

Investigation of the Cleveland Division of Police



United States Department of Justice
Civil Rights Division

United States Attorney's Office
Northern District of Ohio

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Executive Summary

The Department of Justice (“DOJ”) has completed its civil pattern or practice investigation of the Cleveland Division of Police (“CDP” or “Division”). We have concluded that we have reasonable cause to believe that CDP engages in a pattern or practice of using excessive force in violation of the Fourth Amendment of the United States Constitution. Our investigation under the Violent Crime and Law Enforcement Act of 1994, 42 U.S.C. § 14141 focused on allegations of excessive force by CDP officers. We have determined that structural and systemic deficiencies and practices—including insufficient accountability, inadequate training and equipment, ineffective policies, and inadequate engagement with the community—contribute to CDP’s use of unreasonable force. For these reasons, and because this is the second time in the last ten years that the DOJ has investigated and found the need for reforms at CDP, we believe that comprehensive reform can only be assured with outside verification in the form of a federal consent decree which includes an independent monitor.

The release of this findings letter marks the end of a civil investigation that began in March 2013, following a series of highly publicized incidents that suggested critical flaws exist in CDP’s use of force policies, procedures, and practices, including CDP’s ability and willingness to properly assess officers’ uses of force and hold officers accountable for their actions. These incidents also revealed a rift between CDP and certain segments of the communities it serves. Numerous leaders and organizations in Cleveland called on us to open an independent investigation into CDP, including a member of the U.S. Congress, leaders of several different religious communities, civil rights and community groups, and the Mayor of Cleveland. Our investigation found that the concerns about these events raised by many community members and civic leaders are well-founded.

Our investigation did not focus only on highly publicized use of force incidents. Instead, our review examined nearly 600 use of force incidents that occurred between 2010 and 2013, including incidents involving the use of lethal and less lethal force. We closely analyzed these incidents, using use of force reports and other documents and evidence provided by CDP, and applied the relevant legal standards to determine whether CDP’s use of force was legally justified. In addition, our evaluation of CDP’s use of force was informed by many other sources, including: witness interviews and the participation of hundreds of individuals in community town hall meetings; interviews with the Division’s officers, supervisors, and command staff; input from other stakeholders in the City, including elected representatives of the patrol officer and management unions, the Office of Professional Standards, the Civilian Police Review Board, members of religious communities, and other community leaders; Division policies, procedures and training materials; and analysis provided by expert police consultants DOJ retained to assist with this investigation.

We recognize the challenges faced by officers in Cleveland and in communities across the nation every day. Policing can be dangerous. At times, officers must use force, including deadly force, to protect lives, including their own. The use of force by police should be guided by a respect for human life and human dignity, the need to protect public safety, and the duty to protect individuals from unreasonable seizures under the Fourth Amendment. A significant

amount of the force used by CDP officers falls short of these standards. Although CDP has taken some steps to improve the Division's use of force policies and procedures, these initiatives, by themselves, have been insufficient.

Like most police departments the Department of Justice has investigated, the majority of the force used by CDP officers is reasonable and not in violation of the Constitution. In addition, the vast majority of CDP officers are seeking to serve the public as best they can under dangerous and difficult conditions. These officers deserve the community's respect and gratitude. However, based on our review, we nevertheless have determined that we have reasonable cause to believe that CDP engages in a pattern or practice of using unreasonable force in violation of the Fourth Amendment.¹ We have concluded that these incidents of excessive force are rooted in common structural deficiencies. CDP's pattern or practice of excessive force is both reflected by and stems from its failure to adequately review and investigate officers' uses of force; fully and objectively investigate all allegations of police misconduct; identify and respond to patterns of at-risk behavior; provide its officers with the support, training, supervision, and equipment needed to allow them to do their jobs safely and effectively; adopt and enforce appropriate policies; and implement effective community policing strategies at all levels of CDP.

The pattern or practice of unreasonable force we identified is reflected in CDP's use of both deadly and less lethal force.² For example, we found incidents of CDP officers firing their guns at people who do not pose an immediate threat of death or serious bodily injury to officers or others and using guns in a careless and dangerous manner, including hitting people on the head with their guns, in circumstances where deadly force is not justified. Officers also use less lethal force that is out of proportion to the resistance encountered and officers too often escalate incidents with citizens instead of using effective and accepted tactics to de-escalate tension. By way of example, we reviewed incidents where officers used Tasers,³ oleoresin capsicum spray ("OC Spray"), or punched people who were already subdued, including people in handcuffs. Many of these people could have been controlled with a lesser application of force. At times, such force appears to have been applied as punishment for the person's earlier verbal or physical resistance to an officer's command, and was not based on a current threat posed by the person. This retaliatory use of force is not legally justified. Our review also revealed that officers use excessive force against individuals who are in mental health crisis or who may be unable to understand or comply with officers' commands, including incidents in which the police are

¹ Our findings, however, do not mean that any individual officers have acted with criminal intent, a wholly different and higher legal standard that is beyond the scope of this investigation.

² For purposes of this summary, "less lethal force" means a force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less lethal force can result in death or serious injury.

³ The division uses the Taser brand of electronic control weapons and refers to them in its policies as "Tasers." Throughout this summary, we will refer to these electronic control weapons as Tasers.

called to help provide service involving such an individual who is not suspected of having committed any crime at all.

In addition to the pattern or practice of excessive force, we found that CDP officers commit tactical errors that endanger both themselves and others in the Cleveland community and, in some instances, may result in constitutional violations. They too often fire their weapons in a manner and in circumstances that place innocent bystanders in danger. Too often they accidentally fire their weapons, sometimes fortuitously hitting nothing and other times shooting people and seriously injuring them. CDP officers too often use dangerous and poor tactics to try to gain control of suspects, which results in the application of additional force or places others in danger. Critically, officers do not make effective use of de-escalation techniques, too often instead escalating encounters and employing force when it may not be needed and could be avoided. While these tactical errors may not always result in constitutional violations, they place officers, suspects, and other members of the Cleveland community at risk, and, as set forth below, officers are not reliably retrained or disciplined for such conduct, leading to its repetition.

Principal among the systemic deficiencies that have resulted in the pattern or practice we found is the Division's failure to implement effective and rigorous accountability systems. Force incidents often are not properly reported, documented, investigated, or addressed with corrective measures. Even limiting a review to the records actually generated by CDP, supervisors throughout the chain of command endorse questionable and sometimes unlawful conduct by officers. We reviewed supervisory investigations of officers' use of force that appear to be designed from the outset to justify the officers' actions. Deeply troubling to us was that some of the specially-trained investigators who are charged with conducting unbiased reviews of officers' use of deadly force actually admitted to us that they conduct their investigations with the goal of casting the accused officer in the most positive light possible. This admitted bias appears deeply rooted, cuts at the heart of the accountability system at CDP, and is emblematic of the types of practice that justify our finding.

Another critical flaw we discovered is that many of the investigators in CDP's Internal Affairs Unit advised us that they will only find that an officer violated Division policy if the evidence against the officer proves beyond a reasonable doubt that an officer engaged in misconduct—an unreasonably high standard reserved for criminal prosecutions and inappropriate in this context. This standard apparently has been applied, whether formally or informally, for years to countless numbers of these investigations and further supports the finding that the accountability systems regarding use of force at CDP are structurally flawed.

It should not be surprising then, that we found that CDP disciplines its officers for improper uses of force at an unreasonably low frequency. For uses of force during the time period we examined, only six CDP officers were suspended for any period of time for improper uses of force. Discipline is so rare that even CDP claims that no more than 51 officers out of a sworn force of 1,500 were disciplined *in any fashion* in connection with a use of force incident over a three-and-a-half year period from 2010 until early May, 2014. However, when we examined CDP's discipline numbers further, it was apparent that in most of those 51 cases, the actual discipline imposed was for procedural violations such as failing to file a report, charges were dismissed or deemed unfounded, or the disciplinary process was suspended due to pending civil claims. A finding of excessive force by CDP's internal disciplinary system is exceedingly

rare. A member of the Office of Professional Standards, which, among other duties, has been charged with investigating use of deadly force incidents, stated that the office has not formally reviewed a deadly force incident since 2012. CDP's systemic failures are such that the Division is not able to timely, properly, and effectively determine how much force its officers are using, and under what circumstances, whether the force was reasonable and if not, what discipline, change in policy, training or other action is appropriate. Instead, they are too often working in a reactive crisis mode, responding to the latest highly publicized event.

The current pattern or practice of constitutional violations is even more troubling because we identified many of these structural deficiencies more than ten years ago during our previous investigation of CDP's use of force. In 2002, we provided initial observations regarding CDP's use of force and accountability systems and, in 2004, we recommended that the Division make changes to address some of the deficiencies we identified. CDP entered into an agreement with the Department of Justice, but that agreement was not enforced by a court and did not involve an independent monitor to assess its implementation. The agreement did require CDP to make a variety of changes, including revising its use of force policy and establishing new procedures for reviewing officer-involved shootings. In 2005, we found that Cleveland had abided by that agreement and it was terminated. It is clear, however, that despite these measures, many of the policy and practice reforms that were initiated in response to the 2004 memorandum agreement were either not fully implemented or, if implemented, were not maintained over time. It is critical that the City and the Division now take more rigorous measures to identify, address, and prevent excessive force to protect the public and to build the community's trust. We believe that a consent decree and an independent monitor are necessary to ensure that reforms are successfully implemented and sustainable.

Finally, CDP's failure to ensure that its officers do not use excessive force, or are held accountable if they do, interferes with its ability to gain the trust of and work with the communities whose cooperation the Division most needs to enforce the law, ensure officer safety, and prevent crime. Instead of working with Cleveland's communities to understand their needs and concerns and to set crime-fighting priorities and strategies consistent with those needs, CDP too often polices in a way that contributes to community distrust and a lack of respect for officers—even the many officers who are doing their jobs effectively. That is unfair to those good officers, but it is a factual reality that CDP, whose mission is to serve the community, must work in partnership with that community in order to change. While CDP's leadership does participate in programmatic efforts to connect with the community, especially at higher levels, and also recently adopted a new community policing initiative, the Division must undergo a cultural shift at all levels – down to the patrol officer -- to change an “us-against-them” mentality we too often observed and to truly integrate and inculcate community oriented policing principles into the daily work and management of the Division.

Although we did not investigate CDP's search, seizure, and arrest practices, our force review revealed concerns in those areas as well. The documents we reviewed to determine the lawfulness of CDP's force practices often also described stops, searches, and arrests by officers that appear to have been unsupported, at least in the pertinent reports. Where bases for detentions and searches were articulated, officers used canned or boilerplate language. Supervisors routinely approved these inadequate reports without seeking additional information. Given the possibility that CDP's practices in this regard violate the Constitution and the near

certainty that they breed more distrust in the community, we are asking that the Division work with us to address these concerns as well.

We also found that CDP does not consistently provide its officers with all of the basic support, training, equipment and infrastructure they require to effectively and constitutionally police the community. Over time, this further erodes the morale of the police force and can contribute to diminished professionalism when officers face difficult situations. While we acknowledge that Cleveland in general, and CDP in particular, face significant budget constraints, we believe both that limited resources can be more efficiently used and that the City must invest more in its police force. As much as any building, public works project, stadium, or infrastructure, having effective, professional and constitutional policing is key to the success and vitality of any American city, including Cleveland.

We recognize that the Division has started to implement some reforms to address concerns raised by the Department of Justice, the community, and others, but much more is needed. The failure to swiftly take even more remedial action places residents at risk of excessive force and further alienates the Division from the communities it serves. Making constitutional policing a core Division value, and building systems of real accountability that carry out that value, will support the vast majority of CDP officers who strive to and do uphold their oaths to protect and serve the City of Cleveland. This will foster trust with the community, allowing all CDP officers to perform their jobs more safely and effectively.