

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF CLEVELAND

Defendant.

) CASE NO.: 1:15-CV-01046

)

) JUDGE SOLOMON OLIVER, JR.

)

) **MEMORANDUM SUBMITTING FIRST**

) **SEMIANNUAL REPORT**

)

The Cleveland Police Monitoring Team submits its First Semiannual Report.

Respectfully submitted,

/s/ Matthew Barge

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Cleveland
Police
Monitoring
Team

First Semiannual Report

June 2016





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EXECUTIVE SUMMARY

Under the Consent Decree between the United States and City of Cleveland (the “Parties”) involving various reforms to the Cleveland Division of Police (“CPD,” “CDP,” “Division of Police,” or the “Division”), the Cleveland Police Monitoring Team must “assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in constitutional and effective policing, professional treatment of individuals, and increased community trust of CPD.”¹ The First Semiannual Report is the Monitor’s first, comprehensive summary of the City and CPD’s progress to date in implementing the reforms that the Decree requires.

The Monitor and Monitoring Team are “agent[s] of the Court” who are “subject to the supervision and orders of the Court.”² The Monitor works for the Court – not the City and not the DOJ – and serves as its eyes and ears, with “a legal duty to act solely in [the Court’s] interests.”³ The Monitor serves simultaneously as arbiter, technical advisor, and facilitator as CPD works to ensure effective, safe, and constitutional policing consistent with the values of the Cleveland community.

After being appointed in October 2015, the Monitoring Team worked with the Parties on a First-Year Monitoring Plan. That Plan is “intended to provide a clear, unified structure and frame-

work for the day-to-day and week-to-week efforts that stakeholders from across the Cleveland community need to undertake to ensure that the Consent Decree is implemented” according to the Decree’s objectives.⁴ Part project roadmap and part agenda,⁵ the Court approved the detailed plan in early February 2016.⁶

The Monitoring Plan sought to “set[] aggressive but realistic goals, deadlines, and milestones for complying with the requirements” of the Consent Decree, and it provided mechanisms for the Parties and Monitor to make “adjustments to certain timelines [when] necessary” to reflect changed circumstances or operational realities.⁷ It also built community and CPD officer participation directly into the substantive reform process – both early, when the Community Police Commission and Division of Police gather views, values, experiences, and expectations of residents and officers to inform CPD’s initial drafting of new policies, training, and processes; and later on, when the Monitor works with stakeholders to get direct and substantive feedback about specific reforms.

Notable Areas of Progress to Date

1. Use of Force

Reform in the area of force is a primary area of focus and work throughout the remainder of 2016 and into 2017. The current goal, codified in the First-Year Monitoring Plan, is for CPD to have a new use of force policy in place, and all officers trained on the policy, by December 31, 2016. This will allow the new policy to become effective and implemented across Cleveland as of January 1, 2017.

To date, there has been tremendous progress toward a core use of force policy that provides clear, specific direction on when force may be used. The Division and the personnel it has tasked

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with working on policy changes have worked collaboratively and diligently to incorporate the recommendations of Consent Decree stakeholders. Since late March 2016, several iterations and drafts have

been the subject of productive discussions in which CPD has remained open to exploring the adoption of new approaches. In working on the policy, CPD has been aided by feedback collected by the CPC and the City of Cleveland on resident views of use of force and officer feedback collected by CPD in collaboration with police officer unions and organizations.

Because the policy discussion period has taken slightly longer than originally projected, and because the RNC is increasingly imposing substantial operational demands on CPD and the

¹ Dkt. 7-1 ¶ 350; accord ¶ 375 (requiring semiannual “written, public reports”).

² Dkt. 7-1 ¶ 351.

³ Cornell University Law School, Legal Information Institute, Fiduciary Duty, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Apr. 22, 2016).

⁴ Dkt. 43 at 2.

⁵ *Id.*

⁶ Dkt. 44.

⁷ Dkt. 43 at 1; Dkt. 51.

City, the Parties and Monitor have agreed that community engagement on the proposed final draft of a new force policy for Cleveland should occur in late July or August. Although the Parties and Monitor will update the Court and public on a modified timeframe for community review of the proposed new force policy in the coming weeks, this modified timeframe does not impact the ultimate goal of having CPD officers trained on the new policy by December 31 and the policy subsequently effective on the streets of Cleveland on January 1, 2017.

2. Officer Training

A consensus continues to emerge that high-quality and robust training throughout an officer's career is a linchpin to ensuring safe, effective, constitutional, and community-based policing. The Consent Decree requires that CPD officers receive no fewer than 40 hours of in-service training annually, with year-to-year training priorities, needs, and commitments established by a Training Review Committee. The Court approved a new CPD policy substantially expanding the Training Review Committee in April 2016.⁸ Additionally, the First-Year Monitoring Plan notes that policies that come about in the Consent Decree do not become effective "until the Parties and Monitor have certified that training on the policy and its core concepts has been successfully completed."⁹

CPD worked closely with the Parties and Monitor to identify a prioritized training for training provided to CPD personnel in 2016 as part of the First-Year Monitoring Plan. The year's major training initiatives include: (1) state-required officer re-certification training; (2) training on an important, new officer performance and management database system called Blue Team; (3) training in the Fall of 2016 on the anticipated new officer use of force policy intended to provide knowledge, skills, and scenario-based practice on applying the new policy; (4) initial supervisor training in the Fall of 2016 that serves as an early, classroom-based opportunity for CPD to discuss with supervisors what they can expect in the way of new requirements, changed processes, and reform initiatives upcoming in the Consent Decree process; and (5) eight hours of Decree-required crisis intervention training for all CPD officers. The Monitoring Team will be closely evaluating officer training in a number of ways and at several discrete stages.

3. Crisis Intervention

The Consent Decree required the development of a Mental Health Response Advisory Committee "to foster relationships and build support between the police, the community, and mental health providers" and "identify problems and develop solutions designed to improve outcomes for individuals in crisis,"

⁸ Dkt. 55.

⁹ See, e.g., Dkt. 43-1 at 9-13.

including individuals experiencing mental, substance abuse, or other behavioral health challenges.¹⁰

Although creating a community-based problem solving group is a challenging mission, CPD and the Cleveland community are, at this early stage, making meaningful process toward community- and stakeholder-driven reforms to the delivery of services to individuals in crisis. The Advisory Committee currently has over 50 members representing the Cleveland community, including representatives from the judiciary, social service providers, behavioral health experts, and representatives of CPD, including CPD's new, Decree-required Crisis Intervention Coordinator.¹¹

The Advisory Committee's first task under the First-Year Monitoring Plan was completing a crisis intervention needs assessment – to evaluate both the needs of the public and those of CPD officers. Assessments of resident and officer needs were incorporated into a detailed Work Plan for accomplishing various Consent-Decree required tasks through the end of January 2017. The final, Court-approved plan¹² clearly reflected a great deal of work and set a clear agenda for addressing changes in CPD crisis intervention policy, training, data collection, and other areas.

Progress under the Work Plan has been swift, with the Committee's Policy Subcommittee already having reviewed over 23 separate crisis intervention policies from across the country, identified best features of each policy, and incorporated those features into a policy that best fits the unique challenges and opportunities in Cleveland. The group is on track to deliver a comprehensive, revised set of crisis intervention policies at a noteworthy pace.

In the coming months, attention will focus on providing eight hours of crisis intervention training to all officers and developing a 40-hour enhanced training for specialized crisis intervention officers who, once selected, will be dispatched to the scene of those incidents that appear to involve subjects in crisis.

4. Community Police Commission

The Community Police Commission, created by the Parties to serve as a conduit between the Consent Decree reform process and Cleveland's diverse communities, spent its first several months determining how it should operate, function, and structure itself in order to accomplish its duties. That the Commission has sometimes engaged in extended discussions or heated debates about its work is a sign of strength and progress, not impotence or dysfunction. Indeed, the Commission, must perpetually strive to create an environment at its meetings where the Cleveland community members can passionately disagree when

¹⁰ Dkt. 7-1 ¶ 131.

¹¹ Dkt. 64.

¹² Dkt. 63 at 2.

warranted while assuring a respectful tone that promotes participants listening to views different than their own. Although the Monitoring Team is continuing to review the group's specific recommendations, the final, written work product of the CPC addressing force, bias-free policing, and CPD's mission statement has been – along with the work of the Mental Health Advisory Committee – at a very high level of quality.

Notable Challenges to Date

1. Office of Professional Standards ("OPS") & Police Review Board ("PRB")

OPS is a civilian-led office charged with investigating civilian complaints about CPD officers. PRB is the body that reviews OPS investigations and recommends dispositions in such cases to the Chief of Police.

Although the Monitoring Team is still crunching some of the data recently provided to it by the OPS and the City, a staggering number of OPS cases are incomplete – including, as of May 4, 2016, 202 cases from calendar year 2014 and 225 cases from calendar year 2015, according to OPS' own data. This is unacceptable and irresponsible by any measure. The state of OPS is dire – even with OPS and PRB initiating steps, since early May, to review and dispose of long-incomplete investigations, as it is unclear to the Monitoring Team precisely what standards were in place to allow OPS and PRB to suddenly complete 122 long-running cases in a span of just a few weeks.

The foundational deficiencies with OPS are more significant and urgent than the Monitor and Parties were aware in early 2016 as the Monitoring Plan for the year was constructed. For one thing, the Monitoring Team only started to receive up-to-date statistics and information about OPS' work in mid-April 2016, although initial requests were made in October 2015. For another, an initial, 14-page draft of a Decree-required, revised operational manual, which must spell out in detail how OPS operates and investigates cases, was deficient in every regard – lacking rigor, containing inaccurate information, failing to address numerous Consent Decree requirements, and omitting a host of material details.

As work progressed on revising the Manual, it became clear to the Parties and Monitor that, before an effective Manual can be seriously contemplated, a comprehensive and intensive organizational assessment of OPS must be conducted to determine how OPS is currently functioning, why so few cases are investigated, and what specific reforms must be instituted to ensure that new complaints are fully and fairly investigated and the enormous backlog of incomplete investigations is addressed. Over the coming months, the Parties and Monitor have agreed that a sub-group of the Monitoring Team will be detailed to con-

duct an in-depth, microscopic review of OPS and its functions geared toward developing an emergency organizational transformation plan. It is noteworthy and commendable that the City has recognized the significant deficiencies with OPS and has committed to the Monitor and Department of Justice to fixing OPS, including by providing additional resources to address the situation.

Cleveland residents and officers deserve to have confidence that resident complaints about police performance or conduct will be objectively, fairly, thoroughly, and timely investigated according to processes and standards that, in themselves, are rigorous, fair, transparent, and keep involved parties updated as to progress. They likewise deserve to have confidence that those investigations will be reviewed in a manner that is similarly impartial and exhaustive. OPS and PRB have some distance to travel before such confidence could be fairly considered to be well-placed.

2. Equipment and Resources

It is clear that the City and CPD will have to make significant progress along a host of areas to fulfill their commitments related to equipment and officer resources under the Consent Decree. It must be emphasized that many of the areas that the Division must address under the Consent Decree – including a records management system, computer-aided dispatch, and ensuring sufficient number of computers in district stations and in cars – are basic technology platforms that Cleveland was overdue to address regardless of whether there had been a Consent Decree. These tools are necessary to protect the public, keep officers safe, and allow the Division of Police to effectively and efficiently conduct law enforcement.

One such tool, which the Division must address under the Consent Decree, is the records management system ("RMS"). An RMS is the hub of a police department's day-to-day law enforcement activity, storing records such as incident and arrest reports, and "today's police environment cannot function without a solid RMS."¹³ In 2011, the City contracted for an "upgrade" of its aging (circa-1998) RMS system.

The new system, called LERMS, was immediately plagued by significant problems when it went live. Many users reported receiving "system error" messages, and many others experienced frequent system freezes for which the only solution was unplugging the computer unit from the wall, re-plugging, and starting the computer and the LERMS program again. These technical problems, stemming from both vendor software and City infrastructure and project management issues, led to a backlog of, as of April 20, 2016, 11,000 to 12,000 records of incident, arrest,

¹³ Ralph Ioino, *Introduction to Criminal Justice Information Systems* 105-106 (2016).

and other police reports not yet entered into the RMS system. Without such reports entered into the system, it is as though these events never happened. As a result, since LERMS went live in November 2015, officers and government leaders have been operating with incomplete or outdated information about crime and law enforcement activity.

The City has appropriately put focus on the LERMS issue. Temporary workers have assisted in reducing the backlog of cases not entered into the system to 7,590 as of May 25, 2016. Current city personnel working on ensuring that LERMS is a stable, high-functioning system have gone to extraordinary lengths to address issues far more related to business practice and implementation issues rather than core computer or technology concerns. To be successful in the long-term, and to allow the City to proceed with updates to other related systems (including field reporting and an updated Computer Aided Dispatch system), the City, Department of Public Safety, and CPD must commit to rigorously implementing mainstream project management structures going forward.

Elsewhere, whether always the case or not, many elements of CPD's core infrastructure – computers, cars, and the like – are either aging, run-down, or deficient. For instance, CPD vehicles are often in significant levels of disrepair – with personnel at times having serviced on their own time and dime. There are reports that CPD personnel have resorted to using their personal vehicles for some types of Division work. It appears that there remain an insufficient number of computers available to patrol officers to effectuate their shift-to-shift duties. In the absence of in-car or mobile tools, many officers rely on personal mobile phones for Division-related communications and record-keeping.

After the RNC, the Monitoring Plan will provide the City with a Gap Analysis that describes where CPD is with respect to infrastructure now and where it needs to be going forward. The Team's recommendations will not be tied to unrealistic, unduly expensive, or unnecessary systems. Far from insisting that CPD buy a Rolls Royce, the Monitor will be attempting to ensure that CPD officers have a reliable, high-functioning overall technology infrastructure that gets the Division and its officers to where it needs to be.

Areas of Focus in the Next Six Months

To date, the City and CPD must be commended for producing deliverables – such as drafts of policies, plans, or training – by the Court-ordered deadlines of the First-Year Monitoring Plan. CPD personnel who have been involved in the policy drafting and revision process have been particularly responsive, thoughtful, and collaborative – and able to produce policy materials of

strong quality.

However, some of CPD and the City's initial work product or deliverables responding to specific deadlines did not reflect the level of quality, comprehensiveness, or rigor that will be necessary. Indeed, a number of conversations among the Parties and Monitor have focused on basic project management strategies rather than substantive reform requirements – leading initial feedback to focus on how the City and CPD should approach thinking about structuring major reforms rather than talking about the nature or substance of those Decree requirements. As a result, some deadlines that the City and CPD originally proposed in some areas turned out to err too far on the side of speed and ambition, with deliverables needing more revision and discussion in most instances than initially contemplated.

Further, significant City and CPD capacity has necessarily needed to be focused on planning and preparations for the Republican National Convention (the "RNC" or "Convention") – with the circumstances surrounding the event substantially evolving since the Monitoring Plan was discussed in December 2015 and January 2016. Division, City, and community attention has, especially in recent months, understandably been significantly focused on the July Convention. The early stages of a Consent Decree have been time-intensive for all cities that have implemented them, but Cleveland has faced the unique challenge of needing to balance the early days of reform with preparation for a major national security event of the size and scope that the city does not hold in a typical period.

In light of the Monitoring Team's evaluation of progress, as reflected in this report, the Parties and Monitoring Team are in the process of identifying additional revisions of the Monitoring Plan that will allow CPD to build on the progress to date in light of external dynamics that have arisen. The Monitor will, as

always, keep the Court and public informed as to any contemplated adjustments. The process of reform is hard work. Real-world issues, pragmatic considerations, and operational realities will require adjustments, from time to time, of the timetables and deadlines set forth in the Monitoring Plan. The Monitoring Team will not

consider such adjustments or revisions problematic if it is clear that Consent Decree implementation is proceeding in good faith, with appropriate urgency, and in a manner that focuses on high-quality solutions.

Even pending more detailed discussions – and in addition to continued work on finalizing the use of force policy, implementing training for officers on the force policy and initial training for supervisors, and addressing the challenges encountered with OPS and the Division's equipment and technology infrastructure outlined above – work is projected to continue in several other foundational areas.

1. Community and Problem-Oriented Policing

In the coming months, CPD will need to develop and implement a “comprehensive and integrated community and problem-oriented policing model.”¹⁴ That model may well require CPD to devote adequate resources and adjust its staffing model to allow community policing to become central to the Division’s structure and operations – with individual officers incentivized to develop community relationships and solve resident problems not as an extra duty conducted in time specifically set aside for community policing but as part of executing the general philosophy and basic approach of CPD.

This process will also necessarily inform further changes to the Decree-required Recruitment and Hiring Plan, which must identify specific strategies for “attracting a diverse group of applicants, including officers who are familiar with the different neighborhoods of Cleveland, who possess strategic thinking and problem-solving skills,” and possess other important capabilities.¹⁵ Early drafts of such a plan lacked dynamic, outside-the-box thinking about how to attract such officers or any clear project management structure.

CPD’s Decree-required “comprehensive staffing study to assess the appropriate number of sworn and civilian personnel to perform” CPD’s mission and fulfill the Decree’s requirements will be setting the stage for a discussion of how the Division’s staffing and assignment structure may need to change to allow for successful implementation of a comprehensive community policing model.¹⁶

One of the first major tasks related to community policing has been the development of an updated mission statement for CPD.¹⁷ After significant input and collaboration from CPC and CPD officers, CPD developed a mission statement that is currently available for public review. The Monitor will soon recommend to the Court whether the statement should be approved.¹⁸

2. Use of Force Inquiries & Review

The manner in which a law enforcement agency evaluates whether an officer’s use of force was consistent with law, policy, and generally-accepted law enforcement practices is best served by a prompt, unbiased, and thorough use of force investigation. An important goal of the Consent Decree is to ensure that all uses of force administered by CPD officers are, after being promptly and uniformly reported, meaningfully examined and reviewed.

¹⁴ Dkt. 7-1 ¶ 27.

¹⁵ *Id.* ¶ 304.

¹⁶ *Id.* ¶ 319.

¹⁷ *Id.* ¶ 27; Dkt. 43-1 at 3–4.

¹⁸ More information on ways to provide feedback on the mission statement and other substantive reform measures can be found at the Monitoring Team’s website at www.clevelandpolicemonitor.com.

Work is underway on the policies relating to the review of force incidents, with types of administrative responses necessary varying according to the general severity of the force employed.

Likewise, CPD will be crafting policies and procedures related to supervisory review of completed force inquiries. Part of this process will entail the establishment of a new Force Review Board (“FRB”). Intended “to serve as a quality control mechanism for uses of force and force investigations,” FRB will “appraise use of force incidents from a tactics, training, policy, and agency improvement perspective.”¹⁹

3. Bias-Free Policing

The City and United States agreed that CPD would implement a host of reforms to ensure that the Division “deliver[s] police services . . . that . . . are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence”²⁰ The goal of the bias-free policing policies is to ensure policing and law enforcement outcomes that are as free from the effects of all bias, whether express or implicit, to the greatest extent possible. CPC provided recommendations on Bias-Free Policing Recommendations in March and were the culmination of a number of community meetings across Cleveland. A bias-free policing policy is slated to be finalized in October 2016 and officer training approved by the Court by early March 2017.

About the Remainder of the Report

During the Monitor’s initial reports, as CPD begins work in earnest on a number of areas, much more will be left either partially or yet to be addressed than has been sufficiently reduced to approved policy, the subject of adequate training, or implemented for an adequate period so as to allow the Monitor to assess whether a policy or process requirement is being carried out day-to-day throughout the Department and across Cleveland. As such, although this report addresses all substantive provisions of the Consent Decree and summarizes CPD’s progress to date in complying with them, the report is structured around the major sections and sub-sections of the Decree²¹ rather than inventorying progress in each and every provision and sub-requirement.

Accordingly, those looking for a report card, ratings, percentages, scales, or other similar over-simplifications will not find them here. Instead, appropriate to the current, early stage of Consent Decree implementation, the remainder of this report aims to describe the progress made to date, challenges outstanding, and future expectations with respect to CPD and the City’s compliance with the Decree.

¹⁹ Dkt. 7-1 ¶ 124.

²⁰ *Id.* ¶ 35.

²¹ See *id.* at i–iv.

A NOTE FROM THE MONITOR



The Consent Decree does not refer to the names of individuals who must implement it. Instead, it addresses roles, entities, and structures. This is because the Decree is aimed at long-term, systemic reforms that will leave Cleveland with structures and processes to ensure constitutional policing regardless of who happens to be in positions of leadership in CPD, the City, or the community at any given moment – and long after the Consent Decree is done.

Accordingly, the Cleveland Police Monitoring Team's First Semiannual Report on the status of Consent Decree implementation generally refers to the positions, entities, organizations, and institutions that are tasked with driving progress rather than referencing particular individuals. It does, however, name specific actors when their work or performance is particularly tied to the substantive areas described.

Organizations and entities are, however, made up of people. The personalities, specific skills, or unique dedication of individuals doing the hard work of structural change will drive the quality and nature of progress over time.

In our work so far, we have been grateful to have received the sustained commitment of Mayor Frank Jackson. The Mayor and I have spoken regularly about substantive reform issues. He remains deeply engaged in the day-to-day, week-to-week efforts of the Division and City on implementing the Decree. His dedication to ensuring that the Consent Decree can reset the relationship between the police and the community it serves has set a clear tone – a tone that has paved the way for the Division and City to work on substantive reforms without the extended periods of resistance or indifference that have inaugurated Consent Decree efforts in other cities.

Chief Calvin Williams has been similarly dedicated and engaged since the beginning of the Consent Decree process. From inviting us to address his command staff on the day that we were appointed to inviting me to join him in welcoming the class of CPD recruits currently concluding their academy training, we have deeply appreciated the Chief's genuine commitment to collaboration and getting everyone to roll up their sleeves and work toward fulfilling the Decree's requirements. His able leads on Consent Decree implementation,

Deputy Chief Joellen O'Neill and Commander Brian Heffernan, have gone out of their way to ensure that the Monitoring Team has received what we have needed during our first several months on the job – from cooperation and information to office space and IDs providing easy access to CPD buildings. Retired Judge Greg White's continued public service as the coordinator of compliance across City functions has likewise benefited the process.

As this report details more specifically elsewhere, the Monitoring Team has spent significant amounts of time in CPD's districts and in the field with police officers. At least three Monitoring Team members have been assigned to each of CPD's five district as primary liaisons to the Team. We are endeavoring to develop ongoing relationships with the rank-and-file and command staff alike so that the Team develops a detailed view of the challenges, opportunities, risks, and rewards of being a CPD officer. We sincerely thank the many officers who have candidly shared their views, frustrations, and concerns – whether about the Division, the City, the Consent Decree process, or us – and who have placed their confidence and trust in us to oversee changes that keep them safe, help them keep the community safe, and allow them to form the kind of deep, enduring ties with Cleveland's communities that nearly all officers with whom we have spoken have said that they want.

We also thank the leadership of CPD's various police officer organizations for their willingness to work with us and to engage in the process outlined in the First-Year Monitoring Plan. Steve Loomis, head of the Cleveland Police Patrolmen's Association; Brian Betley, President of Fraternal Order of Police Lodge Number Eight; Cesar Herrera, head of the Hispanic Police Officer Association of Cleveland; and Lynn Hampton, head of Cleveland's Black Shield Police Association have all actively encouraged their members to participate in the various mechanisms in place not only to interact directly with the Monitoring Team but also with the Division's command staff as the Division's leadership ask for feedback, comments, and views on proposed changes to policies and processes. The Monitoring Team greatly appreciates the open lines of communication that have been established with each of these organizations and their members.

Elsewhere, for the City of Cleveland, City Council President Kevin Kelley and Councilman Matt Zone, Chair of the Council's Safety Committee, have provided strong support to all Consent Decree stakeholders. Director of Law Barbara Langhenry and her Chief Counsel, Gary Singletary, have remained deeply engaged in the reform process. Their deep understanding of Cleveland, the Consent Decree, and CPD contributed significantly to the swift completion of the comprehensive, 66-page project plan that the Court approved as the First-Year Monitoring Plan in early February 2016. Blaine Griffin has helpfully assisted the Consent Decree process in driving greater and sustained community participation as substantive reform has started in earnest since the approval of that Monitoring Plan.

The United States retains an active role as the specific requirements of the First-Year Monitoring Plan and Consent Decree are being implemented. Lawyers from the U.S. Attorney's Office in Cleveland and Civil Rights Division in Washington, D.C. have remained readily responsive to their obligation to provide substantive feedback and input to the City and Division as work proceeds across a host of areas. In particular, acting U.S. Attorney Carole Rendon has remained significantly engaged in the reform process since assuming that role from former U.S. Attorney Steven Dettelbach, for whom we have great respect and appreciation.

We also appreciate the contributions of the Community Police Commission ("CPC") and its volunteer commissioners. As only the second body of its kind established pursuant to a Consent Decree in the country, the group has needed to spend substantial amounts of time early on determining to fulfill its mission. The workload has been substantial

as the group has established itself and begun the work of gathering community input on core issues such as use of force and bias-free policing. In particular, we thank the Commission's three initial co-chairs – Dr. Rhonda Williams, Mario Clopton, and Dean Craig M. Boise (who resigned from his appointment in April 2016 in connection with being named Dean of Syracuse University's College of Law) – for their significant contributions to the Commission and Consent Decree process to date. While there have been periodic frustrations and disagreements in the Commission's early days, and while elements of its operations are a work in progress, we appreciate the Commission's commitment since February to providing high-quality work product outlining the concerns, interests, values, and experiences of various elements of Cleveland's diverse communities with respect to the police.

Indeed, nothing in the description of the good working relationships that have been established between and among various Consent Decree stakeholders should be read to suggest anything other than that the work under the Consent Decree remains very much a work in progress. There have already been some challenging conversations, extended debates, and frustrations expressed in areas of both substance and process among Consent Decree stakeholders. We not only suspect that this will continue but, to at least some extent, hope that it will. Differences of opinion, passion, and professional tension can all be good things so long as all involved continue to listen to one another and remain focused on the objectives and requirements of the Decree. The Monitoring Team is gratified that, to date, primary Consent Decree stakeholders have committed themselves to coming together, around a common agenda, and directly addressing a sometimes challenging web of interests, experiences, and views.

Finally, we are immensely appreciative of the contributions and investment of the Cleveland community – neighborhood residents who have participated in District Policing Committee meetings, individuals who have attended a CPC town hall or public forum, organizations and individuals who have met and shared their experiences with the Monitoring Team, and the many residents who have already participated in City-wide community feedback efforts or emailed the Cleveland Police Monitoring Team. The Parties and the Monitoring Team, via the First-Year Monitoring Plan, have pledged to involve the community substantively and intensively throughout the reform process. We thank the individuals and organizations who have participated to date.

To the extent that the Consent Decree must drive policing “consistent with community values,” all stakeholders – including the Court and the Monitor – need to know what those values involve. As the process continues to address a host of changes to policing in Cleveland, we urge all of Cleveland's residents to become involved directly in the reform process – by sending an email, participating in an online feedback process from time to time, attending a CPC or District Policing Committee meeting, becoming involved in one of the Monitoring Team's study groups, or otherwise. As Cleveland develops a new, shared vision of policing going forward, we appreciate the investment made to date by many within the community – and encourage residents from across Cleveland's diverse communities to have their say as that new vision begins to develop.

Since being appointed in October 2016, there have been some additions to the Monitoring Team, as well as a change in personnel. Maggie Goodrich, Chief Information Officer for the Los Angeles Police Department (LAPD), is working with the Team on issues related to technology, equipment, and resources – and doing so in addition to her full-time, significant responsibilities with that police department. Victor Ruiz, the Executive Director of Esperanza in Cleveland, has joined the Monitor's Community Engagement Team with a focus on engaging Cleveland's Hispanic and Latino communities. Finally, the New

York University School of Law Policing Project serves as consultant to the Monitoring Team. Professor Barry Friedman, one of the nation's leading constitutional and Fourth Amendment scholars as well as reporter to the American Law Institute's Principles of Law: Police Investigations project, and Maria Ponomarenko, a distinguished constitutional and criminal procedure legal scholar, are helping on a host of projects that support the Team's ongoing monitoring work. We are also fortunate that NYU is detailing Nonny Onyekweli to the Cleveland monitoring effort beginning in August 2016.

In December 2015, our original Deputy Monitor, Chief Noble Wray (ret.) departed the Team to accept a position with the Community Oriented Policing Services ("COPS") Office of the U.S. Department of Justice. The Team is grateful for his important initial contributions. We are, and Cleveland is, fortunate to have, as Chief Wray's replacement, Commissioner Charles H. Ramsey (ret.). Commissioner Ramsey served as the head of the Philadelphia Police Department until January 2016 and the Chief of the Metropolitan Police Department in Washington, D.C. from 1998 to 2006. Previously, he was a Deputy Superintendent at the Chicago Police Department. In January 2015, President Obama named Commissioner Ramsey as the co-chair of the President's Task Force on 21st Century Policing. Commissioner Ramsey is participating across all aspects of our oversight and technical assistance.

With the addition of Commissioner Ramsey as Deputy Monitor, the Team now consists of 19 Team members or consultants from both Cleveland and around the country. Team members have spent significant amounts of time on the ground in Cleveland, working with Consent Decree stakeholders, meeting with Cleveland residents and community organizations, and spending time with CPD personnel in its districts. The Monitoring Team maintains two primary offices: an office within CPD headquarters to facilitate discussion with CPD personnel and to access CPD data systems, as well as a community office at Lutheran Metropolitan Ministries at East 45th Street and Superior Avenue. We are appreciative of Lutheran Ministries' ongoing generosity and support.

I continue to have the incredibly good fortune of working with a Monitoring Team of unparalleled expertise and dedication. This report represents the collective view, and hard work, of that Team. The report is also detailed. Substantive and enduring change happens in details, not sound bites. This report summarizes an early, important stage in the systemic reform process that the Consent Decree requires.

Matthew Barge
Monitor
June 2, 2016

THE ROLE OF THE MONITOR & THIS REPORT

A. The Role of the Monitor & Other Stakeholders

The agreement between the United States and City of Cleveland (the “Parties”) involving various reforms to the Cleveland Division of Police (“CPD,” “CDP,”²² “Division of Police,” or the “Division”) takes the form of a consent decree.²³ The Consent Decree (also referred to as the “Decree”) binds not only the Division of Police but the entire City of Cleveland including all City depart-

²² The Consent Decree refers to the Cleveland Division of Police as “CDP.” Our understanding is that Division personnel refer to themselves as “CPD.” Accordingly, this report refers to the Division as “CDP.”

²³ The name of the document is a Settlement Agreement. The Parties moved the Court to approve the Agreement as a Consent Decree, in part “because voluntary compliance through a negotiated resolution and entry of a consent decree is more likely to accomplish agreed upon goals than will orders imposed at the end of bitter and protracted litigation.” See Dkt. 3 at 4, available at <https://www.justice.gov/file/441411/download>. Since the announcement of the agreement between the United States and the City, Cleveland residents and media have more typically referred to it as a Consent Decree rather than a Settlement Agreement. See, e.g., Henry J. Gomez, “Cleveland Consent Decree Provides Blueprint for Long-Elusive Police Reforms: The Big Story,” *Cleveland Plain Dealer* (May 27, 2015), http://www.cleveland.com/metro/index.ssf/2015/05/cleveland_consent_decree_provi.html; About Us, Cleveland Community Police Commission, <http://www.clecpc.org/about-us> (last visited May 24, 2016) (preamble referencing Consent Decree); Paul Orlousky, “Former Federal Judge to Coordinate Cleveland Consent Decree,” *Cleveland19.com* (Apr. 1, 2016), <http://www.cleveland19.com/story/31621886/former-federal-judge-to-coordinate-cleveland-consent-decree> (referring to agreement as “federally mandated consent decree”).

ments, the City Council, and the Mayor’s Office. Although a vast majority of the specific requirements most directly implicate CPD, the City as a whole remains the entity that must ensure compliance with the Decree’s requirements.

The U.S. Department of Justice (“DOJ”) concluded its investigation of the actions, policies, and procedures of the CPD in December 2014.²⁴ The DOJ maintains an active role in the implementation of the Consent Decree as a party to the litigation and with an ongoing, statutory enforcement obligation.

The Parties selected Matthew Barge and the Police Assessment Resource Center (“PARC”) to serve as an “Independent Monitor who will assess and report on whether the requirements of the Consent Decree have been implemented, and whether this implementation is resulting in constitutional and effective policing, professional treatment of individuals, and increased community trust of CPD.”²⁵ The Court appointed the Monitor and the Cleveland Police Monitoring Team (the “Monitoring Team”) on October 1, 2015.

The Monitor and Monitoring Team are “agent[s] of the Court” who are “subject to the supervision and orders of the Court.”²⁶ Accordingly, the Monitor is not an employee, contractor, or any other type of agent of the City of Cleveland. Likewise, the Monitor is not an employee, contractor, or any other type of agent of the Department of Justice. Instead, the Monitor is an independent actor, working on behalf of the Court, to oversee, monitor, and assess implementation of the Consent Decree. The Monitor works for the Court – not the City and not the DOJ.

In short, the Monitoring Team serves as the eyes and ears of the Court, with “a legal duty to act solely in [the Court’s] interests.”²⁷ Significantly, this arrangement – with a Court and a Monitor overseeing implementation of reforms until they are substantially and effectively implemented – is different from Cleveland’s prior experiences with police reform.²⁸

²⁴ See Letter from Vanita Gupta and Steven Dettlbeach to Mayor Frank Jackson on the DOJ’s Investigation of Cleveland Division of Police (Dec. 14, 2014) https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf.

²⁵ Dkt. 7-1 ¶ 350.

²⁶ Dkt. 7-1 ¶ 351.

²⁷ Cornell University Law School, Legal Information Institute, Fiduciary Duty, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Apr. 22, 2016).

²⁸ See Letter from Shanetta Y. Cutlar to Subodh Chandra, et al, Re: Agreement to Conclude DOJ’s Investigation of the Cleveland Division of Police’s Use of Deadly Force (Feb. 9, 2004), available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/cleveland_uof_final.pdf. Specifically, the memorandum of understanding executed between the City of Cleveland and the Department of Justice in 2004 contained suggested police reforms but there was never a formal consent de-

B. What the Monitoring Team Does²⁹

The Monitoring Team plays many different roles. One role is that of arbiter. The Consent Decree directs the Monitor to “assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in constitutional and effective policing, professional treatment of individuals, and increased community trust of CDP.”³⁰ This means that the Monitor reviews, provides feedback on, and ultimately recommends approval or disapproval to the Court of changes in policy, training, procedure, and other practices within the Division of Police. It also means that the Monitor must update the Court and public on the current status of reform overall at defined intervals.

In this role, the Monitor will not hesitate to praise the City and Division of Police when promising progress has been made. Nor will it hesitate to inventory areas in which progress is insufficient or too slow. The job of the Monitoring Team is to fully and fairly assess the nature, scope, and progress of reform and to report its assessments to the Court and to the public.

A second role is that of technical advisor. The Cleveland Police Monitoring Team’s goal is for the Division of Police to benefit from the decades of law enforcement, monitoring, and organizational change experience of the Team’s members. As the Division crafts new policies and revamps particular practices, the Monitoring Team will, wherever possible, provide information about best practices, discuss what has worked and not worked well in other cities to address similar issues, and make expectations clear from the beginning. It is hoped that this granular, day-to-day, hands-on involvement will make reform faster, better, more efficient, and more effective.

Another role of the Monitoring Team is that of facilitator. The Consent Decree involves a host of interrelated reforms. To ensure that all stakeholders, from within the Division and across the Cleveland community, are heard and can participate in the Consent Decree process, the Monitoring Team works with the City, Division, DOJ, and Court to provide a framework and process for implementing the Decree. The Court-approved First-Year Monitoring Plan (the “Monitoring Plan”), discussed in further detail below, is one of many significant ways, to date, that the Monitoring Team has served as facilitator.³¹

The Monitor plays many different roles, including those of arbiter, technical advisor, and facilitator.

A further, important component of the Monitoring Team’s role as facilitator involves the Monitoring Team’s ongoing, sustained, and intensive community engagement. In this role, the Monitoring Team organizes and leads meetings, summits, discussions, and educational forums throughout Cleveland aimed toward involving the Cleveland community in key aspects reform. This report elsewhere describes in greater detail the Team’s specific efforts to involve the Cleveland community directly and substantively in the reform process.³²

Some have inquired as to why the Monitoring Team is spending time and effort engaging with the community when the Consent Decree is about the police. The reason is that the Consent Decree is built around “ensuring that police services in Cleveland” are, among other things, “consistent with community values” and promote the emergence of “a strong community-police relationship.”³³ To determine whether various substantive reforms support and promote those community-focused goals, the Monitoring Team needs to ensure both that it has an ongoing understanding of the values, concerns, experiences, and interests of the Cleveland community in all of its forms and that the community is actively and substantively involved in the details of reform, from the ground up.

Relatedly, some have wondered why the Monitoring Team must engage in community outreach when the Consent Decree charges the newly-created Community Police Commission (“CPC”) with “work[ing] with the many communities that make up Cleveland for the purpose of developing recommendations . . . that reflect an understanding of the values and priorities of Cleveland residents.”³⁴ The Court and Monitor are invested in ensuring that the CPC succeeds in fulfilling the tasks assigned to it by the Consent Decree. However, the Monitoring Team has an independent obligation to ensure that the community is involved in the process of reform itself so that all residents, organizations, and stakeholders who want to be involved and make their voices heard can adequately do so. Thus, the Monitor’s ongoing community engagement is not redundant to CPC’s work nor inconsistent with that work. Instead, it is aimed at ensuring that the community has access not merely to one Consent Decree stakeholder, in the form of CPC, but to the process and the Court more generally.

It is also worth emphasizing what the Monitor and his Team do not do. For one thing, the Team does not have the authority, jurisdiction, or ability to take specific actions on particular cases, incidents, or allegations of officer misconduct. The Team cannot bring criminal charges against either citizens or police officers, as it is not a substitute for local prosecutors. Likewise, the Team cannot intervene directly in ongoing employment or disciplinary issues within the Division, as it is not a substitute for

cree or any oversight by the federal court.

²⁹ Some elements of this discussion are adapted from material previously published on the Monitoring Team’s website. See About Us, Cleveland Police Monitoring Team, <http://www.clevelandpolicemonitor.net/about/> (last visited May 26, 2016).

³⁰ Dkt. 7-1 ¶ 350.

³¹ See Dkt. 7-1 ¶ 369 (setting forth requirements for monitoring plan).

³² See *infra* 19–22.

³³ Dkt. 7-1 at 1.

³⁴ Dkt. 7-1 at ¶ 15(b).

the disciplinary process or an override to the decisions of the Division, City, or arbitrators in specific cases.

Similarly, the Monitor and his Team do not substitute for the Division of Police or Department of Public Safety. Operational decisions, planning, and ensuring accountability remain in the hands of CPD and the City. Although the Team is available to give technical assistance on any areas of interest to CPD during the pendency of our monitoring, neither the Monitor nor the Court run the Division.

The Monitoring Team is charged with assessing whether the Division is effectively implementing the overall, systemic changes to how it functions that are required by the Consent Decree. The Team is overseeing the long-term reforms required by the Consent Decree so that, in the future, policing in Cleveland is effective, safe, constitutional, and consistent with the values of the community. In doing so, the duty of the Monitor in this report is to summarize to the Court and public precisely where CPD is – over time, across issue areas, and in light of all of the Consent Decree’s obligations – on the road to reform.

C. About the First-Year Monitoring Plan, the Nature of Progress, and Compliance Under the Consent Decree

During our first several months in Cleveland, one issue that has arisen relates to exactly what progress and compliance under the Consent Decree might entail or look like. More specifically, some have suggested, from time to time, that the Monitor or the Court need to become involved on a specific area or in a given incident because CPD does not yet appear to be functioning in the way described by the Consent Decree. That is, some have demanded action when it has appeared that CPD is not yet complying with a particular requirement of the Consent Decree.

The Consent Decree, however, outlines a comprehensive set of substantial, systemic reforms that require, in almost all instances, a period of time for the City and CPD to address, get right, and fully implement. However, even good-faith attempts to do everything that is required under the Consent Decree simultaneously and without a sound project management structure would only ensure that little is accomplished at the level of quality, and with the level of stakeholder and community engagement, that the Consent Decree requires. The Team recognizes that “if well-intentioned stakeholders address disparate elements of the Consent Decree at different junctures, it will be far less possible for major changes to be implemented as effectively, efficiently, and with the involvement of all important stakeholders” as is necessary to comply with the Decree’s requirements.³⁵

Accordingly, the Decree-required Monitoring Plan was “intend-

ed to provide a clear, unified structure and framework for the day-to-day and week-to-week efforts that stakeholders from across the Cleveland community need to undertake to ensure that the Consent Decree is implemented” according to the Decree’s objectives.³⁶ The goal of CPD, the Parties, and the Monitoring Team in constructing the First-Year Monitoring Plan was to get all stakeholders – including CPD officers and the community – on the same page with respect to what areas or issues would be addressed by when.

Covering the period of February 1, 2016 to January 31, 2017, the Monitoring Plan takes the form “partially [of] a project implementation plan and partially [of] an agenda.”³⁷ The Consent Decree’s major requirements or objectives are broken down into a series of key results or milestones to an identified stakeholder for completion by express deadlines.³⁸ The First-Year Plan aims to make clear to any interested resident or stakeholder precisely what changes can be expected when. The Court approved the Plan on February 4, 2016.³⁹

The Monitoring Plan sought to “set[] aggressive but realistic goals, deadlines, and milestones for complying with the requirements” of the Consent Decree, but it also provides mechanisms for the Parties and Monitor to make “adjustments to certain timelines [when] necessary” to reflect changed circumstances or operational realities.⁴⁰ It should also be noted that the Plan has formally changed some of the original, specific timeline references in the Consent Decree – including various requirements for some provisions to be accomplished within a specific number of days – such that the Consent Decree has been revised to conform to the timetables required by the Monitoring Plan.

The First-Year Monitoring Plan has set the agenda for prioritizing and structuring what CPD must do first or most urgently given real-world operational considerations. Therefore, the Monitor and Court will, for the foreseeable future, be primarily enforcing the deadlines for key milestones and deliverables set forth in the Monitoring Plan. Only after a reformed policy, process, curriculum, or the like has been completed by CPD; approved by the Court; been the subject of adequate training for CPD personnel; and implemented for a sufficient period of time will a given element of the Decree fully become reality. In short,

the Consent Decree operates more like a roadmap to reform rather than an “on/off” switch.

Some residents have asked the Monitoring Team why the Cleveland community needs to “wait” in order to see the required changes fully implemented. The Team recognizes some of the frustrations

The First-Year Monitoring Plan has set the agenda for prioritizing and structuring what CPD must do first or most urgently given real-world operational considerations.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 2–3.

³⁹ Dkt. 44.

⁴⁰ Dkt. 43 at 1; Dkt. 51.

³⁵ Dkt. 43 at 2.

that it has heard from community members who wonder why the Court or Monitor cannot simply unilaterally dictate or impose all of the new policies, processes, and training on CPD at one time.

Change imposed from outside CPD would not give rise to meaningful, lasting reform. However, the Parties agreed to a reform process overseen and assisted by the Court and Monitor but ultimately implemented by the City and CPD itself in dynamic partnership with the Cleveland community.⁴¹ Such systemic and cultural change may, from time to time, be perceived as “taking longer” than something externally imposed. Indeed, the Consent Decree contemplates that the process of implementing its reforms will potentially take several years⁴² – in part because it is the City, CPD, and City of Cleveland that need to be the primary drivers and owners of real change. Ultimately, neither the Monitoring Team nor the court own the reform process. CPD and the City of Cleveland are responsible for meeting deadlines with high-quality deliverables consistent with the Consent Decree; neither the Court and Monitor nor Department of Justice and any other entity controls the delivery of progress. It is, and will remain, the CPD and the City, in all of its forms, that will dictate the pace, nature, and long-term success of substantially and effectively implementing the Decree’s many requirements.

To date, the City and CPD must be commended for producing deliverables – such as drafts of policies, plans, or training – by the Court-ordered deadlines of the First-Year Monitoring Plan. However, some of CPD and the City’s initial work product or deliverables responding to specific deadlines did not reflect the level of quality, comprehensiveness, or rigor necessary. Indeed, a number of conversations among the Parties and Monitor have focused on basic project management strategies and skills rather than substantive reform requirements – leading initial feedback to focus on how the City and CPD should approach thinking about structuring major reforms rather than talking about the nature or substance of those Decree requirements. Ultimately, some deadlines that the City and CPD originally proposed in some areas turned out to err too far on the side of speed and ambition, with deliverables needing more revision and discussion in most instances than initially contemplated.

Further, significant City and CPD capacity has necessarily needed to be focused on planning and preparations for the Republican National Convention (the “RNC” or “Convention”) – with the circumstances surrounding the event substantially evolving since the Monitoring Plan was discussed in December 2015 and

In light of the Monitoring Team’s evaluation of progress, as reflected in this report, the Parties and Monitoring Team are in the process of identifying additional revisions to the Monitoring Plan that will allow CPD to build on the progress to date in light of external dynamics that have arisen.

January 2016. (See “A Note on the Republican National Convention.”) The early stages of a Consent Decree have been time-intensive for all cities that have implemented them, but Cleveland has faced the unique challenge of needing to balance the early days of reform with preparation for a major national security event of the size and scope that the city does not hold in a typical period.

The process of reform is hard work. Real-world issues, pragmatic considerations, and operational realities will require adjustments, from time to time, of the timetables and deadlines set forth in the Monitoring Plan.

The Monitor does not consider such adjustments or revisions problematic if it is clear that Consent Decree implementation is proceeding in good faith, with appropriate urgency, and in a manner that focuses on high-quality solutions.

As work on the Consent Decree continues, the Parties and Monitoring Team will need to continuously adapt or adjust the Monitoring Plan to real-world circumstances and operational realities. Indeed, “it is inevitable that unanticipated events will occur in projects,” including “technical issues,” “external events,” and performance-related issues.⁴³ Decree stakeholders will, accordingly, need to “balance[e] formality and flexibility,” which “allows for creativity, adaptation to undefined situations, and continuous improvement, while maintaining a clearly stated set of standards, procedures, and guidelines that promote best practices.”⁴⁴

In a few instances to date, the Court has already approved minor, recommended adjustments to the Monitoring Plan at the request of the Monitoring Team and Parties.⁴⁵ In light of the Monitoring Team’s evaluation of progress, as reflected in this report, the Parties and Monitoring Team are in the process of identifying additional revisions of the Monitoring Plan that will allow CPD to build on the progress to date in light of external dynamics that have arisen. The Monitor will, as always, keep the Court and public informed as to any contemplated adjustments.

⁴³ Franco Caron, *Managing the Continuum: Certainty, Uncertainty, Unpredictability in Large Engineering Projects* 30 (2013).

⁴⁴ George Pitagorsky, *The Zen Approach to Project Management* 236 (2007); accord Mohan V. Tatikonda & Stephen R. Rosenthal, “Successful Execution of Product Development Projects: Balancing Firmness and Flexibility in the Innovation Process,” 18 *J. Operations Mgmt.* 401, 402 (2000) (“A recurring, problematic challenge [project management] practitioners face[] [i]s what we call ‘balancing firmness and flexibility’ in project execution”; Jurg Kuster, et al, *Project Management Handbook* 115 (2015) (“Bureaucracy should not destroy project management’s flexibility. How any problems that occur are discussed and resolved in a manner that is appropriate to the situation is actually more important.”).

⁴⁵ Dkt. 53, 59.

⁴¹ See Dkt. 7-1 ¶ 351 (“The Monitor will not, and is not intended to, replace or assume the role and duties of any CDP employee, including the Chief . . . [T]he Chief of CDP maintains the authority to oversee the operations of the CDP.”).

⁴² *Id.* ¶ 355 (appointing Monitor for “period of five years”).

A Note on the Republican National Convention

In July 2016, Cleveland will host the Republican National Convention. In any year, this would be a significant national security event. The state, of the current political contest that will culminate in Cleveland has increased the attention on planning and preparations for the Convention.

Because, again, the Monitor is an agent of the Court, the Monitoring Team is not running the Division's or the City's planning for the RNC. Indeed, preparations for the event commenced long before the Team's oversight began. The Monitor's role will remain the monitoring and assessment of the Division's compliance with the Consent Decree over time.

As the remainder of this report makes clear, almost all of the Consent Decree's requirements will take time to be fully implemented. Since the Court approved the consensus Monitoring Plan in February, work has begun on changes to core use of force policies, officer training, internal procedures, and day-to-day processes. However, much of this work will still be in progress when the RNC comes to Cleveland. Although the requirements to police constitutionally never change, and the Consent Decree remains in place during the Convention, the timing of that event means that work on a host of major reforms still will be either in progress or yet to come in mid-July.

Law enforcement experts will note that crowd management environments can be particularly challenging for any police department. As Deputy Monitor Charles Ramsey knows from his time as the Chief of Police in Washington, D.C. – an area necessarily accustomed to handling large-scale national security events – such large events pose unique operational realities even among departments that routinely handle them.

During the Convention, the Monitor and members of the Team will be on the ground in Cleveland. To the extent that any events may require, the Team will monitor any situations that might unfold that implicate the use of force, internal and citizen's complaint investigations, bias-free policing, supervision, or other Consent Decree issues. As noted above, however, the Monitor cannot and does not, under the terms of the Decree, comment on pending investigations or independently evaluate claims of officer misconduct in real-time.

Even pending more detailed discussions, it appears likely that efforts in the latter half of the year will focus more exclusively on policies and training relating to use of force; the creation of a community and problem-oriented policing model, and related issues of staffing and recruitment and hiring processes; and

transforming the Office of Professional Standards, and the related Police Review Board, into a high-functioning investigatory agency. As always, the Monitoring Team will update the Court and the public on proposed updates to the Monitoring Plan.

D. About This Report

The Monitor must “file with the Court, every six months, written, public reports.” Generally, the reports must “descri[be] . . . the work conducted by the Monitor during” the period covered by the report and outline “which [Consent Decree] requirements have been incorporated into policy [and] actual practice.”

During the Monitor's initial reports, as CPD begins work in earnest on a number of areas, much more will be left either partially or yet to be addressed than has been sufficiently reduced to approved policy, the subject of adequate training, or implemented for an adequate period so as to allow the Monitor to assess whether a policy or process requirement is being carried out day-to-day throughout the Department and across Cleveland. As such, although this report will address all substantive provisions of the Consent Decree and summarizes CPD's progress to date in complying with them, the report is structured around the major sections and sub-sections of the Decree rather than inventorying progress in each and every provision and sub-requirement.

Accordingly, those looking for a report card, ratings, percentages, scales, or other similar over-simplifications will not find them here. Instead, appropriate to the current, early stage of Consent Decree implementation, this report aims to describe – in substantive, real-world terms and in a format intentionally designed to look and feel unlike a typical Court document – the progress made to date, challenges outstanding, and future expectations with respect to CPD and the City's compliance with the Decree.



COMMUNITY ENGAGEMENT & BUILDING TRUST

The goal of the Consent Decree, as set forth in its first paragraph, is “ensuring that police services in Cleveland are delivered in a manner that is constitutional, effective and consistent with community values, while preserving officer and public safety” with the additional acknowledgement that – in order to do so – “the Cleveland Division of Police and the Cleveland community must have a strong relationship that is built on mutual trust and respect.”⁴⁶

To that end, the first substantive section of the Consent Decree seeks to promote enhanced “community engagement and trust” through two, specific “formal mechanisms . . . that facilitate ongoing communication between CDP and the many Cleveland communities it serves.”⁴⁷ This section addresses the City’s progress to date on those two mechanisms: the Community Police Commission (“CPC”) and the District Policing Committees.

An important task of the Monitoring Team is to ensure that any proposed policy not only meets the particular requirements spelled out in the decree but also promotes the larger goals of safe, effective, and constitutional policing consistent with Cleveland’s values. To gauge whether reforms are consistent with the values of Cleveland residents, the Monitoring Team must hear

substantively and continually from the city’s diverse communities about proposed new ways of policing in Cleveland. Under the First-Year Monitoring Plan, this happens both early in the process – when the Community Police Commission and Division of Police gather views, values, experiences, and expectations from the community that inform the initial drafting of new policies and processes – and later on, when the Monitor works with stakeholders to get real, direct, and substantive feedback about specific reform proposals. Accordingly, this section also addresses the Monitoring Team’s community engagement efforts.

A. Community Police Commission

The Parties have acknowledged the “importance of community input into the way police services are delivered.”⁴⁸ The Cleveland Community Police Commission (“CPC” or the “Commission”) is an important mechanism created through the Decree “to promote public trust and confidence in the CDP” and to “facilitate ongoing communication between CDP and the many Cleveland communities it serves.”⁴⁹ The CPC is mandated “to make recommendations to the Chief of Police and the City, including the Mayor and the City Council” based on the “values and priorities of Cleveland residents.”⁵⁰ In this way, CPC is intended to serve as a conduit between the Consent Decree reform process and Cleveland’s diverse communities.

The Mayor appointed the CPC’s thirteen volunteer commissioners on September 8, 2015. Ten of those individuals were selected to represent the many diverse segments of Cleveland civilian communities, and another three commissioners received appointments to serve as representatives from three CPD unions.

Like any new organization, the first several months of the CPC’s existence required it to determine how it should operate, function, and structure itself in order to accomplish its duties. That the Commission has

sometimes engaged in extended discussions or heated debates about what to do, how to accomplish its work, or what recommendations to make to Consent Decree stakeholders on a given subject are signs of strength and progress, not impotence or dysfunction. The Commission is intended to be a forum where individuals with different backgrounds, experiences, and views come together to talk about creating a new, shared vision of policing in Cleveland.

Put differently, the Monitor would be skeptical if the Commission did not experience some growing pains, take some time to figure out how to operate, or engage in sometimes intense debates. The Monitoring Team only observes that the Commission must perpetually strive to create an environment at its

⁴⁶ Dkt. 7-1 at. 1.

⁴⁷ *Id.* ¶ 14.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* ¶ 15.

meetings where members of the public, CPD, and commissioners can disagree, with passion, with one another where warranted while ensuring that the tone remains respectful and promotes participants listening to views that may be different than their own. The Monitoring Team has previously suggested to the Commission that it make use of outside moderators to help commissioners lead public dialogue and structure community discussion in a way that promotes this kind of participation and forward-looking conversation. The recent use of such moderators has enhanced the quality of CPC meetings.

The Commission must also continually challenge itself to find ways of attracting an ever-broader cross-section of the community to its meetings. It must remain committed to outreach to Cleveland residents of all views, backgrounds, experiences, affiliations, and walks of life in order to be the forward-looking problem-solving venue that it must aspire to be.

Because the Consent Decree process necessarily prioritizes community input and participation in reform, CPC has been tasked with working through a host of important topics to date. This, in turn, has required a significant investment from the Commission's volunteer commissioners. The Monitoring Team is grateful to the commissioners for their investments, and it understands the significance of their time commitments. To ensure that the Cleveland community yields the best and broadest returns from the commissioners' investments, the Monitoring Team has recommended that CPC consider hiring an organizational consultant to provide assistance with helping the all-volunteer group to ensure that its processes and approach allow it fulfill its priorities and mission. The Monitor understands that CPC has been allocated funds to hire an Executive Director and staff support, which also promises to assist the Commission in coordinating and structuring its work.

The CPC has generally held two full commission meetings, one town hall, and several committee and/or "work group" meetings per month. With the exception of one policy-related work group, CPC meetings have been open to the public and convened at various locations in the Cleveland community. The Monitoring Team has recommended that CPC consider, from time to time, taking fuller advantage of meetings held just among commissioners themselves so that more discussion, dialogue, and collaboration can take place in person rather than through electronic communications.⁵¹

As a result of diligent work over the last seven months, CPC has completed a number of in-depth reports addressing CPD's mission statement, use of force policy, bias-free policing policy, the

Office of Professional Responsibility ("OPS") Manual, and job descriptions for an eventual Inspector General and civilian head of Internal Affairs. CPC has also provided extremely helpful feedback on the First-Year Monitoring Plan and biennial community survey. Although the Monitoring Team is continuing to review the group's specific recommendations as work proceeds in many of these areas, the Monitor has been significantly impressed by the thoughtfulness and quality of the Commission's work product and its commitment to hearing from the community. Indeed, the final, written work product of the CPC addressing force, bias-free policing, and CPD's mission statement has been – along with the work of the Mental Health Advisory Committee⁵² – at a very high level of quality.

The CPC meets with other stakeholders – including the Chief, City Law, the City's Community Relations Board, CPD's Consent Decree Implementation Unit, the Department of Justice, and the Monitoring Team – in a monthly meeting required by the Consent Decree. The CPC and the Chief of Police have expressed a desire to cement a relationship grounded in collaboration, trust, and problem-solving. The Monitoring Team will remain committed to providing whatever support and assistance is necessary to ensure that those desires become a reality.

B. District Policing Committees

In an effort "to facilitate regular communication and cooperation between CDP and community leaders at the local level," the Consent Decree also calls for the expansion – building on existing structures – of five District Policing Committees, or one for each of the five police districts within the city of Cleveland.⁵³ Those Committees are tasked with working in cooperation with the City of Cleveland Community Relations Board, the CPC, and the CDP to "identify strategies to address crime and safety issues in their District."⁵⁴

Initial discussions between the Monitoring Team and the City's Community Relations Board have taken place regarding the timeline for ensuring expansion of the District Policing Committees. In the next six months, the Monitor will be looking to ensure that the Committees are fulfilling their obligations to "present . . . identified strategies, concerns and recommendations to the [Community Police] Commission" and each Committee's officer member "present[s] to the Commission CDP's assessment of ways to address, and barriers to, implementing the strategies, concerns and recommendations of the Committee."⁵⁵

⁵¹ As advisors to the Chief of Police, the Commission is not subject to laws related to open meetings. Commissioners may, then, choose whether or not any particular meeting is well-suited to be a public meeting.

⁵² See *infra* 38-43.

⁵³ Dkt. 7-1 ¶¶ 23-24.

⁵⁴ *Id.* ¶ 25.

⁵⁵ *Id.* ¶ 26.

C. The Monitoring Team's Community Engagement & Outreach

The Consent Decree calls for the robust, intensive, substantive and sustained engagement of the community throughout the implementation process. The Monitoring Team has committed to an aggressive community outreach initiative that maximizes the substantive involvement of as many Cleveland residents as want to become involved in the conversation on how policing should look in Cleveland going forward. Consequently, the Team's day-to-day efforts have been geared toward ensuring that reform is not something that happens in a downtown conference room and is imposed on Cleveland residents and CPD officers but, instead, happens in partnership with the community.

To date, this robust effort has included in-person face-to-face meetings with civil rights organizations, faith communities, public and private legal institutions, Cleveland Police Officer Associations, public housing residents, persons who are homeless, individuals returning from incarceration, gang members, college students, fraternities and sororities, members of the LGBTQ community, young people and high schoolers, government officials, and social service agencies.

As of early May 2016, well over 100 community groups have been directly engaged by the Monitoring Team. In our conversations, we have learned about the experiences, expectations, values, interests, and concerns that individuals from all walks of life and backgrounds have with respect to law enforcement generally and the CPD specifically. The report presents a non-exhaustive list of examples of the types of individuals and organizations who have become directly engaged and involved in the monitoring process.

The Monitoring Team has also conducted public forums to discuss general monitoring issues, as well as to receive feedback on the First-Year Monitoring Plan when it was in draft form in late 2015 and early 2016. The Team has entered into an ongoing partnership with the Cleveland Public Library, which is making available to patrons reproduced copies of the Consent Decree, 2014 Department of Justice Findings Letter, the First-Year Monitoring Plan, and proposed draft policies on which the Consent Decree process will be seeking public input and participation in the coming months.

To expand community involvement and foster informed feedback to the Division of Police, Monitor, Court, and other Consent Decree stakeholders, the Monitor's Engagement Team is organizing community "study groups" across the Cleveland community. These study groups will consist of three to six individuals from a particular organization (i.e., a church, social club, agency, fraternity, sorority, public housing location, or the like) who will meet regularly to review the Monitoring Plan, study the Settlement Agreement, review proposed policies and training coming out of the Consent Decree process, and work on developing recommendations – all under the organization of the

Examples of Monitoring Team Engagement

Civil Rights Organizations

Anti-Defamation League
American Civil Liberty Union (ACLU)
Partnership for a Safer Cleveland
Council on American Islamic Relations
Collaborative for a Safe & Just Cleveland
NAACP
Urban League of Greater Cleveland
LGBT Community Center of Greater Cleveland
National Alliance for the Mentally Ill

Faith Communities

Olivet Baptist Church
The Word Church
Greater Cleveland Congregation
LGBT Ministries of Cleveland
Northeast Ohio Faith-Based Collaborative
United Black Pastors Association

Youth Groups

MyComm
Cleveland Youth Leadership (The 110)
Youth Solutions Congress
CMSD Investment Schools Site Coordinators\
Schubert Center for Youth Studies
High Tech Academy, Cuyahoga Community College
Boys and Girls Club members

Crime & Safety Organizations

Peace in the Hood
The Peace Alliance
Black on Black Crime
Society for Nonviolent Change
Black Man's Army Association

Hispanic and Latino Organizations

Hispanic Roundtable
Spanish American Committee
Hispanic Police Officer Association
Northeast Ohio Hispanic Chamber of Commerce

Community & Family Support Organizations

Neighborhood Connections
Fatherhood Initiative
Neighborhood Leadership Institute
100 Black Men
Life Exchange Center
Cleveland Neighborhood Progress
Cleveland Foundation
Gund Foundation
Cuyahoga Metropolitan Housing Authority (CMHA)
Cleveland Public Library

Monitoring Team.

In its engagement, the Monitoring Team has encountered some distinct "schools of thought" surrounding the implementation

of the Consent Decree and about the possibility for real reform. Some believe that better relationships can exist between and police and community and that the Consent Decree can be a way to achieve such relationships. Others are skeptical. They want to see improved relationships between the community and the police but past, failed attempts at reform leave them somewhat dubious at the potential for meaningful, sustained change. Yet others believe that the Consent Decree constitutes little more than “business as usual” – that a different relationship between the police and community is necessary but that, ultimately, the dynamics are unlikely to change. A final group appear to take a “wait and see” approach – wanting an improved relationship between law enforcement and residents but are “on the fence” and not yet willing to become engaged with the process.

A common factor across all these schools, as well as among individuals who believe that reform is not necessary or that the Consent Decree is not a necessary exercise, is that all seem to want a relationship between the community and police that helps make Cleveland the best place to live and work that it can be.

This Monitoring Team’s commitment is, and will remain, to in-depth, sustained engagement with the community geared toward having individual residents participate directly and substantively in the reform process. Another pledge of the Monitor and the Engagement Team is inclusiveness. Some community groups are experienced, poised, and ready to participate in substantive conversations surrounding the implementation of the consent decree. Those groups tend to attend public meetings, complete surveys, and track news regarding CPD the Consent Decree. Such groups are, and will remain, an asset to the process.

There are also those residents who do not have the time, ability, resources, or incentive to engage with the process, attend public meetings, or track details regarding reform. To this end, the Team has facilitated outreach meetings in homeless shelters, at public housing estates, in local community rooms for residents with physical impairments that prevented them from traveling, in substance abuse treatment facilities to get and included the opinions of residents housed there, in reentry communities where returning citizens gather. These voices must be included in the implementation process if the Consent Decree is to be successful.

Finally, the Monitoring Team observes that its definition of “community” squarely includes the Division of Police. As this report details elsewhere, the Monitoring Team continues to work closely with CPD, the various police officer unions and organizations, and command staff to foster direct, open dialogue between rank-and-file patrol officers and Consent Decree stakeholders.



COMMUNITY & PROBLEM-ORIENTED POLICING

The Consent Decree requires that CPD develop and implement a “comprehensive and integrated community and problem-oriented policing model.”⁵⁶ This section refers to policing according to this model as “community policing.”

Community policing blends two key concepts. The first is that effective law enforcement requires problem-solving in active partnership with the community. The second is that this partnership requires a respectful and trusting relationship between the police and community.

The Consent Decree requires that CPD implement a number of fundamental reforms related to community policing, including:

- “[E]nsur[ing] that its mission statement reflects its commitment to community oriented policing”⁵⁷;
- “[E]nsur[ing] that its officers are familiar with the geographic areas they serve . . . and engage in problem identification and solving activities with the community . . .”⁵⁸
- “[P]rovid[ing] initial and annual in-service community and problem-oriented policing training,” to include problem solving with the community, as well as concepts such as leadership and communication; procedural justice; conflict resolution and verbal de-escalation; and cultural competency sensitivity training”⁵⁹;

- “[M]aintain[ing] collaborative relationships with a broad spectrum of community groups”⁶⁰;
- “[C]ontinu[ing] to meet with members of the community in each District on a monthly basis” and “actively solicit[ing] participation from a broad cross-section of community members in each District”⁶¹;
- “[D]eveloping and implementing systems to monitor officer outreach to the community”⁶²; and
- “Analyze” the quality and nature of its, and officer’s community policing efforts, “broken out by District, in a publicly available community policing report”⁶³.

CPD is in the very early stages of its efforts with regard to the community policing requirements of the Consent Decree. Still, many community members and CPD personnel have asked members of the Monitoring Team for details on how the adoption of a new approach to “community policing” may be expected to impact CPD and the City of Cleveland in the months and years to come. Accordingly, this section addresses the major features of “a comprehensive and integrated community and problem-oriented policing model” – and what the Monitoring Team will be looking for in the future as it assesses the CPD’s efforts in this area.

A. What Community Policing Is⁶⁴

As the Monitoring Team works with Consent Decree stakeholders on the CPD’s development and implementation of a community policing strategy, the Monitoring Team’s expectations will be informed by established conclusions found in academic research and the documented experiences of police agencies and practitioners in the real world – including many members of the Monitoring Team itself.⁶⁵

⁶⁰ *Id.* ¶ 31.

⁶¹ *Id.* ¶ 32.

⁶² *Id.* ¶ 33.

⁶³ *Id.* ¶ 33–34.

⁶⁴ Some elements of this discussion are adapted or condensed from a framework that multiple members of the Cleveland Police Monitoring Team have provided to other jurisdictions.

⁶⁵ Among others, Deputy Monitor Chuck Ramsey implemented a widely-cited model of community policing in Chicago, the Chicago Alternative Policing Strategy (“CAPS”) in the 1990s, as Deputy Superintendent before serving as Commissioner of the Philadelphia Police Department and Chief of the Metropolitan Police Department in Washington, D.C. Chief Joseph Brann was appointed by President Bill Clinton to establish the Department of Justice’s Community Oriented Policing Services (COPS) Office. Dr. Ellen Scrivner served as Deputy Director of the COPS Office. Brian Center was centrally involved in the development and implementation of a comprehensive, community-based anti-gang strategy in partnership with the Los Angeles Police Department (LAPD) in South Los Angeles.

⁵⁶ Dkt. 7-1 ¶ 27.

⁵⁷ *Id.* ¶ 28.

⁵⁸ *Id.* ¶ 29.

⁵⁹ *Id.* ¶ 30.

That is not to say that the Monitor will dictate the specifics of community policing in Cleveland. Efforts to build effective policing in partnership with the community must come both from within the CPD and the community. A new policing model must be created to fit the unique experience and history of Cleveland, as well as the diversity of views and experiences among its residents.

However, the Monitoring Team will require that CPD explain, to all Consent Decree stakeholders and the Cleveland community, the reasons for the various elements of an updated policing model. Determinations of what a comprehensive policing strategy entails should be grounded in what we know works or, otherwise, be accompanied by well-reasoned justifications for exploring untested practices.

The issue of what constitutes community policing has, from time to time, “suffered from conceptual confusion in research and practice.”⁶⁶ Nevertheless, there is a large body of work that provides a solid definition of community policing. The COPS Office of the Department of Justice currently defines community policing as:

[A] philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.⁶⁷

Core features of community policing include the following:

(1) It should be the standard operating method of policing, not an occasional special project; (2) it should be practiced by personnel throughout the ranks . . . ; (3) it should be empirical, in the sense that decisions are made on the basis of information that is gathered systematically; (4) it should involve, whenever possible, collaboration between police and other agencies and institutions; and (5) it should incorporate, wherever possible, community input and participation, so that it is the community's problems that are addressed (not just the police department's) and so that the community shares in the responsibility for its own protection.⁶⁸

⁶⁶ A. Gerasimos Gianakis, et al., “Reinventing or repackaging public services? The case of community-oriented policing,” 58 *Pub. Admin. Rev.* 485 (1998).

⁶⁷ COPS Office, U.S. Dept. of Justice, “Community Policing Defined” at 1 (2014), available at <http://www.cops.usdoj.gov/pdf/vetsto-cops/e030917193-CP-Defined.pdf>.

⁶⁸ Gary W. Cordner, “Community Policing: Elements and Effects,”

B. Key Features of Community Policing

This section briefly outlines a number of foundational tenets that should guide the discussion about what community policing should look like going forward. We consider these concepts to be a framework. As such, they are not a checklist of specific tasks or requirements independent of the Consent Decree. Rather,

they are provided to set some basic expectations about the features generally associated with a community policing program that is truly comprehensive and integrated across all aspects of CPD's operations. To the extent that elements of CPD's work

to date have addressed some of these particular features, the section discusses them briefly here.

Institutional Features

The factors referred to here as “institutional considerations” focus on what the Division does as a whole, organizationally, to achieve its goals around community policing. Transforming any large organization is challenging, and it takes a disciplined attention to detail to ensure that all components of the organization work together.

1. CPD Must Have Both a Mission Statement & Strategic Plan That Reflect a Comprehensive Commitment to Community Policing.

“Successful institutionalization of community policing is likely only if it is included as part of the adopting organization's mission,” especially if accompanied by a “set of core values.”⁶⁹ It is the Monitoring Team's experience that successful organizations put their goals in writing and communicate clearly with their staff about how to reach those goals.

One of the first major tasks under the First-Year Monitoring Plan was the required development of an updated mission statement for CPD.⁷⁰ As part of this process, CPD, in partnership with CPPA, FOP, and other police officer organizations, publicized an online questionnaire for officers to provide direct input. Some 133 officers took part. An overwhelming point of feedback from officers, as well as union leadership, was that the mission statement should be short, concise, and clear. CPC engaged in a similar feedback process, yielding more than 120 responses, in addition to addressing the mission statement in regular open CPC meetings. Generally, community respondents believed the CPD's former mission statement was, while well-written, less measurable, attainable, and clear than it could be.

5 *Police Forum* 1, 5 (1995)).

⁶⁹ E.J. Williams, “Structuring in Community Policing: Institutionalizing Innovative Change,” 4 *Police Practice & Research* 119, 124 (2003).

⁷⁰ Dkt. 7-1 ¶ 27; Dkt. 43-1 at 3-4.

On January 6, CPPA submitted to CPD and the Monitoring Team a draft mission statement that, in part, signaled a strong commitment to CPD's "PRIDE" values (Professionalism, Respect, Integrity, Dedication, and Excellence). On March 22, CPD submitted to the Parties and Monitor a first draft mission statement. DOJ and the Monitoring Team provided comments indicating that the submitted statement constituted a good start but that the Division should work to make it simpler, clearer, action-oriented, and values-focused. The Monitoring Team provided CPD with an extensive primer on mission statements that discussed the important elements of good mission statements from both the corporate and law enforcement worlds.

CPD revised the statement, submitting a new draft during the week of April 11. Subsequently, the Monitor provided a mission statement primer and CPD heard a number of presentations by experts provided at a CPC meeting. CPD made additional changes, submitting another version of the statement on April 18. CPC issued a written report of its work on CPD's mission on May 10, 2016.

The period for community review and input on CPD's new, proposed mission statement will conclude on June 10. After CPD, the Parties, and Monitoring Team review and address the community's feedback, the Monitor will recommend to the Court whether the mission should be approved as consistent with the Consent Decree. The Monitoring Team thanks those Cleveland residents who have provided input – and urge those who have not yet given feedback to do so.⁷¹

2. CPD Must Embrace a Geographic and Problem-Solving Focus.

A primary indicator of successful community policing is a department's tailoring of policing strategies to fit the needs of specific neighborhoods.⁷² Accordingly, part of the Monitoring Team's future assessments will look at whether CPD has strategies in place Division-wide geared toward the challenges and circumstances of specific neighborhoods.

3. Adequate Resources Must Be Devoted to Community Policing.

Adequate funding, as well as the effective use of resources, is

⁷¹ More information on ways to provide feedback on the mission statement and other substantive reform measures can be found at the Monitoring Team's website at www.clevelandpolicemonitor.com.

⁷² See, e.g., Cordner, *supra* note 71 at 2–3 ("Community policing emphasizes the geographic basis of assignment and responsibility by shifting the fundamental unit of patrol accountability from time of day to place."); Wesley G. Skogan, "Representing the Community in Community Policing," in *Community Policing: Can It Work* 58 (2003) (noting importance of "adopt[ion] of a decentralized turf orientation by reorganizing patrol work around small geographical areas . . .").

important to the successful adoption of community-oriented policing.⁷³ Whatever community policing strategy or plan is ultimately adopted by CPD and approved by the Court, the successful implementation of the plan will depend on the extent to which the Division and its officers benefit from the support necessary to meaningfully implement it.

4. Community Policing Must Be Central to Organizational Structure and Operations.

An issue in any organization attempting to adopt community policing "is whether . . . attitudinal and behavioral changes at the police officer level will be supported by structural changes in the police organization."⁷⁴ Sustained, structural change contrasts with "police agencies [that would] implement tangential and symbolic elements of community policing at the fringes of the organization, without actually producing changes in the technical core (where the primary work is accomplished)."⁷⁵ Indeed, over the years, some police departments have tried to create stand-alone units to engage in community policing, but this strategy has consistently failed.

Therefore, the Monitoring Team will be looking see if the entire Division, including specialty units, are part of the community policing strategy and if the philosophy guides day-to-day, shift-to-shift priorities and approaches. The recent appointment of Commander Johnny Johnson to serve as the commander of CPD's Bureau of Community Policing⁷⁶ is an early, positive signal that CPD can embrace a vision of community policing in which community collaboration is how officers operate minute-to-minute – and consists of far more than events, programs, or time specifically set aside for officers to "do" community policing before returning to their "normal" law enforcement activities. The Monitoring Team looks forward to working closely with Commander Johnson in driving the active embrace of community policing as the general philosophy and basic approach of the Division.

5. The Division Must Use Performance Measures that Reflect Community Policing Principles.

⁷³ See, e.g., Gianakis, *supra* note 69 at 485 (1998) (funding was highest- ranked operational problem associated with adoption of community-oriented policing); Allison T. Chappell, "The Philosophical Versus Actual Adoption of Community Policing: A Case Study," 34 *Crim. Justice Rev.* 5, 17 (2009) (most important measure may not be about the overall monetary commitment so much as the effective use of resources).

⁷⁴ Gianakis, *supra* note 69.

⁷⁵ Edward R. Maguire & Stephen D. Mastrofski, "Patterns of Community Policing in the United States," 3 *Police Quarterly* 4, 5 (2000).

⁷⁶ See Ryllie Danylko, "Cleveland Appoints Commander of Community Policing Bureau," *Cleveland Plain Dealer* (Apr. 11, 2016), http://www.cleveland.com/metro/index.ssf/2016/04/cleveland_appoints_commander_o.html.

Historically, “[w]ithin both formal and formal police cultures, crime solving and criminal apprehension are more valued than crime prevention,” with an officer “more likely to be commended for arresting a bank robber than for initiating actions that prevent such robberies.”⁷⁷ This approach has become increasingly disfavored, with greater recognition that officers must be incentivized according to clear performance metrics aligned with an organization’s overall strategic and operational goals. As a new community policing model is implemented and embraced, a proven track record of productive and proactive community policing must be prerequisites for advancement, and the standard mode of operation, within the Division. The Monitoring Team will be looking to work closely with Consent Decree stakeholders to ensure the implementation of performance measures and metrics that promote and sustain a new community policing approach.⁷⁸

6. CPD Must Provide Training that Incorporates Community Policing Values and Objectives.

Training will be a crucial component of implementing a new community policing vision. Studies have found that, “[c]ompared to those who did not receive training, officers who attended the [community-oriented policing] training strongly and significantly agree[d] to adopt and practice” such policing.⁷⁹ Indeed, attempting to practice community police without providing sufficient, high-quality training can be minimally or counter-productive.⁸⁰ After a new community policing model is finalized, the Monitoring Team will work with CPD and other stakeholders on the Consent Decree-required, comprehensive community policing training.⁸¹

7. The Division Should Explore and Implement, as Appropriate, Alternatives to Motorized Patrol.

Successful community policing frequently involves the implementation of alternatives and/or supplements to motorized patrol – such as bike patrols, store front or neighborhood-based offices or stations, mobile offices or stations, or foot patrols.⁸² The Monitoring Team will be looking to see whether the City and CPD closely and thoroughly consider the array of officer de-

ployment possibilities available and evaluate them based on the needs and resources of Cleveland.

8. CPD Must Actively Promote the Visibility of Officers and Its Activities in a Transparent Manner.

How the Department communicates its strategies, efforts and accomplishments can be important in building community confidence and partnership.⁸³ Indeed, community knowledge about what CPD is doing or how the Division is responding in particular incidents can lead to a greater sense that the Division is willing to establish an authentic two-way relationship – providing the public with ongoing, real information about policing in Cleveland, whether good, bad, or otherwise. The Monitoring Team will be looking to see how CPD actively communicates with community members about what they are doing in specific areas and how they keep the community engaged.

Officer-Based Features

Other features of community policing that will be considered by CPD relate to how individual officers are utilized. These include:

1. Officers Should Be Assigned to Specific, Appropriately-Sized Beats.

Researchers have generally found that patrol officers should be assigned to the same areas for extended periods of time to increase their familiarity with the community – and the community’s familiarity with them.⁸⁴ Thus, CPD will need to re-evaluate how patrol officers are utilized, including how officers are staffed, assigned, and whether a sufficient number are assigned to fixed shifts, and to defined beats that are organized along natural neighborhood and community boundaries, for appropriate lengths of time. The Monitoring Team will look forward to discussing CPD’s staffing models, and its assignment process, to ensure that officer beats are well-sized and that the Division allows its officers the time, incentives, and resources to develop authentic community relationships as a part of day-to-day policing.

2. Officers Must Spend Sufficient Time Doing Community Engagement and Problem Solving.

⁷⁷ Cordner, *supra* note 71 at 3; accord Chappel, *supra* note 76 at 10.

⁷⁸ See Dkt. 7-1 ¶ 33.

⁷⁹ Sutham Cheurprakobkit, “Community policing: Training, definitions and policy implications,” 25 *Policing* 709, 720 (2002).

⁸⁰ P.C. Kratcoski & S.B. Noonan, “An assessment of police officers’ acceptance of community policing,” in P.C. Kratcoski & D. Dukes (eds.), *Issues in Community Policing* 169 (1995).

⁸¹ Dkt. 7-1 ¶ 30.

⁸² Cordner, *supra* note 71 at 4.

⁸³ Skogan, *supra* note 75 at 312.

⁸⁴ See Cordner, *supra* note 71 at 2–3 (summarizing importance of long-term assignments to defined beats); M. K. Sparrow, National Institute of Justice, “Implementing Community Policing: Research in Brief,” (1988) (indicating that, with respect to community policing, “[a]gencies that assign fixed shifts and beats generally enjoy a higher success rate. Long-term and/or permanent shift assignment—the ultimate forms of decentralization—allow officers to learn more about people, places, issues, and problems within neighborhoods”).

A sustained philosophical and logistical challenge that departments face when implementing a community policing model is ensuring that officers have sufficient time and ability to engage with the community and in problem-solving activity. Departments too often believe “that responding to calls for service leaves them with too little time to practice community policing.”⁸⁵

The Monitoring Team commits to providing technical assistance to CPD and Consent Decree stakeholders on reimagining the investments of its resources to ensure that officers can have the time and resources necessary to spend time engaging in proactive, problem-solving activities.

3. Officers and Supervisors Must Make Ongoing, Active Use of Real-Time Information and Data.

The effective use of accurate data is critical to effective problem solving. The appropriate use of objective data and information “helps police identify and analyze community problems” while also “assist[ing] them in police program assessment.”⁸⁶ Accordingly, the Division’s long-term challenges with information technology, discussed in detail elsewhere in this report, fundamentally impact its ability to engage in comprehensive, integrated community policing – which uses real-world evidence and data dynamically and creatively to address crime and community issues.

Community-Based Features

Authentic community policing can increase the public’s confidence in, and cooperation with, the police because it entails an ongoing, true partnership between law enforcement and the public.

1. The Division Must Maintain and Optimize a Range of Community Partnerships.

Successful community policing requires agencies to facilitate and promote a wide range of community partnerships – including with other law enforcement agencies, other components of the criminal justice system, government agencies, non-profits that serve the community, the local media, and residents. Successful partnerships entail a police department systematically participating in, organizing, or promoting community-based crime prevention and social service initiatives.⁸⁷ The Monitor-

⁸⁵ Chappell, *supra* note 76 at 17–18 (summarizing Glensor, R. W., & Peak, K., “Implementing change: Community-oriented policing and problem solving,” FBI Law Enforcement Bulletin 65(7) at 14–21 (1995)).

⁸⁶ Chaurprakobkit, *supra* note 82 at 712 (2002); see Dkt. 7-1 ¶ 34.

⁸⁷ See U.S. Department of Justice, Community Oriented Policing Services (COPS) Office, *Community Policing Self-Assessment Tool* 6 (2001).

ing Team will review the quality and consistency of those efforts, as it must under the terms of the Consent Decree.⁸⁸

2. Residents Must Provide Input on Substantive Policing Issues, and the Department Must Respond to Such Input.

Community engagement and partnerships are only useful, in the long-term, when they provide mechanisms for residents to provide specific input and feedback on substantive policing concerns. Likewise, the input that a police agency gathers from the community is meaningful to the extent that the agency engages with and responds to such input – even if, ultimately, the response is to indicate that particular suggestions or ideas are not feasible, counter-productive, or inconsistent with what the Division believes it must do.

The First-Year Monitoring Plan builds into the reform process mechanisms for sustained, intensive community involvement. CPC is charged with collecting the “concerns, experiences, values, and issues related to” any of a number of topics “from across Cleveland’s diverse communities” and preparing “a single, written document that fairly and accurately summarizes community input received.”⁸⁹ This summary of input is provided to CPD, along with similar feedback from CPD officers and their organizations, prior to CPD’s work beginning in earnest on draft policies, trainings, and other reforms responsive to the Decree. Later in the process, when CPD or the City have produced a Proposed Final Draft that adequately incorporates, where appropriate, stakeholder input and comment, the Monitor, “working wherever possible with CPD, will engage in an affirmative, intensive effort to obtain CPC, community, officer, and other stakeholder input and comment” on a proposed final draft of the policy, training, or other change at issue.⁹⁰ This provides a further opportunity for the reform

process to be shaped directly by the input, comment, and participation of the community.

As progress is made under the Decree, however, CPD will need to ensure, through its community and problem-oriented policing model, that the precedent being set by reform under the Decree is not an aberration but a commitment to community inclusion and involvement.⁹¹

3. Residents Must Be Involved with Law Enforcement and Crime Prevention.

Because the Consent Decree touches on numerous aspects of

⁸⁸ Dkt. 7-1 ¶ 367(d); accord *id.* ¶¶ 31, 32.

⁸⁹ See, e.g., Dkt. 43-1 at 3–4 (outlining process for work on revised CPD mission statement, which reflects basic process used through much of First-Year Monitoring Plan).

⁹⁰ See, e.g., *id.*

⁹¹ Dkt. 7-1 ¶ 33.

CPD's core functions – from how officers are hired, fired, promoted, and disciplined and the equipment and resources available for them to use to the way that the Division aligns its operations and management with a community-focused approach – the Decree's reforms are part and parcel of further enhancing the quality of CPD's law enforcement and "crime fighting" efforts. A significant role of the police-community partnership must be geared toward building avenues in which residents become ever more involved with crime prevention and other law enforcement objectives. "To be effective in lowering crime and creating secure communities, the police must be able to elicit cooperation from community residents."⁹² Therefore, the Monitoring Team will be evaluating, throughout the Decree process, the mechanisms that CPD has, puts in place, or enhances to engage the community as direct law enforcement partners.

4. CPD Should Explore Ways of Ensuring the Visibility of Police Across Cleveland's Communities.

Some research indicates that "[r]espondents who recalled spotting police on patrol in their neighborhood recently grew less worried about crime" and, at the same time, had "increased confidence in the police."⁹³ Indeed, the visibility of police in residents' neighborhoods may in fact influence opinions of the police to the same extent or more than the quality of interactions between residents and the police.⁹⁴ Accordingly, as CPD adopts an enhanced community policing model and completes "a comprehensive staffing study to assess the appropriate number of sworn and civilian personnel . . . necessary for CDP to fulfill its mission, and satisfy the requirements of" the Decree⁹⁵, the Division will need to ensure a staffing system and assignment model that promotes sufficient officer visibility across Cleveland's neighborhoods.

5. Any Community Policing Model Must Focus on Long-Term Improvements to the Quality of Police Encounters and Enhancing Confidence in Mechanisms Available to Residents to Address Problematic Police Encounters.

One of the most important factors related to successful community policing is the quality of citizen encounters and interactions with the police. Positive encounters increase trust while negative encounters, especially in historically underrepresented or

vulnerable communities, have a significant impact on reducing overall confidence in police. This report elsewhere describes the Monitoring Team's efforts, as part of the Decree's requirement that the Monitor "conduct a reliable, comprehensive, and representative survey of members of the Cleveland community regarding their experiences with and perceptions of CDP and of public safety,"⁹⁶ to track trends in the quality of interactions that residents report with respect to CPD. Likewise, the required reforms to OPS will necessarily influence overall public confidence and trust in the police to the extent that it provides a trusted outlet to address those encounters where citizens felt mistreated.

The Monitoring Team will be looking to see if the entire CPD are part of the community policing strategy and if the philosophy guides day-to-day priorities and approaches – rather than consisting only of events, programs, or time specifically set aside for officers to "do" community policing.



⁹² Tom Tyler & Jeffrey Fagan, "Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?," 6 Ohio St. J. Crim. L. 231, 232 (2008).

⁹³ Skogan, *supra* note 75 at 312.

⁹⁴ James Hawdon & John Ryan, "Police-Resident Interactions and Satisfaction with Police: An Empirical Test of Community Policing Assertions," 14 Crim. Justice Pol'y Rev. 1, 1 (2003).

⁹⁵ Dkt. 7-1 ¶ 319.

⁹⁶ *Id.* ¶¶ 361–66.

BIAS-FREE POLICING

The City and United States agreed that CPD would implement a host of reforms to ensure that the Division “deliver[s] police services . . . that . . . are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence”⁹⁷

The Monitoring Team observes here that the use of the term “bias-free policing” can, in some instances, lead to some confusion about expectations going forward. The Monitor assumes that, if asked, any police officer currently employed with CPD would say that they want to treat everyone equally. Social cognition research increasingly confirms that, even among individuals with an express commitment to treating people equally,⁹⁸ “attitudes or stereotypes . . . [may] affect our understanding, actions, and decisions . . . involuntarily and without an individual’s awareness or intentional control.”⁹⁹ Indeed, everyone – from lawyers and

⁹⁷ Dkt. 7-1 ¶ 35.

⁹⁸ Justin D. Levinson, “Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering,” 57 *Duke L.J.* 345, 360 (2007) (“[I]mplicit racial attitudes . . . frequently diverge from explicit racial attitudes.”); accord Anthony G. Greenwald & Linda H. Krieger, “Implicit Bias: Scientific Foundations,” 94 *Cal. L. Rev.* 945 (2006) (defining implicit biases as “biases based on implicit attitudes or implicit stereotypes” that “can produce behavior that diverges from a person’s avowed or endorsed beliefs or principles”).

⁹⁹ Kirwan Institute for the Study of Race and Ethnicity, “State of the Science: Implicit Bias Review 2014” at 16, <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf>.

judges to physicians and teachers¹⁰⁰ – appears to have implicit, or subconscious, biases to some extent because:

[The human] brain . . . learns over time how to distinguish different objects (e.g., an apple and an orange) based on features of the objects that coalesce into patterns. These patterns or schemas help the brain process information efficiently – rather than figuring out what an apple is every time it encounters one, the brain automatically recognizes it and understands that it is red, edible, sweet, and juicy

These patterns also operate at the social level. Over time, the brain learns to sort people into certain groups (e.g. male or female, young or old) based on combinations of characteristics as well. The problem is when the brain automatically associates certain characteristics with specific groups that are not accurate for all individuals in the group¹⁰¹

Thus, CPD’s bias-free policing initiatives will need to be geared toward: (1) ensuring a zero-tolerance approach to express, outward, and intentional manifestations of bias by CPD personnel; (2) ensuring policies and processes for identifying instances in which police services may be delivered in a less than impartial manner; and (3) providing officers with education and training on areas such as “problem-oriented policing, procedural justice, . . . recognizing implicit bias,”¹⁰² “cultural competency training regarding the histories and cultures of local immigrant and ethnic communities,”¹⁰³ and others.¹⁰⁴

¹⁰⁰ Christine Jolls & Cass R. Sunstein, “The Law of Implicit Bias,” 94 *Cal. L. Rev.* 969, 975 n.31 (“The legal literature on implicit bias is by now enormous”); Theodore Eisenberg & Sheri Lynn Johnson, “Implicit Racial Attitudes of Death Penalty Lawyers,” 53 *DePaul L. Rev.* 1539, 1553 (2004) (implicit bias among defense attorneys); Alexander R. Green, et al, “Implicit Bias Among Physicians and its Prediction of Thrombolysis for Black and White Patients,” 22 *J. Gen. Internal Med.* 1231, 1237 (2007) (“[P]hysicians, like others, may harbor unconscious preferences and stereotypes that influence clinical decisions.”).

¹⁰¹ National Center for State Courts, “Helping Courts Address Implicit Bias: Resources for Education” (2012), http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx.

¹⁰² Dkt. 7-1 ¶ 40(b).

¹⁰³ *Id.* ¶ 40(f).

¹⁰⁴ See President’s Task Force on 21st Century Policing, Final Report at 11 (2015) (“To achieve legitimacy, mitigating implicit bias should be a part of training at all levels of a law enforcement organization to increase awareness and ensure respectful encounters both inside the organization and with communities.”).

The goal, then, of the bias-free policing policies is to ensure policing and law enforcement outcomes that are as free from the effects of all bias to greatest extent possible. Even if cultural and historical realities render it impossible to entirely eliminate the possibility or effects of individual bias, CPD policy and training can provide officers with specific strategies and approaches – backed up by scientific literature and existing real-world training – for attempting to minimize the effects of such bias on officer decision-making.

The first major task under the First-Year Monitoring Plan is the “develop[ment] [of] a bias-free policy that incorporates, as appropriate, . . . recommendations developed” by CPC “and that provides clear guidance to officers that biased policing, including deciding to detain a motorist or pedestrian based solely on racial stereotypes is prohibited.”¹⁰⁵

Consistent with the Monitoring Plan, the CPC provided Bias-Free Policing Recommendations on March 7, 2016. Those recommendations were the culmination of approximately seven community meetings devoted to gathering the experiences, viewpoints, and feedback of Cleveland’s communities of color, faith, LGBTQ, and youth, homeless related to bias-free policing. The initial CPC report included specific comments and concerns collected by the CPC Bias-Free Work Group from community members. The report also provided numerous recommendations to the CPD related to its: interaction with citizens of varying backgrounds and demographics; organizational culture; recruitment; training; and, reporting.

As a result of CPC’s considerable efforts to gather the views and feedback from across Cleveland’s diverse communities, the Commission’s initial bias-free policing recommendations were detailed and thorough – and will no doubt prove useful as the Division drafts an initial bias-free policing policy that utilizes “strategies, such as problem-oriented policing, procedural justice, and recognizing implicit bias”¹⁰⁶ by June 3, 2016.¹⁰⁷ That policy must be finalized by October 14, 2016 and a training developed, and approved by the Court, by March 6, 2017.¹⁰⁸

In addition to the revision of policies and initial training on those policies, CPD must provide officers with annual training on bias-free policing; analyze data to “ensure that police services are delivered in a manner free from bias”; and apply bias-free principles to hiring, unit assignments, promotion and performance evaluations.¹⁰⁹



¹⁰⁵ Dkt 7-1 ¶¶ 38.

¹⁰⁶ *Id.* ¶¶ 38 – 40.

¹⁰⁷ Dkt. 43-1 at 59.

¹⁰⁸ *Id.* at 60.

¹⁰⁹ Dkt. 7-1 ¶¶ 42–44.

USE OF FORCE

How, when, and under what circumstances CPD officers are authorized to use force, the manner in which they are trained regarding fundamental use of force principles, and how uses of force are documented and subsequently investigated, are at the core of the Consent Decree.¹¹⁰ As the Decree is implemented, CPD must, therefore:

[R]evise, develop, and implement force policies, training, supervision, and accountability systems with the goal of ensuring that force is used in accordance with the Constitution and laws of the United States and the requirements of the Agreement and that any use of unreasonable force is promptly identified and responded to appropriately.¹¹¹

Reform in the area of force is a primary area of focus and work throughout the remainder of 2016 and into 2017. The Parties, Monitoring Team, Community Police Commission, and other stakeholders will be working to ensure that the terms and objectives of the Consent Decree are fully embraced, implemented, and become the substantive road map for a reset relationship between the community and the Cleveland community.

The current goal, codified in the First-Year Monitoring Plan, is for CPD to have a new use of force policy in place, and all officers trained on the policy, by December 31, 2016. This will al-

low the new policy to become effective and implemented across Cleveland as of January 1, 2017. This is an ambitious goal, but it is possible – especially because of the focus that CPD will continue to be investing on preparations for the Republican National Convention in July 2016 – that operational realities or other pragmatic considerations might require adjustments to the timeframe. However, the City and CPD’s ongoing commitment to this aggressive timetable serves as evidence of a commitment to addressing the Consent Decree’s requirements with an appropriate sense of urgency. Work on additional requirements related to force reporting and review has begun and will continue through the remainder of 2016.

This section provides an update on CPD’s progress to date in complying with the Decree’s use-of-force-related provisions and a preview of what CPD officers and Cleveland residents can expect in the months to come.

A. Use of Force Principles & Officer Use of Force Policy

Since the Court ordered it effective in early February 2016¹¹², the First-Year Monitoring Plan has focused initial work on CPD’s foundational policy governing when officers are authorized to and are prohibited from using force.¹¹³ The goal of all Consent Decree stakeholders is to provide CPD officers with clear rules of the road regarding when force may and may not be used.

The Consent Decree requires that these revised force policies address a number of “use of force principles,” or global requirements that are applicable “regardless of the type of force, tactics, or weapon used.”¹¹⁴ These requirements are expressly inventoried in the Consent Decree,¹¹⁵ but the various principles relate to some overarching concepts:

Reasonableness. Officers are authorized only to use force that is objectively reasonable.¹¹⁶ Objectively reasonable force is force that is appropriate when analyzed from the perspective of a reasonable officer under all of the circumstances, or in light of all of the factors, that the officer who used force encountered. Objective reasonableness incorporates the idea that officers, in the moment that they make split-second decisions in “tense, uncertain, and rapidly evolving” situations,¹¹⁷ do not have the benefit of 20/20 hindsight in the way that others might have after an incident. Nevertheless, it demands that each officer do what a reasonable officer would when encountering the same

A major goal for the year is having CPD officers trained on the new use of force policy by December 31, 2016 and the policy subsequently becoming effective on the streets of Cleveland on January 1, 2017.

¹¹² Dkt. 44.

¹¹³ Dkt. 43-1 at 8–9.

¹¹⁴ Dkt. 7-1 ¶ 46.

¹¹⁵ *Id.* ¶ 46.

¹¹⁶ See generally *Graham v. Connor*, 490 U.S. 386 (1989) (describing basic contours of “objective reasonableness”).

¹¹⁷ *Id.* at 397–98.

¹¹⁰ See Dkt. 7-1 ¶¶ 45–130.

¹¹¹ *Id.* ¶ 45.

situation.

Necessity. Necessity refers to the idea that officers should use force only when required under the circumstances or in the absence of reasonably effective alternatives.¹¹⁸

Proportionality. The concept that force should be proportional means that force should roughly correspond to, be commensurate with, or reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it. The concept does not require that officers use the same type or amount of force as the subject.¹¹⁹

De-escalation. De-escalation refers to officers using strategies, tactics, and techniques – when safe and feasible to do so – aimed at reducing the need or likelihood for force to be used. It does not mean that officers have to retreat or avoid using force when confronted with a safety threat. Instead, the requirement to de-escalate asks officers to use proactive approaches to resolve issues in a way that might avoid or reduce force.¹²⁰ “De-escala-

¹¹⁸ See, e.g., Dkt. 7-1 ¶ 45 (“force policies . . . will be designed with the goal of ensuring that officers . . . use force only when necessary”); ¶ 46(c) (“[I]f force becomes necessary, officers will be limited to using only the amount of force objectively reasonable as necessary to control the person.”); ¶ 46(e) (requiring prohibition against officers using force against handcuffed subjects “unless it is objectively reasonable and necessary under the circumstances to stop an assault, escape, or as necessary to fulfill other law enforcement objectives”); ¶ 46(f) (“[O]fficers will not use force against persons who only verbally confront them and do not impede a legitimate law enforcement function”); ¶ 46(g) (prohibiting “use of retaliatory force”); ¶ 46(i) (“ . . . [O]fficers will not be use force to subdue an individual who is not suspected of any criminal conduct”); ¶ 46(l) (“CDP will continue to limit vehicle pursuits to those in which the need to capture the suspect outweighs the danger to the public”); ¶ 61 (“Officers will use” tasers “only where . . . such force is necessary to protect the officer, the subject, or another party from immediate physical harm, and lesser means would be ineffective or have been tried and failed”).

¹¹⁹ See, e.g., *id.* ¶ 46(c) (“ . . . [O]fficers will be limited to using only the amount of force objectively reasonable as necessary to control the person.”); ¶ 46(d) (“[I]n applying force, officers will reduce the level of force as the threat diminishes”); ¶ 46(e) (general prohibition against use of force against handcuffed or restrained subjects); ¶ 46(f) (prohibition against use of force against subjects “who only verbally confront” officers); ¶ 46(i) (prohibition on applying force “to subdue an individual who is not suspected of any criminal conduct”).

¹²⁰ See, e.g., *id.* ¶ 46(a) (“[O]fficers will allow individuals the opportunity to submit to arrest before force is used whenever possible.”); ¶ 46(b) (“[O]fficers will use de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce

tion techniques may include verbal persuasion and warnings and tactical de-escalation techniques, such as slowing down the pace of an incident, waiting out subjects, creating distance (and thus the reactionary gap) between the officer and the threat, and requesting additional resources”¹²¹

Consistent with and building from the basic principles, the Decree also requires policies providing officers with specific guidance on using various force instruments or weapons.¹²²

Work on the revised use of force policies began with CPC “collect[ing] the concerns, experiences, values, and issues” of community members “related to the use of force policy . . . from across Cleveland’s diverse communities into a single, written document” summarizing community input that it received.¹²³ Specifically, CPC held a number of meetings addressing use of force, including:

- A full CPC meeting on the topic (February 24, 2016)
- A March 9 town hall (March 9, 2016)
- Special meetings regarding use of force with:
 - A focus group from Black Shield
 - A focus group of Cuyahoga Metropolitan Housing Authority (“CMHA”) residents
 - A focus group with members of 100 Black Men
 - Meetings and discussions with clergy
 - Discussions at meetings and with members of the Mental Health Advisory Committee
- Force-related discussions that occurred organically during forums more directly geared toward bias-free policing (including meetings seeking to engage the Muslim and LGBTQ communities)

Additionally, the CPC fielded a “Use of Force Questionnaire” to get feedback from Cleveland residents. Community organizations provided comments and input directly to the Commission, as well, including Showing Up for Racial Justice (SURJ), Strategies for Youth, and the Schubert Center for Child Studies at Case Western Reserve University.

The Commission adopted a number of recommendations that stemmed from and incorporated the input that it received. These recommendations were summarized in a list of premises provided to Consent Decree stakeholders:

- Incorporate a number of critical elements of model Use of Force Policies in statement in practice – including “life preservation” as “cornerstone” of

the need for force.”); ¶ 46(d) (“ . . . [O]fficers will reduce the level of force as the threat diminishes”).

¹²¹ *Id.* ¶ 46(b).

¹²² *Id.* ¶¶ 54–83.

¹²³ Dkt. 43-1 at 8.

a use of force policy, emphasizing concepts such as de-escalation, and ensuring that officers have a duty to intervene to stop excessive force;

- Developing a force policy that, at minimum, adopts an approach somewhere between a purely “permissive” and “restrictive” approach to using force;
- Focusing on providing “updated, state-of-the-art training that focuses on de-escalation, decision-making, and accountability”;
- Ensuring that force policies are “align[ed] with community values and expectations” and recent work in the field of policing; and
- Ensuring that force policies are connected with a clear sense of how officers are held accountable for adhering to policy requirements.¹²⁴

The City of Cleveland’s Community Relations Board also fielded an informal, non-scientific feedback survey on use of force issues in which a total of 1,092 residents provided responses in some format. Key findings of that input initiative included:

- A relatively low number of Cleveland residents (about one-third said that the City of Cleveland’s police are fair when using force. Residents indicated that CPD’s use of de-escalation tactics, crisis intervention and cultural competency training, and use of less-lethal force instruments would address the issue.
- Fewer than half (44 percent) of respondents agreed that CPD approaches citizens in a respectful manner, recommending customer service, diversity, sensitivity, and bias-free policing training.
- Close to half (45 percent) of participants in the survey said that CPD uses excessive, or too much, force. A slightly higher percentage (54 percent) of respondents believed that CPD disproportionately uses force against certain groups of people.
- Most respondents (59 percent) believe that CPD is not appropriately trained on use of force issues.
- About two-thirds (65 percent) of respondents indicated that they do not believe that there is accountability and accuracy in how officers report use of force incidents.

Although the City’s survey did not seek to secure a random, statistically-significant sample that would allow it to determine the general views of the Cleveland population as a whole, the results of the City’s survey are useful. The Monitoring Team appreciates the Mayor and Community Relations Board’s proactive involvement in the area. Not only do the surveys help to inform

¹²⁴ Cleveland Community Police Commission, “Use of Force: Summary Report & Initial Policy Recommendations” at 7–8 (Mar. 31, 2016), available at <https://drive.google.com/file/d/0B5DdH-kGRNM-2QWZWZGNSaVJtMms/view> (last visited May 1, 2016).

some of the issues that CPD must address in its use of force policy revisions, the City initiative also sets the stage for the even more comprehensive and methodologically rigorous survey on similar issues that the Monitoring Team is currently undertaking pursuant to the Consent Decree’s requirements.¹²⁵

Concurrently, CPD, working directly with “the leadership of CPPA, FOP, and other police officer organizations” engaged in several forms of officer outreach – including an unscientific on-line officer feedback survey, focus group discussions, anonymous written submissions, and a series of meetings with union and officer organization leadership. Like CPC, CPD “generate[d] a single, written document that summarize[d] the officer input received.”¹²⁶

Some 243 CPD personnel participated in the on-line survey. Key findings included that:¹²⁷

- Most officers who completed the feedback form did not believe that force types and categories in CPD’s current force policies are sufficiently clear (with more than one-third (36 percent) of respondents disagreeing that the current policies are clear and another one-third (32 percent) saying that the current policies were neither especially unclear or clear).
- Fewer than one-third (31 percent) of responding officers believe that the current CPD policy reflects a priority on using techniques other than force to effectuate law enforcement objectives.
- Of officers who had experience using the taser, nearly two-thirds (65 percent) of respondents found the less-lethal very effective or effective.
- Officers appeared to want clearer definitions of key terms used in the force policy, with fewer than 40 percent of officers saying that current definitions make the current policy more understandable.

With in-depth reports on the views of CPD officers and representatives of many of Cleveland’s communities, the Division

¹²⁵ See *infra* 66–68.

¹²⁶ Dkt. 43-1 at 8.

¹²⁷ Data from CPD (Mar. 31, 2016). As this report emphasizes elsewhere, CPD’s survey cannot be used to definitively establish what all officers in CPD necessarily believe with respect to CPD’s current policies. Although a significant number of officers participated, the sample was not random and the number of respondents not necessarily statistically significant such that one could say, with sufficient confidence, that the reflected views would be consistent with all CPD officers, including those who did not participate in the survey. Nevertheless, the feedback from officers who invested the time to complete the survey is a useful glimpse into how a sizable number of CPD officers are viewing force policy issues. The report presents the results here in that spirit.

drafted a revised force policy. Since late March 2016, CPD, DOJ, and the Monitoring Team have been meeting regularly and exchanging drafts. The communication that has been taking place with CPD personnel tasked with crafting the new policy has been robust, cooperative, and uniformly aimed at producing a policy that will not only satisfy the terms and conditions of Decree but also keep members of CPD, and the vast and diverse community they serve, safe. Nothing within the Consent Decree, the revised policy, or eventual training on a revised use of force is intended to create circumstances that place officers and citizens at risk. Rather, these important revisions seek to minimize the possibility of force and thus, injury to officers or individuals. Particular care is being given to ensure that those provisions of the policy that require verbal and tactical de-escalation when and where appropriate are clear and effectively communicated.

As of the date of filing this report with the Court, June 2, 2016, there has been tremendous progress toward a core use of force policy that provides clear, specific direction to officers on when force may be used.

The Division, and the personnel it has tasked with working on policy changes, have worked diligently to incorporate the recommendations of various Consent Decree stakeholders – including the CPC and its officers – and have worked collaboratively with other City representatives, the Department of Justice, and Monitoring Team. The Monitoring Team commends the Division for being open to exploring adoption of new approaches.

As with most major police policies implicated by the Decree, the First-Year Monitoring Plan calls for a period, once the Division has completed a Proposed Final Draft of a core use of force policy sufficiently responsive to the Decree, of intensive community engagement and input on the substance of the proposed policy itself. This feedback process is intended to involve, to the extent possible, a community conversation about whether the policy adequately addresses the diverse interests of Cleveland's diverse communities.

The time period for this engagement period was originally to start on or about April 28 and run through May 30, 2016. However, the Parties and Monitor have needed to use this period to continue work on the force policies, which has pushed back the time horizon for the community process. Although it is likely that the force policies will be ready for broad-based public discussion and comment soon, the Monitor is mindful, as this report elsewhere makes clear, of the significant operational demands that the RNC has been imposing – and will continue to impose until after the convention in late July 2016. The attentions of Cleveland's officers, residents, community groups, and civic organizations have likewise, and appropriately, turned to addressing the potential impacts of the event on the community. Given the centrality of the use of force policy to the Consent Decree, and many of its other reforms, the Parties and Monitoring Team agree that the public's substantive, informed participation in reform is too

important to short-circuit or to attempt when other significant law enforcement imperatives are consuming the Division and the community's focus.

The Parties and Monitor currently contemplate that community engagement on the new force policy will occur beginning in late July or August, with the Monitor recommending that the Court either approve or disapprove of the policy in late August or early September. The Parties and Monitor will update the Court and public on this modified timeframe in the coming weeks. Nevertheless, this timeframe does not impact the ultimate goal of having CPD officers trained on the new policy by December 31, 2016 and the policy subsequently becoming effective on the streets of Cleveland on January 1, 2017.

B. Officer Use of Force Training

Although policy is the mechanism which guides and sets expectations for an officer's work, training is the key to ensuring proper understand-

ing and application of policies in practice – day in and day out on the streets of Cleveland. Thus, the manner in which CPD constructs and implements Decree-required training will be critical to ensuring that desired outcomes are reached and constitutional and effective policing principles, particularly those related to the use of force, are woven into CPD's DNA.

The Consent Decree required that CPD officers receive training on a host of force-related topics within 365 of the Decree becoming effective in June 2015.¹²⁸ CPD, the Parties, and the Monitor all agreed, in the context of discussing the First-Year Monitoring Plan, that such a timeline was unrealistic – given the Monitor's appointment in October 2015, and the Monitoring Plan becoming effective, consistent with the terms of the Decree, in February 2016, and the necessity for completed revisions and updates to CPD's policies to be codified and approved by the Court before officers can receive training on new expectations.

An initial draft of officer training on the new force policy is due to the Parties and Monitor by July 5, 2016, with a finalized training slated to be submitted to the Court by October 7, 2016. This report elsewhere details the Monitoring Team's expectations regarding this, and other, upcoming training.¹²⁹

C. Use of Force Reporting

How CPD captures information regarding force incidents, including the facts and circumstances that led to the use of force, the actions of the subject to whom force was applied, and the level of force deployed will assist the Division in ensuring that use of force decisions are appropriate and that the type of force

¹²⁸ Dkt. 7-1 ¶ 84.

¹²⁹ See *infra* 52-55.

used is consistent with the Constitution, state and federal law, and CPD policy.

The uniform reporting of force will also enable the Division to better adjust its officer training, practices, and procedures to respond to lessons learned, trends, or patterns that may impact the safety of officers and the community. That is, rigorous reporting of force will allow, over time, for the Division both to manage for itself the risk of unconstitutional policing and to use real-world data and evidence to make operational and managerial decisions.

Part of the Consent Decree's force reporting requirements involve CPD establishing a new system of classifying force. This classification approach does not, in itself, affect whether an officer's use of force is or is not authorized by CPD policy. Although CPD officers will need to know about the classification structure in order to effectuate proper reporting and post-incident performance, CPD officers do not necessarily need to know anything about the scheme in order to make decisions in the field about applying force in a manner consistent with the core officer use of force policy. The stratification of force into three "levels" triggers a specific administrative response, investigation, and review of a force incident after it occurs.

Level One force is the lowest level of force. It is force that is "reasonably expected to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in actual injury, and does not result in a complaint of injury."¹³⁰ Some minor or so-called *de minimis* force, such as touching, and handcuffing, is, technically, a use of force for constitutional purposes, and application of such force could also result in exposure to liability in state and federal court if conducted in a manner contrary to law.¹³¹ However, consistent with the logic of Courts in the area,¹³² when such physical contact with an individual does not result in injury or complaint of inju-

Rigorous reporting of force will allow, over time, for the Division both to manage for itself the risk of unconstitutional policing and to use real-world data and evidence to make operational and managerial decisions.

ry, it typically does not rise to Level One force for purposes of the Consent Decree.

Level Two force is force that "causes an injury, could reasonably be expected to cause an injury, or results in a complaint of injury."¹³³ It typically includes all types and instrumentalities of force the use of which does not rise to the level of lethal force or is otherwise characterized as Level Three force.

Level Three force is that force which constitutes "lethal" or "deadly" force. It also includes any level of force which results in death or serious injury, hospital admission, or loss of consciousness. Specific types of force such as neck restraints, canine bites, and more than three applications of an Electronic Control Weapon (i.e. Taser) or a single application that lasts longer than 15 seconds also constitutes a Level Three use of force.¹³⁴

The Consent Decree places an affirmative duty on all officers using or observing force to report such force in writing by the completion of their tour of duty. This particular provision within the Decree underscores the importance of a sufficiently detailed and descriptive narrative which highlights the facts and circumstances which led to the initial police/citizen interaction, as well as those actions which led to the decision to use force, the level of resistance encountered, and a complete and accurate description of every type of force used.¹³⁵

The Consent Decree requires that CPD develop and implement a "single, uniform reporting system" within 365 days of the Decree's effective date in June 2015.¹³⁶ The Court-approved First-Year Monitoring Plan adjusted some elements of this obligation, with the policy on use of force reporting not slated to be completed until late June 2016 and officer training, necessary to be completed before the policy can be fully implemented, not slated to be finished until December 31, 2016.

Until recently, officers reported force by completing a narrative in a word processing document in which they were expected to provide all information – including basic information like the subject's name or the address of the incident. CPD has made significant progress in making the reporting of force easier, more straightforward, and efficient for officers. CPD is well into the implementation of IAPro, an officer performance management database system that will be a platform for, among other things, the logging of information about force incidents. Beginning in late April 2016, rank-and-file officers are being trained to use Blue Team, a straightforward, web-based, end-user portal for entering data into in the IAPro system. Because the IAPro/Blue Team environment is an "off-the-shelf"

¹³⁰ Dkt. 7-1 ¶ 87(a).

¹³¹ *Bingham v. City of Manhattan*, 341 F.3d 939, 947 (9th Cir. 2003) (indicating that some Fourth Amendment violations can be, by their nature, *de minimis*); *Watts v. County of Sacramento* 1111, 1119–20 (E.D. Cal. 1999), *rev'd on other grounds*, 256 F.3d 886 (9th Cir. 2001) (lifting suspects by handcuffs was not *de minimis* force as a matter of law).

¹³² The concept of *de minimis* force reflects the recognition by many courts that some types of physical contact "are just too minor to constitute a 'seizure' for Fourth Amendment purposes without doing violence to that word." *Acevedo v. Canterbury*, 457 F.3d 721, 725 (7th Cir. 2006); *accord Graham v. Connor*, 490 U.S. 386, 396 (1989) ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment.").

¹³³ Dkt. 7-1 ¶ 87(b).

¹³⁴ *Id.* ¶ 87(c).

¹³⁵ *Id.* ¶ 88.

¹³⁶ *Id.* ¶ 87.

software solution, CPD has needed to substantially import the program's built-in data fields and collect the information that the system's standard use of force module requires.

The Monitor worked closely with CPD personnel on configuring its use of force data portal to be consistent with both the requirements of the Consent Decree and best practices. As officers transition from paper-based use of force reports to using the computerized Blue Team environment, they are using an updated paper reporting form that mimics, line by line and screen by screen, the electronic process. The adoption of Blue Team will, in the long-term, constitute a significant efficiency within CPD as well as a substantive step toward better, unified, real-time information on force across the Division.

After all officers have transitioned to using Blue Team and the use of force reporting policy is implemented, the Monitoring Team will begin reviewing a statistically random sampling of use of force reports to determine compliance with the terms and conditions of the Agreement. The Team's findings incident to those reviews will be made part of the Monitor's semi-annual reports. To the extent those reviews result in a finding of non-compliance, the Monitoring Team will work closely with the Division to remediate deficiencies and put in place training and accountability measures to ensure compliance.

The City, CPD, and CPC engaged in significant initiatives to gain initial feedback and input from Cleveland residents and police officers on use of force prior to CPD developing a new use of force policy.

D. Use of Force Investigations & Review

The manner in which a law enforcement agency evaluates whether an officer's use of force was consistent with law, policy, and generally-accepted law enforcement practices is best served by a prompt, unbiased, and thorough use of force investigation. An important goal of the Consent Decree is to ensure that all uses of force administered by CPD officers are, after being promptly and uniformly reported, meaningfully examined and reviewed.

As a threshold matter, CPD has, for at least some time, referred to *any* examinations into officer performance in a given incident as investigations – or, more precisely, as “invests.” Because supervisors within the department (also referred to as the “chain of command”) have also, at least to date, investigated at least a good share of internal allegations of officer misconduct, many CPD personnel believe that all force investigations are, essentially, internal affairs or full-blown misconduct investigations. Going forward, all use of force will need to be examined, with facts ascertained and circumstances surrounding the incident specifically explored. However, this factual examination and subsequent review will not be because the Division necessarily assumes that officer misconduct occurred. Over the coming months and years, it will be a cultural change for CPD to start viewing internal reviews of force as mechanisms that the Division uses to continually leverage real-world lessons learned, trends, and patterns to self-manage and continually improve the

quality of its service.

Furthermore, it appears to the Monitoring Team that all uses of force, no matter how serious or comparatively minimal, are currently being investigated using similar processes. This has resulted in substantial frustration among supervisors who wonder why they are investigating relatively minor uses of force, in which no misconduct appears to be involved and which causes no pain or injury to a subject, as though they were a relatively serious force incident. Although all uses of force need to be reviewed, not all use of force investigations, based on the seriousness of the force or incident, necessarily should require the same degree or depth of investigation.

Consequently, the Consent Decree's protocols for force inquiries vary according to the Level of force. For example, supervisors are not required under the Decree to respond to the scene of Level One uses of force. Likewise, unless the supervisor deems the lower-level force to be in violation of policy, the subject to whom force was applied makes an allegation of excessive force, or the supervisor determines that the level of force was improperly classified, the investigation will typically be limited to a review of the involved officer's use of force report.¹³⁷

Level Two uses of force require that a supervisor respond to the scene and commence a preliminary force inquiry. Such inquiries will include

assessing officer and subject injuries and ensuring prompt medical assistance, locating and interviewing witnesses, identifying and locating physical or forensic evidence, securing any audio or video evidence that may have captured the incident, and properly evaluating whether the force used was consistent with law and policy.¹³⁸ If a supervisor's inquiry at any point indicates “that there may have been misconduct, the supervisor will immediately notify Internal Affairs and Internal Affairs will determine if it should respond to the scene and/or conduct or take over the investigation.”¹³⁹

Level Three uses of force may come under the purview of either the Division's Force Investigation Team (“FIT Team”) or an independent outside agency. With the current focus on the development and implementation of the Division's revised Use of Force Policy, the Consent Decree process will not get to the development of a specialized Force Investigation Team in earnest until later this Summer.¹⁴⁰ Even after a policy is established,

¹³⁷ *Id.* ¶¶ 94-95.

¹³⁸ *Id.* ¶¶ 95-97.

¹³⁹ *Id.* ¶ 99.

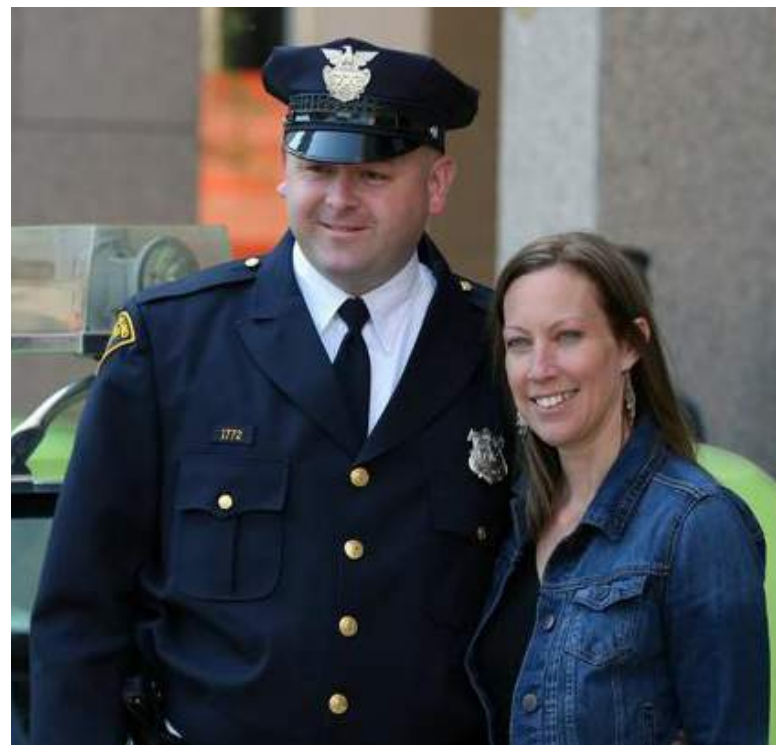
¹⁴⁰ Specific Consent Decree provisions address the composition of the Force Investigation Team, those cases for which they will have investigative authority, the manner in which those persons will be trained and equipped to conduct their work, and the manner in which they will conduct their investigations. *Id.* ¶¶ 110-118.

FIT team personnel will need to be identified and trained before being deployed in order to ensure that the force investigation considers not only what occurred at the moment that an officer applied force but the totality of the circumstances, tactics, and considerations from the moment of dispatch or an officer initiating contact with a subject until after force has been applied and the incident resolved or scene secured.

In addition to policies and procedures relating to force inquiries, CPD will also be crafting policies and procedures related to supervisory review of completed force inquiries. Part of this process will entail the establishment of a Force Review Board ("FRB"). Intended "to serve as a quality control mechanism for uses of force and force investigations," FRB will "appraise use of force incidents from a tactics, training, policy, and agency improvement perspective."¹⁴¹ Specifically, FRB will review all serious uses of force (e.g., FIT investigations), Level 2 investigations involving force-related misconduct, and a sample of Level 2 investigations.¹⁴² The Board will be comprised of personnel from across the Division.¹⁴³

Upon implementation of the FRB and the commencement of their work, the Monitoring Team looks forward to routinely attending FRB meetings to determine if FRB is "conduct[ing] comprehensive and reliable reviews" of force incidents that:

[I]nclude the circumstances leading up to the use of force, tactical decisions, information sharing and communication, adequacy of supervision, equipment, training, C[PD]'s medical response, when applicable and any commendable actions. The review will include the actions and inactions of all officers, supervisors, commanders, and dispatchers involved in the incident, as appropriate.¹⁴⁴



¹⁴¹ *Id.* ¶ 124.

¹⁴² *Id.* ¶ 124.

¹⁴³ *Id.* ¶ 124.

¹⁴⁴ *Id.* ¶ 126; see also *id.* ¶ 127 (listing requirements of FRB consideration of each reviewed incident).

CRISIS INTERVENTION

The Department of Justice's 2014 investigation indicated that "officers use excessive force against individuals who are in mental health crisis" – in part because the Division's "crisis intervention policies and practices are underdeveloped."¹⁴⁵

The Consent Decree includes a host of requirements aimed at "build[ing] upon and improv[ing]" the Division's crisis intervention programs. In particular, the Decree envisions that the Division's Crisis Intervention Program provide a forum for effective problem solving regarding the interaction between the criminal justice and the mental health care system, as well as creating a context for sustainable change.¹⁴⁶

The Settlement Agreement indicates that CPD should build upon and improve its Crisis Intervention Program, with the following goals:

- Assisting individuals in crisis;
- Improving the safety of officer, consumers, family members, and others within the community;
- Providing the foundation necessary to promote community and statewide solutions to assist individuals with mental illness; and
- Reducing the need for individuals with mental illness to have further involvement with the criminal justice system.¹⁴⁷

¹⁴⁵ U.S. Department of Justice, "Investigation of the Cleveland Division of Police" (Dec. 4, 2014) [hereinafter "2014 Findings Letter"] at 4, 52.

¹⁴⁶ See generally Dkt. 7-1 ¶¶ 131–59.

¹⁴⁷ *Id.* ¶ 131.

To meet these goals, the Decree required the development of a Mental Health Response Advisory Committee "to foster relationships and build support between the police, the community, and mental health providers" and "identify problems and develop solutions designed to improve outcomes for individuals in crisis."¹⁴⁸

While creating a community-based problem solving group is a challenging mission, CPD and the Cleveland community are, at this early stage of the process, making meaningful progress toward developing a forum and structure where police, social service providers, mental health and other advocates, and individuals struggling with mental illness and substance abuse challenges can meet and discuss how to best provide services to individuals in crisis.

The credit for the good start goes not only to CPD but to the Alcohol, Drug Addiction and Mental Health Service Board of Cuyahoga County (the "ADAMHS Board") and the community volunteers and professionals who work with the police on the Mental Health Response Advisory Committee (the "Advisory Committee"). Volunteer providers and community members have reached out to a wide range of Cleveland residents to assess the needs of the Cleveland community. Social service providers have begun to talk about substantive reforms to policies, police officer training, response approaches, and long-term changes to the delivery of social services in Cleveland. Working with CPD and the ADAMHS Board, the members of the committee have engaged a wide range of citizens in order to assess the needs of the Cleveland community, studied the efforts of other cities in addressing crisis intervention issues, examined diversion and alternatives to arrest, analyzed the available data, worked to develop a model policy document, and recommended important changes to crisis intervention training.

In short, a partnership is being formed, in real-time, that can serve as a foundation of an integrated system to meet the needs of individuals experiencing a behavioral crisis. The remainder of this section summarizes the fruits, to date, of this new, dynamic partnership.

A. Background Information

1. ADAMHS Task Force Recommendations for the Consent Decree

In response to issues raised by the DOJ investigation, the ADAMHS Board formed a task force to make recommendations for the Consent Decree (the "Task Force"). The Task Force focused on issues related to of training, continued practice, and oversight and presented their results to the City and DOJ.¹⁴⁹ For instance,

¹⁴⁸ *Id.*

¹⁴⁹ Alcohol, Drug Addiction and Mental Health Service Board of Cuyahoga County Mental Health Task Force, "Mental Health Task Force Recommendations for the Consent Decree Between the

the Task Force recommended creation of a Citizen Police Relationship Committee that would focus on integrating various social service functions and bridge gaps between the community and the police. The Task Force recommended that all officers and command staff receive some training on mental health issues and de-escalation techniques but that a specialized Cleveland Crisis Intervention Team (“CIT”) curriculum be created. It recommended that dispatchers receive specialized crisis training and that a CIT Program champion be identified within the CPD command structure.

The Task Force emphasized the importance of consistent information-sharing, data collection, and internal collaboration among CPD, the court systems, and the ADAMHS Board on identifying individuals with frequent criminal justice and behavioral health system involvement and ensuring provision of social services to such individuals. It also recommended creation of a Special Co-Responder Team – to include a social worker, mental health expert, and seasoned police officer – on the East and West sides of Cleveland who could be called to handle extreme mental health crisis situations and follow-up upon individuals released from treatment.

2. Criminal Justice Coordinating Center of Excellence CIT Peer Review

The State of Ohio Criminal Justice Coordinating Center of Excellence (“CJCCOE”) conducted a voluntary CIT Peer Review and presented a number of recommendations.¹⁵⁰ This report was cited in the Consent Decree with the stipulation that the City of Cleveland should consider the CJCCOE assessment and any recommendations.¹⁵¹

The report made a wide range of recommendations, many of which were consistent with the ADAMHS

Task Force’s recommendations. Additionally, the Peer Review addressed strengthening how specialized crisis intervention officers are routed to a call, enhancing the use of data on crisis intervention encounters, developing a collaborative crisis communication policy, addressing the role of officers in involuntary hospitalization, and coordinating the transport of individuals with mental illness. The report also made recommendations regarding officer training, including the need for more interactive learning opportunities, greater use of de-escalation role-playing, more robust lectures on legal issues, enhanced training evaluation, and the delivery of training to first-line supervisors.

U.S. Department of Justice and the City of Cleveland Division of Police,” 1-5 (March, 2015).

¹⁵⁰ Woody M, Futo J, and Lilley P, Criminal Justice Coordinating Center of Excellence, “Cleveland Division of Police CIT Peer Review” (Apr. 2015) at 1-13.

¹⁵¹ Dkt. 7-1 ¶ 153.

B. Current Implementation Status

1. Developing a Mental Health Response Advisory Committee

One of the first major steps toward implementation of the Consent Decree’s provisions regarding crisis intervention was the development of the Mental Health Response Advisory Committee (the “Advisory Committee”) within 180 days of the Consent Decree becoming effective. Prior to the appointment of the Monitor, the City signed a Memorandum of Understanding¹⁵² with the ADAMHS Board to assist the City and CPD with creating the Consent Decree-required Mental Health Response Advisory Committee. The terms of that Memorandum of Understanding do not supersede, replace, or otherwise alter the requirements of the Consent Decree or the Court’s jurisdiction over crisis intervention issues.

The ADAMHS Board established the Advisory Committee, which formed six standing sub-committees (Executive, Policy, Data, Training, Community Engagement, and Diversion). An *ad hoc* Public Survey Task Force was also formed, as a partnership between the Community Engagement and Policy functions, to coordinate the Advisory Committee’s efforts to obtain community input.

The Advisory Committee currently has over 50 members representing the Cleveland community. They include representatives from the Cleveland Municipal Court’s Mental Health Docket, Front Line Services, the Ohio Criminal Justice Coordinating Center for Excellence, and a diverse array of mental and behavioral health social service providers.¹⁵³ The Committee has gotten off to a swift start and shown good momentum. It has conducted numerous meetings, as well as a day-long retreat to develop a structure and working relationships.

CPD and the Advisory Committee have, to date, formed a productive community partnership. High-ranking police leadership have regularly attended the Advisory Committee’s meetings, and CPD contributions to the community partnership have been excellent. CPD has been actively involved with the Advisory Committee and each of its subcommittees. The Division is engaged with the Committee’s members in developing the mission for each subcommittee.

The volunteer professionals and advocates who make up the Committee and its subcommittees have devoted significant time,

¹⁵² Memorandum of Understanding between the City of Cleveland Department of Public Safety and The Alcohol, Drug Addiction and Mental Health Services Board of Cuyahoga County 1-4 (Sept. 2015).

¹⁵³ Dkt. 7-1 ¶ 133.

and exhibited impressive dedication, to addressing a wide range of issues. The ADAMHS Board continues to make a noteworthy investment in staff support for the work of the Committee.

2. Crisis Intervention Needs Assessment

The Advisory Committee's first task under the First-Year Monitoring Plan was completing a crisis intervention needs assessment – to evaluate both the needs of the public and those of officers (the “Needs Assessment”).

The Community Engagement and Policy Subcommittees were part of a Task Force on the Needs Assessment. The Public Survey Task Force organized a series of community meetings. These meetings occurred in March and were facilitated by members of the Advisory Committee and the Division. The Public Survey Task Force developed a survey instrument that was available at the community meetings and online, with Spanish language versions made available and special efforts made to reach out to the Spanish-speaking community.¹⁵⁴ The Advisory Committee joined with the National Alliance of Mental Illness (“NAMI”) Greater Cleveland to host three focus group sessions. Meanwhile, CPD took on the task of assessing the needs of the officers. An Officer Needs Assessment survey was developed by the Division, with input provided by a range of police officer organizations.

The Committee's Advisory and Data subcommittees worked on analyzing the results of the community-wide and police officer survey initiatives. The summary of initial feedback was shared with the subcommittees and presented at the April 2016 Advisory Committee general meeting. The results from the needs assessment are being integrated into the work of each subcommittee, even as the needs assessment process is slated to continue, with efforts to involve the community in addressing the needs of citizens experiencing a crisis event becoming ongoing.

3. Work Plan

The First-Year Monitoring Plan charged the Advisory Committee with creating a detailed Work Plan for accomplishing its various Consent Decree-required tasks through the end of January 2017 – one that includes task assignments and a timeline for developing the specifics of all CPD crisis intervention and training programs.

Representatives and staff of the ADAMHS Board took on the task. The first draft of the Work Plan was submitted after consultation with the subcommittee chairs and several revisions. The plan is extensive and covers 14 pages. The Work Plan is a good start toward a strategic plan to accomplish the steps provided in the Settlement Agreement.

The Work Plan does a good job of organizing the tasks, identi-

¹⁵⁴ To view these surveys, go to <http://bit.ly/ClevelandCrisisSurvey> and <http://bit.ly/EncuestaPublicaCLE>.

fying the responsible parties, and setting working timeframes. The U.S. Department of Justice, the City of Cleveland and the Monitoring Team reviewed the plan and provided feedback to the ADAMHS Board and the MHRAC. All Consent Decree stakeholders had a number of meetings and engaged in scores of other communications to address various important elements in the plan. On May 9, 2016, the Monitor recommended that the Court approve the Plan and adopt its various requirements and deadlines as part of the First-Year Monitoring Plan, indicating, in part:

The final proposed version of the Work Plan . . . clearly reflects a great deal of work, and the Monitoring Team commends CPD, the City, the Advisory Committee, and the United States for their significant efforts. The extensive Work Plan does a good job of organizing the tasks, identifying the responsible parties, and setting appropriate timeframes for various stakeholders to reach defined milestones.

Significantly, the Work Plan calls for significant work to be completed by June 2016. This work includes: (1) gaining community input about crisis intervention issues through a needs assessment; (2) developing a revised CPD Crisis Intervention Policy; (3) exploring a new crisis event data collection process and instrument; (4) revising a number of crisis-related training curricula including an annual course for all officers, a specialized course for CIT officers, a course for call taker and dispatchers, and a strategy for crisis training for new officers; and (5) establishing CPD Crisis Intervention Team leadership. Impressively, significant progress has been made and draft work products are already under review in all five areas. An extensive community needs assessment was completed and a preliminary report has been reviewed. A survey of CPD officers was also conducted and reviewed by the MHRAC. A draft CPD Crisis Intervention Policy has been completed, and the full Advisory Committee has begun to consider that draft policy. A new data collection instrument has been explored. An annual crisis in[-]service has been proposed and initially reviewed by the MHRAC at a monthly meeting. Additionally, the training curriculum for call takers and dispatchers is well underway and on track to be completed soon. A revision of the specialized CIT training course is well underway as well. Finally, a CIT Coordinator for CPD has been appointed, and the Division is represented at MHRAC meetings.

Having closely reviewed the Work Plan, the Monitoring Team concludes that it provides a clear and

appropriate structure for implementing the Consent Decree's provisions addressing crisis intervention.¹⁵⁵

The Court approved the Work Plan on May 18, 2016.¹⁵⁶ Consequently, its obligations and deadlines have become a part of the Court-enforced First-Year Monitoring Plan.

C. Appointing a CPD Crisis Intervention Coordinator

The Settlement Agreement required the appointment of an officer, at the rank of Captain or above, to act as the Crisis Intervention Coordinator within 180 days of the Consent Decree becoming effective.¹⁵⁷ The CIT Coordinator is responsible for a range of important duties, including:

- Developing partnerships with stakeholders
- Participating in the Advisory Committee
- Soliciting feedback from the community and specialized CIT officers and dispatchers
- Coordinating implementation of changes
- Ensuring the selection of appropriate candidates as specialized CIT officers and creating ways to honor and recognize specialized CIT officers and dispatchers.¹⁵⁸

CPD moved quickly to comply with this provision and fill this position. Prior to the appointment of the Monitoring Team, CPD has posted the position and identified three qualified candidates. Captain James Purcell was selected for the position. The Monitoring Team had the opportunity to meet with Captain Purcell while he was considering the CIT Coordinator position, and his focused efforts on crisis intervention issues since being appointed have assisted the Division in integrating fully into the Advisory Committee structure.

The Monitoring Team notes that, while the CIT Coordinator will continue to have a vital role in reshaping CPD and the City's crisis intervention service delivery efforts, the Division's involvement in the formal Advisory Committee structure must continue to grow. The identification of one individual to be a crisis intervention "point person" within the Division is necessary but not sufficient.

For instance, the Advisory Committee is currently co-chaired by the head of the ADAMHS Board and the City's Assistant Director of Public Safety. Given the central role of the Division to crisis intervention response and to compliance with the Consent Decree's crisis intervention provisions, the Monitoring Team recommends that the Advisory Committee – like other cities that have success-

fully implemented a CIT and community-based crisis intervention coordinating committee model – appoint a member of the Division itself to serve as a chair of the Advisory Committee.

D. Crisis Intervention Policies and Procedures

1. Revised CPD Crisis Intervention Policies

The Consent Decree requires that CPD, in partnership with the Advisory Committee, revise its policies to make clear, among other things, that:

- Crisis intervention responses may be necessary even in situations where there has been an apparent law violation;
- CIT officers have appropriate discretion to direct individuals to health care rather than the judicial system; and
- CIT officers must be dispatched to all calls that involve an individual in crisis.¹⁵⁹

As part of approaching the task of revising the Crisis Intervention Policies, the Policy Subcommittee identified four guiding principles:

- Advancing respect, dignity and safety in all interactions between CDP and citizens;
- Safely diverting people with mental illness, the vulnerable and/or those citizens in crisis from the criminal justice system where possible to appropriate mental health and substance abuse treatment;
- Reducing unnecessary use of force and injury and advancing best practice tactics; and
- Managing the stigma associated with mental illness and addiction in police-citizen encounters.¹⁶⁰

Through the Mental Health Advisory Committee, a partnership is being formed, in real-time, that can serve as a foundation of an integrated system to meet the needs of individuals experiencing a behavioral crisis – including mental health, substance abuse, and other challenges.

The Policy Subcommittee has reviewed over 23 separate crisis intervention policies from across the country.¹⁶¹ Subcommittee members identified the best features of each policy and are working with CPD to incorporate those features into an updated crisis intervention policy

that best fits the unique challenges and opportunities in Cleveland. With in-depth meetings stretching as long as four and a half hours in some cases, the work of the volunteer members of the Policy Subcommittee has been particularly impressive. The

¹⁵⁵ Dkt. 63 at 2.

¹⁵⁶ Dkt. 64.

¹⁵⁷ Dkt. 7-1 ¶ 137.

¹⁵⁸ *Id.* ¶¶ 137-42.

¹⁵⁹ *Id.* ¶¶ 153-59.

¹⁶⁰ ADAMHS Board of Cuyahoga County on behalf of the City of Cleveland Mental Health Response Advisory Committee, *City of Cleveland Mental Health Advisory Committee 2015 Report*, 1-22 (Jan. 2016)

¹⁶¹ This impressive resource collection has been posted on-line by the ADAMHS Board. See ADAMHS Board, "Crisis Intervention Policies," available at <http://adamhsc.org/en-US/Crisis-Intervention-Policies.aspx>.

group is on track to deliver a comprehensive, revised set of crisis intervention policies at a noteworthy pace.

3. Crisis Intervention Data

CPD must track calls and incidents that involve individuals in crisis, collecting an array of specific data.¹⁶² Data will be publicly reported annually and used to identify training needs, trends, successful individual officer performance, necessary changes in strategies, and systemic issues related to crisis intervention response.¹⁶³

Even before the Consent Decree, CPD had a “data sheet” – a pencil and paper form – for collecting some basic information about crisis intervention incidents. The Advisory Committee’s Data subcommittee undertook an analysis of existing data on crisis intervention. Both CPD and the Advisory Committee have become aware of the low completion rates of these existing data sheets. Current estimates are that data may have been collected on only 10 to 20 percent of actual crisis events.

As a result, CPD and the ADAMHS Board have identified that the data sheet, and data collection and analysis process, will need to be improved. Especially given that CPD is collecting some data about some class of crisis events – which positions it ahead of some similarly situated police departments – the City, CPD, and Advisory Committee need to take time to get the rollout of new or improved reporting requirements to officers right. Although some changes to the specific data collection instrument that officers use will be required, those changes cannot occur unless and until (i) a new crisis intervention policy is in place that clarifies precisely what a crisis intervention incident is and, consequently, when crisis intervention-related data must be provided about that incident, and (ii) a non-manual, technology-based solution is in place or imminently contemplated that will ensure that revised reporting requirements do not unnecessarily impede the ability of officers to efficiently and effectively provide law enforcement service.

Because the Consent Decree identifies five interrelated crisis intervention strategies that will directly involve CPD officers, there must be compatible and strategic approaches across all of CPD’s crisis intervention efforts and programs. The Policy Subcommittee’s work on CPD’s crisis intervention policy is relevant to nearly all of the Advisory Committee’s, and CPD’s, work. As such, the Policy Subcommittee’s work must be sufficiently far along in order for work on training, data, and other areas to progress further. Given the dedication and impressive progress made to date in the area of policy, the Monitoring Team has confidence that waiting to finalize training curricula, data forms, the specifics of diversion programs, and other areas until basic CPD policies have been definitively finalized will produce more effective and lasting – as well as ultimately more efficient – reform.

E. Completing Crisis Intervention Training

The Settlement Agreement provides a number of objectives for Crisis Intervention Training. These training objectives include:

All officers	8 hours of annual training (minimum)
New recruit training	16 hours of academy training
Dispatchers & call-takers	Appropriate training
Specialized CIT officers	40 hours of enhanced training

Since the Consent Decree was ordered, the Ohio Peace Officer Training Commission has issued a new Crisis Intervention training curriculum for Ohio Peace Officers.¹⁶⁴ This curriculum is part of the academy training for recruits. Consent Decree stakeholders have tentatively agreed that this new training is a reasonable substitute for the Decree-required sixteen hours of Academy Training. A formal request for this substitution will be reviewed and submitted to the Court.

As part of the discussions about the Work Plan for the first year of monitoring, the Advisory Committee has been reviewing recommendations for developing training consistent with the Consent Decree’s requirements. Despite the complexity and scope of the task, the Training Subcommittee has made good progress toward completing the Crisis Intervention Training. Their work is to be commended.

The Training Subcommittee is currently tackling the curriculum for the minimum of eight hours of annual training for all officers. Having reviewed the new crisis intervention training curriculum that will be used to instruct new recruits, the Subcommittee is developing recommendations to use elements of this curriculum to shape the eight hours of annual training for all officers.

The Training Subcommittee has developed a series of preliminary recommendations for the 40 Hours of Enhanced Training for Specialized CIT Officers. These recommendations include:

- A maximum class size of 30 officer participants;
- Focus on patrol officers who volunteer for the training;
- Use of providers/experts in the field and experienced CIT officers to provide training, including individuals and families of individuals in recovery from serious mental illness;
- A new emphasis on the use of de-escalation tactics with individuals experiencing mental health or behavioral crisis, with more intensive role playing;
 - The inclusion of in-person site visits to crisis-related social service providers;
 - Increased time at St. Vincent Charity Medical Center

¹⁶² Dkt. 7-1 ¶ 157.

¹⁶³ *Id.* ¶ 157-58

¹⁶⁴ Ohio Peace Officer Training Commission: Education & Policy Section, Peace Officer Basic Training Crisis Intervention, 1-156 (Jan. 2016).

Psychiatric Emergency Department;

- Adding the use of the commitment process to the legal education component; and
- Providing more time for interactive question-and-answer sessions.

Work on specific curricula for a 40-hour enhanced training for specialized crisis intervention officers will continue once a revised crisis intervention policy has been finalized. Similarly, the work of the Diversion Subcommittee, which is examining alternatives to both arrest and inpatient commitment for individuals experiencing crisis, will also provide additional direction to the Training Subcommittee. Additionally, the Training Subcommittee has begun to review the existing Crisis Intervention Training Curriculum for dispatchers and call takers. This work will be completed when the draft CIT Policy for Dispatchers is available to guide further curriculum development.

A good deal of discussion in the area of training has focused on the City's long-term goal of providing 40 hours of crisis training not only to the specifically-designated specialist officers dispatched to the scene of crisis incidents but, instead, to all CPD officers. Devoting that level of resources to crisis intervention would have the potential of making CPD one of the most-trained departments in the country with respect to behavioral crisis. That goal is commendable. To effectively integrate this goal into the Consent Decree's obligations, the City of Cleveland, Advisory Committee, CPD, and other stakeholders will need to ensure that all elements of crisis intervention policy, training, and service delivery reflect compatible and consistent strategic goals.

As some jurisdictions have observed, providing significant amounts of crisis training to all officers can, without careful planning, run the risk of an inefficient duplication of effort, for multiple demands to be made upon a volunteer community training faculty, and of inconsistency in the final results during an actual crisis event.¹⁶⁵ The Monitoring Team stands at the ready to assist the City with ensuring that it might simultaneously meet its Consent Decree and long-term, aspirational commitments in a manner that does not detract from the effectiveness of either. This implementation of various of the interrelated crisis intervention strategies would best be accomplished sequentially. The Policy Subcommittee should continue to lead the charge in addressing revision of CPD's core crisis intervention policies

to conform to Consent Decree requirements and best practice. The Training Subcommittee should continue to review and make general recommendations for strategies on, respectively, the eight-hour annual training for all officers, the 40-hour training for specialized crisis intervention officers, and the training for dispatchers and call takers. As such, it is likely that additional needs of all CPD officers beyond the eight-hour annual training should be reviewed, and training recommendations that can further strengthen the CPD's capacity to respond to crisis events should be made, once the initial crisis intervention programs have been developed and implemented.

F. Selection of Specialized CIT Officers

The Consent Decree addresses the identification and selection of crisis intervention officers who are specifically "called upon to respond to incidents or calls involving individuals in crisis."¹⁶⁶ Thus, CPD must eventually have a volunteer, dedicated cadre of officers within its ranks who are crisis intervention specialists and regularly dispatched to the scene of incidents involving individuals experiencing a crisis.

Under the Decree, to be a designated "specialized CIT officer," an officer must volunteer, have three years of CPD experience, complete a written application, obtain supervisory recommendations, undergo a disciplinary file review (including use of force-related discipline), and participate in an in-person interview.

CPD is taking the lead on developing a selection process for these specialized CIT officers. This strategy makes sense, and the Work Plan provides a good deal of time to complete the selection process. Going forward, CPD should continue to work with the Advisory Committee, DOJ, and the Monitoring Team on the selection process – which should include a mechanism to allow the Parties to the Consent Decree and Monitoring Team to independently assess whether officers selected to be CIT specialists meet the relevant qualifications criteria.

The Consent Decree identifies five interrelated crisis intervention strategies that will directly involve CPD officers. Accordingly, there must be compatible and strategic approaches across all of CPD's crisis intervention efforts.

¹⁶⁵ See M.T. Compton, et al, "The police-based crisis intervention team (CIT) model: II. Effects on level of force and resolution, referral, and arrest," *Psychiatric Services* 523-529 (2014); R.T. Dupont, "The Crisis Intervention Team Model: An Intersection Point for the Criminal Justice System and the Psychiatric Emergency Service," in A. Fishkind (ed.), *Emergency Psychiatry: Principles and Practice* (2008).

¹⁶⁶ Dkt. 7-1 ¶ 145.

SEARCH & SEIZURE

The Parties agreed in the Consent Decree that the Cleveland Division of Police will ensure its officers “conduct all investigatory stops, searches, and arrests with the goal” that those events protect the rights conferred to individuals under the “Constitution, state and federal law.”¹⁶⁷ CPD has committed to providing its officers with the appropriate guidance and training regarding the Fourth Amendment, “professionalism,” and procedural justice in its interactions with individuals.¹⁶⁸

Specifically, the Division is slated to “revise, develop and implement”¹⁶⁹ policies that train its officers on how to appropriately conduct investigations and searches in the community. Those stops and searches will need to avoid using immutable characteristics – such as race, ethnicity, gender, and perceived sexual orientation – as a factor when evaluating whether or not an individual should be suspected of criminal activity.¹⁷⁰ Officers will not be permitted to make stops without reasonable suspicion, and pat-down searches will not take place absent the requisite “specific and articulable facts” regarding an individual’s possession of a weapon and dangerousness.¹⁷¹

Additionally, officers will be expressly required to inform individuals of their right to decline consent to search (where such

agreement is required).¹⁷² Of equal importance, in those instances where no underlying crimes are alleged and an individual is arrested solely for a crime related to interactions with police, such as resisting arrest and obstructing official business, the officer making the arrest is required to notify his or her immediate supervisor so that the superior officer can arrive on scene to assess the situation.¹⁷³

The reporting and supervision of stops, searches, and seizures are also addressed by the Decree. Officers will be required to use specific details in reports documenting the events that led to an investigatory stop, search, or arrest – while refraining from employing “canned or conclusory statements.”¹⁷⁴ This oversight provides two levels of review, involving the immediate supervisor and command level, where the reporting of the patrol officers are evaluated in a timely fashion to ensure compliance with applicable laws and CPD policies.¹⁷⁵ That review is designed to address all violations and deficiencies in the documentation while explicitly authorizing supervisors with the authority to recommend correction and disciplinary action, along with criminal investigation, where appropriate.¹⁷⁶

In the context of the Court-approved, First-Year Monitoring Plan, the Parties and Monitor agreed to defer close consideration of policies, procedures, and practices related to stops of individuals until the second year of monitoring in 2017. This should not be mistaken as minimizing the importance of issues related to search and seizure to the Cleveland community. Indeed, the Monitoring Team has heard from numerous individuals from across the city that negative views of interactions with CPD stem not necessarily from *what* happens but, instead, from *how* officers treat or interact with residents during those encounters. Reserving key portions of 2017 and 2018 to fundamentally addressing these issues through changes in policy and officer training allows reform in this area to happen within a broader context of actively implementing community-based performance metrics and a comprehensive community policing model. The Monitor looks forward to working on these issues with stakeholders and the Cleveland community going forward.

¹⁶⁷ Dkt. 7-1 ¶¶160.

¹⁶⁸ *Id.* ¶¶173-175.

¹⁶⁹ *Id.* ¶160.

¹⁷⁰ *Id.* ¶161.

¹⁷¹ *Id.* ¶¶162-163.

¹⁷² *Id.* ¶164.

¹⁷³ *Id.* ¶166.

¹⁷⁴ *Id.* ¶167.

¹⁷⁵ *Id.* ¶¶168-172.

¹⁷⁶ *Id.*

ACCOUNTABILITY

The Consent Decree indicates that, to further the goals of effective, safe, and constitutional policing consistent with the values of the community, the City will, among other things, “provide clear guidance to officers; [and] increase accountability”¹⁷⁷ This commitment to expanded accountability is reinforced in the City and CPD’s commitment to:

[E]nsur[ing] that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process.¹⁷⁸

To achieve these outcomes, CPD and the City have agreed to implement several requirements under Article X (paragraphs 176 to 268) of the Decree. Under the First-Year Monitoring Plan, progress toward implementing a number of these requirements either is, or soon will be, underway.¹⁷⁹ Other requirements await full implementation as foundational steps are taken. This section summarizes CPD’s progress toward complying with the Decree’s provisions related to accountability, including Internal Affairs (“IA”), the Office of Professional Standards (“OPS”), Police Review Board (“PRB”).

¹⁷⁷ *Id.* at 1.

¹⁷⁸ *Id.* ¶ 196.

¹⁷⁹ Dkt. 43-1 at 39–47.

A. Cleveland's Accountability Structure Generally

In Cleveland, and at least since the creation of the Office of Professional Standards, the process used to investigate complaints of officer misconduct has depended on the source of those complaints. Potential misconduct identified or discovered internally, by CPD personnel, have been investigated by the Division itself. Although identifying precisely who or what entity within the Division may be responsible for what types of internal misconduct investigations has been somewhat convoluted for some time, the results of any internal investigation eventually are forwarded to the Chief of Police and, in some instances, the Director of Public Safety for review and adjudication.

Complaints of misconduct from residents, or sources external to the Division, have needed to be investigated by OPS. OPS investigators, upon completing an investigation, are responsible for forwarding the investigation on to the Police Review Board, a civilian-based body tasked with evaluating OPS investigations and making recommendations on the case to the Chief of Police.

B. Internal Affairs

“Internal affairs is a generic term that refers to the function of investigating the police or to the police organizational unit responsible for that function.”¹⁸⁰ Although “[t]he types of [IA] units and their functions vary extensively among the police departments in the United States,” internal investigations of officer misconduct are, in agencies of CPD’s size, most typically “reviewed and investigated by internal affairs units.”¹⁸¹

Currently, what CPD has historically called Internal Affairs is housed with the Division’s Bureau of Integrity Control. That Bureau consists of two parts: an Inspections Unit and Internal Affairs. By policy, Internal Affairs has been responsible for conducting primarily *criminal* investigations of potential officer misconduct and investigating any incidents specifically directed to it by the Chief of Police.¹⁸²

The Inspections Unit is charged with “conduct[ing] inspections designed to maximize the performance of police personnel by securing compliance with Division rules, regulations, policies and procedures.”¹⁸³ Among other tasks, it “[r]espond[s] to and

¹⁸⁰ Jeffrey J. Noble & Geoffrey P. Alpert, *Managing Accountability Systems for Police Conduct: Internal Affairs & External Oversight* xiii – xiv (2008).

¹⁸¹ *Id.* at xiv.

¹⁸² CPD GPO 1.3.16, Integrity Control Section Call-Up Teams, Section I(D) (rev. Oct. 14, 2009). Other CPD policies suggest that Internal Affairs also investigates “incidents of Domestic Violence involving members of the Division.” CPD GPO 1.2.01, Organizational Structure, Section II(G)(1) (rev. Mar. 18, 2014).

¹⁸³ CPD GPO 1.2.01, Organizational Structure, Section II(G)(2) (rev.

provide[s] investigative oversight of any incident(s)” referred to it by the Chief, “any use of the beanbag shotgun,” any “[n]on-fatal motor vehicle accidents involving off-duty sworn members,” and certain classes of “[f]irearm discharges and shooting incidents” that the Division’s prior Use of Deadly Force Investigation Team would handle.¹⁸⁴ Although the full scope of its activities is not exhaustively inventoried in existing CPD policy, the Monitoring Team’s current understanding is that Inspections has historically addressed “low-level” accountability issues, such as uniform violations, tardiness concerns, or various logbook audit requirements.

Generally, then, unless a non-criminal administrative investigation for the potential violation by an officer of the Division’s policy has been specifically referred to IA by the Chief, the investigation happens elsewhere – whether within the involved officer’s chain of command or, with less frequency, by some element (not clearly defined in current CPD policy) within the Inspections Unit.

The Monitor observes that, in conversations over several months with Division personnel, some confusion has existed among officers as to the full scope of cases that IA may address. For instance, the interaction between an OPS investigation and an IA investigation is unclear. Similarly, members of the Monitoring Team have received different answers at different times to inquiries about how, if a patrol officer believed that a colleague engaged in possible misconduct, and precisely where that officer should refer the misconduct complaint and precisely what internal entity would be responsible for investigating. CPD’s existing policies are redundant with respect many material details of its internal accountability system – but silent as to many more.

Under the Consent Decree, “Internal Affairs will conduct objective, comprehensive, and timely investigations of internal allegations of officer misconduct.”¹⁸⁵ The term “misconduct” refers to “any improper conduct by an officer, including an alleged violation of CDP policy, procedure, regulations, orders, or other standards of conduct required of City employees including the improper use of force.”¹⁸⁶ The Decree does, however, note that such “misconduct” does not include certain “minor infractions.”¹⁸⁷ Consistent with best practices, comparatively low-level or technical violations of CPD policy will continue to be handled by first-line supervisors.¹⁸⁸

Mar. 18, 2014).

¹⁸⁴ CPD GPO 1.3.16, Integrity Control Section Call-Up Teams, Section II(A)–(C) (rev. Oct. 14, 2009).

¹⁸⁵ Dkt. 7-1 ¶ 177.

¹⁸⁶ *Id.* ¶ 438 (emphasis added).

¹⁸⁷ *Id.* ¶ 438.

¹⁸⁸ See Stephen D. Mastrofski, Dennis P. Rosenbaum, & Laurie Fridell, National Institute of Justice, “Police Supervision: A

Thus, although the Consent Decree preserves a clear role for the Inspections Unit, or whatever entity the Division may find appropriate, to address a specifically-identified class of “minor infractions” like “uniform violations” or “routine motor vehicle accidents,”¹⁸⁹ CPD’s revamped Internal Affairs function will be a primary engine for the Division’s non-criminal investigations

as to whether officers may have violated Division policy. IA will conduct all non-minor, non-criminal internal or administrative investigations of potential officer misconduct. CPD officers will have an affirmative obligation, under CPD policy, when they “observe[] or become[] aware of any act of misconduct by another

employee to report their incident to a supervisor or directly to Internal Affairs.”¹⁹⁰ Division policy “will expressly prohibit all forms of retaliation, discouragement, intimidation, coercion, or adverse action, against any person . . . who reports misconduct”¹⁹¹

The Consent Decree requires that, going forward, Internal Affairs will be headed by a non-sworn civilian.¹⁹² In early February 2016, the CPD, with input from the Parties, Monitor, and CPC, initiated the process for the selection of a civilian head of the Department’s Internal Affairs by finalizing a job description. The City is currently identifying and reviewing the qualifications of potential candidates. The First-Year Monitoring Plan anticipates that this position will be filled and that the new head of IA will be in place by late August.

Once the new IA director has started in that position, CPD will update its Internal Affairs policy manual (currently called the “Internal Affairs Policies and Procedures”), Inspections Unit Manual, and all implicated General Police Orders to reflect the Consent Decree’s requirements relating to IA, reporting misconduct, and preventing retaliation.¹⁹³ The First-Year Monitoring Plan calls for all of this work to be completed, and submitted to the Court for its review, on or before February 1, 2017. As always, the Monitoring Team’s recommendations and assessments of IA reforms will be based on the extent to which they adequately comply with the requirements of the Consent Decree, incorporate feedback of the Parties, are consistent with best practices, and reflect the values and specific input of com-

360-Degree View of Eight Police Departments” at 1 (Feb. 2011) (“Supervisors are then a key to accountability, performance, and vitality in contemporary [police] organizations.”).

¹⁸⁹ Dkt. 7-1 ¶ 438.

¹⁹⁰ *Id.* ¶ 189. Such reporting may be confidential or anonymous. *Id.*

¹⁹¹ *Id.* ¶ 191.

¹⁹² *Id.* ¶ 178 (providing that civilian may not be either “a current or former employee of CDP” and may not be “a current or retired law enforcement officer”).

¹⁹³ *Id.* ¶¶ 176–92.

munity and Division stakeholders.

C. Office of Professional Standards (“OPS”) and Police Review Board (“PRB”)

OPS, as outlined above, is a civilian-led office charged with investigating civilian complaints about CPD officers. The City of Cleveland’s Charter requires OPS to conduct “a full and complete investigation” of all complaints of officer misconduct.¹⁹⁴ The Police Review Board reviews OPS investigations and makes recommendations to the Chief of Police about disposition of OPS cases.

DOJ’s 2014 investigation observed that significant, systemic problems that it had identified in its previous 2004 investigation “remain[ed] and, in some cases, have worsened,” with ongoing “impossibly high caseloads for investigators, . . . inappropriate and premature rejection of civilians’ complaints, substandard investigations, significant delays in completing investigations, and the failure to document and track outcomes.”¹⁹⁵ Consequently, the Consent Decree imposes, and City must ensure OPS’ compliance with, a substantial array of comprehensive obligations on OPS and the Police Review Board.¹⁹⁶

Although the Monitoring Team is still crunching some of the data recently provided to it by the OPS and the City, and will have more to say on the subject when it files its Quantitative Baseline Assessment Report with the Court in June, a staggering number of OPS cases are incomplete – including, as of May 4, 2016, 202 cases from calendar year 2014 and 225 cases from calendar year 2015, according to OPS’ own data. This is unacceptable and irresponsible by any measure. The state of OPS is dire.

Since early May, OPS and PRB initiated steps to review and dispose of long-incomplete investigations. In May 2016, PRB reviewed and disposed of 122 of the 202 pending cases from 2014. It is unclear to the Monitoring Team precisely how OPS and PRB managed to complete 122 cases in just a few weeks. The Parties and Monitoring Team will consequently need to explore how those cases were adjudicated, whether the investigations were in fact complete, and whether the decisions to end and adjudicate outstanding cases were made according to a codified, fair, and rigorous procedure.

The foundational deficiencies associated with OPS are more significant and more urgent than the Monitor and Parties were aware in early 2016 as the Monitoring Plan for the year was constructed. For one thing, the Monitoring Team only started to receive up-to-date statistics about OPS’ work in mid-April 2016, al-

though initial requests were made on October 26, 2015 – leaving the full extent of the problem only recently identified by either the Parties or Monitoring Team.

For another, the Consent Decree required that, within 180 days of the Consent Decree becoming effective on June 12, 2016, OPS needed to have “develop[ed] a revised operations manual” that would include, among other things: a mission statement; detailed investigative, report-writing, and evidence-collection procedures; procedures “outlining when complaints may be administratively dismissed” and a process for “ensur[ing] that complaints are not prematurely or unnecessarily dismissed”; defined procedures, duties, and practices for the PRB; and the system of “dispositions and outcomes” that OPS and PRB will use.¹⁹⁷ Under the First-Year Monitoring Plan, the timetable for providing an initial draft of the OPS Manual was extended to February 1, 2016.

An initial, 14-page draft of the OPS Manual provided to the Monitoring Team was deficient in every regard. As the Monitoring Team indicated to the OPS and the City on March 17, 2016, the draft Manual lacked rigor, contained inaccurate information, failed to address numerous Consent Decree requirements, and omitted a host of material details. It was especially bewildering to the Monitoring Team that the draft did not directly import clearly-stated requirements of the Decree. Most troublingly, the Manual did not impose rigorous requirements on investigators relating to the fairness, thoroughness, objectivity, completeness, and timeliness, and it left unaddressed basic information about the Board operates, functions, and makes decisions.

The Court subsequently agreed to various deadline changes that provided OPS and the City until May 5, 2016 to submit a draft responsive to the Consent Decree and the comments of the Monitoring Team and DOJ.¹⁹⁸ As work progressed on a Manual, it became clear to the Parties and Monitor that, before an effective Manual that codifies how OPS must do business going forward can be seriously contemplated, a comprehensive and intensive organizational assessment of OPS must be conducted to determine how OPS is currently functioning, why few cases are investigated, and what specific reforms must be instituted on an expedited basis to ensure both that new complaints of officer misconduct are fully and fairly investigated and that the enormous backlog of incomplete investigations is addressed.

Over the coming months, the Parties and Monitor have agreed that a sub-group of the Monitoring Team will be detailed to conduct an in-depth, microscopic review of OPS and its functions geared toward developing an emergency organizational transformation plan. This will entail the Monitoring Team investing significant resources in helping OPS turn itself around and providing substantial technical assistance to that end. It is notewor-

¹⁹⁴ Charter of City of Cleveland, § 115-4, Investigation and Disposition of Complaints.

¹⁹⁵ 2014 Findings Letter at 39.

¹⁹⁶ Dkt. 7-1 ¶¶ 193-239.

¹⁹⁷ *Id.* ¶¶ 199, 200.

¹⁹⁸ Dkt. 58 at 2; Dkt. 59.

thy and commendable that the City has recognized the significant deficiencies with OPS and has committed to the Monitor and Department of Justice to fixing OPS.

Although the Monitoring Team is pleased to be able to apply its experience in civilian oversight, investigations, administrative processes, and organizational change to OPS, the provision of such in-depth assistance goes well beyond what the Parties and Monitor initially expected and will, as a result, require the shifting of other areas of focus in the First-Year Monitoring Plan to accommodate a disproportionate amount of attention on OPS in the next several months. All of the Monitoring Team, City, DOJ, and OPS only have so much capacity – and getting OPS into a state where Cleveland residents can have confidence that complaints about the police will result in an objective, impartial, rigorous, and complete investigation will require a great deal of time and effort. Meanwhile, the City has committed to providing additional resources, including added investigators, to help address the situation.

The Monitoring Team has heard, from time to time, that one reason why OPS has struggled relates to a purported lack of resources. In January 2016, both OPS and PRB provided proposed budgets for the 2016 budget year. The proposed budgets were analyzed, as required by the Decree, by the Monitoring Team.¹⁹⁹

Mindful of the scope of the reforms that OPS must make in the coming year, the Monitoring Team could not identify any sound, evidence-based approach to determining what OPS may or may not need as it implements the various requirements of the Decree. For instance, part of the 2016 OPS budget involved a line-item allocation for training for OPS investigators – a sum that we understand to have been based on projected training courses provided by OPS' Administrative Manager that all OPS investigators and management will complete over a two-year period. However, the Parties, OPS, and Monitor will need to determine what training is sufficient in scope to comply with the Consent Decree.²⁰⁰ Given insufficient facts about the training, and numerous other, line items of the OPS budget, the Monitoring Team could not reach any conclusions about the adequacy, or inadequacy, of the 2016 OPS Budget.

Similarly, because a number of changes in the PRB workload and processes will be necessary, the Monitoring Team did not reach any conclusions about the 2016 PRB Budget. The Monitor looks forward to working with OPS and PRB over the coming year to implement many foundational requirements of the Consent Decree and, in doing so, gain a far more structured and comprehen-

sive understanding of what a budget sufficient for OPS and PRB to comply with the Decree might be.

Still, it is unlikely that resource issues alone can explain or justify how OPS has gotten to where it is. Instituting mechanisms for keeping investigators on task, a process for prioritizing investigations if it appears as though the existing staff cannot keep up with all complaints received, reducing processes to writing, and taking advantage of technological efficiencies require time but not necessarily substantial financial commitments.

For instance, last year, it was reported that OPS had “established a centralized electronic numbering and tracking system for all complaints.”²⁰¹ Although such a logging system does appear to be technically in place, OPS still has a distance to travel to use its new electronic case management platform – a dedicated area in IAPro, CPD's selected off-the-shelf officer performance and investigations database software system – in a way that can adequately promote fair, thorough, objective, and timely investigations. Specifically, it does not appear that OPS investigators

are using much of the program's electronic capabilities and are, instead, continuing to accomplish much of their day-to-day work on paper and attaching such work after the fact or, otherwise, using a rudimentary, home-grown database to log basic information. Given that investigators have received in-depth training on

the system, it is puzzling that OPS refuses to use it. Likewise, given that OPS' current procedures and processes have resulted in such an extraordinary backlog of incomplete investigations, it cannot be argued with a straight face that OPS' old, manual systems have been effective.

Cleveland residents and officers deserve to have confidence that resident complaints about police performance or conduct will be objectively, fairly, thoroughly, and timely investigated according to processes and standards that, in themselves, are rigorous, fair, transparent, and keep involved parties updated as to progress. They likewise deserve to have confidence that those investigations will be reviewed in a manner that is similarly impartial and exhaustive. OPS and PRB have some distance to travel before such confidence could be fairly considered to be well-placed.

Cleveland residents and officers deserve to have confidence that complaints about police performance or conduct will be objectively, fairly, thoroughly, and timely investigated according to processes and standards that, in themselves, are rigorous, fair, and transparent.

¹⁹⁹ Dkt. 7-1 ¶¶ 199, 232.

²⁰⁰ *Id.* ¶¶ 195–96; see *id.* ¶ 195 (contemplating a one-year time-frame for initial training sufficient in content and scope to adequately address Consent Decree-required training topics).

²⁰¹ Dkt. 34 at 6.

TRANSPARENCY & OVERSIGHT

Transparency and oversight are elements of a culture and system of real accountability. They are also essential values of effective and well-functioning law enforcement agencies. CPD, like all police departments, has a responsibility to ensure that incidents are properly reported, documented, and investigated and, where warranted, addressed with fair, prompt, and appropriate remedial measures. This responsibility includes regular analysis of both individual incidents and of aggregate data and trends. Such analysis can aid in the detection of unreasonable force or other types of inappropriate behavior and can help supervisors and commanders to take measures to prevent such conduct. It also can help identify policies, procedures, training, or equipment issues that may need to be addressed.

Section X of the Consent Decree, entitled “Transparency and Oversight,” includes two primary sections. The first addresses the creation of a new Police Inspector General. The other addresses the collection and analysis of data on officer and the Division’s performance.

A. Police Inspector General

The Consent Decree requires the creation of a new, internal oversight function within the Division – a Police Inspector General.²⁰² The Inspector General must be an experienced civilian who will be responsible for monitoring, auditing, and reporting on both individual incidents and the systemic, Division-wide

performance of officers.

This new position and its staff will have a number of significant duties, including: reviewing policies and practices to determine compliance with the law, effectiveness, consistency with principles of bias-free and community policing, and whether they promote public safety; auditing compliance with policies; conducting investigations and analyzing investigations conducted by OPS; analyzing trends; developing recommendations for reform; analyzing whether the discipline system is working in a fair and consistent manner; and ensuring that the office’s reports and recommendations are made publicly available.

Although the Inspector General function constitutes an important piece of the accountability-focused reforms of the Decree, the Decree does not provide an express timetable for the City to initiate the hiring of an Inspector General or for a selected candidate to assume the position. In weighing the relative importance of the Inspector General position in light of the competing concerns, the Monitoring Team and Parties concluded that hiring and funding an Inspector General need not necessarily happen during the first year of monitoring. Accordingly, the First-Year Monitoring Plan does not include a deadline for this position during 2016. Establishing the position of the Inspector General while significant foundational work is happening on numerous other terms of the Consent Decree risks the position becoming less attractive for qualified applicants – who might believe that the Consent Decree gives them relatively little room to review or audit compliance with policies that are still just being established or written under the oversight of the Court. A better time to initiate the process of searching for, interviewing, and ultimately hiring an Inspector General may be during, or after, the first quarter of calendar year 2017. Furthermore, under the Consent Decree, CPD must consult with the CPC “in developing the minimum qualifications and experience for an Inspector General.”²⁰³ The Monitor’s current understanding is that this consultation remains ongoing.

Nonetheless, one of the requirements of the Consent Decree is that “[t]he Monitor . . . analyze the Inspector General’s budget and advise the Parties whether it affords sufficient independence and resources”²⁰⁴ When preparing its 2016 budget for the Division, the City included a proposed budget for the Inspector General of \$148,760, which constitutes \$142,960 in salary and benefits and \$5,800 for related professional costs in 2016.

Based upon the information provided, the Monitoring Team defers final judgment on whether the budget proposed for the Inspector General is sufficient to provide it with adequate independence and/or to meet the terms of the Consent Decree. However, given the Division’s size and the scope of the Inspector General’s responsibilities, a single budgeted position will not be

²⁰³ *Id.* ¶ 250.

²⁰⁴ *Id.* ¶ 255.

²⁰² Dkt. 7-1 ¶¶ 250–56.

sufficient to meet the terms of the Agreement. Likewise, we are highly skeptical, based on experiences of other cities in creating similar oversight mechanisms, that an Inspector General could be successful solely by utilizing auditors already working in existing City functions.²⁰⁵ Determinations about how well a police department is functioning necessarily entail both pure auditing, quantitative, and qualitative functions – both systemically and with respect to specific instances or cases.²⁰⁶ Consequently, the Monitor encourages the City to ensure that the budget request in future years corresponds realistically to funding an Inspector General and the requisite support necessary to enable this new oversight mechanism to accomplish the host of significant duties outlined in the Consent Decree.²⁰⁷

B. Data Collection and Analysis

This report addresses elsewhere the intersection of equipment, resources, information technology, and the collection of data necessary under the Consent Decree.²⁰⁸ This section more narrowly focuses on the obligation of the Division to hire a Data Collection and Analysis Coordinator (the “Coordinator”) to help ensure that CPD is maintaining the required information in a manner that “facilitate[s] transparency and . . . broad public access to information related to CDP’s decision making and activities.”²⁰⁹

Among the Coordinator’s primary obligations is ensuring the collection and tracking of all information related to uses of force, search and seizure practices, and allegations of misconduct. Significantly, the Coordinator will be tasked with “ensur[ing] the creation and maintenance of a reliable and accurate electronic

²⁰⁵ See Association of Inspectors General, *Principles & Standards for Offices of Inspector General* 7 (2004) (noting that because Offices of Inspectors General “are established . . . often under differing authorities and mandates[,] [t]hese differences, as well as other factors, may affect the practices of various offices and, consequently, the applicability of standards to these offices”); Institute of Internal Auditors, *International Standards for the Professional Practice of Internal Auditing* (2012) (outlining auditing standards addressing little about in-depth qualitative review and policy recommendations); United States Government Accountability Office, *Government Auditing Standards* (2011) (same).

²⁰⁶ See Rebekah Hollwedel & Tim Burns, Office of the Police Ombudsman, Spokane, Washington, “A Current Sampling of Civilian Oversight of Law Enforcement Practices in the United States” at 5 (June 2012), <https://static.spokane.org/documents/opo/documents-reports/other/civilian-oversight.pdf> (“Other than auditing, reviewing, and investigating complaints, [police] oversight responsibilities can include policy and procedure recommendations, mediation and helping set up and maintain early warning systems to track complaints made against officers who may need more training or counseling from a supervisor.”).

²⁰⁷ Dkt. 7-1 ¶ 253.

²⁰⁸ See *infra* 55-.

²⁰⁹ Dkt. 7-1 ¶ 257.

system to track” use of force-related data and search and seizure information.²¹⁰ The Coordinator also is “responsible for the routine reporting of relevant data” to various entities within the Division²¹¹; conducting annual assessments of both use of force and investigatory stop data²¹²; and analyzing Division practices for potential disproportionate or disparate impacts with respect to “race, ethnicity, gender, disability, sexual orientation, or gender identity.”²¹³ All of these reports must “be made publicly available.”²¹⁴

CPD indicates that it will designate and identify the Data Collection and Analysis Coordinator imminently.²¹⁵ The Division elected to search for an individual from outside the department to fill the position. A job description was created, which the Parties and Monitoring Team reviewed and approved. That job has been posted, and the City is currently in the process of reviewing applications and interviewing applicants.

Once in place, the Coordinator will meet with the Monitoring Team at least monthly.²¹⁶ The Monitoring Team looks forward to working with the new Coordinator and sharing with him or her the data-related insights that it has gained during initial observations and assessments. These include an analysis of data types, format, and availability of various types of information across the Division and City.

One of the Coordinator’s first tasks will be to develop a Data Analysis Protocol to guide the analysis of data in various areas, including stops, searches, arrests, uses of force, vehicle stops, investigatory stops, and complaints of discrimination or bias. Pursuant to the Monitoring Plan, a draft of the Analysis Protocol will be due to the Court by October 12, 2016.²¹⁷ Following approval of the Analysis Protocol, CPD and the Coordinator’s first major assessment on the host of data analysis areas outlined in the Consent Decree will be filed with the Court in late January 2017.²¹⁸

C. Public Availability of CPD-Related Information

The Consent Decree requires that certain documents and information – including CPD’s “policies and procedures, training plans, community policing initiatives, community meeting schedules, budgets, and internal audit reports” – be posted on its

²¹⁰ *Id.* ¶¶ 259, 260.

²¹¹ *Id.* ¶ 261.

²¹² *Id.* ¶¶ 263, 264, 266.

²¹³ *Id.* ¶ 265.

²¹⁴ *Id.* ¶ 267.

²¹⁵ The First-Year Monitoring Plan called for CPD to designate the Coordinator on or before June 1, 2016.

²¹⁶ Dkt. 43-1 at 55.

²¹⁷ *Id.* at 55-56.

²¹⁸ *Id.* at 56.

website.²¹⁹ The Monitoring Team has been monitoring CPD's website and regular intervals to determine whether these types of information are being made available.

As of April 20, 2016, little to none of the required information that should have been available – including existing CPD policies and procedures, training plans to satisfy state-imposed certification requirements, community meeting schedules, budget materials, and any internal reports – in a finalized form had been posted. The City and CPD indicate that they have been working on a mechanism for the Division to be able to more easily and directly post relevant information on the website.



²¹⁹ Dkt. 7-1 ¶¶ 267-68.

OFFICER ASSISTANCE & SUPPORT

The Consent Decree recognizes that, for CPD to best serve the Cleveland community, its officers must have the knowledge, training, resources, and support necessary to perform at the highest level and consistent with both the Division's mission and the community's values. Although the interests of and support for CPD's sworn personnel are woven throughout the Consent Decree, Section XI of the Agreement identifies some specific areas for the City to address: (1) training; (2) equipment; (3) recruitment and hiring; (4) performance evaluations and promotions; and (5) staffing.

Required reforms in each of the five areas discussed in this section are aimed at providing Cleveland's officers with the day-to-day support that they need to ensure their safety, the safety of the public, and the ability to enjoy success in their careers as a result of embracing community-focused policing.

A. Training

A consensus continues to emerge that high-quality and robust training throughout an officer's career is a linchpin to ensuring safe, effective, constitutional, and community-based policing. For instance, the President's Task Force on 21st Century Policing identified "training and education" as one of six basic pillars of contemporary policing, noting that "[a]s our nation becomes more pluralistic and the scope of law enforcement's responsibilities expands, the need for expanded and more effective training has become critical."²²⁰

²²⁰ President's Task Force on 21st Century Policing, Final Report (2015) at 3.

Likewise, the International Association of Chiefs of Police ("IACP"), a major police organization, has noted, with respect to use of force training in particular, that "[w]hat we do know for certain is that leaders have a professional obligation to train law enforcement to the fullest degree in order to ensure officer safety as well as public safety."²²¹ The group identified "concern[s] that in-service trainings have not" in the past "been validated in the same rigorous fashion as academy training, and that the level of accountability is far different for officers when approaching in-service training" in many organizations.²²²

1. In-Service Training

The Consent Decree requires that CPD officers receive no fewer than 40 hours of in-service training annually, with year-to-year training priorities, needs, and commitments established by a Training Review Committee.²²³ The Court approved a new CPD policy substantially expanding this Training Review Committee in April 2016. Responsible for "develop[ing] comprehensive, annual plans relating to the specific training programs that CPD will provide its officers and continually evaluat[ing] the quality of the Division's training," the Committee is "comprised of members of the Division's Training section; designated District-level training coordinators, who serve as a local point of contact about training issues for officers; union representatives; and members of the Community Police Commission."²²⁴ As the Monitor reported to the Court when it recommended approval, the policy creating the Committee, among other things:²²⁵

- Mandates that the Division incorporate "[a] variety of adult learning techniques, scenario-based training, and problem-solving practices, beyond solely traditional lecture formats . . . into all training;"²²⁶
- Provides that officers receive continuing professional training on constitutional use of force, search and seizure, tactics, crisis intervention, community and problem-oriented policing, bias-free policing, annual equipment training, state requirements, supervision, and technology as necessary or required;²²⁷
- Sets the composition of the Training Review Committee;²²⁸

²²¹ International Association of Chiefs of Police & U.S. Department of Justice, Emerging Use of Force Issues: Balancing Public and Officer Safety at 23 (Mar. 2012), <http://www.theiacp.org/portals/0/pdfs/emerginguseofforceissues041612.pdf>.

²²² *Id.*

²²³ Historically, "in-service" training has referred within CPD to annual training that fulfilled both state and Division requirements. The term is used in this report to refer to any and all training provided to current CPD officers.

²²⁴ Dkt. 55 at 1.

²²⁵ *Id.* at 1, 2-3.

²²⁶ Dkt. 55-1 at 3.

²²⁷ *Id.* at 2-4.

²²⁸ *Id.* at 5-6.

- Requires that the Committee create specific minimum and desired standards for training instructors, who must have “exemplary performance records”;²²⁹
- Delineates requirements for the Training Review Committee to identify trends and lessons learned from officer performance, conduct an annual needs assessment, develop a written training plan to ensure that the Division’s needs are addressed in its in-service training programs, and analyze all aspects of CPD’s FTO program;²³⁰ and
- Requires that the Division document officer participation in and attendance at officer training.²³¹

The Monitor attended the Training Review Committee’s first meeting at CPD Headquarters on April 5, 2016 and was encouraged by the immediate level of active engagement exhibited by CPD personnel, union representatives, and CPC commissioners. The Monitoring Team looks forward to continuing to provide technical assistance and support as the Committee establishes how it will carry out its significant charge.

For training provided to CPD personnel in 2016, CPD worked closely with the Parties and the Monitor to identify a prioritized training agenda in the First-Year Monitoring Plan.²³² The year’s major training initiatives include:

State-Required Officer Re-Certification Training. Each year, the State of Ohio requires that police officers receive a minimum number of hours of continuing education training in specified areas in order for officers to remain sworn peace officers in the state (commonly referred to as “OPOTA Training”). In late 2015, CPD worked with the Parties and Monitoring Team to review proposed training, intended to satisfy the 2016 state certification requirements, to ensure that such training would not be inconsistent with Consent Decree training to come. Although officers are receiving some state-required training on areas that touch on the Consent Decree – including procedural justice, crisis intervention, and the Fourth Amendment – this training addressed foundational topics that, indeed, the Monitoring Team and Parties did not determine to be inconsistent with Consent Decree requirements. CPD officers began receiving the state-required training in mid-January 2016.

BlueTeam Training. CPD is in the midst of implementing IA-Pro, an officer performance and management database system. The IAPro platform includes a user-friendly interface called Blue Team, which allows officers to input and view information in the database system in a web-based portal. The required training of officers on Blue Team, is scheduled to begin at the end of April 2016.

Upcoming Training. The First-Year Monitoring Plan ties the

creation and implementation of officer training initiatives to the anticipated approval of new policies.

Officer Use of Force. The Monitoring Plan calls for all CPD officers to have completed basic training on a Court-approved, new use of force policy by December 31, 2016 – allowing for a new use of force policy to be fully effective as of January 1, 2017. This initial force training is intended to provide knowledge, skills, and scenario-based practice on applying the new use of force policy.

This training will be geared toward ensuring that all CPD personnel have a straightforward base of understanding about the new use of force policy’s requirements. Additional, intensive training in 2017 will go even further toward addressing the force-related topics and skills required by the Consent Decree. The Court approved a timetable for force training replaces the initially-contemplated deadlines identified in the Decree to ensure that the finalization of clear rules of the road for officers on force are fully completed before CPD provides training in the area of force.²³³

Initial Supervisor Training. Several requirements of the Decree address officer supervision, as this report details elsewhere. Consistent with these requirements, the Decree mandates that CPD “develop and implement mandatory supervisory training for all new and current supervisors” that covers, among many other topics, “techniques for effectively guiding and directing officers”; “de-escalating conflict”; “evaluating written reports”; “investigating officer uses of force”; “building community partnerships”; “evaluating officer performance”; and other subjects.²³⁴

An Initial Supervisor Training program is slated to begin in mid-August and conclude October 21, 2016.²³⁵ This training, initially proposed by Chief Williams and enthusiastically endorsed by the Parties and Monitoring Team, has been conceived as an early, classroom-based opportunity for the Division to discuss with its supervisors what they can expect in the way of new requirements, changed processes, and reform initiatives upcoming in the Consent Decree process. The intent is to provide supervisors with specific information that they can use, day-to-day and shift-to-shift, to address the concerns, questions, or possible misinformation that may circulate around the Division from time to time as CPD personnel adjust to new or different expectations. Additional supervisor training will be developed in coordination with the Training Review Committee, with the Court-Approved Monitoring Plan also replacing the initially-contemplated timetable identified in the Decree regarding supervisor training.

Crisis Intervention. CPD must provide all officers with “at least eight hours of initial training” on crisis intervention and “annual in-service training thereafter.”²³⁶ Because that basic training

²²⁹ *Id.* at 2.

²³⁰ *Id.* at 6–7.

²³¹ *Id.* at 7.

²³² Dkt. 43-1 at 14–33.

²³³ See Dkt. 7-1 ¶ 84.

²³⁴ *Id.* ¶ 323.

²³⁵ Dkt. 43-1 at 23–24.

²³⁶ Dkt. 7-1 ¶ 143.

for all CPD officers must include both basic information and skill-building on responding to individuals experiencing mental health or other behavioral crisis, the required revisions of CPD's crisis intervention policies will need to be completed before this training can commence.²³⁷ The policy and training changes must be completed in partnership with the Mental Health Response Advisory Committee.²³⁸

The First-Year Monitoring Plan indicates that revised policies that come about in the Consent Decree "do not become effective, and officers are neither expected to conform to its requirements, or be subject to discipline or any employment action pursuant to it, until the Parties and Monitor have certified that training on the policy and its core concepts has been successfully completed."²³⁹ The Monitoring Team cannot stress more strongly, to Cleveland's officers and residents alike, that no policy with substantial operational impact may be implemented in the Consent Decree process before officers have received training on the new policy's specific expectations – or before the Monitor and Parties have so certified. Because training programs are what translate policy expectations into everyday officer performance, officers must be afforded an environment to learn about new or updated rules, engage with the substantive requirements, and practice incorporating that knowledge into real-world scenarios in a training environment before they can be expected to implement actively the new policies in practice.

As training is developed in 2016 and beyond, the Monitoring Team will be looking to see whether CPD's initiatives take full advantage of longstanding best practices in adult education. Generally, effective adult and professional learning programs present problems for adults to solve or tasks for them to complete rather than, or at least in addition to, solely providing information for students to passively consume:

To involve adults in their own learning and adhere to adult learning principles, introduce interactivity whenever possible into your instruction . . . [L]ook for opportunities to use case studies, brainstorming exercises, facilitated discussions, role-plays, problem solving, etc. Use the experience of your adult learners to help you introduce interactivity.

Some training courses depend too much on cognitive learning, using only lectures, slide presentations. This type of learning requires the learner to passively absorb and retain large amounts of *content*. To retain learning, learners need opportunities to make a *connection* with the content and *apply* the learning to real-life.²⁴⁰

²³⁷ *Id.* ¶¶ 154–56.

²³⁸ *Id.* ¶¶ 132–36.

²³⁹ See, e.g., Dkt. 43-1 at 9–13.

²⁴⁰ National Highway Institute, NIH Instructor Development Course, available at <https://www.nhi.fhwa.dot.gov/downloads/free-bies/172/PR%20Pre-course%20Reading%20Assignment.pdf>; see

In the specific context of police officer training, established best practices and the Consent Decree point the way toward "realistic, scenario-based training" that is integrated and woven throughout specific training courses rather than standing alone or separate from other means of content delivery and skills development.²⁴¹

Integrating these practices into CPD's overall training paradigm may require the Division, and City, to embrace decidedly new approaches to providing officer education from a logistical and resource perspective. Previously, continuing education for officers was provided in the form of one 40-hour (one-week) block of "in-service" training. When an officer had completed this training, that officer had functionally completed the major training requirements for the year. Although this approach has certain operational advantages, the effective and efficient implementation of the Consent Decree's requirements will likely change the way that CPD schedules, conducts, and conceives of officer training – with training programs likely needing to start and stop on a rolling basis throughout the year and officers needing to schedule time to participate in several, shorter training programs on distinct topics or policies throughout the year. During the pendency of the Decree, and beyond, CPD must be able to more nimbly address officer needs by providing more training with greater frequency than it generally has in the past. The Monitoring Team will be working with the Division in an intensive, hands-on way in the upcoming months to modify the Division's long-term approaches to officer training.

An innovation that should help CPD in changing its training delivery paradigm is its impending procurement and use of an electronic learning management system ("LMS"). This platform will have two important uses. The first will be to track each individual officer's training history in an electronic form. Currently, training histories are kept manually, and it is not currently clear to the Monitoring Team whether or not such records are entirely complete. The second important use of the LMS will be to provide computer-based or electronic learning to officers. This will provide CPD with a training platform that is less formal and resource-intensive than live classroom training but can be more standardized than trainings conducted by an array of supervisors before officer shifts at roll calls. Many police agencies, government organizations, and private firms have successfully transitioned elements of their ongoing employee training and education to electronic environments, and the Monitoring Team is pleased that CPD has proactively pursued adopting

generally Stephen D. Brookfield, *Understanding & Facilitating Adult Learning: A Comprehensive Analysis of Principles and Effective Practices* (1986); Malcolm S. Knowles, et al, *The Adult Learner: The Definitive Classic in Adult Education and Human Resource Development* (5th ed., 1998).

²⁴¹ Task Force on 21st Century Policing, Final Report at 52 (Mar. 2015); Dkt. 7-1 ¶ 84(e).

this innovation. As of late April 2016, an RFP for the LMS had been issued, and the Division, with City partners, has begun reviewing responses.

The Monitoring Team will be evaluating officer training in various ways to gauge whether the CPD's training programs satisfy substantial and effective compliance with the specific training provisions of the Consent Decree and further the practical implementation of new and revised CPD policies and procedures. One means of evaluation is by review of proposed curricula for training and, ultimately, recommending to the Court whether to approve the training initiative – and subsequently observing such training to ensure that the delivered instruction is consistent with the Court-approved materials.²⁴² Across training initiatives, the Monitoring Team will be basing its determination of the adequacy of training programs “based on the extent to which the [training] adequately complies with the requirements of the Agreement, incorporates feedback of the Parties, and reflects the values and specific input of community and Division stakeholders.”²⁴³ Among the requirements of the Agreement that the Monitor will consider is the extent to which the training makes use of “instructional strategies that incorporate active learning methods such as problem-solving and scenario-based activities, based on current theories of learning.”²⁴⁴

After training curricula have been approved by the Monitor and Court, CPD's training will need to be evaluated pursuant to the Consent Decree along four discrete dimensions:²⁴⁵

Reaction criteria. Trainees’ “affective and attitudinal responses to the training program” assessed “by using self-report measures.”

Learning criteria. “[M]easures of the learning outcomes of training,” which typically take the form of “paper-and-pencil” or other “performance tests” that occur within the training program itself.

Behavioral criteria. “[M]easures of actual on-the-job performance” such as “supervisor ratings or objective indicators of performance” to gauge whether the training has, in fact, had any effect on performance.

Results criteria. Measures of the “value gained by engaging” in the training to the organization in terms of effects on the Division in the aggregate and across time. These will align with the Monitoring Team's ongoing outcome measurement initia-

tives.²⁴⁶

The Monitoring Team looks forward to working closely with CPD's Training Bureau as it begins to craft training programs that provide officers with practical, real-world skills and clear knowledge about the requirements of CPD's new policies and procedures.

2. Academy Training

The Consent Decree also contains certain obligations relating to the training of new officers at the academy.²⁴⁷ For the Academy class that will soon graduate, the City and CPD elected to send recruits to the Ohio State Patrol's academy in Columbus, Ohio before having the class return for additional, CPD-specific training. In the upcoming months, the Monitoring Team will be closely reviewing that training and speaking with members of the most recent class to gauge whether the training conforms to the Decree's requirements.

B. Equipment & Resources

Cleveland does not yet benefit from many of the basic technological innovations associated with contemporary, urban policing. As part of the Consent Decree, “[w]ith the goal of ensuring that CPD is provided with the resources, equipment, and updated technology necessary to implement” the Decree “and to allow officers to perform their jobs safely, effectively, and efficiently,”²⁴⁸ the City and CPD agreed to implement a comprehensive “Equipment and Resource Plan,” approved by the Court, that “will provide for necessary equipment including, at least the following”²⁴⁹:

- [A]n adequate number of computers;
- [A]n adequate number of operable and safe zone cars;
- [Z]one cars with reliable, functioning computers that provide officers with up-to-date technology, including:
 - [A] mobile computer-aided dispatch system that allows officers and supervisors to access real time information received from call-takers and dispatchers;
 - [T]he ability to access CDP's records management system; and
 - [A]ccess to law enforcement databases that allow officers to learn basic information about the civilians with whom they interact and the call history associated with the locations to which they are responding, as well as warrant and driver's

²⁴² See generally Dkt. 43-1 at 13–33.

²⁴³ See, e.g., Dkt. 43-1 at 14.

²⁴⁴ Dkt. 7-1 ¶ 271(b).

²⁴⁵ Winfred Arthur, et al, “Effectiveness of Training in Organizations: A Meta-Analysis of Design and Evaluation Features,” 88 *Journal of Applied Psychology* 234, 235 (2003).

²⁴⁶ Dkt. 7-1 ¶ 367.

²⁴⁷ *Id.* ¶ 277.

²⁴⁸ *Id.* ¶ 291.

²⁴⁹ *Id.* ¶ 293; see *id.* ¶ 295.

license checks, and information concerning restraining orders.²⁵⁰

That Plan must also identify clear mechanisms for ensuring that the City and CPD are “properly maintain[ing] and seek[ing] to continuously improve upon existing equipment and technology,” as well as “appropriately identifying equipment needs and seeking to utilize, as appropriate, emerging technologies.”²⁵¹

On April 21, 2016, CPD completed an initial Equipment & Resource Study aimed toward “assess[ing] its current needs and priorities to perform the functions necessary for CPD to fulfill its mission and satisfy” the Consent Decree’s obligations.²⁵² The Monitor appreciates the CPD’s efforts and is closely reviewing the study. The First-Year Monitoring Plan called for the Monitoring Team to submit to the Court an Equipment and Resource Gap Analysis on June 13, 2016 that “attempts to identify the current state of CPD technology, equipment, and related resources and identifies what will be necessary for CPD to comply with the Settlement Agreement,” with stakeholders convening an Equipment and Resource Summit to begin the discussion of how to get the Division to where it needs to be.²⁵³ Because of operational demands associated with the RNC, the Parties and Monitor have agreed to defer submission of the gap analysis and a convening of stakeholders on the issues until early August 2016. The Monitor looks forward to discussing issues related to addressing CPD’s equipment and resource needs following the RNC and submission of the Team’s Gap Analysis.

Even pending completion of the Gap Analysis, however, it is clear that the City and CPD will have to make significant progress along a host of areas to fulfill their commitments related to equipment and officer resources under the Consent Decree. It must be emphasized that many of the areas that the Division must address – including a records management system, computer-aided dispatch, and ensuring sufficient number of computers in district stations and in cars – are basic technology platforms that Cleveland was overdue to address regardless of whether there had been a Consent Decree. These tools are necessary to protect the public, keep officers safe, and allow the Division of Police to effectively and efficiently conduct law enforcement.

The Monitoring Team notes that many of its members have in-depth, real-world experience working under the resource constraints of local governments from across the country. The Team’s determination of what an “adequate” equipment and resource infrastructure entails will not be tied to unrealistic, undu-

ly expensive, or unnecessary systems. The goal will be to ensure that CPD provides the basic tools and technology foundation for officers to be able to effectively and efficiently keep the public and themselves safe. Far from insisting that CPD buy a Rolls Royce, the Monitor will be attempting to ensure that CPD officers have a reliable, high-functioning vehicle that gets the Division to where it needs to be.

This section summarizes the City and CPD’s efforts to date to address some of the specific equipment and technology requirements of the Consent Decree.²⁵⁴

1. Records Management System (“RMS”/“LERMS”)

A records management system (“RMS”) is the hub of a police department’s day-to-day law enforcement activity. Generally, the RMS is the computerized database platform “that provides for the storage, retrieval, retention, manipulation, archiving, and viewing of information, records, documents, or files pertaining to law enforcement operations.”²⁵⁵ Its importance cannot be understated:

The RMS is the main departmental database . . . [It] is the main storage system that the police department depends on for data storage and retrieval of critical information . . . The data stored on these systems are crucial to performing day-to-day operations, and today’s police environment cannot function without a solid RMS.²⁵⁶

RMS stores “[s]uch records [as] . . . incident and accident reports, arrests, citations, warrants, case management, field contacts, and other operations-oriented records.”²⁵⁷ Thus, when an officer in the field runs a check of an individual stopped for a traffic violation, the officer is querying the RMS. When an officer needs to arrest an individual, the arrest and related reports are entered into the RMS. When the Mayor, Chief, or District Commander needs information about crime trends, this information comes from RMS. Whether information about “people, locations, property, conveyances (e.g., vehicles), and organizations (including businesses and gangs),” the RMS is the primary and often only way that anyone in a law enforcement agency can keep track of critical operational infor-

When it comes to equipment and technology, far from insisting that CPD buy a Rolls Royce, the Monitor will be attempting to ensure that CPD officers have a high-functioning vehicle that gets the Division to where it needs to be.

²⁵⁰ *Id.* ¶ 293(a)–(c).

²⁵¹ *Id.* ¶ 293(e)–(f).

²⁵² Dkt. 43-1 at 48.

²⁵³ *Id.*

²⁵⁴ Dkt. 7-1 ¶ 293.

²⁵⁵ Law Enforcement Information Technology Standards Council, Bureau of Justice Assistance, and National Institute of Justice, “Standard Functional Specifications for Law Enforcement Records Management Systems” [hereinafter “Specifications for RMS”] at x (2003).

²⁵⁶ Ralph Iorio, *Introduction to Criminal Justice Information Systems* 105-106 (2016).

²⁵⁷ Specifications for RMS at x (2003).

mation.²⁵⁸

Until November 2015, Cleveland was using a legacy RMS system originally implemented around 1998. In 2011, the City contracted with New World Systems for an “upgrade” of its aging RMS system to the company’s Law Enforcement Record Management System (“LERMS”) platform. For reasons not entirely clear to the Monitoring Team, or to many Division personnel, the planning and implementation process thereafter took nearly half a decade. One explanation for the length of time necessary to implement the system may be related to the fact that Cleveland is one of, if not the, most populated and most urban environments in which the LERMS platform has been used.²⁵⁹

After LERMS “went live,” it was immediately plagued by significant problems. Many users reported receiving “system error” messages, and many others experienced frequent system freezes for which the only solution was unplugging the computer unit from the wall, re-plugging, and starting the computer and the LERMS program again.

Other issues stemmed not from the vendor software issues but from CPD’s computing infrastructure. Many users who were experiencing the most substantial problems turned out to be using computers that did not meet the manufacturers’ minimum specifications for running LERMS – for instance, by trying to use the system on a 32-bit computer when the minimum specifications require a 64-bit processor. In addition to causing end user problems, the Division’s lack of centralized knowledge about its IT inventory (what computers with what specifications are located where) in the department required IT personnel to have to manually install LERMS updates intended to potentially fix ongoing issues – one computer at a time, in person, and district by district.

Still other issues seemed to stem from business practice and data challenges – including confusion about how the new LERMS system might capture information or accommodate workflows that the Division had used previously. A formalized business process mapping – in which the CPD’s current workflow across the host of end-user utilizations and needs are charted in detail against the capabilities and limitations of the system – did not

take place during the project’s nearly five-year gestation.²⁶⁰

As the technical troubleshooting proceeded, IT experts could not benefit from trial-and-error processes in a test database environment until early March 2016. Prior to that time, the only database version available was the full-blown production environment, where making changes could risk compromising the quality, integrity, or basic stability of the system that officers were depending on live and in the field.²⁶¹

These technological, business practice, and project management problems are not simply technical or bureaucratic – they have real-world ramifications for Cleveland’s officers and the Cleveland community. First, since November 2015, officers and government leaders have been operating with incomplete or outdated information about crime and law enforcement activity. Under Cleveland’s old RMS and with the current LERMS system, officers write out field reports on law enforcement incidents and interactions they have, type them up in a station, print them out, and fax them to a data entry unit that would re-type the officers’ reports and extract relevant data or information to enter into fields within RMS. Leaving aside the inefficiencies and redundancies baked into this approach, the technical problems and program instability that data entry personnel experienced with LERMS led to a backlog, as of April 20, 2016, of some 11,000 to 12,000 records of incident,

arrest, and other police reports not yet entered into the RMS system.²⁶² Without such reports entered into the system, it is as though these events never happened. This is a public safety and officer safety issue. CPD cannot effectively formulate a law enforcement response to incidents that they do not know are

Going forward, a significant governance issue with respect to CPD’s information technology structure must be addressed to ensure sound, active management across City functions.

²⁵⁸ *Id.* at 3.

²⁵⁹ See, e.g., Tyler Technologies, Public Safety Client Success Stories, <http://www.tylertech.com/solutions-products/public-safety-solutions/public-safety-success-stories> (last visited Apr. 29, 2016) (listing as “success stories” of New World platform San Bernadino, California; Frisco, Colorado; Waterbury, Connecticut; Milford, Delaware; Kanakee, Illinois; Chesterfield, Michigan; Syracuse University, Syracuse, New York; Sioux Falls, South Dakota; Germantown, Tennessee; Rockwall, Texas; and Lynden, Washington).

²⁶⁰ See generally Paul Harmon, *Business Process Change: A Business Process Management Guide for Managers and Process Professionals* (3d Ed. 2014); Peter Henderson (ed.), *Systems Engineering for Business Process Change: Collected Papers from the EPSRC Research Programme* (2012).

²⁶¹ See Mario A. Nascimento, *Very Large Data Bases* 1116 (2004) (“In enterprise databases,” such as RMS, “it is common . . . to use test servers in addition to the production server(s). A test server can be used for a variety of purposes including performance tuning, testing changes before they are deployed . . . and so on.”).

²⁶² Although switchboard operators scan police reports when received from the field, categorize them, and assign a number to the incident (therefore ensuring that the incident is formally “entered into the system”), the content, information, and data contained within that report is not entered until data entry specialists manually enter such information. Technically, then, all reports being received from the field are logged in the system, but the assignment of a number has no value to officers in the field and CPD command staff because substantive information about the nature of the incident, individuals involved, location, and the like are entered later in the process by the data specialists – which is precisely the stage at which the backlog has developed.

occurring, and officers may be interacting with individuals or in environments about which they do not have full information regarding recent history.

Core law enforcement functions were significantly impacted by the problems with LERMS. For example, all of the software “plug-in” interfaces used for crime mapping and reporting purposes broke when LERMS was introduced. This included mechanisms for reporting to the county court system, Ohio state systems, an on-line police reporting system, and crime mapping. The loss of crime-mapping capabilities persisted until at least early April 2016 – leading some within the Division, for the four or five months without crime mapping, to resort to tracking crime trends with pushpins, markers, and wall maps based on word of mouth rather than documented crime reports.

The Monitoring Team has reason to believe that the situation with LERMS has stabilized somewhat. Significant attention has been given over the past few months to LERMS’ technical problems. New World Systems, which was recently bought by Tyler Technologies, ultimately came up with a so-called “hot fix” to resolve many of the issues causing error messages and the system timing out. A new lead from Winbourne Consulting, LLC, a technology and management consulting services firm, has been secured to assist in the project management and technical troubleshooting of the LERMS project. Older equipment and infrastructure that was not consistent with minimum specifications necessary to run LERMS were swapped out for more up-to-date equipment.

Going forward, a significant governance issue with respect to CPD’s information technology structure must be addressed to ensure the sound, active management, across City functions, of CPD-related projects. Generally speaking, the management of an IT project must be informed by a “business owner,” who “leads the organization that requires or directly benefits from the products or services being provided by the project,”²⁶³ to ensure that “the computerized solution . . . synchronize[s] with the customer and users’ actual needs for the solution”²⁶⁴

A challenge in the LERMS project was that the Division viewed the LERMS “upgrade” as, fundamentally, a technology project that should be outsourced almost exclusively to IT. However,

Given the challenges that CPD has seen with LERMS, the Monitoring Team will be looking to approve an in-depth implementation plan prior to the start of any implementation of field reporting, computer-aided dispatch (CAD), or other systems.

although billed as an “upgrade,” the LERMS implementation required the adoption of an entirely new platform: replacing a more antiquated system from the mid-1990s with a modern, Windows environment.

Apparently, no CPD personnel were intensively involved in the day-to-day project management of what essentially was the implementation of an entirely new system. That involvement will be necessary going forward to ensure that other required technology upgrades and solutions work for, rather than at cross-purposes from, the Division of Police. In April 2016, CPD formally designated a technology steering committee comprised of IT, CPD, and City representatives. This marks an encouraging, if long overdue, step in the right direction. As new technological elements continue to be introduced to CPD to make policing more effective, and more accountable, CPD itself – and not merely the Division of Public Safety – needs a primary seat at the table so that technologies can be procured and implemented in a way that is most optimized for the Division’s operational needs.

The Monitoring Team notes that the current City personnel working on ensuring that LERMS is a stable, high-functioning records management system, including Chief Information Officer Donald Phillips and IT Project Manager Larry Jones II, have both invested significant time and gone to extraordinary lengths to address issues – the seeds of which, in many instances, were planted well before they worked for the City of Cleveland – far more related to functional practice and implementation issues rather than core computer or technology concerns. Their focus on LERMS has been commendable, and the Monitoring Team looks forward to working with them closely on this and additional law enforcement IT projects.

City IT and implicated CPD personnel are still working through various issues with LERMS logged on an “issues list.” Until these problems are addressed and the Department of Public Safety, CPD, and other City stakeholders commit to mainstream project management structures, it is unlikely that the problems with LERMS will be definitively behind the City – and that the City can make progress on implementing other vital tools for public and officer safety, including field reporting and a modern in-car Computer Aided Dispatch (CAD) system, without encountering the kinds of significant challenges that have plagued LERMS.

Finally, the City has appropriately put focus and resources on addressing the backlog of records, including hiring and training temporary workers to enter information into LERMS. As of May 25, 2016, the backlog of records not entered into LERMS is down to 7,590. The City reports that 4,938 of those records were created within the last three months (March to May 2016). The Monitoring Team appreciates the dedicated efforts of City and CPD personnel to address the backlog.

²⁶³ Maryland Department of Information Technology, “Roles and Responsibilities” at 10, available at <http://doit.maryland.gov/SDLC/Documents/SDLC%20Roles%20and%20Responsibilities.pdf> (last visited Apr. 29, 2016).

²⁶⁴ Terry T. Kidd, *Handbook of Research on Technology, Project Management, Planning, and Operations* 205 (2009); see generally Colleen Garton & Erika McCulloch, *Fundamentals of Technology Project Management* (2012) (outlining best practices in technology project management).

2. Field Reporting

A 2003 study observed that, even then, “[f]ield mobile computing has been at the forefront of police technology implementations throughout the United States for the past several years.”²⁶⁵ Field reporting will allow CPD officers to complete various incident reports in the field rather than in the station – making far less manual and redundant the process of such reporting than current practices, outlined above, allow.

Because field reporting essentially serves as a front-end interface for the RMS system, successful implementation of field reporting depends substantially on resolving ongoing issues with LERMS. The Monitoring Team looks forward to the implementation of field reporting occurring within the framework of the Equipment and Resource Plan. Given the challenges that CPD has seen with LERMS, the Monitoring Team will be looking to approve an in-depth implementation plan prior to the start of any implementation of field reporting, CAD, or other systems.

3. Infrastructure (Adequate Numbers & Deployment of Computers, Cars, and Other Tools)

The Consent Decree requires that CPD ensure, and the Monitoring Team certify, that CPD provide officers with “an adequate number of computers” and an “adequate number of operable and safe zone cars” that have “reliable, functioning computers” that can access CAD, RMS, and other related law enforcement databases.²⁶⁶ CPD’s Equipment and Resource Study, as well as the Monitor’s upcoming Equipment and Resource Gap Analysis, will assist in addressing where CPD is now, what an adequate infrastructure in terms of officer-focused technology might entail, and what is necessary to get CPD to where it needs to be on the equipment front.

The Monitor observes that, whether always the case or not, we have consistently heard from officers, and seen ourselves, that many elements of CPD’s core infrastructure – computers, cars, and the like – are either aging, run-down, or deficient. Multiple police officers told us that CPD officers will go to local garage sales to find spare parts for some of the Division’s desk phones that are no longer supported by the manufacturer. We have seen CPD cars in significant levels of disrepair – cars that personnel at times have serviced on their own time and dime. In some instances, there are reports that CPD personnel have resorted to using their personal vehicles for some types of Division work. We continue to identify what appears to be an insufficient number of computers available to patrol officers within CPD’s five stations available for them to use actively to effectuate shift-to-shift duties. It was

The Monitoring Team has consistently heard from CPD officers that many elements of the Division’s core infrastructure are aging, run-down, or deficient.

only recently that all officers obtained the ability to access City-wide email – which still needs to become essential for basic communication, including rapid and efficient dissemination of both mundane and critical information.²⁶⁷ In the absence of in-car or mobile tools, many officers rely on their personal mobile phones for Division-related communications and record-keeping. Far too many critical law enforcement functions depend on manual processes or idiosyncratic officer workarounds rather than harness the advantage of uniform, computerized platforms.

C. Recruitment & Hiring

The Decree calls for CPD to update its processes and protocols for recruiting and hiring CPD officers, in order to ensure that the Division “successfully attracts and hires a diverse group of qualified individuals.”²⁶⁸ To do so, the Division is charged with “develop[ing] a recruitment policy and a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross-section of the community, . . . establish[ing] and clearly identify[ing] the goals of C[PD]’s recruitment efforts . . .”²⁶⁹ That plan must, in particular, include specific strategies for:

[A]tracting a diverse group of applicants, including officers who are familiar with the different neighborhoods of Cleveland, who possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community.²⁷⁰

Consistent with the Monitoring Plan, the City provided a draft Recruitment and Hiring Plan on February 16, 2016. The Monitor and Department of Justice separately provided feedback to the minimalistic outline provided. Those comments recommended that subsequent drafts be more specific; include specific, measurable, realistic, and time-bound objectives; set forth clear deliverables that “translate [the] project mission . . . into actionable realities”²⁷¹; provide specific deadlines for all deliverables; incorporate elements from successful recruitment plans implemented elsewhere and from best practices literature.²⁷² The Plan suggested to the Monitoring Team

²⁶⁷ See *id.* ¶ 297 (requiring CPD to “utilize a department-wide e-mail system to improve communication and information sharing among all department personnel, including command staff, supervisors, and patrol officers”).

²⁶⁸ *Id.* ¶ 300.

²⁶⁹ *Id.* ¶ 302.

²⁷⁰ *Id.* ¶ 304.

²⁷¹ Jack Ferraro, *Project Management for Non-Project Managers* 172 (2012).

²⁷² See International Association of Chiefs of Police & Community Oriented Policing Services Office, “Law Enforcement Recruitment Toolkit” (2009), <http://ric-zai-inc.com/Publications/copsp171-pub.pdf>; Jeremy M. Wilson, et al, RAND Corporation,

²⁶⁵ Ralph E. Ioimo & Jay E. Aronson, “The Benefits of Police Field Mobile Computing Realized by Non-Patrol Sections of a Police Department,” 5 *Int. J. Pol. Sci. & Mgmt.* 195, 195 (2003).

²⁶⁶ Dkt. 7-1 ¶ 293.

both a lack of dynamic, outside-the-box thinking about how to attract diverse and qualified officers and a significant lack of a clear project management structure.

The City provided a revised draft on April 11, 2016. Although somewhat more specific, the draft version nonetheless still failed to specify an overall, measurable objective for the effort; did not indicate precisely what community stakeholders would be engaged and how during a recruitment effort; stated only that a subsequent media outreach plan would be crafted at some undefined stage prior to January 1, 2016 rather than endeavoring to spell out precisely what media strategies might be used; and outlined vague plans to measure the success of the overall initiative. Given the amount of work still necessary to craft a sufficient, actionable plan for complying with paragraph 304 of the Consent Decree, the Monitor and Parties have agreed, pending approval of the Court, to revisit active revision and work on the Plan after the RNC is completed – which also allows the Plan to be considered in the context of CPD’s development of a comprehensive, new community and problem-oriented policing model. Indeed, the Monitoring Team believes that considering the hiring and recruiting of new officers will allow the City and CPD to have a clearer understanding of precisely what qualifications, skills, experiences, and attributes they should be looking for in attracting candidates capable of executing a new vision of day-to-day policing in Cleveland.

In the meantime, the Division will need a new class of recruits, to keep pace with retirements and attrition, to begin the Academy in early 2017. Depending on when a comprehensive Recruitment and Hiring Plan that meets all Consent Decree requirements can be implemented, it is likely that the next class will need to be recruited and selected without the benefit of the comprehensive Plan being in place.

Nonetheless, CPD has begun some work on some important components of the ultimate Recruitment and Hiring Plan. One encouraging feature is the commitment to implementing an on-line application process to make applying to be a Cleveland officer easier and to allow for recruiters and hiring managers to communicate with applicants across all stages of the process. In January 2016, the City contracted with NEOGOV, a software provider, to provide the infrastructure for such on-line applications. Likewise, in February 2016, the City issued a Request for Proposals for a vendor to provide overhauled testing of prospective recruits. A vendor has been slated to be selected by June 1, 2016.

²⁷³ “Police Recruitment and Retention for the New Millennium: The State of Knowledge” (2010), http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG959.pdf; CALEA, “Effective Public Safety Recruitment Plans,” <http://www.calea.org/content/effective-publicsafety-recruitment-plans> (last visited Mar. 14, 2016).

D. Performance Evaluations and Promotions

Part of the culture change that will be necessary across the Division relates to how officer performance is evaluated – and ensuring that high-performing officers have access to promotional opportunities. Over time, CPD must “develop and implement fair and consistent practices to accurately evaluate officers” across a number of dimensions including “integrity, community policing, and critical police functions.”²⁷³

The First-Year Monitoring Plan does not directly address these issues. In part, that is because the “formalized system documenting the annual performance evaluations of each officer” must “include an assessment of,” among other things, “community engagement and communication with the public,” “use of community and problem-oriented policing,” “de-escalation strategies,” and “techniques for dealing with individuals in crisis.”²⁷⁴ With such policies, procedures, systems, and training still being some months away from being fully implemented, it is simply too early in the Consent Decree process to devise an evaluation system that features these elements.

The Division must also “develop and implement fair and consistent promotion practices that . . . result in the promotion of officers who are effective and professional.”²⁷⁵ Because factors that the Consent Decree will require to be considered include elements such as the “effective use of community and problem-oriented policing strategies” within CPD’s community-oriented policing model that will be addressed later this year, the promotional process is likewise not addressed in the First-Year Monitoring Plan.²⁷⁶

The Monitoring Team looks forward to working with the Parties, Division, CPC, and other community stakeholders on developing a system of evaluation and promotion within the Division that gives greater confidence that CPD personnel are being evaluated on the elements and features of performance that are most critical, with officers being rewarded for community-oriented, respectful, and effective policing.

E. Staffing

A number of elements of the Consent Decree are likely to compel changes in the way that CPD deploys its existing personnel and, potentially, in the overall number of sworn and civilian personnel. Specifically, CPD’s total number of personnel and its plan, procedures, and policies governing the staffing, assignment, and deployment of such personnel within its districts must allow the Division to, among other things:

- Implement a “comprehensive and integrated problem-ori-

²⁷³ Dkt. 7-1 ¶ 313.

²⁷⁴ *Id.* ¶ 314.

²⁷⁵ *Id.* ¶ 317.

²⁷⁶ *Id.* ¶ 318.

ented policing model”²⁷⁷;

- Ensure rigorous investigations and reviews of force incidents²⁷⁸;
- Ensure that specialized crisis intervention officers “are dispatched to an incident involving an individual in crisis” and are able to “have primary responsibility for the scene”²⁷⁹;
- Provide the ability for supervisors to eventually “review all documentation of investigatory stops, searches, and arrests”²⁸⁰;
- Ensure that officers can receive the training required by the Decree²⁸¹;
- Ensure that officers guarantee necessary evaluations²⁸²;
- Provide necessary opportunity for “first line supervisors [to] provide close and effective supervision of officers”²⁸³;
- Implement the Officer Intervention Program²⁸⁴; and
- Provide supervisors with the ability to “conduct adequate random and directed audits of body worn camera recordings.”²⁸⁵

Given the scope of requirements that implicate the Division’s basic staffing and deployment, the types of changes that the Division and City will need to contemplate are unlikely to be satisfied by minor adjustments, temporary “band-aids,” or half-measures.

The Consent Decree requires that CPD “complete a comprehensive staffing study to assess the appropriate number of sworn and civilian personnel to perform” CPD’s mission and fulfill the requirements of the Decree.²⁸⁶ In particular, the Staffing Plan must “provide for each of the following”:

- [P]ersonnel deployment to ensure effective community and problem-oriented policing;
- [A] sufficient number of well-trained staff and resources to conduct timely misconduct investigations;
- [T]o the extent feasible, Unity of Command; and
- [A] sufficient number of supervisors.²⁸⁷

Under the First-Year Monitoring Plan, the Staffing Study was due to the Monitor and Parties on June 1, 2016. The Monitoring Team looks forward to reviewing the Study in the coming days. Subsequently, CPD “will develop an effective, comprehensive Staffing Plan that is consistent with its mission, including community and problem-oriented policing, and that will allow”

²⁷⁷ *Id.* ¶ 27.

²⁷⁸ Dkt. 7-1 ¶¶ 93–130.

²⁷⁹ *Id.* ¶ 151.

²⁸⁰ *Id.* ¶ 168.

²⁸¹ *Id.* ¶ 271.

²⁸² *Id.* ¶¶ 313–16.

²⁸³ Dkt. 7-1 ¶ 322.

²⁸⁴ *Id.* ¶¶ 326–36.

²⁸⁵ *Id.* ¶ 339.

²⁸⁶ *Id.* ¶ 319.

²⁸⁷ *Id.* ¶ 320.

the Division to comply with the whole of the Decree’s requirements.²⁸⁸



²⁸⁸

Dkt. 7-1 ¶ 319.

- [I]dentifying training and professional development needs; and
- [P]roviding leadership, counseling, redirection, and support to officers as needed.²⁹¹

The Division must ensure that CPD supervisors are held “directly accountable for the quality and effectiveness of their supervision”²⁹²

In addition to setting forth clear expectations for CPD supervisors in Consent Decree-related policies, both “new and current supervisors” will be receiving substantial training over the coming years.²⁹³ As this report outlines elsewhere, CPD supervisors are currently expected receive the first Court-approved supervision training in late Summer and early Fall 2016. This Initial Supervisor Training is intended to provide a substantive overview of Consent Decree requirements and changes so that supervisors can have a solid understanding of what is coming down the pipeline.

Over the next few years, supervisors will be receiving not only targeted training on new or changed responsibilities in updated policies and procedures but also broader training on effective management skills, leadership development, supervisory techniques and approaches, evaluating performance, understanding community and work styles, and other areas.²⁹⁴ This “in-service management training”²⁹⁵ will be aimed at giving sergeants the practical toolkit that they need to promote high-quality performance from those under their command.

The Monitoring Team’s current understanding is that new sergeants have historically received relatively little training other than on CPD policies and other bureaucratic considerations. Because effectively managing, supervising, and leading individuals who were only recently a new sergeant’s direct peers involves a significant and sometimes-foreign skill set for newly-minted supervisors, the Team will also be exploring with the Division how to create something akin to a Field Training Officer program for new sergeants, lieutenants, and other command staff.

SUPERVISION

A. First-Line Supervisors

“It is an established principle in policing that first-line supervisors – sergeants – play a critical role in directing and controlling the behavior of officers in police-citizen interactions.”²⁸⁹ In police organizations, “[t]he sergeant is the person to whom the rank-and-file officer will look for direction, guidance, and assistance with problem solving,” with first-line supervisors “essentially determin[ing] the efficiency and effectiveness of the agency.”²⁹⁰

The Consent Decree recognizes the importance of “close and effective” first-line supervision, which includes:

- [R]esponding to, investigating, and documenting force . . . ;
- [E]nsuring that officers are working actively to engage the community with the goal of increasing public trust;
- [M]onitoring, commanding, and controlling incidents and calls for service;
- [R]eviewing arrest reports for compliance with law and this Agreement;

²⁸⁹ Samuel Walker, National Institute of Justice, “Police Accountability: Current Issues and Research Needs” (2007) at 12, *available at* <http://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf>.

²⁹⁰ Sean E. Moriarty, “The Leadership of Police Organizations Program in the Delaware State Police: Recommendations for Law Enforcement Leadership Development,” *Police Chief* (May 2009), *available at* http://www.policchiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1792&issue_id=52009#4.

²⁹¹ Dkt. 7-1 ¶ 322.

²⁹² *Id.* ¶ 325.

²⁹³ *Id.* ¶ 323.

²⁹⁴ See, e.g., Bruce J. Avolio, *Full Leadership Development: Building the Vital Forces Within Organizations* (1999) (outlining approaches to and principles of leadership development); Steven A. Murphy & Edward N. Drodge, “The Four I’s of Police Leadership: A Case Study Heuristic,” 6 *Int’l J. Pol. Sci. & Mgmt.* 1 (2004) (leadership development in context of police agencies); Terry D. Anderson, et al, *Every Officer is a Leader: Transforming Leadership in Police, Justice, and Public Safety* (2000) (same); Richard Hughes, et al, *Leadership: Enhancing the Lessons of Experience* (5th ed. 2005) (outlining approaches to personnel management and leadership).

²⁹⁵ Dkt. 7-1 ¶ 324.

B. Officer Intervention Program

1. Overview

This section discusses CPD's progress in complying with requirements to modify its Officer Intervention Program ("OIP").²⁹⁶ The Consent Decree requires that the OIP become a broader, systemic management tool that will "proactive[ly] identif[y] . . . potentially problematic behavior among officers" and provide non-disciplinary supervisory intervention aimed at "modify[ing] officers' behavior and improv[ing] performance" before the performance may cause more significant problems.²⁹⁷

The Consent Decree requires that CPD's existing OIP be comprehensively transformed into an effective "early intervention system." The concept of an "early intervention system" is not new. As early as 1981, a national civil rights commission recommended that police departments develop systems to identify officers who might be prone to misconduct claims.²⁹⁸ For decades, major law enforcement groups have endorsed the utility of police agencies identifying problematic performance trends early so that supervisors can provide mentoring, training, and other performance interventions.²⁹⁹ This is especially true in light of "growing evidence [to] support[] the perception that a small percentage of officers are responsible for a disproportionate share of citizen complaints and other concerns."³⁰⁰ An early intervention system builds on "the basic principles of personnel management and human resource development that have developed in the private sector."³⁰¹ The purpose of the system "is to translate officer performance indicators into a formal management tool for identifying officers with potential behavioral problems" or issues that would benefit from some form of proactive intervention.³⁰² Such a system relies on a database that logs information about various elements of an officer's performance – uses of force, firearm discharges, civilian complaints, disciplinary action taken against officers, failures to comply with the Division's body-worn camera policies, and many others.³⁰³

Over the next few years, supervisors will be receiving not only targeted training on new or changed responsibilities but also broader training on effective management skills, leadership development, supervisory techniques and approaches, evaluating performance, work styles, and other areas.

Supervisors will be required to regularly review this performance data. When an officer reaches a certain, defined threshold in some area of performance, a supervisor will be required to assess an officer's performance to determine whether there are any patterns of conduct that may suggest potential deficiencies, the effects of stress, or some other issue that might be impacting the officer's work and whether some sort of intervention may be useful.

It must be emphasized that the OIP system, and process, will always constitute "non-disciplinary corrective action."³⁰⁴ The OIP is a mechanism for the Division to proactively and affirmatively address officer performance trends – separate and apart from the disciplinary process. Indeed, the Consent Decree expressly provides that "[t]he intent of OIP is to intervene before discipline is required."³⁰⁵

The OIP system does not take the place of the disciplinary process, however. Officer performance in specific incidents that might constitute misconduct must, under other Consent Decree provisions, be rigorously investigated.

2. Current Implementation Status

CPD's existing officer intervention program constitutes a good starting point to the extent that it identifies personnel subject to administrative charges, sick time abuse, civilian complaints, use of force incidents, and internal investigations.³⁰⁶ Supervisors, or other employees, can refer officers who may benefit from "guidance or assistance" are referred to the program by the Occupational Medical Director of CPD's Medical Unit.³⁰⁷

Nevertheless, the existing program will need to be substantially overhauled to conform to the Consent Decree's requirements. For one thing, first-line supervisors currently do not have regular and timely information about performance trends for officers under their supervision, specifically those that reflect potential risks and require their attention. Tracking officer performance over time depends on a supervisor's recollection or generalized intuition, not objective information or hard data. Because they are, "many say, the most important figure[s] in the police supervisory and command hierarchy" when it comes to early intervention systems,³⁰⁸ CPD's front-line supervisors will be responsible

²⁹⁶ *Id.* ¶¶ 326–36.

²⁹⁷ *Id.* ¶¶ 326, 327.

²⁹⁸ U.S. Civil Rights Commission, *Who Is Guarding the Guardians?* 80 (1989).

²⁹⁹ See CALEA Standard 45.1.15 cmt. (4th ed. 2001); International Association of Chiefs of Police, *Building Integrity and Reducing Drug Corruption in Police Departments* 80 (1989).

³⁰⁰ Geoffrey P. Alpert & Samuel Walker, "Police Accountability and Early Warning Systems: Developing Policies and Programs," 2 *Justice Research & Policy* 59, 60 (2000).

³⁰¹ *Id.* at 61.

³⁰² *Id.*

³⁰³ Dkt. 7-1 ¶ 328.

³⁰⁴ *Id.* ¶ 327.

³⁰⁵ *Id.*

³⁰⁶ CPD GPO Number 1.1.20-I-A.

³⁰⁷ CPD GPO Number 1.1.20 Purpose, I-B.

³⁰⁸ John S. Dempsey & Linda S. Forst, *An Introduction to Policing* 87 (2015); see, e.g., U.S. Department of Justice, Office of Community Oriented Policing Services, "Strategies for Intervening with Officers through Early Intervention Systems: A Guide for

for assessing officer performance in a host of areas, rather than having the Medical Unit alert supervisors as to the performance of the officers under their command.

Additionally, rather than something related to an internal medical division about which officers and supervisors have understandable concerns about privacy implications, the program will need to be considered by the Division as a primary officer performance management tool – and something that is a primary vehicle for self-managing the risks of unconstitutional policing. As such, the Division will need to consider how to expand OIP so that it includes a broader range of interventions (training, counseling, peer-based mentoring, etc.) and ensures that the assistance provided by means of OIP is a proactive form of career development and mentoring rather than something that, while non-disciplinary, feels to officers either too much like the formal discipline process or like a mental or medical health referral.

Further, the success of the OIP will rely on the implementation and use of “a computerized relational database that will be used to collect, maintain, integrate, and retrieve data department-wide” on officer performance.³⁰⁹ As described elsewhere in this report, the Division is in the process of implementing IAPro, the officer performance database. One of the ultimate functions that IAPro – and its related, web-based front-end user interface called BlueTeam will serve as a “one-stop shop” for a host of information about officer performance in the field – will perform for CPD will be the automatic “trigger[ing of] a formal review” when certain “threshold levels” of activity “for each OIP indicator” are met.³¹⁰

For the OIP to be based on a sufficiently robust data set, IAPro will need to include some amount of historical information. In some of the classes of information required to be a part of the OIP, the process of gathering historical data will be more difficult simply because CPD either did not uniformly track the information or, if it did, the data may be scattered across a number of discrete databases or informal spreadsheets maintained by officers.

Front-Line Supervisors” at 4 (Feb. 2006) (observing that “first-line supervisors are really the linchpin of EIS” such that supervisors implementing a robust EIS “will be required to handle responsibilities that previously may not have been considered part of their job”); U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, “How Police Supervisory Styles Influence Patrol Officer Behavior” at 2 (June 2003) (noting that “active style of supervision” has “the most influence over patrol officers’ behaviors”); James J. Willis, U.S. Department of Justice, Community Oriented Policing Services Office, “First-Line Supervision Under Compstat and Community Policing” at 5 (March 2011) (“First-line supervisors play a key role in what the police organization does and how it does it . . .”).

³⁰⁹ Dkt. 7-1 ¶ 328.

³¹⁰ *Id.* ¶ 329.

C. Body-Worn Cameras

Within the last 12 to 18 months, the Cleveland Division of Police has joined the more than 6,000 estimate police departments in the United States that use body cameras in some capacity.³¹¹ All CPD patrol officers are equipped with body cameras, with specialty units (such as personnel working at the Cleveland Hopkins International Airport) slated to be equipped with units in the near future. CPD and the City of Cleveland are to be commended for embracing a technology that, in other jurisdictions, has been associated with substantial decreases in use of force and civilian complaints.³¹²

CPD’s “use of body worn cameras is not required by” the Consent Decree.³¹³ However, “[i]f C[PD] chooses to use body worn cameras,” which it has, the Division must “provide clear guidance and training on their use” and “implement protocols for testing equipment and preserv[ing] . . . recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals.”³¹⁴ The Decree outlines CPD supervisor responsibilities for viewing recorded incidents and “conduct[ing] adequate random and directed audits of body worn camera recordings . . . to confirm compliance with C[PD] policy.”³¹⁵ The Division must also ensure that officers are “subject to the disciplinary process for intentional or otherwise un-

³¹¹ Jon Schuppe & Andrew Blankstein, “LAPD Skid Row Shooting Brings Focus to Body Camera Technology,” NBCNews.com (Mar. 2, 2015), <http://www.nbcnews.com/news/us-news/lapd-skid-row-shooting-brings-focus-body-camera-technology-n315731>; accord Zusha Elinson, “Police Use of Body Cameras Raises Questions Over Access to Footage,” *Wall St. Journal* (Apr. 28, 2015), <http://www.wsj.com/articles/police-use-of-body-cameras-raises-questions-over-access-to-footage-1430253877>.

³¹² See, e.g., “Oakland Mayor Says Police Body Cameras Have Cut Use-Of-Force Incidents Significantly in 5 Years,” KPIX (Dec. 17, 2014), <http://sanfrancisco.cbslocal.com/2014/12/17/oakland-mayor-says-police-body-cameras-have-cut-use-of-force-incidents-by-60-in-4-years-jean-quan-oakland-police-department-opd-officer-involved-shooting/> (reporting decrease in use of force incidents by nearly 75 percent in six years that Oakland Police Department has used body cameras); Tony Perry, “San Diego police body camera report: Fewer complaints, less use of force,” *L.A. Times* (Mar. 18, 2015), <http://www.latimes.com/local/lanow/la-me-ln-body-cameras-20150318-story.html> (noting 40.5 percent fall in complaints and 46.5 percent reduction in “personal body” force following adoption of body cameras); Tony Farrar, “Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-force,” Police Foundation (Mar. 2013), http://www.policefoundation.org/content/body-worn_camera (summarizing 50 percent reduction in use of force over a one-year period in Rialto, California).

³¹³ Dkt. 7-1 ¶ 337.

³¹⁴ *Id.*

³¹⁵ *Id.* ¶¶ 338–39.

justified failure to activate” cameras in accordance with CPD policy.³¹⁶

CPD crafted their body-worn camera policy in mid-2015. Because CPD engaged in a policy process that engaged community organizations, stakeholders, and residents, the task of the Monitoring Team has been to confirm that the body-worn camera policy appropriately incorporates community comment, conforms to the Decree’s specific requirements, and sufficiently promotes the Decree’s other objectives.

To examine the extent to which the body-worn camera policy incorporates or reflects community values, the Monitoring Team engaged in a community outreach effort. One element of that effort was to discuss the current policy with organizations such as the ACLU and NAACP that were involved in the initial policy process. These groups provided helpful feedback and, while recommending some updates and changes to the existing policy, expressed a generally positive view of the process that CPD used to create that initial policy.

Another element of the Monitoring Team’s efforts was to make available and publicize a non-scientific feedback survey to allow Cleveland residents to provide their views, input, and feedback on the issue of body cameras. The Monitoring Team received 304 responses either on-line or through completing a printed version of the on-line questionnaire. Those who provided feedback generally were supportive of current CPD policies regarding the activation and deactivation of body camera units, although a sizable minority (around one-third of respondents) thought that cameras should be on at all times. Residents who took the survey strongly believed that procedures should be in place to allow individuals who have complaints about officer conduct or performance to access body-worn camera footage. Residents agreed with current CPD policies about only discontinuing the filming of an incident until an encounter has ended or they have been ordered to stop recording by a supervisor; about not stopping record (even if asked by someone to do so) unless the officer enters a private residence without a warrant (and when domestic violence is not at issue) or when a victim refuses to talk to an officer while the camera records; and about current requirements for an officer wearing a camera to tell a resident, at the first reasonable opportunity, that the camera is on.

The Department of Justice and Monitoring Team have provided feedback on the body-worn camera policy. The Division has subsequently provided revisions of the policy, responding to the concerns, to the Department of Justice. It is anticipated that the Monitoring Team will submit CPD’s updated body-worn camera policy, along with the Team’s approval or disapproval of the policy, to the Court in the coming week.



³¹⁶ *Id.* ¶ 340.

COMPLIANCE & OUTCOME ASSESSMENTS

A. Nature of Compliance & Outcome Assessments

The Consent Decree constitutes a comprehensive, and interrelated, set of reforms. In one way, the Decree can be viewed as requiring CPD to adopt a substantial program of reforms that have worked well in other jurisdictions to address the same or similar problems.

A good portion of the Monitoring Team's efforts, especially in the early stages of Consent Decree implementation, will always be on what might be called "compliance assessments."³¹⁷ This class of work involves the Monitoring Team evaluating whether CPD and the City are, in fact, doing what is required under the Consent Decree; doing it with a sufficient level of quality; and ensuring that the approved policies, procedures, and training are being actively implemented in the field by officers. In simplest terms, the Monitor's "compliance reviews" evaluate if CPD and the City are doing what they are supposed to be doing under the Decree. If CPD and the City are meeting technical requirements, the compliance assessments seek to verify whether the implementation of reforms are being performed in actual practice over a sufficiently sustained period. Thus, compliance assessments also seek to ensure that reform exists not merely on paper or in theory but in day-to-day practice.

However, the Consent Decree reforms will only be worthwhile to the extent that they drive real change in the real world – and in the ongoing, daily experiences of residents from across Cleveland's diverse communities. The Consent Decree will not have

³¹⁷ Dkt. 7-1 ¶ 367 (outlining distinction between "compliance reviews and audits" and "outcome measurements").

succeeded if the Division has sterling policies and ideal processes on the books, which officers follow and the Division rigorously enforces, but the policies do not ultimately translate into conditions and results that Cleveland residents feel in their neighborhoods and CPD officers recognize on a daily basis.

To this end, the Decree requires the Monitor to also conduct "outcome assessments," or "qualitative and quantitative assessments to measure whether implementing this Agreement has resulted in constitutional policing" in Cleveland.³¹⁸ Thus, the Decree requires that the Monitor assess whether the implementation of the Consent Decree's reforms is contributing to the necessary outcomes of ensuring safe, effective, and constitutional policing consistent with Cleveland's values. Ultimately, these "outcome measurements" explore whether implemented changes are having the actual effects across the Cleveland community that they are intended to have.

A notable feature of the Cleveland Consent Decree is its express inclusion of a host of specific outcome assessments that the Monitor must evaluate and track over time.³¹⁹ This section of the report addresses the Monitoring Team's work, to date, on taking baseline measurements in those predefined areas so that, over time, the Court can gauge whether the Consent Decree is driving the overall change in CPD's culture and practice that the Decree contemplates.

B. Monitor's Progress to Date

1. Baseline Assessments

In a filing with the Court, the Monitor described in detail the data that is being collected with respect to CPD's performance in 2015 – the last calendar year before reform began in earnest under the First-Year Monitoring Plan – to establish a baseline for the CPD along a number of the required outcome areas.³²⁰

In some instances, the assessments will be quantitative, and the process will be geared toward identifying data with which new numbers in subsequent years can be compared. This type of data will include, but is not limited to: numbers of uses of force and the numbers per factors such as the subject's perceived race, gender, or mental condition; number of complaints about bias or discrimination; the composition of new police academy recruit class by race, gender, and other considerations; and others.

For other categories of assessments, the Monitoring Team will conduct qualitative reviews. For instance, the Team will be evaluating a statistically significant, random sample of use of force investigations and reviews from 2015 – to gauge how their level

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ Dkt. 50.

of quality measures up against the requirements of the Consent Decree with respect to fairness, thoroughness, completeness, objectivity, and other basic factors. The initial baseline evaluation of pre-Consent Decree implementation force investigations will enable the Monitor, Court, Parties, and community stakeholders to have something to which to compare inquiries that occur pursuant to new policy and processes, implemented according to the Consent Decree, in the coming years.

The Consent Decree required the Monitor to review the outcome measures and recommend any changes within 90 days of being appointed.³²¹ After carefully considering the outcome measures outlined in the Decree, the Monitor did not recommend any changes.

Within 120 days of being appointed, the Monitoring Team was required “to develop a plan for conducting the compliance reviews and outcome assessments” contemplated by the Decree.³²² That plan was to include a few components. First, it was to “clearly delineate the requirements” of the Consent Decree that would “be assed for compliance . . . within the first two years” of monitoring. The Parties and Monitor agreed that coming up with a schedule for conducting a comprehensive “compliance review or audit” of many of the requirements of the Consent Decree would be premature during the first year of monitoring given the desire to focus on real-world implementation of a host of the Decree’s requirements during that time.

Second, the Monitor needed to “set out a schedule for conducting outcome measure assessments at least annually”³²³ The Parties and Monitor agreed, via the First-Year Monitoring Plan, to continue discussing the process for completing an initial set of outcome measurements, which functionally serve as baseline assessments in each of the areas referenced in the Decree.³²⁴ Accordingly, the Parties and Monitor presented a plan to the Court on March 16, 2016 for the Monitor to conduct these baseline assessments.³²⁵ The Court approved this Baseline Assessment Plan on March 24, 2016.³²⁶

The Baseline Assessment Plan called for the Monitoring Team to collect, clean, and sort 2015 quantitative data from CPD, OPS, and the City of Cleveland between March 1, 2016 and May 31, 2016. The Monitor assigned a dedicated sub-team to focus on outcome measures. That team has conducted a series of site visits since December 2015 to meet with a variety of CPD and City personnel to learn the state of CPD’s data collection capacity, efforts, and constraints. In many instances, this required some

degree of effort to identify precisely which individuals in which areas of the Division or City might have information or data related to each outcome measure. During these conversations, the Monitoring Team discussed the current feasibility of in fact collecting and reporting data in a fashion called for by the consent decree, or the lack thereof.

The Monitoring Team has received a decent share of the data necessary to begin any meaningful analysis as of the end of April. In some instances, this data was slow to be produced – expressly not for reasons relating to a lack of attention, cooperation, or good faith desire to comply with the Team’s requests. Instead, it became apparent to the Monitoring Team that the Division’s current IT infrastructure limits CPD’s ability to easily retrieve, analyze, and use data. Indeed, many classes of relatively straightforward data are collected on paper, in pen-and-paper logbooks, or on individual Excel spreadsheets created and maintained by enterprising but individual personnel.

In other instances, the Monitoring Team has identified that meaningful baseline assessments will be difficult to conduct at all. Some of the data requested is simply not collected, such as information on stops, searches, and seizures. Other data are either not centrally available anywhere within the City or are not expected to be collected and, as such, is prohibitively challenging to assemble, such as the number and type of the Division’s ongoing community partnerships (for which there appears no centralized or formalized tracking).

The Monitor is currently discussing preliminary results of its analysis of available quantitative data with the Parties and CPD for discussion.³²⁷ The Monitoring Team is also discussing the quality of the data considered and the capacity of the Division to sustain its own rigorous, annual data collection process,³²⁸ as well as serve as the basis for the Monitor’s ongoing assessments.³²⁹ The Monitoring Team is due to file a public report with the Court summarizing the findings of its baseline measurement process by June 22, 2016.³³⁰

2. Biennial Community Survey

All of CPD, CPC, the City (through the Mayor and Community Relations Board), and Monitoring Team have asked for substantive comment and input from both the community at large and from CPD officers. Indeed, one unique feature of the Consent Decree in Cleveland has been the sustained commitment by CPD, in partnership with the police officer unions and other organizations, to asking police officers about what changes they

³²¹ Dkt. 7-1 ¶ 368.

³²² *Id.* ¶ 369.

³²³ *Id.* ¶ 369(b).

³²⁴ Dkt. 43-1 at 63.

³²⁵ Dkt. 50.

³²⁶ Dkt. 52.

³²⁷ Dkt. 52-1 at 7.

³²⁸ Dkt. 7-1 ¶ 129.

³²⁹ *Id.* ¶ 367.

³³⁰ Dkt. 50-1 at 7.

would like to see in policy, process, procedure, training, and support resources to further the goals of the Decree. Likewise, the early timing, significant scope, and primary importance of community input at the beginning of work on nearly all major reform topics has helped to put the needs, experiences, and values of the Cleveland community further to the fore than many other Consent Decree processes.

It should be noted here that some elements of this community outreach has been the design and deployment of what have been colloquially termed “surveys.” Although there have been billed as “surveys” on issues related to use of force policies, bias-free policing, body-worn cameras, and the Division’s mission statement, among others, these community feedback efforts are not the sort of methodologically-rigorous surveys – featuring random sampling of a statistically relevant number of individuals from across Cleveland’s diverse communities – from which the Monitor or other stakeholders can be assured that the expressed views are representative of Cleveland’s whole population. These “surveys” do, however, provide an important snapshot of the views of individuals who are electing to take the Consent Decree process up on its offer to be heard and contribute to reform from the ground up. So that the utility of these non-representative feedback instruments can be most useful to the Consent Decree process, the Monitoring Team has provided technical assistance to both CPD and the City on certain elements of feedback instruments to date.

Accordingly, the feedback initiatives that have previously been, and will continue to be, undertaken, by various Consent Decree stakeholders are separate and different from the formal, scientific survey of community perceptions. To that end, the Consent Decree requires that the Monitor, “[w]ithin 180 days of the Effective Date, and every two years thereafter, . . . conduct a reliable, comprehensive, and representative survey of the members of the Cleveland community regarding their experiences with and perceptions of CDP and of public safety.”³³¹ Because the Monitor was appointed nearly four months after the Consent Decree’s effective date, the Parties and Monitor agreed that the deadline for the first biennial survey would be extended to June 23, 2016.³³²

On March 15, the Monitor filed the Biennial Community Survey Plan (the “Survey Plan”) required by the First-Year Monitoring Plan³³³ with the Court.³³⁴ The Plan outlined three phases for completing a comprehensive survey initiative.

The first phase consists of an initial, comprehensive, and rigorous survey of Cleveland residents. The survey conducted will be a telephone-based survey of a random set of Cleveland residents, with the composition of those residents sufficient to allow valid

statistical inferences about the whole of the Cleveland population. After the Court approved the Survey Plan,³³⁵ the Monitoring Team created a “call for survey firms” that it advertised in the Monitoring Team’s website and disseminated affirmatively with both national firms and local Cleveland firms with prior survey experience. The Team collected and assessed responses to the call for surveys, selecting two firms as finalists. Subsequently, the Team solicited and received input from the Parties about the finalist survey firms.

Ultimately, with the consent of the Parties, the firm of ISA was selected to conduct the initial community survey.³³⁶ The first task of the Monitor, working with ISA, was to construct a survey design instrument responsive to the requirements of the Decree. To that end, the Monitoring Team obtained prior surveys conducted in Cleveland and reviewed surveys conducted in other jurisdictions related to policing, public safety, and public confidence of law enforcement. A draft of the survey instrument was distributed to the Parties and CPC for feedback and comment.

The community survey was conducted between May 5 and May 31. A final report on the results is slated to be filed with the Court no later than June 23, 2016.

Phase Two of the community survey initiative will consist of “structured, methodologically rigorous focus group research,” which “is a standard mechanism for augmenting generalized survey research to gain a greater, more detailed, and more nuanced view of the reasons, experiences, and motivations behind particular views or opinions expressed in an overview survey.”³³⁷ The focus group component “will both inform and supplement the survey results” and provide an opportunity “to secure input from members of the community [who] are more difficult to reach by telephone” and to provide a forum “for dialogue and sharing of experiences that can offer a more complete perspective than survey answers” that necessarily add little opportunity for respondents to provide narrative explanations or accounts of experiences to support their views.³³⁸

The last phase of the survey initiative will involve developing a process for assessing the perceptions of experiences of police officers with regard to their interactions with the community and of arrested detainees to probe the nature of their interactions with CPD – both of which are required by the Decree.³³⁹

³³⁵ Dkt. 52.

³³⁶ See ISA Corporation, About Us, <http://www.isacorp.com/about-us/> (last visited Apr. 19, 2016).

³³⁷ Dkt. 50.

³³⁸ *Id.*

³³⁹ Dkt. 7-1 ¶ 363(b).

³³¹ Dkt. 7-1 ¶ 361.

³³² Dkt. 47.

³³³ Dkt. 43-1 at 61.

³³⁴ Dkt. 50.



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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2016, I served the foregoing document entitled Memorandum Submitting First-Year Monitoring Plan via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE