



December 4, 2018

The Honorable Tim Neese
Office of the Mayor
229 S 2nd St,
Elkhart, IN 46516

Dear Mayor Neese:

We, the American Civil Liberties Union of Indiana and national ACLU, share the great concerns expressed by your community about misconduct within the Elkhart Police Department. The use of excessive force and shootings in Elkhart must be properly and impartially investigated, not just to hold individual officers accountable but to change the policies and practices that keep leading to police abuses of power.

We urge you to abandon any proposal which would establish a review board consisting solely of law enforcement officers, in order to investigate cases of excessive force.

We urge the city of Elkhart to work with community stakeholders to bring in a proven, independent third-party expert to examine these endemic and historic acts of brutality within the Elkhart Police Department. There are organizations that are well-equipped to assist Elkhart in identifying an appropriate expert to conduct such an investigation and ensuring the investigation is thorough and credible, such as the Leadership Conference Education Fund and Leadership Conference on Civil and Human Rights, the Center for Policing Equity or the NYU Policing Project.

Regarding the need for an independent review, we also advise that a Department of Justice investigation is not realistic at this time. The call for a Justice Department pattern-and-practice investigation into the Elkhart Police Department would have been an effective plan of action under a different administration. Under President Obama, the U.S. Department of Justice negotiated a significant number of consent decrees with police departments throughout the country, requiring cities to adopt substantive, systemic reforms on issues that included excessive use of force, discriminatory policing, search and seizure, and gender bias in policing. These reforms were based on extensive fact-finding, including review of documents and data, interviews with diverse stakeholders from both law enforcement and the community, and analysis by statistical experts and criminologists. Implementation was typically overseen by a court-appointed monitor. Some examples of the tangible results of these Obama-era agreements include:

- Seattle, Washington, where the police department entered into a consent decree with the DOJ in 2012 in order to reduce biased policing and unnecessary use of force.¹ Seattle Police Department monitor Merrick Bobb found that over a 28-month period there was a 60% decrease in the use of moderate and high-level use of force.²
- Ferguson, Missouri, where reformed training and accountability measures are in their final stages of implementation³ and U.S. District Judge Catherine Perry said that she was seeing a “great deal of progress” being made in the Ferguson Police Department.⁴
- Cleveland, Ohio, whose police department has also reached many milestones since entering into a consent decree in 2015, following the tragic death of 12 year-old Tamir Rice, including completing training with all officers on how to properly use force.

Under the Trump administration, however, the Justice Department’s Civil Rights Division has been largely stripped of its power to negotiate consent decrees and other settlement agreements regulating patterns and practices of police enforcement. A November 7, 2018 DOJ policy memorandum⁵ imposed such severe limitations on these agreements that it is now next to impossible for the Civil Rights Division to use them to reform troubled police departments. As Christy Lopez, former deputy chief of the Civil Rights Division’s special litigation section, recently put it, these changes mean “this Justice Department has no intention of letting its civil rights division protect us from abuse by the state.”⁶ The Justice Department has also sharply curtailed the role of the Office of Community Oriented Policing Services (COPS Office), which previously allowed local jurisdictions to voluntarily seek federal assistance to resolve the kinds of policing failures that Elkhart is experiencing, such as excessive force, biased policing, and lack of community trust in police. Under the Trump

¹ Sydney Brownstone and Steven Hsieh, Judge Finds SPD in "Full and Effective Compliance" With Consent Decree, The Stranger (Jan. 10, 2018), <https://www.thestranger.com/slog/2018/01/10/25699217/judge-finds-spd-in-full-and-effective-compliance-with-consent-decree>

² Steven Miletich, Seattle police make dramatic turnaround with use-of-force reforms, federal monitor finds, Seattle Times (Apr. 6, 2017), <https://www.seattletimes.com/seattle-news/crime/in-major-step-federal-monitor-finds-seattle-police-use-of-force-reforms-are-working/>

³ Ashley Winters and Chad Davis, Ferguson monitor says city is on pace to meet requirements of consent decree, St. Louis Public Radio (March 6, 2018), <http://news.stlpublicradio.org/post/ferguson-monitor-says-city-pace-meet-requirements-consent-decree#stream/0>

⁴ Robert Patrick, Federal judge says 'a great deal of progress' made on Ferguson consent decree, St. Louis Post-Dispatch (June 26, 2018), https://www.stltoday.com/news/local/crime-and-courts/federal-judge-says-a-great-deal-of-progress-made-on/article_f5646ff4-d25e-55d2-aaa3-e8ff4f046582.html

⁵ Office of the Attorney General, Memorandum for Heads of Civil Litigating Components, United States Attorneys (Nov. 7, 2018), <https://www.justice.gov/opa/press-release/file/1109621/download>

⁶ Christy E. Lopez, Here’s Why Jeff Sessions’ Parting Shot Is Worse Than You Thought, The Marshall Project (Nov. 19, 2018), <https://www.themarshallproject.org/2018/11/19/here-s-why-jeff-sessions-parting-shot-is-worse-than-you-thought>



administration, the COPS Office has pulled back from providing this kind of collaborative reform. As a result, it is simply not realistic to expect that the Justice Department will be able to carry out the kind of investigation and reform that the Elkhart Police Department needs.

The fact that the Justice Department can no longer be relied upon to conduct pattern-and-practice investigations in this presidential administration is not an excuse for inaction. The ACLU urges city leadership to work with community stakeholders to bring in an outside expert who can conduct a similar analysis and investigation and identify what policies and practices need to be changed. Fortunately, there are a number of police practices experts and organizations that have the substantive knowledge and experience to provide the City of Elkhart with evidence-based analysis and recommendations similar to what could be generated by a DOJ investigation. The Center for Policing Equity, for example, is a research and action think tank that has partnered with law enforcement agencies to evaluate policies and practices and provide an empirical basis for policy decision-making. The Leadership Conference Education Fund and Leadership Conference on Civil and Human Rights, which is now led by Vanita Gupta (who oversaw the Justice Department's Civil Rights Division from 2014 to 2017), partners with a wide range of organizations to examine local police practices, and supports collaborative reform efforts to overhaul local policing. And the Policing Project at New York University Law School works with law enforcement agencies to foster public participation and accountability to the public in police decision-making, policies, and practices; conduct better analysis of police practices; and provide policy guidance to law enforcement agencies.

We urge the city of Elkhart to work with one of these independent organizations to examine the endemic and historic acts of brutality within the Elkhart Police Department.

We hope that you will take these recommendations to heart as you work to ensure that Elkhart is a safe and welcoming city, in which all community members can share confidence and trust in their local law enforcement and elected officials.

Sincerely,

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cc: Members of the Board of Public Safety and the Elkhart City Council