

TO: Joe Biden, 2024 Democrats' Presidential Candidate
FROM: Chia Wen Cheng, Presidential Candidate Advisor
RE: We Should Avoid Dependence on Pattern-or-Practice Investigation Process
DATE: November 13, 2023

Executive Summary

Certain recent studies suggest that DOJ's pattern-or-practice investigations can address excessive enforcement by local police. However, you should instead instruct the DOJ to stop its pattern-or-practice approach. Supporters argue the DOJ is potent in combating injustice, but excessive trust in this mechanism intensifies biases and hinders acknowledgment of its flaws. Despite solid findings, the DOJ lacks an effective regime for disciplining inappropriate conduct, as policy recommendations post-investigation often fall short. Instead, this memo recommends a balanced approach to federal governance: 1) create an independent incorporated administrative agency that will collaborate with local police departments on discipline reform frequently and proactively, and 2) allow the DOJ to offer recommendations to the new agency based on their legal expertise. This approach aims for a more responsive and accountable policing framework.

Challenges in Maintaining the Current Pattern-or-Practice Approach

1. Blindness to Injustice due to Excessive Trust in the Investigative Approach

In response to public complaints about over-policing, the pattern-or-practice oversight measure was introduced with the expectation of effectively curbing future violations of human rights. Doubts persist about whether the marginalized are less likely to experience misconduct from the police despite observed changes in conduct disciplines.^{1 2} Economic research reveals the significant rise in homicide and total crime rates following pattern-or-practice investigations on controversial incidents of deadly force against black civilians in Baltimore, Chicago, and

¹ Gurman, S. (2021, May 27). *Police Overhauls Help Fight Crime, Biden Administration Official Says*. The Wall Street Journal. <https://www.wsj.com/articles/police-overhauls-help-fight-crime-biden-administration-official-says-11622031515>.

² Walker, S. (2022). The Justice Department's Pattern-or-practice police reform program, 1994–2017: Goals, achievements, and issues. *Annual Review of Criminology*, 5(1), 21–42. <https://doi.org/10.1146/annurev-criminol-030920-102432>.

Cincinnati, an effect absent in cities with viral shootings but no investigation.³ The reasons have not been clearly concluded but there is evidence that vulnerable individuals are at a heightened risk after the intervention of federal investigation.

2. Ineffective Accountability Reform due to Lack of Power to Make Changes

The DOJ claims widespread implementation of the pattern-or-practice investigation process across various communities, noting successful restrictions placed on local police based on these investigations. However, the initiation process, whether proactive or passive, remains unclear. Research also reveals that only 8 ongoing investigation cases are under this process, a stark contrast to the numerous daily police shooting deaths nationwide.⁴ Additionally, in instances where agreements cannot be reached, the DOJ resorts to filing lawsuits. This further step indicates a perceived lack of authority to enforce changes, even with substantial research results highlighting constitutional violations in policing.⁵ The lack of clarity and authority transforms the process into what appears to be a preliminary investigation before entering the court system. The court system, proven ineffective in delivering justice to victims of over-policing, prompts questions about the overall efficacy of this approach.⁶

Counterarguments and Refutations

Supporters of the DOJ's ongoing pattern-or-practice investigations are worried about the absence of external legal checks to address excessive enforcement without this system. However, it functions similarly to the existing constitutional review process but with more limitations.

³ Devi, T., & Fryer, R. G. (2020, June). Policing the Police: The Impact of “Pattern-or-Practice” Investigations on Crime. https://www.nber.org/system/files/working_papers/w27324/w27324.pdf.

⁴ Guzman, J. (2023, April 7). *What is a pattern-or-practice investigation?*. Legal Defense Fund. <https://www.naacpldf.org/police-pattern-practice-investigation/>.

⁵ Office of Public Affairs, Department of Justice. (n.d.). Fact sheet: The Department of Justice Pattern or Practice Investigation of the Chicago Police Department. <https://www.justice.gov/opa/file/925851/download>.

⁶ Rice, C. (2012). The Blue Grip. In *Power Concedes Nothing: One Woman's Quest for Social Justice in America from the Courtrooms to the Kill Zones* (pp. 92–114). essay, Scribner.

Research underscores the influence of politics on investigation initiation, as seen in the Trump administration's one investigation compared to the Obama administration's 25.⁷ Moreover, the increased risk of injustice to vulnerable populations contradicts the goal of rectifying excessive enforcement. Overall, the DOJ's pattern-or-practice investigations, marked by redundancy and susceptibility to political influence, which exacerbates potential injustice, provide evidence for discontinuing their operation. Given past failures to successfully address issues in the public-police relationship even through lawsuits, investing public resources into this approach lacks value. Instead, establishing and empowering an independent incorporated administrative agency to collaborate proactively with local police departments for disciplinary examinations and reforms, without exclusions, is recommended.

Principles for the DOJ to Follow

Due to the pattern-or-practice investigation approach's ineffectiveness, replication, and exacerbation of injustice, the DOJ should halt its operation. The DOJ should focus on strengthening court lawsuits to ensure police accountability and mend the relationship between local law enforcement and the public. Leveraging legal expertise, the DOJ can offer non-binding recommendations to the newly established independent incorporated administrative agency. This agency, comprising a diverse team of experts with a balanced composition of appointed and recruited personnel, will collaboratively engage with each police department to assess and improve their disciplinary practices. Consequently, it is well-positioned to tackle systemic issues and strengthen police accountability. The DOJ, however, should refrain from assuming control over this agency or seeking to influence its decision-making process in any way.

⁷ Guzman, J. (2023, April 7). *What is a pattern-or-practice investigation?*. Legal Defense Fund. <https://www.naacpldf.org/police-pattern-practice-investigation/>.