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# Police Reform and the Judicial Mandate

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# POLICE REFORM AND THE JUDICIAL MANDATE

*Julian A. Cook, III\**

## I. INTRODUCTION

In response to a crisis that threatens his tenure as Mayor of Chicago, Rahm Emanuel announced in December 2015 reform measures designed to curb aggressive police tactics by the Chicago Police Department (CPD).<sup>1</sup> The reform measures are limited, but aim to reduce deadly police-citizen encounters by arming the police with more tasers, and by requiring that officers undergo de-escalation training.<sup>2</sup> Though allegations of excessive force have plagued the department for years, the death of Laquan McDonald, an African-American teenager who was fatally shot by Jason Van Dyke, a white officer with the CPD, was the impetus for the Mayor's reforms.<sup>3</sup> McDonald was shot sixteen times.<sup>4</sup> Dash cam footage revealed that McDonald was holding a small knife and, in contravention of reports prepared by Van Dyke and several other police officers, was walking away from the officers at the time of the shooting.<sup>5</sup>

In January 2016, the Mayor also announced that Charles H. Ramsey, former Police Commissioner of the Philadelphia Police Department, and former Chief of Police of the Metropolitan Police

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<sup>1</sup> Dan Hinkel, *Emanuel Touts Tasers, Training to Cut Chicago Police Shootings*, CHI. TRIB., Dec. 31, 2015, <http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-chicago-police-training-1231-20151230-story.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Jeff Coen & John Chase, *Top Emanuel Aides Aware of Key Laquan McDonald Details Months Before Mayor Says He Knew*, CHI. TRIB., Jan. 14, 2016, <http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-laquan-mcdonald-shooting-met-20160113-story.html>.

Department of Washington, D.C., was hired to serve as a consultant to the City on matters pertaining to “policies, training and accountability” in regards to police use of force, community interaction, and community policing.<sup>6</sup> Ramsey will also interact with the United States Department of Justice (DOJ), which announced in December 2015 that it would commence an investigation into the CPD’s policing practices.<sup>7</sup> During his terms in Philadelphia and Washington, D.C., Ramsey invited DOJ review of the police practices in those cities.<sup>8</sup> Recently, Ramsey served as a co-chair of the President’s Task Force on 21st Century Policing, which was established by President Barack Obama in May 2015 to develop recommendations to help curb aggressive police practices.<sup>9</sup>

Emanuel’s reform measures have been met with skepticism. It has been noted, for example, that CPD officers have carried tasers for many years, and despite the expanded use of the devices since 2010, there has been no “immediate” decrease in police shootings.<sup>10</sup> And while many experts deem police de-escalation training to be beneficial, they argue that without effective supervision and identifiable measures to ensure officer accountability, such training might be of limited value.<sup>11</sup>

Irrespective of the merits of these criticisms, police reforms, such as those announced by Emanuel, face a prospect for sustained success that is daunting. This Essay will explain why decisions rendered by the United States Supreme Court since the close of the Warren Court era in 1969, argue against the prospect of positive, sustained remedial change, and why meaningful, enduring police organizational improvements will be difficult to

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<sup>6</sup> Patrick M. O’Connell, *Former Chicago Officer Returns to Advise Department on Civil Rights Reform*, CHI. TRIB., Jan. 24, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-senior-advisor-met-20160124-story.html>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 81 (2015).

<sup>10</sup> Hinkel, *supra* note 1.

<sup>11</sup> *Id.*

achieve absent the adoption of an expansive standing doctrine and a reinvigorated exclusionary rule. In making this argument, I will examine the DOJ's employment of consent decrees as a mechanism to force positive remedial change, and explain why judicial oversight—an inherent aspect of the consent decree remedial process—is essential to the achievement of effectual police reform.

## II. THE IMPACT OF THE SUPREME COURT ON POLICE ORGANIZATIONAL PRACTICE AND A PROPOSED REMEDIAL MEASURE

The Warren Court was notable for its expansive interpretation of individual liberties. Though not as well-known as its landmark decision in *Miranda v. Arizona*, which required the rendition of a set of warnings prior to any police custodial interrogation,<sup>12</sup> the Court's decision in *Mapp v. Ohio*,<sup>13</sup> a Fourth Amendment exclusionary rule case, was arguably just as influential. In general terms, the exclusionary rule provides that evidence obtained in violation of the Constitution cannot be used at trial. Prior to *Mapp*, this rule had been applicable only in federal courts.<sup>14</sup> But *Mapp* extended this prohibition to the states, and concluded that exclusion was a constitutional mandate.<sup>15</sup>

Also during the Warren Court era, the pool of individuals eligible to challenge allegedly unconstitutional government investigative conduct was much broader than it is today. In *Jones v. United States*,<sup>16</sup> the Supreme Court declared that standing to contest the constitutionality of police conduct could be achieved by demonstrating that the claimant was legitimately on the premises of the search, had an established privacy interest, had a possessory interest in the item that was seized or searched, or was the target of a government investigation.<sup>17</sup>

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<sup>12</sup> 384 U.S. 436 (1966).

<sup>13</sup> 367 U.S. 643 (1961).

<sup>14</sup> *Id.* at 654 (citing *Elkins v. United States*, 369 U.S. 206 (1960)).

<sup>15</sup> *Id.* at 655.

<sup>16</sup> 362 U.S. 257 (1960).

<sup>17</sup> *Id.* at 261, 263–67.

However, since the close of the Warren Court, individual liberties have been scaled back significantly, and the exclusionary rule and the standing doctrine have not escaped the Court's pruning. Many exceptions to the exclusionary rule have developed, with the good faith doctrine unquestionably the most significant development in this regard.<sup>18</sup> The exclusionary rule, once considered an embedded part of the Fourth Amendment, is now a rule of last recourse. Today, it is invoked only when meaningful deterrence of police misconduct can be achieved.<sup>19</sup>

Similarly, the standing doctrine has also been significantly winnowed. The principal standing threshold is the privacy test, which requires that a claimant demonstrate a reasonable expectation of privacy in the area of the search.<sup>20</sup> No longer can the standing threshold be satisfied by proof of a defendant's possessory interest in the evidentiary item seized or searched, by demonstrating his legitimate presence on the premises of the search, or by showing that he was the intended target of a government investigation. Concomitantly, investigative freedoms of the police have become increasingly liberated in the post-Warren Court years.<sup>21</sup>

Police organizations pay attention to pronouncements from the Supreme Court that impact their investigative function. Cognizant that their investigative powers have increased, and that their failure to comply with constitutional safeguards will frequently be overlooked, it is inevitable that many police

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<sup>18</sup> See generally, *United States v. Leon*, 468 U.S. 897 (1984); *Illinois v. Krull*, 480 U.S. 340 (1987); *Arizona v. Evans*, 514 U.S. 1 (1995); *Herring v. United States*, 555 U.S. 135 (2009).

<sup>19</sup> *Herring v. United States*, 555 U.S. at 144.

<sup>20</sup> *Rakas v. Illinois*, 439 U.S. 128, 143(1978).

<sup>21</sup> See, e.g., *Illinois v. Gates*, 462 U.S. 213 (1983) (holding that search warrant applications be assessed pursuant to a totality of the circumstances approach); *United States v. Robinson*, 414 U.S. 218 (1973) (holding that officers may perform a full search of a person incident to arrest); *Whren v. United States*, 517 U.S. 806 (1996) (holding that an officer may properly stop a motorist upon probable cause of a traffic violation, even if the stop was pretextual); *Atwater v. Lago Vista*, 532 U.S. 318 (2001) (holding that an officer does not violate an individual's Fourth Amendment rights when a motorist is arrested for a minor traffic offense that is punishable only by a fine).

organizations will become emboldened by their broad investigative freedoms.<sup>22</sup> Thus, when the Supreme Court grants officers significant latitude to perform their investigative function, and willingly forgives their constitutional missteps, it should come as no surprise when officers capitalize on these investigative freedoms and cross constitutional boundaries. And when constitutional safeguards are crossed, it should also not be surprising when some officers get overly aggressive, and when some get *way* too aggressive. Such a steady stream of pro-law-enforcement pronouncements inevitably contributes to an aggressive culture of policing, and further expands the divide that exists between law enforcement entities and the communities which they serve.

When Emanuel announced his reforms for Chicago, he referenced the culture of policing and the need to positively alter this atmosphere.<sup>23</sup> On an earlier occasion, he also made reference to a “code of silence” among officers,<sup>24</sup> which refers to a practice, all too prevalent in law-enforcement circles, of shielding fellow officers from their misdeeds.<sup>25</sup> Indeed, this practice was evident in the McDonald case when five officers prepared reports that corroborated Van Dyke’s now-discounted version of the events surrounding the shooting.<sup>26</sup>

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<sup>22</sup> Also relevant are the extensions of immunity protections, such as that enjoyed by states pursuant to the Eleventh Amendment of the Constitution and that enjoyed by individual officers by virtue of qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

<sup>23</sup> Hinkel, *supra* note 1.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., Jason Meisner & Annie Sweeney, *Case Spotlights Code of Silence Among Chicago Police*, CHI. TRIB., Dec. 17, 2015, <http://www.chicagotribune.com/news/ct-chicago-p-olice-code-of-silence-conviction-met-20151216-story.html> (explaining the code of silence in Chicago); Matt Pearce, *Jury Rules Chicago Police ‘Code of Silence’ Protected Felon Cop*, L.A. TIMES, Nov. 14, 2012, <http://articles.latimes.com/2012/nov/14/nation/la-na-nn-chicago-police-code-silence-20121114> (explaining how the code of silence covered up a case of police brutality).

<sup>26</sup> Monica Davey, *Officers’ Statements Differ From Video in Death of Laquan McDonald*, N.Y. TIMES, Dec. 5, 2015, <http://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html>.

Resistance to challenge and change is entrenched within many law enforcement organizations, not just that in Chicago.<sup>27</sup> Thus, meaningful and sustained reform to policing practices will be difficult to achieve when the accomplishment of this objective is dependent upon the good will of police organizations. As a matter of logic, the police will not relinquish their investigative freedoms granted them by the Supreme Court, including their ability to breach constitutional standards, on their own volition. Accordingly, for meaningful cultural change within police departments to take hold, there must be a threat of judicial sanction.

I have advocated elsewhere that police cultural change begins by establishing a robust third-party standing doctrine and reinvigorating the exclusionary rule.<sup>28</sup> The core of my standing proposal is this: not only must criminal defendants be afforded the opportunity to contest police investigative practices when their reasonable Fourth Amendment privacy interests have been violated, but they should also enjoy this opportunity when the only privacy rights that have been violated belong to third-parties.<sup>29</sup> Thus, when the government seeks to admit evidence against a defendant that it obtained by virtue of an unconstitutional search of a third-party, the defendant should be afforded the opportunity to challenge that government practice.<sup>30</sup> The ability to have your claim heard in court provides the judiciary with an opportunity to impose a remedy. To effectuate meaningful police reform, not only must the courts be empowered to exclude unconstitutionally-seized evidence far beyond what is currently authorized by Supreme Court jurisprudence, but a criminal defendant's ability to seek judicial redress must be dramatically expanded.<sup>31</sup> And when police organizations become cognizant of the vast landscape of

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<sup>27</sup> See, e.g., *infra* note 57.

<sup>28</sup> See generally Julian A. Cook, III, *Police Culture in the Twenty-First Century: A Critique of the President's Task Force's Final Report*, 91 NOTRE DAME L. REV. ONLINE 106 (2016).

<sup>29</sup> *Id.* at 112–14.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

eligible challengers to their investigative practices, as well as the judiciary's expanded ability to exclude ill-gotten evidence, law enforcement will have little choice but to change its culture to meet this new reality.<sup>32</sup>

While an expansive standing doctrine and robust exclusionary rule will certainly produce positive change, they are no panaceas. Police resistance to reform will manifest, even against the threat of judicial sanction. Lessons from the consent decree context are instructive in this regard. For example, 42 U.S.C. § 14141 (2012) empowers the DOJ to pursue civil actions against government units when it has reason to believe that a police agency has engaged in a "pattern or practice" of violating individual constitutional protections. Specifically, the law provides:

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

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<sup>32</sup> *Id.*



Often, in lieu of bringing a civil action (or even after the commencement of a civil action) the DOJ and the targeted city will enter into a consent decree, which is a settlement negotiated between the government and the city, approved by a court, and aimed at reforming troublesome police practices and policies.<sup>33</sup> In the event of non-compliance, a court may impose equitable relief.<sup>34</sup>

Yet, even in this context, police resistance has hardly been uncommon.<sup>35</sup> Consider the consent decree entered into between the United States and the City of Seattle. In March 2011, the DOJ commenced an investigation of the Seattle Police Department's (SPD) policing practices, and determined, as detailed in its final report submitted on December 16, 2011, that it had "reasonable cause to believe that" the department "engages in a pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment."<sup>36</sup> On July 27, 2012, the DOJ and the City of Seattle entered into a consent decree (as well as a Memorandum of Understanding) in order to address the government's findings.<sup>37</sup> Despite disagreement with the DOJ's assessment, the City entered into the agreements because "it wish[ed] to ensure that its police

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<sup>33</sup> Eugene Kim, *Vindicating Civil Rights Under 42 U.S.C. § 14141: Guidance From Procedures in Complex Litigation*, 29 HASTINGS CONST. L.Q. 767, 773 n.37 (2002).

<sup>34</sup> Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1347 (2015).

<sup>35</sup> *See id.* at 1376 (noting that it is common for police unions to attempt to participate in settlement talks between the DOJ and the cities in order to prevent the adoption of reform measures "that may increase oversight or otherwise burden frontline police officers"); Elliot Harvey Schatmeier, *Reforming Police Use-of-Force Practices: A Case Study of the Cincinnati Police Department*, 46 COLUM. J.L. & SOC. PROBS. 539, 550 (noting that "rank-and-file officers are often hostile to [memorandums of agreements] because they see the terms as a challenge to their professionalism, unnecessary and ineffective oversight, and penalty for honest police work").

<sup>36</sup> Settlement Agreement and Stipulated Order of Resolution, *United States v. Seattle*, No. 12-CV-1282 ¶ 15 (W.D. Wash. July 27, 2012), [http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542d82a2e4b0e604b756e932/1412268706512/DOJ\\_Settlement\\_Agreement.pdf](http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542d82a2e4b0e604b756e932/1412268706512/DOJ_Settlement_Agreement.pdf).

<sup>37</sup> SEATTLE POLICE DEPARTMENT: COMPLIANCE & PROFESSIONAL STANDARDS, <http://www.seattle.gov/police/compliance/> (last visited May 27, 2016).

department is functioning at an exceptional level and that it has positive relationships with all its communities.”<sup>38</sup>

The consent decree contains numerous remedial provisions, but of particular note are its sections addressing the excessive use of force. The decree emphasizes de-escalation practices, officer training, and a comprehensive system of documenting and investigating instances when the police have employed force.<sup>39</sup> It further details policies on stops and frisks pursuant to *Terry v. Ohio*,<sup>40</sup> as well as discriminatory police practices.<sup>41</sup> Merrick Bobb, the Executive Director of the Police Assessment Resource Center, was appointed as a Monitor.<sup>42</sup> He is tasked with the responsibility of assisting the SPD with the implementation of the agreed upon reforms, providing progress reports to the court and the public, and offering an assessment regarding whether the SPD has achieved full compliance with the terms of the agreements.<sup>43</sup>

In his Sixth Semiannual Report, submitted in December 2015, Bobb found that the SPD had made meaningful progress towards

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<sup>38</sup> Settlement Agreement and Stipulated Order of Resolution, *United States v. Seattle*, No. 12-CV-1282 ¶ 17 (W.D. Wash. July 27, 2012), [http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542d82a2e4b0e604b756e932/1412268706512/DOJ\\_Settlement\\_Agreement.pdf](http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542d82a2e4b0e604b756e932/1412268706512/DOJ_Settlement_Agreement.pdf).

<sup>39</sup> Order Approving Parties’ Updated Use of Force Policies, *United States v. Seattle*, No. 12-CV-1282 ¶¶ 70(h), 72 (W.D. Wash. July 27, 2015), <http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/55b69606e4b057b59452f21b/1438029318148/Order+Approving+Updated+UOF+Policies.pdf>. See also SEATTLE POLICE DEP’T MANUAL: 8.100 DE-ESCALATION (effective date Sept. 1, 2015), <http://www.seattle.gov/police-manual/title-8---use-of-force/8100--de-escalation>; SEATTLE POLICE DEP’T MANUAL: 8.200 USING FORCE (effective date Sept. 1, 2015), <http://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force>; SEATTLE POLICE DEP’T MANUAL: 8.400 USE OF FORCE REPORTING AND INVESTIGATION (effective date Sept. 1, 2015), <http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation>.

<sup>40</sup> 392 U.S. 1 (1968).

<sup>41</sup> Memorandum Submitting Consensus Seattle Police Dep’t Policies and Order Approving Same, *United States v. Seattle*, No. 12-CV-1282 (W.D. Wash. Jan. 17, 2014), [http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542ae2d3e4b01c971776bb9b/1412096723782/118\\_Memo\\_Submitting\\_Consensus.pdf](http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542ae2d3e4b01c971776bb9b/1412096723782/118_Memo_Submitting_Consensus.pdf).

<sup>42</sup> *The Seattle Consent Decree: How it Came About, What it is, and What the Monitor Does*, SEATTLE POLICE MONITOR, <http://www.seattlemonitor.com/overview/> (last visited May 29, 2016).

<sup>43</sup> *Id.*

fulfilling its obligations under the consent decree.<sup>44</sup> He commented that “Seattle has come to be seen as a national model on how to address fundamental issues relating to use of force, stops and detentions, and bias-free policing.”<sup>45</sup> Indeed, U.S. Attorney General Loretta Lynch noted this progress during a visit to Seattle in September 2015.<sup>46</sup> Yet, these positive developments have not come without resistance, particularly during earlier stages of the consent decree.

In the Monitor’s First Semiannual Report, submitted in April 2013, Bobb stated that though the SPD had taken positive steps towards compliance, the department “still does not speak with one voice.”<sup>47</sup> Bobb referenced internal “fighting up and down the command staff level” and that the department “does not appear settled on a unified vision of what it is to become.”<sup>48</sup> He added that many individuals “within the union-organized ranks, remain ‘dug in’ and continue[] to resist the force and implications of the Settlement Agreement.”<sup>49</sup> And he further declared that “[t]he time has come for [all the] persons in the [SPD], and particularly those with influence and authority, to move past their disagreements with [the] DOJ and to get on with reform.”<sup>50</sup>

Similar frustration was expressed in his Second Semiannual Report, filed in December 2013. Noting the existence of “intransigence” as well as “an aversion to innovation,” Bobb found that the SPD “has not made nearly as much progress during this

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<sup>44</sup> SEATTLE POLICE MONITOR, SIXTH SEMIANNUAL REPORT (2015), <http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/56c346b301dbaeb4caf65d84/1455638196035/Sixth+Semiannual+Report--12-15-15--FOR+FILING.pdf>.

<sup>45</sup> *Id.* at 1.

<sup>46</sup> Mike Carter & Steve Miletich, *U.S. Attorney General Lynch Lauds Seattle Police for Reform Efforts*, SEATTLE TIMES, Sept. 24, 2015, <http://www.seattletimes.com/seattle-news/seattle-to-receive-15m-federal-grant-to-fight-human-trafficking/>.

<sup>47</sup> SEATTLE POLICE MONITOR, FIRST SEMIANNUAL REPORT 5 (2013), [http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542c0a37e4b0801eab71294c/1412172343193/Seattle\\_First\\_Semiannual\\_Report\\_Final.pdf](http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542c0a37e4b0801eab71294c/1412172343193/Seattle_First_Semiannual_Report_Final.pdf).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 6.

period as the Monitoring Team knows to have been possible.”<sup>51</sup> He stated that the SPD failed “to fully and fairly analyze officer-involved shootings” and noted the department’s “[p]atent attempts to narrowly restrict the scope of the inquiry, to improperly coach officer testimony, and to definitively stack the odds against a proceeding that would determine . . . whether the shooting was inconsistent with policy.”<sup>52</sup> He also expressed serious reservations regarding the prospect of the SPD ultimately fulfilling its consent decree obligations, stating:

It appears to the Monitoring Team that a struggle wages on at the upper command level for control of policy related to the Consent Decree . . . . [S]uccessful implementation of the Consent Decree requires all of the command staff to join ranks, end resistance to the Settlement Agreement, and embrace reform. If the current senior command staff remains in place and their attitudes toward the Settlement Agreement do not change, the SPD is unlikely to be able to achieve full and effective compliance with the Consent Decree.<sup>53</sup>

Also, in May 2014, more than 100 Seattle police officers, detectives, and sergeants filed a civil rights complaint against the Attorney General, the City of Seattle, the Chief of Police of the SPD, and Merrick Bobb, among others, complaining, *inter alia*, that the policies and practices delineated in the consent decree “unreasonably restrict and burden [their] right to use force reasonably required, to protect themselves and others, from apparent harm and danger.”<sup>54</sup> This action was later dismissed.<sup>55</sup>

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<sup>51</sup> SEATTLE POLICE MONITOR, SECOND SEMIANNUAL REPORT 1 (2013), <http://static1.square-space.com/static/5425b9f0e4b0d66352331e0e/t/542adfabe4b0957885ec6029/1412095915929/Second+Semiannual+Report+---+Final.pdf>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 6.

<sup>54</sup> Complaint at 2, *Mahoney v. Holder*, 62 F. Supp. 3d 1215 (W.D. Wash. May 28, 2014) (No. C14-0794), <https://www.documentcloud.org/documents/1175039-complaint.html>.

Unquestionably, the problem of aggressive policing is complex and requires a diverse set of remedial approaches. One of the lessons from the Seattle decree experience is that positive change is facilitated when police department chiefs and other individuals of influence exhibit a good faith commitment to the reform process. Bobb cited this development as a critical factor in the successful reform efforts in that city.<sup>56</sup> However, Seattle is also instructive as to another set of realities: namely, that police resistance to reform is not uncommon, that it can arise even in contexts involving judicial oversight, and that it can seriously impede the process of reform.<sup>57</sup>

### III. CONCLUSION

When consent decrees produce positive police reforms<sup>58</sup> a host of explanatory rationales underlie such outcomes. Commitment to reform among law enforcement leadership, as noted earlier, is unquestionably a critical factor, as is the ability and willingness of a city to finance the remedial settlement, and the identification of appropriate benchmarks by which to assess police department

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<sup>55</sup> Steve Miletich, *Judge Dismisses Suit by SPD Officer On Use-of-Force Reforms*, SEATTLE TIMES, Oct. 20, 2014, <http://blogs.seattletimes.com/today/2014/10/judge-dismisses-suit-by-spd-officers-on-use-of-force-reforms/>.

<sup>56</sup> See SEATTLE POLICE MONITOR, FOURTH SEMIANNUAL REPORT 1–5 (2014), <http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/548f45e6e4b0767ae18867c4/1418675686394/Fourth+Semiannual+Report.pdf> (noting “solid progress to date” of police department compliance); SEATTLE POLICE MONITOR, FIFTH SEMIANNUAL REPORT 1 (2015), <http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/557f3f8fe4b0e62e4460ff9b/1434402703419/Fifth+Semiannual+Report.pdf> (aiming for “full and effective compliance with the Consent Decree”); SEATTLE POLICE MONITOR, *supra* note 44, at 1 (noting the department’s “unflagging commitment to police reform”).

<sup>57</sup> See, e.g., Rushin, *supra* note 34, at 1416 (noting that Oakland has been cited as an example of police leadership that has conflicted with government efforts to achieve reform by means of a consent decree); Joe Domanick, *Police Reform’s Best Tool: A Federal Consent Decree*, THE CRIME REPORT, July 15, 2014, 5:29:38 AM, <http://www.thecrimereport.org/news/articles/2014-07-police-reforms-best-tool-a-federal-consent-decree> (noting resistance to consent decrees in Oakland, Cincinnati, New Orleans, and New York City).

<sup>58</sup> See Rushin, *supra* note 34, at 1359–64 (noting studies that concluded that consent decree reform efforts in Pittsburgh, Cincinnati, and Los Angeles have produced successful results).

progress.<sup>59</sup> But another critical influence—the judiciary’s oversight of the police reform process—is no less central to successful police reform efforts. In Bobb’s Fourth Semiannual Report, he observed that the consent decree cannot end unless the court “certif[ies] that SPD had reached ‘full and effective compliance’ with the various commitments, requirements, and terms set forth in the Consent Decree.”<sup>60</sup> He added,

The full scope, and precise contours, of “full and effective” compliance may at this juncture look different depending upon one’s angle or perspective. The Parties are engaged in ongoing discussions about the contours of “full and effective” compliance. Notwithstanding such discussions, and while the Parties’ views remain useful, *it is clear that it is the Court, with input from the Monitor, that determines what compliance is.*<sup>61</sup>

Bobb’s comments reflect an important understanding on the part of the DOJ and the SPD regarding the judiciary: judicial oversight is a mainstay for the duration of the decree and that the court is the ultimate adjudicator regarding compliance. The parties understand that self-policing is not an option in this context. Indeed, it was the inability of the police to effectively police itself that prompted the initial DOJ investigation and eventual consent decree. In the absence of sufficient incentives, even the best-intentioned police organizations will find it difficult to implement and maintain meaningful reform measures.<sup>62</sup> That

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<sup>59</sup> See Simone Weichselbaum, *The Problems With Policing the Police*, TIME, <http://time.com/police-shootings-justice-department-civil-rights-investigations/> (last visited May 29, 2016) (describing how costs of reforms and adequate benchmarks have been problems in police reform processes).

<sup>60</sup> SEATTLE POLICE MONITOR, FOURTH SEMIANNUAL REPORT, *supra* note 56, at 7.

<sup>61</sup> *Id.* (emphasis added).

<sup>62</sup> See, e.g., Weichselbaum, *supra* note 59 (noting the recurrence of policing problems in Cleveland, Miami, New Jersey, and New Orleans, despite earlier agreements with the DOJ to implement reforms).

is why a remedy to the problem of aggressive police practices necessitates an active judicial role.

A robust standing doctrine, alongside an expansive judicial mandate to exclude evidence obtained by virtue of a breach of a constitutional safeguard, can help adjust police organizational culture and improve officer behavior on the ground. The persistent oversight of the judiciary and the accompanying threat of judicial sanction are among the vital linchpins to the achievement of beneficial and long-lasting change in police culture and practice. In contrast to the consent decree context, where judicial oversight of policing practices terminates upon a court's determination that full compliance with the decree has been achieved, judicial oversight in the exclusionary rule context has greater permanence. It stands to reason, therefore, that the dual reforms advocated for in this Essay—empowering a broad base of individuals with standing to challenge government investigative practices, and a substantive judicial mandate to exclude unconstitutionally seized evidence—is a logical place to start the arduous process of police reform.