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THESIS

**THE CRISIS OF LEGITIMACY AFTER POLICE-RELATED
CIVILIAN DEATHS: APPLYING THE CYNEFIN
FRAMEWORK TO LEGITIMACY-DEVELOPING POLICIES**

by

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March 2021

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DEATHS: APPLYING THE CYNEFIN FRAMEWORK TO
LEGITIMACY-DEVELOPING POLICIES**

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ABSTRACT

Police-related civilian deaths, caused by direct force or occurring during custody, pose one of the central challenges to police legitimacy. This thesis studied five police departments that experienced such a crisis of legitimacy, as evidenced by either deadly retaliatory violence against police or substantial civil unrest in response. Specifically, this thesis examined how each agency implemented expert-recommended legitimacy-developing policies before and in response to the challenge of these deaths. This thesis then applied the Cynefin framework to these implementations, revealing which domains better conform to expert recommendations and sustain legitimacy policies in the wake of a crisis. This research recommends and provides a method for police leaders to leverage the Cynefin framework to assess their legitimacy policy implementations.

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LIST OF ACRONYMS AND ABBREVIATIONS

BCRB	Baltimore Civilian Review Board
BPD	Baltimore Police Department
BRPD	Baton Rouge Police Department
BWC	body-worn camera
CCD	Community Collaboration Division
CCRB	Civilian Complaint Review Board
CED	conducted electrical device
CEU	Community Engagement Unit
COPS	Community Oriented Policing Services
COTF	Community Oversight Task Force
DCPI	Deputy Commissioner of Public Information
DOJ	Department of Justice
DPD	Dallas Police Department
FCRB	Ferguson Civilian Review Board
FIP	Fair and Impartial Policing
FOIL	Freedom of Information Law
FPD	Ferguson Police Department
IACP	International Association of Chiefs of Police
MPD	Minneapolis Police Department
MRS	Media Relations Section
NAACP	National Association for the Advancement of Colored People
NACOLE	National Association for Civilian Oversight of Law Enforcement
NCO	neighborhood coordination officer
NYPD	New York City Police Department
OC	oleoresin capsicum
PERF	Police Executive Research Forum
SAPD	Saint Anthony Police Department
SLCPD	St. Louis County Police Department
SQF	stop, question, and frisk

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EXECUTIVE SUMMARY

Police-related civilian deaths, either by use of force or occurring during law enforcement custody, pose one of the central challenges to police legitimacy.¹ For example, protesters marched against police funding, sporadic episodes of civil disorder erupted, and police policy reviews commenced in the wake of the May 2020 death of George Floyd while in the custody of members of the Minneapolis Police Department.² Police-related civilian deaths are a persistent challenge to the legitimacy of police departments.

Research shows that government institutions function better when they develop and maintain legitimacy, which is “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.”³ Therefore, police organizations, as institutions of government, similarly benefit from establishing legitimacy. Yale Professor Tom R. Tyler, an expert in psychology and law, proposes that legitimacy represents an essential component of successful police organizations and survival in their settings.⁴ Tyler posits that “procedural justice,” the public’s perception that the police treat people fairly and act impartially, positively correlates to their judgments of police legitimacy.⁵

¹ Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* (Washington, DC: Commission on Civil Rights, 2018), 131, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

² Elliott C. McLaughlin, “How George Floyd’s Death Ignited a Racial Reckoning That Shows No Signs of Slowing Down,” CNN, August 9, 2020, <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>.

³ Mark C. Suchman, “Managing Legitimacy: Strategic and Institutional Approaches,” *Academy of Management Review* 20, no. 3 (July 1995): 574.

⁴ Anthony Bottoms and Justice Tankebe, “Criminology: Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice,” *Journal of Criminal Law & Criminology* 102, no. 1 (Winter 2012): 120.

⁵ Jason Sunshine and Tom R. Tyler, “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” *Law & Society Review* 37, no. 3 (September 2003): 513, <https://doi.org/10.1111/1540-5893.3703002>.

However, perceptions that police unfairly or unjustifiably apply force can harm perceptions of legitimacy.⁶ Such a challenge to a police organization's legitimacy can have severe consequences. Deadly retaliatory violence against police and large-scale civil unrest have followed use-of-force incidents perceived as illegitimate, specifically police confrontations that have led to a civilian's death.⁷

With the legitimacy challenges caused by police-related civilian deaths providing its context, this thesis examines five U.S. police agencies that experienced such events and a subsequent challenge to their legitimacy. The police agencies and civilian deaths selected are as follows:

- New York City Police Department: Eric Garner on July 17, 2014
- Ferguson Police Department: Michael Brown on August 8, 2014
- Baltimore Police Department: Freddie Gray on April 12, 2015
- Baton Rouge Police Department: Alton Sterling on July 5, 2016
- Saint Anthony Police Department: Philando Castile on July 6, 2016

Each incident significantly affected the respective department's perceived legitimacy and relationship with the community, and received considerable negative attention. Additionally, each provoked either deadly retaliatory violence against the police or substantial, large-scale civil unrest.

This thesis compares each agency's application of 12 expert-recommended legitimacy-developing policies *before* and *in response* to each crisis-inducing fatality.

⁶ Commission on Civil Rights, *Police Use of Force*, 2.

⁷ Steve Giegerich, Jessica Bogan, and Kim Bell, "Ferguson Day Two Wrapup: Day of Protests, Night of Frenzy," *St. Louis Post-Dispatch*, August 11, 2014, https://www.stltoday.com/news/local/crime-and-courts/ferguson-day-two-wrapup-day-of-protests-night-of-frenzy/article_f9d627dc-e3c8-5bde-b2ab-7f0a3d36a083.html; Larry Celona et al., "Gunman Executes 2 NYPD Cops in Garner 'Revenge,'" *New York Post*, December 20, 2014, <https://nypost.com/2014/12/20/2-nypd-cops-shot-execution-style-in-brooklyn/>; Holly Yan and Dana Ford, "Baltimore Riots: Looting, Fires Engulf City after Freddie Gray's Funeral," CNN, April 28, 2015, <https://www.cnn.com/2015/04/27/us/baltimore-unrest/index.html>; Richard Fausset, Manny Fernandez, and Alan Blinder, "Micah Johnson, Gunman in Dallas, Honed Military Skills to a Deadly Conclusion," *New York Times*, July 9, 2016, <https://www.nytimes.com/2016/07/10/us/dallas-quiet-after-police-shooting-but-protests-flare-elsewhere.html>; Steve Visser, "Baton Rouge Shooting: 3 Officers Dead; Shooter Was Missouri Man, Sources Say," CNN, July 18, 2016, <https://www.cnn.com/2016/07/17/us/baton-route-police-shooting/index.html>.

Briefly, these include creating civilian police boards or commissions; improving or replacing agency leadership; systemically adopting community-oriented policing; enhancing community engagement; revising use-of-force guidelines to emphasize de-escalation and adopting less-lethal technologies; using a well-structured media strategy and publicly directed statements to improve communication with the community; transparency on procedural processes; introducing body-worn cameras (BWCs); publicly releasing BWC footage related to critical events; leveraging social media to increase community interaction; enhancing training; and providing implicit bias awareness training.

The Cynefin sense-making framework, pioneered by consultant researchers David J. Snowden, Cynthia F. Kurtz, and Mary E. Boone, is then applied to categorize each of these implementation efforts.⁸ While the framework was initially designed as a business tool, government organizations have used it to assist with sense-making and support decision-making in various situations.⁹ Moreover, although police experts provide recommendations to promote legitimacy, implementation varies as police departments operate independently of each other. Thus, the framework provides a standard for sense-making, allowing implementation examination across police departments and individual policy dimensions. Using the framework, this thesis categorizes the sense-making context—*obvious/simple, complicated, complex, chaotic, or disorder*—of each agency’s implementation of these policies before and after the crisis event, revealing which contexts successfully withstood the legitimacy challenge and which did not.

The analysis resulted in four findings that illustrate the applicability of the Cynefin framework to police-legitimacy policies *before* and *in response* to police-related civilian deaths. Across the five police departments examined, the findings are as follows:

⁸ Cynthia F. Kurtz and David J. Snowden, “The New Dynamics of Strategy: Sense-Making in a Complex and Complicated World,” *IBM Systems Journal* 42, no. 3 (2003): 462; David J. Snowden and Mary E. Boone, “A Leader’s Framework for Decision Making,” *Harvard Business Review*, November 2007.

⁹ Kurtz and Snowden, “The New Dynamics of Strategy,” 468.

1. The *obvious/simple* domain dominated legitimacy-developing policy implementations *before* the civilian fatality, but most shifted into the *complicated* domain *in response*.
2. Policy positions that occupied the *complicated* domain *before* the crisis of a police-related civilian death mostly remained in that context *in response*.
3. Most policy positions occupied the *complicated* domain *in response* to the legitimacy crisis following a police-related civilian death.
4. Nearly one-quarter of all policy positions *before* a crisis-inducing civilian death could not be categorized with a Cynefin context—largely due to absent BWC-associated policies—but most shifted into the *complicated* domain *in response*.

The findings reveal that legitimacy-developing policies in the *complicated* domain best sustained the challenge of a police-related civilian death among the police departments this thesis examined. Further, after such a crisis, these agencies most often opted for sense-making in the *complicated* domain to enhance their implementation of recommended legitimacy-developing practices.

Based on these findings, this thesis recommends using the Cynefin framework to evaluate and strengthen police implementation of legitimacy-developing policies. These recommendations comprise surveying policies; categorizing policies into Cynefin domains; shifting away from the *obvious/simple* domain; embracing the *complicated* domain; and conducting legitimacy crisis drills.

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“This isn’t what I ordered!”

—The author, at every turn of events in 2020

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- Associate General Counsel Elisabeth Schweitzer, Florida Department of Law Enforcement
- Captain Christopher Zam, New York City Fire Department

Most of all, thank you to the person reading this thesis. I began this project endeavoring to make policing a better profession and more worthy of the sacrifices some cops have made. I believe you are reading this thesis for the same reason and I hope I accomplished my objective.

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I. INTRODUCTION

As government institutions, police organizations function better when they develop and maintain legitimacy, which the National Research Council defines as “the judgments that ordinary citizens make about the rightfulness of police conduct and the organizations that employ and supervise them.”¹ Criminal justice researchers Tal Jonathan-Zamir and David Weisburd say succinctly that legitimacy is “associated with numerous cooperative behaviors such as obeying the law, consenting to police decisions, providing information and collaborating with police more generally.”² In this context, legitimacy provides value to both the police and the community. In addition, legitimacy leads to organizational persistence. When an organization demonstrates legitimacy, the finite resources that are critical for its continued survival, such as funding, are more easily allocated.³ In sum, organizations possessing legitimacy are more meaningful, more predictable, and more trustworthy.⁴

While legitimacy is a desirable quality, it can be challenging to define, acquire, and quantify. As Mark Suchman, an American sociologist who studies legitimacy, argues, “Legitimacy is more often invoked than described, and it is more often described than defined.”⁵ Still, police agencies seek legitimacy because of how it improves the nature of interactions with the public. The efforts to achieve legitimacy often involve seeking similar institutional actors and modeling them: police agencies often copy others that are perceived to be legitimate.⁶ For example, law enforcement agencies may seek political actors,

¹ National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, DC: National Academies Press, 2004), 291, <https://doi.org/10.17226/10419>.

² Tal Jonathan-Zamir and David Weisburd, “The Effects of Security Threats on Antecedents of Police Legitimacy: Findings from a Quasi-Experiment in Israel,” *Journal of Research in Crime and Delinquency* 50, no. 1 (2013): 4, <https://doi.org/10.1177/0022427811418002>.

³ Mark C. Suchman, “Managing Legitimacy: Strategic and Institutional Approaches,” *Academy of Management Review* 20, no. 3 (July 1995): 574, <https://doi.org/10.2307/258788>; Jonathan A. Cooper, *In Search of Police Legitimacy: Territoriality, Isomorphism, and Changes in Policing Practices* (El Paso: LFB Scholarly Publishing, 2014), 13, ProQuest.

⁴ Suchman, “Managing Legitimacy,” 575.

⁵ Suchman, 573.

⁶ Cooper, *In Search of Police Legitimacy*, 3.

professional organizations, influential police agencies, or individuals within their departments to replicate legitimacy development methods.⁷

Researchers have offered various arguments on how police acquire legitimacy. The prevailing opinion comes from Tom R. Tyler, a psychologist who has conducted extensive research in the field. He argues that people perceiving fair treatment legitimize the police in a process he calls “procedural justice.”⁸ Other researchers suggest procedural justice has less value in acquiring legitimacy, claiming it is just one of several components—such as police effectiveness or the lawfulness of their actions—that people use to assess a police organization’s legitimacy.⁹ Yet others argue that legitimacy is less of a static state, dependent solely on police behavior, than an ongoing dialogue between the police and the public.¹⁰

Quantifying legitimacy in police work also presents difficulties. In the early 20th century, police associated their legitimacy with quantifiable dimensions of policing, such as the number of arrests made, calls for service, and response times.¹¹ However, evidence suggests “order-maintenance” policing—the strategy of targeting minor offenses with the belief that it deters serious crime—reduces the sense of legitimacy a community feels toward the police given the absence of hard numbers.¹² Researcher Justice Tankebe says more recent attempts to quantify legitimacy consist of evaluating people’s “perceived

⁷ Cooper, 10.

⁸ Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006), 7.

⁹ David J. Smith, “The Foundations of Legitimacy,” in *Legitimacy and Criminal Justice: An International Perspective*, ed. Tom R. Tyler (New York: Russell Sage Foundation, 2007), 56, https://muse.jhu.edu/book/38590#info_wrap; Justice Tankebe, “Police Legitimacy,” in *The Oxford Handbook of Police and Policing*, ed. Michael D. Reisig and Robert J. Kane (Oxford: Oxford University Press, 2014), 253, <https://doi.org/10.1093/oxfordhb/9780199843886.013.017>.

¹⁰ Anthony Bottoms and Justice Tankebe, “Criminology: Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice,” *Journal of Criminal Law & Criminology* 102, no. 1 (Winter 2012): 169; Ben Bradford, Jonathan Jackson, and Mike Hough, “Police Legitimacy in Action: Lessons for Theory and Policy,” in *The Oxford Handbook of Police and Policing*, ed. Michael D. Reisig and Robert J. Kane (Oxford: Oxford University Press, 2013), 553, <https://doi.org/10.1093/oxfordhb/9780199843886.013.002>.

¹¹ Cooper, *In Search of Police Legitimacy*, 13.

¹² Jacinta M. Gau and Rod K. Brunson, “Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men’s Perceptions of Police Legitimacy,” *Justice Quarterly* 27, no. 2 (April 2010): 273, <https://doi.org/10.1080/07418820902763889>.

obligation to obey the law and expressed allegiance or support for legal authorities.”¹³ All in all, quantifying legitimacy continues to be challenging.

Still, the concept of legitimacy remains a critical component of policing, despite the difficulties in defining, acquiring, and quantifying it. Further, a challenge to a police organization’s legitimacy can have severe consequences. Deadly retaliatory violence against police and large-scale civil unrest have followed use-of-force incidents perceived as illegitimate, specifically police confrontations that have led to a civilian’s death.¹⁴ As previously stated, legitimacy is essential to an organization’s survival, and a crisis of legitimacy threatens its survival. To alleviate this threat and continue as an organization, a challenged police agency, in some instances, will look to outside entities to replicate their methods for building legitimacy.¹⁵

Comparing how some police agencies implemented legitimacy-developing policies *before* suffering the crisis of a fatal force event with actions taken *in response* may be valuable (for the purpose of scoping, “before” refers to policies as they existed at the time of the crisis event). Examining the efforts before and after a crisis-inducing event—by applying the sense-making Cynefin framework to categorize the context of these efforts—may reveal their relative effectiveness.¹⁶ Such an evaluation would reveal the sense-making behind legitimization efforts that withstood the challenge a fatal force event presented, as well as those that did not. This approach would provide recommendations for

¹³ Tankebe, “Police Legitimacy,” 247.

¹⁴ Steve Giegerich, Jessica Bogan, and Kim Bell, “Ferguson Day Two Wrapup: Day of Protests, Night of Frenzy,” *St. Louis Post-Dispatch*, August 11, 2014, https://www.stltoday.com/news/local/crime-and-courts/ferguson-day-two-wrapup-day-of-protests-night-of-frenzy/article_f9d627dc-e3c8-5bde-b2ab-7f0a3d36a083.html; Larry Celona et al., “Gunman Executes 2 NYPD Cops in Garner ‘Revenge,’” *New York Post*, December 20, 2014, <https://nypost.com/2014/12/20/2-nypd-cops-shot-execution-style-in-brooklyn/>; Holly Yan and Dana Ford, “Baltimore Riots: Looting, Fires Engulf City after Freddie Gray’s Funeral,” CNN, April 28, 2015, <https://www.cnn.com/2015/04/27/us/baltimore-unrest/index.html>; Richard Fausset, Manny Fernandez, and Alan Blinder, “Micah Johnson, Gunman in Dallas, Honed Military Skills to a Deadly Conclusion,” *New York Times*, July 9, 2016, <https://www.nytimes.com/2016/07/10/us/dallas-quiet-after-police-shooting-but-protests-flare-elsewhere.html>; Steve Visser, “Baton Rouge Shooting: 3 Officers Dead; Shooter Was Missouri Man, Sources Say,” CNN, July 18, 2016, <https://www.cnn.com/2016/07/17/us/baton-route-police-shooting/index.html>.

¹⁵ Cooper, *In Search of Police Legitimacy*, 21.

¹⁶ The Cynefin framework and its application in this thesis are detailed in the research design section of this chapter.

implementing legitimacy-building policies that incorporate Cynefin sense-making. Police agencies could use these recommendations to improve policy weaknesses before the onset of a legitimacy crisis or implement them to recover legitimacy once a crisis is underway.

A. RESEARCH QUESTIONS

1. Using the Cynefin framework, what is understood about the implementation of police legitimacy policies *before* and *in response* to police-related civilian deaths?
2. What type of policy implementation sustained the legitimacy challenges that arose from these crises?
3. What recommendations does that analysis reveal to effectively implement policies that develop police legitimacy?

B. RESEARCH DESIGN

Police-related civilian deaths, either by use of force or occurring during law enforcement custody, pose one of the central challenges to police legitimacy.¹⁷ Beginning in the summer of 2014, a series of such events in the United States gained nationwide and international attention, dominating media headlines.¹⁸ These incidents sparked intense and wide-ranging discussions on police use-of-force issues and law enforcement's interaction and engagement with the community.¹⁹ Most recently, protesters marched against police funding, sporadic episodes of civil disorder erupted, and police policy reviews commenced in the wake of the May 2020 death of George Floyd while in the custody of members of

¹⁷ Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* (Washington, DC: Commission on Civil Rights, 2018), 131, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

¹⁸ Department of Justice, "Guide to Critical Issues in Policing: Community Relations Services Toolkit for Policing" (Washington, DC: Department of Justice, 2018), 1, <https://www.justice.gov/crs/file/836416/download>.

¹⁹ Nathan James et al., *Public Trust and Law Enforcement—A Discussion for Policymakers*, CRS Report No. R43904 (Washington, DC: Congressional Research Service, 2020), 1, <https://fas.org/sgp/crs/misc/R43904.pdf>.

the Minneapolis Police Department.²⁰ Police-related civilian deaths present a persistent challenge to the legitimacy of police departments.

With the legitimacy challenges caused by police-related civilian deaths providing its context, this thesis examines five U.S. police agencies that experienced such events and a subsequent challenge to their legitimacy. The police agencies and civilian deaths selected are as follows:

- New York City Police Department: Eric Garner on July 17, 2014
- Ferguson Police Department: Michael Brown on August 8, 2014
- Baltimore Police Department: Freddie Gray on April 12, 2015
- Baton Rouge Police Department: Alton Sterling on July 5, 2016
- Saint Anthony Police Department: Philando Castile on July 6, 2016

These five events were chosen for two reasons. First, each incident significantly affected the respective department's perceived legitimacy and relationship with the community, and received considerable negative attention. Second, each provoked either deadly retaliatory violence against the police or substantial, large-scale civil unrest. This research focus excludes other police agencies whose legitimacy was challenged by a police-related civilian fatality.

For the purpose of scoping, the five incidents selected occurred from 2014 to 2016 during a resurgence in the scrutiny of police and community relations.²¹ The violent public retaliation in response to these incidents significantly affected the police and public order, making these five events most relevant to this research. Specifically, the assassination of New York City Police Officers Wenjian Liu and Rafael Ramos in December 2014 was in

²⁰ Elliott C. McLaughlin, "How George Floyd's Death Ignited a Racial Reckoning That Shows No Signs of Slowing Down," CNN, August 9, 2020, <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>.

²¹ Justin Nix and Justin T. Pickett, "Third-Person Perceptions, Hostile Media Effects, and Policing: Developing a Theoretical Framework for Assessing the Ferguson Effect," *Journal of Criminal Justice* 51 (2017): 24, <https://doi.org/10.1016/j.jcrimjus.2017.05.016>.

retaliation for the deaths of Eric Garner and Michael Brown.²² Riots erupted in Ferguson after Brown's death in the summer of 2014 and in Baltimore after Gray's death in April 2015.²³ Finally, the killings of five officers in Dallas and three more in Baton Rouge during a 10-day period in July 2016 were in retaliation for the deaths of Alton Sterling and Philando Castile.²⁴ These five events flow from the resurgence discussions of the use of force by police after Garner's death in 2014 and end in 2016 with one of the deadliest periods for law enforcement since 9/11.²⁵

With the selected police agencies and civilian fatalities creating the space within which this thesis answers the research questions, each agency's implementations (or lack thereof) of 12 legitimacy-building policies suggested by police policy "sovereigns" are documented.²⁶ The literature review that comprises Chapter II details these policy recommendations. Briefly, they involve creating civilian police boards or commissions; improving or replacing agency leadership; systemically adopting community-oriented policing; enhancing community engagement; revising use-of-force guidelines to emphasize de-escalation and adopting less-lethal technologies; using a well-structured media strategy and publicly directed statements to improve communication with the community; transparency on procedural processes; introducing body-worn cameras (BWCs); publicly releasing BWC footage related to critical events; leveraging social media to increase community interaction; enhancing training; and providing implicit bias awareness training.

²² Benjamin Mueller and Al Baker, "2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide," *New York Times*, December 20, 2014, <https://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html>.

²³ Sheryl Gay Stolberg and Stephen Babcock, "Scenes of Chaos in Baltimore as Thousands Protest Freddie Gray's Death," *New York Times*, April 25, 2015, <https://www.nytimes.com/2015/04/26/us/baltimore-crowd-swells-in-protest-of-freddie-grays-death.html>.

²⁴ Visser, "Baton Rouge Shooting."

²⁵ Ryan W. Miller, "Deadliest Attacks on Police in the Last 100 Years," *USA Today*, July 17, 2016, <https://www.usatoday.com/story/news/nation/2016/07/17/deadliest-attacks-police-last-100-years/87222472/>.

²⁶ The concept of policy "sovereigns" is discussed in the literature review, Chapter II, as referenced in Cooper, *In Search of Police Legitimacy*, 23.

With the agencies and civilian deaths identified and policy dimensions for examination established, how (or if) each agency implemented these legitimacy-building guidelines before and after each incident is discussed. Using these policy dimensions lends assessment standards for comparing each agency. This comparison details what each agency did to develop legitimacy using the recommended policy suggestions *before* its controversial fatality and *in response* to the legitimacy challenge.

The final stage of this research project applies the Cynefin framework to each of the five agencies' efforts at implementing these policy dimensions. The framework is used, as Snowden and Boone suggest, as a tool to help organizational leaders sense what context they are in *before* and *in response* to a police-related civilian death to make better decisions and to anticipate and avoid future challenges.²⁷ Once the framework is applied to each agency's pre- and post-event implementation of the 12 policy guidelines, this thesis determines which contexts were more or less successful in promoting legitimacy.

David J. Snowden, Cynthia F. Kurtz, and Mary E. Boone are consultant researchers who pioneered the Cynefin framework.²⁸ While the framework was initially designed as a business tool, government organizations have used it to assist with sense-making and support decision-making in various situations.²⁹ Sense-making is the central component of the framework, Snowden and Boone note, as Cynefin is not a method for making arguments or empirical verifications. This seems to make the framework a valid technique for interpreting police agencies' implementations of the above legitimacy-promoting policies before and after civilian fatalities. The Cynefin framework and its component contexts are represented visually in Figure 1.

²⁷ David J. Snowden and Mary E. Boone, "A Leader's Framework for Decision Making," *Harvard Business Review*, November 2007, 70–74.

²⁸ Cynthia F. Kurtz and David J. Snowden, "The New Dynamics of Strategy: Sense-Making in a Complex and Complicated World," *IBM Systems Journal* 42, no. 3 (2003): 462; Snowden and Boone, "A Leader's Framework."

²⁹ Kurtz and Snowden, "The New Dynamics of Strategy," 468.



Figure 1. Cynefin Framework³⁰

When introducing the Cynefin framework, according to Snowden and Boone, successful agency managers and executives mold their responses to the complexity of the issues they face.³¹ They believe failure occurs when leaders maintain a single response protocol because it was successful in one situation, but it might be inapplicable when applied to another. Snowden and Boone argue the assumption of predictability in events causes these leaders to falter in their reliance on “one-size-fits-all” approaches.³² Moreover, if circumstances change and challenges appear, leaders fail when they rely on simplifications rather than pivoting with the complexities, explain Boone and Snowden. The Cynefin framework, they say, gives organizational leaders a tool to gain new perspectives on issues and address their real-world problems.

The Cynefin framework is organized into five contexts (or “domains”): *obvious* (formerly known as *simple*), *complicated*, *complex*, *chaotic*, and *disorder*.³³ Each context

³⁰ Source: Simon Powers, “Cynefin & Sense-Making Framework,” Adventures with Agile, September 14, 2015, <https://www.adventureswithagile.com/2015/09/14/cynefin-sense-making-framework/>.

³¹ Snowden and Boone, “A Leader’s Framework,” 69.

³² Snowden and Boone, 70.

³³ “The Cynefin Framework,” Cognitive Edge, accessed November 26, 2020, <https://www.cognitive-edge.com/the-cynefin-framework/>.

is separate and distinct from the other, as Figure 1 illustrates. The framework's strength is in providing leaders with guidance to identify a sense of the relationships between the cause and effect of an event or circumstance and a recommended action response.

The first context is the *obvious/simple*, the domain of “known knowns,” where there is a clear relationship between cause and effect, the “right” answer is undisputed and self-evident, and decisions are unquestioned.³⁴ The response process to issues within this context is “sense-categorize-respond,” which requires assessing the facts of a situation, the proper categorization of these facts, and a response based on established practice. As such, Snowden and Boone refer to the obvious/simple context as the realm of “best” or “established” practices.³⁵

Several problems can arise in the obvious/simple context, according to Boone and Snowden.³⁶ One such problem is the oversimplification of a problem. Doing so can lead to miscategorizing the issue into the obvious/simple domain, Boone and Snowden impart, which risks venturing into the chaotic context (discussed below). Another problem that can emerge is the entrainment of a leader's thinking, where crediting old successes in following established protocols precludes the exploration of evolved thinking or actions.³⁷ Lastly, overreliance on the obvious/simple context can lead to complacency, where leaders are slow to react to challenges due to the expectation of smooth operations. Best practice, they say, is past practice—and hindsight is not forward-looking.

The next context represents the realm dominated by experts in the field of the issue at hand.³⁸ *Complicated* is the domain of the “known unknowns,” where there is a clear relationship between cause and effect, but not everyone can see it. There may be multiple

³⁴ Snowden and Boone, “A Leader's Framework,” 70; Kurtz and Snowden, “The New Dynamics of Strategy,” 468.

³⁵ Snowden and Boone, “A Leader's Framework,” 70.

³⁶ Snowden and Boone, 71.

³⁷ Kurtz and Snowden, “The New Dynamics of Strategy,” 70. The authors define *entrained thinking* as “a conditioned response that occurs when people are blinded to new ways of thinking by the perspectives they acquired through past experience, training, and success.”

³⁸ Kurtz and Snowden, “The New Dynamics of Strategy,” 468; Snowden and Boone, “A Leader's Framework,” 71.

solutions to issues within this context, but professional expertise is needed to decipher the path forward. Whereas the obvious/simple context is that of established “best practice,” “good practice” guided by experts is more valuable in the complicated context. According to Boone and Snowden, the response process to issues in the complicated context is “sense-analyze-respond.”³⁹

As in the obvious/simple context, however, entrained thinking can be a problem in the complicated context. In the complicated context, experts consulted for a solution to the problem may ignore the suggestions of non-experts in the field. Experts may ignore the recommendations of non-experts because they are most invested in providing a resolution of their making, causing them to be less tolerant of ideas from others.⁴⁰ Another potential problem in the complicated context is “analysis paralysis,” where entrained thinking (or ego) prevents experts from agreeing on a solution, causing delays and inaction. Analysis takes time, Boone and Snowden say, and leaders must choose between tolerating potential delays in finding the “right” answer or finally committing to action.

The third context is the *complex*.⁴¹ Cause-and-effect relationships exist in this context, but the number of variables precludes their prediction. Issues occur in this context when unpredictability precipitates a major change or crisis, during which a solution emerges. Experts’ opinions based on their prior experiences are not as valuable as they are in the complicated context. There is at least one right answer to resolve an issue in this domain, but it is not immediately apparent. Leaders managing issues in the complex context must demonstrate patience and allow the solution to reveal itself. In this domain, the response process is “probe-sense-respond,” enabling the emergence of a viable path forward out of unpredictability and flux. “Unknown unknowns” dominate the complex context, so only in retrospect is there an understanding of why things happened. However,

³⁹ Snowden and Boone, “A Leader’s Framework,” 71.

⁴⁰ Snowden and Boone, 72.

⁴¹ Snowden and Boone, “A Leader’s Framework,” 74; Kurtz and Snowden, “The New Dynamics of Strategy,” 469.

Snowden and Boone believe these unstable conditions foster innovation more than in contexts of increased stability.⁴²

A problem likely to occur in the complex context is the temptation to revert to a traditional command-and-control structure rather than foster the innovation that may emerge.⁴³ When results are not quickly apparent and consistent with their expectations, leaders may become impatient with the process and seize absolute control, risking failure. Conversely, leaders who foster creativity, innovation, and the exploration of new techniques are more likely to resolve issues in the complex context than those who attempt to impose strict order.

Chaotic is the fourth context and requires immediate action to restore normalcy, resulting in a response process of “act-sense-respond.”⁴⁴ This context represents the realm of the unknowable, with relationships between cause and effect impossible to decipher. Boone and Snowden describe the chaotic context as one of turbulence, where a leader’s first responsibility is to “stop the bleeding” rather than determine whether identifiable patterns exist.⁴⁵ The first order of business is the restoration of order and a sense of stability. Strong leadership must dominate in the chaotic context, as there is no time to request the opinions of others. Given the instability of this context, Snowden and Boone argue that innovation flourishes in this domain. Leaders will be more receptive to innovative actions that support a return to stability. This context allows leaders an opportunity to advance thinking if they seize upon it and possess the courage to act. When represented visually, as in Figure 1, the chaotic context is situated next to and below the obvious/simple context, which occupies a higher “plateau.” Snowden and Kurtz represent the framework this way to illustrate their belief that the improper application of best practices in the obvious/simple domain may cause a leader to “fall” into the chaotic context.

⁴² Snowden and Boone, “A Leader’s Framework,” 74.

⁴³ Snowden and Boone, 74.

⁴⁴ Snowden and Boone, “A Leader’s Framework,” 74; Kurtz and Snowden, “The New Dynamics of Strategy,” 469.

⁴⁵ Snowden and Boone, “A Leader’s Framework,” 74.

However, a problem in the chaotic context is the tendency of leaders in this domain to develop an inflated sense of image and capability.⁴⁶ Their successes may gain them a cult-like following, feeding into their self-image and clouding their vision to changing contexts. Those successful at the dominant leadership style required in the chaotic context, Snowden and Boone note, may stumble in others if they insist on maintaining that posture.

The final context of the Cynefin framework is *disorder*, at the center of the illustrative model, which Kurtz and Snowden call a state of “uncertainty about uncertainty.”⁴⁷ Snowden and Boone say that disorder occurs when leadership stakeholders disagree on which Cynefin context a current issue occupies.⁴⁸ In disorder, they continue, “multiple perspectives jostle for prominence, factional leaders argue with one another, and cacophony rules.”⁴⁹ Exiting disorder, they say, requires either agreeing unanimously about which of the other contexts an issue exists in entirely, or dividing the issue into its constituent parts so that each is handled in one of the other four contexts. Kurtz and Snowden say consensus among decision-makers reduces the size of the disorder “space” and is a step toward finding an agreed-upon solution.⁵⁰ Disorder is an unhappy place, Snowden warns in a Cynefin lesson, as things in this domain are likely to get worse.⁵¹

The Cynefin framework was widely distributed outside of academic channels when an article outlining its core concepts was published in *Harvard Business Review* in 2007. While the magazine’s readership is primarily professionals in the private sector, Snowden and Boone introduced an example of the framework’s application to a crisis using a decidedly non-business case: the 1993 Brown’s Chicken Massacre in Palatine, Illinois.⁵² On January 8, 1993, two men murdered seven people inside a Brown’s Chicken fast-food

⁴⁶ Snowden and Boone, 75.

⁴⁷ Kurtz and Snowden, “The New Dynamics of Strategy,” 480.

⁴⁸ Snowden and Boone, “A Leader’s Framework,” 70.

⁴⁹ Snowden and Boone, 72.

⁵⁰ Kurtz and Snowden, “The New Dynamics of Strategy,” 470.

⁵¹ Cognitive Edge, “Cynefin Framework.”

⁵² Snowden and Boone, “A Leader’s Framework,” 69.

restaurant during a robbery.⁵³ The crime occurred in Palatine, a suburb outside of Chicago, and is one of the most infamous crimes in that city's area. The men responsible were convicted in 2009 and sentenced to life imprisonment for their crimes.⁵⁴

In the magazine, Snowden and Boone used the crime as the backdrop against which they evaluated the actions of Deputy Chief Walter Gasior of the Palatine Police Department. During the murder investigation, he was an administrative executive and spokesperson for his department. Using the Cynefin framework, they observed that Chief Gasior faced multiple contexts at once during his response to his department's crisis event.⁵⁵ Issues challenged Chief Gasior from the chaotic, complex, and obvious/simple contexts. Snowden and Boone described how his responses to each issue followed the recommended response processes the framework identified, allowing him to navigate a significant crisis successfully. In a 2011 blog post, Snowden again featured the Cynefin framework's application to evaluate police policy. In that post, he featured analysis and application of Cynefin sense-making to the police response during an Oklahoma hostage situation.⁵⁶ Snowden and Boone's decision to use a police emergency as the narrative device to introduce their framework in 2007, and Snowden's reference of the framework's application to policing again in 2011, supports using it as an analytical tool in this thesis.

This research intends to reveal which context each agency's legitimization efforts and policies were in *before* the selected civilian death, and the context in which they existed *in response* to the event. By categorizing these policy implementation efforts, this thesis identifies the specific Cynefin contexts likely to maintain or restore legitimacy when police agencies confront the challenge of a police-related civilian death. Further, categorizing the

⁵³ "Robbery Hinted in Slayings in Chicago Suburb," *New York Times*, January 15, 1993, <https://www.nytimes.com/1993/01/15/us/robbery-hinted-in-slayings-in-chicago-suburb.html>.

⁵⁴ Megan Crepeau, "Judge Tosses Bid for New Hearing in Brown's Chicken Massacre," *Chicago Tribune*, January 11, 2018, <https://www.chicagotribune.com/news/breaking/ct-met-browns-chicken-massacre-court-20180111-story.html>.

⁵⁵ Snowden and Boone, "A Leader's Framework," 76.

⁵⁶ Dave Snowden, "Sense-Making in a Hostage Situation," *Cognitive Edge*, October 30, 2011, <https://www.cognitive-edge.com/blog/sense-making-in-a-hostage-situation/>.

contexts of less-successful efforts and policies can inform police agencies on areas needing revision to withstand a future legitimacy challenge successfully.

This project does not produce a list of guidelines, best practices in legitimation efforts, or tactics to follow. Each agency serves a unique community with unique needs. Instead, the objective is to provide recommendations that allow police to determine the context their legitimation efforts currently operate in and compare that to the contexts that have shown efficacy when challenged by a fatal force event. It will be a method to evaluate policies from within and provide a way for police departments to prepare for future legitimacy challenges.

This thesis is organized into eight chapters. Chapter II, the literature review, begins by examining legitimacy theory as applied to institutions broadly and the police specifically; then, the policies that policing sovereigns recommend to promote legitimacy are discussed. Chapters III through VII detail the five police agencies whose officers had interactions that resulted in a civilian death, prompting a legitimacy challenge to the agency involved and either retaliatory violence against police or large civil unrest. These chapters and agencies are as follows:

- Chapter III: New York City Police Department
- Chapter IV: Ferguson Police Department
- Chapter V: Baltimore Police Department
- Chapter VI: Baton Rouge Police Department
- Chapter VII: Saint Anthony Police Department

Each chapter also shows how (or if) the studied agency applied the aforementioned legitimacy-promoting policy dimensions, using the Cynefin framework to compare the context/domain each agency operated in before and in response to the fatal force event. In doing so, the aim is to discover whether there is a context/domain that better promoted or retained legitimacy in the wake of a crisis. In conclusion, Chapter VIII presents the findings of this analysis and provides police leaders with recommendations for future legitimacy policy application.

II. LITERATURE REVIEW

This chapter provides an analysis of the academic discussions of legitimacy theory, legitimacy vis-à-vis policing, and police policies that contribute to legitimacy. This literature review is divided into two sections. First, the general function of legitimacy in institutions is discussed; then, this discussion examines how legitimacy positively affects policing and promotes its good operation within the community. Next, the chapter discusses legitimacy-developing recommendations from several prominent professional organizations and government agencies that guide police agencies in policy formulation. These organizations and agencies assert that police agencies must possess legitimacy if they intend to be successful. The goal of each recommendation is to enhance the public's sense of police legitimacy. The sequence of this literature review is designed to help answer the research questions—defining legitimacy and its significance to policing and detailing prevailing police policies that develop legitimacy.

A. THE FUNCTION OF LEGITIMACY IN INSTITUTIONS AND POLICING

The focus of the literature on institutional legitimacy ranges widely, with competing theories explaining how it originates. Legitimacy is an essential quality that supports an institution's survival and a necessary component for police organizations to fulfill the core tenets of their societal mission: preventing crime, maintaining order, preserving life, and protecting property.⁵⁷ When a police organization faces a legitimacy challenge, obstacles to accomplishing their mission emerge. These obstacles may include people not complying with police directions, disobeying the law, and, at the extreme, directing violence toward the police. This section reviews the significant literature regarding legitimacy theory; the challenges of building, maintaining, and repairing legitimacy; the reasons police organizations need legitimacy; and the antecedents of police legitimacy.

⁵⁷ M. A. Lewis, "Peel's Legacy," *FBI Law Enforcement Bulletin* 80, no. 12 (December 2011): 8–11; "Sir Robert Peel's Nine Principles of Policing," *New York Times*, April 15, 2014, <https://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html>.

German sociologist Max Weber's seminal work, *The Theory of Social and Economic Organization*, forms the foundation of modern institutional legitimacy theory.⁵⁸ In his book, Weber describes an "imperative control" or "imperative coordination," the process wherein people usually comply with a specific order given by an authoritative source.⁵⁹ Compliance with direction represents the critical element of "legitimate authority," of which he argues three forms exist.⁶⁰ First, as Weber posits, *rational (legal) authority* consists of obeying authority based on the belief in the validity of commands given by those in elevated positions of power. Next, *traditional authority* supports the acceptance of established traditions and the authority of those exercising and practicing those traditions. Finally, *charismatic authority* rises from allegiance to an extraordinary person and the customs and behaviors he or she determines and directs.⁶¹ Weber's work fits into the broader framework of his theories on society and state bureaucracies, which remain especially influential in the context of legitimacy studies.

Although Weber says that the sources of institutional legitimacy have at their core either a rational, traditional, or charismatic authority, American sociologists Paul J. DiMaggio and Walter W. Powell suggest an alternate method for developing legitimacy.⁶² They argue against the notion of Weber's rational authority, which requires obedience to those in elevated positions, thereby conferring legitimacy to such authority.⁶³ DiMaggio and Powell do so by asking how "confused and contentious bumbler"—their words for those failing to meet Weber's standard of "elevated persons" who wield legitimated authority—continue to survive in their institutions.⁶⁴ They argue that people lacking talent or skill not only occupy but can also thrive in elevated positions of authority. They disagree

⁵⁸ Max Weber, *The Theory of Social and Economic Organization* (New York: Free Press, 1997).

⁵⁹ Weber, 152.

⁶⁰ Weber, 328.

⁶¹ Weber, 328.

⁶² Paul J. DiMaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48, no. 2 (April 1983): 147–60, <https://doi.org/10.2307/2095101>.

⁶³ Weber, *Social and Economic Organization*, 328.

⁶⁴ DiMaggio and Powell, "The Iron Cage Revisited," 157.

with Weber's argument, doubting that those with lesser abilities would inspire compliance only because of their higher status. Rather, DiMaggio and Powell suggest that as institutions and organizations grow and mature, pressure grows for similarity in form and function.⁶⁵ Legitimacy, they argue, results from "institutional isomorphism," grounded in the likeness of structure, output, and culture of like institutions.⁶⁶ Their model proposes that as institutions progress, they exchange legitimacy as a result of shifts toward identical form. In other words, one institution seeks legitimacy by modeling another's qualities.

DiMaggio and Powell further suggest three mechanisms that contribute to institutional isomorphic change. The first is *coercive isomorphism*, which derives from political influence, government mandates, and the pressures from organizations that rely on and interact with each other.⁶⁷ Next, *mimetic isomorphism* is a process of imitation, such as searching for organizations with similar problems to model after, locating solutions to challenges at little cost.⁶⁸ Last is *normative isomorphism*, which DiMaggio and Powell argue relates to professionalization, professional organizations, and the efforts of those in the field to define their conditions and work methods.⁶⁹ Notably, they suggest that even in the absence of evidence of improved organizational efficiency, the forces of institutional isomorphism—the drive toward similarity—continue to confer legitimacy. Much like Weber, DiMaggio and Powell's work has been influential in the field. They have continued legitimacy studies and compelled other researchers to reconcile the different perspectives.

For example, American sociologist Mark C. Suchman's research incorporates Weber's and DiMaggio and Powell's studies on legitimacy.⁷⁰ He argues that like an "anchor-point," institutional legitimacy binds the various cognitive and normative forces that define, build, and allow an institution authority.⁷¹ In synthesizing his predecessors'

⁶⁵ DiMaggio and Powell, 148.

⁶⁶ DiMaggio and Powell, 147.

⁶⁷ DiMaggio and Powell, 150.

⁶⁸ DiMaggio and Powell, 151.

⁶⁹ DiMaggio and Powell, 153.

⁷⁰ Suchman, "Managing Legitimacy."

⁷¹ Suchman, 571.

work, Suchman suggests that legitimacy research is not a homogeneous, single-solution field. He argues that legitimacy research separates into two tracks. The first track represents a *strategic tradition* of legitimacy studies, which explores the managerial perspectives that employ manipulation to garner societal support.⁷² The other track constitutes the *institutional tradition* of legitimacy, which examines how pressures from sector-wide structure dynamics affect an organization or field. The strategic tradition corresponds with Weber's legitimacy theories while DiMaggio and Powell's concepts on isomorphism fit into the institutional tradition. Suchman's separation allows Weber's and DiMaggio and Powell's models to co-exist even if they are sometimes incompatible.⁷³

Although he notes the difficulty of defining legitimacy, Suchman's work nonetheless provides a definition.⁷⁴ Legitimacy, he claims, describes "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."⁷⁵ Accordingly, he argues there are three types of legitimacy. *Pragmatic legitimacy* lies within the self-interest and expected value a group attaches to an action; *moral legitimacy* depends on an audience's judgment that institutional activity is the proper course of action; and *cognitive legitimacy* recognizes an organization's inevitability and accepts its necessity.⁷⁶

Suchman argues that legitimate institutions are more meaningful, predictable, and trustworthy.⁷⁷ Legitimacy enhances the stability and comprehensibility of an organization's activities, meaning these traits augment each other. In other words, when people understand an organization's actions, they voice challenges less often, and public acceptance improves the organization's stability. Possessing legitimacy leads an institution to appear proper, desirable, and appropriate. Suchman argues that these qualities increase

⁷² Suchman, 572.

⁷³ Suchman, 602.

⁷⁴ Suchman, 573.

⁷⁵ Suchman, 574.

⁷⁶ Suchman, 578–82.

⁷⁷ Suchman, 575.

the likelihood that institutions will obtain finite resources (such as funding) that ensure their survival.⁷⁸

Legitimacy can suffer challenges, however. Suchman believes the challenge of legitimacy lies in gaining, maintaining, and repairing it. His work provides techniques to achieve each end.⁷⁹ He argues that legitimate institutions survive while institutions that lose legitimacy risk their continued existence and must undertake significant efforts to restore it.⁸⁰ Weber, DiMaggio and Powell, and Suchman's work demonstrates differing theories on the origins of institutional legitimacy, the methods and reasons organizations seek to build it, and the benefits and challenges of an institution's quest for legitimacy. As such, studies of police legitimacy incorporate several of these thematic elements.

The literature firmly establishes the value of legitimacy to institutions. Therefore, police organizations, as institutions of government, similarly benefit from establishing legitimacy. Tom R. Tyler, Yale professor of psychology and law, has heavily influenced research into police legitimacy.⁸¹ Tyler proposes that legitimacy represents an essential component of successful police organizations and survival in their settings. Scholars in the field describe his research and model of the antecedents to legitimacy as a "conceptual touchstone," and his arguments are widely accepted.⁸² Tyler posits that "procedural justice," the public's perception that the police treat people fairly and act impartially, positively correlates to their judgments of police legitimacy.⁸³ Inversely, when perceptions

⁷⁸ Suchman, 574.

⁷⁹ Suchman, 586.

⁸⁰ Suchman, "Managing Legitimacy," 597. The rise of the #defundthepolice movement in 2020 after George Floyd's death is an example of this. See Rashawn Ray, "What Does 'Defund the Police' Mean and Does It Have Merit?," Brookings, June 19, 2020, <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/>.

⁸¹ Bottoms and Tankebe, "Criminology," 120.

⁸² Robert E. Worden and Sarah J. McLean, *Mirage of Police Reform: Procedural Justice and Police Legitimacy* (Berkeley: University of California Press, 2017), 44, <https://www.jstor.org/stable/10.1525/j.ctt1w8h1r1.1>.

⁸³ Jason Sunshine and Tom R. Tyler, "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing," *Law & Society Review* 37, no. 3 (September 2003): 513, <https://doi.org/10.1111/1540-5893.3703002>.

of procedural injustice are high, opinions of police legitimacy are low.⁸⁴ Thus, legitimacy is an important component of successful policing.

Tyler's work challenges older models of building legitimacy. Tyler argues that receiving cooperation from the public indicates and results from police legitimacy, which suggests the instrumental model's flawed nature. He argues that the instrumental model of legitimacy, whereby public perceptions of police performance (e.g., crime control, criminal deterrence, and fear of arrest) form its basis, has a low correlation with gaining public cooperation.⁸⁵ The instrumental model of police legitimacy has its roots in the early 20th century, during a period of professionalizing the occupation. Quantifiable indicators, such as arrests, calls for service, and rapid response times, became the measures police employed to demonstrate their value and establish legitimacy.⁸⁶ However, Tyler disputes this claim, contending that the public's sense of police legitimacy is unrelated to performance evaluations, arguing that these instrumental metrics inadequately measure its development.⁸⁷ For example, his research indicates that the public does not legitimate police organizations based on parameters such as arrest numbers or response time. He argues that procedural justice leads to legitimacy and inspires a strong belief in the value of following the law and voluntarily complying with the police.⁸⁸

According to Tyler, the elements of procedural justice include people's having a sense of participation during their interactions with the police and feeling heard; believing that the police act equitably and neutrally; being treated with respect and dignity; and feeling that the police work in a fair and trustworthy manner.⁸⁹ Procedural justice is the basis for police legitimacy in Tyler's widely accepted model. Other criminal justice researchers have supported Tyler's model of procedural justice.

⁸⁴ Bradford, Jackson, and Hough, "Police Legitimacy in Action," 555.

⁸⁵ Tom R. Tyler, "Enhancing Police Legitimacy," *Annals of the American Academy of Political and Social Science* 593 (2004): 86; Sunshine and Tyler, "Procedural Justice," 514.

⁸⁶ Cooper, *In Search of Police Legitimacy*, 13; Tyler, *Why People Obey the Law*, 96.

⁸⁷ Sunshine and Tyler, "Procedural Justice," 534; Tyler, *Why People Obey the Law*, 84.

⁸⁸ Tyler, *Why People Obey the Law*, 177.

⁸⁹ Tyler, "Enhancing Police Legitimacy," 94.

For example, Tal Jonathan-Zamir and David Weisburd tested the strength of Tyler's argument that procedural justice leads to police legitimacy.⁹⁰ Their hypothesis acknowledged procedural justice as the precursor to police legitimacy but predicted that the importance of police legitimacy would decrease when a population felt "under threat." They tested this hypothesis by surveying the opinions of the residents of Sderot, a city in Israel that frequently experiences missile attacks due to its proximity to Gaza.⁹¹ Jonathan-Zamir and Weisburd believed that the threat of attack would decrease the respondents' correlation between procedural justice and police legitimacy. They hypothesized that the dangerous circumstances would lower expectations of the police who continued to demonstrate just behavior. Jonathan-Zamir and Weisburd, however, found the opposite.⁹² According to their research, even as Sderot's residents were fearful of an attack, the level of value they attached to procedural justice remained constant; instead, they found a sense of stability in valuing fair policing processes.⁹³ The social value of procedural justice in their police institution remained high regardless of the threat.

However, other research exposes some weaknesses in Tyler's model of police legitimacy. Some argue that when police use confrontational enforcement tactics and focus on minor violations, they can negatively affect perceptions of legitimacy, even in the presence of procedural justice. For example, Jacinta M. Gau, a professor of criminal justice from the University of Central Florida, and Rod K. Brunson, a professor of criminology at Northeastern University, suggest that "order-maintenance" policing is at odds with building a sense of procedural justice in people, negatively affecting their perceptions of legitimacy.⁹⁴ They argue that the tactics of order-maintenance policing, such as aggressive enforcement of low-level criminal activity and zero tolerance for any transgression, harm procedural justice perceptions. Respondents in Gau and Brunson's research questioned the need for heavy-handed policing tactics, such as stop-and-frisk and car stops, believing that

⁹⁰ Jonathan-Zamir and Weisburd, "Security Threats," 3.

⁹¹ Jonathan-Zamir and Weisburd, 10.

⁹² Jonathan-Zamir and Weisburd, 20.

⁹³ Jonathan-Zamir and Weisburd, 18.

⁹⁴ Gau and Brunson, "Order Maintenance Policing," 255.

the officers applied them unfairly.⁹⁵ Gau and Brunson agree with Tyler that policing with procedural justice leads to a sense of legitimacy in the organization but insist that intensive policing tactics weaken this feeling.⁹⁶

While Gau and Brunson find weaknesses in Tyler's assertions about police legitimacy, other researchers disagree entirely with his procedural justice model. For example, in their book *Mirage of Police Reform*, Robert E. Worden and Sarah J. McLean agree with the prevailing literature that legitimacy has positive consequences for police organizations.⁹⁷ They concur that people are more likely to accept decisions and comply with requests from legitimate police organizations.⁹⁸ However, they argue that police departments weakly apply procedural justice efforts and measure them minimally, reducing their impact on legitimacy.

Worden and McLean counter Tyler's claim that procedural justice is the primary antecedent to police legitimacy on two fronts. First, they claim police agencies poorly implement procedural justice, the fairness with which the police treat the public, and tend not to have adequate measurement standards.⁹⁹ They argue that while police agencies may intend for their members to practice fair policy, the independent nature of policing (the frequent absence of direct supervision) precludes ensuring procedural justice in each public interaction. Second, based on their surveys of members of the public who had police interactions, coupled with observations of police BWC footage capturing that interaction, Worden and McLean determined that procedural justice is weakly linked to the public's perception of police legitimacy.¹⁰⁰ Worden and McLean's research concluded that whether or not the police acted with procedural justice made little impact on people's perceptions of their legitimacy. Instead, they found that people's *interaction* with police, regardless of the sense of fairness, significantly influenced their perceptions of police

⁹⁵ Gau and Brunson, 272.

⁹⁶ Gau and Brunson, 260.

⁹⁷ Worden and McLean, *Mirage of Police Reform*.

⁹⁸ Worden and McLean, 6.

⁹⁹ Worden and McLean, 8.

¹⁰⁰ Worden and McLean, 186.

legitimacy. Those with more police contact had a lesser opinion of police legitimacy; those with less police contact had a more favorable impression.¹⁰¹

Worden and McLean's work is particularly relevant when compared with Tyler's research design. Tyler conducted his research via surveys of residents of particular localities. His survey generated self-reported data reflecting the respondents' opinions on whether they believed the police had treated them in a procedurally just manner.¹⁰² Tyler did not pursue independent confirmation of such treatment. Conversely, Worden and McLean surveyed those who had interactions with police while also observing the officers' relevant body-worn and in-car camera footage.¹⁰³ This method allowed an objective determination of whether the person had been treated with procedural justice and measured the impact this treatment had on perceptions of police legitimacy. Their findings indicated that it was not *how* police conducted public interactions but *whether* they interacted with a person at all that most affected perceptions of police legitimacy.¹⁰⁴

This review of the prevalent literature on institutional legitimacy theory and police legitimacy touches on a deep and wide-ranging body of literature. Police legitimacy studies focus on the antecedents of legitimacy and how to build and sustain police organizations' legitimacy. The next section examines the literature on police organizational practices and policies that promote legitimacy.

B. POLICE POLICIES THAT PROMOTE LEGITIMACY

Some professional organizations and government agencies provide policy guidelines and recommendations for police agencies and, in doing so, confer legitimacy on those agencies that comply with their direction. Cooper describes this process as "sovereign isomorphism," wherein entities define institutional and professional standards to be followed, conferring legitimacy on agencies that conform to these standards.¹⁰⁵ Worden

¹⁰¹ Worden and McLean, 179.

¹⁰² Sunshine and Tyler, "Procedural Justice," 528.

¹⁰³ Worden and McLean, *Mirage of Police Reform*, 107.

¹⁰⁴ Worden and McLean, 12.

¹⁰⁵ Cooper, *In Search of Police Legitimacy*, 23.

and McLean describe sovereigns as “audiences with standing,” such as legislators, courts, and professional organizations, that confer legitimacy to organizations that follow their guidance.¹⁰⁶ Consistent with this process, police agencies seek counsel and recommendations from sovereign organizations to help build legitimacy.

Some of these sovereigns include the International Association of Chiefs of Police (IACP), the Department of Justice (DOJ) and its Office of Community Oriented Policing Services (COPS), the Police Executive Research Forum (PERF), President Obama’s Task Force on 21st Century Policing (the Task Force), and the U.S. Commission on Civil Rights. These groups’ documents, directions, and guidelines are recognized by police executives nationwide as sources of recommendations and validation of their policing policies.¹⁰⁷ As described below, concern about the public’s perception of police legitimacy forms the cornerstone of many of their policy proposals.

Building and maintaining legitimacy is the primary declared objective of many sovereign policy proposals and recommendations. President Obama’s Task Force on 21st Century Policing was established by executive order in December 2014, in the wake of the deaths of Eric Garner in New York and Michael Brown in Ferguson earlier that year.¹⁰⁸ The first section of the report states, “Building trust and nurturing legitimacy on both sides of the police–citizen divide is not only the first pillar of this task force’s report but also the foundational principle underlying this inquiry into the nature of relations between law enforcement and the communities they serve.”¹⁰⁹ The Task Force highlights Tyler’s findings on the effect of procedural justice on legitimacy. It agrees with his assessment that when people have a sense of fair treatment, they are more likely to comply with the law

¹⁰⁶ Worden and McLean, *Mirage of Police Reform*, 55.

¹⁰⁷ Worden and McLean, 32.

¹⁰⁸ Office of the Press Secretary, “Fact Sheet: Task Force on 21st Century Policing,” White House, December 18, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/12/18/fact-sheet-task-force-21st-century-policing>.

¹⁰⁹ Community Oriented Policing Services, *Final Report of the President’s Task Force on 21st Century Policing* (Washington, DC: Community Oriented Policing Services, 2015), 9, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

and police direction, thus conferring legitimacy to the police.¹¹⁰ Further, the report recommends that procedural justice be the center around which all police training is focused instead of existing on the fringes.¹¹¹

Echoing the Task Force’s emphasis on the importance of legitimacy in policing, the U.S. Commission on Civil Rights recommends that police need to alleviate the perception or concerns a community may have about being treated unfairly or unequally, which negatively affects legitimacy.¹¹² The commission further agrees that citizens are more likely to cooperate if they believe law enforcement performs its duty in an equitable and impartial manner.¹¹³ However, the finding most relevant to this thesis is the “overarching need” to build legitimacy between police and the community, as this is one of the central matters of contention after a fatal police shooting.¹¹⁴ These events can have an immense and immediate detrimental impact on police and community relations.

The DOJ’s Community Relations Service has warned that a controversial use of police force can rapidly deteriorate (or destroy) the police and community’s relationship and threaten a department’s internal stability.¹¹⁵ Further, Nathan James et al. authored a report finding that the tension created by high-profile police incidents can negatively affect the perception people have about police even beyond the local community involved.¹¹⁶ For example, after the controversial deaths of Eric Garner in Staten Island, New York, and Michael Brown in Ferguson, Missouri, in the summer of 2014, policing was subject to national and international attention and scrutiny.¹¹⁷ Such controversial force incidents expose fractures in the relationship between the police and community and affect the

¹¹⁰ Community Oriented Policing Services, 10.

¹¹¹ Community Oriented Policing Services, 52.

¹¹² Commission on Civil Rights, *Police Use of Force*, 1.

¹¹³ Commission on Civil Rights, 2.

¹¹⁴ Commission on Civil Rights, 131.

¹¹⁵ Department of Justice, “Community Relations Services Toolkit,” 1.

¹¹⁶ James et al., *Public Trust*, 1.

¹¹⁷ Department of Justice, “Community Relations Services Toolkit,” 1.

perception of police acting in an impartial manner, which negatively impacts the public's sense of police legitimacy.¹¹⁸

Legitimacy is vital in gaining the public's cooperation with the police and the law. Use-of-force events may hurt this relationship, so professional organizations and government agencies that guide police agencies have identified several policy dimensions that may positively impact the public's sense of police legitimacy. Enhancements to police oversight, changes to department leadership, increases in community engagement efforts, modification of training, and incorporation of technology are some of the legitimacy-building policies these guiding organizations have proposed. A discussion of these policies follows. This thesis applies these policies to analyze how the five police agencies responded to the incidents identified, which in turn provides the information needed to answer the research questions.

Suchman has suggested that the creation of monitors and watchdogs allows an organization to "post a bond" on its reputation.¹¹⁹ In other words, the addition of a police oversight function may aid in the public's perception that a guarantor will ensure fair police processes, thus enhancing perceived legitimacy. In line with his position, the Task Force recommends creating *civilian oversight police boards or commissions*, whose purpose is to review serious uses of force and controversial incidents.¹²⁰ The board's mission would be to identify lapses in administrative, policy, tactical, training, and supervisory capacities.¹²¹ In findings similar to the Task Force's, the U.S. Commission on Civil Rights recommends that civilian review boards be genuinely independent and separate from law enforcement, even suggesting that they have subpoena powers to complete their mandates.¹²² The commission also recommends that these boards oversee routine police disciplinary matters, in addition to the more serious incidents mentioned by the Task Force,

¹¹⁸ Department of Justice, 16.

¹¹⁹ Suchman, "Managing Legitimacy," 598.

¹²⁰ Community Oriented Policing Services, *21st Century Policing*, 22.

¹²¹ Community Oriented Policing Services, 26.

¹²² Commission on Civil Rights, *Police Use of Force*, 73.

which it believes can further improve community faith in the police.¹²³ However, according to James E. Copple and Nicola L. Erb in a policy document written for COPS, these boards and commissions need training and exposure to the daily reality of policing.¹²⁴ By comparing police boards to medical review boards (where trained members of the medical profession evaluate other members), Copple and Erb recommend that oversight boards provide their members training on police policy and process. They argue that doing so will equip board members to better understand policing issues while also encouraging police officers to believe the process is fair.

Improving or replacing agency leadership is another dimension recommended by research conducted by police policy sovereigns. The Task Force recommends establishing enhancement programs and higher standards of conduct at every leadership level, finding that good leadership is likely to lead to line officers behaving in accordance with department policies.¹²⁵ The U.S. Commission on Civil Rights finds that organizational transformations support community partnerships when management and structures align to set improved performance as a goal, which may increase faith and legitimacy in the police.¹²⁶ However, in some cases, seeking improvement from agency leadership is insufficient, and more drastic change is necessary. Suchman describes this process as “disassociation,” whereby structural changes to leadership create a space between an incident of poor performance and the organization as a whole, indicating an agency’s desire to move beyond a controversy.¹²⁷ American criminologist Lawrence W. Sherman concurs with Suchman, noting that removing the police executive (chief or commissioner) provides a symbolic change from an agency’s prior unfavorable actions. He believes doing so

¹²³ Commission on Civil Rights, 74.

¹²⁴ James E. Copple and Nicola L. Erb, *Rank and File: Leaders in Building Trust and Community Policing* (Washington, DC: Community Oriented Policing Services, 2016), 10, <https://cops.usdoj.gov/RIC/Publications/cops-p351-pub.pdf>.

¹²⁵ Community Oriented Policing Services, *21st Century Policing*, 54.

¹²⁶ Commission on Civil Rights, *Police Use of Force*, 97.

¹²⁷ Suchman, “Managing Legitimacy,” 598.

separates the agency from improper conduct of the past, with these reforms re-creating it as a “new” agency.¹²⁸

The recent firings of two police executives following controversial incidents serve as examples of this symbolic change and disassociation process. For instance, Chief Rick Maglione of the Fort Lauderdale Police Department was relieved of his command in June 2020 after BWC footage revealed his officers’ questionable use of force and unprofessional conduct during a demonstration.¹²⁹ Another instance of this disassociation process is manifest in the firing of Louisville Metro Police Department Chief Steve Conrad that same month due to his officers’ failures to activate their BWCs during a fatal shooting incident.¹³⁰ In the latter incident, Louisville Mayor Greg Fischer stated, “This type of institutional failure will not be tolerated,” and Kentucky Governor Andy Beshear agreed, declaring the chief’s firing “had to happen.”¹³¹ These pronouncements created a wedge between the “old” department under Conrad’s command and a “new” department from that moment forward. The changing of an agency’s executive is a considerable commitment to transformation. Still, as crime policy researcher Wesley Skogan and the National Research Council found, the police chief is the central component in determining his or her officers’ behavior.¹³² As demonstrated, improvement or change in leadership is a recognized method for enhancing police legitimacy.

Beyond enriching (or replacing) agency leadership, *adopting community-oriented policing* is endorsed by sovereign professional organizations and government agencies. The IACP suggests that community-oriented policing is an effective, valuable way for a

¹²⁸ Lawrence W. Sherman, *Scandal and Reform: Controlling Police Corruption* (Berkeley: University of California Press, 1978), 97.

¹²⁹ Nicholas Reimann, “Ft. Lauderdale Police Chief Out after Officers Fired Rubber Bullets, Laughing at Protesters,” *Forbes*, July 9, 2020, <https://www.forbes.com/sites/nicholasreimann/2020/07/09/ft-lauderdale-police-chief-out-after-officers-fired-rubber-bullets-laughing-at-protesters/>.

¹³⁰ Peter Martinez, “Louisville Police Chief Fired after Fatal Shooting of Black Business Owner,” CBS News, June 2, 2020, <https://www.cbsnews.com/news/steve-conrad-louisville-police-chief-fired-protest-shooting-death/>.

¹³¹ Martinez.

¹³² National Research Council, *Fairness and Effectiveness in Policing*, 283.

department to engage and empower the community.¹³³ It argues that successful community-oriented policing embraces the philosophy of community service as the central goal of the agency, internalizing an institutional commitment to the strategy. This model empowers citizens, the IACP suggests, to partner with police and solve the local crime and social problems of their community. The DOJ's Community Relations Service concurs with the IACP, advising that good police and community relations validate the public's sense of police legitimacy, making them more inclined to cooperate with the police.¹³⁴ Conversely, when this relationship is weak, the public's inclination to cooperate weakens. Further, James et al. find that community policing—the police and the public's engagement as established policy—can be an avenue to repair existing fissures in that relationship.¹³⁵

According to the U.S. Commission on Civil Rights, an effective community-oriented policing policy consists of three critical components: a “collaborative relationship between law enforcement agencies and the public”; “organizational transformations that provide alignment of management structure, personnel, and information systems to support community partnerships” at the institutional rather than programmatic level; and the development of “problem-solving strategies which pertain to a process of active examination of identified problems . . . to develop . . . effective responses.”¹³⁶ Copple and Erb further note that routine-yet-negative police contacts, such as traffic enforcement, can complicate the police's relationship with the community.¹³⁷ They recommend that agencies structure their patrol function to increase direct positive contacts with the community. Expanding on their view, the Task Force report recommends that police enforcement measures, such as ticket writing, be used solely as a corrective measure to

¹³³ International Association of Chiefs of Police, *Building Trust between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement* (Washington, DC: Community Oriented Policing Services, 2009), 13, <https://www.theiacp.org/resources/document/building-trust-between-police-and-citizens>.

¹³⁴ Department of Justice, “Community Relations Services Toolkit,” 15.

¹³⁵ James et al., *Public Trust*.

¹³⁶ Commission on Civil Rights, *Police Use of Force*, 97.

¹³⁷ Copple and Erb, *Building Trust and Community Policing*, 9.

enhance public safety rather than a revenue stream.¹³⁸ The Task Force finds community-oriented policing requires that positive relationships be built actively. The strategy must not be relegated to a specialized unit's duties but rather be the way the entire department operates.¹³⁹

Besides incorporating community-oriented policing into a police department's organizational structure, *enhancing community engagement* is an essential policy consideration recommended by police policy sovereigns. Distinct from community-oriented policing, which describes the institutionalization of that policy and philosophy within a police department agency-wide, community engagement defines the *methods* of interacting and communicating with the community. The Task Force report proposes, for instance, that police departments engage in positive community contacts (such as youth outreach) in areas they frequently find themselves responding to for negative reasons (such as responding to crime reports).¹⁴⁰ The rationale for such action is to balance negative interactions with contacts benefiting the community. Positive connections can weaken the perception that police only appear in these areas to enforce the law, thus increasing a sense of fairness and legitimacy. Additionally, the IACP notes that positive community contacts may take the form of social events, such as forming neighborhood watches, enrolling people in citizen police academies, or attending "coffee with a cop" events.¹⁴¹ These "trust-building endeavors," as described in the Task Force report, may help foster relationships between police and the public by increasing non-enforcement contacts between them.¹⁴² Social events, such as annual National Night Out events, should be part of an ongoing and persistent dialogue between police and the community they serve, the IACP finds; the effort to meet the community cannot wait until a high-profile or

¹³⁸ Community Oriented Policing Services, *21st Century Policing*, 26.

¹³⁹ Community Oriented Policing Services, 42–43.

¹⁴⁰ Community Oriented Policing Services, 14.

¹⁴¹ International Association of Chiefs of Police, *Building Trust*, 14.

¹⁴² Community Oriented Policing Services, *21st Century Policing*, 15.

controversial incident occurs.¹⁴³ Copple and Erb agree with these findings, suggesting that the police forge “anchor” relationships within the community at gatherings outside the scope of traditional policing, such as barbeques, visits to senior centers, and sporting events.¹⁴⁴ Community-oriented policing and community engagement go hand-in-glove, requiring a commitment to mutual familiarization and relationship building. Beyond community interaction, however, police agencies are also advised by sovereign organizations on force and tactical equipment policy considerations, which may positively or negatively impact legitimacy.

Police policy sovereigns heavily emphasize *de-escalation*, *the preservation of life in use-of-force guidelines*, and *less-lethal technologies*. The Task Force report, for example, advises police agencies to formulate de-escalation and alternatives to summonses or arrests into policy, in keeping with the idea that overly aggressive law enforcement strategies damage the police–community relationship.¹⁴⁵ The report further details that the use of force against “vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others—can undermine public trust and should be used as a last resort,” as such action can adversely impact public perceptions of legitimacy.¹⁴⁶ The report further suggests that departments conduct research to establish whether their use-of-force and equipment policies, while effective, may be perceived as unfairly applied and cause collateral damage to legitimacy.¹⁴⁷ Holding an opinion similar to the one held by the Task Force, the DOJ’s Community Relations Service suggests that officers should de-escalate encounters whenever possible, recognizing that “a controversial use of force by a police officer can

¹⁴³ International Association of Chiefs of Police, *Officer-Involved Shootings: A Guide for Law Enforcement Leaders* (Washington, DC: Community Oriented Policing Services, 2016), 8, 33, https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf.

¹⁴⁴ Copple and Erb, *Building Trust and Community Policing*, 16.

¹⁴⁵ Community Oriented Policing Services, *21st Century Policing*, 16, 20.

¹⁴⁶ Community Oriented Policing Services, 15.

¹⁴⁷ Community Oriented Policing Services, 16.

jeopardize the stability of a police department and its relationships with the community overnight.”¹⁴⁸

To enhance use-of-force accountability, PERF’s *Guiding Principles on Use of Force* advises that police agencies document all force incidents, be they purely physical force events or the use of authorized equipment.¹⁴⁹ The U.S. Commission on Civil Rights concurs and endeavors to collect this data to determine whether the police apply force to different groups unfairly, which would harm perceptions of legitimacy.¹⁵⁰ As the Task Force states, “Crime reduction is not self-justifying,” meaning the community is unlikely to accept behaviors they deem to be outside of the fairness and equity they expect, lest the police lose legitimacy.¹⁵¹

Less-lethal technologies, which are unlikely to cause death when appropriately deployed, are suggested by the Task Force report as possibly decreasing fatal police interventions.¹⁵² For example, the use of conducted electrical devices (CEDs) reduces officer injuries by 70 percent and suspect injuries by 40 percent in cities that use CEDs compared to those that do not.¹⁵³ PERF’s *Guiding Principles on Use of Force* supports the Task Forces’ recommendation, advocating that use-of-force policies nationwide incorporate CEDs and that policies do not rely on lethal force to address ineffective CED deployment.¹⁵⁴ PERF suggests that in response to an ineffective CED deployment, officers use a “critical decision-making model” rather than escalating force, which requires re-assessing the threat and responding with proportional action instead of automatically resorting to a firearm.¹⁵⁵ Continuing with a commitment to de-escalation, PERF

¹⁴⁸ Department of Justice, “Community Relations Services Toolkit,” 1.

¹⁴⁹ Police Executive Research Forum, *Guiding Principles on Use of Force*, Critical Issues in Policing (Washington, DC: Police Executive Research Forum, 2016), 40.

¹⁵⁰ Commission on Civil Rights, *Police Use of Force*, 2.

¹⁵¹ Community Oriented Policing Services, *21st Century Policing*, 16.

¹⁵² Community Oriented Policing Services, 21.

¹⁵³ Community Oriented Policing Services, 37.

¹⁵⁴ Police Executive Research Forum, *Guiding Principles*, 67.

¹⁵⁵ Police Executive Research Forum, 65.

recommends discontinuing concepts it finds outdated, such as officers’ “drawing a line in the sand” during contentious confrontations or trying to resolve all situations quickly, which can lead to controversial uses of force.¹⁵⁶ PERF also recommends that police agencies provide officers with tools such as personal protective shields, which allow them to deflect incoming threats and assess de-escalation tactics.¹⁵⁷ Copple and Erb add to PERF’s guidance on these devices, noting that there must be nuance in their deployment so as not to send a message of aggression.¹⁵⁸ As incidents of force and equipment deployment are subject to interpretation by a public typically uninformed of specific police policy, the messaging between an agency and an interested public is essential.

In *Building Trust between the Police and the Citizens They Serve*, the IACP and COPS say a well-structured *media strategy* and *publicly directed statements* are an effective means to positively influence the public’s perception of a police agency and its actions.¹⁵⁹ An agency’s use of a designated spokesperson, the guide suggests, can cultivate contacts in the media and help devise a proactive messaging strategy that highlights department successes and positive stories. Copple and Erb concur with the IACP and COPS, arguing that police agencies should use the media to promote their positive stories and create a narrative of their own with the public.¹⁶⁰ However, more important than proactive, positive messaging is communication with the media and public during critical police incidents, such as officer-involved shootings or allegations of misconduct. The IACP finds police executives who are transparent with their community members and include public messaging in their response to critical incidents obtain and sustain the confidence of their citizens, thereby increasing legitimacy.¹⁶¹ The Task Force similarly notes that agencies need to communicate with media and the public quickly, openly, and

¹⁵⁶ Police Executive Research Forum, 5.

¹⁵⁷ Police Executive Research Forum, 68.

¹⁵⁸ Copple and Erb, *Building Trust and Community Policing*, 9.

¹⁵⁹ International Association of Chiefs of Police, *Building Trust*, 14.

¹⁶⁰ Copple and Erb, *Building Trust and Community Policing*, 16.

¹⁶¹ International Association of Chiefs of Police, *Building Trust*, 7.

impartially, especially in response to allegations of misconduct or improper use of force.¹⁶² Specifically, for officer-involved shootings, the IACP explains, there should be a systematic response capability built to address community inquiries and concerns.¹⁶³

To discourage speculation or uninformed commentary on noteworthy police incidents, the IACP recommends providing basic information to the press and public as quickly as possible, which can quash speculation and rumor.¹⁶⁴ During such events, police agencies can also benefit from providing procedures and protocols, giving actions context in public and media messaging.¹⁶⁵ The IACP suggests that this messaging be an ongoing police–community communication program that does not wait for a crisis incident. PERF advocates regular information releases even when information is preliminary and events are still unfolding.¹⁶⁶

Beyond the mere facts of an incident and applicable policies, *transparency on procedural processes* is an essential aspect of communication with the media and the public: a clear, concise, and open discussion of the internal mechanisms that dictate an agency’s response to a critical event.¹⁶⁷ In these discussions, the U.S. Commission on Civil Rights encourages increased police accountability and transparency with the public.¹⁶⁸ The commission finds that the lack of transparency about practice and policy negatively impacts the public’s perception of police legitimacy.¹⁶⁹ Mary-Jo Robinson and Christopher Smith, writing for COPS-sponsored *Rank and File*, find that the communities police agencies serve have come to expect the “what, when, where, and how” of critical

¹⁶² Community Oriented Policing Services, *21st Century Policing*, 13.

¹⁶³ International Association of Chiefs of Police, *Officer-Involved Shootings*, 3.

¹⁶⁴ International Association of Chiefs of Police, 30.

¹⁶⁵ International Association of Chiefs of Police, 8.

¹⁶⁶ Police Executive Research Forum, *Guiding Principles*, 52.

¹⁶⁷ International Association of Chiefs of Police, *Building Trust*, 7.

¹⁶⁸ Commission on Civil Rights, *Police Use of Force*, 3.

¹⁶⁹ Commission on Civil Rights, 4.

police events, policies, and processes that are important to them, and demand prompt explanations.¹⁷⁰

With these public expectations declared, the *use of BWCs* has become the primary way police agencies demonstrate their commitment to transparency.¹⁷¹ To explore this approach, police technology-policy researchers Lindsey Miller and Jessica Toliver co-authored a PERF-sponsored guide on BWCs.¹⁷² In it, they report that officers' use of BWCs supports a community's sense that they are receiving procedurally just policing while creating public records of events for subsequent review, each of which enhances perceptions of legitimacy. BWCs provide the community with transparency on issues concerning police conduct, they continue, providing the ability to review evidence of questionable encounters and answer any inquiries.¹⁷³ Further, Miller and Toliver say that BWCs act as a deterrent to improper police behaviors, as evidenced by fewer complaints against police officers using them versus those who do not, and provide a managerial tool to identify and correct poor performance. The Task Force report concurs, stating that BWCs create a sense of self-awareness in officers and the public that their actions are being recorded, leading to better behavior by both parties.¹⁷⁴ The U.S. Commission on Civil Rights describes this as a "civilizing effect on both officer and civilian behavior."¹⁷⁵ Further, the Task Force cites a 12-month study that found officers using BWCs had 59 percent fewer complaints and 87.5 percent fewer use-of-force incidents than officers not using cameras.¹⁷⁶

¹⁷⁰ Mary-Jo Robinson and Christopher Smith, *Rank and File: Reflections on Emerging Issues in Law Enforcement* (Washington, DC: Community Oriented Policing Services, 2018), 17, <https://cops.usdoj.gov/RIC/Publications/cops-w0868-pub.pdf>.

¹⁷¹ Lindsey Miller, Jessica Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (Washington, DC: Community Oriented Policing Services, 2014).

¹⁷² Miller, Toliver, and Police Executive Research Forum, v.

¹⁷³ Miller, Toliver, and Police Executive Research Forum, 5.

¹⁷⁴ Community Oriented Policing Services, *21st Century Policing*, 32.

¹⁷⁵ Commission on Civil Rights, *Police Use of Force*, 65.

¹⁷⁶ Community Oriented Policing Services, *21st Century Policing*, 32.

The research cited in the previous paragraph shows that police officers using BWCs are likely to improve police–community relations and increase public perceptions of procedural justice and, by effect, create greater police legitimacy. It is important to note, however, that police agencies using BWCs must do more than purchase and distribute them, policy sovereigns say. Copple and Erb’s COPS guide notes that police agencies should not “just buy the cameras and slap them on the officer’s chest” but must also ensure that sound policy dictates their use.¹⁷⁷ For example, the U.S. Commission on Civil Rights recommends that officers turn their cameras on at the beginning of a public interaction rather than once it is in progress.¹⁷⁸ Turning the BWC on midway, says the commission, can be seen by the public as a provocative action and negate the civilizing effect described above.

A report by James et al. lists other BWC policy concerns, including the costs associated with maintaining the equipment and videos; concerns relative to citizen privacy rights (particularly during medical assistance assignments); the detrimental effect recording may have on witness cooperation; and the outcome wearing BWCs may have on proactive police enforcement, such as traffic stops.¹⁷⁹ While BWCs can promote legitimacy and fair policing, they are not a cure-all; their use must be considered within the context of improving the relationship between police and the community and promoting a sense of legitimacy.

Accordingly, *releasing BWC footage containing uses of force or publicly questioned events* is the policy widely suggested for adoption by police agencies by the U.S. Commission on Civil Rights, Toliver and Miller, Copple and Erb, PERF, COPS, and other policy sovereigns.¹⁸⁰ This release should be within each state’s public disclosure laws, they say. Still, they generally recommend the widest distribution possible to

¹⁷⁷ Copple and Erb, *Building Trust and Community Policing*, 14.

¹⁷⁸ Commission on Civil Rights, *Police Use of Force*, 65.

¹⁷⁹ James et al., *Public Trust*, 19–20.

¹⁸⁰ Commission on Civil Rights, *Police Use of Force*, 64; Miller, Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program*, 64; Copple and Erb, *Building Trust and Community Policing*, 16.

demonstrate the agency's commitment to openness, accountability, and transparency, which aid in building a perception of neutrality and legitimacy.¹⁸¹ The legitimacy-developing benefits of a police agency's BWC program demonstrate how embracing modern technology can bridge understanding between the police and community.

Similarly, another technology that can create a bridge of understanding with the community is social media. When recommending that police departments *use social media platforms*, such as Facebook, Twitter, and YouTube, extensively, the Task Force observes that doing so promotes community engagement and increases the community's sense of access to the police.¹⁸² Police can use social media in a few ways to engage with the public positively. Primarily, as Copple and Erb suggest, police agencies can easily promote the good work they do, rapidly creating and communicating a narrative of constructive interactions with the people they serve.¹⁸³ Robinson and Smith believe this communication humanizes police to the community and demonstrates how officers participate helpfully in the public's lives, such as through youth outreach.¹⁸⁴ Secondly, police departments can leverage social media during critical or controversial incidents as a method to disseminate information quickly, but the information must be current and factual. As the IACP indicates, misleading or false statements, particularly surrounding use-of-force events, can be very damaging.¹⁸⁵ Successful communication via social media can open two-way communication lines between police and the community, Robinson and Smith suggest, reinforcing the principles of transparency.¹⁸⁶

Finally, many of the legitimacy-building policy recommendations listed above, such as modifications to the use of force and less-lethal force alternatives, community engagement, using BWCs, and leveraging social media, lean on a police agency's ability

¹⁸¹ Miller, Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program*, 64.

¹⁸² Community Oriented Policing Services, *21st Century Policing*, 32, 36.

¹⁸³ Copple and Erb, *Building Trust and Community Policing*, 16.

¹⁸⁴ Robinson and Smith, *Reflections on Emerging Issues*, 17.

¹⁸⁵ International Association of Chiefs of Police, *Officer-Involved Shootings*, 30.

¹⁸⁶ Robinson and Smith, *Reflections on Emerging Issues*, 18.

to teach its membership the value and importance of these courses of action. As such, police policy sovereigns recommend *enhancing training* as a way to unite these various legitimacy-building actions. The IACP and DOJ argue that training is an ongoing process from hiring until retirement, focusing on integrity, discretion, and ethics for building character and forming good habits.¹⁸⁷ The Task Force expands on this idea, suggesting that training must impart the concept that officers should be responsive to the needs, character, and ideals of the community served.¹⁸⁸ PERF advocates for value-based training to connect with the community, suggesting that the training culture reflect the skills, values, and attributes police agencies want their members to display when interacting with the public.¹⁸⁹ The ethos of training, these sovereigns believe, should primarily emphasize connections and responsiveness in all policing aspects with the community. Currently, as Robinson and Smith note, there is an imbalance in training.¹⁹⁰ For example, they find police recruit training consists of an average of 58 hours on firearms training and 49 hours on defensive tactics, but only about 8 hours on crisis intervention, CEDs, and de-escalation techniques. They advise that proper training is the backbone of comprehensive community policing, thus requiring the correction of this imbalance.

As a part of improving the training commitment to community values and needs, policy sovereigns most heavily emphasize reductions in the use of force, the implementation of less-lethal technologies, and de-escalation techniques in their recommendations. The Task Force suggests that, at a minimum, firearms training be conducted annually, with a focus on “shoot/don’t shoot” scenarios, seeking to train officers away from leaning on their firearm as the primary force option. Less-lethal force options, they believe, should be incorporated into this annual training.¹⁹¹ The IACP’s recommendations align with the Task Force’s, arguing that training improvements can teach officers to choose the appropriate response level rather than automatically select a

¹⁸⁷ International Association of Chiefs of Police, *Building Trust*, 11.

¹⁸⁸ Community Oriented Policing Services, *21st Century Policing*, 21, 54.

¹⁸⁹ Police Executive Research Forum, *Guiding Principles*, 52.

¹⁹⁰ Robinson and Smith, *Reflections on Emerging Issues*, 5.

¹⁹¹ Community Oriented Policing Services, *21st Century Policing*, 21.

higher force option.¹⁹² Officers trained this way, the IACP suggests, are better prepared to explore options other than force and can leverage de-escalation techniques that preserve the lives and safety of all parties. The U.S. Commission on Civil Rights also emphasizes that police training benefits from de-escalation tactics, including strategies to create distance, time, and space between an officer and a threat, intending to reduce the need to use force.¹⁹³ As of November 2018, the commission notes that de-escalation training is not required in 34 states, finding that current police instruction overemphasizes officer safety and firearms proficiency skills.¹⁹⁴ Alternatively, the commission suggests teaching officers to avoid situations where using physical force or a firearm is their sole option.¹⁹⁵

A vital part of the training shift toward de-escalation and using less force is revamping the style of training. The Task Force suggests abandoning the prevalent disciplinarian, paramilitary “boot camp” models of instruction for an adult-style learning and scenario-based model.¹⁹⁶ James et al. say the current military-style training models are stress-based approaches to police training, which prepare police for “combat” and crime-fighting rather than community service and problem solving.¹⁹⁷ Their report found that police agencies should implement scenario-based training, role-playing exercises that teach officers ways to respond to various incidents they may encounter.¹⁹⁸ These sessions, they say, are more impactful than lecture-based sessions that lack realistic interactions. James et al. suggest that this training model is more effective at teaching officers de-escalation and crisis intervention skills, thus decreasing the likelihood of needing to use force.

The introduction of *implicit bias awareness* is an emerging area in the efforts to enhance police training. The Task Force advises that achieving legitimacy requires the

¹⁹² International Association of Chiefs of Police, *Officer-Involved Shootings*, 7.

¹⁹³ Commission on Civil Rights, *Police Use of Force*, 113.

¹⁹⁴ Commission on Civil Rights, 114.

¹⁹⁵ Commission on Civil Rights, 116.

¹⁹⁶ Community Oriented Policing Services, *21st Century Policing*, 53.

¹⁹⁷ James et al., *Public Trust*, 23.

¹⁹⁸ James et al., 4.

mitigation of implicit biases, defined as those which people are unaware they have, and incorporating this concept into all aspects of training.¹⁹⁹ Implicit biases may distort the perception police have about members of certain groups and affect their decision-making process, the U.S. Commission on Civil Rights finds.²⁰⁰ Correcting this type of bias, the Task Force advises, requires that police agencies move away from tactics and policies that unintentionally lead to excessive action against minority groups, such as African-Americans, Latinos, Muslims, LGBTQ members, and others.²⁰¹ The DOJ Community Relations Service suggests that a partnership with the community can help police agencies develop “cultural competency” courses to foster an understanding of each community’s uniqueness.²⁰² Incorporating implicit bias awareness into the overall culture of enhanced police training, as evidenced above, can strengthen the bond between the police and the community, fostering a sense of fairness and impartiality that is critical in building the perception of police legitimacy.

Many of the recommendations to increase the public’s perception of legitimacy have become more prevalent in U.S. police departments since George Floyd’s death on May 25, 2020. As this thesis was conceived before his death, it seems appropriate to briefly discuss how his case relates to the subject of this research topic, even as it remains active. Floyd died in police custody while being restrained by Minneapolis Police Department (MPD) Officer Derek Chauvin.²⁰³ Civilian witnesses captured the incident on video, showing Officer Chauvin kneeling on Floyd’s neck until he became unconscious and then unresponsive, and later died at the scene.²⁰⁴ Media reporting of the incident included this video on a continuous loop, which sparked worldwide outrage at police. In addition to the

¹⁹⁹ Community Oriented Policing Services, *21st Century Policing*, 11.

²⁰⁰ Commission on Civil Rights, *Police Use of Force*, 103.

²⁰¹ Community Oriented Policing Services, *21st Century Policing*, 52.

²⁰² Department of Justice, “Community Relations Services Toolkit,” 15–16.

²⁰³ Meredith Deliso, “Timeline: The Impact of George Floyd’s Death in Minneapolis and Beyond,” ABC News, June 10, 2020, <https://abcnews.go.com/US/timeline-impact-george-floyds-death-minneapolis/story?id=70999322>.

²⁰⁴ Bill Hutchinson, “Officer Charged in George Floyd’s Death Argues Drug Overdose Killed Him, Not Knee on Neck,” ABC News, August 30, 2020, <https://abcnews.go.com/US/officer-charged-george-floyds-death-argues-drug-overdose/story?id=72711824>.

numerous protests in the United States, which still occur as of this writing, widespread anti-police protests inspired by Floyd's death have occurred in countries such as England, Switzerland, Brazil, Italy, Spain, Scotland, and China, among others.²⁰⁵

Writing about Floyd's death and the massive public outrage that ensued, Rick Muir, director of the Police Foundation in the United Kingdom, argues in favor of enhancing procedural justice as a way to improve public confidence in the police. Muir contends that "police legitimacy has to be renewed constantly, every hour of every day, in the practice of police officers and in the way they relate to members of the public."²⁰⁶ The IACP, echoing Muir, condemned the actions of the officers involved in Floyd's death while emphasizing the need for police to increase transparency, enhance procedural justice through policy changes, and reduce the use of force.²⁰⁷ Chuck Wexler, the executive director of PERF, referenced the *30 Guiding Principles on the Use of Force* when commenting critically on Chauvin's actions and advocating adherence to de-escalation: "Ultimately, this . . . is about the sanctity of all human life."²⁰⁸

Several police agencies pivoted in response to the challenge Floyd's death posed to police legitimacy. Many of the legitimacy-increasing policy recommendations suggested above by police sovereigns have been a part of that response. For example, some heads of nationwide police agencies condemned the Minneapolis officers' actions in *strategically planned media conferences* and *publicly directed statements* regarding the Floyd incident.²⁰⁹ The MPD publicly *released the BWC footage* of his arrest after public and

²⁰⁵ "Protests across the Globe after George Floyd's Death," CNN, June 13, 2020, <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html>.

²⁰⁶ Rick Muir, "Out of the Darkness: Policing and the Death of George Floyd," *Police Foundation* (blog), June 5, 2020, <http://www.police-foundation.org.uk/2020/06/policing-and-the-death-of-george-floyd/>.

²⁰⁷ "The Challenge before Us," *International Association of Chiefs of Police* (blog), May 31, 2020, <https://www.theiacp.org/news/blog-post/the-challenge-before-us>.

²⁰⁸ Jonah McKeown, "George Floyd's Death Shows Need for 'Sanctity of Life' Police Training, Researcher Says," Catholic News Agency, June 7, 2020, <https://www.catholicnewsagency.com/news/george-floyds-death-shows-need-for-sanctity-of-life-police-training-researcher-says-37676>.

²⁰⁹ Tom Jackman, "Police Chiefs React with Disgust to Minneapolis Death, Try to Reassure Their Own Cities," *Washington Post*, May 27, 2020, <https://www.washingtonpost.com/crime-law/2020/05/27/police-chiefs-react-with-disgust-minneapolis-killing-try-reassure-their-own-cities/>.

media demands.²¹⁰ In keeping with *transparency on procedural processes*, MPD Police Chief Medaria Arradondo quickly announced the firing of four officers involved in the incident the day after Floyd's death.²¹¹

Separate from Minneapolis, other cities also implemented sovereign recommendations to maintain and support their legitimacy in response to Floyd's death. A ban on chokeholds, for example, is among *changes to use-of-force policies* occurring in over 20 cities across the country post-Floyd, including New York City, Los Angeles, Denver, Houston, and Washington, DC.²¹² Floyd's death prompted citizens in Fort Worth to demand *civilian oversight boards* (the city opted instead for a police monitor).²¹³ In Atlanta, Chief of Police Erika Shields resigned two days after a fatal shooting of a black man by a member of her agency, an act consistent with efforts to *improve or replace agency leadership* after a controversial use of force.²¹⁴ While Shields insists she left voluntarily, the immediacy of her resignation after the shooting suggests otherwise. The death of George Floyd is having a continued impact on police legitimacy that has yet to be measured. The aftermath of the events of May 25, 2020, is ongoing. In the wake of Floyd, police agencies nationwide are grappling with the legitimacy challenge and are following the suggestions of police policy sovereign organizations to recover in the public's eyes.

This literature review examined legitimacy theory as applied to institutions broadly and the police specifically, as well as policies that policing sovereigns recommend to promote legitimacy. The first section informed how legitimacy affects an institution's

²¹⁰ Omar Jimenez and Elliott C. McLaughlin, "Two Police Body Cameras Capture the Struggle Leading to George Floyd's Death," CNN, August 11, 2020, <https://www.cnn.com/2020/08/10/us/george-floyd-body-camera-footage/index.html>.

²¹¹ Brittany Shammass et al., "Four Minneapolis Officers Are Fired after Video Shows One Kneeling on Neck of Black Man Who Later Died," *Washington Post*, May 26, 2020, <https://www.washingtonpost.com/nation/2020/05/26/minneapolis-police-death-custody-fbi/>.

²¹² Ray Sanchez, "Police Reforms Quickly Take Hold across America. It's Only Just Getting Started," CNN, June 14, 2020, <https://www.cnn.com/2020/06/14/us/george-floyd-national-police-reforms/index.html>.

²¹³ William Joy, "Death of George Floyd Renews Call for Citizen Review Board in Fort Worth," ABC Dallas, May 27, 2020, <https://www.wfaa.com/article/news/local/tarrant-county/death-of-george-floyd-renews-call-for-citizen-review-board-in-fort-worth/287-bcdb85fa-f308-431f-ad00-b79343de6e33>.

²¹⁴ Shaila Dewan, "Police Chiefs Are Finding Job Security Is Hard to Come By," *New York Times*, June 15, 2020, <https://www.nytimes.com/2020/06/15/us/police-chiefs-fatal-shooting-atlanta.html>.

ability to survive and how police agencies need the public perception of legitimacy to gain and maintain support. The second section detailed 12 policy dimensions that police policy sovereigns found enhance a sense of legitimacy when implemented as directed. A brief review of some policing responses to George Floyd's death provided evidence that police leaders adhered to those policy prescriptions following a police-related civilian fatality. These two areas of legitimacy theory and police policy form the core logic of this thesis and are the guiding principles for the analysis that follows in Chapters III through VII.

The next chapters detail the five selected police interactions that resulted in a civilian's death and precipitated a crisis of legitimacy for the agency involved. Each fatality was caused either by police directly using force (by shooting or applying physical force) or while the person was under the care and custody of the police. These deaths resulted in a substantial legitimacy challenge to the agencies involved, drastically damaged their relationship with the community, and generated intense public attention and media coverage. More critically, the aftermath of each fatality included either deadly violence targeting the police or large-scale civil disorder and riots, extreme representations of lost legitimacy.

These deaths, between 2014 and 2016, ignited intense and persisting scrutiny of the use of force by police and law enforcement's relationship with the community.²¹⁵ These chapters follow in chronological order of occurrence. First, the facts, legal processes, and outcomes are described (the action), followed by a review of the retaliation against police or widespread destruction of property (the aftermath).²¹⁶ Then, the Cynefin framework is applied to each agency's implementation of the expert-recommended legitimacy-developing policies *before* and *in response* to the crisis. Finally, Chapter VIII provides the results of this analysis and answers the research questions.

²¹⁵ Nix and Pickett, "Third-Person Perceptions, Hostile Media Effects, and Policing," 24.

²¹⁶ This thesis distinguishes the relevant "aftermath" as deadly violence or the riotous wide-scale destruction of property. These specific actions are distinct from the civil disobedience or small-scale vandalism that routinely occurs during protests and demonstrations.

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III. NEW YORK CITY POLICE DEPARTMENT: ERIC GARNER—JULY 17, 2014

On Thursday, July 17, 2014, two plainclothes members of the New York City Police Department (NYPD) approached Eric Garner on a street corner in the Tompkinsville section of Staten Island, New York, suspecting him of selling loose cigarettes.²¹⁷ Garner was 43 years old, stood over six feet tall, and weighed close to 400 pounds; he suffered from sleep apnea, diabetes, and severe asthma.²¹⁸ A bystander captured the events that followed on video, which the *New York Daily News* website published the following day. In the footage, the officers speak to Garner, explaining why he was being arrested, with Garner protesting his innocence and asking to be left alone.²¹⁹ The video shows Officer Daniel Pantaleo approaching Garner from behind to take him into custody, wrapping one arm under Garner's armpit and the other around his neck; a struggle ensues. Garner and several more intervening officers then fall to the ground, and they handcuff him. While on the ground with officers on top of him, Garner repeats "I can't breathe" 11 times before he loses unconsciousness.²²⁰ He died a short time later at Richmond University Hospital on Staten Island.²²¹

²¹⁷ Andy Newman, "The Death of Eric Garner, and the Events That Followed," *New York Times*, December 3, 2014, <https://www.nytimes.com/interactive/2014/12/04/nyregion/04garner-timeline.html>.

²¹⁸ Joseph Goldstein and Nate Schweber, "Man's Death after Chokehold Raises Old Issue for the Police," *New York Times*, July 18, 2014, <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

²¹⁹ Ken Murray et al., "Staten Island Man Dies after NYPD Cop Puts Him in Chokehold—See the Video," *New York Daily News*, July 18, 2014, <https://www.nydailynews.com/new-york/staten-island-man-dies-puts-choke-hold-article-1.1871486>.

²²⁰ The phrase "I can't breathe" became a rallying cry for protestors after Garner's death and has persisted, as George Floyd uttered the same words before his death in police custody. See Maanvi Singh, "George Floyd Told Officers 'I Can't Breathe' More Than 20 Times, Transcripts Show," *Guardian*, July 9, 2020, <https://www.theguardian.com/us-news/2020/jul/08/george-floyd-police-killing-transcript-i-cant-breathe>.

²²¹ Goldstein and Schweber, "Man's Death after Chokehold Raises Old Issue for the Police."

The response to Garner's death was swift condemnation from the public and community leaders such as Al Sharpton.²²² Sharpton and Garner's wife met with New York City Mayor Bill de Blasio and then-NYPD Police Commissioner William J. Bratton, expressing their demands for an impartial investigation. Later, other political figures, including New York City Federation of Teachers President Michael Mulgrew and former New York State Governor David Patterson, joined in criticizing the NYPD.²²³ Thousands marched in protests nationwide, expressing anger at Garner's death through the summer of 2014. The demonstrations became particularly fierce in August 2014 when the New York City medical examiner ruled Garner's death a homicide. The medical examiner found that Garner died from Pantaleo's placing him in a chokehold and compressing his chest, with his poor health aggravating both actions.²²⁴

Staten Island District Attorney Daniel M. Donovan Jr. convened a grand jury in September 2014 to determine whether criminal charges were warranted, based on evidence including the medical examiner's findings.²²⁵ On Wednesday, December 3, 2014, the grand jury returned its decision, declining to indict Pantaleo while determining that no criminality was manifest in Garner's death.²²⁶ Later that same day, then-Attorney General Eric Holder announced the start of a DOJ-led federal civil rights investigation into Garner's death.²²⁷ Holder noted that his office had allowed the Staten Island district attorney's local

²²² James Queally, "Rev. Al Sharpton Leads Calls for Justice in NYPD Chokehold Death," *Los Angeles Times*, July 19, 2014, <https://www.latimes.com/nation/nationnow/la-na-nn-sharpton-events-20140719-story.html>.

²²³ Mara Gay, Mark Morales, and Andrew Tangel, "Thousands Protest in Staten Island over Eric Garner's Death," *Wall Street Journal*, August 23, 2014, <https://www.wsj.com/articles/protesters-head-to-staten-island-for-al-sharptons-eric-garner-rally-1408807227>.

²²⁴ Joseph Goldstein and Marc Santora, "Staten Island Man Died from Chokehold during Arrest, Autopsy Finds," *New York Times*, August 1, 2014, <https://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html>.

²²⁵ J. David Goodman and Al Baker, "Wave of Protests after Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case," *New York Times*, December 3, 2014, <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

²²⁶ J. David Goodman and Michael Wilson, "Officer Daniel Pantaleo Told Grand Jury He Meant No Harm to Eric Garner," *New York Times*, December 3, 2014, <https://www.nytimes.com/2014/12/04/nyregion/officer-told-grand-jury-he-meant-no-harm-to-eric-garner.html>.

²²⁷ Eric Holder, "Statement by Attorney General Holder on Federal Investigation into Death of Eric Garner," Department of Justice, December 3, 2014, <https://www.justice.gov/opa/speech/statement-attorney-general-holder-federal-investigation-death-eric-garner>.

investigation to commence before his own while the DOJ monitored the proceedings from their start. On Tuesday, July 16, 2019—nearly five years after Holder announced the investigation—the U.S. attorney for the Eastern District of New York, Richard Donoghue, declared insufficient evidence existed to prove that officers violated any federal civil rights statutes during Garner’s arrest. That decision ended the search for criminality in this incident.²²⁸

In May 2019, two months before the cessation of federal proceedings against Pantaleo, his NYPD department trial began.²²⁹ Separate from a criminal proceeding, an NYPD department trial is an internal disciplinary process to determine whether an officer violated policy or procedures and recommend a penalty to the police commissioner for final approval. On Friday, August 2, 2019, an administrative judge overseeing the trial found Pantaleo guilty of violating an NYPD policy that banned chokeholds, and recommended his firing.²³⁰ A few weeks later, then-NYPD Police Commissioner James P. O’Neill announced his agreement with the decision to terminate Pantaleo’s employment with the NYPD. Pantaleo is currently appealing the police commissioner’s decision, requesting his reinstatement.²³¹ Civilly, New York City settled the Garner family’s wrongful-death claim one year after his death in 2015, agreeing to pay \$5.9 million to Garner’s survivors.²³²

²²⁸ Richard P. Donoghue, “Statement by United States Attorney Richard P. Donoghue,” Department of Justice, July 16, 2019, <https://www.justice.gov/usao-edny/pr/statement-united-states-attorney-richard-p-donoghue>.

²²⁹ Azi Paybarah, “Eric Garner Died in 2014. Officer Pantaleo Goes on Trial Today,” *New York Times*, May 13, 2019, <https://www.nytimes.com/2019/05/13/nyregion/newyorktoday/nyc-news-pantaleo-eric-garner.html>.

²³⁰ Ashley Southall, Ali Watkins, and William K. Rashbaum, “Daniel Pantaleo, N.Y.P.D. Officer in Eric Garner’s Death, Should Be Fired, Judge Says,” *New York Times*, August 2, 2019, <https://www.nytimes.com/2019/08/02/nyregion/eric-garner-daniel-pantaleo.html>.

²³¹ Doha Madani, “Fired NYPD Officer in Eric Garner’s Chokehold Death, Daniel Pantaleo, Sues to Get Job Back,” NBC News, October 23, 2019, <https://www.nbcnews.com/news/us-news/fired-nypd-officer-eric-garner-s-chokehold-death-daniel-pantaleo-n1071076>.

²³² J. David Goodman, “Eric Garner Case Is Settled by New York City for \$5.9 Million,” *New York Times*, July 13, 2015, <https://www.nytimes.com/2015/07/14/nyregion/eric-garner-case-is-settled-by-new-york-city-for-5-9-million.html>.

A. AFTERMATH: TWO NEW YORK OFFICERS KILLED

Eric Garner's death sparked a crisis of legitimacy for the NYPD and damaged its relationship with the community.²³³ The protests that began immediately after his death, and reignited each time state and federal authorities announced they would not be filing charges, spread beyond New York to cities such as Boston, Chicago, Pittsburgh, and Washington.²³⁴ In New York City, police arrested hundreds during these protests, during which some protesters carried coffins over the Brooklyn Bridge with the names of those shot by police. "No justice, no peace, no racist police" was a common refrain during these demonstrations. After the state-level grand jury declined to return an indictment in December 2014, demonstrators in Washington and Boston timed their marches to coincide with local Christmas tree lightings, snarling traffic and pedestrian access. Anger at the lack of a criminal indictment, demands to change the regulations that guide police use of force, and increased police accountability were sentiments expressed by those marching. These actions were an expression of rage at the perception of a broken criminal justice system.²³⁵ The expressions of anger indicated a loss of legitimacy—the perception that the police were unjustified in their actions. The protesters demanded that their voices be heard and systemic changes be made. However, others would take violent action against the police, deviating from the ongoing protests and demonstrations, which were legal and anticipated avenues of change and police accountability. In December 2014, violence targeting NYPD officers would demonstrate an extreme example of lost police legitimacy.

Just before 3:00 p.m. on Saturday, December 20, 2014, just weeks after the Staten Island grand jury's decision not to indict Daniel Pantaleo, NYPD Officers Wenjian Liu and Rafael Ramos were shot and killed by Ismaaiyl Brinsley while they sat in their police car

²³³ Cyril Josh Barker, "The Fight Continues: Eric Garner Bill Proposed," *Amsterdam News*, September 26, 2019, <http://amsterdamnews.com/news/2019/sep/26/fight-continues-eric-garner-bill-proposed/>.

²³⁴ Ashley Southall, "Protesters Fill Streets across U.S. over Decision in Garner Case," *New York Times*, December 4, 2014, <https://www.nytimes.com/2014/12/05/nyregion/protests-continue-after-grand-jury-decision-in-eric-garner-case.html>.

²³⁵ Nicholas St. Fleur, "They Shouted 'I Can't Breathe,'" *Atlantic*, December 4, 2014, <https://www.theatlantic.com/national/archive/2014/12/New-York-City-Eric-Garner-Protests/383415/>.

in the Bedford-Stuyvesant section of Brooklyn.²³⁶ Brinsley, a resident of Baltimore, Maryland, then fled on foot, committing suicide on a subway platform a short distance away as pursuing officers closed in on him.

Brinsley had an extensive criminal history, having been arrested nearly 20 times in his lifetime.²³⁷ Brinsley was on a violent spree the day of the police murders, having shot an ex-girlfriend that morning in the abdomen after an argument in Baltimore. He then traveled to New York City by bus, posting anti-police comments on his Instagram social media account. During the trip, he posted a photograph of a handgun with the caption “I’m Putting Wings On Pigs Today. They Take 1 of Ours. . . . Let’s Take 2 of Theirs #ShootThePolice #RIPErивGardner #RIPMikeBrown This may be my final post. . . . I’m Putting Pigs In A Blanket” (original emphasis).²³⁸ Brinsley’s references to “wings on pigs” and “pigs in a blanket” were expressions of his desire to kill police officers (“pig” is vulgar slang for a police officer).²³⁹ He also referenced Eric Garner and Michael Brown—a man killed by police in Ferguson, Missouri, during the summer of 2014—further declaring his motivations for killing Liu and Ramos.²⁴⁰

There is no evidence that Brinsley harbored deep-seated, long-standing resentment or anger toward police.²⁴¹ His life was marked with petty crimes, an unstable childhood, and the struggles of a youth in a poor urban environment. However, his final words to the world on social media and his actions that day in December 2014 indicate a person whose anger, rage, and actions were directed at police. In his final post, the specific mentioning

²³⁶ Mueller and Baker, “2 N.Y.P.D. Officers Killed.”

²³⁷ Andrew Soergel, “Suspect in Police Shootings Carries Lengthy Arrest Resume,” U.S. News & World Report, December 22, 2014, <https://www.usnews.com/news/newsgram/articles/2014/12/22/ismaaiyl-brinsley-arrested-19-times-before-shooting-pair-of-nypd-officers-in-brooklyn>.

²³⁸ Celona et al., “Gunman Executes 2 NYPD Cops.” Brinsley misspelled Garner’s name in the social media post.

²³⁹ Tom O’Connor, “Why Are Police Called Pigs? In U.S. Capitol, Controversial Painting Goes Up and Down,” International Business Times, January 10, 2017, <https://www.ibtimes.com/why-are-police-called-pigs-us-capitol-controversial-painting-goes-down-2473278>.

²⁴⁰ Michael Brown’s death is discussed in Chapter IV.

²⁴¹ Kim Barker, Mosi Secret, and Richard Fausset, “Many Identities of New York Officers’ Killer in a Life of Wrong Turns,” *New York Times*, January 2, 2015, <https://www.nytimes.com/2015/01/03/nyregion/ismaaiyl-brinsleys-many-identities-fueled-life-of-wrong-turns.html>.

of Garner and Brown voiced his intent to retaliate against the police for what he believed were actions lacking legitimacy. Chapter II demonstrated that people are more likely to comply and cooperate with the police when they possess legitimacy; the retaliatory murder of police is the ultimate evidence of a perceived loss of legitimacy.

B. CIVILIAN BOARDS AND COMMISSIONS

1. Before

The original NYPD police misconduct board was founded in 1955 as a police-staffed sub-unit within the department, created to address “police misconduct in their relations with Puerto Ricans and Negroes specifically.”²⁴² The board’s review process excluded outside civilian input until 1987, when New York City Council legislation mandated the inclusion of civilian investigators. These investigators, however, worked alongside other officers and under the supervision of police department officials.

Full civilianization of the board came a few years later, due mainly to a well-publicized and notorious “police riot” in Tompkins Square Park. On Saturday, August 6, 1988, police and fair-housing protesters engaged in violent clashes in the park, during which 31 civilians and 13 police officers suffered injuries of varying severity. Reporters described the event as “the most violent conflict between police and a crowd in years.”²⁴³ Civilian videos of the riot revealed that some officers had hid or obscured their badges, reducing the ability to identify them, and at times wildly hit protesters with batons.²⁴⁴ In 1993, then-Mayor David Dinkins and the City Council agreed to remove the board from NYPD control, creating an entirely independent civilian agency.²⁴⁵ Thus, the New York

²⁴² “History,” New York City Civilian Complaint Review Board, accessed October 30, 2020, <https://www1.nyc.gov/site/ccrb/about/history.page>. The language is reflective of the time, and is verbatim from the website.

²⁴³ Todd S. Purdum, “Melee in Tompkins Sq. Park: Violence and Its Provocation,” *New York Times*, August 14, 1988, <https://www.nytimes.com/1988/08/14/nyregion/melee-in-tompkins-sq-park-violence-and-its-provocation.html>.

²⁴⁴ Michael Scotto, “The Tompkins Square Park Riot, 30 Years Later,” *Spectrum News NY1*, August 7, 2018, <https://www.ny1.com/nyc/all-boroughs/news/2018/08/07/30th-anniversary-of-the-tompkins-square-park-riot>.

²⁴⁵ New York City Civilian Complaint Review Board, “History.”

City Civilian Complaint Review Board (CCRB) was established, empowered with subpoena authority for its investigations and the ability to recommend discipline in substantiated misconduct cases to the police commissioner.

In 2012, the CCRB's authority expanded.²⁴⁶ Before then, when CCRB substantiated an allegation of serious police misconduct, an NYPD "department advocate," an officer with the department trained in the law, would "prosecute" an officer during an administrative NYPD trial.²⁴⁷ Critics of this model called the system a "toothless tiger," suggesting that the NYPD was inept at the process.²⁴⁸ Under a memorandum of agreement reached by the NYPD and CCRB that year, civilian employees of the CCRB assumed the prosecutorial role during the administrative hearings. Department officials remained judges during these proceedings, with the police commissioner the final arbiter of discipline. However, if the commissioner deviates from the discipline recommendation of the CCRB when an officer is found guilty, he or she must provide the board with a written explanation. The board can appeal the commissioner's decision if it chooses.

2. In Response

The CCRB remained unchanged procedurally after Eric Garner's death, but some leadership changes coincided with the incident. On the day of Garner's death, Mayor Bill de Blasio appointed Richard Emery as the new chair of the CCRB, a position vacant since December 2013; his appointment was previously planned, though, and unrelated to the events on Staten Island.²⁴⁹ Emery was a prominent civil rights lawyer, having previously criticized the CCRB as ineffective. Upon assuming the role, his objective was to increase

²⁴⁶ Al Baker, "Independent Agency Gets New Powers to Prosecute New York Police Officers," *New York Times*, March 27, 2012, <https://www.nytimes.com/2012/03/28/nyregion/civilian-complaint-review-board-gets-new-powers-to-prosecute-new-york-police.html>.

²⁴⁷ "Police Discipline," New York City Civilian Complaint Review Board, accessed October 30, 2020, <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page>.

²⁴⁸ Baker, "Independent Agency Gets New Powers."

²⁴⁹ "Attorney Richard Emery Tapped to Head NYPD Civilian Complaint Review Board," CBS News New York, July 17, 2014, <https://newyork.cbslocal.com/2014/07/17/attorney-richard-emery-tapped-to-head-nypd-civilian-complaint-panel/>.

public confidence in the board while still treating officers fairly.²⁵⁰ After taking control of the board in the wake of Garner's death, Emery effected several personnel changes. He ousted his executive director and several board members in September 2014 as part of revamping the agency.²⁵¹ Additionally, in October 2014, de Blasio and Police Commissioner William J. Bratton announced they both intended to impanel two new board members supportive of Emery's vision.²⁵² However, his tenure was short-lived as Emery resigned in 2016 after making comments deemed disparaging to women and police officers.²⁵³

Currently, the CCRB maintains 13 executive board members.²⁵⁴ The mayor and City Council are each allowed to pick five board members while the police commissioner chooses three. No members may have prior police experience except for those appointed by the police commissioner. Recently, however, public discussions about changing the process of selecting board members have emerged.²⁵⁵ Some activists advocate amending the city charter to convert CCRB board members to publicly elected officials rather than political appointees. They argue that the change would increase the board's public accountability.

²⁵⁰ CBS News New York.

²⁵¹ Shawn Cohen and Laura Italiano, "Board Members Move to Ax NYPD Watchdog Group Head," *New York Post*, September 14, 2014, <https://nypost.com/2014/09/14/board-members-move-to-ax-nypd-watchdog-group-head/>; John M. Annese, "Outspoken Member of the City's CCRB Has Been Ousted in Ongoing Shake-Up," *Staten Island Advance*, September 17, 2014, https://www.silive.com/news/2014/09/sources_outspoken_member_of_th.html.

²⁵² John M. Annese, "More Shakeups at CCRB, as Mayor Announces Four New Members to Sit on NYPD Watchdog Panel," *Staten Island Advance*, October 2, 2014, https://www.silive.com/news/2014/10/more_shakeups_at_ccrb_as_mayor.html.

²⁵³ "NYPD Watchdog Chairman Steps Down Day after Being Sued for Gender-Based Slur," CBS News New York, April 13, 2016, <https://newyork.cbslocal.com/2016/04/13/ccrb-chairman-resigns/>.

²⁵⁴ New York City Civilian Complaint Review Board, *Strengthening Accountability: The Impact of the NYPD's Body-Worn Camera Program on CCRB Investigations* (New York: New York City Civilian Complaint Review Board, February 2020), 5, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf.

²⁵⁵ George Joseph, "Activists Want an Elected Civilian Review Board to Investigate Police Misconduct," WNYC News, September 22, 2019, <https://www.wnyc.org/story/activists-want-elected-civilian-review-board-investigate-police-misconduct/>.

3. Cynefin Analysis

Personnel changes aside, there was little difference in the CCRB’s policy and procedures before and in response to Garner’s death. The board was fully civilianized by 1993, and the CCRB assumed control of the prosecutorial process in 2012, well before his death. As such, the NYPD was operating in the *complicated* domain before and after Garner’s death, maintaining the expert-recommended “good practice” of civilian boards’ having oversight of police misconduct issues.²⁵⁶

C. IMPROVING OR REPLACING LEADERSHIP

1. Before

Police Commissioner Bratton and Chief Philip Banks III were the top officials in charge of NYPD when Garner died. In December 2013, newly elected Mayor de Blasio announced Bratton’s appointment to commissioner, assuming the role Raymond Kelly had held since 2002.²⁵⁷ This was Bratton’s second term as commissioner, his first being in 1994 under then-Mayor Rudolph Giuliani. When Bratton assumed command in January 2014, he maintained Banks as chief of the NYPD, the position he had occupied since March 2013 under Kelly.²⁵⁸ At the local community level at the time of Garner’s death, Assistant Chief Edward Delatorre headed the Patrol Borough Staten Island command while Deputy Inspector Joseph Veneziano led the 120th Precinct, serving as Officer Pantaleo’s commanding officer.²⁵⁹

²⁵⁶ Snowden and Boone, “A Leader’s Framework,” 73.

²⁵⁷ J. David Goodman, “Bratton to Lead New York Police for Second Time,” *New York Times*, December 5, 2013, <https://www.nytimes.com/2013/12/06/nyregion/william-bratton-new-york-city-police-commissioner.html>.

²⁵⁸ Wendy Ruderman, “New Police Chief Appointee Is Hailed as a ‘Bridge Builder,’” *New York Times*, March 27, 2013, <https://www.nytimes.com/2013/03/28/nyregion/philip-banks-iii-is-appointed-police-department-chief.html>.

²⁵⁹ Frank Donnelly, “Edward Delatorre Is Named NYPD Borough Commander for Staten Island,” *Staten Island Advance*, July 27, 2013, https://www.silive.com/news/2013/07/staten_island_to_get_new_polic.html; Kiawana Rich, “Three of Staten Island’s Police Precincts Are Getting New Bosses,” *Staten Island Advance*, March 22, 2014, https://www.silive.com/news/2014/03/three_of_staten_islands_police.html.

2. In Response

There were no changes to any of the NYPD leadership roles described above as a result of Garner's death. Instead, Mayor de Blasio pulled Bratton closer, expressing faith that his new commissioner would conduct a thorough investigation of the incident.²⁶⁰ For example, at a roundtable discussion with community leaders, de Blasio kept Bratton by his side as both faced questions from angry citizens.²⁶¹

While both Bratton and Banks would later separate from the NYPD, there is no evidence that Garner's death was the causative factor. Banks retired in November 2014 rather than assuming the role of Bratton's first deputy commissioner, a promotion from chief of department but, in his opinion, one less relevant to everyday police operations.²⁶² Bratton remained police commissioner until September 2016, leaving the department to work for a policy advising firm over two years after Garner's death.²⁶³ Both Delatorre and Veneziano also remained in their respective commands for several years post-Garner and have since been promoted to higher positions of authority.

3. Cynefin Analysis

There were no NYPD leadership changes in response to Garner's death. Mayor de Blasio openly expressed confidence that his new police commissioner would identify and correct the agency's issues and its relationship with the community. Thus, the NYPD was in the *complicated* domain before and after Garner's death, requiring Bratton's *expert*

²⁶⁰ Mark Berman, "Investigations, Outrage Follow Police Chokehold and Eric Garner's Death," *Washington Post*, July 21, 2014, <https://www.washingtonpost.com/news/post-nation/wp/2014/07/21/investigations-outrage-follow-police-chokehold-and-eric-garner-death/>.

²⁶¹ Azi Paybarah, "A Sharpton-Bratton Debate, with De Blasio in the Middle," *Politico*, July 31, 2014, <https://www.politico.com/states/new-york/city-hall/story/2014/07/a-sharpton-bratton-debate-with-de-blasio-in-the-middle-014727>.

²⁶² Rocco Parascandola, Jennifer Fermino, and Larry McShane, "NYPD Chief of Department Philip Banks Resigns after 28 Years on Force," *New York Daily News*, November 1, 2014, <https://www.nydailynews.com/new-york/nypd-chief-department-philip-banks-resigns-sources-article-1.1994283>.

²⁶³ Dean Meminger, "Police Commissioner Bratton Resigns, Promises 'Seamless Transition' in NYPD Leadership," *Spectrum News NY1*, August 3, 2016, <https://www.ny1.com/nyc/all-boroughs/news/2016/08/2/police-commissioner-bill-bratton-stepping-down>.

professional guidance and *fact-based management* to determine the best course of action post-Garner, which are each identified features of this domain.²⁶⁴

D. ADOPTING COMMUNITY-ORIENTED POLICING

1. Before

As noted above, Officer Pantaleo's confrontation with Garner happened in July 2014, seven months into the new tenures of Mayor de Blasio and Commissioner Bratton. Many of the prior administration's policies were still in effect. As such, the department maintained a programmatic, rather than an institutional, model of community-oriented policing based on a plan formulated by former Police Commissioner Lee P. Brown in 1991.²⁶⁵ Under this model, officers assigned to the NYPD's Community Affairs Bureau were exclusively responsible for fostering goodwill and outreach with the public, community leaders, and civic organizations.²⁶⁶ This model relegated these tasks to the small number of officers in the bureau, relying little on the participation of outside officers. The assignments of Community Affairs officers lacked consistency, and they were deployed to routine policing duties when needed, reducing their impact in the community-oriented policing program.²⁶⁷ The programmatic nature of the NYPD's approach minimized the results obtained under its style of community-oriented policing.

2. In Response

Garner's death motivated a change in the NYPD's community-oriented policing model. In May 2015, the NYPD introduced the neighborhood policing model.²⁶⁸ Touted

²⁶⁴ Snowden and Boone, "A Leader's Framework," 73.

²⁶⁵ Alan M. Webber, "Crime and Management: An Interview with New York City Police Commissioner Lee P. Brown," *Harvard Business Review*, May–June 1991, <https://hbr.org/1991/05/crime-and-management-an-interview-with-new-york-city-police-commissioner-lee-p-brown>.

²⁶⁶ Thomas Tracy, "New NYPD Community Affairs Chief Thomas Chan Grew Up in City Housing," *New York Daily News*, April 25, 2013, <https://www.nydailynews.com/new-york/nypd-taps-new-chief-community-affairs-bureau-article-1.1327752>.

²⁶⁷ Anisha Nandi, "Neighborhood Policing Program Builds Relationships to Cut Crime," CBS News, March 27, 2018, <https://www.cbsnews.com/news/nypd-community-policing-lower-crime/>.

²⁶⁸ New York City Police Department, *NYPD in Focus* (New York: New York City Police Department, 2020), 4, <https://indd.adobe.com/view/2114a389-4855-4be8-b343-8eb534bfab>.

by the agency as a new patrol paradigm, the program systemically changed how police officers perform their duties.²⁶⁹ By implementing neighborhood policing, the agency intended to “increase connectivity and engagement with the community without diminishing, and, in fact, improving the NYPD’s crime-fighting capabilities.”²⁷⁰ The program was introduced in phases, first in the Patrol Services Bureau, before being expanded to the Transit and Housing Bureaus, and the department adjusted as issues and problems arose.

Each precinct was divided into five “sectors,” unique geographical zones that correspond as much as possible to established neighborhoods. Officers are assigned the same sector every day, encouraging ownership of each area’s issues and providing the public with the opportunity to interact with the same officers consistently. The officers assigned to sector duties must remain within the boundaries of their assignment, absent emergencies. Further, two additional officers are designated to each sector as neighborhood coordination officers (NCOs)—liaisons between the police and community members who also help detectives with investigative work, developing leads, and collecting evidence. NCOs gather information and coordinate their efforts with sector officers to jointly address the community’s needs and concerns. The commitment to an agency-wide community-policing philosophy differs significantly from the old model, which was programmatic and narrowly realized.

3. Cynefin Analysis

The NYPD’s formulaic and simplistic method of programmatically implementing community-oriented policing before Garner’s death indicates operating in the *obvious/simple* domain. The program lacked the institution-wide commitment to collaborative relationships and organizational changes recommended by policy sovereigns due to entrained thinking, instead relying on established practices from the past, a weakness of

²⁶⁹ “Neighborhood Policing,” New York City Police Department, accessed October 30, 2020, <https://www1.nyc.gov/site/nypd/bureaus/patrol/neighborhood-coordination-officers.page>.

²⁷⁰ New York City Police Department.

the *obvious/simple* domain.²⁷¹ However, after Garner’s death, the department’s expansion of the NCO program better aligned with a full conversion to community-oriented policing. The gradual implementation of the policy indicated the agency was in the *complex* domain, following the “probe-sense-respond” cycle.²⁷² The shift toward community-oriented policing was probed in a small number of precincts, allowing for the emergence of a fully realized model.

E. ENHANCING COMMUNITY ENGAGEMENT

1. Before

The NYPD weakly implemented community engagement efforts in the years before Garner’s death, engaging in practices that alienated the public and committing scant resources to community outreach. Of particular controversy was the department’s aggressive reliance on “stop, question, and frisk” (SQF) as a crime-reduction tool from 2002 to 2013.²⁷³ Under former Mayor Michael Bloomberg and Police Commissioner Raymond Kelly’s leadership during that period, SQFs increased from 97,296 in 2003 to 685,724 in 2011.²⁷⁴ Critics charged that while the department’s SQF policy was intended to enhance safety and reduce crime, it instead undermined the NYPD’s relationship and engagement with the community.²⁷⁵

The NYPD’s SQF practices resulted in several plaintiffs filing lawsuits against the agency and New York City. On August 12, 2013, federal judge Shira A. Scheindlin found in *Floyd v. City of New York*—a 2008 class action lawsuit alleging that police stopped the plaintiffs without cause—that the NYPD’s SQF practices were unconstitutional and

²⁷¹ Snowden and Boone, “A Leader’s Framework,” 73.

²⁷² Snowden and Boone, 73.

²⁷³ Joel Rose, “NYPD’s Stop-and-Frisk Tactics Targeted by Critics,” NPR, April 5, 2012, <https://www.npr.org/2012/04/05/150059728/lawmakers-target-the-new-york-city-stop-and-frisk>.

²⁷⁴ Robert Gangi, “Focused on Crime Numbers, but Not Ones That Count,” *New York Times*, July 17, 2012, <https://www.nytimes.com/roomfordebate/2012/07/17/does-stop-and-frisk-reduce-crime/focused-on-crime-numbers-but-not-ones-that-count>.

²⁷⁵ Gangi.

amounted to indirect racial profiling.²⁷⁶ As part of a remediation order mandating changes to the SQF program, Judge Scheindlin directed the department to pilot a body-worn camera program and appointed attorney Peter L. Zimroth as the monitor overseeing the reform process.²⁷⁷

Under Commissioner Kelly, the agency's commitment of resources to community outreach relied heavily on its Community Affairs Bureau. However, as mentioned above, these efforts were programmatically rather than institutionally implemented. In other words, community outreach was a task designated to few officers rather than an agency-wide philosophy. Local-level community engagement was inadequate.²⁷⁸ At the precinct level, the NYPD operated community councils, advisory groups that met monthly. The purpose of these groups was to link the community and the commanding officer, aiming to establish a working partnership to improve public safety and quality of life. On the other hand, a criticism of these councils was that goals were set "top-down" by the NYPD, being agency-driven rather than responsive to community members' needs.²⁷⁹

2. In Response

In January 2014, Mayor de Blasio settled the Bloomberg administration's appeal of Judge Scheindlin's ruling.²⁸⁰ Agreeing to her reforms was part of the city's and department's efforts at ameliorating SQF's harmful impact on community engagement. As a result, stops decreased from an all-time high of nearly 700,000 in 2011 to 45,787 by the

²⁷⁶ "Floyd et al. v. City of New York et al.," Center for Constitutional Rights, last modified October 24, 2020, <https://ccrjustice.org/node/1765>.

²⁷⁷ "Overview," NYPD Monitor, accessed October 14, 2020, <http://nypdmonitor.org/overview/>.

²⁷⁸ Pamela Ransom and Sidique Wai, "Fostering Community Engagement: Reinvigorating Community Precinct Councils in New York City," *Police Journal* 90, no. 3 (2017): 264, <https://doi.org/10.1177/0032258X16679857>.

²⁷⁹ Ransom and Wai, 270.

²⁸⁰ Benjamin Weiser and Joseph Goldstein, "Mayor Says New York City Will Settle Suits on Stop-and-Frisk Tactics," *New York Times*, January 30, 2014, <https://www.nytimes.com/2014/01/31/nyregion/de-blasio-stop-and-frisk.html>.

end of 2014.²⁸¹ That number was further reduced to 22,565 in 2015, and then again to 12,404 in 2016.

Besides eliminating stop-and-frisk as a central component of its crime-reduction strategy, the NYPD experimented with novel community engagement methods after Garner's death. For example, NYPD officers participated in Coffee with a Cop meetings, which focused on opening channels of communication with the public in an informal setting; some of these coffee sessions had over 60 attendees.²⁸² The NYPD did not restrict its outreach efforts to the surface level; it went underground as well. NYPD subway officers organized Meet Your Police initiatives in the transit system, with members of the local police station establishing information hubs on busy platforms to increase engagement with commuters.²⁸³

Notably, while the mission of the neighborhood policing model requires all officers to embrace community policing and engagement as a mandate, the department recently created a specialized "Rapid Response Team" to help distressed citizens in their utmost time of need.²⁸⁴ Two recent cases of the team's work demonstrate the NYPD's enhanced commitment to community outreach.²⁸⁵ In early July 2020, Rapid Response Team members helped a 10-year-old girl celebrate her birthday after she and her family were left homeless in a fire. Later in the month, they bought groceries to help feed the family of a

²⁸¹ New York Civil Liberties Union, *Stop-and-Frisk in the de Blasio Era* (New York: New York Civil Liberties Union, March 2019), 4, <https://www.nyclu.org/en/stop-and-frisk-data>.

²⁸² Alison Fox, "Coffee with a Cop Day Brings NYPD and Jamaica Community Together," *AM New York Metro*, October 4, 2017, <https://www.amny.com/news/coffee-with-a-cop-day-brings-nypd-and-communities-together-1-14341836/>.

²⁸³ "Meet Your Police, Community Engagement in an Urban Transit System," *International Association of Chiefs of Police* (blog), March 24, 2016, <https://www.theiacp.org/news/blog-post/meet-your-police-community-engagement-in-an-urban-transit-system>.

²⁸⁴ Shayna Jacobs, "With Gun Violence Surging and Public Trust on the Line, New York's Officers Go Back on the Beat," *Washington Post*, August 22, 2020, https://www.washingtonpost.com/national-security/new-york-violent-crime-police/2020/08/21/f359fc24-c882-11ea-8ffe-372be8d82298_story.html.

²⁸⁵ "NYPD Cops Surprise Girl with Birthday Cake after Home Burns Down in Bronx," ABC 7 New York, July 5, 2020, <https://abc7ny.com/6300212/>; Chief Jeffrey Maddrey (@NYPDCommAffairs), "To Protect & Serve," Twitter, July 29, 2020, 7:33 p.m., <https://twitter.com/NYPDCommAffairs/status/1288618723876769793>.

shooting victim. These focused interventions were unheard of in the NYPD's old model of community outreach.

3. Cynefin Analysis

Much like its efforts at community-oriented policing before Garner's death, the NYPD's community outreach approaches resided in the *obvious/simple* domain. By prioritizing a tool for crime reduction at the sacrifice of community outreach, the NYPD's use of "established practices" alienated it from some community members and exposed it to legal oversight from outside the agency. In response to Garner's death (and Judge Scheindlin's findings), the NYPD has pivoted into the *complex* domain. The NYPD probed for an emergent solution to community outreach, reducing its reliance on SQF and adopting new ways of presenting itself to the community.

F. EMPHASIZING DE-ESCALATION, PRESERVATION OF LIFE, AND ADOPTING LESS-LETHAL TECHNOLOGIES

1. Before

The NYPD began collecting data on firearms discharges in 1971, analyzing the circumstances of its officers' use of deadly force. The agency annually releases an aggregated report of the data from the prior year for public review. The 2013 *Annual Firearms Discharge Report*, compiling data from the year before Garner's death, stated that "the Department has made restrain the norm."²⁸⁶ The report says that evidence of officer restraint was manifest in the reduction of lethal police shootings from 93 in 1971 to 8 in 2013, which also saw the smallest number of total police firearms discharges, 81, since the department began tracking them.²⁸⁷ The NYPD's ultimate objective, the report says, is to ensure that officers fire their weapons only when there is absolutely no other option. The report further notes the department's pledge to preserve life, including those of

²⁸⁶ New York City Police Department, *NYPD Annual Firearms Discharge Report 2013* (New York: New York City Police Department, 2014), 2, https://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/nypd_annual_firearms_discharge_report_2013.pdf.

²⁸⁷ New York City Police Department, 14.

subjects threatening the life of an officer or another person.²⁸⁸ Additionally, the report emphasizes the department mandates its officers use lethal force to *stop* a subject's actions, not *kill* the subject. Lacking in the report, however, is any mention of de-escalation; instead, it frames the discussion of lethal force in terms of restraint.²⁸⁹

In February 2014, however, the NYPD announced the introduction of Seven Steps to Positive Community Interactions, a training program teaching officers de-escalation skills. "The idea is to begin to formulate new language for all our officers that might help diffuse a situation rather than escalate it," said Commissioner Bratton when introducing the program.²⁹⁰ Mayor de Blasio said the plan was part of his administration's efforts to repair community relationships damaged by the city's history with SQF and encourage officers to be respectful during encounters with the public.²⁹¹

At the time of Garner's death, the less-lethal force options available to NYPD patrol officers were limited to batons and oleoresin capicum (OC) spray. A 2008 RAND Corporation study by Rostker et al. found that officers rarely used the OC spray and recommended the NYPD supply its officers with additional less-lethal technology options.²⁹² The study suggested the NYPD had equipped officers with CEDs and impact munitions, soft non-penetrating projectiles—fired from launchers—that induce compliance by blunt-force pain.²⁹³ "If the NYPD employed a more robust standoff weapon," Rostker et al. found, "it might not only prevent some incidents from escalating to deadly force but might also reduce injuries to officers and citizens alike."²⁹⁴ At the time of Garner's death,

²⁸⁸ New York City Police Department, 52.

²⁸⁹ New York City Police Department, 23, 34.

²⁹⁰ Yoav Gonen, "Finest, Now Be Kindest: NYPD Respect Push," *New York Post*, February 28, 2014, <https://nypost.com/2014/02/28/finest-now-be-kindest-nypd-respect-push/>.

²⁹¹ Kathleen Horan, "Seven Steps to Adjust an Officer's Attitude," WNYC News, February 27, 2014, <https://www.wnyc.org/story/7-steps-officer-attitude-adjustment/>.

²⁹² Bernard Rostker et al., *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* (Santa Monica, CA: RAND Corporation, 2008), 63, <http://www.jstor.org/stable/10.7249/mg717nypd>.

²⁹³ Rostker et al., 79.

²⁹⁴ Rostker et al., 96.

only patrol supervisors were equipped with CEDs, and impact munitions were exclusive to members of the Emergency Service Unit, the department's tactical team.²⁹⁵

2. In Response

In September 2014, Commissioner Bratton testified before a New York City Council oversight hearing on the erosion of police and community relations since Garner's death.²⁹⁶ At that hearing, Bratton announced the creation of a mandatory three-day retraining program that would instruct officers on ways of speaking with uncooperative subjects and gaining compliance, methods of subduing a person if they refused to comply, and cultural sensitivity. He intended for officers to attend this training regularly, as they did for firearms training. The program commenced in December 2014 and was the first department-wide de-escalation training effort resulting from Garner's death.²⁹⁷ While combining classroom instruction with tactical scenarios in a gymnasium setting, instructors advised officers to forego ego- or adrenaline-driven responses and instead focus on protecting the lives of everyone involved in an altercation.²⁹⁸ The program has since evolved from its original form to a four-day Crisis Intervention Team Training Program conducted by the NYPD's Specialized Training Section. The program teams up members from the criminal justice and mental health systems, teaching officers skills to de-escalate tense encounters.²⁹⁹

²⁹⁵ Joseph Goldstein, "New York City Police Study Use of Force; May Issue More Tasers," *New York Times*, July 22, 2014, <https://www.nytimes.com/2014/07/23/nyregion/police-study-use-of-force-may-issue-more-tasers.html>.

²⁹⁶ J. David Goodman, "Bratton Outlines Police Training Overhaul," *New York Times*, September 8, 2014, <https://www.nytimes.com/2014/09/09/nyregion/bratton-outlines-overhaul-in-training-for-new-york-city-police-officers.html>.

²⁹⁷ Marc Santora, "Mayor de Blasio Announces Retraining of New York Police," *New York Times*, December 4, 2014, <https://www.nytimes.com/2014/12/05/nyregion/mayor-bill-de-blasio-retraining-new-york-police-dept-eric-garner.html>.

²⁹⁸ Amanda Holpuch, "NYPD Officers to Undergo Retraining in Use of Force following Garner Death," *Guardian*, December 4, 2014, <https://www.theguardian.com/us-news/2014/dec/04/new-york-city-police-eric-garner>.

²⁹⁹ "Specialized Training Section," New York City Police Department, accessed November 4, 2020, <https://www1.nyc.gov/site/nypd/bureaus/administrative/training-specialized.page#cit>.

The introduction of de-escalation, first as a workshop and later as formal instruction, was a departure from the NYPD's training curriculum that existed when Garner died. In October 2015, the New York City Inspector General's Office highlighted this deficiency in a report critical of the NYPD's efforts at teaching de-escalation skills before 2014. The report, commissioned in response to Garner's death, found "little to no substantive focus on de-escalation in NYPD's training programs."³⁰⁰ For example, only a portion of a four-and-a-half-hour police policy course focused on de-escalation skills during the entire 468-hour NYPD recruit training program.³⁰¹ In addition to introducing the de-escalation training, the NYPD's response to the report was to change its use-of-force reporting guidelines, requiring officers to document all instances of applying force.³⁰² The motivation for the policy shift was to encourage officers to protect people and de-escalate encounters when possible, signaling an intentional and ongoing shift to preserve life in direct response to Garner's death. "De-escalation," said Mayor de Blasio in December 2019 during a press conference, "is the dominant approach now."³⁰³

In addition to the post-Garner emphasis on de-escalation, the NYPD considered providing its officers with CEDs, as was recommended by the 2008 RAND Corporation study, immediately after Garner's death. Within a week, department officials began internal discussions on allowing patrol officers to carry CEDs, recognizing that officers might need more tools to subdue resistant subjects.³⁰⁴ By December 2014, Bratton announced the pending distribution of 450 CEDs to field training officers; by July 2016,

³⁰⁰ New York City Department of Investigation, Office of the Inspector General, *Police Use of Force in New York City: Findings and Recommendations on NYPD's Policies and Practices* (New York: New York City Department of Investigation, October 1, 2015), 4, https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-10-01-Pr_uofrpt.pdf.

³⁰¹ New York City Department of Investigation, 43–44.

³⁰² Al Baker and J. David Goodman, "New York Police Will Document Virtually All Instances of Force," *New York Times*, October 1, 2015, <https://www.nytimes.com/2015/10/01/nyregion/new-york-police-will-document-virtually-all-instances-of-force.html>.

³⁰³ Samar Khurshid, "De Blasio's Answer to Garner Death, NYPD Deescalation Training Slowly Evolves Toward Meeting Mayor's Rhetoric," *Gotham Gazette*, December 10, 2019, <https://www.gothamgazette.com/city/8977-garner-death-slowly-evolving-nypd-deescalation-training-doesnt-match-de-blasio-rhetoric>.

³⁰⁴ Goldstein, "Police Study Use of Force."

the department had nearly 10,000 officers trained on the devices.³⁰⁵ By 2019, the department had trained 28,624 officers to use CEDs and distributed 6,954 devices on patrol.³⁰⁶ The department also increased the potency of the OC spray supplied to officers, from 0.21 to 0.67 percent concentration of the active ingredients.³⁰⁷ The older version, officers complained, was ineffective at subduing even dogs.

3. Cynefin Analysis

The NYPD was in the *obvious/simple* domain in the area of de-escalation, preservation of life, and adoption of less-lethal tools for its officers before Garner's death. The agency relied on established practices, leading to an oversimplification in its force analysis and complacency in modernizing its officers' technology options. For instance, the topic of de-escalation was absent from the agency's reporting, which instead focused on restraint, the NYPD's long-time evaluation metric. Further, the RAND study's recommendation to provide officers with CEDs was ignored by Commissioner Kelly's administration. After Garner's death, the NYPD entered the *complicated* domain. Following the "sense-analyze-respond" process, these policy implementations applied the RAND report's recommendations of introducing de-escalation training, emphasizing preservation of life, and providing officers with CEDs.

³⁰⁵ Eliza Gray, "More Tasers for New York Cops Might 'Do More Harm Than Good,'" *Time*, December 11, 2014, <https://time.com/3630709/new-york-city-police-tasers-nypd/>; Joseph Goldstein, "New York Police Embracing a Weapon They Have a Complicated Past With: Tasers," *New York Times*, July 27, 2016, <https://www.nytimes.com/2016/07/28/nyregion/new-york-police-embracing-a-weapon-they-have-a-complicated-past-with-tasers.html>.

³⁰⁶ New York City Police Department, *Use of Force Report 2019* (New York: New York City Police Department, 2020), 45, <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2019-2020-11-03.pdf>.

³⁰⁷ Rocco Parascandola, "Exclusive: NYPD Hopes More Potent Pepper Spray Will Lead to Fewer Police Shootings, Some Critics Say Upgrade Is Recipe for Disaster," *New York Daily News*, January 27, 2016, <https://www.nydailynews.com/new-york/nypd-hopes-new-pepper-spray-lead-shootings-article-1.2510683>.

G. MEDIA STRATEGY AND PUBLICLY DIRECTED STATEMENTS

1. Before

The NYPD staffs the Office of the Deputy Commissioner for Public Information (DCPI), led by a civilian deputy commissioner, as its primary method of media communication. The DCPI establishes relationships with local, national, and international media outlets, seeking to foster “communication, reputational management, and [facilitate] citywide news coverage.”³⁰⁸ The office is staffed 24 hours a day, with members available for consultation when disseminating media-worthy police information.

Under former Police Commissioner Kelly, the Office of the DCPI sometimes had a contentious relationship with the media. The office was managed by Paul J. Browne, who centralized media messaging; during many press conferences, Browne was the only person allowed to speak other than Kelly.³⁰⁹ Some media sources reported having difficulty obtaining press credentials, which would enable coveted access to secure areas during police events and inside public buildings.³¹⁰ Others resorted to hiring lawyers and filing lawsuits to obtain credentials.³¹¹ Kelly announced an interim replacement for Browne when he retired in mid-2013, a few months before the end of Kelly’s tenure.³¹² Upon beginning his second term commanding the NYPD in January 2014, Commissioner Bratton appointed Stephen P. Davis as DCPI.³¹³

³⁰⁸ “Public Information,” New York City Police Department, accessed November 5, 2020, <https://www1.nyc.gov/site/nypd/bureaus/administrative/public-information.page>.

³⁰⁹ Mona El-Naggar, “With 360-Degree View, Police Spokesman Plays Pivotal Role,” *New York Times*, July 21, 2013, <https://www.nytimes.com/2013/07/22/nyregion/with-360-degree-view-police-spokesman-plays-pivotal-role.html>.

³¹⁰ Christopher Robbins, “Inside Gothamist’s Absurd Struggle to Get NYPD Press Passes,” *Gothamist*, December 15, 2011, <https://gothamist.com/news/inside-gothamists-absurd-struggle-to-get-nypd-press-passes>.

³¹¹ Christopher Robbins, “Gothamist Finally Gets Press Passes (after 8 Years and Thousands Spent on High-Profile Lawyer),” *Gothamist*, March 26, 2012, <https://gothamist.com/news/gothamist-finally-gets-press-passes-after-8-years-and-thousands-spent-on-high-profile-lawyer>.

³¹² J. David Goodman, “Longtime Chief Spokesman of Police Department Will Step Down,” *New York Times*, July 18, 2013, <https://www.nytimes.com/2013/07/19/nyregion/police-depts-chief-spokesman-to-step-down.html>.

³¹³ Mark Toor, “Bratton Appoints Three Deputy Commissioners,” *Chief*, February 14, 2014, https://thechiefleader.com/news/news_of_the_week/bratton-appoints-three-deputy-commissioners/article_ce71467a-959d-11e3-b4c2-0017a43b2370.html.

2. In Response

After Garner's death, Commissioner Bratton broadened media access to the NYPD's inner workings. Bratton allowed *New Yorker* writer Ken Auletta to accompany him for several days, while he outlined his strategic plan for the NYPD, for an article Auletta was preparing. Auletta joined him at a memorial for an officer killed in the line of duty, and later at dinner in Manhattan, while Bratton described how the department was planning to repair its relationship with the community. He also permitted the press to accompany officers while they patrolled New York City, giving them an inside perspective of the changes he was making to the patrol model.³¹⁴ Bratton's open approach with the media was a conscious effort at promoting channels of communication.

Additionally, the NYPD decentralized press conferences after Garner's death. No longer did the DCPI exclusively manage outgoing information to the media. For example, the DCPI authorized on-scene police officials to speak on the department's behalf after consultation with them, even for major news events such as the Trump Tower climber in August 2016.³¹⁵ At that press conference, officers having an active role in the rescue responded to media inquiries, allowing greater depth and detail in the answers provided. As another example, the NYPD allowed the head of the Force Investigation Division to conduct comprehensive briefings about police-involved shootings and provide media representatives follow-up information as needed.³¹⁶

3. Cynefin Analysis

Before Garner's death, the NYPD occupied the *obvious/simple* domain in its media policy. The agency categorized its relationship with the media and comments to the public based on established practices, limiting who was allowed to speak on its behalf. This policy

³¹⁴ Bob Henderson, "A Night with the NYPD," Marshall Project, June 2, 2015, <https://www.themarshallproject.org/2015/06/02/a-night-with-the-nypd>.

³¹⁵ NBC News, "NYPD Officer Explains How He Grabbed Trump Tower Climber," August 11, 2016, YouTube, video, 1:07, <https://www.youtube.com/watch?v=U-Ic9eEe4GI>. A careful eye will find the author in the background of this video.

³¹⁶ Michael R. Sisak, "NYPD: Suspect's Bullet Struck Officer Who Was Saved by Vest," AP News, October 24, 2019, <https://apnews.com/article/5f1c14b2ac4a4b5a8dc61b1c39a8eed3>.

was unquestioned, not open to dispute or advancement of thinking, a known aspect of this domain.³¹⁷ Assuming this posture strained media relations, as indicated above. After Garner’s death, the department pivoted to the *complex* domain, experimenting with closer, more open media relationships, probing different policy positions in a manner the agency had not done before the tragedy. These actions suggest the agency was following the “probe-sense-analyze” response cycle of the *complex* domain.³¹⁸

H. TRANSPARENCY ON PROCEDURAL PROCESSES

1. Before

Police Commissioner Bratton committed to improving the NYPD’s transparency in procedural processes early in his tenure. In a speech before the Citizen’s Crime Commission in February 2014, five months before Garner’s death, Bratton proclaimed, “There should be no secrets in the NYPD.”³¹⁹ However, a reporter’s test of the department’s efforts at transparency indicated the agency was falling short of its goals. The same month Bratton made his speech, the department rejected reporter Shawn Musgrave’s request for its Freedom of Information Law (FOIL) policy, suggesting the agency’s document was protected by attorney–client privilege.³²⁰ The irony of the NYPD’s withholding its public information guidelines was not lost on Musgrave. The department then tried to charge Musgrave over \$500 for photocopies of the NYPD’s *Patrol Guide* containing the FOIL policy.³²¹ The agency later relented and provided him the documents free of charge—the same month that Garner died.

³¹⁷ Snowden and Boone, “A Leader’s Framework,” 70.

³¹⁸ Snowden and Boone, 73.

³¹⁹ “New York Police Commissioner William Bratton Speaks at Milstein Criminal Justice Policy Forum of Citizens Crime Commission,” Howard and Abby Milstein Foundation, February 7, 2014, <https://www.howardandabbymilsteinfoundation.org/2014/02/nypd-commissioner-bratton-at-milstein-criminal-justice-policy-forum/>.

³²⁰ Shawn Musgrave, “NYPD Rejects Request for Its Freedom of Information Handbook,” MuckRock, February 14, 2014, <https://www.muckrock.com/news/archives/2014/feb/14/nypd-rejects-foil-handbook-request/>.

³²¹ Shawn Musgrave, “The Foil Fight Over the NYPD’s Patrol Guide,” MuckRock, July 2, 2014, <https://www.muckrock.com/news/archives/2014/jul/02/nypd-has-freedom-information-handbook-after-all/>.

2. In Response

After Garner's death, the public availability of NYPD officers' disciplinary action dispositions became the focal point of procedural transparency discussions. At that time, New York Civil Rights Law 50-a prohibited the agency from releasing police personnel data, including disciplinary dispositions. Some critics of the law claimed it prevented the public from learning the circumstances and outcomes of police discipline, protecting bad officers, but noted little political will to change the law, even after Eric Garner's and Michael Brown's deaths.³²² A 2017 decision by the New York Supreme Court's Appellate Division settled two lawsuits seeking information protected by 50-a, one of which sought Officer Pantaleo's records, rejecting the plaintiffs' requests. In its ruling, the court said, "The remedy must not come from this court, but from the legislature."³²³ Thus, the existing privacy rules remained in place pending a legislative solution.

In 2019, a report by an independent panel charged with reviewing the NYPD's disciplinary policies and chaired by former U.S. Attorney Mary Jo White leveled criticisms at the agency's confidentiality practices. The panel found the process contained a "fundamental and pervasive lack of transparency" and recommended the state legislature seek a policy that balanced officers' privacy and the public's right to information.³²⁴ However, 50-a would remain unchanged until 2020. After George Floyd's death, police reform legislation gained traction in the New York State Legislature, and it sent a repeal of 50-a to Governor Andrew Cuomo's desk.³²⁵ He signed the measure in June 2020, making

³²² David Uberti, "How New York Protects Police Records from Public View," *Columbia Journalism Review*, December 23, 2014, https://www.cjr.org/b-roll/how_new_york_protects_police_r.php.

³²³ Alan Feuer, "Civil Rights Law Shields Police Personnel Files, Court Finds," *New York Times*, March 30, 2017, <https://www.nytimes.com/2017/03/30/nyregion/civil-rights-law-section-50-a-police-disciplinary-records.html>.

³²⁴ Mary Jo White, Robert L. Capers, and Barbara S. Jones, *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (New York: Independent Panel on the Disciplinary System of the New York City Police Department, 2019), 17, <https://www.independentpanelreportnypd.net/assets/report.pdf>.

³²⁵ Bernadette Hogan and Carl Campanile, "NY Lawmakers Pass Bill That Releases Officer Disciplinary Records through Foil," *New York Post*, June 9, 2020, <https://nypost.com/2020/06/09/ny-passes-bill-that-releases-disciplinary-records-through-foil/>.

officers' records subject to FOIL requests. There is currently a stay on the repeal due to the NYPD police union's pending action before the U.S. Second Circuit Court of Appeals.³²⁶

3. Cynefin Analysis

The NYPD's transparency in procedural processes was in the *obvious/simple* domain before Garner, lacking openness with the public. The agency maintained established practices even as they were contrary to leadership's objectives, suggesting the entrainment of thinking found to be problematic in this domain.³²⁷ Further, state law limited the agency's release of information, an embedded structural process that precluded change. However, the NYPD has experimented with alternative methods of transparency. In October 2020, the agency announced disciplinary action on Twitter while withholding the officer's identity, operating within 50-a rules; in response to a viral video of the officer using a loudspeaker for political purposes, the NYPD tweeted news of the officer's suspension and pending disciplinary action.³²⁸ This emergent "probe-sense-respond" cycle indicates a move into the *complex* domain pending a legislative solution that will ultimately determine what personnel information the agency can make public.³²⁹

I. BWC USE

1. Before

As noted above, in August 2013, Judge Scheindlin in *Floyd v. City of New York* ordered the NYPD to develop a BWC pilot program. The department did not use the cameras at the time of her ruling, and Mayor Bloomberg expressed his resistance to her decision, calling the technology a "nightmare" that would overburden officers while doing

³²⁶ Craig McCarthy, "Fed Court Blocks Release of NYPD Misconduct Records until Judges Hear Appeal," *New York Post*, August 26, 2020, <https://nypost.com/2020/08/26/nypd-misconduct-records-blocked-until-judges-hear-unions-appeal/>.

³²⁷ Snowden and Boone, "A Leader's Framework," 73.

³²⁸ NYPD News (@NYPDnews), "Suspended without Pay; The Police Officer Who Is Under Investigation for Using a Department Vehicle's Loud Speaker for Political Purposes Has Been Suspended, Effective Immediately," Twitter, October 25, 2020, 3:36 p.m., <https://twitter.com/NYPDnews/status/1320449207258537986>.

³²⁹ Snowden and Boone, "A Leader's Framework," 73.

their job.³³⁰ In November 2013, he appealed Scheindlin's ruling, endeavoring to overturn her decision before the end of his term the following month.³³¹ However, his efforts only delayed the NYPD's adoption of BWCs. Upon assuming office in January 2014, newly elected Mayor de Blasio announced his intention of settling Bloomberg's appeal and implementing the pilot program.³³² However, the program was not yet in operation at the time of Garner's death.

2. In Response

The NYPD's BWC pilot program began in September 2014, two months after Garner's death.³³³ While Judge Sheindlin's order directed the department to test the technology in only five designated precincts, those with the highest number of SQF reports, Mayor de Blasio announced in early December 2014 his intent to accelerate the program. Recognizing the rising tensions between the police and the community after the deaths of Eric Garner and Michael Brown, de Blasio said at a news conference, "When something happens, to have a video record of it, from the police officers' perspective, is going to help in many, many ways. And God forbid, when something goes wrong, we are going to have a clearer sense of what happened."³³⁴ The pilot program ended in March 2015, but finalizing policy and procuring the cameras needed to equip the NYPD delayed their deployment until 2017.³³⁵

³³⁰ Marc Santora, "Order That Police Wear Cameras Stirs Unexpected Reactions," *New York Times*, August 13, 2013, <https://www.nytimes.com/2013/08/14/nyregion/order-that-police-wear-cameras-stirs-unexpected-reactions.html>.

³³¹ Benjamin Weiser and Joseph Goldstein, "New York City Asks Court to Vacate Rulings on Stop-and-Frisk Tactic," *New York Times*, November 9, 2013, <https://www.nytimes.com/2013/11/10/nyregion/city-asks-court-to-vacate-rulings-on-policing-tactic.html>.

³³² Weiser and Goldstein, "New York City Will Settle Suits."

³³³ J. David Goodman, "New York Police Officers to Start Using Body Cameras in a Pilot Program," *New York Times*, September 4, 2014, <https://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html>.

³³⁴ Marc Santora and Nikita Stewart, "Police Body Cameras Could Come to New York Soon," *New York Times*, December 3, 2014, <https://www.nytimes.com/2014/12/04/nyregion/new-york-city-police-speeding-up-effort-to-give-officers-body-cameras.html>.

³³⁵ Joseph Goldstein, "Not One New York Police Officer Has a Body Camera," *New York Times*, October 4, 2016, <https://www.nytimes.com/2016/10/04/nyregion/despite-national-trend-new-york-police-are-slow-to-adopt-body-cameras.html>.

The NYPD currently operates the most extensive police BWC program in the United States.³³⁶ The department equipped over 24,000 officers of all ranks with the cameras during a phased roll-out from April 2017 through December 2019. In addition to police officers on patrol, detectives, sergeants, and lieutenants wear BWCs, as do command-level members (captains and above) supervising these officers.

3. Cynefin Analysis

Since the NYPD did not use BWCs before Garner, the agency did not occupy a Cynefin domain before Garner's death regarding their implementation. However, after Garner, the department entered the *complicated* context, guided by expert-recommended "good practices," such as Judge Scheindlin's directives; Mayor de Blasio's expansion of the program; and the expertise of policy sovereigns.

J. RELEASING BWC FOOTAGE

1. Before

NYPD officers did not use BWCs before Garner's death. As such, there was no video release policy.

2. In Response

In the early stages of the NYPD's BWC pilot program, the department was reluctant to release captured footage. In August 2015, a department official suggested that releasing unedited BWC videos would invade the privacy of people recorded in them.³³⁷ Prohibitively, however, the NYPD placed the cost of an edited version available through a FOIL request at \$36,000. By comparison, the Seattle Police Department provided edited BWC footage to requestors at no charge.

³³⁶ "Body-Worn Cameras," New York City Police Department, accessed October 14, 2020, <https://www1.nyc.gov/site/nypd/about/about-nypd/equipment-tech/body-worn-cameras.page>.

³³⁷ Courtney Gross, "NYPD Ready to Hit Record on Body Camera Pilot Program," Spectrum News NY1, August 27, 2015, <https://www.nyl.com/nyc/all-boroughs/news/2015/08/27/nypd-ready-to-hit-record-on-body-camera-pilot>.

By 2017, the NYPD took a less restrictive approach in releasing BWC videos. That September, the department released a BWC video for the first time, consisting of 48 minutes of footage captured from four officers involved in a fatal shooting.³³⁸ The department published the videos and a narrative of the circumstances on its website, allowing for public and media download.³³⁹ However, the policy of BWC video release outside of FOIL requests was still unclear and subjective. The guidelines regulating the release of BWC footage relied on the police commissioner's finding a "public concern" or trying to "preserve peace."³⁴⁰ Some critics accused the NYPD of selectively releasing videos beneficial to the agency's image while suppressing videos containing questionable police conduct.³⁴¹

The NYPD announced formal policies for releasing BWC footage in June 2020, these being less subjective than the previous "public concern" and "preserve peace" guidelines.³⁴² These guidelines are published on the department's website for public review. In broad terms, within 30 days, the department releases BWC videos of critical incidents, which include officer firearm discharges, use-of-force incidents resulting in death or serious physical injury, and events that may create public attention and curiosity.³⁴³ Further, the NYPD now complies with FOIL requests for video recordings unless prohibited by law. Additionally, the department created a YouTube channel called

³³⁸ Tina Moore and Max Jaeger, "NYPD Releases First Bodycam Footage of Fatal Police Shooting," *New York Post*, September 14, 2017, <https://nypost.com/2017/09/14/nypd-releases-first-body-cam-footage-of-fatal-police-shooting/>.

³³⁹ "NYPD Releases Body-Worn Camera Footage Captured during a Police-Involved Shooting on September 6, 2017," New York City Police Department, September 14, 2017, <http://www1.nyc.gov/site/nypd/news/pr0914/nypd-releases-body-worn-camera-footage-captured-during-police-involved-shooting-september-6->.

³⁴⁰ "New Policy Requires NYPD to Release Body Camera Footage," AP News, June 16, 2020, <https://apnews.com/article/2fea6f0179f8e95e332c2c4decaa861a>.

³⁴¹ Max Jaeger, "Activists Suing NYPD for Unedited Video in Fatal Shooting," *New York Post*, July 19, 2018, <https://nypost.com/2018/07/19/activists-suing-nypd-for-unedited-video-in-fatal-shooting/>.

³⁴² "New Policies Require NYPD to Release Body Cam Footage, Disciplinary Records," NBC New York, June 17, 2020, <https://www.nbcnewyork.com/news/local/new-policy-requires-nypd-to-release-body-camera-footage-within-30-days-of-incident/2467911/>.

³⁴³ New York City Police Department, "Body-Worn Cameras."

insideNYPD that compiles these videos for public review; the channel currently has over 19,000 subscribers.³⁴⁴

3. Cynefin Analysis

There was no video release policy when Garner died as the NYPD did not use BWCs. However, early their adoption, the department entered the *complex* domain, testing different policies with various levels of community acceptance until it created the formal system discussed above. The agency has transitioned into the *complicated* context, whereby releasing BWC videos is guided by legitimate “good practices,” federal court mandates, and policy sovereign recommendations.

K. USING SOCIAL MEDIA

1. Before

In January 2014, the NYPD began using Facebook and Twitter social media platforms strategically at the direction of Commissioner Bratton.³⁴⁵ Bratton’s goal was to reshape the public’s perception of police officers by presenting uplifting stories without relying on the media.³⁴⁶ However, the strategy stumbled early on. In April 2014, the department launched a campaign to increase public engagement, asking for pictures of people with police officers and applying the hashtag #myNYPD. Instead of tourist-type photos of people smiling while standing next to officers, the agency found its social media feeds flooded with uncomplimentary images, such as police using force and police dogs biting suspects. The effort was labeled a fiasco by some media insiders.³⁴⁷ Undeterred, Bratton pivoted, insisting that there is no bad publicity, and noted the department had

³⁴⁴ “NYPD,” YouTube, accessed October 14, 2020, <https://www.youtube.com/c/nypd/videos>.

³⁴⁵ New York City Police Department, *NYPD in Focus*, 4. The NYPD has maintained a presence on Twitter since 2008 with its @NYPDnews page, but the department did not leverage the platform strategically until Bratton’s directive. Also, Twitter did not allow photo-sharing until June 2011, limiting tweets to text only.

³⁴⁶ J. David Goodman, “Despite Twitter Backlash, New York Police Dept. Plans to Expand Social Media Efforts,” *New York Times*, April 27, 2014, <https://www.nytimes.com/2014/04/28/nyregion/despite-twitter-backlash-new-york-police-dept-plans-to-expand-social-media-efforts.html>.

³⁴⁷ Mel Robbins, “Opinion: NYPD’s Twitter Campaign Was a Fiasco,” CNN, April 24, 2014, <https://www.cnn.com/2014/04/24/opinion/robbins-nypd-twitter/index.html>.

gained over 4,000 new followers.³⁴⁸ The department treated the misstep as a learning lesson, with a spokeswoman saying social media use would continue as a means of creating new ways to speak directly to the community.³⁴⁹

2. In Response

By December 2014, five months after Eric Garner's death, the growing pains associated with the NYPD's entry to social media were still evident. That month, the Mid-Town South Precinct's official Twitter account posted a tweet of a still image from the movie *A Few Good Men*.³⁵⁰ The tweet included lines from a scene when Jack Nicholson's character Colonel Nathan Jessup yells, "You can't handle the truth!" while justifying the murder of a subordinate. The post fell flat with the public and critics alike and was quickly deleted.

The NYPD formalized its social media policies regarding the technology's use as a public communication tool as its audience expanded.³⁵¹ The agency has amassed over one million followers across 119 Twitter feeds, with the platform being the central source for social media communication.³⁵² The department now designates digital communications officers to manage authorized social media accounts under the supervision of their respective commanding officers.³⁵³ The position's guidelines require that commanding officers approve all posts, focusing on community outreach and communication, distributing crime information, and advertising good police work. Further,

³⁴⁸ Goodman, "Dept. Plans to Expand Social Media Efforts."

³⁴⁹ J. David Goodman, "Lesson for the Police: Be Careful What You Tweet For," *New York Times*, April 22, 2014, <https://www.nytimes.com/2014/04/23/nyregion/new-york-police-reach-out-on-twitter-but-receive-a-slap-in-the-face.html>.

³⁵⁰ Ryan Bort, "NYPD Definitely Missed the Point of *A Few Good Men*," *Esquire*, December 15, 2014, <https://www.esquire.com/news-politics/news/a32122/nypd-tweets-few-good-men-quote/>.

³⁵¹ New York City Police Department, *New York City Police Department Patrol Guide* (New York: New York City Police Department, 2020), 203–28, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf.

³⁵² Caroline Haskins, "Internal Documents Show Why the NYPD Tries to Be 'Funny' Online," *Vice*, July 22, 2019, <https://www.vice.com/en/article/3k3g3n/internal-documents-show-why-the-nypd-tries-to-be-funny-online>.

³⁵³ New York City Police Department, *Patrol Guide*, 202–43.

the NYPD posted a social media disclaimer on its website explaining the rules of public commentary on its posts, such as reserving the right to delete posts containing hate speech or incitement of violence.³⁵⁴

3. Cynefin Analysis

The department's efforts at leveraging social media before Garner's death resided in the *complex* domain, its "probe-sense-respond" cycle evidenced in the trial-and-error approach to using the technology to promote its mission.³⁵⁵ After Garner, social media policy evolved, leading to the agency's existing formal policies. The NYPD maintains a robust presence on its social media platforms, following the policy experts' recommendations and promoting its narrative to the public. Doing so causes the department's social media strategy to reside in the *obvious/simple* context, following the "sense-categorize-respond" process in conjunction with established practice and policy.³⁵⁶

L. ENHANCING TRAINING

1. Before

Through 2014, the agency required newly hired officers to complete a six-month training program at the Police Academy.³⁵⁷ The multi-disciplinary instruction program consisted of 53 courses separated into three tracks: police studies, humanities, and legal studies. Within these instruction courses, recruits attended a nine-hour use-of-force course and a four-and-a-half-hour class on policing professionally. It was in this latter course, as mentioned above, that de-escalation skills were briefly addressed. After completing the classroom portion of training, they attended firearms and tactics training, where they learned firearms proficiency, OC spray usage, and other tactical exercises.³⁵⁸ Recruits successful in each part of academy training were then eligible to become full-fledged police

³⁵⁴ "Social Media Disclaimer," New York City Police Department, accessed October 28, 2020, <https://www1.nyc.gov/site/nypd/about/about-nypd/social-media-disclaimer.page>.

³⁵⁵ Kurtz and Snowden, "The New Dynamics of Strategy," 73.

³⁵⁶ Kurtz and Snowden, 468.

³⁵⁷ New York City Department of Investigation, *Police Use of Force*, 39.

³⁵⁸ New York City Department of Investigation, 40.

officers. Scenario-based training, however, which replicated encounters recruits might have on patrol, was poorly implemented. During the entirety of recruit training, the Police Academy devoted only three sessions to scenario-based instruction.³⁵⁹

The New York City Inspector General's Office interviewed academy instructors and recruits as a part of the October 2015 report initiated after Garner's death. That report centered on NYPD practices from the period of 2011 through 2014, just before Garner's death. The report found both the instructors and recruits critical of the inadequate time spent on scenario-based and encounter-simulation training, expressing a desire that the program be lengthened to help them fully grasp the concepts taught.³⁶⁰

These sentiments corroborated the assessment of Rostker et al. from their 2008 RAND Corporation study. In that study, they found the NYPD's model of scenario-based training poorly structured.³⁶¹ During their survey, they observed that time constraints and insufficient instructors precluded recruits from practicing skills learned, an obstacle to reaching a minimal level of competency. Rostker et al. recommended that the NYPD increase the quality and number of scenario-based training modules provided to recruits.³⁶² As evidenced by statements collected by the inspector general, the NYPD had failed to follow the RAND study's recommendations.

2. In Response

As discussed above, in the immediate aftermath of Garner's death, teaching officers de-escalation skills became paramount. The course Commissioner Bratton announced before the City Council in September 2014 was the NYPD's central training task for the remainder of that year.³⁶³ He ordered a full review of NYPD training, seeking to identify deficiencies, acknowledging the undertaking would likely require retraining every officer

³⁵⁹ New York City Department of Investigation, 41.

³⁶⁰ New York City Department of Investigation, 43.

³⁶¹ Rostker et al., *Evaluation*, 27.

³⁶² Rostker et al., 31.

³⁶³ Goodman, "Police Training Overhaul."

and potentially take years to complete.³⁶⁴ In July 2015, the NYPD reported the results of its survey-based review titled “Training: Bringing the NYPD into the 21st Century.”³⁶⁵ The report emphasized a commitment to revitalizing and modernizing Police Academy training and identified several areas for improvement.

First, the report prominently critiqued the department’s lack of scenario-based training. The report found that officers felt Police Academy training was “overly formulaic and mechanical, relying on lectures rather than situational engagement.”³⁶⁶ The existing Police Academy facility was determined an ineffective training environment for scenario-based training, limiting the teaching method’s incorporation.

As a part of its modernization efforts, the NYPD built a new, sprawling Police Academy facility in Queens to replace its tight quarters in Manhattan.³⁶⁷ This new facility contained a “simulated tactical village,” replete with storefronts, bank windows, automobiles, and even a subway car, to hold scenario-based training sessions. Only 10 to 20 officers may use the village at once, allowing better student–instructor ratios. In scenario-based training sessions, officers wear BWCs during their simulated encounters, whose recordings instructors review and evaluate with participants.

Next, the report revealed that the recruit curriculum was over a decade old, lacking regular or systematic updates.³⁶⁸ To remedy this, the NYPD hired civilian curriculum specialists and educators to guide the design of an adult-learning-style program while specifically incorporating scenario-based training in all topic areas.³⁶⁹ The report detailed

³⁶⁴ Deborah Bloom and Jareen Imam, “New York Choke Hold Death Leads Police to Review Training Procedures,” CNN, December 8, 2014, <https://www.cnn.com/2014/07/22/justice/new-york-choke-hold-death/index.html>.

³⁶⁵ New York City Police Department, “Training: Bringing the NYPD into the 21st Century” (New York: New York City Police Department, 2015), 2, <http://www.nyc.gov/html/nypd/html/home/POA/pdf/Training.pdf>.

³⁶⁶ New York City Police Department, 1.

³⁶⁷ New York City Police Department, 3.

³⁶⁸ New York City Police Department, 1.

³⁶⁹ New York City Police Department, 7.

the department's desire to shift away from a one-size-fits-all approach toward an interactive learning process that strengthens officers individually.³⁷⁰

Finally, the report found that many instructors lacked recent field experience and professional development.³⁷¹ Instructor development, the report said, would ensure that training remained effective, interactive, and vibrant.³⁷² Rather than teaching a single track, instructors are cross-trained in disciplines (an academic instructor sometimes teaches tactics, for example) and teach in teams, seeking consistency in strategy and messaging. Lastly, instructors are periodically assigned to fieldwork for several months, keeping their experience relevant and relatable.

3. Cynefin Analysis

Before Garner's death, the NYPD's training policy resided in the *obvious/simple* context, relying on standard operating procedures and the constraints of established practices, and suffered from two problems featured in that domain. First, the department's neglect of the Police Academy recruit training program exposed an oversimplification of the education process. Second, this oversimplification was evidence of entrained thinking that precluded exploration of modern teaching methods. After Garner's death, the NYPD entered the *complex* domain, using the "probe-sense-respond" cycle when exploring new techniques and approaches, such as introducing new workshops, which over time have evolved into full training courses.³⁷³

M. IMPLICIT BIAS AWARENESS TRAINING

1. Before

The NYPD's approach to managing implicit bias awareness and promoting cultural diversity instruction has taken many forms. The Police Academy introduced a course on

³⁷⁰ New York City Police Department, 6.

³⁷¹ New York City Police Department, 1.

³⁷² New York City Police Department, 5.

³⁷³ Kurtz and Snowden, "The New Dynamics of Strategy," 73.

“cultural competence” beginning in 2000.³⁷⁴ Recruits watched and discussed films on racism, sexism, financial class issues, and discrimination against the transgender and gay communities. When observing the program, political commentator Heather Mac Donald found “the cultural competence curriculum assumes that recruits come into the department with deep-seated biases” that the course seeks to reduce.³⁷⁵ In 2007, the NYPD expanded its efforts at broadening its recruits’ skills in dealing with the diverse communities of New York City. During “multi-cultural immersion training,” members from CCRB, prominent community members, and police executives helped recruits understand the vast range of cultural, sexual, and religious perspectives within New York City.³⁷⁶ By 2013, the department provided officers with a portable manual entitled *Policing a Multicultural Society*, which sought to help officers deal with cultural and communication barriers that might arise with the community.

2. In Response

After Garner, the NYPD began an intentional effort to address implicit bias in July 2015 as part of modernizing its curriculum, as discussed above. The process was first reported and continues to be overseen by Peter L. Zimroth, the monitor appointed under Judge Scheindlin’s *Floyd* ruling.³⁷⁷ The course, *Policing Impartially*, contained information on police history and the benefits of fair and unbiased policing. However, Zimroth found many of the course materials were from prior recruit classes and prepared internally by the NYPD. He noted that the NYPD would likely change the program as its training overhaul continued.

³⁷⁴ Heather Mac Donald, “How to Train Cops,” *City Journal*, Autumn 2000, <https://www.city-journal.org/html/how-train-cops-12124.html>.

³⁷⁵ Mac Donald.

³⁷⁶ Sheila Anne Feeney, “NYPD Police Recruits Getting Multicultural Immersion Training,” *Newsday*, December 18, 2013, <https://www.newsday.com/news/new-york/nypd-police-recruits-getting-multicultural-immersion-training-1.6636933>.

³⁷⁷ Peter L. Zimroth, *First Report of the Independent Monitor* (New York: NYPD Monitor, 2015), 36–39, <http://nypdmonitor.org/monitor-reports/>.

In 2018, the NYPD entered into a contract with Florida company Fair and Impartial Policing (FIP), a leader in the field of implicit bias awareness training.³⁷⁸ By contract agreement, no more than 40 officers attend at once with two trainers present. FIP frames implicit bias as a safety concern: instructors show officers that their biases of who is “dangerous” leave them vulnerable to unperceived threats. At the same time, over-vigilance can lead to community tensions.³⁷⁹ However, implicit bias awareness training is different from addressing overt racism; officers may become defensive if they believe instructors are accusing them of the latter.³⁸⁰ Instead, FIP prepares officers to manage their biases first by identifying them and then providing officers with tools to conduct self-checks on their decision-making processes while policing, examining whether implicit bias influenced their choices.³⁸¹

3. Cynefin Analysis

While not labeled implicit bias awareness training, the NYPD had cultural competency curriculum, an established, dedicated module in Police Academy training that had been expanded in the years leading up to Garner’s death. While the department relabeled the program several times, it essentially remained stagnant. Thus, the department operated in the *obvious/simple* domain when Garner died, following “best practices” but lacking the advanced techniques policy experts would provide. After Garner, the department entered the *complicated* domain, using the “sense-analyze-respond” cycle when hiring adept professionals to teach the implicit bias awareness courses—a “good practice” recommended by policy sovereigns.

³⁷⁸ Al Baker, “Confronting Implicit Bias in the New York Police Department,” *New York Times*, July 15, 2018, <https://www.nytimes.com/2018/07/15/nyregion/bias-training-police.html>.

³⁷⁹ Robert E. Worden et al., *The Impacts of Implicit Bias Awareness Training in the NYPD* (Albany, NY: John F. Finn Institute for Public Safety, 2020), 31, <https://www1.nyc.gov/site/nypd/stats/research/published-research.page>.

³⁸⁰ Worden et al., 14.

³⁸¹ Worden et al., 15.

IV. FERGUSON POLICE DEPARTMENT: MICHAEL BROWN—AUGUST 9, 2014

On Saturday, August 9, 2014, just weeks after the death of Eric Garner in New York City, Ferguson Police Department (FPD) Officer Darren Wilson shot and killed Michael Brown, continuing the legitimacy challenges police faced that summer.³⁸² Initial reporting suggested that Officer Wilson approached Brown, an unarmed 18-year-old man, for the sole reason that he and his friend were walking in the middle of the street.³⁸³ These reports stated that during a conversation between Wilson and Brown, a struggle ensued and that Brown was holding his hands above his head in a gesture of surrender when Wilson shot him unnecessarily.³⁸⁴ These claims were the genesis of the protest cry “hands up, don’t shoot!”

The immediate aftermath of the shooting in Ferguson, a suburb to the north of St. Louis County, Missouri, drew quick condemnation from the community and political leaders. John Gaskin, a member of the St. Louis County chapter of the National Association for the Advancement of Colored People (NAACP), said, “With the recent events of a young man killed by the police in New York City [Eric Garner] . . . this [shooting of Michael Brown] is a dire concern to the NAACP.”³⁸⁵ Within days, President Barack Obama called Brown’s death “heartbreaking” while encouraging the public to await full details.³⁸⁶ On August 11, 2014, U.S. Attorney General Eric Holder said he would be monitoring and supplementing the local investigation into the shooting, saying, “aggressively pursuing

³⁸² “Ferguson Police Say Teen Shot by Cop Was Suspect in Robbery; Officer’s Identity Revealed,” CBS News, August 15, 2014, <https://www.cbsnews.com/news/darren-wilson-ferguson-police-officer-who-fatally-shot-michael-brown-identified/>.

³⁸³ “Angry Crowd Gathers after Missouri Police Shoot Teen,” CBS News, August 10, 2014, <https://www.cbsnews.com/news/angry-crowd-gathers-after-missouri-police-shoot-teen/>.

³⁸⁴ Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri* (Washington, DC: Community Oriented Policing Services, 2015), 14.

³⁸⁵ CBS News, “Angry Crowd Gathers.”

³⁸⁶ Office of the Press Secretary, “Statement by the President on the Passing of Michael Brown,” White House, August 12, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/08/12/statement-president-passing-michael-brown>.

investigations such as this is critical for preserving trust between law enforcement and the communities they serve.”³⁸⁷ The Brown family’s attorney, Benjamin Crump, denied FPD information that Brown’s being a robbery suspect prompted Wilson to stop him: “It’s bad enough they assassinated him, and now they’re trying to assassinate his character.”³⁸⁸

The investigation of Brown’s death was removed from the FPD and assigned to the St. Louis County Police Department (SLCPD) to avoid the appearance of a conflict of interest. When the shooting happened, an FPD captain led the multi-agency Major Case Squad in St. Louis County, the unit that would have typically investigated this incident but for the captain’s assignment.³⁸⁹ St. Louis County Prosecutor Robert P. McCulloch convened a grand jury beginning on August 20, 2014, to review the evidence and determine whether criminal charges against Wilson would be appropriate.³⁹⁰ The grand jury met for 25 days over three months and listened to the testimony of over 60 witnesses. On November 24, 2014, the grand jury declined to return an indictment against Wilson. McCulloch also announced publicly that the grand jury’s investigation discredited many of the earlier claims that Wilson had murdered Brown in cold blood, saying those claims were “completely refuted by the physical evidence.”³⁹¹

On March 4, 2015, U.S. Attorney General Eric Holder released the federal investigation’s findings of Brown’s shooting, which indicated that the facts did not support a civil rights violations case against Wilson.³⁹² The early reporting on Brown’s death

³⁸⁷ Eric Holder, “Statement by Attorney General Holder on Recent Shooting Incident in Ferguson, Missouri,” Department of Justice, August 11, 2014, <https://www.justice.gov/opa/pr/statement-attorney-general-holder-recent-shooting-incident-ferguson-missouri>.

³⁸⁸ CBS News, “Officer’s Identity Revealed.”

³⁸⁹ Institute for Intergovernmental Research, *After-Action Assessment*, 6.

³⁹⁰ Monica Davey and Julie Bosman, “Protests Flare after Ferguson Police Officer Is Not Indicted,” *New York Times*, November 24, 2014, <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

³⁹¹ Tracy Connor et al., “Ferguson Cop Darren Wilson Not Indicted in Shooting of Michael Brown,” NBC News, November 25, 2014, <https://www.nbcnews.com/storyline/michael-brown-shooting/ferguson-cop-darren-wilson-not-indicted-shooting-michael-brown-n255391>.

³⁹² Eric Holder, “Attorney General Holder Delivers Update on Investigations in Ferguson, Missouri,” Department of Justice, March 4, 2015, <https://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri>.

suggested Officer Wilson killed him while he was surrendering. However, the DOJ's report into the shooting released after Holder's announcement consolidated witness reports and evidence that discredited these claims and supported Wilson's assertion that he fired in self-defense.³⁹³

Wilson, citing threats to his life, resigned from the FPD after the grand jury's finding in November 2014.³⁹⁴ The City of Ferguson settled the Brown family's wrongful-death lawsuit for \$1.5 million in 2017.³⁹⁵ In July 2020, St. Louis County prosecutor Wesley Bell announced reopening the Brown investigation based on suggestions that McCulloch's grand jury investigation had been incomplete.³⁹⁶ Bell, however, who campaigned for his position on a social justice platform, found that criminal charges could not be supported by the facts of the case, thus ending the search for criminality in the shooting.

A. AFTERMATH: LARGE-SCALE CIVIL DISORDER IN FERGUSON

Michael Brown's shooting death happened just weeks after Eric Garner's confrontation with Officer Daniel Pantaleo in New York City. When Officer Wilson engaged with Brown in August 2014, New York City was already well into dealing with the wake of Garner's death. His final words, "I can't breathe," were gaining popularity as a rallying cry among protesters in the streets, on social media, and on clothing worn by professional athletes.³⁹⁷ Indeed, "I can't breathe" would become the most notable quote

³⁹³ Department of Justice, "Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson Missouri Police Officer Darren Wilson" (official memorandum, Washington, DC: Department of Justice, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

³⁹⁴ Christine Byers, "Darren Wilson Resigns from Ferguson Police Department," *St. Louis Post-Dispatch*, November 30, 2014, https://www.stltoday.com/news/local/crime-and-courts/darren-wilson-resigns-from-ferguson-police-department/article_a8cfa6e7-408c-520c-b9d2-de2a75e8983d.html.

³⁹⁵ Phil Helsel, "Michael Brown's Parents, Ferguson Reach Settlement Deal in Lawsuit," NBC News, June 20, 2017, <https://www.nbcnews.com/storyline/michael-brown-shooting/michael-brown-s-parents-city-ferguson-reach-settlement-deal-lawsuit-n774911>.

³⁹⁶ John Eligon, "No Charges for Ferguson Officer Who Killed Michael Brown, New Prosecutor Says," *New York Times*, July 30, 2020, <https://www.nytimes.com/2020/07/30/us/michael-brown-darren-wilson-ferguson.html>.

³⁹⁷ Michael Skolnik (@MichaelSkolnik), "Michael Skolnik on Twitter," Twitter, December 8, 2014, 7:22 p.m., <https://twitter.com/MichaelSkolnik/status/542112133799227392>.

of 2014.³⁹⁸ “Hands up, don’t shoot” followed soon after, becoming yet another mantra of protesters after Brown’s death. New York City managed the Garner protests occurring throughout the city with minimal violence or property destruction. For example, city officials successfully negotiated with protesters to avoid logistical and political concerns well into August 2014, in one case relocating a protest to avoid blocking traffic on the Verrazano Bridge.³⁹⁹

However, the City of Ferguson was on a different path, toward two periods of violence: first in reaction to Brown’s death in August 2014 and later in November of the same year when the grand jury declined to indict Wilson. These riots, however, had a root cause: the loss of police legitimacy. Worden and McLean argue that riots are the public’s overt expression of diminished trust and absent police legitimacy, when a department’s operations (or an officer’s conduct) are held to be inappropriate or improper.⁴⁰⁰ Writing in *The Week*, writer Ryan Cooper concurs with Worden and McLean in his assessment of the post-Floyd riots in Minneapolis. In his piece, he argues that Floyd’s death caused “a profound collapse in the legitimacy of the Minneapolis criminal justice system,” concluding that “when the police have well earned the utter contempt of its citizenry, disorder tends to follow.”⁴⁰¹ Thus, the riots in August and November 2014, described below, were the result of the FPD’s loss of legitimacy, caused by the death of Michael Brown.

In the early hours of Sunday, August 10—the day after Brown’s death—the chant “kill the police” echoed through some parts of the Ferguson community as protesters

³⁹⁸ Elahe Izadi, “‘I Can’t Breathe.’ Eric Garner’s Last Words Are 2014’s Most Notable Quote, According to a Yale Librarian,” *Washington Post*, December 9, 2014, <https://www.washingtonpost.com/news/post-nation/wp/2014/12/09/i-cant-breathe-eric-garners-last-words-are-2014s-most-notable-quote-according-to-yale-librarian/>.

³⁹⁹ Benjamin Mueller, “Protest March in Chokehold Case Is Moved from Verrazano Bridge to Staten Island,” *New York Times*, August 9, 2014, <https://www.nytimes.com/2014/08/10/nyregion/protest-march-in-chokehold-case-is-moved-from-verrazano-bridge-to-staten-island.html>.

⁴⁰⁰ Worden and McLean, *Mirage of Police Reform*, 43, 56.

⁴⁰¹ Ryan Cooper, “What Happens When the Police Lose All Legitimacy,” *Week*, May 29, 2020, <https://theweek.com/articles/917040/what-happens-when-police-lose-all-legitimacy>.

marched near police officers.⁴⁰² A vigil community members held later that day was peaceful during daylight hours but became increasingly volatile as the evening hours approached. Rioters vandalized and looted over 30 businesses that night, including a convenience store, a check-cashing store, a boutique, and several other commercial establishments near the site of Brown's death.⁴⁰³ 9-1-1 dispatch received multiple calls for gunshots that night, and videos showed looters stealing tires and smashing car windows as disorder spread through parts of the city.⁴⁰⁴ That first night of violence would last until around 3:30 a.m. on Monday, August 11, 2014, during which police arrested over 30 people for theft, assault, or burglary; two police officers suffered injuries, one of which was hit with a brick; and rioters fired on a police helicopter and later burned a QuikTrip gas station to the ground.⁴⁰⁵ In response to the violence and rioting, nearby school districts canceled classes or delayed opening, and several restaurants announced temporary closings.⁴⁰⁶

A cycle of daytime peaceful protests and demonstrations with nighttime lawlessness emerged in the days that followed. Civic leaders, politicians, and community leaders non-violently marched in protest during the daylight hours while shootings and looting became commonplace in the evening.⁴⁰⁷ Social activists such as Al Sharpton and Jesse Jackson traveled to Ferguson, pleading for an end to the disorder and violence.⁴⁰⁸ The intensity of the evening disturbances would ebb and flow for 19 nights until the end

⁴⁰² Associated Press, "Fatal Police Shooting of Michael Brown Sparks Protests in Missouri," NBC News, August 10, 2014, <https://www.nbcnews.com/storyline/michael-brown-shooting/fatal-police-shooting-michael-brown-sparks-protests-missouri-n177081>.

⁴⁰³ Institute for Intergovernmental Research, *After-Action Assessment*, 15.

⁴⁰⁴ "Looting Erupts in Missouri After Vigil," August 11, 2014, *New York Times*, video, 0:52, <https://www.nytimes.com/video/us/100000003049670/looting-erupts-in-missouri-after-vigil.html>.

⁴⁰⁵ Giegerich, Bogan, and Bell, "Ferguson Day Two Wrapup."

⁴⁰⁶ Ian Froeb, "Several Ferguson Restaurants Close Today after Protests," *St. Louis Post-Dispatch*, August 11, 2014, https://www.stltoday.com/entertainment/dining/restaurants/off-the-menu/several-ferguson-restaurants-close-today-after-protests/article_bb110462-8976-5c76-bff4-8ace9acb9b0e.html.

⁴⁰⁷ Chuck Raasch, "Since Brown Shooting, It's Been Night-and-Day in the Community," *St. Louis Post-Dispatch*, August 13, 2014, https://www.stltoday.com/news/local/crime-and-courts/since-brown-shooting-its-been-night-and-day-in-the-community/article_00c8262c-1c1f-5b06-b07f-b91552a6acd2.html.

⁴⁰⁸ Lilly Fowler, "Al Sharpton Arrives in St. Louis, Seeking Justice for Michael Brown," *St. Louis Post-Dispatch*, August 12, 2014, https://www.stltoday.com/lifestyles/faith-and-values/al-sharpton-arrives-in-st-louis-seeking-justice-for-michael-brown/article_17152c80-a923-53a4-9ec9-84363709129b.html.

of August 2014. After several nights of calm, the police in Ferguson reduced their overt presence in the city.⁴⁰⁹ By the end of August 2014, more than 230 people had been arrested for charges including burglary and gun or drug possession; one person had been shot after pointing a gun at a police officer; 29 businesses had been burglarized during looting; rioters had set multiple fires, with one business burned entirely to the ground; and the city had incurred approximately \$5 million in property damage.⁴¹⁰ The lawlessness of August 2014 subsided in the months leading to the fall season. On November 24, 2014, the grand jury empaneled to investigate Brown's death returned its decision not to indict Wilson, and violence again erupted.

The outrage and anger at the grand jury's decision not to indict Officer Wilson was immediate and fierce, surpassing that of the summer. In a press conference held at 1:30 a.m. the day after the grand jury's decision, St. Louis County Police Chief Jon Belmar said of the unrest, "What I've seen tonight is probably much worse than the worst night we ever had in August."⁴¹¹ Continuing, Belmar reported hearing over 150 shots fired that night, expressing his surprise he had not been hit. Large swaths of businesses were again set aflame, as were multiple cars at several automobile dealerships. During the violence, at least 20 buildings were entirely destroyed by fire.⁴¹² Looting was widespread, with some locations suffering riot damage in both August and November. So numerous were the shootings that the Federal Aviation Administration diverted 10 flights scheduled to land at Lambert-St. Louis Airport that night, until either the shootings subsided or the weather

⁴⁰⁹ Joel Currier, "State and County Police to Scale Back Presence in Ferguson," *St. Louis Post-Dispatch*, August 27, 2014, https://www.stltoday.com/news/local/metro/state-and-county-police-to-scale-back-presence-in-ferguson/article_3a99312e-33d4-5c79-8fda-32c3f43cf594.html.

⁴¹⁰ Jeremy Kohler, "Ferguson by the Numbers: Breakdown since Protests Began," *St. Louis Post-Dispatch*, November 22, 2014, https://www.stltoday.com/news/local/crime-and-courts/ferguson-by-the-numbers-breakdown-since-protests-began/article_5ec448a4-3f08-5861-813c-d03bed1c9784.html.

⁴¹¹ "In Ferguson: Businesses Burn, Police Cars Torched as Violence 'Much Worse' Than August," *St. Louis Post-Dispatch*, November 25, 2014, https://www.stltoday.com/news/local/crime-and-courts/in-ferguson-businesses-burn-police-cars-torched-as-violence-much-worse-than-august/article_47fc89b3-b0d2-5c41-a1fa-f4636673aac0.html.

⁴¹² "The Damage in Ferguson," *New York Times*, November 25, 2014, <https://www.nytimes.com/interactive/2014/11/25/us/ferguson-photos.html>.

allowed planes to land on a different runway.⁴¹³ Rioters targeted police cars, stealing an AR-15 rifle from one and setting another two aflame with Molotov cocktails.

Missouri Governor Jay Nixon ordered 3,400 National Guard members into Ferguson to quell the violence, which subsided as the week continued toward Thanksgiving. The damage, however, had been done. The riots signaled to the FPD, and those watching on television, lost legitimacy with the citizenry. Businesses were destroyed, injuries were sustained, and parts of Ferguson lay in ruin. Estimates of the damage from the August 2014 disturbances amounted to over \$5 million, but by the second wave of riots in November 2014, the total financial impact increased to over \$20 million.⁴¹⁴

It is worth remembering that while Eric Garner's and Michael Brown's deaths occurred within weeks of each other, they shared a connection beyond temporal proximity. While on his journey from Baltimore to Brooklyn to kill Officers Liu and Ramos, Ismaaiyl Brinsley invoked Brown's name in social media posts declaring his intentions to harm police officers. Thus, the murders of Officers Liu and Ramos might be seen as at least partially attributable to Brown's death.

B. CIVILIAN BOARDS AND COMMISSIONS

1. Before

The FPD lacked civilian board oversight of police misconduct complaints when Michael Brown died; the agency's Internal Affairs unit investigated citizen complaints at the time. However, the DOJ's *Investigation of the Ferguson Police Department* report found that the system "[failed] to respond meaningfully to complaints of officer

⁴¹³ Doug Moore, "Print Story: Violence Erupts after Grand Jury Declines to Indict Darren Wilson," *St. Louis Post-Dispatch*, November 24, 2014, https://www.stltoday.com/news/local/crime-and-courts/print-story-violence-erupts-after-grand-jury-declines-to-indict-darren-wilson/article_239f41f4-adcf-565c-9259-77a7fb2d67c3.html.

⁴¹⁴ Elliott Davis, "The Cost Taxpayers Will Have to Shell Out for Ferguson," Fox 2 Now, December 9, 2014, <https://fox2now.com/news/you-paid-for-it/the-cost-taxpayer-will-have-to-shell-out-for-ferguson/>.

misconduct.”⁴¹⁵ The report found that the FPD discouraged both *citizens from making* complaints against officers and *officers from accepting* citizen complaints. Further, the report observed that there was little likelihood the FPD would investigate citizen complaints of police misconduct under this system.⁴¹⁶ On the infrequent occasions the agency accepted a complaint, the FPD usually ruled in the officer’s favor, even when his version of events conflicted with objective evidence.⁴¹⁷ Each of these failures to respond to civilian complaints directly opposed established FPD policies. In sum, the report found that FPD leadership sent its officers the message that they could disregard civilian complaint policy with little fear of punishment.⁴¹⁸

2. In Response

In response to Brown’s death, Ferguson city officials met with the National Association for Civilian Oversight of Law Enforcement (NACOLE) in November 2014.⁴¹⁹ NACOLE is a non-profit professional network of nationwide police review boards, consulted by city officials to advise on creating civilian review panels. After the consultation, the city established a Civilian Review Task Force to include community input with formulating recommendations for a Ferguson Civilian Review Board (FCRB). The Task Force compiled its proposals in an October 2015 report, which listed the FCRB’s mission: “foster respect, trust, cooperation, and accountability between the Ferguson Police

⁴¹⁵ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (Washington, DC: Department of Justice, 2015), 82, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. While the DOJ did not find evidence to charge Officer Darren Wilson with civil rights violations in Michael Brown’s death, a parallel investigation into the Ferguson Police Department revealed a pattern and practice of unlawful conduct within the agency. Based on this report’s finding, the Ferguson Police Department entered into a consent decree with the DOJ on April 19, 2016.

⁴¹⁶ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 83.

⁴¹⁷ Department of Justice, Civil Rights Division, 85.

⁴¹⁸ Department of Justice, Civil Rights Division, 86.

⁴¹⁹ “Civilian Review Task Force,” City of Ferguson, accessed November 10, 2020, <http://www.fergusoncity.com/632/Civilian-Review-Task-Force>.

Department and the greater Ferguson community.”⁴²⁰ In April 2016, the City of Ferguson and the FPD entered into a consent decree with the DOJ, resulting from an investigation that revealed illegal policing practices (discussed in detail below).⁴²¹ A central stipulation of the consent decree was that the city and police department accept the Task Force recommendations and have the FCRB functional by March 2017.⁴²²

The FCRB is currently operational, its bylaws describing both the board’s composition and mission.⁴²³ The board consists of nine members appointed by the City Council, each serving three-year terms. Two must be residents from each of the city’s three wards, and three are “at-large” members from Ferguson’s civic or business community. Ferguson’s elected officials and government employees (including police officers) are ineligible to become members. Police misconduct complaint investigations now include civilian oversight and input.⁴²⁴ Under the new system, the FPD retains responsibility for investigating civilian complaints. However, the FCRB reviews the agency’s findings and presents disciplinary recommendations to the FPD chief. The FCRB can request additional

⁴²⁰ Ferguson Civilian Review Board Task Force, *Recommendations of the Ferguson CRB Task Force* (Ferguson, MO: Ferguson City Council 2015), 5, <http://www.fergusoncity.com/DocumentCenter/View/2257/RecommendationsoftheCRBTaskForce?bidId=>.

⁴²¹ The Violent Crime Control and Law Enforcement Act of 1994 authorized the DOJ Civil Rights Division to enforce “the civil prohibition on a ‘pattern or practice’ of policing that violates the Constitution or other federal laws.” “Pattern-or-practice” investigations examine allegations of *systemic* police misconduct rather than the actions of *individual* officers. The DOJ issues findings and recommendations in a publicly available report when it substantiates such allegations. These investigations can result in a federal court-mandated consent decree with the subject agency, managed by an independent monitor that periodically reports progress to the issuing court. Under the terms of a consent decree, the DOJ and subject agency negotiate and agree to DOJ-recommended reforms to remedy the illegal practices. Consent decrees end when the court finds the subject agency has met the reform requirements for a sustained period. Alternatively, the DOJ may enter into a “memorandum of agreement” when an agency’s pattern-or-practice issues are narrow, and for which evidence exists that the agency can make corrections without ongoing court oversight. See Department of Justice, Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994–Present* (Washington, DC: Department of Justice, 2017), 1–2, 21, <https://www.justice.gov/crt/file/922421/download>.

⁴²² U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree* (Clayton: U.S. District Court, Eastern District of Missouri Eastern Division, 2016), <https://fergusonmonitor.com/wp-content/uploads/2018/06/Consent-Decree.pdf>.

⁴²³ Ferguson Civilian Review Board, “Bylaws of the Ferguson Civilian Review Board, Ferguson, Missouri” (Ferguson, MO: City of Ferguson, 2018), <https://www.fergusoncity.com/DocumentCenter/View/3827/FCRB---Bylaws-v4>.

⁴²⁴ “Your Guide to the Police Complaint Process & the Ferguson Civilian Review Board,” City of Ferguson, accessed October 14, 2020, <https://www.fergusoncity.com/DocumentCenter/View/3188/Ferguson-Civilian-Review-Board-Brochure-Final>.

information from the FPD as needed to help make its recommendations, but the chief remains the final authority on disciplinary penalties.

However, a news report from the August 2019 board session revealed the FCRB was not currently operating at full capability.⁴²⁵ During the session, the board barely achieved quorum when only five of the nine members appeared on time. Those members present voted to dismiss a non-present member who had failed to attend the previous *two* meetings without an excusal. Further, public participation was low, with just one woman in the gallery watching the proceedings that day. The woman was a former member of the Civilian Review Task Force, the group that helped create the FCRB; she told a reporter she was usually the only person who attended. Before closing the meeting, FCRB members voiced persistent difficulty getting the police department to comply with consent decree rules, saying the agency was not forthcoming with documents and materials the board needed to investigate misconduct allegations.

3. Cynefin Analysis

While the FPD did not have civilian oversight of police misconduct investigations before Brown's death, the internal investigation policy in place then allows for Cynefin analysis. Those internal mechanisms operated within the *obvious/simple* domain. In this domain, established policy and a repeatable standard operating procedure were supposed to guide misconduct complaint investigations.⁴²⁶ However, the lack of managerial oversight indicates oversimplification of the process, failing to ensure policy compliance or discover wanton officer disregard. After the shooting, the FPD entered the *complicated* domain, first when it sought the expertise of NACOLE to guide creating a civilian board, and then later when following consent decree mandates relevant to the board's operation.

⁴²⁵ Christine Byers, "A Woman Knits, a Board Member Is Voted Out as Ferguson Civilian Review Board Meets," *St. Louis Post-Dispatch*, August 9, 2019, https://www.stltoday.com/news/local/govt-and-politics/a-woman-knits-a-board-member-is-voted-out-as-ferguson-civilian-review-board-meets/article_db779e32-7373-5098-b8a5-fe2fe512ece6.html.

⁴²⁶ Kurtz and Snowden, "The New Dynamics of Strategy," 468.

The FPD required an informed diagnosis, consulting with and getting guidance from experts in the field, and following the domain’s “sense-analyze-respond” cycle.⁴²⁷

C. IMPROVING OR REPLACING LEADERSHIP

1. Before

Chief Thomas Jackson commanded the FPD when Brown died, having led the agency since 2010.⁴²⁸ As an experienced police executive, he had served in the SLCPD for 31 years before joining the FPD.⁴²⁹ He had held various roles in that larger agency, including SWAT supervisor, hostage negotiator, airplane and helicopter pilot, and undercover detective.⁴³⁰ Within 13 minutes of the shooting, officers at the scene informed Chief Jackson of the events unfolding.⁴³¹ Shortly after, he asked the SLCPD to assume the shooting investigation, as discussed above.

2. In Response

Chief Jackson was heavily criticized for the FPD’s handling of Brown’s crime scene and the perception that the department had mismanaged protests. In September 2014, one month after the shooting, he responded to those criticisms with apologies in a video message directed to the Brown family and community.⁴³² Responding to the video, some Ferguson residents found Chief Jackson’s words inadequate and demanded his resignation, which he refused.⁴³³ In November 2014, Jackson again brushed suggestions that he resign,

⁴²⁷ Snowden and Boone, “A Leader’s Framework,” 73.

⁴²⁸ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 7.

⁴²⁹ Christine Byers, “Embattled Ferguson Police Chief Resigns; Protests Resume,” *St. Louis Post-Dispatch*, March 12, 2015, https://www.stltoday.com/news/local/crime-and-courts/embattled-ferguson-police-chief-resigns-protests-resume/article_3cd9e079-8dd5-523d-a84d-335d73a714f9.html.

⁴³⁰ Natalie DiBlasio, “Who Is Ferguson Police Chief Thomas Jackson?,” *USA Today*, August 19, 2014, <https://www.usatoday.com/story/news/nation/2014/08/19/ferguson-police-chief-thomas-jackson/14284829/>.

⁴³¹ Institute for Intergovernmental Research, *After-Action Assessment*, 6.

⁴³² Julie Bosman, “In a Video, Police Chief of Ferguson Apologizes,” *New York Times*, September 25, 2014, <https://www.nytimes.com/2014/09/26/us/ferguson-police-chief-apology-michael-brown.html>.

⁴³³ Elliott C. McLaughlin and Ana Cabrera, “Ferguson Police Chief: I Will Not Step Down,” CNN, September 29, 2014, <https://www.cnn.com/2014/09/25/us/ferguson-michael-brown-police-chief-apology/index.html>.

telling CNN during the civil upheavals in Ferguson that month “I intend to see this thing through.”⁴³⁴

Chief Jackson’s tenure, however, would end on March 19, 2015. Chief Jackson and Ferguson city officials mutually decided on his separation after the DOJ’s “pattern-and-practice” findings detailed his failures heading the FPD.⁴³⁵ The DOJ’s *Investigation of the Ferguson Police Department* revealed examples of his involvement in the FPD’s illegal practices; these acts directly resulted in the agency’s entering the consent decree in April 2016. Some of the misconduct under his watch included abusively using law enforcement tools (like tickets) as revenue streams to fill city coffers; suggesting the city reach revenue goals by hiring additional officers; changing officers’ schedules to increase ticket-writing revenue; and arresting suspects with less-than-probable cause.⁴³⁶ Further, the DOJ found that Chief Jackson had poorly complied with other FPD regulations, including failing to monitor use-of-force reports; never reviewing other supervisors’ justifications for officers’ use of force; and keeping insufficient records of disciplinary actions.⁴³⁷

3. Cynefin Analysis

Chief Jackson’s FPD career ended when the DOJ report revealed his complicity in the department’s illegal practices and his failure to monitor internal department operations. His oversight of the agency was in a problematic state of the *obvious/simple* domain at the time of Brown’s shooting, as evident in his desire to make a complex problem (agency funding) seem simple (using officers to generate revenue)—this oversimplification of the process affected the police–community relationship (discussed below).⁴³⁸ His removal marked the FPD’s entering the *complex* domain, an attempt to emerge from the period of

⁴³⁴ Sara Sidner, Catherine E. Shoichet, and Julian Cummings, “Ferguson Police Chief Thomas Jackson Resigns,” CNN, March 11, 2015, <https://www.cnn.com/2015/03/11/us/ferguson-police-chief/index.html>.

⁴³⁵ Sidner, Shoichet, and Cummings.

⁴³⁶ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 2, 10, 13, 23.

⁴³⁷ Department of Justice, Civil Rights Division, 38–41.

⁴³⁸ Snowden and Boone, “A Leader’s Framework,” 73.

unpredictability after Brown’s death.⁴³⁹ Since Jackson’s resignation, the FPD has changed leadership five times, indicating the agency’s use of the “probe-sense-respond” cycle while probing management options that best provide stability.⁴⁴⁰

D. ADOPTING COMMUNITY-ORIENTED POLICING

1. Before

The FPD did not strategically embrace the community-oriented policing philosophy before Brown’s death. In January 2013, Chief Jackson authorized FPD General Order 220.00, which outlined the FPD’s *Crime Prevention and Community Policing* policy.⁴⁴¹ The FPD executed its community-oriented policy programmatically, differing from the institutional implementation sovereigns suggest. The order designated a “community relations officer” who also serves as “crime prevention officer.” The position involved duties closer to those of a crime analyst, such as reviewing crime reports, rather than responsibilities that foster community partnerships. While the FPD directed patrol officers to participate in community policing, their duties were vague and non-mandatory. For example, the order required officers to “create an effective working partnership between the community and police” when “not on assignment” but failed to provide methods to do so.⁴⁴²

The DOJ’s *Investigation of the Ferguson Police Department* found that before Brown’s death, the “FPD moved away from the modest community policing efforts it previously had implemented, reducing opportunities for positive police–community interactions, and losing the little familiarity it had with some African-American neighborhoods.”⁴⁴³ The FPD’s policy deficiencies were glaring, indicating little concern

⁴³⁹ Snowden and Boone, 74.

⁴⁴⁰ Jesse Bogan, “Ferguson Hires Police Captain from Atlanta Suburb as Its Next Chief,” *St. Louis Post-Dispatch*, June 26, 2019, https://www.stltoday.com/news/local/metro/ferguson-hires-police-captain-from-atlanta-suburb-as-its-next-chief/article_2b94d937-1806-5644-9425-f8e8a1bedae1.html.

⁴⁴¹ Ferguson Police Department, *General Orders* (Ferguson, MO: City of Ferguson, 2011), 201, <http://www.fergusoncity.com/DocumentCenter/View/2230/Ferguson-Police-Department-General-Orders?bidId=>.

⁴⁴² Ferguson Police Department, 204.

⁴⁴³ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 6.

for fostering an effective program. For example, the single FPD community policing officer, in addition to being the crime prevention officer, was *also* the public relations liaison. No other officers held substantial roles in the community-oriented policing initiative. As another example, the FPD did not maintain geographic consistency in officer assignments. This deployment style resulted in officers failing to become familiar with the people and communities they served.

2. In Response

In its investigation report, the DOJ recommended that the FPD implement a “robust system of true community policing” while providing several specific techniques.⁴⁴⁴ The report suggested that the FPD involve the entire community while developing the plan, departing from the department’s internally formulated policy. The suggestions included increasing opportunities for the FPD to interact with the public in informal and social contexts, including police athletic leagues. The DOJ also suggested the agency modify officer deployment, shortening the shift length and maintaining consistency in geographic assignments to foster community interaction. Finally, the report recommended the department teach its officers the mechanics of community policing and their role in implementing the program, and create a system to evaluate performance. U.S. Attorney General Eric Holder commented on the FPD, saying, “I think it’s pretty clear that the need for wholesale change in the department is appropriate.”⁴⁴⁵ He made the statement two months after Brown’s death, but changes to the FPD’s community-oriented policing program would not occur until it entered into the consent decree in April 2016.

By August 2016, the FPD began the shift toward the new model of community-oriented policing.⁴⁴⁶ Each of the policy modifications brought the department closer to compliance with the DOJ’s consent decree. The department required officers to get out of

⁴⁴⁴ Department of Justice, Civil Rights Division, 90.

⁴⁴⁵ Trymaine Lee, “DOJ Offers Police Training in Ferguson,” MSNBC, November 7, 2014, <https://www.msnbc.com/msnbc/doj-offers-police-training-ferguson-msna454226>.

⁴⁴⁶ Kelly Moffitt, “3 Months in, Ferguson’s New Police Chief Delrish Moss Reflects on the Job,” St. Louis Public Radio, August 14, 2016, <https://news.stlpublicradio.org/show/st-louis-on-the-air/2016-08-14/3-months-in-fergusons-new-police-chief-delrish-moss-reflects-on-the-job>.

their cars and meet community members even when not on assignment to build positive relationships. FPD leadership took steps to formally introduce its officers to the community at local meetings and gatherings, breaking down communication barriers. Then-Chief Delrish Moss, appointed a year after Chief Jackson's resignation, described his philosophy of community-oriented policing as "[policing] at the pleasure of the community, not at the peril of the community."⁴⁴⁷ Additionally, FPD officers assumed geographic consistency in their assignments.⁴⁴⁸ By June 2019, a progress report on the FPD's compliance with the community-policing goals revealed the agency had taken significant steps toward complying with DOJ direction.⁴⁴⁹

3. Cynefin Analysis

The FPD operated in the *obvious/simple* domain in its approach to community-oriented policing before Brown's death. The agency codified its community-oriented policing program in written policy, which included some "best practices" in the order, but its oversimplification of implementation requirements led to the program's failure. After Brown's death, the agency pivoted to the *complicated* domain, using the "sense-analyze-respond" cycle in relying on DOJ experts' direction as it endeavored to comply with the terms of the consent decree.

E. ENHANCING COMMUNITY ENGAGEMENT

1. Before

FPD efforts at community engagement before Brown's death were deficient, much as its community-oriented policing program was. General Order 220.00, the FPD's community-oriented policing policy, lacked descriptive methods of outreach and relationship building. To illustrate, it listed suggestions unproductive at engaging the

⁴⁴⁷ Moffitt.

⁴⁴⁸ "Services & Programs," City of Ferguson, accessed November 12, 2020, <https://www.fergusoncity.com/94/Services-Programs>.

⁴⁴⁹ Ferguson Monitor, "Appendix A: A Summary of the City's Compliance with the Year Three Workplan during the Reporting Period," in *Independent Monitor's Spring 2019 Report* (Ferguson, MO: Ferguson Monitor, 2019), 2–4, <https://fergusonmonitor.com/wp-content/uploads/2019/09/118-1.-Appendices-to-Spring-2019-Report.pdf>.

community in a meaningful way, such as providing citizens with crime statistics or “establishing community groups wherever and whenever the need is identified.”⁴⁵⁰ Further, the city’s reliance on law enforcement fees as a central revenue source, as described above, created a two-fold problem. Officers alienated the community with aggressive, revenue-motivated enforcement, and the feeling of constant pressure to produce revenue dissuaded them from exploring opportunities to engage the community in a significant way.⁴⁵¹ The DOJ’s report offers an example of how the FPD failed to engage with the public: officers could not get out of their cars and play basketball with kids even if they wanted to because the FPD had removed all basketball hoops under city ordinance. In summarizing the FPD’s community engagement efforts, the DOJ’s *Investigation of the Ferguson Police Department* said, “Ferguson’s . . . efforts appear to have always been modest, but have dwindled to almost nothing in recent years. FPD has no . . . community engagement plan.”⁴⁵²

2. In Response

The DOJ’s report shed light on the FPD’s failure to take part in community engagement, and the consent decree detailed the steps required to correct its course.⁴⁵³ Some of these directives included creating an FPD–community engagement plan, with input from a steering committee made up of Ferguson residents; hosting and participating in facilitated group dialogues between officers and community members, requiring each FPD officer to attend at least one series of three meetings; starting a police explorer program to teach young people police-related skills and help with outreach; and establishing athletic, art, and music programs to foster positive interactions. In February 2020, Natasha Tidwell, the Ferguson federal monitor overseeing FPD’s compliance with the consent decree, reported that these efforts were “largely stagnant” due to budgetary

⁴⁵⁰ Ferguson Police Department, *General Orders*, 202.

⁴⁵¹ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 87.

⁴⁵² Department of Justice, Civil Rights Division, 87.

⁴⁵³ U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree*, 5–7.

constraints.⁴⁵⁴ However, in June 2020, the group dialogues required to formulate an engagement plan were still ongoing.⁴⁵⁵

3. Cynefin Analysis

The FPD's approach to community engagement operated within the *disorder* space before Brown's shooting, the state Kurtz and Snowden describe as "uncertainty about uncertainty."⁴⁵⁶ The agency's community approach focused on revenue generation, and some officers engaged in abusive and illegal practices against the citizenry. The lack of consensus between stakeholders in public safety (e.g., FPD leadership, officers, and the community) led the agency to see the population as a revenue source, leaving officers split between leadership pressures and a desire to engage positively with the public. The agency entered the *complicated* domain when entering into the consent decree with the DOJ, with expert advisors providing analytical guidance on how to proceed, causing the agency to enter the domain's "sense-analyze-respond" cycle.⁴⁵⁷

F. EMPHASIZING DE-ESCALATION, PRESERVATION OF LIFE, AND ADOPTING LESS-LETHAL TECHNOLOGIES

1. Before

Before Brown's death, the FPD's use-of-force, de-escalation, preservation-of-life, and less-lethal technologies regulation conformed to many sovereign policy recommendations. FPD General Order 410.00 stated that the agency "recognize [d] and respect [ed] the value and integrity of each human life."⁴⁵⁸ While not explicitly required by regulation or methods provided, de-escalation was the goal in the agency's authorization

⁴⁵⁴ Sophie Hurwitz, "Ferguson 'Largely Stagnant,'" *St. Louis American*, February 20, 2020, http://www.stlamerican.com/news/local_news/ferguson-largely-stagnant/article_6f3639ee-5370-11ea-8bf0-13afb607cfac.html.

⁴⁵⁵ Transcript of Status Conference via Videoconference, United States v. City of Ferguson, no. 4:16-CV-180-CDP (E.D. Mo. 2020), <https://fergusonmonitor.com/wp-content/uploads/2020/06/Transcript-of-2020.06.04-Status-Conference.pdf>.

⁴⁵⁶ Kurtz and Snowden, "The New Dynamics of Strategy," 480.

⁴⁵⁷ Snowden and Boone, "A Leader's Framework," 73.

⁴⁵⁸ Ferguson Police Department, *General Orders*, 298.

of several less-lethal technology options. In addition to expandable batons, agency policy allowed officers to use tear gas, OC spray, CEDs, and impact munitions. Officers were to use these devices in a manner that would “best de-escalate the incident and bring it under control in a safe manner.”⁴⁵⁹ In practice, however, FPD officers often operated in violation of those policies.

Indeed, the DOJ investigation found that FPD officers routinely ignored use-of-force policies at the time of Brown’s death.⁴⁶⁰ They engaged in a pattern of excessive force and escalated confrontations with citizens they believed were non-compliant or resisting arrest.⁴⁶¹ Further, FPD officers tended to use unnecessary force against vulnerable populations, such as juveniles and people with cognitive or mental health issues, actions that went against policy sovereigns’ recommendations. Officers also used CEDs outside of the agency’s guidelines, using the devices when less force would have been sufficient. For example, an FPD supervisor used a CED to elicit pain compliance from a woman refusing to remove a bracelet while being processed in the city jail, even as five other officers were present and she did not present a threat.⁴⁶²

2. In Response

The consent decree heralded many changes to the use-of-force, de-escalation, preservation-of-life, and less-lethal technology guidelines for the agency. The agreement directed the FPD to build policies and evaluative systems to ensure the agency maintained an “unwavering commitment to protecting human life, and to upholding the value and dignity of every person.”⁴⁶³ To that end, the agency committed to a use-of-force model that established clear policy, trained officers on that policy, and mandated that supervisors ensure officer compliance. The goal was to give officers the training and skills they needed

⁴⁵⁹ Ferguson Police Department, 302.

⁴⁶⁰ Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 38.

⁴⁶¹ Department of Justice, Civil Rights Division, 28.

⁴⁶² Department of Justice, Civil Rights Division, 29.

⁴⁶³ U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree*, 30.

for optimal decision-making and to learn ways of resolving conflicts without force.⁴⁶⁴ De-escalation is a recurring requirement in the consent decree, with multiple prompts directing that officers attempt to diffuse tense situations rather than automatically resorting to force.⁴⁶⁵

Regarding less-lethal technologies, the consent decree limited their use to instances when a subject attacked another person and officers founds that less-intrusive measures were (or would be) ineffective at ending the attack.⁴⁶⁶ Further, the ruling codified several CED policy restrictions, such as prohibiting officers from using them for pain compliance, as occurred in the bracelet incident above.⁴⁶⁷ Additionally, the consent decree required that officers justify *each instance* of applying a less-lethal device on a subject, rather than merely justifying its *use*.⁴⁶⁸ In June 2019, the federal monitor reported that the FPD had thus far significantly complied with the consent decree's requirements.

3. Cynefin Analysis

Before Brown's death, the FPD was in the *obvious/simple* domain in the area of de-escalation, preservation of life, and adoption of less-lethal tools for its officers. While the department dictated established practices in its use-of-force guidelines, leadership did not inquire whether or how officers followed those guidelines, leading to abuses. When the consent decree enhanced FPD policy, the changes it dictated moved the agency into the *complicated* domain, causing a requisite switch from "best practice" to "good practice," an identified feature of this domain.⁴⁶⁹

⁴⁶⁴ U.S. District Court, Eastern District of Missouri Eastern Division, 36.

⁴⁶⁵ U.S. District Court, Eastern District of Missouri Eastern Division, 41.

⁴⁶⁶ U.S. District Court, Eastern District of Missouri Eastern Division, 32.

⁴⁶⁷ U.S. District Court, Eastern District of Missouri Eastern Division, 36.

⁴⁶⁸ U.S. District Court, Eastern District of Missouri Eastern Division, 36–38.

⁴⁶⁹ Snowden and Boone, "A Leader's Framework," 71.

G. MEDIA STRATEGY AND PUBLICLY DIRECTED STATEMENTS

1. Before

Before Brown's death, the FPD community relations officer was responsible for facilitating communication between the agency and the media.⁴⁷⁰ As discussed above, this officer filled multiple roles, having crime analysis duties while also being the FPD's public relations liaison. This officer represented the FPD in relaying crime and investigation-related information to the press.⁴⁷¹ Additionally, the officer was responsible for providing the agency's entire membership with guidance on press releases and interviews.⁴⁷² The FPD allocated little resources, just one officer, to its media strategy, failing to utilize the press as an avenue to promote its good work positively.

2. In Response

In the immediate aftermath of Brown's death, the intensity of interest in the shooting overwhelmed the FPD's media strategy. The agency provided a brief media statement on the day of the shooting but offered little follow-up, at the direction of a public relations firm the city had hired.⁴⁷³ Meanwhile, the SLCPD, the agency responsible for the shooting investigation, did not hold a press conference until nearly 24 hours after Brown's death; Chief Jackson did not speak at this briefing.⁴⁷⁴ These delays and lack of information led to rumors and social media commentary developing a false narrative of events. Complicating matters, officials were *reactively* releasing information in response to media inquiries rather than *proactively* messaging the public as is recommended by policy sovereigns.⁴⁷⁵

⁴⁷⁰ Ferguson Police Department, *General Orders*, 202.

⁴⁷¹ Ferguson Police Department, 468.

⁴⁷² Ferguson Police Department, 203.

⁴⁷³ Institute for Intergovernmental Research, *After-Action Assessment*, 92.

⁴⁷⁴ Institute for Intergovernmental Research, 91.

⁴⁷⁵ Institute for Intergovernmental Research, 92.

Chief Jackson held his next press conference nearly a week after Brown's death, and the community was convinced the delay was meant to cover up police misconduct.⁴⁷⁶ However, the briefing was poorly executed. During the press conference, Chief Jackson revealed that Officer Wilson's reason for approaching Brown was to stop him as a suspect in a store robbery, and provided a security video of the alleged crime. Police commanders from outside agencies assisting the FPD with protests had urged Chief Jackson not to release this information, advising him that implying Brown was a criminal would inflame community sentiments. The commanders' assessments were correct, as one said, "You could tell we [law enforcement] had taken a step back" from restoring calm in the community.⁴⁷⁷

The FPD's media strategy was so ineffective that in February 2015, the Illinois Association of Chiefs of Police offered a training session called "Media Relations Training: Don't Be the Next Ferguson, Missouri!" Rick Rosenthal, the course's instructor, commented, "The bottom line is there was an information vacuum from the Ferguson Police Department, and the Twitiverse filled that vacuum."⁴⁷⁸ The *After-Action Assessment of the Police Response in Ferguson, Missouri*, found that the FPD's limited public information offerings and reactive public communications set a negative tone after Brown's death.⁴⁷⁹ However, evidence suggests there have not been improvements to the FPD's media policy, even with leadership changes.

As mentioned above, the City of Ferguson hired Delish Moss in 2016 to serve as chief after Chief Jackson's resignation. Before his appointment, Moss was a major with the Miami Police Department, assigned to that department's media relations unit for over

⁴⁷⁶ Institute for Intergovernmental Research, 92.

⁴⁷⁷ Institute for Intergovernmental Research, 21.

⁴⁷⁸ Lauren Zumbach, "After Ferguson, Area Police Taking Closer Look at Press Relations," *Chicago Tribune*, February 22, 2015, <https://www.chicagotribune.com/suburbs/ct-orl-ferguson-police-media-training-tl-0212-20150222-story.html>.

⁴⁷⁹ Institute for Intergovernmental Research, *After-Action Assessment*, 95.

20 years.⁴⁸⁰ One of Moss's priorities then was improving communication between the department and its citizens.⁴⁸¹ Moss's media relations experience was a critical factor in the decision to hire him.⁴⁸² However, Moss left the FPD in 2018, and as of this writing, Chief Jackson's 2010 press relations order remains in effect.⁴⁸³

3. Cynefin Analysis

Chief Jackson's failure to leverage the media to communicate effectively with his community, and his reliance on established policies, indicated complacency and a slow reaction to the evolving events after Brown's death, indicators of operating within the *obvious/simple* domain.⁴⁸⁴ Little has changed in policy and practice, even after the critiques noted in the *After-Action Assessment of the Police Response in Ferguson, Missouri*. The FPD appears to have remained in the *obvious/simple* context since Brown's death, the same as before the shooting.

H. TRANSPARENCY ON PROCEDURAL PROCESSES

1. Before

The FPD maintained little to no procedural transparency before Brown's death. For example, the FPD declined to make its policies and procedures publicly available.⁴⁸⁵ In addition, some processes intended to promote transparency existed in policy but not in practice. For instance, FPD General Order 301.00, governing employee misconduct investigations, required the chief to forward information about civilian complaints

⁴⁸⁰ Associated Press, "Veteran Miami Officer Named Police Chief in Ferguson," *Chicago Tribune*, March 31, 2016, <https://www.chicagotribune.com/nation-world/ct-ferguson-police-chief-delrish-moss-20160331-story.html>.

⁴⁸¹ Richard Luscombe, "'Ready for the Challenge': Ferguson's New Police Chief Takes Over Department," *Guardian*, April 1, 2015, <https://www.theguardian.com/us-news/2016/apr/01/ferguson-new-police-chief-delrish-moss-miami>.

⁴⁸² Jason Rosenbaum, "Ferguson Picks Miami Cop to Be Next Police Chief," St. Louis Public Radio, March 31, 2016, <https://news.stlpublicradio.org/government-politics-issues/2016-03-31/ferguson-picks-miami-cop-to-be-next-police-chief>.

⁴⁸³ "Ferguson Police General Orders," City of Ferguson, accessed November 14, 2020, <https://www.fergusoncity.com/DocumentCenter/Index/233>.

⁴⁸⁴ Snowden and Boone, "A Leader's Framework," 70.

⁴⁸⁵ Institute for Intergovernmental Research, *After-Action Assessment*, 71.

investigations to a “professional standards inspector” for inclusion in an annual report.⁴⁸⁶ There is no evidence, however, that the agency followed this policy.⁴⁸⁷ It is unknown whether the report was generated or distributed.

2. In Response

The FPD has adjusted some of its practices to increase transparency since Brown’s death. The agency complied with the consent decree requirement to publish its policies and protocols online, making them available at www.fergusoncity.com/documentcenter. The site contains draft and final versions of police policy documents. Additionally, the consent decree requires the agency to generate several annual reports, such as updating law enforcement achievements and challenges, and posting them online. The agreement also requires yearly reporting of the department’s implementation and status of its efforts at complying with the consent decree terms, which are also available on the website.

The FPD has also taken independent transparency-developing action separate from the terms of the consent decree. In 2017, the department began using a record-keeping software suite donated by LEFTA systems, a technology company operated by former police officers.⁴⁸⁸ The database stores information on new officer training regiments, in-service training records, use-of-force information, and the demographic information of people subjected to FPD enforcement actions. The data collection tool allows FPD officials to collect and analyze this data and respond to community inquires and questions more quickly and accurately, improving transparency.

3. Cynefin Analysis

The FPD’s transparency protocols operated in the *obvious/simple* domain before Brown died. While agency policy called for an annual reporting of civilian complaints—a

⁴⁸⁶ Ferguson Police Department, *General Orders*, 230. This policy was in effect before the creation of the Ferguson Civilian Review Board discussed previously.

⁴⁸⁷ Institute for Intergovernmental Research, *After-Action Assessment*, 75.

⁴⁸⁸ Sophie Hurwitz, “Donated Software Intended to Increase Accountability in Ferguson Police Department,” *St. Louis American*, July 14, 2017, http://www.stlamerican.com/news/local_news/donated-software-intended-to-increase-accountability-in-ferguson-police-department/article_7f08f9ca-68d0-11e7-b4a4-53715b9cef8d.html.

“best practice” transparency technique that experts recommend—it meagerly maintained the protocol. Complacent leadership allowed the process to fail, an anticipated problem in this domain, while giving the false appearance that operations conformed with policy. After Brown’s shooting, the FPD entered the *complicated* context, guided by the directions of the consent decree and DOJ expertise, following the “good practices” that policy experts recommend.

I. BWC USE

1. Before

At the time of Brown’s death, the FPD did not use BWCs. The agency’s 54-officer department possessed only two BWCs and lacked the funds to have them installed and made operational.⁴⁸⁹

2. In Response

In the aftermath of Brown’s shooting and the rising protests, two technology companies donated nearly 50 BWCs to the FPD in August 2014, allowing each officer to wear one while on patrol.⁴⁹⁰ In the following month, problems emerged as officers used the cameras. These issues included storage shortages for digital images and unfinalized rules dictating when officers should activate the cameras.⁴⁹¹ More than a year after the shooting, the FPD had not set policies guiding retention and public dissemination of captured video.⁴⁹²

⁴⁸⁹ Nicholas J. C. Pistor, “St. Louis Area Officials Contemplate Wearable Cameras in Wake of Ferguson,” *St. Louis Post-Dispatch*, August 26, 2014, https://www.stltoday.com/news/local/metro/st-louis-area-officials-contemplate-wearable-cameras-in-wake-of-ferguson/article_08073a29-61a4-542a-89cc-9fe0c381b44c.html.

⁴⁹⁰ Denise Hollinshed, “Ferguson Police Are Using Body Cameras,” *St. Louis Post-Dispatch*, August 31, 2014, https://www.stltoday.com/news/local/crime-and-courts/ferguson-police-are-using-body-cameras/article_88e0067c-d3e6-5599-a581-a58d0022f1f8.html.

⁴⁹¹ Christine Byers, “Police: Ferguson Officer Had No Time to Activate Camera During Shooting,” *St. Louis Post-Dispatch*, September 30, 2014, https://www.stltoday.com/news/local/crime-and-courts/police-ferguson-officer-had-no-time-to-activate-camera-during-shooting/article_7deefeea-2b54-5873-9df7-40c8162629a2.html.

⁴⁹² Aamer Madhani, “Ferguson Residents Petition for Police Body Camera Rules,” *USA Today*, June 23, 2015, <https://www.usatoday.com/story/news/2015/06/23/ferguson-residents-push-for-body-camera-rules/29179439/>.

The DOJ’s consent decree would resolve these issues.⁴⁹³ The agreement required that all FPD officers, supervisors, jail workers, and any personnel who regularly interacted with the public wear BWCs while on duty. The decree also required that the city meet with a vendor to resolve its video collection and storage issues and develop policies dictating BWC activation. The order also directed that the FPD make videos publicly available within Missouri law to promote transparency and increase accountability.

Currently, the FPD’s BWC program operates under General Order 20–6.10, authorized by Chief Jason P. Armstrong in August 2020.⁴⁹⁴ This order guides when officers must wear cameras and how they are to wear them, and defines situations when they must (or must not) activate them. The policy also delineates the process to upload video recordings, defines the obligatory retention period (90 days), and the rules about who may watch the footage. The department’s BWC program is guided by a robust and detailed policy, consistent with police sovereign recommendations and the terms of the consent decree.

3. Cynefin Analysis

Since the FPD did not use BWCs before Brown’s death, the department’s actions could not be evaluated by applying a Cynefin domain in this area. After his death, the department entered the *complicated* domain, its BWC program informed by “good practices” that experts recommend and that align with the consent decree’s mandates.

J. RELEASING BWC FOOTAGE

1. Before

FPD officers did not use BWCs before Brown’s death. As such, no video release policy existed.

⁴⁹³ U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree*, 52–57.

⁴⁹⁴ Ferguson Police Department, *Body Worn Video Recorders*, General Order 20–6.10 (Ferguson, MO: City of Ferguson, 2020), <https://www.fergusoncity.com/DocumentCenter/View/3290/General-Order-BWC-FINAL-12-17-18>.

2. In Response

As noted above, the FPD began using BWCs when two companies donated cameras after Brown's death. However, by June 2015, the agency had not formulated a video dissemination policy, as required by the consent decree. FPD finalized its video release policy in December 2018.⁴⁹⁵ The policy explains that Ferguson recognizes the rapid release of video recordings containing "serious incidents" facilitates transparency between the agency and the community. Qualifying incidents include officers' use of force resulting in serious injuries, firearms discharge by officers, vehicle pursuits with severe injury or death, or a subject's death in custody. The policy also defines the maximum time the FPD is allowed to decide on releasing videos, providing the chief seven days from a "serious incident" to determine whether the department will make the video public. Additionally, the order contains privacy provisions shielding the identity of minors, crime victims, witnesses, sexual assault survivors, and other protected parties. Finally, the policy allows citizens to request video online or in person, which the FPD may redact if required by law.

3. Cynefin Analysis

As the FPD did not use BWCs at the time of Brown's death, it had no video release policy. Current FPD policy follows "good practices" established by police sovereigns and conforms to consent decree regulations, placing the FPD in the *complicated* domain for this policy dimension.

K. USING SOCIAL MEDIA

1. Before

The FPD did not maintain a presence on any social media platforms before Brown's death. The *After-Action Assessment of the Police Response in Ferguson, Missouri*, found that FPD officials "had no concept of the effect of social media until it was too late, and all they could do was play catch up with the massive amount of data being shared" about the

⁴⁹⁵ Ferguson Police Department, "Policy on Public Release of Body-Worn and In-Car Camera Footage, Including Serious Incident Recordings" (Ferguson, MO: City of Ferguson, 2018), <https://www.fergusoncity.com/DocumentCenter/View/3235/Ferguson-Footage-Sharing-Policy---FINAL-12-20-18>.

shooting.⁴⁹⁶ The FPD could not respond to the deluge of social media attention aimed in its direction. For instance, users shared posts with the hashtag #ferguson over 3.5 million times within five days of Brown's death.

2. In Response

There is little evidence that the FPD has developed a social media strategy since Brown's shooting. The only social media footprint the department maintains is a Twitter account, opened in September 2014, @FPD_PUBLIC_INFO. The page is inactive, consisting of only 30 tweets, the most recent of which were from November 2014.⁴⁹⁷ Policy sovereigns suggest that police agencies use social media communications to create constructive narratives with the community. However, a review of the still-visible FPD Twitter page indicates the agency held an antagonistic tone, focusing on arrests and enforcement rather than community outreach. The following are some examples:

"Chief Jackson tries to speak and walk with protestors who turn violent and disobedient. 2 officers injured. 7 arrests made."⁴⁹⁸

"13 people arrested last night for noise viol, resist arrest, fail to comply and 2 for language to incite violence."⁴⁹⁹

"42 arrests made at Ferguson Police Dept. this morning for Peace Disturbance."⁵⁰⁰

In contrast with police sovereigns, a search of the FPD's website and general orders did not identify a social media strategy policy.

⁴⁹⁶ Institute for Intergovernmental Research, *After-Action Assessment*, 98.

⁴⁹⁷ Ferguson Police Department (@FPD_PUBLIC_INFO), "Ferguson Police Department," Twitter, accessed November 15, 2020, https://twitter.com/FPD_PUBLIC_INFO. The account appears to have been active during the period between the end of the summer protests until two weeks before the state grand jury declined to indict Officer Wilson.

⁴⁹⁸ Ferguson Police Department (@FPD_PUBLIC_INFO), "Chief Jackson Tries to Speak," Twitter, September 26, 2014, 12:18 p.m., https://twitter.com/FPD_PUBLIC_INFO/status/515536009581174785.

⁴⁹⁹ Ferguson Police Department (@FPD_PUBLIC_INFO), "13 People Arrested," Twitter, October 3, 2014, 1:47 p.m., https://twitter.com/FPD_PUBLIC_INFO/status/518094996088819714.

⁵⁰⁰ Ferguson Police Department (@FPD_PUBLIC_INFO), "42 Arrests Made," Twitter, October 13, 2014, 10:47 p.m., https://twitter.com/FPD_PUBLIC_INFO/status/521802084673269760.

3. Cynefin Analysis

The FPD did not use social media before Brown's death. Although the agency posted sporadically on Twitter for three months after the shooting, it has not maintained an online presence since then. As such, it did not meaningfully occupy a Cynefin context either before or after Brown's shooting and cannot be categorized.

L. ENHANCING TRAINING

1. Before

Missouri's Peace Officer Standards and Training guidelines required that new police officers attend a minimum of 916 hours of basic instruction.⁵⁰¹ The state also instructed officers to complete 48 hours of in-service training over three years, consisting of courses in legal studies, interpersonal perspectives, and racial profiling. Most FPD officers received introductory and active-duty training, but most did not attend additional sessions unless they began a specialized assignment, such as investigation duty.

The DOJ's report found the FPD's officer training program, as it existed before Brown's death, inadequate on several fronts. First, officers poorly understood the legalities surrounding their powers to stop a suspect with less-than-probable cause.⁵⁰² Officers also lacked training on interacting with the mentally ill or those under the influence of drugs or alcohol, leading them to interpret a lack of compliance as resistance that necessitated the use of force.⁵⁰³ As mentioned above, de-escalation training was absent from FPD training. The report expressed criticism in finding that FPD "officers need a better knowledge of what law, policy, and integrity require, and concrete training on how to carry out their police responsibilities."⁵⁰⁴ Finally, the FPD did not implement scenario-based or adult-learning methods in its training program as is recommended by policy sovereigns.

⁵⁰¹ Institute for Intergovernmental Research, *After-Action Assessment*, 66–67.

⁵⁰² Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 23.

⁵⁰³ Department of Justice, Civil Rights Division, 37.

⁵⁰⁴ Department of Justice, Civil Rights Division, 94.

2. In Response

The FPD's consent decree directed many of the agency's training enhancements. First, the agreement required that the agency develop a committee responsible for creating basic and in-service training plans for approval by both the DOJ and federal monitor. Some procedural changes included increasing in-service training to 50 hours annually and implementing a training coordinator to monitor and track officers' progress.⁵⁰⁵ The consent decree further required the FPD to train its officers in community policing, critical thinking, and problem solving; bias-free policing (discussed more below); stop, search, and arrest; First Amendment rights; use of force; crisis intervention; BWC use; supervisory skills; accountability policy; and officer wellness techniques.⁵⁰⁶ The courts further directed that the training structure consist of scenario-based training and adult-learning techniques in addition to traditional lectures.⁵⁰⁷ By May 2019, the FPD had complied with the terms of the consent decree's training reform directions.⁵⁰⁸

3. Cynefin Analysis

The FPD maintained an *obvious/simple* approach in its training program before Brown's death, entrenched in standard operating procedures and established processes. However, in this domain, several weaknesses were evident. For example, while officers were qualified within state standards, the agency failed to incorporate police sovereign recommendations, such as de-escalation training and scenario-based instruction. This failure indicates entrained thinking, which credited old successes (state-qualified officers) to established protocols, precluding the exploration of evolved training methods. The agency now operates within the *complicated* context, using the "sense-analyze-respond" cycle, as the expertise-driven consent decree requirements guide its training program.

⁵⁰⁵ U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree*, 13–15.

⁵⁰⁶ U.S. District Court, Eastern District of Missouri Eastern Division, 71–78.

⁵⁰⁷ U.S. District Court, Eastern District of Missouri Eastern Division, 14.

⁵⁰⁸ Ferguson Monitor, "Appendix A," 6.

M. IMPLICIT BIAS AWARENESS TRAINING

1. Before

General Order 401.00, promulgated in December 2012, stated that all FPD officers would receive “bias-based profiling” training, the department’s term for racial profiling, every year.⁵⁰⁹ Racial profiling is an explicit expression of bias whereas implicit bias affects people subconsciously. Thus, the FPD did not conduct training to minimize implicit bias before Brown’s death. The agency also failed to provide cultural awareness training before Brown’s death. Some officers reported in the *After-Action Assessment* that the agency had not held such sessions since 1995.⁵¹⁰

2. In Response

On November 6 and 7, 2014, the DOJ’s Office of Community Oriented Policing Services hosted a “Fair and Impartial Policing” training session for command-level members of the FPD.⁵¹¹ Leadership from St. Louis County, St. Louis Metropolitan, and Missouri Highway Patrol police departments were also present, each having assisted the FPD in managing the protests and riots after Brown’s death. The session taught officers how implicit bias affects their behavior, and the detrimental impact of biased policing on their relationship with the community. The sessions were led by Dr. Lorie Fridell, an expert on racially biased policing, and Noble Wray, a retired police chief from the Madison, Wisconsin, Police Department. Fridell and Wray would later found Fair and Impartial Policing, the company contracted by the NYPD in 2018 for its implicit bias program.

Under the terms of the consent decree, the FPD would provide its officers with annual training on implicit bias, cultural competency, cultural awareness, and the impact these topics have on police and community relations.⁵¹² The FPD’s fair and impartial

⁵⁰⁹ Ferguson Police Department, *General Orders*, 255.

⁵¹⁰ Institute for Intergovernmental Research, *After-Action Assessment*, 115.

⁵¹¹ “U.S. Department of Justice Holds Two-Day ‘Fair and Impartial Policing’ Training for St. Louis County Law Enforcement,” Department of Justice, November 6, 2014, <https://www.justice.gov/opa/pr/us-department-justice-holds-two-day-fair-and-impartial-policing-training-st-louis-county-law>.

⁵¹² U.S. District Court, Eastern District of Missouri Eastern Division, *City of Ferguson Consent Decree*, 72.

policing policy is in draft form as of October 2019 and is available for public review on the city’s website.⁵¹³ Topics in the annual course include minimizing implicit bias, the effect of implicit bias on police legitimacy, cross-cultural communication and cultural competency, and the law and legal prohibitions against discriminatory policing. The FPD’s policy warns that officers are subject to discipline for failing to attend the training or for policing in a biased fashion.

3. Cynefin Analysis

An FPD implicit bias program did not exist before Brown’s death, and its racial profiling program was sparse—and by some accounts, non-existent. As such, it did not occupy a Cynefin context in a meaningful way before Brown’s death and cannot be categorized. After Brown, the FPD entered the *complicated* domain, implementing “good practices” at the consent decree’s direction and guided by DOJ expertise.

⁵¹³ Ferguson Police Department, *Fair and Impartial Policing (Draft)*, General Order (Ferguson, MO: City of Ferguson, n.d.), <http://www.fergusoncity.com/DocumentCenter/View/3893/FPD-Fair-and-Impartial-Policing-2019-10-02-2>.

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V. BALTIMORE POLICE DEPARTMENT: FREDDIE GRAY—APRIL 12, 2015

At around 8:40 a.m. on Sunday, April 12, 2015, four Baltimore Police Department (BPD) bicycle patrol officers tried to stop 25-year-old Freddie Gray near the Gilmore Homes housing development in the Sandtown-Winchester section of the city.⁵¹⁴ The officers suspected Gray of involvement with criminal activity because he fled without provocation upon seeing them.⁵¹⁵ When police caught him, Gray had a switchblade knife clipped inside his pants, and they arrested him. Since the officers were on bicycles, they requested a department vehicle to transport Gray to the Western District BPD station. Two additional officers arrived at the arrest site in a van and assumed custody of a handcuffed Gray. Those officers then picked up another prisoner and delivered both to the station for processing.

When Gray arrived at the station, he was unconscious and in severe medical distress. Due to his condition, city paramedics responded and removed him to the University of Maryland's Shock Trauma unit.⁵¹⁶ Gray remained comatose, never regaining consciousness. He underwent several surgeries for a neck injury while lingering in the hospital but never recovered. Gray died from resultant medical complications on Sunday, April 19, 2015, one week after his arrest. An autopsy report revealed that Gray suffered a "high energy injury [to his spine] most often caused by abrupt deceleration of a rotated head on a hyperflexed neck, such as seen in shallow water diving accidents."⁵¹⁷ The autopsy concluded the neck injury that eventuated Gray's death was likely caused by his striking his head on the van's interior while being handcuffed and in leg restraints but

⁵¹⁴ "Timeline: Freddie Gray's Arrest and Death," *Baltimore Sun*, accessed September 21, 2020, <http://data.baltimoresun.com/news/freddie-gray/index.html>.

⁵¹⁵ Justin Fenton and Jessica Anderson, "Freddie Gray Repeatedly Asked for Medical Care, Police Said Monday," *Baltimore Sun*, April 20, 2015, <https://www.baltimoresun.com/news/crime/bs-md-ci-freddie-gray-arrest-documents-20150420-story.html>.

⁵¹⁶ Natalie Sherman, Chris Kaltenbach, and Colin Campbell, "Freddie Gray Dies a Week after Being Injured during Arrest," *Baltimore Sun*, April 19, 2015, <https://www.baltimoresun.com/news/crime/bs-md-freddie-gray-20150419-story.html>.

⁵¹⁷ "Freddie Gray Autopsy: Excerpt from the Report," *Baltimore Sun*, June 24, 2015, <https://www.baltimoresun.com/news/crime/bal-read-the-freddie-gray-autopsy-report-text-story.html>.

lacking the security of a seatbelt. The medical examiner ruled his death a homicide (a death caused by another person), finding that Gray's injury occurred while police transported him in a vulnerable position while in the van, violating established police safety policies. Namely, the BPD had distributed a policy memo to officers mandating seat belts be used during prisoner transports on April 3, 2015; it was effective on April 9, 2015, three days before Gray's arrest and transport.⁵¹⁸

In the week after Gray's death, the BPD suspended and publicly identified the four bicycle officers who initiated his arrest and the two officers who transported him to the police station.⁵¹⁹ Near the end of April 2015, U.S. Attorney General Loretta E. Lynch announced that the DOJ's Civil Rights Division and the Federal Bureau of Investigation would conduct an independent probe of Gray's death to determine whether the officers committed any civil rights violations.⁵²⁰ On May 1, 2015, Marilyn Mosby, the state's attorney for Baltimore City, announced criminal charges and the six officers' arrests during a well-publicized press conference.⁵²¹ The total charges against the officers included second-degree murder, manslaughter, involuntary manslaughter, second-degree assault, vehicular manslaughter, misconduct in office, and false imprisonment.

Although facing substantial criminal charges, none of the officers were convicted. Officer William G. Porter was the first officer to stand trial, his case beginning in December 2015. It ended with a hung jury in January 2016 when the jurors could not unanimously

⁵¹⁸ Peter Hermann, "Prisoner in Van Heard 'Banging against Walls,'" *Washington Post*, April 29, 2015, https://www.washingtonpost.com/local/crime/prisoner-in-van-said-freddie-gray-was-banging-against-the-walls-during-ride/2015/04/29/56d7da10-eeec6-11e4-8666-a1d756d0218e_story.html.

⁵¹⁹ Richard Pérez-Peña, "Baltimore Officers Suspended over Death of Freddie Gray Are Identified," *New York Times*, April 21, 2015, <https://www.nytimes.com/2015/04/22/us/baltimore-police-officers-suspended-in-freddie-gray-inquiry-are-identified.html>.

⁵²⁰ Loretta E. Lynch, "Attorney General Loretta E. Lynch Statement on the Ongoing Situation in Baltimore," Department of Justice, April 29, 2015, <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-statement-ongoing-situation-baltimore>.

⁵²¹ Alan Blinder and Richard Pérez-Peña, "6 Baltimore Police Officers Charged in Freddie Gray Death," *New York Times*, May 1, 2015, <https://www.nytimes.com/2015/05/02/us/freddie-gray-autopsy-report-given-to-baltimore-prosecutors.html>.

decide on his guilt.⁵²² Prosecutors conducted the next criminal trial against Officer Edward Nero, who faced up to 20 years in prison if convicted; his five-day bench trial (whereby a judge rather than a jury decided guilt) ended with his acquittal on May 23, 2016.⁵²³ Next, the state tried Officer Caesar R. Goodson Jr. in June 2016. Goodson drove the van wherein Gray suffered his injury and was charged with second-degree murder, the highest charge against any of the officers.⁵²⁴ The eight-day bench trial ended in acquittal on June 23, 2016. The bench trial of Lieutenant Brian Rice, the highest-ranking person on scene during Gray's arrest, ended on July 18, 2016, once again in an acquittal.⁵²⁵ Rice's trial would be the last attempt by Mosby's office seeking criminality in Gray's death. In the week following the final acquittal, Mosby dropped the charges against the remaining officers (including those against Officer Porter, whose retrial was pending), saying she was no longer confident the remaining trials would ever result in a conviction, a decision she said was "agonizing."⁵²⁶

Federal officials would not bring charges against the officers either. In a statement released on September 12, 2017, the DOJ said no evidence supported federal civil rights charges against the officers.⁵²⁷ Calling Gray's death "a tragic event," the agency declared that "the evidence [was] insufficient to prove beyond a reasonable doubt that [the six officers] willfully violated Gray's civil rights," ending any criminal cases against the

⁵²² Kevin Rector and Justin Fenton, "Jury in Officer Porter Trial Was One Vote from Acquittal on Most Serious Charge," *Baltimore Sun*, January 16, 2016, <https://www.baltimoresun.com/news/crime/bs-md-ci-porter-jury-split-20160115-story.html>.

⁵²³ Jess Bidgood and Timothy Williams, "Police Officer in Freddie Gray Case Is Acquitted of All Charges," *New York Times*, May 23, 2016, <https://www.nytimes.com/2016/05/24/us/baltimore-officer-edward-nero-freddie-gray-court-verdict.html>.

⁵²⁴ Justin Fenton and Kevin Rector, "Officer Caesar Goodson, Facing the Most Serious Charges in Death of Freddie Gray, Heads to Trial," *Baltimore Sun*, June 5, 2016, <https://www.baltimoresun.com/news/crime/bs-md-ci-caesar-goodson-freddie-gray-trial-preview-20160605-story.html>.

⁵²⁵ Kevin Rector, "Judge Acquits Lt. Brian Rice of All Charges in Freddie Gray Case," *Baltimore Sun*, July 18, 2016, <https://www.baltimoresun.com/news/crime/bs-md-ci-rice-verdict-20160718-story.html>.

⁵²⁶ Sheryl Gay Stolberg and Jess Bidgood, "All Charges Dropped against Baltimore Officers in Freddie Gray Case," *New York Times*, July 27, 2016, <https://www.nytimes.com/2016/07/28/us/charges-dropped-against-3-remaining-officers-in-freddie-gray-case.html>.

⁵²⁷ "Federal Officials Decline Prosecution in the Death of Freddie Gray," Department of Justice, September 12, 2017, <https://www.justice.gov/opa/pr/federal-officials-decline-prosecution-death-freddie-gray>.

officers.⁵²⁸ Meanwhile, Baltimore had settled the wrongful-death civil suit brought by Gray's family for \$6.4 million in September 2015.⁵²⁹

With the state and federal processes completed, the BPD presented administrative charges against five of the six officers for policy violations during Gray's arrest.⁵³⁰ Two officers accepted minor discipline, administrative boards acquitted two officers, and the BPD later dropped charges against the remaining officer. By November 2017, all six were back to full duty.

A. AFTERMATH: LARGE-SCALE CIVIL DISORDER IN BALTIMORE

The protests against Gray's arrest and the questionable circumstances of his hospitalization began in front of the Western District station on April 18, 2015, one day before his death.⁵³¹ The protests continued for six days, causing Governor Larry Hogan to send members of the Maryland State Police to assist the BPD as the marches grew in size and intensity. However intense the protesters were, their initial displays of anger and dissatisfaction at Gray's death remained peaceful. However, on Saturday, April 25, 2015, some of these peaceful demonstrations devolved into violence and disorder.

On that day, over 1,000 people marched uneventfully through downtown Baltimore, the most massive protest yet.⁵³² However, at around 6:30 p.m., a smaller contingent of protesters split from that group and erupted in violence. Similar to Ferguson during the Michael Brown unrest, the Baltimore protesters became increasingly confrontational and aggressive with police and civilians as the sun set.⁵³³ Rioters smashed

⁵²⁸ Department of Justice.

⁵²⁹ Yvonne Wenger and Mark Puente, "Baltimore to Pay Freddie Gray's Family \$6.4 Million to Settle Civil Claims," *Baltimore Sun*, September 8, 2015, <https://www.baltimoresun.com/news/crime/bs-md-ci-boe-20150908-story.html>.

⁵³⁰ Tim Prudente, "With Prosecutions Over, Six Baltimore Officers Back at Work after Death of Freddie Gray," *Baltimore Sun*, November 30, 2017, <https://www.baltimoresun.com/news/crime/bs-md-ci-officers-back-to-work-20171128-story.html>.

⁵³¹ "Freddie Gray's Arrest and Death."

⁵³² Yvonne Wenger et al., "After Peaceful Start, Violence Mars Freddie Gray Protest in Baltimore," *Baltimore Sun*, April 26, 2015, <https://www.baltimoresun.com/sports/bal-protesters-rally-for-freddie-gray-hundreds-to-march-20150425-story.html>.

⁵³³ Stolberg and Babcock, "Thousands Protest Freddie Gray's Death."

local retail storefront windows, used rocks and bottles to damage police cars, looted convenience stores, and attacked people having dinner in restaurants near the Camden Yards baseball stadium. For a brief period, police prohibited those inside the ballpark from exiting until they dispersed the crowd. Omar Newberns, a protester interviewed by the *New York Times*, captured the anger of the moment. Newberns told the newspaper, “This is a powder keg right now. . . . New York and Ferguson and all the other places are just preliminary to introduce it to the nation,” referencing the unrest and violent retaliation that developed in New York City and Ferguson after the deaths of Eric Garner and Michael Brown.⁵³⁴ Media images of rioters standing on damaged police cars and using traffic cones and garbage cans to bash their windows flooded the media.⁵³⁵ At an evening press conference hosted by Baltimore Mayor Stephanie Rawlings-Blake, Fredericka Gray—Freddie’s twin sister—pleaded for an end to the violence, saying, “Can y’all please, please stop the violence? . . . Freddie Gray would not want this.” By the end of the riots that night, police had arrested at least 35 people, and six officers suffered minor injuries.⁵³⁶

Gray’s wake was the following day, Sunday, April 26, 2015, with his funeral scheduled for Monday, April 27. Social justice activists like Jesse Jackson, some members of Eric Garner’s family, and three officials from the White House attended the wake, which featured comments from late-Baltimore Congressman Elijah Cummings, who demanded a full investigation of his death.⁵³⁷ After the wake, Mayor Rawlings-Blake voiced her support for the demonstrators but reiterated her demands for peaceful protests.⁵³⁸ While that Sunday evening was uneventful, her request would go unheeded after Gray’s funeral the next day.

⁵³⁴ Stolberg and Babcock.

⁵³⁵ “Freddie Gray’s Arrest and Death.”

⁵³⁶ Holly Yan and Ashley Fantz, “Fiery and Emotional at Freddie Gray’s Funeral,” CNN, April 29, 2015, <https://www.cnn.com/2015/04/27/us/baltimore-freddie-gray-funeral/index.html>.

⁵³⁷ Yan and Fantz.

⁵³⁸ Paul Schwartzman, “At Gray’s Funeral, Outrage over Way in Which He Died,” *Washington Post*, April 27, 2015, https://www.washingtonpost.com/local/mourners-gather-in-baltimore-after-clashes-over-police-custody-death/2015/04/27/c28f564c-ecbf-11e4-8666-a1d756d0218e_story.html.

On Monday, April 27, violence broke out in the northwest Baltimore neighborhood of Mondawmin immediately after Gray's funeral. Roaming gangs of rioters tore across the city, looting and setting fire to businesses and property.⁵³⁹ Rioters threw rocks and bottles at police, and looters loaded their cars with stolen possessions. Reporters on the scene broadcast as rioters emptied a local CVS pharmacy and then burned it to the ground. They also captured video of a protester using a knife to cut a hose that firefighters were using to extinguish the flames.⁵⁴⁰ Baltimore descended into chaos and violence. Governor Hogan declared a state of emergency, activated the National Guard, and mobilized nearly 1,500 state troopers and 5,000 officers from neighboring departments to help the BPD quell the riots.⁵⁴¹ By Tuesday morning, protesters had set 144 cars and 15 structures ablaze, and police had arrested more than 200 people.⁵⁴² Later Tuesday night, Rawlings-Blake imposed a 10:00 p.m. to 5:00 a.m. curfew to remove those causing the violence from the streets; with the increased law enforcement presence, these measures prevented any further significant incidents. The curfew remained in effect from Tuesday, April 28, to Sunday, May 3. After several nights of calm, the Mayor rescinded the order and demobilized the National Guard and outside law enforcement agencies, returning Baltimore to normal. Mosby's announcement of criminal charges and arrests on May 1 likely contributed to the cessation of violence.⁵⁴³

⁵³⁹ Ron Nixon, "Amid Violence, Factions and Messages Converge in a Weary and Unsettled Baltimore," *New York Times*, April 27, 2015, <https://www.nytimes.com/2015/04/28/us/amid-violence-factions-and-messages-converge-in-a-weary-and-unsettled-baltimore.html>.

⁵⁴⁰ "Mapping the Clashes between Baltimore Police and Protesters," *New York Times*, April 28, 2015, <https://www.nytimes.com/interactive/2015/04/24/us/freddie-gray-and-the-baltimore-police-department-timeline.html>.

⁵⁴¹ Kevin Rector, Scott Dance, and Luke Broadwater, "Riots Erupt: Baltimore Descends into Chaos, Violence, Looting," *Baltimore Sun*, April 28, 2015, <https://www.baltimoresun.com/news/crime/bs-md-ci-police-student-violence-20150427-story.html>.

⁵⁴² "Mapping the Clashes."

⁵⁴³ Alan Blinder, Richard Fausset, and Nikita Stewart, "In Baltimore, National Guard Pullout Begins as Citywide Curfew Is Lifted," *New York Times*, May 3, 2015, <https://www.nytimes.com/2015/05/04/us/baltimore-lifts-citywide-curfew-put-in-place-after-rioting.html>.

The final tabulation of the Baltimore riots of 2015 was nearly 500 people arrested and over 150 officers injured.⁵⁴⁴ Financially, the Small Business Administration's initial estimate of costs associated with the riots totaled nearly \$9 million in damage to 285 businesses and \$60,000 to two residential structures. The Baltimore Development Corporation, the agency responsible for the city's economic development, calculated a higher number, reporting that 350 businesses had been damaged.⁵⁴⁵ Rioters using fire destroyed close to 150 vehicles and over 60 structures. Looters targeted three pharmacies during the riots, stealing nearly 315,000 doses of drugs, some of which were potent opioids.⁵⁴⁶ However, some commercial operators voiced longer-term concerns, including tourists' and shoppers' possible hesitance to visit the city; they feared the economic impact would linger for years.⁵⁴⁷ Their fears were founded, as six months after the riots, some businesses reported revenue being down 20 to 30 percent.⁵⁴⁸

The riots after Gray's death were an expression of the BPD's lost legitimacy with the public. As researcher Mark S. Mellman writes, while referencing Tom Tyler's work on police legitimacy, "Absent either legitimacy or severe repression, anarchy reigns," further arguing that "without the legitimacy that fairness produces, it will be more difficult for police to do their jobs effectively, and we will see more Fergusons and Baltimores."⁵⁴⁹ The death of Freddie Gray in the custody of BPD officers indicated to some residents a

⁵⁴⁴ Dan Morse and Lynh Bui, "Accurately Charging People Arrested in Baltimore Proves to Be Legal Challenge," *Washington Post*, May 4, 2015, https://www.washingtonpost.com/local/crime/high-number-of-arrests-in-baltimore-leads-to-confusion-in-charging/2015/05/04/d71ad79c-f28e-11e4-bcc4-e8141e5eb0c9_story.html.

⁵⁴⁵ Yvonne Wenger, "One Estimate of Business Damage from Baltimore Riot Estimated at \$9M, Total Cost Unknown," *Baltimore Sun*, May 13, 2015, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-damage-estimate-20150513-story.html>.

⁵⁴⁶ Christina Tkacik, "Remembering the Baltimore Riots after Freddie Gray's Death, 3 Years Later," *Baltimore Sun*, April 27, 2018, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-riots-three-years-later-20180426-story.html>.

⁵⁴⁷ Natalie Sherman, "After Cleanup from Baltimore Riots, Some Fear Economic Scars Will Linger," *Baltimore Sun*, May 2, 2015, <https://www.baltimoresun.com/business/bs-bz-economic-impact-riots-20150501-story.html>.

⁵⁴⁸ Rick Ritter, "Some Businesses Still Down by 20–30 Percent after Baltimore Riot," CBS Baltimore, October 27, 2015, <https://baltimore.cbslocal.com/2015/10/27/some-businesses-still-down-by-20-30-after-baltimore-riot/>.

⁵⁴⁹ Mark Mellman, "The Crisis of Police Legitimacy," *Hill*, May 5, 2015, <https://thehill.com/opinion/mark-mellman/241148-mark-mellman-the-crisis-of-police-legitimacy>.

tremendous lack of procedural justice and fairness in his interaction with those officers, thus greatly impacting the perception of police legitimacy.

B. CIVILIAN BOARDS AND COMMISSIONS

1. Before

The Baltimore Civilian Review Board (BCRB) was established well before Freddie Gray's death but operated in a manner essentially described as "irrelevant."⁵⁵⁰ The Maryland General Assembly founded the board in 2000 after several police shootings and a controversial incident where police handcuffed a state senator. In 2013, City Council President Bernard C. "Jack" Young described the board as a "paper tiger" because the police department usually rejected its disciplinary recommendations.⁵⁵¹ Further, board member attendance was sporadic. Of nine "voting member" positions, four had not participated in years. Of the five active participants, four were beyond their three-year term limit and had voiced their desire to resign. In addition, the three "non-voting" advisory positions the BPD and police union were supposed to appoint were vacant. While the board had limited subpoena powers, allowing it to obtain items needed to probe police misconduct complaints, like the medical records of people alleging police abuse, it only had two investigators, limiting its ability to examine complaints thoroughly. Citizen complaints would often go months without status updates or resolution.

Additionally, the DOJ's *Investigation of the Baltimore City Police Department* was critical of the BPD/BCRB citizen complaint investigation process.⁵⁵² When the DOJ examined the period from 2010 to 2015, it found that the BCRB had faced several obstacles accomplishing its mission. For example, the BPD withheld complaint information to which the board was entitled and often closed officer complaints before the BCRB conducted its

⁵⁵⁰ Justin Fenton, "Baltimore Police Review Board Called Irrelevant, Ineffective," *Baltimore Sun*, June 2, 2013, <https://www.baltimoresun.com/news/crime/bs-md-ci-police-civilian-review-board-20130602-story.html>.

⁵⁵¹ Fenton.

⁵⁵² Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* (Washington, DC: Department of Justice, 2016), 148, https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/59db9c97cd39c33ffea89afe/1507564699528/bpd_findings_8-10-16.pdf.

own investigation. A report in the *Baltimore Sun* supported this finding, revealing that the BPD withheld two-thirds of cases under the board's purview from 2013 to 2015.⁵⁵³ Furthermore, the DOJ report found that the BCRB lacked the authority to compel officers to participate in its investigations; under state law, only other sworn officers were allowed to question BPD members.⁵⁵⁴ Finally, the BPD did not have to abide by BCRB discipline recommendations, nor was it obligated to apprise the board of investigation results. Overall, the DOJ found the civilian oversight mechanisms "inadequate and ineffective," suggesting that the "flaws damage [d] the Department's legitimacy."⁵⁵⁵

2. In Response

The BPD's civilian oversight board remained mostly unchanged from Gray's death in 2015 until the department entered into its consent decree with the DOJ in April 2017.⁵⁵⁶ The court order mandated creating a Community Oversight Task Force (COTF) that would review the board's functions, remove impediments to the complaint process, and increase public accountability.⁵⁵⁷ The consent decree also required that the BPD and BCRB streamline the complaint process and obligated the BPD to share case information with the board, among other changes.⁵⁵⁸

⁵⁵³ Catherine Rentz, "Baltimore Police Failed to Share Misconduct Complaints with Civilian Oversight Board; Promise to Do So Now," *Baltimore Sun*, August 31, 2016, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-civilian-review-board-20160831-story.html>. The Baltimore Civilian Review Board investigates allegations of excessive force, abusive language, harassment, false arrest, and false imprisonment.

⁵⁵⁴ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 148.

⁵⁵⁵ Department of Justice, Civil Rights Division, 147.

⁵⁵⁶ U.S. District Court for the District of Maryland, *City of Baltimore Consent Decree* (Baltimore: U.S. District Court for the District of Maryland, 2017). Much like in the Michael Brown case, the Department of Justice did not find that the officers involved in Gray's arrest violated his civil rights, but a parallel investigation into the Baltimore Police Department revealed the agency engaged in a pattern or practice of unconstitutional conduct.

⁵⁵⁷ U.S. District Court for the District of Maryland, *City of Baltimore Consent Decree*, 4.

⁵⁵⁸ U.S. District Court for the District of Maryland, 115.

By the end of 2017, some media outlets claimed the consent decree had “breathed new life” into the BCRB.⁵⁵⁹ More recent developments, however, suggest those reports were overly optimistic. In 2018, the COTF recommended disbanding the BCRB, advocating for a new independent board with full investigatory and subpoena powers; however, that recommendation required state legislative changes unlikely to occur.⁵⁶⁰ Further, the BCRB has the same staffing issues in the years after Gray’s death as existed before: its website shows only six active voting members, and as of this writing, the positions representing the Southern, Eastern, and Southeastern districts are vacant.⁵⁶¹ Additionally, BCRB members have reported the BPD is still unforthcoming with information they need to adjudicate misconduct cases, saying the process remains “ineffective” and “opaque.” Detractors say the Baltimore City Office of Equity and Civil Rights of the BCRB, rather than investigating civilian complaints, “blunts criticism [of police], muzzles opposition, and obfuscates abuse” to “insulate the city from liability for racist, oppressive, and unconstitutional policing.”⁵⁶²

3. Cynefin Analysis

The BPD remained in the *obvious/simple* domain before and after Gray’s death, with structured processes embedded into agency policy. The agency was compliant with the “best practice” of having civilian oversight of police misconduct investigations before Gray’s death, as policy sovereigns recommend. However, the board’s lack of impact on discipline recommendations in that period suggests complacency in operation, evident in

⁵⁵⁹ J. F. Meils, “Civilian Review Board Lacks Full Power to Punish Officers,” CNS Maryland, accessed January 30, 2021, <https://cnsmaryland.org/baltimore-civilian/>.

⁵⁶⁰ Jessica Anderson, “Panel Calls for More Powerful ‘Independent Police Accountability Agency,’” *Baltimore Sun*, July 15, 2018, <https://www.baltimoresun.com/news/crime/bs-md-ci-civilian-oversight-report-20180711-story.html>; Community Oversight Task Force, *The Community Oversight Task Force’s Recommendations for Strengthening Police Accountability and Police-Community Relations in Baltimore City* (Baltimore: Community Oversight Task Force, 2018), 5, https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/0909_COTF_Final_Web.pdf.

⁵⁶¹ “Civilian Review Board,” City of Baltimore, accessed November 21, 2020, <https://civilrights.baltimorecity.gov/civilian-review-board>.

⁵⁶² Jillian Aldebron, Roland N. Patterson Jr., and Marvin L. Cheatham Sr., “Baltimore Stifles Review Board That Investigates Police Misconduct Cases,” *Baltimore Sun*, March 13, 2020, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0315-baltimore-civilian-police-board-oversight-20200313-qkmsqmsuqbbrdb66goepzs6p5a-story.html>.

that no entity ensured that BPD practice followed policy, a problem that arises in the *obvious/simple* context.⁵⁶³ While the requirements of the consent decree suggest the BPD had entered the *complicated* domain after Gray’s death, the board’s persistent problems in achieving full staffing and police support in obtaining investigatory needs indicate little has changed, reflecting entrained thinking that prevents initiatives to improve performance.

C. IMPROVING OR REPLACING LEADERSHIP

1. Before

Anthony W. Batts was the police commissioner for over two years when Gray died. Commissioner Batts was chosen by Mayor Stephanie Rawlings-Blake in September 2012 and confirmed by the City Council the following month.⁵⁶⁴ Before going to Baltimore, Batts headed the Oakland Police Department from 2009 to 2011, and spent nearly 30 years before that with the Long Beach Police Department in California.⁵⁶⁵ Known as a well-educated reformer in his previous police leaderships roles, Batts intended the same for the BPD. In November 2013, he published his strategic vision in a lengthy planning report, stating his objectives were “over the next five years to reduce crime, improve service, increase efficiency, redouble community engagement, and provide for the highest standards of accountability and ethical integrity.”⁵⁶⁶ The improvement commitments his plan discussed included some of the sovereign recommendations described in Chapter II.

2. In Response

In July 2015, three months after Gray’s death, Commissioner Batts was fired by Mayor Rawlings-Blake. The mayor said she relieved Batts of his duties due to the rise in

⁵⁶³ Snowden and Boone, “A Leader’s Framework,” 73.

⁵⁶⁴ Pat Warren, “Baltimore City Council to Confirm Anthony Batts as the New Police Commissioner,” CBS Baltimore, October 17, 2012, <https://baltimore.cbslocal.com/2012/10/17/baltimore-city-council-to-confirm-anthony-batts-as-the-new-police-chief/>.

⁵⁶⁵ Justin Fenton and Julie Scharper, “New Police Commissioner Expected to Be Former Oakland Chief,” *Baltimore Sun*, August 27, 2012, <https://www.baltimoresun.com/news/crime/bs-md-ci-new-police-commissioner-20120827-story.html>.

⁵⁶⁶ Anthony Batts, *Public Safety in the City of Baltimore: A Strategic Plan for Improvement* (Baltimore: Baltimore Police Department, 2013), 5, <http://www.justiceacademy.org/iShare/Library-StrategicPlans/BaltimorePD-StrategicPlan.pdf>.

crime in the wake of the April 2015 riots, appointing Ken Davis as commissioner; Davis was one of Batts's deputy commissioners.⁵⁶⁷ Before his firing, Batts was also under fire from other critics. The City Council had been preparing to send the mayor a letter demanding Batts's resignation for his failure to curb the spike in murders, which by July had risen to 155 for the year, up from 105 the year before.⁵⁶⁸ The police union had also planned to hold a no-confidence vote for Batts's alleged leadership failures during the riots.⁵⁶⁹ The union claimed that Batts's "hands-off" approach with rioters had allowed the violence to spread, leading to over 150 officers suffering injuries.⁵⁷⁰

Interestingly, some criminal justice system observers suggest that Batts's partiality to policy analysis and education may have contributed to his ineffectiveness in the BPD.⁵⁷¹ Batts was active among academic and strategy elites, often contracting sovereign organizations like PERF in policy recommendations. He holds a doctorate in public administration and has lectured at the Harvard Kennedy School. Batts's academic credentials, however, appeared to leave BPD officers unimpressed, which turned to open hostility after some were injured during the riots. Rather than gaining the respect of the rank and file, he was viewed as an outsider, and his inclination toward academics caused some to label him an "egghead."⁵⁷²

⁵⁶⁷ Yvonne Wenger, "Baltimore Mayor Rawlings-Blake Fires Police Commissioner Anthony W. Batts," *Baltimore Sun*, July 10, 2015, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-batts-fired-20150708-story.html>. Ken Davis would remain commissioner until January 2018 when he, too, was fired. See Kevin Rector, "Baltimore Police Commissioner Kevin Davis Fired by Mayor Pugh, Citing Rising Crime," *Baltimore Sun*, January 19, 2018, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-davis-replaced-20180119-story.html>.

⁵⁶⁸ Sheryl Gay Stolberg, "Baltimore Mayor's Challenge: Fighting Crime While Reining in Police," *New York Times*, July 11, 2015, <https://www.nytimes.com/2015/07/12/us/baltimore-mayors-challenge-fighting-crime-while-reining-in-police.html>.

⁵⁶⁹ Justin Fenton and Kevin Rector, "Police Union Blasts Commanders in 'After Action Review' of Riot," *Baltimore Sun*, July 8, 2015, <https://www.baltimoresun.com/news/crime/bs-md-ci-fop-report-20150708-story.html>.

⁵⁷⁰ Fenton and Rector.

⁵⁷¹ Simone Weichselbaum, "The Rise and Fall of Anthony Batts," Marshall Project, July 10, 2015, <https://www.themarshallproject.org/2015/07/10/the-rise-and-fall-of-anthony-batts>.

⁵⁷² Weichselbaum.

3. Cynefin Analysis

Commissioner Batts's leadership did not sustain the fallout of Gray's death. His extensive police management experience combined with his educational background placed the BPD firmly in the *complicated* domain, where his expertise guided his intent to bring "good practices" to the department. However, Batts's preference for policy evaluation and accusations of inaction during the riots suggest "analysis paralysis," an identified problem of the *complicated* domain.⁵⁷³ Additionally, Batts's diagnosis of the BPD's problems in his strategy document suggest an overconfidence in his ability to correct them based on his past successes in other departments, an identified "danger signal" in the *complicated* domain.⁵⁷⁴ After Gray's death, the agency entered the *complex* domain. Following the unrest and rise in crime, the mayor selected one of Batts's subordinates to lead the agency. Doing so indicated her willingness to probe his ability to lead, allowing the possibility of a viable path out of instability and adopting the "probe-sense-respond" cycle featured in the *complex* domain.⁵⁷⁵

D. ADOPTING COMMUNITY-ORIENTED POLICING

1. Before

The DOJ's *Investigation of the Baltimore City Police Department* found that before Gray's death, the BPD's model of policing centered on antagonistic policing rather than methods to foster community relationships.⁵⁷⁶ The agency's strategies focused on narcotics enforcement, gun arrests, and an aggressive tactic to move people off the streets, known as "clearing corners." These tactics resulted in the DOJ's observing a "significant divide" between the community and BPD officers, some of whom admitted that "community relations [were] BPD's weakest attribute."⁵⁷⁷ The DOJ also found that

⁵⁷³ Snowden and Boone, "A Leader's Framework," 73.

⁵⁷⁴ Snowden and Boone, 73.

⁵⁷⁵ Snowden and Boone, 74.

⁵⁷⁶ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 156.

⁵⁷⁷ Department of Justice, Civil Rights Division, 156.

officers maintained a prevalent “us-versus-them” mentality and thought of community policing as “pandering to the public.”⁵⁷⁸ Many BPD district commanders did not work with community groups to establish common objectives, and rarely did they send officers to local meetings.⁵⁷⁹

While BPD officers were dismissive of community policing, their attitude corresponded with the agency’s overall implementation of the concept. Structurally, the BPD maintained a Community Collaboration Division (CCD), charged with managing community-policing efforts citywide, but the unit was lightly staffed and lacked input from local commanders or systemic integration with other parts of the agency.⁵⁸⁰ At times, local police district initiatives collided with CCD efforts as there was little coordination between the two.

2. In Response

The BPD took several steps to improve its community-policing program after Gray’s death—notably, *before* the DOJ released its *Investigation of the Baltimore City Police Department* in August 2016 and before the mandates of the April 2017 consent decree.⁵⁸¹ For example, Commissioner Davis hosted a series of lectures for his officers called the History of Baltimore Speaker Series. Commissioner Davis wanted his officers to learn more about the variety of people they served, suggesting the BPD would become a nationwide model for other police departments looking to improve their community-policing programs. The department assigned a new head to the CCD and directed the unit to expand its efforts at increasing positive community contacts. The agency also revived a defunct chaplaincy program, training 150 chaplains with access to police officers to help them mend community relationships. The DOJ report lauded Davis’s proactive efforts, but said substantial obstacles remained that prevented the agency from creating a successful

⁵⁷⁸ Department of Justice, Civil Rights Division, 157.

⁵⁷⁹ Department of Justice, Civil Rights Division, 159.

⁵⁸⁰ Department of Justice, Civil Rights Division, 160.

⁵⁸¹ Baltimore Police Department, “Baltimore Police Department Progress and Improvements Implemented Since the Start of the DOJ Investigation” (Baltimore: Baltimore Police Department, 2017), 1–3, https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Reform_Progress.pdf.

community-policing program, such as officers' documented reluctance to accept the philosophy.⁵⁸²

The BPD published a formal *Community Policing Plan* in April 2020, a requirement of the consent decree. The plan describes that “every officer is a Community Policing Officer,” a declaration that all BPD members will systemically participate in the program.⁵⁸³ The BPD also “flattened” the organization, streamlining communications and accountability between field officers and leadership so that both are working toward building community solutions. Further, the BPD reorganized its patrol staffing plan, increasing the number of street-level officers to allow them to spend at least 40 percent of their time engaging in active community-policing efforts. Finally, all BPD officers must annually attend an eight-hour training session that reinforces the plan and its underlying principles.⁵⁸⁴

3. Cynefin Analysis

The BPD's implementation of a community-policing program that poorly communicated with other department units and its emphasis on aggressive crime-reduction techniques indicate operating in the *obvious/simple* before Gray's death. The agency claimed to engage in the “established practice” of community-oriented policing yet oversimplified its operation by restricting its efforts to a single unit and failing to implement the philosophy in a manner that would lead to officer acceptance. Importantly, however, the agency independently pivoted to the *complex* domain when Commissioner Davis used the “probe-sense-respond” cycle to experiment with different programs when he assumed command, taking steps to build the program in line with sovereign recommendations. The agency now operates in the *complicated* domain, having fully adopting the “good practice” of community policing as a department-wide strategy in alignment with policy sovereigns and the consent decree.

⁵⁸² Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 19.

⁵⁸³ Baltimore Police Department, *Community Policing Plan* (Baltimore: Baltimore Police Department, 2020), 11, <https://www.baltimorepolice.org/bpd-community-policing-plan>.

⁵⁸⁴ Baltimore Police Department, 12.

E. ENHANCING COMMUNITY ENGAGEMENT

1. Before

Before Gray's death, the BPD poorly engaged with the community. As mentioned above, the BPD's policing model emphasized criminal enforcement over community engagement, which led to a relationship characterized as contentious and tense.⁵⁸⁵ The DOJ's report found that many officers displayed rude, aggressive behavior with witnesses, suspects, and the general public. To illustrate, one officer is quoted in the report as saying, "You've got to be the baddest motherf***er out there."⁵⁸⁶ Further, officers ignored some policies intended to promote positive engagement.⁵⁸⁷ For example, the BPD required a daily 30-minute foot patrol from every street officer, intending to provide a period when they could get to know the people they serve. However, many officers disregarded the directive, and supervisors failed to enforce compliance.

2. In Response

The BPD took proactive measures to enhance community engagement before DOJ or consent decree mandates, much as it did with its community-policing program.⁵⁸⁸ New officers began attending services at houses of worship to foster a greater understanding and connection to the community. The agency also created a Youth Advisory Board and Women in Law Enforcement Program, mentoring groups to help younger community residents with professional development and encouragement. Further, the BPD began a Reading Partners program, providing kids with one-on-one tutoring at local libraries.

In its *Community Policing Plan*, the BPD further defines how it engages with the community, dividing the efforts into three methods.⁵⁸⁹ The plan describes "informal community engagement," such as playing basketball with youths or having conversations

⁵⁸⁵ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 157.

⁵⁸⁶ Department of Justice, Civil Rights Division, 157.

⁵⁸⁷ Department of Justice, Civil Rights Division, 161.

⁵⁸⁸ Baltimore Police Department, "Baltimore Police Department Progress," 2, 6–7.

⁵⁸⁹ Baltimore Police Department, *Community Policing Plan*, 8.

with business owners; “formal community engagement,” such as attending community meetings and organized events; and “daily problem-solving,” where officers help community members with issues and disputes that could escalate in the future. A vital component of the plan is that responsibility for community engagement, which the agency says is crucial to successful community policing, is decentralized from units within headquarters and bestowed on every officer.⁵⁹⁰

3. Cynefin Analysis

The BPD’s community engagement strategy operated within the *obvious/simple* domain before Gray’s death. The agency’s policy suggests it wanted officers to engage meaningfully with the community, a repeatable “best practice” recommended by policy sovereigns. However, officers did not abide by policy, and supervisors demonstrated complacency in not ensuring compliance, an identified problem in the *obvious/simple* context.⁵⁹¹ The BPD did not foster an authentic community engagement program, which indicated an expectation of smooth operation within existing policy; that led to the officer sentiments listed above, whereby officers maintained an adversarial view of the public. Much like it did with its community-policing program, the BPD took proactive “probe-sense-respond” steps to enhance community engagement after Gray’s death, entering the *complex* domain and then later the *complicated* domain when complying with the “good practices” dictated by the consent decree.

F. EMPHASIZING DE-ESCALATION, PRESERVATION OF LIFE, AND ADOPTING LESS-LETHAL TECHNOLOGIES

1. Before

The DOJ’s *Investigation of the Baltimore City Police Department* report found significant evidence that BPD officers often failed to de-escalate encounters, using tactics that unnecessarily escalated encounters, leading to the use of force in situations that could

⁵⁹⁰ Baltimore Police Department, 7.

⁵⁹¹ Snowden and Boone, “A Leader’s Framework,” 73.

have been peacefully resolved.⁵⁹² Further, the department did not incorporate de-escalation techniques until 2015.⁵⁹³ Instead, BPD training until then focused on physical tactics to overcome resistance, bypassing the opportunity to provide officers with skills to find alternatives to the use of force. Force was the preferred alternative to de-escalation.⁵⁹⁴

BPD officers' use of less-lethal technology also reflected their disregard for de-escalation. CEDs were the less-lethal option available to patrol officers when Gray died. However, the DOJ reported that BPD policy and training on their use was inadequate and led to officers deploying them improperly.⁵⁹⁵ For example, the DOJ reported an incident of an officer's using a CED to calm a woman down, which obviously was ineffective as it caused her extreme pain.⁵⁹⁶ When she refused to remain calm, the officer applied the CED two more times, an escalation of force against an unarmed person posing little threat.

2. In Response

In 2016, the BPD embarked on a full review of its use-of-force policies, which had not changed since 2003; notably, this review occurred before any external mandates.⁵⁹⁷ The department also began revising policies on less-lethal technologies, including CEDs, OC spray, and impact munitions, and added de-escalation strategies to its training curriculum.⁵⁹⁸ By 2017, the consent decree required that the agency teach, and that officers use, de-escalation techniques to reduce the necessity for using force even in circumstances

⁵⁹² Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 76.

⁵⁹³ Department of Justice, Civil Rights Division, 80.

⁵⁹⁴ Department of Justice, Civil Rights Division, 83.

⁵⁹⁵ Department of Justice, Civil Rights Division, 10.

⁵⁹⁶ Department of Justice, Civil Rights Division, 78.

⁵⁹⁷ Baltimore Police Department, "Baltimore Police Department Progress," 6.

⁵⁹⁸ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 99.

where force would be legally justified.⁵⁹⁹ The ruling also formalized the requirement that the agency complete its ongoing revision of less-lethal technology rules.⁶⁰⁰

Since Gray's death, the BPD has made substantial progress in modernizing its de-escalation and force policies, formalizing and making them available online for public view on its active policies page.⁶⁰¹ Currently, the BPD's website notes its commitment to teaching its officers "de-escalation techniques and tactical maneuvers that minimize the chances a scenario will call for the use of deadly force."⁶⁰² The agency also affirms its commitment to preserving life, saying that officers are allowed to use lethal force only in the "most extreme circumstances when all lesser means of force have failed or could not be reasonably deployed."⁶⁰³ The department's de-escalation policy requires that officers value the sanctity of life, strive toward peaceful resolutions, and comply with department standards, which are stricter than the minimum legal requirements for the use of force.⁶⁰⁴ Additionally, BPD regulations require that officers use CEDs only against people displaying active resistance, such as kicking, or those who demonstrate an "imminent threat of death or serious physical injury."⁶⁰⁵ The agency now leverages electronic learning to supplement classroom learning on the use of force, with all of these measures bringing it in compliance with federal orders.⁶⁰⁶

⁵⁹⁹ U.S. District Court for the District of Maryland, *City of Baltimore Consent Decree*, 54.

⁶⁰⁰ U.S. District Court for the District of Maryland, 60.

⁶⁰¹ "Active Policies," Baltimore Police Department, accessed November 23, 2020, <https://www.baltimorepolice.org/transparency/policies>.

⁶⁰² "Understanding Use of Force," Baltimore Police Department, accessed November 22, 2020, <https://www.baltimorepolice.org/transparency/understanding-use-of-force>.

⁶⁰³ Baltimore Police Department.

⁶⁰⁴ Baltimore Police Department, *De-escalation*, Policy 1107 (Baltimore: Baltimore Police Department, 2019), <https://www.baltimorepolice.org/1107-de-escalation>.

⁶⁰⁵ Baltimore Police Department, *Conducted Electrical Weapon*, Policy 719 (Baltimore: Baltimore Police Department, 2019), <https://www.baltimorepolice.org/719-conducted-electrical-weapon-cew>.

⁶⁰⁶ Baltimore Consent Decree Monitoring Team, *First Comprehensive Re-assessment* (Baltimore: Baltimore Consent Decree Monitoring Team, 2020), 53, <https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/5f74e69c2982fc0cb82f4140/1601496732748/BPD+-+Comprehensive+Re-Assessment+9-30-20.pdf>.

3. Cynefin Analysis

The BPD's use-of-force policy operated in the *obvious/simple* domain before Gray's death. The BPD's emphasis on force-based solutions in its training, as opposed to de-escalation, and frequent improper CED use indicate a reluctance to pivot from "best practices" of the past to emerging options that support minimal use of force. Such a reluctance to evolve is a problem in the *obvious/simple* domain and is an example of overreliance on "best practices," which Snowden and Boone say are "past practices," and not forward-looking.⁶⁰⁷ After Gray's death, the BPD's independent use-of-force review brought the department into the *complex* domain, using the "probe-sense-respond" cycle when prompted by its legitimacy crisis to explore multiple paths to emerge from the instability, public rebukes, and riots that followed. The BPD's current compliance with federal mandates and expert direction caused it later to operate in the *complicated* domain, following the "good practices" of their recommendations.

G. MEDIA STRATEGY AND PUBLICLY DIRECTED STATEMENTS

1. Before

Before Gray's death, the BPD's dedicated Media Relations Section (MRS) responded to media inquiries on policies, procedures, and general information on newsworthy police events.⁶⁰⁸ When Commissioner Batts joined the agency in 2012, however, he found the department's media strategy inadequate.⁶⁰⁹ The agency lacked a public communications plan to establish its strategic messaging goals, so it could not showcase its positive work in the community. Further, the office was not fully staffed, limiting the department's ability to answer media inquiries 24 hours a day.

⁶⁰⁷ Snowden and Boone, "A Leader's Framework," 71.

⁶⁰⁸ "Maryland Public Information Act," Baltimore Police Department, accessed November 23, 2020, <https://www.baltimorepolice.org/transparency/maryland-public-information-act>.

⁶⁰⁹ Batts, *Strategic Plan for Improvement*, 69.

2. In Response

Immediately after Gray's death, the BPD took innovative steps to allow the media access to the investigation. For instance, the department embedded a *Baltimore Sun* reporter with the team investigating Gray's death, but ordered that the reporter refrain from publishing the story until the results were revealed.⁶¹⁰ While this was a move toward openness with the media, the overall BPD media strategy was failing. The department was fielding press inquiries at a rate of over 100 per hour, and the limited staff the agency assigned to the MRS were quickly overwhelmed. The department faced difficulties getting its messaging out, and worse, some in the public believed it was trying to hide information or spread disinformation. For example, the MRS released a statement suggesting there was an assassination plot targeting police officers after Gray's death, which was later debunked but led to increased tension with the community.⁶¹¹

After Batts's separation from the BPD, Commissioner Davis hired T. J. Smith as the new MRS director in August 2015, saying there was a "cosmic shift in thinking" underway in modern policing following Gray's death, necessitating that police departments recognize the importance of quality communication with the public.⁶¹² Smith was recruited from the Anne Arundel County Police Department and was known for using social media and live-streaming technology in innovative ways to keep the public informed on breaking police events.⁶¹³ Smith remained MRS director until 2018 and, for nearly three years, oversaw the BPD's communications strategy during the entirety of the Gray

⁶¹⁰ Police Executive Research Forum, *Lessons Learned from the 2015 Civil Unrest in Baltimore* (Washington, DC: Police Executive Research Forum, 2015), 65, <https://www.policeforum.org/assets/2015baltimorecivilunrest.pdf>.

⁶¹¹ Police Executive Research Forum, 25.

⁶¹² Christine M. Boynton, "T. J. Smith Joins Baltimore Police Dept. as Director-Media Relations," Fox News Baltimore, August 12, 2015, <https://foxbaltimore.com/news/local/tj-smith-joins-baltimore-police-dept-as-director-media-relations>.

⁶¹³ Saliqa Khan, "Baltimore Police Department to Get New Director of Media Relations," NBC 11 Baltimore, August 12, 2015, <https://www.wbalTV.com/article/baltimore-police-department-to-get-new-director-of-media-relations/7095267>.

officers' trials and the federal oversight that followed.⁶¹⁴ He held press conferences nearly daily, promoting changes the department was undertaking to restore its reputation and relationship with the community, and speaking out regularly against surges of violence.⁶¹⁵ The MRS remains the central media contact clearinghouse for BPD officers, but it allows officers of the rank of captain and above to speak to the media on the agency's behalf.⁶¹⁶

3. Cynefin Analysis

While the BPD maintained a media section before Gray's death, the lack of an overall messaging plan suggests it was in the *obvious/simple* domain. The agency followed the "best practice" of maintaining a dedicated point of contact for media access but lacked a plan to incorporate the unit into the agency's positive messaging goals. This failure revealed ignorance to new practices, a sign of complacency, which led to an inability to react to new challenges, a known problem in the *obvious/simple* domain.⁶¹⁷ After Gray's death, the BPD entered the *complex* domain, the "probe-sense-respond" cycle indicated by the agency's new efforts to allow unprecedented media access to the investigation and hire an innovator savvy at using new media-messaging technologies.

H. TRANSPARENCY ON PROCEDURAL PROCESSES

1. Before

Commissioner Batts's 2013 strategic plan identified transparency in department policy and internal discipline structures as an area he sought to improve, recognizing that open processes promote collaboration between police and the community.⁶¹⁸ His plan made

⁶¹⁴ Alison Knezevich, "T. J. Smith Brings 'Personal Narrative' to Baltimore Mayoral Race, Connects with Those Affected by City Violence," *Baltimore Sun*, May 14, 2020, <https://www.baltimoresun.com/politics/elections/bs-md-pol-tj-smith-profile-20200514-zrrodjrk4jh6dpkrywtrolxy2i-story.html>.

⁶¹⁵ Luke Broadwater, "Baltimore Police Spokesman Holds Tearful Press Conference after Brother's Killing," *Baltimore Sun*, July 5, 2017, <https://www.baltimoresun.com/news/crime/bs-md-ci-tj-smith-brother-20170705-story.html>.

⁶¹⁶ Baltimore Police Department, *Member Confidentiality Obligations and Media Releases*, Policy 601 (Baltimore: Baltimore Police Department, 2016), <https://www.baltimorepolice.org/601-member-confidentiality-obligations-and-media-releases>.

⁶¹⁷ Snowden and Boone, "A Leader's Framework," 70–71.

⁶¹⁸ Batts, *Strategic Plan for Improvement*, 6, 8.

deputy commissioners accountable for ensuring police operations were as transparent as possible, directing that they allay public fear or concerns regarding the BPD.⁶¹⁹ Reputation management was an important component of Batts's plan, which tied transparency to his desire to enhance the BPD's professional image. Under Batts's tenure, the BPD made increased efforts to inform the public on policy and procedures, time frames of critical incidents, and the roles external entities maintained in investigations, even if privacy laws or investigatory status precluded the full release of information.⁶²⁰ Consistent with his education and reformist background, Batts's perspective on transparency conformed with policy sovereign recommendations.

2. In Response

The BPD made substantial improvements in procedural transparency after Gray's death at the suggestion of the DOJ's report.⁶²¹ The consent decree recognized the transparency measures that the BPD had taken before Gray's death as productive, as it did the continuing efforts before the agency was under federal oversight, all of which aligned with policy sovereign recommendations.⁶²² After Gray's death and the riots that followed, some policy experts suggested the BPD provide readily accessible policies on its website.⁶²³ The BPD followed this suggestion but went further in its efforts to promote greater transparency. In addition to routine police regulations, the agency also allows the public online access to many of its internally focused strategic documents. For example, the BPD includes on its website its retention plan, the agency's strategy to encourage talented members to remain with the BPD rather than leave for another department.⁶²⁴

The BPD has taken other measures to increase its transparency with the public. For example, it posts proposed changes to regulations and training materials on its website and

⁶¹⁹ Batts, 22.

⁶²⁰ Batts, 35.

⁶²¹ Baltimore Police Department, "Baltimore Police Department Progress," 1.

⁶²² U.S. District Court for the District of Maryland, *City of Baltimore Consent Decree*, 141.

⁶²³ Police Executive Research Forum, *Lessons Learned*, 56.

⁶²⁴ Baltimore Police Department, *The Baltimore Police Plan for Retaining Talent* (Baltimore: Baltimore Police Department, 2019), <https://www.baltimorepolice.org/retention-plan>.

collects public feedback.⁶²⁵ The agency also began posting data on officer-involved shootings, providing the status of state attorney actions and the internal review board's assessments.⁶²⁶

3. Cynefin Analysis

Guided by Commissioner Batts's police management proficiency and advanced education, the BPD operated in the *complicated* domain before Gray's death, the domain of "good practice" guided by expert methodology and opinion.⁶²⁷ In response to his death, the agency experimented with broadening ways to provide the public with internal process information, a "probe-sense-respond" cycle suggesting a transition to the *complex* domain. In its efforts to promote transparency, the BPD has increased levels of experimental communication and interaction, both of which support success in the *complex* domain.⁶²⁸

I. BWC USE

1. Before

While the BPD did not use BWCs before Gray's death, Commissioner Batts in 2013 identified his intent to begin testing devices in a pilot program, exploring the associated costs, and searching for recommended policy guidance for the devices.⁶²⁹ His experience as the chief of the Oakland Police Department, where he introduced BWCs, helped inform his plans for the BPD. While Mayor Rawlings-Blake was initially resistant to the technology, in October 2014, she created a working group to evaluate how BPD officers would use BWCs.⁶³⁰ This group agreed with Batts's assessment and, in early 2015, recommended a

⁶²⁵ "Draft Policies & Training Materials," Baltimore Police Department, accessed November 27, 2020, <https://www.baltimorepolice.org/transparency/draft-policies>.

⁶²⁶ Baltimore Police Department, "Understanding Use of Force."

⁶²⁷ Kurtz and Snowden, "The New Dynamics of Strategy," 468.

⁶²⁸ Snowden and Boone, "A Leader's Framework," 73.

⁶²⁹ Batts, *Strategic Plan for Improvement*, 85.

⁶³⁰ Josh Sanburn, "Baltimore Police Won't Fully Have Body Cameras Until 2019," *Time*, June 25, 2015, <https://time.com/3936695/baltimore-police-cameras-four-years/>; "Mayor Announces Recommendations for Body Camera Program," City of Baltimore, February 18, 2015, <https://mayor.baltimorecity.gov/news/press-releases/2015-02-18-mayor-announces-recommendations-body-camera-program>.

pilot program to finalize protocols on how officers would use the cameras, with Rawlings-Blake saying she intended to have BPD officers equipped by the end of 2015.⁶³¹ Nevertheless, none of the officers involved in Gray's arrest had BWCs.

2. In Response

The BPD continued with its plans to equip its officers with BWCs after Gray's death. In October 2015, 155 officers entered the pilot program, testing technology options from three different vendors.⁶³² The protocols for the camera's use, however, were still in draft form, and the BPD chose not to make them public at the time. The lack of transparency with the camera regulations disturbed some, including a member of Rawlings-Blake's working group, who categorized the BPD's decision "incomprehensible and utterly unacceptable."⁶³³

The pilot program was a success, and in May 2016, the BPD began a full roll-out; by 2018, every officer had a BWC.⁶³⁴ The agency also transitioned to a more transparent posture regarding the cameras and their regulations. The BPD provides statistical information about the number of videos officers record and notes that officer misconduct discovered on footage is investigated by its Internal Affairs section for possible discipline. Members of the public can request copies of videos as is allowed under Maryland privacy laws, which the agency provides for a small fee. Additionally, the BPD publishes many of its internal documentation regulating the cameras online, furthering its transparency efforts. For

⁶³¹ Luke Broadwater, "Mayor Pledges Police Body Cameras by Year's End," *Baltimore Sun*, February 16, 2015, <https://www.baltimoresun.com/politics/bal-mayors-body-camera-task-force-to-announce-recommendations-wednesday-20150216-story.html>.

⁶³² Kevin Rector, "Baltimore Police Officers Begin Wearing Body Cameras," *Baltimore Sun*, October 26, 2015, <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-police-body-worn-cameras-20151026-story.html>.

⁶³³ Rector.

⁶³⁴ "Body Worn Cameras Basics," Baltimore Police Department, accessed November 22, 2020, <https://www.baltimorepolice.org/transparency/body-worn-cameras>.

example, it publishes existing BWC policy, draft versions of potential policy changes, and internal officer training documents.⁶³⁵

3. Cynefin Analysis

While the BPD officers did not use BWCs before Gray's death, Commissioner Batts and the mayor were consulting with panels of experts to design "good practice" regarding their use. Thus, the agency was operating in the *complicated* domain before Gray died. After Gray's death, the agency aligned its policies to conform with sovereigns' recommendations and the consent decree, using "good practices" regarding BWC protocols in a clear and direct way with its officers and the public, thus remaining in the *complicated* domain.

J. RELEASING BWC FOOTAGE

1. Before

BPD officers did not use BWCs before Gray's death. As such, there was no video release policy.

2. In Response

As discussed above, when the BPD began its BWC pilot program in October 2015, the agency refrained from providing the public with information on how to obtain video recordings, much to the consternation of some.⁶³⁶ The agency has pivoted since then and maintains a policy consistent with the recommendations of policy sovereigns. Currently, the BPD Document Compliance Unit fields public requests for videos, charging a fee of \$50 per video file related to a requested incident.⁶³⁷ A department BWC coordinator collects the

⁶³⁵ Baltimore Police Department, *Body-Worn Camera*, Policy 824 (Baltimore: Baltimore Police Department, 2020), <https://www.baltimorepolice.org/824-body-worn-camera>; Baltimore Police Department, *Body-Worn Camera (Draft)*, Policy 824 (Baltimore: Baltimore Police Department, 2018), <https://www.baltimorepolice.org/824-draft-body-worn-camera>; "Draft Body-Worn Camera eLearning," Baltimore Police Department, accessed November 27, 2020, <https://www.baltimorepolice.org/draft-body-worn-camera-elearning>.

⁶³⁶ Rector, "Officers Begin Wearing Body Cameras."

⁶³⁷ Baltimore Police Department, *Body-Worn Camera*.

footage and returns it to the unit for public release, redacting the footage as required by the Maryland Public Information Act, if necessary.⁶³⁸

3. Cynefin Analysis

As noted above, the BPD did not use BWCs before Gray's death but was consulting with outside experts to provide guidance on formulating "good practice" protocols, thus placing this policy dimension in the *complicated* context. After Gray's death, the agency finalized its BWC program under the consent decree's expert guidance, which included a video release policy, retaining this policy dimension in the *complicated* domain.

K. USING SOCIAL MEDIA

1. Before

In June 2014, the year before Gray died, the BPD celebrated amassing 50,000 Twitter followers with a three-minute video on YouTube of officers from various units singing and dancing to artist Pharrell William's song "Happy."⁶³⁹ The department's YouTube account had been active since 2006, and its Twitter account since 2009, indicating the agency's awareness of the messaging value social media provided.⁶⁴⁰ A review of the BPD's YouTube site shows that its first video was uploaded the year it activated the account, and the department's videos contain a mix of officer profiles, press conferences, crime-reduction strategies, and social events the agency hosted. Years before Gray's death, the agency had been leveraging social media as a way to promote the agency's good work, as suggested by policy sovereigns.

⁶³⁸ Baltimore Police Department, *Document Compliance Unit*, Policy 603 (Baltimore: Baltimore Police Department, 2017), <https://www.baltimorepolice.org/603-document-compliance-unit>.

⁶³⁹ Baltimore Police, "Baltimore Police 50,000 Twitter Followers!," June 30, 2014, YouTube, video, 3:03, https://www.youtube.com/watch?v=oFULxMdji20&feature=emb_logo.

⁶⁴⁰ Baltimore Police (@BaltimorePolice), "Baltimore Police," Twitter, accessed November 27, 2020, <https://twitter.com/BaltimorePolice>; "Baltimore Police," YouTube, accessed November 27, 2020, <https://www.youtube.com/user/BPDMEDIAUNIT/about>.

2. In Response

After Gray's death, the BPD used social media extensively to give the public updates on demonstrations, respond to false statements and rumors, and promote as much transparency as possible.⁶⁴¹ For example, the department uploaded news conferences on its YouTube page and used Twitter to communicate with the public; during this period, the BPD's number of Twitter followers increased from 80,000 to 126,000.⁶⁴² An after-action report by PERF commended the agency's social media presence in the wake of Gray's death, recommending the BPD continue its efforts. Currently, the BPD has over 295,000 Twitter followers, over 216,000 Facebook followers, and over 15,000 YouTube subscribers.⁶⁴³ The BPD's website curates its tweets and promotes its social media outreach efforts as a way to strengthen the department's relationship with the community.⁶⁴⁴

3. Cynefin Analysis

The BPD was leveraging social media to promote itself positively well before Gray's death in many of the ways sovereigns recommend as "good practice," indicating it existed in the *complicated* domain for this policy dimension. After Gray's death, the agency used its established social media practices to keep the public informed on developments and provide counter-messaging against rumors. This was in keeping with the "best practices" that policy experts recommend, placing the BPD in the *obvious/simple* domain.

⁶⁴¹ Police Executive Research Forum, *Lessons Learned*, 65.

⁶⁴² Police Executive Research Forum, 66.

⁶⁴³ Baltimore Police, "Baltimore Police"; Baltimore Police Department (@BaltimoreCityPolice), "About," Facebook, accessed November 27, 2020, https://www.facebook.com/BaltimoreCityPolice/about/?ref=page_internal; YouTube, Baltimore Police.

⁶⁴⁴ Baltimore Police Department, Consent Decree Implementation Unit, *Consent Decree Primer* (Baltimore: Baltimore Police Department, 2019), <https://www.baltimorepolice.org/transparency/community-engagement>; "Tweets," Baltimore Police Department, accessed November 27, 2020, <https://www.baltimorepolice.org/tweets-raw>.

L. ENHANCING TRAINING

1. Before

Commissioner Batts identified the BPD's training program as deficient in his 2013 strategic plan and advocated for improvements, arguing that regular training keeps officers abreast of legal issues, standard procedures, and emerging topics in modern policing.⁶⁴⁵ His plan specifically noted that the BPD training protocol lacked scenario-based training and was also inadequate in many other areas, including use-of-force policy; field training officer instruction; crowd-control techniques; car stop tactics and vehicle pursuit regulations; and police-involved shooting instruction.⁶⁴⁶ Batts also referenced that any future training model be an ongoing, continuous delivery rather than single long sessions.

The DOJ's report agreed with Batts's critical assessment of the BPD's training program, finding that before Gray's death, training had not been prioritized at any agency level. Instead, the report found that the "lack of emphasis on training [had] a pervasive influence on the Department."⁶⁴⁷ For instance, BPD supervisors viewed training as a fringe activity that prevented them from fully staffing patrol needs. Additionally, even officers assigned to the training unit found themselves pulled from those duties and assigned to street patrol, which delayed and extended different training programs. While Batts had expressed concern over the quality of the BPD's training program in 2013, the DOJ's review indicated the agency remained deficient in addressing his concerns prior to Gray's death.

2. In Response

Substantive changes to the training issues that had plagued the BPD followed the DOJ's report publication in August 2016, over a year after Gray's death. The department hired a new training director, who was charged with modernizing the training curriculum

⁶⁴⁵ Batts, *Strategic Plan for Improvement*, 20.

⁶⁴⁶ Batts, 93–94.

⁶⁴⁷ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 131.

and ensuring that officers understood that *just* policing is the cornerstone of all police interactions.⁶⁴⁸ To that end, the agency began using scenario-based instruction in the areas of constitutional law; the characteristics of an armed person; and most importantly—in a 16-hour session—de-escalation and communication, crisis recognition and response, and critical decision-making. The goal of this latter segment was to teach officers how to obtain voluntary compliance from people with minimal use of force. Additionally, the BPD began training officers on community foot patrol, providing recruits a 40-hour course on how to engage with community members in a respectful and collaborative manner; tenured officers attended short sessions of the program. Many of the improvements to the BPD’s training strategy comported with recommendations made by police policy sovereigns.

3. Cynefin Analysis

While Commissioner Batts identified training as an area requiring improvement well before Gray’s death, the agency was largely lacking in undertaking the improvements he suggested. Many of his officers disregarded his training strategy, effectively rendering his suggestions moot. This disagreement between stakeholders placed the BPD in the *disorder* context prior to Gray’s death, with “multiple perspectives jostling for prominence.”⁶⁴⁹ After Gray, the BPD entered the *complicated* domain as the agency fulfilled the “good practice” training enhancements police sovereigns recommend.

M. IMPLICIT BIAS AWARENESS TRAINING

1. Before

The BPD began sessions on implicit bias training in April 2014, approximately one year before Gray’s death.⁶⁵⁰ In late 2013, Commissioner Batts voluntarily

⁶⁴⁸ Baltimore Police Department, “Baltimore Police Department Progress,” 4–6.

⁶⁴⁹ Snowden and Boone, “A Leader’s Framework,” 72.

⁶⁵⁰ Mark Puente, “Baltimore Police Training Designed to Eliminate Racial Bias,” *Baltimore Sun*, November 26, 2014, <https://www.baltimoresun.com/maryland/bs-md-impartial-police-training-20141126-story.html>.

commenced a collaborative reform process with the DOJ in response to multiple misconduct lawsuits filed against officers, resulting in over \$5.7 million in damages paid to complainants since 2011.⁶⁵¹ As a part of the discussions between the two agencies, the DOJ recommended and funded Fair and Impartial Policing to provide BPD officers with lessons on minimizing implicit bias in their dealings with the community.⁶⁵² By November 2014, about 200 officers, mostly recruits and new supervisors, had attended training sessions.⁶⁵³

2. In Response

When Gray died, the BPD was in the early stages of its agreement with the DOJ, a voluntary process aimed at helping police departments restore their relationship with the community.⁶⁵⁴ After his death and the public outrage and riots that followed, the DOJ began a formal pattern-or-practice investigation, which led to the subsequent findings in the *Investigation of the Baltimore City Police Department* in August 2016 and the consent decree in April 2017.⁶⁵⁵ As such, the agency had been conducting implicit bias training voluntarily before Gray died, but the consent decree later stipulated that every officer needed the instruction.⁶⁵⁶ As of November 2019, the BPD certified that nearly all eligible officers had completed the training program, and the department had woven implicit bias awareness into other aspects of training, including arrest and use-of-force training.⁶⁵⁷

⁶⁵¹ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 19; Puente, “Baltimore Police Training.”

⁶⁵² Baltimore Police Department, “Baltimore Police Department Progress,” 4. Fair and Impartial Policing is the same company that provided implicit bias training to the New York City and Ferguson Police Departments.

⁶⁵³ Puente, “Baltimore Police Training.”

⁶⁵⁴ Department of Justice, “Ongoing Situation in Baltimore.”

⁶⁵⁵ Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, 20.

⁶⁵⁶ U.S. District Court for the District of Maryland, *City of Baltimore Consent Decree*, 32.

⁶⁵⁷ Baltimore Consent Decree Monitoring Team, *First Comprehensive Re-assessment*, 26, 51.

3. Cynefin Analysis

The BPD was in the complicated domain regarding implicit bias training before Gray died, having consulted with and being advised by an external panel of experts in the topic, and maintaining “good practices” in line with the recommendations of policy sovereigns. The agency remains in the complicated domain, as it is required to provide the instruction under the expert guidance of the consent decree.

VI. BATON ROUGE POLICE DEPARTMENT: ALTON STERLING—JULY 5, 2016

On Tuesday, July 5, 2016, a homeless man reported to 9-1-1 that Alton Sterling had pointed a handgun at him after the man had asked Sterling for money several times.⁶⁵⁸ Sterling, a 37-year-old, 327-pound man, was selling CDs from his car in front of the Triple S Food Mart in Baton Rouge, Louisiana. A police dispatcher relayed that information to Baton Rouge Police Department (BRPD) Officers Blane Salamoni and Howie Lake II, including information that a suspect with a red shirt might have a gun in his pocket.⁶⁵⁹ About 35 minutes after midnight, the officers arrived at the convenience store at 2112 North Foster Drive.⁶⁶⁰ The officers approached Sterling, who matched the caller's description, including the red shirt.

Two cellphone videos from civilian witnesses captured the interaction.⁶⁶¹ In the video, Lake unsuccessfully deploys a CED against Sterling as he resists the officers' efforts to detain him. Salamoni then tackles him, and all three fall to the ground. During the struggle to handcuff Sterling, Lake yells, "Gun! Gun!," and seconds later, Salamoni fires six shots, fatally striking Sterling. As Sterling lies wounded, Lake removes a loaded .38 caliber revolver from Sterling's right front pocket. Salamoni later claimed that he could

⁶⁵⁸ Joshua Berlinger, Nick Valencia, and Steve Almasy, "Alton Sterling Shooting: Homeless Man Made 911 Call, Source Says," CNN, July 8, 2016, <https://www.cnn.com/2016/07/07/us/baton-rouge-alton-sterling-shooting/index.html>.

⁶⁵⁹ "The Investigators: Police Dispatch Tapes Obtained in Alton Sterling Shooting," WAFB 9 News, July 27, 2016, <https://www.wafb.com/story/32388050/the-investigators-police-dispatch-tapes-obtained-in-alton-sterling-shooting>.

⁶⁶⁰ Camila Domonoske and Bill Chappell, "Video of Baton Rouge Man's Fatal Shooting by Police Sparks Protests, FBI Inquiry," NPR, July 6, 2016, <https://www.npr.org/sections/thetwo-way/2016/07/06/484909862/video-of-baton-rouge-mans-fatal-encounter-with-police-sparks-protests>.

⁶⁶¹ Just Baton Rouge, "Baton Rouge Police Fatal Shooting of Alton Sterling," July 5, 2016, YouTube, video, 0:48, https://www.youtube.com/watch?v=jBZPCDqymyo&feature=emb_logo&has_verified=1; Just Baton Rouge, "2nd Video of Alton Sterling Fatal Shooting by Baton Rouge Police Department (Graphic)," July 6, 2016, YouTube, video, 0:35, https://www.youtube.com/watch?v=olqE7Jv_0Vk.

see Sterling trying to remove the gun from his pocket during their struggle and shot him to stop the threat.⁶⁶²

Different from the Garner, Brown, and Gray cases, wherein federal civil rights investigations followed a state criminal investigation, the DOJ assumed the lead role in the inquiry of Sterling's death. In response to community leaders' and the Sterling family's requests for federal intervention, Louisiana Governor John Bel Edwards agreed and quickly announced that a federal civil rights investigation would precede the local state criminal investigation.⁶⁶³ Local District Attorney Hillar C. Moore III released a statement on July 6, 2016, supporting Edward's decision to turn the case over to the DOJ and Federal Bureau of Investigation.⁶⁶⁴ Moore would later entirely recuse himself from the proceedings and ask the Louisiana State Attorney General's Office to handle any potential state prosecutions. His prior professional relationships with Officer Salamoni's parents, both veteran Baton Rouge police officials, prompted his decision. "This is in the interest of justice, for the community and all involved," Moore said, adding that his recusal "is the only and proper decision to make."⁶⁶⁵ That Moore's and Salamoni's parents past working relationship might affect the perception of impartiality in the Sterling case heavily influenced his decision.⁶⁶⁶ Louisiana State Attorney General Jeff Landry assumed responsibility for the state criminal proceedings expected to follow the federal investigation.

⁶⁶² Frances Robles, "Funeral for Alton Sterling Is an Expression of Grief and Anger," *New York Times*, July 15, 2016, <https://www.nytimes.com/2016/07/16/us/louisiana-funeral-alton-sterling-grief.html>.

⁶⁶³ Oliver Laughland, "Police Killing of Alton Sterling to Be Investigated by Department of Justice," *Guardian*, July 6, 2016, <https://www.theguardian.com/us-news/2016/jul/06/alton-sterling-baton-rouge-investigation-department-of-justice>.

⁶⁶⁴ "District Attorney Hillar Moore Releases Statement on Alton Sterling," BRProud, July 6, 2016, <https://www.brproud.com/news/district-attorney-hillar-moore-releases-statement-on-alton-sterling/>.

⁶⁶⁵ Bryn Stole, "East Baton Rouge DA Recuses His Office from Alton Sterling Case, Citing Relationship with Officer's Parents," *Advocate*, July 11, 2016, https://www.theadvocate.com/baton_rouge/news/alton_sterling/article_4dff0b20-076b-5715-8afd-83b1efc59362.html.

⁶⁶⁶ Mark Berman, "Baton Rouge Prosecutor Says He Will Recuse Himself from Investigation into Alton Sterling's Death," *Washington Post*, July 11, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/07/11/prosecutor-says-he-will-recuse-himself-from-investigation-into-alton-sterlings-death/>.

On May 3, 2017, the DOJ released the findings of its 10-month investigation, concluding there was insufficient evidence to charge Officers Salamoni and Lake with federal criminal charges and closing the case without prosecution.⁶⁶⁷ Federal officials also declared their intention to provide the Louisiana State Attorney General's Office with their investigative file, which Landry's office could use to examine whether the officers had violated state law. Eleven months later, however, Landry announced that he would not be filing charges against the officers.⁶⁶⁸ In a March 27, 2018, press conference, Landry detailed his office's investigation and the facts supporting legal justification for Salamoni's shooting Sterling.⁶⁶⁹ Among the evidence that supported legal justification for Salamoni's use of lethal force, Landry's investigation found that Sterling had pointed a gun at another person, refused to comply with the officers' attempt to handcuff him, and reached toward the gun in his pocket.

Three days after Landry publicized his decision, BRPD Chief Murphy Paul held a press conference announcing his firing of Salamoni for a "violation of command of temper," finding that he had failed to follow the department's guidelines on de-escalation procedures.⁶⁷⁰ Chief Paul issued a three-day suspension without pay to Lake, not for using the CED, which he deemed a proper de-escalation attempt, but for using rude and derogatory language captured on video after the shooting.

After being fired, Salamoni announced he would appeal his termination to the Baton Rouge Municipal Fire & Police Civil Service Board. However, before his board

⁶⁶⁷ "Federal Officials Close Investigation into Death of Alton Sterling," Department of Justice, May 3, 2017, <https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-alton-sterling>.

⁶⁶⁸ Richard Fausset and Alan Blinder, "Baton Rouge Officers Will Not Be Charged in Alton Sterling's Killing," *New York Times*, March 27, 2018, <https://www.nytimes.com/2018/03/27/us/alton-sterling-baton-rouge.html>.

⁶⁶⁹ "Raw: AG Jeff Landry's Detailed Report," WAFB 9 News, August 1, 2018, <https://www.wafb.com/clip/14228808/raw-ag-jeff-landrys-detailed-report>.

⁶⁷⁰ Grace Toohey, "Baton Rouge Officer Who Shot Alton Sterling Is Terminated; Other Officer Involved Suspended Three Days," *Advocate*, March 30, 2018, https://www.theadvocate.com/baton_rouge/news/alton_sterling/article_dc82c5f8-342d-11e8-80a2-2321f64efd2a.html.

appearance, he reached a settlement in August 2019 with Chief Paul and the BRPD.⁶⁷¹ Under the terms of the agreement, Salamoni's termination was re-categorized as a formal resignation, contingent on his agreeing to withdraw his appeal. Chief Paul agreed to the settlement as he was unwilling to risk a board finding in Salamoni's favor, which could have obligated his restoration as a BRPD officer. Lake considered appealing his suspension to the civil service board but withdrew his petition to end the matter and resume his career with the BRPD.⁶⁷² The civil suit brought by Sterling's family against the East Baton Rouge Metro Council, which funds the BRPD, was set to begin in April 2020 but has been rescheduled until March 1, 2021, due to the COVID-19 pandemic.⁶⁷³

A. AFTERMATH: THREE BATON ROUGE OFFICERS KILLED

At around 8:40 a.m. on July 17, 2016, an anonymous caller reported to 9-1-1 that a suspicious person with a gun, identified later as Gavin Long, was behind the Hair Crown Beauty Supply on Airline Highway in Baton Rouge, Louisiana.⁶⁷⁴ BRPD Officers Montrell L. Jackson and Matthew Gerald responded to the call, with East Baton Rouge Parish Sheriff's Deputy Brad Garafola arriving shortly thereafter.⁶⁷⁵ Armed with a rifle, Long immediately fired on the BRPD officers, killing one and wounding the other. The injured officer broadcasted a distress signal and asked for additional assistance. Deputy Garafola, having heard the shots and seeing the wounded officer crawling behind a dumpster to look for cover, ran to attempt a rescue. During his effort, Long shot and killed

⁶⁷¹ Lea Skene and Grace Toohey, "BRPD Ends Appeal from Blane Salamoni with Settlement in Alton Sterling Shooting, Chief Apologizes," *Advocate*, August 1, 2019, https://www.theadvocate.com/baton_rouge/news/crime_police/article_89889056-b3ea-11e9-b63c-f33031466077.html.

⁶⁷² Lea Skene, "BRPD Officer Suspended for Actions during Alton Sterling Shooting Withdraws Appeal," *Advocate*, September 19, 2019, https://www.theadvocate.com/baton_rouge/news/crime_police/article_422ecf62-da79-11e9-8eb5-5347d8033217.html.

⁶⁷³ Kevin Foster and Allison Childers, "Blane Salamoni's Psychological Evaluation 'Absolutely Devastating,' Sterling Family Attorney Says," WAFB 9 News, May 22, 2020, <https://www.wafb.com/2020/05/22/blane-salamonis-psychological-evaluation-absolutely-devastating-sterling-family-attorney-says/>.

⁶⁷⁴ Larry Buchanan, Joe Burgess, and Ford Fessenden, "How the Shooting of Police Officers in Baton Rouge Unfolded," *New York Times*, July 17, 2017, <https://www.nytimes.com/interactive/2016/07/17/us/what-happened-in-the-shooting-of-police-officers-in-baton-rouge.html>.

⁶⁷⁵ Visser, "Baton Rouge Shooting."

Garafola. Noticing that the remaining BRPD officer was still alive, Long focused his rifle and fired twice more, killing him.⁶⁷⁶ Long shot three more BRPD officers while evading capture. BRPD SWAT arrived shortly after the initial call for assistance, and a police sniper killed Long at a range of over 100 yards.⁶⁷⁷ By 8:48 a.m., Long was dead; less than 10 minutes had elapsed from his first shot until police killed him.⁶⁷⁸

The investigation of Long's murderous spree revealed his history, motivations, and desire to kill police officers. Long, who had turned 29 on the day of his attack, was a divorced, former Marine sergeant and resident of Kansas City, Missouri; those who knew him spoke unremarkably about him to reporters after his death.⁶⁷⁹ While Long did not appear outwardly unusual, his actions leading up to July 17 revealed a singular motive: to target police. Two days after the confrontation between Officers Salamoni and Lake and Alton Sterling in Baton Rouge, Long used his laptop to search for the officers' personal information and home addresses.⁶⁸⁰ The day he searched for this information, July 7, was the same day that Micah Johnson killed five officers in Dallas in retaliation for Sterling's shooting and the shooting of Philando Castile on July 6, 2016, which is discussed in Chapter VII.⁶⁸¹

Long headed to Dallas after Johnson's murder of the five officers in that city, driving over 500 miles through the night. Once there, he posted a video to his YouTube page. In the video, he suggested that actions beyond protest were necessary to demonstrate

⁶⁷⁶ Steve Visser, Ashley Fantz, and Joshua Berlinger, "'Helluva' Shot Stopped Gunman in Baton Rouge," CNN, July 19, 2016, <https://www.cnn.com/2016/07/18/us/baton-rouge-police-shooting/index.html>.

⁶⁷⁷ Visser, Fantz, and Berlinger.

⁶⁷⁸ Julie Bloom, Richard Fausset, and Mike McPhate, "Baton Rouge Shooting Jolts a Nation on Edge," *New York Times*, July 17, 2016, <https://www.nytimes.com/2016/07/18/us/baton-rouge-shooting.html>.

⁶⁷⁹ Louis Sahahun and Jaweed Kaleem, "A Study in Anger: How Gavin Long Went from Decorated Iraq Veteran to Cop Killer," *Los Angeles Times*, July 19, 2016, <https://www.latimes.com/nation/la-na-baton-rouge-gavin-long-20160718-snap-story.html>.

⁶⁸⁰ Rebekah Allen, "Gavin Long Was Looking for 2 Officers Involved in Alton Sterling Shooting during 2016 Attack," *Advocate*, June 30, 2017, https://www.theadvocate.com/baton_rouge/news/crime_police/article_5d0cd146-5dc9-11e7-bed4-6f2b3845350e.html.

⁶⁸¹ Gina Cherelus, "Note Shows Gunman in 2016 Baton Rouge Ambush Sought to Kill Police," Reuters, June 30, 2017, <https://www.reuters.com/article/us-louisiana-police-idUSKBN19L2V3>.

dissatisfaction with the police killings of Sterling and Castile, clearly referencing Johnson's murders. In a video he posted on July 10, he says, "If y'all wanna keep protesting, do that, but for the serious ones, the real ones, the alpha ones, we know what it's going to take: revenue and blood."⁶⁸² Long then traveled to Baton Rouge, arriving on July 12, five days before his rampage.

On the day he killed the three officers, Long intentionally targeted BRPD officers; video captured two failed attempts before he was successful.⁶⁸³ He missed his first opportunity when a parked patrol car he stalked with his rifle was empty; the officer was inside a convenience store. Another officer washing his patrol car was Long's next target, but the officer drove off before Long could approach him at the car wash. These two missed opportunities happened just before Long was confronted by his victims, Officers Jackson and Gerald and Deputy Garafola.

Hillar C. Moore, East Baton Rouge Parish district attorney, released the suicide note found in Long's rental auto after his death.⁶⁸⁴ His letter corroborates the motivations and intentions evident in his actions. Long's writings speak directly to his motives and choice of violent retribution, and he calls on others to do the same:

The way the current system is set up, it protects all cops whether good or bad, right or wrong, instead of punishing bad cops & holding them accountable for their actions. . . . I must bring the same destruction that bad cops continue to inflict upon my people, upon bad cops and as well as good cops. . . . Therefore, now if the bad cops, lawmakers, & justice system leaders care about the welfare, families, & well-being of their fellow good cops, then they (bad cops) will quit committing criminal acts against melanated people & people in general. If not, my people, & the people in general will continue to strike back against all cops until we see that bad cops are no longer protected & allowed to flourish.⁶⁸⁵

⁶⁸² Allen, "Gavin Long Was Looking for 2 Officers."

⁶⁸³ Visser, Fantz, and Berlinger, "'Helluva' Shot."

⁶⁸⁴ Allen, "Gavin Long Was Looking for 2 Officers."

⁶⁸⁵ Gavin Long, "Gavin Long's Suicide Note," *Advocate*, accessed October 13, 2020, <https://bloximages.newyork1.vip.townnews.com/theadvocate.com/content/tncms/assets/v3/editorial/e/b8/eb8a5584-5daa-11e7-b31c-4b9625b33ad8/595671da54de3.pdf.pdf>.

Rumors circulated through the BRPD that Long arrived in Baton Rouge seeking retribution specifically against Salamoni and Lake, given his computer searches and lack of an independent reason to travel to the city.⁶⁸⁶ The rumors remain unconfirmed, but Long's suicide letter provides insight into his motive and supports the rumor.

The 10 days encompassing the deaths of the five Dallas officers and the three Baton Rouge officers accounted for the greatest loss of life in the law enforcement community since 9/11.⁶⁸⁷

B. CIVILIAN BOARDS AND COMMISSIONS

1. Before

The BRPD did not have a civilian oversight body for police misconduct complaints before Alton Sterling's death.⁶⁸⁸ Those complaints were investigated by its Internal Affairs division, with the chief determining appropriate disciplinary penalties in substantiated cases.⁶⁸⁹ Disciplinary options available to the chief ranged from verbal reprimands at the minimum to employment termination at the maximum. However, the agency infrequently disciplined officers. For example, data from 2014—the most recently available when reviewed by the media in a 2016 report—found that 30 of 35 use-of-force complaints lodged against officers did not result in disciplinary action; the remaining five complaints remained open more than two years later.⁶⁹⁰ Civilian oversight of the BRPD was one of the more frequent requests from community members, but the measure had little political support and was vocally opposed by the police union.⁶⁹¹

⁶⁸⁶ Allen, "Gavin Long Was Looking for 2 Officers."

⁶⁸⁷ Miller, "Deadliest Attacks on Police in the Last 100 Years."

⁶⁸⁸ Andrea Gallo, Grace Toohey, and Emma Discher, "Does the Baton Rouge Police Department Need More 'Reform'?", *Advocate*, May 13, 2017, https://www.theadvocate.com/baton_rouge/news/alton_sterling/article_a4785fce-3753-11e7-be55-4ffe05def670.html.

⁶⁸⁹ "Complaint Form," City of Baton Rouge, accessed December 3, 2020, <https://www.brla.gov/1821/Complaint-Form>.

⁶⁹⁰ Jason Silverstein, "The Baton Rouge Police Department Has History of Clearing Its Cops in Use of Force Cases," *New York Daily News*, July 6, 2016, <https://www.nydailynews.com/news/national/baton-rouge-police-department-clears-cops-force-article-1.2701115>.

⁶⁹¹ Gallo, Toohey, and Discher, "Need More 'Reform'?"

2. In Response

The BRPD did not adopt a civilian oversight model after Sterling's death. The department's Internal Affairs division continues to be the repository and investigating entity for misconduct complaints, but the agency made changes in June 2020 to simplify the intake process.⁶⁹² Namely, the agency now accepts civilian complaints against officers using an online data-entry portal, in addition to accepting them by phone and mail.⁶⁹³

3. Cynefin Analysis

The BRPD officer misconduct complaint investigation process remained mostly unchanged in response to Sterling's death. However, as described with the Ferguson Police Department in Chapter IV, the agency's internal investigation policy allows for Cynefin analysis. Before and after the shootings, the agency's officer complaint process operated in the *obvious/simple* domain, which is characterized by standard operating procedures and straightforward processing and management.⁶⁹⁴ However, the agency has not responded to community desires for a civilian oversight board and has at times allowed its internal investigations to languish. Both of these facts indicate complacency in oversight functions and narrow thinking that preclude searching for enhanced methods, identified flaws in the *obvious/simple* domain.

C. IMPROVING OR REPLACING LEADERSHIP

1. Before

Before Sterling's death, Carl Dabadie had been BRPD's chief, having assumed the position in January 2013 when the mayor fired his predecessor.⁶⁹⁵ Chief Dabadie, then a 26-year member of the BRPD, had been a subordinate of the outgoing chief. Just days

⁶⁹² Nick Gremillion, "Top Baton Rouge Police Officials Talk About Ongoing Department Reforms," WAFB 9 News, June 8, 2020, <https://www.wafb.com/2020/06/08/baton-rouge-police-hold-news-conference-about-ongoing-reforms-department/>.

⁶⁹³ City of Baton Rouge, "Complaint Form."

⁶⁹⁴ Snowden and Boone, "A Leader's Framework," 70.

⁶⁹⁵ "Baton Rouge Police Chief Fired," WAFB 9 News, January 14, 2013, <https://www.wafb.com/story/20581908/baton-rouge-police-chief-fired>.

before Sterling's shooting, Dabadie was thought to be an uncontroversial person who steered clear of controversy with little tolerance for politics—unlike the prior chief.⁶⁹⁶

2. In Response

Within a day of the shooting, Chief Dabadie called Sterling's death a "horrible tragedy" but denied suggestions that he was considering resigning or retiring as a result.⁶⁹⁷ The days that followed thrust him into the national spotlight. After Sterling's death on July 5 and the killings of three officers in his jurisdiction 12 days later, Dabadie was at once responsible for steering his agency through the impending state and federal investigations while also providing leadership as he consoled his officers.⁶⁹⁸

In the months that followed, he and his agency became political fodder for candidates, becoming the central campaign issue for the upcoming East Baton Rouge Parish mayoral election.⁶⁹⁹ Upon her election in December 2016, incoming Mayor-President Sharon Weston Broome declared her intent to remove Chief Dabadie to restore community trust, but he refused, and civil service protections prohibited his firing.⁷⁰⁰ Dabadie eventually relented and resigned in July 2017, suggesting it was best for him and the agency, ending the showdown with Broome. In December that year, the mayor selected Murphy J. Paul Jr. for the BRPD's chief position. Once selected, Chief Paul immediately began an assessment of the agency, building a team to seek ways to improve its relationship with the community, specifically in the areas of community policing and use-of-force policy. He has been described as "experienced, progressive, and visionary,"

⁶⁹⁶ Rebekah Allen, "'A Delicate Line': Baton Rouge Police Chief Thrust into Spotlight amid Shooting Tragedies, Scrutiny," *Advocate*, August 6, 2016, https://www.theadvocate.com/baton_rouge/news/baton_rouge_officer_shooting/article_7eb56422-5512-11e6-a655-a37897a8a088.html.

⁶⁹⁷ Melissa Chan, "Baton Rouge Police Chief Says He Won't Resign after Alton Sterling's Death," *Time*, July 6, 2016, <https://time.com/4395056/alton-sterling-baton-rouge-police-chief/>.

⁶⁹⁸ Allen, "A Delicate Line."

⁶⁹⁹ Andrea Gallo, "Police Officer Killings, Alton Sterling Outcry Likely Themes in Baton Rouge Mayoral Race as Qualifying Begins," *Advocate*, July 19, 2016, https://www.theadvocate.com/baton_rouge/news/article_7ccea528-4e01-11e6-9987-77500b3f5bff.html.

⁷⁰⁰ Bryn Stole, "Baton Rouge Police Chief Carl Dabadie Retires after 3 Decades with BRPD, Ending Showdown with Mayor," *Advocate*, July 25, 2017, https://www.theadvocate.com/baton_rouge/news/crime_police/article_bdcd58-7080-11e7-b0aa-1fcfd370ae81.html.

with a strong commitment to transparency and integrity.⁷⁰¹ Having come from the Louisiana State Police Department, Chief Paul was an outsider to the BRPD but committed to examining the agency with “a fresh set of eyes and a different perspective.”⁷⁰²

3. Cynefin Analysis

Chief Dabadie’s “no-nonsense,” fact-based management style and long-time experience with the BRPD indicates the agency’s operating in the *obvious/simple* context, relying on the “known knowns” of his command-and-control methods before Sterling’s death. The mayor’s selection of Chief Paul as Dabadie’s successor suggests the agency shifted into the *complex* domain, with Chief Paul using the “probe-sense-respond” cycle to create an environment that could generate ideas, promote innovative approaches, and allow new methods of policing to emerge.

D. ADOPTING COMMUNITY-ORIENTED POLICING

1. Before

Chief Dabadie credited “community policing” with helping to reduce murders in Baton Rouge in 2016.⁷⁰³ However, the BRPD’s community-oriented policing program was small and programmatically implemented. There is little evidence that the BRPD placed any emphasis on a community-policing model as policy sovereigns advocate. Instead, the agency relied on a crime suppression model that focused on pedestrian-heavy commercial districts.⁷⁰⁴ Instead of deploying officers in a manner likely to build community partnerships, the agency at times had its officers remain standing outside

⁷⁰¹ Emma Discher, “Louisiana State Police Veteran Murphy Paul Named as Baton Rouge’s New Police Chief,” *Advocate*, December 29, 2017, https://www.theadvocate.com/baton_rouge/news/crime_police/article_4e0de070-eb1f-11e7-8caf-9fa2bf58558b.html.

⁷⁰² David Jacobs, “Baton Rouge’s New Police Chief Talks Community Policing and a Fresh Perspective,” *225 Magazine*, March 28, 2018, <https://www.225batonrouge.com/our-city/baton-rouges-new-police-chief-talks-community-policing-fresh-perspective>.

⁷⁰³ Maya Lau, “Homicides Down in 2016 in Baton Rouge; Officials Explain What Might Be Working,” *Advocate*, July 1, 2016, https://www.theadvocate.com/baton_rouge/news/crime_police/article_316fa31a-3fde-11e6-a60c-7f4e2034b2aa.html.

⁷⁰⁴ Daniel Bethencourt and Timothy Boone, “Baton Rouge Police Increasing Presence Downtown,” *Advocate*, February 11, 2015, https://www.theadvocate.com/baton_rouge/news/article_80e89016-9f4a-5855-961c-b3b2c98175ca.html.

restaurants and bars until hours as late as 4:00 a.m., moving belligerent drunks on their way.

By some accounts, as little as five officers comprised the BRPD's Community Policing Unit.⁷⁰⁵ However, rather than foster relationships with the public, the group operated more as a crime prevention strategies unit. Some Baton Rouge residents lamented how the unit compared to the past, when officers patrolled on foot and familiarized themselves with the people. "They were there every day. It became part of the culture, and it meant a lot. And these people grew to love them [the officers]," said one resident speaking of the past BRPD community-policing efforts.⁷⁰⁶ Instead, the unit had moved toward actions like providing technical safety solutions at home association meetings, such as suggesting home security systems, rather than developing quality community relationships.

2. In Response

Louisiana State Representative Denise Marcelle leveled pointed criticism at the BRPD's paltry community policing program in response to Sterling's shooting. She said an officer familiar with Baton Rouge community members would have been aware of Alton Sterling. "He was the guy that everybody called the CD man," she said, suggesting that officers would have approached him differently had they known he was a local community fixture.⁷⁰⁷ Chief Dabadie responded to these critiques by saying he believed in community policing but that "a lot of people don't want to be friends with the police either. You can't make somebody talk to you."⁷⁰⁸

⁷⁰⁵ Robert Stewart, "Inside Report for July 19, 2012," *Advocate*, August 22, 2013, https://www.theadvocate.com/baton_rouge/opinion/article_def6c07c-60de-5ccc-9a58-588424e23e84.html.

⁷⁰⁶ Megan Wyatt, "Relationship between Baton Rouge Police, Community 'Distrustful,' 'Strained,'" *Daily Advertiser*, July 9, 2016, <https://www.theadvertiser.com/story/news/local/louisiana/2016/07/09/relationship-between-baton-rouge-police-community-strained/86850988/>.

⁷⁰⁷ Greg Allen, "In Baton Rouge, Simmering Mistrust Divides Police, Community," NPR, July 14, 2016, <https://www.npr.org/2016/07/14/485875467/in-baton-rouge-simmering-mistrust-divides-police-community>.

⁷⁰⁸ Allen.

Since Sterling's death, the BRPD has worked to improve its community-oriented policing program to comply more with sovereign recommendations. When Chief Paul assumed control of the BRPD in January 2018, he focused the agency's strategy on drawing the public into community decision-making processes.⁷⁰⁹ During this transition to improve his department's relationship with the public, Chief Paul adopted the motto "Keep Talking Baton Rouge, We Will Never Stop Listening."⁷¹⁰ To support his vision, BRPD officers attend "procedural justice policing" training, expanding their understanding of community policing's benefits.⁷¹¹ Further, the BRPD has shifted from "zero tolerance" policing and blanketing officers haphazardly in communities to targeted enforcement on problematic individuals. While the BRPD has not implemented community-oriented policing systemically as recommended by policy sovereigns, the work it has done to improve relationships via community engagement since Sterling's death is significant, as discussed in the following section.

3. Cynefin Analysis

Before Sterling's death, the BRPD's community-oriented policing program operated in the *obvious/simple* domain, as evidenced by the "sense-categorize-respond" cycle indicated in the example above of sending community policing officers to a community meeting. However, those officers were not fulfilling the community's expectations and failed to achieve the relationship-building model suggested by policy sovereigns. Thus, an oversimplification of that process resulted, a known liability of the context. After Sterling's death, the BRPD entered the *complicated* domain, with Chief Paul adopting many of the "good practices" recommended by policy experts.

⁷⁰⁹ Jacobs, "New Police Chief Talks Community Policing."

⁷¹⁰ Baton Rouge Police Department, *2020 Report to the Community* (Baton Rouge: Baton Rouge Police Department, 2020), 1, <https://www.brla.gov/DocumentCenter/View/9474/2020-BRPD-Report-to-the-Community>.

⁷¹¹ Baton Rouge Police Department, *2019 Report to the Community* (Baton Rouge: Baton Rouge Police Department, 2019), 2, <https://www.brla.gov/DocumentCenter/View/7168/Final-2019-Community-Report>.

E. ENHANCING COMMUNITY ENGAGEMENT

1. Before

The BRPD nominally participated in community engagement events before Sterling's death. As discussed above, BRPD leadership expressed opinions that people could not be made to like the police, as evidenced in a sparse record of outreach events.⁷¹² For instance, the agency participated annually in National Night Out against crime events and once hosted a Halloween event for community children at its headquarters.⁷¹³

2. In Response

After Sterling's death, the BRPD shifted toward heavy engagement with the Baton Rouge community. For example, from 2018 to 2019, officers attended over 650 outreach events, such as cooking competitions, bicycle safety events, and organized park fence repairs.⁷¹⁴ Further, the BRPD established a Chief's Advisory Council, composed of local organizations and grassroots groups to provide input on community initiatives.⁷¹⁵ Finally, the agency restored its Police Explorer program after a long period of inactivity, giving teens 14 to 18 years old the opportunity to gain an in-depth understanding of the challenges officers face and encouraging interest in community service.⁷¹⁶

3. Cynefin Analysis

Mirroring its community-oriented policing program, the BRPD's weak community engagement strategy operated in the *obvious/simple* domain before Sterling's shooting. The agency operated in a near *automated* manner that *delegated responsibilities* to ensure attendance at community events, these being characteristics of the domain.⁷¹⁷ After the

⁷¹² Allen, "Simmering Mistrust Divides."

⁷¹³ Amber Stegall, "BRPD Hosts Free Community Halloween Party on Oct. 30," WAFB 9 News, October 17, 2014, <https://www.wafb.com/story/26816288/brpd-hosts-free-community-halloween-party-on-oct-30>.

⁷¹⁴ Baton Rouge Police Department, *2020 Report to the Community*, 11.

⁷¹⁵ Baton Rouge Police Department, 12.

⁷¹⁶ Baton Rouge Police Department, 11.

⁷¹⁷ Snowden and Boone, "A Leader's Framework," 70.

shooting, the agency transitioned into the *complicated* domain, following many of the expert-recommended outreach techniques in a “sense-analyze-respond” cycle.

F. EMPHASIZING DE-ESCALATION, PRESERVATION OF LIFE, AND ADOPTING LESS-LETHAL TECHNOLOGIES

1. Before

The BRPD’s use-of-force policy before Sterling’s death stated that the preservation of life was the department’s first priority. However, the regulation was broadly structured and lacked detail on de-escalation or alternatives to force when dealing with confrontational people. The agency’s guidelines stated that officers could use “reasonable force” or “the amount of force necessary” and prohibited using “unnecessary force or violence” but failed to provide officers with alternatives.⁷¹⁸ Further, the policy focused on ways to overcome a subject’s resistance by relying on a force “continuum” that required officers to employ progressive levels of force, including CEDs and OC spray, before resorting to lethal force. Absent from the policy were any instructions on critical decision-making, ways to avoid the *need* to use force, or methods of defusing confrontational situations, as policy sovereigns recommend. Nevertheless, former Chief Dabadie claimed that the agency did teach de-escalation techniques before Sterling’s shooting but had not incorporated them into official policies.⁷¹⁹

2. In Response

In February 2017, the BRPD announced enhancements to its use-of-force policy, several of which are sovereign recommended.⁷²⁰ Most significantly, the new policy requires officers to de-escalate situations before using force when possible. No longer was the agency’s force policy structured solely around overcoming resistance. Further, the policy gives officers specific options to avoid using force, such as disengaging, isolating

⁷¹⁸ “Use of Force Policy (Baton Rouge Police Department),” MuckRock, June 19, 2015, <https://www.muckrock.com/foi/baton-rouge-east-baton-rouge-16213/use-of-force-policy-baton-rouge-police-department-18942/>.

⁷¹⁹ Lauren McCoy, “New Use of Force Policies for Baton Rouge Police,” BRProud, February 5, 2017, <https://www.brproud.com/news/new-use-of-force-policies-for-baton-rouge-police/>.

⁷²⁰ McCoy.

or containing resistant people, and requesting additional officers or specialized non-lethal equipment.⁷²¹ Additional policy enhancements include prohibiting chokeholds, requiring officers to give verbal warnings before using force when possible, and expecting officers to intervene if they see colleagues using excessive force. The policy amendments were well-received by community members, with a local pastor commenting, “What if these kinds of policies were in place last July,” referencing Sterling’s death. “I believe Alton Sterling would still be alive,” he said.⁷²²

3. Cynefin Analysis

The BRPD’s force-related policies operated in the *obvious/simple* domain at the time of Sterling’s death, with agency directives setting force parameters but lacking several expert-recommended policy aspects, such as de-escalation. This policy posture suggests that the agency operated in the “known knowns” of the domain but suffered a lack of foresight on available policy advancements from experts, a weakness in the *obvious/simple* context.⁷²³ After Sterling, the agency advanced into the *complicated* domain, closely aligning its force policies with “good practice” strategies recommended by policy experts.

G. MEDIA STRATEGY AND PUBLICLY DIRECTED STATEMENTS

1. Before

The BRPD’s media policy, revised about five months before Sterling’s death, centered on providing the community with information within the public domain, provided doing so would not interfere with privacy laws or investigations.⁷²⁴ The department’s Public Information Office was the central source of information to answer media inquiries.

⁷²¹ Andrea Gallo, Bryn Stole, and Steve Hardy, “Here’s Why Experts Say New Use-of-Force Policies Put Baton Rouge Ahead of Most Police Agencies,” *Advocate*, February 2, 2017, https://www.theadvocate.com/baton_rouge/news/alton_sterling/article_de5fa502-e8cb-11e6-8fd7-af3ba631b532.html.

⁷²² Gallo, Stole, and Hardy.

⁷²³ Snowden and Boone, “A Leader’s Framework,” 71.

⁷²⁴ Baton Rouge Police Department, *Media Relations and Public Information*, General Order No. 139 (Baton Rouge: Baton Rouge Police Department, 2016), <https://www.brla.gov/DocumentCenter/View/10135/General-Order-139-Media-Relations-and-Public-Information>.

The BRPD appeared not to have strategically leveraged its media section to positively promote its work in the community before the shooting.

2. In Response

The BRPD media policy remained unchanged after Sterling's death. The 2016 policy revision in effect at that time remains active on the agency's public website.⁷²⁵ Furthermore, neither the 2019 nor the 2020 BRPD *Report to the Community* discusses using media to influence the public's perception of the agency.⁷²⁶

3. Cynefin Analysis

The BRPD did not leverage a media relationship in a strategic manner before or in response to Sterling's death. The agency's Public Information Section remains unchanged, and there is no evidence that it promotes the agency positively or provides anything other than routine crime information. As such, the BRPD did not occupy a Cynefin domain for this policy dimension either before or after Sterling's death and cannot be categorized.

H. TRANSPARENCY ON PROCEDURAL PROCESSES

1. Before

The BRPD considered several options in providing the public with transparent processes in the years before Sterling's death. After the 2014 high-profile deaths of Eric Garner in New York and Michael Brown in Ferguson, East Baton Rouge Parish District Attorney Hillar Moore considered creating a multi-agency team to investigate police-related shootings.⁷²⁷ Moore suggested that due to the BRPD's small size, about 700 officers, investigators might show favoritism and bias toward fellow officers when

⁷²⁵ Baton Rouge Police Department.

⁷²⁶ Baton Rouge Police Department, *2019 Report to the Community*; Baton Rouge Police Department, *2020 Report to the Community*.

⁷²⁷ Ben Wallace, "Officer-Involved Shooting Investigations in Baton Rouge Could Change," *Advocate*, December 28, 2014, https://www.theadvocate.com/baton_rouge/news/crime_police/article_a1f8a384-e643-5655-b513-67be628d1de4.html.

examining use-of-force cases. By May 2016, Moore’s plan was in place.⁷²⁸ Prosecutors were embedded during police shooting investigations and had to report the results to the public, as well as demonstrate the evidence supporting their conclusions. Adding a layer of separation could increase the perception of impartiality and transparency, he said.

2. In Response

After Sterling’s death, the BRPD took several sovereign-recommended measures to further enhance its public transparency. In his 2019 *Report to the Community*, Chief Paul listed transparency as an important component of his agency’s strategy since his appointment the year prior. As evidence, both his 2019 and 2020 reports provide information on the agency’s crime strategies, investigative methods, officer equipment, and statistics on use of force.⁷²⁹ Further, the BRPD allows public access to the status and outcomes of Internal Affairs investigations, which for 2019 indicated that 57 of 118 cases resulted in a “sustained” finding.⁷³⁰ Finally, the agency has published its entire list of general orders, BWC policy, press releases, and other community-relevant documents for the public online through its web portal.⁷³¹

3. Cynefin Analysis

Before Sterling’s death, the BRPD occupied the *complex* domain, as the agency experimented with several techniques to enhance its community transparency in response to police-related civilian deaths in other states. The agency showed a willingness to try innovative approaches, unsure whether they would be effective, but following the context’s

⁷²⁸ Bryn Stole, “Baton Rouge DA Moore Promising Transparency in Police Shooting Investigations,” *Advocate*, May 22, 2016, <https://pceinc.org/wp-content/uploads/2019/11/20160514-Baton-Rouge-DA-Moore-Promising-Transparency-In-Police-Shooting-Investigations-The-Advocate-Stole.pdf>.

⁷²⁹ Baton Rouge Police Department, *2019 Report to the Community*, 3–9; Baton Rouge Police Department, *2020 Report to the Community*, 6–8.

⁷³⁰ “2019 Baton Rouge Police Department Internal Affairs Investigations,” City of Baton Rouge, accessed December 3, 2020, <https://www.brla.gov/DocumentCenter/View/7639/2019-Internal-Investigations?bidId=>.

⁷³¹ “BRPD Policies,” City of Baton Rouge, accessed December 3, 2020, <https://www.brla.gov/2251/BRPD-Policies>.

“probe-sense-respond” process.⁷³² After Sterling, the agency transitioned to the *complicated* domain, following many sovereign “good practices” in giving the public clear access to its internal mechanisms.

I. BWC USE

1. Before

Initial discussions about BRPD officers using BWCs began in September 2014, two years before Sterling’s death.⁷³³ After securing funding, the agency began testing four different BWC technology options with select officers. The first trial phase began in October 2015 and ended February 2016; the second began in January 2016 and ended June 2016. When BRPD officers approached Sterling in July 2016, the agency was about three weeks into its third trial phase.⁷³⁴

2. In Response

The third BWC phase continued until September 2016.⁷³⁵ The fourth and final phase ended in March 2017, and in August of that year, the BRPD finalized its camera choice and began providing the devices to all its officers. In 2019, the department launched an independent website, Baton Rouge Police Body Camera Program, which provides an overview of the implementation program, a timeline documenting the process to obtain the cameras, and technical details on the camera technology.⁷³⁶ The portal also provides statistical information, such as the reduction in the reported use of force by officers and the number of videos recorded. In 2019, the BRPD finalized its BWC policy, also available on

⁷³² Snowden and Boone, “A Leader’s Framework,” 73.

⁷³³ “BWC Timeline,” Baton Rouge Police Department, accessed December 5, 2020, <https://www.brpdbodycam.com/timeline>.

⁷³⁴ Both Officers Salamoni and Lake wore third-trial phase BWCs, which detached from their bodies during their confrontation with Sterling. See Aliyah Frumin, “After Baton Rouge Shooting, Questions Swirl Around Body Cam Failures,” NBC News, July 7, 2016, <https://www.nbcnews.com/news/us-news/after-baton-rouge-shooting-questions-swirl-around-body-cam-failures-n605386>.

⁷³⁵ Baton Rouge Police Department, “BWC Timeline.”

⁷³⁶ “Baton Rouge Police Body Camera Program,” Baton Rouge Police Department, accessed December 3, 2020, <https://www.brpdbodycam.com/>.

its online portal, delineating the instances when officers must activate the cameras, retention and storage requirements, and supervisory oversight responsibilities.

3. Cynefin Analysis

Before and after Sterling's death, the BRPD operated in the *complicated* domain. Well before the shooting, the BRPD had been piloting different camera systems and formulating its policy, largely following "good practice" recommendations. The trial phases continued after the shooting, and once a camera platform was selected, the agency continued to follow expert recommendations, such as providing the public full access to the camera's technical information and making relevant department policies available to the public.

J. RELEASING BWC FOOTAGE

1. Before

During the four pilot programs, the BRPD had not implemented a policy regarding releasing videos to interested parties.⁷³⁷

2. In Response

After providing cameras to all BRPD officers in August 2017, standard policy until April 2018 was that the department withheld BWC footage related to an open investigation until the case was adjudicated. That April, the agency revised its video release policy, which facilitated the expeditious release of videos to interested parties within 12 days of critical incidents, such as police shootings. When announcing the policy, Chief Paul said, "Transparency is essential in policing today. The public's expectations of law enforcement have evolved, and it is our duty to respond to their concerns."⁷³⁸ In 2020, the agency again

⁷³⁷ Rebekah Allen, "Baton Rouge Launching Pilot Program That Places Body Cameras on Officers in the High-Crime First District," *Advocate*, December 21, 2016, https://www.theadvocate.com/baton_rouge/news/article_4ce9f7a8-e268-50f5-9a77-0738139f83a3.html.

⁷³⁸ Grace Toohey, "BRPD Adopts New Policy for Faster Release of Video Footage from Officer-Involved Shootings, Chief Says," *Advocate*, August 20, 2018, https://www.theadvocate.com/baton_rouge/news/crime_police/article_1f8d5498-a4b9-11e8-80f1-a3016b0cc253.html.

updated its policy, requiring the chief to make a determination of whether to make a critical-incident video public within nine days of its occurrence.⁷³⁹

3. Cynefin Analysis

During the BWC trial phases before Sterling's death, only select officers wore the cameras, and the agency had not promulgated a release policy; thus, it did not occupy a Cynefin context and cannot be categorized. After Sterling's death, the agency entered the *complicated* domain, following sovereign "good practice" recommendations by making BWC videos widely available, within state privacy laws, to enhance accountability and transparency.

K. USING SOCIAL MEDIA

1. Before

The BRPD maintained a presence on social media accounts for several years before Sterling's death, including Twitter and Facebook.⁷⁴⁰ The agency's first tweet was a 2009 request for information about a homicide the agency was investigating.⁷⁴¹ Crime-related information drove the BRPD's Twitter feed for the rest of 2009, but over the years, the agency pivoted to more community-oriented outreach efforts. For example, days before Sterling's death, the BRPD tweeted photos of Chief Dabadie receiving an award from a local media group.⁷⁴²

⁷³⁹ Baton Rouge Police Department, *Public Release of Critical Incident Recordings*, General Order No. 147 (Baton Rouge: Baton Rouge Police Department, 2020), <https://www.brla.gov/DocumentCenter/View/10294/General-Order-147-Public-Release-of-Critical-Incident-Recordings>.

⁷⁴⁰ Baton Rouge Police Department (@batonrougepolice), "Home Page," Facebook, accessed December 6, 2020, <https://www.facebook.com/batonrougepolice/>; Baton Rouge Police (@BRPD), "Baton Rouge Police," Twitter, accessed December 6, 2020, <https://twitter.com/BRPD>.

⁷⁴¹ Baton Rouge Police (@BRPD), "Homicide Div Is Investigating a Homicide," Twitter, August 8, 2009, 3:14 p.m., <https://twitter.com/BRPD/status/3196539129>.

⁷⁴² Baton Rouge Police (@BRPD), "Chief Dabadie Was Selected as One of 14 Community Champions," Twitter, July 1, 2016, 8:01 a.m., <https://twitter.com/BRPD/status/748848934316085248>.

2. In Response

The day after Sterling's shooting, the BRPD tweeted a 28-minute press conference with Chief Dabadie and other local officials providing initial information and answering media questions about the incident.⁷⁴³ The agency's Twitter feed remained silent until it requested information related to the murders of the three officers by Gavin Long on July 17. In the days that followed, the agency thanked Baton Rouge residents for their outpouring of sympathy, leveraging the tragic events into an opportunity to connect with the community.⁷⁴⁴ Since then, the BRPD has continued an active community-engagement strategy, expanding to YouTube in 2017 and Instagram in 2020.⁷⁴⁵ For example, recent posts during the COVID-19 pandemic give tips on safe social distancing and local food drives.

3. Cynefin Analysis

Several years before Sterling's death, the BRPD was present on social media platforms, using them as avenues of information distribution and collection and communicating with the community as policy experts recommend. These actions suggest the agency was operating in the *complicated* domain, following "good practices." Since Sterling, the BRPD's established social media platforms have helped the agency communicate with the public as a regular practice, thus transitioning into the *obvious/simple* domain.

⁷⁴³ Baton Rouge Police (@BRPD), "Live on #Periscope: Press Conference," Twitter, July 6, 2016, 12:10 p.m., <https://twitter.com/BRPD/status/750723589788225536>.

⁷⁴⁴ Baton Rouge Police (@BRPD), "Always Thankful for Love and Support from Our #batonrouge Community," Twitter, July 20, 2016, 7:31 p.m., <https://twitter.com/BRPD/status/755908097634242560>.

⁷⁴⁵ Baton Rouge Police Department (@batonrougepolice), "Baton Rouge Police Department," Instagram, accessed December 6, 2020, <https://www.instagram.com/batonrougepolice/>; "Baton Rouge City Police Department," YouTube, accessed December 6, 2020, <https://www.youtube.com/c/BatonRougeCityPoliceDepartment/about>.

L. ENHANCING TRAINING

1. Before

Before Sterling's death, the BRPD's new officer training program was 20 weeks long, averaging about 800 hours.⁷⁴⁶ However, some critics noted that this length of training was much less than for other professions, such as barbers, who the state requires to attend more than 1,500 hours of instruction.⁷⁴⁷ Scenario-based lessons, values-based instruction, and responsiveness to the community, all policy expert recommendations, were absent.

2. In Response

After Sterling's death, the BRPD affirmed its commitment to enhancing its officers' training regimen. Demonstrating that commitment, the agency delayed several incoming new officer classes, so BRPD training staff could attend procedural justice policing courses, which taught them the benefits of treating the public fairly and without bias.⁷⁴⁸ The agency then incorporated the lessons learned into its own curriculum, promoting the program as a way to bolster a good relationship with the community and shape interactions with the public.⁷⁴⁹

Other improvements include the additions to the agency's new officer training program, such as 40 hours of crisis intervention training, aimed at helping officers reduce their need to use force with people in mental crisis; 8 hours of scenario-based use-of-force training; and 19 hours on professionalism in policing.⁷⁵⁰ The BRPD programming in these sovereign-recommended course topics goes beyond the minimum requirements mandated

⁷⁴⁶ Ryan Broussard, "More Than a Police Uniform," *Advocate*, March 23, 2013, https://www.theadvocate.com/baton_rouge/article_addf93c4-6542-5d3c-9b18-efb931a32bec.html.

⁷⁴⁷ Jonathan Bullington, "Louisiana Requires Less Training Hours to Become a Cop Than to Become a Barber, Website Reports," *Times-Picayune*, March 12, 2015, https://www.nola.com/news/crime_police/article_9dd5d48b-2152-5d24-a4a0-bc11128d0c0f.html.

⁷⁴⁸ Lea Skene and Grace Toohey, "Baton Rouge Police Begin Basic Training for 32 Recruits: 'You Are the Future,'" *Advocate*, March 18, 2019, https://www.theadvocate.com/baton_rouge/news/crime_police/article_b7ce53a6-4987-11e9-83d4-5f5f18e8e53d.html.

⁷⁴⁹ Baton Rouge Police Department, *2019 Report to the Community*, 7.

⁷⁵⁰ Baton Rouge Police Department, "Academy Course Schedule" (Baton Rouge: Baton Rouge Police Department, 2020), <http://geauxbrpd.com/wp-content/uploads/2020/06/brpd-sample-academy-scheduled.pdf>.

by Louisiana. In fact, the BRPD training program overall consists of 790 hours of instruction while the state minimum is only 496.

3. Cynefin Analysis

Before Sterling's death, the BRPD operated in the *obvious/simple* domain, largely guided by state-mandated minimum training requirements and the constraints of established practices. However, as a shortcoming in this context, the agency lacked forward strategic vision to expand its program to include advanced training options. After the shooting, the BRPD added substantial aspects of the "good practices" policy experts recommend, placing the agency in the *complicated* context while using the "sense-analyze-respond" cycle.

M. IMPLICIT BIAS AWARENESS TRAINING

1. Before

The BRPD did not provide its officers with implicit bias training before Sterling's death.⁷⁵¹ Instead, agency policy focused on forbidding explicit bias-based profiling, teaching cultural competency, and imparting interpersonal communication skills to maintain professionalism.⁷⁵²

2. In Response

After Sterling's death, Chief Dabadie worked to bring implicit bias training to his department as part of his efforts to restore his agency's relationship with the public, but he resigned before the program began.⁷⁵³ In August 2017, BRPD training staff attended a three-day "training-of-trainers" course provided by FIP, the same organization discussed in the previous NYPD, FPD, and BPD policy analyses. FIP certified 30 BRPD officers as

⁷⁵¹ Grace Toohey, "National 'Fair and Impartial Policing' Training Comes to Baton Rouge Police Department," *Advocate*, August 22, 2017, https://www.theadvocate.com/baton_rouge/news/crime_police/article_ba41038a-8788-11e7-bc1a-9f7d996c9c85.html.

⁷⁵² Baton Rouge Police Department, *Bias Based Profiling*, General Order No. 108 (Baton Rouge: Baton Rouge Police Department, 2018), <https://www.brla.gov/DocumentCenter/View/9874/General-Order-108-Bias-Based-Profiling->.

⁷⁵³ Toohey, "'Fair and Impartial Policing' Training."

implicit bias instructors, who were then tasked by the agency to create a program for incoming recruits and current officers. The BRPD has incorporated this instruction in its seven-hour “BIAS policing recognition” program, the agency’s delivery of implicit bias training.⁷⁵⁴

3. Cynefin Analysis

The BRPD’s anti-bias training focused on the explicit forms of bias before Sterling’s death, such as racially biased policing, which as discussed previously are distinct from implicit bias. Thus, the agency operated in the *obvious/simple* context, relying on established protocols and policies. After the shooting, Chief Dabadie’s decision to contract with the FIP placed it in the *complicated* domain, with expert-recommended “good practices” guiding its implicit bias program.

⁷⁵⁴ Baton Rouge Police Department, “Academy Course Schedule,” 6.

VII. SAINT ANTHONY POLICE DEPARTMENT: PHILANDO CASTILE—JULY 6, 2016

On the evening of Wednesday, July 6, 2016, Saint Anthony Police Department (SAPD) Officers Jeronimo Yanez and Joseph Kauser pulled over an Oldsmobile driven by 32-year-old Philando Castile.⁷⁵⁵ Inside the car was Castile's girlfriend, Diamond Reynolds, and her four-year-old daughter as they all traveled in the city of Falcon Heights, Minnesota.⁷⁵⁶ Falcon Heights does not have a police department and was in contract with the SAPD for police services at that time.⁷⁵⁷ Yanez later told investigators that his reasons for stopping Castile included a broken taillight and suspicion that the driver might have been a suspect from a past robbery.⁷⁵⁸

Castile was a licensed pistol owner and in possession of his gun when Yanez pulled him over. Reynolds claimed that Castile told Yanez he had his gun and reached for his wallet to provide his permit.⁷⁵⁹ Yanez, whose version of events differed from Reynolds's, claimed Castile was not making a motion for his wallet but instead reaching for the gun. Yanez then shot Castile, killing him. Immediately after the shooting, Reynolds used her cellphone to live stream the events to her Facebook social media account; by the next day, her video of Castile's final moments struggling to breathe were viewed over four million times.⁷⁶⁰

⁷⁵⁵ This incident occurred the day after the death of Alton Sterling on July 5, 2016, as described in Chapter VI.

⁷⁵⁶ Julie Bosman, "After Poised Live-Streaming, Tears and Fury Find Diamond Reynolds," *New York Times*, July 7, 2016, <https://www.nytimes.com/2016/07/08/us/after-poised-live-streaming-tears-and-fury-find-diamond-reynolds.html>.

⁷⁵⁷ "Falcon Heights Contract with St. Anthony Police Expires," CBS Minnesota, January 1, 2018, <https://minnesota.cbslocal.com/2018/01/01/falcon-heights-st-anthony-police-2/>.

⁷⁵⁸ Mark Berman, "Minnesota Officer Charged with Manslaughter for Shooting Philando Castile during Incident Streamed on Facebook," *Washington Post*, November 16, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/11/16/prosecutors-to-announce-update-on-investigation-into-shooting-of-philando-castile/>.

⁷⁵⁹ Mitch Smith, "In Court, Diamond Reynolds Recounts Moments before a Police Shooting," *New York Times*, June 6, 2017, <https://www.nytimes.com/2017/06/06/us/castile-police-shooting-facebook-trial.html>.

⁷⁶⁰ Bosman, "Live-Streaming, Tears and Fury."

The Minnesota Bureau of Criminal Apprehension assumed the lead in the shooting investigation, with Ramsey County Attorney Joh Choi set to receive the results.⁷⁶¹ On November 16, 2016, Choi announced manslaughter charges against Yanez, which included endangering charges for his shooting Castile while Reynolds and her daughter were also in the car. Choi criticized Yanez in the press conference announcing the charges, saying, “I cannot allow the death of a motorist who was lawfully carrying a firearm under these facts and circumstances to go unaccounted for.”⁷⁶²

Yanez’s trial began May 30, 2017, during which he testified in his defense, claiming that he had shot Castile because he feared for his life as Castile made a motion toward the gun.⁷⁶³ On June 16, 2017, a jury acquitted Yanez of all charges.⁷⁶⁴ A month after the trial concluded, Yanez and the City of Saint Anthony Village reached an agreement on his voluntary separation from the SAPD, which allowed him to receive \$48,500 for unused leave he had accumulated while in service.⁷⁶⁵ Later, Falcon Heights city officials decided not to renew their contract with the SAPD, and on January 1, 2018, the Ramsey County Sheriff’s Office assumed policing responsibilities in the city.⁷⁶⁶ Castile’s family and Saint Anthony reached a \$3 million civil settlement after Yanez’s acquittal.⁷⁶⁷

⁷⁶¹ David Chanen, “Jesse Jackson Visits Twin Cities as Castile Shooting Continues to Reverberate,” *Star Tribune*, July 9, 2016, <https://www.startribune.com/ramsey-county-attorney-says-he-needs-time-to-determine-whether-to-use-grand-jury-in-castile-shooting/386029891/>.

⁷⁶² Berman, “Minnesota Officer Charged with Manslaughter.”

⁷⁶³ Michelle Mark, “The Trial for the Police Officer Charged in the Shooting Death of Philando Castile Began Today—Here’s What We Know So Far,” *Business Insider*, May 30, 2017, <https://www.businessinsider.com/trial-begins-for-police-officer-jeronimo-yanezwho-fatally-shot-philando-castile-2017-5>; Matt Furber and Mitch Smith, “‘I Had No Choice,’ Minnesota Officer Testifies on Shooting,” *New York Times*, June 9, 2017, <https://www.nytimes.com/2017/06/09/us/jeronimo-yanez-philando-castile-minnesota-shooting.html>.

⁷⁶⁴ Smith, “Moments before a Police Shooting.”

⁷⁶⁵ Amy Forliti, “Cop Who Killed Philando Castile to Be Paid \$48,500 in Buyout,” *USA Today*, July 10, 2017, <https://www.usatoday.com/story/news/nation/2017/07/11/cop-who-killed-philando-castile-paid-48-500-buyout/466918001/>.

⁷⁶⁶ CBS Minnesota, “Falcon Heights Contract.”

⁷⁶⁷ Mitch Smith, “Philando Castile Family Reaches \$3 Million Settlement,” *New York Times*, June 26, 2016, <https://www.nytimes.com/2017/06/26/us/philando-castile-family-settlement.html>.

Unlike the DOJ's actions during the Garner, Brown, Gray, and Sterling cases, the agency did not commence an investigation into potential pattern-and-practice or civil rights violations in Castile's death. However, the SAPD voluntarily joined the Collaborative Reform Initiative under the DOJ's Office of Community Oriented Policing Services in December 2016.⁷⁶⁸ The program helps police departments with various consulting services to restore community trust, such as implementing community policing and improving hiring practices.⁷⁶⁹ SAPD Chief Jon Mangseth promised his constituents that he would abide by the DOJ's recommendations resulting from the eight-month review, which began in February 2018 and ended in August that year.⁷⁷⁰

A. AFTERMATH: FIVE DALLAS OFFICERS KILLED

The first week of July 2016 was tumultuous for American policing. On Tuesday, July 5, 2016, Alton Sterling was shot and killed by a BRPD officer during an encounter outside a convenience store.⁷⁷¹ The next day, motorist Philando Castile was fatally shot by an SAPD officer during a traffic stop in Falcon Heights, Minnesota. In reaction to these two shootings, protesters held a march on Thursday, July 7, in downtown Dallas, Texas. The group, organized under the banner of #blacklivesmatter, argued the shootings were examples of excessive police force against black men.⁷⁷²

⁷⁶⁸ Jon Collins and Riham Feshir, "Feds to Assess St. Anthony Cops after Castile Shooting," MPR News, December 15, 2016, <https://www.mprnews.org/story/2016/12/15/st-anthony-pd-department-of-justice>.

⁷⁶⁹ "CRI-TAC Collaborative Reform Initiative," Community Oriented Policing Services, accessed October 5, 2020, <https://cops.usdoj.gov/collaborativereform>.

⁷⁷⁰ Pat Pheifer, "U.S. Department of Justice's Work with St. Anthony Police Will Continue, but Differently," *Star Tribune*, February 22, 2018, <https://www.startribune.com/doj-s-work-with-st-anthony-police-will-continue-but-differently/474914003/>.

⁷⁷¹ Domonoske and Chappell, "Baton Rouge Man's Fatal Shooting."

⁷⁷² Dwain Price, "Ex-Police Chief David Brown Recalls Shootings of Dallas Police Officers following Black Live Matters Event in His New Book 'Called to Rise,'" *Undeclared*, July 7, 2017, <https://theundeclared.com/features/ex-police-chief-dave-brown-recalls-shootings-of-dallas-police-officers-following-black-live-matters-event-in-his-new-book-called-to-rise/>.

The protest was organized and peaceful, with Dallas Police Department officers and politicians joining together in solidarity alongside the protesters.⁷⁷³ The group gathered in Belo Garden Park, peacefully voicing their dissatisfaction with the events in Baton Rouge and Falcon Heights.⁷⁷⁴ However, at 8:59 p.m., as the protesters marched on Commerce Street through downtown Dallas, officers reported hearing gunshots. What followed was a running gun-battle as an active shooter, identified later by police as Micah Johnson, engaged with the police officers. Multiple civilian videos recorded the chaos of the night, some capturing Johnson killing officers.⁷⁷⁵ By 9:40 p.m., Johnson had killed two officers. At 10:53 p.m., police reported 11 officers shot; by the end of Johnson's shooting spree, a total of 11 officers and 2 civilians had suffered gunshot wounds.⁷⁷⁶ Five of the injured officers lost their lives that night: Lorne Ahrens, Michael Krol, Michael J. Smith, and Patrick Zamarripa of the Dallas Police Department (DPD), and Brent Thompson of the Dallas Area Rapid Transit Police.⁷⁷⁷

By 11:10 p.m., police had tracked and contained Johnson in the parking garage of El Centro Community College in downtown Dallas.⁷⁷⁸ Johnson was a 25-year-old Army Reserve washout from Mesquite, Texas, having separated from the service after a female soldier accused him of sexual harassment.⁷⁷⁹ With Johnson contained in the garage, DPD negotiators spoke with him, trying to convince him to surrender. Commenting on Johnson's conversation with negotiators, former DPD Chief David O. Brown said, "He was upset

⁷⁷³ Dallas Police Department (@DallasPD), "@DPDAnderson with Senator Royce West @Demonstration @Belo Garden Park," Twitter, July 7, 2016, 9:11 p.m., <https://twitter.com/DallasPD/status/751222050673430528>.

⁷⁷⁴ Marjorie Owens, "This Is How the Dallas Sniper Shootings Unfolded," *USA Today*, July 8, 2016, <https://www.usatoday.com/story/news/nation-now/2016/07/08/how-dallas-sniper-shooting-developed/86843004/>.

⁷⁷⁵ Rosa Torres, "Dallas Texas Shooting Caught on Video!!," July 7, 2016, YouTube, video, 2:53, <https://www.youtube.com/watch?v=dIOZIRPKa9A>; Associated Press, "Dramatic Footage Shows Dallas Officer Shot," July 8, 2016, YouTube, video, 2:17, <https://www.youtube.com/watch?v=tpb-mtjN9q8>.

⁷⁷⁶ Owens, "Dallas Sniper Shootings."

⁷⁷⁷ Manny Fernandez, Richard Pérez-Peña, and Jonah Engel Bromwich, "Five Dallas Officers Were Killed as Payback, Police Chief Says," *New York Times*, July 8, 2016, <https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html>.

⁷⁷⁸ Owens, "Dallas Sniper Shootings."

⁷⁷⁹ Fausset, Fernandez, and Blinder, "Micah Johnson."

about the recent police shootings. The suspect said he was upset at white people. The suspect stated he wanted to kill white people, especially white officers.”⁷⁸⁰ While speaking with police negotiators, Johnson proclaimed, “Y’all are gonna have to kill my ass, and I’m going to do my best to kill you. . . . I’m trying to kill as many white pigs as I can. How many did I get?”⁷⁸¹ These statements led DPD officials to believe that Sterling and Castile’s deaths had prompted Johnson’s rage, causing him to target and kill police officers that evening in Dallas.⁷⁸²

Negotiations continued for several hours without progress.⁷⁸³ During the stand-off, Johnson continued shooting at the negotiators, but no additional officers were hit. He refused to surrender, threatening to animate from his position while firing, hoping to kill more officers. With negotiations breaking down, and given Johnson’s proven deadly capabilities and threats of possessing explosives, Chief Brown authorized lethal measures.⁷⁸⁴ Just after 3:06 a.m. on Friday, July 8, 2016, a DPD bomb-disposal robot delivered and detonated a one-pound explosive device to Johnson’s location, killing him.⁷⁸⁵ Dallas County District Attorney Faith Johnson presented the DPD’s use of a robot to kill Johnson to a grand jury, as is customary in Dallas for cases of police use of force with death.⁷⁸⁶ In January 2018, a grand jury determined the DPD’s use of force was lawful.

⁷⁸⁰ Fernandez, Pérez-Peña, and Bromwich, “Five Dallas Officers Were Killed.”

⁷⁸¹ Jamie Thompson, *Standoff: Race, Policing, and a Deadly Assault That Captivated a Nation* (New York: Henry Holt and Company, 2020), 114. The slang from Johnson’s text has been directly reproduced.

⁷⁸² Nicole Gaouette and Steve Visser, “Dallas Police Shooter a Reclusive Veteran,” CNN, July 11, 2016, <https://www.cnn.com/2016/07/08/us/micah-xavier-johnson-dallas-shooter/index.html>.

⁷⁸³ Fernandez, Pérez-Peña, and Bromwich, “Five Dallas Officers Were Killed.”

⁷⁸⁴ Owens, “Dallas Sniper Shootings.”

⁷⁸⁵ Notably, this was the first application of lethal force by police robot in the United States. See Peter W. Singer, “Police Used a Robot to Kill: The Key Questions,” CNN, July 10, 2016, <https://www.cnn.com/2016/07/09/opinions/dallas-robot-questions-singer/index.html>.

⁷⁸⁶ Claudia Lauer, “Officials: No Charges for Officers Who Killed Dallas Sniper,” AP News, January 31, 2018, <https://apnews.com/article/8920e3f8aeb44df88c15874026fd868>.

The day after the shootings, U.S. Attorney General Loretta Lynch released a statement encompassing the events in Falcon Heights, Baton Rouge, and Dallas.⁷⁸⁷ “This has been a week of profound grief and heartbreaking loss,” she said, while also noting her department’s lead role investigating Sterling’s death and providing assistance to the SAPD after Castile’s death. Lynch distinguished between legitimate protesters and those engaging in violent retaliation or destruction of property, saying, “To those who seek to improve our country through peaceful protest and protected speech: I want you to know that your voice is important. Do not be discouraged by those who would use your lawful actions as a cover for heinous violence.”⁷⁸⁸ Lynch’s pronouncement of the investigations into Sterling’s and Castile’s deaths, while expressing sympathy for the dead officers in the same statement, denoted her understanding that police actions perceived as illegitimate could catalyze deadly violence against officers. The feelings of uncertainty, helplessness, and fear were understandable and justified, she said. Violent action, however, is never the answer, she argued. Instead, she urged “calm, peaceful, collaborative and determined action” to rebuild the relationship between the community and police.⁷⁸⁹ Her words, however, came only 10 days before Gavin Long would kill three officers in Baton Rouge, also in retaliation for Sterling’s and Castile’s deaths, as described in Chapter VI.⁷⁹⁰

B. CIVILIAN BOARDS AND COMMISSIONS

1. Before

The SAPD did not have civilian oversight of officer misconduct complaints at the time of Philando Castile’s death in 2016.⁷⁹¹ In fact, state law from 2012 prohibited

⁷⁸⁷ Loretta E. Lynch, “Attorney General Loretta E. Lynch Delivers Statement on Dallas Shooting,” Department of Justice, July 8, 2016, <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-statement-dallas-shooting>.

⁷⁸⁸ Department of Justice.

⁷⁸⁹ Department of Justice.

⁷⁹⁰ Gabe Gutierrez and F. Brinely Bruton, “Baton Rouge Cop Killer Didn’t Make 911 Call: Official,” NBC News, July 18, 2016, <https://www.nbcnews.com/storyline/baton-rouge-police-ambush/baton-rouge-police-ambush-cop-killer-didn-t-make-911-n611366>.

⁷⁹¹ Jessie Van Berkel, “Shootings by Officers Prompt Local and Federal Pushes for Police Oversight,” *Star Tribune*, July 24, 2016, <https://www.startribune.com/shootings-by-officers-prompt-local-and-federal-pushes-for-police-oversight/388086282/>.

Minnesota civilian review boards from issuing “findings of fact or determination regarding a complaint against an officer.”⁷⁹² The legislation allowed existing civilian boards only to make non-binding recommendations to police chiefs, who some suggested were inclined to overlook officers’ transgressions to avoid documenting deficiencies that could be used against their agencies in future litigation. As such, police misconduct investigations were solely under the purview of the relevant police department.

2. In Response

After Castile’s shooting, some said that citizens wronged by Minnesota police officers “have little means of redress and that citizen oversight is one way to help balance the power of police.”⁷⁹³ However, little has changed in response to his death. Under SAPD policy, the chief retains final authority on misconduct allegations.⁷⁹⁴ The chief may accept or modify investigative findings, and as the arbiter of discipline, the chief can mete out anything from an oral reprimand to termination from the agency. In 2020, Minnesota approved several police reform measures after George Floyd’s death but failed to modify the restrictions on civilian boards.⁷⁹⁵

3. Cynefin Analysis

The state law prohibiting civilian oversight panels from influencing officer misconduct investigations remained unchanged in response to Castile’s death. As such, the SAPD maintains its process-driven, internally managed investigative practice without civilian input, suggesting operating in the *obvious/simple* domain before and after the shooting. However, the SAPD cannot be categorized as occupying a Cynefin domain. As

⁷⁹² Randy Furst, “New Law Throws Minneapolis Police Oversight in Turmoil,” *Star Tribune*, April 6, 2012, <https://www.startribune.com/new-law-throws-minneapolis-police-oversight-in-turmoil/146497655/>.

⁷⁹³ Karen Kraco, “Emotions Still Intense as St. Anthony Residents Wait for Yanez Investigation,” *Northeaster*, August 30, 2016, <https://www.mynortheaster.com/news/emotions-still-intense-as-st-anthony-residents-wait-for-yanez-investigation/>.

⁷⁹⁴ Saint Anthony Police Department, *Policy Manual* (Saint Anthony Village, MN: Saint Anthony Police Department, 2020), 552–53, <http://savmn.com/DocumentCenter/View/1752/St-Anthony-Police-Department-Policy-Manual-May-3-2020>.

⁷⁹⁵ Mohamed Ibrahim, “Minnesota Governor Signs Police Accountability Bill. A Deeper Look at What Law Does,” *Twin Cities Pioneer Press*, July 23, 2020, <https://www.twincities.com/2020/07/23/minnesota-governor-signs-police-accountability-bill-into-law/>.

is demonstrated below, Chief Jon Mangseth instituted many changes to his department after the shooting that better align with policy sovereigns' recommendations. Doing so denoted a willingness to consult expert opinions to enhance his agency. However, the state restrictions supersede the SAPD's ability to meaningfully implement expert-recommended civilian oversight boards. Thus, it would be improper to categorize the agency's context in a policy dimension it does not control.

C. IMPROVING OR REPLACING LEADERSHIP

1. Before

Chief Mangseth was the SAPD's interim police chief at the time of Castile's death. He joined the SAPD in 1995 and by 2015 had risen to the rank of sergeant.⁷⁹⁶ That year, then-Sergeant Mangseth completed the Minnesota Bureau of Criminal Apprehension's Chief Law Enforcement Officer and Command Academy, a training course that readies officers to assume command staff positions.⁷⁹⁷ In early 2016, his predecessor John Ohl retired, and after 21 years with the department, Mangseth was selected to head the agency.⁷⁹⁸

2. In Response

Chief Mangseth commented that Castile's shooting was the first he could remember in the department's history, saying, "We haven't had an officer-involved shooting in thirty years of more, I'd have to go back in the history books. It's shocking."⁷⁹⁹ He remained police chief after Castile's death and, as mentioned above, in December 2016 volunteered

⁷⁹⁶ Kyle Potter, "Police Chief Defends Officer Who Killed Castile," MPR News, August 17, 2016, <https://www.mprnews.org/story/2016/08/17/minnesota-police-chief-defends-officer-in-july-shooting-of-castile>.

⁷⁹⁷ City of Saint Anthony Village, *Police Department Annual Report 2015* (Saint Anthony, MN: City of Saint Anthony Village, 2015), 15, <http://www.stanthonyvillagewineandspirits.com/Archive/ViewFile/Item/52>.

⁷⁹⁸ Potter, "Police Chief Defends Officer."

⁷⁹⁹ Natasha Bertrand, "The Philando Castile Shooting Just Threw into Question a Central Belief People Have about the U.S. Policing System," Business Insider, July 7, 2016, <https://www.businessinsider.com/philando-castile-shooting-police-commands-2016-7>.

his agency for the DOJ's Collaborative Reform Initiative.⁸⁰⁰ Unlike an official investigation, as the DOJ conducted for the FPD and BPD in seeking systemic civil rights violations, the Collaborative Reform Initiative is a voluntary program for police departments to receive technical assistance intended to raise them to the top of the field in best policing practices.⁸⁰¹ Chief Mangseth embraced the outside perspective the process provided, saying that identifying the SAPD's strengths and weaknesses would allow his officers to better serve the community.⁸⁰²

3. Cynefin Analysis

Chief Mangseth's short tenure before Castile's death does not allow for meaningful Cynefin categorization, as he headed the agency for mere months before the shooting. However, his rapid request to join the Collaborative Reform Initiative in response to the shooting firmly placed the SAPD in the *complicated* domain, with a "sense-analyze-respond" cycle. Chief Mangseth welcomed the expert-driven diagnostic process to discover agency improvements to mitigate the crisis caused by Castile's shooting.

D. ADOPTING COMMUNITY-ORIENTED POLICING

1. Before

Before Castile's death, the SAPD's community-oriented policing program failed to incorporate methods as suggested by policy experts. For example, the city's 2016 budget describes some of the department's previous attempts to demonstrate its commitment to community policing, including checking liquor and tobacco compliance, establishing a neighborhood crime watch, and performing animal control functions.⁸⁰³ None of these efforts are suggested by policy sovereigns as contributing to collaborative relationships; instead, they suggest the SAPD had been labeling routine law enforcement practices "community-oriented policing."

⁸⁰⁰ Collins and Feshir, "Feds to Assess St. Anthony Cops."

⁸⁰¹ Community Oriented Policing Services, "Collaborative Reform Initiative."

⁸⁰² Collins and Feshir, "Feds to Assess St. Anthony Cops."

⁸⁰³ City of Saint Anthony Village, *City of St. Anthony Annual Budget 2016* (Saint Anthony, MN: City of Saint Anthony Village, 2016), 15, <https://www.savmn.com/Archive/ViewFile/Item/110>.

In addition, the agency's strategic posture before the shooting reveals a simplistic and presumptive view of community-oriented policing. In a report reviewing the events of 2015, Chief John Ohl (Chief Mangseth's predecessor) stated, "We [the SAPD] know our community and the community knows us," arguing that the community should not confuse his agency with other departments that had experienced the fallout from controversial use-of-force incidents that year. His statements suggest he believed his agency's community relationship-building efforts were sufficient and not in need of enrichment. However, in the same report, he suggested that his officers had to at times deal with "the dregs of society," language inconsistent with building community partnerships.⁸⁰⁴ Further, the SAPD's patrol strategy centered on officers' technical policing skills' being useful in solving community issues, with little mention of cooperative, collaborative, or community-centered behaviors.⁸⁰⁵

2. In Response

Chief Mangseth's 2016 *Annual Report* reviewed agency events from that year; it was the first report after Castile's death and also the first under his leadership. In the report, he maintained a vastly different approach from Chief Ohl when discussing community relationships, saying that the SAPD "look [s] forward to learning how we can enhance our police service in the community."⁸⁰⁶ Whereas Chief Ohl presumptively suggested the police and community "knew" each other, Chief Mangseth voiced his willingness to partner with and empower citizens to solve problems in the community, a technique that policy experts recommend. The department understood, the report continued, that getting to know community members was an essential component of gaining their support and working together on solving local problems.⁸⁰⁷

⁸⁰⁴ City of Saint Anthony Village, *Annual Report 2015*, 1.

⁸⁰⁵ City of Saint Anthony Village, 9.

⁸⁰⁶ City of Saint Anthony Village, *Police Department Annual Report 2016* (Saint Anthony, MN: City of Saint Anthony Village, 2016), 1, <http://www.savmn.com/ArchiveCenter/ViewFile/Item/208>.

⁸⁰⁷ City of Saint Anthony Village, 9.

The SAPD's strategic plan also highlights how the agency has refocused its commitment to community-oriented policing.⁸⁰⁸ While the agency's small size, approximately 20 officers, precludes altering its deployment structures to include policy recommendations such as maintaining particular officers in the same patrol areas, it has created inclusive relationships with different community groups.⁸⁰⁹ Community-oriented policing, says Chief Mangseth, is "a lens through which all policing activities and strategies must pass."⁸¹⁰

3. Cynefin Analysis

The SAPD's community-oriented policing program operated in the *obvious/simple* domain prior to Castile's death. The agency had presumed there was a clear cause and effect in its policing strategy, suggesting that its law enforcement techniques built community relationships, but policy experts find such attempts ineffective. Further, Chief Ohl's suggestion that his agency was in sync with the community suggests an over-simplification of the relationship-development process and a mental entrainment that precluded new ways of thinking, a weakness in this domain.⁸¹¹ After Castile's shooting, the SAPD shifted into the *complicated* domain, implementing "good practice" relationship-building strategies that experts advocate.

E. ENHANCING COMMUNITY ENGAGEMENT

1. Before

The SAPD community engagement efforts focused heavily on law enforcement and tactical-related activities before Castile's death, rather than promoting positive non-enforcement connections intended to foster familiarization and relationship building.

⁸⁰⁸ City of Saint Anthony Village, *St. Anthony Police Department 2018 Strategic Plan* (Saint Anthony, MN: City of Saint Anthony Village, 2018), 1, <https://www.savmn.com/DocumentCenter/View/1078/St-Anthony-Police-Department-2018-Strategic-Plan>.

⁸⁰⁹ "Police Department," City of Saint Anthony Village, accessed December 13, 2020, <https://www.savmn.com/191/Police-Department>.

⁸¹⁰ "Body Worn Cameras," City of Saint Anthony Village, accessed December 13, 2020, <https://www.savmn.com/391/Body-Worn-Cameras>.

⁸¹¹ Snowden and Boone, "A Leader's Framework," 70.

For example, the year before the shooting, a department event included a “Touch a Truck” event, where SWAT officers allowed kids to play in an armored vehicle.⁸¹² As another example, the SAPD hosted a “Cops versus Kids” basketball game but categorized it as a “crime prevention” event rather than one to foster community engagement.⁸¹³ Additionally, “police effectiveness,” how well it suppressed crime and promoted a sense of security, was a central SAPD objective in its community engagement plan.⁸¹⁴ This strategy suggested that achieving safety *for* the community was more important to the agency than doing so *with* the community.

2. In Response

After Castile’s death, the SAPD transitioned to an active community engagement plan, embracing many expert recommendations. The agency has adopted a programmatic method of community engagement, creating a Community Engagement Unit (CEU) consisting of one sergeant and four officers; however, given the SAPD’s small size, 25 percent of its staff have been assigned to the unit.⁸¹⁵ Some of the agency’s early efforts at engaging the community included offering kids ice-skating lessons, teaching bicycle safety courses, and acting as “guest readers” at community centers.⁸¹⁶

In 2019, the SAPD introduced several more sovereign-recommended community-engagement strategies.⁸¹⁷ These included restoring its Citizens Academy, which allows 10 community members to sample an officer’s duties; attending student-driven conversations on race and policing at local high schools; hosting Coffee with the Cops events; and having officers visit community block parties to promote familiarization. Sergeant Mike Huddle, the SAPD’s CEU leader, described the agency’s community

⁸¹² City of Saint Anthony Village, *Annual Report 2015*, 19.

⁸¹³ City of Saint Anthony Village, 22.

⁸¹⁴ City of Saint Anthony Village, 9.

⁸¹⁵ City of Saint Anthony Village, *Annual Report 2016*, 29.

⁸¹⁶ City of Saint Anthony Village, 30–33.

⁸¹⁷ City of Saint Anthony Village, *Police Department Annual Report 2019* (Saint Anthony, MN: City of Saint Anthony Village, 2019), 30–35, <https://miweblink.metro-inet.us/SAPublic/DocView.aspx?id=40974>.

engagement plan as demanding “constant self-examination, feedback from community members, training, growth, and commitment from each member of the organization.”⁸¹⁸

3. Cynefin Analysis

The SAPD’s community engagement plan operated in the *obvious/simple* domain before Castile’s death, similar to its community-oriented policing program. The agency maintained a structurally linear approach to interacting with the community. Officers were present at some events and displayed the agency’s technical and procedural capabilities, claiming they engendered building relationships. However, these efforts failed to follow the recommendations of policy sovereigns, who suggest non-enforcement-related and informal methods of community outreach. After the shooting, the SAPD shifted into the *complicated* domain, implementing many of the sovereign-designated “good practices.”

F. EMPHASIZING DE-ESCALATION, PRESERVATION OF LIFE, AND ADOPTING LESS-LETHAL TECHNOLOGIES

1. Before

According to the SAPD’s *Annual Report* published the year before Castile’s death, the agency claimed its officers participated in role-playing scenario training centered on de-escalation, use of force, and critical incident management.⁸¹⁹ However, the report noted that officers found it odd being taught these topics by professionals outside of policing, implying that officers considered the non-department training inferior.⁸²⁰ As for force options at the time of Castile’s death, SAPD officers had several less-lethal tools available. When he pulled Castile’s car over, Officer Jeronimo Yanez was equipped with a CED,

⁸¹⁸ City of Saint Anthony Village, 29.

⁸¹⁹ City of Saint Anthony Village, *Annual Report 2016*, 20.

⁸²⁰ City of Saint Anthony Village, *Annual Report 2015*, 14.

baton, and OC spray; SAPD patrol officers were not routinely issued other less-lethal technology options on patrol.⁸²¹

2. In Response

In response to questions about the SAPD's use-of-force policies after Castile's death, the SAPD claimed it considered some of its officers "experts in de-escalating contentious situations" and noted some also trained officers from outside agencies.⁸²² However, an examination of records after the shooting revealed that in both 2012 and 2014, Officer Yanez attended two 20-hour "Bulletproof Warrior" training sessions.⁸²³ These sessions carried labels like "Officer Survival" and "Street Survival" and taught attendees that hesitation could lead to injury or death, the opposite objective of de-escalation. Notably, Officer Yanez's training records documented that he received only one two-hour instruction block on de-escalation during his four years with the department.

With the assistance of the Collaborative Reform Initiative, the SAPD codified its commitment to de-escalation, proper use of force, and less-lethal technologies.⁸²⁴ For example, policy now requires that officers should attempt to stabilize public encounters to reduce the immediacy of a threat and minimize the likelihood of needing to use force.⁸²⁵ Further, regulations require officers to consider less-lethal tools when possible and avoid physical confrontations, unless immediately necessary.⁸²⁶ The agency also made impact munitions available to trained officers, recommending them as a tool for de-escalation and

⁸²¹ Doug Henning and Christopher Olson, "Transcript of Interview of Officer Jeromino Yanez" (Minnesota Department of Public Safety, Bureau of Criminal Apprehension, 2016), 4, <https://www.ramseycounty.us/sites/default/files/County%20Attorney/Yanez%20BCA%20Interview%20Transcript%207.7.16.pdf>.

⁸²² "A Commitment to Serve St. Anthony, Falcon Heights and Lauderdale with Skilled and Dedicated Law Enforcement Professionals Who Are Well Trained and Connected to Our Communities," Saint Anthony Police Department, 2016, 2, <https://www.savmn.com/DocumentCenter/View/469/August-1-2016-St-Anthony-Village-Police-Officer-Training>.

⁸²³ Jennifer Bjorhus, "Officer Who Shot Castile Attended 'Bulletproof Warrior' Training," *Star Tribune*, July 14, 2016, <https://www.startribune.com/officer-in-castile-case-attended-bulletproof-warrior-training/386717431/>.

⁸²⁴ City of Saint Anthony Village, *Annual Report 2019*, 19.

⁸²⁵ Saint Anthony Police Department, *Policy Manual*, 46.

⁸²⁶ Saint Anthony Police Department, 49.

reducing the need to use greater force.⁸²⁷ Unlike the Bulletproof Warrior instruction that advises against hesitation due to threat of injury, SAPD policy states that officers should consider whether “taking no action or passively monitoring” a situation is the most reasonable response to a confrontation, especially for those in mental crisis.⁸²⁸ The transition to an enhanced de-escalation and use-of-force policy brought the SAPD into greater conformity with experts’ policy recommendations.

3. Cynefin Analysis

The SAPD’s force and de-escalation related policies occupied the *obvious/simple* domain before Castile’s death, characterized by officers having a narrow perspective on accepting information from outside sources and straightforward thinking that relied on addressing threats to officers rather than learning skills to reduce the need to use force. The training imbalance described above goes specifically against sovereign recommendations, but the *obvious/simple* domain can result in “no challenge of received wisdom” and complacency in seeking policy advancements.⁸²⁹ After Castile’s death, the agency entered the *complicated* domain, working with the Collaborative Reform Initiative to create policies better supporting de-escalation and “good practices” recommended by use-of-force experts.

G. MEDIA STRATEGY AND PUBLICLY DIRECTED STATEMENTS

1. Before

The SAPD did not maintain a dedicated public information section before Castile’s death. Instead, the department’s policy deferred all decisions related to media contact to the chief. However, an interview from May 2016 with former Chief John Ohl, who Chief Mangseth replaced, indicated the agency’s strategy did not involve leveraging the media for proactive community messaging, procedural transparency, or information gathering. Instead, the interview revealed his hostility toward the media. In it, Ohl claimed media bias

⁸²⁷ Saint Anthony Police Department, 65.

⁸²⁸ Saint Anthony Police Department, 353.

⁸²⁹ Snowden and Boone, “A Leader’s Framework,” 73.

was responsible for the public's negative perceptions of police, particularly in light of how the media had covered police-related civilian deaths. Ohl continued his critique of the media in his interview, saying it "[chooses] to dig deep and find the worst possible scenario, and shine it like a light, and report on it every day," blaming the media exclusively for opinions of the police profession being "in the toilet."⁸³⁰

2. In Response

As discussed in Chapter II, policy sovereigns recommend that there should be a systematic response capability to address community inquiries and concerns after police-involved shootings.⁸³¹ After the shooting, the SAPD issued this press release after Castile's death:

On 07-06-2016 at approximately 2100 hours, a Saint Anthony Police Officer effected a traffic stop on Larpenteur and Fry in the City of Falcon Heights, Minnesota. During the stop, shots were fired. One adult male was taken to the hospital. We have been informed that this individual is deceased. No one else was injured and the BCA has been called in to investigate this officer involved shooting. A handgun was recovered from the scene.⁸³²

While the SAPD issued a public statement immediately after the shooting, it was short and vague, lacking context and explanations of procedures and protocols as policy experts recommend.

However, during his first public forum in December 2016, Chief Mangseth acknowledged that his small agency would need to learn how to respond to the increased scrutiny and questions from the community.⁸³³ At that press conference, he admitted that the shooting spurred him to move forward and improve his department, saying, "I take

⁸³⁰ Bill Lindeke, "Interview with John Ohl, Recently Retired Police Chief of Saint Anthony," *Twin City Sidewalks* (blog), July 7, 2016, <http://tcsidewalks.blogspot.com/2016/07/interview-with-john-ohl-recently.html>.

⁸³¹ International Association of Chiefs of Police, *Officer-Involved Shootings*, 3.

⁸³² Lindeke, "Interview with John Ohl." Officer Yanez stopped Philando Castile's car at the intersection of Larpenteur Avenue and Fry Street in the city of Falcon Heights.

⁸³³ Matt Sepic and Riham Feshir, "St. Anthony Police Chief Answers Public Questions for 1st Time since Castile Shooting," MPR News, December 12, 2016, <https://www.mprnews.org/story/2016/12/12/st-anthony-police-chief-answers-public-questions-castile-shooting>.

[Castile's death] seriously. I just want you to know that I am invested in doing what we need to do to provide the best service.”⁸³⁴ This was one of his early attempts to leverage media as a tool to amplify his message to the community. Chief Mangseth has since used the media to promote the policy changes his agency undertook since Castile's shooting while in the collaborative reform process, but SAPD policy preserves him as the sole contact for media inquiries and communication.⁸³⁵

3. Cynefin Analysis

Before Castile's shooting, the SAPD chief was also the agency's media spokesperson and did not leverage the media in a strategic manner to promote itself positively. Thus, the agency did not occupy a Cynefin domain before the shooting and cannot be categorized. However, after Castile's death, Chief Mangseth pivoted into the *complex* domain. While the chief remains the sole conduit for public information, he seized on emerging opportunities in a “probe-sense-respond” cycle to communicate publicly in a variety of interviews and public appearances. Further, he has committed to experimenting with new strategies to deliver information on policy advancements to the community.

H. TRANSPARENCY ON PROCEDURAL PROCESSES

1. Before

Before Castile's death, the SAPD's annual reports operated as the agency's way of being transparent with the community.⁸³⁶ Since 2014, the department has posted these reports online, providing crime statistics, a review of its patrol and investigatory branches, a crime prevention summary, and a list of past accomplishments and projected goals.⁸³⁷

⁸³⁴ Sepic and Feshir.

⁸³⁵ Pfeifer, “U.S. Department of Justice's Work.”

⁸³⁶ City of Saint Anthony Village, *Police Department Annual Report 2014* (Saint Anthony, MN: City of Saint Anthony Village, 2014), http://lauderdalemn.org/vertical/sites/%7B5F73237E-9F78-407B-A785-DA0D9F5C945F%7D/uploads/02.12_St._Anthony_2014_Annual_Report_-_Police-LDL.pdf; City of Saint Anthony Village, *Annual Report 2015*; City of Saint Anthony Village, *Annual Report 2016*; City of Saint Anthony Village, *Annual Report 2019*.

⁸³⁷ “Police Department Annual Reports,” City of Saint Anthony Village, accessed December 15, 2020, <https://www.savmn.com/Archive.aspx?AMID=40&Type=&ADID=>.

However, a review of the reports before Castile's death yields few details about the internal decisions that formed the agency's policies or discussions that speak to police accountability, topics recommended by policy experts.

2. In Response

After Castile's death, the SAPD adopted multiple sovereign-recommended transparency techniques to supplement its annual reports, which it continues to publish. The agency created a transparency and data-sharing page on its website, containing links to several subpages that address citizens' concerns and questions on internal processes.⁸³⁸ For example, the SAPD publishes alleged misconduct reports, which disclose the details and dispositions of officer misconduct investigations.⁸³⁹ In addition, the agency publishes an annual use-of-force analysis containing detailed narratives on each instance of an SAPD officer's use of force.⁸⁴⁰ The report includes a determination of whether an officer's actions were within policy regulations and the demographic information of the civilian subject involved. Further, the SAPD's policy manual is available online, with an introduction from Chief Mangseth inviting the public to review the document and submit recommendations for improvements.⁸⁴¹ Finally, the SAPD provides an update on its status in the Collaborative Reform Initiative, a quarterly report that catalogues the agency's policy and procedural advancements under the plan.⁸⁴²

3. Cynefin Analysis

The SAPD's method of transparency before Castile's death existed in the *obvious/simple* domain. While the agency provided the public with some insight into its operations,

⁸³⁸ "Transparency & Data Sharing," City of Saint Anthony Village, accessed December 12, 2020, <http://www.savmn.com/415/Transparency-Data-Sharing>.

⁸³⁹ "Police Alleged Misconduct Reports," City of Saint Anthony Village, accessed December 12, 2020, <http://www.savmn.com/Archive.aspx?AMID=53>.

⁸⁴⁰ Saint Anthony Police Department, "2019 Use of Force Analysis" (Saint Anthony, MN: Saint Anthony Police Department, 2020), <https://www.savmn.com/Archive/ViewFile/Item/592>.

⁸⁴¹ "Policy Manual," Saint Anthony Village, accessed December 15, 2020, <http://www.savmn.com/467/Policy-Manual>.

⁸⁴² "Collaborative Reform: Police Chief Updates," City of Saint Anthony Village, accessed December 13, 2020, <https://www.savmn.com/Archive.aspx?AMID=62>.

the topics discussed were a communication in a single direction, excluding public input or commentary. That posture suggests the agency operated under the presumption that extensive interactive communication was not necessary, while also trying to resolve a complex issue (public transparency) by simple means (publishing a document). After the shooting, the SAPD entered the *complicated* domain, closely aligning its policies with expert-recommended “good practices.”

I. BWC USE

1. Before

At the time of Castile’s death, the SAPD did not equip its officers with BWCs.

2. In Response

In January 2017, the SAPD created the Tri-City Body Camera Work Group.⁸⁴³ The group comprised residents and city council members from the three municipalities the agency served, discussing how best to bring the technology to the agency. By the end of 2017, the agency finalized its technology selection and, beginning in January 2018, began providing its officers with BWCs.⁸⁴⁴ By November that year, every SAPD officer was equipped with a camera.

Beyond merely providing his officers BWCs, Chief Mangseth established sound policies regulating their use, implementing several layers of oversight. Daily record checks ensure that officers are wearing the cameras as directed, and the agency requires monthly supervisory audits to verify that officers are using the cameras within policy. Chief Mangseth does not think of BWCs as an “end-all do-all fix,” however, admitting that the devices do not capture every aspect of a police–citizen encounter.⁸⁴⁵ Officers must act

⁸⁴³ “Tri-City Body Camera Work Group,” City of Saint Anthony Village, accessed December 15, 2020, <https://www.savmn.com/271/Tri-City-Body-Camera-Work-Group>. When the working group was formed, the SAPD provided police services to Saint Anthony, Lauderdale, and Falcon Heights. As mentioned above, Falcon Heights declined to renew its contract with the SAPD beginning in January 2018, instead choosing the Ramsey County Police Department for police services. The SAPD continues to provide contracted police services to the City of Lauderdale.

⁸⁴⁴ City of Saint Anthony Village, “Body Worn Cameras.”

⁸⁴⁵ City of Saint Anthony Village.

with procedural justice and impartial policing, he says, if they expect the public to accept the limits on the perspective BWCs provide.

3. Cynefin Analysis

The SAPD did not use BWCs before Castile's death, so the department did not occupy a Cynefin domain in this policy area and cannot be categorized. After his death, the department entered the *complicated* domain, creating a panel of experts to formulate its BWC program and incorporating "good practices" that policy experts recommend.

J. RELEASING BWC FOOTAGE

1. Before

As the SAPD did not use BWCs until nearly two years after Castile's death, there was no policy on releasing footage.

2. In Response

BWCs are a relatively new technology in Minnesota, and policies in the state are emerging and evolving as agencies introduce the devices. In Minnesota, most BWC data is "presumptively private," unlike the "presumptively public" status of other government data.⁸⁴⁶ SAPD policy complies with state law.⁸⁴⁷ Under the law, BWCs are considered public in just two circumstances.⁸⁴⁸ First, videos containing footage of an officer causing a person substantial bodily harm, such as an officer-involved shooting, are publicly accessible. Second, a police agency can designate a video public if a person in the footage (even if only audibly) chooses to do so, if investigations utilizing the footage are completed, and if others in the video either agree to its release or request redactions.

⁸⁴⁶ League of Minnesota Cities, "Use of Body-Worn Cameras" (memorandum, Saint Paul, MN: League of Minnesota Cities, 2019), 1, <https://www.lmc.org/wp-content/uploads/documents/Use-of-Body-Worn-Cameras.pdf>.

⁸⁴⁷ Saint Anthony Police Department, *Policy Manual*, 328.

⁸⁴⁸ Tad Venzer, "Dayton Signs Law Governing Police Body Cameras and Footage," *Twin Cities Pioneer Press*, May 31, 2016, <https://www.twincities.com/2016/05/31/dayton-signs-law-governing-police-body-cameras-and-footage/>.

3. Cynefin Analysis

The SAPD did not use BWCs when Castile died, so the agency did not occupy a Cynefin domain for this policy dimension. Currently, the BWC video release policy is governed by state law and, in most cases, is presumed private and not available to the public. Since the SAPD cannot independently formulate its own release policy, it is improper to categorize the agency in a Cynefin context for this policy dimension.

K. USING SOCIAL MEDIA

1. Before

The SAPD did not have a social media presence on any platforms before Castile's death.

2. In Response

Chief Mangseth listed implementation of SAPD social media pages and applicable policy as a future objective his 2016 *Annual Report*.⁸⁴⁹ Following through on that goal, the agency created Facebook and Twitter accounts in March 2017, followed by an Instagram page in September that year.⁸⁵⁰ The SAPD's official social media policy is contained within its department manual, incorporating the technology into its overall communications strategy.⁸⁵¹ The agency uses expert-recommended practices across all three platforms to promote its partnership with the community. For example, the SAPD's initial Twitter post was a back-to-school celebration, with an officer greeting "little villagers" on the first day of class.⁸⁵² The agency also provided links to its Collaborative Initiate Reform website, updating residents on changes to procedures and policies, in

⁸⁴⁹ City of Saint Anthony Village, *Annual Report 2016*, 40.

⁸⁵⁰ Saint Anthony Police Department (@StAnthonyPolice), "Home Page," Facebook, accessed December 12, 2020, <https://www.facebook.com/StAnthonyPolice>; Saint Anthony Police Department (@stanthonypolice), "St. Anthony Police Department," Instagram, accessed December 12, 2020, <https://www.instagram.com/stanthonypolice/>; Saint Anthony Police (@StAnthonyPolice), "St. Anthony Police," Twitter, accessed December 12, 2020, <https://twitter.com/StAnthonyPolice>.

⁸⁵¹ Saint Anthony Police Department, *Policy Manual*, 241.

⁸⁵² Saint Anthony Police (@StAnthonyPolice), "#backtoschool for Wilshire Park Elementary!," Twitter, September 6, 2017, 1:35 p.m., <https://twitter.com/StAnthonyPolice/status/905484639313297410>.

addition to routine crime information, notable arrests, and information on community social events. While Twitter is the official social media platform of the SAPD and its sub-department, the agency duplicates its posts and pictures across other platforms, amplifying its community outreach efforts.⁸⁵³

3. Cynefin Analysis

Since it did not use social media before Castile's death, the SAPD did not then occupy a Cynefin domain and cannot be categorized. Following the shooting, the agency began using multiple social media outlets to engage and interact with the public as policy sovereigns recommend, promoting its partnership efforts with the community. Thus, the agency entered into the *complicated* domain, following the "good practices" that experts recommend.

L. ENHANCING TRAINING

1. Before

Before Castile's death, the SAPD's 2015 *Annual Report* stated that it had provided yearly increases in total training hours every year since 2012, from 1,432 hours to 1,541 hours.⁸⁵⁴ On average, SAPD officers attended about 80 hours of training every year, much more than the Minnesota minimum requirement of 48 hours every three years. In describing the SAPD, Dennis Flaherty, executive director of a statewide Minnesota police union said, "It looks like they are indeed a department that places a great emphasis on training."⁸⁵⁵ However, many of the courses were in tactical operations and enforcement areas, such as active-shooter training, hazardous materials instruction, defensive driving, and emergency medicine. Additionally, included in the agency's training program were courses on officer survival, specifically the Bulletproof Warrior course, described

⁸⁵³ "Communications," City of Saint Anthony Village, accessed December 13, 2020, <https://www.savmn.com/449/Communications>.

⁸⁵⁴ City of Saint Anthony Village, *Annual Report 2015*, 15.

⁸⁵⁵ Amy Forliti, "St. Anthony Police Say They're Reviewing Officer Training, Diversity," *Twin Cities Pioneer Press*, August 5, 2016, <https://www.twincities.com/2016/08/05/st-anthony-police-say-theyre-reviewing-officer-training-diversity/>.

previously as the antithesis to de-escalation training. The agency's training ethos lacked a values-based approach that taught officers to be responsive to community needs, as policy sovereigns recommend, instead focusing on crime prevention and officer safety. As mentioned above, for example, Officer Yanez received only four hours of de-escalation training compared to over 40 hours of officer survival during his four years with the SAPD, evidence of a training imbalance critiqued by policy experts.⁸⁵⁶

2. In Response

The annual report that followed Castile's death took a different approach in its training prioritization than the previous year's report. In the new report, Chief Mangseth describes training as an organizational value that supports the agency's culture of service, teamwork, and accountability.⁸⁵⁷ As an example of his vision, the 2016 report prominently notes that every officer receives training in de-escalation and scenario-based use-of-force instruction.⁸⁵⁸ In addition, exploring and implementing additional instruction on de-escalation and community relations is listed as an objective for 2017.⁸⁵⁹

The SAPD has broadened its training structure since the shooting. For example, its 2018 strategic plan notes planning to engage community members and provide education to the department on community needs and possible solutions, denoting the agency's commitment to fostering that partnership.⁸⁶⁰ More recently, the 2019 *Annual Report* notes that the department provides over 1,900 hours of training, but highlights "Crisis/Conflict/Community Diversity Training" on the same level as "SWAT/Negotiator Training," indicating that the former is as valuable as the latter.⁸⁶¹ In fact, the SAPD spent 23 percent of its training time allotment, about 440 hours, in the crisis and conflict track, which focuses

⁸⁵⁶ Bjorhus, "Bulletproof Warrior"; Robinson and Smith, *Reflections on Emerging Issues*, 5.

⁸⁵⁷ City of Saint Anthony Village, *Annual Report 2016*, 1.

⁸⁵⁸ City of Saint Anthony Village, 20.

⁸⁵⁹ City of Saint Anthony Village, 40.

⁸⁶⁰ City of Saint Anthony Village, *2018 Strategic Plan*, 1.

⁸⁶¹ City of Saint Anthony Village, *Annual Report 2019*, 20.

on de-escalation, implicit bias, and dealing with those in mental crisis.⁸⁶² Of note, as of 2017, the SAPD no longer provides officers access to the Bulletproof Warrior program.⁸⁶³

3. Cynefin Analysis

While the SAPD's training program before Castile's death was robust and increasing annually, it was narrowly scoped to the exclusion of sovereign-recommended de-escalation techniques and strategies, focused primarily on ways to effectively use force rather than seek alternatives. Thus, the agency occupied the *obvious/simple* domain, as evidenced by a simplistic approach to force-related training and entrained thinking that precluded implementing modern expert-recommended practices. After the shooting, the agency entered the *complicated* domain, implementing the "good practices" that policy experts endorse.

M. IMPLICIT BIAS AWARENESS TRAINING

1. Before

In 2014, the SAPD participated in "Diversity Awareness in Law Enforcement Training," described as teaching how to recognize and minimize unintentional racial "micro-aggressions."⁸⁶⁴ This version of diversity training continued through 2015.⁸⁶⁵ However, the agency described its officers as having difficulty accepting the program as it was taught by outside professionals.

2. In Response

In the aftermath of Castile's death, some community residents demanded that the SAPD re-examine its training on racial bias, saying that Chief Mangseth would have to provide leadership and "jump into this one hundred ten percent."⁸⁶⁶ It appears that he

⁸⁶² City of Saint Anthony Village, 21.

⁸⁶³ Pheifer, "U.S. Department of Justice's Work."

⁸⁶⁴ City of Saint Anthony Village, *Annual Report 2014*, 10.

⁸⁶⁵ City of Saint Anthony Village, *Annual Report 2015*, 14.

⁸⁶⁶ Forliti, "Reviewing Officer Training, Diversity."

responded to the community's concerns. By the end of 2016, every member of his department had attended a course on recognizing and mitigating implicit bias.⁸⁶⁷ At the advice of the Collaborative Reform Initiative, Chief Mangseth arranged for every officer to attend Fair and Impartial Policing in September the following year.⁸⁶⁸ In 2018, Chief Mangseth added a procedural justice training program to his officers' curriculum, building on the prior years' instructional courses.⁸⁶⁹ To ensure officer compliance, the most recent revision to the SAPD department manual makes these training sessions mandatory and explicitly forbids bias-based policing.⁸⁷⁰

3. Cynefin Analysis

The SAPD's diversity training focused on the explicit forms of racist conduct before Castile's death, different from the implicit bias programs it introduced after the shooting. Thus, the agency operated in the *obvious/simple* context, relying on established protocols and policies, rather than advancing its anti-bias programs, and including newer instructional courses. The agency pivoted to the *complicated* domain under Chief Mangseth's leadership, incorporating a progressive track of "good practices" in sovereign-recommended instruction for his officers.

⁸⁶⁷ City of Saint Anthony Village, *Annual Report 2016*, 1.

⁸⁶⁸ Jon Mangseth, "St. Anthony Police Receive Training on Fair and Impartial Policing," Saint Anthony Police Department, accessed January 31, 2021, <http://www.stanthonyvillagewineandspirits.com/DocumentCenter/View/800/2017-Fall-VillageNotes-Article?bidId=>.

⁸⁶⁹ Jon Mangseth, "St. Anthony Police Receive Training on Procedural Justice," Saint Anthony Police Department, accessed January 31, 2021, <http://www.stanthonyvillagewineandspirits.com/DocumentCenter/View/1178/2018-Winter-VillageNotes-Article>.

⁸⁷⁰ Saint Anthony Police Department, *Policy Manual*, 247, 253.

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VIII. CONCLUSION

This thesis applied the Cynefin framework to legitimacy-developing police practices *before* and *in response* to five police-related civilian deaths that significantly challenged each agency's legitimacy. The analysis supports the answers to the research questions detailed in this chapter's findings and recommendations.

A. RESPONSES TO RESEARCH QUESTIONS

Research Question 1: Using the Cynefin framework, what is understood about the implementation of police legitimacy policies before and in response to police-related civilian deaths? Research data and analysis offer four distinct responses to this research question:

- (1) The *obvious/simple* domain dominated legitimacy-developing policy implementations before the civilian fatality—but most shifted into the *complicated* domain in response.

Of the 60 possible “starting” policy positions—the factor of 12 policy positions across five agencies, prior to the police-related civilian death—32 occupied the obvious/simple context. In other words, over half of all legitimacy-building practices existed in the obvious/simple domain before the legitimacy crisis. However, the majority of policy dimensions that began in the obvious/simple domain shifted to another context in response to the agency's legitimacy crisis.

Twenty-nine policy positions that began in the obvious/simple domain shifted to a different context. Namely, 21 entered the complicated domain, and 8 entered the complex. In fact, obvious/simple to complicated was the most frequent transition across all of the agencies' policy dimensions. Five policy dimensions accounted for most of the obvious/simple-to-complicated context transitions (see Table 1).

Table 1. Obvious/Simple-to-Complicated Context Transitions

Policy Dimension	Police Department
Adopting Community-Oriented Policing	FPD, BPD, BRPD, SAPD
Increasing Community Engagement	BPD, BRD, SAPD
UOF/De-Escalation	NYPD, FPD, BPD, BRPD, SAPD
Enhancing Training	FPD, BRPD, SAPD
Implicit Bias Awareness Training	NYPD, BRPD, SAPD

The vulnerabilities of complacency and entrained thinking found in the obvious/simple domain necessitated a shift toward the complicated domain, when police departments sought expert-recommended strategies in several policy dimensions to help them emerge from their crises and restore legitimacy while exploring new ways of thinking. For example, after Garner’s death, the NYPD shifted away from a narrow and programmatic model of community policing to the fully systemic Neighborhood Policing program, conforming to the recommendations of policy experts. As another example, the NYPD, BRPD, and SAPD transitioned away from the “best practice” of overt bias and diversity training, opting for the implicit bias program created by Fair and Impartial Policing, the preference of policy experts.

As discussed above, the examined police agencies pivoted from eight starting policy positions, away from the obvious/simple domain to the complex. Notably, the NYPD’s policy dimension shifts after Garner’s death accounted for five of these transitions, which were in the areas of adopting community-oriented policing, community engagement, media strategy, transparency, and training

Mayor de Blasio’s decision to retain Commissioner Bratton as the NYPD’s agency head after Garner’s death explains the agency’s transition to the complex domain across these policy dimensions. As discussed in Chapter III, his post-Garner reform processes specifically identified improving these practices. The last three obvious/simple-to-complex transitions occurred with the FPD, BPD, and BRPD. Both the FPD and BRPD entered the complex domain in the enhancing leadership dimension, with each probing several police chiefs after its legitimacy crisis. Lastly, the BPD media strategy entered the complex domain after Freddie Gray’s death, when the agency experimented with allowing media unprecedented access to the criminal investigation.

Only three policy positions remained in the obvious/simple domain in response to a legitimacy crisis: the FPD’s media strategy and both the BPD’s and BRPD’s civilian oversight board policy. By remaining in the obvious/simple domain, these police departments maintained weak implementations of the policy dimensions. Namely, the FPD’s media plan was quickly overwhelmed by press information demands after Brown’s death, and since then, the agency has not modified policy, nor do its current practices leverage the media in a strategic manner to promote the agency’s work. Further, in the areas of civilian oversight of police misconduct investigations, both the BPD and the BRPD preserved the ineffective systems that existed before the deaths of Freddie Gray and Alton Sterling, respectively.

- (2) Additionally, most policy positions that occupied the *complicated* domain before the crisis of a police-related civilian death remained in that context in response.

Ten policy positions occupied the complicated domain before the police department’s legitimacy crises, with six remaining in that context in response. These six policy dimensions largely conformed to the recommendations of experts in the field, and the “sense-analyze-respond” cycle behind each remained unchanged (see Table 2).

Table 2. No Transition from the Complicated Domain

Policy Dimension	Police Department
Civilian Boards	NYPD
Leadership	NYPD
BWC Use	BPD, BRPD
Footage Release Policy	BPD
Implicit Bias Training	BPD

For example, Eric Garner’s death had little impact on the NYPD’s policy position on civilian oversight boards and leadership. Well before his death, the CCRB was an established entity and operated as sovereigns had recommended, and Mayor de Blasio’s confidence in Commissioner Bratton’s extensive police experience protected his employment. As another example, before Freddie Gray’s death, the BPD had been

considering implementing BWCs, while also formulating the associated policies, and had already been offering officers implicit bias training. Both of these BPD policy dimensions were unaffected by Gray’s death, and no transition from complicated was necessary.

Four policy positions that originated in the complicated transitioned to other domains: two entered the obvious/simple domain, and two entered the complex. In response to the crises of their civilian death incidents, both the BPD’s and BRPD’s social media policies shifted in the obvious/simple. Prior to the legitimacy crisis, each successfully leveraged social media as a community outreach tool as sovereigns had recommended and, in response, adopted that “good practice” as part of routine, “best practice” agency operations. Finally, the BPD accounted for the two policy positions that shifted to the complex domain: first as the agency cycled through several new chiefs to replace Commissioner Batts, and then as it experimented with wider transparency efforts in its internal planning operations.

- (3) Further, most policy positions occupied the *complicated* domain *in response* to the legitimacy crisis following a police-related civilian death.

Of 60 post-crisis policy positions—again, the factor of 12 policy positions across five agencies, prior to the police-related civilian death—39 occupied the complicated domain. As discussed above, 21 policy positions shifted from obvious/simple into complicated, and 6 of 10 policy positions that began in complicated remained there. Table 3 shows the total “starting” policy contexts that transitioned to (or remained) in the complicated domain post-crisis.

Table 3. Transitions to or Stasis in the Complicated Domain

Policy Dimension	Frequency
Obvious/Simple	21
Complicated	6
Complex	1
Disorder	2
Null	9

As Table 3 shows, one policy position from the complex domain and two from disorder entered the complicated domain after the agency's legitimacy crisis.⁸⁷¹ The BRPD's transparency process shifted from the complex to the complicated domain. Before Sterling's death, the agency experimented with greater transparency efforts in its force investigations, embedding prosecutors within force investigation teams and leveraging the complex domain's "probe-sense-respond" cycle. After his death, the agency shifted to expert-recommended "good practices" of the complicated domain to foster continued openness with the community. Two policy positions entered the complicated domain from disorder. These were the FPD's community engagement policy—which before Brown's death predominantly consisted of the agency's treating Ferguson citizens as a revenue stream—and the BPD's training policy—which officers widely disregarded before Gray's death. As a result of their respective police-related civilian deaths, both the FPD and BPD entered into consent decrees with the DOJ, mandating their compliance with expert-recommended practices and placing them in the complicated domain.

- (4) Nearly one-quarter of all policy positions before a crisis-inducing civilian death could not be categorized with a Cynefin context—largely due to absent BWC-associated policies—but most shifted into the *complicated* domain in response.

Before the police-related civilian deaths, 14 policy positions could not be categorized as occupying a Cynefin domain. However, of the "null" positions, seven were associated with police departments' not using BWCs or not having a BWC video release policy before the fatalities. The NYPD, FPD, and SAPD did not have BWCs before their police-related civilian death crises and, therefore, no video release policy; the BRPD was testing BWCs before Sterling's death but had not finalized its release policy (see Table 4).

⁸⁷¹ The nine policy positions that entered the *complicated* domain from "null," policy dimensions not occupying a Cynefin context before a civilian death, are discussed in finding #4.

Table 4. Non-existent BWC Use or Footage Release Policies

Police Department	BWC use		BWC footage release	
NYPD	NULL	COMPLICATED SAR	NULL	COMPLICATED SAR
FPD	NULL	COMPLICATED SAR	NULL	COMPLICATED SAR
BPD	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR
BRPD	COMPLICATED SAR	COMPLICATED SAR	NULL	COMPLICATED SAR
SAPD	NULL	COMPLICATED SAR	NULL	NULL

Of these agencies' 14 null policy positions before their police-related civilian deaths, a total of nine entered the complicated domain. As shown in Table 4, six of these nine instances occurred as the NYPD, FPD, BRPD, and SAPD aligned their BWC use and/or video release policies with sovereigns' recommendations. Separate from BWC-associated policies, three remaining null-to-complicated transitions occurred. One transition occurred when the FPD implemented an implicit bias awareness program in response to Michael Brown's death, having poorly maintained its diversity training prior; as mentioned in Chapter III, some officers reported the FPD had not conducted diversity sessions since 1995. The SAPD undertook the two other transitions. The agency did not use social media before Castile's death, but thereafter, it began maintaining a social media presence as policy experts recommend. Further, the SAPD's leadership policy position does not allow for Cynefin categorization due to Chief Mangseth's brief period heading the agency before Philando Castile's shooting; however, after Castile's death, Mangseth postured his agency in alignment with the "good practices" that experts recommend.

Of the original 14 null policy positions before a legitimacy crisis, four remained in that category. Minnesota state law limited the SAPD's ability to establish expert-recommended policies in both the civilian oversight boards and BWC footage release dimensions, thus preventing the agency from entering a Cynefin context. Lastly, the FPD's social media policy and the BRPD's media strategy each remained unchanged in response to the respective police-related civilian deaths. The FPD's social media presence is non-

existent, as it was before Brown’s death, and the BRPD does not maintain a media strategy to promote the agency, as was the case before Sterling’s death.

Research Question 2: What type of policy implementation sustained the legitimacy challenges that arose from these crises? Research data and analysis point to the following response to this research question:

The findings reveal that legitimacy-developing polices in the *complicated* domain best sustained the challenge of a police-related civilian death among the police departments this thesis examined.

The findings from answering the first research question revealed what was learned by applying the Cynefin framework to police-legitimacy policy *before* and *in response* to police-related civilian deaths. These answers inform the responses second research question. These findings show that legitimacy policies in the complicated sense-making domain *before* a police-related civilian death most often withstood the crisis presented by the event. For example, the NYPD’s sovereign-recommended “good practice” civilian board model was unaffected by the fallout of Eric Garner’s death. As another example, both the BPD and BRPD body camera programs remained on course after their respective civilian deaths examined in this thesis. Before Freddie Gray’s death, the BPD had already commissioned a panel to design a “good practice” regarding its officers using BWCs; after his death, the program continued as planned until full roll-out in May 2016. At the time of Alton Sterling’s death, the BRPD was in the third phase of its BWC pilot program, which continued to a fourth phase after the shooting. The findings above provide evidence that policy implementations aligning with the “sense-analyze-respond” cycle while closely following expert-recommended practices sustained the legitimacy challenge of a controversial civilian death.

B. VISUAL REPRESENTATIONS OF CYNEFIN ANALYSIS RESULTS

The following table visually displays the results from applying the Cynefin framework to legitimacy-developing policy implementation *before* and *in response* to the five police-related civilian deaths this thesis examined in Chapters III through VII. In Table 6, the relevant agencies appear on the X-axis, and the 12 legitimacy-developing policies,

as detailed in Chapter II, appear on the Y-axis. The Cynefin domains and their response cycles are color-coded as follows:

Table 5. Color Coding for Cynefin Analysis

Color	Domain	Cycle	Abbreviation
Green	Obvious/Simple	Sense-Categorize-Respond	SCR
Blue	Complicated	Sense-Analyze-Respond	SAR
Yellow	Complex	Probe-Sense-Respond	PSR
Grey	Disorder	N/A	
Salmon	Null	N/A	

The *chaotic* domain is not represented in this chart, as this thesis found no policy implementations in that sense-making context. There is no significance to the colors chosen for each domain. Instead, the charts' color differentiation displays policy implementations across each agency and allows a reader to observe transitions or stability across agencies and policy.

Table 6. Cynefin Analysis—Police Agency at X-Axis

NYPD		FPD		BPD		BRPD		SAPD	
Before	In Response	Before	In Response	Before	In Response	Before	In Response	Before	In Response
Civilian Boards		Civilian Boards		Civilian Boards		Civilian Boards		Civilian Boards	
COMPLICATED SAR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	OBVIOUS SCR	OBVIOUS SCR	OBVIOUS SCR	NULL	NULL
Improve/Replace Leadership		Improve/Replace Leadership		Improve/Replace Leadership		Improve/Replace Leadership		Improve/Replace Leadership	
COMPLICATED SAR	COMPLICATED SAR	OBVIOUS SCR	COMPLEX PSR	COMPLICATED SAR	COMPLEX PSR	OBVIOUS SCR	COMPLEX PSR	NULL	COMPLICATED SAR
Community Oriented Policing		Community Oriented Policing		Community Oriented Policing		Community Oriented Policing		Community Oriented Policing	
OBVIOUS SCR	COMPLEX PSR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR
Community Engagement		Community Engagement		Community Engagement		Community Engagement		Community Engagement	
OBVIOUS SCR	COMPLEX PSR	DISORDER	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR
De-escalation/UOF/Less Lethal		De-escalation/UOF/Less Lethal		De-escalation/UOF/Less Lethal		De-escalation/UOF/Less Lethal		De-escalation/UOF/Less Lethal	
OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR
Media/Public		Media/Public		Media/Public		Media/Public		Media/Public	
OBVIOUS SCR	COMPLEX PSR	OBVIOUS SCR	OBVIOUS SCR	OBVIOUS SCR	COMPLEX PSR	NULL	NULL	NULL	COMPLEX PSR
Transparent Process		Transparent Process		Transparent Process		Transparent Process		Transparent Process	
OBVIOUS SCR	COMPLEX PSR	OBVIOUS SCR	COMPLICATED SAR	COMPLICATED SAR	COMPLEX PSR	COMPLEX PSR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR
BWC use		BWC use		BWC use		BWC use		BWC use	
NULL	COMPLICATED SAR	NULL	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	NULL	COMPLICATED SAR
BWC footage release		BWC footage release		BWC footage release		BWC footage release		BWC footage release	
NULL	COMPLICATED SAR	NULL	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	NULL	COMPLICATED SAR	NULL	NULL
Social Media		Social Media		Social Media		Social Media		Social Media	
COMPLEX PSR	OBVIOUS SCR	NULL	NULL	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	NULL	COMPLICATED SAR
Enhanced Training		Enhanced Training		Enhanced Training		Enhanced Training		Enhanced Training	
OBVIOUS SCR	COMPLEX PSR	OBVIOUS SCR	COMPLICATED SAR	DISORDER	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR
Implicit Bias Awareness		Implicit Bias Awareness		Implicit Bias Awareness		Implicit Bias Awareness		Implicit Bias Awareness	
OBVIOUS SCR	COMPLICATED SAR	NULL	COMPLICATED SAR	COMPLICATED SAR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR	OBVIOUS SCR	COMPLICATED SAR

C. RECOMMENDATIONS

Based on the findings outlined in the previous section, this thesis makes the following recommendations for using the Cynefin framework to evaluate and strengthen police implementation of legitimacy-developing policies, which answers the third research

question: What recommendations does that analysis reveal to effectively implement policies that develop police legitimacy?

1. Survey Policies

First, police leaders should determine which expert-recommended legitimacy-developing practices their departments incorporate. Chapter II detailed the 12 policy dimensions that police sovereigns say support the legitimacy of police institutions, and how best to implement them. However, as this thesis suggested, not all police agencies have adopted these recommended policies. Police leaders should survey their practices and establish which of the 12 policy dimensions their agencies follow.

2. Use Cynefin to Categorize Policies

Next, police leaders need to find out *how* they implement their legitimacy-developing policies and categorize the Cynefin context of each implementation. As this thesis highlights, police agencies may claim to have adopted expert-suggested policy dimensions yet maintain an implementation style that renders them ineffective. For example, each police agency this thesis analyzed claimed to have practiced community-oriented policing before its police-related civilian death, but each of the obvious/simple programmatic implementations operated against policy experts' recommendations. Chapters III through VII provide police leaders with examples of how to categorize the context of legitimacy-developing policy implementations. Additionally, police leaders can leverage Table 6 to categorize their sense-making contexts.

3. Shift Away from the Obvious/Simple Domain

Once police leaders assign a Cynefin domain to each policy dimension, they should closely examine those in the obvious/simple domain. As discussed previously, this domain was dominated by simplistic and unsophisticated legitimacy policy implementations, and unlikely to sustain the crisis of a controversial civilian death. Further, policies in the obvious/simple domain sometimes caused police agencies difficulty in navigating toward stability mid-crisis. For example, before Michael Brown's death, the FPD had an obvious/simple media strategy that later collapsed under the weight of press demands in response

to his shooting. Police leaders must avoid the complacency in thought and action that this thesis exposed. Policy dimensions that police leaders believe are “settled business” should be among the first re-evaluated to ensure they conform with sovereign recommendations.

4. Embrace the Complicated Domain

As this thesis has demonstrated, policy dimensions in the complicated domain best align with sovereign recommendations. Moreover, policies in this domain best withstood a legitimacy crisis. Additionally, after a legitimacy crisis, police agencies most often shifted policy implementations into this domain. Police leaders should embrace policy implementations existing in the complicated domain and strive to move all legitimacy-developing policies there.

5. Conduct Legitimacy Crisis Drills

Steps one through four above suggest how police leaders can assess and strengthen their legitimacy-building efforts. After police leaders survey their policies, apply the Cynefin framework, and transition away from the obvious/simple and into the complicated domain, they should conduct a self-assessment to determine whether their legitimacy efforts will sustain the challenge of a police-related civilian death. Police leaders should challenge themselves and other leaders in the organization during drills that test the sustainability of all 12 recommended legitimacy practices. These drills can identify potential policy failure points that a leader can adjust before suffering an actual crisis of legitimacy.

D. SUMMARY AND FUTURE RESEARCH

As this thesis discussed, a legitimacy crisis caused by a police-related civilian death can result in deadly retaliation targeting police officers, or in substantial and costly civil disorder. Police leaders must recognize and effectively implement expert-recommended policies to promote the public’s perception of their agency’s legitimacy. Nevertheless, *how* police agencies implement those policies cannot be taken for granted. As described previously, each police department implemented legitimacy-building policies differently. For example, with over 35,000 officers, the NYPD’s application of these practices differed

greatly from SAPD's application, with 20 officers. However, examining the *sense-making* of policy implementations across these agencies is possible.

This analysis revealed the complicated context as more successfully aligning with sovereign-endorsed practices, while exposing the obvious/simple domain more common *before* the onset of a crisis but less successful at sustaining policy *in response*. Police leaders should use the Cynefin framework to assess and strengthen their legitimacy-building policies before suffering their own crises or use it to recover legitimacy after a crisis in progress. Future research should focus on improving the perceived legitimacy of other functions of the criminal justice system. For example, studies focusing on prosecutorial entities and correctional departments could use the Cynefin framework to categorize the sense-making behind their legitimization efforts. Leaders in those fields could then evaluate which contexts better support their efforts, endeavoring to enhance the legitimacy of the criminal justice system writ large.

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