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**THE ONLY RELIABLE WAY TO REBUILD POLICE-COMMUNITY
RELATIONS: THE JUSTICE DEPARTMENT PATTERN AND PRACTICE
CONSENT DECREES**

Michael Greenberger*

Over an almost three-year period police community relations nationwide have deteriorated to a seeming point of no return. Beginning in Ferguson, Missouri in May, 2014, police shootings and other police malpractices have led to the deaths of unarmed inner city minority civilians, across the country. The deaths of these individuals have resulted in a range of highly disruptive activities from widespread angry protests to multi-day destructive rioting.¹ The common denominator in each of these cases is the systemic breakdown of relations between police departments and the communities they serve.

In Baltimore, Maryland, the death of inner city resident Freddie Gray, resulting from an alleged so-called “rough ride” in a Baltimore Police Department van, led to destructive rioting in West Baltimore that went on for days in May 2015 and could only be ended by the Maryland Governor’s calling out the Maryland National Guard. The serious economic and psychological damage to the citizens of Baltimore continues to this day, evidenced most clearly by the departure of Baltimore businesses from the city and by the ending of plans of many out-of-state businesses to relocate to Baltimore. Baltimore’s economic well-being was in jeopardy before the Freddie Gray riots and is now, generously speaking, on life support.

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¹ See *Tracking the Events in the Wake of Michael Brown’s Shooting*, N.Y. TIMES, http://www.nytimes.com/interactive/2014/11/09/us/10ferguson-michael-brown-shooting-grand-jury-darren-wilson.html#time354_10512 (last updated Nov. 24, 2014) (chronicling the events that led to 18-year-old Michael Brown’s death after an encounter with an officer from the Ferguson Police Department); see also Al Baker et al., *Beyond the Chokehold: The Path to Eric Garner’s Death*, N.Y. TIMES (June 13, 2015), <http://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html> (detailing the 2015 death of 43-year-old Eric Garner after a confrontation with an officer from the New York city Police Department); see also Tim Stelloh, *Murder Trial of South Carolina Ex-Cop Who Killed Walter Scott to Begin*, NBC NEWS (Oct. 31, 2016, 5:44 AM), <http://www.nbcnews.com/storyline/walter-scott-shooting/murder-trial-south-carolina-ex-cop-who-killed-walter-scott-n675396> (describing a cellphone video showing 50-year-old Walter Scott being shot eight times in the back by an officer from the North Charleston Police Department).

I. THE DOJ REPORT

Soon after the Baltimore Freddie Gray riots were quelled, the Baltimore Mayor, Stephanie Rawlings-Blake, called upon the Department of Justice (DOJ)'s Civil Rights Division to begin a "pattern-or-practice" civil rights investigation of the Baltimore Police Department ("DOJ Report").² As a result of that investigation, the DOJ on August 10, 2016, released a scathing report that found an extensive and long standing "pattern or practice" of civil rights violations by the Baltimore Police Department (BPD).³ The report concluded that the BPD "engages in a pattern...of conduct that violates the [First and Fourth Amendments of] the Constitution [and] federal [anti-discrimination] law[s]."⁴

The DOJ found that, as the result of "systemic deficiencies" within the Department, BPD makes stops, searches, and arrests of inner city minority residents without the requisite legal justification; uses those practices to subject Baltimore's inner city minorities to repeated harassment serving no law enforcement purpose; otherwise uses excessive force and unjustified force against Baltimore's inner city residents in carrying out law enforcement functions; and unlawfully retaliates against inner city minorities for exercising their constitutionally-protected right to free expression.⁵ The DOJ Report concluded that these practices violate the First and Fourth Amendments, the Civil Rights Act, and the Safe Streets Act.⁶

The DOJ Report found these illegal BPD actions not only violate individual rights, but, on a larger, and possibly more important scale, exacerbate community distrust of the police, particularly in the Baltimore African-American community.⁷ According to Attorney General Loretta Lynch, the pattern of unlawful and unconstitutional

² *Mayor Rawlings-Blake Requests Federal Investigation of Baltimore Police Department*, CITY OF BALTIMORE (May 6, 2015), <http://mayor.baltimorecity.gov/news/press-releases/2015-05-06-mayor-rawlings-blake-requests-federal-investigation-baltimore-police>.

³ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download> [hereinafter *DOJ Report*].

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* at 21–22.

⁷ *Id.* at 62.

actions by BPD has broken the “bonds of trust” between the BPD and the communities it serves.⁸

II. THE RESULTING OUTRAGE AND HOPELESSNESS OVER THE DOJ REPORT

Quite understandably, the response to the DOJ report by Baltimore’s public and private civic leadership, the Baltimore media, and the leading Baltimore academic and religious institutions was one of outrage.⁹ Unfortunately, that outrage was accompanied by a widely articulated sense of hopelessness. A pervasive feeling was expressed that Baltimore police/community relations have deteriorated to a point beyond repair. The often unspoken conclusion was that the social and economic fabric of the city had been torn asunder, possibly leading to the urban equivalent of a “failed state.”¹⁰

Fortunately, however, once the damning DOJ Report is put in its legal context, reasons for optimism exist. The sense of dread over the DOJ Report has been uninformed by the context of that report, *i.e.*, it is only the first step in a DOJ “pattern or practice” process that has almost uniformly led to the satisfactory reform of even the most roguish of the Nation’s police departments.

III. THE DOJ POLICE PATTERN OR PRACTICE POLICE REFORM PROCESS

Under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994¹¹, the Civil Rights Division of the DOJ was charged with prohibiting government authorities from engaging in a “pattern or practice of conduct by law enforcement officers...that deprives persons of rights...protected by the Constitution or laws of

⁸ Loretta Lynch Says Baltimore Police Engaged in “Unlawful and Unconstitutional Conduct”, BALT. SUN (Aug. 10, 2016, 10:52 AM), <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bal-lorretta-lynch-statement-20160810-story.html>.

⁹ Kevin Rector, *Baltimore Reacts to Searing Justice Department Report: “The Stories Were Always True”*, BALT. SUN (Aug. 10, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bs-md-ci-doj-reaction-20160810-story.html>.

¹⁰ *Id.* (quoting Lt. Gene Ryan, President of Baltimore Police Department’s Union, calling the DOJ Report “a clear indictment of the failed leadership at all levels of city government”).

¹¹ 42 U.S.C. § 14141 (1994).

the United States.” That statute authorizes DOJ to bring civil actions for equitable and declaratory relief where DOJ has “reasonable cause to believe” that the police department in question has trampled on constitutional and/or statutory rights.¹² The first step in this process is the “pattern or practice” investigation and the issuance of the kind of report about BPD discussed above.

Self-evidently, the DOJ Report gives DOJ “reasonable cause to believe” pattern or practice violations have occurred.¹³ However, as a matter of DOJ practice, after the pattern or practice report is issued but before a civil suit is commenced, DOJ conducts negotiations with the police department at issue leading to agreement on a broad and detailed program of police reform to be undertaken by the police department to end the illegalities that have been uncovered. A pattern or practice federal lawsuit is then brought, but immediately stayed by the entry of a judge-sanctioned consent decree embodying the agreement entered into between DOJ and the police department. That consent decree’s implementation is then monitored by a court-appointed private monitor or team of monitors who work with the police department to implement the specified reforms. The case is not dismissed until the supervising judge is satisfied that the reforms specified in the consent decree have been successfully implemented.

These consent decrees, once implemented, have historically had two consequences: (1) police/community relations are dramatically improved, and (2) crime within the jurisdiction also drops dramatically. Thus, the despair over the Baltimore Police DOJ Report must be tempered by the prospect that it is only the first step in what has proven to be successful police reform efforts across the country.

IV. CASE STUDY: CINCINNATI

The DOJ/Cincinnati Police Department consent decree process provides an excellent recent example of how the DOJ pattern or practice process leads to effective and sustainable policing reforms.¹⁴

¹² 42 U.S.C. § 14141(b).

¹³ *DOJ Report*, *supra* note 3, at 3.

¹⁴ See SAUL A. GREEN & RICHARD B. JEROME, CITY OF CINCINNATI INDEPENDENT MONITOR’S FINAL REPORT 36 (Dec. 2008), <http://www.cincinnati-oh.gov/police/linkservid/97D9709F-F1C1-4A75-804C07D9873DC70F/showMeta/0/> (reporting on the vast improvements in community relations, use of force incidents, and training of the Cincinnati Police Department).

The problems in Baltimore inner city/BPD relations today are similar to the problems that existed in Cincinnati in the late 1990s and early 2000s.¹⁵ At the time, racial tensions were high in Cincinnati following a series of incidents of alleged police brutality and racial profiling.¹⁶ In 2001, the city experienced riots and civil disorder after an unarmed black man, Timothy Thomas, was fatally shot by a police officer.¹⁷

Through a pattern or practice DOJ/Cincinnati consent decree, an ambitious plan was implemented that led to significant Cincinnati Police Department reforms that improved dramatically the way in which the police approached crime, police stops, incarceration, and interaction between police and members of the community.¹⁸ A central component of these reforms, as is true in all consent decrees of this nature, was the implementation of a community problem-oriented policing approach, which focuses on police active engagement in the civic activities of inner city institutions and creating an environment that lessens crime.¹⁹ The overall theme of community policing is that the department keep in regular contact with, and attend meetings of, civic, neighborhood, and religious groups to emphasize a partnership with the community.²⁰ A classic “service” provided under community policing is working with residents to improve street lighting which discourages street crime.²¹ Another service is starting after school programs for inner city youth, thereby reducing chances of youth involvement in criminal activities.²²

Fifteen years after the adoption of the consent decree, Cincinnati serves as a “model of effective reform.”²³ The results were

¹⁵ *Id.* at 3–4.

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ Alana Semuels, *How to Fix a Broken Police Department*, THE ATLANTIC (May 28, 2015), <http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/>.

¹⁹ GREEN & JEROME, *supra* note 14, at 17 (“[Crime Prevention Through Environmental Design] teaches us that an effective way to decrease disorder and reduce crime is for citizens to ‘reclaim space.’ Reclaiming space is the first step because if no one ‘owns’ a space, then someone else will take it over.”).

²⁰ *Id.* at 49 (reporting that the CPD hosted a series of community seminars on issues of police integrity, accountability, and professionalism in the community as part of their process of reform).

²¹ *Id.* at 48.

²² Semuels, *supra* note 18.

²³ *Id.*

profound: between 1999 and 2014, police use-of-force incidents declined by 69 percent, citizen complaints against police declined by 42 percent, and injuries resulting from encounters with police declined by 56 percent.²⁴ In addition, the number of violent crimes dropped from 4,137 in 2002 to 2,343 in 2015.²⁵

The Cincinnati consent decree has served as the model for recent consent decrees entered into by DOJ with Cleveland, Ohio, and Ferguson, Missouri.²⁶

V. PRESIDENT TRUMP

Needless to say the unexpected election of Donald Trump on November 8, 2016 to the Presidency may influence the Justice Department's handling of pattern and practice cases generally. As a candidate, Trump made clear his support of police departments. He also promised to improve the inner city living conditions and community safety, naming Baltimore specifically as needing his Administration's attention. He also pledged to increase funding for police training, which comports with existing consent decree policy.²⁷ The issue of the Trump administration's influence on the Baltimore consent decree will likely be mooted because on January 12, 2017, Baltimore and the Department of Justice announced that a decree had been signed by both parties.²⁸ If it is promptly incorporated in a federal district court order (and, as of this writing, all parties and a federal district court judge are moving quickly to promulgate such an order), it is highly unlikely that it can be altered because of a change in Justice Department policing policy under President Trump.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Jenna Johnson, "I Will Give You Everything." *Here Are 282 of Donald Trump's Campaign Promises*, BALT. SUN (Nov. 28, 2016), https://www.washingtonpost.com/politics/i-will-give-you-everything-here-are-282-of-donald-trumps-campaign-promises/2016/11/24/01160678-b0f9-11e6-8616-52b15787add0_story.html?utm_term=.f3375328278b.

²⁸ Kevin Rector, Justin George & Luke Broadwater, *Baltimore, Justice Department Reach Consent Decree Agreement on Police Reform* (Jan. 12, 2017, 8:43 PM), <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bs-md-ci-doj-consent-decree-20170112-story.html>.

CONCLUSION

Based on the positive results described above in Cincinnati, there is every reason to be optimistic about the current situation in Baltimore even after the scathing pattern and practice report issued about BPD by DOJ in May 2016. As a result of that report, DOJ and Baltimore have signed a consent decree to create systemic, across-the-board police reforms under that decree. Once judicially approved and embedded in a court's order, implementing that decree will also take time. It seems, moreover, that the Trump Justice Department will be unlikely to overturn such a decree as embodied in a court order. Moreover, under new leadership, BPD is not waiting until the consent decree process is completed to create positive change. New reforms are already taking shape. But, the full and complete impact of reform must await full a court sanctioned consent decree's implementation. It is worth the wait. And, it is a reason not to despair.