

## **DOJ Review of Ferguson Is it a blueprint?**

On March 4, 2015, the Department of Justice (DOJ) released a 102-page report containing its findings from its [investigation into the Ferguson Police Department](#). The release of this report has brought about a flood of attention from countless venues. Everyone from media, to legal experts and political analysts, and even the President of the United States has weighed in on the report. The report has been called “shocking,” “damning,” “scorching,” and “scathing,” containing “outrageous examples of police misconduct.” Whichever adjective is attached to this report, there is no doubt that the findings and recommendations contained therein will have a devastating effect on the City of Ferguson.

While at the moment, the country’s attention is on the Ferguson Police Department, other police department administrators can take this opportunity to utilize the DOJ’s investigative process, and its findings and recommendations, as a tool to conduct a self-examination into their own department’s practices and procedures, and create a blueprint by which to improve their own department operations.

It is not feasible within the confines of this article to discuss all of the issues and recommendations contained in the lengthy Ferguson report. Rather, we will focus on those areas in the report that seem to garner the most attention in investigations of this sort, and those areas in which many departments often find a need for improvement. As such, this article will be limited to a brief discussion of the following: bias based policing, use of force reporting and investigations, proper supervision, accepting and investigating complaints of misconduct, training, and community policing. The purpose of this article is not to opine on the accuracy of the DOJ’s investigation and assessment. Rather, it is a review of the DOJ’s findings and recommendations contained in its report.

### **Bias Based Policing**

The development of a comprehensive policy and procedure for bias free policing is necessary to ensure constitutional policing within a department. A proper policy clarifies for officers the meaning of the term “bias based policing,” and those actions and behavior that fall within its meaning. The policy must further outline and identify the department standards and procedures put in place to prevent this type of conduct.

The Ferguson report was replete with examples of racial bias and disparate treatment by FPD officers against the African-American population in Ferguson. The report concluded that racial bias had infected every area of police practices within the Department, including vehicles stops, searches, arrests, citations issued, and general interactions with Ferguson’s black citizens.

The report found that “Ferguson’s approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson’s police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race.”

The DOJ recommended that the Department:

1. Provide initial and recurring training to all officers that sends a clear, consistent and emphatic message that bias-based profiling and other forms of discriminatory policing are prohibited. Training should include:
  - Relevant legal and ethical standards
  - Information on how stereotypes and implicit bias can infect police work
  - The importance of procedural justice and police legitimacy on community trust, police effectiveness, and officer safety
  - The negative impacts of profiling on public safety and crime prevention
2. Provide training to supervisors and commanders on detecting and responding to bias-based profiling and other forms of discriminatory policing.
3. Include community members from groups that have expressed high levels of distrust of police in officer training
4. Take steps to eliminate all forms of workplace bias from FPD and the City

### **Use of Force Reporting and Investigation**

An officer's authority to use force carries with it certain responsibilities and obligations, and the need for accountability in order to safeguard the constitutional rights of the public, as well as the integrity of the department. To ensure that officers remain within the parameters of their authority to use force, departments must require officers to document all use of force incidents in a timely, complete, and accurate manner, and require supervisors to conduct a thorough review of each use of force incident. Proper use of force reporting and investigation acts as an early intervention system to detect patterns and trends, allows departments to rectify any problems or issues that are discovered during the review process, and determine the need to revise policies and conduct additional training. Instituting a proper use of force reporting and investigation system provides protection to both citizens and employees, and demonstrates the department's commitment to documenting and investigating all use of force incidents.

The DOJ report found that the Ferguson Police Department's use of force reporting and review system was "particularly ineffectual," and that use of force frequently was not reported. In those instances where force was reported, there was no meaningful supervisory review. The investigation found that supervisors: "do little to no investigation; either do not understand or choose not to follow FPD's use-of-force policy in analyzing officer conduct; rarely correct officer misconduct when they find it; and do not see the patterns of abuse that are evident when viewing these incidents in the aggregate."

The investigation also revealed that the mentality among FPD officers was that any level of resistance justified any level of force. Furthermore, officers frequently used "boilerplate" language when drafting use of force reports, such as "subject took a fighting stance." In addition, sergeants and above conducted their own use of force reviews, and there were inadequate use of force packets going up the chain of command.

The DOJ recommended that the FPD:

1. Develop and implement supervisory review of force that requires the supervisor to conduct a complete review of each use of force, including gathering and considering evidence necessary to understand the circumstances of the force incident and determine its consistency with law and policy, including statements from individuals against whom force is used and civilian witnesses.
2. Prohibit supervisors from reviewing or investigating a use of force in which they participated or directed.
3. Discipline any officer who fails to report a use of force, as well as any supervisor who fails to conduct adequate force investigations.

The DOJ also recommended that the FPD implement a system of force review that ensures that improper force is detected and responded to effectively, and that policy, training, tactics, and officer safety concerns are identified.

### **Proper Supervision**

Proper supervision provides officers with the direction and guidance necessary to improve and develop as police officers; ensures that officers follow department procedure; and identifies, corrects, and prevents officer misconduct. Departments must make certain that supervisors have the necessary knowledge, skill, and ability to provide close and effective supervision to each officer under the supervisors' direct command.

The DOJ report found that overall the FPD lacked adequate supervision. The DOJ recommended that FPD supervisors "review more stringently officers' stop, search, ticketing, and arrest practices to ensure that officers are complying with the Constitution and department policy, and to evaluate the impact of officer activity on police legitimacy and community trust."

The DOJ further recommended that the FPD:

1. Require supervisors to review all officer activity and review all officer reports before the supervisor leaves shift;
2. Provide all supervisors with specific supervisory training prior to assigning them to supervisory positions;
3. Develop and require supervisors to use an "early intervention system" to objectively detect problematic patterns of officer misconduct, assist officers who need additional attention, and identify training and equipment needs;
4. Support supervisors who encourage and guide respectful policing and implement community policing principles, and evaluate them on this basis. Remove supervisors who do not adequately review officer activity and reports or fail to support, through words or actions, unbiased policing;
5. Ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide close and effective supervision to each officer under the supervisor's direct command, provide officers with the direction and guidance necessary to improve and develop as officers, and to identify, correct, and prevent misconduct.

## **Accepting and Investigating Complaints of Misconduct**

Establishing a policy for accepting and investigating citizen complaints is essential to ensure that Departments accept all complaints of misconduct, in any form; fairly and impartially investigate all complaints of misconduct; and timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. The DOJ report provided that “responding to allegations of officer misconduct is critical not only to correct officer behavior and identify policy, training, or tactical concerns, but also to build community confidence and police legitimacy.”

The DOJ investigation revealed that the FPD internal affairs system failed to “meaningfully respond to complaints of officer misconduct.” Ferguson Police Department policy provided that complaints would be taken from “any source, identified or otherwise” and that Department members were prohibited from discouraging the filing of a citizen complaint. The investigation revealed, however, that the FPD actively discouraged citizens from filing complaints, and discouraged department members from taking them.

The DOJ recommended that the FPD:

1. Modify procedures and practices for accepting complaints to make it easier and less intimidating for individuals to register formal complaints about police conduct, including providing complaint forms online and in various locations throughout the City and allowing for complaints to be submitted online and by third parties or anonymously;
2. Require that all complaints be logged and investigated;
3. Develop and implement a consistent, reliable, and fair process for investigating and responding to complaints of officer misconduct, including:
  - An investigation of all misconduct complaints, even where the complainant indicates he or she does not want the complaint investigated, or wishes to remain anonymous;
  - Not withdrawing complaints without reaching a disposition
  - Developing and implementing a fair and consistent system for disciplining officers found to have committed misconduct
  - Terminating officers found to have been materially untruthful in performance of their duties, including in completing reports or during internal affairs investigations

## **Training**

Officer training is essential to ensure that officers understand the policies and procedures that have been put in place; to identify the legal standards applicable to the policies; and specify the actions and behaviors

necessary to conform to the standards. The United States Supreme Court has repeatedly held that a police department has a duty to train its officers on core tasks that the officers are required to complete.

The DOJ found that FPD officers overall received far too little training as recruits and after becoming police officers, and that officers need a “better knowledge of what law, policy, and integrity require, and concrete training on how to carry out their police responsibilities.” There were several examples in the DOJ report where FPD did have proper policies in place related to specific areas of police procedures, but the report indicated that officers were not following these policies (e.g. Report Writing, Bias Based Policing, and Citizen Complaints).

The DOJ recommended that the FPD:

1. Train and require officers to use de-escalation to avoid a situation escalating to a use of force
2. Require that training cover, in depth, constitutional and other legal restrictions on officer action, as well as additional factors officers should consider before taking enforcement action (such as police legitimacy and procedural justice considerations);
3. Employ scenario-based and adult-learning methods.

### **Community Policing**

Research provides that community policing creates and promotes an environment of trust between police officers and the citizens they are sworn to protect and serve. Community members who have frequent positive interactions with police officers feel a greater degree of safety within their communities, and are left with a greater level of confidence in the police department. By nurturing a policy of community policing, police departments develop a partnership with its citizens for the identification and prevention of crime.

During its investigation, the DOJ determined that FPD’s community policing efforts had always been “modest, but have dwindled to almost nothing in recent years.” The DOJ investigation found that the Department designated only a single officer to act as the “Community Resource Officer,” and that no other officer played a substantive role in community policing efforts. It should be noted, however, that during the investigation several FPD officers expressed the desire to become more involved in the community, but found it difficult given the current 12- hour shift structure and the pressure to facilitate revenue through ticket writing.

The DOJ recommended that FPD:

1. Develop and put into action a policy and detailed plan for comprehensive implementation of community policing and problem-solving principles. Conduct outreach and involve the entire community in developing and implementing this plan;
2. Increase opportunities for officers to have frequent, positive interactions with people outside of an enforcement context, especially groups that have expressed high levels of distrust of police. Such opportunities may include police athletic leagues and similar informal activities;

3. Develop community partnerships to identify crime prevention priorities, with a focus on disconnected areas, such as Ferguson's apartment complexes, and disconnected groups, such as much of Ferguson's African-American youth;
4. Modify officer deployment patterns and scheduling (such as moving away from the current 12-hour shift and assigning officers to patrol the same geographic areas consistently) to facilitate participating in crime prevention projects and familiarity with areas and people;
5. Train officers on crime-prevention, officer safety, and anti-discrimination advantages of community policing. Train officers on mechanics of community policing and their role in implementing it;
6. Measure and evaluate individual, supervisory, and agency police performance on community engagement, problem-oriented-policing projects, and crime prevention, rather than on arrest and citation productivity.

It was evident in certain sections of the DOJ report that Ferguson Police Department's policies and procedures often reflected proper and constitutional police practices and standards. The investigation, however, revealed that officers were not properly trained on the policies and/or no steps were taken to ensure that officers were following Department procedure and practices. We have repeatedly stated in our training sessions, publications, and communications with police departments that it is just not enough to draft proper policies and then simply save them in the software system or place them upon a shelf never to be seen again. Departments must conduct ongoing training of its officers on each and every department policy, including annual training on certain high profile/high liability subject areas (e.g., use of force, reporting and investigating use of force, accepting and investigating complaints of misconduct, and constitutional policing.) Police departments must also ensure that its supervisors, particularly the first line supervisors, have all the training and skill necessary to adequately supervisor those officers under their command. Following officer training, supervisors absolutely must exercise close and effective supervision of officers to ensure that they are following department procedure. It is only through comprehensive policies that meet constitutional standards, thorough and regular training, and effective supervision that departments can police themselves and create an early intervention system that alerts them to potential issues or dangers. Equally important, should any issues be identified, Departments must take steps to immediately address such problems before they become systematic and wide-spread, and create an environment in which unconstitutional policing is cultivated and allowed to persist. Should a Department ever allow this to occur, that Department's administrators may very well find themselves on the receiving end of a telephone call informing them of the commencement of a Department of Justice investigation.

*This publication is produced to provide general information on the topic presented. It is distributed with the understanding that the publisher (Daigle Law Group, LLC.) is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.*