders, and grassroots and policy organizations are considering whether and how to influence the DOJ's police-reform consent decrees. Given the popularity of advocacy to change police practices and the recognition by law enforcement and city officials that police and community relationships require overhaul, examination of consent decrees that attempt to insert communities into the process of police reform is important to the national conversation on police reform.

Therefore, this Article's close examination of the community's role comes at a critical juncture. This is not meant to understate the DOJ's role in police reform, but the consent decree processes are unlikely to eliminate police departments' paramilitary culture, blue wall of silence, or role in maintaining a social order that

18. See Samuel Johnson Jr., *Civilian Oversight's Important Role in Police Reform*, GOVERNING (Jan. 19, 2016), <http://www.governing.com/gov-institute/voices/col-civilian-oversight-important-role-police-reform.html>; Simone Weichselbaum, The Marshall Project, *The Problems with Policing the Police*, TIME, <http://time.com/police-shootings-justice-department-civil-rights-investigations/> (last visited Oct. 22, 2016).

19. My forthcoming article will examine community involvement in § 1983 injunctions against police. See generally Sunita Patel, *Democratic Policing and Public Law Injunctions* (2016) (unpublished manuscript) (on file with author) (examining community involvement in § 1983 injunctions against police).

disadvantages Black communities. This Article will assist advocates engaging with the current administration, and the next, to determine how to use this reform tool (among many others) to shift power between the police and the communities they serve. Moreover, this research may not only help improve police-reform processes, but may locate problematic trends that could be harmful to long-term police and community relationships without correction. Finally, this research will aid advocates and individuals harmed by police misconduct in strengthening their position vis-à-vis the DOJ or police departments.

Important literature has advocated for democratizing police departments.²⁰ This Article furthers that conversation. Part I describes two theories influencing my arguments. The first is legitimacy theory, which aligns with the DOJ's desire to build broad consensus toward the reforms outlined in consent decrees and serves as a useful tool for inclusivity and transparency. These are core values of democratic deliberation and democracy building. Second, Part I examines Chantal Mouffe and Ernesto Laclau's theory of agonism as a way to analyze and understand what has occurred with community engagement practices. This concept offers a respectful, yet contentious, approach to analyzing institutions of power. It positions dissenting adversaries as adding normative value in a meaningful democratic process, allowing us to question *and* appreciate the outsider and contentious insider as part of democratizing community engagement. Rather than viewing the various methods of police reform as consensus building, legitimizing, or transparency mechanisms, I suggest community engagement elevates the role of stakeholders and affected individuals through a *contested* process. In some circumstances this contestation creates the potential for a shift in power between communities and the police. Litigators and courts can look beyond participatory and deliberative democratic principles to give particular importance to the experiences and expertise of communities targeted by police. Part I suggests that marginalized communities and community stakeholders should have a direct role in the consent decree monitoring process and provides the normative argument for why community participation and power shifting matter to those harmed by police practices, courts, and the public at large.

20. See Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1881 (2015); Kami Chavis Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 408–09 (2010); David Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1706 (2005); Jonathan M. Smith, *Closing the Gap Between What Is Lawful and What Is Right in Police Use of Force Jurisprudence by Making Police Departments More Democratic Institutions*, 21 MICH. J. RACE & L. 315, 340–41 (2016).

The inclusion of community engagement in the DOJ's consent decrees should be understood as part of an important set of changes to earlier police-reform attempts by the DOJ. Part II describes the history of DOJ-initiated police reform. One of the earliest criticisms of police-reform consent decrees was the lack of community involvement in the reform process. The DOJ and 42 U.S.C. § 14141 were not designed to support grassroots efforts for police reform because they are limited by the needs of law enforcement and the DOJ's need to protect its relationship with law enforcement. Part II also summarizes prior research on DOJ policing consent decrees to place this Article's contribution in context. The history and prior scholarship illuminate how community engagement is an interruption in our understanding of the limited role that directly affected persons can play in a DOJ-initiated reform process.

Part III surveys community engagement following consent decrees signed by the DOJ and Portland, Oregon; New Orleans, Louisiana; Seattle, Washington; Albuquerque, New Mexico; Cleveland, Ohio; Ferguson, Missouri; and Puerto Rico. This study will inform the existing reform processes, the ones in formation, and future consent decree negotiations. Notably, a distinct pattern has emerged in many of the examined jurisdictions: the community engagement body responsible for voicing the views of community members has felt inadequately represented by the DOJ. In several cities, courts denied community groups' attempts to intervene as official parties. Such rejection always rests upon the DOJ's view that the community engagement entities or advocacy groups do not have a separate, protectable interest beyond that of the government's. This Article questions that view, arguing that for the consent decree negotiations and implementation to be truly democratic, they must provide a meaningful role for community members, despite these members' diverse political and social viewpoints.

Although community engagement, with little exception, has largely fallen short of advocates' and harmed communities' expectations for reform, this Article allows parties, advocates, and courts to consider better models for community participation in the DOJ consent decrees by documenting the possibilities and limitations of community engagement as a power-shifting tool. Such observations may be applicable to remedial phases of private litigation against police departments and in other areas of civil rights.²¹ Part IV begins the work of finding solutions and offers initial proposals to improve community engagement, but from the

21. The examination into consent decree reform processes supports a larger project rooted in establishing meaningful roles for harmed individuals in court reform processes.

framework of meaningful democratic participation instead of legitimization and consensus-based processes. Part IV considers how community engagement in particular can be wielded carefully to advance the interests of individuals affected by discriminatory police practices and support reformers seeking to shift power in the relationships between the police and the policed. I offer values-based, structural, measurement, and procedural suggestions for improving community engagement. This Part also illustrates challenges and limitations for community engagement within the agonism and legitimacy frameworks.

I. MEANINGFUL DEMOCRATIC PARTICIPATION AND COMMUNITY ENGAGEMENT

This Article seeks to reveal the ways in which communities have felt marginalized in the DOJ's efforts to reform police departments via § 14141 litigation and to make the case for shifting power to directly impacted communities within community engagement. From a normative perspective, the direct participation and deliberation of directly affected community members in the DOJ's reform process have been established as essential to the legitimacy of police departments with the community.²² Including directly affected community members in the DOJ's process widens the social dialogue around policing practices and offers more effective solutions.²³

22. See, e.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3–4 (1990); Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651, 666 (2009).

23. See CONSTANCE RICE & SUSAN K. LEE, RELATIONSHIP-BASED POLICING ACHIEVING SAFETY IN WATTS 4–5 (Josh Green & Melissa Nalani Ross eds., 2015), <http://advancementprojectca.org/wp/wp-content/uploads/2015/09/imce/President's%20Task%20Force%20CSP%20Policy%20Brief%20FINAL%2002-27-15.pdf>; Friedman & Ponomarenko, *supra* note 20, at 1881; Smith, *supra* note 20, at 340–41; Susan P. Sturm, *The Promise of Participation*, 78 IOWA L. REV. 981, 993–94 (1993); see also NAT'L RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 310–11 (2004), <http://www.nap.edu/catalog/10419.html> (explaining that police experienced increased legitimacy by taking on policies more responsive to community needs); Stephen J. Schulhofer et al., *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 101 J. CRIM. L. & CRIMINOLOGY 335, 348 (2011) (explaining that for community members to cooperate with the police, they must first view the police as legitimate); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 252 (2008) (expressing the importance of community involvement in establishing police legitimacy).

A. Deliberation

The primary theories of deliberative democracy emphasize the right, opportunity, and capacity of anyone subject to a collectively made decision to participate in a meaningful way in deliberations regarding decisions that affect him or her.²⁴ Rational consensus will derive from rational communication and the free exercise of public reason.²⁵ Political theorists, policing scholars, and psychologists have extensively and empirically documented the value of police legitimacy within the community in effective policing.²⁶ Max Weber and David Beetham have long theorized that the value of the legitimacy of state authority lies in inducing voluntary cooperation with those in power.²⁷ Weber has argued that legitimacy results from the way in which state authorities exercise their power.²⁸ Similarly, Beetham has argued that legitimacy results from the interaction of authorities and individuals where the two shareholders communicate their social values and the normative rationale, which justifies the state's practice of authority.²⁹ In order for the public to believe a law or policy is reasonable, political participation must involve public autonomy in decision making.³⁰ Jürgen Habermas summarizes this requirement in his democratic principle of legitimacy: "Only those statutes may claim legitimacy

24. William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 WM. & MARY L. REV. 127, 175 (2004).

25. See JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS 127 (William Rehg trans., 1996); JOHN RAWLS, POLITICAL LIBERALISM 217 (1993); see also JAMES S. FISHKIN, WHEN THE PEOPLE SPEAK: DELIBERATIVE DEMOCRACY & PUBLIC CONSULTATION 76 (2009) (outlining deliberative theory for public participation in "consequential" decisions where consequential deliberation signifies deliberation that directly informs the final adopted solution).

26. See, e.g., DAVID BEETHAM, THE LEGITIMATION OF POWER 15–18 (Palgrave Macmillan 2013) (1991) (defining legitimacy); MAX WEBER, ECONOMY AND SOCIETY 214 (Guenther Roth & Claus Wittich eds., Ephraim Fischhoff et al. trans., 1968) (arguing that there is inherent value to the populace viewing state power as legitimate and describing legitimacy as influencing individuals' cooperation with state power); Meares, *supra* note 22, at 660 (arguing that police legitimacy is more instrumental to cooperation and effective policing than "instrumental reasons" such as sanctions and incentive-based structures); Tyler & Fagan, *supra* note 23, at 266–67 (arguing that for police to be successful they must have the community's cooperation and that such cooperation increases when communities perceive police as procedurally just); Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375, 378 (2006) (discussing how legitimacy allows states to better use their authority when communities view authorities as "normatively or morally appropriate").

27. BEETHAM, *supra* note 26, at 18; WEBER, *supra* note 26, at 212–15.

28. WEBER, *supra* note 26, at 213.

29. BEETHAM, *supra* note 26, at 16–17.

30. HABERMAS, *supra* note 25, at 110.

that can meet with the assent . . . of all citizens in a discursive process of legislation that in turn has been legally constituted.”³¹ Habermas’s discursive theory of deliberative democracy provides the early origin of concepts such as procedural justice.³² Research suggests procedural justice is even more closely connected with police legitimacy than the outcome of police interactions, including arrests.³³ An increase in legitimacy increases community cooperation with police beyond that elicited via sanctions and incentives.³⁴ In sum, when police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective. Processes that all participants and stakeholders believe to be just create “positive relations” among group members and maintain social cohesion even where there are differing or opposing values and priorities.³⁵

The language used by consent decrees and DOJ officials demonstrates the influence of legitimacy theory, deliberative democracy, new governance, and experimental democracy.³⁶ The negotiation procedures that occur in the consent decree process are recognized as fertile grounds for the promotion and creation of social norms and cohesion for police practices.³⁷ Deliberative democracy is not without flaws, as the community engagement descriptions in Part III reveal. The theory has garnered criticism on grounds that it is too internally focused on the process of deliberation within the

31. *Id.*

32. *Id.* at 179.

33. Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT’L J. PSYCHOL. 117, 119–20 (2000) (finding procedural justice factors more important than outcomes of police interaction, such as arrest, for assessment of legitimacy).

34. Tyler & Fagan, *supra* note 23, at 236.

35. Meares, *supra* note 22, at 658.

36. Beyond the text of the agreements, press releases, and speeches by DOJ officials, we can look to a recent publication by the former Section Chief of the Special Litigation Section of the Civil Rights Division of the Department of Justice. In *Closing the Gap Between What Is Lawful and What Is Right in Police Use of Force Jurisprudence by Making Police Departments More Democratic Institutions*, Jonathan M. Smith cites community engagement and civilian oversight found in the consent decrees signed under the Obama Administration as tactics for democratizing policing. Smith, *supra* note 20, at 340. For an understanding of different democratic theories, see Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267, 267–68 (1998) (defining democratic experimentalism as a system in which “power is decentralized to enable citizens and other actors to utilize their local knowledge to fit solutions to their individual circumstances” but local lessons are shared regionally and nationally), and Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 345–47 (2004) (describing the host of terms used in legal scholarship to describe the shift from regulation to governance).

37. Simmons, *supra* note 20, at 394.

deliberative forum.³⁸ Accordingly, deliberative democracy may fail to account for features of the broader society. Rational deliberation, Mouffe observes, sets aside the critical elements of passions and allegiances that drive individuals and groups toward securing democratic values.³⁹ Emphasizing the individual capacity toward morality and rational thinking, Habermas's deliberative democratic process relies on the production of a rational agreement that, as Mouffe criticizes, precludes the possibility of contestation.⁴⁰

Furthermore, deliberative democracy may be vulnerable to co-optation by elite members of the deliberative process, becoming a "useful legitimating device[] for an already-decided policy."⁴¹ Because of institutional advantages that exist for elites—such as white, male, or wealthy members of a deliberative process—those members are in a position to exert undue influence and design outcomes that serve them disproportionately.⁴² Moreover, political philosophers have also criticized deliberative democracy's emphasis on the achievement of consensus in the deliberative process.⁴³ They have argued that the achievement of consensus often comes at the cost of productive dissent essential to the operation of a genuinely democratic system.⁴⁴ The critique of deliberation for deliberation's sake and consensus at the expense of avoiding dissent has begun to emerge in legal scholarship on policing.⁴⁵

38. See *id.* at 409–10 (highlighting the advantages of inclusion and active deliberation by citizens with respect to democratic ideals).

39. CHANTAL MOUFFE, *DEMOCRATIC PARADOX* 95 (2000).

40. *Id.* at 92–93.

41. Carole Pateman, Participatory Democracy Revisited, Presidential Address at the Annual Meeting of the American Political Science Association (Sept. 2011), in 10 *PERSP. ON POL.* 7, 9 (2012).

42. See generally ERNESTO LACLAU & CHANTAL MOUFFE, *HEGEMONY AND SOCIALIST STRATEGY: TOWARDS A RADICAL DEMOCRATIC POLITICS* (Winston Moore & Paul Cammack trans., 1985) (analyzing potential conflict in social and political processes as a byproduct of economic disparity).

43. See Chantal Mouffe, *For a Politics of Nomadic Identity*, in *TRAVELLERS' TALES: NARRATIVES OF HOME AND DISPLACEMENT* 105, 111 (1994) (arguing that tension and lack of consensus is important to the preservation of democracy); Chantal Mouffe, *Radical Democracy or Liberal Democracy?*, in *RADICAL DEMOCRACY: IDENTITY, CITIZENSHIP, AND THE STATE* 19, 22 (David Trend ed., 1996) [hereinafter Mouffe, *Radical Democracy*] (arguing that negating the eradicable character of antagonism and aiming at a universal rational consensus is the real threat to democracy where unrecognized violence can hide behind appeals to rationality, as is often the case in liberal thinking, which disguises the necessary frontiers and forms of exclusion behind pretenses of neutrality).

44. See Mouffe, *Radical Democracy*, *supra* note 43, at 19, 25.

45. Jocelyn Simonson, *Copwatching*, 104 *CAL. L. REV.* 391, 404–06 (2016).

B. Agonism and DOJ Reform Processes

The examples of DOJ-initiated community engagement provided in Part III reveal adversarial and contested processes testing the bounds of traditional democratic theory. Alienation from the seemingly democratic processes of consent decree reforms has led to disruption and withdrawal from the DOJ's process in some jurisdictions. Current protests, emerging social movements, and renewed outcry for fundamental change in the power relationships between police and communities, including in cities where community engagement exists, highlight frustration with current deliberative processes available to affected community members. Accordingly, this Article argues that the DOJ's process for solution generation, implementation, and evaluation corrects for the legitimate criticisms raised by community-engagement participants. In this way, I apply the critical work of Mouffe and Laclau, whose seminal formulation of agonism in *Hegemony and Social Strategy*, along with Mouffe's *Democratic Paradox* and *Agonistics*, established a way forward beyond such shortcomings.⁴⁶

At this stage, it would be helpful to define agonism's distinction between antagonism and deliberation, and dissent and consensus. Jocelyn Simonson neatly summarizes the principles in her study of police observation through a practice called "copwatching":

Agonism takes an adversarial stance toward practices and ideologies of institutions in power, but it does so through engagement with those institutions rather than withdrawal, by acknowledging intractable differences but respecting the adversary who disagrees. Agonism serves as a contrast to, on one end, *antagonism*, through which groups withdraw from political institutions altogether, and on the other end, *deliberation*, which emphasizes consensus through rational dialogue.⁴⁷

Mouffe is critical of these latter approaches.⁴⁸ Because no one idea can be representative of a diverse and plural modern population, "[t]oo much emphasis on consensus, together with aversion toward confrontations, leads to apathy and to a disaffection with political participation."⁴⁹

Mouffe defines an adversary as someone with whom "one shares a common allegiance to the democratic principles of 'liberty and

46. For commentary on Mouffe and Laclau's theories, see Pateman, *supra* note 41, at 8.

47. Simonson, *supra* note 45, at 435–36 (internal citations omitted).

48. CHANTAL MOUFFE, AGONISTICS 6 (2013) ("What both of these models leave aside is the centrality of collective identities and the crucial role played by affects in their constitution.").

49. *Id.* at 7.

equality for all,' while disagreeing about their interpretation."⁵⁰ Agonism acknowledges the exclusion that can come from avoiding conflict through consensus and maintains that change can come through contestation within democratic processes.⁵¹ "This confrontation between adversaries is what constitutes the 'agonistic struggle' that is the very condition of a vibrant democracy."⁵² Dissenting views that come to the fore during community engagement should not be swept under the rug or discounted but instead viewed as an opportunity for true democratic participation. Agonism allows parties and affected community members to approach community engagement as an equalizing process by appreciating the conflict inherent when plural societies engage in decision making. Equalization between communities and police is a lofty objective. But with this goal in mind, community engagement could go beyond merely changing the image of police-community relations and actually alter the power distribution between communities and police. As Part II will show, while consent decrees have been an effective reform tool, their purpose may not be to change the core nature of relationships between communities and police.

Agonistic community engagement would celebrate the profound disagreements that emerge between the DOJ and community-based groups or organizers and work to change police practices through both formal and informal means. In some ways, agonism would predict the failure of the consensus-driven model of community engagement.⁵³ Agonism allows us to consider what may be lost when consensus and deliberation are the primary objectives. Though they sometimes clash, the DOJ and community-engagement participants both share the common goal of changing policing practices for the better. An agonistic model of community engagement would further this objective while not shrinking from disagreements between different stakeholders. And where antagonism might lead groups to separate from the reform process completely, agonism involves them in ways that extend beyond courts' consent decrees, such as legislation and protest.

Meaningful inclusion of directly impacted voices rests fundamentally on the principles of self-determination, anti-subordination, and individual liberty. This includes giving communities of color and other marginalized groups a voice within the reform process.⁵⁴ To realize a truly democratic society, the value

50. *Id.*

51. *See id.*

52. *Id.*

53. *See id.* at 7–8.

54. *See* ANNA MARIE SMITH, LACLAU AND MOUFFE: THE RADICAL DEMOCRATIC IMAGINARY 33 (1998).

of individual self-determination—a value the liberal democratic process has sometimes sacrificed in the process of achieving consensus—must be revitalized, because minority or marginalized voices are sometimes silenced in liberal democratic processes.⁵⁵ At the same time, “the irreducibly plural character of the social must be preserved,”⁵⁶ meaning diverse perspectives on and proposed solutions to particular problems should be welcomed. “Minority groups should never be asked to pay the price of cultural self-destruction, through assimilation and disciplinary neutralization in exchange for inclusion, legitimacy, and recognition.”⁵⁷ Therefore, decision-making processes within DOJ-implemented reforms should strive to provide the resources that minority groups require in order to “preserve their rights and to promote their distinct democratic differences.”⁵⁸

Involving the community as an equal stakeholder in the deliberative process enables individuals to understand their roles in solving communal problems and therefore contribute more meaningfully to the implementation of solutions.⁵⁹ Communities’ direct participation in the consent decree process incorporates different sources of information into the deliberation and allows a broader field of knowledge on which to base decisions.⁶⁰

[T]hose who have experienced discrimination speak with a special voice to which we should listen. Looking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice.⁶¹

Drawing upon the knowledge of those Antonio Gramsci calls “organic intellectuals,”⁶² and whom Mari Matsuda calls “grass roots philosophers,” allows for the “relat[ion of] theory to the concrete experience of oppression,” thus establishing more meaningful and

55. See *id.* at 10. This sacrifice of individual self-determination has often included the silencing of minorities and other marginalized groups. *Id.* at 33.

56. *Id.*

57. *Id.*

58. *Id.*

59. Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 538–39 (2008).

60. Brandon Garrett, *Remedying Racial Profiling*, 33 COLUM. HUM. RTS. L. REV. 41, 133 (2001) (“Outsiders have access to different information, and working partnerships allow everyone to ‘pool’ their data and expertise.”); Simmons, *supra* note 59, at 539.

61. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L.L. REV. 323, 324 (1987).

62. See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 6 (1971).

effective solutions.⁶³ Agonistic community engagement allows litigants and courts to obtain the “contextually-specific wisdom that locally-situated groups” possess and potentially minimize the risks of surveillance and more police presence that lead some members of harmed communities to remain outside of the democratic process.⁶⁴ Promoting the plurality of voices and prioritizing community and individual autonomy in the negotiation process widens the field for new tactics and organizational structures, “a kind of decentralization and ‘flexible specialization’...every movement needs in order to respond effectively to the specificity of hybrid antagonism[.]”⁶⁵

II. POLICE REFORM THROUGH DOJ CONSENT DECREES

The history leading to the enactment of § 14141 is one filled with violent, spontaneous rebellion, but also organized movements and traditional legal reform. On March 3, 1991, four white police officers severely beat a twenty-five-year-old Black man named Rodney King, who lay in submission on his stomach after engaging the police in a chase through Los Angeles County, California.⁶⁶ Eleven other officers stood by and watched while their colleagues beat Mr. King.⁶⁷ Mr. King sustained a fractured leg and broken facial bones and required hospitalization.⁶⁸ Transcripts of the officers’ communications after the incident showed the officers boasting about the beating and joking to one another.⁶⁹ The not guilty verdict of officers involved sent Los Angeles into a tailspin.⁷⁰ The Black and Latino communities had known for a long time what the video revealed to the rest of the world: police officers in Los Angeles County frequently brutalized individuals of color. When the four officers involved were acquitted, what ensued in the following days were mass protests and rebellions (some called them riots) that resulted in fifty-four deaths, more than 2300 injuries, and one

63. Matsuda, *supra* note 61, at 325.

64. SMITH, *supra* note 54, at 35.

65. *Id.*

66. Seth Mydans, *Seven Minutes in Los Angeles – A Special Report.; Videotaped Beating by Officers Puts Full Glare on Brutality Issue*, N.Y. TIMES (Mar. 18, 1991), <http://www.nytimes.com/1991/03/18/us/seven-minutes-los-angeles-special-report-videotaped-beating-officers-puts-full.html?pagewanted=2&pagewanted=all>.

67. *Id.*

68. *Koon v. United States*, 518 U.S. 81, 87 (1996).

69. Richard A. Serrano, *Officers Beat King Out of Anger, Transcript Suggests: Trial: Radio Tape of Dispatchers, Who Joked About the Incident, May Be Used in Federal Case Against Policemen*, L.A. TIMES (Jan. 24, 1993), http://articles.latimes.com/1993-01-24/news/mn-2702_1_police-dispatcher.

70. Mydans, *supra* note 66.

billion dollars in property damage.⁷¹ The 1992 Los Angeles uprising “marked the deadliest civil disturbance in the [United States] since the Civil War.”⁷²

The events prompted the House Subcommittee on Civil and Constitutional Rights (“HSCCR”) to initiate an investigation into police misconduct in the county.⁷³ This investigation revealed that the officers who beat Rodney King were not acting outside orders but rather as a result of a pervasive pattern of brutality, racism, and leniency that permeated the entire police department.⁷⁴ The HSCCR found that within the Los Angeles Police Department (“LAPD”), “183 officers had four or more allegations [of excessive force], 44 had six or more, 16 had eight or more, and one had 16 such allegations.”⁷⁵ Despite these allegations, the officers continued to receive positive reviews from their supervisors.⁷⁶ Out of the 2152 citizen-made allegations of excessive force, the LAPD only sustained forty-two.⁷⁷ Though the federal government was able to sustain a criminal conviction for some of the officers at the scene of the Rodney King beating, the incident starkly highlighted that existing mechanisms for police accountability, including private litigation, were unable to address the pervasive pattern of abuse at the departmental level.⁷⁸

Recognition of this inadequacy grew. Just eight years prior, the Supreme Court had held that Adolph Lyons, a twenty-four-year-old Black man who sustained brutal injuries after being placed in a chokehold by an LAPD officer could not sue to enjoin the police department from using chokeholds in the future.⁷⁹ The Court held that Lyons lacked standing to seek injunctive relief because he could not demonstrate that he “faced a real and immediate threat of again” falling victim to the LAPD’s illegal chokehold practice.⁸⁰ With this holding, the Supreme Court strongly curtailed the ability of private litigants to challenge police brutality and abuse at a

71. George Hodak, *April 29, 1992: King Verdict Ignites LA Riots*, A.B.A. J., Apr. 2010, at 72.

72. *Id.*

73. *Police Brutality: Hearings Before the H. Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary*, 102d Cong. 1, 133–34 (1991).

74. INDEP. COMM’N ON THE L.A. POLICE DEP’T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT, at iv (1991).

75. *Id.* at ix–x.

76. *Id.* at 17.

77. *Id.* at xix.

78. See Rushin, *supra* note 9, at 1346–47; Seth Mydans, *Sympathetic Judge Gives Officers 2 1/2 Years in Rodney King Beating*, N.Y. TIMES (Aug. 5, 1993), <http://www.nytimes.com/1993/08/05/us/sympathetic-judge-gives-officers-2-1-2-years-in-rodney-king-beating.html>.

79. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

80. *Id.* at 110.

structural level.⁸¹ Additionally, the exclusionary rule's inability to meaningfully address the structural problems plaguing many police departments was widely documented.⁸² Whatever tools existed for the federal government to address the systematic abuses that it saw in Los Angeles were glaringly inadequate.⁸³

These glaring gaps and the resulting anger within communities of color led Congress to enact § 14141.⁸⁴ Section 14141 gives the United States Attorney General the power to bring structural reform litigation against police departments that are engaged in a "pattern or practice" of misconduct that "deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."⁸⁵ This statute proscribes conduct that regularly violates existing constitutional protections against police misconduct, such as the use of excessive force, false arrests, unreasonable searches and seizures, and intentional racial or ethnic discrimination.⁸⁶ Pursuant to this authority, the DOJ may initiate an investigation into a police department upon receiving information from a variety of different sources.⁸⁷ Such complaints or referrals have traditionally come from individuals, advocacy organizations, lawyers, and parties in civil litigation against police departments, individual officers or their representatives, prosecutors and criminal defense lawyers, jurists, authors of investigative reports, such as academics, review panels, and journalists, as well as the FBI or other divisions of the DOJ.⁸⁸

Once the DOJ receives a complaint, the Special Litigation Section of the DOJ reviews it to determine whether the complaint alleges a pattern or practice of misconduct.⁸⁹ If the complaint

81. See Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1385–86 (2000) (describing how in the years following the *Lyons* decision, incidents of police brutality proliferated while private litigants were unable to do anything other than appeal to the DOJ for "patterns or practices" investigations).

82. Rushin, *supra* note 9, at 1353–54.

83. *Id.* at 1346; see H.R. REP. NO. 102-242, pt. 1, at 137 (1991) (describing the lack of tools at the federal government's disposal as a "serious and outdated gap in the federal scheme for protecting constitutional rights").

84. Simmons, *supra* note 59, at 492–93.

85. 42 U.S.C. § 14141 (2012). Congress passed this statute as part of the Violent Crime Control and Law Enforcement Act of 1994. Rushin, *supra* note 10, at 3191.

86. Rushin, *supra* note 10, at 3191.

87. Rushin, *supra* note 9, at 1367.

88. *Department of Justice Police Misconduct Pattern or Practice Program*, PATTERN OR PRACTICE PROGRAM FAQ (Colum. L. Sch., New York, N.Y.), at 2, <http://web.law.columbia.edu/sites/default/files/microsites/contract-economic-organization/files/10-SPL-Pattern%20or%20Practice%20Program%20FAQ.pdf>.

89. Rushin, *supra* note 9, at 1370.

alleges sufficient facts to show that there were more than a few, sporadic incidents of misconduct, the case will enter into a “preliminary inquiry stage.”⁹⁰ In this stage, the DOJ will perform a confidential assessment of publicly available information, media reports, and community perceptions via interviews with residents.⁹¹ If this assessment reveals sufficient proof that the police department is engaged in a pattern or practice of wrongdoing, a formal investigation is initiated.⁹² In the most comprehensive empirical evaluation of this process to date, Stephen Rushin found that only approximately twelve percent of the preliminary assessments result in formal investigations.⁹³

In those cases that do turn into formal investigations, the DOJ expends considerable resources and time.⁹⁴ Once a formal investigation is completed, the DOJ can either initiate a lawsuit against the police department or attempt to resolve the issues via a settlement agreement.⁹⁵ In some cases, the DOJ will release Investigative Findings Letters that do not involve a court enforced settlement. For example, an investigation of the Cleveland Police Department led to such a letter in 2014.⁹⁶ Last year, the DOJ filed suit and the city and DOJ entered into a consent decree.⁹⁷ Former Attorney General Janet Reno has stated that the DOJ aims to “address police integrity issues without litigation, where possible.”⁹⁸ In line with this policy, all investigations against police departments performed by the DOJ have resulted in settlements.⁹⁹

Settlement agreements have taken the form of consent decrees, memoranda of understanding, or memoranda of agreement.¹⁰⁰ A consent decree is “an agreement between DOJ and a municipality to

90. Rushin, *supra* note 10, at 3224.

91. *Id.* at 3225.

92. Rushin, *supra* note 9, at 1370.

93. *Id.*

94. *Id.* at 1370–71.

95. *Id.* at 1372.

96. CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 2 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/12/04/cleveland_summary_12-4-14.pdf [hereinafter CLEVELAND FINDINGS LETTER].

97. Joint Motion & Memorandum for Entry of Consent Decree at 1, *United States v. City of Cleveland*, No. 15-cv-01046-SO (N.D. Oh. May 26, 2015), ECF No. 3-1 [hereinafter *Cleveland Consent Decree*].

98. Janet Reno, U.S. Att’y Gen., Remarks at the National Press Club Luncheon (Apr. 15, 1999).

99. See Rushin, *supra* note 9, at 1372 (noting that no investigation has led to a law suit against a police department). This article was published in April, 2015, prior to the negotiation impasse in Ferguson, Missouri.

100. Overview: *The Seattle Consent Decree*, SEATTLE POLICE MONITOR, <http://www.seattlemonitor.com/overview/> (last visited Oct. 22, 2016).

eliminate unconstitutional policing.”¹⁰¹ This agreement is signed by a judge and is an order of the court, and thus the parties may be held in contempt for violations of the decree.¹⁰² A memorandum of understanding (“MOU”) is “a related side agreement between the parties,” which is not enforceable by contempt but by the DOJ as any private contract would be.¹⁰³ In some places, MOUs have been used to establish various reform-oriented committees, such as civilian police commissions.¹⁰⁴ The DOJ will sometimes sign “intent to settle” agreements with cities to outline the contours of ongoing negotiations and inform the public of its progress.¹⁰⁵ Monitoring and implementation of consent decrees during the Clinton administration led to remarkable changes and professionalization of police departments.¹⁰⁶ The role DOJ consent decrees play in creating police accountability is well established.¹⁰⁷

The initiation of § 14141 litigation by the DOJ has ebbed and flowed with differing administrations. The Clinton-era investigation

101. *Id.*; cf. U.S. DEP’T OF JUSTICE, HOW DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION CONDUCTS PATTERN-OR-PRACTICE INVESTIGATIONS, <https://www.justice.gov/opa/file/797676/download> (“If an investigation reveals patterns or practices of unlawful policing, the [DOJ] will seek to work with the department, with input from community stakeholders, to effectively and sustainably remedy any unlawful practices. This usually takes the form of a negotiated agreement that incorporates specific remedies and that becomes a federal court order overseen by an independent monitor.”).

102. *Overview: The Seattle Consent Decree*, *supra* note 100.

103. *Id.*

104. *Id.*

105. See Rachel Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 40 (2009).

106. See Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 7 (2003) (noting that the January 2001 DOJ report, *Principles for Promoting Policy Integrity*, which was issued during the Clinton administration, included a list of police best practices that “are incorporated into all of the consent decrees and memoranda of understanding currently in force”). It is important to add, however, that the best practices and other content of the MOUs and consent decrees utilized by the DOJ developed within the law enforcement profession over many years “and reflected the best thinking within the profession. The Justice Department simply took the best policies on a few key issues and included them in consent decrees . . .” SAMUEL WALKER & CAROL A. ARCHBOLD, *THE NEW WORLD OF POLICE ACCOUNTABILITY* 26 (2d. ed. 2014).

107. See Harmon, *supra* note 105, at 2–3, 40. Walker notes that the DOJ’s litigation made a significant impact in crafting and lending authority to “a package of interrelated accountability procedures,” including an accessible citizen complaint intake system, an early intervention system, and a novel use of force policies. WALKER & ARCHBOLD, *supra* note 106, at 264. Despite the DOJ’s early successes, Walker argues that the new world of police accountability requires additional formal procedures and policies, as well as improved early intervention systems and increased data collection, in order to sustain the DOJ’s efforts. *Id.* at 264–65.

and consent decree process exposed the need for the inclusion of community organizations in the investigations of police departments.¹⁰⁸ Without the inclusion of community voices, reform efforts endured skepticism from certain sectors of communities of color. Communities questioned the sustainability of achieved reforms, especially after the DOJ's departure.¹⁰⁹ Culture change proved difficult to obtain and measure despite years of city police department consent decrees.¹¹⁰ The inadequacies revealed in the Clinton-era, however, went largely ignored under the following Bush administration, as the DOJ undertook very few § 14141 cases during that time.¹¹¹ The executive branch's focus then reversed again when President Obama's administration began to reinvigorate the mission of the DOJ Civil Rights Division's Special Litigation Section.¹¹²

The consent decrees negotiated by the Obama administration's DOJ have, by and large, responded more astutely to community needs than those executed in previous years. The administration has taken a different look at benchmarking and experts, bringing in various different sources to inform negotiation processes.¹¹³ Further, contrary to the Bush administration's lenient method of dealing with rogue or uncooperative police departments, the Obama administration has decidedly played hardball, taking departments that fail to comply to court.¹¹⁴ Additionally, while the Bush administration closed most of its investigations without formal agreements, the Obama administration has refused or declined to close cases after an investigation without an agreement that formalizes institutional police reforms.¹¹⁵

Despite the increasing strength with which the DOJ has negotiated these consent decrees, research regarding the efficacy of these negotiated agreements is only beginning to emerge,¹¹⁶ and

108. See Harmon, *supra* note 105, at 54 n.162.

109. See Walker, *supra* note 106, at 23–30.

110. See ROBERT C. DAVIS ET AL., VERA INST. OF JUSTICE, TURNING NECESSITY INTO VIRTUE: PITTSBURGH'S EXPERIENCE WITH A FEDERAL CONSENT DECREE 47 (2002), http://archive.vera.org/sites/default/files/resources/downloads/Pittsburgh_consent_decree.pdf.

111. Harmon, *supra* note 105, at 54 n.162.

112. *Id.* at 3–4.

113. Timothy M. Phelps, *Obama Administration Cracks Down on Police Abuse, Draws Challenges*, L.A. TIMES (Oct. 22, 2015), <http://www.latimes.com/nation/la-na-obama-police-reform-20151022-story.html>.

114. *Id.*

115. *Id.*

116. One criticism of the DOJ consent decree process is the uncertainty of continued success. Samuel Walker argues that the newer, more creative and burdensome aspects of police accountability are particularly likely to meet resistance. WALKER & ARCHBOLD, *supra* note 106, at 267–270 (explaining “[t]he basic threat to the new accountability is the resistance to change that is

what research is developing has yet to address the role of communities in the process. In 2015, Stephen Rushin published the most comprehensive empirical look into the efficacy of the DOJ's structural reform litigation so far.¹¹⁷ His research found that while the DOJ's work was successful on some measures, it fell short on others. He concluded that the DOJ process has been effective in "reducing misconduct in several police agencies" through methods implementing "external monitoring to ensure organizational compliance" and forcing the allocation of resources to effectuate police reform.¹¹⁸ Rushin also found that police departments had reduced civil liability as a result of the DOJ's intervention.¹¹⁹ He noted, however, that the process was "long and costly" and that many questions remained as to whether the reforms initiated by the DOJ's monitoring would endure beyond the DOJ's presence in the region.¹²⁰ He concluded, "In the end, SRL [structural reform litigation] will never be the primary mechanism for addressing police wrongdoing."¹²¹

In addition to Rushin's analysis, the Vera Institute, the Rand Corporation, and Professor Christopher Stone's team at Harvard Law School have assessed the Clinton-era consent decrees established in Pittsburgh, Cincinnati, and Los Angeles respectively.¹²² In Pittsburgh, the Vera Institute found that the police misconduct and use of force had decreased after the involvement of the DOJ.¹²³ A majority of police officers reported that DOJ's involvement had resulted in changes, such as increased accountability, in the department.¹²⁴ Nearly all residents interviewed reported either an improved or unchanged perception of the Pittsburgh Police Department.¹²⁵ The Rand Corporation's 2009 study in Cincinnati found that some surveyed areas, such as residents' perception, racial profiling, and recordkeeping in the

inherent in all large organizations" and that the threats to improved accountability are "many and powerful").

117. Rushin, *supra* note 9, at 1343.

118. *Id.* at 1422.

119. *Id.*

120. *Id.*

121. *Id.*

122. DAVIS ET AL., *supra* note 110, at 1; GREG RIDGEWAY ET AL., POLICE-COMMUNITY RELATIONS IN CINCINNATI, at iii (2009), http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG853.pdf; CHRISTOPHER STONE ET AL., POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD, at i (2009), <http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf>.

123. DAVIS ET AL., *supra* note 110, at 39–40, 44.

124. ROBERT C. DAVIS ET AL., OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, FEDERAL INTERVENTION IN LOCAL POLICING: PITTSBURGH'S EXPERIENCE WITH A CONSENT DECREE 19 (2005), <http://cprbpgh.org/976>.

125. DAVIS ET AL., *supra* 110, at 38.

police department, had improved.¹²⁶ Finally, the Stone study found that the DOJ's involvement in reforming LAPD misconduct had resulted in significant improvements in the LAPD's policies.¹²⁷ Community perceptions of police rose, use of force declined, and so-called de-policing did not occur.¹²⁸ There was an increase in the "quality of stops," which meant a higher proportion of those being stopped were arrested and later charged with felonies.¹²⁹ Furthermore, the study found that the actual rates of crime, as well as perceived crime rates, decreased.¹³⁰ There was, however, a persistent difference in Black and Latino experiences with police, and despite marked increases in satisfaction with the police, a significant number of individuals remained dissatisfied with police departments.¹³¹

Beyond these empirical studies, academics have also assessed, from a theoretical perspective, the efficacy of the DOJ's structural reform litigation. In 2000, Professor Gilles argued that though it was still too early to definitively tell: "[§ 14141] has proven ineffective, as the government has failed to muster the political will or requisite resources to address systemic police misconduct in a meaningful way."¹³² She also pointed out that the consent decree process was too closely entwined with "money and politics," rendering it vulnerable to bias and political maneuvering.¹³³ To remedy this, she argued for an amendment to § 14141 to empower private citizens to bring suits for injunctive relief claims, in certain circumstances, against unconstitutional police misconduct.¹³⁴ Professor Kami Chavis has argued for involving community members in the DOJ's negotiation process,¹³⁵ asserting that consent decrees lack aggressive enforcement, have lengthy investigation periods, are at the behest of the political will of changing administrations, and exclude affected stakeholders.¹³⁶ In 2010, she found that there had been no role for community members in the

126. RIDGEWAY ET AL., *supra* note 122, at xvii, xxxi, 68, 90.

127. STONE ET AL., *supra* note 122, at 68.

128. *Id.* at i–ii. *But see* Stephen Rushin & Griffin Sims Edwards, *De-Policing*, 102 CORNELL L. REV. (forthcoming 2017) (manuscript at 54), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2757809 (concluding a study of the de-policing effect of regulation—that is, the theory that aggressive oversight would lead to a reduction in enforcement activities—by stating de-policing is “not entirely implausible” as well as noting a correlation between at least one form of regulation with increased crime rates).

129. *See* STONE ET AL., *supra* note 122, at 26.

130. *Id.* at 44–48.

131. *Id.* at 49–53.

132. Gilles, *supra* note 81, at 1386–87.

133. *Id.* at 1409.

134. *Id.* at 1414.

135. *See* Simmons, *supra* note 20, at 376, 379.

136. *See id.* at 415–18.

accountability reforms.¹³⁷ Such exclusion of community members, she argued, threatened the DOJ's reform efforts.¹³⁸ Professor Chavis has also argued that the relationship between police agencies and the DOJ resembles the structure of administrative agencies and is subject to the same pitfalls.¹³⁹ She has therefore argued for a shift toward community engagement and instating structures that would facilitate community groups to influence reforms.¹⁴⁰ Professors Samuel Walker and Morgan Macdonald have recommended that states adopt their own local version of § 14141.¹⁴¹ Despite the overall positive outlook these studies provide, they point out that the consent decree process suffers from organizational obstacles and delays, future uncertainty, enforcement patterns subject to administrative and executive changes, and underemphasized community engagement provisions.¹⁴²

Though these scholars have provided well-reasoned assessments of the DOJ's consent decree process from both theoretical and empirical perspectives, there remains a dearth of research regarding the role of affected persons and community stakeholders in the process. What research does exist regarding community engagement is limited in scope to communities' perceptions of changes, rather than a measure of their actual involvement or success in obtaining fundamental change in police-community interactions.¹⁴³ Such research is limited further because situations in various localities have changed drastically. For example, in Pittsburgh, a new consent decree was required after the Vera Institute performed its assessment regarding the initial decree negotiated there.¹⁴⁴ Additionally, because such research is limited

137. *Id.* at 416.

138. *Id.*

139. *Id.* at 399 (likening the relationship between the DOJ and reforming municipalities to the rulemaking processes employed by administrative agencies and noting that this similarity "makes the reform process susceptible to many of the ills associated with traditional administrative rulemaking").

140. *Id.* at 423.

141. Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 GEO. MASON U. C.R.L.J. 479, 479–82 (2009).

142. See, e.g., Simmons, *supra* note 20, at 416 (noting the lack of democratic community involvement in the current federal regulatory scheme); Walker & Macdonald, *supra* note 141, at 532–35 (noting the obstacles to sustained reform include political regime changes and other organizational externalities, such as budgeting).

143. For a discussion on three studies that assess the outcomes of structural reform litigation, see Rushin, *supra* note 9, at 1359–64. The author emphasizes that these studies, completed in three different cities, discuss the change in community perceptions of police but not how or why these results are achieved. *Id.*

144. *Id.* at 1410–11.

to community perception, it does not inform the larger debate about the formal shifting of power from police departments to community members in the reform process. Given the enormous normative and consequential reasons for shifting power to community members, this dearth of research must be addressed. This Article attempts to fill the existing academic void by providing a review of community involvement in the consent decree processes during the Obama administration throughout various regions of the country. The goal is not to suggest that consent decree processes, or even court-supervised reform, will lead to radical change. Rather, this Article envisions an alternative role for affected communities and other stakeholders and attempts to move the needle toward a fundamentally different process for change.

III. "COMMUNITY ENGAGEMENT" WITHIN DOJ CONSENT DECREES

With this normative and historical framework in place, this Part turns to the community engagement provisions found in the agreements between the parties in Seattle, Puerto Rico, New Orleans, Portland, Cleveland, Albuquerque, and Ferguson. This Part outlines what each community engagement provision aims to accomplish and evaluates each consent decree's successes and challenges in shifting power to the community according to radical democratic principles. Where appropriate I will highlight how the process has created opportunities to assert and shift power in the context of policing consent decree reforms.

Since at least 2012, each DOJ consent decree signed with major urban police departments has included an enumerated "community engagement" section. The first such agreements signed during President Obama's administration were between the DOJ and New Orleans, Portland, Seattle, and Puerto Rico. Community engagement provisions required the creation of structures involving the community for the purpose of assisting with the monitoring and reform of police departments during the consent decree process. For example, the Portland Settlement Agreement created a Police Community Oversight Advisory Board ("COAB") in recognition of the "ideas, talent, experience and expertise of the community."¹⁴⁵

145. Portland Consent Decree, *supra* note 14, at 50–51. Both parties realize there is significant community and city interest in improving relationships between the Portland Police and community members. The Agreement ensures community oversight of the implementation and results of the Agreement with the creation of the COAB. *Id.* The 20-member COAB will review and assist with the implementation of this agreement and address how to improve the Portland Police Bureau's ("PPB") current community outreach efforts. *Id.* at 51. The intent of the COAB is to work toward community confidence in the PPB and facilitate police/community relationships necessary to promote public safety for all Portlanders. *Id.*

Among its enumerated duties, the COAB is authorized to “independently assess the implementation” of the consent decree, receive public comments and concerns, make recommendations for further actions, and advise the Chief of Police and the Police Commissioner on strategies to improve community relations.¹⁴⁶

The consent decrees’ provisions suggest independent entities are necessary to keep the parties to the agreements—the DOJ and the respective police departments—in line with the stated objectives of the agreements. On paper these structures promise the community a role in the reform process, including the ability to raise concerns directly with the police department, the court monitor, and the DOJ.¹⁴⁷ Perhaps as an unintended consequence, these consent decrees sometimes create a relationship or quasi-relationship not only between marginalized communities and the police department, but also between community constituents and the court.¹⁴⁸

Despite the recognition by the DOJ and cities that community member participation is a critical aspect of meaningful police reform, community stakeholders and persons targeted by police practices contest and question the parties’ implementation of community engagement provisions. Public comments, letters to city officials, and court filings have revealed a high level of frustration with the outsider role inherent with non-party status. Without a formal role in the remedial process between the DOJ and police departments, role confusion can create frustration and legitimacy questions for the DOJ.¹⁴⁹ Even where the structures called for in these agreements have been implemented, discontent remains regarding the membership, role, and authority of those structures. For true reform to take effect, this confusion must be eradicated. Barry Friedman has argued that the project of democratizing police “is an imperative. Transparency and democratic accountability are not optional. They are requisites of American governance.”¹⁵⁰ Community engagement wherein those individuals most impacted by poor policing enjoy the power to converse and negotiate with the

146. *Id.*

147. *See id.* at 2–3 (explaining that the commission will review reports and recommendations of the court monitor and communicate additional reviews or recommendations with the parties to the agreement).

148. When I refer to courts in this Part, I am referring to the federal district court for the city in which the consent decree is monitored.

149. Some private litigation examples help fill in the gaps for how the process might lead to power sharing and address race conscious policing practices. My next piece will address this gap by examining private litigation and its formal involvement of community members. *See generally* Patel, *supra* note 19 (examining community involvement in § 1983 injunctions against police).

150. Friedman & Ponomarenko, *supra* note 20, at 1881.

DOJ and police departments on equal footing is the only means by which true reform will be accomplished.

A. *Seattle*

The 2012 policing consent decree in Seattle highlights several shortcomings and opportunities found in the community engagement process, such as contestation over the scope of community members' involvement, both in terms of the type and form of input. The court has taken a rigid approach to its role in reforming the police department and has suggested that nonparties, including the city council and the Community Police Commission ("CPC") created under the consent decree, should limit police-reform efforts to the consent decree process. The parties and community members have disagreed over allocation of the city's resources and priorities for reform.

In August 2010, John T. Williams, a fifty-year-old First Nation wood carver, was shot by Seattle Police Department ("SPD") officer Ian Birk.¹⁵¹ Mr. Williams was walking down the street while carving a piece of wood when Officer Birk saw him.¹⁵² Officer Birk called out to Mr. Williams several times.¹⁵³ Mr. Williams, having no hearing in one ear and under the influence of alcohol, did not respond.¹⁵⁴ Officer Birk directed Mr. Williams to drop his carving knife several times before Mr. Williams closed his pocketknife, turned around, and noticed that an officer was behind him.¹⁵⁵ Officer Birk stated that Mr. Williams was approximately ten feet away from him at this time.¹⁵⁶ Despite this, Officer Birk reported Mr. Williams bore "pre-attack indicators" because of his stern expression.¹⁵⁷ Officer Birk shot Mr. Williams five times, killing him at the scene.¹⁵⁸

151. Steve Miletich & Sara Jean Green, *Seattle Police Have Questions About Fatal Shooting by Officer*, SEATTLE TIMES (Sept. 1, 2010), <http://www.seattletimes.com/seattle-news/seattle-police-have-questions-about-fatal-shooting-by-officer/>.

152. *Id.*

153. *Id.*

154. Christine Clarridge & Steve Miletich, *Officer on Fatal Shooting: "No Doubt . . . Attack Was Coming,"* SEATTLE TIMES (Jan. 12, 2011), <http://www.seattletimes.com/seattle-news/officer-on-fatal-shooting-no-doubt-attack-was-coming/>; Miletich & Green, *supra* note 151.

155. Clarridge & Miletich, *supra* note 154.

156. Miletich & Green, *supra* note 151.

157. Clarridge & Miletich, *supra* note 154.

158. *Id.*; see also Letter from Thomas E. Perez, Assistant Att'y Gen., Civil Rights Div., and Jenny A. Durkan, U.S. Att'y, U.S. Att'y's Office, W. Dist. of Wash., to the Honorable Michael McGinn, Mayor, City of Seattle, app. E, at 5, (Nov. 23, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf [hereinafter Seattle Findings Letter]. "Pre-attack" indicators are among the kind of vague criteria police use to justify potential

Mr. Williams's death led the Seattle community to establish the John T. Williams Organizing Committee, which coordinated protests and attended court proceedings.¹⁵⁹ In response to such expressions of community outrage, the American Civil Liberties Union ("ACLU") of Washington requested the DOJ commence an investigation.¹⁶⁰ In a letter, written on December 3, 2010, the ACLU outlined five incidents of violence directed at members of the community between June 2009 and October 2010 and "request[ed] that the Civil Rights Division of the Department of Justice promptly investigate whether the Seattle Police Department has engaged in a pattern or practice of violations of civil rights by using unnecessary and excessive force against the residents of Seattle in violation of federal law."¹⁶¹

The DOJ responded by initiating a nine-month investigation of the SPD.¹⁶² In December 2011, the DOJ concluded that the SPD engaged in a pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment and § 14141.¹⁶³ Though the DOJ did not find that the police department engaged in a pattern of discriminatory policing, the investigation did "raise[] serious concerns on this issue."¹⁶⁴ Particularly, "[o]f the cases . . . determined to [involve] unnecessary or excessive uses of force, over 50% involved minorities."¹⁶⁵ In regards to community relations specifically, the DOJ pointed out that SPD is unable to maintain community trust because of

- (1) deficient policies that address the risk of biased policing and or govern pedestrian stops; (2) inadequate supervision and training of its officers on (a) how to avoid biased policing practices, (b) how to conduct proper pedestrian stops, (c) tactical communication skills; (3) a failure to proactively and consistently engage the community; and (4) the failure to keep

implicit bias. See Cynthia Lee, *Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training*, 79 LAW & CONTEMP. PROBS. 145, 149–150 (2016).

159. Cienna Madrid, *Eight Days: Inside the Courtroom During the Inquest into the Death of John T. Williams*, STRANGER (Jan. 27, 2011), <http://www.thestranger.com/seattle/eight-days/Content?oid=6475662>.

160. Letter from Kathleen Taylor, Exec. Dir., ACLU of Wash., to Thomas Perez, Assistant Att'y Gen., U.S. Dep't of Justice Civil Rights Div., Special Litig. Section, and Honorable Jenny Durkan, U.S. Att'y (Dec. 3, 2010), <https://aclu-wa.org/re-request-investigate-pattern-or-practice-misconduct-seattle-police-department>.

161. *Id.*

162. Seattle Findings Letter, *supra* note 158, at app. E, at 1.

163. *Id.* at 3.

164. *Id.*

165. *Id.* at 6.

meaningful data that would permit SPD to evaluate and take action to address allegations of biased policing.¹⁶⁶

The DOJ specifically pointed to information gathered from meeting with communities and organizational stakeholders.¹⁶⁷ The DOJ's investigation revealed that community members' grievances included the lack of accountability for police misconduct and the department's "empower[ing] [of] the relatively small number of officers who do engage in misconduct."¹⁶⁸ Community members also believed officers should be doing more to de-escalate confrontations¹⁶⁹ and perceived the SPD as an agency that disproportionately targeted minorities.¹⁷⁰

Pursuant to these findings, on July 27, 2012, the DOJ initiated a lawsuit against the SPD and the City of Seattle.¹⁷¹ This lawsuit resulted in a Settlement Agreement and an MOU between the U.S. Government and the City of Seattle.¹⁷² Pursuant to the MOU, the City of Seattle was directed to establish a CPC.¹⁷³ The ordinance by which the CPC was established defines the number of members on the commission and specifies mechanisms by which the selection of members will ensure the diversity of the CPC.¹⁷⁴ The members of the CPC are appointed by the mayor and subject to confirmation by the city council.¹⁷⁵ The commission must also include one rank-and-file officer and one mid-level manager from the SPD.¹⁷⁶ Both of these officers are selected through their collective bargaining unit.¹⁷⁷

166. *Id.*

167. *Id.* at 1.

168. *Id.* at 21.

169. *Id.* at 24.

170. *Id.* at 25.

171. *See* Complaint, United States v. City of Seattle, No. 12-CV-01282 (W.D. Wash. July 27, 2012).

172. *See* Memorandum of Understanding, United States v. Seattle, No. 12-CV-01282 (W.D. Wash. July 27, 2012) [hereinafter *Seattle Memorandum*]; *Seattle Consent Decree*, *supra* note 14.

173. *Seattle Memorandum*, *supra* note 172, at 1.

174. *Seattle*, Wash., Ordinance 124021 (Oct. 22, 2012).

175. *Id.*

176. *Id.*

177. *See* Betsy Graef, *The Seattle Community Police Commission: Lessons Learned and Considerations for Effective Community Involvement*, 14 SEATTLE J. SOC. JUST. 1, 9 (2015) (indicating that the union representatives were appointed by its members). I support the practice of involving police in the community accountability structure. Other cities have embraced this idea as well. In Cincinnati, police and advocates alike agree that involving police union representatives in a consensus driven process was a key component to the culture shift that purportedly took place during the 2002 to 2009 reform process. *See Cincinnati Has Earned Its Policing Pride*, CINCINNATI.COM (May 20, 2015, 10:22 AM), <http://www.cincinnati.com/story/opinion/editorials/2015/05/19/cincinnati-earned-policing-pride/27606913/>. In Seattle, community members of the CPC have worked well with union representatives in the reform

The MOU and Settlement Agreement appear to endorse a deliberative democratic process. As the CPC has stated, the MOU “creates an important opportunity for Seattle’s diverse communities to participate in the implementation of the MOU and certain aspects of the Settlement Agreement, and to promote greater transparency and public understanding of the Seattle Police Department.”¹⁷⁸ Likewise, the Settlement Agreement states:

Certain aspects of the reform efforts embodied in the Agreements are best developed by dialogue and wide-spread input. Moreover, ongoing community input into the development of reforms, the establishment of police priorities, and mechanisms to promote community confidence in SPD will strengthen SPD and facilitate police/community relationships necessary to promote public safety.¹⁷⁹

The MOU specifies five policy issues for which the CPC is responsible: community engagement, accountability, investigatory stops and data collection, officer assistance and support, and transparency and public reporting.¹⁸⁰ For each of the enumerated areas of reform, the CPC is specifically charged with providing input as the reforms are developed, ensuring support and guidance in the implementation phase, and reviewing all reports and recommendations put forth by the court’s monitor.¹⁸¹ The CPC issues its own reports, holds regular public meetings, and gathers a

process. Graef, *supra* note 177, at 31. The results in other jurisdictions has been mixed. In Cleveland, the police representatives have been accused of sabotaging the community engagement process. See David Kroman, *Police Unions, Citizen Group Forge Unlikely Partnership*, CROSSCUT.COM (Feb. 9, 2016), <http://crosscut.com/2016/02/police-citizen-group-forge-unlikely-partnership/>. Line officers are often dissatisfied with the “brass” on public safety strategy. Seth W. Stoughton’s work has effectively discussed the tension between officer behavior and management decision making. See Seth W. Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179, 2214 (2014) (“Line officers may resent what they view as unnecessarily onerous department procedures adopted by police managers who are overly concerned with legal liability and out of touch with life on the street, while police managers are exasperated by officers who will not voluntarily adopt new practices, refuse to support new programs, and lose track of bigger picture concerns like community perceptions of legitimacy.”); see also LEONARD BROOM ET AL., *SOCIOLOGY: A TEXT WITH ADAPTED READINGS* 167–68 (7th ed. 1981) (pointing to the psychological reasons behind officer and management tension, including that “the line resists innovation” due to line officers’ suspicion of management’s efforts to control day-to-day operations).

178. Seattle Memorandum, *supra* note 172, at 1.

179. Seattle Consent Decree, *supra* note 14, at 2.

180. See Seattle Memorandum, *supra* note 172, at 6–7, 34.

181. *Id.* at 23.

broad array of public input to achieve its mandate.¹⁸² It is also required to maintain regular contact with the city and post its reports publicly on the city's website.¹⁸³ The CPC has published several reports based on community-driven data collection and focus groups with recommendations for topics covered in the consent decree, such as bias-based policing, performance mentoring, *Terry* stops, and use of force.¹⁸⁴

As can be expected with any potential adversarial process, the involvement of community voices is not without some tension. Specifically, controversy has stemmed from questions regarding the CPC's role. For example, is the CPC's role sufficient from the perspective of affected persons, and if not, is there any recourse to achieve a greater role? This issue arose in 2013 when the DOJ and the city were in the process of negotiating a new use-of-force policy. This topic was not among the list of enumerated issues for which the Seattle CPC was required to provide input. However, because SPD's use-of-force tactics and the deaths of unarmed persons drove advocates' initial request to the DOJ to investigate the SPD, the CPC interpreted the MOU not to foreclose its involvement in the development and evaluation of a new use-of-force policy.¹⁸⁵ The city and court monitor disagreed, citing the terms of the Settlement Agreement and MOU.¹⁸⁶ Negotiations ensued. Ultimately the parties and the monitor agreed that the CPC should have a direct role in the development of the use-of-force policy and the reform process generally.¹⁸⁷ Unwilling to play a narrowly circumscribed role, the CPC then attempted to intervene in the DOJ lawsuit to obtain party status.¹⁸⁸ Although intervention was unsuccessful, the

182. See, e.g., SEATTLE CMTY. POLICE COMM'N, OUTREACH REPORT: EXECUTIVE SUMMARY 2 (2014), <http://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/Outreach%20Report%20Exec%20Sum%2002-28-14.pdf>.

183. Seattle Memorandum, *supra* note 172, at 23.

184. See *Policies Approved by Court*, COMMUNITY POLICE COMMISSION, www.seattle.gov/community-police-commission/policies-approved-by-court (last visited Oct. 22, 2016). The role of the CPC is also circumscribed in some ways by the parties' agreement. Significantly, the MOU specifically states,

The commission will not review or report on specific cases of alleged misconduct, review or comment on discipline, and will not seek to influence the course or outcome of a specific complaint investigation or the discipline of specific police officers. The Commission will not have access to any non-public information regarding an individual police officer or allegation of misconduct or disciplinary action.

Seattle Memorandum, *supra* note 172, at 3.

185. Samuel Walker, *The Community Voice in Policing: Old Issues, New Evidence*, 27 CRIM. JUST. POL'Y REV. 537, 546 (2015).

186. *Id.*

187. *Id.*

188. Order Regarding Motion to Intervene and Motions for Deadline Extensions at 13, *United States v. City of Seattle*, No. 12-cv-01282-JLR (W.D.

district court permitted the CPC to obtain heightened amici status.¹⁸⁹ Subsequently, the CPC filed an amicus brief addressing the use-of-force policy.¹⁹⁰ The CPC's emphasis on de-escalation as a front-line defense represents not only sound policing policy, but also the community's position on how officers should address circumstances where force is permitted.¹⁹¹

In late 2014, the CPC sent a list of fifty-five recommendations for police reform to the Mayor of Seattle.¹⁹² He signaled plans to implement many of them immediately and promised to codify some of the changes through legislation in order make them immune from the fragility inherent with executive change.¹⁹³ Consistent with the communication between the CPC and the Mayor's office, the CPC developed a package of legislative proposals and intended to send them to the Mayor for consideration over the summer of 2015.¹⁹⁴

Wash. Nov. 26, 2013), ECF No. 106, https://www.justice.gov/sites/default/files/crt/legacy/2014/10/10/spd_docket106_11-26-13.pdf [hereinafter Seattle Order Regarding Motion to Intervene].

189. *Id.* at 14.

190. Exhibit A of Community Police Commission's *Amicus Curiae* Submission Regarding Use of Force Policies at 1, *United States v. City of Seattle*, No. 12-cv-01282-JLR (W.D. Wash. May 18, 2015), ECF No. 206.

191. Law enforcement and police professionals consider de-escalation as a best practice for use of force policies. POLICE EXEC. RESEARCH FORUM, AN INTEGRATED APPROACH TO DE-ESCALATION AND MINIMIZING USE OF FORCE 26 (2012), http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf. The SPD is still criticized by some community members for failures to use de-escalation tactics, even though it has received high marks by the independent police monitor. *Compare* Steve Miletich, *Watch: Police Release Video, Say Man Reached for Gun Before Shot*, SEATTLE TIMES (Feb. 22, 2016, 11:59 AM), <http://www.seattletimes.com/seattle-news/crime/man-fatally-shot-by-spd-officers-was-under-doc-supervision/> (detailing the fatal shooting of Che Andre Taylor, an African American man, by two Seattle police officers, which "came at a time of heightened scrutiny nationwide into the police use of deadly force against African-American males, along with federally mandated reforms requiring the SPD to adopt reforms to curb excessive force"), *with* Steve Miletich, *Federal Monitor Praises SPD Board That Reviews Use of Force*, SEATTLE TIMES (Nov. 24, 2015, 6:59 PM), <http://www.seattletimes.com/seattle-news/federal-monitor-praises-spd-board-that-reviews-use-of-force/> (noting that the federal monitor found that the SPD's Force Review Board was in "initial compliance" with the consent decree). Another important feature of the use-of-force policy in Seattle is the provision that SPD will wait until after an investigation into the incident to claim justification for the use of force. Doing so avoids undermining the investigatory process and builds confidence in the Department's ability to conduct thorough investigations.

192. *See* David Kroman, *Community Police Commission Searches Its Soul About Reform Role*, CROSSCUT.COM (July 9, 2015), <http://crosscut.com/2015/07/community-police-commission-searches-its-soul-about-reform-role/>.

193. *Id.*

194. *See id.*

The proposals were in concert with the reform proposals advocates had been seeking for a number of years, and the CPC believed that they were ripe for the local legislature to consider.¹⁹⁵ What seemed like an initial indication of a greater role for the CPC in the reform process, however, soon hit a snag. According to news reports, a member of the court monitor's staff was informed of the proposals and the circumstances under which the CPC sought the legislative reform (prior to the next city budget cycle).¹⁹⁶ The federal district court interpreted the legislative reforms—in particular one that would make the CPC a permanent structure following the consent decree's dissolution—as a “power grab” meant to alter the terms of the Settlement Agreement and MOU and held them invalid under the Settlement Agreement.¹⁹⁷ This resulted in the CPC and its members feeling frustrated and “shut out” of the police-reform process.¹⁹⁸

Today, members of the CPC question the DOJ's motives in creating the oversight body and worry their function is to rubber stamp the parties' reforms, rather than engage in community-driven decision making to effect a long-term shift in power between police and communities subject to police practices.¹⁹⁹ Several barriers seem to stand in the CPC's way. First, perhaps the most fundamental concerns are role confusion, frustration, and lack of alignment regarding how and when the CPC can inject itself into the reform process. The CPC has one view, and the parties, court, and monitor seem to have another. At the time of writing, the CPC was undergoing a series of meetings with the parties and the monitoring team to decide a course of action involving its authority to exist after the consent decree is lifted and to seek accountability reforms outside of the consent decree process.²⁰⁰ Second, priorities for sequencing reforms are driven by the DOJ rather than the CPC or some other community-based input method.²⁰¹ This can be problematic because the DOJ may choose to tackle a particular problem first, second, or last and at times this seems inapposite to

195. *See id.*

196. *See id.*

197. *Id.*; see Status Conference, *United States v. City of Seattle*, No. 12-cv-01282-JLR (W.D. Wash. June 30, 2015), <http://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle>.

198. *See* Amy Radil, *Seattle Police Reformers Say They're Being Shut Out*, KUOW.ORG (Sept. 23, 2015), <http://kuow.org/post/seattle-police-reformers-say-theyre-being-shut-out>.

199. *See* Ansel Herz, *Police Reform Advocates Say Federal Oversight Hasn't Gone Far Enough*, STRANGER (Aug. 26, 2015), <http://www.thestranger.com/news/feature/2015/08/26/22758232/police-reform-advocates-say-federal-oversight-hasnt-gone-far-enough>.

200. *See* Kroman, *supra* note 192.

201. *See id.*

community concerns. Finally, there have been differences of opinion in how to reform a particular police practice or policing policy. Use of force, discussed earlier, is one example. Perhaps one policy concern that will be universal across the country is the issue of body cameras. The CPC disagrees with a \$600,000 award by the DOJ to the City of Seattle for the acquisition of body cameras.²⁰² It is concerned that such cameras elicit privacy concerns for citizens, and it had arranged to develop a set of proposals to cabin the use of body worn cameras.²⁰³ CPC members view the grant as curtailing a process it had begun to protect the interests of its constituents.²⁰⁴

In sum, despite praise from scholars²⁰⁵ and positive reports²⁰⁶ regarding the Seattle CPC's involvement in shaping the direction of the policies implemented as part of the consent decree reform process, genuine concerns remain regarding the actual power granted to communities to shape police policies.²⁰⁷

202. David Kroman, *Ready or Not, Seattle's All-In on Police Body Cameras*, CROSSCUT.COM (Oct. 1, 2015), <http://crosscut.com/2015/10/ready-or-not-citys-all-in-on-police-body-cameras/>.

203. Letter from Rev. Harriett Walden and Lisa Daugaard, Co-Chairs of Cmty. Police Comm'n, to Seattle City Council (Oct. 19, 2015), http://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/FINAL_Body_Cam_letter_to_City_Council_101915.pdf.

204. See Radil, *supra* note 198.

205. Police accountability expert and criminologist Samuel Walker has observed that the Seattle Settlement Agreement and the CPC process represented the first time in American policing that community stakeholders had a formalized voice in creating police policy. Walker, *supra* note 185, at 548. Walker noted that the CPC's intervention involved the collaboration and agreement of community stakeholders and police officer representatives as both entities sought a more meaningful voice in the reform process. *Id.* at 547. This unexpected, unified front provided the CPC with a stronger claim to engage in the reform process and resulted in a new use-of-force de-escalation policy that has become a recognized best practice. *Id.* at 548.

206. The community engagement assessment report was released this year. The report stated that

[o]verall, the Monitor found that, since the start of the consent decree, SPD 'has not only fully embraced a community-oriented policing approach, but has demonstrated . . . a willingness to engage and join with the community in an effort that is impressive in focus and shows early signs of success.' That said, the Monitor also noted that these efforts 'are just a beginning of the steps necessary to cementing an organizational culture capable of building and sustaining trust with the community,' particularly in isolated communities.

Press Release, U.S. Att'y's Office, W. Dist. Wash., U.S. Dep't of Justice, Assessments of Public Confidence and Community Trust in the Seattle Police Department Filed with Court (Jan. 28, 2016), <https://www.justice.gov/usao-wdwa/pr/assessments-public-confidence-and-community-trust-seattle-police-department-filed-court>.

207. Samuel Walker, *supra* note 185, at 548 (noting that the CPC process "represents the first time in the history of American police where community representatives had a formal voice in the making of police policy"); *Policies*

B. Puerto Rico

In Puerto Rico the consent decree process creates a formal accountability structure, much like Seattle's CPC. The organized police-reform movement not only lacks adequate formal infrastructure to engage with the court and parties to the consent decree, but has also raised concerns that general access to information about the process has been insufficient. Nonetheless, policing advocates and individuals affected by police misconduct have pushed their way into the reform process. A new community coalition has been created to engage with the parties to the consent decree, provide specific feedback on proposals, highlight failures in the process, and even communicate directly with the court to increase access to information. These community-driven steps to take some control over the reform process have caused the Puerto Rican Police Department ("PRPD") to use drastic methods to shut the advocates out of the reform process.

On August 11, 2007, Miguel Cáceres Cruz was helping direct traffic for a quinceañera celebration when a police car passed him; the officers inside the car addressed Mr. Cáceres using offensive language.²⁰⁸ The car then stopped and the officers got out, backing a threatened Mr. Cáceres onto the sidewalk and up against a wall.²⁰⁹ One officer shot Mr. Cáceres five times, including one shot to the back of the head.²¹⁰ The entire exchange, captured on video, has been described as depicting "graphic violence."²¹¹ According to the DOJ's investigation, Mr. Cáceres's death followed several years of consistent police abuse in Puerto Rico.²¹² The PRPD and its pervasive misconduct, though not widely covered, are of enormous importance to the United States; the PRPD is the second largest

Approved By Court, SEATTLE.GOV, (last visited Oct. 22, 2016), <http://www.seattle.gov/community-police-commission/policies-approved-by-court>.

208. AJ Vicens, *You've Probably Never Heard of America's Worst Police Force*, MOTHER JONES (FEB. 27, 2015, 7:00 AM), <http://www.motherjones.com/politics/2015/02/puerto-rico-police-department-abuses-reform>.

209. *Id.*

210. *Id.*

211. *Id.* This incident is remembered among Puerto Ricans as one of the most shocking and egregious examples of police violence rampant in Puerto Rico. "The murder of Miguel Cáceres is to Puerto Rico what the choke-hold death of Eric Garner is to New York and Michael Brown killing is to Ferguson, Missouri," Judith Berkan, a civil rights attorney wrote in a brief in an ongoing law suit between the family of Mr. Cáceres and the Puerto Rico Police Department. *Id.*

212. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT 6 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/09/08/prpd_letter.pdf [hereinafter Puerto Rico Findings Letter].

police department in the country, second only to New York in its size with more than 17,000 police officers.²¹³

Based on the findings of a 2011 investigatory report,²¹⁴ the ACLU of Puerto Rico requested that the DOJ initiate an investigation into the police department's pattern of abuses, which it did.²¹⁵ The DOJ found that PRPD officers engaged in a pattern and practice of excessive force and unlawful search and seizures in violation of the Fourth Amendment as well as misconduct designed to suppress the exercise of First Amendment rights.²¹⁶ As a result, the DOJ initiated a lawsuit against the PRPD²¹⁷ that resulted in a consent decree settlement in July 2013 requiring the PRPD to undertake several major reforms.²¹⁸ These reforms include changes

213. ACLU, ISLAND OF IMPUNITY: PUERTO RICO'S OUTLAW POLICE FORCE 11 (2012), https://www.aclu.org/files/assets/islandofimpunity_20120619.pdf. These other incidents include:

the killing of family members by two police officers in the "Massacre of Las Piedras" in 2007; . . . the shooting death of a PRPD lieutenant by a sergeant at a police station in Yabucoa in 2007; the conviction of multiple officers assigned to the Mayagüez Drug Unit for planting drugs in 2008; the conviction of the director of the Special Arrests and Extraditions Unit and several of his officers on drug-related charges in 2009; the conviction of a lieutenant directing the weapons registry at PRPD headquarters as part of an illegal gun licensing scheme in 2009; the indiscriminate use of batons and chemical irritants against protesters at the Capitol in June 2010; the shooting death of an unarmed young man who was reportedly aiding police following a robbery in September 2010; and the arrest of 61 PRPD officers as part of the largest police corruption operation in the Federal Bureau of Investigation's ("FBI") history in October 2010.

Puerto Rico Findings Letter, *supra* note 212, at 6.

214. In 2011, the ACLU initiated an investigation of the PRPD. This investigation found that the PRPD consistently uses excessive force, violates the civil rights of the Puerto Rican population, fails to investigate sex crimes and domestic violence, and discriminates against Puerto Rico's Dominican community. ACLU, *supra* note 213, at 11. The ACLU report also found that the PRPD is home to pervasive corruption and criminal activity. *Id.* at 12. From 2005 to 2010, over 1700, or ten percent of the PRPD police officers, were arrested for criminal activity including assault, theft, domestic violence, drug trafficking, and murder. *Id.*

215. *See generally* Puerto Rico Findings Letter, *supra* note 212 (finding several years of consistent police abuse in Puerto Rico).

216. *See id.* at 19–32.

217. Complaint, United States v. Puerto Rico, No. 12-cv-02039-GAG (D.P.R. Dec. 21, 2012), ECF No. 1. The ACLU, along with Kirkland and Lewis LLP, also initiated its own lawsuit against the PRPD. Preliminary Statement, Consejo General de Estudiantes del Recinto de Río Piedras Universidad de Puerto Rico v. Pesquera, No. 12-cv-01518-JAF (D.P.R. June 27, 2012), ECF No. 1.

218. *See* Settlement at 1, United States v. Puerto Rico, No. 12-cv-02039-GAG (D.P.R. July 17, 2013), ECF No. 60 [hereinafter Puerto Rico Consent Decree]. In total, the Consent Decree requires that the PRPD make changes in eleven compliance areas and implement 301 specific requirements over ten years.

to internal controls and accountability mechanisms on the use-of-force and search-and-seizure policies; patterns of discriminatory policing; recruitment, selection, and hiring plans; training, supervision, and management; civilian complaints; internal investigations; and discipline.²¹⁹

With regard to community engagement, the consent decree optimistically prescribes the PRPD to engage with the community to “ensure collaborative problem-solving, ethical and bias-free policing, and more effective crime prevention.”²²⁰ The consent decree also requires the continued maintenance of Community Interaction Councils (“CICs”) with community representatives to facilitate regular communication and cooperation between the PRPD and community leaders at the local level.²²¹ The PRPD is to allocate sufficient resources to the CICs to ensure the CICs can “fulfill their mission.”²²² The CICs must facilitate regular communication and cooperation between the PRPD and community leaders, meeting every three months.²²³ The PRPD consent decree mandates that the PRPD seek the CICs’ “assistance, counsel, recommendations or participation” in several areas of police operations, including

- a) reviewing and assessing the propriety and effectiveness of law enforcement priorities and related community policing strategies, materials, and training;
- b) reviewing and assessing the propriety and effectiveness of PRPD policies on matters such as discriminatory policing, search and seizure, use of force, the civilian complaint process, and victim services;
- c) reviewing and assessing concerns or recommendations about specific PRPD policing tactics and initiatives;

Motion Submitting PRPD’s Progress Report on the Agreement on the Sustainable Reform at 2, *United States v. Puerto Rico*, No. 12-cv-02039-GAG (D.P.R. Aug. 8, 2014), ECF No. 159.

219. *See generally* Puerto Rico Consent Decree, *supra* note 218 (outlining the areas of reform in the subsection headings).

220. *Id.* at 67; *see also id.* at 67–68 (noting that the consent decree requires that the PRPD integrate community and problem-oriented policing principles into its management, policies and procedures, recruitment, training, personnel evaluations, tactics, deployment of resources, and systems accountability).

221. *Id.* at 68 (acknowledging pre-existing “Community Interaction Councils,” which were comprised of both PRPD members and community representatives, and requiring the PRPD to develop a way to select the CIC members with community representatives, in order to ensure inclusion of a cross section of community members and PRPD officers.).

222. *Id.* at 69.

223. *Id.* at 68.

- d) providing information to the community and conveying feedback from the community to PRPD;
- e) advising the Superintendent on recruiting a qualified, diverse workforce; and
- f) advising the Superintendent on ways to provide data and information, including information about PRPD's compliance with this Agreement, to the public in a transparent and public-friendly format, to the greatest extent allowable by law.²²⁴

The CICs are also required to publish public reports, available online, that outline their suggestions to the PRPD.²²⁵ Importantly, the CICs are not independent of the police department and function independently from the consent decree process.²²⁶

Community access to information about the court-monitored reform process seems to have been limited for the first few years of the consent decree process.²²⁷ In a 2014 motion to the court, the Caguas Region CIC complained about the lack of a settlement agreement in Spanish (the provision of which the settlement agreement required),²²⁸ the failure to appoint a court monitor (called

224. *Id.* at 69–70.

225. *Id.* at 70, 75 (noting that CICs are specifically permitted to obtain records and information from the Reform Unit within the PRPD).

226. *Id.* at 68–69.

227. Community Interaction Council Motion Requesting Enforcement of Conditional Judgment Subject to Compliance with the Agreement for the Sustainable Reform of the Puerto Rico Police Department at 3, United States v. Puerto Rico, No. 12–cv–02039–GAG (D.P.R. May 27, 2014), ECF No. 117 [hereinafter Puerto Rico Community Interaction Council Motion]; Puerto Rico Consent Decree, *supra* note 218, at 69 (referencing the agreement which states CIC members shall have “sufficient resources and authority” and “possess the means, staffing, access, training, and mandate necessary to fulfill their mission and requirements of this Agreement”).

228. The motion states that the “CIC meetings are held in Spanish . . . [and] Meeting Minutes have to be drafted and filed in Spanish.” Puerto Rico Community Interaction Council Motion, *supra* note 227, at 2. If community members cannot even understand the contents of the agreement, it is difficult to envision that they have much of a role, if any, in the reform process. As a remedy, the CIC requested that the court order the parties to release the final and official settlement agreement in Spanish within thirty days, order the PRPD to inform the CIC of the status of the TCA appointment within the next five days, and order the PRPD to provide the CIC with budget allocation information. *Id.* at 4–5. Responding to this concern, however, the DOJ Special Litigation Section has now provided a Spanish-language version of the settlement agreement. Puerto Rico Consent Decree, *supra* note 218, at 95. It is unclear the extent to which future court orders or other reports by the court monitor will be available in Spanish.

a Technical Compliance Advisor (“TCA”),²²⁹ and the lack of information available on the PRPD’s operating budgets.²³⁰ The district court denied the motion on the same day it was filed because the CIC was not a party to the lawsuit.²³¹ Though the order is not available publicly, a note on Bloomberg describing the order states, “Notwithstanding [the denial], the court notes [the CIC’s] concerns, many of which are shared.”²³²

The TCA’s first six-month report, concerning June 6, 2014, to December 2014, addressed the lack of steps taken in implementing the consent decree due to the long delay in appointing a TCA and discussed the TCA’s activities and engagements with the community.²³³ The TCA deemed it necessary to meet with government officials, former police superintendents, the PRPD’s Reform Unit, PRPD representatives, and a number of community organizations.²³⁴ The TCA opined that the PRPD needed to take many steps to incorporate the community into the reform process.²³⁵

In addition to the CICs efforts, a number of organized civil rights groups have formed the Communitarian Work Group in Regards to the Police Reform (“GRUCORPO”) to promote community participation in the consent decree reform process.²³⁶ GRUCORPO became active in speaking to community members, individuals who had been victims of police brutality, PRPD leaders, as well as the TCA.²³⁷ GRUCORPO successfully established a relationship with the PRPD, especially the department’s Reform Unit. Through these ties, GRUCORPO obtained drafts of proposed new policies and protocols.²³⁸ In addition, the group provided

229. It was only through media reports that the CIC had become aware of a court-approved extension to appoint the monitor. Puerto Rico Community Interaction Council Motion, *supra* note 227, at 3–5.

230. *Id.* at 3–5 (“The CIC is concerned that there is still no duly appointed Technical Compliance Advisor Although we became aware, *through public media*, there was a Court extension for the parties until June 15, 2014 to address the issue.”); Puerto Rico Consent Decree, *supra* note 218, at 69.

231. See Docket for Order Denying 117 Motion to Enforce Judgment, United States v. Puerto Rico, No. 3:12-cv-02039-GAG (D.P.R. May 27, 2014), ECF No. 118.

232. *Id.*

233. Six-Month Report of the Technical Compliance Advisor June 6 – December 6, 2014 at 21–25, United States v. Puerto Rico, No. 3:12-cv-02039-GAG (D.P.R. filed Feb. 9, 2015), ECF No. 203, <https://www.justice.gov/crt/file/846941/download>.

234. *Id.* app. 1, at 31–39.

235. See, e.g., *id.* at 20–21.

236. Six-Month Report of the Technical Compliance Advisor June 8, 2015 – December 8, 2015 at 49, United States v. Puerto Rico, No. 3:12-cv-02039-GAG (D.P.R. filed Feb. 1, 2016), ECF No. 306, <https://www.justice.gov/crt/file/846976/download>.

237. *Id.* at 49–50.

238. See *id.* at 50.

commentary and recommendations on general orders, policies, and protocols with the vision of promoting human rights.²³⁹

In essence, GRUCORPO has filled the role of a community engagement structure but without a formal seat at the table, an approach that presents particular challenges. GRUCORPO has brought to the reform process concerns regarding discrimination, lack of civilian oversight, and general transparency surrounding the reform process. Such concerns were heard at a public hearing held by the court on October 22 and 23, 2015.²⁴⁰ At this hearing, community members “aired significant concerns that must be identified and addressed.”²⁴¹ Most concerning were the testimonies of the Executive Director of the ACLU, William Ramirez, and Josué González of the ACLU of Puerto Rico on behalf of GRUCORPO.²⁴² Ramirez expressed concerns over the continued lack of a civilian oversight body in the PRPD reform process and pointed out that the only way for such a body to be established in Puerto Rico is via the settlement agreement, given that the governor and the legislature are unlikely to attempt to or succeed at establishing such a body due to their reluctance to oppose “police interests.”²⁴³ Ramirez pointed to the unique perspective and expertise that those directly impacted by police misconduct would provide and stated that the involvement of the community was necessary to promote accountability and transparency within the police department.²⁴⁴ To make his point, he pointed to the Cáraces incident, expressing how the presence of civilians with their cell phones was the only way that the true story of the murder was revealed.²⁴⁵ Ramirez also pointed to the

239. *Id.* GRUCORPO sent four separate documents outlining commentaries and recommendations on several issues. Letter from GRUCORPO to Clementina Vega Rosario, Dir., Office of Police Reform (Aug. 17, 2015), <http://www.grucorpo.org/portfolio-item/reestructuracion-operaciones-tacticas/> (discussing the reformation of the tactical operations division); Letter from GRUCORPO to Clementina Vega Rosario, Dir., Office of Police Reform (July 15, 2015), <http://www.grucorpo.org/portfolio-item/violencia-domestica/> (discussing investigations of domestic violence complaints); Letter from GRUCORPO to Clementina Vega Rosario, Dir., Office of Police Reform (June 16, 2015), <http://www.grucorpo.org/portfolio-item/uso-de-fuerza-e-investigacion-de-incidentes-uso-de-fuerza/> (discussing use of force); Letter from GRUCORPO to Clementina Vega Rosario, Dir., Office of Police Reform (May 15, 2015), <http://www.grucorpo.org/portfolio-item/detenciones-investigativas-y-entrevistas-voluntarias-600-6/> (discussing investigatory stops and voluntary interviews).

240. Six-Month Report of the Technical Compliance Advisor June 8, 2015 – December 8, 2015, *supra* note 233, at 42–51 (dedicating nine pages to discussing the outcome of the second public hearing held by the court on October 22 and 23, 2015).

241. *Id.* at 42.

242. *Id.* at 46, 49.

243. *Id.* at 46.

244. *Id.* at 47.

245. *Id.* at 48.

importance of involving the community in the process of reform, noting Puerto Rico was “one of the few jurisdictions lacking civilian oversight.”²⁴⁶ González called for the development of programs to inform residents on the PRPD’s progress, address community concerns, and publicize crime statistics.²⁴⁷

Another speaker at the hearing was civil rights leader Georgina Candal, president of the Civil Rights Commission. She pointed to the PRPD’s continued violence and discrimination against transsexual individuals and the Dominican population living in Puerto Rico.²⁴⁸ The Honorable Franklin Grullon, Consul for the Dominican Republic in Puerto Rico, also spoke about the discrimination facing Dominicans and acknowledged that the PRPD had made improvements in this reform area.²⁴⁹ In October 2015, however, the Dominican Committee of Human Rights asked the Puerto Rican government for extensive investigation within the PRPD.²⁵⁰ Amongst other concerns, the group expressed complaints of constant mistreatment and discrimination against the Dominican immigrants in the community.²⁵¹ The complaints reported police corruption, police abuse and mistreatment, and the violation of civil rights of the Dominican community members during investigative stops.²⁵² The president of the Dominican Committee of Human Rights stated that if no investigation was initiated, then the complaints would be taken up to the Inter-American Commission on Human Rights.²⁵³

In January 2016, the PRPD ordered a halt in GRUCORPO’s participation in the reform process.²⁵⁴ GRUCORPO reported that the PRPD superintendent, Jose Caldero, conditioned the group’s continued participation with the process on the group signing an additional agreement between GRUCORPO and the PRPD requiring

246. *Id.* at 47.

247. *Id.* at 50.

248. *Id.* at 43.

249. *Id.* at 49.

250. *See Comunidad dominicana pide investigar a policias corruptos en Puerto Rico* [Dominican Community Asked to Investigate Corrupt Cops in Puerto Rico], DIARIO LIBRE (Oct. 1, 2015, 5:14 PM), <http://www.diariolibre.com/noticias/justicia/comunidad-dominicana-pide-investigar-a-policias-corruptos-en-puerto-rico-EY1427574#>.

251. *See id.*

252. *Id.*

253. *Id.*

254. Mari Mari Narváez, *Policía de Puerto Rico Detiene Participacion Comunitaria en Reforma de la Policía* [Puerto Rico Police Stops Community Involvement in Police Reform], GRUCORPO: THE BLOG (Jan. 4, 2016), <http://www.grucorpo.org/2016/01/04/policia-de-puerto-rico-detiene-participacion-comunitaria-en-reforma-de-la-policia/>.

confidentiality of information and draft proposals.²⁵⁵ The organizations that form GRUCORPO decided that the group would not agree to such a condition and would not sign the agreement.²⁵⁶ In response, the PRPD announced that drafts of newly proposed policies would no longer be sent to the group until the group signed the confidentiality agreement.²⁵⁷ Lt. Col. Clementina Vega Rosario, the director of the Office of Police Reform, reasoned that if and when GRUCORPO releases draft and incomplete policies, which have not yet been approved by the correct authorities, the group would be acting against the public's interest and creating confusion.²⁵⁸ Members and leaders of GRUCORPO have spoken out regarding Superintendent Caldero's announcement and argue that the initial consent decree between the DOJ and the Puerto Rican Government requires the participation of the community without any additional agreements.²⁵⁹

C. New Orleans

Following Hurricane Katrina in August 2005, several tragic incidents laid bare the corruption and lawlessness within the New Orleans Police Department ("NOPD").²⁶⁰ When unarmed individuals crossed the Danziger Bridge while fleeing the city's flooding, NOPD officers fired shots that injured several and killed two Black men, Ronald Madison and James Brissette.²⁶¹ Officers and supervisors shot multiple civilians, including one in the back, despite no apparent threat, and fired AK-47s at wounded individuals.²⁶² The officers then colluded to cover up their

255. Keila López Alicea, *Exigen Transparencia con la Reforma de la Policía* [*They Demand Transparency with Police Reform*], EL NUEVO DÍA: NOTICIAS (Dec. 2, 2015, 1:32 PM), <http://www.elnuevodia.com/noticias/seguridad/nota/exigentransparenciaconlareformadelapolicia-2133924>.

256. Narváez, *supra* note 254.

257. López Alicea, *supra* note 255.

258. *Id.*

259. See Narváez, *supra* note 254.

260. See Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351, 354–55 (2011) (suggesting that incidents such as the Henry Glover shooting and the Danziger Bridge shooting laid bare the corruption and misconduct of the NOPD); Campbell Robertson, *Jury Convicts 3 Officers Over a Killing in New Orleans*, N.Y. TIMES (Dec. 10, 2010), <http://query.nytimes.com/gst/fullpage.html?res=9501E4DD123BF933A25751C1A9669D8B63>.

261. Laura Maggi, *4th Former New Orleans Cop Pleads Guilty in Danziger Bridge Coverup*, TIMES-PICAYUNE (Apr. 28, 2010, 9:32 PM), http://www.nola.com/crime/index.ssf/2010/04/4th_former_new_orleans_cop_ple.html; Robertson, *supra* note 260.

262. See Indictment for Deprivation of Rights Under Color of Law, Use of a Weapon During Commission of a Crime of Violence, Conspiracy, Obstruction of Justice, and False Statements at 2, 4, *United States v. Bowen*, No. 10-204 (E.D. La. July 12, 2010), ECF No. 1.

actions.²⁶³ These actions, among others, led to federal criminal investigations by the DOJ.²⁶⁴

On May 4, 2010, a group of civil rights leaders and community organizations requested the DOJ exercise its § 14141 authority and investigate the NOPD's widespread and systemic problems.²⁶⁵ On May 5, 2010, just two days after he took office, then-Mayor Mitch Landrieu publicly asked for a federal intervention.²⁶⁶ After a ten-month investigation, the DOJ released its findings on March 17, 2011, reporting systematic "dysfunction and corruption in nearly every facet of the department."²⁶⁷ The DOJ acknowledged the significant contribution of "many community members and groups who met with [the DOJ] on weekends and on evenings until late into the night to ensure [the DOJ] had [a] full . . . picture."²⁶⁸ On January 11, 2013, the DOJ and the City of New Orleans entered a consent decree, which called for a Police-Community Advisory Board ("PCAB") and a Community-Based Restorative Justice Project.²⁶⁹

The NOPD and the Mayor of New Orleans created the PCAB in 2011 with the assistance of the DOJ during the DOJ's fact-finding process.²⁷⁰ As a "neighborhood participation plan," it included the development of a seven-member council in each of eight districts.²⁷¹ The consent decree affirmed the PCAB's role: to facilitate regular

263. *Id.* at 10.

264. The Louisiana Justice Institute, a public-interest law firm in New Orleans, along with a coalition of community groups requested that the DOJ file suit against the NOPD in order to compel oversight of the police department. Press Release, La. Justice Inst., *Diverse Group of Leaders Call for Justice Department Intervention in NOPD* (May 4, 2010), http://www.louisianajusticeinstitute.org/files/all/docs/_NOPD_Brutality_and_Corruption_4May10_2_1_.pdf; see also Donovan X. Ramsey, *How Katrina Sparked Reform in a Troubled Police Department*, ATLANTIC (Aug. 31, 2015), <http://www.theatlantic.com/politics/archive/2015/08/katrina-blew-the-lid-off-the-nopd/402814/>.

265. Laura Maggi, *NOPD Needs More Federal Oversight, Community Coalition Says*, TIMES-PICAYUNE (May 4, 2010, 8:45 PM), http://www.nola.com/crime/index.ssf/2010/05/nopd_needs_more_federal_oversi.html.

266. Campbell Robertson, *Justice Department to Review New Orleans's Troubled Police Force*, N.Y. TIMES (May 17, 2010), <http://www.nytimes.com/2010/05/18/us/18orleans.html>.

267. John Schwartz, *New Orleans Police, Mired in Scandal, Accept Plan for Overhaul*, N.Y. TIMES (July 24, 2012), <http://www.nytimes.com/2012/07/25/us/plan-to-reform-new-orleans-police-department.html>.

268. Letter from Thomas E. Perez, Assistant Att'y Gen., Civ. Rights Div., to the Honorable Mitchell J. Landrieu, Mayor, City of New Orleans (Mar. 16, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_letter.pdf.

269. New Orleans Consent Decree, *supra* note 14, at 1.

270. NEW ORLEANS POLICE DEP'T, POLICE COMMUNITY ADVISORY BOARD POLICY MANUAL 3 (2013), [http://www.nola.gov/nola/media/Neighborhood-Engagement/Files/PCAB-Policy-Manual-Final-Copy-\(6-03-2013\).pdf](http://www.nola.gov/nola/media/Neighborhood-Engagement/Files/PCAB-Policy-Manual-Final-Copy-(6-03-2013).pdf).

271. *Id.*

communication and cooperation through the development of a community advisory panel and the collaborative development of policing strategies and priorities.²⁷² The PCAB is to provide regular input into community policing strategies, accountability for professional/ethical behavior by individual police officers, and information sharing with the community.²⁷³ The PCAB sets the agenda at its quarterly meetings, and command-level or executive staff are required to attend.²⁷⁴ Very few meeting minutes are publicly available, but those that are show the PCAB functions as a conduit to gather and share information for law enforcement activity.²⁷⁵ Nothing suggests the PCAB has embraced its accountability function, nor does anything suggest the PCAB has a relationship with the court monitor or organized constituents working to reform the police department. Thus, the PCAB does little to foster democratic policing, but rather legitimizes law enforcement activity and a process that neither promotes self-determination nor a power shift toward impacted communities.

The second independent structure referenced in the consent decree, the Community-Based Restorative Justice Project, presents a unique concept among DOJ policing consent decrees. This structure's goal is to remedy mistrust between the NOPD and the broader New Orleans community and to create an environment for successful problem-solving partnerships.²⁷⁶ To date, this body has not been created.

Unfortunately, the New Orleans consent decree process has limited, if any, mechanisms for affected community members to provide reform proposals or information regarding everyday policing practices. Decisions are made by the parties to the litigation, perhaps in consultation with stakeholders or advocates, without a mechanism for broad-based community involvement or idea generation. Without a method for contestation and questioning among community perspectives and between the parties and community advocates, little opportunity exists for structural change in the relationship between police and harmed community members.

On August 7, 2012, Community United for Change ("CUC") attempted to intervene in the litigation, noting "there is no existing party which adequately represents the interests of 'the people who are the primary victims of the culture and corruption pointed out by

272. New Orleans Consent Decree, *supra* note 14, at 107.

273. *Id.*

274. *Id.* at 108.

275. For the PCAB's data collection responsibilities, see *id.* at 105–06. For board-meeting minutes, see *Police Community Advisory Board*, CITY NEW ORLEANS, [http://www.nola.gov/neighborhood-engagement/projects/new-orleans-police-community-advisory-board-\(pcab\)/](http://www.nola.gov/neighborhood-engagement/projects/new-orleans-police-community-advisory-board-(pcab)/) (last visited Oct. 24, 2016).

276. New Orleans Consent Decree, *supra* note 14, at 108.

[the] DOJ.”²⁷⁷ As with intervention attempts in other jurisdictions, the court denied the CUC’s motion to intervene for failure to show a protectable interest.²⁷⁸ In words nearly identical to those used by previous judges, the court stated that even if the community organization did have a protectable interest, that interest would not be impaired by the litigation.²⁷⁹ Additionally, the court held that it would not use its discretion to grant the CUC permissive intervention in the litigation because doing so would “unduly delay . . . proceedings and prejudice the existing parties while not offering significant assistance to the Court.”²⁸⁰

Despite its non-party status, the CUC continued to be involved. In 2014, it submitted a report regarding the status of the NOPD’s efforts to engage with the community. In this report, the CUC expressed major concerns regarding the ability of the independent monitor to connect to the needs of the community.²⁸¹ The group summarized its findings by stating: “This report reveals a definite disconnect with the people of New Orleans and the monitoring team.”²⁸² The CUC expressed its discontent with the monitor’s complaint-gathering and investigation activities.²⁸³ Additionally, the report expressed the CUC’s concern with its exclusion from the drafting of the quarterly reports, pointing out that special considerations are given to interest groups.²⁸⁴

In April 2015, the NOPD also issued its annual report on community engagement, detailing its work with the community and evaluating its current efforts.²⁸⁵ These efforts included the establishment of a Community Affairs Coordinator responsible for communicating information between the community and the police department.²⁸⁶ The NOPD also established the New Orleans Neighborhood Police Anti-Crime Council, at which representatives of the community are permitted to be present and express their concerns directly to the NOPD.²⁸⁷ In addition to these two

277. Order & Reasons at 11–12, *United States v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW (E.D. La. Aug. 31, 2012), ECF No. 102.

278. *Id.* at 12.

279. *Id.*

280. *Id.* at 13.

281. See Official Review & Response: Third Quarterly Consent Decree Monitor’s Report New Orleans Police Department at 4, *United States v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW (E.D. La. Sept. 23, 2014), ECF No. 409.

282. *Id.* at 5.

283. *Id.*

284. *Id.*

285. NEW ORLEANS POLICE DEP’T, 2014 COMMUNITY ENGAGEMENT ANNUAL REPORT 1 (2015), <http://www.nola.gov/nopd/policing-data/data/community-engagement-/2014-community-engagement-annual-report/>.

286. *Id.*

287. *Id.*

mechanisms for community involvement, the NOPD established a Quality of Life Office responsible for monitoring the state of the neighborhood's quality of life through indicators such as illegal parking, special events, and permits.²⁸⁸ The NOPD has also tracked its community involvement by tallying the number of community partnerships it creates and the number of community meetings it attends, as well as the number of participants at each of these meetings.²⁸⁹ According to the data it presented for 2014 in its report, the NOPD has formed a total of 279 partnerships and attended 911 community meetings, at which some 16,312 individuals were present.²⁹⁰

In the biannual report from the NOPD, filed on July 1, 2015, the NOPD expends one small paragraph to assess the extent of its community engagement efforts.²⁹¹ The report points to the NOPD's creation of a community engagement tracking system on January 1, 2015, but provides little other information.²⁹² Similarly, community engagement comprised a single paragraph of the NOPD's report covering the period from July 1, 2015, to December 31, 2015.²⁹³ This report, however, noted that the NOPD would begin to publish quarterly reports describing its community engagement efforts according to district.²⁹⁴ In its report covering 2015, the NOPD stated that the department had attended 626 community meetings in the various districts, and that these meetings were attended by over 15,000 people.²⁹⁵ The report nonetheless identified lingering problems with the NOPD's tracking and documenting of community engagement and policing—the mechanisms were not used consistently.²⁹⁶ Additionally, on October 13, 2016, at the NOPD's

288. *Id.*

289. *Id.* at 2.

290. *Id.*

291. Biannual Report of the New Orleans Police Department at 9, United States v. City of New Orleans, No. 12-CV-01924 (E.D. La. July 1, 2015), ECF No. 443.

292. *Id.* at 9 (“NOPD implemented a new community engagement tracking system on January 1, 2015 to collect additional information on community engagement efforts. The tracking system records the activities of Community Coordinating Sergeants, Quality of Life Officers, and School Resource Officers, and it provides greater oversight and accountability for NOPD's community engagement. The system will allow NOPD to analyze the scope and effectiveness of its community engagement efforts and adjust outreach accordingly.”).

293. Biannual Report of the New Orleans Police Department at 11, United States v. City of New Orleans, No. 12-CV-01924 (E.D. La. Jan. 6, 2016).

294. *Id.*

295. NEW ORLEANS POLICE DEP'T, 2015 COMMUNITY ENGAGEMENT ANNUAL REPORT 2 (2016), <http://www.nola.gov/nopd/policing-data/data/community-engagement-/2015-community-engagement-annual-report/>.

296. *Id.* at 7–8.

Third District “Community Engagement Night Out,” community members expressed dissatisfaction with the NOPD’s lack of communication with residents, particularly failures to follow up with citizen complaints and reports.²⁹⁷

All of this indicates the New Orleans consent decree process, despite improvements in a number of other areas, has made little progress in the area of community engagement. The rigorous intervention practice with this suit suggests discontent on the part of several community constituents and government agencies. Moreover, a tracking system of police interactions with organized constituents does little to change the structure or power dynamic that created the cry for DOJ-led reform.

D. Portland

On September 17, 2006, James Chasse, a man with schizophrenia, was beaten to death by police officers in Portland, Oregon.²⁹⁸ Four years later, officers shot Aaron Campbell during a “welfare check” after receiving a call from Mr. Campbell’s girlfriend that he had a gun and was suicidal.²⁹⁹ Officers stated Mr. Campbell, who they believed was armed, was not being cooperative, which forced them to open fire.³⁰⁰ Although the officers were brought to court, the grand jury did not indict them.³⁰¹ In reaching their decision, the jurors issued a three-page letter, expressing their dissatisfaction with the officers’ actions but noting that, under the current law, they could not legally indict the officers.³⁰² They stated,

[W]e the grand jury determined that we could not indict Officer Ron Frashour on any criminal charge. That is not to say that we found him innocent, agreed with his decisions, or

297. Jamal Melancon, *Residents Identify NOPD Following Up as a Top Concern at First Community Engagement Night Out*, GENTILLY MESSENGER (Oct. 19, 2016), <http://gentilymessenger.com/residents-identify-nopd-following-up-as-a-top-concern-at-first-community-engagement-night-out/>.

298. April Baer, *Film Explores the Life and Death of James Chasse*, OR. PUB. BROAD. (Feb. 15, 2013, 6:00 AM), <http://www.opb.org/news/article/film-explores-the-life-and-death-of-james-chasse/>.

299. Oregonian Editorial Bd., *Yes, a Grand Jury; But More, Too*, OREGONIAN (Feb. 8, 2010, 11:36 AM), http://www.oregonlive.com/opinion/index.ssf/2010/02/yes_a_grand_jury_but_more_too.html.

300. *Id.*

301. Amelia Templeton, *Police Review Panel Completes Probe of Aaron Campbell Shooting*, OR. PUB. BROAD. (Aug. 31, 2010, 8:52 AM), <http://www.opb.org/news/article/police-review-panel-completes-probe-aaron-campbell-shooting/>.

302. Letter from Grand Jury 1, Session 1, to Michael D. Schrunk, Dist. Att’y, Multnomah Cty. Courthouse (Feb. 10, 2010), http://media.oregonlive.com/news_impact/other/letter-jurors.pdf.

found that the police incident at Sandy Terrace was without flaw. What we found was that Officer Frashour's actions were consistent with the relevant laws and statutes regarding the use of deadly force by a police officer. After much discussion, we realized that we could not indict for emotional reasons, when the legal reason indicated otherwise We feel that his death resulted from flawed police policies, incomplete or inappropriate training, incomplete communication, and other issues with the police effort. We feel strongly that something must be done to correct this, and the Portland Police Bureau should be held responsible for this tragedy.³⁰³

Prompted by this incident, advocates, then-Mayor Sam Adams, and Police Chief Michael Reese invited the DOJ to investigate the Portland Police Bureau ("PPB").³⁰⁴ Prior incidents also formed a basis for this request; in the previous three years, PPB officers had used deadly force twelve times, nine of which involved people affected by mental illness.³⁰⁵ Following an eighteen-month investigation, the DOJ found

reasonable cause to believe that PPB is engaged in a pattern or practice of unnecessary or unreasonable force against people with actual or perceived mental illness. This pattern or practice [was] manifest[ed] through the excessive and inappropriate use of [electronic control weapons] and by using more force than necessary to effectuate arrests for low-level offenses.³⁰⁶

The DOJ released its findings on September 13, 2012, along with a joint press release with the City of Portland informing the public of the parties' mutual intent to reach a negotiated settlement agreement to resolve the DOJ's findings of unconstitutional conduct.³⁰⁷ The DOJ filed suit against the City of Portland on

303. *Id.*

304. Letter from Thomas E. Perez, Assistant Att'y Gen., Civil Rights Div., and Amanda Marshall, U.S. Att'y, Dist. of Or., to the Honorable Sam Adams, Mayor, City of Portland 2 (Sept. 12, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/09/17/ppb_findings_9-12-12.pdf. See generally Matt Davis, *Campbell Shooting: Adams, Saltzman Call For Civil Rights Probe*, PORTLAND MERCURY: BLOGTOWN (Feb. 19, 2010, 11:11 AM), <http://www.portlandmercury.com/BlogtownPDX/archives/2010/02/19/campbell-shooting-adams-saltzman-call-for-civil-rights-probe> (explaining that leaders from the community called for a DOJ investigation related to the police shooting death of Aaron Campbell).

305. Perez, *supra* note 304, at 4 n.1; see also *id.* at 12–13 (describing specific incidents to illustrate the pattern or practice).

306. *Id.* at 10.

307. Complaint at 7, United States v. City of Portland, No. 12–cv–02265-SI (D. Or. Dec. 17, 2012), ECF No. 1 [hereinafter Portland Complaint]; Perez, *supra* note 304, at 1; Press Release, U.S. Attorney's Office, Or., Or., Justice

December 17, 2012, seeking injunctive relief “to remedy a pattern or practice of unconstitutional uses of force by officers of the [PPB].”³⁰⁸ On the same day, the DOJ submitted its proposed settlement agreement with the City of Portland.³⁰⁹ Section IX of the proposed agreement established the Community Oversight Accountability Board (“COAB”), which was authorized to, among other responsibilities, independently assess implementation of the settlement agreement, make recommendations to the monitor and parties for additional reforms, advise the PPB on ways to improve community relations, and receive public comments and concerns.³¹⁰

Community advocates and individuals affected by police abuse were disappointed that the complaint did not allege racially discriminatory policing. In the fact-gathering process that ensued, members of the Albina Ministerial Alliance Coalition for Justice and Police Reform (“AMA Coalition”) and other groups presented questions about the missing concern of race.³¹¹ As a result of their continued advocacy and information, the settlement agreement included provisions related to bias-based policing, data collection on race, and a community engagement and outreach (“CEO”) plan.³¹² According to one advocate, these measures were a result of community pressure.³¹³

As in the DOJ consent decree process in other cities, community advocates were dissatisfied with their role. In January 2013, police unions and the AMA Coalition sought to intervene in the DOJ and City of Portland’s remedial process.³¹⁴ The AMA Coalition argued

Department and the City of Portland, ORE., Reach Preliminary Agreement on Reforms Regarding Portland Police Bureau’s Use of Force Against Persons with Mental Illness (Sept. 13, 2012), https://www.justice.gov/archive/usao/or/news/2012/20120913_ppb.html; Statement of Intent, United States and City of Portland (Sept. 12, 2012), http://www.justice.gov/sites/default/files/crt/legacy/2012/09/13/ppb_statementofintent_9-12-12.pdf.

308. Portland Complaint, *supra* note 307, at 2.

309. Portland Consent Decree, *supra* note 14, at 76.

310. *Id.* at 50–51. The COAB selection process was revised following a Collaborative Agreement between the parties and the Albina Ministerial Alliance Coalition for Justice and Police Reform. One of the modifications included a decision for the COAB to be constituted with fifteen community members and five advisory law enforcement members. *Id.* at 51–53. The settlement agreement also reforms the Citizen Review Committee (the civilian body that hears appeals from Independent Police Review findings in non-deadly force police misconduct complaints). *Id.* at 8, 43.

311. Memorandum of Law in Support of AMA Coalition’s Motion to Intervene at 4–5, United States v. City of Portland, No. 12-cv-02265-SI (D. Or. Jan. 8, 2013), ECF No. 20.

312. Portland Consent Decree, *supra* note 14, at 50–51, 57–61, 65–67.

313. Interview with Anonymous, Cmty. Advocate, in Portland, Or. (Mar. 18, 2016).

314. Plaintiff AMA Coalition’s Motion to Intervene at 1–2, United States v. City of Portland, No. 12-cv-02265-SI (D. Or. Jan. 8, 2013), ECF No. 19.

that it had a significant protectable interest as an organization with a long history of advocating for police reform in Portland and that its “proposed changes to [Police Bureau] practices related to use of force and race relations in Portland have not come to fruition.”³¹⁵ Though independent litigation could address these concerns, the AMA Coalition contended such litigation was not practicable.³¹⁶ Accordingly, the AMA Coalition argued that its interests were impaired, granting it a significant protectable interest in the litigation.³¹⁷

Despite this, on February 19, 2013, Judge Simon held that (1) the AMA Coalition did not have a protectable interest in the litigation because the litigation involved only police misconduct toward those with mental illnesses, and that (2) even if the AMA Coalition did have a protectable interest, that interest was not impaired in the lawsuit because the AMA Coalition shared the DOJ’s interests in the litigation.³¹⁸ The court held that the DOJ had expended significant resources and effort to investigate the problem, assess and bargain over a remedy, and construct and propose the settlement agreement.³¹⁹ Even if the AMA Coalition did not agree with the entirety of the DOJ’s proposals or the limited scope of the DOJ’s complaint, such disagreements amounted to “differences in legal strategy” and did not justify intervention.³²⁰ Even so, the court granted the AMA Coalition enhanced amici status.³²¹

The court recommended that the parties and the AMA Coalition engage in mediation to resolve the disputes regarding the community’s view on necessary reforms and the organization’s role in the reform process.³²² After a period of mediation, the AMA

315. Memorandum of Law in Support of AMA Coalition’s Motion to Intervene, *supra* note 311, at 10–12.

316. *Id.* at 12.

317. *Id.* at 10, 12–15.

318. Opinion & Order at 11–12, 14, *United States v. City of Portland*, No. 12-cv-02265-SI (D. Or. Jan. 8, 2013), ECF No. 32.

319. *Id.* at 15.

320. *Id.* It is important to note that the court did grant the Portland Police Association’s (“PPA”) request to intervene as a party in the same Order. *Id.* at 3, 20–21. In so holding, the court reasoned that the PPA had a significant and protectable interest because the terms of the proposed settlement agreement conflicted with certain provisions of the labor agreement existing between the city and the PPA, because the disposition of the action could impair or impede the PPA’s continuing ability to protect and enforce its contractual rights, and because the city could not adequately represent the PPA’s interest since the city and the PPA were antagonists in the collective bargaining process. *Id.* at 8–10. At the time of writing, no other court has granted a police union or police organization’s motion to intervene in a DOJ police reform process.

321. *Id.* at 3, 17.

322. See Collaborative Agreement at 2, *United States v. City of Portland*, No. 3:12-cv-02265-SI (D. Or. Dec. 30, 2013), ECF No. 55-1 [hereinafter *Portland Collaborative Agreement*].

Coalition entered into a collaborative agreement with the City of Portland and the DOJ to effectuate the AMA Coalition's "enhanced amici status." To this end, the parties filed a "collaborative agreement" with the court on December 30, 2013.³²³ In this agreement, the AMA Coalition agreed not to oppose the entry of the settlement agreement, though it retained the right to request stronger, broader terms.³²⁴ The AMA Coalition agreed to advocate for the implementation of the terms of the settlement agreement that support its goals and "oppose any attempts to weaken or dilute" the same provisions.³²⁵ The collaborative agreement in Portland also established that the AMA Coalition can pursue alternative methods of seeking police reform.³²⁶ The city also agreed to include the AMA Coalition in the process of selecting its Compliance Officer and Community Liaison ("COCL").³²⁷ Other provisions in the collaborative agreement delineated communication between the parties and the AMA Coalition to enhance the AMA Coalition's role in the reform process.³²⁸ The AMA Coalition also agreed to work with other community organizations to foster broad community involvement when gathering information to incorporate into the reform process.³²⁹

In the next step of confirming the settlement agreement, on February 18, 2014, the court conducted a fairness hearing to determine whether the settlement agreement was "fair, adequate, and reasonable."³³⁰ The fairness hearing was designed to obtain critical feedback on the settlement agreement, and several advocacy and faith-based organizations—including at least one that sought an investigation by the DOJ—used the hearing as an opportunity to display public discontent with particular aspects of the

323. *Id.* at 6.

324. *Id.* at 2.

325. *Id.* at 2. "The AMA Coalition shall continue to work to improve policy, practices, and accountability within the PPB." *Id.* at 3.

326. *Compare id.* at 3 ("The AMA Coalition shall continue to work to improve policy, practices, and accountability within the PPB."), *with* Herz, *supra* note 199 (discussing the process with the City of Seattle, where it remains unclear whether mechanisms outside of the consent decree process to reform police practices will be permitted to move forward).

327. Portland Collaborative Agreement, *supra* note 322, at 3.

328. *Id.* at 3–4.

329. *Id.* at 4.

330. Order Entering Settlement Agreement, Conditionally Dismissing Litigation, and Setting First Annual Settlement-Compliance Hearing at 3, *United States v. City of Portland*, No. 3:12-cv-02265-SI (D. Or. Aug. 29, 2014), ECF No. 86 [hereinafter *Portland Order Entering Settlement Agreement*]; Maxine Bernstein, *Public Hearing Gets Underway on Settlement Agreement Between Portland and U.S. Department of Justice (updates)*, OREGONLIVE (Feb. 18, 2014, 3:23 PM), http://www.oregonlive.com/portland/index.ssf/2014/02/public_hearing_gets_underway_o.html.

settlement.³³¹ Advocates questioned the lack of changes to the “48-hour rule” that permitted officers forty-eight hours before questioning about an incident of force, the lack of data collection for “mere conversations” of individuals, and the vague nature of the de-escalation principles set forth in the agreement.³³² In addition, advocates sought to inform the court about specific ways it could enhance the role of the community in the police-reform process in areas related to community oversight and involvement in the training of police, the internal review and discipline processes, and the authority of the COCL.³³³

Hailed by some as historic for its inclusion of so many community voices, the fairness hearing lasted two days, involved recorded and live testimony, and provided a platform for a prepared list of fifty-eight speakers from the community.³³⁴ It is important to

331. See *The US Department of Justice Agreement about Portland's Police Bureau: What Does it Mean?*, DOJ FACT SHEET (Albina Ministerial Alliance Coalition, Portland, Or.), Dec. 20, 2013, at 2, http://albinaministerialcoalition.org/doj_fact_sheet.pdf [hereinafter AMA FLYER] (“The internal Police Review Board, which considers use of force cases and potential discipline for officers, remains closed to the public and the person involved in the incident being reviewed for possible misconduct. The DOJ’s letter of findings found this ‘curious,’ so the Agreement should provide for some community access to these hearings.”).

332. See *id.* at 1–2. Specific critiques included:

The City was not required to change provisions of existing collective bargaining contracts which are inhibiting effective investigations, such as the so-called “48-hour rule” (allowing 48 hours after deadly force incidents before officers are interviewed) and provisions limiting independent civilian investigation of misconduct, including shootings. . . . The Agreement is not explicit enough in calling for officers to use the least force necessary, doesn’t allow for a “matrix” tying maximum force levels to certain levels of resistance, doesn’t prohibit the use of weapons, animals or vehicles as intimidation when no threat exists, and doesn’t prohibit the use of force on downed/injured subjects. . . . The Agreement calls for “enhancements to data collection” (§ 148) but does not require tracking of all community contacts including “mere conversations.”

Id.

333. See *id.* at 1. Some suggestions were:

The Agreement mentions the Training Advisory Council, which advises the police on training policies, but should also require community member involvement in all aspects of training, including developing, facilitating, and participating in training. . . . The new position of Compliance Officer/Community Liaison (§ 160) is created to oversee implementation of the Agreement, but has no power before the federal court when recommending changes (§ 164).

Id.

334. *Fairness Hearing Update February 21, 2014*, POLICE BUREAU, <https://www.portlandoregon.gov/police/article/481977> (last visited Oct. 22, 2016); *USA v. City of PDX, 12-2265 Fairness Hearing Testimony Order*,

take a moment to recognize the opportunity such a hearing creates for a bottom-up approach to police reform. By providing for the direct input of those impacted, this process inches closer to a truly democratic vision of policing. Through community input, this process did more than increase the police's legitimacy within the community; it also respected and acknowledged the wisdom of those on the ground, and therefore, further promoted individual self-determination within the policing context.

The court set up annual status hearings when it entered the settlement agreement on August 29, 2014.³³⁵ These hearings were designed to allow the AMA Coalition, along with the other parties and community members, to testify and present evidence.³³⁶ The court limited its own authority to hearing information rather than ordering the city to perform any corrective measures.³³⁷ On October 27, 2014, the City of Portland appealed the requirement that an evidentiary hearing be held every year on the status of the reform process.³³⁸ The city was concerned that the status hearing would create a record of misdeeds and an opportunity for the AMA Coalition and community groups to complain about its practices.³³⁹ It argued that the court's requirement inappropriately altered the terms of the parties' settlement agreement.³⁴⁰ Following a mediation process overseen by the Ninth Circuit, in which the three parties and the AMA Coalition participated,³⁴¹ the city agreed to withdraw its appeal.³⁴² The mediation led to a joint request to alter

OREGONLIVE (Feb. 14, 2014, 6:11 PM), http://media.oregonlive.com/portland_impact/other/FairnessHearingTestimonyOrder%20copy.pdf.

335. Press Release, U.S. Dep't of Justice, Court Approves Police Reform Agreement in Portland, Oregon (Aug. 29, 2014), <https://www.justice.gov/opa/pr/court-approves-police-reform-agreement-portland-oregon> (discussing the need for status hearings with community members to gauge city progress).

336. Portland Order Entering Settlement Agreement, *supra* note 330, at 5 (stating that the parties must appear in court to respond to the court's questions and present evidence on the issues).

337. *Id.*

338. See *United States v. City of Portland*, No. 14-35903 (9th Cir. filed Oct. 27, 2014).

339. See Maxine Bernstein, *Community Coalition Protests City of Portland's Appeal of Federal Judge's Order Requiring Annual Hearings on Police Reform*, OREGONLIVE (Jan. 7, 2015, 1:28 PM), http://www.oregonlive.com/portland/index.ssf/2015/01/community_coalition_protests_c.html.

340. Appellant City of Portland Mediation Questionnaire at 1, *United States v. City of Portland*, No. 14-35903 (9th Cir. Nov. 3, 2014); see Bernstein, *supra* note 339.

341. See Maxine Bernstein, *Portland City Attorneys Seek Mediation in City's Appeal of Federal Judge's Order Regarding Oversight of Police Reforms*, OREGONLIVE (Jan. 7, 2015, 5:00 AM), http://www.oregonlive.com/portland/index.ssf/2015/01/portland_city_attorneys_to_see.html.

342. See Joint Stipulated Motion to Voluntarily Dismiss Appeal at 1, *United States v. City of Portland*, No. 14-35903 (9th Cir. Aug. 6, 2015).

the annual status hearing to a status conference, meaning the court would not take evidence or testimony.³⁴³ The AMA Coalition's role was narrowed to providing reports rather than asking questions of the parties and submitting evidence; instead, the COAB would play the role of questioning and presenting information on behalf of community members.³⁴⁴

The DOJ submitted a compliance report to the federal court on September 10, 2015, and held a community meeting on September 14, 2015, in advance of the parties' first annual status conference held on October 21, 2015.³⁴⁵ Most of the provisions relevant to community engagement and the creation of the COAB—found in Section IX—received unmeasured or partial compliance ratings.³⁴⁶ The AMA Coalition submitted its own report to the court, which outlined its priorities pursuant to the collaborative agreement.³⁴⁷ It reported involvement in the selection process for the COCL in accordance with the collaborative agreement, even though the City Council did not adopt the recommendations of the selection

343. Letter from Tracy P. Reeve, City Att'y, et al. to the Honorable Michael H. Simon, U.S. Dist. Ct. (June 16, 2015), <http://www.mentalhealthportland.org/wp-content/uploads/2016/04/Letter-to-Judge-Michael-Simon-from-all-parties-to-U.S.-v.-City-of-Portland.pdf> (discussing the joint request to alter the annual hearings to status conferences, stating that mediation was successful and that the COAB will be the mouthpiece for the community members).

344. *Id.* The COAB was not listed as a participant in the status hearings originally ordered by the Court. See Portland Order Entering Settlement Agreement, *supra* note 330.

345. See Albina Ministerial Alliance for Justice & Police Reform's Status Report at 1, 5–6, *United States v. City of Portland*, No. 12-cv-02265-SI (D. Or. Oct. 14, 2015), ECF No. 109 [hereinafter AMA Status Report] (noting concern by the DOJ and AMA on the continued use of the forty-eight-hour rule and urging the city to include people with lived experience of mental health issues in giving Crisis Intervention Training, and increase diversity and the use of authentic grassroots community participation in trainings in general).

346. See CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, UNITED STATES V. CITY OF PORTLAND SETTLEMENT AGREEMENT COMPLIANCE STATUS ASSESSMENT REPORT—SEPTEMBER 10, 2015, at 81–86 (2015), <https://www.justice.gov/usao-or/file/771166/download> [hereinafter Portland Compliance Report] (noting that ¶¶ 141–45 of Settlement Agreement (re: COAB duties and selection) received a blue compliance rating; ¶¶ 146–49 of Settlement Agreement (re: developing metrics to evaluate community engagement and outreach) received a blue compliance rating; ¶ 152 (re: COAB's twice-yearly meeting with Chief, Police Commissioner, PPB Precinct Commanders, PPB Neighborhood Response Teams, and representative of the Office of Neighborhood Involvement Crime Prevention) received a yellow compliance rating; ¶¶ 154–55 (re: COAB meetings) received a yellow compliance rating); Letter from Billy J. Williams, Acting U.S. Att'y, Dist. of Wash., et al. to Ellen Osoinach, Deputy City Att'y, Office of the City Att'y 1–2 (Sept. 10, 2015), <https://www.justice.gov/crt/case-document/file/771296/download> [hereinafter Portland Compliance Report Cover Letter].

347. See AMA Status Report, *supra* note 345.

committee.³⁴⁸ The AMA Coalition expressed concern regarding implementation of specific provisions, inadequate notification about certain meetings relevant to the reform process, and the city's lack of responsiveness to the concerns the group had raised at the meeting a month prior.³⁴⁹

At the time of this Article's writing, the process of developing the CEO plan is ongoing with a vote on the plan scheduled for early 2017.³⁵⁰ Notes from the group's meeting in February 2016,³⁵¹ along with the developments described above, illuminate several concerns. First, the tactics used by the PPB and the City to restrict and subordinate the community's voice have hindered the democratization of the consent decree process. While the DOJ has allowed community advocates to have a role in developing the contours of the community engagement process, community members have had to organize and engage in litigation to have a meaningful role in the process. Consistent with radical democratic theory, such contestation and organization is not only to be expected, but also of immense value to the democratization of police reform. However, by forcing the community to contest and organize simply to validate its role in the process, limited, community-based resources are taken away from innovative solution generation over substantive issues within the reform process. Second, the City of Portland and the PPB find it difficult to transition from community policing to the type of community engagement demanded by the AMA Coalition and others under the consent decree. The city's deleterious litigation strategy suggests that it questions the requests and recommendations of community advocates. Several COAB recommendations have been submitted to the DOJ following the broad-based community process proscribed in the settlement agreement. Proposals that are at odds with or different than those proposals developed by the DOJ or its experts have been stalled. Failure to use or respond to community proposals minimizes the legitimization function of the process. Today, members of the COAB perceive the DOJ and the City as engaging in behavior to limit its role.

Advocates in the COAB (and CEO) possess historical memory of the long-term fight against police misconduct. These individuals are

348. *Id.* at 2.

349. *See id.* at 5–7 (describing the AMA Coalition's activities and advocacy for implementation of the settlement agreement reforms in the areas related to the forty-eight-hour rule, training, use of force, the Independent Police Review, and community engagement, and supporting the Community Oversight Advisory Board's recommendations on bias-based policing, among others).

350. *Community Engagement & Outreach Meeting Thursday, February 18th, 2016 Draft Minutes*, COCL COAB 3 (Feb. 18, 2016), www.cocl-coab.org/sites/default/files/021816%20CEOPS%20Minutes.pdf.

351. *Id.*

critical to understanding the psychology of reluctant change within the police department and the resistance on the part of directly affected community members to believe police reform is likely to occur simply with the signing of a settlement agreement with the DOJ. They will not rubber stamp reforms, and instead maintain a sliver of the adversarial spirit in the community engagement process. Challenging the parties and the process is critical to avoiding co-optation and disconnection from the various interests of community members. This contestation and challenge provides fertile grounds for the further cultivation of a responsive and democratic police-reform process.

E. Cleveland

The DOJ investigation of the Cleveland Division of Police (“CDP”) followed the November 2012 shootings of Malissa Williams and Timothy Russell by thirteen police officers who collectively fired 137 bullets at the two.³⁵² On March 13, 2013, the DOJ announced it was initiating an investigation into the CDP’s practices at the request of Cleveland’s mayor, Frank Jackson, as well as the NAACP, ACLU, “faith-based leaders, and other civil rights and civil liberties organizations.”³⁵³

On December 4, 2014, only months after the highly publicized officer shooting of twelve-year-old Tamir Rice, the DOJ released a report concluding that the CDP engaged in a pattern of using excessive force.³⁵⁴ Accordingly, five months later, on May 26, 2015, the CDP, the DOJ, and the city reached a settlement to reform the CDP.³⁵⁵ In a Joint Statement of Principles, the city and the DOJ pledged to “ensur[e] that police practices not only reflect constitutional principles, but the values of the communities served by [the] CDP” and noted that “[t]he successful implementation and sustainability of reforms will require the active participation of, and input from, the Cleveland community.”³⁵⁶

Included in the agreement was a requirement that by September 10, 2015, the City of Cleveland establish a Community Police Commission (“CPC”) comprised of ten individuals representative of the city’s various communities, as well as one member from each of the following organizations: the Black Shield,

352. *About Us*, CLEVELAND COMMUNITY POLICE COMMISSION, <http://www.clecpc.org/about-us> (last visited Oct. 22, 2016).

353. *Id.*

354. CLEVELAND FINDINGS LETTER, *supra* note 96, at 2.

355. Cleveland Consent Decree, *supra* note 97, at 1.

356. JOINT STATEMENT OF PRINCIPLES BY THE UNITED STATES DEPARTMENT OF JUSTICE AND THE CITY OF CLEVELAND REGARDING THE CLEVELAND DIVISION OF POLICE 1 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/12/04/cleveland_sop_12-2-14.pdf.

the Fraternal Order of Police, and the Cleveland Police Patrolmen's Association.³⁵⁷ The CPC's mission is to

make recommendations on policies and practices related to community and problem-oriented policing, bias-free policing, and police transparency; to work with the many communities that make up Cleveland for the purpose of developing recommendations for police practices that reflect an understanding of the values and priorities of Cleveland residents; and to report to the City and community as a whole and to provide transparency on police department reforms.³⁵⁸

The members of the CPC, selected by a panel appointed by Mayor Jackson in consultation with the DOJ and the City Council, were sworn in on September 8, 2015.³⁵⁹

While the Cleveland CPC is still in its nascent stages, it has already been subject to criticism from advocates in the Cleveland area. In a letter dated August 28, 2015, civil rights leaders from the NAACP, the Council on American-Islamic Relations, the National Lawyers Guild, and the Collaborative for a Safe, Fair, and Just Cleveland raised a list of concerns regarding the CPC's effectiveness and selection processes.³⁶⁰ Among the issues raised, they pointed to a lack of transparency in the selection process for the law enforcement members of the CPC, the source of the CPC's budget, the lack of published criteria for the selection of the Commissioners, the lack of a defined budget for the CPC, the lack of subpoena powers for the CPC or a mandate or deadline for the police department's provision of documents requested by the CPC, the lack of provisions requiring the regular inclusion of the CPC in monthly meetings, and the insufficient time allotted to the CPC for reviewing new policies by the CDP.³⁶¹ The issues raised in the letter were previously submitted to the court as an amicus brief, which the signatories believed received no attention or response from the court or the parties to the litigation.³⁶²

357. *About Us*, *supra* note 352.

358. *Id.*

359. *Id.*

360. Open Letter from Terry H. Gilbert, Nat'l Lawyers Guild, et al., to Frank G. Jackson, Mayor of Cleveland & Steven Dettelbach, U.S. Att'y, N. Dist. Ohio (Aug. 28, 2015).

361. *Id.*; Eric Heisig, *Activist Group Renews Complaints about Court-Ordered Cleveland Community Police Commission*, CLEVELAND.COM (Aug. 28, 2015, 12:29 PM), http://www.cleveland.com/court-justice/index.ssf/2015/08/activist_group_renews_complain.html.

362. See Gilbert et al., *supra* note 360. Other activists, such as Deo Odolecki from CopBlock, write that CPC members are not unbiased as the majority are employed by the State and because the commission has provided three seats to police union members. Deo Odolecki, *'Community' Police Commission Appointed in Cleveland*, COPBLOCK (Sept. 18, 2015), <http://www.copblock.org>

The concerns with the CPC's representation of the Cleveland community pose genuine legitimacy questions about the community engagement process in Cleveland. First and foremost, the selection process is integral to the final outcome of the community engagement provisions. If the process lacks transparency and accountability, it is difficult to imagine that it can produce solutions that acknowledge and uplift the needs of those impacted first and foremost by police misconduct. Such challenges are integral to the democratic process of accountability, and establishing processes that minimize such contestations creates hindrances to the democratization of the CDP and the consent decree reform process.

While subject to criticism, the Cleveland CPC has issued a number of policy recommendations, including a Proposed Draft of Revised City Charter Provisions regarding the Office of Professional Standards ("OPS") and the Police Review Board³⁶³ and proposed changes to the Cleveland City Charter regarding the internal operations of the pre-existing Civilian Police Review Board ("CPRB").³⁶⁴ One recommendation would require the city consult with the CPC to develop minimum qualifications for any future OPS administrator appointments.³⁶⁵ Another recommendation looks to ensure a diverse CPRB membership by requiring the inclusion of African Americans, LGBTQ citizens, and youth, while also expecting membership to include persons with experience in areas such as women's rights, homelessness, mental health, and the differently abled.³⁶⁶ Recommendations such as these will enable directly affected persons to participate in the deliberations that set and maintain policing policies and review police conduct.³⁶⁷

/140065/community-police-commission-appointed-cleveland/. Odolecki has concerns with the lack of protestors' representation on the commission, writing, "[n]one of these people are anyone I have seen marching in miles of protests against police brutality. How can this be touted as a solution to the police brutality problem we face here in Cleveland?" *Id.*

363. *See generally* CLEVELAND CMTY. POLICE COMM'N, PROPOSED DRAFT OF REVISED CITY CHARTER PROVISIONS REGARDING THE OFFICE OF PROFESSIONAL STANDARDS (OPS) AND THE POLICE REVIEW BOARD (PRB) (2015), <https://drive.google.com/file/d/0B5DdHkGRNM-2Y1V5RjVPMVNsTGM/view> (proposing changes to the number of members for each entity and detailing changes to the powers and duties of each entity).

364. *See generally id.* (detailing proposed changes to the membership and duties of the CPRB).

365. *Id.* at 1.

366. *Id.* at 3.

367. *See id.* at 2–3. The CPC also submitted recommendations to the CPRB and Office of Professional Standards operating manual on March 17, 2016. *See generally* CLEVELAND CMTY. POLICE COMM'N, INITIAL RECOMMENDATIONS: CIVILIAN POLICE REVIEW BOARD & OFFICE OF PROFESSIONAL STANDARDS OPERATING MANUAL (2016), <https://drive.google.com/file/d/0B5DdHkGRNM-2WWN6YTU2cHd6UEU/view> (making recommendations regarding the CPRB and Office of Professional Standards).

On March 7, 2016, the CPC issued a Bias-Free Recommendation Report, in which it outlined its community engagement process.³⁶⁸ The report noted that the CPC conducted meetings in which it asked community members a series of questions regarding their interactions with CDP officers.³⁶⁹ The report summarized a number of themes that emerged regarding community engagement, such as the need for commanders in each community to build relationships with the community, more community-oriented policing, more “park and walk and talk,” and more “public education and tools so that individuals will understand and be able to assert their rights during a stop and/or detention.”³⁷⁰

The Cleveland CPC provided input into revising the CDP’s mission statement, which was met with support by the court-appointed monitor and CDP, and the revised mission statement was subsequently approved on July 12, 2016.³⁷¹ In addition, the CPC proposed revisions to the police-civilian oversight process in the Cleveland City Charter that were ultimately passed in Emergency Ordinance No. 826-16.³⁷² Notably, the proposals in the ordinance broke down the membership of the CPRB so that the mayor would appoint five members of the nine-person board, the council would appoint four members, and one would be a citizen of the district.³⁷³ At the time of this Article’s writing, the proposed changes contained in the ordinance will be voted on by ballot on November 8, 2016.³⁷⁴

In its second status report, filed on June 13, 2016, the City of Cleveland noted that the CPC is providing community feedback regarding use-of-force policies.³⁷⁵ The CPC, in conjunction with the City of Cleveland, the CDP, and the DOJ, also held roundtables in September 2016 to seek community feedback on these use-of-force policies.³⁷⁶ Further, the court-appointed monitor filed a report of the

368. CLEVELAND CMTY. POLICE COMM’N, BIAS-FREE POLICING RECOMMENDATIONS REPORT 24 (2016), <https://drive.google.com/file/d/0B5DdHkGRNM-2VUtDVHkyeWstX00/view>.

369. *Id.* at 24–26.

370. *Id.* at 29.

371. Order at 1, *United States v. City of Cleveland*, No. 1:15-CV-1046 (N.D. Ohio July 12, 2016), ECF No. 74.

372. Press Release, Cleveland Cmty. Police Comm’n, The City and City Council Introduce First Emergency Ordinance to Change Police Civilian Oversight Process (Aug. 2, 2016), <https://drive.google.com/file/d/0B5DdHkGRNM-2Q1dscFZkcWYwUIU/view>.

373. Cleveland, Ohio, Ordinance No. 826-16 (Aug. 10, 2016), <https://assets.documentcloud.org/documents/3003519/CPRB-ballot-measure-proposal.pdf>.

374. *Id.*

375. City of Cleveland’s Second Status Report at 5, *United States v. City of Cleveland*, No. 1:15-CV-1046 (N.D. Ohio June 13, 2016).

376. Press Release, U.S. Att’y’s Office, N. Dist. Ohio, U.S. Dep’t of Justice, Community Forums on Cleveland Police Use of Force Policies to Be Held this

baseline statistics against which all future improvements will be measured, in order to track whether or not the consent decree is “result[ing] in constitutional policing.”³⁷⁷

The Cleveland CPC seems to play a dual role of a traditional community-policing entity and an accountability organization. Members may find themselves unable to serve a legitimizing function while also attempting to change structural dynamics that lead to incidents like the shootings of Tamir Rice and Malissa Williams. As a newer entity, the CPC has an opportunity to consider the collaborative agreement in Portland as a possibility to empower itself and strengthen its mandate to include more opportunities for self-determination. By learning from entities in other cities, particularly the PCAB in New Orleans, the CPC members can identify the limitations that come with a community-policing structure led by police departments.

F. Albuquerque

In July 2011, the Martin Luther King, Jr. Memorial Center met with Albuquerque Mayor Richard J. Berry, asking him to join it and other activists in inviting the DOJ to investigate the civil rights violations of the Albuquerque Police Department (“APD”).³⁷⁸ Mayor Berry and APD Chief Ray Schultz then tried to stave off investigation for months by instituting a number of reforms and raising hiring requirements for incoming cadets.³⁷⁹ When the City Council passed a resolution requesting that the DOJ investigate the APD, the mayor vetoed it.³⁸⁰ As in other cities, community members challenging standing structures of power eventually sparked action; the DOJ ultimately decided to investigate the APD after receiving pressure from Albuquerque residents, families of shooting victims, and city councillors.³⁸¹ The DOJ announced the launch of its

Month (Sept. 14, 2016), <https://www.justice.gov/usao-ndoh/pr/community-forums-cleveland-police-use-force-policies-be-held-month>.

377. Memorandum Providing Baseline Assessment Report at 2, United States v. City of Cleveland, No. 1:15-CV-01046 (N.D. Ohio June 24, 2016). This report states that data is not expected to be collected on the number and type of community partnerships. *Id.* at 5–6.

378. Rachel Aviv, *Your Son is Deceased*, NEW YORKER (Feb. 2, 2015), <http://www.newyorker.com/magazine/2015/02/02/son-deceased>.

379. Associated Press, *Justice Dept. Launches Probe into Albuquerque Police*, CBS NEWS (Nov. 27, 2012, 5:50 PM), <http://www.cbsnews.com/news/justice-dept-launches-probe-into-albuquerque-police/>.

380. Aviv, *supra* note 378.

381. Peter St. Cyr, *UPDATED: US Dept. of Justice to Investigate Albuquerque Police Dept. (VIDEO)*, SF REP. (Nov. 27, 2012, 4:00 PM), <http://www.sfreporter.com/santafe/blog-4029-updated-us-dept-of-justice-to-investigate-albuquer.html>.

investigation into the APD on November 27, 2012.³⁸² The parties began settlement negotiations on October 29, 2014.³⁸³

As in almost all other jurisdictions, certain actions in Albuquerque also suggest disagreement between the DOJ and community advocates. When Disability Rights New Mexico, ACLU of New Mexico, and Native American Voters Alliance Education Project filed a motion to intervene on behalf of people with mental disabilities, who are or have been homeless, or are Native Americans who encountered APD officers,³⁸⁴ the parties to the litigation opposed the motion.³⁸⁵ In its brief opposing the motion, the United States stated,

The Movants . . . seek to intervene, not to dispute the allegations that APD has engaged in a pattern or practice of excessive force, including deadly force, but for the sole purpose of modifying and fashioning remedies in the proposed Settlement Agreement. If the Court elected to grant permissive intervention to the Movants, who seek to modify and fashion additional remedies in the proposed Settlement Agreement, it would unduly delay this matter and ostensibly elevate the interests of the Movants over the hundreds of thousands of Albuquerque residents who would be affected by the settlement – all of whom desire an APD that operates within appropriate constitutional bounds.³⁸⁶

382. Press Release, Elizabeth M. Martinez, Exec. Assistant U.S. Att’y, U.S. Dep’t of Justice, Justice Department Launches Investigation of Albuquerque Police Department’s Use of Force (Nov. 27, 2012), http://www.justice.gov/sites/default/files/usao-nm/legacy/2015/01/20/2012-11-27_apd_investigation_pr.pdf.

383. Letter from Vanita Gupta, Acting Assistant Att’y Gen., Civil Rights Div., and Damon P. Martinez, U.S. Att’y, Dist. of N.M., to Richard J. Berry, Mayor, City of Albuquerque (Oct. 29, 2014), <https://www.cabq.gov/council/documents/doj-settlement-agreement/DOJmemorializecommitment.pdf/view> [hereinafter Albuquerque Letter of Commitment]. APD officers shot forty-one Albuquerque citizens from 2010 to 2015, killing two-thirds of the people shot. Amicus Curiae Brief of APD Forward Regarding Court Approval of the Settlement Agreement Between the City of Albuquerque and the United States Department of Justice at 4, *United States v. City of Albuquerque*, No. 14-cv-01025-RB-SMV (D.N.M. Jan. 14, 2015), ECF No. 56 [hereinafter APD Forward Amicus Brief]. Albuquerque is a city of 557,417, and its rate of police shootings is four per 100,000, compared to New York City, with a population of 8.3 million and a rate of 0.4 police shootings per 100,000. *Id.* APD’s high rate of violence is “particularly troubling considering that both violent crime and assault on officers have been on a downward trend in Albuquerque.” *Id.*

384. Memorandum Opinion & Order at 4, *United States v. City of Albuquerque*, No. 14-cv-01025-RB-SMV (D.N.M. June 2, 2015), ECF No. 134 [hereinafter Albuquerque Order Approving Settlement].

385. *Id.*

386. *United States’ Opposition to Motion to Intervene by Disability Rights New Mexico, ACLU of New Mexico, and Native American Voters Alliance*

The court denied the intervenors' motion and accepted the parties' settlement on June 2, 2015.³⁸⁷ In a press release, the ACLU announced that it was disappointed that it would not be an official party but was pleased with the settlement agreement, which it considered "a milestone in [the] community's long struggle to reform the [APD's] pattern and practice of using excessive force."³⁸⁸ The ACLU noted that it would do the majority of its work going forward in cooperation with APD Forward, a community coalition comprised of Albuquerque residents in partnership with Albuquerque Health Care for the Homeless, ACLU of New Mexico, Common Cause New Mexico, Disability Rights New Mexico, and the Native American Voters Alliance, among many others.³⁸⁹ APD Forward filed an amicus brief during the court's consideration of the settlement agreement, addressing a number of concerns, including the adequacy of the reporting requirements and transparency for the monitoring process, the policing of vulnerable persons, particular force concerns with SWAT deployments, body-worn cameras, and community engagement.³⁹⁰

Interestingly, APD Forward's initial assessment of the settlement agreement's community engagement provisions—which do not include the creation of a community oversight structure similar to those found in Portland and Seattle—was affirmative. The settlement agreement places an emphasis on community policing and creates responsibilities *within the police department* (not in conjunction with the DOJ or APD Forward) to establish a Community Policing Council ("CPC") for each area command.³⁹¹ The settlement agreement also requires that the APD hold public meetings in each area command, with every officer required to attend at least two meetings per year.³⁹² The mayor announced the establishment of six CPCs on May 30, 2014.³⁹³ Each of the six

Education Project at 3, *United States v. City of Albuquerque*, No. 14-cv-01025-RB-SMV (D.N.M. Apr. 22, 2015), ECF No. 120.

387. *Albuquerque Order Approving Settlement*, *supra* note 384, at 1; Micah McCoy, *Some Good News and Bad News for the DOJ-APD Reform Agreement*, ACLU N.M. (June 2, 2015), <https://www.aclu-nm.org/some-good-and-bad-news-for-the-doj-apd-reform-agreement/2015/06/>.

388. McCoy, *supra* note 387.

389. *Id.*; see Press Release, APD Forward, "APD Forward" Campaign Launched (June 9, 2014), http://www.apdforward.org/_apd_forward_campaign_launched ("[T]he APD Forward campaign [is] a community-driven effort to hold the City of Albuquerque and the Albuquerque Police Department (APD) accountable for implementing reforms of the city's police department.").

390. APD Forward Amicus Brief, *supra* note 383, at 6.

391. *Albuquerque Settlement Agreement*, *supra* note 14, at 81–82.

392. *Id.* at 80.

393. *Mayor Berry Establishes Community Policing Councils to Improve Policing and Community Relationships*, CITY ALBUQUERQUE (May 30, 2014),

established CPCs was to meet monthly and be composed of members of the community who have resided within or had business within the boundaries of their area command for at least three years and APD officers assigned to that area command.³⁹⁴

Recently, however, APD Forward has been more critical of the CPCs. On March 22, 2016, APD Forward released an analysis of the second status report issued by the federal monitor.³⁹⁵ In it, APD Forward noted that “[r]ather than addressing APD’s compliance with the settlement agreement, [the CPCs] appear to be functioning similarly to neighborhood associations” and are failing to solicit “constructive public critique.”³⁹⁶

Without prioritizing community voices, the consent decree’s remedies fail to capitalize on community knowledge and pose significant accountability problems from a democratic perspective. This is because the traditional approach to community-police relationships—where the objective is for police to be seen in the community and develop a positive rapport in the neighborhoods targeted for police interaction—does little to change values within the police agency or communities. It is unlikely that the CPC structure will shift power to directly affected persons or create decision-making authority for advocates. The lack of formalized mechanisms within which to assert authority over the oversight and reform process has left APD Forward in the position of an outsider, playing a role similar to that of a traditional reform advocate.

APD Forward has taken steps to address these difficulties. The group has sent multiple letters to Mayor Berry and Police Chief Eden to suggest reforms and put pressure on the city to make changes to improve police oversight and use-of-force investigations.³⁹⁷ APD Forward is also actively engaged in a process

<https://www.cabq.gov/mayor/news/mayor-berry-establishes-community-policing-councils-designed-to-improve-policing-and-community-relationships>.

394. According to Celina Espinoza, the APD’s communications and community outreach director, the meetings are well attended. Carolyn Carlson, *Back to Work*, ALIBI, <http://alibi.com/news/49578/Back-to-Work.html> (last visited Oct. 22, 2016). Since the creation of the CPCs, the APD has made a few additional changes to its outreach efforts, such as posting more safety tips on social media. Lysse Mitre, *Council Recommends Changes for Albuquerque Police*, KRQE NEWS 13 (July 15, 2015, 5:50 AM), <http://krqe.com/2015/07/15/council-recommends-changes-for-albuquerque-police/>.

395. Micah McCoy, *APD Forward Releases Analysis of Second Independent Federal Monitor Report*, APD FORWARD (Mar. 22, 2016, 4:40 PM), http://www.apdforward.org/apd_forward_releases_analysis_of_independent_monitor_s_special_report.

396. APD FORWARD, *THE SECOND MONITOR’S REPORT 7* (2016), https://d3n8a8pro7vnm.cloudfront.net/apdforward/pages/33/attachments/original/1458664383/Second_Monitor_Report_Analysis.pdf?1458664383.

397. See, e.g., Letter from Nancy Koenigsberg, Disability Rights N.M., to the Honorable Richard J. Berry, Mayor, City of Albuquerque, & Gordon

to ensure that a pre-existing city agency, the Civilian Police Oversight Agency (“CPOA”), functions as a community monitor under the terms of the settlement agreement, similar to the Seattle CPC and the Portland COAB.³⁹⁸ Paragraph 288 of Section XII, Subsection D of the agreement reads, “APD shall submit all changes to policy related to this Agreement (i.e. use of force, specialized units, crisis intervention, civilian complaints, supervision, discipline, and community engagement) to the [CPOA] for review, and the agency shall report any concerns it may have to the Chief regarding policy changes.”³⁹⁹ The CPOA is an independent agency of the city government, not part of either the City Administration or the City Council.⁴⁰⁰ The CPOA consists of a Police Oversight Board (“POB”) and an Administrative Office led by a CPOA Executive Director.⁴⁰¹ The POB is a nine-member board of community members appointed by the City Council.⁴⁰² The POB previously existed, but was inoperable for several years; it was reinstituted following the settlement agreement.⁴⁰³ In September 2015, a member of the POB wrote to the mayor and the police chief, concerned that the city was moving forward with changes to its policing policies without providing the CPOA an opportunity to review and express any potential concerns.⁴⁰⁴ APD Forward submitted a letter to the mayor and chief of police echoing the concerns of the POB member. The September 9, 2015, letter states, “The POB offers a critical venue for community members to engage with the reform of their police department. Up to this point,

Eden, Chief of Police, City of Albuquerque (Sept. 9, 2015) [hereinafter APD Forward Letter], https://d3n8a8pro7vhnmx.cloudfront.net/apdforward/pages/53/attachments/original/1441833755/APD_Forward_letter_to_Mayor_and_Chief_9-9-15.pdf?1441833755.

398. Albuquerque Settlement Agreement, *supra* note 14, at 83.

399. *Id.* at 86.

400. *Id.* at 83.

401. *Civilian Police Oversight Agency (CPOA)*, CITY ALBUQUERQUE, <https://www.cabq.gov/cpoa/civilian-police-oversight-agency-cpoa> (last visited Oct. 22, 2016).

402. Members are appointed for three-year staggered terms and are eligible for reappointment for an additional full term. *POB Member Profiles*, CITY ALBUQUERQUE, <https://www.cabq.gov/cpoa/police-oversight-board/pob-agenda-meeting-minutes> (last visited Oct. 22, 2016). In addition to its role under the settlement agreement, the CPOA receives, investigates, and reviews complaints and commendations submitted by community members for/against the APD. *Civilian Police Oversight Agency (CPOA)*, *supra* note 401. The CPOA also reviews APD policies, practices, and procedures, making recommendations to the Chief of Police. *Id.*

403. Albuquerque Settlement Agreement, *supra* note 14, at 83; *Civilian Police Oversight Agency (CPOA)*, *supra* note 401.

404. APD Forward Letter, *supra* note 397.

residents of Albuquerque have been passive observers in the reform process.”⁴⁰⁵

The monitor’s third status report discusses the “growing pains” associated with establishing the CPCs. The APD has reached out to experienced community-involvement specialists to begin deeper consideration for including residents in the creation of policies and procedures.⁴⁰⁶ This is a positive step. The process of creating consultative processes with true democratic potential will require expertise from the community and “specialists” in the field. This move indicates the monitor and advocates are willing to continue engagement and consider improvements to the established process. The monitor also noted the need for the community engagement process to develop policy to “effectuate its articulated purpose.”⁴⁰⁷ POB Chair Beth A. Mohr herself noted some of the POB’s major issues, including a lack of timeliness to review cases:

The entire issue of allowing time for meaningful civilian review, with time for the POB to meet and review the matter, with adequate time that the CPOA and POB’s conclusions and recommendations actually reach the Chief of Police in time to impact his decision . . . must be rethought.⁴⁰⁸

She further noted that the CPOA and POB are excluded from many opportunities for meaningful policy input, being shut down after proposing specific suggestions and being given no explanation as to why certain proposed changes were not adopted.⁴⁰⁹

G. *Ferguson*

On August 9, 2014, in Ferguson, Missouri, Michael Brown, an unarmed, Black, eighteen-year-old man, was shot several times and killed while fleeing police officer Darren Wilson.⁴¹⁰ Officer Wilson fired a total of twelve shots, at least seven of which made contact with Mr. Brown; Mr. Brown’s body “lay in the street for four hours

405. *Id.*

406. Monitor’s Third Report at 12, *United States v. City of Albuquerque*, No. 1:14-cv-1025-RB-SMV (D.N.M. July 1, 2016), ECF No. 183, <https://www.cabq.gov/cpoa/documents/im-report-3-july-1-2016.pdf>.

407. *Id.*

408. E-mail from Beth A. Mohr, Chair, Police Oversight Bd., Albuquerque, N.M., to Elizabeth Martinez, Exec. Assistant U.S. Att’y, U.S. Att’y’s Office Dist. N.M. (July 15, 2016) (filed in the court’s docket at *United States v. City of Albuquerque*, No. 1:14-cv01025-RB-SMV (D.N.M. July 27, 2016), ECF No. 191).

409. *Id.*

410. *Ferguson Protests: What We Know About Michael Brown’s Last Minutes*, BBC (Nov. 25, 2014), <http://www.bbc.com/news/world-us-canada-28841715>.

before it was removed.”⁴¹¹ Mr. Brown’s death, the controversy that surrounded the eyewitness accounts, and persistent patterns of ingrained and systematic segregation in Ferguson⁴¹² gained immediate national attention.⁴¹³

The shooting sparked reactions (even rebellions) from local residents, the majority of whom formed grassroots and social movements calling for reform. The St. Louis County branch of the NAACP, in conjunction with the ACLU and the Lawyers’ Committee for Civil Rights, petitioned the FBI to investigate the shooting “to ensure a full, unencumbered investigation into Michael Brown’s death.”⁴¹⁴ CREDO Action, an activist network, created a petition calling for DOJ and Missouri authorities to investigate Mr. Brown’s death and the Ferguson Police Department’s (“FPD”) discriminatory police practices and policies.⁴¹⁵ Countless letters were sent to the St. Louis Dispatch from residents, calling for increased communication between citizens and cops,⁴¹⁶ more officers of color,

411. *Ferguson Unrest: From Shooting to Nationwide Protests*, BBC (Aug. 10, 2015), <http://www.bbc.com/news/world-us-canada-30193354>.

412. See Richard Rothstein, *The Making of Ferguson: Public Policies at the Root of Its Troubles*, ECON. POL. INST. (Oct. 15, 2014), <http://www.epi.org/publication/making-ferguson/>. In his report, Mr. Rothstein describes how policies across the state of Missouri, at both local/state and federal levels, contributed to segregation, as opposed to sudden and inexplicable “white flight.” *Id.* For instance, in the 1950s, as suburbs were developed in St. Louis, the federal government effectively prohibited black residents from moving to the suburbs but subsidized the move for white residents. *Id.*

413. It is important, however, to note that Mr. Brown’s death did not constitute a new phenomenon and instead reflected problems already present in Ferguson and St. Louis. A year before the shooting, the Office of the Attorney General in Missouri reported that Ferguson police were twice as likely to arrest African Americans during traffic stops as they were to arrest white individuals. Wesley Lowery et al., *Even Before Michael Brown’s Slaying in Ferguson, Racial Questions Hung over Police*, WASH. POST (Aug. 13, 2014), https://www.washingtonpost.com/politics/even-before-teen-michael-browns-slaying-in-mo-racial-questions-have-hung-over-police/2014/08/13/78b3c5c6-2307-11e4-86ca-6f03cbd15c1a_story.html. Similarly, the NAACP had already filed a complaint against the St. Louis police department, alleging discriminatory policing. *Id.*

414. *Justice for Michael Brown*, NAACPFLINT.ORG, <http://naacpflint.org/justice-for-michael-brown/> (last visited Oct. 26, 2016).

415. *Justice for Mike Brown*, CREDO ACTION, http://act.credoaction.com/sign/mike_brown_justice (last visited Oct. 22, 2016).

416. See, e.g., Aubrey Richards, *Media Coverage Overshadows Necessary Actions of Protestors*, ST. LOUIS POST-DISPATCH (Aug. 16, 2014), http://www.stltoday.com/news/opinion/mailbag/media-coverage-overshadows-necessary-actions-of-protestors/article_1bb4a2cb-0d92-59c8-b942-6c31ff57755d.html; Susan Williams, *Develop Better Rapport Between Police Officers, Young People*, ST. LOUIS POST-DISPATCH (Aug. 17, 2014), http://www.stltoday.com/news/opinion/mailbag/develop-better-rapport-between-police-officers-young-people/article_943b4126-4fe0-56eb-b873-d605f0e8b4f1.html.

and the decreased militarization of the FPD.⁴¹⁷

On August 11, 2014, just two days after the fatal shooting, Attorney General Eric Holder released a statement giving notice that the DOJ would launch an investigation into the shooting.⁴¹⁸ One month later, the DOJ opened a probe into the FPD.⁴¹⁹ As part of its investigation, the DOJ interviewed community members, police officers, city officials, and other concerned parties,⁴²⁰ listening to their concerns.⁴²¹ From these interviews, it was clear to investigators that police policies “reinforce[d] the harm of discriminatory stereotypes; discourage[d] a culture of accountability; and neglect[ed] community engagement.”⁴²²

In addition to the DOJ’s investigation, events following Mr. Brown’s death led the City of Ferguson to examine the FPD. Following community-led advocacy, the City of Ferguson announced changes to court process, unpaid fines, and bench warrants meant to improve relations between police officials and residents⁴²³ and

417. See, e.g., Eric Stein, *County and Ferguson Police Aren’t Getting the Message*, ST. LOUIS POST-DISPATCH (Aug. 15, 2014), http://www.stltoday.com/news/opinion/mailbag/county-and-ferguson-police-aren-t-getting-the-message/article_b7870fc9-0b62-588c-ba04-7ce2eef379f7.html; Nancy L. Williams, *Police Must Show Restraint, Peacefully Resolve Conflicts*, ST. LOUIS POST-DISPATCH (Aug. 15, 2014), http://www.stltoday.com/news/opinion/mailbag/police-must-show-restraint-peacefully-resolve-conflicts/article_e4640dc0-b08a-52ea-b944-2dce48f9f085.html.

418. Press Release, U.S. Dep’t of Justice, Statement by Attorney General Holder on Recent Shooting Incident in Ferguson, Missouri (Aug. 11, 2014), <https://www.justice.gov/opa/pr/statement-attorney-general-holder-recent-shooting-incident-ferguson-missouri> (“The shooting incident in Ferguson, Missouri this weekend deserves a fulsome review. In addition to the local investigation already underway, FBI agents from the St. Louis field office, working together with attorneys from the Justice Department’s Civil Rights Division and [U.S.] Attorney’s Office, have opened a concurrent, federal inquiry. The federal investigation will supplement, rather than supplant, the inquiry by local authorities.”).

419. CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 1 (2015) [hereinafter *FERGUSON POLICE DEPARTMENT FINDINGS*], https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

420. *Id.*

421. *Id.* (“[W]e sought to engage the local community, conducting hundreds of in-person and telephone interviews of individuals . . . who have had interactions with the police department. We contacted ten neighborhood associations and met with each group that responded to us, as well as several other community groups and advocacy organizations.”).

422. *Id.* at 6.

423. Frances Robles, *Ferguson Sets Broad Change for City Courts*, N.Y. TIMES (Sept. 8, 2014), http://www.nytimes.com/2014/09/09/us/ferguson-council-looks-to-improve-community-relations-with-police.html?_r=1. Thomas Harvey, the Executive Director for the Arch City Defenders, had previously penned a letter to the mayor, asking him to waive pending fines warrants for nonviolent

proposed the creation of a citizen review board (“CRB”)⁴²⁴ to give disenfranchised residents a voice.⁴²⁵ The CRB would essentially act as a civilian oversight committee, making recommendations to the FPD and making findings concerning potential police misconduct.⁴²⁶ City officials met with representatives of the National Association for Civilian Oversight of Law Enforcement for guidance in consideration of how the CRB could be implemented.⁴²⁷ The mayor appointed a task force to oversee the establishment of the CRB.⁴²⁸

In addition to local efforts and the DOJ’s investigation, on November 18, 2014, Missouri Governor Jay Nixon appointed an independent group, the Ferguson Commission (“Commission”), to conduct a review of the conditions in Ferguson and the greater St. Louis area in order to understand the issues of racism and inequality that were “underscored by the unrest in the wake of the

offenses. Mr. Harvey observed that the “changes were about three-quarters of what they had requested” and constituted a significant step forward. *Id.*; see also Thomas Harvey & Brendan Roediger, *St. Louis County Municipal Courts, For-Profit Policing, and the Road to Reforms*, in AM. BAR ASS’N, *FERGUSON’S FAULT LINES: THE RACE QUAKE THAT ROCKED THE NATION* 57–74 (2016), <http://www.americanbar.org/content/dam/aba/multimedia/cle/materials/2016/05/ce1605fss.authcheckdam.pdf> (describing destructive policies in the St. Louis area, such as excessive fining for petty offenses that fund the municipalities but harm residents, and efforts to reform the system).

424. Bill No. 7110, City Council of the City of Ferguson (Mo. 2016), <http://www.fergusoncity.com/DocumentCenter/View/1970>.

425. *Id.*

426. *Id.*

427. *Moving Ferguson Forward*, CITY FERGUSON, <http://www.fergusoncity.com/531/Moving-Ferguson-Forward> (last visited Oct. 22, 2016).

428. *Id.* Although the idea for the CRB was generated in the heated months after the shooting and the subsequent failure to indict Officer Wilson, actually establishing the CRB took well over a year. *Civilian Review Board Task Force Seeks Comment on Ordinance*, CITY FERGUSON (Apr. 11, 2016), <https://www.fergusoncity.com/CivicAlerts.aspx?AID=457&ARC=831>; see also Matt Pearce, *Ferguson Plan for Police Oversight Board Is Derided as ‘Insulting,’* L.A. TIMES (Sept. 11, 2014, 6:17 PM), <http://www.latimes.com/nation/la-na-0911-ferguson-review-board-20140912-story.html>. There was instantaneous resistance to the idea of civilian oversight by local advocates and police experts. *Id.* National police oversight expert Samuel Walker called the proposal the weakest he has seen in years. *Id.* This criticism is rooted in the CRB’s inability to investigate or review individual complaints. See *id.* Some organizations, including the local NAACP and ACLU of Missouri, believed the small step was nonetheless a “step in the right direction.” *Id.* As of June 2016, the City held informational meetings for potential CRB members and the board members were appointed in July 2016. Adam McDonald, *City of Ferguson Encouraging Residents to Attend Civilian Review Board Meetings*, RAYCOM NEWS NETWORK, (June 5, 2016, 6:02 PM), <http://raycomgroup.worldnow.com/story/32149286/city-of-ferguson-encouraging-residents-to-attend-civilian-review-board-meetings?config=H264>.

death of Michael Brown.”⁴²⁹ The Commission was made up of sixteen community members whose primary responsibilities were to make policy findings and recommendations by holding commission meetings in local neighborhoods to gather broad participation and comment from a wide cross-section of the Ferguson community.⁴³⁰

After meetings with nearly 2000 people, including residents and experts, the Commission released its report in October 2015.⁴³¹ The report noted rampant discrimination and over-policing and made comprehensive recommendations, ranging from the establishment of civilian review boards in all municipalities to the creation of a demonstration response plan.⁴³² In September of 2014, Governor Nixon also created the “Office of Community Engagement” within the State Office of Administration.⁴³³ This entity is meant to provide assistance to communities and highlight critical social issues.⁴³⁴

Other groups within Missouri also took root in the months after the shooting. Ferguson Action (previously named Ferguson October), a social movement, has organized various protests and held many public hearings and events to expose police brutality and race-based policing practices.⁴³⁵ One such protest included the “Weekend of Resistance.”⁴³⁶ Demands made during this protest included: an end to discrimination, an immediate end to police

429. Ferguson Comm’n, *The Commission*, FORWARD THROUGH FERGUSON, <http://forwardthroughferguson.org/report/executive-summary/the-commission/> (last visited Oct. 22, 2016).

430. *Id.*

431. FERGUSON COMM’N, FORWARD THROUGH FERGUSON: A PATH TOWARD RACIAL EQUITY 1 (2016), http://3680or2khmk3bzkp33juia1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf. After the first public hearing, based on “community prioritization,” the Commission was divided into four distinct working groups that held separate, additional public meetings to address specific needs. Ferguson Comm’n, *supra* note 429. The working groups included: citizen-law enforcement relations, municipal courts and governance, economic inequity and opportunity, and child well-being and education equity. *Id.* To determine these working group priorities, the Commission convened leaders and community members to help identify areas of concern. *Id.*

432. See FERGUSON COMM’N, *supra* note 431, at 30, 64.

433. *Executive Order 14-11*, OFFICE MO. GOVERNOR JAY NIXON, <https://governor.mo.gov/news/executive-orders/executive-order-14-11> (last visited Oct. 22, 2016).

434. *Id.*

435. *United We Fight*, FERGUSON ACTION, <http://fergusonaction.com/united-we-fight/> (last visited Oct. 22, 2016).

436. The “Weekend of Resistance” was a four-day long event in the St. Louis area, consisting of “demonstrations, discussions, and civil disobedience.” Greg Botelho & Sara Weisfeldt, ‘We Say No More:’ Protesters Kick Off 4 Days of ‘Resistance’ Over Ferguson Case, CNN (Oct. 10, 2014), <http://www.cnn.com/2014/10/10/us/ferguson-weekend-protests/>.

brutality, congressional hearings investigating criminalization of communities of color, and a comprehensive review of systematic abuse by the state.⁴³⁷ #HealSTL, another social movement and non-profit organization that sought to gain traction in the aftermath of the shooting, was founded in August 2014.⁴³⁸ Thirteen days after Mr. Brown's fatal shooting, the leader of #HealSTL, an alderman for the City of Ferguson, Antonio French, was interviewed during the protests.⁴³⁹ In response to a question concerning community engagement, he stated moving forward required repairing relationships and "getting the African-American population . . . active and involved in their government so they get a government that actually reflects their interests and reflects their community."⁴⁴⁰ Another group, ONE Ferguson, also created in August of 2014, consists of a slowly growing group of residents that discuss racial inequality and potential solutions.⁴⁴¹ The group attended city council meetings and held their own open houses, inviting the public to contribute and make comments to help create a plan to address the racial disparities within the community.⁴⁴²

Although the DOJ found no criminal wrongdoing on the part of Officer Wilson,⁴⁴³ it did find "a pattern or practice of unlawful conduct within the FPD in violation of the First, Fourth, and Fourteenth Amendments."⁴⁴⁴ On February 10, 2015, the DOJ filed a complaint against the City of Ferguson alleging that Ferguson routinely and inappropriately violated constitutional and statutory

437. *Demands: Our Vision For a New America*, FERGUSON ACTION, <http://fergusonaction.com/demands/> (last visited Oct. 22, 2016).

438. The official goals of #HealSTL are to promote economic development, political empowerment, and defend civil rights. #HEALSTL, <http://www.healstl.org> (last visited Oct. 22, 2016).

439. *Rachel Maddow Show* (MSNBC television broadcast Aug. 22, 2014).

440. *Id.*

441. *About Us*, ONE FERGUSON, <http://www.oneferguson.com/about-us/> (last visited Oct. 22, 2016) (describing its mission as the recreation of "our community through citizen engagement, empowerment, and accountability").

442. *Open House Summary Report & Action Plan*, ONE FERGUSON (Nov. 16, 2014), http://oneferguson.com/ONE_Ferguson-OpenHouseReport.pdf. One of the first open houses, held on November 16, 2014, discussed five different focus actions: (1) police and court reform, (2) community relations and development, (3) economic development, (4) citizenship support and progress, and (5) resident education advocacy. *Id.* More than one hundred Ferguson residents and community stakeholders attended the open house. *Id.*

443. U.S. DEPT OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON 86 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

444. FERGUSON POLICE DEPARTMENT FINDINGS, *supra* note 419, at 1.

rights.⁴⁴⁵ In its report released on March 4, 2015, the DOJ stated that the FPD conducted stops, searches, and seizures without legal justification; used excessive force and prosecuted municipal charges in violation of due process and equal protection; and clearly discriminated against African Americans in its policing and policies.⁴⁴⁶ In addition, the DOJ found the FPD made almost no effort to implement community policing, citing a lack of communication between the FPD and neighborhood groups and the FPD's focus on revenue generation.⁴⁴⁷

A lengthy negotiation period followed in which the city council and mayor protested discussion with the DOJ, concerned that the costs of enforcing the consent decree could bankrupt the city and impose burdensome taxes on its citizens.⁴⁴⁸ The city held several community meetings to obtain the public's input on the decree before accepting it.⁴⁴⁹ The vast majority of speakers, including residents, seemed to overwhelmingly favor the decree, expressing concerns that Ferguson still refused to acknowledge the city's racist policing practices.⁴⁵⁰ At the last hearing, most of the resident speakers supported the signing of the consent decree, with the few dissenting voices noting the financial burden the decree would place on the city.⁴⁵¹ The parties reluctantly settled and jointly sought the court's entry of the decree.⁴⁵²

The consent decree's first substantive section was entitled "Community Policing and Engagement" and included provisions for a more community-oriented policing approach.⁴⁵³ The first part of

445. Complaint at 1–2, *United States v. Ferguson*, No. 4:16-cv-00180-CDP, (E.D. Mo. Feb. 10, 2016).

446. *Id.* at 1–2; FERGUSON POLICE DEPARTMENT FINDINGS, *supra* note 419, at 2.

447. FERGUSON POLICE DEPARTMENT FINDINGS, *supra* note 419, at 87–88.

448. Jim Salter, *Ferguson Mayor: With Costs Clarified, DOJ Agreement Near*, SEATTLE TIMES (Mar. 7, 2016, 11:02 AM), <http://www.seattletimes.com/nation-world/ferguson-mayor-with-costs-clarified-doj-agreement-near/>.

449. Shawndrea Thomas, *Ferguson Votes to Approve DOJ Consent Decree*, FOX NOW (Feb. 9, 2016, 9:36 PM), <http://fox2now.com/2016/02/09/ferguson-votes-to-approve-doj-consent-decree/>.

450. See Jason Rosenbaum, *Ferguson Poised to Take Final Vote on Federal Consent Decree*, ST. LOUIS PUB. RADIO (Mar. 9, 2016), <http://news.stlpublicradio.org/post/ferguson-poised-take-final-vote-federal-consent-decree#stream/0> (quoting resident Mildred Clines, who stated, "I'm tired of trying to convince certain people in our community that this is how people who look like me have been treated by the police. . . . Because it has happened").

451. CITY OF FERGUSON, MO., CITY COUNCIL MEETING MINUTES 2–4 (2016), <https://www.fergusoncity.com/AgendaCenter/ViewFile/Minutes/02092016-387>.

452. Joint Motion for Entry of Consent Decree at 1, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Mar. 17, 2016), ECF No. 12.

453. Consent Decree at i, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo., Mar. 17, 2016), ECF No. 12-2 [hereinafter *Ferguson Consent Decree*].

this section concerned the development and implementation of a community-outreach program to facilitate positive interactions between residents and law enforcement and required mandatory small-group dialogues between concerned community members and police officers.⁴⁵⁴ The proposed decree also required the implementation of community-engagement and community-policing measures, the development of a Neighborhood Police Steering Committee (“NPSC”), the development of apartment “Neighborhood Associations,” continued support for the Ferguson Youth Advisory Board, the establishment of a Community Mediation Program, and a guaranteed ongoing assessment by the city.⁴⁵⁵ The NPSC would act as a mechanism through which community representatives could provide feedback to the FPD and assist in developing the City’s Neighborhood Policing Plan.⁴⁵⁶ The NPSC is a separate entity from the previously established CRB.⁴⁵⁷ The consent decree also formalized the CRB, stating that the CRB would review and make findings concerning claims of potential police misconduct and submit recommendations to the Chief of Police “for appropriate action consistent with FPD policy.”⁴⁵⁸ Unfortunately, the consent decree utilized broad language for many of its requirements. For example, the decree required CRB members to be “representative of all areas and groups within the City.”⁴⁵⁹ A significant portion of the agreement remained vague due to the DOJ’s deference toward the City’s and the CRB’s recommendations. Thus, many individual provisions have been left to these entities to determine “the most appropriate form of civilian oversight for Ferguson.”⁴⁶⁰

Concerns over these vague provisions were heard at a public hearing meant to solicit additional community feedback and gauge the public response to the proposed consent decree.⁴⁶¹ The court

454. *Id.* at 4.

455. *Id.* at i, 4, 6–9.

456. *Id.* at 5, 6.

457. *Id.* at 6.

458. *Id.* at 99–100.

459. *Id.* at 99.

460. *Id.*

461. Memorandum in Support of Joint Motion for Entry of Consent Decree at 12, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Mar. 17, 2016), ECF No. 12-1. Although the DOJ received input from various community members and stakeholders in drafting the consent decree, both the city and the DOJ “believe[d] that allowing community stakeholders to provide their views regarding the Decree” might have assisted the court. *Id.* at 12. The vast majority of those who wrote letters and spoke at the nearly all-day hearing supported the consent decree and wanted to strengthen sections that provided for community involvement in the reform process. See Rachel Lippmann, *Federal Judge Approves Ferguson Consent Decree*, ST. LOUIS PUB. RADIO (Apr. 19, 2016), <http://news.stlpublicradio.org/post/federal-judge-approves-ferguson-consent-decree#stream/0>; Mariah Stewart & Ryan Reilly, *Ferguson Consent*

received written submissions detailing this feedback.⁴⁶² Many commenters argued that the community engagement provisions included within the consent decree failed to adequately incentivize officials and police officers to reach out to community members, particularly the most disenfranchised Ferguson residents.⁴⁶³ Justin Hansford, an assistant professor of law at St. Louis University School of Law, commented that the decree's community engagement provisions needed to be more thoroughly defined to clarify who would participate in civilian oversight.⁴⁶⁴ Commenters generally felt that citizen review boards would only have an enduring effect on the reform process if community oversight and engagement provisions were strengthened.⁴⁶⁵

Despite these criticisms, the judge approved the consent decree on April 19, 2016, without including a written opinion on the approval.⁴⁶⁶ The court stated that the consent decree adequately

Decree Approved by Judge, ST. LOUIS AM. (Apr. 20, 2016), http://www.stlamerican.com/news/local_news/article_ecadc1d6-0760-11e6-9ffa-ef36bbf0a08e.html.

462. Order Setting Public Hearing at 1, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Mar. 28, 2016), ECF No. 15.

463. See Written Testimony at 1–2, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Mar. 17, 2016), ECF No. 23 (“The NPSC is still in its infancy but is already following the path of the Civilian Review Board (CRB) in terms of illegitimacy and minimal ability to challenge the City. For example, we have had a difficult time convincing the group and the city itself to do adequate outreach to include members most disenfranchised by the city’s policies.”).

464. For example, Mr. Hansford urged that the small group sessions between the police and community members should include African-American youth, formerly incarcerated people, and individuals who had filed complaints against the police but had not received a mutually beneficial outcome. Written Testimony on Behalf of Justin Hansford, Assistant Professor of Law at Saint Louis University School of Law at 2, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Mar. 17, 2016), ECF No. 36. Professor Hansford called for disciplinary procedures in the event of police noncompliance with the community engagement plan. *Id.*

465. See, e.g., Ferguson’s Collaborative Written Testimony in Response to the Consent Decree at 1–2, *United States v. Ferguson*, No. 4:16-cv-00180-CDP, (E.D. Mo. Mar. 17, 2016), ECF No. 37. Comment 37 was compiled by the Ferguson Collaborative, a grassroots group “working to lift up and empower the community’s voice as part of the Department of Justice intervention and consent decree process.” *Id.* at 1. The comment reflects general concerns that police complaints are not taken seriously and that the oversight boards would not be given “real autonomy and a chance to influence outcomes.” *Id.* at 1–2. The Collaborative suggests that the NPSC should be institutionalized to guarantee its permanence in the reform process, should have a say in monitor appointment, and should be more intimately involved with audits and complaint procedures. *Id.* at 3.

466. Transcript of Excerpt of Ruling from Motion Hearing at 2, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Apr. 19, 2016), ECF No. 43.

addressed the concerns of both parties, even though “some people have complained that they weren’t involved in the negotiation of the settlement agreement.”⁴⁶⁷ The court suggested that many individuals were dissatisfied with the DOJ’s process and believed it to be “biased in its approach.”⁴⁶⁸ One group, Ferguson Truth, was established to encourage Ferguson to contest the DOJ’s demands.⁴⁶⁹ Others declared that the City could not be trusted in its negotiations.⁴⁷⁰

Since the adoption of the Ferguson consent decree, Black residents and advocates have expressed skepticism that the parties will include community perspectives in the reform process. The Ferguson Collaborative, one of the strongest local advocacy voices, has maintained that more rigorous accountability and “deep, engaged community involvement” is required for the decree to be anything more than “lip service.”⁴⁷¹ On May 23, 2016, the Ferguson Collaborative called on officials to engage the community in the process of establishing and selecting a monitoring team.⁴⁷² This team would be composed of a community liaison—someone already trusted by the community stakeholders—and other members of diverse backgrounds possessing expertise in racial justice and an

467. *Id.* at 5 (“[T]he parties to the case were involved in the negotiation, and they sought the input of the public, and I think the comments here today and those that were provided in writing—although some people disagree with the way this was handled, I think people have had a chance to have their positions heard, and so that it is a procedurally fair . . . process.”).

468. *Id.* at 6; *see also* Lippmann, *supra* note 461 (noting that many members of the public still harbor mistrust for Ferguson’s public officials).

469. *Everything We Dislike About the Protestors, in One Council Meeting*, FERGUSON TRUTH (May 17, 2016), <http://www.fergusontruth.org/ferguson-truth/everything-we-dislike-about-the-protesters-in-one-council-meeting> (declaring that in its handling of Ferguson, the DOJ deliberately meant to incite anger and protest). In an open letter to Ferguson residents in the St. Louis Dispatch, leaders complained of exclusion from the consent decree’s development. Blake Ashby et al., *Commentary: All Ferguson Residents Should See DOJ Settlement Before It’s Signed*, ST. LOUIS POST-DISPATCH (Dec. 22, 2015), http://www.stltoday.com/news/opinion/commentary-all-ferguson-residents-should-see-doj-settlement-before-it/article_a6424ebd-9998-5305-8f92-c882950ae851.html.

470. *See* Transcript of Motion Hearing at 98–99, *United States v. Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. Apr. 19, 2016), ECF No. 46 (“The community police steering committee, one part of the decree which the city has begun, is being stalled by antipolice activists. These persons, many who are not residents of the city, have openly stated that they do not want police at committee events.”). Similarly, the author posits that the DOJ failed to take seriously positive remarks concerning the FPD and has only heeded the criticisms. *Id.* at 98.

471. Brett Blume, “*Ferguson Collaborative*” *Lays Out Consent Decree Demands*, CBS ST. LOUIS (May 23, 2016, 7:14 PM), <http://stlouis.cbslocal.com/2016/05/23/ferguson-collaborative-lays-out-consent-decree-demands/>.

472. *Id.*

understanding of municipal court practice.⁴⁷³ On July 12, 2016, a public hearing was held where community members, advocates, and residents could question the final four monitor candidates.⁴⁷⁴ Questions arose concerning each candidate's goals and how each would properly address community engagement.⁴⁷⁵ The public was given several days to provide feedback to the city or the DOJ on the final selection.⁴⁷⁶ Ultimately, the law firm of Squire Patton Boggs was selected as the monitoring team and was approved by the court on July 25, 2016.⁴⁷⁷

More than a year after the Ferguson Commission's report advocating for stronger community involvement and a citizen-review board mechanism, the Ferguson Collaborative found change from the consent decree process was "happening too slowly and [wasn't] reaching those in the community who need it most."⁴⁷⁸ Two members of the Collaborative stated that despite the consent decree's call for a role for residents in the reformation of the FPD, a larger role was necessary, because "[t]he invitation has to be authentic The relationships that are needed have to be truthful and honest and include people that have been excluded. Those invitations don't appear and they don't feel authentic."⁴⁷⁹ On September 7, 2016, the DOJ, monitoring team, and attorneys for the

473. *Id.* The DOJ and Ferguson solicited "individuals, firms, [and] organizations" for applicants looking to serve as the monitor and manage an inter-disciplinary team. U.S. DEPT OF JUSTICE, REQUEST FOR APPLICATIONS INDEPENDENT MONITOR 1 (2016), <https://www.justice.gov/crt/file/850951/download>. Ferguson residents were permitted to attend a hearing on July 12, 2016, in order to discuss concerns and questions with the monitor applicants. See *Ferguson, DOJ Seeking Public Feedback on Independent Monitor Candidates*, KMOV ST. LOUIS (July 12, 2016, 6:24 AM), <http://www.kmov.com/story/32422909/ferguson-doj-seeking-public-feedback-on-independent-monitor-candidates>. The public was permitted to provide feedback to both the city and the DOJ regarding the applicants. *Id.*

474. *Ferguson Meets the Finalists for DOJ Consent Decree Monitor*, ST. LOUIS AM. (July 14, 2016), http://www.stlamerican.com/news/political_eye/ferguson-meets-the-finalists-for-doj-consent-decree-monitor/article_19a23574-493c-11e6-b9a2-d369c2547700.html.

475. Angela Mueller, *Decision on Monitor for Ferguson Consent Decree Open for Public Comment*, ST. LOUIS BUS. J. (July 13, 2016, 7:17 AM), <http://www.bizjournals.com/stlouis/news/2016/07/13/decision-on-monitor-for-ferguson-consent-decree.html>.

476. *Id.*

477. Jim Salter, *Monitor Chosen to Oversee Ferguson's Police, Court Reforms*, U.S. NEWS & WORLD REP. (July 25, 2016, 7:03 PM), <http://www.usnews.com/news/us/articles/2016-07-25/monitor-chosen-to-oversee-fergusons-police-court-reforms>.

478. Alex Heuer, *Ferguson Collaborative: Change Is Too Slow and Isn't Helping People Who Need It Most*, ST. LOUIS PUB. RADIO (Sept. 16, 2016), <http://news.stlpublicradio.org/post/ferguson-collaborative-change-too-slow-and-isn-t-helping-people-who-need-it-most#stream/0>.

479. *Id.*

city met in front of Judge Perry for a public review of the consent decree—the first since it was accepted in April.⁴⁸⁰ Of the consent decrees forty objectives, seven had not been implemented, and another twenty were listed as still in progress.⁴⁸¹ Among those objectives was the development of a mechanism by which policies could be reviewed by the monitor and DOJ “to ensure they comply with the consent decree. For example, the ordinance setting up a civilian review board had to be re-written.”⁴⁸²

IV. PROPOSED SOLUTIONS AND AREAS OF FURTHER INQUIRY

The studied examples of implementing community engagement through consent decrees provide rich information from which to draw further ideas regarding democratic participation in police-reform processes. This Part begins with lessons and preliminary solutions. The summaries presented are not meant to detract from the important contributions the DOJ has made to improving police accountability and establishing constitutional best practices nationally. Instead, this Part aims to complicate the notion of community participation and engagement. The DOJ has taken a great step forward by including community engagement as a central component in most consent decrees during President Obama’s administration. The next administration should do the same and consider the reasons the processes have not gone as planned, in order to build better mechanisms in the future. Community advocates, organizers, and Black and Brown persons facing the brunt of excessive police practices should continue to consider the DOJ process as a useful tool for reform.

A. *Extracting Lessons Learned*

The discussed community engagement processes, and the structures developed from the analyzed agreements, accord with deliberative democracy and legitimacy theory—the idea that we must increase communication and collaboration to determine crime fighting objectives for police while also taking steps to foster greater trust between the police agencies and the communities subjected to law enforcement tactics.⁴⁸³ These portions of the consent decrees

480. Rachel Lippmann, *Ferguson Gets Mixed Reviews on Consent Decree Compliance*, ST. LOUIS PUB. RADIO (Sept. 7, 2016), <http://news.stlpublicradio.org/post/ferguson-gets-mixed-reviews-consent-decree-compliance#stream/0>.

481. *Id.*

482. *Id.*

483. Some scholars suggest the goals of community policing are unable to address the root causes of police and community distrust. See Eric J. Miller, *Challenging Police Discretion*, 58 HOW. L.J. 521, 548 (2015) (contending that even theories of policing that attempt to incorporate feedback from the public in

serve the explicit purpose of improving the police departments' relationships with organized community stakeholders and, in some cities, implementing community, problem-oriented policing.⁴⁸⁴ Non-parties' inclusion in community engagement varies by jurisdiction. The range of participation includes everything from recommending proposed reforms; to implementation and evaluation of the proposed, or soon to be drafted, reform proposals; to simply requiring police to set up meetings with residents in different areas in a given city where public safety concerns may arise. Law enforcement and advocates alike applauded these improvements on the first generation (Clinton-era) of consent decrees.⁴⁸⁵ As enforceable court orders, such structures offer something police-driven community policing strategies cannot.⁴⁸⁶

In the interests of informing potential solutions and further research, several lessons should be extracted from the previously examined community engagement processes. In the introduction, this Article proposed answering how, where, and why the DOJ has fallen short. First, the DOJ has adopted a community-policing framework that some stakeholders, advocates, and affected community members (primarily Black and Latino) find illegitimate and in opposition to the supposed purpose of the consent decree process. Many organized constituents in the cities examined in this Article see the parties' objectives—improving community relations and crime fighting—in tension with advocates' goals of changing power relationships with communities and police.

Second, the lack of a formal adversarial process complicates the public narrative the parties and monitor present. Even though the

the formation of police policies fail to account for the domination of political minorities who must depend on others to make their voices heard); Steven Wu, *The Secret Ambition of Racial Profiling*, 115 YALE L.J. 491, 495–96 (2005) (arguing that even if communities and police learn to trust one another, structural or value- and goal-based differences remain, creating “serious obstacles” for structural reform through direct discussion between police and minority communities).

484. See Joshua M. Chanin & Salvador Espinosa, *Examining Determinants of Police Transparency: The View of Police Executives*, 27 CRIM. JUST. POL'Y REV. 498, 500 (2016); Chanin, *supra* note 10, at 165.

485. See Walker, *supra* note 106, at 5–6.

486. Some positive examples of community policing exist. See, e.g., David Alan Sklansky, Book Review, 42 L. & SOC'Y REV. 233–35 (2008) (reviewing WESLEY G. SKOGAN, *POLICE AND COMMUNITY IN CHICAGO: A TALE OF THREE CITIES* (2006)) (describing the significant success of community policing in building relationships between law enforcement and African American communities); Bertus R. Ferreira, *The Use and Effectiveness of Community Policing in a Democracy*, NCJRS.GOV, <https://www.ncjrs.gov/policing/use139.htm> (last visited Oct. 22, 2016) (discussing the successes of various community policing measures, including a two-year pilot program in Chicago that created more positive attitudes within the community toward the police and the perception that crime had decreased significantly).

consent decree negotiations and implementations are adversarial in nature, the role of the court and monitor is to avoid conflict. For example, the monitor assists parties to confront and manage differences.⁴⁸⁷ In the web of institutions with power to shape the outcome of the consent decree process, affected communities or individuals have a lesser role than the parties or other municipal departments. Even within the existing adversarial process, community-engagement structures are not given party status and therefore may be limited in their ability to voice their concerns directly to the parties and the court. As Part III exposed, in city after city, the DOJ has explicitly stated that it believes the court should deny official party status to community groups because they will influence and delay the outcome of the consent decree. The communities' direct participation in the monitoring process, however, and the solutions the communities generate are essential for the democratic legitimacy of the reform process. If community groups are concerned about the DOJ's ability to adequately and justly represent them and have asked for a direct role in the process, courts should closely examine those concerns. Without the ability to intervene, plural communities with differences of opinion regarding strategies and desired outcomes have no place in the consent decree process. Portland provides an example of parties agreeing to a non-party, yet enhanced, status for a group representing community interests.

Third, to develop remedies and monitor consent decrees, advocates must be willing to expend substantial time and resources to a long-term process. Rarely in the evolution of policy advancements do the same individuals remain at the front of protracted, decade-long processes. Funding priorities, leadership changes, lack of short-term results, and other factors lead community advocates to change commitments. In contrast, the DOJ and the cities' law departments do not have to struggle with such considerations. Attorneys remain involved with prolonged reform processes because a case creates an obligation to do so.

487. Deliberative processes generally begin with the random selection of a sample of the affected population—random to ensure equality in the chance of being selected—for deliberation on a certain issue. See James S. Fishkin, *Deliberative Democracy in Context: Reflections on Theory and Practice*, in *DELIBERATIVE MINI-PUBLICS INVOLVING CITIZENS IN THE DEMOCRATIC PROCESS* 27, 30 (Kimmo Grönlund et al. eds., 2014). Those randomly selected convene to learn about and discuss the issue with a view to crafting its solution. Pateman, *supra* note 41, at 8. To ensure meaningful deliberation, a facilitator is present to provide useful knowledge, regulate rules of the discussion, and contribute expertise where needed. *Id.* The rules of such discussions are established prior to deliberation to ensure that conversations are multi-directional and educative. *Id.* A solution is adopted once consensus is achieved among all members of the deliberative group. *Id.*

Fourth, a lack of clarity regarding roles in the community engagement process creates concerns for legitimacy and community investment in the process. In most jurisdictions, affected individuals (and even stakeholders) within community engagement structures have no delineated involvement when the parties are engaged in compromises and negotiations. This has led advocates and individuals involved in community engagement to question their ability to influence the process with community-centered values and proposals. Nonetheless, it is evident that some segment of vocal community constituents expected a larger role in the implementation, evaluation, and monitoring of the consent decrees. Courts in city after city, however, denied each community organizations' attempt to intervene. The courts reasoned that the DOJ already represented each group's interests in the litigation and that even if the group had a separate interest any such interest would not be impaired by the ongoing litigation.

Outcome assessment presents enduring challenges. The current benchmarks—for example, measuring contacts police have made in communities⁴⁸⁸—may create a helpful narrative to motivate a reluctant police department, but does little for marginalized communities who seek a role in creating meaningful change through the consent decree process. Similar to the criticism with deliberative democracy's preoccupation with creating a perfectly inclusive, deliberative opportunity, contact for contact's sake serves no meaningful democratic purpose. Mere presence in the community has not been shown to shift power between the police and those targeted by police. Moreover, ordering police to participate in community or neighborhood meetings may lead to negative perceptions of the police. Presence in private or semi-private spaces in Black and Brown communities could lead individuals present to limit participation, or worse, feel they are under surveillance, rather than engaged in problem solving to reform harmful police practices.⁴⁸⁹

B. Preliminary Proposals

Whether consent decrees offer affected persons and community stakeholders a meaningful and authentic opportunity to participate in the reform process is an open question. It has long been

488. *See supra* Subpart III.C.

489. Advocates and community members must be careful to ensure DOJ consent decrees are not used as a tool to further police surveillance. *See Government Surveillance and Race, Part I*, C-SPAN (Apr. 8, 2016), <https://www.c-span.org/video/?407901-1/discussion-racial-bias-government> (covering footage of a symposium held by the Georgetown University Law Center and the Center on Privacy and Technology discussing the nature of surveillance of people of color in the contemporary United States).

understood that for law enforcement reforms to stick, law enforcement agencies must undergo a culture change.⁴⁹⁰ Community engagement should likewise aim to stop police departments from viewing community concerns as a public perception problem and encourage agencies to see these concerns as a source of important information on problems, and solutions to those problems, within the department. Community engagement structures have the potential to create long-term mechanisms for sharing power between communities and police where community members are considered valuable participants in accountability infrastructures.⁴⁹¹ As Mouffe describes in other contexts, the state (here, the federal government) can be an important source for fostering popular demands rather than an obstacle to democratic advancement.⁴⁹² Sustainable, community-driven accountability structures can begin with the DOJ's involvement in local police reform, but for affected persons, or even line police officers, to have a meaningful seat at the table, they must have an explicit role in the reform process.⁴⁹³

Here, this Article presents preliminary thinking on how community engagement could be reformulated to do more than serve as a legitimizing function and, instead, align with meaningful, democratic participation. To best develop proposals, however, further study is needed. Empirical research based on surveys and interviews with participants in the community engagement process, monitors, police, and DOJ attorneys is needed.

1. Values Statements and Orientation

If the DOJ is interested in community-based perspectives to problem solving, it should adopt values and approaches to the negotiation of and monitoring of consent decrees that reflect this interest. Currently, the language of many settlement agreements offers a strong commitment to the improvement of police-community

490. See, e.g., Stoughton, *supra* note 6, at 666 ("If the principles and values of policing have contributed to the profession's current problems, systemic reform requires changing those principles.").

491. See Seth Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225, 226 (2015) (critiquing the warrior mindset that many police departments currently embrace).

492. See MOUFFE, *supra* note 48, at 124.

493. Alexandra Holmes, Note, *Bridging the Information Gap: The Department of Justice's "Pattern or Practice" Suits and Community Organizations*, 92 TEX. L. REV. 1241, 1243 (2014) (pointing to an example in Texas where a local organization assisted DOJ by collecting data and case examples for its investigation).

relationships and/or the adoption of community policing.⁴⁹⁴ While improving relationships is certainly necessary, the consent decrees (or intent to settle or technical assistance letters) should also include value statements within their opening paragraphs to strengthen the role of community advocates and individuals and signal the needed power shift between police and communities targeted by policing practices. This would be consistent with deliberative process theory whereby rules of the discussion, including respective roles, expertise, and points of engagement, are determined in advance.

2. *Elevating Decision Making*

Similarly, the DOJ should take an explicit position that it will foster a reform process that elevates the role of communities and values lived experience. The DOJ should value stakeholders' and affected individuals' expertise developed through many interactions with police officials over time. Community advocates, civil rights and civil liberties groups, public defenders, and social service organizations, among others, usually request that the DOJ investigate a particular police department's practices. To investigate police agencies' practices, the DOJ relies on these same advocates and their clients or members to provide information during the fact-finding process. Therefore, the consent decrees should do more than acknowledge the importance of community relationships; they should provide communities with a central role in developing solutions as well as implementing and evaluating reform. In addition, the consent decrees can recognize the important roles dissent and disagreement play in democratic reform processes. Rather than shutting the reformist door when critics of the process voice concerns, community engagement should allow agonistic debate between the parties and the members of the community most harmed by police practices. Moving away from a strict consensus view of democratic reform will enlarge the democratic terrain and engender more trust in the process. At the same time, expanding the opportunity for agonistic interactions among adversaries improves the solution-generating process.

For a shift in power to occur, the parties and participants in community engagement (including the court-appointed monitor) must truly value the participation of affected individuals and understand the limited function of stakeholders vis-à-vis the most

494. See Cleveland Settlement Agreement, *supra* note 17, at 1 (reiterating the commitment of the police department to bolstering its relationship with the Cleveland community).

marginalized persons harmed by police practices.⁴⁹⁵ The democratization of the police must “be accompanied by the decentralization of power such that diverse social associations obtain effective decision-making authority.”⁴⁹⁶ This requires opening majority values to “minorities’ democratic critique, and the construction of a new set of shared community values through negotiation.”⁴⁹⁷ This process requires a “profound redistribution of power.”⁴⁹⁸ In practice, it would require community engagement participants to become involved with negotiations among the parties, as the Ninth Circuit permitted in the Portland reform process. For each jurisdiction, this may take a different form.⁴⁹⁹ Deeper thought development is required to develop concrete suggestions for giving affected individuals meaningful, democratic participation in community engagement structures. One initial suggestion is to involve one or more representatives of the community engagement structure in each meeting the parties hold with the monitor. This person or persons should not be limited in their ability to speak to other members of the community engagement process. If they are not truly included in the multiple, negotiated decisions made in the process of implementing the consent decree, community engagement structures risk becoming a tool of the parties and the court to legitimize preconceived notions of what reforms should be implemented.

3. *Measuring Community Engagement*

Another set of questions emerging from Part III relates to the research-measuring attitudes and relationships between communities and police. Cities where police departments operate using respectful conduct and polite tone have generated improved satisfaction ratings.⁵⁰⁰ Despite the results of these studies, however, continued discontent with police agencies is evident through other

495. Recall the possibility of co-optation and elite viewpoints dominating the democratic process. See *An Open Letter to the ACLU of Illinois Regarding Stop & Frisk*, WE CHARGE GENOCIDE (Aug. 12, 2015), <http://wechargegenocide.org/an-open-letter-to-the-aclu-of-illinois-regarding-stop-frisk> (laying out a community group’s dissatisfaction with settlement negotiations between the ACLU of Illinois, the City of Chicago, and the Chicago Police Department).

496. SMITH, *supra* note 54, at 138.

497. *Id.* at 33.

498. *Id.* at 31.

499. See *supra* Part III.

500. Mike Carter, *Survey: Fewer People Report Negative Experience With Seattle Police*, POLICE ASSESSMENT RES. CTR. (Oct. 1, 2015), <http://www.parc.info/blog/2015/10/13/survey-fewer-people-report-negative-experiences-with-seattle-police> (indicating an overall improved perception of police but noting that Blacks, as a group, continue to show distrust).

sources.⁵⁰¹ Due to their nature, these quantitative reviews conducted within the monitoring process are unlikely to account for attitude changes caused by critical incidents. Stronger measurement rubrics for the community engagement provisions of DOJ consent decrees would improve trouble identification. In addition, the research conducted for purposes of community engagement should include mechanisms to evaluate the quality of deliberations and whether the police policy reforms are deemed satisfactory. The monitor can include, for example, news reports and letters from advocates within his or her monitoring reports. The DOJ should consider implementing additional or different mechanisms to monitor and document community attitudes because, at least in the few jurisdictions where such attitudes have been studied, the positive narrative is sometimes at odds with the experiences and opinions of the communities most likely to be targeted by the potentially unlawful police practices at issue. A prematurely positive outlook on police-community relationships may have negative consequences for the consent decree process. Police officers may or may not believe that improvements have been sufficient. Beat cops and line officers may disagree with the results because their individual interactions with community members showcase an unwillingness to assist in police investigations or a general distrust of police. Likewise, community members may disagree with the results, and the process of reform may lose legitimacy. A narrative that inadequately accounts for problems in the reform process may lead directly affected community members to lose interest or trust in the DOJ.

The outcome assessments currently adopted by the DOJ to measure improvement in community engagement generally involve quantifying the number of community interactions.⁵⁰² Requiring officers to participate in a certain number of meetings in the community or conduct a specified number of conversations with community members may meaningfully alter the perception that

501. See Tony Briscoe, *More Than 100 Protest in Chicago Against Police Brutality*, CHI. TRIBUNE (July 15, 2016, 7:57 PM), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-protests-0716-20160715-story.html> (describing the protest that took place in Chicago following fatal police shootings in Minnesota and Louisiana); *Protests Against Police Violence Continue Across U.S.*, CBS NEWS (July 12, 2016, 1:10 AM), <http://www.cbsnews.com/news/protests-against-police-violence-continue-across-us> (describing the protests that took place across the United States following police shootings of Black men).

502. See DAVID E. DUFFEE ET AL., U.S. DEP'T OF JUSTICE, MEASURING COMMUNITY BUILDING INVOLVING THE POLICE: THE FINAL RESEARCH REPORT OF THE POLICE-COMMUNITY INTERACTION PROJECT, at iv-v (2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/213135.pdf> (setting out the criteria by which to measure interaction between the community and the police).

officers are outsiders or are inaccessible, but it is unlikely such steps will lead to community members participating in the solution-generation or solution-evaluation process, which is critical to shifting power and sustaining meaningful reforms. The DOJ should create benchmarks indicative of power sharing (e.g., changes in decision making) rather than, or in addition to, quantifying interactions with community members. More research is necessary to determine the rubrics parties and courts should adopt to measure the changes in power and decision making carried out by the terms of a consent decree.

4. *Structural Proposals*

The synthesis of each city's consent decree process reveals community advocates' structural concerns with the monitoring process. Nearly each consent decree process has been interrupted by motions to intervene, and in some cities, multiple motions to intervene. In Portland, Seattle, and Cleveland, there exists a palpable tension over the nonparty status of the structures created under the consent decree. To live up to the demands of police reform advocates, the consent decree process must offer a genuine shifting of power from the police departments to the communities that they govern. Whether this is even a possible, tangible result is not clear at this time. Likewise, it is not clear whether the DOJ will embrace community engagement processes that cede power and decision-making authority to entities outside of the current parties.

Parties must consider several questions and develop answers tailored to each particular jurisdiction. How can the parties incorporate independent, community-based structures in a manner that does not replicate the concerns associated with traditional community policing and democratic deliberation processes? Should such structures outlive the consent decree processes? Whom should be appointed to the structures and how large should the structures be? What is the ideal process for appointing the members of these structures? The answers to these questions are beyond the scope of this Article, but such questions surely present difficult, practical concerns for those hoping to achieve true democratic involvement in consent decree processes. Remember, however, that even with the right constituents, achieving a perfect, deliberative model is not the objective in an agonistic community engagement process. The objective is to create opportunities for an agonistic process of democracy.⁵⁰³

First and foremost, ensuring that stakeholders are provided equal participatory and deliberative power requires adjusting for systematic forms of oppression that have decreased participatory

503. See MOUFFE, *supra* note 48, at 7.

power for some.⁵⁰⁴ Deliberations in the context of consent decrees occur against the backdrop of an already established and recognized pattern or practice of unconstitutional police behavior, and thus the rules by which such deliberations occur must be adaptive and responsive to this fact.⁵⁰⁵ Because police officers have contributed to communities' subordination in jurisdictions where the DOJ has found a pattern or practice of unconstitutional or discriminatory policing, a just and formally equal deliberative process elevates the voices of the oppressed and shifts power to those who have not been heard.⁵⁰⁶ Accordingly, individuals with direct experience with police brutality must receive an enhanced opportunity to present their experiences within the boundaries established for the deliberative process. These are the voices of the "grassroots philosophers" who can relate stories that illuminate the truth of their experience to those not impacted by police practices.⁵⁰⁷

Outside of correcting for the unequal position of the stakeholders in the consent decree process, it is imperative to the legitimacy of the deliberative process to include and adequately hear the voices of the organizers of social movements.⁵⁰⁸ For any community process seeking to reform police misconduct at a systematic level to be legitimate, the work of the activists who have been instrumental to the initiation of the DOJ's investigation process must be prioritized.⁵⁰⁹ Furthermore, this prioritization must move beyond essentializing community voices and embrace the plurality of activists' views and demands.⁵¹⁰ It is also important to note that it is usually those who are most directly impacted by police brutality who take it upon themselves to organize a broader movement.⁵¹¹ Accordingly, these voices provide well-informed

504. SMITH, *supra* note 54, at 31 ("In a radical democratic society, there would be equal access not only to material resources necessary for self-development, but also to meaningful participation in social, cultural, political and economic decision-making.").

505. See Mouffe, *Radical Democracy*, *supra* note 43, at 19, 24.

506. See *id.*

507. Matsuda, *supra* note 61, at 325.

508. See CHANTAL MOUFFE, *THE RETURN OF THE POLITICAL* 100 (1993).

509. Yet, it will be important to preserve some outsider perspective to avoid co-optation of the process and allow the most marginalized perspectives to be considered within and outside of the process. See DAVID COLE, *ENGINES OF LIBERTY: THE POWER OF CITIZEN ACTIVISTS TO MAKE CONSTITUTIONAL LAW* 222 (2016).

510. SMITH, *supra* note 54, at 33 ("[T]he irreducibly plural character of the social must be preserved, even as democratic struggles combine to fight authoritarianism. Plurality and diversity are not problems . . . [but are] the very condition for the expansion of the democratic revolution.").

511. See, e.g., Geoff Gilbert, *Meet the Families Affected by Police Violence Who Are Organizing to Stop the Killing*, WAGING NONVIOLENCE (May 7, 2015),

experiences from which the consent decree process must draw to adequately address police shortcomings. It is important to understand that communities experiencing harm from police practices may lack organized infrastructure. Any thoughtful development of community engagement should be accompanied by efforts to make capacity-building resources available to support police reform.

Beyond the role that organizers play within the deliberative process, their grassroots efforts outside of that process are incredibly important for preserving room for dissent on issues on which consensus is not achieved and generating change as an affirmative act.⁵¹² Acknowledging that not all solutions will be generated through the process of deliberation, and that inherent value exists in the preservation of dissent and room for such dissent, this Article argues for uplifting the work of the grassroots organizers—acknowledging and engaging with the myriad different views and perspectives that they offer. Change on intractable issues is sometimes the sole province of organizers and activists, whose dissenting voices and strategic tactics ensure the preservation of a plurality of voices and a continuous commitment to morals and principles, regardless of consensus.⁵¹³ This Article acknowledges the possibility for the continuation of conflict upon the conclusion of the deliberative process and embraces such conflict. It is this conflict, and the possibility for such conflict to take root in grassroots strategies, that ensures the existence of a truly democratic society. For example, in Portland, the AMA Coalition straddles an insider and outsider role;⁵¹⁴ in Puerto Rico, GRUCORPO does so as well.⁵¹⁵ These groups challenge the traditional notion of community participation in court reform and traditional democratic police reform. By challenging the parties' agenda, the process to achieve that agenda, and the outcome, democracy is enhanced. Expressions of disagreement and dissent help other participants in the police-reform process—city councils, mayors' offices, and administrative oversight bodies—hear and respond to the diverse and pluralistic views of persons harmed by excessive police practices.

<http://wagingnonviolence.org/feature/meet-families-affected-police-violence-organizing-stop-killing/>.

512. SMITH, *supra* note 54, at 139 (“[R]esistance to domination would ideally take a ‘grassroots’ form. Resistance strategies would seek, first and foremost, to work with the organic philosophies of resistance that are already in motion within the sphere in question, and to use them as a basis for further radicalization.”); Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2796 (2014).

513. See SMITH, *supra* note 54, at 139–40.

514. See *supra* text accompanying notes 311–44.

515. See *supra* text accompanying notes 236–59.

CONCLUSION

This Article outlines the ways in which the consent decree negotiation processes and resulting settlement agreements have failed to address community needs in a way that is consistent with a vision of true democracy. This is not to say that consent decrees are not useful in reforming police misconduct, nor that any court reform process alone can achieve a reorientation of policing in society. Instead, this Article operates with the assumption that consent decrees have been useful tools for reforming police misconduct and aims to build upon those tools by providing a theory for furthering their democratization and efficacy. The recognition of the normative values and practical benefits inherent in the direct participation and power building of community members and activists—those whom Gramsci called the “organic intellectuals”⁵¹⁶—is integral to the improvement of the consent decree process. Accordingly, this Article provides a vision through which this power shift can be achieved.

This Article argues for the adoption of a form of true democracy that allows for direct community participation in designing, implementing, and evaluating police reforms instituted as a result of DOJ consent decrees. By adjusting for institutional forms of oppression that compromise the ability of certain stakeholders and affected persons to engage in the deliberative process, this Article argues that deliberation under the democratic theory of agonism will produce more effective and accountable solutions from consent decree processes than traditional consensus and legitimacy based principles.

Part I of this Article explained why community matters. From the agonistic perspective expounded by Mouffe, Part I argued for communities to receive a prioritized voice within the reform process. Some of the greatest civil rights legal victories of this nation have rested on the backs of community and social movement organizers. Uplifting the roles of activists and advocates in the DOJ reform process is essential to a complete narrative.

With the normative framework established, Part II provided a look at existing research on the efficacy of consent decrees as a whole. This survey, however, also revealed a lack of research into the implementation of the community engagement provisions of the various consent decrees. Accordingly, this Article aimed to address this gap.

In Part III, this Article assessed the community engagement provisions of consent decrees in Seattle, Puerto Rico, New Orleans, Portland, Cleveland, Albuquerque, and Ferguson. First, this Part provided the content of each community engagement provision. Second, this Part went on to assess how such community

516. *See supra* text accompanying note 62.

engagement provisions have played out on the ground. In numerous places, this assessment demonstrated that community members have felt marginalized within the consent decree process. In nearly every city, a community-based organization or institution attempted to intervene for the purpose of becoming an official party in the reform litigation, believing the DOJ had not adequately represented the community's interests. In every city, however, this attempt was rejected. The DOJ successfully argued that including the community entity would unduly delay the process and present obstacles to reaching a settlement. This reasoning, however, is directly at odds with the communities' meaningful democratic participation within the consent decree process. Genuine democratic participation requires direct participation by those who are most heavily affected, acknowledges the value of contestation, makes room for marginalized and minority voices with all of their complexity, and refuses to sacrifice principles of self-determination for those of swiftness and efficiency. Beyond aligning with normative democratic values, participation capitalizes on the knowledge and experience of those directly impacted by harmful and discriminatory police practices, namely Black and Brown communities.

Finally, in Part IV, this Article provided several solutions that have potential ramifications beyond the DOJ consent decree processes. This Article hopes to provide additional resources for communities advocating for their rights within the consent decree process and highlights future areas in which additional research is necessary. The suggestions provided in Part IV could be applied, with modification and careful design, in other areas of DOJ civil rights enforcement and in private litigation against police departments and other public institutions.