

U.S. Department of Justice

Civil Rights Division

*Special Litigation Section
P.O. Box 66400
Washington, DC 20035-6400*

July 23, 2002



Subodh Chandra, Esquire
Director, Law Department
Cleveland City Hall
601 Lakeside Avenue
Room 106
Cleveland, OH 44114

Re: Investigation of the Cleveland Division of Police

Dear Mr. Chandra:

We would like to take this opportunity to express our appreciation for the considerable cooperation we have received from the City, Police Chief Edward Lohn, and the men and women of the Cleveland Division of Police (CDP) in our investigation and mutual effort to improve policing in Cleveland. The CDP's willingness to review and improve its policies and procedures is admirable. We likewise want to thank the Cleveland Police Patrolmen's Association, the Fraternal Order of Police, the Black Shield Association, and community leaders who share the Division's desire to improve police practices.

Members of our team, including our police practices experts, have met with Chief Edward Lohn, former chiefs Mary Bounds and Martin Flask, and the CDP command staff to share informally recommendations about the policies and practices of the CDP. During our meeting on March 11, 2002 then Acting Law Director Rick Horvath, Public Safety Director James Draper and Chief Lohn expressed interest in receiving specific written recommendations to assist the CDP in the implementation of new policies, including the Manual of General Police Orders adopted on March 1, 2002. In this letter, we convey in greater detail our recommendations regarding use of force, misconduct complaint investigations, risk management, traffic stop procedures, and training.

To date we have reviewed relevant CDP policies and directives; attended police academy and in-service training sessions; ridden along with district patrol officers; and conducted interviews with CDP officials, a broad cross-section of the CDP command staff, and those charged with oversight of the CDP. We have spoken with representatives of the Cleveland Police Patrolman's Association, the Fraternal Order of Police and the Black Shield Association, as well as local attorneys, community leaders and citizens. Additionally, we are in the process of reviewing the investigative reports provided to us by the City relating to civilian complaints, use of force investigations and Internal Affairs (IA) investigations.

This letter is not meant to be exhaustive, but rather focuses on significant recommendations that we can provide at this stage of the investigation under 42 U.S.C. § 14141 and 42 U.S.C. § 3789d. Although we have nearly completed our review of the use of deadly force investigations and the discharge of firearms investigations provided by the CDP, important aspects of our investigation have yet to be completed, most notably completing our review of the CDP complaint investigation reports, and the more current reports of uses of non-deadly force, still to be produced. In addition, we are proceeding with our review of the computer data relating to traffic citations that we have received recently. Therefore, this letter is not intended to provide our findings regarding the ultimate question for our investigation: whether the CDP is engaged in a pattern or practice of unconstitutional conduct.

We hope that this letter will assist in our mutual goal of ensuring that the CDP provides effective and respectful police service to the people of Cleveland, and we look forward to continued cooperation toward this goal. We also would be happy to provide examples of policies used by other police departments that might address issues we raise below.

I. Uses of Force

A. The CDP should clarify its use of force policy

We recognize that the CDP has recently adopted a new Use of Force policy (GPO 2.1.01), which provides guidance on both the use of deadly force and the use of non-deadly force. The new policy appropriately adds head strikes with ASP batons to the definition of deadly force. However, it does not include head

strikes with other hard objects. (e.g., flashlights, portable radios). Model policies of well-recognized authorities, including the National Law Enforcement Policy Center of the International Association of Chiefs of Police, consider strikes to the head with impact weapons such as flashlights to constitute uses of deadly force. Accordingly, we recommend that the CDP clarify its use of deadly force policy to designate any strike to the head with an impact weapon as a use of deadly force and impose the same use threshold, reporting and investigation requirements as other uses of deadly force.¹

B. The CDP should clarify its process for reviewing uses of deadly force to ensure consistency

We understand that the CDP investigates uses of deadly force differently depending on whether or not the use of force results in death or injury to a person. Although not specified in the policy, we understand that when a CDP officer uses deadly force and a person is either injured or killed, the Use of Deadly Force Investigative Team (UDFIT) responds to the scene and conducts an investigation. However, if deadly force is used, but no person is injured or killed, the UDFIT apparently does not respond to the incident. We understand that, instead, on-duty homicide detectives and staff from the Inspections Unit investigate non-injury shootings and other non-injury incidents in which deadly force is used. Finally we understand that prior to October 2001, these non-injury incidents were investigated by the involved officer's district supervisor.

We recommend that the CDP clarify its policy on the investigation of use of deadly force incidents to make clear that in-depth examination of uses of deadly force does not depend on whether there is injury or death to a person, but on whether the force used by an officer could result in death or serious bodily injury. The use of deadly force definition contained within GPO 2.1.01 appropriately includes any "action that is likely to cause death or serious physical harm" and is not limited to incidents that actually cause such harm. Therefore, we recommend that the

¹ We observe that the CDP policy now defines intermediate weapons as "authorized less than lethal devices approved and issued by the Division" including the ASP baton and beanbag shotgun. We recommend that the CDP clarify that ASP batons and beanbag shotguns, given their potential to cause lethal injury, are "less lethal" rather than "less than lethal" weapons.

CDP adopt a uniform policy requiring the investigation of all uses of deadly force by the UDFIT, regardless of whether injury actually results.

In addition, we recommend that the CDP form and utilize a shooting review team to review uses of deadly force after any criminal and administrative reviews have been completed. The purpose of the shooting review team should be to review every incident of use of deadly force to evaluate the tactics used, the effectiveness of the equipment used, and whether training standards need to be altered.

We also recommend that, if not already offered, the CDP explore making confidential psychological counseling and stress de-briefing available to officers in the aftermath of a traumatic event as part of the process of ensuring that the officer remains fit for duty. We recommend that the CDP review and consider revising its stated policy that officers involved in a use of deadly force incident automatically "undergo a psychiatric evaluation if they cause death or injury and shall not return to street duty until so ordered by the Chief." (GPO 2.1.01 (V)). This policy raises two potential concerns. First, the use of the term "psychiatric evaluation" may unfairly suggest that an officer is unfit for duty before any such determination is made. Second, if the CDP is performing only a traditional "psychiatric evaluation," that process alone may not offer the assistance and support appropriate to an officer involved in a traumatic use of force.

C. CDP should thoroughly investigate and document uses of force

Our review of CDP use of deadly force and use of non-deadly force investigations from 1998-2000, and our interviews with CDP investigators, revealed a lack of documentation that raises concerns about the competency, thoroughness, and impartiality of use of force investigations. For example, we have found instances in which investigators failed to document interviews of victims, suspects, or CDP or civilian witnesses. In other instances, CDP investigators failed to document the location of all physical evidence, perform standard gunshot residue tests, locate other forensic evidence, or take relevant photographs. We recommend that the CDP provide specific guidance that investigators photograph all claimed or actual areas of injury and interview all officers who could be witnesses in addition to all civilian witnesses.

These apparent deficiencies may derive from inadequate training for use of force investigators. The command staff and investigators we interviewed informed us that investigators receive no specialized training in conducting these sorts of investigations. We recommend, at a minimum, that the CDP provide all of its use of force investigators with training in the following: observation and surveillance skills; basic forensics; interviewing and interrogation skills; report writing; basic criminal law; basic court procedures; basic rules of evidence; and CDP's disciplinary and administrative procedures.

We also reviewed several investigations where the investigator was involved in or supervised the use of force incident. This raises the strong potential for a conflict of interest. In addition, for injuries which result in hospital admission and, as described above, incidents involving the use of deadly force, we recommend that investigators not be based in the district in which the incident occurs. We recommend that CDP policy make specific that supervisors who are involved as witnesses, participants or supervisors in a use of force incident shall not investigate that use of force.

We also recommend that every supervisory review of any use of force include an assessment of the following issues: (1) was the force used in compliance with policy, training and legal standards; (2) if not, should the incident be further investigated to determine whether misconduct occurred; (3) using different tactics could the officer(s) have avoided using force or using the level of force employed; (4) does the incident indicate a need for additional training, counseling or other remedial measures; and (5) does the incident suggest that CDP should revise its policies, training, tactics, or equipment. The investigations we have reviewed to date are inconsistent in terms of addressing these critical questions.

We were recently provided with a database of use of non-deadly force reports by the CDP. We noted that this database does not track whether the use of force is determined to be within policy. We recommend that this information be added to the database.

II. Complaints of Police Misconduct

A. The CDP should clarify its structure and policy regarding complaints of police misconduct

We recommend that the CDP include a definition of "complaint" in its policy on accepting citizen complaints (GPO 1.3.15) and that the Office of Professional Standards (OPS) and Internal Affairs (IA) procedural manuals contain consistent guidance.

We recognize that the CDP has recently reallocated responsibility for investigations of police misconduct. Currently, allegations of criminal misconduct are investigated by IA, which consists entirely of sworn personnel and reports directly to the Chief. All other complaints of police misconduct are investigated by OPS, which is staffed by sworn personnel who report to a civilian supervisor. OPS forwards its investigations for review by the Police Review Board, which then makes a recommendation to the Chief regarding the disposition of the complaint and whether discipline should be imposed. In light of this restructuring of the complaint investigation process, we recommend that the CDP promulgate a policy statement that clearly delineates the responsibility for the investigation of complaints or allegations of misconduct between Internal Affairs, OPS and first line supervisors.

To assure that complaints are directed to the appropriate unit for investigation and the results of the investigation are appropriately tracked, we recommend that the CDP develop a centralized system for accepting, logging, tracking and assigning complaints for investigation by the appropriate CDP authority. We recommend that these data be entered into the Risk Management System discussed below. We recommend that the CDP adopt a policy addressing who will be responsible for investigating complaints against OPS and IA personnel. Moreover, we recommend that the CDP implement both a public education campaign and additional in-service training on the policies and procedures for accepting and handling complaints. Ensuring that the public is informed of the means by which complaints can be lodged and that all complaints will be professionally and appropriately handled benefits community/police relations.

B. The CDP should review its policies for staffing IA and OPS and review the training and equipment needs for these specialized units

We understand that staff assignments to OPS are determined almost entirely by seniority and that OPS investigators receive

no formal training in conducting complaint investigations. We recommend that the CDP work with the appropriate union officials to establish eligibility criteria for sworn investigator applicants, including consideration of an officer's complaint and disciplinary history. We also recommend the CDP remove investigators whose actions while serving as investigators would have disqualified them from selection as investigators.

IA and OPS investigators should receive specialized and ongoing training. Officers newly assigned to OPS and IA should be paired with a more experienced investigator in these specialized units for an appropriate period. We also recommend that the CDP provide additional training to both IA and OPS investigators from sources outside the Division. We would be happy to assist the CDP in identifying appropriate resources. Additionally, OPS and Internal Affairs investigators should provide in-service training to first line supervisors regarding their roles at the front end of the complaint process and in assisting in internal investigations. Finally, we recommend that the CDP takes steps to encourage officers to consider OPS duty as an important step in their career development paths. Lending greater prestige to this office should aid in having effective OPS staff.

We also recommend that the CDP carefully evaluate the staffing and workload of OPS, as the responsibility for a larger volume of complaints has raised concerns about the adequacy of OPS staffing. We understand that the recent restructuring increased OPS' workload from approximately 350 cases per year to over 700 while the staff only increased from five investigators to eight. We understand from staff that complaint investigations are being resolved more quickly than in the past, but investigations still take as long as four months to be completed. We also heard staff concerns regarding the equipment assigned to OPS. Specifically, we understand that OPS has only two cars for its eight investigators and that at the time of our interviews with OPS staff both of these cars were in disrepair. The unavailability of cars can limit the ability of investigators to be in the field. Further, we understand that investigators must devote time to transcribing tape recorded interviews. It is our understanding that both IA and the former Complaint Investigation Unit investigators were assigned or had access to a CDP vehicle and that transcription of tape recorded interviews by these investigators was performed by clerical staff. We recommend that the CDP review the allocation of resources to ensure that OPS is

adequately staffed and equipped to perform its function efficiently.

C. The CDP should review its policy on the administrative withdrawal of misconduct complaints

We understand that many complaints are administratively withdrawn because investigators are unable to contact complainants or complainants do not respond to phone calls or letters seeking additional information necessary to the investigation. We also understand that under current CDP policy and the Collective Bargaining Agreement, complaints are investigated by OPS only if signed by the complainant and written in the complainant's own handwriting. Complaints that do not comply with these requirements are administratively withdrawn and are not investigated. We understand that the limited availability of staff and equipment discussed above may hamper the ability to contact complainants, many of whom contact OPS initially by phone, to obtain the required signatures and written statements, thus precluding investigation of those complaints. Our review of complaint files to date reveals that a significant number of the total complaints received by OPS are administratively withdrawn without a final determination on the merits. Based on a review of the OPS investigation files provided to us, during the period 1998 to 2000, approximately 28 percent of complaints were administratively withdrawn. Investigations by CIU during the same time period resulted in a nearly identical administrative withdrawal rate (27 percent).

We recommend the CDP work with the appropriate union officials to permit the CDP to investigate all citizen complaints, whether signed and written in the complainant's handwriting or not. Absent this change in policy, we recommend that the CDP allocate the necessary resources to assure meaningful efforts to have complaints received conform to these requirements. Although we recognize that some complaints from anonymous sources may not provide sufficient information upon which to base an investigation, we recommend that CDP investigate all citizen complaints to the extent reasonably possible to determine whether or not the allegations can be resolved and that the CDP not close any misconduct investigation without rendering one of the following dispositions: sustained; unfounded; exonerated; insufficient evidence; or administrative withdrawal.

We recommend that the CDP adopt a clear standard for when a

case may be administratively withdrawn. We note that Section 9.0 of the Proposed OPS Procedural Manual contains useful guidance on this issue,² however further clarification may be beneficial. We recommend that the standard for administrative withdrawal be phrased so that a matter is not administratively withdrawn unless an investigation cannot be completed because the complainant is unavailable or unwilling to cooperate after diligent effort has been made and there is no other information on which to base an investigation. We recommend that the standard be incorporated in a general police order and be made applicable to all officers charged with investigating complaints, including IA.

D. The CDP should revise and update the standard procedures for accepting and investigating misconduct complaints

Based on our review of investigations to date, we are concerned that investigators inject opinions and speculation that may call into question the objectivity of the investigation. We recommend that the CDP clarify Section 3.4 of the OPS manual to make clear that investigators should not insert personal views or unsupported conjecture in their investigative reports. The goal of administrative investigation is to (1) ensure that the investigation is conducted fairly and impartially, (2) establish what happened, and (3) uncover and preserve all pertinent evidence. Accordingly, we recommend that all complaint investigators be trained to consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. Investigators should not give automatic preference to any person's statement over any other person's statement. In making such credibility determinations, the investigators should consider, at a minimum, the following factors: (i) the officer's investigation history (if relevant to their credibility in the investigation); (ii) the complainant's or witness' criminal history (if relevant to their credibility in the investigation); and, (iii) other credible facts suggesting a propensity for untruthfulness of the persons involved or credibility of the

² Section 9.0 provides in relevant part: "Administratively Withdrawn - the investigation cannot be completed due to the unavailability of the complainant after diligent efforts have been made to contact him and there is no other information on which to base an investigation and/or the complainant's unwillingness, if there is no other information on which to base an investigation."

complaint in general. In making such credibility determinations CDP investigators should not disregard a witness's statement merely because the witness has some connection to the complainant. Further, the CDP should train all of their investigators on the factors to consider when evaluating complainant or witness credibility. Investigators should make efforts to resolve material inconsistencies between witness statements. We recommend that the CDP prohibit investigators, during complaint investigations, from asking officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques.

Our review of OPS investigations also revealed concerns about the thoroughness of misconduct complaint investigations and the potential for possible criminal prosecutions to be affected by a lack of appreciation for the principles of Garrity v. New Jersey 385 U.S. 493 (1967) (holding that if a law enforcement officer is not provided with immunity, any statement given under threat of adverse personnel action is unconstitutionally coerced). We recommend that OPS institute the following investigative policies and practices: for all complaints alleging misconduct, require investigators to conduct in-person, recorded interviews with all identified complainants, witnesses, and officers who are the subject of such complaints; require that all complaints alleging misconduct, including, anonymous complaints, withdrawn complaints, and complaints filed by complainants who are unwilling to cooperate with the OPS or whom OPS is unable to locate, are investigated to the extent reasonably possible to determine whether or not the allegations can be resolved; create written guidelines regarding when to compel statements pursuant to Garrity v. New Jersey that ensure the integrity of potential criminal investigations; and train investigators in these procedures.

Finally, the IA procedural manual CDP provided to us by the CDP was published in 1982. This 20 year old manual does not appear to accurately describe the current role of IA and, by virtue of its age, contains techniques that are out-dated and no longer applicable. Accordingly, we recommend that the CDP develop a new IA manual that, at a minimum, describes the required investigative steps including (a) procedures for contacting victims and witnesses, (b) evidence gathering techniques, (c) the format and content of investigative reports and (d) procedures for exchanging information between different

units of the CDP. We would be happy to suggest training resources and model policies that may assist in the development of this new manual.

III. Risk Management

- A. The CDP should develop its risk management system to track a wide variety of employee conduct in order to identify and assist employees whose actions suggest job-related issues

We understand that the CDP has recently purchased a risk management software system to help identify and remedy potentially troublesome officer conduct. We understand that this system is designed to allow the CDP to aggregate data from a variety of sources, such as personnel files, citizen complaints and use of force reports in order to review systemic issues that may require changes in training or policy. Our specific recommendations on the data elements that should be collected to make the risk management system a more useful tool from the present day forward are included below. We also recommend that the database be populated with historical data from the last several years.

We believe that the CDP will benefit from utilization of its automated risk management tool. We are pleased to learn that the CDP's system was installed in December 2001, and that CDP staff are presently working on the logistical issues involved in populating this system with data from different sources. We recommend that the CDP capture data elements relating to both officer action and organizational conduct. Data that may be helpful include: uses of deadly and non-deadly force, complaints investigated by both IA and OPS, criminal allegations against officers, civil or administrative claims against officers, assignment and rank history of officers. Because of the CDP policy regarding the administrative withdrawal of complaints discussed above, we recommend that the risk management system also include data regarding complaints that are closed by withdrawal.

Because risk management tools are designed to help supervisors and managers identify and correct behaviors before the imposition of discipline might become necessary, we recommend that the CDP review its policy regarding the Early Intervention Program (EIP) and clarify how the risk management system will be used in connection with the EIP, including what thresholds will

be used to identify officers for review and how such officers' conduct will be reviewed. Moreover, officers should be made aware of what non-disciplinary actions may be taken by supervisors and managers when specific officers are identified by the risk management system. We also recommend that the CDP emphasize that first line supervisors remain responsible for the behavior of officers under their supervision.

We understand that the current EIP policy contemplates that the office of the Chief of Police will monitor statistical records, presumably the risk management system. In addition, when an officer exhibits a number of indicators equal to or exceeding the threshold determined by the Chief, an EIP package will be delivered to the officer's commander for review. We understand that the commander, with input from supervisory staff, may determine that intervention is not warranted. We recommend that the CDP require district commanders who determine that intervention is not merited under the EIP, be required to provide a written explanation to justify this determination. Finally, we recommend that the EIP not be voluntary on the part of the officer, as the program is designed to reaffirm agency policy and provide additional training or other appropriate non-disciplinary assistance. We understand that other police departments around the country require that officers participate in these types of assistance programs in order to address at risk behavior and prevent officers from becoming involved in serious misconduct.

IV. Traffic and Pedestrian Stops

A. The CDP should implement its data collection initiative and expand the frequency and scope of its data analysis

We understand that the CDP has decided to collect data on all pedestrian and motor vehicle stops by CDP officers. We understand that as part of this initiative the CDP is including diverse members of the community, representatives of the CPPA, the FOP, and other line officers and command staff in the development of the policy statement and data collection protocol. We applaud these efforts. As we have discussed with Chief Lohn, former Chiefs Bounds and Flask, and members of the CDP command staff, meaningful analysis of stop data requires the collection of a number of data items. We have been provided with a draft data collection form that CDP officers will utilize to capture the following data: the date of the stop, the officer's name and badge number, the location of the stop, the gender,

race/ethnicity and date of birth of person stopped, the basis for the stop, whether a search or frisk of the person or vehicle was conducted, whether the search was consensual, whether any contraband was seized, the result of the contact (i.e verbal warning, citation issued, or arrest), the state in which the vehicle stopped is registered, and whether a canine was deployed. We understand that the CDP had planned to begin data collection in February 2002, but that a test of the data collection system in January 2002 highlighted certain logistical issues that the CDP is currently working to resolve.

We also recommend that the CDP develop a methodology for analyses of stop data on a regular basis. Because much research is presently being done in the area of data analysis, both within the policing profession and in academia, the CDP may want to retain a consultant for guidance in data analysis. In addition to examining traffic stop data, we recommend that traffic stop analyses include a review of commendations and compliments, as well as information on complaints and civil suits (both pending and resolved) that allege discrimination in the provision of police services on the basis of race, color, or national or ethnic origin.

We also understand that for the last year the CDP has been collecting and reviewing certain data items from uniform traffic tickets (UTTs) including the identity, gender, and race of all persons to whom a citation is issued, data that identifies the vehicle and license plate, the street location of the stop that resulted in the issuance of the ticket(s), the police district in which the ticket was issued and the identity of the issuing officer. We understand that the CDP has been conducting regular reviews of this UTT data and recommend that this practice continue in conjunction with the stop data analyses discussed above.

B. The CDP should utilize its in-car video cameras and audio recorders more systematically

It is our understanding that CDP utilizes video cameras mounted in police cruisers and audio recorders to detect and prosecute persons suspected of driving under the influence violations and to investigate fatal and other serious traffic accidents. (GPO 3.4.03). We recommend that these cameras and recorders be used to record all traffic stops. We urge the CDP (1) to configure the video camera systems and audio recorders so

they begin taping at the time that an officer activates his/her emergency equipment, and (2) to modify its policy regarding the storage of the tapes to prohibit officers from rewinding the tapes or erasing or re-using the tapes and to maintain the evidentiary integrity of the tapes. Used tapes should be stored for a minimum of 90 days. These recordings can then be used to aid in quickly resolving complaints as well as in conjunction with the stop data and analysis discussed above.

V. Training

A. The CDP should provide additional in-service firearms training

All CDP officers are required by the state training board to qualify annually in the use of firearms. We understand that this qualification is achieved during an eight hour in-service firearms training. This training consists of classroom presentations and the administration of a short written exam on the use of deadly force policy, followed by a live-fire examination on the shooting range that focuses on ensuring that officers know how to use firearms proficiently. We understand that the GPO 1.1.10 requires that officers score a minimum of 80 percent on the written examination, but that the written exam consists of approximately 20 questions. Thus, a passing score could be obtained even though questions that test an officer's basic understanding of the use of deadly force policy are answered incorrectly. We recommend that the CDP review this requirement to ensure that a passing score on the written examination requires that officer correctly answer key questions related to the use of deadly force policy.

During our observation of firearms qualification and training, CDP staff showed us the 19 room training facility that is an obvious source of pride. We understand that training is offered at this facility in both search techniques and the use of firearms indoors. We were favorably impressed with the facility and recommend that the CDP develop a formal training curriculum and schedule so that all officers can receive the benefit of this resource. We understand from speaking with command staff, firearms trainers, and rank and file officers, that additional firearms training would be welcomed.

We also understand that the CDP is considering adding quarterly firearms training for all officers to focus on tactical

and decision-making skills. We strongly encourage this plan. Our review of use of deadly force investigations and "non-use" of deadly force investigations revealed numerous circumstances in which CDP officers utilized tactics that appeared to create additional risks to the officers. Specifically, we observed a number of investigations of CDP officers firing at moving vehicles that, through the use of different tactics, may have been avoidable and presented fewer risks to officers and subjects. We recommend that this additional training include exercises in tactical training and "shoot, don't shoot" decision-making scenarios. Further, the use of interactive firearms training technology, or simulation training tools, would provide for realistic role playing and provide CDP officers decision-making practice and assessment. To the extent possible, we recommend that the CDP training include scenarios drawn from actual CDP use of force incidents. We recommend that the scenarios be balanced between incidents wherein the officer is able to deploy tactics that result in avoidance of shooting as well as incidents wherein use of deadly force was necessary and justified. Finally, we recommend that officers receive training in night shooting and stress training (i.e., training in using a firearm after undergoing physical exertion). Our review of the 23 use of deadly force incidents provided by the CDP reflect that 17 of these occurred at night.

B. CDP should develop a structured Field Training Officer (FTO) Program, implement a well-designed FTO selection procedure and take measures to assure that FTOs are adequately trained

We understand from district commanders that FTOs are selected almost exclusively on the basis of seniority with little input from the command staff. These FTOs serve for indefinite terms and receive only limited training. We recommend that the CDP work with union officials to develop a structured program for recruiting, selecting, training and evaluating FTOs.

The CDP should develop specific criteria for the selection of FTOs from the ranks of qualified personnel with the clearly established minimum qualifications. At a minimum, FTOs should have several years of experience as police officers. FTOs should have no adverse disciplinary actions that reflect a lack of integrity, use of excessive force or discriminatory behavior, have favorable performance appraisals, and exhibit interpersonal skills consistent with the coach/mentor function of an FTO. Moreover, the CDP should adopt a structured training and

evaluation program for FTOs. We would be happy to provide the CDP with examples of FTO programs that other law enforcement agencies have implemented with success.

We recommend that the CDP take measures to recruit and train qualified FTOs, including providing additional incentives to encourage officers to apply to become FTOs. Possible incentives include greater monetary compensation or priority for receiving training on new equipment (such as weapons), policies and procedures. We also recommend that FTOs be appointed to serve for a fixed term of approximately 2 years, renewable at the discretion of the CDP based upon overall satisfactory performance, and that the CDP develop a mechanism for removing FTOs who fail to perform adequately.

C. CDP management should audit recruit and in-service training and provide in-service cultural diversity training.

A number of training sessions that we have observed highlight the need for the Chief or Executive Staff to audit academy and in-service training in order to be confident that policies are being effectively taught. While some training courses we have attended were well done, others clearly were not effective in conveying the subject matter. For example, one particular training course consisted solely of a lecture on Supreme Court decisions and complex legal concepts. Officers clearly were not paying attention to the lecture (to the point of reading newspapers, doing crossword puzzles and chatting among themselves), asked no questions, and did not participate in any discussion of the issues. CDP command staff apparently were unaware of the specifics of this training until we brought it to their attention.

The recommended auditing can be accomplished either through an auditing function, in which designated CDP personnel, not part of the academy staff, attend training courses and report their observations to the Chief, or by requiring executive and command staff to attend training and to report to the Chief. Regardless of who is designated to carry out the audit function, there should be a reporting structure that, at a minimum, provides information on whether the subject matter taught complied with department policy and current law, whether class time was sufficient and properly used, and whether teaching methods were effective.

In conclusion, we appreciate the cooperation we have received from City and CDP officials in our investigation to date. We look forward to continuing to work with you and to discussing the issues raised by this letter.

Sincerely,

/s/ Steven H. Rosenbaum

Steven H. Rosenbaum
Chief
Special Litigation Section

cc: Emily M. Sweeney, Esq.
United States Attorney