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MUNICIPAL POLICE UNDER FEDERAL CONTROL: A MIXED-METHODS ANALYSIS
OF TITLE 42 U.S.C. SECTION 14141 NEGOTIATED SETTLEMENTS

by

JASON W. OSTROWE

A dissertation submitted to the Graduate Faculty in Criminal Justice
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2019
ABSTRACT


by

Jason W. Ostrowe

Advisor: Professor Maria (Maki) Haberfeld

Passed as part of the Violent Crime Control and Law Enforcement Act of 1994, the Law Enforcement Misconduct Statute 42 U.S.C. 14141 (§ 14141) authorizes the Department of Justice (DOJ) to investigate, and enter into a court-enforceable structural reform agreement with a law enforcement agency engaged in patterns or practices of systemic misconduct, violations of federal law, and unconstitutional policing.

Under § 14141 authority, 33 investigations of municipal police have been conducted since 1994 where the DOJ determined that a police agency was engaged in, or at unreasonable risk of engaging in, a pattern or practice of unconstitutional policing. Publicizing this determination, a DOJ issued findings letter is the resultant output of a § 14141 investigation, detailing a variety of organizational deficiencies related to polices, practices, procedures, and systems contributing to systemic misconduct and unconstitutional policing.

Using a mixed-methodological approach, this study sought to identify, describe, explore, and analyze phenomena concomitant to DOJ findings of a pattern or practice of unconstitutional policing for municipal police agencies under § 14141 authority. Through an embedded design, the qualitative methodology consisted of analyzing DOJ’s findings letters for latent and manifest content describing policies, practices, procedures, and systems in need of reform. Supporting the
 qualitative analysis, the quantitative portion consisted of analyzing variables integrating disjointed incrementalism, deterrence, and the multiple streams framework theories. The quantitative analysis was designed to better understand influences on patterns or practices of police behavior, organizational decision-making across investigative outcomes, and between generations of §14141 enforcement.

These analyses led to an explication of the meaning and contours of unconstitutional policing, the creation of a compendium of policies and practices to address systemic problems in municipal police agencies, and a four-step prescriptive model that can be used to forestall systemic misconduct and unconstitutional policing, obviating the potential for § 14141 investigation, intervention, loss of autonomy, and federal oversight. In addition, an exploration of policy options for the continued enforcement of § 14141 is presented based on the analysis of past enforcement practices, and emerging conditions.
ACKNOWLEDGEMENTS

Foremost, I would like to thank my committee chair, Dr. Maria Haberfeld for her vision and leadership. I first met Dr. Haberfeld in the aftermath of 9/11, when I enrolled in the police graduate studies program at John Jay; a program in which she co-created. This dissertation is in part the product of that vision, but also, the accumulation of knowledge, professional experience, and learning from that point onward. I would also like to recognize Dr. Peter Mameli, who I’ve known since taking graduate classes at John Jay some 10 plus years ago. Before deciding to apply to the PhD program, I met with Dr. Mameli, we talked for approximately a half-hour, it was after that conversation that I knew this would be the right direction for me. Certainly, a transformative moment. Thank you Dr. Mameli. I’d also like to thank my committee members, Dr. Pezzella, and Dr. Ivkovich, both of you have provided me with insightful and sage feedback, pushing this project into directions that I did not anticipate. All on this committee have helped make this project what it has become.

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Finally, I would like to thank my family for their love and guidance throughout my life, and for always believing that I could achieve great things. But most of all, I’d like to thank my wife, Linda, who has steadfastly stood by me every step of this journey: My success is a reflection of your support. Thank you for your love, patience, and companionship – making this not just my accomplishment, but ours.
DEDICATION

Jaclyn Eve Ostrowe

For making me a better man.
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Introduction

Federal intervention of municipal police by the United States Department of Justice (DOJ) in accordance with the Law Enforcement Misconduct Statute 42 United States Code § 14141 (herein § 14141) signifies the failure of a law enforcement agency to meet its civic requirement of constitutional policing. At a most basic level, police departments exist to carry out the mission of protecting life and property, maintaining order, enforcing laws and regulations, arresting offenders, and protecting the rights of citizens within their jurisdiction while abiding by the Constitution and applicable law (Haberfeld, 2018). Police agencies¹ that do not meet these standards are at risk of investigation, intervention, and regulatory oversight by the federal government, thereby stripping away jurisdictional control and operational autonomy. Considering the historical context, § 14141 empowers the DOJ to intervene in an area of government operations that until recently, has been the exclusive domain of local governance by tradition and intent. Indeed, the 1994 passage of § 14141 has been referred to by scholars of police as an “unprecedented event in the history of American policing” (Walker, 2017, p. 1).

Section 14141 authorizes the DOJ to investigate law enforcement agencies suspected of engaging in patterns or practices of systemic misconduct, unconstitutional policing, and violations of federal law (DOJ, 2017a). Investigations producing affirmative findings that a police agency is engaged in a pattern or practice of unconstitutional policing, empowers the DOJ to enter into a court-ordered structural reform agreement with the offending police agency to address and rectify underlying causes of that misconduct. To meet the sufficient standard of proof to initiate this process, the DOJ conducts an investigation and detailed review of a police

¹ When referring to police as an organization throughout this dissertation, the terms “department” and “agency” are used interchangeably for linguistic purposes. Both of these terms have definitions that include; “an administrative division of government” (Merriam-Webster, 2018), therefore, can be used synonymously in the context of a police organization.
agency’s policies, practices, procedures, and systems; attempting to discern the constitutionality of the agency’s operations, with particular interest in practices related to:

- Stops and searches; arrests without warrants or sufficient cause, or in retaliation for exercising free speech rights, and discrimination based on factors such as race, ethnicity, national origin, religion, disability, and sex—including sexual orientation, gender identity and LGBT status. (DOJ, 2017a, p. 5)

Although § 14141 has been viewed by many scholars as an appropriate mechanism to reform troubled and dysfunctional police departments (Armacost, 2003; Rushin, 2017; Stuntz 2006), § 14141 has also been criticized as being antagonistic to the principle of federalism embedded in the U.S. Constitution and American tradition of governance (U.S. Const. amend. X). Scholars who make this argument suggest that § 14141 is at odds with the traditional relationship that the police should be accountable to local government and the people served by that government (Ross & Parke, 2009). This position is supported by other scholars who have studied implications of the federalist orientation of governance; arguing that in the U.S., “local prerogative is part and parcel of government structure and philosophy” (O’Hara, 2012, p. 65).

Parallel to these scholarly criticisms, police practitioners whose law enforcement agencies have been the subject of a § 14141 action have noted not only does an investigation of a police agency undermine the historic tradition of local control and accountability, as well, federal intervention under § 14141 results in national stigma, negatively effecting a police agency’s reputation, and damaging agency credibility with the local community (Police Executive Research Forum, 2013).

The philosophical perspective regarding a limited federal role in local matters, particularly as it relates to oversight of local police under § 14141, has real-world consequences.
Indeed, as indicated by the former United States Attorney General (AG), who as head of the DOJ was responsible for setting agency agenda and priorities, has written:

The federal government alone cannot successfully address rising crime rates, secure public safety, protect and respect the civil rights of all members of the public, or implement best practices in policing. These are, first and foremost, tasks for state, local, and tribal law enforcement. (Sessions, 2017, pp. 1-2)

This policy position creates a degree of uncertainty in the viability of ongoing and emerging § 14141 actions. The result of this uncertainty leaves police leaders, state and local governments, as well as the general public with a challenge: Since the agency responsible for the enforcement of § 14141 has taken a policy position that the investigation, intervention, and regulation of local police is not a federal priority (Sessions, 2018), by default, it becomes the responsibility of each law enforcement agency and their parent jurisdiction to monitor and self-regulate, ensuring that their policies and practices are within applicable law, and constitutional guidelines.

The success of self-regulation presupposes that police leaders have the requisite knowledge, awareness, capabilities, and motivation to identify and address deficient policies, practices, procedures, systems, and conditions indicating that their police agency is engaged in, or at risk of engaging in unconstitutional policing. This is flawed assumption, as the knowledge required for self-regulation to become actionable requires that police leaders know where, when, and precisely what to look for, most of which has not been explored relative to § 14141.

The confluence of recent events involving police in the United States, including a number of high-profile controversial enforcement actions (e.g. Eric Garner, Philando Castile, Alton Sterling, Walter Scott, etc.), perceptions of a lack of accountability for police engaged in use of
force incidents (Hafner, 2018), and the uncertainty involving the current and future enforcement of § 14141, presents an opportune moment to review not what has been done regarding § 14141 actions – that knowledge already exists – but to glean new knowledge regarding the problematic policies, practices, procedures, and systems that existed in and about municipal police departments prior to the initiation of a DOJ action under § 14141 and thereafter. Examining § 14141 interventions retrospectively affords the police profession, and public, the opportunity to understand how a municipal police department can avoid patterns or practices of unconstitutional policing through an analysis of problematic or deficient policies, practices, procedures, and systems concomitant to police agencies under federal investigation and intervention. This knowledge then can offer police leaders insights that will allow them to identify problematic areas within their own agencies, and address those deficiencies to protect against patterns or practices of unconstitutional policing, loss of reputation, credibility, autonomy, and potentially, organizational demise.

In the 25 years since the passage of § 14141, the DOJ has conducted 69 investigations of law enforcement agencies suspected of engaging in patterns or practices of systemic misconduct leading to unconstitutional policing (DOJ, 2017a). Of these 69 investigations, 55 involved what are defined as local police (Bureau of Justice Statistics, 2015). These 55 § 14141 investigations were initiated against 51 discrete local police departments. Municipalities with dedicated police agencies, generally referred to as “city”, “village”, or “town” police, make up 98% of local police departments in the United States (BJS, 2008). Local municipalities that are referred to as “cities”, while having dedicated police departments subject to a § 14141 investigation, were the focus of this study.

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2 Four local police departments were the subject of two distinct § 14141 investigations, these include: Cleveland, Miami, New Orleans, and New York. Hence, 51 police agencies make up 55 investigations of local police.
Overall Research Goal

The 51 local police departments investigated under § 14141 authority comprise 0.28% of the 18,000 law enforcement agencies in the United States, and 0.42% of the 12,000 local police agencies nationwide (BJS, 2015). The mere fact that so few police agencies have been subject to § 14141 enforcement leads to two fundamental questions: What contributes to such a rare event? And, how can this information assist other municipal police departments to practice constitutional policing?

To address the two-pronged research problem presented above, this dissertation seeks to identify, describe, explore, and analyze phenomenon concomitant to DOJ findings of a pattern or practice of systemic misconduct resulting in unconstitutional policing within a municipal police department, ex-ante. The purpose is to identify institutional, environmental, and systemic conditions, as well as deficiencies in policies and procedures, that existed in municipal police agencies prior to a § 14141 action by analyzing commonalities allowing for the proliferation of unconstitutional policing. The knowledge created from this analysis can then be used to facilitate the development of a compendium of policies and practices, and a prescriptive model to forestall municipal police behavior, that when applied to a police agency, can prevent patterns or practices of unconstitutional policing. Moreover, this research seeks to examine DOJ decision-making relative to § 14141, and explore how organizational decision-making influenced investigative findings and outcomes under § 14141 over time. In doing so, this research will explore policy implications for criminal justice at the federal, state, local, and organizational levels.

Scholarly activities involving § 14141 are few, until this study was conducted, an analysis of the conditions that preceded a § 14141 action was not undertaken. This dissertation adds then to the body of knowledge regarding § 14141, while making a significant contribution to the literature on police practices, oversight, federal intervention, public policy and
criminological theory, while revealing areas for future research, and new directions in the fields of criminal justice policy, and public administration.

Problem Statement

In 2015, the President’s Task Force on 21st Century Policing (President’s Task Force), reported: “Trust between law enforcement agencies and the people they protect and serve is essential in a democracy” (President’s Task Force, 2015, p. 5); reflecting priorities in participatory governance, rule of law, and the administration of justice as critical components of a just democratic society. This statement came after the President’s Task Force was initiated to review, research, and develop solutions to many of the problems that trouble local police departments in light of events that “have exposed rifts between local police and the communities they protect and serve” (President’s Task Force, 2015, p. 5).

The language of the President’s Task Force implies that problems related to the relationship between police and communities that are served by those agencies is either an emerging phenomenon, or one that has gathered enough public attention to become actionable. However, a closer examination of this relationship, particularly viewed through the prism of U.S. history, suggests that neither suggestion is accurate. Indeed, a variety of governmental commissions seeking to improve police operations, enhance constitutional policing and legitimacy, and identify best practices have had different iterations in the United States as far back as the early 1930s.

Scholars of police have identified the Wickersham Commission as one of the earliest governmentally sanctioned investigatory bodies initiated to address the myriad problems associated with policing in the United States (Walker, 1997). Since Wickersham, there have been a number of commissions seeking to expose and address systemic police failures related to corruption, misconduct, excessive force, failed oversight, and unlawful activities (e.g.
Christopher Commission, 1991; Knapp Commission, 1973; Mollen Commission, 1994; Rampart, 2000). These commissions were local in orientation and focus, addressing problems within a specific agency and jurisdiction, reflecting the traditional notion of policing as a local institution in America. Until the passage of § 14141, the federal government’s role in matters related to local police was restricted and infrequent.

More recently, scholars have categorized the relationship between the federal government and intervention of local police in the U.S. into three distinct periods beginning with what is referred to as the “hands-off era” (Rushin, 2017, p. 9). This first era of federal intervention encompassed the founding of the United States until the early 20th century, and was behaviorally characterized by the prevailing view that law enforcement, police regulation and oversight, were the responsibility of local governance. This perspective obviated the need for a federal role in matters related to local law enforcement.

A shift in orientation away from the hands-off era began in 1931 with the “Wickersham Commission”. Officially known as the National Commission on Law Observance and Enforcement, the Wickersham Commission investigated police practices and made details of widespread physical and constitutional abuses perpetrated by the police known to the public. Findings from the Wickersham Commission were memorialized in the *Report on Lawlessness in Law Enforcement*. This report detailed a variety of unconstitutional police practices and misconduct commonly referred to as the “third-degree”; practices that included “physical brutality, illegal detention, and refusal to allow access of counsel to suspects” (Walker, 1997, p. ix). It is not surprising then that Wickersham has been referred to as “one of the most important events in the history of American policing” (Walker, 1997, p. v).
The time period following the Wickersham Commission until 1994, referred to as the “build-up era” (Rushin, 2017, p. 45), was characterized by incremental changes in the relationship between the federal government and local law enforcement. Many of these changes were the result of judicial decisions that established regulations controlling police policies, procedures, and practices through the application of case law. One of the most prominent examples comes from the landmark U.S. Supreme Court case *Mapp v. Ohio* (1961). The court’s decision in *Mapp* established the applicability of the exclusionary rule to local police, consequently, providing a mechanism for individuals who were the subject of a specific type of unconstitutional policing to seek relief through the suppression and exclusion of illegally obtained evidence. Another remedy provided to victims of police misconduct during the build-up era occurred when the federal government authorized “civilians to file federal civil rights lawsuits against local police officers and police departments” (Rushin, 2017, p. 12) for under color of law civil rights violations through Title 42 United States Code § 1983.

The passage of the 1994 crime bill, and in particular § 14141, began in earnest what is now referred to as the “intervention era” (Rushin, 2017, p. 67). This time period, 1994 - present day, is characterized by the legal authority of the DOJ to investigate, and initiate regulatory intervention and oversight of law enforcement agencies across all jurisdictions of government under the purview of U.S. law. Although the authority granted by § 14141 replicates that practiced by the federal government to intervene in other public services including education and corrections, the passage of § 14141 still is viewed as “an unprecedented expansion of the federal government’s authority into a realm traditionally regulated by local and state governments” (Rushin, 2017, p. 84).
The initiation of a § 14141 action against a municipal police department, as such, is an expression of federal authority that breaks from historical, and federalist norms. Considering that the mechanism of investigation, intervention, court-ordered oversight, and forced change authorized under § 14141 is so rarely used, it is perfectly valid to question the government bringing a federal solution to what many perceive to be a local problem on philosophical, effectiveness, or constitutional grounds. Indeed, these critiques do not appear to be unfounded.

Even the former head of the DOJ, who was responsible for overseeing the enforcement of § 14141 – before departing his position – issued a policy memo regarding the enforcement of § 14141 that greatly restricted and scaled-back current and future oversight actions, adding an even greater level of uncertainty regarding § 14141’s future. The former AG’s reasoning for these changes was grounded in the belief that § 14141 actions can cause more harm than good by undermining democratic control and accountability through burdening local jurisdictions with long-term financial liabilities that can greatly restrict operational autonomy (Sessions, 2018). Further noting, that any jurisdiction subject to a § 14141 inquiry must be afforded “the respect and comity deserving of a separate sovereignty” (Session, 2018, p. 2). In sum and substance, the AG’s argument was that the constitutional concept of federalism justified the numerous internal policy changes in the interpretation and application of § 14141 against local police.

Of the approximately 18,000 police agencies that are subject to U.S. law, very few have been subject to a § 14141 action. This has led some police practitioners whose law enforcement agencies have come under § 14141 investigation to resist what has been viewed as overweening and meddlesome federal authority. Two such examples involve the Maricopa County Sheriff, and Alamance County (N.C.) Sheriff, both of whom refused to share their records with the DOJ during the course of a § 14141 investigation against their agency, as stated: “they [the DOJ] just
want to come in and take over your law-enforcement agency. They march in the door and say you are guilty of all these things” (Albright, 2015 as cited in Weichselbaum, 2015, final paragraph). The issue articulated by the Sheriff’s, per se, raises important questions of equity, fairness, and the ability of the federal government to implement § 14141 in a manner consistent with a constitutional framework. Considering these critiques, it is worth noting that DOJ’s current policy on § 14141 enforcement appears to acquiesce to both practitioner concerns and scholarly criticisms (Sessions, 2017; Sessions, 2018).

Nevertheless, § 14141 has existed since 1994 and continues to do so. With approximately 63% of the U.S. population living in cities (U.S. Census, 2015), federal intervention of municipal police has impacted millions of U.S. residents, yet, has the potential to impact millions more through organizational modeling, and implementation of policing best practices. When viewed from this macro perspective, the scale and scope of the Law Enforcement Misconduct Statute becomes much larger than the 69 § 14141 investigations and numerous reform agreements with local police agencies. Concerning this scale then, and how little is known of the circumstances that support the government’s findings of a pattern or practice of unconstitutional policing, it is fitting and appropriate that this dissertation identified, described, explored, and analyzed the ex-ante conditions that contributed to a pattern or practice of unconstitutional policing, thereby subjecting a municipal police agency to public scrutiny, legal and financial liability, and loss of autonomy for federal intervention and external control.

The above review leads to some fundamental questions for exploration, including:

- Out of what is essentially innumerable choice, how does the DOJ identify a specific municipal police agency engaged in unconstitutional policing?
- What policy deficiencies contributed to a pattern or practice of unconstitutional policing?
• What organizational characteristics and environmental conditions existed in municipal police departments prior to a § 14141 investigation?

• What themes emerge as patterns or practices of unconstitutional policing from DOJ’s § 14141 findings?

• Have DOJ’s pattern and practice investigations changed over time?

• As well: How can these findings support other police departments to practice constitutional policing, while avoiding organizational failure that may lead to federal oversight?

These questions frame the scope of the dissertation analysis.
Literature Review

Title 42 U.S.C. § 14141

Often referred to as the 1994 crime act or crime bill (DOJ, 2010), after the Violent Crime Control and Law Enforcement Act (VCCLEA) was passed into law, the federal government announced:

[The VCCLEA] represents the bipartisan product of six years of hard work. It is the largest crime bill in the history of the country and will provide for 100,000 new police officers, $9.7 billion in funding for prisons and $6.1 billion in funding for prevention programs…. $2.6 billion in additional funding for the FBI, DEA, INS, United States Attorneys, and other Justice Department components. (DOJ, 1994, para. 1)

Included in the VCCLEA, but not as a “significant provision of the bill” (DOJ, 1994, para. 1), the police reform subsection known as the Law Enforcement Misconduct Statute 42 U.S.C. 14141, was the result of years-long effort to pass police accountability measures at the federal level (Rushin, 2017). Although some scholars who have studied § 14141 directly relate its passage to the events involving Rodney King and the LAPD in 1991 (Alpert, McLean, & Wolfe, 2017; Douglass, 2017), the law’s genesis can be traced to findings made by the Kerner Commission in 1968, and subsequent recommendations made by the United States Commission on Civil Rights in the 1981 publication Who is guarding the guardians? A report on police practices (DOJ, 2010). The momentum created by these commissions and their recommendations helped to initiate necessary action on police accountability that coalesced after the 1991 Rodney King incident, subsequent acquittal of four indicted LAPD officers, and the rioting in Los Angeles that was followed by numerous hearings on police misconduct and accountability held throughout the country in the early 1990s (DOJ, 2010; DOJ, 2017a).
Following these events, § 14141 was passed by Congress in August 1994 as part of the VCCLEA, and signed by President Bill Clinton on September 13, 1994 (Miller Center, 2018).

The law reads:

(a) Unlawful conduct[.]. It shall be unlawful for any government authority, or any agent thereof, or any person acting on behalf of a government 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. (U.S. Government Publishing Office, 2006)

The DOJ may initiate a § 14141 investigation when there is sufficient cause that a police agency is engaging in a pattern or practice of systemic misconduct resulting in unconstitutional policing or violations of federal law (DOJ, 2017a). Affirmative findings of unconstitutional policing require a “reasonable cause to believe” (DOJ, 2017a, p. 15) standard that violations of the Constitution or federal laws are not isolated events, but rather represent a pattern or practice (DOJ, 2017a). Legal precedent is used to define and categorize a “pattern or practice” insofar as the DOJ “does not need to find a set number of incidents” (Perez, 2013, p. 4), wherein a “pattern or practice may be found by examples representing typical conduct, as opposed to isolated incidents” (Perez, 2013, p. 4) that “appears to be part of usual practice, whether officially
sanctioned by policy or otherwise” (DOJ, 2014, p. 3). Pattern or practice findings, therefore, do not need to meet specific objective criteria for affirmation, and can be challenged in court.

The first § 14141 investigation commenced in May 1995 against the Torrance (CA) Police Department (Childress, 2015; Rushin, 2017), and the most recent in December 2016 against the Orange County (CA) Sheriff’s Department (DOJ, 2017b). Between 1994 and 2017 there have been 69 § 14141 investigations, most of which supported findings of a pattern or practice of unconstitutional policing, resulting in a specific legal settlement or agency agreement between the law enforcement agency under investigation and the federal government (DOJ, 2017a). However, as indicated, 26 § 14141 investigations have been closed without formal findings (DOJ, 2017a). Although accurate on its face, this statistic is misleading; 11 of those 26 investigations yielded technical assistance reports where the DOJ (2017b) memorialized and made public, findings of systemic misconduct and organizational problems that did not, but had the potential to rise to the level of a pattern or practice of unconstitutional policing if left unaddressed. As well, one § 14141 investigation was dropped after initial findings of unconstitutional policing (DOJ, 2017b).

Considering the federal government’s interpretation of § 14141 formal findings, it is instructive to recognize that over the life of § 14141, 55 of the 69 § 14141 investigations have resulted in some type of publicly available, verifiable, and memorialized agreement to reform police practices that have led to, or were believed to have the potential to lead to patterns or practices of unconstitutional policing.

**The § 14141 process.**

Prior to initiating an official investigation of a municipal police department, the DOJ conducts what is known as a preliminary inquiry. These are confidential fact-finding actions that
involve the monitoring and tracking of a specific police agency (PERF, 2013). At this stage, it is not disclosed to the police agency in question that a § 14141 inquiry has been initiated (PERF, 2013). Consequently, complete and accurate data related to the number of preliminary inquiries over the life of § 14141 are not publicly available. If at any time during the course of this preliminary inquiry, the DOJ finds sufficient cause that a police agency is engaged in a pattern or practice of systemic misconduct, unconstitutional policing, or violations of federal law, the police agency is notified, concurrent with initiation of an official investigation.

A DOJ issued findings letter is the output of a § 14141 investigation wherein a pattern or practice of unconstitutional policing has been revealed. The DOJ makes these findings letters available to the police agency and the general public, detailing the results of their investigation and describing policies, practices, procedures, systems, and operations in need of reform. Section 14141 investigations in which findings do not support that a police department is engaged in a pattern or practice of unconstitutional policing, but significant operational deficiencies have been noted, a non-binding technical assistance letter, or referrals to other federal assistance programs may be offered to that police agency (DOJ, 2017a). Investigations that have led to technical assistance have embedded findings in DOJ issued letters, whereas referrals to other federal assistance programs do not elicit any publicly issued findings or comments.

A resultant § 14141 investigation, then, will generally follow one of three outcomes:

(1) An investigation that did not reveal any systemic misconduct or unconstitutional policing; the DOJ will terminate the § 14141 action without the public issuance of findings or enforcement action being taken against that police agency.³

³ DOJ (2017a) has indicated that in some § 14141 investigations, “other forms of federal intervention are better suited to address a particular law enforcement agency’s needs” (p. 7). These actions can include individual officer prosecution, referral to the Office of Community Oriented Policing Services (COPS) or Office of Justice Programs (DOJ, 2017a).
(2) Investigative findings not supporting that a police department is engaged in a pattern or practice of unconstitutional policing, but the DOJ has noted significant operational and systemic deficiencies that have the potential for unconstitutional policing outcomes; non-binding technical assistance may be offered.

(3) Investigative findings supporting that a police department is engaged in a pattern or practice of unconstitutional policing, resulting in a specific type of negotiated settlement between the DOJ and the offending police agency.

These three options do not necessarily suggest mutually exclusivity in § 14141 investigative outcomes. The DOJ retains the authority to initiate a new investigation, issue multiple findings, pursue various outcomes over-time, or discontinue § 14141 actions after adverse findings, and has done so with police agencies when deemed necessary and appropriate (Childress, 2015; DOJ, 2010; DOJ, 2017a; DOJ, 2017b; Rushin, 2017).

After the DOJ has made known their investigative findings to both the police agency and public, they then initiate a process towards reform, this process is described by the Civil Rights Division as follows:

Where the Division has found evidence of a pattern or practice of police misconduct, resolution generally will take the form of an order enforced by a federal court. These orders are usually called ‘consent decrees,’ reflecting that the terms of the order were negotiated and agreed to by the United States and the law enforcement agency that was investigated. (DOJ, 2017a, p. 22)

Police departments that have been found to be engaged in a pattern or practice of unconstitutional policing will have specific legal remedies taken against them initiating the reform process; these include entering into a type of negotiated settlement, legal agreement,
consent decree, or a memorandum of agreement (MOA). Police agencies can then choose to litigate the findings or decide to settle the matter (Douglass, 2017). Six police agencies under § 14141 investigation have chosen the former option (DOJ, 2017a; Douglass, 2017), one of which won at trial, however, that police agency along with the five other litigants ended up resolving the § 14141 action against their agency in a negotiated settlement with the government at a later time (Childress, 2015; DOJ, 2017a; Douglass, 2017).

Court enforceable actions, including consent decrees, and negotiated settlements are the preferred remedy in § 14141 actions when an investigation reveals a pattern or practice of unconstitutional policing (DOJ, 2017a). Alternatively, a MOA may be offered to a police agency “when the issues to be addressed are relatively narrow and there is significant evidence that the jurisdiction has the capacity to accomplish and sustain reform in a timely manner and without ongoing court oversight” (DOJ, 2017a, p. 23).

Consent decrees, MOAs and court settlements are all considered “negotiated settlements” (Harmon, 2009, p. 16), meaning a jurisdiction and the DOJ have agreed to adopt specific remedial measures to address systemic failures. Specific types of negotiated settlements have different force of law; for example, consent decrees and settlement agreements are contained within, and enforceable by court order (Harmon, 2009), whereas MOAs are drafted as private contracts between two parties, as such, the enforcement mechanism for a MOA is to sue for breach of contract. However, the functionality of legal settlements and MOAs are the same; both are the result of negotiation between parties that require institutional changes and reforms to deficient policies, practices, procedures, systems, and organizational structures.

Considering their commonalities, and to standardize meaning for analysis, clarity, and consistency, “negotiated settlement” will be used henceforth to include all § 14141 actions
resulting in a MOA, legal settlement, court-enforceable agreement, settlement-agreement, or consent decree. In a number of § 14141 actions involving municipal police, the DOJ sought to terminate the negotiated settlement after a finding of a pattern or practice of unconstitutional policing in favor of a transition agreement to more efficiently address remaining systemic deficiencies and threats to constitutional policing within that law enforcement agency (DOJ, 2017a; DOJ, 2018). As such, transition agreements are in sum and substance the result of a § 14141 investigation where the government first established reasonable cause to believe that a police agency was engaged in a pattern or practice of unconstitutional policing.

Differentiated from the standard meaning of a negotiated settlement, these transition agreements may result from scenarios in which the police agency under investigation was found to have made “significant reforms” (DOJ, 2018, p. 17) throughout the course of a § 14141 action. When these reforms occur after a negotiated settlement has been reached, and the DOJ believes it preferable to work with the police agency to continue reforms, they will seek permission of the court to terminate the negotiated settlement (DOJ, 2018). This process helps facilitate a police agency’s implementation of agreed-upon reforms while the government acknowledges “the progress the agency has made toward effective constitutional policing” (DOJ, 2017a, p. 37). Although the final agreement between the DOJ and the police agency in these transition agreements was not a negotiated settlement or technical assistance, since the transition agreement came after an investigative finding of unconstitutional policing, they too were classified as negotiated settlements for the purpose of this study.

To assist with implementing the legal terms of a negotiated settlement, a monitoring team is appointed to report, offer technical assistance, and lend their expertise to the offending police agency, the DOJ, and assigned judge overseeing the negotiated settlement. A negotiated
settlement will be terminated upon satisfactory implementation of institutional reforms after an agreed-upon duration. At that point and moving forward, it becomes the responsibility of the police agency to maintain and institutionalize those reforms without federal assistance.

As an alternative to entering into a negotiated settlement with a police agency, the DOJ has on numerous occasions offered technical assistance when a § 14141 investigative finding reveals operational or policy deficiencies contributing to systemic problems that do not rise to the level of a pattern or practice unconstitutional policing (DOJ, 2010; DOJ 2017a). This type of assistance has been described as “non-adversarial” (DOJ, 2018, p. 19), and seeks to address a myriad of substantive-related organizational and operational issues through training, peer-to-peer consultation, data analysis, strategic planning, and curriculum development (Bureau of Justice Assistance, National Training and Technical Assistance Center, n.d.).

Academic Literature

Although federal authority to investigate and enter into a reform agreement with municipal law enforcement agencies has been in force since 1994, a dearth of quantitative or qualitative studies exist on its empirical effectiveness (Chappell, 2017). These deficiencies were recognized as recently as 2017 in which calls were made for greater research on a practice that has been “shrouded in secrecy” (Alpert, McLean, & Wolfe, 2017, p. 240). As a result, criminologists have paid very little attention to § 14141 and its impact on police (Alpert, et al., 2017). In addition to academics, legal scholars have noted the lack of research on this topic, acknowledging that “very little scholarship in any discipline has empirically analyzed structural police reform. And virtually no legal scholarship has done an empirical examination of the topic” (Rushin, 2014, p. 3215). This is all the more troubling considering § 14141 has been referred to by scholars in the legal community as “the most important legal initiative of the past twenty
years in the sphere of police regulation” (Stuntz, 2006, p. 781), and “perhaps the most promising mechanism” (Armacost, 2003 p. 457) to reduce systemic police misconduct.

The first academic study of § 14141 was conducted five years after the City of Pittsburgh and the DOJ entered into a consent decree. As part of the settlement’s evaluative process, Vera Institute of Justice (Vera) and the Office of Community Oriented Policing Services sought lessons to be learned by performing “in-depth interviews with police officials, the monitor, police officers, union members, OMI staff, human rights activists and community leaders” (Davis, Ortiz, Henderson, Miller, & Massie, 2002, p. 8). Additionally, Vera surveyed hundreds of Pittsburgh residents and solicited opinions from the general public to gain a better sense of community awareness and perceptions of change in policing during the period of reform implementation (Davis, et al., 2002).

Vera found that the Pittsburgh negotiated settlement was “generally viewed as a success in terms of increasing police accountability and improving officer training” (Davis, et al., 2002, p. 3). However, the researchers noted that there were complaints from officers regarding a “decline in morale, an increase in paperwork, and a reluctance to engage in enforcement actions” (Davis, et al., 2002, p. 3). With this first report, thus began the scholarship orientation of § 14141 that has since followed; implementation analyses and post-hoc assessments.

In 2005, Vera conducted a follow up to their original report on the Pittsburgh decree; building off earlier findings, Vera sought to answer the central question: “Can local officials maintain these reforms after the federal government and its monitor withdraw?” (Davis, Henderson, & Ortiz, 2005, p. 2). To assess the lasting impact of this § 14141 settlement, Vera used a variety of methodologies including qualitative focus groups with community members, interviews with public officials, and reviews of police policies and operations. Vera’s assessment
led them to conclude that a negotiated settlement “could engender substantial accountability reforms in a short time and that the reforms would survive the life of the decree intact” (Davis, et al., 2005, p. 41).

As of 2005, there were indications that federal intervention could work to bring about short and long-term change in American police agencies. As promising as these findings first appeared, a longer view of federal intervention has not produced such optimism. Indeed, regarding sustainability, Alpert, McLean, and Wolfe (2017) have concluded that “there is some anecdotal information about positive, short-term impacts of CDs [consent decrees], but there is no convincing evidence that there are long-term improvements in the agency” (p. 243). Similar concerns over post-termination sustained viability and agency backsliding have been raised by numerous scholars who have studied § 14141 (Chanin, 2015; Keenan & Walker, 2005; Simmons, 2008; Walker, 2012). Such backsliding served to justify the DOJ’s initiation of a second § 14141 investigation against the Miami Police Department (Perez, 2013), and the Cleveland Police Bureau, both specifically for failing to institutionalize and sustain agreed-upon reforms (Gupta & Dettelbach, 2014).

A core problem identified by scholars of § 14141 agreements who have studied post-reform implementation is that institutional changes in police organizations are not self-sustaining (Chanin, 2015). This issue was manifestly acknowledged and made known to the general public, not by police scholars, but when The New York Times reported of the follow-up to § 14141 Pittsburgh decree, announcing: “It Did Not Stick: The First Federal Effort to Curb Police Abuse” (Stolberg, 2017).

More recent than Vera’s second report on the Pittsburgh consent decree, an assessment of changes in the Los Angeles Police Department during consent decree implementation was
undertaken by Stone, Foglesong, and Cole (2009). Using participant observation, analysis of police data, surveys of police officers, and focus group interviews, the researchers concluded that there was a “staggering scale of change” (p. 75), and after eight years since the initiation of the consent decree:

The LAPD of today is a changed organization. Within Los Angeles, community engagement and partnership is part of the mainstream culture of the Department. Not everyone embraces it, and not everyone practices it, but the commanders we observed take relationships with communities seriously as an essential part of their work. The precise forms that accountability takes remain subjects of intense debate, but the fact of accountability has entered the lifeblood of the organization. (p. 76)

As positive as these findings appeared at that time, the researchers advise caution in light of fundamental questions regarding sustained improvements after decree termination. Specifically, their criticisms were directed at the strength and durability of management systems and oversight initiated under the decree. These concerns over sustainability echo those that became realized in the Pittsburgh, Cleveland, and Miami § 14141 agreements (Gupta & Dettelbach, 2014, Perez, 2013, Stolberg, 2017).

More recent than the report on the LAPD, and both studies of the Pittsburgh negotiated settlement conducted by Vera, Chanin (2014a) conducted an analysis of the lasting effects and continued compliance of § 14141 negotiated settlements for five police agencies (Pittsburgh, Washington, D.C., Prince George’s County, Los Angeles, Cincinnati). Using a mixed-methodological design, the researcher found that the success of creating institutional change within police departments was varied, concluding that “these findings highlight the challenge jurisdictions face in working to institutionalize reform” (Chanin, 2014a, p. 109). This issue has
been noted by other scholars as well, such as Skogan, (2008) who suggests that reforming a police department, and holding police agencies responsible for institutionalizing changes are more complex and nuanced tasks than academics, politicians and the informed public imagine.

Scholars have recently moved beyond measuring implementation outcomes and institutionalized sustainability of § 14141. One recent example involves a study conducted by Powell, Meitl, and Worrall (2017) in which the researchers sought to explore the relationship between the number of lawsuits filed for civil rights violations against police officials before and after a § 14141 action. For this study, § 1983 lawsuits were used as a proxy to measure the success of a consent decree in reducing patterns or practices of unconstitutional policing. These results suggest that a consent decree may reduce the likelihood of federal civil rights lawsuits against a police agency, but by how much, and under what conditions remained unclear. As well, there were two significant methodological limitations in the study design, one of which involved their choice of a control, the other concern was related to the internal validity of the measure. These criticisms notwithstanding, their technique offered scholars new insights into how a consent decree can change police behavior, while adding to methodologies used to measure the impact of § 14141 to initiate and sustain structural police reform.

Other examples of scholars moving beyond implementation studies of § 14141 involve assessing the relationship between § 14141 and changes in police behavior related to levels of enforcement activity (Chanin & Sheats, 2017; Rushin & Edwards, 2017). Concerning § 14141 intervention on officer behavior, for example, Rushin and Edwards (2017) found that “the introduction of external regulation to a police department via a § 14141 action was associated with a statistically significant increase in the frequency of several crime categories” (p. 758) albeit temporarily, and immediately subsequent to § 14141 intervention. The researchers in this
study found support for the idea that police officers in agencies under a consent decree and federal control, are more likely to engage in “‘de-policing’-retreating from active police work in reaction to the negative publicity that has been placed on police agencies across the country” (Shjarback, Pyrooz, Wolfe, & Decker, 2017, p. 42). These empirical findings support the qualitative assessments that were made by researchers in both the Pittsburgh and LAPD implementation studies regarding the perspective of rank-and-file officers, and their suggestion that § 14141 will lead to less effective policing. Yet, other scholars disagree with the de-policing phenomenon, for example, Chanin and Sheats (2017) using a more limited study sample than Rushin and Edwards (2017), found no evidence supporting that de-policing is an unintended consequence on police behavior in agencies subject to a § 14141 action.

**Emerging literature on DOJ’s process.**

Recently some scholars have begun to offer insights that describe DOJ’s § 14141 investigative process (Chanin, 2017; Chanin, 2014a; Rushin, 2017). Yet, how and why the DOJ chose a specific police agency to investigate and proceed into a negotiated settlement remains an open question. Noting this gap, Chappell (2017) asserts that “there is no systematic approach for identifying problematic police departments” (p. 572). Indeed, in discussing methods to improve outcomes for § 14141 negotiated settlements by identifying the most troubled police departments, Harmon (2017) suggests that decision-making seems to have been mostly based on a combination of informed judgments and intuition, commenting; “the Department of Justice is more likely to notice and sue a department that seems to have a serious pattern of misconduct if it is especially large or its problem is especially salient” (p. 620). Yet there are no studies that seek to explore the ex-ante conditions that gave rise to a § 14141 investigation and subsequent reform agreement.
It wasn’t until 2017 that the process in which § 14141 actions proceed was publicly detailed. In the report; *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*, the DOJ described much of what had been unknown to scholars and practitioners regarding § 14141 enforcement. Although moving towards transparency, the DOJ did not specify a rationale for their choices beyond qualitative descriptions, or explain how their decisions and choices regarding enforcement were made. As described in their technical reports, § 14141 investigative processes follow the contours of structured reform described by Bertelli (2004), and as such, merely comports with what is already known about traditional structural reform models. Nor did the DOJ offer any explanation of how or why they chose a particular police agency for a preliminary inquiry, preferring to keep the specifics of this process confidential.

Enforcement of § 14141 appears to have been beset by challenges related to the scope and scale of law enforcement in the United States. Choosing among the multitude of agencies that have the potential to be the next § 14141 investigation appears to be overwhelming to the federal government; in their own words: “[The] Division’s police reform strategy is not, and cannot be, premised on an effort to investigate every police department in need of reform” (DOJ, 2017a, p. 4). However, the DOJ must somehow identify among thousands of potential police agencies to investigate for systemic violations, the agency has stated of this process:

[The] staff in the Civil Rights Division regularly examine information available to the Division, including publicly available information and confidential information provided to the Division by witnesses and complainants, to conduct preliminary inquiries into whether law enforcement agencies may be engaging in a pattern or practice of police misconduct…it regularly receives complaints from affected community members and families, advocacy groups, prosecutors and defense attorney, judges, legislators, and
police officers with knowledge of misconduct…the Division also conducts its own research to identify potential subjects for investigation…reviewing investigative reports by academics, review panels, and journalists; monitoring existing lawsuits involving law enforcement agencies; tracking complaints received over time by the Division; and consulting with persons and organizations likely to have relevant information about policing issues around the country. (DOJ, 2017a, pp. 5-6)

While all of this is useful, it does not better inform researchers, the public, or police practitioners how “hundreds of preliminary inquiries” (DOJ, 2017a, p. 5) lead to a negotiated settlement with so few police departments while other police agencies remain uninvestigated, dropped after a preliminary inquiry, or never rise to the level of requiring a preliminary inquiry.

Given the need to select among 18,000 agencies to investigate, the DOJ (2017a) has to “prioritize, the national context” (p. 6), and determine “whether the allegations represent an emerging or developing issue, such that reforms could have an impact beyond the primary objective of eliminating constitutional violations in the specific law enforcement agency” (DOJ, 2017a, p. 6). From this policy statement, it can be inferred that decisions made regarding § 14141 pattern or practice investigations, are in part based off a general deterrence (Beccaria, 1764) and incrementalist decision-making approach (Lindblom, 1979). That is, the DOJ seeks out police agencies to serve as examples of unconstitutional policing, with an awareness that special attention be paid to the complexity of the problems and proposed reforms both for a specific police agency, and as a model for other police departments. This overall strategy is consistent with what Harmon (2009) refers to as a “worst-first” policy (p. 4).

This has led some scholars to suggest that § 14141 “enforcement is driven by a complicated mixture of politics, policy, and legal discretion” (Harmon, 2017, p. 622) still, “no
consistent technique exists for identifying problematic police departments” (Powell, et al., 2017, p. 579). Although the specifics of their decision-making remain opaque to the general public, the DOJ has described the basic investigative process they follow, and has shed light on their motivations for doing so. These insights allow researchers to further explore § 14141 decision-making, and better understand the conditions that may lead a municipal police agency into a negotiated settlement from an ex-ante perspective – which has yet to be done.

**Negotiated settlements.**

Court orders that are used to initiate structural reform can come in a variety of legal frameworks. These legal frameworks can broadly be described as negotiated settlements; two of which – consent decrees and memoranda of agreement – are variations of the type of negotiated settlement that are regularly used after a § 14141 investigation. These two particular types of negotiated settlements have been found to have specific advantages over other types of legal actions since “a city does not admit liability, but nevertheless agrees to adopt specific remedial measures to end the matter and avoid litigation” (Harmon, 2009, p. 16). Court orders, including legal settlements, consent decrees, and MOAs have been referred to as influential government output that helps drive social change in the public sphere (Schlanger, 2006). These binding agreements allow the federal government to initiate structural changes in a government agency by force of law when necessary, whereas using alternative mechanisms, reforms may not have been possible because of organizational resistance.

Using negotiated settlements and courts to initiate organizational change in public agencies did not begin with § 14141. In a review of negotiated settlements related to employment discrimination, Schwarzschild (1984) informs that “the federal courts have increasingly become the forum for litigation over the policies of large public and private institutions” (p. 887), noting
that the use of injunctive relief by the federal government “first became prominent in antitrust cases” (p. 888). Since then, structural reform litigation has been widely used to initiate institutional and organizational reform in “education, voting, housing, and prisons” (Harmon, 2009, p. 11).

Scholars have cited the landmark desegregation case *Brown v. Board of Education* (1954) as an example of the impact that structural reform litigation can have on government practices, institutions, and society (Schlanger, 2006; Schwarzschild, 1984). Soon after the *Brown* case, structural reform litigation was viewed with great potential because it “authorized district judges to assess the need for, order, and oversee sweeping changes not only to schools but the full range of important governmental institutions” (Schlanger, 2006, p. 552). Viewed from this perspective, constitutional violations perpetrated by local government institutions that are unable, or unwilling to abide by constitutionally permissible practices, provide the government sufficient and necessary justification for federal intervention.

**Consent decrees in the criminal justice system.**

Since the onset of civil litigation against jails and prisons in the 1960s, court orders and consent decrees have been widely used in correctional contexts to address “nearly all aspects of prison and jail life” (Schlanger, 2006, p. 564). These orders have been found to have had an enormous impact “by direct regulation, their indirect effects, and the shadow they cast” (p. 563). The potential for reform outside of a correctional context has been particularly appealing as a mechanism for reforming municipal police departments because:

A remedy designed to reform the workings of a large organization is most effective when the organization cooperates in carrying out the remedy, and the human beings who make
up an institution are more apt to cooperate in carrying out a negotiated scheme than in complying with an order imposed from above by a court (Schwarzschild, 1984, p. 899).

Scholars who study the impact of consent decrees on public organizations suggest that “over time, structural reform litigation has created significant and recognizable change” (Bertelli, 2004, p. 29). As well, it is assumed these types of reform agreements will do so for police organizations because “consent decrees remedy unconstitutional policing by providing specific, detailed guidance to the subject police department on how to remedy its past unlawful practices and provide for accountability” (Douglass, 2017, p. 329).

**Practitioner Perspectives**

Concerning federal intervention in local police matters, no consensus opinion has emerged from police leaders whether those opinions were from leaders whose agency was subject to § 14141 or otherwise. Some police leaders whose agencies have been through the § 14141 process viewed it opportunistically, from a perspective that a § 14141 action can be useful for the police profession in identifying best practices that can then be applied to their specific agency (PERF, 2013). Additionally, § 14141 has been viewed by some police leaders as the necessary ingredient to secure the support of the public to initiate much needed organizational reform (Kohler, 2014). Such was the case that occurred in Pittsburgh, wherein the Police Chief used federal oversight and intervention as a strategy to force “reforms that he supported and that otherwise could be stymied by police labor unions” (PERF, 2013, p. 2). Similarly, police leaders have suggested that using the § 14141 process as leverage can be useful to “get resources your department needs” (PERF, 2013, p. 34), which then may lead to a better police organization (Prince George County Chief Magaw, 2015, reported in Kelly, Childress, & Rich, 2015).
Other police leaders who view § 14141 positively have used the provision for the purpose of external review. Police Chief Charles Ramsey, who on two occasions with different municipal police departments, requested that the DOJ conduct an investigation and consider federal intervention, believing that the § 14141 process will benefit organizational performance (PERF, 2013). Similar to actions taken by Chief Ramsey, Chief Raul Martinez of the Miami Police Department requested a § 14141 investigation after a series of controversial police shootings (Perez, 2013), and Chief Michael Chitwood of the Portland, Maine Police Department requested an investigation of his department’s policies and procedures to help remedy ongoing operational dysfunction (Brown Cutlar, 2003).

Opinions regarding the utility of § 14141 have not stopped at police leadership; political leaders such as the Mayor of New Orleans, Mitch Landrieu, and the Mayor of Portland, Sam Adams, have reached out to the DOJ for assistance with their police agencies for guidance in constitutional policing under § 14141. Mayor Landrieu later pushed-back against the DOJ’s findings because of expected costs (Robertson, 2013), while Portland’s political and police leadership demonstrated a willingness to collaborate and remedy organizational deficiencies (Perez & Marshall, 2012). As well, the City of Austin, Texas, represented by the City Manager, and Chief of Police requested a § 14141 review after a local newspaper reported an unflattering analysis of the Austin Police Department’s use of force (Futrell & Knee, 2005).

Arguments against federal intervention both by police and political leaders have revolved around three particular issues found problematic to the police agency and parent jurisdiction; loss of autonomy, costs, and stigma. An example of this occurred at the completion of the New Orleans investigation wherein the City of New Orleans claimed that DOJ’s required changes would cause “catastrophic damage” to the city budget (Robertson, 2013). New Orleans was not
the only city that raised what was perceived to be excessive financial costs as a justification for pushback against § 14141 intervention, for example:

In cities like Detroit and New Orleans, officials have railed at the high cost of the Justice Department’s reform plans, including the multi-million-dollar fees paid to the monitors who make sure local officials comply with federal mandates. Elsewhere, some local officials have simply refused to accept what they view as meddlesome dictates, preferring to fight the demands for change in federal court. (Weichselbaum, 2015, p. 2)

Another criticism that police leaders have articulated regarding § 14141 enforcement involves the stigma associated with federal oversight, which “takes a long time to overcome in the community” (PERF, 2010, p. 3). Even with § 14141 associated stigma, some police leaders have suggested that while it is important to accept the inevitability of federal intervention under § 14141, their critique was that as a matter of fairness, police leaders should be “appraised of an investigation and become involved earlier rather than later in the process” (PERF, 2010, p. 3), suggesting that a loss of autonomy, and exclusion from the § 14141 process is more problematic to the police agency than the associated stigma. These critiques notwithstanding, for some police leaders, federal intervention has simply been described as “cumbersome, expensive, overly adversarial, and time-consuming” (PERF, 2013, p. 37).

Rank-and-file police officers supported by their union representatives have frequently opposed federal intervention and police reform efforts for a myriad of reasons. Keenan and Walker (2005) point to the use of statutory law by police unions to create legal barriers to proposed organizational and work changes. Skogan (2008) points to a number of reasons why reform efforts involving the police fail, including generalized internal resistance and organizational support including that of the rank-and-file. Simmons (2008) makes a point to
acknowledge that excluding those closest, and most responsible for implementing proposed reforms is contrary to democratic inclusion. This last critique, ipso facto, justified rank-and-file and union resistance to reform in many of the early § 14141 investigations of municipal police.

Police scholars have noted that union resistance to federal oversight and blocking important reform efforts have had a noteworthy history in the U.S. (Emmanuel, 2016; Walker 2008; Walker, 2016), pointing out that resistance by unions typically involves filing motions in federal court to block federally-initiated reforms (Bernstein, 2012). In contrast, other police unions have “voiced their displeasure with their exclusion from DOJ’s reform process” (Simmons, 2008, p. 523). Some other police unions, including the Fraternal Order of Police, have sought to play a more active role in the negotiation process (Khan, 2016). The importance of this active role has been noted by Simmons (2008) who argues that excluding those closest to the reforms is “contrary to the general principal of democratic theory that those affected by government policies should be able to participate in the decision-making process” (p. 520).

In the review of the LAPD agreement conducted by Stone, Foglesong, and Cole (2009), researchers found that “ubiquitous among police officers of every rank, that the consent decree has burdened the police with increased paperwork and recordkeeping” (p. 13). Often the basis for union resistance is the belief that reform agreements and oversight will make officers “less active and aggressive in fighting crime” (Davis, et al., 2005, executive summary). These perspectives were noted by the president of the Albuquerque Police Officers Association who claimed that “many beat cops – some already skeptical of the push for more transparency and accountability – see an inefficient system of red tape that keeps them off the streets while they fill out paperwork for various oversight authorities” (Wing & Domrzalski, 2017, pp. 6-7).
Finally, there have been many police leaders who have expressed frustration at the lack of assistance from the current DOJ in matters related to local law enforcement and the collaborative reform of local police (Eder, Protess, & Dewan, 2017). Although not requesting investigation and oversight under § 14141, police leaders in Spokane, Washington; Fort Pierce, Florida; Tucson, Arizona; Tulsa, Oklahoma; and St. Louis County, Missouri have gone on record to suggest that collaborative policing efforts between the federal government and local police, with guidance in matters related to constitutional policing, are out of step with a growing consensus that rebuilding community trust is essential to crime reduction (Elder, et al., 2017), supporting the idea that federal assistance in local police matters can benefit police organizations, police leadership, rank-and-file, and the public being served.

Criticisms

Despite the historical use of negotiated settlements to initiate change in the area of civil rights, not all scholars have viewed this tool without criticism (Douglass, 2017; Ross & Parke, 2009). In a review of consent decrees and federal involvement in local government organizations, Scott (2017) points out that “the history of direct federal involvement in reforming state and local institutions, across a variety of occupational realms, is not one of unqualified success” (p. 611). Indeed, there are many issues that scholars of consent decrees, and federal regulation of the police have raised, some of which are fundamental to the meaning of ordered liberty rather than disagreements over how well a law is being implemented. A critique of § 14141 in this spirit is offered by Ross and Parke (2009) who warn that there are “several reasons for caution and skepticism” (p. 202). Their warning is not based on the effectiveness of implementation, rather it is directed at the role the federal government plays in local matters, particularly “in a country founded on the principle of federalism” (p. 203).
Scholars have also raised concerns over § 14141 negotiation transparency as exemplified by a shifting of power away from the people and their elected representatives to the courts and the federal government, in addition to the information asymmetry that exists between the police as a profession and the general public (Douglass, 2017). Observing that the process of federal intervention and negotiation by its very nature happens in secret behind closed doors, Ross and Parke (2009) suggest; “[results in] the government failing to represent the public as a whole” (p. 203). Further supporting this argument, Chanin (2017) points out that the process of negotiating in the early stages of a consent decree are particularly problematic, characterized by disproportionate power structures, exacerbating unequal negotiations between the DOJ and local jurisdiction, suggesting; “the DOJ’s early reputation for heavy-handedness and an unnecessarily adversarial approach to the investigation process” (p. 260) was not unjustified.

These inequalities in negotiations and perceived power shifts have frequently engendered animosity between the local jurisdiction and the federal government as local police departments are forced into federal compliance (Powell, Meitl, & Worrall, 2017). Indeed, the power structure that exists between the federal government’s resources and that of a local police agency make the negotiation process between the two parties “uneven from the start” (Ross & Parke, 2009, p. 206). Embedded within this resource asymmetry argument is a cost-effectiveness criticism, similar to that offered by Scott (2017), who argues that enforcing compliance with a local agency is costly for both the federal government, and agency being sued. As such, “the taxpaying public might reasonably expect a more significant return on investment” (p. 609) than what is being realized.
Gaps in the Literature

A review of the extant literature reveals that until recently, scholars have taken a post-hoc approach to studying § 14141 actions. Conducting an implementation study of § 14141 implicitly acknowledges that a police agency was engaged in a pattern or practice of unconstitutional policing, yet the very meaning of this term has not been fully operationalized. Understanding, defining, and practicing constitutional policing is an acute problem in the United States where policing is decentralized (Douglass, 2017). As asserted by PERF (2015), constitutional policing is at its most fundamental, “legal policing” (p. 1), however, this term is too “often used in a limited context” (p. 3), as “discussions about constitutional policing occur only ‘after the fact’” (p. 3). The lack of clarity in the meaning of constitutional policing, and questions regarding what type of credible measures should be used to assess this construct, have plagued the study and utilization of § 14141 since its passage (Harmon, 2017).

Implicit in PERF’s (2015) argument over the meaning of “legal policing” and “after the fact” analysis is that greater internal scrutiny may help preclude organizational and operational deficiencies before they cascade into unconstitutional practices. As evidence of this point of view, PERF (2015) comments that “forward-thinking police leaders are reviewing their policies and practices to ensure that they not only promote community policing and crime reduction, but also advance the broad constitutional goal of protecting everyone’s civil liberties and providing equal protection under the law” (p. 3). This statement and perspective can be interpreted as a call by PERF to help provide police leadership with the requisite knowledge to assist in ensuring constitutional policing.

All of this supports the notion that there is both a significant knowledge gap regarding § 14141, and a practical need to have that gap filled, as there is not any literature that attempts to
explore, examine, or analyze conditions that existed in a municipal police department prior to a § 14141 investigation. As such, the tools and knowledge that forward-thinking police leaders, and scholars could use to promote constitutional policing, remain unstudied and elusive.

**Final Thoughts on the Literature**

What stands out most in the literature is the lack of research that attempts to describe, explore, or explain the conditions surrounding a police department that may have led to a § 14141 action, and what can be done with that information. Consider § 14141 actions as a process for a moment; that process consists of a predecision (preliminary inquiry-investigation), decision (investigative findings), agreement (negotiated settlement), implementation (monitoring and reporting), compliance (agreement termination), and results (sustainability). This process has been studied and reported in the literature with one exception, the earliest part, that is, the predecision to decision. This lacuna made for an apt, compelling, and necessary study; as has been noted by scholars of § 14141: “[T]here remains a descriptive gap in the literature on the process by which the DOJ currently identifies cities engaged in a pattern or practice of police misconduct” (Rushin, 2014, p. 3218).
Theoretical Framework

Theory Integration

Exploring and understanding the enforcement of § 14141 by the federal government against municipal police presents a unique problem in criminal justice, public policy, and public administration. It is an enforcement action taken against a government agency at one level, by a government agency within another level of government for the purpose of constitutional and legal compliance, while also involving complex agency decision-making and purposeful selection of a specified municipal police agency.

Since an established criticism of § 14141 enforcement against municipal police is that federal intervention of local police contravenes constitutional directive, ipso facto, it was imperative that the examination of § 14141 against municipal police encompassed a range of methodology and theory to address this problem. In doing so, three theories were applied to assist in answering this study’s research questions. As such, multiple streams formed the overarching theoretical framework, and thereby supported by disjointed incrementalism and deterrence.

These three theories have been selected to support core components of this dissertation. These components involve the identification of variables within a framework contributing to § 14141 selection, a description of how the agency responsible for identifying and investigating police agencies applies its legal mandate over-time, and a description of how § 14141 findings can be used as prescriptive measures in the law enforcement community to prevent unconstitutional policing, and potential federal intervention.

Multiple Streams

Public policy theory provides a lens in which the world of governmental decision-making and organizational rationality can be explored. John Kingdon’s (1995) multiple streams (MS) is a
public policy framework that allows scholars to understand the phenomenon of organizational
decision-making, and the variety of factors that influence policy and agenda decisions, ex ante.

**Rationale.**

At its core, the MS framework is a policy process model that explores governmental
decision-making among infinite choices in “organized anarchies” (Kingdon, 1995, p. 84). In its
original construction, MS describes how specific policy options, which may have lain dormant,
rise to agenda status when its three streams converge, whereby some action is taken to promote a
specific policy choice over an alternative. As applied to government decision-making at the
organizational level, this same construct applies. The DOJ, as part and parcel of the federal
government, does not make decisions in a vacuum. Actionable, decision-making in public
organizations is suffused with both rationality and values. Using terminology from public policy
theory, organizational decision-making regarding which items, or in the case of this study,
municipal police departments, become actionable under § 14141 is not wholly rational-
comprehensive or post-positivistic (Smith & Larimer, 2013). Rather, decision-making at the
organizational level is a combination of the two.

Implicit in Kingdon’s framework is that policy choices are imbued with values, and those
values support decisions based on objective conditions. To illustrate; a focusing event can
illuminate problems within a public organization. A close examination of that focusing event
may lead to the discovery of a faulty policy. Problems and faulty policies are quantifiable in MS
through a rational-comprehensive lens by measuring size, scope, impact, and cost-benefit.
Values support which problems or faulty policies are worth paying attention to over others.

When applying MS to § 14141 actions using the above reasoning, this study will show
that the DOJ pays special attention to problems and policies that generate widespread attention,
are technically feasible, have value acceptability, conform to the political environment and national mood. All of these; problems, policies and politics, are accounted for in the MS framework. As such, this framework was used to explore and explain how the convergence of the three streams in the context of municipal police agency practices, and environmental conditions, facilitates the initiation of a § 14141 action. This knowledge, then, can be used by police leadership to initiate necessary policy change within their agencies.

The MS framework “theorizes at the systemic level” (Zahariadis, 2007, p. 66) and uses “predecisions” (Kingdon, 1995, p. 1), meaning the entire system (Zahariadis, 2007), as the unit of analysis. In doing so, MS provides a lens to examine government decision-making policy retrospectively, which made it particularly applicable for this dissertation. The strength of the MS framework has been noted by scholars such as Larkin (1996), who has asserted:

There is no shortage of examples in numerous federal policy fields to illustrate the operation of Kingdon’s theory…the criminal justice field, however, is a particularly inviting subject. The reason is that, short of sending the nation to war, the most intrusive action that the federal government can take against any person is to imprison or execute a convicted defendant for a crime. Judicious implementation of sound criminal justice policy also is a cornerstone to any successful political society, since there is no more elementary duty that government has than to protect public safety. And there is no shortage of controversial criminal justice issues potentially subject to illumination by Kingdon’s theory. (p. 9)

Although Kindgon’s framework is most well known as a theory of the policy process in terms of agenda setting, MS has been widely used to explore decision-making within national, sub-national, and international government contexts (Cairney & Jones, 2016), and is considered
a “flagship framework for explaining agenda setting, policy making, and policy implementation” (Rawat & Morris, 2016, p. 627). As an example of its prominence, the MS framework has been applied in a variety of policy fields including transportation, the environment, energy, law enforcement, arms-control, health and transportation (Rawat & Morris, 2016). In the field of criminal justice, researchers have applied the MS framework to explore the rise and fall of prison privatization (Culp, 2005), drug policy process in Australia (Lancaster, Ritter, & Colebatch, 2014), “three strikes” legislation (Saint-Germain & Calamia, 1996), antiterrorism policy and the death penalty (Larkin, 2012), police privatization in the United Kingdom (White, 2014), and the adoption of emergency management policies in Canada (Henstra, 2010). As this dissertation focuses its analysis on decision-making by the DOJ in matters related to unconstitutional policing at the municipal level, MS provided a particularly suitable fit for guiding the project forward.

**Structural Elements and Processes.**

Described as theorizing “from the macro to the micro” (Zahariadis, 2007, p. 68) by subsuming three independent streams flowing through a system, to which, when there is convergence, presents an opportunity for a policy decision, or policy output. The three streams are the problem, policy, and political streams (Kingdon, 1995), each with their own operationalization. The policy output resulting from the convergence of the three streams is described by Kingdon (1995) in a temporal order; a “problem is recognized, a solution is developed and available in the policy community, a political change makes it the right time for policy change, and political constraints are not severe” (p. 165).

Convergence of the three streams brings together two additional structural elements leading to a policy output; policy windows and policy entrepreneurs. These two structural
elements describe processes of the MS framework. As informed by Kingdon (1995), policy windows are limited-time opportunities that allow for the initiation of policy action at critical moments. These windows are opened by “compelling problems or by events in the political stream” (Zahariadis, 2007, p. 74), and are coupled by the appropriate policy makers and stakeholders (Kingdon, 1995). The successful union of these elements results in specific type of output. The policy output for this research is DOJ’s § 14141 investigative outcome, presented in a publicly issued findings letter that identifies and describes the extent to which a police agency is engaged in patterns or practices of unconstitutional policing. The conceptualization of the MS framework, as applied to this dissertation is presented as an iterative process in Figure 1.

As such, Kingdon’s multiple streams formed the overarching framework that allows for both an exploratory and explanatory analysis of § 14141 enforcement against municipal police agencies engaged in unconstitutional policing, assisting to answer research questions 5 and 6: *How does the DOJ identify a specific municipal police agency engaged in unconstitutional policing? How can § 14141 support police departments to practice constitutional policing?*
Operationalization: problem stream.

Three core elements make up the problem stream, these include; focusing events, indicators, and feedback. In the MS framework, focusing events are crises that can bring an issue to the forefront for policymakers and governmental agencies; examples include “a crisis or disaster that comes along to call attention to the problem, a powerful symbol that catches on” (Kingdon, 1995, pp. 94-95). As well, a focusing event is known as a “Triggering Event”, described by Chanin (2014b) thusly:
It is not uncommon for a seemingly random occurrence—for example, a critical op-ed newspaper article written…an inmate taken to a local hospital with severe injuries inflicted by police officers—to bring attention to government policies or behaviors that potentially violate constitutional law. (p. 281)

Considering these descriptions, the operationalization of a focusing event for this study was the identification of a high-profile event(s) involving a specific municipal police agency in the three years prior to a § 14141 investigation. This event must have been: either explicitly recognized by the DOJ, alluded to by the DOJ in their § 14141 documents, or publicly reported in such a way that in the aggregate, represents a singular problem to that municipal police agency. This operationalization is supported by DOJ’s policy and decision-making language regarding high-profile events insofar as “individual incidents may suggest a systemic problem, and often, therefore, comprise part of the information the Division relies upon to justify opening an investigation” (DOJ, 2017a, p. 10).

The second core element in the problem stream is referred to as indicators. Indicators consist of activities and events used to “assess the magnitude of a problem and to become aware of changes in the problem” (Kingdon, 1995, p. 91). Indicators can take the form of any number of activities; using Kingdon’s (1995) studies, some examples of indicators include “highway deaths, disease rates, immunization rates, consumer prices, commuter and intercity ridership…infant mortality rates, and many others” (p. 90). As noted by Zahariadis (2007) “indicators can be monitored either routinely or through special studies” (p. 79), and as Kingdon (1995) describes, there is a “need for indicators, particularly quantitative measures” (p. 93).

One way that municipal police departments monitor indicators for both individual and organizational performance is through early warning systems, also referred to as early
intervention systems (EIS) (Walker, Milligan, & Berke, 2005). These systems have been
described as a “data-based police management tool designated to identify problematic behavior
and allow early intervention…to promote best professional police practices, accountability and
proactive management” (Cutlar, 2008, p. 42).

As a type of performance management system, scholars have recognized the importance
of intervention systems in measuring and promoting organizational effectiveness, greater
efficiency, and transparency for agencies at various levels of government, including the police
(Hatry, 1978; Wholey & Hatry, 1992). Indeed, the U.S. Commission on Civil Rights endorsed
the adoption of performance management systems, including early intervention systems, for
police departments nationwide in 1981, and by the year 2000, approximately 40% of municipal
police departments with a population greater than 50,000 were estimated to have implemented,
or planned to implement such a system (Alpert & Walker, 2000).

As described by the DOJ, early intervention systems should be designed to track and
monitor a variety of indicators and particularly those involving misconduct, and specific
behaviors that may necessitate intervention, including; complaints against officers, internal
disciplinary actions, uses of force, civil lawsuits, sick leave, vehicle accidents, and other data
relevant to “evaluate and audit the performance of all levels” (Cutlar, 2008, p. 44) of a police
department. Since EISs subsume a variety of regularly measurable misconduct indicators, DOJ
findings of a deficient EIS was operationalized as the presence of indicators in the problem
stream.

The third element in the problem stream is feedback since government officials receive
information about policies and operations through feedback from the external environment
(Kingdon, 1995). This is done through a variety of mechanisms that are sometimes systematic,
and other times informal. One such example of the use of systematic feedback “comes in the form of media portrayals [because]….the press thrives on the public interest and consistently portrays events and issues of great social importance” (Worrell, 1999, p. 325). As operationalized in this study, feedback involved the presence or absence of news media reports of misconduct by a municipal police department in the national news media during the three years prior to the commencement of a § 14141 investigation against that specific municipal police agency.

**Operationalization: policy stream.**

The policy stream is described by Zahariadis (2007) as containing various elements, including “a ‘soup’ of ideas that compete to win acceptance” (p. 72). Within this soup exist policy communities that “are composed of specialists in a given policy area” (Kingdon, 1995, p. 117). A variety of policy proposals “are considered in various forums and forms, such as hearings, papers and conversations” (Zahariadias, 2007, p. 72). Moreover, these policy proposals are brought before a variety of groups and forums for the purpose of “educating the general public” (Kingdon, 1995, p. 128), and informing a “more specialized public, peculiar to a particular issue” (Kingdon, 1995, p. 128).

The success of policy proposals within this stream involve the consideration of a variety of policy options, however, few survive because of what is referred to as “selection criteria” (Zahariadis, 2007, p. 72). Two core constructs of selection criteria include “technical feasibility and value acceptability” (Kingdon, 1995, p. 131). Value acceptability refers “not only notions of the proper role and size of government, but also concepts of equity and efficiency” (Kingdon, 1995, p. 143).
In detailing the process of identifying policies and practices for remedy, the DOJ (2017a) has stated that they seek “community input regarding remedies” (p. 17), and that this “input has informed the provisions of the Division’s reform agreement” (p. 17). Furthermore, the DOJ (2017a) also seeks the input of rank-and-file officers and police unions and affinity groups [because]…all stakeholders must feel invested in the remedies presented….Communities must be invested for the long-term sustainability of the reform. Individual officers who, day-to-day, will carry out the reforms must be invested….And police and local leadership must be invested to provide leadership and support. (p. 18)

The DOJ’s position involving policy communities in their § 14141 actions reflects Kingdon’s (1995) comments regarding the importance of value acceptability within the policy stream.

In addition to value acceptability, the DOJ takes into consideration whether it is believed that a policy proposal can be successfully implemented because “without that belief in its technical feasibility, the proposal is not likely to survive to the point of serious consideration” (Kingdon, 1995, p. 132). Technical feasibility, as expressed by the DOJ (2017a), is part their § 14141 policy consideration process insofar as “consensus opinions in the law enforcement profession regarding best practices for preventing police misconduct” (p. 20) are critical to a policy’s successful acceptance and implementation. By actively engaging with national police experts, as well, considering how to best “assist the agency in developing a plan to implement reforms and address any barriers to implementation, including by providing technical assistance” (p. 21), the DOJ is better able understand the limits of a municipal police agency to implement required reforms because of their technical feasibility.
In consideration of these processes within the policy stream, and the reliance on technical feasibility and value acceptability as core criteria for implementing organizational change in a municipal police department, the policy stream was operationalized as specific policies grouped into clusters identified in § 14141 investigative findings letters that are in need of reform. The aggregation of these policies into clusters are thus the reflection of selection criteria’s highly restrictive two core elements; technical feasibility and value acceptability.

**Operationalization: political stream.**

The political stream contains three elements that contribute to understanding changes in policy, these include; the national mood, pressure group campaigns, and administrative turnover (Kingdon, 1995). Zahariadias (2007) points out that among these three elements, “the combination of the national mood and turnover in government exerts the most powerful effect on agendas” (p. 73). In Kingdon’s (1995) words; “swings of national mood and the shifts of administration…brought about by election results can be sufficient to overcome organized opposition, and to define the political stream as leaning towards changes” (p. 152).

In consideration of Kingdon’s national mood and administrative turnover as the two most important aspects of the political stream, polling data – specifically three questions related to confidence in the police, confidence in the criminal justice system, and perceptions of police honesty by Gallop Inc. over the life-course of § 14141 were used to conceptualize and measure the national mood as it relates to attitudes towards the police. Presidential office-holder and their associated political party were used to operationalize and measure influences of administrative turnover in the political stream.

As opposed to the political party of municipal leadership at the local level, political party of the president was selected as the most appropriate level of analysis in the political stream for
three reasons. First, in keeping within the established conceptualization of the MS framework as articulated by Kingdon (1995), presidential officeholder is theorized to exert the strongest influence on agendas, and therefore, a policy output. Second, although having been applied at different levels of government in previous studies, the MS framework, as conceptualized and applied in this study, focuses its exploratory decision-making from the federal level onto the local level of government, not vice versa. The implication of which is that the political environment at the federal level has direct influence on policy decisions, which is the specific area requiring exploration in this study. Finally, the analysis of decision-making in this study is from the perspective of the DOJ – a federal agency whose leadership is directly appointed by the president, and as such, the most powerful actor in Kingdon’s framework, consequently, the political party of the leadership of a municipality under § 14141 lacks appropriate relevancy at the federal level of analysis, and thus, is unsupported by MS as applied in this study.

**Operationalization: policy entrepreneurs.**

In the MS framework, policy entrepreneurs are represented by a variety of interested parties and actors who assist in the movement of the two core elements in the policy stream, value acceptability and technical feasibility, with the convergence of an issue or decision during a policy window. Elements within this process are unspecified and unmeasured variables within this study as the policy output subsumes the two values that allow for a policy output. Moreover, qualitatively, DOJ (2017a) acknowledges the influence of interested parties in their § 14141 investigative processes, yet, these parties’ role in § 14141 investigations remain unspecified since the DOJ does not make known through their findings letters the extent to which policy entrepreneurs influenced the outcome of a § 14141 investigation. As such, the influence of these
entrepreneurs is not specifically operationalized, but rather treated as a process since its specificity is unknown.

**Operationalization: policy windows.**

Similar to policy entrepreneurs, policy windows are an unmeasured descriptive process in Kingdon’s framework resulting from the convergence of the problem stream, political stream, and timely movement of core elements in the policy stream by policy entrepreneurs. Policy windows consist of time-limited opportunities for an agenda to move through the framework allowing for a policy output. As indicated by Kingdon (1995) windows open and close for a variety of reasons including general elections, focusing events, and most consequentially, the president. The influence of policy windows then, beyond mere description, is best represented by the confluence of elements in the problem and political streams that must come together apropos for an output. For this study, all policy outputs are affirmative, that is, a DOJ § 14141 decision has successfully made it through the streams framework, and implicit in that output is that the streams successfully navigated the policy window. As such, policy windows are not specifically measured but are a subsumed process as indicated by a successful policy output.

**Operationalization: policy output.**

As conceptualized, the MS process finalizes with a policy output. In Kingdon’s framework a policy output is the adoption of a specific policy resulting from the successful confluence of the three streams by entrepreneurs during times of opportunity (windows). The application of the MS framework to DOJ’s decision-making in this context is an affirmative one. That is, decisions by the DOJ not to pursue a § 14141 action post-investigation are not considered, consequently, each policy output represents the successful union of the different elements and processes of the MS framework. However, since the policy output in this study
consists of two categories, the differentiation of the output was used to explore the different variables within the various streams and processes on MS’ final policy output for each municipal police agency.

**Disjointed Incrementalism**

Disjointed incrementalism by Lindblom (1979) is a theory of the policy process that focuses on decision-making within an organizational context. Having been referred to as “a theory of organizational behavior” (Atkinson, 2011, p. 14), disjointed incrementalism is an expansion of Lindblom’s (1959) earlier work on incrementalism rooted in Simon’s (1947) “bounded rationality”. Initially described as “muddling through”, incrementalism by Lindblom (1959) “viewed policy making as a fragmented process of small steps that individuals engender only slight changes in existing policies” (Culp, 2005, p. 416), because decision-makers “must respond to problems in the absence of certainty regarding outcomes or agreement over core values” (Atkinson, 2011, p. 10). This requires decision-making “premised on what is practical and possible” (p. 10).

As opposed to small changes over the status quo, disjointed incrementalism offers a “realistic model of policy making that comport with the diffuse authority and responsibility structures of bureaucracy” (Culp, 2005, p. 417). Disjointed incrementalism is characterized by the following:

- Limitation of analysis to a few somewhat familiar policy alternatives.
- An intertwining of analysis of policy goals and other values with the empirical aspects of the problem.
- A greater analytical preoccupation with ills to be remedied than positive goals to be sought.
- A sequence of trials, errors, and revised trials.
• Analysis that explores only some, not all, of the important possible consequences of a considered alternative.

• Fragmentation of analytical work to many (partisan) participants in the policy process.

Although well-known and popular since its initial formulation, disjointed incrementalism has been criticized as being a “spent intellectual force” (Bendor, 2015, p. 194) in large part because of its inability to account for rapid, large, or unforeseen changes from the status quo (Dror, 1964; Etzioni, 1989; Lustick, 1980; Rajagopalan & Rasheed, 1995). Etzioni (1989) suggests that incremental decision-making is “not so much toward a goal as away from trouble” (p. 123), claiming that disjointed incrementalism “amounts to drifting to action without direction” (p. 124). Dror (1964) has referred to Lindblom’s (1959) original formulation of incrementalism as “pro-inertia and anti-innovation” (p. 155). Rajagopalan and Rasheed (1995) point out that continual change in the environment, and incremental policy change, when unequal, can create a ‘strategic drift’ requiring non-incremental change, because “under conditions of high-rate change, ignorance can produce agreement upon a catastrophic policy” (Dror, 1964, p. 155).

Overall, criticisms of disjointed incrementalism revolve around the framework being insufficiently proactive, insufficiently goal oriented and ambitions, excessively conservative, useful in too limited a range of decision contexts, and too hostile to analysis (Weiss & Woodhouse, 1992). Yet these same researchers claim that criticisms of disjointed incrementalism are “by and large invalid” (Weiss & Woodhouse, 1993, p. 255), and have gone to lengths to argue that its descriptive power endures as Lindblom’s (1959) original formulation was as an alternative to the impossibility of the synoptic model of decision-making.
Despite these criticisms, disjointed incrementalism has been used in the field of criminal justice to explain prison privatization (Culp, 2005), decarceration in Massachusetts (Stolz, 1984), criminal justice policy-making at the federal level (Stolz, 1985), and offered as an efficient means of criminal justice planning to deal with the “field’s most troublesome characteristics” (Smith & Klosterman, 1980, p. 403). As such, disjointed incrementalism was used to analyze DOJ decision-making while supplementing analysis from Kingdon’s multiple streams.

**Operationalization of disjointed incrementalism.**

Decision-making by DOJ regarding policy alternatives is embedded in their language, as an example, in § 14141 cases the DOJ (2017a) “considers whether the allegations represent an emerging or developing issue” (p. 6). Tellingly, DOJ (2017a) emphasizes that:

> The model of reform reflected…has changed over time as the Division has learned from its own experiences enforcing Section 14141, responding to feedback from law enforcement and community stakeholders, and incorporated developments in the social science of police reform. (p. 20)

This statement is indicative of disjointed incrementalism, that is; limited policy alternatives, analysis and values intertwined, remedy of ills, learning from trial and error, exploration of some alternatives, and diffusion of policy work to partisans. Moreover, § 14141 actions during the first decade after the law’s enactment are referred to as “the first-generation model of police reform” (DOJ, 2017a, p. 40), and more recent § 14141 actions as the “current generation” (DOJ, 2017a, p. 40), clearly demarcating a philosophical and practical approach between two eras. Disjointed incrementalism then is well-suited to explore DOJ’s decision-making regarding a § 14141 action. As such, disjointed incrementalism was operationalized as changes in unconstitutional policing themes, length of investigation over-time, productivity,
efficiency, investigative outcome, and output over the life-course of § 14141, and assisted in answering research questions 3, 4, and 6: Have DOJ’s pattern and practice investigations changed over-time? What organizational characteristics and environmental conditions existed in municipal police departments prior to a § 14141 investigation? How can § 14141 support police departments to practice constitutional policing?

Deterrence

Deterrence theory traces its roots to utilitarian notions of crime and punishment as formulated by Beccaria (1764) and espoused by Bentham (1789). The underpinning of deterrence theory is the rational actor model which “assumes that offenders exercise rational judgment and are reasonably aware of the potential costs and benefits with criminal acts” (Pratt & Cullen, 2005, p. 415).

Deterrence theory posits that when present, three key elements of punishment – certainty, severity, and celerity, will discourage criminal behavior. These three elements manifest in a utilitarian calculus that dictates general, specific, and marginal effects on behavior (Harmon, 2009; Nagin, 2013). Despite evidence suggesting its empirical weakness relative to other modern criminological theories (Pratt & Cullen, 2005), some scholars argue that deterrence theory’s nuances and complexity have been misapplied and understudied, and therefore not sufficiently understood (Nagin, 2013). Even with these scholarly disagreements, deterrence theory remains popular among scholars and practitioners for its unambiguous conceptualization, and applicability to social science, criminal justice, and public policy (Braga & Weisburd, 2012; Kelling & Wilson, 1982; National Academy of Sciences, 2017; Wilson, 1975).

Deterrence theory has also been used as a framework by economists to explore questions related to optimal levels of enforcement and crime, as was initially done by Becker (1968). Since then, models of deterrence using an economic framework have emerged to explain the behaviors
of rational actors related to crime, enforcement, and punishment. One such model has been offered by Polinsky and Shavell (2000), known as the public enforcement of law. These scholars apply their economic model to a variety of aspects of the enforcement process, one such is referred to as “The enforcement authority’s problem” (p. 49). As described in this context, the goal of enforcement “is to maximize social welfare by choosing enforcement expenditures e (or, equivalently, the probability of detection p), the level of the fine, f, the length of the imprisonment term, and the standard for imposing liability” (Polinsky & Shavell, 2000, p. 49).

Related to police organizations, and to serve as a deterrent against unconstitutional policing practices, Harmon (2009) interprets this model as; “expected cost of § 14141, E, to any municipality is at least p, the probability perceived by the municipality that its police department will be subject to a full investigation…multiplied by c, the cost a municipality expects to incur as a result of that investigation” (p. 24). As applied, raising the costs or probability of a § 14141 action against a specific police agency will increase that agency’s expected costs above efficiency, thereby serve as a deterrent to an offending police agency. Using this model of deterrence, sufficiently raising the probability of intervention related to systemic misconduct relative to the costs borne by a police department under a § 14141 action, a rational police agency would be deterred from engaging in unconstitutional policing through punitive expenditures, loss of autonomy, and potential organizational demise. This operationalization of deterrence was used as a framework, along with MS and disjointed incrementalism, to explore the many policy implications of a § 14141 action on a municipal police department.
Operationalization of deterrence.

It can be inferred from public comments that enforcement of § 14141 as it relates to choosing a specific police agency to investigate is influenced by the principles of deterrence, as expressed by the DOJ (2017a):

The Division considers whether the allegations represent an issue common to many law enforcement agencies as well as whether the allegations represent an emerging or developing issue, such that reform could have an impact beyond the primary objective of eliminating constitutional violations in the specific law enforcement agency. (p. 6)

Financial costs associated with a § 14141 action vary depending on the size of the organization and complexity of DOJ’s findings, however, little of this aspect of § 14141 is known. What is known, however, is that the “local jurisdiction generally bears the costs of supporting the monitoring team” (DOJ, 2017a, p. 23), approximating $1 million per year (PERF, 2013). This figure does not include the costs associated with actual organizational reform, which appear to be substantial. As an example, Kelly, Childress, and Rich (2015) reported that the total cost of § 14141 reform in the LAPD – which lasted over 12 years – was estimated by the Los Angeles Chief Legislative Analyst to approximate $300 million.

Since costs associated with § 14141 action appear to be substantial, and quite possibly onerous to the police agency and their parent jurisdiction, the application of § 14141 within a deterrence framework suggests that enforcement may be directed towards municipal police agencies with specific attributes including larger size, greater resources, and more financially supportive jurisdictions. Municipalities with these characteristics may be better suited to withstand the costs associated with a § 14141 investigation than smaller or resource deprived municipal police agencies and their parent jurisdictions. As well, since § 14141 emphasis is on
the reform of patterns or practices of unconstitutional policing practices, and often those patterns or practices involve civil rights, the demographic make-up of jurisdictions is an important variable to consider as the DOJ may be employing their authority as a specific deterrent against certain types of unconstitutional policing, and specific constitutional violations.

As such, the deterrence framework above was operationalized as resources, measured as a police-to-civilian-served ratio, contextualized within an external control and resource dependence (Pfeffer & Salancik, 2016) perspective to explore the inducement of organizational change in the deterrence model. The variable resources was selected to represent a dimension of deterrence in this study rather than municipal expenditures because as conceptualized and applied to municipal police, resources and expenditures are differentiated variables through the concepts of effectiveness and efficiency. That is, in the context of municipal police and application of §14141, the DOJ is interested in the “overall goal of achieving effective, [emphasis added] constitutional policing” (DOJ, 2017a, p. 22). Organizational effectiveness in policing directly relates to the police meeting their operational goals, whereas, efficiency refers to police organizations that get more for their money (Skogan, 1976).

In their pursuit of ensuring effective and constitutional policing for the municipal police agencies under their purview, the DOJ makes no mention of improving municipal police efficiency, but rather routinely targets police effectiveness (DOJ, 2010; DOJ, 2017a). Consequently, the effective application of a municipal police department’s resources is more important to constitutional policing than the efficient application of those resources. By extension, how much a municipality spends on a police department per officer is less relevant to how well a police department meets the mission of the agency with the resources they have been provided, and officer-to-civilian ratio better reflects this construct than expenditures.
In addition to ratio of police-to-civilian-served ratio, size of the police department was operationalized in terms of sworn employees because larger police departments can serve as an example of reform in a general deterrence framework, while better absorbing the costs associated with a § 14141 investigation than small police agencies. Included with the size of a police agency and ratio of sworn employees, overall population statistics, and demographics measured as a municipality’s percent of the non-White population were both operationalized within the deterrence framework to assist in answering research questions 4 and 6: What organizational characteristics and environmental conditions existed in municipal police departments prior to a § 14141 investigation? How can § 14141 support police departments to practice constitutional policing?

**Theory Integration Representation**

Using multiple streams as the driving theoretical framework and integrating it with other theories is consistent with much prior research (Rawat & Morris, 2016), and for this study, it was essential. Without multiple streams, understanding decision-making lacks model and form; without disjointed incrementalism, an evaluation of changes in decision-making over-time lacks direction; without deterrence, a suggestion that municipal police should be called to action to implement necessary change lacks incentive. As well, by applying these three theories, all aspects of the main research problem are couched in well-established, and venerable theories that integrate the social sciences through the fields of public policy and criminal justice. As conceptualized, influences of disjointed incrementalism, and deterrence on the MS process are presented in Figure 2, visually representing the influence of disjointed incrementalism from one investigation to the next, the theory’s influence on investigative outcomes over-time, as well as the influence of a deterrence orientation from one outcome to a subsequent investigation.
Figure 2. Influences on the MS Process: Disjointed Incrementalism and Deterrence

Research Questions

In attempt to both fill the knowledge gap posed by the literature review, and address the problem statement, the following research questions guided this study:

1. *What pattern or practice themes emerge from DOJ investigative findings?*

Prior to a municipal police agency entering into a negotiated settlement or technical assistance subsequent a § 14141 investigation, the DOJ publicly issues a *findings letter* specifying the results of their investigation, and describing remedies to be undertaken to rectify organizational and systemic police dysfunctionality. Two affirmative outcomes – negotiated settlement or technical assistance – result from DOJ’s conclusion that a municipal police agency suffers from systemic problems so great that they are actively engaged in, or at risk of engaging in, patterns or practices of unconstitutional policing. This differentiation is crucial, as it is the demarcation of unconstitutional, and constitutional but problematic police behavior.

Since § 14141 investigative findings letters vary in length, detail, and analysis, it was suspected that these differences were related to a number of variables including whether a § 14141 action commenced during the first or second-generation of DOJ’s enforcement of the
statute, over-time changes in the interpretation and emphasis on behaviors that constitute patterns or practices of unconstitutional policing, as well as both the unique variations associated with a discrete police agency, and their parent municipality.

DOJ’s § 14141 investigative findings letters contain two types of content – manifest and latent. The manifest content is characterized by overt policy, practice, and procedural deficiencies that were specifically attributed to systemic problems, and for many investigations, unconstitutional policing practices. In contrast, latent content is subtler, nuanced, and intricate – only to be discerned through a careful analysis and interpretation of the data contained therein. Determining the themes embedded in these investigative findings letters through thematic analysis allowed for a clear attribution of patterns or practices of organizational police dysfunctionality, and the contours of unconstitutional policing.

2. **What patterns or practices did DOJ find contribute to unconstitutional policing?**

Identifying and specifying DOJ’s patterns or practices of unconstitutional policing, through a differentiation of the two categories of investigative outcome, allowed for an analysis and interpretation of the relationship that exists in how the DOJ identifies a specific municipal police agency for investigation, commonalities in what the DOJ seeks to reveal through their investigations, what they find, and how these findings change over-time. The analysis contained herein assisted in addressing both parts of the research problem, that is, identifying what contributes to patterns or practices of unconstitutional policing, and how municipal police leaders can use that knowledge to prevent systemic problems, misconduct, investigation, and potentially, federal intervention.
3. **Have DOJ’s pattern or practice investigations changed over-time?**

Understanding how organizational decision-making, and the influence of rationality apply to the identification, investigation, and enforcement of patterns or practices of unconstitutional policing, its interpretation, and how that may change over-time was necessary to address the second part of the research problem. Exploring the phenomena of over-time change regarding § 14141 investigations offers municipal police departments knowledge comporting not only to their current needs, but the knowledge necessary to forecast needs as a reaction to emerging DOJ enforcement practices, and the mutable interpretation of unconstitutional policing. Determining how the DOJ exercised their § 14141 authority in the past, and examining the changes that occurred in the enforcement of § 14141 over the life-course of the law, facilitated the development of a model to forestall unconstitutional policing.

4. **What organizational characteristics and environmental conditions existed in municipal police departments prior to a § 14141 investigation?**

Employment characteristics, and environmental conditions were necessary to contextualize § 14141 investigations at the municipal level, and to help understand the interactions or effects that organizational resources, organizational size, jurisdictional demographics, and population size have on patterns or practices of unconstitutional policing, and why the DOJ may have identified a specific municipal police agency for reform with respect to these variables. As well, these data facilitated the operationalization of a municipal police agency to meet the minimum jurisdictional population for this study – information that was used to assist in an understanding of the implications of resource deprivations, and targeted enforcement within the deterrence framework.
5. How does the DOJ identify a specific municipal police agency engaged in unconstitutional policing?

A theoretical framework of the policy process was applied to identify, describe, explore, and analyze concomitant variables within all § 14141 municipal police agencies investigated for patterns or practices of systemic misconduct. Through an application of the theoretical framework, and by differentiating § 14141 actions by investigative outcome, it was hoped that a clearer picture would emerge of the specific variables that led to a finding of patterns or practices of unconstitutional policing. This analysis then assisted in answering the first prong of this study apart from the research question: What contributes to such a rare event?

6. How can § 14141 support police departments to practice constitutional policing?

This question was formulated to address the second prong of the research problem; accordingly, how can the information produced from the first prong of the research problem assist other police departments to practice constitutional policing? This knowledge then can be used to improve municipal police performance through the creation of a compendium of police practices, serving as a remedy to systemic police dysfunctionality and unconstitutional policing prescriptively. Moreover, the application of the knowledge created in this study can then be used to explore policy options regarding future enforcement of § 14141, serving as a guide for municipal police leaders, while incentivizing those leaders to study, learn about, and initiate necessary change in their agencies proactively, rather than by legal decree, obviating a loss of autonomy, national stigma, or subjecting a police agency to possible demise.
Variables Examined in Hypotheses

Dependent variables.

The dependent variable of interest in this dissertation was DOJ’s § 14141 investigative outcome, that is, the binary categorization of police agencies under negotiated settlement differentiated from police agencies under technical assistance. By definition and design, this dichotomy distinguishes municipal police agencies found to have engaged in a pattern or practice of unconstitutional policing (i.e. negotiated settlements, \( n = 24 \)), from those municipal police agencies found to have systemic problems that did not rise to the level of a pattern or practice of unconstitutional policing (i.e. technical assistance, \( n = 9 \)). Moreover, to assist in explaining rational decision-making through the process of disjointed incrementalism, DOJ’s investigative output, that is, the length of their § 14141 findings letters, measured as the number of pages for each findings letter, served as a dependent variable for related analyses. This was selected as a secondary dependent variable to assist in assessing changes in the complexity, nuance, and depth of DOJ’s findings over-time.

Descriptors from findings letters.

- Thematic findings – derived from a thematic analysis of DOJ’s findings letters, measured according to presence or absence in each findings letter, not by frequency or intensity. Thematic findings that were comprised of subthemes were categorized as present if at least one subtheme was derived from the analysis. Accordingly, at this level, the presence of multiple subthemes within a single theme was counted as the presence of one theme.
- Subthematic findings – derived from a thematic analysis of DOJ’s findings letters, measured according to presence or absence in each findings letter, not by frequency or intensity. At this level of analysis, all subthemes were scaled to the thematic level and
measured by their presence or absence in each findings letter. Any theme that did not have subthemes was measured as a scaled theme.

**Independent variables.**

Independent variables for this dissertation were grouped according to their supporting theory and analytical strategy. The following categories of variables are presented in the same order as their associated hypotheses:

*Disjointed Incrementalism.*

- Generation – measured dichotomously as first or second-generation § 14141 investigation based on pre or post 2005 initiation.
- Investigation length – time period from the reported initiation of a § 14141 investigation to the issuance of a final findings letter, measured in months.

*Deterrence.*

- Resources – measured as a ratio of the number of sworn officers to population. Then categorized dichotomously as greater than or less than the national average.
- Size – number of sworn officers for each municipal police department. Classified into one of seven of BJS’ (2015) sworn employee categories, and further categorized dichotomously as greater than, or less than 500.
- Population group – total population of a municipality classified into one of seven of BJS’ (2015) population groups. Further reduced and categorized dichotomously as greater than, or less than 250,000 persons.
- Percent non-White – percentage of municipal population identified as any other race, or ethnicity than White-only. Dichotomously categorized as greater than, or less than 54%.
Multiple streams – problems.

- Focusing events – measured as the presence or absence of an operationalized focusing event in the three years prior to the initiation of a § 14141 investigation. Gleaned from the manifest analysis of DOJ issued findings letters, related archives, and publicly issued technical reports.

- Indicators – measured as the presence or absence of DOJ recognized insufficiencies, deficiencies, and non-existent police early intervention systems. Gleaned from an analysis of DOJ issued findings letters. These systems are designed to monitor, track, and alert police supervision and leadership to a variety of problematic police officer behavior indicating individual, and organizational misconduct.

- Feedback – measured as the presence or absence of national news reports of police corruption or misconduct related to each municipal police agency in three years prior to the initiation of a § 14141 investigation.

- Accompaniment – measured as the interdependence of focusing events and feedback in the three years prior to the initiation of a § 14141 investigation.

Multiple streams – policies.

- Policy clusters – the categorization of five clusters of policies including; use of force, stop, search and arrest, response to special populations, civilian complaint systems, and internal discipline system policies. Measured as the presence or absence of insufficiencies and deficiencies gleaned from a manifest analysis of findings letters.

Multiple streams – politics.

- Political party of the president – § 14141 investigation categorized by political party, Democrat or Republican, based on the month and year of investigation commencement.
• National mood – an aggregated over-time measure of three polling data questions related to attitude towards the police. Measured each year over the life-course of § 14141 as more positive, or less positive than historic positive drawn from Gallop Inc. data between 1994-2017 specific to confidence in the police, confidence in American institutions, and honesty of police officers.

_Covariate_.

• In state – measured dichotomously as the presence or absence of more than one § 14141 investigation of municipal police within a state.

_Hypotheses_

Section 14141 investigations of municipal police resulting in publicly issued findings letters have been categorized into one of two outcomes – negotiated settlement or technical assistance. Implicit in this categorization are organizational, and aggregated individual behaviors that differentiate a finding of unconstitutional from constitutional but problematic policing – allowing for identification, analysis, and interpretation. As such, the first hypothesis is offered:

_H1: Thematic findings will differ between municipal police agencies under negotiated settlement, and those under technical assistance._

Moving beyond a differentiation of findings between the two types of investigative outcomes, police agencies found to engage in patterns or practices of unconstitutional policing were expected to have a greater number of findings than those police agencies under technical assistance. The basis for this expectation was supported by DOJ’s conceptual and legal reasoning behind the identification of unconstitutional policing. Police agencies found to engage in a pattern or practice of unconstitutional policing engage in specific unconstitutional behaviors, and in greater amounts than those agencies that have not been found to engage in a pattern or practice
of unconstitutional policing. At a more granular level, comparing subthemes across investigative outcomes, then, should allow for greater nuance, detail, and analysis. To quantify these differences, and to better identify these differences behaviorally, the second hypothesis is offered:

\[ H_2: \text{Municipal police agencies under negotiated settlement will have more scaled subtheme findings than those under technical assistance.} \]

As applied to organizational decision-making, disjointed incrementalism (Lindblom, 1979) posits that small adjustments over the status-quo are preferable to decision-making that attempts rational-comprehensiveness, or other methods that do not allow for small adjustments and corrections. Throughout the course of § 14141 investigations of municipal police, DOJ’s output appeared to change in length, complexity, nuance, and analysis. One scholar has referred to this phenomenon as exemplifying the government’s “learning curve” (Walker, 2017, p. 10) in the implementation of the provision. Explicitly, the DOJ has recognized the incrementalism of their § 14141 decision-making through the differentiation of investigations into two distinct generations – those commenced through 2005, and after (DOJ, 2017a). One manner to assess the effects of disjointed incrementalism relative to § 14141 should then be evident through DOJ’s output, that is, their findings letters. As such, the third hypothesis is offered:

\[ H_3: \text{Second-generation output will be significantly longer than first-generation output.} \]

Furthermore, when applying disjointed incrementalism to § 14141 investigations, the expectation is that over-time change would produce greater efficiency; a product of shorter investigation lengths through trial and error, organizational learning, institutional memory, and necessary adjustments that would then be revealed through changes in investigation length
between the two generations of § 14141 enforcement. As such, the following hypothesis is offered:

\[ H_4: \text{First-generation § 14141 investigations will have lasted longer than second-generation investigations.} \]

The product of efficiency in their investigative process, and ability to conduct investigations of larger, more complex organizations would be expected from over-time changes in the application of § 14141 by the DOJ against municipal police. Disjointed incrementalism then would be revealed through shorter investigation times with a greater number of findings, therefore, marked by a greater ability to assess unconstitutional policing in larger police agencies. As such, the following hypothesis is offered:

\[ H_5: \text{The length of an investigation will be negatively associated with the number of DOJ scaled findings, controlling for the size of a police department.} \]

Moreover, the application of disjointed incrementalism to § 14141 investigations suggests there would be a change in orientation in the types of police practices that the DOJ sought to investigate because of ills to be remedied, and intertwining of policy goals and values (Lindblom, 1979) are mutable. Indeed, considering the effects that administrative turnover is posited to have within the political stream (Kingdon, 1995), and therefore, on the enforcement of § 14141 (DOJ, 2017a), the following hypothesis is offered:

\[ H_6: \text{DOJ’s investigative findings will differ over time.} \]

The application of a deterrence orientation to the enforcement of § 14141 by the DOJ suggests that certain municipalities, and their police agencies are targeted for enforcement action under this authority as a means of both addressing the most highly offensive municipal police agencies engaged in unconstitutional policing, and to serve as an example to prevent other
municipal police agencies from engaging in unconstitutional policing. Applying an economic framework of deterrence; organizational resources and size, as well as environmental conditions would be expected to differ between police agencies engaged in constitutional and unconstitutional policing. As such, the following hypothesis is offered:

\[ H_7: \text{Environmental and organizational characteristics will differ between police agencies found to engage in unconstitutional policing, and police agencies without such findings.} \]

Under a deterrence framework, municipal police agencies that suffer from resource deprivations would be expected to have more organizational problems as indicated by the number of findings. As well, § 14141 as applied through a resource dependence perspective, the size of a police agency is less relevant than a police agency’s resources. As such, the following hypothesis is offered:

\[ H_8: \text{Municipal police agency resources will be negatively associated with the number of scaled findings, controlling for the size of a police department.} \]

The MS framework as applied to § 14141 decision-making was used to support an exploration of the variables that may lead to the identification of a police agency engaged in unconstitutional policing, ex-ante. Each of the three streams have their own variables, some of which are theorized to act independently, while others, dependently. Within the problem stream, Kingdon (1995) suggests that focusing events require accompaniment of a previous agenda to rise to actionable status, however, other scholars have found that accompaniment is not required to change the agenda status of a decision in the problem stream when focusing events are particularly unique or large (Worrall, 1999). To test whether a focusing event, that is, a large and widely publicized triggering event, is a precondition to a finding that a municipal police agency
was engaged in a pattern or practice of unconstitutional policing, as suggested by the MS literature, the following hypothesis is offered:

\[ H_9: \text{Municipal police agencies experiencing a focusing event are more likely to have been found to engage in unconstitutional policing than those that have not experienced a focusing event.} \]

Similar to focusing events in the problem stream that may require accompaniment, indicators within the problem stream can assist in bringing problems to the attention of decision-makers, helping to allow the problem rise to actionable status (Kingdon, 1995). To test whether indicators within the problem stream, operationalized and measured as a deficient intervention system, serve as a precondition to a finding that a municipal police agency was engaged in a pattern or practice of unconstitutional policing, the following hypothesis is offered:

\[ H_{10}: \text{Municipal police agencies found to have deficient intervention systems will be more likely to engage in unconstitutional policing than municipal police departments without such deficiencies.} \]

As an alternative to the independence of focusing events in the problem stream, Kingdon (1995) suggests that focusing events require accompaniment to become actionable. In the context of § 14141, feedback, in the form of national media reporting is such example of accompaniment that along with a focusing event, facilitates a problem becoming actionable by the DOJ. To test whether feedback has independent influence on raising an issue to agenda status, the following hypothesis is offered:

\[ H_{11}: \text{Municipal police agencies with focusing events are more likely to have accompaniment in the form of feedback, than police agencies without focusing events.} \]
Within the policy stream, policy proposals reflect the two core criteria of value acceptability and technical feasibility, that is, what should be done, and what is doable. As applied to § 14141 investigations, it stands to reason that police agencies found to engage in unconstitutional policing would have a greater number of policy problems (i.e. insufficiencies, deficiencies, and necessary, but non-existent policies) than police agencies that were not found to engage in unconstitutional policing, implying that policies, and investigative outcomes are directly related. As such, the following hypothesis is offered:

\[ H_{12} : \text{Municipal police agencies under negotiated settlement will have a greater number of policy deficiencies than those under technical assistance.} \]

In the MS framework, policies within the policy stream are described to move through the framework directly to policy entrepreneurs where they are then coupled through a policy window. As described by Kingdon, this stream does not act in unison with the others. Consequently, to better establish a connection between problematic policies and DOJ’s descriptive findings of a municipal police agency, which would suggest a relationship between deficient policies and overall organizational dysfunctionality, it is expected that deficient policies would be related to the level of organizational problems since policies are the most independent of the three streams in relation to the policy output. As such, the following hypothesis is offered:

\[ H_{13} : \text{The number of deficient policies will be positively associated with the number of thematic findings.} \]

Within the political stream it is argued by Kingdon (1995) that administrative turnover is the most important element that effects an agenda and decision-making. Applied to the enforcement of § 14141, administrative turnover is operationalized as changes in presidential administration. By extension, it is expected that changes in the presidential officeholder would
exert the strongest influence on a DOJ § 14141 agenda, and therefore on enforcement action against municipal police. As such, the following hypothesis is offered:

\[ H_{14}: \text{The number of observed § 14141 investigations occurring during the tenure of each president will differ from expected observations.} \]

In the MS framework, administrative turnover is accounted for by changes in presidential administration, however, an alternative interpretation considers administrative turnover between political parties of the president, rather than the officeholder of president since a president must pay special attention to their political party and base of support when making political appointment decisions (Aberbach & Rockman, 2009). It is expected then that administrative turnover, as operationalized by political party of the president, would have the greatest influence on a §14141 investigation. Therefore, the following hypothesis is offered:

\[ H_{15}: \text{Investigative outcomes will differ between political parties.} \]

In addition to the above stated hypotheses, during the course of research and analysis of variables, information was revealed warranting special consideration relating to possible differences in this study’s organizational and environmental variables when disaggregated by investigative generation. Since differences in these variables between the two generations was not initially considered, yet important for deeper analysis of over-time changes in § 14141 targeted enforcement, the following exploratory hypothesis was offered:

\[ H_{e}: \text{Organizational and environmental characteristics for municipal police will differ between first and second-generation investigations.} \]

N.B.: The above exploratory hypothesis is listed as the last hypotheses as is customary, however, due to its analytical relevance it was tested between \( H_{6} \) and \( H_{7} \) as it bridges disjointed incrementalism and deterrence theories.
Methods

Research Design

This dissertation used a mixed-methodological embedded design to address the research problem. An embedded research design is useful “when the primary method is qualitative or quantitative but the researcher adds the other component to gain additional insight” (Bachman & Schutt, 2014, p. 353). Researchers recognize that using a mixed-methodological approach can provide a more robust understanding of the research problem than could be accomplished with only one approach (Caruth, 2013; Creswell, 2008). Although both types of data are used in an embedded design, one type of data serves as a supplement for the other type because both “are useful for gaining a broader perspective on the topic at hand and for studying different groups, or levels, within a single study” (Hanson, Creswell, Plano Clark, Petska, & Creswell, 2005), and when a “single data set is not sufficient, that different questions need to be answered, and that each type of question requires different types of data” (Creswell & Plano Clark, 2011, p. 91). In the field of criminal justice, scholars such as Brent and Kraska (2010) have argued the benefits of using a mixed design as a viable third methodological choice, particularly for its compatibility with various types of data.

Designing this mixed-methodological study involved similar procedures used in traditional research methods, however, due to the nature of the problem, three additional steps were necessary (Hanson, et al., 2005, pp. 226-227), these included:

1. Deciding whether to use a specific theoretical lens that underlines a researcher’s study and subsequent methodological choices (Crotty, 1998).
2. Deciding how data collection will be implemented and prioritized.
3. Deciding the point at which data analysis and integration will occur.
Rationale for a mixed-methodological approach.

The rationale for applying this methodology was the result of three distinct but interrelated factors; (a) the research problem, (b) the theoretical framework, and supporting theories used to examine the research problem, and (c) the pragmatist philosophical perspective driving the research questions.

Kingdon’s MS framework, accompanied by Lindblom’s disjointed incrementalism, and deterrence are particularly well-suited to a qualitatively-driven embedded design. In considering that the three streams have a variety of qualitative and quantitative variables that come together to produce an outcome, MS embraces both the rationalist and post-positivistic traditions of science, while both incrementalism and deterrence are well-aligned with the philosophical perspective of pragmatism. This flexibility allows the theoretical framework to comport seamlessly to the collection and interpretation of both types of data, and is in keeping with positivist-quantitative, and hermeneutist-qualitative traditions of scientific inquiry (Caruth, 2013).

Use of a comparison group in the research design.

To enrich the findings, and better understand the nuanced differentiation of constitutional and unconstitutional patterns or practices at the organizational level, municipal police departments subject to a § 14141 investigation resulting in technical assistance rather than a negotiated settlement were used as a comparison group. Municipal police departments investigated under § 14141 authority resulting in an agreement for technical assistance were all found to suffer from systemic, policy, and structural issues detrimental to the municipal police agency and public. Yet, for these investigations, the DOJ noted that the specific police agency either was not engaged in a pattern or practice of unconstitutional policing, or made no explicit
findings regarding the constitutionality of a police agency’s patterns or practices. The DOJ’s justification for technical assistance in lieu of a negotiated settlement in these cases suggests that a police agency’s patterns or practices, aggregated and at the organizational level, may lead to unconstitutional policing if left unaddressed. Findings for these unconstitutional policing “near-misses” were embedded in the letters/technical assistance reports issued near, or at, the completion of a § 14141 investigation. An example of a technical assistance determination from the DOJ in a letter issued to the Harvey Police Department:

We have completed our investigation. We do not make findings that there is a pattern or practice of constitutional law violations and are closing our investigation. However, we do conclude that there are serious deficiencies in the operation of the Harvey Police Department that create an unreasonable risk that constitutional violations will occur.

(Smith, 2012, p. 1)

Analyzing these unconstitutional near-misses, aggregated with the negotiated settlements into a study population, and disaggregated by investigative outcome (i.e. negotiated settlement or technical assistance), allowed for a clear, documentable, and officially sanctioned distinction between municipal police agencies found to have engaged in patterns or practices of unconstitutional policing, from municipal police agencies that have not. Moreover, including § 14141 investigations with two distinct outcomes captures all of DOJ’s investigative outcomes in which a findings letter was produced under § 14141 authority against municipal police. This design supported a robust analysis, facilitating the creation of knowledge while supplementing the understanding of the differentiation between police behavior at the systemic and organizational level that constituted unconstitutional policing, thereby, offering a means to identify and apply that knowledge for prescriptive remedy.
Data Collection

Reflecting the choice of research design, data collection occurred in steps wherein qualitative data collection and interpretation were the emphasis for the first part of the study, and thereafter supported by quantitative data analysis of variables attributable to disjointed incrementalism, deterrence, and the multiple streams framework. All analyses within this dissertation were conceptualized and conducted as a single-coder study. Consequently, the qualitative portion of the mixed-methods design relies exclusively on single researcher interpretation and analysis. Subsequent quantitative analyses subsume aspects of the qualitative data interpretation. As such, protocols were developed from the methodological literature to ensure the highest levels of trustworthiness. These protocols, and insufficiencies related to solo-coder interpretation are addressed in subsequent sections.

Study population – municipal police subject to § 14141.

All municipal police agencies subject to a § 14141 action resulting in a negotiated settlement or technical assistance were identified. These data were open source, available through documents that live on DOJ’s website and in their technical reports (DOJ, 2010; DOJ, 2017a; DOJ, 2017b). DOJ issued technical reports and their website archive contained information related to the opening and closing of a § 14141 investigation, allegations of misconduct, investigative outcome, and disposition when applicable. This information was available for all negotiated settlements which was then collected and recorded, however, information for § 14141 investigations resulting in technical assistance have only been published by the DOJ through June 2010. To identify all § 14141 actions involving a negotiated settlement or technical assistance, two secondary sources (Childress, 2015; Rushin, 2017) were cross-referenced with existing § 14141 memos, letters, and lawsuits from the DOJ, Civil Rights
Division, Special Litigation Section’s website archive to verify inclusion for analysis (DOJ, 2017b). This technique resulted in the identification of 55 § 14141 investigations resulting in a negotiated settlement or technical assistance between 1994 and 2017. The remaining 14 investigations that did not lead to a negotiated settlement or technical assistance were excluded from analysis; reflecting a decision by the DOJ not to further pursue § 14141 reform post-investigation is indicative of insufficient support that the subject police agency was engaged in, or at risk of engaging in, a pattern or practice of unconstitutional policing (DOJ, 2017a). For these 14 investigations, the DOJ did not publicly memorialize, nor has made publicly available any documents, findings, or justifications for their decision not to pursue further § 14141 enforcement against the investigated police agency. In these non-finding § 14141 investigations, the DOJ will simply notify the agency and close the investigation (DOJ, 2017a).

After identifying the 55 § 14141 investigations that led to a negotiated settlement or technical assistance, police agencies that did not meet the operationalization of a municipal police department were excluded from analysis. Using the BJS (2015) definition of local police, a differentiation between specific types of local police agencies including municipal police, was critical for the purposes of specificity, measurement, and analysis. Accordingly, the term “municipal”, which refers to “those governments designated as cities, villages, boroughs (except in Alaska), and towns (except in the six New England states, Minnesota, New York, and Washington” (U.S. Census: Federal, State, & Local Governments, n.d.), was narrowed to refer only to place-names of cities. The rationale for the operationalization of the term “city” was rooted in the U.S. federalist structure insofar as each state has the legal authority to dictate the terms of municipal incorporation. As such, there is discontinuity between place-names and government structures across the 50 states.
Analyzing jurisdictions that adhere to place-names of “city” standardized the term for consistent analysis. Of the 55 § 14141 investigations leading to a negotiated settlement or technical assistance, 39 involved place-names of cities. Moreover, laws regarding differentiation of the terms “city,” “town,” and “village” vary by state, however, these definitions typically involve; (a) minimum populations, and (b) legal incorporation (U.S. Census, 2013). The current distinction between these terms is one of population size (National League of Cities, 2017), and the specification of principal cities by the U.S. Census Bureau (2012) does just that by defining a principal city as the largest incorporated place with a population of at least 10,000 persons.

Principal cities with a population at least 10,000 persons but fewer than 50,000 are referred to as micropolitan statistical areas, and those with a population at least 50,000 persons are referred to as metropolitan statistical areas (U.S. Census Bureau, 2012). In addition to operationalizing the meaning of the term “city”, the U.S. Census (2012) definition of a principal city was used as the population floor for inclusivity of a municipal police department, which therefore included populations comprised only of micropolitan and metropolitan statistical areas.

Applying the U.S. Census Bureau’s (2012) population standards of a principal city to the 39 § 14141 investigations led to the exclusion of two municipal police agencies due to insufficient population – Villa Rica, Georgia, population 4,134 (U.S. Census, 2000) and Ville Platte, Louisiana, population 7,430 (U.S. Census, 2010b). One dual-jurisdiction police agency serving both a town and city was excluded due to that agency bearing responsibility for police services in two different jurisdictional structures across two adjacent states with different place-names, although classified under one investigation by the DOJ (2017b). Colorado City Marshal’s Office provides police service for Colorado City, AZ – which is designated as a town (U.S. Census, 2010b), and Hildale, UT – which is designated as a city, yet falls below the established
population floor at 2,726 persons (U.S. Census, 2010b). This law enforcement agency was not included in the initial tabulation of municipal police agencies subject to 14141 due to its unique organizational structure and jurisdictional responsibilities.

Two municipal police agencies were included although they did not meet the strict criteria of a § 14141 investigation leading to a negotiated settlement or technical assistance. First, the Columbus Division of Police was the subject of a § 14141 investigation beginning March 1998, with DOJ findings of a pattern or practice of unconstitutional policing made public in October 1999 (DOJ, 2017b). The DOJ then brought a lawsuit against the City of Columbus where it was revealed that both parties agreed to enter into a consent decree (U.S. v. City of Columbus, OH, 1999). This lawsuit was resolved in 2002 at the request of the DOJ without formally entering into a negotiated settlement. This resolution reflects more broadly a negotiated settlement than technical assistance or no finding, as such, it was classified as a negotiated settlement. Similarly, the Chicago Police Department was the subject of a § 14141 investigation beginning December 2015. In January 2017, the DOJ released findings of a pattern or practice of unconstitutional policing, and along with the City of Chicago announced an agreement to enter into a consent decree (DOJ, 2017c). With the changeover in presidential administration in January 2017, both the DOJ and the City of Chicago agreed to discontinue that agreement (Hinkel, Sweeney, & Ruthhart, 2017). The interim agreement of this investigation best reflects a negotiated settlement rather than technical assistance or no findings, and was therefore classified as such. These exclusions, and special inclusions resulted in 37 § 14141 investigations involving 34 discrete municipal police agencies at this stage of the methodology.4

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4 Three municipal police agencies were the subject of a § 14141 negotiated settlement or technical assistance on two separate occasions, these agencies include: New Orleans, LA; Cleveland, OH; & Miami, FL. Hence, 34 police agencies account for 37 § 14141 investigations of municipal police at this stage of the methodology.
**Investigative outcome.**

To reflect the binary outcome of a § 14141 investigation, each municipal police agency was categorized according to their final investigative outcome. Consequently, municipal police agencies under technical assistance were coded as “0”, and negotiated settlement as “1”, thus reflecting municipal police agencies having not been found to engage in patterns or practices of unconstitutional policing to those that have.

**Collection of findings letters and decision rules.**

Upon completion of a § 14141 investigation wherein a pattern or practice of unconstitutional policing has been found, a DOJ issued findings letter is sent to the offending police agency and made publicly available for review. All municipal police agencies subject to a negotiated settlement under § 14141, including the two special cases of Columbus and Chicago, had available findings letters with two exceptions, the Buffalo Police Department, in which a MOA from 2002 and amended MOA from 2007 were available, and Highland Park Police Department, in which a consent decree and MOA were available. Because the findings letters for these two municipal police departments were not available, and were critical data for consistent analysis across all cases, both were excluded from the study.

The DOJ issued multiple findings letters to two different municipal police agencies at different times during the course of a § 14141 investigation. The Detroit Police Department had three findings/technical assistance letters issued by the DOJ over the course of four months before entering into two separate but concurrent consent decrees. In this case I chose to use the third and final findings letter for date of investigation completion but aggregated the findings from the three letters as one for analysis.
The Easton Police Department had four separate findings/technical assistance letters issued by DOJ before entering into a MOA, in this case I decided to use the fourth and final findings letter for analysis, and as the end of investigation date. The rationale for this decision was based on the manifest language used in the findings letter, suggesting that the § 14141 investigation was ongoing; for example, “As you know, the Civil Rights Division of the Department of Justice (‘DOJ’) has been conducting an investigation [emphasis added] of the Easton Police Department pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141” (Cutlar, 2010, p. 1). Additionally, in this case, the fourth and final findings letter best represented the aggregated findings of DOJ’s investigation.

The DOJ’s first investigation of the Cleveland Division of Police began in 2000 leading to two separate findings, one related to the initial investigation with interim findings issued in July 2002, resulting in a negotiated settlement. That investigation was subsequently closed in February 2004, however, during the course of the first Cleveland investigation, The DOJ issued additional findings against Cleveland in June 2003 on a separate matter unrelated to the initial investigation. This second, but concurrent investigation led to a distinct negotiated settlement between the DOJ and Cleveland in May 2004. In this case, since both findings were from the same agency, and the second investigation was concurrent with the initial investigation, both findings letters were included in the analysis, however, in this special case, similar to Detroit, both § 14141 actions against Cleveland were classified as one investigation and analyzed accordingly.

The DOJ initiated a new § 14141 investigation of the Cleveland Division of Police in March 2013 resulting in a negotiated settlement. Since this investigation occurred after DOJ’s first negotiated settlement terminated in 2005, it was classified as a discrete investigation and

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analyzed accordingly. Similar to DOJ’s two § 14141 investigations against Cleveland (2000 & 2013), both resulting in distinct negotiated settlements, the DOJ conducted two discrete § 14141 investigations against Miami (2002 & 2011), the earlier resulting in technical assistance, and more recent, a negotiated settlement. These four § 14141 investigations against two police departments were classified as four distinct municipal police agencies for subsequent measurement and analysis for two reasons. First, the DOJ treated both investigations against Cleveland and Miami as distinct investigations with unique findings. Second, because the two § 14141 investigations against Cleveland and Miami occurred in different decades, the variables related to these investigations reflected changed environments, organizational attributes, and conditions. As such, these two police departments were treated as four distinct agencies for analysis, resulting in 35 investigations of municipal police at this stage of the methodology.

With these above-mentioned exclusions, special cases, and inclusions, the final yield was $n = 24$ investigations leading to a negotiated settlement against municipal police agencies having DOJ issued findings letters available for analysis.

Section 14141 investigations that produced less than reasonable cause to believe that a police agency was engaged in a pattern or practice of unconstitutional policing, but where the DOJ as part of their investigation noted operational deficiencies, systemic problems, or insufficiencies with policies or procedures, a technical assistance letter with embedded findings was issued to that police agency and made publicly available. There were 11 police agencies whose § 14141 investigation ended with a mutual agreement for technical assistance without a resultant negotiated settlement pursuant to that particular investigation.

Of the initial 11 § 14141 investigations of municipal police resulting in technical assistance, two police agencies were the subject of a second § 14141 investigation at a later time.
For both the New Orleans Police Department and Miami Police Department, this second § 14141 investigation resulted in a negotiated settlement. Since both of these second investigations were treated as discrete from their initial investigation by the DOJ, and resulted in a different outcome from their first § 14141 investigation, New Orleans and Miami were treated as investigations unique to technical assistance outcomes. This resulted in a pool of 11 investigations of 11 police agencies.

Findings/technical assistance letters for these 11 municipal police agencies were publicly available and able to be collected with two exceptions – New Orleans Police Department and Eastpointe Police Department. Concerning New Orleans, a § 14141 action resulting in technical assistance from 1996 was verified through a DOJ issued technical report (DOJ, 2010), however, as reported by Childress (2015), the DOJ has indicated that they are unable to locate any specific documents related to this investigation. As well, my search of DOJ archives revealed no documents or memorialized history of this investigation other than verification of its occurrence in a DOJ document (DOJ, 2010). Concerning the Eastpointe Police Department, a DOJ technical report (DOJ, 2010) indicated that the Eastpointe investigation resulted in a technical assistance letter, however, DOJ archives, and secondary sources (Childress, 2015; Rushin, 2017) used to triangulate the data did not reveal the existence of a technical assistance letter or memorialization of the investigation. Since the existence of these letters was critical to consistency and not available, both of these investigations were excluded from analysis.

These exclusions yielded \( n = 9 \) municipal police agencies investigated by the DOJ under § 14141 resulting in technical assistance with findings letters suitable for analysis. Including investigations leading to a negotiated settlement, and special consideration given to the two police agencies with available findings letters subject to two distinct § 14141 actions (Cleveland
investigations involving municipal police with findings letters suitable for inclusion and analysis. The complete list of all municipal police agencies included in this study can be found in Appendix A.

**Investigative output.**

After collection of all $N = 33$ investigative findings letters of municipal police, the second dependent variable was collected. DOJ’s investigative output, that is, the number of pages in DOJ’s publicly issued findings letters was recorded as a continuous variable for each investigation. Due to the issuance of multiple findings letters in some of the $N = 33$ investigations of municipal police, three cases required special consideration. First, the Detroit Police Department was the subject of multiple findings letters during DOJ’s investigation, and since these letters covered different qualitative aspects of Detroit’s operations, they were classified together as one investigation for the purposes of analysis.

To maintain analytical consistency, the investigative output (number of pages) from the § 14141 action against Detroit was aggregated and recorded as one investigative output. Similarly, the first investigation against the Cleveland Division of Police (2003) yielded two separate findings and consent decrees, and since these two investigations ran concurrently, both findings letters were analyzed in the aggregate. Consequently, the output from the DOJ investigation of Cleveland from 2003 is the aggregation of both letters. Conversely, the Easton Police Department was the subject of multiple findings letters from the DOJ over a five-year period. Differentiated from the output against Detroit and Cleveland, each investigative output from DOJ against Easton was not aggregated for analysis, only the final letter was analyzed and its
output recorded since this final § 14141 investigative findings letters best represented the aggregation of DOJ’s findings from previous investigations and letters.

**Qualitative Data Integration**

In the embedded research design, one type of data supports the other type of data. This study is qualitatively driven, with the quantitative data providing descriptive and analytical support. As such, the initial step in analysis involved a qualitative review of DOJ’s findings letters.

Content analysis is an analytical technique that uses a set of procedures to make valid inferences from text (Weber, 1990). This technique can produce qualitative, quantitative, or both types of data. The most common approach to content analysis is thematic analysis (Franzosi, 2004). Thematic analysis has been described as “a method for identifying, analyzing and reporting patterns (themes) within text” (Braun & Clarke, 2006, p. 79) by coding data into segmented and categorized themes (Ayres, 2008).

Thematic analysis was performed on all findings letters involving a municipal police agency subject to a § 14141 negotiated settlement or technical assistance. Each findings letter was analyzed for latent themes related to unconstitutional policing; the search for which “goes beyond the semantic content of the data…to identify or examine the underlying ideas, assumptions, and conceptualizations – and ideologies – that are theorized as shaping the semantic content of the data” (Braun & Clarke, 2006, p. 84). As well, findings of deficient policies, focusing events, and the presence or absence of an insufficient EIS were recorded and categorized. These types of data are referred to as manifest content, described by Potter and Levine-Donnerstein (1999) as “that which is on the surface and easily observable, such as the appearance of a particular word in a written text” (p. 259).
Thematic analysis was the qualitative methodological choice in this study for three specific reasons: (a) DOJ’s findings are based on the failure of a police agency to practice “constitutional policing” – the interpretation of which lacks specificity and clarity. Latent thematic analysis allows for the identification, and exploration of organizational behaviors that give meaning to that term and the underlying ideas behind it; (b) thematic analysis allows the researcher to identify with specificity, unacceptable patterns or practices within municipal police departments, and to quantify, classify, and analyze those patterns and practices, and (c) to compare DOJ’s § 14141 actions between police agencies found to engage in patterns or practices of unconstitutional policing as a counterpoint to agencies with problematic practices or policies that have not risen to the level of a pattern or practice of unconstitutional policing.

The thematic analysis and related coding were conducted as solo research. Although uncommon, there is precedent for solo thematic coding in dissertation research and published reports (Fereday & Muir-Cochrane, 2006). Essential to all interpretive research, but specifically to solo research is establishing a “process to demonstrate credibility and trustworthiness” (Fereday & Muir-Cochrane, 2006, p. 81). Such a process of establishing trustworthiness in thematic analysis has been put forth by Nowell, Norris, White, and Moules, (2017), this involves establishing: (1) credibility; (2) transferability; (3) dependability; (4) confirmability; and (5) audit trails. Although these scholars indicate that “there is not clear agreement about how researchers can rigorously apply the method [of thematic analysis]” (Nowell et al., 2017, p. 2), this five-step process provided a template for establishing trustworthiness and credibility. As such, their five-step process was used throughout the thematic analysis.

Procedurally, in conducting the thematic analysis, I adhered to the step-by-step outline recommended by Braun and Clarke (2006). This included the following six-steps: (1) familiarize
yourself with the data; (2) generate initial codes; (3) search for themes; (4) review themes; (5) define and name themes; and (6) produce the report. The initial review was conducted manually on paper copies; beginning with step two, I digitized all documents, and used Excel Office Professional Plus 2016 for code and extract organization, as well as thematic review.

**Familiarize yourself with the data.**

As recommended by Braun and Clarke (2006), after collection of the complete data set, I read through all 1,356 pages of text contained therein, making notations on the data items, and searching for patterns and meanings across the entire data set. As suggested by Nowell, et al., (2017), I engaged with the data in a prolonged manner, as demonstrated, initial review of the data began in early March and continued through late June. To memorialize this process, work towards code and theme development, and help establish an audit trail, a reflective journal was kept throughout the preliminary coding process with thoughts, reflections, and ideas for triangulation. Preliminary codes with examples were recorded on the data and in the reflective journal heuristically. All raw data with initial notes were kept secure and well-organized in archives.

**Generate initial codes.**

The approach for coding the latent data was inductive; that is, “without trying to fit it into a preexisting coding frame” (Nowell et al., 2017, p. 8). During this second phase, preliminary codes were developed from within-and across-case comparisons as suggested by Ayers (2008), and memorialized agency by agency through the creation of a preliminary scheme with ideas gleaned from the first phase of analysis. This was done by reviewing all 1,356 pages of the data set and accompanying notes contained therein identifying terms, conditions, findings, and
conclusions from the data that could serve as appropriate codes for subsequent analysis and theme development.

At this stage, the development and identification of codes was still preliminary but oriented towards specificity for each extract. This preliminary process produced 159 unique codes applied to 1,034 coded extracts for the \( n = 24 \) investigative findings letters. The reason for the high number of codes during this phase was in keeping with Braun and Clarke’s (2006) suggestion that the researcher should “code for as many potential themes/patterns as possible…code individual extracts of data in as many different ‘themes’ as they fit into – so an extract may be uncoded, coded once, or coded many times” (p. 89). As well, the duplicative nature of many of the codes (e.g. Investigations-internal-partiality; Investigations-internal-failure to conduct; Investigations-internal-bias, etc.) facilitated the production of the high number of preliminary codes arranged around similar findings. The same process of preliminary coding was conducted for the \( n = 9 \) investigations leading to technical assistance yielding 69 unique codes applied to 359 data extracts.

The next step was to review, refine, and consolidate the preliminary codes, and continue the process of establishing trustworthiness (Nowell, et al., 2017), which for this step included; development of a coding framework, ongoing documentation, reflexive journaling, triangulation, and the use of “professional experience” (Ayers, 2008, p. 868). Each unique code was placed within a broader code through the creation of coding framework with exemplar extracts, descriptions, and references. This process yielded 39 unique codes for the entire dataset: See Table 1 for an example of the coding framework. The complete coding framework that resulted from this step for the thematic analysis can be found in Appendix B.
Table 1  
*Preliminary Coding Framework Exemplar Extract – Complaint Deficiencies.*

<table>
<thead>
<tr>
<th>Code</th>
<th>Description of code</th>
<th>Exemplar extract</th>
<th>Triangulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint deficiencies</td>
<td>Describes deficiencies in policies, procedures, practices, and systems specific to the civilian complaint making process; not the internal investigation of those complaints.</td>
<td>CDP’s civilian complaint system, as a whole, is disorganized and ineffective. CDP was only able to produce a fraction of the case files we requested, and the files produced were often incomplete and lacked basic information about dispositions and outcomes. CDP does not have systems in place to track its performance or decision-making regarding civilian complaints (Gupta &amp; Dettelbach, 2014, p. 48).</td>
<td>Rushin (2017) Walker (2017)</td>
</tr>
</tbody>
</table>

Similar to development of the preliminary codes, code development at this stage was inductive, however, I regularly referred to prior-research to triangulate and serve as a consistency check a posteriori. Exclusive of DOJ documents and technical reports, four publications exist that address specific and summary findings of § 14141 actions that proved useful in further code development, and were used to cross-reference and triangulate my analysis (Childress, 2015; Rushin, 2017; Walker, 2017; Douglass, 2017). Additionally, as described by Boyatzis, (1998) reliability of codes can be demonstrated as “consistency of judgement over time, events, and settings…when a person makes the same observation at two different times or in two different settings” (p. 147). This research required consistency of judgment over different time periods, and across investigative findings. Considering the $N = 33$ investigations involved 33 municipal police agencies from 1994 to 2017, there was substantial cross-over in themes across investigations, and between investigative outcomes. The development of a preliminary codebook and reflective journaling served to demonstrate consistency of judgement across cases.
Searching for themes.

Step three analysis began after all preliminary codes were reviewed and collated into broader codes. The goal of this phase was to identify “candidate themes” (Braun & Clarke, 2006, p. 89) by “sorting the different codes into potential themes and collating all the relevant coded extracts with the identified themes” (Braun & Clarke, 2006, p. 89). Since this process was inductive, I did not attempt to fit the codes into any type of preexisting thematic frame or theory, and ensured that the candidate themes were closely linked with the data as recommended by Nowell, et al., (2017). Detailed notes were kept throughout this process in the reflective journal to maintain trustworthiness (Nowell, et al., 2017).

This process produced 18 candidate themes, which included a “miscellaneous” theme for coded extracts that did not yet fall within a theme. Continuing to follow the methodology described by Braun and Clarke (2006), I organized the candidate themes into theme-piles and creating a visual representation of the themes within the reflective journal. This was an iterative and reflective process in which the codes from each candidate theme were reviewed and finely analyzed to ensure appropriate theme association: See Table 2 for an example of the output of this process.

<table>
<thead>
<tr>
<th>Code</th>
<th>Candidate Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deficient accountability systems</td>
<td></td>
</tr>
<tr>
<td>Complaint deficiencies</td>
<td>Lack of accountability</td>
</tr>
<tr>
<td>Deficient internal investigations</td>
<td></td>
</tr>
<tr>
<td>Insufficient individual accountability</td>
<td></td>
</tr>
</tbody>
</table>

Table 2
Thematic Analysis Candidate Theme and Code Association.
Reviewing themes.

During this step, analysis and refinement of the 18 candidate themes began with a review of the candidate themes with necessary revisions. This process was in keeping with established practices of data reduction for thematic analysis (Boyatzis, 1998; Braun & Clarke, 2006; Nowell, et al., 2017) wherein codes that formed a coherent pattern were grouped as themes or subthemes, and those that did not were reviewed to ensure adequate support within the dataset. As recommended by Braun and Clarke (2006), review and analysis took place at two levels, the first involved rereading all the coded data within each associated theme to ensure consistency, coherence, “and clear and identifiable distinctions between themes” (p. 91). This first level of review resulted in some recoding, modification, and refinement as was necessary and expected (Braun & Clarke, 2006).

The second level of analysis during this phase involved a review of all codes within associated themes across the dataset to ensure consistency of interpretation and robustness for final theme consideration. The process of returning to the data was in keeping with trustworthiness criteria (Nowell, et al., 2017). During the analysis it became clear that some candidate themes were more suitable to subthemes, while others lacked support across the entire dataset for theme or subtheme consideration. In addition, two new codes were developed (King, 2004) from the “miscellaneous” theme, one of which became its own theme, the other a subtheme.

This iterative and reflective process yielded a total of 8 themes with 18 associated subthemes from the 1,356 pages of data, and 159 preliminary codes. The reduction of data cohered to Attride-Stirling’s (2001) suggestion that during thematic analysis, the data should become more manageable and succinct.
Defining and naming themes.

Following Braun and Clarke’s (2006) methodology, this step began by conducting a detailed analysis of each theme, which was done both qualitatively and quantitatively. For the qualitative portion, each theme, subtheme, and associated coded extract were reviewed for internal consistency by referring to DOJ’s (2017a) *The Civil Rights Division’s Pattern and Practice Reform Work: 1994-Present* report a posteriori by comparing summary reports to thematic findings. Similar to the procedure during preliminary code development, a qualitative analysis write-up for each theme and subtheme was memorialized with examples from the dataset: See Table 3 for an example of the output of this process. This same process, with relevant interpretation and memorialization, was completed for all eight themes, and 18 subthemes. A full and finalized theme and subtheme codebook can be found in Appendix C.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Interpretation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational orientation and culture</td>
<td>-</td>
<td>Organizational outlook and enduring legacy. Widespread and endorsed strategies and practices geared towards a specific end. Can be characterized by legitimate means towards illegitimate ends.</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Focus on enforcement, activity, and arrests</td>
<td>-</td>
<td>FPD supervisors are more concerned with the number of citations and arrests officers produce than whether those citations and arrests are lawful or promote public safety. (DOJ, 2015, p. 22)</td>
</tr>
</tbody>
</table>

The quantitative analysis of each theme involved frequency scoring by counting the presence or absence of each theme and subtheme for the dataset (Boyatzis, 1998). To facilitate different types of analyses, the $n = 24$ negotiated settlements, and $n = 9$ technical assistance
letters with thematic findings were then reviewed and analyzed according to, (1) temporal order by year at first presence to analyze over-time changes in § 14141 findings, (2) highest to lowest frequency observations to understand any hierarchy of meaning within the data (Braun & Clarke, 2006), and by (3) simple scaling of the subthemes and themes by frequency counts (Boyatzis, 1998).

After quantitative analysis of each theme was completed, each theme, subtheme and coded extract were reviewed twice, and scrutinized as recommended by King (2004) to aid in ensuring trustworthiness. The final phase, producing the report (Braun & Clarke, 2006) was the final output of this process, and is included in the thematic analysis section of this dissertation.

**Quantitative Data Integration**

The quantitative data were collected from a variety of sources contingent to the type of data sought and supporting theory. The following sections identify the sources of those data, methodology in collection, and coding of applicable variables.

**Disjointed incrementalism variables.**

Disjointed incrementalism variables were collected from the following open sources: DOJ issued findings letters, DOJ’s website archive, and DOJ technical reports (DOJ, 2010; DOJ, 2017a; DOJ, 2017b; DOJ, 2018), news reports (Childress, 2015), and scholarly publications (Rushin, 2017). The collection of variables from the preceding sources is described below.

**Investigative generation.**

DOJ § 14141 investigations of municipal police were categorized according to the generation in which the investigation commenced. As indicated by the DOJ (2017a), investigations through 2005 are categorized as first-generation, and thereafter, have been categorized as second-generation. The commencement date of each § 14141 investigation was gathered from multiple and triangulated sources for accuracy (Childress, 2015; DOJ, 2010; DOJ,
This generational dichotomy resulted in \( n = 16 \) first-generation, and \( n = 17 \) second-generation § 14141 investigations of municipal police. To reflect the binary distinction between first and second-generation investigations, first-generation investigations were coded as a “0”, and second-generation as “1”.

**Investigation length.**

The length of a § 14141 investigation was determined by the reported and documented month and year that an official § 14141 action was commenced using multiple, and triangulated sources to verify initiation date (Childress, 2015; DOJ, 2010; DOJ, 2017a; DOJ, 2017b; Rushin, 2017). The variable investigation *length* was calculated from this date to the identified month and year when a final findings letter was issued by the DOJ. Investigation *length* was measured as the number of total months between these two dates. All \( N = 33 \) § 14141 investigative findings letters had the date of issuance identified on their first page with three exceptions; Pittsburgh, Columbus, and Washington D.C. For these cases, I was able to obtain the findings letter issuance date through other primary (DOJ, 2010) and secondary sources (Childress, 2015; Rushin, 2017), and used that date accordingly. Both the investigation commencement date, and findings letter issuance date for all \( N = 33 \) investigations can be found in Appendix A.

**Deterrence variables.**

Deterrence variables were collected from a variety of open source documents and public archives including municipal police employment data from the Federal Bureau of Investigation, Uniform Crime Reporting – Crime in the United States *Law Enforcement Personnel* report for each year that the DOJ initiated an investigation against a police agency. Population statistics were collected from the U.S. Census Bureau website. Both sources served to assist in the creation of other deterrence variables including *size* and *percent non-white*. The methodology for collection and coding is described below.
**Resources.**

The nearest decennial census year for each of the 33 § 14141 investigations was used to create a ratio of total sworn personnel per 1,000 population as a measure of police resources. This process led to the creation of the variable *resources*, and is the same ratio reported in the UCR *cities and counties group by size* reports (FBI-UCR, 1994-2015). The variable *resources* was measured at the ratio level, and further as a binary variable. Since 2.8 sworn police officers per 1,000-person population was the mean of the study population, the variable *resources* was coded as “0” for municipal police agencies with fewer than 2.8 sworn employees per 1,000-person population, and “1” for those with 2.8 or greater.

**Size.**

Accounting for the variable *size* of a municipal police agency involved reducing the number of sworn employees by dividing the total number of sworn employees by 10 to make the data more manageable, facilitate interpretation, categorization, and analysis. *Size* of a municipal police agency was treated as both a continuous, and categorical variable, depending on the type of analysis conducted. To assign police agencies into categories with validity, I used seven of BJS’ (2015) *Local Police Departments, 2013: Personnel, Policies, and Practices* categories accordingly; (category) size of police agency by full-time sworn employees: (1) 10-24; (2) 25-49; (3) 50-99; (4) 100-249; (5) 250-499; (6) 500-999; (7) 1,000 or more. BJS (2015) accounts for police agencies with 0-1, 2-4, and 5-9 sworn employees, however, these categories were not included since these sized agencies had no representation in the study population.

For analysis as a binary predictor variable, the seven categories of the variable *size*, were collapsed into two: Categories 1-5 which include municipal police departments with up to and including 499 sworn employees were coded as “0”. The remaining two categories, 6-7, which include municipal police agencies with 500 or more sworn employees were coded as “1”. This
binary categorization was chosen because municipal police agencies with 500 or more sworn employees represent 1% of all local police agencies in the United States (BJS, 2015). As such, the binary distribution of the variable size by code was “0” for the bottom 99% of local police agencies, and “1” for the top 1% of local police agencies based on the number of sworn employees.

**Population group.**

BJS’ (2015) *Local Police Departments, 2013* report served as a reference for categorization of the variable population group. Since the inclusion of a municipality for this dissertation had to meet the 10,000-person threshold, two of BJS’ population categories were excluded since their populations fell below the minimum threshold for operationalization as a municipality. The remaining seven population categories were assigned accordingly; (category) population served at time of nearest census year: (1) 10,000-24,999; (2) 25,000-49,999; (3) 50,000-99,999; (4) 100,000-249,999; (5) 250,000-499,999; (6) 500,000-999,999; (7) 1,000,000 or more.

For analysis as a binary predictor variable, the seven categories of the variable population group were collapsed into two: Categories 1-4 which include municipalities with up to 249,999 persons were coded as “0”. The remaining three categories, 5-7, which included municipalities with 250,000 or more persons was coded as “1”.

When coded as a binary variable, both size and population group reflect their aggregated categories that are less than 1% of all local police. That is, BJS (2015) indicates that 0.9% of all local police agencies in the U.S. have 500 sworn employees or more (categories 6 & 7), and 0.8% of all local police agencies in the U.S. serve populations of 250,000 or more persons (categories 5, 6, & 7). Adding an additional category to either variable makes the percentage of police agencies categorized as a binary variable inconsistent. Hence, the binary codes of “0” and
“1” reflect a dichotomy that differentiates the aggregation of categories representing 99% of local police, from 1% of local police for both variables.

**Percent non-white.**

Population statistics were collected from the U.S. Census Bureau’s website. Specifically, population data from each municipality reflected the nearest decennial census year to the date that a § 14141 investigation was initiated against a particular police agency. These data were collected in the form of total population, and percent population non-White by subtracting the White-alone percentage from 100. Since Latino or Hispanic origin are considered ethnicities, and not races (U.S. Census Bureau, 2010a). I created a demographic variable municipality percent non-white by calculating the non-White population of each municipality from the Not-Hispanic or Latino category of individuals who self-identified as White-alone in each census report. This was done to tease out the White population from the Hispanic and Latino population who identify themselves as racially White, but ethnically Latino or Hispanic. The variable percent non-white, then, reflects the census demographics of a municipality that self-identifies as any race or ethnicity but for White-alone. This variable was then coded as “0” for municipalities that were less than 54% non-White, and “1” for municipalities that were 54% or greater non-White, reflecting the mean percent non-white in the study population.

**Multiple streams variables.**

Multiple streams variables were collected from various open-sources including DOJ issued findings letters, news search queries, polling data, and governmental archives. The methodology, collection, and coding of all variables for multiple streams data is described in the following section.
Problem stream.

The problem stream has three distinct elements each having a different operationalization, and as such three sources were used for relevant analysis. All of the following data were retrieved from open sources:

(1) Focusing events: To determine the presence or absence of a focusing event in the study population, I established one condition and three discrete criterion – of which one must have been met – to determine applicability as a focusing event for a particular investigation.

First, to better understand the relationship between focusing events and DOJ’s decision-making relative to a § 14141 investigative outcome, the condition required that the event(s) occurred within three years prior to the commencement of the established § 14141 investigation date (Childress, 2015; DOJ, 2010; DOJ, 2017a; DOJ, 2017b; Rushin, 2017).

Second, one of following three required criterion must have been met for categorization; (a) a focusing event must have been specifically referenced in a DOJ findings document, for example: “Since the August 2014 shooting death of Michael Brown, the lack of trust between the Ferguson Police Department and a significant portion of Ferguson’s residents, has become undeniable” (DOJ, 2015, p. 6); (b) the focusing event(s) are alluded to in DOJ’s findings document but not specifically cited, for example: “There have been a number of widely publicized incidents involving use of force by the police, leading to understandable public concern” (Smith & Durkan, 2011, p. 3); or (c) an event is not specifically mentioned or alluded to in an investigative findings document but publicly reported in such a way that in the aggregate, represents a type of singular event, for example: “Federal official first looked at Schenectady police after four of its officers were sent to prison on federal drug charges” (Childress, 2015, Schenectady Police Department, para. 1).
Using this methodology, 14 of the 24 § 14141 investigations resulting in a negotiated settlement had attributable focusing events, and 4 of the 9 § 14141 investigations resulting in technical assistance had attributable focusing events. Focusing events for each investigation were coded as “0” for absence, and “1” for presence, by municipal police agency.

(2) Indicators – early intervention systems are designed to track and monitor individual, and organizational performance (DOJ, 2017a). Identification and analysis of municipal police agency deficiencies with EISs have been a consistent feature of DOJ’s § 14141 investigative findings over the life-course of the provision. The DOJ has prioritized addressing issues related to EISs in municipal police agencies because these systems are designed to identify aberrant and problematic police behavior to “prevent patterns of misconduct from emerging” (DOJ, 2017a, p. 31) while providing an overall assessment of a law enforcement agency (King & Dassin, 2009). Although EISs vary according to the needs and size of a police department (Walker, Milligan, & Berke, 2005), certain components are considered core to all police agencies, and are designed to capture generalized misconduct, therefore, make up an aggregate of indicators in the problem stream, these components include, but are not limited to; rates of use of force, citizens’ complaints, civil litigation, and use of sick time (DOJ, 2017a). As such, an adequate and functional EIS served as a measure for the variety of indicators in the problem stream.

As part of the analysis of the § 14141 findings letters, I searched and identified when present, manifest content that specifically referred to a municipal police agency having insufficiencies, deficiencies, or lack of an EIS. Police agencies in which the DOJ did not address EIS as problematic were categorized as “0”, for absence of an identified problem, and where the DOJ specifically referred to a police agency as having a problematic EIS as “1” for presence of
an identified problem. This methodology resulted in 20 of 24 police agencies under negotiated settlement with noted issues related to EIS, and 8 of 9 police agencies under technical assistance with noted issues related to EISs, and therefore an inadequate indictor system.

(3) Feedback: *ProQuest Majors Dailies* search of the five most popular and influential news organizations in the United States, including: *The New York Times, The Washington Post, Los Angeles Times, The Wall Street Journal, and The Chicago Tribune* for reports related to municipal police agency misconduct and corruption. Using national media reporting on crime, terrorism, and other criminal justice issues as a methodology to analyze and discern public attitudes has been used scholars such as Enns (2016), and Worrell (1999). Indeed, Rushin (2017) acknowledges that “one way to judge the perceived importance of legal measures is to analyze media coverage” (p. 95), and this technique is well suited for that purpose since the “DOJ has relied on media coverage of police misconduct” (Rushin, 2017, p. 104) to guide decisions regarding which police agencies to investigate.

Using the name of the municipality as the primary search term, along with the secondary term, “police”, I identified all news articles related to a police agency within the three-year-period prior to the established date of a § 14141 investigation. The term “police” was included in the secondary search term as a modifier to better distinguish news articles related to municipal police rather than other government agencies. Since § 14141 investigations vary in duration, and may take over a year (DOJ, 2017a), a standardized search period for all municipal police agencies of three years prior to the announcement date of a § 14141 investigation was utilized coinciding with the timeframe for identification of a focusing event.

After the initial search was conducted, ProQuest’s sorting feature allowed me to filter through, and include news reports related to each municipal police agency subject to § 14141 by
geographic location, and by terms commonly associated with police malfeasance and
dysfunction. These filterable search terms varied from one news search to another due to the
nuances, details, and intricacies of the misconduct related to each police agency and associated
news story, however, when filtering I searched for, identified, and tagged for inclusion, any
ProQuest subject that explicitly mentioned, or is commonly associated with police misconduct,
unlawful police practice, police brutality, or police corruption. Some examples of ProQuest
subjects that were tagged for search inclusion; false arrests, civil liberties, firings, official
misconduct, review boards, shootings, scandals, litigation, investigations, obstruction, arrests,
raids, minorities, firearms, deadly force, search and seizure, protests, riots, corruption,
misconduct, brutality, and excessive force.

This search technique produced a final yield of news articles in the five major
newspapers that met the following three criteria; three-year timeframe prior to the initiation of an
official § 14141 investigation, name of the municipality and police agency under investigation,
and news articles with applicable subject terms. I then reviewed the final yield of articles to
identify any news reports implicating a specific municipal police agency in misconduct,
brutality, corruption, or unlawful practices.

Using this methodology, 17 of the 24 § 14141 investigations resulting in a negotiated
settlement had feedback, and 4 of the 9 § 14141 investigations leading to technical assistance had
feedback. Municipal police agencies without national news media feedback were coded as “0”,
and those with feedback were coded as “1”.

(4) Accompaniment:

The accompaniment variable was not collected from a public source, per se, rather it was
the measure of interdependence between the MS variables focusing events and feedback.
**Policy stream.**

Manifest content from the findings letters, or what Braun and Clarke (2006) refer to as semantic data, exists at the explicit level. As part of the thematic analysis, all findings letters from the $N = 33$ § 14141 investigations were reviewed and analyzed for manifest content describing insufficient, deficient, or necessary but non-existent policies. Once identified, these data were recorded and categorized as present or absent for each municipal police agency. After identification and recording, five policy clusters were formed using a process described by Boyatzis (1998). The resultant policy clusters were then reviewed a posteriori against previous research (Childress, 2015; Douglass, 2017; Rushin, 2017; Walker, 2017), and DOJ publications (DOJ, 2010; DOJ, 2017a; DOJ, 2017b) to aid in ensuring trustworthiness (Nowell, et al., 2017). Each of the five policy clusters contained multiple policies specific to each agency under § 14141 investigation, with cross-over between different findings letters and police agencies. For each police agency under investigation, noted policies within the cluster dictated if the cluster was rated as present or absent. In keeping with this thematic clustering methodology (Boyatzis, 1998), frequency, intensity, or scaling were not calculated. An example of the output for the variety of polices clustered under the variable *use of force policies* can be found in Table 4.

<table>
<thead>
<tr>
<th>Policy cluster</th>
<th>Included policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of force policies</td>
<td>Use of force – general</td>
</tr>
<tr>
<td></td>
<td>Use of force – pepper spray</td>
</tr>
<tr>
<td></td>
<td>Use of force – reporting</td>
</tr>
<tr>
<td></td>
<td>Use of force – chokeholds</td>
</tr>
<tr>
<td></td>
<td>Use of force – canines</td>
</tr>
<tr>
<td></td>
<td>Use of force – investigations</td>
</tr>
<tr>
<td></td>
<td>Use of force – firearms</td>
</tr>
<tr>
<td></td>
<td>Use of force – tasers</td>
</tr>
</tbody>
</table>
This process resulted in the following five distinct policy clusters; (a) use of force policies; (b) stop, search, and arrest policies; (c) civilian complaint system policies; (d) internal discipline system policies; and (e) response to special populations policies. With the exception of the special population cluster, all policy clusters represented specific, and explicitly named policies by the DOJ in need of reform. As such, four of the five policy clusters did not require special criteria or definitions for inclusion; mere reference as a policy deficiency in a § 14141 investigative findings letter was enough to satisfy inclusion. An example of mere reference to an internal discipline policy deficiency from the *Austin Police Department*:

We recommend that the APD complete the development of a discipline matrix….Such a matrix should detail the levels of discipline available – e.g., retraining, verbal counseling, letters of counseling, forfeiture of leave time, suspension, demotion, and termination – to address violations of policy. The matrix should specify for each type of policy violation what level of discipline shall be utilized for sustained violations of policy. (Cutlar, 2008, p. 39)

Special populations were defined using federal policy language that specifies protection of rights of identified groups of individuals on the basis of race, ethnicity, gender, LGBTQ status, individuals in mental health crisis, and juveniles (DOJ, 2017a). Early intervention system policies were excluded from the policy cluster analysis since the quantification of this variable was included in the problem stream, operationalized as indicators.

For the purposes of clarity and efficiency; insufficient, deficient, or non-existent polices, as indicated in this section, are referred to as “policy deficiencies” or “deficient policies” throughout the remaining dissertation. Municipal police agencies without noted deficient policies
were coded as “0” for each policy cluster, and agencies where deficiencies were noted for each policy cluster were coded as “1”.

**Political stream.**

The conceptualization of the political stream involved developing a measure of the national mood towards the police, and tracking administrative turnover in the federal government. Since Kingdon (1995) broadly describes the national mood as “changes in public opinion…in discernable ways” (p. 146), three specific questions related to attitude towards the police, and criminal justice system were collected and aggregated to develop a composite measure of the national mood regarding the police. Although Gallop Inc. asks and reports a specific question related to confidence in the police, prior research using time-series polling data to draw inferences regarding criminal justice topics suggests that aggregating various polling measures can produce a more valid and reliable dimension of a criminal justice construct then a single measure (Enns, 2016).

Guided by scholarship measuring the construct of confidence in the judicial system by Enns (2016), I identified six Gallop Inc. questions related to public attitudes regarding the police and criminal justice system. Although not a direct question related to police, the question regarding confidence in the criminal justice system was included since numerous § 14141 investigations noted deficiencies related to a municipal police agency’s interaction with the larger criminal justice system as a root cause of organizational police dysfunction (e.g. Baltimore, Cleveland, Ferguson, New Orleans, Meridian, Missoula, etc.). Of the six polling questions, three were asked intermittently during the life-course of § 14141, therefore, excluded from analysis. The three remaining questions asked by Gallop Inc. that were used to form a composite measure of the national mood towards the police were:
• “Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one – a great deal, quite a lot, some or very little? The police” (Gallop Inc., 2018a, p. 22).

• “Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one – a great deal, quite a lot, some or very little? The criminal justice system” (Gallop Inc., 2018a, p. 21).

• “Please tell me how you would rate the honesty and ethical standards of people in these fields – very high, high, average, low or very low. Police officers” (Gallop Inc., 2018b, p. 31).

Of the three polling questions, both confidence in the police, and honesty were asked and reported every year over the life-course of § 14141, however, the question related to confidence in the criminal justice system was asked every year from 1994 to 2017 with the exception of 2001. To make up for these missing data, I used K-nearest neighbors mean imputation (Schmitt, Mandel, & Guedj, 2015) for each of the four possible responses from the 2001 Gallop Inc. question. This method was chosen over using overall-mean imputation, other imputation methods, or deletion since the use of polling data for the national mood was intended to identify over-time changes in support, not an aggregated measure of support for the criminal justice system.

Although four categories of responses were asked for all three questions, Gallop reported an additional category of “none” for all three questions (Gallop Inc., 2016; Gallop Inc., 2018a; & Gallop Inc., 2018b). The five categories of responses were then collapsed into three, since this is the method that Gallop Inc. (2016) uses to report their social series data. As such, responses for the three questions were aggregated into positive responses (very high, high, a great deal & quite
a lot), neutral responses (some & average), and negative responses (low, very low, very little & none).

The three Gallop Inc. questions and their positive responses, conceptualized as an over-
time measure of the national mood towards the police were tested for consistency using
Cronbach’s alpha, $\alpha = .717$. The responses for each of the three questions were aggregated into a
single measure for positive, neutral, and negative national mood. Using this methodology, the
overall average positive national mood in attitude towards the police was 46% throughout the life
course of § 14141. Years in which the national mood was higher were coded as “1”, and years in
which the mood was lower were coded as “0”. There were four years in which the average
positive mood was the historical average of 46% (2006, 2011, 2013, & 2016). For these years, I
determined the code based on changes in the negative mood, that is, when the negative mood
was up and neutral was down, these years were coded as negative (2013 & 2016), and when
negative mood was down and neutral was up, these years were coded as positive (2006 & 2011).
Considering the dichotomous nature of the data after coding, and in the context of attempting to
capture over time changes in the positive national mood towards the police, I determined to
classify the national mood for the four years at historic average according to their trend to more
precisely capture the mood than categorizing the historic average by an absolute binary cutoff.

Data regarding administrative turnover, conceptualized as the officeholder of Presidency
of the United States and their political party, were collected from the University of Virginia,
Miller Center, The Presidency archive. For the time period from 1994 to 2017, each president’s
inauguration, and end date were cross-listed against DOJ’s § 14141 investigation commencement
date. Each of the $N = 33$ investigation commencement dates that fell within a president’s tenure
was attributed to that president and their political party. Section 14141 investigations that were
commenced under a Democratic administration were coded as “0”, and those commenced under a Republican administration as “1”.
Thematic Analysis

Descriptive Statistics

Descriptive statistics are provided in Table 5 for variables related to the $N = 33$ investigations of municipal police. These data include variables measuring the police organization (size & resources), the municipal environment of the police agency (population category & percentage non-white), and DOJ investigative characteristics (length of investigation & investigative output). The descriptive statistics are presented as aggregated into a study population, and disaggregated by investigative outcome, revealing noteworthy information related to § 14141 investigations of municipal police, including the following points, many of which are further explored in this study:

- The mean size of municipal police departments appears to substantially differ based on investigative outcome.
- Mean population category, and police resources appear to substantially differ based on investigative outcome.
- Larger population categories of municipal police, and greater resources appear positively related.
- The distribution of municipal police agencies by size is highly positively skewed, and to a greater extent for police agencies under negotiated settlement than under technical assistance.
- Length of an investigation, and percentage of population non-white do not appear to vary based on investigative outcome.
- The range of municipal police departments, by size, appears substantially larger for agencies under negotiated settlement than those under technical assistance.
- Investigative output appears to differ based on investigative outcome.
Table 5
*Descriptive Statistics – Study Population and by Investigative Outcome.*

<table>
<thead>
<tr>
<th>Population</th>
<th>Variable</th>
<th>$M$</th>
<th>$SD$</th>
<th>$Mdn$</th>
<th>$Mode$</th>
<th>Min</th>
<th>Max</th>
<th>Skew</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>N = 33</strong></td>
<td>Population category</td>
<td>4.2</td>
<td>1.88</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>7</td>
<td>-0.4</td>
</tr>
<tr>
<td></td>
<td>Percentage non-white</td>
<td>54</td>
<td>25.64</td>
<td>58</td>
<td>33.1</td>
<td>9</td>
<td>97</td>
<td>-0.05</td>
</tr>
<tr>
<td></td>
<td>Size (sworn x 10)</td>
<td>152.3</td>
<td>257.21</td>
<td>99.9</td>
<td>9.9</td>
<td>1.6</td>
<td>1203.4</td>
<td>3.11</td>
</tr>
<tr>
<td></td>
<td>Resources (sworn per 1,000)</td>
<td>2.8</td>
<td>1.2</td>
<td>2.6</td>
<td>-</td>
<td>0.6</td>
<td>6.1</td>
<td>0.75</td>
</tr>
<tr>
<td></td>
<td>Length (Investigative months)</td>
<td>18.8</td>
<td>12.2</td>
<td>15</td>
<td>9</td>
<td>5</td>
<td>51</td>
<td>1.26</td>
</tr>
<tr>
<td></td>
<td>Output (pages)</td>
<td>41.1</td>
<td>44.7</td>
<td>29</td>
<td>2</td>
<td>2</td>
<td>164</td>
<td>1.91</td>
</tr>
<tr>
<td><strong>Negotiated settlement n = 24</strong></td>
<td>Population category</td>
<td>4.5</td>
<td>1.96</td>
<td>5</td>
<td>6</td>
<td>1</td>
<td>7</td>
<td>-0.71</td>
</tr>
<tr>
<td></td>
<td>Percentage non-white</td>
<td>55</td>
<td>22.46</td>
<td>60.1</td>
<td>67</td>
<td>10</td>
<td>89.5</td>
<td>-0.23</td>
</tr>
<tr>
<td></td>
<td>Size (sworn x 10)</td>
<td>194.7</td>
<td>290.35</td>
<td>107.8</td>
<td>-</td>
<td>1.6</td>
<td>1203.4</td>
<td>2.64</td>
</tr>
<tr>
<td></td>
<td>Resources (sworn per 1,000)</td>
<td>2.9</td>
<td>1.24</td>
<td>2.6</td>
<td>-</td>
<td>0.6</td>
<td>6.1</td>
<td>0.44</td>
</tr>
<tr>
<td></td>
<td>Length (Investigative months)</td>
<td>18.8</td>
<td>12.28</td>
<td>15</td>
<td>15</td>
<td>5</td>
<td>51</td>
<td>1.35</td>
</tr>
<tr>
<td></td>
<td>Output (pages)</td>
<td>47.6</td>
<td>50.56</td>
<td>34</td>
<td>164</td>
<td>2</td>
<td>164</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Technical assistance n = 9</strong></td>
<td>Population category</td>
<td>3.4</td>
<td>1.51</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>0.14</td>
</tr>
<tr>
<td></td>
<td>Percentage non-white</td>
<td>53</td>
<td>34.30</td>
<td>49</td>
<td>-</td>
<td>9</td>
<td>97</td>
<td>0.20</td>
</tr>
<tr>
<td></td>
<td>Size (sworn x 10)</td>
<td>39.2</td>
<td>49.78</td>
<td>16</td>
<td>-</td>
<td>5.1</td>
<td>141.8</td>
<td>1.65</td>
</tr>
<tr>
<td></td>
<td>Resources (sworn per 1,000)</td>
<td>2.1</td>
<td>0.6</td>
<td>2.3</td>
<td>-</td>
<td>1.3</td>
<td>3</td>
<td>-0.06</td>
</tr>
<tr>
<td></td>
<td>Length (Investigative months)</td>
<td>18.8</td>
<td>12.74</td>
<td>11</td>
<td>10</td>
<td>9</td>
<td>42</td>
<td>1.26</td>
</tr>
<tr>
<td></td>
<td>Output (pages)</td>
<td>23.8</td>
<td>13.47</td>
<td>23</td>
<td>20</td>
<td>6</td>
<td>50</td>
<td>0.57</td>
</tr>
</tbody>
</table>

*Note. (-) No mode*
Thematic Analysis

- **RQ1: What pattern or practice themes emerge from DOJ’s investigative findings?**

Thematic analysis of the $N = 33$ findings letters yielded eight main themes, and 18 subthemes. The themes were tabulated using a process described by Boyatzis (1998) where the presence or absence of a theme was counted for each police agency, rather than the frequency or intensity of that theme. The eight themes with their representation in the complete dataset, and as a percentage of investigations of municipal police agencies with findings is presented in Table 6.

<table>
<thead>
<tr>
<th>Theme</th>
<th># of investigations with thematic finding</th>
<th>% of investigations with thematic finding</th>
<th>% of total thematic findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions of ambiguity</td>
<td>21</td>
<td>64%</td>
<td>12%</td>
</tr>
<tr>
<td>Institutionalization</td>
<td>28</td>
<td>85%</td>
<td>16%</td>
</tr>
<tr>
<td>Lack of professional currency</td>
<td>32</td>
<td>97%</td>
<td>18%</td>
</tr>
<tr>
<td>Leadership and management failure</td>
<td>15</td>
<td>45%</td>
<td>8%</td>
</tr>
<tr>
<td>Organizational myopia</td>
<td>27</td>
<td>82%</td>
<td>15%</td>
</tr>
<tr>
<td>Organizational orientation and culture</td>
<td>9</td>
<td>27%</td>
<td>5%</td>
</tr>
<tr>
<td>Routinized misconduct</td>
<td>20</td>
<td>61%</td>
<td>11%</td>
</tr>
<tr>
<td>Tactical discretion, weapon competency,</td>
<td>25</td>
<td>76%</td>
<td>14%</td>
</tr>
<tr>
<td>equipment insufficiencies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>177</strong></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>
Noteworthy in the initial analysis presented in Table 6 is that almost all § 14141 investigations of municipal police (97%), the DOJ determined that there was a lack of professional currency embedded within the police agency. Furthermore, two other organizational-wide themes, institutionalization and organizational myopia, were found by the DOJ as deficiencies in 85% and 82% of all municipal police agencies under study. These three themes comprised approximately half (49%) of all themes discovered among the $N = 33$ investigations of municipal police. In contrast, a different organizational-wide theme, organizational orientation and culture, was the least present among the themes with just 27% of investigations of municipal police yielding this result and the only main theme, along with leadership and management failure, in which less than 50% of investigations of municipal police were found. All remaining themes were present in more than 50% but less than 80% of investigative findings letters.

**Theme one - conditions of ambiguity.**

DOJ’s § 14141 findings letters frequently referenced situations in which officers, including both rank and file, were unsure, had contradictory information, received vague direction, or were confused regarding how to implement specific processes, policies and procedures. This confusion was often described as a lack of understanding and clarity rooted not in training deficiencies, rather inadequacies in policies, general guidance, clear communication, and officer direction. The DOJ attributed these ambiguities to causal systemic agency problems, generalized misconduct, and improper policing. An example of conditions of ambiguity from the *Investigation of the Cleveland Division of Police*:

The use of force policy has changed, but the policy in place at the time of our investigation was confusing, at times conflicted with the law, and did not provide
sufficient guidance to officers. Indeed, many officers reported to us that they did not understand the policy and, more generally, did not understand what level of force they were permitted to use under what circumstances. (Gupta & Dettelbach, 2014, p. 45)

Conditions of ambiguity were frequently organization-wide, rooted in a generalized lack of understanding of basic police functionality. As an example, from the *Investigation of the Albuquerque Police Department*: “We observed that there was no consistent understanding of the department’s community policing program within the ranks. Even commanders had inconsistent understandings of the agency’s program” (Samuels & Martinez, 2014, p. 40).

Conditions of ambiguity were often a direct cause of other systemic problems, in particular, the DOJ noted the relationship between vague directions and officer reporting requirements for use-of-force incidents, this type of ambiguity was found to allow systemic misconduct to proliferate when insufficiently monitored. From the *Findings Letter Re: Use of Force by the Washington Metropolitan Police Department*: “We found widespread variances in how MPD officers understand and define the kinds of force they need to report” (Yeomans, 2001, p. 2). These types of procedural inconsistencies do not allow for municipal police agencies to accurately or reliably use critical information for internal accountability. Taken together, conditions of ambiguity whether in policy, organizational functionality, or reporting requirements, create an undercurrent of systemic problems for police agencies that contribute to unconstitutional policing practices.

**Theme two - institutionalization.**

Institutionalization as defined by O’Hara (2012), occurs when “an organization increasingly bases its approach to customers or clients on what best serves the comfort or preference of employees” (p. 20). Embedded within many of the findings letters, municipal
police agencies under § 14141 investigation were consistently cited for demonstrating behaviors and actions appearing to best serve their members, often out of manifest partiality, and other times borne out of agency preference and convenience. Municipal police agencies that demonstrated these attributes tended to do so in two distinct ways. As such, institutionalization has two subthemes.

**Subtheme one - internal partiality.**

In DOJ’s findings letters, internal partiality is typified by an agency’s bias in outlook, behavior, and orientation favoring police officers in events involving police-citizen encounters and any subsequent investigation. An example of this type of institutionalization was exemplified in the *City of Pittsburgh Investigative Findings Letter* wherein it was noted that the police agency “gives greater weight to the statements of its police officers, while discounting the statements of witnesses for the complainant...[and] does not fully collect all evidence during its investigations [of police misconduct]” (Patrick, 1997, p. 2). This internal partiality towards police officers runs deep in many organizations, and may in fact lead to unjustified exonerations, and a lack of accountability for police wrongdoing; for example, the DOJ found it deeply troubling...that some of the specially-trained investigators who are charged with conducting unbiased reviews of officers’ use of deadly force admitted to us that they conduct their investigations with the goal of casting the accused officer in the most positive light possible. (Gupta & Dettelbach, 2014, p. 5)

Further, the DOJ routinely pointed out that the partiality of internal investigations can become compromised when “investigations of alleged criminal misconduct [are] conducted by officers in the same command as the officers who allegedly engaged in the misconduct, creating a potential conflict of interest” (DOJ, 2002, p. 5). This conflict of interest was thematically
apparent in many DOJ issued findings letters, particularly when police supervisory officers were charged with conducting investigations in which they witnessed, or were part of a misconduct allegation (Rosenbaum, 2003), undermining what should otherwise have been an impartial investigative process.

**Subtheme two - misaligned policy and practice.**

Many of DOJ’s findings indicated that a municipal police agency was not adhering to its own policies, in these circumstances policies are clear and appropriate, yet the police agency accepts practices from its employees that routinely ignore those policies, adhering to accepted alternatives for organizational and officer convenience. With misaligned policy and practice findings, operational convenience and organizational practicality, rather than systemic misconduct is implied. An example of misaligned policy and practice from the *Investigation of the Miami Police Department*:

Although DO 2.7 (Firearms Procedures) requires officers to qualify every year with every kind of firearm the MPD allows them to use, we learned from command staff and officers that the MPD does not enforce this requirement. We learned that, in practice, officers can remain qualified for up to eighteen months to two years before having to requalify.

(Rosenbaum, 2003, p. 8)

Failing to adhere to organizational standards, when those standards are necessary and appropriate, was noted as a contributor to unconstitutional policing in the investigation of the Ferguson Police Department, as stated: “Perhaps the greatest deviation from FPD’s use-of-force policies is that officers frequently do not report the force they use at all. There are many indications that this underreporting is widespread [and that] these policies are routinely ignored” (DOJ, 2015, p. 38).
Institutionalization in a municipal police agency manifests through agency practices that favor its members both to the exclusion of impartiality for internal bias, and the avoidance of established protocols for practicality and operational convenience. Considering that such a high percentage of police agencies under § 14141 investigation demonstrated attributes of institutionalization is highly suggestive of internal compliance and culture as significant contributors to deep systemic problems, and the potential for unconstitutional policing.

**Theme three - lack of professional currency.**

With the notable exception of one municipal police agency that discontinued cooperating with the federal government during the investigation of the agency (Perez, 2012), all § 14141 letters are suffused with findings of municipal police departments that have failed to establish, or maintain, acceptable standards in systems, procedures, policies, and practices. Differentiated from conditions of ambiguity where a generalized lack of clarity exists regarding policies and practices, or institutionalization where policies are not adhered to in favor of convenience, practicality, or partiality, a lack of professional currency suggests that a municipal police agency does not observe generally accepted practices of its own profession whether by intent, design, or structure. A municipal police agency symptomatic of a lack of professional currency has been found to behave in three distinct, but often overlapping ways. Hence, three subthemes.

*Subtheme one - deficient selection criteria.*

Routine and characteristic of many municipal police agencies under § 14141 investigation was the selection and appointment of personnel to agency positions in which they were not qualified, trained, prepared, and in some instances, disqualified but assigned nonetheless. These deficiencies centered on five critical police agency positions including; field training officer, training instructor, investigative supervisor, specialized enforcement assignment,
and field supervisor. Out of need, expediency, neglect or indifference, critical positions throughout many municipal police agencies were filled by individuals unqualified to be there, this as suggested, was to the great detriment of the police agency, the public it serves, and makes a police agency susceptible to unconstitutional policing practices. One such example of deficient criteria selection from the *Investigation of the Alabaster Police Department*:

Well-qualified FTO instructors are critical to ensuring well-trained police recruits. APD’s current policy appears to contain no criteria to evaluate the qualifications or effectiveness of those providing field training. The APD has no eligibility criteria for FTOs pertaining to the applicants’ complaint and disciplinary histories, performance levels or special skills. (Cutlar, 2004, p. 21)

The *Investigation of the Yonkers Police Department* findings suggest that qualifications in these essential positions are paramount to preventing unconstitutional policing, and that this could be rectified through the implementation of formalized selection criteria because “well-qualified FTOs are critical to ensuring well-trained police recruits. The YPD, however, has no formal policy addressing the selection [of FTO’s]” (King & Dassin, 2009, p. 30). Furthermore, deficiencies in agency selection criteria extend to in-service police trainers, that is, police trainers who are responsible for training experienced officers:

All training [should] be conducted by instructors who have been trained and certified to be instructors, and who are competent in the subject matter they are to teach.

Accordingly, the WPD should validate the qualification and expertise of its current trainers. The WPD may do so through certification programs outside of the WPD. (Cutlar, 2006, p. 26).
The lack of staff preparation, and inadequacies of training instructors and qualifications for assignment wean their way through the entire organizational structure in some municipal police departments. This is particularly troubling as it impacts specialized units such as SWAT, and other enforcement units that may be called upon to appropriately react in high-liability circumstances, for example, in the Miami Police Department there is “a lax recruitment process that insufficiently vets officer suitability for assignment [to a specialized enforcement unit]” (Perez, 2013, p. 9). Even more troubling is when commanders of such specialized units are unprepared or unqualified for assignment, such was the finding when the DOJ investigated the Albuquerque Police Department: “[T]he SWAT commander had not received adequate training and appeared to lack the experience to direct a disciplined and effective SWAT unit” (Samuels & Martinez, 2014, p. 35).

The DOJ has also made numerous findings of police agencies that place officers as well as civilian staff into internal investigative positions without preparation, necessary qualifications, or sufficient experience to hold such a position (Rosenbaum & Collins, 2002). This suggests that a relationship between a lack of professional currency in selection criteria, and internal partiality of investigations exists, as employees who may be unqualified and partial, are charged with conducting what ought to be impartial and thorough investigations. As an example, findings from the Investigation of the Newark Police Department:

The NPD has failed to appropriately train its investigators. NPD command staff and officers, IA investigators, and Integrity Compliance Officers (“ICO”) consistently reported that investigative experience has not been required to become an investigator….This failure must be addressed if the NPD is to ensure adequate investigations of officer misconduct. (DOJ, 2014, p. 45)
Subtheme two - failure to maintain standards in systems, practices, and policies.

The DOJ frequently attributed underlying organizational problems to systemic deficiencies, inadequacies, and insufficiencies in internal control systems, common police practices, internal communication failures, and training. This subtheme reflects similar global assessments of § 14141 investigations made by scholars such as Walker (2017) who have studied DOJ’s pattern or practice enforcement through content analysis. Police organizations that were found to have these attributes had many, if not all of the capabilities to adhere to professional standards, but they failed to do so. These failures cover a broad spectrum of police organizational and operational functions. Taken together, this best reflects the failure of a municipal police agency to operate as a professional organization. As such, many of these deficiencies are directly implicated in a municipal police department’s failure to engage in constitutional policing. From the Investigation of the New Orleans Police Department:

NOPD still does not provide meaningful in-service training to officers on how to properly carry out stops, searches, and arrests. Throughout the Department, and among other stakeholders in the criminal justice system, we heard broad and emphatic consensus that officers have a poor understanding of how to lawfully execute searches and seizures. NOPD’s failure to train officers or otherwise provide guidance on the limits and requirements of the Fourth Amendment contributes directly to the pattern of unconstitutional stops, searches, and arrests. (DOJ, 2011, p. 28)

As part of their investigation of a municipal police agency, the DOJ reviews policy and procedure manuals wherein they have often found outdated procedures, convoluted and disorganized operational guides, failure to effectively communicate procedural changes to rank and file, as well as procedural deficiencies that may all lead to unconstitutional policing.
The following serve as examples of such deficiencies.

A complete lack of policy or training of basic police functionality from the *Investigation of the Steubenville Police Department* was noted in that “The City has no policy and provides no training about what types of force are useful and acceptable in different types of situations. In addition, it fails to require use-of-force reports or otherwise investigate or review uses of force” (Pinzler, 1997, p. 2).

Many municipal police agencies that did have policies and procedures in place suffered from failures to update them in a timely manner, from the *Investigation of the Miami Police Department*:

The [use of force] matrix we saw at survival training is outdated, and does not include some of the specific types of force MPD officers use, such as canines and Tasers. Lack of specific guidance may lead officers to believe they are justified in using force in situations in which it would be unreasonable or unnecessary. (Rosenbaum, 2003, p. 3)

An example of ineffective internal communication and accountability related to procedures:

It is our understanding that there is no process for reviewing or updating the Manual on a regular basis. Instead, new and revised policies are added to the disk upon approval by the Chief, and the disks are then reissued to officers. (Cutlar, 2004, p. 2)

The lack of internal communication, and failure to update officers regarding policy and procedural changes in a timely manner was noted in the *Investigation of the Cleveland Division of Police* findings letter:

When a policy is revised, even significantly so, officers are advised of that change in roll-call. Officers informed us that no training accompanies that advisement – the new or
revised policy simply is distributed to officers and read aloud. The officer in charge of the training division informed us that no training on that revised policy will occur until the next in-service training, which may be many months away. (Gupta & Dettelbach, 2014, p. 44)

As well, generally disorganized and outdated policy manuals from the Investigation of the Easton Police Department:

At the time of our initial tours, EPD policies and procedures were in a binder called the “Black Book,” a hodgepodge of policies and procedures, that in many instances had not been updated since the 1980s. With the exception of special orders or unofficial procedural documents that have been distributed over the years, the “Black Book” served as the primary document governing the field services and administrative actions of EPD. (Cutlar, 2007, p. 2)

Failure to maintain currency in systems, collect and review data for risk management and early intervention systems were commonly implicated as a direct contributor of systemic misconduct and unconstitutional policing practices beginning with § 14141’s first publicly issued investigative findings; from the City of Pittsburgh Investigative Findings Letter:

The PBP does not monitor complaints filed against its officers as a means of detecting problems before they occur. Such a tracking system would alert management to a potential problem and to the need for counseling, retraining or other intervention techniques. (Patrick, 1997, p. 2)

As well, the failure of municipal police agencies to maintain adequate performance tracking systems, and collect necessary and appropriate data has been implicated as causal in a
failure to identify organizational trends and officers responsible for unconstitutional policing practices. From the *Investigation of the Newark Police Department*:

NPD [has not] taken adequate steps to implement an early warning system that would track and identify officers’ problematic behavior. As a result of these systemic deficiencies, the NPD does not discern or respond to problematic trends in officer conduct that could constitute or lead to misconduct….The NPD further must collect and analyze data related to stops, searches, and arrests, so that it can minimize the disparate impact of its enforcement efforts and avoid bias in policing. (DOJ, 2014, pp. 3-4)

**Subtheme three - failure to adhere to established best practices.**

Differentiated from subtheme two by a focus on adherence to external professionalism standards rather than internal, failure to adhere to established best practices was noted in several findings letters as symptomatic of systemic problems that placed an agency at risk of unconstitutional policing practices. From the *Investigation of the Newark Police Department*:

A full understanding of the race-based effects of the NPD’s policing practices is made more difficult by the NPD’s failure to track and analyze data with respect to race, which is unusual, and at odds with sound policing practices, for a police department in a major city, especially one with such diversity. (DOJ, 2014, p. 36)

Deviation from tactical best practices was also noted as contributing to the detriment of the public and officer safety: “We recommend that the MPD follow the trend in most police departments by setting a reasonable restriction on the speed for continuing a vehicle pursuit, and add this specific limitation to the DO” (Rosenbaum, 2003, p. 14). As well, with best practices related to the use of force, from the *Investigation of the Portland, Maine Police Department*:

“Many major city police departments employ a use of force continuum because it provides a
useful tool in training officers to consider lower levels of force first, which protects the safety of both the officer and the civilian” (Brown Cutlar, 2003, p. 4).

Theme four - leadership and management failure.

Contained within many findings letters were references, both direct and indirect, to systemic problems attributable to a lack of leadership and effective management. These failures focused on the upper layers of the organizational hierarchy and reflected deficiencies of accountability within the chain-of-command, including leadership indifference to institutional problems, lack of vision for the organization, and a generalized lack of investment in supporting or guiding the police organization. The Investigation of the New Orleans Police Department reveals how detrimental that leadership and management failure can be to an organization:

Our investigation further showed a lack of accountability throughout the chain of command sufficient to ensure that field sergeants are properly supervising their subordinates. Much of the work supervisors do requires review or approval by the chain of command. Commanders seem to take no notice of, much less hold accountable, supervisors who approve egregious uses of force without question, conduct obviously flawed investigations, sign off on clearly deficient arrest reports, or who simply do not supervise. (DOJ, 2011, p. xv)

Similarly, this up-the-chain lack of accountability was found in other police organizations, however, the DOJ attributed these deficiencies to management’s desire to avoid responsibility:

The hundreds of less lethal force reports we reviewed were almost entirely devoid of any analysis by anyone in the chain of command regarding whether the force was reasonable. Instead, they simply state that use of force was within Division guidelines. It is almost as
if the goal of the chain of command in many incidents is not [emphasis in original] to create a complete record of the incident that can be subjected to internal and external review, instead of the opposite. (Gupta & Dettelbach, 2014, p. 31)

Leadership and management failure have been attributed to overall organizational dysfunction, and have been implicated as leading to unnecessary use of deadly force: “We further noted a near absence of organizational accountability. Officers are simply afforded too much autonomy, which has contributed to even greater insularity from the department’s accountability systems, ineffective deployments and tragic shootings that could have been avoided” (Samuels & Martinez, 2014, p. 35).

The DOJ alludes to the importance of necessary leadership investment, and appropriate communication with the organization as a whole, as leadership and management deficiencies can infect many parts of a police agency’s operations, which may lead to unconstitutional policing practices:

The responsibility for correcting the NPD’s unconstitutional policing practices lies at every level within the Department. NPD supervisors and command leadership must ensure that officers receive the training, guidance, and direction necessary to police effectively and constitutionally, and clearly communicate to officers that constitutional policing and effective law enforcement are not in tension with each other, but rather are interdependent. (DOJ, 2014, p. 4)

**Theme five - organizational myopia.**

Organizational myopia as described by Catino (2013) is “the limited capacity on the part of an organization to evaluate the facts as they actually are and in terms of their possible evolution” (p. 3). For municipal police under § 14141 investigation, this limited capacity
manifests itself in two distinct ways: (1) the incapacity to detect potential signs of danger, undermining an organization’s survival or compromising its regular operations, and (2) the incapacity of an organization to detect potential opportunities that favor its survival and adaptation to the environment (Catino, 2013). Analyzing § 14141 findings letters, it became clear that many municipal police agencies had systemic problems related to short-term thinking and planning; exhibited insularity, did not adapt to their external environment, and were unaware, or indifferent to potential dangers and risks posed to their organization. Municipal police agencies under § 14141 action that suffered from organizational myopia were characterized by at least one of four subthemes.

**Subtheme one - adaptation failure.**

Adaptation failure is best interpreted as a municipal police agency’s failure to adapt to changing external conditions in an appropriate manner to the point of detriment to that agency and community served. This type of failure was evident in a number of § 14141 investigative findings, and manifested in the organization as an inability of a municipal police agency to effectively communicate or interact with members of the community served, thereby increasing the potential for excessive or unnecessary force. An example of this type of failure, from the *Investigation of the Yonkers Police Department* is instructive: “In light of the diversity of the Yonkers community, we also recommend that any warnings issued to individuals prior to the deployment of the K-9 Unit be issued in Spanish, as well as in English” (King & Dassin, 2009, p. 17).

Adaptation failure was also noted in other municipalities with diverse populations, such as New Orleans: “NOPD is dangerously limited in its capacity to communicate effectively and accurately with LEP [Limited English Proficient] victims, witnesses, suspects, and community
members in the Latino and Vietnamese communities” (DOJ, 2011, p. xii). The DOJ noted the dangers inherent with a police department failing to adapt to their environment in the Investigation of the Miami Police Department: “Failure to require multiple and complete warnings in a language that the subject can understand can result in excessive force being used, because it eliminates the opportunity for a subject to surrender before getting bitten” (Rosenbaum, 2003, p. 6).

Subtheme two - conflicts of interest.

Conflicts of interest in the context of organizational myopia are practices in opposition to the interest or autonomy of a municipal police agency. By allowing and accepting certain practices that are in conflict with a police agency’s core function and mission, conflicts of interest may allow unconstitutional policing to proliferate. One such example of a police department absolving itself of a core responsibility – enforcement discretion, and ensuring that a necessary legal standard for seizure is met for all arrest situations – led to findings of a pattern or practice of unconstitutional policing in Meridian, MS. As indicated:

MPD policy requires officers to automatically arrest a student whenever school staff indicate that they would like to press charges. MPD officers who respond to District referrals do not assess the facts or circumstances of the alleged charge, or whether the alleged conduct actually qualifies as an arrestable offense….MPD’s pattern or practice of automatically arresting children referred by the District constitutes a blanket failure to apply probable cause in violation of the Fourth Amendment. (Perez, 2012, p. 2)

Conflicts of interest can also be entrenched, system-wide, corrupting, and yet endorsed by leadership and management, creating conflicts with organizational priorities and chain-of-command as in the case of New Orleans’ paid detail:
The Detail system is essentially a form of overtime work for officers. Officers may work *ad hoc* Details providing, for example, extra security for special events or individuals visiting New Orleans. Or an officer may have a regularly-scheduled Detail, such as being hired by a business to provide security in a retail establishment or by a neighborhood association to patrol the neighborhood. *When on Detail, however, officers are paid and largely controlled by entities other than NOPD* [emphasis added]…..Virtually every officer works a Detail, wants to work a Detail, or at some point will have to rely on an officer who works a Detail. The effects of Details thus permeate the entire Department. It is widely acknowledged that NOPD’s Detail system is corrupting. (DOJ, 2011, p. xvi)

**Subtheme three - deficient interaction with external organizations.**

Organizational myopia is also characterized by a police agency’s failure to effectively communicate and interact with partner organizations including community groups, oversight bodies, and other law enforcement organizations. This lack of interaction in many instances led to deficiencies in operations, organizational performance, and accountability allowing unconstitutional policing to proliferate. One such example from the *United States’ Investigation of the Missoula Police Department*, attributed poor external communication to violations of equal protection, and as such, unconstitutional policing:

> Communication between police, prosecutors, and others is critical to ensure effective investigations and prosecutions. MPD engages in insufficient communication and cooperation with its law enforcement and community partners regarding their response to reports of sexual assault. This lack of collaboration weakens the efficacy of MPD's response to reports of sexual assault by inhibiting coordination and information-sharing needed to fairly and objectively discern the truth in a sexual assault investigation and
compounds the other deficiencies we found in the investigative process. (Perez & Cotter, 2013, p. 10)

**Subtheme four - research, planning, and resource allocation.**

Municipal police agencies that fail to use, collect, or analyze operational information for the betterment of police functionality, fail to research and learn, fail to conduct internal studies, assessments, review allocation of resources, and make well-informed operational decisions have been found to be at risk of engaging in unconstitutional policing through insufficient knowledge, feedback, and even fatigue. From the *Investigation of the Baltimore City Police Department:*

BPD fails to adequately support its officers with adequate staffing and material resources. The Department lacks effective strategies for staffing, recruitment and retention, forcing officers to work overtime after long shifts, lowering morale, and leading to officers working with deteriorated decision-making skills. (DOJ, 2016, p. 11)

Failure of a municipal police agency to research, review, and learn from mistakes was indicated by the DOJ to have future consequences:

We found that the files for recently completed investigations revealed little administrative or operational analysis by MPD. As a consequence, the opportunity to learn from an incident and apply lessons learned to future incidents, at both the individual and departmental levels, was lost. (Perez, 2013, p. 11)

Lack of internal research and planning has also been indicated to lead to operational problems involving routine police duties for supervisors, adding to cynicism, and overall deficiencies:

Supervisors also reported that their workloads are simply unmanageable. Sergeants told us that “it’s the worst job in the department” and “the work never stops,” noting that they
might be responsible for five less lethal force investigations during one shift in addition to various other duties….supervisors appeared to have difficulty balancing their responsibility to effectively lead, manage, and hold officers accountable. (Gupta & Dettelbach, 2014, p. 33)

**Theme six - organizational orientation and culture.**

Many § 14141 findings letters are highly suggestive of a deeply entrenched cultural view, organizational and officer perspective, and enduring organizational legacy as root causes of systemic problems that when left unaddressed, led to unconstitutional policing. Without specification, in many § 14141 investigations, the DOJ was implying that frequently municipal police agencies were conducting legitimate practices but for illegitimate ends, as such, were engaged in unconstitutional policing.

When analyzing § 14141 investigative findings letters, it became clear that police organizations that suffered from organizational orientation and cultural problems, were deeply troubled. This theme then, revealed itself in two distinct, but often connected ways.

*Subtheme one - focus on enforcement, activity, and arrests.*

Characteristic of municipal police departments that had attributes of this subtheme were often based on legacy perspectives that a police agency’s first and most important priority is to fight crime. While prioritizing police resources to fight crime is a legitimate goal of police, often the byproduct of an enforcement-first orientation for many of these police agencies were ends that were highly problematic, discriminatory, and often illegitimate. An example from New Orleans:

The Department’s organizational focus on arrests, particularly in combination with its poor training and policies, encourages stops without reasonable suspicion, illegal pat
downs, and arrests without probable cause. NOPD’s focus on statistics…amplifies the risk that officers will execute illegal searches and seizures…many officers described a strong and unyielding pressure to increase numbers…As one commander told us, “[t]hese officers are under the gun to make arrest, arrest, arrest, which leads to civil rights violations and complaints.” Detached as it is from problem-oriented policing, community partnerships, or long-term strategies, there is no indication that NOPD’s emphasis on arrests results in better crime prevention or safer communities. To the contrary, NOPD recently acknowledged that the Department’s staggering volume of arrests for low-level offenses is counter-productive. (DOJ, 2011, p. viii)

An organizational culture that focuses on arrests and enforcement has also been noted to create problems between the police and the community. Additionally, these practices were often not just found to be acceptable by management, but were viewed as an appropriate and valuable police function, and often required:

During various time periods in recent years, NPD leadership reportedly instituted a quota to encourage officers to increase the number of citations issued. Officers’ eligibility for overtime and desirable assignments apparently were linked to meeting the Quality of Life citation quota, thus giving officers an incentive to issue more….Officers and residents alike perceive that the NPD issues these citations in order to satisfy quotas rather than to improve public safety. This perception alienates many community members. (DOJ, 2014, p. 21)

An example from the Investigation of the Baltimore City Police Department demonstrates how legacy perspectives and cultural orientation, coalesce with management
demands for enforcement activity produces illegitimate ends through the corruption of legitimate means, resulting in unconstitutional policing:

BPD’s legacy of zero tolerance enforcement continues to drive its policing in certain Baltimore neighborhoods and leads to unconstitutional stops, searches, and arrests. Many BPD supervisors instruct officers to make frequent stops and arrests – even for minor offenses and with minimal or no suspicion – without sufficient consideration of whether this enforcement strategy promotes public safety and community trust or conforms to constitutional standards. (DOJ, 2016, p. 5)

**Subtheme two - prevailing cultural view.**

Contained within findings letters from many police departments investigated under § 14141, existed widely-held viewpoints and perspectives as part of the broader police culture. Often, the DOJ would specifically mention the culture of an organization, and attribute systemic problems to that culture, other times the attribution was implied. Apart from the differences in latency, a prevailing cultural view, or dominant way of thinking by officers, was regularly a contributing factor to systemic problems, police-community strains, and often unconstitutional policing.

In conducting their investigation of the Albuquerque Police Department, it was noted that “problematic behavior continues to be viewed as reasonable, even exemplary….These deficiencies demonstrate a failure to embrace policing fundamentals, namely, recognizing and enabling officers’ duty to protect both the public’s safety and civil rights” (Samuels & Martinez, 2014, p. 21). This type of prevailing cultural view is indicative of a police agency with “an aggressive culture that undervalues civilian safety” (Samuels & Martinez, 2014, p. 22). An
example of this aggressive culture was noted in that “subjects of force are…referred to as ‘combatants’ in APD policy” (Samuels & Martinez, 2014, p. 31).

A police agency with a problematic cultural view was viewed to have difficulties embracing modern policing strategies because of that culture, and to resist organizational change. The DOJ gives an example of how a prevailing cultural view creates rifts between the police and community, and how difficult that culture can be to change within a police department. From the *Investigation of the Cleveland Division of Police*:

Some officers hold views that are incompatible with community policing principles, and that this attitude is tolerated and encouraged by at least some members of command staff. A former actual Commander of community policing for CDP told us that he believes the culture within CDP is antithetical to a community policing mentality and that officer training instills in officers an “us-against-them” mentality. During an interview with one district commander, he referred to his district as a “forward operating base,” and we later observed a large sign hanging in the vehicle bay of that district station identifying it as such. Such metaphors have no place in a community-oriented police department. (Gupta & Dettelbach, 2014, p. 51)

**Theme seven - routinized misconduct.**

Many § 14141 investigative findings contained references and examples of misconduct, malfeasance, and otherwise criminal conduct committed by officers routinely occurring within a police agency. Although the federal government has the authority to bring criminal civil rights charges against individual officers, §14141 investigations focus on systemic problems rather than individual wrongdoing (DOJ, 2017a). Furthermore, although the DOJ has indicated that individual incidents of misconduct never warrant the opening of a § 14141 investigation, they
have informed that individual incidents of misconduct may suggest systemic problems, and therefore be part of an investigative finding (DOJ, 2017a). To that end, numerous investigative findings letters provided detailed examples of individual occurrences of police misconduct as exemplary incidents of larger systemic problems. These examples repeatedly comprised one of four types of police misconduct indicative of unconstitutional policing. As such, there are four subthemes to routinized misconduct.

**Subtheme one - abuse of authority.**

Department of Justice findings from a number of investigations indicated that officers routinely used their police authority in an intentionally abusive, often unnecessary, and frequently excessive manner. Officers who abused their authority often had sufficient legal justification to take enforcement action, but the poor use of discretion often led to what was classified as unconstitutional policing. An example from the *Lorain Police Department*:

We noted several incidents in which LPD officers deployed ECWs [electronic control weapons] to apprehend subjects in situations in which LPD officer's only recorded knowledge at the time of deployment was that the subject was fleeing for an unknown reason after a minor infraction, such as walking in the roadway or jaywalking. Similarly, LPD has deployed its canine in find-and-bite apprehensions when subjects fled but did not offer any resistance. In one such situation, LPD use-of-force reports show that LPD had its canine pursue and eventually bite one subject who fled from a car pulled over only for a window-tint violation. (Smith, 2012, p. 3)

An example of unreasonable use of force and poor discretion from the *Investigation of the Cincinnati Police Division*:
We received reports about CPD officers using chemical irritant at closer range than is allowed pursuant to the CPD's policy, or in quantities that seem unreasonable. For example, interviewees related instances in which officers emptied entire canisters of chemical irritant on a single subject or sprayed chemical irritant up subjects' noses or down their throats. (Rosenbaum, 2001, p. 2)

Abuse of authority was also evident in non-use-of-force situations where an officer’s actions were legally justified, but by all appearances were unreasonable, yet deemed acceptable by the organization because of a widespread culture and management acceptance of abusive practices. From the *Investigation of the Ferguson Police Department*:

FPD officers routinely issue multiple citations during a single stop, often for the same violation. Issuing three or four charges in one stop is not uncommon….Officers sometimes write six, eight, or, in at least one instance, fourteen citations for a single encounter. Indeed, officers told us that some compete to see who can issue the largest number of citations during a single stop. (DOJ, 2015, p. 11)

Finally, abuse of authority frequently involved situations in which officers used force or took enforcement action for the purpose of punishment and retaliation. In these situations, the DOJ found the initial use of force may have been legally justified, but the excessive or unreasonable nature of its use was believed to be abusive relative to the facts, circumstances, and context that the force was used. An example of this finding from the *Investigation of the Cleveland Division of Police*:

Despite the fact that there were two officers present, the officers drive-stunned Jason twice while he was handcuffed and on the ground. This use of force was unreasonable. The suspect was already on the ground and was in handcuffs. The decision to drive stun
him twice appears to have been made more to punish Jason for running rather than to
gain control of him, which could have been accomplished with less force, if any. (Gupta
& Dettelbach, 2014, p. 22)

Subtheme two - biased-based practices.

Policing practices that are motivated by bias towards any particular class or group of
persons was repeatedly evident in numerous investigative findings letters. Throughout many §
14141 investigations, the DOJ informs that biased intent need not be present for a police
department to engage in a pattern or practice of unconstitutional policing, rather differential
impact may satisfy this standard. Both biased intent, and differential impact were evident in a
number of § 14141 investigative letters, where unconstitutional policing practices were
committed by a number of police agencies affecting a wide array of groups including those
identified as women, Blacks, Hispanics, LGBTQ, Asians, and persons in mental health crisis.
Routinized misconduct against these groups manifested itself in one of three, but not necessarily
mutually exclusive ways: Biased intent, denial of adequate services, or biased differential
impact.

An example of intentional bias from the Investigation of the New Orleans Police
Department:

Transgender women complained that NOPD officers improperly target and arrest them
for prostitution, sometimes fabricating evidence of solicitation for compensation.
Moreover, transgender residents reported that officers are likelier, because of their gender
identity, to charge them under the state’s “crimes against nature” statute – a statute whose
history reflects anti-LGBT sentiment. Multiple convictions under the “crimes against
nature” statute, unlike Louisiana’s general prostitution statute, require registration as a sex offender. (DOJ, 2011, p. x)

An example of bias through the denial of adequate services from the Investigation of the Missoula Police Department:

We found practices that discourage female victims of sexual assault from cooperating with law enforcement and thereby significantly compromise the investigative process…these investigative weaknesses appear due, at least in part, to stereotypes and misinformation about women and victims of sexual assault. (Perez, 2013, p. 6)

An example of bias through differential impact from the Investigation of the Newark Police Department:

This investigation found that black people in Newark have been stopped and arrested at a significantly higher rate than their white and Hispanic counterparts. This disparity is stark and unremitting. Approximately 80% of the NPD’s stops and arrests have involved black individuals, while Newark’s population is only 53.9% black. Black residents of Newark are at least 2.5 times more likely to be subjected to a pedestrian stop or arrested than white individuals. (DOJ, 2014, p. 16)

Subtheme three - cultural deviation.

Cultural deviation is a phenomenon described by O’Hara (2012) as occurring “when elements of the organization increasingly operate according to their own standards, with little regard for the organization and its rules” (pp. 19-20). Expanding on this definition to specifically include the violation of laws and criminal activity committed by subgroups of officers within a police department, it was evident that cultural deviation was a form of routinized misconduct existing in many municipal police agencies under § 14141 investigation.
An example of cultural deviation within a subgroup manifested as criminal conduct, from the *Investigation of the Newark Police Department*:

The evidence makes clear that theft from arrestees has been more than an aberration limited to a few officers or incidents within NPD. Examples of the problem include allegations of theft of money and drugs during arrests and allegedly deliberate failure to return money and property such as wallets, cell phones, jewelry, and car keys upon arrestees’ release by the NPD….that theft of civilians’ property and money by officers was particularly problematic in the NPD’s specialized units, such as narcotics and gangs, and in the prisoner processing unit at the NPD’s Green Street Cell Block. (DOJ, 2014, p. 31)

When cultural deviation exists outside of subgroups, that is, within the broader organizational context, it suggests that cultural deviation may be intertwined with other thematic failures including culture and leadership, the combination of which, may be responsible for unconstitutional policing practices.

An example from the *Investigation of the Baltimore City Police Department* is instructive:

In some cases, unconstitutional stops result from supervisory officers’ explicit instructions. During a ride-along with Justice Department officials, a BPD sergeant instructed a patrol officer to stop a group of young African-American males on a street corner, question them, and order them to disperse. When the patrol officer protested that he had no valid reason to stop the group, the sergeant replied “Then make something up.” [emphasis added]. This incident is far from anomalous. (DOJ, 2016, p. 29)

*Subtheme four - unjustified enforcement actions.*
The final type of routinized misconduct contained within § 14141 investigative findings related to individual, and organizational enforcement actions that occurred without meeting a necessary or sufficient legal standard. Municipal police agencies wherein unjustified enforcement actions were found, typically revolved around police actions involving seizures, searches, arrests, and detainments without proper legal justification.

An example of unjustified enforcement from the *Columbus Findings Letter* served as an example of unjustified enforcement actions early in the life of § 14141: “Many of the victims of excessive force, false arrest or charges, and/or an improper search are, at the time when the misconduct occurs, carrying out some ordinary, routine daily activity” (Lann Lee, 1999, p. 1). As well, in the investigation of the LAPD, the DOJ directly implicated systemic unconstitutional policing practices with unjustified enforcement actions “including improper officer-involved shootings; improper seizures of persons, including making stops not based on reasonable suspicion and making arrests without probable cause” (Lann Lee, 2000, p. 2).

The DOJ frequently identified unjustified enforcement actions where a specific legal threshold was met only after an unjustified action had taken place. This ex post facto application of a necessary and appropriate burden of proof is unconstitutional, and when municipal police departments have patterns or practices of such, formed the basis for a negotiated settlement. Newark Police Department provides an instructive example of this finding:

NPD officers also regularly have justified stops based solely on information or evidence discovered after the stop was initiated. Examples include “Individual Was Stopped on Bicycle No Proper ID” and “A Record Check of the Above Individual Revealed an Open Warrant”….Similarly, officers have justified stops based on the fact that the individual was ultimately arrested….This is constitutionally impermissible: an officer must first
have reasonable suspicion of criminal activity in order to conduct a stop, and the
discovery of evidence during or after the stop that provides probable cause for arrest
cannot be used to retroactively establish reasonable suspicion for the stop. (DOJ, 2014,
pp. 11-12)

Theme eight - tactical discretion, weapon competency, and equipment inadequacies.

In the course of regular police duties, use of force may be necessary to gain control of a
suspect, prevent escape, or defend human life. The DOJ acknowledges these facts in many of
their findings reports (Samuels & Martinez, 2014), yet they also make efforts to point out when
the use of force goes beyond what may be necessary.

Frequently cited by the DOJ were situations in which police officers used force, and were
justified in using that force, however, the amount of force, or under specific circumstances, albeit
constitutional, constituted poor choices and discretion including when the use of force, justified
at the moment, could have been avoided. When it is determined that these poor tactical decisions
are systemic within an organization, the DOJ suggests that it contributes to unconstitutional
policing practices. Furthermore, the DOJ views officer’s availability of suitable equipment, and
competency to use that equipment effectively as a contributor to systemic misconduct and
possible unconstitutional policing practices. As such, this theme is comprised of the following
three subthemes.

Subtheme one - inappropriate tactical discretion.

Police officers have a variety of tools to choose from when taking appropriate and
necessary law enforcement action. The application of these tools falls on what is referred to as a
force continuum. A force continuum is the standard in which police use of force guidelines are
conceptualized and visualized. At its lowest level, a force continuum involves officer presence,
and at its highest, deadly physical force (National Institute of Justice, 2009). In many investigative findings letters, there were frequent references to situations in which officers used force, albeit within policy guidelines and legally justified under the circumstances, that resulted in unnecessary public risk, injury, or death.

An example of poor use of tactical discretion and its implications from the Investigation of the Albuquerque Police Department: “Officers frequently use takedown procedures in ways that unnecessarily increase the harm to the person. Finally, officers escalate situations in which force could have been avoided had they instead used de-escalation measures” (Samuels & Martinez, 2014, p. 3).

Poor tactical choices by police officers have also been found to contribute not just to injury, but risk of death to innocent civilians:

We found that officers sometimes draw, point and/or fire their weapons without considering their environment, or the potential harm to bystanders or nearby residents. Officers do not adequately consider the potential destination of rounds fired especially if, as often happens, they miss their intended targets. (Gupta & Dettelbach, 2014, p. 26)

The DOJ has concluded that poor tactical discretion can contribute to unconstitutional policing through unnecessary force, in addition to contributing to the erosion of police-community relations: “BPD uses overly aggressive tactics that unnecessarily escalate encounters, increase tensions, and lead to unnecessary force, and fails to de-escalate encounters when it would be reasonable to do so” (DOJ, 2016, p. 8).

**Subtheme two - equipment inadequacies.**

Although not directly implicated as a cause of unconstitutional policing, equipment inadequacies, including not have the proper equipment, or having inadequate equipment, has
been attributed to a police organization not supporting their officers to do the job for which they are tasked.

In an example of the risks inherent in not providing officers the appropriate equipment, the DOJ suggests that officers who are not issued appropriate and necessary equipment, may use the equipment they have improperly: “Officers may unnecessarily resort to their firearms if intermediate force options are not available, we recommend that the APD require all officers to carry a chemical weapon, in addition to an impact weapon” (Cutlar, 2008, p. 13). Other times, it was noted that the failure of a police agency to properly equip their officers contributes to a less effective agency: “Cleveland police officers are not given the basic equipment, the physical structures, and the technology required to perform their jobs safely and effectively” (Gupta & Dettelbach, 2014, p. 55).

**Subtheme three - weapon competency.**

Tying together a lack of professional currency with equipment inadequacies, the DOJ identified many instances of officers who appeared to use their weapons and tactics without the requisite competence. This to the detriment of public safety, and potentially leading to unconstitutional policing. An example from the *Investigation of the Portland Police Bureau*:

We found instances that support a pattern of officers using multiple cycles of shock without waiting between cycles to allow the suspect to comply, or officers failing to utilize control tactics during ECW cycles to properly affect handcuffing without having to resort to repeated ECW shocks. (Perez & Marshall, 2012, p. 3)

The DOJ directly implicated a lack of weapon competency with unjustified use of force in the *Investigation of the Cleveland Division of Police* illustrating the risks inherent for the public:
CDP officers use their guns to strike people in the head in circumstances where the use of deadly force is not justified. Striking someone in the head with an impact weapon is deadly force, as CDP’s own policies recognize….CDP officers have hit suspects in the head with their pistols in circumstances that do not warrant deadly force. This practice is partially a result of tactical errors where officers drawn their firearms at inappropriate times. In these circumstances, when officers ultimately engage physically with suspects, they do so while holding a firearm. This is an extremely dangerous practice, increasing the risk of an accidental discharge – which has happened on more than one occasion involving CDP officers – and the risk that a suspect will gain control of the weapon. It also limits the less-lethal options an officer has available to bring an actively resisting subject under control because one of his hands is occupied holding the firearm. (Gupta & Dettelbach, 2014, pp. 18-19)

**Unconstitutional Policing**

Police practices adhering to constitutional standards were differentiated from unconstitutional police practices through § 14141 investigative outcomes. For the \( n = 24 \) police negotiated settlements, the DOJ determined there was reasonable cause to believe that the municipal police agency was engaged in a pattern or practice of unconstitutional policing, whereas for the \( n = 9 \) police agencies under technical assistance, the DOJ made no such affirmative determination. By comparing themes associated with each investigative outcome, a clearer picture emerges of the contours of unconstitutional policing.

Since an investigative outcome differentiates patterns or practices of constitutional from unconstitutional policing, it was posited that the number and types of themes between these two outcomes would differ. As such, the following hypothesis was offered and tested:
• *H₁: Thematic findings will differ between municipal police agencies under negotiated settlement, and those under technical assistance.*

A two-tailed z-score test for two population proportions was conducted on the total number of thematic findings, and for each of the eight themes by investigative outcome to test *H₁*, that thematic findings would differ between municipal police agencies under negotiated settlement, and technical assistance. This type of test can be used to determine if two population proportions significantly differ for categorical data (Laerd, 2016a). Since each of the eight main themes, and total number of themes by investigative outcome were measured as presence or absence of the theme, and *H₁* is a non-directional prediction, a two-tailed test was appropriate for this hypothesis. Although not statistically significant at the *p < .05* level, proportions of total thematic findings were found to be marginally significant between agencies under negotiated settlement (.70), and technical assistance (.58), *z* = 1.84, *p* = .066. However, as indicated in Table 7, police agencies under negotiated settlement had a significantly higher proportion of organizational orientation and culture thematic findings (.38) than those under technical assistance (.00) *z* = 2.15, *p* = .032. As well, there were significant differences in proportions of the theme routinized misconduct by investigative outcome, *z* = 2.76, *p* = .005, with the police agencies under negotiated settlement (.75), higher than the proportion under technical assistance (.22).
Having established that there were differences in two specific themes by investigative outcome, and that overall differences in total thematic findings by investigative outcome marginally differ, a more nuanced and detailed analysis at the subtheme level should then provide greater insight into the differences in findings by investigative outcome. As such, the following hypothesis was offered and tested:

- \( H_2: \) Municipal police agencies under negotiated settlement will have more scaled subtheme findings than police agencies under technical assistance.
Using a process described by Boyatzis (1998), all subthemes were scaled to the thematic level, and measured by presence or absence in the same manner as the themes. Comparisons were then made between proportions in the presence or absence of total scaled themes by investigative outcome. A one-tailed $z$-score test for two population proportions was conducted to test $H_2$, that municipal police agencies under negotiated settlement will have more scaled subtheme findings than those under technical assistance. This type of test can be used to determine if two population proportions significantly differ for categorical data (Laerd, 2016a). Since each of the scaled subthemes, and total number of scaled subthemes by investigative outcome were measured as presence or absence, and $H_2$ is a directional prediction, that is, it is expected that the proportion of themes present will be greater for negotiated settlements than technical assistance outcomes, a one-tailed test was appropriate for this hypothesis.

As indicated in Table 8, police agencies under negotiated settlement had a significantly higher proportion of total scaled subtheme findings (.49), than agencies under technical assistance (.40), $z = 2.00, p = .022$. Additionally, significant differences were found between police agencies by investigative outcome in the failure to adhere to best practices subtheme (.71), to (1.00), $z = -1.82, p = .034$, although this result was significant opposite of the hypothesized relationship.

As one subtheme of organizational orientation and culture – prevailing cultural view – the proportion of police agencies with this theme under negotiated settlement significantly differed from the proportion under technical assistance (.38) to (.00), $z = 2.15, p = .016$. In the routinized misconduct theme, the proportion of police agencies significantly differed by investigative outcome for the abuse of authority subtheme (.67) to (.22), $z = 2.28, p = .011$, and the biased-based policing subtheme (.42) to (.00), $z = 2.31, p = .01$. Additionally, the proportion
of police agencies under negotiated settlement significantly differed from those under technical assistance for the unjustified enforcement actions subtheme (.54) to (.00), $z = 2.83, p = .002$. All other scaled subtheme differences by investigative outcome were not statistically significant.

Table 8  
Scaled Thematic Findings by Investigative Outcome.

<table>
<thead>
<tr>
<th>Scaled theme</th>
<th>Negotiated settlements (n = 24)</th>
<th>Technical assistance (n = 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># of agencies with scaled theme</td>
<td>%</td>
</tr>
<tr>
<td>Conditions of ambiguity</td>
<td>14</td>
<td>58%</td>
</tr>
<tr>
<td>Internal partiality</td>
<td>17</td>
<td>71%</td>
</tr>
<tr>
<td>Misaligned policy and practice</td>
<td>14</td>
<td>58%</td>
</tr>
<tr>
<td>Deficient selection criteria</td>
<td>13</td>
<td>54%</td>
</tr>
<tr>
<td>Fails to maintain established standards...</td>
<td>22</td>
<td>92%</td>
</tr>
<tr>
<td>Failure to adhere to best practices</td>
<td>17</td>
<td>71%</td>
</tr>
<tr>
<td>Leadership and management failure</td>
<td>12</td>
<td>50%</td>
</tr>
<tr>
<td>Focus on enforcement, activity and arrests</td>
<td>4</td>
<td>17%</td>
</tr>
<tr>
<td>Prevailing cultural view</td>
<td>9*</td>
<td>38%</td>
</tr>
<tr>
<td>Adaption failure</td>
<td>8</td>
<td>33%</td>
</tr>
<tr>
<td>Conflicts of interest</td>
<td>3</td>
<td>13%</td>
</tr>
<tr>
<td>Deficient interaction with external organizations</td>
<td>16</td>
<td>67%</td>
</tr>
<tr>
<td>Research, planning and resource allocation</td>
<td>15</td>
<td>63%</td>
</tr>
<tr>
<td>Abuse of authority</td>
<td>16*</td>
<td>67%</td>
</tr>
<tr>
<td>Biased-based policing</td>
<td>10*</td>
<td>42%</td>
</tr>
<tr>
<td>Cultural deviation</td>
<td>6</td>
<td>25%</td>
</tr>
<tr>
<td>Unjustified enforcement action</td>
<td>13**</td>
<td>54%</td>
</tr>
<tr>
<td>Inappropriate tactical discretion</td>
<td>16</td>
<td>67%</td>
</tr>
<tr>
<td>Equipment inadequacies</td>
<td>3</td>
<td>13%</td>
</tr>
<tr>
<td>Weapon competency</td>
<td>6</td>
<td>25%</td>
</tr>
<tr>
<td>Total</td>
<td>234*</td>
<td>49%</td>
</tr>
</tbody>
</table>

* $p < .05$; ** $p < .01$
Analysis of Theoretical Issues

Disjointed Incrementalism

Lindblom’s (1979) disjointed incrementalism proposes that an organization will engender small changes in the application of their decision-making authority over-time through trial, error, and minor revisions as appropriate to changing internal and external conditions. As applied to DOJ’s decision-making regarding § 14141, over-time adjustments should be revealed through variables related to year-over-year investigations. Two related outcomes that would be expected to change through disjointed incrementalism then are efficiency and productivity. As measured by the average number of scaled themes per investigation over the life-course of § 14141, the phenomena of disjointed incrementalism is clearly revealed in Figure 3 through increases in productivity.

![Figure 3. Average Number of Scaled Themes per Investigation by Year: 1994 - 2017](image)

Having visually established that DOJ’s approach to § 14141 is indicative of disjointed incrementalism through increases in productivity year-over-year, it was therefore expected that
the application of § 14141 would be revealed through DOJ’s output. As such, the following hypothesis was offered and tested:

- **H3:** *Second-generation DOJ output will be significantly longer than first-generation DOJ output.*

The DOJ categorizes their § 14141 investigations by generation; first-generation investigations were those initiated between 1994 and 2005, and investigations initiated after 2005 are referred to as second-generation (DOJ, 2017a). One way to test over-time changes in organizational decision-making as it relates to unconstitutional policing is to quantitatively measure the output (i.e. findings letters length) of § 14141 investigations. To that end, a one tailed $t$-test for two independent means was conducted on the length of § 14141 output to test $H_3$, that second-generation output will be significantly longer than first-generation output. See Table 9 for the estimated mean length of the output, disaggregated by generation.

<table>
<thead>
<tr>
<th>Table 9</th>
<th>Mean Length of DOJ’s Output by Generation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Generation</td>
</tr>
<tr>
<td>First</td>
<td></td>
</tr>
<tr>
<td>Second</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

**p < .01**

The results of a one-tailed $t$-test with unequal variances indicate that there were significant differences in the length of DOJ’s output between first-generation ($M = 20.06, SD = 14.06$), and second-generation output ($M = 60.88, SD = 54.33$); $t(18) = -2.99, p = .004, d = 1.02$. Furthermore, separate one-tailed $t$-tests with unequal variances were conducted on the length of DOJ’s investigative output between first and second-generation investigations disaggregated by investigative outcome as a further test of $H_3$, resulting in significant differences between first-
generation negotiated settlement ($M = 18.45$, $SD = 16.72$), and second ($M = 72.23$, $SD = 56.83$); 
$t(14) = -3.24$, $p = .003$, $d = 1.28$. However, the results of the one-way $t$-test for length of DOJ output under technical assistance was not significant $t(3) = -0.04$, $p = .49$. Summary statistics can be found in Table 10.

<table>
<thead>
<tr>
<th>Table 10</th>
<th>Mean Length of DOJ’s Output by Generation and Investigative Outcome.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Negotiated Settlements</td>
</tr>
<tr>
<td>Generation</td>
<td>n</td>
</tr>
<tr>
<td>First</td>
<td>11</td>
</tr>
<tr>
<td>Second</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
</tr>
</tbody>
</table>

** $p < .01$

Analyzed ordinally without disaggregating § 14141 findings letters into two generations, the scatterplot in Figure 4 illustrates a positive association between temporal order, and DOJ’s output while the average length of an investigation remains unchanged. Suggestive of disjointed incrementalism through the increased efficiency of DOJ’s output relative to their investigation length, three Spearman’s correlations were conducted to assess the bivariate relationship between temporal order and output length. This type of test can be used to measure the association between an ordinal and continuous variable (Onwuegbuzie, Daniel, & Leech, 2017). Since DOJ’s findings letters were measured ordinally as depicted in Figure 4, and the length of an investigation, measured as the number of months, is a continuous variable, a Spearman’s correlation was the most appropriate inferential test for this analysis.

The results indicate a strong positive significant correlation for the $N = 33$ study population, ($r_s = .69$, $p < .001$), a very strong positive significant correlation for the $n = 24$
agencies under negotiated settlement, \( r_s = .79, p < .001 \), and a moderately negative non-significant relationship for the \( n = 9 \) agencies under technical assistance, \( r_s = -.30, p = .404 \).

Having established that a relationship exists between output length and the order of § 14141 investigations, the application of disjointed incrementalism to § 14141 investigations suggests that investigative efficiency would be revealed through lesser investigative length for more recent investigations compared to earlier investigations. As such, the following hypothesis was offered and tested:

- \( H_4: \) First-generation § 14141 investigations will have lasted longer than second-generation investigations.

To test the hypothesis that first-generation investigations lasted longer than second-generation investigations, and this hypothesis is directional, that is, first-generation investigations are expected to be longer than second, a one-tailed \( t \)-test for two independent means was conducted in which no significant differences between the mean length of DOJ’s
investigations by generation were found $t(31) = 0.12, p = .45$, summary statistics can be found in Table 11.

<table>
<thead>
<tr>
<th>Generation</th>
<th>$n$</th>
<th>$M$ (SD)</th>
<th>LL</th>
<th>UL</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>16</td>
<td>19.06 (13.72)</td>
<td>11.75</td>
<td>26.37</td>
</tr>
<tr>
<td>Second</td>
<td>17</td>
<td>18.52 (11)</td>
<td>12.86</td>
<td>24.17</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>18.79 (12.2)</td>
<td>14.46</td>
<td>23.11</td>
</tr>
</tbody>
</table>

Two separate one-tailed $t$-tests for two independent means were conducted for the length of an investigation by investigative outcome, disaggregated by generation as a further test of $H_4$. The results presented in Table 12 indicate that the mean difference between first and second-generation investigation length for police agencies under negotiated settlement was not significant, $t(15) = 1.20, p = .12$. Although the mean difference in length of investigation for police agencies under technical assistance was close to significant, with unequal variances, $t(3) = -1.83, p = .081$, this difference was opposite of the hypothesized relationship.

<table>
<thead>
<tr>
<th>Generation</th>
<th>Negotiated Settlements</th>
<th>Technical Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>$n$</td>
<td>$M$</td>
</tr>
<tr>
<td>First</td>
<td>11</td>
<td>22.18</td>
</tr>
<tr>
<td>Second</td>
<td>13</td>
<td>15.92</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>18.79</td>
</tr>
</tbody>
</table>

Having established that the length of an investigation does not differ by generation, nor by investigative outcome, the size of a municipal police department was brought in as a control
to glean a more complete analysis of disjointed incrementalism’s effect on DOJ’s § 14141 investigative process. As such, the following hypothesis was offered and tested:

- *H5*: The length of an investigation will be negatively associated with the number of scaled thematic findings, controlling for the size of a police department.

Disjointed incrementalism applied to § 14141 investigations suggests that the DOJ would become more efficient in their investigative process, resulting in greater thematic findings in shorter investigative time periods. An illustration of this relationship in Figure 5 for the *N* = 33 study population indicates a slight negative trend in the relationship between investigation length and number of scaled thematic findings.

![Figure 5. Relationship Between Length of Investigation and Scaled Thematic Findings](image)

A Pearson’s *r* correlation was conducted to assess the relationship between the length of investigation, and total scaled findings for the *N* = 33 investigations, (*r* = -.22, *p* = .199), indicating a weak negative, non-statistically significant relationship. Similarly, Pearson’s *r* correlations were calculated to assess the relationship between length of investigation and scaled
findings for the \( n = 24 \) negotiated settlements, \((r = -.18, p = .399)\), indicating a weak negative, non-statistically significant relationship, and the \( n = 9 \) agencies under technical assistance, \((r = - .64, p = .061)\), although a moderate negative relationship, this difference was marginally, but not statistically significant.

Since it was hypothesized that length of investigation, and scaled thematic findings would be negatively associated, three one-way Pearson’s partial correlations were conducted to bring the size of a police agency in as a control variable. Disjointed incrementalism applied to §14141 decision-making suggests that over-time efficiency by the DOJ would be revealed by producing a greater number of findings, in less time, holding the size of the police department constant. The results of these partial correlations indicate that a weak negative, marginal, but non-significant relationship exists between investigative length and scaled findings, controlling for the size of a police agency in the study population, \((r = -.265, p = .072)\), a weak negative non-significant relationship exists for the \( n = 24 \) agencies \((r = -.209, p = .169)\), and a moderately strong negative and significant relationship exists for the \( n = 9 \) police agencies \((r = -.661, p = .037)\).

Having established that disjointed incrementalism marginally affects DOJ’s investigative efficiency in a statistically significant manner controlling for the size of a police department for the entire study population, a second approach to assessing disjointed incrementalism’s influence on organizational decision-making relative §14141 enforcement was taken. Here, disjointed incrementalism’s influence on outcomes over-time was assessed, and as such, the following hypothesis was offered and tested:

- \( H_6: \) DOJ’s investigative findings will differ over time.
Supported by disjointed incrementalism’s core characteristics, changes in the number, and types of findings over the course of § 14141 enforcement should reveal themselves through the aggregation of findings by generation, and disaggregated by findings between generations. As such, to test $H_6$, that DOJ’s number and type of findings change over-time, a two-tailed z-score test for two population proportions was conducted for the total number of scaled findings between first and second-generation investigations with statistically significant differences found between generations (.38) to (.54), $z = -3.96$, $p < .001$.

Each of the 20 scaled thematic findings were tested for over-time changes by generation using a two-tailed z-score test for each of two population proportions, significant differences were found between first and second-generation findings for the following six scaled themes: (a) leadership and management failure (.19) to (.71), $z = -2.99$, $p = .003$; (b) focus on enforcement, activity, and arrests (.00) to (.24), $z = -2.06$, $p = .038$; (c) prevailing cultural view (.00) to (.53), $z = -3.41$, $p < .001$; (d) biased-based policing (.13) to (.47), $z = -2.16$, $p = .031$; (e) cultural deviation (.06) to (.35), $z = -2.04$, $p = .041$; and, (f) weapon competency (.13) to (.47), $z = -2.16$, $p = .031$. All other scaled thematic differences between generations were not significant. See Table 13 for summary statistics.
Table 13  
* Differences in Scaled Themes by Generation.  

<table>
<thead>
<tr>
<th>Scaled theme</th>
<th>First Generation $n = 16$</th>
<th>Second Generation $n = 17$</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># of agencies with scaled theme</td>
<td>%</td>
</tr>
<tr>
<td>Conditions of ambiguity</td>
<td>12</td>
<td>75%</td>
</tr>
<tr>
<td>Internal partiality</td>
<td>12</td>
<td>75%</td>
</tr>
<tr>
<td>Misaligned policy and practice</td>
<td>7</td>
<td>44%</td>
</tr>
<tr>
<td>Deficient selection criteria</td>
<td>8</td>
<td>50%</td>
</tr>
<tr>
<td>Fails to maintain established standards...</td>
<td>16</td>
<td>100%</td>
</tr>
<tr>
<td>Failure to adhere to best practices</td>
<td>13</td>
<td>81%</td>
</tr>
<tr>
<td>Leadership and management failure</td>
<td>3</td>
<td>19%</td>
</tr>
<tr>
<td>Focus on enforcement, activity and arrests</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Prevailing cultural view</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Adaption failure</td>
<td>3</td>
<td>19%</td>
</tr>
<tr>
<td>Conflicts of interest</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Deficient interaction with external orgs</td>
<td>10</td>
<td>63%</td>
</tr>
<tr>
<td>Research, planning and resource allocation</td>
<td>11</td>
<td>69%</td>
</tr>
<tr>
<td>Abuse of authority</td>
<td>6</td>
<td>38%</td>
</tr>
<tr>
<td>Biased-based policing</td>
<td>2</td>
<td>13%</td>
</tr>
<tr>
<td>Cultural deviation</td>
<td>1</td>
<td>6%</td>
</tr>
<tr>
<td>Unjustified enforcement action</td>
<td>6</td>
<td>38%</td>
</tr>
<tr>
<td>Inappropriate tactical discretion</td>
<td>7</td>
<td>44%</td>
</tr>
<tr>
<td>Equipment inadequacies</td>
<td>4</td>
<td>25%</td>
</tr>
<tr>
<td>Weapon competency</td>
<td>2</td>
<td>13%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>123</td>
<td>38%</td>
</tr>
</tbody>
</table>

* $p < .05$; ** $p < .01$; *** $p < .001$
Having established that DOJ’s findings differed between first and second-generation investigations, applying disjointed incrementalism beyond investigations and findings to exploring differences in the characteristics of the municipal police agencies between generations, the following exploratory hypothesis was offered and tested:

- \( H_e: \text{Organizational and environmental characteristics for municipal police will differ between first and second-generation investigations.} \)

Independent sample \( t \)-tests were run for the four variables; population category, percent non-white, size, and resources by generation. Differences in the population category by generation were not significant, \( t(31) = 0.142, p = .44 \); nor were differences in the size of a police department by generation, with unequal variance, \( t(31) = -0.03, p = .48 \); nor were differences in resources, \( t(31) = 0.09, p = .46 \). However, differences in the percent non-white significantly differed by generation, \( t(31) = -2.06, p = .048, d = 0.72 \). See Table 14 for summary statistics.

<table>
<thead>
<tr>
<th>Variable</th>
<th>First Generation (( n = 16 ))</th>
<th></th>
<th></th>
<th>Second Generation (( n = 17 ))</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( M (SD) )</td>
<td>LL</td>
<td>UL</td>
<td>( 95% ) CI</td>
<td>( M (SD) )</td>
<td>LL</td>
</tr>
<tr>
<td>Population category</td>
<td>3.9 (2.02)</td>
<td>2.8</td>
<td>4.9</td>
<td>4.5 (1.7)</td>
<td>3.6</td>
<td>5.4</td>
</tr>
<tr>
<td>Percent non-white</td>
<td>45.1 (24.9)*</td>
<td>31.8</td>
<td>58.4</td>
<td>62.6 (23.9)*</td>
<td>50.3</td>
<td>74.9</td>
</tr>
<tr>
<td>Size (sworn x10)</td>
<td>151 (23.9)</td>
<td>138.3</td>
<td>163.7</td>
<td>153.6 (28.0)</td>
<td>139.2</td>
<td>168</td>
</tr>
<tr>
<td>Resources (sworn per 1,000)</td>
<td>2.8 (1.29)</td>
<td>2.1</td>
<td>3.5</td>
<td>2.7 (1.05)</td>
<td>2.16</td>
<td>3.24</td>
</tr>
</tbody>
</table>

\( *p < .05 \)
Deterrence

The application of deterrence to DOJ’s § 14141 decision-making suggests that municipalities and their police agencies are specifically targeted for enforcement action under § 14141 authority because of their size. For example, data in Figure 6 illustrate that the DOJ initiated § 14141 investigations against municipal police agencies disproportionate to their representation in the U.S. population as aggregated (BJS, 2015), implying that the largest municipal police agencies, as measured by total sworn employees, are the focus of § 14141 investigations.

Concerning the data presented in Figure 6; the percentage of municipal police agencies categorized by total sworn employees was calculated by multiplying the number of local police agencies per category by .98. Since BJS (2015) informs that 98% of local police departments in the U.S. serve municipalities, that product was then divided by the total number of municipal police agencies to create a percentage of police agencies categorized according to sworn
employees, quantitatively supporting the inference of targeted enforcement by the DOJ.

Moreover, the application of § 14141 against municipal police agencies appears to concentrate among few states; of the $N = 33$ investigations in this study, 57% were concentrated in just six states, as presented in Table 15.

<table>
<thead>
<tr>
<th>State</th>
<th># of $N = 33$ Investigations</th>
<th>% of $N = 33$ Investigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ohio</td>
<td>7</td>
<td>21%</td>
</tr>
<tr>
<td>California</td>
<td>3</td>
<td>9%</td>
</tr>
<tr>
<td>New York</td>
<td>3</td>
<td>9%</td>
</tr>
<tr>
<td>Florida</td>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td>Illinois</td>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td>All others</td>
<td>14</td>
<td>43%</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>100%</td>
</tr>
</tbody>
</table>

Having established that the DOJ targets larger municipal police agencies disproportionate to their representation in the general U.S. population, the application of deterrence theory to § 14141 enforcement suggests that these investigative decisions are intentional ones because of a greater societal benefit in reforming a few large municipal police agencies to serve as an example for the many smaller municipal police agencies in the United States. Since characteristics of large municipal police agencies and their parent jurisdiction differ from smaller ones, the following hypothesis was offered and tested:

- $H_7$: Environmental and organizational characteristics will differ between police agencies found to engage in unconstitutional policing, and police agencies without such findings.

Two variables were conceptualized to represent municipal police agency environmental characteristics (BJS population category, and percent non-white), and two variables were
conceptualized to represent organizational characteristics (size – total sworn, and resources – sworn per 1,000 population). See Table 16 for summary statistics of these variables for the N = 33 investigations of municipal police by investigative outcome.

<table>
<thead>
<tr>
<th>Table 16</th>
<th>Means of Environmental and Organizational Variables by Investigative Outcome.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Negotiated settlement (n = 24)</td>
</tr>
<tr>
<td></td>
<td>95% CI</td>
</tr>
<tr>
<td>Variable</td>
<td>M (SD)</td>
</tr>
<tr>
<td>Population category</td>
<td>4.5 (1.96)</td>
</tr>
<tr>
<td>Percent non-white</td>
<td>54.7 (22.46)</td>
</tr>
<tr>
<td>Size (sworn x10)</td>
<td>194.7 (290.35)*</td>
</tr>
<tr>
<td>Resources (sworn per 1,000)</td>
<td>2.9 (1.24)*</td>
</tr>
</tbody>
</table>

*p < .05

Results of a two-tailed t-test for two independent means for the variable population category did not significant differ by investigative outcome, t(31) = 1.4, p = .17. As well, results of a two-tailed t-test for two independent means for the variable percent non-white was not significant by investigative outcome, t(31) = .189, p = .85. Results of a two-tailed t-test for independent means with unequal variances for the variable size (sworn x 10) significantly differed by investigative outcome, t(26) = 2.52, p = .018, and differences in independent means with unequal variances for the variable resources (sworn per 1,000) by investigative outcome was also statistically significant, t(29) = 2.6, p = .014.

Deterrence – economic theory of public enforcement of law as applied to § 14141, when viewed through a resource dependence lens suggests that municipal police agencies with fewer resources will have more organizational problems due specifically to their reliance on economic
support from public funding. Therefore, municipal police agencies with less economic support should have more institutional and systemic problems. As such, the following hypothesis was offered and tested:

- \( H_8: \) Municipal police agency resources will be negatively associated with the number of scaled findings, controlling for the size of a police department.

Since the average number of sworn employees per 1,000-person population is known to vary according to the size of a police department and their municipality (BJS, 2015), the size of a police agency was used as a control when correlating police resources and total scaled findings. A one-tailed Pearson’s partial correlation was conducted to test \( H_8 \), that a police agency’s resources and the number of scaled findings will be negatively associated, controlling for the size of a police department. Results indicate these variables were moderately associated and statistically significant, however, opposite of the hypothesized relationship, \( r = .402, p = .011 \).

These results present a mixed interpretation regarding the conceptualization, measurement and application of a dimension of deterrence theory to § 14141 enforcement of municipal police. In particular, the partial correlation that resulted in a statistically significant but reverse finding calls into question the conceptualization of a resource dependence perspective of deterrence for § 14141. This and other results are discussed more fully in the discussion chapter.

**Multiple Streams**

**Problem stream.**

Applying the multiple streams framework to all \( N = 33 \) investigations, and comparing the variables from that framework across § 14141 investigative outcomes allowed for an analysis of organizational decision-making, and by which variables, if any, that DOJ is influenced. The problem stream is the first of Kingdon’s (1995) three, and comprises focusing events, indicators,
and feedback, all three of which are posited to influence problem recognition, therefore assisting in decision-making, and facilitating a problem to influence a policy outcome.

**Focusing events.**

The first of the elements in the problem stream are focusing events, in the MS framework focusing events are known to bring attention to a problem. As applied to § 14141, focusing events should be an indication of highly dysfunctional organizational behavior in municipal police. As such, the following hypothesis was offered and tested:

- \( H_9: \) Municipal police agencies experiencing a focusing event are more likely to have been found to engage in unconstitutional policing than those that have not experienced a focusing event.

A Fisher’s exact test was conducted to assess \( H_9 \), that police agencies with a focusing event would be more likely to have engaged in unconstitutional policing than municipal police agencies that have not experienced a focusing event. This test can be used to determine if two dichotomous variables are independent of each other similar to a chi-square test of independence, however, since the chi-square test cannot be run on small sample sizes including those with cell frequencies less than five (Fitzgerald & Fitzgerald, 2014), a Fisher’s exact test is the appropriate test of association. Crosstabulations for these two variables are presented in Table 17. The results of the one-sided Fisher’s exact test were not statistically significant \((p = .37)\), indicating that focusing events and investigative outcome are independent of each other.

<table>
<thead>
<tr>
<th>Table 17</th>
<th>Crosstabs: Focusing Event by Investigative Outcome.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcome</td>
<td>Focusing Event</td>
</tr>
<tr>
<td>----------</td>
<td>----------------</td>
</tr>
<tr>
<td>Negotiated Settlement</td>
<td>Yes</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
</tr>
</tbody>
</table>
**Indicators.**

Having established that focusing events within the problem stream do not by themselves effect the outcome of a policy output (viz., constitutional or unconstitutional policing findings), the MS framework suggests that indicators are a second element in the problem stream that may influence the policy output. As such, the following hypothesis was offered and tested:

- \( H_{10}: \) Municipal police agencies found to have deficient intervention systems will be more likely to engage in unconstitutional policing than municipal police agencies without such deficiencies.

A Fisher’s exact test was conducted to assess \( H_{10} \), that police agencies found to have engaged in unconstitutional policing are more likely to have deficient intervention systems than police agencies that have not been found to have engaged in unconstitutional policing. This test was used as an alternative to a chi-square test of independence since two cell frequencies have fewer than five observations. Crosstabulations for these two variables are presented in Table 18. Results of a one-sided Fisher’s exact test were not statistically significant \( (p = .58) \), indicating that deficient intervention systems, and investigative outcome are independent of each other.

<table>
<thead>
<tr>
<th>Table 18</th>
<th>Crosstabs: Indicators by Investigative Outcome.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deficient Indicator System</td>
</tr>
<tr>
<td></td>
<td>Outcome</td>
</tr>
<tr>
<td>Negotiated Settlement</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
Feedback.

The third individual element in the problem stream is feedback. As an individual variable, feedback was tested by investigative outcome to determine its relationship with an investigative outcome. In the MS framework, feedback’s influence is typically measured as an interaction with focusing events in what Kingdon (1995) refers to as accompaniment, the concept of which was tested, and is reported in the next section. Since feedback as a stand-alone variable is rarely measured and tested in MS, a specific hypothesis was not offered for the following inferential test. However, assessing feedback’s relationship with the investigative outcome was critical for subsequent analysis in this dissertation, as such, a Fisher’s exact test was conducted to determine if feedback and investigative outcome are independent of each other, the result was not significant ($p = .23$), indicating that feedback and an investigative outcome are independent. Summary statistics are reported in Table 19.

Table 19
Crosstabs: Feedback by Investigative Outcome.

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Feedback</th>
<th>Row Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Negotiated Settlement</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>12</td>
</tr>
</tbody>
</table>

Accompaniment.

Having established that focusing events alone are insufficient to determine the relationship with investigative outcome, the MS framework suggests that the influence of feedback along with a focusing event forms a type of accompaniment that can affect a policy decision, and therefore a § 14141 outcome. As such, the following hypothesis was offered and tested:
• $H_{11}$: Municipal police agencies with associated focusing events are more likely to have accompaniment in the form of feedback than agencies without focusing events.

A Fisher’s exact test was conducted to assess $H_{11}$, that municipal police agencies with associated focusing events are more likely to have accompaniment, in the form of feedback from the national news media than police agencies without focusing events. Crosstabulations for the variables focusing events and feedback are presented in Table 20. Results of the Fisher’s exact test of independence were statistically significant ($p = .014$), indicating that focusing events and feedback are interdependent variables, forming a type of accompaniment.

<table>
<thead>
<tr>
<th>Table 20</th>
<th>Crosstabs: Accompaniment - Focusing Events by Feedback.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focusing Event</td>
<td>Feedback</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Present*</td>
<td>15</td>
</tr>
<tr>
<td>Absent*</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
</tr>
</tbody>
</table>

* $p < .05$

Policy stream.

The second stream in the MS framework consists of policies that rise to actionable status as solutions to problems identified in the problem stream through focusing events, indicators, feedback, and accompaniment. To test whether deficient policies are related to investigative outcomes, and serve as a root cause of municipal police agency dysfunction, the following hypothesis was offered and tested:

• $H_{12}$: Municipal police agencies under negotiated settlement will have a greater number of policy deficiencies than those under technical assistance.

Multiple one-way $z$-score tests for two population proportions were conducted to test $H_{12}$, that municipal police agencies under negotiated settlement would have a greater number of
policy deficiencies than agencies under technical assistance. The results presented in Table 21 indicate that by investigative outcome, police agencies under negotiated settlement have a significantly higher proportion of deficient policy findings compared to police agencies under technical assistance by total (.78) to (.56), $z = 2.78, p = .003$; for stop, search, and arrest policies (.75) to (.33), $z = 2.22, p = .013$; for response to special populations policies (.50) to (.00), $z = 2.66, p = .004$; and for internal discipline policies (.88) to (.56), $z = 1.99, p = .023$.

<table>
<thead>
<tr>
<th>Policy cluster</th>
<th>Negotiated settlements ($n = 24$)</th>
<th>Technical assistance ($n = 9$)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># of agencies with policy cluster</td>
<td>% of agencies with policy cluster</td>
</tr>
<tr>
<td>Use of force</td>
<td>21</td>
<td>88%</td>
</tr>
<tr>
<td>Stop, search &amp; arrest</td>
<td>18*</td>
<td>75%</td>
</tr>
<tr>
<td>Response to special populations</td>
<td>12**</td>
<td>50%</td>
</tr>
<tr>
<td>Civilian complaint system</td>
<td>21</td>
<td>88%</td>
</tr>
<tr>
<td>Internal discipline</td>
<td>21*</td>
<td>88%</td>
</tr>
<tr>
<td>Total</td>
<td>93**</td>
<td>78%</td>
</tr>
</tbody>
</table>

*p < .05; **p < .01

Having established that the number and type of policy deficiencies are related to investigative outcome, to further test the influence of the policy stream on an investigative outcome and organizational decision-making, the following hypothesis was offered and tested:

- $H_{13}$: The number of deficient policies will be positively associated with the number of thematic findings.

Three separate one-way Pearson’s $r$ correlations were conducted, one for the study population, and one by each investigative outcome to test $H_{13}$, that deficient policies and
thematic findings are positively associated. A Pearson’s $r$ correlation is a measure of association between two variables measured at the interval or ratio scale (Laerd, 2016b). Since both the number of deficient policies and the number of thematic findings are measured as continuous variables, and have a linear relationship, a Pearson’s $r$ is the appropriate test for $H_{13}$. The results indicate that very strong, positive, and statistically significant associations exist between the number of policy deficiencies and thematic findings for the $N=33$ investigations of municipal police, ($r = .79$, $p < .001$); the $n=24$ police agencies under negotiated settlement, ($r = .79$, $p < .001$); and the $n=9$ police agencies under technical assistance ($r = .71$, $p = .033$).

**Political stream.**

**Administrative turnover.**

The third, and what Kingdon (1995) argues as the most important of the three streams in the MS framework is the political stream. The combination of elements including administrative turnover and the national mood exert the most pressure on an issue rising to actionable status, effecting a policy output. As such, the following hypothesis was offered and tested:

- $H_{14}$: The number of observed § 14141 investigations occurring during the tenure of each president will differ from expected observations.

A chi-square goodness-of-fit crosstabulation with observed and expected § 14141 investigations by presidential officeholder is presented in Table 22. This type of test can be used when one variable is nominal and there are at least five expected frequencies in each group of the nominal variable (Fitzgerald & Fitzgerald, 2014). The chi-square goodness-of-fit test is the preferable test for $H_{14}$ because the null assumes that there would not be any differences between the number of expected and actual observations of the nominal variable (presidential officeholder). As such, the goodness-of-fit allows for a test of this assumption.
Since § 14141 spans two of three president’s complete tenure, I calculated the life of § 14141 for each president by months served in office beginning with initiation of the first § 14141 investigation. That is, § 14141 was passed in September 1994, with the first investigation occurring 28 months into President Clinton’s tenure for a total of 68 months, whereas President’s Bush and Obama each served 96 months in office concurrent with §14141. I then calculated an expected number of § 14141 investigations of municipal police to compare against actual observations to test $H_{14}$, that administrative turnover effects decision-making as suggested by the MS framework. The number of months in office for each president was multiplied by the ratio of total municipal police agency investigations (33), to months of presidential tenure (260). An expected number of § 14141 investigations during each president’s tenure was then calculated by the product of the resultant .13 ratio, and number of months in office. The results of these calculations are presented in Table 22.

<table>
<thead>
<tr>
<th>President</th>
<th>Political Party</th>
<th>Months in Office</th>
<th>Ratio</th>
<th>Expected</th>
<th>Observed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clinton</td>
<td>Democratic</td>
<td>68</td>
<td>.13</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Bush</td>
<td>Republican</td>
<td>96</td>
<td>.13</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Obama</td>
<td>Democratic</td>
<td>96</td>
<td>.13</td>
<td>12</td>
<td>13</td>
</tr>
</tbody>
</table>

A chi-square goodness-of-fit test was performed to determine whether there were differences between the number of expected and observed § 14141 investigations against municipal police during the tenure of each president. The results presented in Table 22, indicate that the observed and expected number of § 14141 investigations based on the presidential officeholder did not significantly differ, ($\chi^2 = 0.611, p = .73$).

Since administrative turnover as conceptualized by officeholder of the president did not have any effect on the number of expected and observed § 14141 investigations, administrative
turnover was further conceptualized to reflect the political party of the president rather than officeholder, since a changeover in party may better reflect a changeover in administrative turnover rather than presidential officeholder. As such, the following hypothesis was offered and tested:

- $H_{15}$: Investigative outcomes will differ between political parties.

A Fisher’s exact test was conducted to determine if there were differences in a § 14141 investigative outcome based on the political party of the president when aggregated. Significant differences were found ($p < .001$), indicating that political party, and category of § 14141 investigative outcome are interdependent. See Table 23 for summary statistics.

<table>
<thead>
<tr>
<th>Political Party</th>
<th>Negotiated Settlement</th>
<th>Technical Assistance</th>
<th>Row Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic***</td>
<td>19</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>Republican***</td>
<td>5</td>
<td>8</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>9</td>
<td>33</td>
</tr>
</tbody>
</table>

***$p < .001$

**National mood.**

The MS framework posits that the combination of administrative turnover and the national mood exert the strongest influence within the political stream – and the political stream is powerful enough influence agenda-setting and organizational decision-making because of the power of the presidency. As applied to § 14141, the combination of the national mood and administrative turnover were calculated to identify over-time changes in the public’s positive attitude towards the police, and contrasted with presidential turnover.

From 1994 through 2017, the national mood related to attitude towards the police was more positive than average positive for 12 years, and less positive than average positive for 12 years. The 12 positive years accounted for the initiation of 14 § 14141 investigations leading to a
negotiated settlement, and six investigations leading to technical assistance. In contrast, the 12 years in which the national mood was less positive than average, 10 § 14141 investigations were initiated leading to a negotiated settlement, and three investigations were initiated leading to technical assistance. Since the national mood data reflect over-time changes, a more instructive presentation of these data can be found in Figure 7, visually presenting the $N = 33$ investigations, national mood, and average positive national mood, suggesting that a relationship between the national mood, political leadership, and the initiation of § 14141 investigations existed through the provision’s life-course.

![Figure 7. National Mood and Number of § 14141 Investigations: 1994-2017](image)

The influence of both the national mood and administrative turnover on § 14141 decision-making becomes more discernable when viewed only as the $n = 24$ negotiated settlements, disaggregated by president, since this investigative outcome is indicative of unconstitutional policing, hence, more serious systemic misconduct. As indicated in Figure 8, over-time changes in decision-making by the DOJ to initiate a § 14141 investigation leading to a
negotiated settlement appear to mirror the national mood, and are aligned with changes in presidential leadership during the following terms: Clinton, 1994-2001; Bush, 2001-2009; Obama, 2009-2017.5

From the passage of § 14141 until the year 2000, the positive national mood toward the police was less than average positive compared over the life-course of § 14141. This time period saw the initiation of five investigations, all of which led to a negotiated settlement. The year 2000 coincided with the election of George W. Bush to the Presidency, and the first time over the life-course of § 14141 where the positive national mood in attitude toward the police was higher than historic average, with that trend continuing through 2006. During this time period, 11 § 14141 investigations were initiated, five of which resulted in technical assistance, coinciding with the § 14141 life-course historical peak positive support for the police.

During the final two full years of the Bush Presidency, 2007-2008, four new § 14141 investigations were initiated, three of which resulted in technical assistance. These two years corresponded to a drop in the positive mood from historic average towards police to lower than historic average at 42% and 45% positive. A changeover in administrations occurred in early 2009 from President Bush to President Obama. During the Obama Administration, 13 new § 14141 investigations of municipal police were conducted, one of which resulted in technical assistance. During the first four years of the Obama Administration the national mood towards the police was above historic positive, yet, this time period accounted for 9 of the 13 investigations of municipal police during the entire Obama Presidency, including a spike of investigations by the DOJ occurring in 2011. In 2014, the national mood towards police was at

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5 The term of the president begins on January 20th. As such, the final year of the three presidential terms do not reflect the entire calendar year. Accordingly, calculations for the number of § 14141 investigations reflect full years of the presidency.
its second-lowest throughout the life-course of § 14141. The only year in which the mood
towards the police was less positive was in 1994, the year § 14141 was passed into law.

Figure 8. National Mood and Negotiated Settlements, 1994-2017

To better determine the combined influence that the national mood and presidential
administration have on DOJ decision-making related to § 14141 enforcement, three separate
correlations were conducted, which included two point-biserial correlations and one Pearson’s $r$
correlation. A point-biserial correlation is used when one variable is measured on a continuous
scale and the other is dichotomous (Laerd, 2016c). The results of the first point-biserial between
the national mood, and political party of the president found a moderate, positive, marginal, but
non-statistically significant relationship, $(r_{pb} = .395, p = .062)$. A second point-biserial

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6 Data from the year 2017 were excluded from these analyses since a new president was inaugurated on January 20th, 2017, and the purpose of these analyses were to identify the over-time interaction between elements in the political stream. As such, the end of President Obama’s second term in 2017 is indicative of the end of § 14141’s “life-course”.
correlation was run between the political party of the president and the number of § 14141
investigations, wherein a weak, positive, non-statistically significant relationship was found, \( r_{pb} = .118, p = .590 \). Finally, a Pearson’s correlation was run on the number of investigations and
national mood wherein a weak, positive, non-statistically significant relationship was found, \( r = .268, p = .216 \).

A summary of all hypotheses tested, and their results can be found in Appendix G.

**Binary Logistic Regression**

A binary logistic regression was conducted using select variables from the MS and
deterrence framework to better understand, and predict how the DOJ identified a specific
municipal police agency engaged in unconstitutional policing. This type of regression is used
when a researcher wants to predict the probability that an observation falls into one of two
categories based on one or more categorical independent variables (Laerd, 2015). Since the
dependent variable being tested is binomial, and the independent variables have been dummy
coded categorically, a binomial regression is the most appropriate inferential test to determine
which independent variable(s) best predict an outcome of unconstitutional policing. Variables
from disjointed incrementalism were intentionally excluded since as applied in this study,
disjointed incrementalism was used to identify, explore, and explain over-time changes in §
14141 investigative findings, and changes in productivity and investigative efficiency throughout
the provision’s life-course. Implicit in this application is that a decision to conduct a § 14141
investigation by the DOJ has already been made. As such, deterrence and MS, as applied, are
used in an attempt to explore and explain how the DOJ made their decision regarding which
municipal police agencies to target for patterns or practices of unconstitutional policing.
Since the study population consisted of just 33 cases, all independent variables could not be used in one predictive model. Although it falls below the events per variable (EPV) “rule of thumb” of 10 events for the smaller of the two outcomes per independent variable (Austin & Steyerberg, 2017), scholars have argued that between five and nine independent variables per event can also produce valid results when properly constructed (Vittinghoff & McCulloch, 2007). Using the above described rationale, there was a need to identify the fewest independent variables to stay within an acceptable EPV ratio considering the smaller of two outcomes was the \(n = 9\) municipal police agencies under technical assistance.

Based on the need to reduce the number of variables to create a workable and valid regression model, purposeful variable selection (Bursac, Gauss, Williams, & Hosmer, 2008) was conducted in two analytical phases: First, phi coefficients were run between all independent variables to identify those with significant relationships, see Appendix D, with the objective of teasing out binary combinations with a coefficient of a \(\phi > .50\).

Using the described analytic technique, 19 combinations of binary variables were found to be significant at \(p < .05\), and in two of those combinations the \(\phi > .50\) threshold was violated. The relationship between the policy stream independent variable civilian complaint systems and problem stream independent variable indicators was very highly correlated, \((\phi = .879, p < .001)\). Moreover, two policy stream independent variables, civilian complaint systems and use of force were found to be moderately correlated, but above the established threshold, \((\phi = .528, p < .01)\). No other binary independent variables met or exceeded the established threshold. This information was used to assist in independent variable model inclusion after completion of the second phase.
Following the first phase, the four deterrence-supported independent variables, *percentage non-white, size, resources,* and *population group* were reviewed for previous inferential testing where the independent variable and investigative outcome had a statistically significant relationship. Two of the four independent variables from the deterrence framework, *size,* and *resources,* were found to significantly differ by investigative outcome at \( p < .05 \) in previously run independent samples \( t \)-tests, as such, both were considered for model inclusion.

Inferential tests by investigative outcome were reviewed from each of the three streams to identify the most appropriate variable for model inclusion. Although all three variables in the problem stream were not significantly related to the investigative outcome, the third variable in the problem stream, *feedback,* had the lowest \( p \) value of the three; *focusing events,* \( (p = .37) \), *indicators,* \( (p = .58) \), and *feedback,* \( (p = .23) \). Moreover, the variable *feedback* was significantly related to *focusing events,* yet below the established maximum threshold for model inclusion (\( \phi = .449, p < .01 \)). As well, the variables *feedback* and *focusing events* were significantly related, acceding to the interdependence of the MS concept accompaniment (Fisher’s exact, \( p = .014 \)). As such, the variable *feedback* was considered for model inclusion, whereas the two other problem stream variables, *focusing events* and *indicators,* were excluded from consideration. Within the policy stream, three independent variables, measured as policy clusters, significantly related to the investigative outcome, these included: *Stop, search, and arrest; response to special populations;* and, *internal discipline.* As such, all three variables were initially considered for model inclusion. Within the political stream, only *Presidential party* was inferentially tested against the dependent variable, however, since this variable was also found to have a statistically significant relationship by investigative outcome, it was the only one of the political stream variables considered for model inclusion.
The candidate variables for selection were then analyzed and compared to each other with phi coefficients. Since the deterrence variable *size*, had a significant phi correlation with two other deterrence variables, *percent non-white* ($\phi = .389, p < .05$), and *resources* ($\phi = .344, p < .05$), whereas the variable *resources* was significantly correlated with only the variable, *size* ($\phi = .344, p < .05$), *size* was selected as the most fitting and best representative deterrence-supported variable for the binary regression.

Of the three statistically significant independent variables by investigative outcome in the policy stream, the *response to special populations* policy cluster variable was excluded from consideration because of a lack of variation in the distribution of the outcome, that is, 12 agencies under negotiated settlement had this deficiency, whereas there were none under technical assistance: This lack of an affirmative outcome for one of the binary options proved inappropriate for the regression model. The other two significant variables; *stop, search, and arrest* policies, and *internal discipline system* policies were both included in the model. The variable *stop, search, and arrest* was significantly correlated to *response to special populations*, ($\phi = .440, p < .05$), and the variable *internal discipline system* was significantly correlated to the variable *use of force*, ($\phi = .352, p < .05$), as well as significantly correlated with *civilian complaint system*, ($\phi = .489, p < .01$). Since two variables in the policy stream accounted for significant relationships with the other variables in the policy stream but did not violate the $\phi > .50$ threshold, it was decided to include both variables in the model since they best represent the entire influence of the policy stream for the regression model.

Using the described analytical strategy and methodology, five independent variables were selected for initial model inclusion. This produced a final yield of events per variable of less than 2:1, falling well-below the minimum 5:1 to 9:1 threshold in which scholars consider necessary
for model validity; noting that an EPV of less than 5:1 consistently produces problems in logistic regression models (Vittinghoff & McCulloch, 2007).

As a workaround to the low EPV, I chose to run a backward-stepwise-Wald binary logistic regression including the five independent variables: size; feedback; stop, search, and arrest; internal discipline system; and Presidential party to identify which of the purposefully chosen MS, and deterrence-supported variables, or combination of two, best predict a § 14141 investigative outcome. Conducting this type of stepwise regression eliminated each independent variable that did not contribute to the significance of regression model based on the Wald chi-square statistic. Running the analysis with all five independent variables, and eliminating each using this technique allowed the regression to identify the fewest independent variables necessary while maintaining model significance. This technique produced five regression iterations with the best fitting model including only one independent variable – Presidential party. The one-variable model was found to be statistically significant over the null, $\chi^2(1, N = 33) = 13.409, p < .001$, and explained 48% (Nagelkerke $R^2$) of the variance in the dependent variable, operationalized by investigative outcome as unconstitutional policing. As well, this model correctly classified 89% of technical assistance outcomes, and 79% of negotiated settlement outcomes for an overall successful classification rate of 82%. Of the five predictor variables in the first model, only Presidential party significantly contributed to the model’s overall significance throughout the five regression iterations resulting in a final EPV ratio of 9:1; this was in keeping with Vittinghoff and McCulloch’s (2007) recommendation of maintaining a minimum EPV of between 5:1 and 9:1 to ensure model validity when using the purposeful variable selection method. All summary statistics for the five iterations of backward-stepwise regression can be found in Table 24.
Deriving the probability of an investigative outcome based on the regression model produced the following probabilities: When the president is a Democrat and there is a § 14141 investigative outcome, there is a .95 probability that the outcome will be a finding of unconstitutional policing (negotiated settlement). In contrast, when the president is a Republican and there is a §14141 investigative outcome, there is a .39 probability that the outcome will be a finding of unconstitutional policing (negotiated settlement). These probabilities were derived using the following formulas: (1) odds equation, (2) probability equation, (3) probability of unconstitutional outcome when Democrat, (3) probability of unconstitutional outcome when Republican.

\[
Odds = \frac{p}{1-p} \quad (1)
\]

\[
p = \frac{odds}{1+odds} \quad (2)
\]

\[
p = \frac{e^{2.944}}{1+e^{2.944}} = \frac{19}{20} \quad (3)
\]

\[
p = \frac{e^{2.944-3.414}}{1+e^{2.944-3.414}} = \frac{0.625}{1+0.625} \quad (4)
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*p < .05; **p < .01; ***p < .001
Discussion

Thematic Analysis - Interpretation

- **RQ2: What patterns or practices does DOJ find contribute to unconstitutional policing?**

  Although the differences in proportions of total themes by investigative outcome was not significant, when individually disaggregated, differences in proportions for two of the eight themes by investigative outcome were statistically significant. These differences, as well as an analysis of differences in proportions at the subtheme level by investigative outcome, provide insight into the contours of unconstitutional policing, its symptoms, causes, and how the interpretation of patterns or practices of systemic police dysfunction and misconduct influence DOJ’s decision-making regarding the constitutionality of police action.

  Of the eight themes analyzed, most prevalent among the $N = 33$ investigations of municipal police was a lack of professional currency. In 97% of the § 14141 investigations there was at a minimum, sufficient cause to believe that a municipal police agency suffered from failures to adhere to generally accepted practices within the policing profession, including any or all of the following; failing to maintain standards in systems, practices, and policies; inappropriately selecting personnel for assignment; or a failure to adhere to the police profession’s best practices. The mere fact that the DOJ identified at least one of these subthemes as systemic failures in every investigation, but one, suggests that a lack of professional currency is both a cause, and symptom of a poorly performing police agency at risk of engaging, or engaged in patterns or practices of unconstitutional policing. Put another way, a lack of professional currency may not differentiate municipal police agencies that have been found to engage in patterns or practices of unconstitutional policing from agencies where the DOJ made no such determination, but characteristics and attributes of a lack of professional currency may
very well differentiate poorly performing municipal police agencies from better performing
police agencies in the global population of municipal police under the jurisdiction of the DOJ.

This interpretation is supported by the fact that at the thematic level, there were no
significant differences in proportions of municipal police agencies exhibiting symptoms of a lack
of professional currency by investigative outcome. There was, however, an unexpected
difference in proportions at the subtheme level. The failure to adhere to best practices subtheme
significantly differed for police agencies by investigative outcome opposite of the hypothesized
relationship. This difference was unexpected, and the following three plausible explanations are
offered; (a) adhering to best practices does not necessarily shield a municipal police agency from
unconstitutional policing practices, (b) the DOJ’s orientation towards certain police agencies
under § 14141 is reflective of assisting an agency with appropriate reform, rather than
compelling agency change through force of law. This carrot-and-stick approach is indicative of a
bias embedded in DOJ’s findings letters, consequently, investigative outcomes reflect this bias,
since a finding of a pattern or practice of a failure to adhere to best practices may not by itself
elicit an unconstitutional policing finding by the DOJ, yet, other pattern or practices could.
Finally, (3) my interpretation of DOJ’s findings letters lacked reliability. Of the three
explanations offered, I believe a combination of both (a) and (b) to be the most strongly
supported.

The rationale for this interpretation is that in adhering to certain best practices, if poorly
constructed, or through the misapplication of a law, rule, or policy, would not ensure a lack of
misconduct or prevent unconstitutional policing. Normalized police conduct, and common police
practices can still produce differential outcomes when inappropriately applied. These outcomes
can, and have, served as the basis for a DOJ finding of a pattern or practice of unconstitutional
policing, such as in the *Investigation of the Newark Police Department* (DOJ, 2014), thereby negating any benefit of adhering to best practices.

Concerning the second explanation, when the outcome of a § 14141 investigation led to technical assistance, DOJ’s findings letters reflected a more conciliatory, and cooperative tone than findings letters issued to police agencies subject to a negotiated settlement; an example from a technical assistance letter:

> As an initial matter, we would like to thank you…for the considerable cooperation and assistance we have received since the beginning of our investigation. We appreciate the City’s commitment to improving police practices in Portland, and we commend the PPD’s willingness to review, analyze, and revise its policies and procedures as needed. (Brown Cutlar, 2003, p. 1).

Contrasting the tone of a negotiated settlement:

> The NOPD has long been a troubled agency. Basic elements of effective policing – clear policies, training, accountability, and confidence of the citizenry – have been absent for years. Far too often, officers show a lack of respect for the civil rights and dignity of the people of New Orleans. (DOJ, 2011, p. vi)

By directing a municipal police agency towards best practices, the DOJ is leading an agency towards learning and self-improvement that the agency may not have otherwise considered. Moreover, through an agreement to adhere to professional best practices, the DOJ is endorsing specific policies and practices as meaningful and appropriate mechanisms within the profession. However, this does not speak to how a police agency implements, or applies those best practices. Municipal police agency failure to properly implement best practices can legitimize the initiation of a subsequent § 14141 action when deemed necessary. Contextualizing
this possibility, three municipal police agencies among the $N = 33$ were the subject of two discrete § 14141 investigations, with all three secondary § 14141 investigations reflecting a failure to fully implement previous agreed-upon reforms (DOJ, 2011; Gupta & Dettelbach, 2014; Perez, 2013).

The third possible explanation for this result relates to reliability of my interpretation of the qualitative data. For two distinct reasons I believe this is the least likely explanation of the three offered. First, in conducting this research, I strictly adhered to established protocols for thematic analysis (Braun & Clarke, 2006), and sought to meet all the trustworthiness criteria as established in previous research (Nowell, et al., 2017). Second, among the themes and subthemes analyzed, the failure to adhere to best practices was among the richest, most detailed, and manifest of § 14141 reported findings. While much of the thematic analysis relied heavily on interpretation, the failure to adhere to best practices was frequently explicitly stated, therefore, could be more objectively identified. An example: “It is apparent that officers have not received guidance nor have been trained on well-established best practices [emphasis added] for police interactions with juveniles” (DOJ, 2016, p. 78). As such, both an emphasis on misapplied best practices, and DOJ investigative bias best explain the results opposite of the stated hypothesis.

Institutionalization, and organizational myopia were two themes that characterized a very high percentage of municipal police agencies, 85% the former and 82% the latter. These findings suggest that municipal police agencies investigated under § 14141 suffered from issues related to internal partiality, misaligned policies and practices, inwardness, short-term thinking, and conflicts of interest. These attributes did not appear to be root causes or effects of unconstitutional policing practices, but through their embeddedness in a police agency, allow systemic misconduct and unconstitutional policing to proliferate.
This interpretation is based off two interrelated factors. First, both themes institutionalization, and organizational myopia characterized more municipal police agencies than any other but for a lack of professional currency, yet there were no significant differences in proportion of police agencies with either of these themes by investigative outcome. Second, unlike a lack of professional currency, there were no significant differences for institutionalization, or organizational myopia at the subtheme level in either direction. This suggests that by investigative outcome, neither institutionalization, nor organizational myopia are specifically associated with unconstitutional policing practices after a municipal police agency has been selected for § 14141 investigation. Rather, organizational problems associated with institutionalization, and organizational myopia appear to be deeply embedded in many troubled municipal police agencies, and although they are undifferentiated by investigative outcome, they may very well be the manifestation of problematic organizational attributes that bring a troubled municipal police agency to the attention of the DOJ for initial § 14141 investigation.

The theme tactical discretion, weapon competency, and equipment insufficiencies was the fourth most common finding with 76% of the $N = 33$ investigations of municipal police exhibiting related systemic problems. Differences in the proportions of police agencies with this finding at the thematic, and subthematic level did not differ based on investigative outcome. Noteworthy, however, at the subtheme level, 67% of municipal police agencies under negotiated settlement were found to have utilized inappropriate tactical discretion compared to 44% for agencies under technical assistance. While these differences were not statistically significant, they are meaningful nonetheless. Tactical discretion is closely tied to the use of force and discretion, that is, choices that police officers make regarding the appropriateness of coercive force to achieve a legally justified end. These choices can themselves be interpreted as
unconstitutional forms of policing when inappropriately applied by individual police officers, however, the DOJ differentiates acts of unconstitutional policing committed by individual officers, and those acts that rise to the subjective level of a pattern or practice of unconstitutional policing. It is my interpretation then that the proportion of municipal police agencies with this subthematic finding were not specifically found to engage in unconstitutional policing on a systemic level, but through officer use of inappropriate tactics, and the application of poor discretion, engaged in individual acts of unconstitutional policing. The aggregation of these acts assisted in differentiating municipal police agencies found to engage in unconstitutional policing from investigations where no such conclusion was made.

Both themes – conditions of ambiguity, and leadership and management failure – did not have any subthemes, and as appropriate, were analyzed by proportions only at the thematic level wherein no statistically significant differences were found by investigative outcome. Even with this result, a qualitative interpretation of these two themes suggests they both relate to overall municipal police agency dysfunctionality. The role they play in that dysfunction has been interpreted in the following way.

It is possible that conditions of ambiguity in policing are the result of the opaque nature of the profession. That is, policework is comprised of, and police officers must respond to, a wide-array of scenarios that may be unpredictable, chaotic, mutable, and disorganized. In such scenarios a reliance on common sense and good judgement may guide officer conduct more effectively than a policy or procedure. Simply put, no police department can have a policy or procedure for every situation that an officer or police organization will encounter. Perhaps then, conditions of ambiguity are an embedded aspect of the profession. Alternatively, the conditions of ambiguity cited in this study as exemplar extracts better reflect conditions of ambiguity in
which well-functioning, and properly led municipal police agencies should have had appropriate guidelines and clarity for their officers, the failure of which to provide officers with is a symptom of a poorly run police department. It is this latter explanation that I find more valid based on my research, subsequent analysis, and interpretation.

This line of reasoning then points to a cause of conditions of ambiguity – the failure of leadership and management. Vision, clarity, direction, and efficiency should be characteristics that effective police leadership instills within their organization; by extension, conditions of ambiguity are then a symptom of a poorly led, and ineffectively managed police agency. Since not all police agencies that exhibited conditions of ambiguity also had findings of leadership and management failure, my interpretation is based on a qualitative understanding of these themes, and how they apply to the content and interpretation of DOJ’s findings. To the extent that conditions of ambiguity in § 14141 findings were more symptomatic of municipal police agencies with leadership deficiencies, than conditions of ambiguity were symptomatic of the opaqueness of policework, suggests that leadership deficiencies are a primary cause of conditions of ambiguity.

As an example of the connection between leadership failure and conditions of ambiguity, scholars of police leadership have noted that agency dysfunction and mismanagement are often attributed to unclear goals and objectives, poor command and control, a lack of accountability, and ineffective and unclear communication (Dias & Vaughn, 2006); attributes at the root of conditions of ambiguity. Moreover, poor police leadership is identified as a “recurrent factor in organizational failures” (Schafer, 2010, p. 738). By extension, deficient leadership is more relevant to conditions of ambiguity than the opaqueness of policework, since a failure of leadership in a municipal police agency may have outlasted the leader of that police agency. As
such, conditions of ambiguity are directly tied into leadership and management failure even
when that leadership failure is a residual of a past leadership and management deficiency.

Of the eight themes analyzed, both organizational orientation and culture, and routinized
misconduct were the only two that significantly differed in proportions by investigative outcome.
The theme organizational orientation and culture had two subthemes, however, only the
prevailing cultural view subtheme statistically differed by investigative outcome. Upon further
analysis, it became clear that the DOJ identified the culture of an organization as a contributing
factor in few and select pattern or practice investigations of unconstitutional policing. This is a
reasonable, and in all likelihood, strategic decision by the DOJ considering that during the course
of a § 14141 investigation, the DOJ is attempting to legally justify a pattern or practice of
unconstitutional policing. To that end, the culture of an organization may be more difficult to
assess, and develop necessary reasonable cause to believe that a pattern or practice of
unconstitutional policing is occurring, than an objective numerically based analysis of deficient
policies, procedures, and systems. Indeed, organizational culture is characterized as “the climate
and practices that organizations develop around their handling of people, or to the espoused
values and credo of an organization” (Schein, 2016, p. 302), defined this way, organizational
culture is very difficult to empirically measure under § 14141.

The prevailing cultural view of a municipal police department was identified to be a root
cause of unconstitutional policing in some, but among the most egregious and highly detailed §
14141 investigations, including the following municipal police departments: Albuquerque,
Baltimore, Chicago, Cleveland, Ferguson, New Orleans, Newark, Portland (Oregon), and
Yonkers. Indeed, no municipal police agencies under technical assistance had this finding, and
all save one, Yonkers, were conducted under the Obama Administration. These investigations

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had one other distinctive commonality – they were all second-generation, suggestive of a DOJ orientation towards seeking to reform municipal police agencies for systems, practices, policies, and culture – specifically during the second half of the life-course of § 14141. Thus, reflecting DOJ’s position in their over-time enforcement of § 14141 that their “priorities change over time as the Division is responsive to contemporary issues in policing and the law” (DOJ, 2017a, p. 6).

Concerning over-time enforcement of § 14141 against municipal police, it is apparent that reforming a deeply-embedded culture within police agencies was a priority in the second-half of § 14141 enforcement with what was viewed as a primary cause of unconstitutional policing.

The second subtheme of organizational orientation and culture was an orientation towards enforcement, arrests, and officer activity. Although four municipal police agencies under negotiated settlement had findings indicative of this orientation compared to none under technical assistance, the difference in proportions by investigative outcome was not significant. This result is interpreted in the following three ways, (a) it supports the importance of the subtheme prevailing cultural view as attributable to unconstitutional policing practices, (b) since all four of these police agencies had more than the mean number of total findings, and were investigated during the second-half of the second-generation of § 14141 investigations, it supports the previous conclusion that the DOJ sought out more complex and intricate systemic police agency problems later in the life of §14141 whereby attributing unconstitutional policing causes to culture, and (c) a larger study population would be more helpful in determining how this attribute of organizational orientation and culture can lead to unconstitutional policing, as the small number of police agencies with this subtheme made it difficult to draw a fully meaningful interpretation.
The proportions of municipal police agencies with the theme routinized misconduct significantly differed by investigative outcome. Moreover, routinized misconduct has four discrete subthemes, three of which were found to significantly differ by investigative outcome. In two of the three routinized misconduct subthemes that significantly differed by investigative outcome – biased-based policing, and unjustified enforcement actions – no municipal police agencies under technical assistance had any such findings, suggesting that these two subthemes were critical to the differentiation of municipal police agencies with widespread unconstitutional policing and generalized misconduct from those with systemic problems not rising to a pattern or practice of unconstitutional policing in most, but not all § 14141 investigations.

For the abuse of authority subtheme, just two of the \( n = 9 \) agencies had such findings while 16 of the \( n = 24 \) police agencies had this finding, suggestive of a widespread tolerance for abusive police behavior that is an effect of unconstitutional policing. This inference is further supported since the final subtheme in routinized misconduct – cultural deviation – was the only one in which no significant differences were found in proportions by investigative outcome. There are two takeaways here; (a) since the subtheme cultural deviation was found to be applicable more to subgroup behavior rather than organizational behavior, this supports the other three routinized misconduct subthemes and their contributions to widespread unconstitutional policing practices, and (b) cultural deviation when widespread and organizational rather than embedded within a subgroup, better reflects the theme organizational orientation and culture.

There are other analyses and interpretations which speak to the importance of routinized misconduct as highly influential to a finding of unconstitutional policing. Indeed, routinized misconduct findings were associated with municipal police agencies in which DOJ findings letters were issued between 1997-2002, and 2011-2017. This phenomenon leads to a twofold
interpretation. First, beginning in 2002, the DOJ appeared to move away from negotiated settlements as a method of enforcement against municipal police, preferring to engage in a collaborative approach towards reform. This interpretation is evinced by the data which informs that all $n = 9$ investigations resulting in technical assistance commenced between 2002-2009, while just four of the $n = 24$ investigations resulting in a negotiated settlement were initiated during that same timeframe.

Second, the transition in emphasis away from findings of routinized misconduct facilitated investigative outcomes that allowed for technical assistance in lieu of a negotiated settlement. It is possible this was an intentional choice as these transitions coincide with the changeover in presidential administration from Clinton to Bush, and Bush to Obama, as well as by political party, Democrat to Republican and Republican to Democrat. These facts support Kingdon’s (1995) contention that administrative turnover in the political stream exerts a powerful influence on the agenda. Taken together, this could suggest that seeking out routinized misconduct in municipal police departments was the orientation for early § 14141 investigations, and for some of the more recent. Moreover, avoiding a finding of routinized misconduct could be argued as necessary to obviate a negotiated settlement for technical assistance – reflecting the influence of political preference in the enforcement of § 14141 against municipal police.

Disjointed Incrementalism - Interpretation

- **RQ3: Have DOJ’s pattern or practice investigations changed over-time?**

  The application of § 14141 authority by the DOJ over the life-course of the law is indicative of disjointed incrementalism in a number of ways including; changes in the number of thematic findings per investigation, length, complexity and nuance of the output, and variations in unconstitutional policing thematic findings over-time.
Between the two generations of investigations, the average number of total scaled findings per year increased from five to 13, reflecting changes in productivity, while the length of a § 14141 investigation remained the same, the combination of these two variables reflects increases in investigative efficiency. Indeed, as predicted in $H_3$, the output between first and second-generation investigations significantly increased for the entire $N = 33$ study population, and $n = 24$ negotiated settlements, while the output for the $n = 9$ technical assistance letters remained the same, reflecting the prioritization of one investigative outcome over the other. It is not just that DOJ’s output increased in length, a qualitative interpretation reveals changes in complexity, nuance, and depth of analysis. Moreover, as predicted in $H_6$, second-generation investigations were more closely associated with addressing issues related to police culture, criminal misconduct, unnecessary use of weapons, and poor tactical decisions, in addition to leadership deficiencies as causes and effects of unconstitutional policing practices contrasted to first-generation investigations.

Along with these expected changes, there were unexpected results as well. The hypothesized relationship between an increase in the variable length of an investigation between first and second-generations, as predicted in $H_4$, was not statistically significant. The mean of this variable remained remarkably similar for all $N = 33$ investigations when aggregated and compared between both generations. Additionally, when disaggregated both by investigative outcome and generation, there was a non-significant decrease in the length of investigation for negotiated settlements, and a non-significant increase in the length of an investigation for those resulting in technical assistance.

To the first result; although not a significant decrease in investigation length, this result nonetheless indicates a trend in the direction of the hypothesized relationship as predicted in $H_4$. 

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One possibility for non-significance is that for this test there were variables which were unaccounted for that mitigated the influence of the downward trend. Concerning the second result; although close to statistical significance opposite of the hypothesized relationship, this result supports other interpretations and conclusions in this dissertation, specifically, that the DOJ deprioritized their use of technical assistance as a tool of § 14141 in lieu of greater enforcement under negotiated settlements during the second half of second-generation investigations. That is to say, technical assistance cases during the second-generation of § 14141 were not prioritized by the DOJ relative to investigating and uncovering more serious patterns or practices of organizational police behavior that in the aggregate, were believed to be unconstitutional.

Moreover, investigations of larger police departments were prioritized during the second-generation of § 14141 investigations leading to technical assistance, and this is supported by the opposite, but marginally non-significant finding related to length of investigation for those police agencies. As an example, of the four investigations resulting in technical assistance, the two agencies from the smaller jurisdictions, Lorain and Harvey, had § 14141 investigations lasting more than three years, whereas the two agencies from the larger jurisdictions, Austin and Inglewood, had investigations lasting 19 months the former, and nine months for the latter agency. These results support the inference that differences in length of investigations reflect DOJ priorities in § 14141 enforcement of larger, and more complex agencies with an emphasis towards findings of a pattern or practice of unconstitutional policing and reforming larger police agencies.

To the non-significant finding in $H_4$ for the entire study population, it is my speculation that there are internal guidelines, which are unknown to the public and me, that necessitate
completion of a § 14141 investigation within a specific timeframe. This supposition is based off my interpretation of the data, professional experience, and knowledge of general investigative procedures whereby investigators are required to follow standardized internal protocols including adhering to pre-specified timelines. Disjointed incrementalism then, without considering any other variables in $H_4$, appears to offer an incomplete explanation of length of investigation and over-time changes as operationalized. I considered these as possible complicating factors when constructing this hypothesis, and as a result of that reasoning, offered the next hypothesis, $H_5$, to bring in the size of a police department as a control. By controlling for the number of sworn employees, and correlating for findings, it was believed that disjointed incrementalism would more clearly be revealed. Consider; if the length of an investigation experienced no changes over the two generations, but the output had become longer, more complex, and nuanced, then disjointed incrementalism should be revealed through changes in variables such as the number and types of findings, in addition to output productivity. This should then be revealed more clearly holding the size of a municipal police department constant.

The result of this partial correlation was marginal, but not statistically significant for the entire study population and negotiated settlements, but significant for agencies under technical assistance. Even with these mixed results, there is meaningful information here. The direction of the relationship between length of investigation and number of scaled findings was accurate, and this I believe speaks to DOJ’s productivity and efficiency. Yet the deficiency of $H_5$, is what is unknown regarding the cooperation that existed between a municipal police agency and the DOJ; information which was not regularly recorded in § 14141 findings letters, and as such, went unaccounted for. Exceptions to this qualitative information existed in one notable investigation. In the output of the investigating the Meridian Police Department, the DOJ specifically indicated
that the city did not cooperate, or fulfill requests for information, data, or records (Perez, 2012). This lack of cooperation had two meaningful consequences: First, the City of Meridian Police Department was the only municipal police agency found not to suffer from a lack of professional currency. Second, this investigation lasted just eight months – from commencement to issuance of DOJ’s investigative findings letter – the third shortest investigation of the \( N = 33 \).

When considering the implications of the result of the marginally, but not statistically significant partial correlation from \( H_5 \), for the study population and significant relationship for agencies under technical assistance, along with the results of the Meridian investigation, two meaningful inferences can be drawn. First, for the DOJ to make a finding related to the appropriateness of a municipal police department’s systems, procedures, practices, and policies, the DOJ requires access and cooperation of the police agency under investigation. Second, cooperation with an investigation, and the length of investigation may be related, evinced through the Meridian investigation being the third shortest of all the § 14141 investigations. Yet, it is unknown if the opposite is true, that greater cooperation between organizations equates longer investigations, as it is unknown which agencies cooperated with a § 14141 investigation, or what the optimal municipal police agency cooperation to investigation relationship is. The meaningfulness of this marginally statistically significant result then is that investigation length, agency cooperation, and the number of scaled findings may be related. Such that when controlling for the size of a municipal police department, the relationship between the length of an investigation, and number of scaled findings may reflect a previously unknown, and currently unaccounted for variable – cooperation between agencies.

The final hypothesis of research question three, \( H_6 \), predicted that investigative findings would differ over-time. Although this was a non-directional hypothesis, significant differences
were found between first and second-generation § 14141 investigative findings by total, and in six of the 20 scaled themes, all of which were present in greater proportions for second-generation investigations. The interpretation of this finding is twofold: First, for second-generation investigations, DOJ was seeking out, and identifying a greater number of systemic deficiencies within municipal police agencies. Second, during second-generation investigations, the DOJ was also seeking to address and define systemic problems differently from first-generation investigations. In particular, the DOJ identified problems with municipal police agencies in second-generation investigations related to police culture, routinized misconduct, weapon competency, and failures of leadership to a greater extent than during first-generation investigations. These findings reflect a departure from, and change in the orientation of § 14141 enforcement over-time, changes in the subjective interpretation of unconstitutional policing, and how the application of that interpretation changed through organizational decision-making.

Further supporting this conclusion, results from the exploratory hypothesis indicate that between first and second-generation § 14141 investigations, the DOJ sought to enforce findings of unconstitutional policing practices against police departments with a greater non-White municipal population. Bringing together differences in themes, and the targeted enforcement of larger police agencies, DOJ investigations of more diverse jurisdictions appears to be intentional decision-making, and conforms to what DOJ indicates in their technical reports (2017a) that the focus of their enforcement changes over-time. It appears that over the two generations of § 14141, the DOJ was targeting municipal police agencies for greater levels of misconduct, leadership failure, use of weapons, and orientation and culture problems in municipalities where there was a significantly higher percentage of the jurisdiction that identified as non-White; apparently reflecting intentional decision-making by the DOJ in § 14141 enforcement.
Disjointed incrementalism, along with MS and deterrence, supports why, and how these changes occurred.

**Deterrence - Interpretation**

- **RQ4: What organizational characteristics, and environmental conditions existed in municipal police departments prior to a § 14141 investigation?**

  Of the $N = 33$ investigations of municipal police in this study, 19, or 57% involved police agencies with more than 500 sworn employees. This by itself is unrevealing, however, when compared to the percentage of police agencies in the United States that serve municipalities, a much different picture emerges. Municipal police departments with more than 500 sworn employees make up 0.9% of all local police departments in the U.S. (BJS, 2015), but made up 57% of the study population. Even more revealing is that of these 19 municipal police agencies, 16 had over 1,000 sworn employees. Municipal police departments in the United States with over 1,000 sworn employees comprise just 0.4% of all local police departments nationwide (BJS, 2015), yet made up almost fifty percent (48%) of the § 14141 investigations in this study. These large differentials and their lack of representativeness in the general population, cannot be due to chance.

  When viewed in the context of municipal police agency size from the previous interpretation, it was unsurprising that there was a disproportionate number of large municipalities, as measured by population, represented among the $N = 33$ investigations of municipal police. For example; 0.8% of police agencies in the United States serve municipalities with a population greater than 250,000 persons (BJS, 2015), yet police agencies serving these municipalities made up 55% of the study population.
Both of these analyses reflect an interpretation that the DOJ targeted large municipalities, and large police departments for §14141 enforcement both for symbolic, and pragmatic reasons. This is supported by work done by police scholars such as King (2014) who has noted that larger police departments are better able to withstand, and better able to respond to crises than smaller police departments, which may be put at risk of demise when faced with external or institutional intrusion. These results also suggest that the DOJ used their limited resources for enforcement of §14141 as a deterrence strategy, which is supported by their policy language (DOJ, 2017a), and by their choices of police agencies deemed suitable to conduct a §14141 investigation – preferring to be responsible for reforming a large troubled police agency, rather than being perceived as leading to the demise of a smaller police agency.

Moreover, larger police agencies serve larger jurisdictions, and although the non-White population of the $N = 33$ remained the same over different investigative outcomes (55% $n = 24$, 53% $n = 9$), the change in the non-White population over the two generations, increases in DOJ thematic and scaled findings, as well as emphasis on unconstitutional policing determinations during the second half of the second-generation investigations suggests that DOJ was targeting larger police agencies serving more diverse populations later in the life-course of § 14141 specifically to address problematic police practices made against more diverse populations.

Another aspect of my analysis that supports the interpretation of targeted enforcement and deterrence revolves around the concept of clustering. As described by King (2014), when discussing the phenomena of police organizational demise, clustering occurs when “the disbanding of a police agency increases the likelihood that geographically proximate police agencies will suffer disbanding as well” (p. 685). Indeed, Kingdon (1995) has a similar construct within the MS framework; “spillovers” (pg. 190) are described as the increase in probability that
a window of opportunity will open in adjacent policy areas – often geographically. Applying the phenomena of clustering and spillovers to the initiation of a § 14141 action against a municipal police department, the triggering of a new investigation in proximate municipalities, and for similar reasons, should not then be unexpected.

This “clustering” or “spillover” effect was found in my analysis wherein many § 14141 investigations involved geographically proximate municipal police departments. For example, seven of the $N = 33$ investigations involved cities in Ohio. Moreover, the first two municipalities subject to a § 14141 investigation leading to a negotiated settlement were roughly adjacent cities albeit in different states – Pittsburgh and Steubenville – the latter of which is located in Ohio. This for a state whose population reflects 3.7% of the overall U.S. population (U.S. Census, 2010a), and is but one of 50 states and numerous territories to which DOJ has jurisdiction. In fact, just six states accounted for 19 of the $N = 33$ investigations of municipal police under study, further suggesting the clustering and spillover effect of §14141 enforcement.

Also supporting an interpretation of targeted enforcement, deterrence, and a clustering effect were the results from $H_7$, that environmental, and organizational characteristics would differ by investigative outcome. For both environmental variables, population category and percent non-white, there were no significant differences by investigative outcome, suggesting that the size of a municipality, by category, and racial composition make no difference to the outcome of a § 14141 investigation. An explanation for the rejection of the alternative hypothesis for the variable population category relates to the chosen methodology. By creating seven categories of municipal populations, the sensitivity of analysis was reduced as the largest municipalities (e.g. Los Angeles & Chicago) are many times larger than the second largest category of municipality (e.g. Columbus, Washington, D.C., Detroit, etc.). Analyzing the range
of largest of the large municipalities – Los Angeles, population 3,694,820 (U.S. Census, 2000), and comparing that to the smallest of the second largest category – Albuquerque, population 545,695 (U.S. Census, 2010a) produces a population ratio of almost 7:1. Assigning municipalities to categories based on population size makes the analysis more manageable, but less sensitive to large differentials, and as such, less sensitive to precision analysis.

Although differences by investigative outcome for the variable percent non-white were not statistically significant, when contrasted to the general U.S. population of 39.3% non-White (U.S. Census, 2010a), differences in racial and ethnic make-up appear to be substantial. Two inferences can be drawn this information. First, municipalities in the study population are misrepresented in terms of population characteristics for the nation as a whole, and second, the racial and ethnic make-up of a municipality is not differentiated by investigative outcome. Put another way, the \( N = 33 \) investigations of municipal police agencies are more diverse than the general population, but diversity does not relate to investigative outcome after a municipality has been selected for \( § 14141 \) action by the DOJ. As well, the exploratory hypothesis supports that the DOJ changed their orientation in second-generation investigations, seeking to address police misconduct in municipalities with greater non-White populations.

Both organizational variables, size, and resources, significantly differed by investigative outcome. A non-directional hypothesis was offered here as I reasoned that the variable size would be significantly larger for municipal police under negotiated settlement – this was supported by the test results. However, I reasoned that resources would be significantly different wherein municipal police agencies with fewer resources would have more problems. As such, police agencies with fewer resources would be more likely to be subject of a negotiated settlement. I offer the following interpretation for the results of both below.
The size of a police department is the total number of sworn employees, and is largely a reflection of the size of the municipality served in terms of overall population. In fact, the variables size and population group were very highly associated when correlated categorically, $r = .86$, and $r^2 = .74$. The variable resources, however, is a ratio of total sworn employees to overall population, and was conceptualized to measure a municipality’s ability to sufficiently support a police agency, and determine what if any effects strained resources have on organizational performance.

Considering that the $n = 24$ municipal police agencies were more highly skewed in a positive direction than the $n = 9$ municipal police agencies (2.64 to 1.65), and that negotiated settlements reflect a more involved investigative outcome, it was unsurprising that there were significant differences in the size of a municipal police department by investigative outcome. Put simply, larger police departments because of their size, have the potential for greater systemic problems than smaller departments, and in DOJ’s enforcement strategy, larger police agencies require more substantial interventions to fix.

The variable resources significantly differed by investigative outcome. As well, this was a non-directional hypothesis, however, I reasoned that fewer resources would be associated with more problems, and more problems would be reflected in both the number of findings, and the type of investigative outcome. The results differed from this expectation, and my interpretation follows.

According to data from BJS (2015), smaller police agencies by category have less sworn officer-to-population ratios than larger police agencies by category. These data may better reflect that small and large police agencies have different needs based on their population to a greater extent than reflect how resource rich or resource poor a municipal police department is. Using an
external control of organizations, resource dependence model to support a resource interpretation appears incomplete. That is, this perspective does not take into consideration the policing needs and differentials between large and small municipalities. Simply put, smaller police departments with fewer resources may have plenty of resources to meet their specific, and often, more limited mission, whereas large police agencies that serve large municipalities may require many more resources to meet their more complex tasks, and the more robust mission inherent in policing a large municipality.

This interpretation also then accounts for the unexpected result opposite of the next hypothesis, $H_8$, that a municipal police agency’s resources, and scaled findings will be negatively associated when controlling for the size of a police department. From this statistically significant result, I can say the opposite is true; that greater resources are positively associated with the number of findings. My interpretation of this unexpected result is twofold. First, conceptually, the variable resources is more closely aligned with size of a police agency than economic constraints, and second; larger municipal police agencies have more systemic problems than smaller police agencies, simply as a consequence of their size.

**Multiple Streams - Interpretation**

- **RQ5. How does the DOJ identify a specific municipal police agency engaged in unconstitutional policing?**

  Regarding the choice of a municipal police agency to investigate under § 14141 authority, the DOJ has indicated that a high-profile event (focusing event) never justifies a § 14141 decision, per se (2017a). The DOJ does, however, use focusing events as a basis to initiate an investigation since a focusing event may serve as a symptom of deeper and more systemic problems within a municipal police agency (DOJ, 2017a). The DOJ’s choice of municipal police
agency to investigate, and their decision-making could only be tested indirectly here, but through a non-significant finding, it was revealed that focusing events are independent of investigative outcome.

Through further analysis of the $N = 33$ investigations of municipal police in this study, it was found that 18 had focusing events, and 15 did not. This equates to 55% for the former, and 45% for the latter. These differences were not statistically significant as predicted and in contrast to the alternative hypothesis in $H_9$. The inferences drawn from these analyses are that; (a) although DOJ’s attention may be drawn towards a police agency because of a focusing event, that event is not necessary or sufficient for a $\S$ 14141 action, and (b) focusing events have no relationship to DOJ’s investigative outcome, per se. The interpretation of the rejection of the alternative hypothesis here is twofold. First, as described by Kingdon (1995), focusing events by themselves are typically insufficient to raise an issue to agenda status (as applied, the policy output), and DOJ’s claim regarding the role of focusing events accurately reflects their practice concerning municipal police.

The presence or absence of an insufficient intervention system served as indicators in this study. That is, in findings letters wherein the DOJ noted deficiencies in EISs, that municipality was categorized as having deficient indicators. The sufficiency of an indicator system was not interdependent with the type of investigative outcome as predicted in the alternative hypothesis in $H_{10}$, however, in 28 of the $N = 33$ (85%) investigations, municipal police agencies were found by the DOJ to have deficiencies in indicator systems. This suggests not that the DOJ seeks to investigate municipal police agencies because of their deficient indicator systems, rather, it suggests that a deficient indicator system is endemic to a poorly functioning police agency. This conclusion is inferred from the interpretation of the data indicating that for 15% of investigations
in this study, the DOJ did not find issues with the municipal police agency’s indicator system, yet there was no statistically significant relationship by Investigative outcome. This does not mean or suggest then that a properly implemented and performing indicator system obviates a DOJ investigation, clearly it does not and cannot, because findings regarding the adequacy of an EIS are only made after a § 14141 investigation has concluded.

Although there is disagreement in the literature as to whether focusing events require accompaniment to reach agenda status and become actionable (Worrall, 1999), in keeping with Kingdon’s (1995) contention, feedback was operationalized as national news reports, and when corresponding to the same time period as a focusing event, albeit not necessarily because of that focusing event, was operationalized as the presence or absence of accompaniment. For this hypothesis, \( H_{11} \), the null was rejected as it was found that focusing events and feedback are interdependent, and form a type of accompaniment. Considering this result in combination with the null finding from focusing events in \( H_9 \), supports Kingdon’s (1995) position that focusing events require accompaniment to become actionable, however, this was not true in all cases. In 12 of the \( N = 33 \) investigations, the focusing event did not have accompaniment. There are two plausible explanations for this result; (a) certain types of focusing events do not require accompaniment to reach agenda status (viz., the policy output) in keeping with Worrall’s (1999) conclusion, and (b) there are other variable(s) that share greater responsibility in a municipal police department being selected by the DOJ for §14141 investigation other than a focusing event, with or without accompaniment.

Since the second stream of the MS framework involves policies, and policies are the result of both technical feasibility and value acceptability, it was reasoned that policy clusters were a more appropriate level to analyze than specific policies for two reasons. First, policy
clusters better reflect the core concept of value acceptability insofar as elements in the policy stream are responsible for its movement into agenda status, including those of an interested public. This public would be more amenable to police policies that are not too esoteric, granular, or highly nuanced, as policy clusters are easier to interpret and understand to an interested, but non-expert public. Second, the technical feasibility aspect of the policy stream is implicit in DOJ’s policy recommendations.

The DOJ employs subject matter experts in their investigations, many of whom have executive-level law enforcement experience (DOJ, 2017a), and through the negotiation process with the offending police agency, derives policy suggestions that typically conform to common police practices which must be implementable by the municipal police agency. Overly technical, complex, or intricate policies can lead to implementation failure, which then would lead to one of two outcomes; (a) the DOJ could not close their § 14141 action, or (b) in a scenario where the implementation failure was really a sustainability failure, the DOJ could open a new § 14141 action against that same agency. This scenario occurred in three cases; New Orleans, Miami, and Cleveland, wherein the justification for initiating a new § 14141 investigation was based on the failure to institutionalize agreed-upon reforms. Although the closing of an investigation is beyond the scope of this study, what is known about the reform agreement process, and accompanying reform implementation timelines, suggests that all §14141 actions of municipal police will close eventually. Just as the two largest municipal police agencies under DOJ’s § 14141 authority, which are two of the three largest police departments in the United States – LAPD and Chicago Police Department – both closed, albeit for different reasons.

Of the five policy clusters analyzed, three significantly differed by investigative outcome in the direction of the hypothesized relationship as predicted in the alternative hypothesis, \( H_{12} \).
As well, there were significant differences in the total proportion of police agencies with deficient policies by investigative outcome, conforming to the hypothesized relationship. These results suggest that policy deficiencies are a main contributor to unconstitutional policing, but they also suggest that specific polices, particularly those related to the use of force, and civilian complaint systems, although not significantly different by investigative outcome, are a main contributor to a type of dysfunctionality that brings a municipal police agency to the attention of the DOJ for a § 14141 investigation.

Put another way, since 91% and 89% of the $N = 33$ investigations of municipal police in this study had policy deficiencies regarding use of force, or civilian complaint systems, but the differences by investigative outcome were undifferentiated, strongly suggests that these two deficient policy areas, more than any of the others, contribute to dysfunctionality that is endemic to a troubled municipal police agency. As such, these two deficient policy areas appear to contribute to behaviors making the DOJ aware that systemic problems exist within a municipal police agency, whereas other policy deficiencies make it more likely that patterns or practices of unconstitutional policing will proliferate.

A second explanation for the differentials in policy findings between outcomes relates to a municipal police agency’s size. That is, police agencies under negotiated settlement are larger in terms of sworn employees than police agencies under technical assistance. Larger police agencies have more complex structures, missions, and scope, or what is referred to as bureaucratization (King, 2014). It stands to reason then that larger police agencies would require more policies to manage their more complex and detailed function. Hence, larger municipal police agencies are more likely to have a greater number of policy deficiencies than smaller municipal police agencies, in part, as a consequence of their size.
This interpretation is supported by the rejection of the null hypothesis for \( H_{13} \), wherein deficient policies and thematic findings were significantly correlated in a positive direction for the study population, and by investigative outcome. Since the variable resources was interpreted to closely represent municipal police agency size, as the unexpected result of \( H_8 \) suggests, and resources and scaled findings were positively correlated, then the number of thematic findings and deficient policies should be positively correlated because they contain the specific common element of size.

The choice in this hypothesis to use thematic findings instead of scaled thematic findings was a strategic and methodological one. I reasoned that since the policy stream was measured in clusters, that any comparison between variables would require measurement at that same level. Scaled findings are measured at a more granular level but when appropriate for analysis, scaled findings provide for more finely tuned nuance and analysis. When comparing across variables, I felt it was necessary to compare similar levels for consistency and accuracy, and comparing themes to cluster, and vice versa, was the appropriate way to do this.

The third of the streams tested in the study was the political stream. In the MS framework, Kingdon (1995) argues that changeover in administration has the strongest effect on a problem becoming actionable and effecting the policy output. To test this idea, and to facilitate an understanding of the influence of political turnover on complex organizational decision-making and a policy output, two inferential tests were conducted. The first test, a chi-squared goodness-of-fit test, was used to detect any differences that may have existed between the number of §14141 actions involving municipal police with the number of § 14141 actions expected to occur under each president as predicted in \( H_{14} \). In contrast to Kingdon’s (1995)
argument, this test revealed that changeover in administration was unrelated to the number of observed § 14141 actions.

When changeover in administration was operationalized as changes in political party rather than turnover in the presidency and tested by investigative outcome, significant differences were found as predicted in $H_{15}$. Indicating that although presidential administration is independent of the initiation of a § 14141 action, the political party of the president is directly related to the type of investigative outcome. This finding is quite revealing, the results of which coincide with the change in orientation of § 14141 after 2002. After the changeover in political party from Democrat to Republican, and after 2002 no municipal police agency had a DOJ finding characterized by routinized misconduct. This trend continued until 2009 with a changeover in political party of the administration from Republican to Democrat. This suggests that a finding of unconstitutional policing, and specifically routinized misconduct, is as much influenced by political orientation as the legality of the police action. Operationalizing Kingdon’s (1995) turnover in administration then as turnover in political party, accedes to the notion that turnover in the political stream is the most influential factor within in the streams, albeit after a decision has been made to conduct a § 14141 investigation of municipal police.

Analyzing the influence of the national mood on § 14141 as a discrete measure leads to a mixed interpretation. That is, the national mood by itself appears to have some influence on both the outcome of an investigation, and the number of investigations. For example, when the national mood is more positive, the DOJ is more likely to engage in technical assistance, and when less positive, the DOJ is more likely to engage in investigations leading to negotiated settlement.
More strikingly, however, it appears that the national mood is most accurately reflected by the president, and who was president is most reflective of the type of investigative outcome. For example: President Clinton was in office for seven full years during the life-course of § 14141 – in six of those seven years, the national mood was less positive than average, with all § 14141 investigations during those years leading to a negotiated settlement. President Bush was in office for eight full years during the life-course of § 14141 – in six of those eight years the national mood was more positive than average, and of the 13 § 14141 investigations conducted during that time, eight, or 62% resulted in technical assistance. Lastly, President Obama was in office for eight full years during the life-course of § 14141 – for this time period the national mood was an even split between four years more positive than average, and four years less positive than average, however, of the 13 § 14141 investigations initiated against municipal police, only one led to technical assistance.

In an attempt to tease out the influence of the national mood and administrative turnover, three correlations were run between variables measured at different scales. The three correlations in the political stream; mood associated with political party, political party associated with number of investigations, and the number of investigations associated with mood, were all non-significant, however, all associations were positive, supporting the previous inference that the national mood is reflective of the president, and the party of the president is reflective of investigative outcome. Indeed, the results of the marginal, but not significant association between the national mood, and political party support this conclusion, insofar as when the administration is led by a Republican, the national mood is more positive, and there are fewer § 14141 investigations leading to negotiated settlement.
Regarding the influence of public opinion on policy, scholars such as Burstein (2003) have argued that “public opinion influences policy most of the time, [and] often strongly” (p. 29). To what degree that public opinion influences policy is a question that is beyond the scope of this study, what is relevant, however, is that public opinion, and public policy regarding the application of § 14141 against municipal police appear to conform to Kingdon’s (1995) position that elements in the political stream, specifically the combination of national mood and administrative turnover, are highly influential on the agenda, and for this study, highly influential on the policy output. It is suggested by my analysis that changes in administration conform to the national mood, which then conforms to § 14141 investigative outcomes. What is unknown from this analysis is which way the influence runs. That is, did the national mood drive the agenda of the president, or the president drive the agenda and lead the national mood?

When conducting an analysis of the relationship between public opinion towards crime, and political elites including the president, Enns (2016) concludes that although there is a give and take between the two, public opinion leads political elites, including the president. Yet, Kingdon (1995) asserts that “there is little doubt that the president remains a powerful force in agenda setting, particularly compared to other actors” (p. 23). The analysis in this dissertation does not answer which way the influence runs, but what is clear is that both the national mood and administrative turnover had a role in DOJ’s § 14141 decision-making and outcomes.

The results of the stepwise-backward regression model also support Kingdon’s (1995) notion regarding administrative turnover in the political stream exerting the biggest influence on the agenda, and in the case of § 14141 of municipal police, it was the variable that was significantly related to the investigative outcome. Consider, in the one-variable significant model, a one-unit change in political party to Republican decreases the odds of unconstitutional
finding by a factor of .033. Put another way, when only considering a § 14141 investigation leading to a finding of unconstitutional policing, the odds of a municipal police agency being found to engage in unconstitutional policing after a DOJ investigation increases by a factor of 30.4 with a change in Presidential party from Republican to Democrat, this for an outcome that was already highly differential; 73% of outcomes were negotiated settlements compared to 27% for technical assistance. In terms of probabilities, the differences between the two political parties that an affirmative §14141 investigation will result in a finding of patterns or practices of unconstitutional policing are almost two-and-a half-times as probable when a Democrat is president compared to a Republican, .95 to .39.

Even with these compelling results, some caution is necessary when drawing conclusions regarding a specific political party and their orientation toward the enforcement of patterns or practices of unconstitutional policing. As further elaborated as a study limitation, this model does not allow for the accounting of § 14141 investigations that did not lead to any findings. That is, what is being predicted in this model is the investigative outcome based on the political party of the president, but only after a decision has been made by the DOJ to commit their resources towards enforcement of pattern or practices of unconstitutional policing or systemic misconduct.

Municipal police agencies that were investigated under § 14141, but those investigations were closed without a finding were not part of this study, thus, unattributable to a political party. As such, the political influence on the decision not to pursue a § 14141 may be as important to understanding political stream influence on a DOJ decision as it is on the influence of the investigative outcome. Until that knowledge is gleaned, it can only be inferred from the result of the binary regression that administrative turnover does in fact exert the most powerful effect on a
DOJ decision regarding the differentiation of patterns or practices of unconstitutional policing from problematic, but constitutional policing.
Policy Implications

- **RQ6: How can § 14141 support police departments to practice constitutional policing?**

  Answering this research question required four discrete but interrelated components. First, to understand constitutional policing, the knowledge gained from this study was applied to the concept of unconstitutional policing; providing a clear, distinct and explicated differentiation of constitutional and unconstitutional policing in the context of § 14141. Second, supporting municipal police agencies to practice constitutional policing required a compendium of policies, practices, and procedures that by deduction, analysis, and interpretation of DOJ’s § 14141 findings letters, were found necessary to shield, forestall, or course correct police agencies engaged in, or at risk of engaging in, unconstitutional policing. Third, police leaders must have an awareness, and knowledge of internal and external conditions that have been linked to patterns or practices of unconstitutional policing. This presupposes that municipal police leaders know when, where, and for what to look – which cannot be taken as a given, since preemptively addressing unconstitutional policing, or alternatively, course-correcting patterns or practices of systemic misconduct that may lead to unconstitutional policing, requires not just knowledge acquisition, but knowledge application. As such, a pragmatic, and workable model was conceptualized, grounded in this study’s findings that when followed by municipal police, supports them forestall unconstitutional policing. Finally, to fully explain how § 14141 can support municipal police agencies to police constitutionally, it was necessary to explore DOJ’s decision-making regarding enforcement of § 14141. To that end, an exploration of rational decision-making related to past enforcement of §14141 was conducted; using the knowledge of past enforcement supported by the application of disjointed incrementalism, served as the basis
to explore options for future enforcement of § 14141. The combination of these four elements, offer municipal police leadership the answer to the final research question.

**Unconstitutional Policing**

Concerning the differentiation of constitutional and unconstitutional policing; it is through their numerous findings letters and technical reports that the DOJ, and by extension, the federal government have defined unconstitutional policing as the accumulation of patterns or practices of systemic police misconduct that violate federal laws or constitutional rights (DOJ, 2010; DOJ, 2017a; DOJ, 2017b; DOJ, 2018). Throughout the life-course of § 14141, special emphasis has been placed on modifying police behaviors that in the aggregate, violate the first, fourth, fifth, and fourteen amendments to the Constitution (DOJ, 2017a) – individual protections that relate to free expression, search and seizure, standards of proof, use of force, due process, and equal protection. As well, the DOJ has regularly made known that isolated and individual acts of officer misconduct, when unconstitutional, per se, are insufficient to warrant a finding of a pattern or practice of unconstitutional policing (DOJ, 2017a). Unconstitutional policing then, requires that individual police misconduct be systemic, representative, or typical conduct within a police agency.

Using this standard, constitutional policing requires the absence of individual acts of police misconduct that violate federal laws, or civil rights of individuals, and specific groups people within a jurisdiction that when aggregated, represent conduct typical of organizational police behavior, or is systemic within a police agency. Noteworthy in this description is that constitutional policing does not equate to good policing, yet, unconstitutional policing is clearly poor policing. The differentiation of what constitutes good and bad policing has been discussed in the literature by scholars such as Scott (2017), and while important to recognize, the
elaboration and differentiation of these two concepts is beyond the scope of this study. Since unconstitutional policing is the aggregation of behaviors, then municipal police agencies require the knowledge to address those behaviors in order to ensure constitutional policing.

**Compendium of Policies, Procedures, and Practices**

Through the research, analysis, and interpretation conducted in this study, the following policy recommendations are offered as necessary to forestall, shield, or course correct, municipal police from engaging in patterns or practices of unconstitutional policing:

- **Address organizational-wide lack of professional currency in policies, systems, procedures, and training.**

- Review, revise, and require adherence to a comprehensive set of use-of-force policies that are in keeping with well-established professional practices, comport with constitutional standards and applicable law, are clear and understandable, and are guided by restraint, discretion and overall safety.

- Enforce full-compliance with use-of-force reporting, review, and investigative follow-through.

- Individuals considered for specialized units must meet all qualifications prior to assignment. Personnel decisions within municipal police agencies cannot be made solely on familiarity with the officer or nepotism. Criteria that would exclude a candidate from a position must be adhered to in practice, and officers in positions for which they are not qualified, must not remain in those positions.

- All training staff must be competent in the material they teach, and must be officially qualified to teach it.
• Training materials must be memorialized and documented. Records of who was trained, on what material, when, and if a refresher is required must be recorded, maintained, and updated at regular intervals.

• Ensure that an updated data-driven early intervention system is implemented, with appropriate and comprehensive measures entered into the system on a regular basis.

• Early intervention systems must have reasonable and objective triggering mechanisms where appropriate intervention is required of supervision who must then document findings, and be held accountable for outcomes and appropriate follow-through.

• **Address attributes of an institutionalized police agency.**

• Internal investigations must be conducted in an unbiased and impartial manner by employees who are immaterial to the incident or officer under investigation. Investigators must orient themselves towards seeking truth, rather than officer exoneration. To that end, statements from complainants, and the accused officer must be given equal weight during internal investigations.

• Refusal to accept, or dissuasion of civilian complaints must be unacceptable in all circumstances. All complaints of officer misconduct must be recorded, investigated, and disposed of in an impartial and objective manner.

• If a policy or practice is impractical, routinely ignored, or outdated, it must be appropriately revised or expurgated. Police departments cannot condone widespread non-compliance of existing policies and procedures.
• **Address organizational characteristics of shortsightedness, conflicts-of-interest, learning, and environmental awareness.**

• An awareness of, and flexibility with, the external environment must be fostered. This can be facilitated by police agencies dedicating themselves to ongoing learning, innovation, adaptation, and openness to change.

• Police agencies must better conform to the needs of the citizens in their subject jurisdiction, and adapt to those needs as necessary, particularly with communities in which changing demographics, language differences, and evolving norms are prevalent.

• Have clear, appropriate, and conflict-free guidelines and policies. Organizational and individual decision-making must always be conflict-of-interest free. Officers and the police organization must always act in accordance with the Constitution, applicable laws, and appropriate standards of proof. Every police decision must be at a minimum, legally justified, but also appropriate to the circumstances, and made in the interest of just enforcement of law.

• Policies and procedures must be routinely reviewed; a dedicated research and development unit must be created to keep current and abreast of professional standards and changing environments, facilitating innovation in a police agency.

• Foster communication with law enforcement partners, other public service agencies, and the general public.

• **Address tactical deficiencies, weapon competencies, and improve officer equipment.**

• Require that all sworn members of the police agency regularly engage in tactical training with a variety of officers and different units. Focus tactical training on high-liability encounters, specializing in scenarios with individuals who are emotionally disturbed, elderly, sick, young, or possibly intoxicated.
- Prioritize de-escalation techniques during use of force training with special emphasis on interacting with individuals who are emotionally unstable, intoxicated, or otherwise in crisis.

- Use-of-force and de-escalation training should be both lecture and scenario-based, and all officers must be required to participate. All officers must be evaluated on the application of this training, and meet minimum performance requirements for full-duty responsibilities.

- Sufficiently train officers in the proper use of their equipment, and provide officers with appropriate, high-quality equipment that is necessary to help accomplish the task for which they have been given.

- Restrict the use of weapons and equipment only to their designed use, absent exigent circumstances. To that end, provide officers with the requisite tactical equipment and sufficient training to cover the entire use-of-force continuum.

- **Clarify policies, procedures, and general expectations by reducing internal conditions of ambiguity.**

- Policies and procedures must be clear, legally sound, and easily understood by all agency employees.

- Any new policy, or policy change, must immediately be made known to all sworn employees. Sufficient training must be conducted with all policy or procedural changes for all sworn employees, and that training must commence upon promulgation by the police agency.

- Policy and procedure manuals must be updated regularly, distributed to all officers, and made available at all police facilities for reference.
• **Address leadership and management deficiencies.**

  Leadership must set the agenda of reform, and create a vision for the police agency. Supervisors must be tasked with seeing that vision through, and held accountable for the performance of the officers under their supervision.

  Leadership and management must look to the external environment for signals of problematic agency behavior including, focusing events, media reports, and community feedback.

  Leadership and management must be attuned to their organizational soft-spots, and vulnerabilities including; being a very large or very small police agency, having police agencies in their proximate area being investigated, externally controlled, or in the process of demise.

  Leadership and management must remain aware of the national political environment and mood, as the orientation towards intervention of police is mutable.

• **Address misconduct through strict enforcement of ethical guidelines, compliance, investigation, and discipline.**

  Work to eliminate bias and deviance within the department by having clear codes of ethics, and corruption and misconduct guidelines that all members of a police agency must follow – without exception – leadership included. Police agencies should regularly engage in integrity tests, and inspection checks across all ranks of the organization to ensure compliance with policies, procedures, and general guidelines.

  Monitor, track, and discipline employees who have numerous or substantiated allegations of excessive force, abuse of authority or other similar allegations of misconduct. Discipline must be swift and appropriate.
• Address the culture and orientation of an organization to reflect community needs and realities of modern policing.

• Foster a culture of service over enforcement; of cooperation with the community over conflict.

• Eliminate officer enforcement activity as a primary metric of officer performance.

• Seek to recruit organizational police leaders, and officers who share in a vision of collaboration, learning, and continuous improvement.

**Necessary and sufficient elements.**

Two global elements have been found critical to the success of reforming a municipal police department under § 14141; committed leadership, and the dedication of adequate resources (Morgan, Murphy, & Horwitz, 2017). First, concerning leadership; municipal police agencies must be headed by individuals who have the requisite leadership abilities, and desire to foster change as the success of lasting reform in police agencies under § 14141 has been closely linked to reform-minded police leaders (Kalyal, Huey, Blaskovits, & Bennell, 2018; Scott, 2017). The concept of leadership, as described for the purpose of overseeing necessary change in a municipal police department can best be defined as “a process whereby an individual influences a group of individuals to achieve a common goal” (Northouse, 2001, p. 3). Applying this definition of leadership to municipal police, the common goal is the reform of a municipal police department to conform with modern and professional practices, for promoting an organization of learning, transformation, and compliance with strict internal standards and regulations, while policing within the restrictions of applicable law, and boundaries set forth by professional best practices, and the Constitution.
When discussing the importance of leadership as a necessary component for organizational change in policing under § 14141, Scott (2017) posits that police officers are more likely to accept internally driven changes rather than externally forced ones – by extension, leadership from police executives who have bought into the notion of reforming their agencies prior to, or in lieu of, external intervention. Furthermore, police chiefs as leaders of police organizations are better suited to gain the compliance of subordinates because “police officers tend to respect and comply with police chiefs’ rules, even if they do not like them” (Scott, 2017, p. 610). This requires sufficient financial support (Kalyal, et al., 2018), and an acknowledgment that leadership is directly tied into the dedication of adequate resources. For example, when analyzing why police reforms fail, Skogan (2008) noted that for reforms to last “the astute change manager has to ensure that they are the department’s and even the city’s project, not just their own” (p. 33). This orientation will help facilitate greater buy-in from the public, and provide a municipal police leader the necessary political leverage to help fund the changes a police leader deems necessary. The issue that accompanies this orientation then is this: How should those resources be allocated?

After leadership, adequate investment of resources was indicated to be the most critical element of lasting success of police reform under §14141 (Morgan, Murphy, & Horwitz, 2017). By extension, reform of a municipal police agency can occur prior to, or in lieu of federal intervention with appropriate and dedicated leadership, sufficient allocation of resources, and the identification of troublesome environmental and organizational areas. Since the above policy recommendations revolve around policies, procedures, practices, and systems, the primary financial investment that a municipal police agency should make is towards research and
planning, this investment will facilitate municipal police agencies to become learning organizations (Geller, 1997).

In the 1967 U.S. President’s Commission on Law Enforcement and Administration report: *The Police*, the call for police to develop a greater openness to research, and to apply the byproduct of that research to policing was made (Skogan, 2018). Since then, research and planning units within police agencies have been associated with the potential for innovation that can support an organization to be more forward-thinking, dynamic, adaptive to change, and responsive to the needs of the public (Bond & Gabriele, 2018). Police research and planning units were initially conceptualized to engage in a variety of activities related to researching best practices, planning, review of equipment needs and quality, conducting needs assessment, and evaluation of programs (Bond & Gabriele, 2018). However, the extant literature on research and planning units in police agencies indicates that these units are more likely to engage in administrative functions instead of their intended purpose of research, evaluation, and promoting innovation (Haberman & King, 2011).

An optimal investment in research and planning for municipal police is the second policy component that municipal police should embrace to prevent their agencies from engaging in patterns or practices of unconstitutional policing. This investment must not just be financial, but as important, the role of research and planning, and tasks they are assigned must be for organizational development, and an orientation towards learning and continuous improvement.

The specific policies, procedures, practices, and systems that have been found to allow for patterns or practices of unconstitutional policing to proliferate have now been identified, how these comport with what each individual municipal police agency does must then be left to that agency to assess. With the support of reform-minded police leadership, an adequate investment
in research and planning can facilitate that necessary change, internally, which has been found critical to the success of police reform, whereby preventing decent into patterns of behavior that may leave a police agency susceptible to loss of reputation, loss of autonomy, and potentially, federal intervention.

The SIRR Model - Forestalling Unconstitutional Policing

Although the previously described policy recommendations can be used to address an array of municipal police agency behaviors, these recommendations alone do not inform police leaders when, or how that knowledge should be applied. To this end, it is critical that police leadership not just have the appropriate model, process, and structure to identify internal and external threats to constitutional policing within their agencies, but they must also have appropriate guidelines in place to know when to initiate the model as a preemptive, or course-correcting mechanism against unconstitutional policing. The proposed model, below, does just that.

In a four-stage model consisting of scanning, identifying, relating, and responding (SIRR), applied from the knowledge created in this study, municipal police leaders can more readily identify both internal and external operational threats that are linked to patterns or practices of unconstitutional policing, providing a municipal police agency with the timing, tools and know-how to forestall the potential for federal investigation, loss of autonomy, national stigma, and organizational demise.

The four-stage SIRR model employs a mixed-scanning approach (Etzioni, 1967) to identify and review variables indicated to pose threats to constitutional policing. In this sense the model is fully grounded in a pragmatist orientation of knowledge application. Described by Etzioni (1967), mixed scanning takes place on different levels and is akin to a weather satellite
that takes pictures of general patterns yet can focus in on smaller more nuanced details to gain a more granular view of problematic areas. A mixed-scanning pragmatist perspective is embedded in the orientation of SIRR; variables within the model exist on multiple levels – some within the broader environment, and others deep in the police organization. A visual representation of the SIRR model, conceptualized as an iterative process is presented in Figure 9.

Figure 9. The SIRR Model: Forestalling Unconstitutional Policing
Step one - initiate a scan.

The first step in forestalling, course-correcting, or addressing threats to constitutional policing involves deciding when to initiate a scan. Scholars of mixed-scanning, such as Etzioni (1967) have argued that for decision-making to be most effective, an encompassing scan is required at least sporadically, or at set intervals because scanning is “aligned with improved organizational performance” (Choo, 1999, p. 22). As such, scanning should be conducted continually by criminal justice administrators to be better prepared for changing environments while allowing the organization to be more responsive to external and environmental demands (Stojkovic, Kalinich, & Klofas, 2015). Other scholars of strategic management and police have suggested less planned-out methods for identifying organizational issues (Loo, 2002). Regardless of timing, researchers of strategic planning note that police organizations frequently conduct less than detailed scans, and that there’s a notable lack of attention being paid to this phase of organizational planning resulting from an absence of competition among police services (Rogers, McIntyre, & Caputo, 2019). To work-through the issues and discrepancies presented above, applying a detailed and pragmatic mixed-scanning approach as the first step of the SIRR model to forestall unconstitutional policing, and obviate a § 14141 action, a formal, detailed, and complete scan should be initiated at one planned annual, and two discrete intervals as conditions dictate.

A planned mixed-scan should be initiated every year as part of an annual budget review in keeping with Etzioni’s (1967) suggestion that “annual budget reviews, and the State of the Union messages provide, in principle, such occasions [for a scan]” (p. 389). Although both of these suggestions are sensible for municipal police, since municipal police agencies are primarily funded through local and state revenues (King, 2014), initiating a scan prior to an annual budget
review is a more relevant and pragmatic interval to initiate the SIRR process. Moreover, conducting an annual scan prior to, or in anticipation of an annual budget review provides municipal police leadership the necessary knowledge for leveraging additional resources as deemed necessary. This orientation is in keeping with the lessons learned from many police leaders who sought out § 14141 to gain resources that were not otherwise available to their police agency, and although this leverage may originate differently – internal and preemptive vs. external and compelled, the end-goal is the same, securing additional resources to address problematic organizational police behavior. As such, there would be no more opportune moment throughout the year to conduct an annual scan than prior to an annual budget review.

In addition to an annual mixed-scan, the initiation of a complete scan should take place each time one of two variables are present; political turnover, and during times of accompaniment. First, since the variable Presidential party best predicted a DOJ finding of a pattern or practice of unconstitutional policing in the logistic regression, this should serve as an indication to municipal police leadership that a scan of the agency is required every time there is a turnover in executive officeholder – both at the federal and state level – the latter for reasons that are explicated in the next section.

Although administrative turnover at the federal executive level was not significant by investigative outcome, when operationalized as turnover in political party, significant differences emerged by investigative outcome, and since changes in the political stream are mutable, as indicated by the combination of the national mood and presidential officeholder, it best serves the municipal police agency to initiate a scan for each executive-level turnover regardless of political party.
Second, the initiation of a mixed-scan is recommended whenever a municipal police agency is subject to the combination of a focusing event, and negative national news media attention. As formulated in the MS framework and operationalized in this study, the combination of the variables focusing events and feedback through negative national news media attention formed the variable accompaniment. As individual variables, neither focusing events, nor feedback were significantly interdependent with the investigative outcome, however, they were significantly related to each other. Furthermore, although accompaniment was also independent of investigative outcome, the combination of focusing events and feedback presents another opportune moment for a municipal police agency to initiate a sporadic scan.

Empirical considerations aside, initiating a sporadic scan during times of accompaniment is also qualitatively supported by DOJ’s past § 14141 enforcement policies. Indeed, the DOJ has noted in their technical reports that neither a focusing event, nor media attention alone serve as the basis for a finding of a pattern or practice of unconstitutional policing (DOJ, 2017a), however, the DOJ has made no known policy statement regarding the combination of these two variables. Moreover, the DOJ has publicly noted that high-profile events, and national media attention are two sources they have used throughout the life-course of § 14141 to identify police agencies at risk of patterns or practices of unconstitutional policing.

Pragmatically, initiating a scan when a police agency has experienced both a focusing event and feedback can serve as an indication to both an interested public, and the DOJ that at a minimum, the municipal police agency is taking necessary action to address ongoing or emerging problems – potentially forestalling external review, investigation, and intervention.

Using this approach, responsible and forward-thinking municipal police leadership must begin to address operational threats to constitutional policing by initiating a scan both annually,
and at sporadic intervals, thereby placing their agency in a better position to examine organizational and environmental threats at different levels within and about their agency, prior to falling into, or to course-correct, patterns or practices of unconstitutional policing.

**Step two - identify variables.**

After the decision to initiate a scan has been made, police leaders must then identify variables relevant to their agency so they can detect linkages that put their agencies at risk of patterns or practices of unconstitutional policing. At this stage, scanning of the variables takes place on multiple levels, reflecting both an orientation towards mixed-scanning, and the combination of variables from the MS and deterrence framework, such that scanning exists at the national, state, municipal, organizational, system, and policy levels. Each of these levels has accompanying variables as conceptualized by the MS framework and deterrence.

In keeping with a mixed-scanning orientation, some variables are more manifest than others (e.g. *Presidential party, size vs. indicators, use of force policies*). This differentiation, and more specifically, the subject area specialties that are required from municipal police to identify, capture, and to understand the finely grained nuances of, underscore the need for a research and planning capacity. Indeed, this capacity must have a dual-role to ensure the success of the model at this stage. First, the capacity and orientation of a research and planning apparatus must exist, and be appropriately supported by municipal police leadership to conduct objective internal reviews. Second, that research and planning capacity must also have the ability to look beyond their agency, to professional associations, to seek-out best practices that can be made applicable to their own agencies.

This inside-outside research and planning orientation is supported by findings from this study. For example, the subtheme failure to adhere to best practices existed within the lack of
professional currency main theme – the most commonly attributed theme across all $N = 33$ investigations of municipal police. This subtheme was found to be statistically significant opposite of the hypothesized relationship by investigative outcome. As addressed in the discussion chapter, there are reasons this unexpected result came to pass, but noteworthy here is that DOJ’s reliance on suggesting adherence to professional best practices was a form of risk reduction for municipal police, since the lack of a capacity to recognize, and adhere to professional best practices was endemic to police agencies with systemic problems found to be at unreasonable risk of engaging in patterns or practices of unconstitutional policing. Additionally, by directing a municipal police agency towards adherence to professional best practices, the DOJ is endorsing specific practices as appropriate, and in keeping with the highest standards of professional conduct. As such, this inside-outside focus by research and planning, at a minimum, can help shield a police agency from allegations of deviation from professional standards, and if properly implemented, patterns or practices of unconstitutional policing.

**Step three - relate variables to themes.**

All independent variables in this dissertation were correlated with themes using phi coefficients (Appendix E). After the research and planning apparatus has identified all the variables relevant to their agency through mixed-scanning, the next step is to relate those variables to themes from past § 14141 investigations. From the results of the thematic analysis, and associations that were empirically shown to have linkages with the independent variables, municipal police leadership can better identify what variables (potential problems) have allowed, or put at risk of allowing, past municipal police departments to engage in patterns or practices of unconstitutional policing.
Once related to a specific municipal police agency, independent variables that have been significantly associated with a theme require prioritization for two reasons. First, significant relationships between variables and themes are those that have been empirically shown to have the strongest, non-random relationship justifying their prioritization. Second, the practicality of organizational focus is important, as an organization that attempts to prioritize all related problems will likely end up diluting focus, having the effect of prioritizing none. To facilitate the process of identifying variables and prioritizing the associated themes, relationships between independent variables and themes have been categorized according to primary, secondary, and tertiary priority – determined by their significance and strength of association. See Appendix F for a matrix of these relationships.

The processes involved in this step provide municipal police agencies with the requisite knowledge of where to look both organizationally and environmentally, to protect against patterns or practices of unconstitutional policing. Themes rather than subthemes were the chosen level of association in this step since themes provide police agencies the specificity to know where to look organizationally and environmentally, without too great a specificity that they overlook other problematic areas within a particular theme.

**Step four - respond to thematic findings.**

The fourth step in the SIRR model requires that municipal police leaders appropriately respond to related recommendations from the compendium of policies, procedures, and practices necessary to forestall patterns or practices of unconstitutional policing by addressing and sufficiently implementing linked recommendations. Here the importance of forward-thinking, and effective leadership is most critical. As previously discussed, reforming a police department is most likely to be successful when changes come from internal leadership rather than external
sources. To that end, prioritization must involve: (1) significant thematic relationship that have been most closely attributed to unconstitutional policing (i.e. organizational orientation and culture, and routinized misconduct), (2) addressing the strongest significant relationship among all the variables and themes, and (3) addressing themes with the strongest relationships within a variable and theme relationship. Applying this process, and overseeing the implementation of the recommendations is the critical last step in protecting a police agency against patterns or practices of unconstitutional policing.

The SIRR model makes the knowledge gained from this study useable, and pragmatic, and although individual organizations may have discrete needs, this model provides police leaders with the knowledge of where to look, what to look for, and how to address threats to constitutional policing practices before they take hold. The success of which falls to two critical elements – dedicated and directed resources (i.e. research and planning), and effective and committed forward-thinking leadership.

**Future Enforcement Options**

The fourth component of this research question requires an understanding of organizational decision-making, and how that may change over-time. The acquisition of knowledge here then is part art, and part science. Indeed, it is known what the DOJ did, and the orientation that guided those decisions. It is unknown, and quite possibly unknowable, what the DOJ will do, however, based on the analysis presented in this dissertation, and what is known regarding the application of this provision by the DOJ through disjointed incrementalism, three possibilities for what law enforcement organizations need to know about § 14141 are offered.

Section 14141 implementation towards municipal police has been characterized by targeted enforcement, deterrence, political leanings, and the mutable interpretation and
prioritization of behaviors that constitute unconstitutional policing. This conclusion adds to the
literature regarding DOJ’s global enforcement of § 14141 and their decision-making, suggesting
that decisions regarding which police agencies to enforce the provision against are in fact a
complex “mixture of politics, policy, and legal discretion” (Harmon, 2017, p. 622). As well, the
DOJ appears to identify police departments for reform when those departments are particularly
large, or their problems salient (Harmon, 2017). With the future status of § 14141 as a means of
reforming municipal police tenuous, restricted, and uncertain (Sessions, 2018), three policy
options are offered to better explore and explicate implications on municipal police.

**Enforcement option one – continuation of past practices.**

Since DOJ’s enforcement policies have been influenced by administrative turnover and
the accompanying agenda, a plausible policy option is to continue to pursue § 14141 actions in
the manner that has been done so in the past. Although such a policy does not comport with a
long-term strategy, it is a strategy nonetheless, and does present a realistic and rational option
that is flexible to administrative turnover, vicissitudes in the political stream, and changes in the
national mood. In a rational decision-making sense, this policy option is quite rational, but not
comprehensive, comporting with Lindblom’s (1979) disjointed incrementalism approach – small
adjustments to the present course, while recognizing the influence of Kingdon’s (1995) position
that elements in the political stream exert the greatest influence on the agenda. However, there
are two core problems associated with this option: First, scholars of police and organizational
behavior, police practitioners, and the DOJ have yet to agree on what constitutes a successful
intervention of municipal police under § 14141 through its current life-course (Chanin, 2014a;
Harmon, 2017; Walker, 2017). Second, this policy does not rectify any of the current criticisms
of § 14141 enforcement including those related to federalism, exclusion of police leadership
from the investigation process, and the apparent random nature of DOJ’s enforcement policies. Moreover, this policy option is aligned with a punishment-first orientation that stigmatizes a municipal police agency – still a criticism of § 14141 by police leadership in general.

By adopting this policy option, all that municipal police know about DOJ’s enforcement orientation is this: Under § 14141 authority, the DOJ is most likely to target large police departments, influenced by the political environment, deterrence, and proximity to other municipal police departments under investigation; everything else is guesswork. This leads to a glaring problem for municipal police: Who or what agency can a municipal police department go to for guidance to determine if their practices and policies put them at risk of unconstitutional policing? Certainly, a municipal police agency cannot go to the DOJ under this policy option for two reasons. First, for fear that a request for assistance may initiate a costly and onerous § 14141 action – a similar outcome that occurred to the New Orleans Police Department. Second, as DOJ’s position on § 14141 enforcement is uncertain, municipal police may not find a receptive audience from the DOJ in matters related to patterns or practices of unconstitutional policing. As such, municipal police leaders hoping to reform and guide their agencies towards avoiding unconstitutional policing have to play a guessing game – never knowing if they will be the next police agency subject to a § 14141 action, unsure of where to go for appropriate assistance, and what can be done about it.

**Enforcement option two – revised deterrence strategy.**

The application of deterrence through an economic framework was first put forth by Harmon (2009), wherein it was suggested that the DOJ seek to substantially raise the probability of § 14141 action against specific police departments as a means of deterring current and future patterns or practices of unconstitutional policing. In a two-pronged approach, the idea is be able
to both compel and induce change in organizational police behavior. In sum and substance, Harmon (2009) recognizes that the scope of law enforcement in the United States, combined with the limited resources of the DOJ, makes it so that § 14141, as previously enforced, is unlikely to address problematic police behavior through compelling change. The costs associated with § 14141 action, the time dedicated to conducting a § 14141 investigation, and the scale of law enforcement in the U.S. compared to the capabilities and resources necessary to identify and address troubled police agencies makes the application of §14141 untenable.

As an alternative to the past model of enforcement, it is suggested that the DOJ identify and categorize police departments according to the degree of harm, and depth of misconduct within their agency. Being assigned to a category of misconduct would then be the equivalent of being put on notice by the DOJ. Police agencies that are unable, or unwilling to reform within a specific period of time, are then recategorized as high-risk, and placed at much greater probability of federal intervention. This strategy would then have the effect of raising the probability of compelled change under § 14141 enforcement for the most troubled agencies, and similarly, incentivizes less-offending police agencies to self-correct through induced change.

The basis for this model of enforcement is the application of economic theory to the public enforcement of law, whereby an increase in the probability of enforcement, or costs associated with that enforcement, alters the behavior of the rational actor, in this case the rational actor is the police agency. Aligning this policy option with investigative findings, and interpretations from this study produces two notable benefits, and two notable drawbacks.

The first benefit of this proposal relates to the police practitioner. As mentioned earlier in this dissertation, many municipal police leaders have called for greater transparency, cooperation, and involvement in the § 14141 process. Identifying troubled police agencies, and
prioritizing those police agencies into two discrete groups ameliorates much of these criticisms by notifying police agencies at risk, and allowing them to engage in induced internal change, as opposed to being stigmatized through association as a failed police agency, and having changed compelled upon them by the federal government.

Second, DOJ’s limited resources dedicated to § 14141 enforcement can be more efficiently managed and utilized through this two-tiered process. Under past enforcement of § 14141, the DOJ opens a preliminary investigation, which may lead to a full investigation, which may lead to a finding of unconstitutional policing, which then leads to a type of agreement. All of this is time-consuming, costly, and heavily resource dependent. Under the deterrence model, the entirety of the § 14141 process would be streamlined, and more efficient.

Before moving on to the drawbacks of this policy, it is important to consider that DOJ’s use of technical assistance during Bush Administration as a means of supporting police reform may have been an attempt to practice such a policy. By having a bifurcated outcome, the DOJ had two types of affirmative enforcement options under § 14141, not dissimilar to this policy option. A qualitative analysis of investigative timelines and outcomes for many § 14141 actions of municipal police support this interpretation. For example, two municipal police agencies under negotiated settlement were first the subject of a discrete § 14141 investigation that led to technical assistance (Miami & New Orleans). Moreover, there were municipal police agencies in this study whose final outcome was a negotiated settlement, however, during the course of a DOJ investigation, interim technical assistance was offered (Easton & Cleveland). Both of these examples suggest that at times over the life-course of § 14141, DOJ’s decision-making sought to induce change in police agencies first, and then to compel change when that option was reasoned ineffectual.
The two most compelling negatives to the adoption of this policy option are the vagaries of political support, and burdensome costs associated with § 14141 action on the police agency that have the potential to lead to organizational demise.

Any and all policy options that the DOJ chooses among its alternatives will have to take into consideration the agenda and political preferences of the chief executive, since past § 14141 enforcement has been directly influenced by this unknowable. This presents a significant problem in the enforcement of this provision, and most acutely for this policy option. As contrasted with the first policy option wherein the DOJ takes this unknowable into consideration, and reacts to the agenda, priorities, and wishes of the chief executive accordingly, policy option two requires that the DOJ be proactive by leading the agenda rather than following.

Making a deterrence strategy workable requires that the rational actor believes in the certainty, swiftness, and severity of the punishment. This presupposes that the DOJ is taking an active policy stance towards enforcement of § 14141, has the capital, and political support to implement the policy as described. Knowing what is known about the interaction of the political stream influence on agenda setting and the policy output in the context of § 14141, this option is tenuous at best. Alternatively, the DOJ could take a wait-and-see approach by incorporating policy option one and two; recognizing the influences of the political stream, while allowing policy option two to lay dormant until a conducive political environment emerges in support this option.

A second negative to a policy of deterrence through economic sanctions is that it poses major threats to the viability of many municipal police agencies, in particular smaller ones. According to BJS (2015), 88.3% of local police agencies in the United States have fewer than 50 sworn employees. As supported in the literature on police disbanding (i.e. no longer in
existence), police agencies most likely to disband are small (King, 2014), with the causes of disbanding related to lack of bureaucratization, changeover in political leadership, age, failure to adapt to their environment, and most importantly, financial decline (Giblin & Nowacki, 2018; Brunet, 2015; King, 2014). A deterrence policy that emphasizes the potential for federal intervention cannot treat all municipal police agencies as equally culpable regardless of the depth of misconduct because not all municipal police agencies can withstand the economic sanction implicit in a § 14141 action. Yet, the overwhelming majority of municipal police agencies in the U.S. are small; by extension, a DOJ deterrence policy would be required to eliminate the threat of § 14141 for small police agencies, therefore, the deterrent aspect of this policy is meaningless and unworkable for the majority of police agencies in the U.S.

An alternative implementation could make this policy more workable, and is probably more realistic. By targeting police agencies through the two-pronged deterrence approach, the DOJ implicitly acknowledges the risks to smaller police departments. As part of this policy then, the DOJ should address misconduct in municipal police through compelling those police departments that can withstand § 14141 intervention to reform, while hoping that smaller, more vulnerable municipal police agencies follow the lead of the larger agencies. This policy option has support in the literature on isomorphism, wherein “organizations change because of pressures from larger, more powerful organizations” (Giblin & Nowacki, 2018, p. 189), and may represent the best approach if this policy option were to be adopted.

**Enforcement option three – suspension of enforcement, enhancement of collaboration.**

The third policy option involves the suspension of § 14141 actions in favor of a collaborative reform approach with federal deferral to state-level authorities for police oversight.
and accountability. Collaborative reform has been implemented by the DOJ as an independent program apart from §14141 enforcement since 2011 (Cole, Collins, Finn, & Lawrence, 2017). From public statements of support made by former Attorney General Sessions (2017), and financial assistance being offered to local police departments through DOJ’s collaborative policing program (DOJ, 2017d), it is apparent that the collaborative reform model is the current, and foreseeable policy option that the DOJ has adopted as an alternative to § 14141. This model seeks to provide proactive, non-adversarial, and cost-effective technical assistance for law enforcement agencies to make necessary internal and organizational reforms (National Association of Police Organizations, n.d.). Moreover, collaborative reform offers an opportunity for induced change, and professional development apart from the coercive § 14141.

A second and unexplored aspect of this policy option, that also placates core criticisms of § 14141, is that in suspending their enforcement against municipal police, the DOJ is allowing state-level governments to take independent action regarding bringing a § 14141-like lawsuit in federal court against an in-state municipal police department. Such is the case in Chicago, where as recently as September 2018, the Illinois State Attorney General, along with the Mayor of the City of Chicago, and the Chief of Chicago Police Department announced that they have entered into a consent decree to be overseen by a federal judge, the findings and agreement of which were supported by DOJ’s Investigation of the Chicago Police Department (Hinkel & Byrne, 2018). Could this policy option be the future of § 14141 enforcement against municipal police? Only time will tell since as of this writing, the details of the agreement between Chicago and the State of Illinois are emerging. What is known though, is that the combination of a collaborative approach, with deferral to state-level authority placates many of the criticisms of § 14141, namely those involving the argument that § 14141 violates the principle of federalism embedded
in the philosophy of American governance, and that the scale of law enforcement in the U.S. is too big and unwieldy to be effectively overseen by the limited-resourced DOJ.

Put succinctly then, § 14141 has supported municipal police to practice constitutional policing through the identification of policies, practices, procedures, and system deficiencies identified by the DOJ, and contained herein that contribute to unconstitutional policing and systemic misconduct. As well, for municipal police to know is that the DOJ’s most realistic policy option for the future of § 14141 is collaboration concomitant with a deferral to state-level enforcement authorities. This is the most agreeable and pragmatic option for municipal police, the federal government, and the future of federal intervention of municipal police under § 14141. The adoption of this policy option by the DOJ, along with the compendium of policy recommendations offered here, and the use of a self-initiated SIRR model would raise an important question then: Are we on the cusp of a new era in federal intervention of police?
Conclusion

Throughout this dissertation, § 14141 and the time period under study, 1994 through 2017, have been referred to as the law’s life-course. Analyzing findings from the first completed § 14141 investigation of municipal police in Pittsburgh, to the most recent in Chicago, the knowledge created in this study fills many of the gaps that previous scholars of § 14141 have called for. To a large extent, everything that municipal police leaders need to know about the contours of unconstitutional policing – what policies, practices, procedures, and systems contribute to its proliferation, what the DOJ looks for when conducting a § 14141 investigation, what influenced the DOJ in their decision-making regarding enforcement of § 14141, how that influence changed over-time, and what municipal police departments can do to initiate self-correction to prevent and address patterns or practices of unconstitutional policing, has now been researched, analyzed, and reported.

This however does not suggest that there is no new knowledge to glean or create from § 14141’s legacy. The DOJ investigation of the Chicago Police Department represents both an end, and new beginning of § 14141. After the agreement to enter into a negotiated settlement that was made between the DOJ under the Obama Administration and the City of Chicago was discontinued in 2017 by the Trump Administration, the Illinois State Attorney General brought a legal action in federal court against the Chicago Police Department to enter into a consent decree for oversight and reform. This is the first known case where a state-official initiated a reform agreement against a municipal police agency in the spirit of § 14141, ex post a DOJ finding of a pattern or practice of unconstitutional policing. This legal action has brought the relationship between municipal police, and federal intervention into unprecedented territory. In this sense, the consent decree between the Chicago Police Department and the State of Illinois now represents a
test-case for a new paradigm of structural reform litigation involving municipal police. And yet, in another sense it’s the same model of reform that has been in place since 1994, as the State of Illinois has simply replicated what the DOJ did under § 14141 for over 20 years. Consider it a Lindblomian approach in their decision-making – Illinois modeled their own investigation, investigative findings, and legal justification for initiating a consent decree off that created by the DOJ under § 14141. Perhaps then, 2017 and the action against the Chicago Police Department do not represent the end of § 14141, but a new beginning.

In 2017, Stephen Rushin expertly identified and described three eras of federal intervention of police in the United States. As expanded upon earlier in this dissertation, the third and most recent era was categorized as the intervention era, commencing with the passage of the 1994 crime bill and § 14141. I believe that the findings presented in this dissertation offer the following addendum to Rushin’s (2017) claim: The intervention era as described Rushin (2017) is over, and a new era of federal intervention has begun – the era of collaborative reform, and deferral to state-level control. The final case of § 14141 initiated against municipal police is also the first case of § 14141-inspired oversight at the state-level. Hence, the case against Chicago represents this new era in police oversight and reform.

The Law Enforcement Misconduct Statute 42 U.S.C. 14141 rose to agenda status in a classic Kingdonian way – a problem was identified through a focusing event, accompaniment preexisted that event, solutions existed in the policy soup and were pushed by entrepreneurs, and the orientation of the political stream allowed for the law’s inclusion in the passage of one of the most consequential criminal justice bills in U.S. history. Section 14141 was applied by the DOJ through 24 years of American history by forces of disjointed incrementalism, a deterrence orientation, and the multiple streams framework that influence organizational decision-making. It
is too early to say definitively what led to § 14141’s demise, or rather its metamorphosis, but it does appear at this point, as Kingdon would suggest, that administrative turnover in the political stream exerted the greatest influence on the agenda, and in the case of § 14141 against municipal police, by all appearances it was the significant variable that caused it to change.

**Study Limitations**

There were five significant limitations in this study that require recognition. First, although established protocols were adhered to for the qualitative thematic analysis, the reliance on a single coder presents challenges for the reliability of interpretation. As well, human error presents certain validity and reliability constraints, however, to protect against both I took great care to adhere to established protocols, and sought to maintain the highest levels of trustworthiness. Yet, interpretive thematic analysis research, as conceived by Braun and Clarke, (2006) is best suited to the interpretation of the researcher (Braun & Clarke, 2016), whereas others argue that interpretive thematic analysis is best conducted with more than one researcher (Boyatzis, 1998). Which argument has greater validity is up for debate, however, the limitations of solo interpretive research must still be recognized and acknowledged.

The second limitation involved both the research design and findings letters. I am referring to both of these as the second limitation since they are interdependent and should be critiqued accordingly. In this design, the main dependent variable was the investigative outcome – one that differentiated a finding of unconstitutional policing, and constitutional but problematic policing. This differentiation is important for the purposes of understanding the specifics, nuances, and contours of unconstitutional policing. What this design did not allow for was a comparison between police departments under §14141 action, and other police departments that have never been under § 14141 consideration. A study design that allows for a comparison
between §14141 police agencies, and others, could be a study conceptualized as that between proper and improper policing. The limitation here came down to DOJ issued findings letters. Municipal police agencies that have never been the subject of a §14141 action, have never had an investigation conducted by the DOJ, nor a publicly issued findings letter detailing organizational dysfunctions. Herein is the limitation, without the §14141 investigation, there is no assessment of a police agency’s policies, procedures, practices, and systems to analyze in the binary outcome.

A third limitation involves classifying the variety of DOJ investigative outcomes of a finding of a pattern or practice of unconstitutional policing into one category. That is, the investigative outcome “negotiated settlement” subsumes a variety of § 14141 investigative conclusions involving; MOA’s, consent decrees, legal agreements, etc. Although the DOJ broadly classifies these § 14141 actions as reform agreements (DOJ, 2017a), and other scholars subsume these outcomes as consent decrees (Walker, 2017), the DOJ chose to engage different municipal police departments into different types of agreements and that each agreement, while consistent with a finding of a pattern or practice of unconstitutional policing, may provide unique insight into organizational practices and the preferred remedies for those practices. For example; might a MOA have produced greater cooperation between the municipal police agency and the DOJ compared to a consent decree? Similarly; do different types of negotiated settlements produce different long-term outcomes? Since the multitude in types of negotiated settlements was not analyzed in this study, it does, however, provide a possible area for future research.

An additional limitation related to the design and findings letters, but intertwined with the theoretical framework, relates to conclusions regarding the influence of the variable Presidential party. Since the \( N = 33 \) § 14141 investigations represent just under half of all DOJ actions
throughout the life-course of the law, attributing unconstitutional policing decisions to a political party offers an incomplete analysis. When only considering municipal police, specific § 14141 actions had to be excluded from analysis as justified by methodological decisions and established criteria. As such, the political influence on a determination of unconstitutional policing made against municipal police has been accurately analyzed and properly attributed, however, this is only after a decision has been made to enter into a type of reform agreement. Consider, many municipal police agencies were the subject of a § 14141 investigation that did not result in any findings by the DOJ, (i.e. no affirmative outcome-negotiated settlement nor technical assistance), this may have influenced the results and interpretation of the influence of the variable Presidential party. To more accurately identify the influences of the variable Presidential party on a § 14141 outcome, all § 14141 investigations could be tested against three types of investigative outcomes, including those investigations that were discontinued by the DOJ without issuing any findings instead of just the two affirmative outcomes in this study design.

Finally, the fifth limitation involved the study population proper, that is, only municipal police. Although municipal police make up the overwhelming majority of local police agencies in the U.S. (BJS, 2015), there is still quite a diversity of law enforcement agencies, structures and jurisdictions that were not included in this research; examples include: State police, county police, Sherriff’s, federal police, and any number of other law enforcement agencies to which the DOJ has jurisdiction. Because of the diversity in both size and structure of law enforcement agencies in the United States, focusing on municipal police limited the number of cases for analysis, thereby constraining the quantitative modeling and analysis. This however, does provide another avenue of many for possible future research.
Future Research

If we are entering into a new era in federal intervention as posited in the conclusion, there are great opportunities for future research in how § 14141 is applied at the state level, in the national shift towards collaborative policing, and how implementation of this new paradigm of intervention functions to forestall unconstitutional policing practices. What becomes of this new era, and how it will play out is an area ripe for academic, and practitioner study. As this era continues to emerge, scholars can move into studying the next phase of § 14141, namely that of outcomes, and how they compare across different levels of governmental intervention with municipal police. A future researcher might seek to answer the following question: Which level of government intervention, federal or state, is responsible for the most successful long-term outcomes for municipal police?

As well, there are other questions that remain unanswered from this dissertation. Related to the concept of disjointed incrementalism; through my research I have posited that the length of an investigation, and number and type of findings, may reflect a previously unaccounted for variable – cooperation between organizations. A line of inquiry can explore this phenomenon as cooperation between municipal police, and state-level enforcement authorities may have implications just as it did between federal and municipal jurisdictions.

From the MS framework, two lines of inquiry are foreseeable. First, the influence of “spillovers” and the “clustering” effect can be explored on two levels in the fourth era of federal intervention. That is, since Illinois has adopted a policy of state-level intervention under the § 14141 model: Will other states follow? Also, what will be the implications of a state intervention for other within-state police agencies? Second, further analysis of the relationship between elements in the political stream, that is, administrative turnover and the national mood are left
unresolved here, as well in the broader literature. This is another line of inquiry worth pursuing, particularly, how the combination of elements in the political stream apply, or do not apply, for state-level investigation, intervention, and enforcement.

Methodologically, the embedded design that was used for this dissertation – thematic analysis, followed by theoretically supported quantitative analysis, can be used as a template to analyze municipal police agencies that are engaged in voluntary collaborative policing reforms with the DOJ, and compare those to municipal police departments that have been subject of § 14141-like intervention at the state-level. This is not dissimilar to comparing municipal police departments by investigative outcome, but for the voluntariness of the police agency in the collaborative reform model.

Finally, the model proposed in this study to forestall patterns or practices of unconstitutional policing, the SIRR model, can be expanded upon to include a wider-variety of police agencies, not just municipal police. Additionally, this model can be tested to determine the effectiveness of forestalling unconstitutional policing across different types of police agencies, and the applicability of the variables in the model. A future researcher might ask the question: How does the SIRR model forestall unconstitutional policing across different structures of police organizations?

If it is accepted that the relationship between the police and federal intervention has entered into a fourth era, the previously described lines of inquiry will expand our knowledge of policing, oversight, research methods, and the integration of criminological and public policy theory, while serving to assist municipal police agencies to be better functioning organizations that meet their missions within the guidelines set forth by applicable law, and most importantly, the Constitution.
Appendices

Appendix A: Municipal police agencies in the study population

Table A
N = 33 Municipal Police Agencies Ordered by Investigation Date.

<table>
<thead>
<tr>
<th>Municipal Police Department</th>
<th>State</th>
<th>Investigation Start: Month-Year</th>
<th>Findings Letter Issued: Month-Year</th>
<th>Investigative Outcome&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pittsburgh Bureau of Police</td>
<td>PA</td>
<td>April-96</td>
<td>January-97</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Los Angeles Police Department</td>
<td>CA</td>
<td>July-96</td>
<td>May-00</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Steubenville Police Department</td>
<td>OH</td>
<td>September-96</td>
<td>June-97</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Columbus Division of Police</td>
<td>OH</td>
<td>March-98</td>
<td>October-99</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Washington Metro D.C. Police</td>
<td>DC&lt;sup&gt;b&lt;/sup&gt;</td>
<td>February-99</td>
<td>June-01</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Cleveland Division of Police</td>
<td>OH</td>
<td>August-00</td>
<td>June-03</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Detroit Police Department</td>
<td>MI</td>
<td>December-00</td>
<td>June-02</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Cincinnati Division of Police</td>
<td>OH</td>
<td>May-01</td>
<td>October-01</td>
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</tr>
<tr>
<td>Schenectady Police Department</td>
<td>NY</td>
<td>April-02</td>
<td>March-03</td>
<td>TAL</td>
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<tr>
<td>Miami Police Department</td>
<td>FL</td>
<td>May-02</td>
<td>March-03</td>
<td>TAL</td>
</tr>
<tr>
<td>Portland Police Department</td>
<td>ME</td>
<td>May-02</td>
<td>March-03</td>
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</tr>
<tr>
<td>Alabaster Police Department</td>
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<td>March-03</td>
<td>November-04</td>
<td>TAL</td>
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<tr>
<td>Bakersfield Police Department</td>
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<td>April-04</td>
<td>TAL</td>
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<tr>
<td>Beacon Police Department</td>
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<td>August-04</td>
<td>June-05</td>
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<tr>
<td>Warren Police Department</td>
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<td>March-06</td>
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<td>Easton Police Department</td>
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<td>January-10</td>
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<tr>
<td>Austin Police Department</td>
<td>TX</td>
<td>May-07</td>
<td>December-08</td>
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<tr>
<td>Yonkers Police Department</td>
<td>NY</td>
<td>August-07</td>
<td>June-09</td>
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</tr>
<tr>
<td>Lorain Police Department</td>
<td>OH</td>
<td>November-08</td>
<td>January-12</td>
<td>TAL</td>
</tr>
<tr>
<td>Harvey Police Department</td>
<td>IL</td>
<td>November-08</td>
<td>May-12</td>
<td>TAL</td>
</tr>
<tr>
<td>Inglewood Police Department</td>
<td>CA</td>
<td>March-09</td>
<td>December-09</td>
<td>TAL</td>
</tr>
<tr>
<td>New Orleans Police Department</td>
<td>LA</td>
<td>May-10</td>
<td>March-11</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Seattle Police Department</td>
<td>WA</td>
<td>March-11</td>
<td>December-11</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Newark Police Department</td>
<td>NJ</td>
<td>May-11</td>
<td>July-14</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Portland Police Bureau</td>
<td>OR</td>
<td>June-11</td>
<td>September-12</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Miami Police Department</td>
<td>FL</td>
<td>November-11</td>
<td>July-13</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Meridian Police Department</td>
<td>MS</td>
<td>December-11</td>
<td>August-12</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Missoula Police Department</td>
<td>MT</td>
<td>May-12</td>
<td>May-13</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Albuquerque Police Department</td>
<td>NM</td>
<td>November-12</td>
<td>April-14</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Cleveland Division of Police</td>
<td>OH</td>
<td>March-13</td>
<td>December-14</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Ferguson Police Department</td>
<td>MO</td>
<td>September-14</td>
<td>March-15</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Baltimore City Police Department</td>
<td>MD</td>
<td>May-15</td>
<td>August-16</td>
<td>Neg Set</td>
</tr>
<tr>
<td>Chicago Police Department</td>
<td>IL</td>
<td>December-15</td>
<td>January-17</td>
<td>Neg Set</td>
</tr>
</tbody>
</table>

Note. Ordered by investigation date. <sup>a</sup>“Neg Set” refers to negotiated settlement, and “TAL” refers to technical assistance letter. <sup>b</sup>The municipality of Washington D.C. is in a federal district, not a state.
Appendix B: Preliminary coding framework with triangulation

Table B
Preliminary coding framework with code description and triangulation.

<table>
<thead>
<tr>
<th>Preliminary Code</th>
<th>Exemplar Extract</th>
<th>Description of Code</th>
<th>Code Triangulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability system</td>
<td>...result in significant part from a lack of accountability and review systems within the NPD. The NPD has neither a functioning early warning system nor an effective internal affairs structure.</td>
<td>Refers to police agency’s system of accountability and review; not specific accountability for an individual officer.</td>
<td>Walker (2017) Childress (2015) Rushin (2017)</td>
</tr>
<tr>
<td>Administrative failure</td>
<td>...the manual has not been comprehensively updated since early 2002.</td>
<td>Refers to failures to update policies and procedures, post new procedures, etc.</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Biased based policing</td>
<td>We also have concerns that officers’ interactions with women victims of sexual assault and with transgender individuals display unlawful gender bias.</td>
<td>Discriminatory policing; enforcement by intent, design, or outcome disfavors a specific protected group</td>
<td>Childress (2015)</td>
</tr>
<tr>
<td>Communication failure</td>
<td>...insufficient communication and cooperation with its law enforcement and community partners regarding their response to reports of sexual assault</td>
<td>Problems associated with transmission of critical information either internally or externally</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Community policing</td>
<td>Community policing must be a core philosophy that is infused throughout the Department’s policing strategies and tactics.</td>
<td>Community involvement in police decision-making, problem-orientated policing strategies</td>
<td>Douglass (2017)</td>
</tr>
<tr>
<td>Complaint deficiencies</td>
<td>CDP’s civilian complaint system, as a whole, is disorganized and ineffective. CDP was only able to produce a fraction of the case</td>
<td>Describes deficiencies in policies, procedures, practices, and systems specific to the civilian</td>
<td>Rushin (2017) Walker (2017)</td>
</tr>
</tbody>
</table>
Appendix B: Preliminary coding framework with triangulation

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<tbody>
<tr>
<td>files we requested, and the files produced were often incomplete and lacked basic information about dispositions and outcomes. CDP does not have systems in place to track its performance or decision-making regarding civilian complaints.</td>
<td>complaint making process; not the investigation of those complaints.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditions of ambiguity</td>
<td>...we observed that there was no consistent understanding of the department’s community policing program within the ranks. Even commanders had inconsistent understandings of the agency’s program.</td>
<td>Describes actions, policies and procedures where there is a lack of clarity or understanding regarding a given topic, leading to officer confusion and uncertainty</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Culture</td>
<td>...the Division must undergo a cultural shift at all levels to change an “us-against-them” mentality we too often observed and to truly integrate and inculcate community oriented policing principles into the daily work and management of the Division.</td>
<td>Refers to broadly established norms of behavior, uncodified and informal</td>
<td>Rushin (2017) Walker (2017) Professional experience</td>
</tr>
<tr>
<td>Deficient formal authority</td>
<td>...downsized ICS has insufficient authority and stature to perform its function effectively.</td>
<td>Refers to the real or imagined perception that a unit/division within a police department lacks the formal authority to take specific action in a given scenario</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Discipline</td>
<td></td>
<td></td>
<td>Childress (2015)</td>
</tr>
</tbody>
</table>
### Appendix B: Preliminary coding framework with triangulation

Table B

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</thead>
<tbody>
<tr>
<td>The NPD has no set presumptive penalties for particular violations. As a result, the Trial Board can impose the same punishment for an officer’s failure to report to work on time as for the officer’s use of excessive force against a civilian.</td>
<td>Formal authority of a police department to manage, correct or discipline its members. Can be individualized or referring to a system</td>
<td>Walker (2017) Rushin (2017)</td>
<td></td>
</tr>
<tr>
<td>Not all of CDP’s zone cars have computers and, of those that do, the computers do not all reliably work. Even the MDCs that do work properly do not give officers access to CAD or CDP’s Records Management System.</td>
<td>References to deficient equipment, or lack of sufficient and necessary equipment to perform basic police function</td>
<td>Professional experience</td>
<td></td>
</tr>
<tr>
<td>This practice is out of the norm for police departments across the country, and the NPD’s leadership acknowledged that it is inappropriate and may discourage complainants from coming forward.</td>
<td>References to a police department’s practices not in keeping with established standards of well-run police organizations and/or widely recognized by professional groups</td>
<td>Walker (2017)</td>
<td></td>
</tr>
<tr>
<td>...lack of name plates poses a potential impediment to the accurate identification of YPD employees involved in alleged misconduct.</td>
<td>Practices that prevent individual officers from being held accountable for their actions, but not system-based</td>
<td>Professional experience</td>
<td></td>
</tr>
<tr>
<td>BPD also fails to collect data on a range of law enforcement actions, and even when it collects data, fails to store it in</td>
<td>Failure to enable a system to collect and store data efficiently and appropriately</td>
<td>Rushin (2017)</td>
<td></td>
</tr>
</tbody>
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Appendix B: Preliminary coding framework with triangulation

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</tr>
</thead>
<tbody>
<tr>
<td>Internal investigation deficiencies</td>
<td>systems that are capable of effective tracking and analysis.</td>
<td>Deficiencies related to the investigation of complaints of misconduct made against officers; not shortcomings of the complaint process</td>
<td>Childress (2015)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rushin (2017)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Walker (2017)</td>
</tr>
<tr>
<td>Intervention system-deficient</td>
<td>Our review also revealed some disturbing lapses and omissions by MPD investigators.</td>
<td></td>
<td>Childress (2015)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>References to an adequate system that allows for police management to monitor, track, and assess police officer behavior to prevent misconduct</td>
<td>Rushin (2017)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Walker (2017)</td>
</tr>
<tr>
<td>Knowledge deficit</td>
<td>...misunderstanding of critical principles of consent and incapacitation that are often at the center of these sensitive sexual assault investigations.</td>
<td>Police officers, or entire police departments that are ignorant of general and/or specific police functions</td>
<td>Rushin (2017)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Professional experience</td>
</tr>
<tr>
<td>Management failure</td>
<td>Officers report that they receive little supervision, guidance, and support from the Division, essentially leaving them to determine for themselves how to perform their difficult and dangerous jobs.</td>
<td>Problems associated with higher-than front line supervision that have a detrimental effect on police performance; not supervision failure</td>
<td>Walker (2017)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rushin (2017)</td>
</tr>
<tr>
<td>Official misconduct</td>
<td>...tamper with evidence and/or witnesses, falsify official reports and filings.</td>
<td>Unlawful and/or criminal activity in the</td>
<td>Professional experience</td>
</tr>
</tbody>
</table>
## Appendix B: Preliminary coding framework with triangulation

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance of duty</strong>; differentiated from constitutional violations or non-criminal misconduct</td>
<td>...officers are still expected to negotiate their compensation with the Detail employer and officers who coordinate Details still wield inordinate influence including, in some instances, over their superiors.</td>
<td>When systems and/or processes allow for conflicts of interest</td>
<td>Professional experience</td>
</tr>
<tr>
<td><strong>Organizational conflict</strong></td>
<td>BPD’s legacy of zero tolerance enforcement continues to drive its policing in certain Baltimore neighborhoods and leads to unconstitutional stops, searches, and arrests. Many BPD supervisors instruct officers to make frequent stops and arrests—even for minor offenses and with minimal or no suspicion—without sufficient consideration of whether this enforcement strategy promotes public safety and community trust or conforms to constitutional standards.</td>
<td>When a police organization has geared itself towards performing activities in a specific way in furtherance of a goal, though this goal leads to misconduct.</td>
<td>Rushin (2017) Walker (2017) Douglass (2017)</td>
</tr>
<tr>
<td><strong>Organizational orientation</strong></td>
<td>BPD has conducted virtually no analysis of its own data to ensure that its enforcement activities are non-discriminatory, and the Department misclassifies or otherwise fails to investigate specific complaints of racial bias.</td>
<td>The practice of reviewing internal mechanisms and processes for efficiency and effectiveness.</td>
<td>Childress (2015) Rushin (2017) Walker (2017)</td>
</tr>
</tbody>
</table>
## Appendix B: Preliminary coding framework with triangulation

Table B

### Preliminary coding framework with code description and triangulation.

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Oversight deficiencies</td>
<td>The Department also lacks adequate civilian oversight—its Civilian Review Board is hampered by inadequate resources, and the agency’s internal affairs and disciplinary process lacks transparency.</td>
<td>Refers to faulty processes with external review of police misconduct.</td>
<td>Walker (2017) Rushin (2017)</td>
</tr>
<tr>
<td>Policy and legal inconsistencies</td>
<td>NPD has misunderstood or misapplied the distinction between criminal and administrative investigations and abdicated its independent responsibility to conduct an administrative investigation to determine whether officer-involved shootings violate NPD policy or present officer safety concerns.</td>
<td>Refers to situations in which findings indicate that the police agency does not follow its own policies in practice, or is operating outside of its legal mandate</td>
<td>Douglass (2017) Professional experience</td>
</tr>
<tr>
<td>Policy deficiencies</td>
<td>EPD does not have a written policy or procedure that prescribes what the Commanders or Chief should review in making their determination regarding the appropriateness of the force.</td>
<td>Policies and rules that have specific deficiencies, insufficiencies, inadequacies, or are non-existent.</td>
<td>Childress (2015) Rushin (2017) Walker (2017)</td>
</tr>
<tr>
<td>Prisoners</td>
<td>The Due Process Clause of the Fourteenth Amendment guarantees a pretrial detainee the right to receive adequate medical care, and that right is violated if officials are deliberately indifferent to the detainee’s serious medical needs.</td>
<td>Refers to deficient practices involving prisoners concerning medical care, transport, incapacitation, shelter, holding time; not policy specific</td>
<td>Childress (2015) Professional experience</td>
</tr>
</tbody>
</table>
### Appendix B: Preliminary coding framework with triangulation

**Table B**

*Preliminary coding framework with code description and triangulation.*

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<tbody>
<tr>
<td>Recruitment</td>
<td>...failure to prioritize the recruitment of high-quality candidates contributes to the chronic, Department-wide problems we observed.</td>
<td>Refers to deficient practices related to hiring candidates to be police officers; does not refer to internal recruitment for positions</td>
<td>Douglass (2017) Professional experience</td>
</tr>
<tr>
<td>Research and development</td>
<td>We recommend that the department conduct a staffing study to determine how many officers would need to be added to the Team, as well as how many patrol officers would need to be trained and certified, to ensure that someone with the appropriate skills is always available in all parts of the city.</td>
<td>Describes conditions that warrant a police department to conduct self-study and/or learn from changing external environment</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Resource inadequacy</td>
<td>We concluded that OPS was understaffed; investigators were not provided with the guidance and resources necessary to do their jobs effectively; investigations were untimely; civilians’ access to the complaint process was limited; and some complaints that should have been investigated were not. More than ten years later, these problems remain and, in some cases, have worsened. Current deficiencies in the complaint process include impossibly high caseloads for investigators.</td>
<td>Refers to police organizations, or divisions/units within police organizations that have deficiencies in manpower or funding; not lack of authority</td>
<td>Douglass (2017) Rushin (2017) Walker (2017)</td>
</tr>
<tr>
<td>Search and seizure</td>
<td>...improper seizures of persons, including making police stops</td>
<td></td>
<td>Childress (2015) Rushin (2017)</td>
</tr>
</tbody>
</table>
Appendix B: Preliminary coding framework with triangulation

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<tbody>
<tr>
<td>Made based on reasonable suspicion and making arrests without probable cause; seizures of property not based on probable cause; and improper searches of persons and property with insufficient cause.</td>
<td>Lack of constitutional authority to perform a stop and frisk or arrest. Lack of sufficient reasonable suspicion and/or probable cause. Differentiated from unjustified arrests wherein cause is falsified</td>
<td>Walker (2017)</td>
<td></td>
</tr>
<tr>
<td>Special populations</td>
<td>APD’s policies, training, and supervision are insufficient to ensure that officers encountering people with mental illness or in distress do so in a manner that respects their rights and is safe for all involved.</td>
<td>Describes deficient practices to vulnerable populations, particularly the mental ill, and juveniles</td>
<td>Childress (2015) Rushin (2017) Walker (2017)</td>
</tr>
<tr>
<td>Specialized units</td>
<td>Accusations of theft and corruption are most often leveled against officers in specialized units—particularly the various narcotics, gang, and street crimes units</td>
<td>Refers to deficiencies specific to sub organizational enforcement and response units-narcotics, special enforcement, SWAT, etc.</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Standards for assignment</td>
<td>Inadequate screening procedures allow officers with multiple theft complaints to be assigned to a specialized unit or transferred to another specialized unit while continuing to accumulate integrity-related complaints.</td>
<td>Describes deficiencies related to transfer or promotion to a unit or assignment for which the officer is unprepared or unqualified</td>
<td>Professional experience</td>
</tr>
</tbody>
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<tbody>
<tr>
<td>Stress and well-being</td>
<td>Policing is a high-stress profession. Law enforcement officers often are called upon to deal with violence or crises as problem solvers, and they often are witnesses to human tragedy. In Chicago, this stress is particularly acute, for several reasons. Increasing levels of gun violence and neighborhood conditions take their toll on officers as well as residents.</td>
<td>Refers to officer health both physical and emotional; systems within police departments that allow for officer assistance; police officer working conditions that contribute to stress and burnout</td>
<td>Professional experience</td>
</tr>
<tr>
<td>Supervision deficiencies</td>
<td>...supervisors often fail to meet their responsibility to provide oversight of the use of force by individual officers.</td>
<td>Describes the failure of front-line supervisors to complete task-specific responsibilities</td>
<td>Childress (2015) Rushin (2017) Walker (2017)</td>
</tr>
<tr>
<td>Tactical deficiencies</td>
<td>We found that officers engage in tactically unsound and unnecessary foot pursuits, and that these foot pursuits too often end with officers unreasonably shooting someone—including unarmed individuals.</td>
<td>Refers to the use of physical restraints, use of weapons, and means of control by officers that are deficient.</td>
<td>Walker (2017) Professional experience</td>
</tr>
<tr>
<td>Training deficiencies</td>
<td>CDP does not have effective mechanisms in place to ensure that its officers have received training that is adequate in its content, quality, and quantity.</td>
<td>Describes conditions of training both at the academy and in-service level, that fail to appropriately address officer’s needs. Can be a system, assessment,</td>
<td>Walker (2017) Rushin (2017) Professional experience</td>
</tr>
</tbody>
</table>
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<tbody>
<tr>
<td>Unjustified arrests</td>
<td>...conversations with FPD officers, one officer admitted that when he conducts a traffic stop, he asks for identification from all passengers as a matter of course. If any refuses, he considers that to be “furtive and aggressive” conduct and cites—and typically arrests.</td>
<td>Arrests that are made without probable cause; differentiate from search and seizure in that misconduct and falsification are presumed</td>
<td>Childress (2015)</td>
</tr>
<tr>
<td>UOF-deficiencies</td>
<td>CPD policy requires officers to report force but, in practice, officers are not required to provide detail about the force they used that is sufficient for an adequate review, and most officer force is not reviewed or investigated.</td>
<td>Refers to policies, practices and systems that contribute to unreasonable, unnecessary, or excessive use of force against a person</td>
<td>Childress (2015) Rushin (2017) Walker (2017) Professional experience</td>
</tr>
</tbody>
</table>
Appendix C: Final theme and subtheme codebook

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions of ambiguity</td>
<td>-</td>
<td>Lack of clarity, appropriate direction or guidance in matters related to policy, procedure, protocol or reporting. Individual and group confusion, and contradiction in responsibility or action leading to a lack of understand of required police duties or functionality.</td>
<td>The use of force policy has changed, but the policy in place at the time of our investigation was confusing, at times conflicted with the law, and did not provide sufficient guidance to officers. Indeed, many officers reported to us that they did not understand the policy and, more generally, did not understand what level of force they were permitted to use under what circumstances (Cleveland, 2014).</td>
</tr>
<tr>
<td>Institutionalization</td>
<td>-</td>
<td>When an organization increasingly bases its approach to customers or clients on what best serves the comfort or preference of employees (O’Hara, 2012).</td>
<td>-</td>
</tr>
<tr>
<td>-</td>
<td>Internal partiality</td>
<td>Decisions and investigations specifically favoring employees in police actions over the impartiality of an investigation.</td>
<td>Specially-trained investigators who are charged with conducting unbiased reviews of officers’ use of deadly force admitted to us that they conduct their investigations with the goal of casting the accused officer in the most positive light possible (Cleveland, 2014)</td>
</tr>
<tr>
<td>-</td>
<td>Misaligned policy and practice</td>
<td>A municipal police organization that has the necessary and appropriate policies, but does not follow</td>
<td>While Chief Jackson implemented new department policies when he joined FPD in 2010, including on use-of-force</td>
</tr>
</tbody>
</table>
### Table C

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of professional currency</td>
<td>-</td>
<td>Failing to have established or maintain and adhere to acceptable standards in systems, procedures, policies, &amp; practices.</td>
<td>...the NPD has failed to appropriately train its investigators. NPD command staff and officers, IA investigators, and Integrity Compliance Officers (“ICO”) consistently reported that investigative experience has not been required to become an investigator (Newark, 2014)</td>
</tr>
<tr>
<td>Deficient selection criteria</td>
<td>-</td>
<td>Selection and appointment of personnel to agency positions in which they were not qualified, trained, prepared, or disqualified but assigned.</td>
<td></td>
</tr>
<tr>
<td>Failure to maintain established standards in systems, practices, and policies</td>
<td>-</td>
<td>Deficiencies with internal control systems, common police practices, communication failures, and training. Police agencies that are capable of adhering to professional standards but do not do so.</td>
<td>...so much of the department’s training program is not documented, it was difficult for us—as is for the department itself—to fully evaluate most of the training that officers receive (Albuquerque, 2014).</td>
</tr>
<tr>
<td>Failure to adhere to best practices</td>
<td>-</td>
<td>Practices and policies that are not in keeping with generally accepted professional standards.</td>
<td>This practice is out of the norm for police departments across the country, and the NPD’s leadership acknowledged that it is inappropriate and may discourage complainants from coming forward.</td>
</tr>
</tbody>
</table>
### Table C
Theme and subtheme codebook with descriptions and examples.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leadership and management failure</td>
<td>-</td>
<td>Failure of accountability within the chain-of-command; leadership indifference to institutional problems, not providing the organization the support and guidance as necessary and appropriate. Generalized lack of investment of proper and appropriate police services by leadership.</td>
<td>(Newark, 2014)</td>
</tr>
<tr>
<td>Organizational orientation and culture</td>
<td>-</td>
<td>Organizational outlook and enduring legacy. Widespread and endorsed strategies; outlook and practices geared towards a specific end. Can be legitimate means for illegitimate ends.</td>
<td>-</td>
</tr>
<tr>
<td>-</td>
<td>Focus on enforcement, activity, and arrests</td>
<td>Law enforcement priority is to fight crime, but in doing so, adhere to illegitimate means.</td>
<td>Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson’s police department, contributing to a pattern of unconstitutional policing (Ferguson, 2015).</td>
</tr>
<tr>
<td>-</td>
<td>Prevailing cultural view</td>
<td>Dominant way of thinking within the organization.</td>
<td>...longstanding deficiencies that have allowed a culture of indifference to constitutional</td>
</tr>
</tbody>
</table>
## Appendix C: Final theme and subtheme codebook

Table C

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational myopia</td>
<td>-</td>
<td>Short term thinking, insularity. Not recognizing risk (Catino, 2013).</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Adaptation failure</td>
<td>Failing to adapt to changing external conditions in an appropriate manner to the point of detriment to the police organization and community.</td>
<td>In light of the diversity of the Yonkers community, we also recommend that any warnings issued to individuals prior to the deployment of the K-9 Unit be issued in Spanish, as well as in English (Yonkers, 2009).</td>
</tr>
<tr>
<td></td>
<td>Conflicts of interest</td>
<td>Practices that are in opposition to the interest and autonomy of a police agency or a police officer’s duties.</td>
<td>MPD policy requires officers to automatically arrest a student whenever school officials or staff indicate that they would like to press charges (Meridian, 2012).</td>
</tr>
<tr>
<td></td>
<td>Deficient interaction with external organizations</td>
<td>Failure to effectively communicate with organizations outside the agency, community groups, oversight bodies, and partner agencies, leading to deficiencies in operations, performance, or accountability.</td>
<td>WPD should hold community outreach meetings. The meetings should be an open forum for all citizens to discuss issues with the WPD (Warren, 2006).</td>
</tr>
<tr>
<td></td>
<td>Research, planning, and resource allocation</td>
<td>Failing to use, collect or analyze information for the betterment of the police department. Fail to research</td>
<td>We recommend that the department conduct a staffing study to determine how many</td>
</tr>
</tbody>
</table>
# Appendix C: Final theme and subtheme codebook

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routinized misconduct</td>
<td>-</td>
<td>Misconduct, malfeasance, and otherwise criminal conduct committed by officers as a matter of routine within a police agency.</td>
<td>-</td>
</tr>
<tr>
<td>-</td>
<td>Abuse of authority</td>
<td>Using police authority in an intentionally abusive, unnecessary, or excessive manner, or using force as retaliation and/or punishment.</td>
<td>Officers use force against individuals, including persons in handcuffs, in circumstances that appeared not only unnecessary but deliberately retaliatory (New Orleans, 2011).</td>
</tr>
<tr>
<td>-</td>
<td>Biased-based policing</td>
<td>Policing practices that are motivated by bias towards any particular class of persons. Bias can be intentional or have a differential impact.</td>
<td>in case reports with video recordings of the same interviews further suggested to us that MPD’s sexual assault investigations are at times compromised by an investigator’s unwarranted gender-based assumptions and stereotypes about women. (Missoula, 2013).</td>
</tr>
<tr>
<td>-</td>
<td>Cultural deviation</td>
<td>When elements of the organization increasingly operate according to their own standards, with little</td>
<td>NPD has been aware for several years that theft by some of its officers is a serious problem. The Special Investigations Unit</td>
</tr>
</tbody>
</table>

Table C

Theme and subtheme codebook with descriptions and examples.
## Appendix C: Final theme and subtheme codebook

### Table C

*Theme and subtheme codebook with descriptions and examples.*

<table>
<thead>
<tr>
<th>Theme Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>regard for the larger organization and its rules. Or violation of laws and criminal activity by subgroups of officers (O’Hara, 2012).</td>
<td>and IA have conducted several reviews of officers with high numbers of theft complain (Newark, 2014).</td>
<td></td>
</tr>
<tr>
<td>Unjustified enforcement actions</td>
<td>Police action; arrests, search and seizure, without the necessary legal justification.</td>
<td>Many of the victims of excessive force, false arrest or charges, and/or an improper search are, at the time when the misconduct occurs, carrying out some ordinary, routine daily activity (either not violating the law or committing some minor infraction). (Columbus, 1999).</td>
</tr>
</tbody>
</table>

### Tactical discretion, weapon competency, and equipment inadequacies

- Inappropriate use of discretion in tactical situations, improper use of weapons, and inadequacies in police-issued equipment.

### Inappropriate tactical discretion

- Not adhering to a force continuum; using tactical discretion inappropriately, and unnecessarily. Legally justified, but reasonable use of force for a given situation.

### Equipment inadequacies

- Inadequate, improper usage of, or insufficient equipment for modern police functionality.

...other basic equipment is either outdated or nonexistent. For instance, officers lack effective zone car computers,
### Appendix C: Final theme and subtheme codebook

Table C
*Theme and subtheme codebook with descriptions and examples.*

<table>
<thead>
<tr>
<th>Theme</th>
<th>Subtheme</th>
<th>Description</th>
<th>Example from data (DOJ Investigation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>Weapon competency</td>
<td>Incompetent use of weapons or tools.</td>
<td>...recognized deficiencies such as poor marksmanship, shooting from too great a distance, failure to follow perimeter protocol, and firing at a moving vehicle. (Miami, 2013)</td>
</tr>
</tbody>
</table>
### Appendix D: Significant relationships; IV by IV

#### Table D

*Phi coefficients for significant relationships, IV by IV.*

<table>
<thead>
<tr>
<th></th>
<th>% non-white</th>
<th>Size</th>
<th>Pop.</th>
<th>Res.</th>
<th>Focusevents</th>
<th>Indicat.</th>
<th>Feed.</th>
<th>Use of force</th>
<th>Stop, search, arrest</th>
<th>Response to special pops.</th>
<th>Civilian complaint</th>
<th>Internal discipline</th>
<th>Presidential party</th>
<th>National mood</th>
<th>More than one</th>
</tr>
</thead>
<tbody>
<tr>
<td>% non-white</td>
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<td>.389*</td>
<td>.344*</td>
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<td>-</td>
<td>-</td>
<td>-.385*</td>
<td>-</td>
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<td></td>
</tr>
<tr>
<td>Size</td>
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<td>-</td>
<td>.344*</td>
<td>-</td>
<td>-</td>
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<td>.407*</td>
<td>.420*</td>
<td>-.385*</td>
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<tr>
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<td>.344*</td>
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<tr>
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<td>.449**</td>
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</tr>
<tr>
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<td>.352*</td>
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<td>Stop, search, arrest</td>
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<tr>
<td>Response to special pops.</td>
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<td>-.481**</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
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<td>.489**</td>
<td>-</td>
<td>-</td>
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<td></td>
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<tr>
<td>Internal discipline</td>
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<td>.401*</td>
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<td>-340*</td>
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</tbody>
</table>
Appendix D: Significant relationships; IV by IV

<table>
<thead>
<tr>
<th></th>
<th>% non-white</th>
<th>Size</th>
<th>Pop.</th>
<th>Res.</th>
<th>Focus-events</th>
<th>Indicat.</th>
<th>Feed.</th>
<th>Use of force</th>
<th>Stop, search, arrest</th>
<th>Response to special pops.</th>
<th>Civilian complaint</th>
<th>Internal discipline</th>
<th>Presidential party</th>
<th>National mood</th>
<th>More than one</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pres. party</td>
<td>-.385*</td>
<td>-.385*</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-.481**</td>
<td>-</td>
<td>-.340*</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>National mood</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>More than one in state</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
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<td>-</td>
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</tr>
</tbody>
</table>

*Note.* (-) Not reported since $p > .05$. Bolded coefficients, $\phi > .50$

*p < .05; **p < .01; ***p < .001*
### Appendix E: Phi coefficients; IVs by themes

**Table E**

*Phi coefficients: Independent variables by themes.*

<table>
<thead>
<tr>
<th>Variable</th>
<th>Conditions of ambiguity</th>
<th>Institutionalization</th>
<th>Lack of professional currency</th>
<th>Leadership &amp; management failure</th>
<th>Organizational orientation &amp; culture</th>
<th>Organizational myopia</th>
<th>Routinized misconduct</th>
<th>Tactical discretion, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>% non-white</td>
<td>-.06</td>
<td>.12</td>
<td>-.16</td>
<td>.10</td>
<td>.42*</td>
<td>.36*</td>
<td>.14</td>
<td>.19</td>
</tr>
<tr>
<td>Resources</td>
<td>.18</td>
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<td>.16</td>
<td>.14</td>
<td>.26</td>
<td>.12</td>
<td>.11</td>
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<td>.19</td>
<td>.10</td>
<td>.42*</td>
<td>.04</td>
<td>.39*</td>
<td>.05</td>
</tr>
<tr>
<td>Population</td>
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<td>.12</td>
<td>-.16</td>
<td>.10</td>
<td>.15</td>
<td>-.27</td>
<td>.14</td>
<td>.05</td>
</tr>
<tr>
<td>Focusing event</td>
<td>-.06</td>
<td>-.05</td>
<td>.19</td>
<td>.10</td>
<td>.01</td>
<td>.20</td>
<td>.14</td>
<td>.19</td>
</tr>
<tr>
<td>Indicators</td>
<td>.56**</td>
<td>-.18</td>
<td>.42*</td>
<td>.22</td>
<td>.26</td>
<td>.24</td>
<td>-.17</td>
<td>.55**</td>
</tr>
<tr>
<td>Feedback</td>
<td>-.05</td>
<td>.03</td>
<td>.23</td>
<td>.06</td>
<td>.18</td>
<td>-.30</td>
<td>.16</td>
<td>.31</td>
</tr>
<tr>
<td>Use of force</td>
<td>.41*</td>
<td>-.13</td>
<td>.56**</td>
<td>.29</td>
<td>.19</td>
<td>.12</td>
<td>-.26</td>
<td>.56**</td>
</tr>
<tr>
<td>Search, seizure, &amp; arrest</td>
<td>.08</td>
<td>.21</td>
<td>-.13</td>
<td>.31</td>
<td>.32</td>
<td>.30</td>
<td>.29</td>
<td>.01</td>
</tr>
<tr>
<td>Response to special populations</td>
<td>-.08</td>
<td>.14</td>
<td>-.23</td>
<td>.45**</td>
<td>.67***</td>
<td>.19</td>
<td>.35*</td>
<td>-.13</td>
</tr>
<tr>
<td>Civilian complaint</td>
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<td>-.16</td>
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<td>.15</td>
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<td>.07</td>
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</tr>
<tr>
<td>Internal discipline</td>
<td>.22</td>
<td>.19</td>
<td>.34*</td>
<td>.03</td>
<td>.15</td>
<td>.14</td>
<td>-.12</td>
<td>.26</td>
</tr>
<tr>
<td>Presidential party</td>
<td>.35*</td>
<td>-.18</td>
<td>.14</td>
<td>.01</td>
<td>-.22</td>
<td>-.10</td>
<td>-.49**</td>
<td>.31</td>
</tr>
<tr>
<td>National mood</td>
<td>.55**</td>
<td>.18</td>
<td>-.14</td>
<td>-.26</td>
<td>-.20</td>
<td>.26</td>
<td>-.39*</td>
<td>.27</td>
</tr>
<tr>
<td>More than one in state</td>
<td>-.14</td>
<td>-.19</td>
<td>.21</td>
<td>-.08</td>
<td>-.30</td>
<td>-.25</td>
<td>-.32</td>
<td>-.06</td>
</tr>
</tbody>
</table>

*Note: Significant coefficients bolded for acuity.*  
*p < .05; **p < .01; ***p < .001
### Table F: Relating Variables to Themes.

<table>
<thead>
<tr>
<th>Relevant Variables</th>
<th>Related theme: Primary&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Related theme: Secondary&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Related theme: Tertiary&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent non-white ≥ 54%</td>
<td>Organizational orientation &amp; culture</td>
<td>Organizational myopia</td>
<td>Tactical discretion, etc.</td>
</tr>
<tr>
<td>Percent non-white &lt; 54%</td>
<td>Lack of professional currency</td>
<td>Conditions of ambiguity</td>
<td>Leadership &amp; management failure</td>
</tr>
<tr>
<td>Resources ≥ 2.8 sworn per population</td>
<td>Organizational orientation &amp; culture</td>
<td>Tactical discretion, etc.</td>
<td>Conditions of ambiguity</td>
</tr>
<tr>
<td>Resources &lt; 2.8 sworn per population</td>
<td>Institutionalization</td>
<td>Routinized Misconduct</td>
<td>Organizational myopia</td>
</tr>
<tr>
<td>Size ≥ 500 sworn employees</td>
<td>Organizational orientation &amp; culture</td>
<td>Routinized misconduct</td>
<td>Conditions of ambiguity</td>
</tr>
<tr>
<td>Size &lt; 500 sworn employees</td>
<td>Organizational myopia</td>
<td>Tactical discretion, etc.</td>
<td>Leadership &amp; management failure</td>
</tr>
<tr>
<td>Population ≥ 250k</td>
<td>Organizational orientation &amp; culture</td>
<td>Routinized misconduct</td>
<td>Institutionalization</td>
</tr>
<tr>
<td>Population &lt; 250k</td>
<td>Organizational myopia</td>
<td>Conditions of ambiguity</td>
<td>Lack of professional currency</td>
</tr>
<tr>
<td>Focusing event</td>
<td>Organizational myopia</td>
<td>Tactical discretion, etc.</td>
<td>Lack of professional currency</td>
</tr>
<tr>
<td>Indicators – deficient EIS</td>
<td>Conditions of ambiguity</td>
<td>Tactical discretion, etc.</td>
<td>Lack of professional currency</td>
</tr>
<tr>
<td>Feedback</td>
<td>Tactical discretion, etc.</td>
<td>Lack of professional currency</td>
<td>Organizational orientation &amp; culture</td>
</tr>
<tr>
<td>Use of force</td>
<td>Lack of professional currency</td>
<td>Tactical discretion, etc.</td>
<td>Conditions of ambiguity</td>
</tr>
<tr>
<td>Search, seizure, &amp; arrest</td>
<td>Organizational orientation &amp; culture</td>
<td>Leadership &amp; management failure</td>
<td>Organizational myopia</td>
</tr>
<tr>
<td>Response to special populations</td>
<td>Organizational orientation &amp; culture</td>
<td>Leadership &amp; management failure</td>
<td>Routinized misconduct</td>
</tr>
<tr>
<td>Civilian complaint system</td>
<td>Conditions of ambiguity</td>
<td>Lack of professional currency</td>
<td>Tactical discretion, etc.</td>
</tr>
<tr>
<td>Internal discipline</td>
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<td>Tactical discretion, etc.</td>
<td>Conditions of ambiguity</td>
</tr>
<tr>
<td>Presidential party - Democrat</td>
<td>Routinized misconduct</td>
<td>Organizational orientation &amp; culture</td>
<td>Institutionalization</td>
</tr>
<tr>
<td>Presidential party - Republican</td>
<td>Conditions of ambiguity</td>
<td>Tactical discretion, etc.</td>
<td>Lack of professional currency</td>
</tr>
<tr>
<td>National mood – positive</td>
<td>Conditions of ambiguity</td>
<td>Tactical discretion, etc.</td>
<td>Organizational myopia</td>
</tr>
<tr>
<td>National mood - negative</td>
<td>Routinized misconduct</td>
<td>Leadership &amp; management failure</td>
<td>Organizational orientation &amp; culture</td>
</tr>
<tr>
<td>More than one in state</td>
<td>Lack of professional currency</td>
<td>Tactical discretion, etc.</td>
<td>Leadership &amp; management failure</td>
</tr>
</tbody>
</table>

<sup>a</sup> Significant phi correlations are italicized.

**Note.** Thematic order was determined by the phi coefficient strength of association.
## Appendix G: Matrix of Hypotheses

### Table G
Matrix of Hypotheses

<table>
<thead>
<tr>
<th>Hypotheses</th>
<th>Hypotheses - As Stated</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>$H_1$</td>
<td>Thematic findings will differ between municipal police agencies under negotiated settlement, and those under technical assistance.</td>
<td>Partially confirmed</td>
</tr>
<tr>
<td>$H_2$</td>
<td>Municipal police agencies under negotiated settlement will have more scaled subtheme findings than those under technical assistance.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_3$</td>
<td>Second-generation output will be significantly longer than first-generation output.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_4$</td>
<td>First-generation § 14141 investigations will have lasted longer than second-generation investigations.</td>
<td>Rejected</td>
</tr>
<tr>
<td>$H_5$</td>
<td>The length of an investigation will be negatively associated with the number of DOJ scaled findings, controlling for the size of a police department.</td>
<td>Partially confirmed</td>
</tr>
<tr>
<td>$H_6$</td>
<td>DOI’s investigative findings will differ over time.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_7$</td>
<td>Environmental and organizational characteristics will differ between police agencies found to engage in unconstitutional policing, and police agencies without such findings.</td>
<td>Partially confirmed</td>
</tr>
<tr>
<td>$H_8$</td>
<td>Municipal police agency resources will be negatively associated with the number of scaled findings, controlling for the size of a police department.</td>
<td>Rejected</td>
</tr>
<tr>
<td>$H_9$</td>
<td>Municipal police agencies experiencing a focusing event are more likely to have been found to engage in unconstitutional policing than those that have not experienced a focusing event.</td>
<td>Rejected</td>
</tr>
<tr>
<td>$H_{10}$</td>
<td>Municipal police agencies found to have deficient intervention systems will be more likely to engage in unconstitutional policing than municipal police departments without such deficiencies.</td>
<td>Rejected</td>
</tr>
<tr>
<td>$H_{11}$</td>
<td>Municipal police agencies with focusing events are more likely to have accompaniment in the form of feedback, than police agencies without focusing events.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_{12}$</td>
<td>Municipal police agencies under negotiated settlement will have a greater number of policy deficiencies than those under technical assistance.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_{13}$</td>
<td>The number of deficient policies will be positively associated with the number of thematic findings.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_{14}$</td>
<td>The number of observed § 14141 investigations occurring during the tenure of each president will differ from expected observations.</td>
<td>Rejected</td>
</tr>
<tr>
<td>$H_{15}$</td>
<td>Investigative outcomes will differ between political parties.</td>
<td>Confirmed</td>
</tr>
<tr>
<td>$H_e$</td>
<td>Organizational and environmental characteristics for municipal police will differ between first and second-generation investigations.</td>
<td>Partially confirmed</td>
</tr>
</tbody>
</table>
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U.S. Const. amend. X.


AUTOBIOGRAPHICAL STATEMENT

I was born Jason William Ostrowe on May 22nd, 1975 in Syosset, New York – the immediate shadow of New York City. My upbringing was middle-class and typical of many families from the 1970s and 1980s experiencing the tumult of a divorced household. With my parents separating when I was just an infant – I grew up like so many others from that generation; sometimes a latch-key kid, other times within a stepfamily. My mother, who was my primary caretaker throughout both my childhood and young adulthood, was a high-school graduate and worked in jobs that did not require a college education or specialized skill. My father, like his brother and father before him, were police officers in the NYPD. Although my immediate family was small and we lived modestly, we never suffered for a lack of the important things. This was due to my mother’s tireless enthusiasm for life, and love for her children.

From as early as I can recall, I was always invigorated by learning and new experiences. I remember quite well as a young child being fascinated by all the information in encyclopedias, spending hours upon hours reading them through, absorbing what I could – the knowledge made me feel alive. Learning was my proclivity, and I was fortunate to grow up in an environment where it was nurtured.

As a young boy and adolescent, when adults would ask what I wanted to be when I grew up, much to my mother’s chagrin, I would answer, “a police officer”. In retrospect, this career choice had more to do with modeling than my own best course – of which: Can anyone really know at such an age? Choosing a career isn’t easy for an adult, much less a child. But what I’ve always known is that I was never motivated by the acquisition of wealth or taken by the spirit of entrepreneurship; my tendencies and aspirations were towards personal development, fulfillment, and being part of something important.
As a young adult entering college, I dedicated myself to personal and academic excellence; I aspired to the highest levels of achievement attainable. My motivation sprang from a lifetime of academic underachievement – embarrassingly so, and a desire to actualize the thoughtful, intelligent, and accomplished person residing in me. I realized this goal for the first time as an undergraduate, having been recognized for outstanding academic achievement by my program.

It was during this time that I decided to pursue a career in policing. This did not come easily, and although I have a family history in the field, it was not ordained. For years I was between pursuing a police or teaching career, having always had a passion for history, public policy, politics, law, and science. My decision at age 20 to major in public justice and psychology sent me on the path which I am just now completing. In retrospect, this decision had more to do with the aspiration to be part of something meaningful and important, my family connection to the career, and the extrinsic stability that comes with a career as a civil service employee. All safe choices.

So, in 1999 at the age of 24 and a year out of college, I was hired by the NYPD; it was a proud moment, and made me feel connected to my father and his father, who I never really knew, and the fulfillment of entering into a career with meaning. My experience in policing as a new officer was similar to that of the many thousands who came before me, then the events of 9/11 happened. I was on-duty in Manhattan during that day, and lived and worked through the chaos that ensued for months on end. This event dramatically changed many people’s lives, as well, it set me on both a career and academic trajectory that I did not envision.

After a few short years as an officer, I began to crave the intellectual stimulation and learning that had fueled me my whole life. As fate would have it, the events of 9/11 ushered in a
new era not just in policing, but in higher education, and it was in 2003 that John Jay College began offering a graduate program in police studies for law enforcement officers – this program was in part a response to 9/11.

I took the program on with great enthusiasm, yet still a police officer, attending classes on weekends, completing it in 2006, and subsequently enrolling in John Jay’s Master of Public Administration program. At that same time, I was accepted to become an academic instructor in the NYPD Police Academy. I knew I wanted to teach – that feeling never left – and had long-term plans to do so as second career. So, I thought what better opportunity to gain some experience in the classroom.

I excelled in teaching, and enjoyed it immensely. The skills necessary to be a quality teacher all came very easily – planning, structure, organization, reading, understanding, communicating, etc., but most needed are passion and interest, in which I possessed in abundance. It was during this time I realized that I wanted to become a college professor, and thus began that journey.

Taking graduate level classes on Saturdays, after a week working at the police academy required a certain level of sacrifice and dedication, but I did it without complaint, and found great satisfaction in the process. The motivation that I brought to my undergraduate career still abided, and with it, I finished the degree in 2011, earning the program award for highest overall GPA – a perfect 4.0.

During that same time, I began making plans to work toward a PhD, and used my connections in the police department for assignment as a policy analyst in the Office of Management Analysis and Planning. There, I gained valuable policy analysis experience, and leveraged my educational achievements and career experience to enroll in the Criminal Justice
PhD program at the CUNY Graduate Center, specializing in policy, oversight, and administration. I began the program in 2012, and attended part-time while still employed as a New York City Police Officer.

The PhD program from the outset was a grind; graduate studies at the master’s and doctoral level differentiate the consumer from the producer, this took me some time to realize, the difference is a leap, and profoundly more challenging. I often felt adrift and floundering in the PhD program, I frequently considered discontinuing. But for many reasons, whether to prove to myself, accomplish something meaningful, feed my need for knowledge and learning, or simply to see it through, I continued-on while still a police officer.

I left the NYPD in 2015 to pursue other opportunities and continue my doctoral studies, which at that point became untenable to maintain. Through fits and starts, I was able to successfully transition to career in higher education, realizing a long-held dream of becoming a college professor.

I was hired as full-time faculty at BMCC in 2016, a hairs-breath away from the WTC site, and the only institution of higher education that sustained damage on 9/11. With this change in career came opportunity. I approached my doctoral studies with renewed vigor and determination. And in late 2016, began development of my proposal. I knew it had to have certain core elements: originality, access to data, an analytical plan, and a topic that could add value to the literature. In the course of my studies I was introduced to John Kingdon’s multiple streams framework, and became fascinated with how it could be applied to explain various types of public policy and organizational decision-making. With my background in policing, teaching, and policy analysis; a study of how a law is applied to police departments by the Department of Justice seemed a natural fit. This was my Eureka moment.
My proposal went to committee and was approved in May 2018; thus, I went all-in completing my dissertation. From June through December I navigated the demands of family life, full-time employment, and researching and writing a dissertation. This required balance, planning, and time-management, but also, support, none more than from my wife. I finished my manuscript on December 15th, 2018, and felt that I had done something quite special. I received news in early March 2019 that my dissertation was accepted with minor revisions, my defense was then scheduled for May.

Completing a dissertation is not easy, nor should it be. I know of no one who suggests otherwise. It is a rarefied achievement, and with it should come great satisfaction. When people remark about how they could never do it, I offer the following analogy: Completing a dissertation is similar to running a marathon – you don’t have to be the best athlete, but athletic enough, and with years of dedication, commitment, persistence, and timing, you’ll successfully complete those 26.2 miles. Likewise, completing a dissertation requires a certain level of competence, but more important, the student must possess the extraordinary dedication, commitment, persistence, and timing to successfully navigate the many bumps, diversions, and challenges in the road to completion – its own 26.2-mile path of discovery.

My struggles throughout this journey were numerous but not unique, yet, they were all mine to own and overcome. I managed to navigate the PhD process and see it successfully through while so many others give up along the way for any number of reasons – job, family, other priorities, lack of commitment, and all of life’s vicissitudes.

This dissertation was 20-plus years in the making, beginning as that college kid introspectively weighing career choices. I have many people to thank for their love, support, guidance, and encouragement along the way. While I recognize them for helping to make this
accomplishment possible, ultimately, my 20-plus year journey is one of self-actualization. The person I always knew I was; thoughtful, intelligent, and accomplished, I never gave up on, and for that, I am most proud.

May the next 20-year journey be as fulfilling as the last.

Jason W. Ostrowe

May 3rd, 2019