

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.

)

) **NOTICE SUBMITTING MONITORING**

) **TEAM'S SECOND SEMIANNUAL**

) **REPORT**

The Cleveland Police Monitoring Team submits its Second Semiannual Report.

Respectfully submitted,

/s/ Matthew Barge

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Cleveland
Police
Monitoring
Team

Second Semiannual Report

January 2017





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EXECUTIVE SUMMARY

Under the terms of the Consent Decree between the United States and the City of Cleveland (the “City”) (collectively, the “Parties”) involving the Cleveland Division of Police (“CPD,” “CDP,” the “Division of Police,” or the “Division”), the Cleveland Police Monitoring Team must “assess and report 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”¹ This is the Monitoring Team’s second summary of the City’s progress to date in complying with the Consent Decree.²

To date, the City of Cleveland has reached several critical milestones in the Consent Decree process. Over the past several months, the reform process focused significantly on guidelines and “rules of the road” for police officers with respect to use of force and interacting with individuals experiencing a behavioral crisis. The recently approved, new use of force policies for CPD and the imminent crisis intervention policies will help to ensure, once officers are trained and the policies become effective, that it can be a new day in Cleveland with respect to force and the response of law enforcement and social providers to individuals experiencing behavioral health crises. Significant

The City of Cleveland has reached several critical milestones in the Consent Decree process – including new use of force policies, forthcoming crisis intervention policies, and new manuals for complaint investigation and review.

strides have also been made in the form of new operational manuals for the Office of Professional Standards (“OPS”) and Police Review Board (“PRB”) aimed at ensuring that investigations and review of resident complaints about the police are fair, thorough, objective, and timely.

At the same time, the City will need to meet significant challenges in the coming months on a host of other areas. Although it will likely benefit now, for the first time, from codified, express operational rules, OPS continues to suffer from a staggering backlog of uncompleted investigations. PRB, in turn, will need to fairly and systematically review those cases when they are complete even as they adjust to vastly different processes and procedures. The City will need to craft a strategic, comprehensive Equipment and Resource Plan that provides the men and women of CPD with the basic equipment and technology necessary for them to do their jobs and outlines a path to ensuring that the Division never again lacks for resources.

Notable Areas of Progress to Date

1. Use of Force Policies

At a status conference on January 6, 2017, the Court indicated that it would approve new use of force policies for CPD. The completion and recent approval policies on when officers may and may not use force on the streets of Cleveland represent a critical milestone in the Division’s progress under the Consent Decree and are a major step forward.

Those policies were the result and culmination of a comprehensive and inclusive engagement process – one in which the community was invited to be involved in the policy revision process both early on, to help set the agenda and frame issues that needed to be addressed in new policies, and later in the process, when CPD and the Consent Decree Parties believed that the revised policies were substantially far enough along to make community feedback valuable and necessary. This included engagement by the Community Police Commission (“CPC”) of Cleveland residents and by the CPD of rank-and-file officers and the police officer unions and organizations.

In making the proposed force policies public well before they were completed, formally reviewed by the Monitor, or circulated to the Court for approval, the Cleveland community had an opportunity to be more involved in the substantive drafting of use of force policies than – at least to this Monitoring Team’s knowledge – any other community has, to date, in other Consent Decree contexts. After a number of important changes were made to respond to community feedback on the final proposed policies, the new-approved policies were finalized and submitted to the Court in November 2016.

¹ Dkt. 7-1 ¶ 350.

² *Id.* ¶ 375 (requiring semiannual reports). The Updated First-Year Monitoring Plan, approved by the Court and the Parties, adjusted the date of filing this report, as well as the City’s next semiannual status report, from December 2016 to January 2017. Dkt. 80-1 at 22. The Monitoring Team used one day of a deadline extension, *id.* at 3, with the consent of the Parties so that the public discussion period could commence on January 11, 2016.

The primary, “General” use of force policy outlines, in greater clarity than CPD’s prior policies, that officers may use force only when it is (1) necessary, (2) proportional, and (3) objectively reasonable, and that officers (4) use strategic de-escalation tactics and strategies when it is safe and feasible to do so. Although no law, court, or policy can prescribe specific rules that can apply to every conceivable circumstance involving all possible police encounters under any possible permutation of circumstances, the policy contains a specific list of actions in which, “[c]onsistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, Officers shall not” engage.³ Those include, for instance, using force against subjects “who only verbally confront officers,” applying force to those “who are handcuffed or otherwise restrained” except in very limited circumstances, using “neck holds,” and using “head strikes with hard objects. Under the new policy, officers now have a duty to intervene and “tak[e] all reasonable actions to stop any use of force” not authorized under CPD policy and a duty to render medical aid.⁴ A separate policy provides instructions to officers on using intermediate weapons, sometimes called less-lethal tools, such as the Taser and OC Spray to gain control of a subject posing a threat without needed to use more significant or deadly force.

Importantly, in addition to de-escalation being a core use of force principle, CPD now has a separate, standalone De-escalation policy. The Division’s stated intent is to clarify that officers understand that “the guidelines relative to de-escalating situations in order to gain voluntary compliance and reduce the need to use force” apply to all encounters, regardless of whether force is ultimately required to resolve the situation or not.⁵

The approved, new use of force policies for CPD will only become effective once the men and women of the Division receive significant, substantive training on the policy’s provisions. The Division’s upcoming, 16-hour training for all officers on the new use of force policies will, it is hoped, serve as a strong foundation for officers to learn about new obligations under the policy and practice skills related to responding to subjects and potential threats in dynamic, scenario-based environments. It is currently contemplated that use of force training may be able to begin sometime in February 2016. Even if several weeks more are required beyond that date to finalize training, train CPD’s instructional staff to give the training to officers on a round-the-clock basis, or commence the training of officers, the Monitoring Team is satisfied that the Division is committed to completing a high-quality training that incorporates the good practices of peer departments and uses adult educational principles.

³ Dkt. 83 at 17.

⁴ *Id.* at 20.

⁵ *Id.* at 24; see also Dkt. 7-1 ¶ 36.

2. Crisis Intervention Policies

The City of Cleveland will likely reach another critical milestone in the coming days when new crisis intervention policies are submitted to the Court for review and approval. The development of these new policies, processes, and approaches for officers interacting with individuals experiencing behavioral health crises (including mental health, substance abuse, or other long-term behavioral health challenges) has been the product of superior work and collaboration by the police, social service providers, mental health and substance abuse professionals, advocates, and individuals in recovery who have met and had candid discussions on improving services for those in crisis as part of Cleveland’s Mental Health Advisory Board (“MHRAC” or the “Board”).

In creating new crisis intervention policies, MHRAC members reviewed over 23 separate Crisis Intervention Policies from CIT programs throughout the country. Members highlighted features of each policy and then worked with CPD to select the best elements and modify, where appropriate, these policy elements to best suit the unique challenges and features of the Cleveland community. As MHRAC and its policy subcommittee explored what approaches would work best for Cleveland, a dynamic and highly cooperative relationship emerged among advocates, healthcare professionals, and CPD.

Consequently, CPD’s proposed crisis intervention policies present a new, comprehensive strategy for responding to individuals in behavioral crisis. Among other key features, the policy

ensures that the Division coordinates with community resources to assist those in need. It focuses on safety for both the officer and individual in crisis and on diverting individuals experiencing a crisis into treatment whenever possible. It emphasizes that all officers use de-escalation strategies with respect to individuals in crisis and, in that way, positively reinforces CPD’s use of force policy. It provides mechanisms to ensure that all CPD officers have basic information about behavioral crisis but that a cadre of specialized, highly-trained officers be available and dispatched to incidents in which an individual experiencing a crisis is involved.

In the coming months, an introductory, eight-hour training for all CPD officers on the new crisis intervention policy, as well as content on mental health signs and symptoms and communication and active listening, will commence. Upcoming years of training will focus on issues including engaging and resolving conflict, addressing a crisis involving a loss of reality, and assisting individuals at risk for suicide. This training is being developed in the context of the MHRAC by a joint task force of CPD training instructors and subject matter experts.

CPD has taken a leadership role and remained active in every phase of the MHRAC, and the ADAMHS Board of Cuyahoga

County has committed significant staff support. The MHRAC's professionals and advocates on the Board have devoted significant time to addressing a wide range of issues, serving without financial compensation. MHRAC members have brought a great deal of civic pride to an important effort for the Cleveland community. They are forming a true community partnership in order to meet the needs of individuals experiencing a behavior crisis and provide CPD officers with the training, tools, resources, and support that they need to respond effectively and safely to individuals experiencing behavioral crises.

3. OPS and PRB Manuals

Since the First Semiannual Report in June 2016, a great deal of work has focused on the development of new operational manuals governing the operations of the Office of Professional Standards ("OPS"), which investigates civilian complaints about the police, and the Police Review Board ("PRB"), which reviews those investigations and makes adjudication and discipline recommendations to the Chief about them. For reasons that are not entirely clear to the Monitoring Team, neither entity – despite their long history – had ever operated according to clear, express, and codified operational rules or expectations.

With respect to OPS, the Parties and Monitoring Team worked hard, prior to the Republican National Convention in Cleveland in July 2016, to develop and finalize a Provisional Manual. The goal, articulated in late May, was to establish a working set of guidelines and processes to guide the reception of civilian complaints in a systematic and thorough manner before the Convention was held. The Provisional Manual has been effective since July 15, 2016.

Subsequently, a more comprehensive, permanent Operations Manual was developed. This Manual, submitted to the Court in November 2016, reflects the organizational mission and values of OPS, clearly defines its organizational structure and detailed job functions, identifies and describes with clarity those matters in which the office has investigative authority, and provides a thorough, comprehensive, and rigorous step-by-step review of how complaints of misconduct are accepted, assessed, documented, tracked, investigated, periodically reviewed, concluded, and ultimately forwarded to the Police Review Board for review and adjudication. The OPS Manual covers a significant amount of ground, creating clear rules of the road for OPS personnel, community members, and CPD personnel alike to understand with respect to how matters are thoroughly and timely investigated.

The situation was much the same with the PRB. Even when PRB has addressed cases, it was not clear precisely how the Board or its members were making decisions – what standards it was applying, how it was considering and weighing evidence, and precisely what its various recommendations as to findings meant.

Cases were adjudicated as "sustained" and "unfounded" without specific reference to particular CPD policies. It was immediately apparent to the Monitoring Team that the Board had been carrying out their duties absent a set of established protocols to guide their decision making – even though the 1984 City Charter amendment creating the PRB provided that the Board "shall make rules providing for the procedure of the Board and for the review of complaints filed with it," to be approved by the Public Safety Director and made effective "fifteen days after their publication in the City Record."⁶

Accordingly, the Monitoring Team, in concert with the Parties, spent several months working with PRB on drafting an Operations Manual (the "PRB Manual") to guide its deliberative process. Designed for a broad-based constituency who may seek to better understand how the PRB conducts business, this Manual provides a step by step process that directs the movement of investigative files from OPS to PRB, how those cases are assigned for PRB member review, the structure and agenda for PRB meetings, the means by which investigations are reviewed and discussed in a public forum, the deliberative process which results in

the board's decisions and recommendations pertaining to each case presented, and a public announcement of their findings and recommendation for further consideration and action by the Chief of Police and Director of Public Safety.

The Monitoring Team will provide ongoing technical assistance to both OPS and PRB as they endeavor to implement the host of new policies, processes, and provisions required by their new manuals.

Notable Challenges to Date

1. OPS and PRB

As of November 21, 2016, OPS had a backlog of 439 uncompleted investigations. More than four out of every five (81 percent) of investigations of complaints received in 2016 are unresolved. More than two out of three (68 percent) of investigations of complaints received in 2015 are likewise unfinished. Some cases still stretch from complaints made in 2014. At this point, the Monitoring Team struggles for language sufficiently strong to communicate how unacceptable and appalling the state of OPS as an entity is.

Currently, the City, Monitoring Team, and OPS are engaged in discussions regarding a plan to eliminate the backlog of uninvestigated, incomplete, or unresolved complaint investigations. The Monitoring Team has asked for such a plan since at least the Spring of 2016. It has been provided with a series of cursory and highly minimalistic documents, purported to be plans for eliminating the backlog, that did little more than summarize

⁶ Charter of the City of Cleveland, § 115-3.

the nature of the problem or, in one instance, propose that OPS eliminate its backlog by summarily pushing a significant number of incomplete cases on to CPD's chain of command to resolve, likely without formal discipline. Accordingly, all efforts to date by OPS to outline mechanisms for addressing the backlog have been patently insufficient in all respects and, in form and content, not serious proposals.

The Monitoring Team declined to either approve or disapprove of the full OPS budget for 2017 – instead providing only short-term, provisional approval of the budget for the first quarter of the year.⁷ The reason for this short-term and provisional approval is that the OPS budget relies substantially on “compensation for four temporary Investigators” who “are slated to provide support to permanent investigators in completing those investigations that remain open.”⁸ However, it is almost certain to be the case that OPS will need to hire additional, full-time investigators to ensure that its personnel have reasonable and manageable caseloads – and that the officer can handle the typical level of civilian complaints that it receives.

Of course, for staffing issues to be definitively addressed, current investigators will need to adopt the extensive rules, practices, and procedures codified in the OPS Manual and to abide by those rules for an extended period before stakeholders can fully understand what an investigator's typical workload is. Even pending approval of the OPS Manual by the Court, the Monitoring Team will be working closely with OPS and its personnel – providing day-to-day technical assistance on how to transform the extensive Manual from paper into practice.

Similarly, the previous lack of clear processes and procedures has allowed PRB to also fall behind on the timely review and deliberation of cases – failing in its core duty and service to the City of Cleveland. Although there is, of course, no question that the backlog of uncompleted cases in OPS has a direct correlation to the Board's ability to promptly receive and adjudicated cases, as PRB cannot conduct a timely review if OPS has not provided them with a timely investigation, PRB will need to remedy significant deficiencies going forward to adhere to the Manual and comply with the Consent Decree. In the past, the process that PRB had used to deliberate on cases previously was improvisational at best, unfair at worst, and in need of substantial rigor and precision, regardless.

2. Equipment, Technology, and Resources

The Consent Decree and First-Year Monitoring Plan required that the City “develop an effective, comprehensive Equipment and Resource Plan that is consistent with its mission and that

will allow it to satisfy the requirements of this Agreement.”⁹ That Plan needed to outline specific strategies for ensuring adequate levels of specific, core technologies;¹⁰ address how the Division will “satisfy the requirements of this Agreement,” including the Decree's many other substantive requirements;¹¹ and “ensure that CDP” both “properly maintains and seeks to continuously improve upon existing equipment and technology” and “is appropriately identifying equipment needs and seeking to utilize, as appropriate, emerging technologies.”¹²

The City submitted its final Equipment and Resource Plan, as required by the First-Year Monitoring Plan, on November 25, 2016.¹³ After closely re-

viewing the submitted Plan, the Monitoring Team, in turn, filed a motion with the Court indicating that – because it did not specifically, strategically, and comprehensively provide CPD officers with the tools they need to do their jobs – the Monitor could not approve the Plan. The Monitor outlined a number of deficiencies in the proposed Plan. Some related to fundamental project management, strategic, and planning failures. Others related to the City's inability to adequately address specific technological and resource requirements of the Consent Decree.

At a status conference on January 6, 2017, the Court instructed the City to continue to work with the Department of Justice and Monitor on a more detailed and comprehensive Equipment and Resource Plan. For too long, the men and women of the Division have not received the equipment, resources, technology, and infrastructure support required to deliver the type and level of police services that the Cleveland community requires and values.¹⁴ Lacking true computer-aided dispatch, field reporting, sufficient in-car computers, and an adequate number of well-functioning patrol cars, CPD is several decades behind where it should be.¹⁵ The implementation of a detailed, comprehensive, and sophisticated Equipment and Resource Plan is a significant opportunity to permanently fix that – and to ensure that the men and women of the Division never again lack what they need to do their jobs.

3. Community Confidence & Trust

In late June 2016, the Monitoring Team filed the results of the first, Consent-Decree-required scientific community survey to gauge public perceptions of safety and policing with the Court.¹⁶ Overall, the survey found that Cleveland residents are skeptical about police conduct and accountability.

⁹ *Id.*

¹⁰ Dkt. 7-1 ¶ 293.

¹¹ *Id.* ¶ 292.

¹² *Id.* ¶ 328.

¹³ Dkt. 80-1 at 19.

¹⁴ Dkt. 93 at 2.

¹⁵ *Id.* at 3.

¹⁶ Dkt. 71.

⁷ Dkt. 87 at 2–3.

⁸ *Id.* at 2.

Generally, “[j]ust over half of all residents surveyed (55%) believe the Cleveland Division of Police is doing a ‘good’ or ‘excellent’ job overall.”¹⁷ Only 50 percent of residents believe police officers follow the law “all of the time” or “most of the time.”¹⁸ “Just under half (48%) believe officers treat people with respect or use the appropriate amount of force (47%) in most situations.”¹⁹ A majority of residents (55 percent) believe officers are held accountable “only some of the time” or “almost never” for misconduct when it occurs.²⁰ Just “one-third of residents think the police have taken the time to meet members of their community (33%) or have developed relationships with people like them (37%).”²¹

There are significant racial disparities with respect to approval of and views about CPD. While “[n]early three-fourths of white residents surveyed (72%) believe the Cleveland Police are doing a good or excellent job overall,” only “43% of black residents” believe the same.²² Indeed, “Black and Latino residents . . . gave the Cleveland Police lower ratings across a number of specific measures” – with “more than two-thirds of black residents (69%) believ[ing] that . . . officers are held accountable ‘some of the time’ or ‘almost never’” for misconduct.²³ White residents are comparatively more likely than Latino and black residents to “ask the police for help” or “report a crime” to CPD,²⁴ which may have significant effects on crime within some Cleveland communities.

Whether policing in Cleveland is effective, safe, and consistent with the values of the community cannot be definitively established by a survey. The protections of the U.S. Constitution are not poll-driven concepts. Consequently, the results from the Monitor’s initial community survey do not definitively establish, one way or another, whether CPD is or is not engaged in constitutional policing and whether the Division has or has not complied with any relevant part of the Consent Decree.

However, the surveys demonstrate a disconnect between the Cleveland Division of Police and the communities that it serves, with a critical number of individuals believing that local law enforcement officials are not as responsive to their views, concerns, or experiences – and that, at times, the burdens of law enforcement are not equally shared.

A renewed trust among the community with respect to the

¹⁷ Dkt. 71-1 at 3.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.* at 3.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

CPD – and a new, shared vision for policing in Cleveland – is also necessary from the perspective of ensuring greater safety on the streets of Cleveland. Community confidence and trust, by making residents more willing to participate and cooperate with police, tends to reduce both crime and the fear of crime.²⁵ Accordingly, the Consent Decree is far more than an administrative, bureaucratic, or accountability-focused document. It is squarely a crime-fighting document that will assist substantially in the ability of CPD officers to perform its core law enforcement functions.

Although there remains skepticism in some quarters of the City and CPD about the utility of resident involvement in the supposedly technical details of police policy and procedure, the Monitoring Team is optimistic that the opportunities for broad and sustained community involvement in the drafting of core policies relating to use of force and to crisis intervention can serve as a foundation for the Division’s, and the City’s, future efforts to increase transparency, access, and accountability. It is likewise optimistic that the remarkable dedication and superior work of Cleveland’s Community Police Commission will increasingly serve as a bridge between the Division and the diverse communities that it serves.

Areas of Focus in the Next Six Months

In the coming months, the attention of Consent Decree stakeholders²⁶ will be turning toward new policies, manuals, and processes for the Division of Police’s internal investigations and administrative reviews – including use of force investigations and officer misconduct investigations. This will also begin to include focus on the discipline system. Meanwhile, Cleveland residents will have opportunities to shape the scope, focus, and content

²⁵ See generally Robert J. Sampson, et al, “Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy,” 277 *Science* 918 (1997) (detailing link between community policing and crime and fear of crime); Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1 (1995) (same); Michael D. Reisig & Roger B. Parks, “Can Community Policing Help the Truly Disadvantaged?,” 50 *Crime & Delinquency* 139 (2004) (same); Dan Fleissner & Fred Heinzelmann, National Institute of Justice, “Crime Prevention Through Environmental Design and Community Policing” (Aug. 1996) (same); A. Steven Dietz, “Evaluating Community Policing: Quality Police Service and Fear of Crime,” 20 *Policing* 83 (1997) (same).

²⁶ The term “Consent Decree stakeholders” is sometimes used in this report to refer to a broad-based group of individuals and entities with an interest in reform under the Consent Decree, including but not limited to the Parties, CPD, the Community Police Commission, the police officer unions and organizations, rank-and-file Division personnel, community organizations and groups, and Cleveland residents.

of the Division's Community and Problem-Oriented Policing Plan, bias-free policing policy, and search and seizure protocols. The Parties and Monitoring Team will be working on the Second-Year Monitoring Plan, which will address these issues and cover the period of February 2017 through January 2018, in the coming weeks.

About the Remainder of the Report

As with the First Semiannual Report, the remainder of "this report addresses all substantive provisions of the Consent Decree and summarizes CPD's progress to date in complying with them."²⁷ "[T]he report is structured around the major sections and sub-sections of the Decree rather than inventorying progress in each and every provision," paragraph, "and sub-requirement."²⁸ It "describe[s] the progress made to date, challenges outstanding, and future expectations with respect to CPD and the City's compliance with the Decree."²⁹

²⁷ First Semiannual Report at 9.

²⁸ *Id.*

²⁹ *Id.*



A NOTE FROM THE MONITOR



Although I spend a good deal of time in Cleveland, I reside in New York City. When the weather and schedule cooperates, running along the City's West Side Highway, which itself runs along the Hudson River, provides one of the area's better outdoor opportunities. From this vantage, one can often see the air traffic taking off and landing at New York's three major airports (LaGuardia, John F. Kennedy, and Newark), as well as a host of smaller, regional airports (Westchester County, Teeterboro, and others).

Those large airports are located within an approximately 35-mile radius. As of 2015, "[o]ver 3,000 commercial flights pass through New York City airports every single day."³⁰ Consequently, "[a]ir traffic operations in and around the New York metropolitan area are notoriously complex."³¹ "Each [a]irport has varying arrival and departure rates which are usually determined by weather conditions."³² Because the configurations of take-off and landing patterns obviously cannot conflict, the air traffic volume, weather, other airspace restrictions, and the "[c]lose proximity of numerous airports" make air traffic management a continually challenging enterprise.³³

Consequently, there are rules, processes, systems, and approaches in place to ensure that everyone involved in aviation can operate within clear expectations and parameters – even in the face of unexpected or unpredictable events. When the weather changes, for

³⁰ Graham Rapier, "This Is Why New York City Can Be a Nightmare for Air Travelers," *Business Insider* (Aug. 5, 2015).

³¹ Paul U. Lee & Nancy M. Smith, "Reducing Departure Delays at LaGuardia Airport with Departure-Sensitive Arrival Spacing (DSAS) Operations," *Proceedings of the Eleventh USA/Europe Air Traffic Management Research and Development Seminar* (2015), available at https://human-factors.arc.nasa.gov/publications/Lee_2015_ATM%20DSAS.pdf.

³² NBAA, "New York City Area Airspace Overview" (2011), available at <https://www.nbaa.org/events/amc/2011/news/presentations/1011-Tue/NBAA2011-NY-Airspace-Review.pdf>.

³³ *Id.*

instance, stakeholders know how traffic patterns are changed. Various individual actors – from pilots and air traffic controllers to airline operations management and airport operators – do not need to independently determine the process for addressing the situation. Although those actors still need to exercise discretion to know what processes or scenarios might apply and need to make informed judgment calls – with even the best systems and procedures subject to human error³⁴ – the systems in place for managing flight traffic are aimed at ensuring the safest and most efficient air travel possible without forcing individuals to continually make something up or reinvent the wheel.

Certainly, the work in which police officers are engaged on a day-to-day, shift-to-shift basis can require them to respond to “circumstances that are tense, uncertain, and rapidly evolving” – involving individuals, environments, and specific factors that they have never previously encountered.³⁵ No law, court, or policy can prescribe specific rules that would apply to every conceivable circumstance involving all possible subjects of police encounters under any possible permutation of circumstances.³⁶

Given “the unpredictability and potential severity of the threats”³⁷ that officers may face, a host of police policies, procedures, and training must give officers pragmatic and clear guidelines that they can apply to a limitless set of situations and encounters on the streets of our communities. To date, the Consent Decree process has focused significantly on guidelines and “rules of the road” for police officers with respect to use of force and interacting with individuals experiencing a behavioral crisis.

Although a city and a police department cannot control what situations officers may face, it can control what tools and training officers receive to do their jobs, how well the careers of its police professionals are supervised and developed, how it evaluates and analyzes officer performance, and the types of service that it delivers to the community. Simply, where a department may have to deal with unpredictability at times on the street, it can at least establish uniform structures, processes, rules, and regulations that are predictable, fair, and aimed at ensuring policing consistent with its mission, community values, and the Constitution.

To this end, the Consent Decree process has addressed administrative and internal processes – including those of the Office of Professional Standards (“OPS”), Police Review Board (“PRB”). As the term of the First-Year Monitoring Plan winds down, the Monitoring Team, Department of Justice, City of Cleveland, Division of Police, Community Police Commission, and others are well underway in addressing others – including the uniform reporting, investigation, and review of use of force and the Division of Police’s Internal Affairs investigations.

The implementation of these new processes, procedures, policies, systems, and approaches necessarily entails some significant abandonment of the status quo. Although the Monitoring Team is aware of the uncertainty and discomfort that can go along with change, the Consent Decree requires that the City of Cleveland and Division of Police reset and renew the way that it does business, supports its officers, and serves the Cleveland community. The most important change may be the transformation of the Division from

³⁴ See Jim Hoffer, “Investigators: Alarming Increase in Runway Incursions at NY Area Airports,” ABC7.com (Feb. 24, 2015).

³⁵ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

³⁶ Linda S. Miller, et al, *Community Policing: Partnerships for Problem Solving* 46 (11th ed. 2011) (“Police use discretion because no set of policies and procedures can prescribe what to do in every circumstance.”).

³⁷ Eugene A Paoline et al, “Police Culture, Individualism, and Community Policing: Evidence from Two Police Departments,” 17 *Justice Quarterly* 575, 581 n. 2 (2000).

an organization that too often operates by custom, unwritten understanding, and undefined policy to a transparent, accountable organization that clearly and fairly articulates expectations to all of its employees – and to the wider public.

Although a great deal of progress has been made – with critical milestones related to policies on use of force, crisis intervention, and civilian oversight reached – an enormous amount of work remains for the City of Cleveland to be considered in substantial and effective compliance with the Consent Decree.

Mindful of the scope of work that remains, the Monitoring Team has added, with the agreement of the Parties, further subject matter expertise since the First Semiannual Report in June 2016. Chief Hassan Aden (ret.) is the former Chief of Police of the Greenville Police Department in Greenville, North Carolina. Until late 2015, he was the Director of the Research and Programs Directorate of the International Association of Chiefs of Police (IACP), where he directly oversaw the day-to-day management of operational programs and research projects aimed at advancing professional police services. He worked for 26 years at the Alexandria Police Department in Alexandria, Virginia, rising to the rank of Deputy Chief. Chief Aden is leading, along with Chief Tim Longo (ret.), the Monitoring Team's efforts related to force investigations and internal affairs.

Richard Rosenthal was, until September 2016, the Chief Civilian Director of the Independent Investigations Office of British Columbia – an office that he was hired to establish in January 2012. He previously served as the Independent Police Monitor for the City and County of Denver, Colorado and as the Director of the Independent Police Review Division in Portland, Oregon. Mr. Rosenthal began his legal career as a Deputy District Attorney in the Los Angeles County District Attorney's Office, where he was credited with uncovering, pursuing, and initiating reform of the LAPD in the wake of the "Rampart Scandal." Mr. Rosenthal, who has published and spoken extensively on civilian oversight and police monitoring, has been spending significant amounts of time with OPS and PRB as it attempts to alleviate its large backlog of incomplete or unreviewed cases and implement its new, Consent-Decree-required operational manuals.

Finally, the Monitoring Team continues to benefit significantly from its relationship with the NYU School of Law Policing Project. In addition to Director Barry Friedman and Deputy Director Maria Ponomarenko's ongoing involvement and assistance, Fellow Nonny Onyekweli and Consultant Rosemary Nidiry have been working closely with the Monitoring Team in Cleveland. Ms. Onyekweli is a 2016 graduate from NYU Law, with experience at the law firms of McDermott Will & Emery and Skadden, Arps, Slate, Meagher & Flom. Ms. Nidiry, most recently a Director of Criminal Justice at the Laura and John Arnold Foundation, worked for many years as an Assistant U.S. Attorney in the Southern District of New York, where she investigated and prosecuted a wide range of federal and criminal matters.

The Team continues to spend significant amounts of time on the ground in Cleveland – meeting with Consent Decree stakeholders and engaging with Cleveland's diverse communities, including the men and women of the Division of Police. The Team has provided significant technical assistance, working side by side with CPD and the City to ensure that final policies, manuals, plans, and other deliverables are consistent with the Consent Decree.

In conducting that work, the Monitoring Team has continued to benefit from a good working relationship with CPD – including (but by no means limited to) Chief Calvin Williams, Deputy Chief Joellen O'Neill, Commander Brian Heffernan³⁸, Captain Robert Simon, and

³⁸ The Monitoring Team notes here that Commander Heffernan's last day, after a 31-year career of public service with CPD, is this Friday, July 13. Since the beginning of our monitoring,

Commander Daniel Fay, Mayor Frank Jackson, Judge Greg White (ret.), Director of Law Barbara Langhenry and her Chief Counsel Gary Singletary, and Blaine Griffin of the City continue to meaningfully partner with the Monitor and the Consent Decree process to achieve notable milestones. Local Department of Justice, under the leadership of Carole Rendon, and Washington, D.C.-based representatives continue to be involved in ensuring that Cleveland's officers and residents realize the benefits and promise of the Consent Decree. Steve Loomis, Brian Betley, Lynn Hampton, and Cesar Herrera have continued to engage with Consent Decree stakeholders and the reform process.

In particular, the Team appreciates the continued dedication of the volunteer commissioners serving on the Community Police Commission, the civilian staff of OPS, and the civilian members of the PRB – who all play critical and ongoing roles in ensuring that the Cleveland community and its police department have an active, mutually reinforcing partnership. In the Consent Decree, the City of Cleveland and United States agreed that “[o]ngoing community input into the development of reforms, the establishment of police priorities, and mechanisms to promote community confidence in CDP will strengthen CDP and the police-community relationship that is necessary to promote public safety.”³⁹ Although there remains skepticism in some quarters of the City and CPD about the utility of resident involvement in the supposedly technical details of police policy and procedure, the Monitoring Team remains committed to ensuring that, long after the Consent Decree, residents will have a direct and substantive say in how their police department conducts the business of keeping their communities safe.

We also thank the men and women of the Cleveland Division of Police. In our meetings, ride-alongs, and candid conversations with police officers of all ranks, we have been impressed by the level of commitment and passion that they exhibit on a daily basis. As numerous members of the Monitoring Team know first-hand from their decades of experience wearing the uniform, police officers are the ones who are called upon to address individuals and solve problems when the rest of the social service and community framework has broken down. As this report elsewhere makes clear, for too long, Cleveland's officers have not received the equipment, resources, technology, training, high-quality supervision, professional development, and basic administrative fairness to which they are – without qualification or deviation – entitled as professionals and public servants. It is the Monitoring Team's hope that CPD officers will soon begin to see and feel the effects of the Consent Decree's attention to the support of the Division's personnel.

As these and other issues are addressed during the implementation of Consent Decree reforms in subsequent periods, the Monitoring Team will stand at the ready to report to this Court, the Cleveland community, and CPD personnel on the status of the City's compliance with the Consent Decree.

Matthew Barge
Monitor
January 10, 2016

Commander Heffernan has headed up a great deal of CPD's day-to-day compliance efforts. A large portion of the progress that the Division has made, to date, on the nuts and bolts of the Consent Decree can be attributed to his focus, commitment, and genuine willingness to embrace new approaches and ways of doing business for the Division. The Monitoring Team will greatly miss his involvement on this project and congratulate him on his retirement.

³⁹ Dkt. 7-1 ¶ 14.

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.” 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.⁴⁰

During the past six-month reporting period, the Monitoring Team has continued to “play[] many different roles.”⁴¹ First, the Monitoring Team has served as an arbiter, “assess[ing] and report[ing]” as to “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.”⁴² During the past six months, the Monitoring Team has worked closely with Consent Decree stakeholders on a host of policies, manuals, and processes – including those related to officer use of force, crisis intervention, OPS, PRB, body-worn cameras, equipment and resources, and officer training.

“A second role” of the Monitoring Team “is that of technical advisor.”⁴³ The Monitoring Team now includes 23 members who are committed to “provid[ing] information about best practices, discuss[ing] what has worked and not worked well in other cities to address similar issues, and mak[ing] expectations clear from the beginning.”⁴⁴ As this report elsewhere makes clear, the Monitoring Team has provided sustained and significant technical assistance over past six months on the Division’s use of force policies, crisis intervention policies and program, use of force training, resident complaint investigations, technology, equipment, resources, information technology governance, data collection, and supervision.

The Monitoring Team also continues to function as a “facilitator” – “ensur[ing] that all stakeholders, from within the Division and across the Cleveland community, are heard and can participate in the Consent Decree process.”⁴⁵ Whether by continually updating timelines, deadlines, and expectations as to progress in its Monitoring Plans⁴⁶ or by facilitating community forums on the Division’s proposed use of force policies, the Monitoring Team has continued over the past six months to provide a day-to-day framework in which collaboration and dialogue can be fostered and in which the community can be ‘actively and substantively involved in the details of reform, from the ground up.’⁴⁷

THE ROLE OF THE MONITOR & THIS REPORT

A. Overview of the Monitoring Team’s Work Over the Past Six Months

The Monitor’s First Semiannual Report introduced and summarized the role of the Monitor in the Consent Decree process:

The agreement 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”) takes the form of a consent decree. 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 departments, 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 Monitor and Monitoring Team are “agent[s] of the Court” who are “subject to the supervision and orders of the Court.” 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 DOJ.

⁴⁰ First Semiannual Report at 14.

⁴¹ *Id.* at 15.

⁴² Dkt. 7-1 ¶ 350.

⁴³ First Semiannual Report at 15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Dkt. 80 (submitting Updated First-Year Monitoring Plan).

⁴⁷ First Semiannual Report at 15.

B. The Updated First-Year Monitoring Plan, Nature of Progress, and Compliance Under the Consent Decree

The Monitoring Team has previously explained that “the Consent Decree operates more like a roadmap to reform than an ‘on/off’ switch.”⁴⁸ That has remained true during the most recent reporting period. As previous filings with the Court demonstrate and this report summarizes, critical milestones have been reached in several fundamental areas, including use of force, crisis intervention, and the investigation and adjudication of civilian complaints about the police. However, much more work remains “to ensure that reform exists not merely on paper or in theory but in day-to-day practice.”⁴⁹ Officers and personnel need to be trained on the new policies and approaches, and time will be necessary as these new ways of doing business become, over time, engrained in the fabric and DNA of the Division and City.

It is worth emphasizing here that, although the Monitoring Team and other Consent Decree stakeholders remained involved in the day-to-day details of achieving compliance and reform, the City and CPD itself – in dynamic partnership with the Cleveland community – ultimately must own the adoption of new policies, processes, and approaches:

Indeed, the Consent Decree contemplates that the process of implementing its reforms will potentially

take several years – in part because it is the City, CPD, and the City of Cleveland that need to be the primary drivers and owners of real change . . . 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.⁵⁰

The City and CPD itself, in dynamic partnership with the Cleveland community, ultimately must own the adoption of new policies, processes, and approaches.

To ensure that all stakeholders continue to work according to “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,”⁵¹ the Parties and Monitoring Team re-

vised the original, Court-approved Monitoring Plan⁵² to reflect operational realities.

The Updated First-Year Monitoring Plan covers the period of November 1, 2016 through January 31, 2017, which is the end of the first monitoring year.⁵³ The updated plan continues to break down the Consent Decree’s major requirements and objectives “into a series of key results or milestones” and assigns responsibility “to an identified stakeholder for completion by express deadlines.”⁵⁴ The updated plan continues to “make clear to any interested resident or stakeholder precisely what changes can be expected when” during the reform process.⁵⁵

The Monitor has previously noted that it might be necessary to modify monitoring plans during the Consent Decree process “to reflect changed circumstances or operational realities.”⁵⁶ The primary changes memorialized in the Updated First-Year Monitoring Plan involved changes to deadlines made necessary in light of the “significant City and CPD capacity” that “needed to be focused on planning and preparations for the Republican National Convention” held in Cleveland in mid-July 2016.⁵⁷ As the Monitoring Team has previously noted, “Cleveland has faced the unique challenge of needing to balance the early days of [Consent Decree] reform with preparation for a major national

security event of the size and scope that the city does not hold in a typical period.”⁵⁸ Simply put, intensive focus on Consent Decree reforms could not be maintained between mid-May 2016 and mid-August 2016 –

which required Consent Decree stakeholders to revise the original Monitoring Plan to ensure that it continued to adequately “set aggressive but realistic goals, deadlines, and milestone for complying with the requirements” of the Consent Decree.⁵⁹

C. The Role of This Report

The First Semiannual Report outlined the purpose of the Monitor’s Consent-Decree-required semiannual reports:

The Monitoring Team is charged with assess-

⁵² See Dkt. 43 (submitting First-Year Monitoring Plan); Dkt. 44 (approving First-Year Monitoring Plan).

⁵³ The Court appointed the Monitor and Cleveland Police Monitoring Team on October 1, 2015. See First Semiannual Report at 14. Pursuant to Paragraph 369 of the Consent Decree, the original First-Year Monitoring Plan was submitted to the Court on February 1, 2016. That Plan covered the period of February 1, 2016 through January 31, 2017. See First Semiannual Report at 16.

⁵⁴ First Semiannual Report at 16.

⁵⁵ *Id.*

⁵⁶ *Id.* at 5; see Dkt. 43 at 1; Dkt. 51.

⁵⁷ First Semiannual Report at 17.

⁵⁸ *Id.*

⁵⁹ Dkt. 43.

⁴⁸ *Id.* at 16.

⁴⁹ *Id.* at 66.

⁵⁰ *Id.* at 17.

⁵¹ Dkt. 43 at 2.

A Note on the Republican National Convention

In July 2016, Cleveland hosted the Republican National Convention. As the Monitoring Team previously observed in June 2016:

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.

Leading up to the RNC, the Division of Police and its personnel invested significant time, resources, and attention to planning for a successful event. This attention, as well as the Division and City's partnership with outside resources from other jurisdictions and the federal government, produced an event that saw the City and police department receiving substantial praise.¹

Although "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,"² the Monitoring Team does observe that police made relatively few arrests during the event, with violence or security events related to or occurring around the Convention kept relatively minimal, as well. To the extent that the eyes of the nation were on Cleveland, the men and women of CPD, under the visible leadership of Chief Calvin Williams, appeared to perform commendably and professionally under potentially challenging circumstances.

¹ See, e.g., Evan MacDonald, "Cleveland Police Perform Well Under Spotlight of Republican National Convention: Analysis," *Cleveland Plain Dealer* (July 22, 2016), http://www.cleveland.com/rnc-2016/index.ssf/2016/07/cleveland_police_perform_well_under_spotlight_of_republican_national_convention_analysis.html; Ivan Livingston, "Despite Fears, Cleveland Security a Success," *CNBC.com* (July 22, 2016), <http://www.cnbc.com/2016/07/22/despite-fears-cleveland-convention-security-a-success.html>; Jonathan D. Woods, "How Police Succeeded at the Republican National Convention," *Time* (July 23, 2016), <http://time.com/4420014/republican-convention-protests-police-secret-service/>.

² First Semiannual Report at 18.

ing 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.⁶⁰

During this reporting period, the Monitor has formally approved or disapproved, per the Consent Decree and First-Year Monitoring Plan, a number of policies, manuals, plans, or other deliverables.⁶¹ In so doing, it has detailed to the Court and to the public the reasons why various deliverables have or have not been consistent with the Consent Decree's requirements. The Monitoring Team has also provided the Court with reports on various of the Monitor's formal outcome measurement requirements.⁶²

The Monitor must also "file with the Court, every six months, written, public reports."⁶³ 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, actual practice."⁶⁴ This is the Monitor's second such report.

The Monitoring Team has previously emphasized that "those looking for a report card, ratings, percentages, scales, or other similar over-simplifications will not find them here."⁶⁵ Instead, this report describes the specific progress that the City and CPD has made to date, the significant challenges that remain, and what the Monitor expects from Consent Decree stakeholders during the next six months.

⁶⁰ First Semiannual Report at 16.

⁶¹ See, e.g., Dkt. 72 (recommending approval of new CPD mission statement); Dkt. 83 (recommending approval of new use of force policies); Dkt. 86 (recommending approval of new OPS and PRB operational manuals); Dkt. 87 (submitting budgets for OPS, PRB, and CPC).

⁶² See, e.g., Dkt. 71 (submitting results of biennial community survey); Dkt. 73 (reporting results of initial baseline outcome measurements).

⁶³ Dkt. 7-1 ¶ 375.

⁶⁴ *Id.* ¶ 375(b).

⁶⁵ First Semiannual Report at 18.

COMMUNITY ENGAGEMENT & BUILDING TRUST

A. Community Police Commission (“CPC”)

The committed group of volunteers comprising the Cleveland Community Police Commission (“CPC” or the “Commission”) has continued to produce high-quality work and important contributions to the Consent Decree process. Just more than one year into its existence, the Commission has built an impressive list of work products that have contributed significantly to new policies and procedures within the Division of Police.

Since the First Semiannual Report, which highlighted the importance of the Commission’s work and its commitment to community input, CPC has continued to produce a number of valuable work products. This work has included, among other things:

- Use of force policy recommendations;
- Recommendations on the OPS Manual;
- Recommendations on the PRB Manual;
- Recommendations on the City’s Equipment and Resource Plan;
- A draft of the Community Engagement Assessment Plan; and
- A draft of the Commission’s first Annual Report.

The CPC coordinates much of its work through its five established committees. These include the Budget Committee, IT and Infrastructure Committee, Community Outreach and Engagement Committee, the Communications Committee, and the Policy and Procedure Assessment (“PPA”) Committee. With the establishment of the PPA Committee, a committee of the whole that meets monthly, the Commission has transitioned

from convening two public meetings to holding one public meeting per month and using the PPA meetings to conduct the important internal and follow-up business among the commissioners themselves. The Monitoring Team commends the Commission for adopting new approaches to its work in order to find a balance between transparency, public input and accountability, and efficiency.

This PPA Committee is responsible for stewarding all CPC policy recommendations and steering the other established committees and work groups. While work groups function on an as-needed basis, currently existing work groups include Bias-Free Policing, Civilian Police Review Board and Office of Professional Standards, and Use of Force.⁶⁶ Work group meetings have been open to the public.

CPC has demonstrated its interest to engage all communities of Cleveland by hosting its meeting locations throughout the City of Cleveland – including in recreation centers, places of worship, and neighborhood resource centers. It continues to allocate a portion of all public meetings to community feedback generally in the form of public comments or breakout sessions. Regardless of how attendees provide feedback, the Commission has documented such input and has taken care to situate its policy recommendations in light of the comments received from the community during these processes.

CPC is also challenging itself to find ways of attracting a broad cross-section of the community to its meetings. The date, time, and location of each meeting are posted on the Commission’s website calendar well in advance of each meeting date. The formats of meetings have been restructured with the goal of fostering a less contentious environment where people of different backgrounds, experiences, and points of view can all feel safe, valued, and comfortable expressing their perspectives. Although average public attendance at CPC meetings has not yet significantly increased, these changes – along with the hiring of community outreach staff – gives some promise for improved community participation going forward.

Another opportunity for greater community participation in Commission activities is through the Commission’s relationship with the District Policing Committees, as the two groups develop deeper connections through shared strategies and aligned outreach efforts.

Over the past six months, in addition to facilitating commission events, members of the Commission have participated in a wide range of police reform assemblies, including but not limited to:

- Monthly meetings of the Parties of the Consent Decree;
- Community and Problem-Oriented Policing Forum held at Case Western Reserve Uni

⁶⁶ A Mission Statement work group has been discontinued by the Commission until such time there is a need to re-evaluate the mission statement of the CDP and/or the CPC.

versity;

- Use of Force policy roundtables;
- Crisis Intervention training and policy roundtables;
- Mental Health Response Advisory Committee; and
- Cleveland's Community Relations Board.

The Monitoring Team has heard diverse viewpoints expressed by Commission members. Conversations have generally remained civil and respectful, even when points of view have been passionate and pointed. CPC is supposed to be a venue where members of the Cleveland community with diverse viewpoints can come together and discuss challenging issues. The Monitoring Team continues to believe that passion, debate, and difficult conversations are a sign of the Commission's health, vibrancy, and progress – and not a sign of failure, insignificance, or chaos. The diversity of viewpoints that the Commission hears, and the diversity of its volunteer commissioners, remains an important part of ensuring that CPC can be the type of conduit between Cleveland's diverse communities and the reform process.

Much has been accomplished by the Commission – at times, with great strain on individual commission members. Commissioners are currently doing more than what can reasonably be expected of a volunteer unit. Borrowed staff of the Cleveland Foundation and the City of Cleveland Community Relations Board has been invaluable to CPC, and the Monitoring Team thanks both entities for their strong support of community participation in police reform.

However, commissioners have, to date, consistently carried out a wide array of duties that should likely be performed by a staff. Therefore, it is necessary for the commission to make operational capacity building a primary focus in the coming months. In particular, the hiring of an Executive Director should be the Commission's top priority. Encouragingly, the Executive Director selection process is underway and the Commission is on pace to fill the position in early 2017. The Commission should endeavor for a transition of executive and administrative duties by empowering the Executive Director with true executive authority and the responsibility of hiring, and managing the onboarding of, additional staff.

B. District Policing Committees

The District Policing Committees (formally known as the District Community Relations Committees), one for each of the five Police Districts, have operated as strong district-wide partnerships involving local stakeholder groups and individuals, the Community Relations Board and the Police Districts. These Committees devise locally-formed strategies to address issues and concerns specific to each Police District.

The Consent Decree calls for the expansion of the membership of the District Policing Committees and annual reporting of its strategies, concerns and recommendations to the Commission.⁶⁷ As active as the Commission and the District Policing Committees are, the bridging of strategies to strengthen communication and cooperation between CPD and communities of Cleveland has not yet been established. In the coming months the Monitoring Team will observe and support the Community Relations Board's efforts to begin to connect the overlapping interests and responsibilities of the District Policing Committees and the CPC.

C. The Monitoring Team's Community Engagement & Outreach

The Consent Decree continues to “call[] for the robust, intensive, substantive[,] and sustained engagement of the community throughout the implementation process.”⁶⁸ During the past six months, the Monitoring Team has continued to gather and listen to the views of Cleveland residents and attempted to ensure that all interested individuals can participate in the reform process.

To this end, the Monitor's Community Engagement Team has conducted more than 40 community meetings and made 60 presentations before community groups of all kinds, i.e. religious congregations, social clubs, fraternities and sororities, political gatherings, ethnic coalitions, law enforcement members, youth groups, and others populations within the City of Cleveland.

As with the prior reporting period, the Monitoring Team has continued to meet with groups large and small, and even one-on-one with community leaders and individuals, to explain the Consent Decree process, update on current progress, share information, and answer questions. By this time in the Team's ongoing efforts, the list of individuals, groups, entities, and organizations with which the Monitoring Team has met or spoken would be prohibitively lengthy to recount here. Because the Team remains mindful that “[t]here are . . . those residents who do not have the time, ability, resources, or incentive to engage with the process,”⁶⁹ the Team continues to work hard to reach even further into Cleveland's diverse communities.

All of the Monitor's engagement is focused on ensuring resident involvement and participation in the substantive reform process. This report elsewhere recounts, in some level of detail, the extensive community engagement and outreach that took place in Cleveland around proposed new use of force policies for CPD. The level, scope, and extent of resident – including police officer – involvement in the development and finalization of those force

⁶⁷ Dkt. 7-1 ¶¶ 23–26.

⁶⁸ *Id.* at 21.

⁶⁹ *Id.* at 22.

policies goes far beyond the process used in other Consent Decrees and is a noteworthy testament to the commitment of the City and its residents to broad-based, community-facing reform.

The Engagement Team continues to provide educational information across the Cleveland Community to residents. The Monitoring Team's website, www.clevelandpolicemonitor.com, contains relevant information on the Consent Decree process and real-time postings of events, meetings, and updates to the Monitoring Plan – so that residents, community organizations, and other interested stakeholders can remain current on all phases of the implementation process. The Monitoring Team remains in a partnership with Cleveland's local libraries, Cuyahoga Community College, and other organizations to provide access to information and real-time knowledge about what Consent Decree reforms are being considered.

As described elsewhere in this report, the Monitoring Team has built extremely strong working relationships with members of the Division at the command level as well as with rank-and-file officers. In the coming year, the Team will work to continue to solidify those relationships and build even stronger partnerships with officers on the street that daily interact with residents in the community.

The public has made it clear that accountability for officer's actions on the streets is one of the main concerns they want to see the reform process address. The Engagement Team works to ensure that their voice is heard on this issue and encourages citizens who hold those concerns to participate in CPC meetings and work groups that deal with policy and accountability issues.

The Monitoring Team continues to maintain an office at Lutheran Metropolitan Ministries ("LMM"), which is provided to the Team without charge. The Monitor thanks LMM for its continued generosity, hospitality, and support.



tems to monitor officer outreach to the community; and

- “Analyze” the quality and nature of its, and officers’ community policing efforts, “broken out by District, in a publicly available community policing report.”⁷⁰

A. Community and Problem-Oriented Policing Plan

The Monitoring Team’s previous report also outlined the major features of a comprehensive and integrated community and problem-oriented policing model based on best practices. That Report noted that, while the Monitor will not dictate the specifics of community policing in Cleveland, we would expect to see a strategy grounded in what we know works or, otherwise, a well-reasoned justification for exploring untested practices.

Given the substantial work required under the Consent Decree, as well as the resources required to police the Republican National Convention, the CPD remains in the early stages of turning its attention to Community Policing. In December, the CDP, City, CPC, DOJ, and the Monitor agreed to embark on a streamlined and coordinated community engagement process around the Division’s “comprehensive and integrated community and problem-oriented policing model.”⁷¹

Substantive community input is the first step in the development of the community and problem-oriented policing plan and the Division’s plan must be a direct response to what the community wants. The goal of this stream-lined process is for the parties to work together when they reach out to the community. A coordinated process is especially important for community and problem-oriented policing because of the breadth and nature of the topic. Discussions around community policing have great potential to stray off into conceptual and philosophical conversation rather than concrete strategy.

Recognizing the need for a more educational, and more productive engagement process around this topic the parties intend to work to together in the effort to have broad and inclusive engagement with Cleveland residents. The stakeholders hope that a collaborative engagement process will minimize multiple and redundant community solicitations on the same topic and allow for meaningful input on this important plan.

The Monitoring Team understands that the CPD has already put some thought into how to re-shape its community policing and build on positive work being done in the community on a daily basis. It looks forward to working closely with the Department as it turns those thoughts into a detailed process and proceeds through the challenging steps needed to implement these important reforms. Nonetheless, some work has been done in this area over the past several months that is worth noting.

COMMUNITY & PROBLEM-ORIENTED POLICING

The First Semiannual Report summarized the requirements of the Consent Decree related to Community & Problem Oriented Policing (“Community Policing”). To review, the Consent Decree requires that the CPD implement a number of fundamental reforms related to community policing, including:

- “[E]nsuring that its mission statement reflects its commitment to community oriented policing;”
- “[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”
- “[P]rovid[ing] initial and annual in-service community and problem-oriented 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;”
- “[Maintain[ing] collaborative relationships with a broad spectrum of community groups;”
- “[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.”
- “[D]eveloping and implementing sys-

⁷⁰ Dkt. 7-1 ¶¶ 27-30.

⁷¹ *Id.* ¶ 27.

B. Mission Statement

The Consent Decree requires that the CPD ensure that its mission statement “reflects its commitment to community oriented policing.”⁷² As the Monitor observed to the Court previously, “[i]n a police department, ‘successful institutionalization of community policing is likely only if it is included as a part of the adopting organization’s mission,’ especially if accompanied by a ‘set of core values.’”⁷³

CPD is still in the process of ensuring active implementation of its new mission statement, approved by the Court in July 2016.

In response to that requirement, the CPD engaged in a thoughtful process, which directly involved CPD officers and the Cleveland community, to draft a new mission statement. Some 133 officers responded to an anonymous feedback form about their views on what should be included in a new mission statement for the Division. Representatives of the Cleveland Police Patrolman’s Association (“CPPA”), Fraternal Order of Police Cleveland Lodge Number 8 (“FOP”), and other officer organizations also met with CPD leadership to discuss the mission statement. Additionally, the CPC, in a labor-intensive effort, also developed a feedback mechanism for Cleveland residents – with 122 people participating and providing feedback to the CPD. Separately, the Commission conducted research and provided recommendations based on commissioner views and the views, experiences, and feedback provided to it during various public meetings and forums. Further, the Monitoring Team sought community feedback about a proposed mission statement that was made public for community input.⁷⁴

The result of this internal and external engagement is a new CPD Mission Statement, collaboratively drafted and approved by this Court in July 2016,⁷⁵ that provides a new direction for the men and women of the Division and the Cleveland community.⁷⁶

The mission of the Cleveland Division of Police is to serve as guardians of the Cleveland community. Guided by the Constitution, we shall enforce the law, maintain order, and protect the lives, property, and rights of all people. We shall carry out our duties with a reverence for human life and in partnership with members of the community through professionalism, respect, integrity, dedication, and excellence in policing.

Problematically, this new mission statement has not been offi-

⁷² *Id.* ¶ 28.

⁷³ Dkt. 72 at 2 (quoting E.J. Williams, “Structuring in Community Policing: Institutionalizing Innovative Change,” 4 *Police Practice & Research* 119, 124 (2003)).

⁷⁴ See Dkt. 72 at 5–7 (describing Monitoring Team’s outreach process).

⁷⁵ Dkt. 74.

⁷⁶ See generally Dkt. 72.

cially rolled out within the Division. Visitors to CPD districts and headquarters may, for instance, see the Division’s prior statement still posted in the buildings. Even more fundamentally, it does not appear that CPD officers have been informed – whether through an email, a Divisional Notice, or oral content provided during pre-shift roll calls – that the Division has a new philosophy and overriding set of values that is embodied by a new mission statement. The lack of urgency with respect to meaningfully implementing the mission statement has been frustrating to the Monitoring Team and other Consent Decree

stakeholders who participated in extensive conversations about that statement in the Spring of 2016.

Thus, although the Monitor and Court have approved a new mission statement, it does not appear that the Division has taken any meaningful steps toward ensuring that the mission statement is substantially and effectively implemented. The Division and Monitoring Team have discussed the possibility of the Division’s upcoming training on the new use of force policies as being a good vehicle for ensuring broad-based awareness of CPD’s new mission. The Team will be looking to see whether that training does provide specific background, context, and content on the new mission statement along with the significant other substance that the training must cover.

C. Biennial Community Survey

The Monitoring Team contracted with an independent research firm to conduct a methodologically rigorous and scientific community survey, to gauge public perceptions of safety and policing.⁷⁷ The purpose of the survey was to assess the community’s trust and confidence in the CPD overall and with regard to specific areas, such as use of force and bias-free policing. The results of the survey, which were filed with the Court in June 2016,⁷⁸ will provide useful information to CPD and the community as a comprehensive community and problem-oriented policing plan is developed.⁷⁹

Overall, the survey found that Cleveland residents are skeptical about police conduct and accountability. Generally, “[j]ust over half of all residents surveyed (55%) believe the Cleveland Division of Police is doing a ‘good’ or ‘excellent’ job overall.”⁸⁰ Only 50 percent of residents believe police officers follow the law “all of the time” or “most of the time.”⁸¹ “Just under half (48%) believe officers treat people with respect or use the appropriate amount of force (47%) in most situations.”⁸² A majority of residents (55 percent) believe officers are held accountable “only some of the

⁷⁷ Dkt. 7-1 ¶¶ 361–66.

⁷⁸ Dkt. 71.

⁷⁹ Dkt. 7-1 ¶¶ 27–34.

⁸⁰ Dkt. 71-1 at 3.

⁸¹ *Id.*

⁸² *Id.*

time” or “almost never” for misconduct when it occurs.⁸³ Just “one-third of residents think the police have taken the time to meet members of their community (33%) or have developed relationships with people like them (37%).”⁸⁴

There are significant racial disparities with respect to approval of and views about CPD. While “[n]early three-fourths of white residents surveyed (72%) believe the Cleveland Police are doing a good or excellent job overall,” only “43% of black residents” believe the same.⁸⁵ Indeed, “Black and Latino residents . . . gave the Cleveland Police lower ratings across a number of specific measures” – with “more than two-thirds of black residents (69%) believ[ing] that . . . officers are held accountable ‘some of the time’ or ‘almost never’” for misconduct.⁸⁶ White residents are comparatively more likely than Latino and black residents to “ask the police for help” or “report a crime” to CPD,⁸⁷ which could have significant effects on crime within some Cleveland communities.

Whether policing in Cleveland is effective, safe, and consistent with the values of the community cannot be definitively established by a survey. The protections of the U.S. Constitution are not poll-driven concepts. Indeed, it is axiomatic among scholars of varied ideological persuasions that, under the U.S. Constitution, “[i]t is of great importance . . . to guard one part of the society against the injustice of the other part”⁸⁸:

[T]he real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.⁸⁹

⁸³ *Id.*

⁸⁴ *Id.* at 4.

⁸⁵ *Id.* at 3.

⁸⁶ *Id.* at 4.

⁸⁷ *Id.* at 5.

⁸⁸ *The Federalist* No. 51 (James Madison) (Clinton Rossiter ed., 2003) at 320.

⁸⁹ Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), in Jack N. Rakove, *Declaring Rights*, at 161–62 (1998); see, e.g., *West Virginia State Bd. Of Educ. V. Barnette*, 319 U.S. 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities . . . [F]undamental rights may not be submitted to vote; they depend on the outcome of no elections.”); Samuel Freeman, “Constitutional Democracy and the Legitimacy of Judicial Review,” 9 *Law & Philosophy* 327, 327 (1990) (“The conception of democracy that stems from the social

Consequently, the results from the Monitor’s initial community survey do not definitively establish, one way or another, whether CPD is or is not engaged in constitutional policing and whether the Division has or has not complied with any relevant part of the Consent Decree.

However, the surveys demonstrate a disconnect between the Cleveland Division of Police and the communities that it serves, with a critical number of individuals believing that local law enforcement officials are not as responsive to their views, concerns, or experiences – and that, at times, the burdens of law enforcement are not equally shared.

A renewed trust among the community with respect to the CPD – and a new, shared vision for policing in Cleveland – is also necessary from the perspective of ensuring greater safety on the streets of Cleveland. Community confidence and trust, by making residents more willing to participate and cooperate with police, tends to reduce both crime and the fear of crime.⁹⁰ Accordingly, the Consent Decree is far more than an administrative, bureaucratic, or accountability-focused document. It is squarely a crime-fighting document that will assist substantially in the ability of CPD officers to perform its core law enforcement functions.

D. CPD Community Engagement

Over the past six months, CPD has meaningfully sought community feedback related to critical reforms. In addition to the efforts made in relation to the mission statement discussed above, the CPD participated significantly in soliciting feedback to proposed changes to its use of force policies, engaging both its front-line police officers and Cleveland residents.

The Team recognizes that, for some CPD personnel, engaging

contract tradition of Locke, Rosseau, Kant and Rawls, is based in an ideal of the equality, independence, and original political jurisdiction of all citizens . . . [J]udicial review can be seen as a kind of shared precommitment by sovereign citizens to maintaining their equal status in the exercise of their political rights . . .”).

⁹⁰ See generally Robert J. Sampson, et al, “Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy,” 277 *Science* 918 (1997) (detailing link between community policing and crime and fear of crime); Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1 (1995) (same); Michael D. Reisig & Roger B. Parks, “Can Community Policing Help the Truly Disadvantaged?,” 50 *Crime & Delinquency* 139 (2004) (same); Dan Fleissner & Fred Heinzelmann, National Institute of Justice, “Crime Prevention Through Environmental Design and Community Policing” (Aug. 1996) (same); A. Steven Dietz, “Evaluating Community Policing: Quality Police Service and Fear of Crime,” 20 *Policing* 83 (1997) (same).

the public substantively on issues related to the Division's policies, procedures, and operations is a new concept and experience. It is understandable that some, at least initially, might believe that such engagement must entail criticism, condescension, or attack. However, the dedication of other CPD personnel to participating in dialogue both with individuals who indicated that they are highly supportive of CPD and with others who indicated that they are highly critical of police conduct has been noteworthy.

The Monitoring Team has received questions and been made aware of the concerns of some community members about the participation of CPD personnel at community forums or on community panels focusing on police reform. The Team understands that the experiences of some community members may lead them to be highly averse or subjectively unable to feel like their experiences can be validated and their voices heard in the context when a member representing the police are present. However, paradigms related to restorative justice are grounded, in part, on "involving all stakeholders."⁹¹ Broad-based, cross-community conflict resolution approaches are likewise grounded in the "[i]nclusion of a full range of stakeholders."⁹² Studies of police complaint mediation programs indicate that the presence of law enforcement agents is critical in transforming the attitudes, views, and behaviors of both residents and police officers regarding specific police-community interactions.⁹³

In short, a renewed relationship between the community and Division of Police, where each group views the other not as "them" but as "us," requires the participation of Cleveland residents and officers alike. It may, from time to time, require a good-faith effort by officers to learn more about the day-to-day interactions that some community members believe passionately are systemically unfair or unjust – just as it may require a good-faith effort by Cleveland residents to hear about the day-to-day realities and rigors of line-level law enforcement. It may require members of the community and police department, over time and when appropriate, to engage with the possibility that the police-community relationship is not inevitably or permanently consigned to be what it may have been.



⁹¹ About Restorative Justice, "Tutorial: Intro to Restorative Justice" (last visited Nov. 21, 2016), <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/>.

⁹² Judith E. Innes, "Consensus Building: Clarifications for the Critics," 3 *Planning Theory* 7 (2004).

⁹³ Samuel Walker & Carol Archbold, "Mediating Citizen Complaints Against the Police: An Exploratory Study," 2000 *J. Disp. Resol.* 231 (2000); Ryan P. Hatch, "Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution," 21 *Ohio St. J. on Disp. Resolut.* 447 (2005).

BIAS-FREE POLICING

As part of the Consent Decree, the City of Cleveland and the Department of Justice have agreed to make certain that the Cleveland Division of Police “will deliver services with the goal of ensuring [those services] are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in CDP.”⁹⁴

To that end “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,”⁹⁵ “cultural competency training regarding the histories and cultures of local immigrant and ethnic communities,”⁹⁶ and others.

While recognizing that “cultural and historical realities [may] 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.”⁹⁷ As detailed in the Updated First-Year Monitoring Plan, the development of that policy and training will need to incorporate,

where appropriate to do so, the concerns and issues gathered by the Cleveland Community Police Commission from Cleveland’s diverse communities.⁹⁸

To date, the CPC has provided specific recommendations relating to bias-free policing. 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, youth, and homeless related to bias-free policing. The initial CPC report summarizing this input and those recommendations included specific comments and concerns collected by the CPC Bias-Free Work Group from community members. The CPC’s 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.”⁹⁹

With that work completed, the focus is now on the development of the CDP’s policy and training. As detailed in the Updated First-Year Monitoring Plan, the Monitor and the Parties are currently reviewing CPD’s draft bias-free policing policy. Ultimately, the Monitor must approve or disapprove of the final Bias-Free Policing Policy by February 28, 2017.¹⁰⁰

⁹⁴ Dkt. 7-1 ¶ 35.

⁹⁵ *Id.* ¶ 40(b).

⁹⁶ *Id.* ¶ 40(d).

⁹⁷ First Semiannual Report at 29.

⁹⁸ Dkt. 80-1 at 20.

⁹⁹ *Id.* at 30.

¹⁰⁰ *Id.* at 20.

USE OF FORCE

A. Policy

The topic of use of force—how, when, and under what circumstance CPD officers are permitted to use force—is central to the consent decree.¹⁰¹ The Decree mandates the CPD:

[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.¹⁰²

1. The Policy Drafting & Community Engagement Process

From the beginning of work on new use of force policies under the Consent Decree, the Parties and major stakeholders have been substantially involved in actively soliciting community involvement in the policy creation and refinement process. Each group's initiative has been vital to the success of creating a use of force policy that incorporates and reflects community values.

Most importantly, the community was invited to be involved in the policy revision process both early on, to help set the agenda and frame issues that needed to be addressed in new policies,

¹⁰¹ See Dkt. 7-1 ¶¶ 45–130.

¹⁰² *Id.* ¶ 45.

and later in the process, when CPD and the Consent Decree Parties believed that the revised policies were substantially far enough along to make community feedback valuable and necessary. In making the proposed force policies public well before they were completed, formally reviewed by the Monitor, or circulated to the Court for approval, the Cleveland community had an opportunity to be more involved in the substantive drafting of use of force policies than – at least to this Monitoring Team's knowledge – any other community has, to date, in other Consent Decree contexts.

Because this commitment to sustained community involvement and substantive public participation by the City, CPD, and the Department of Justice has been so significant, the following sections summarize, in some detail, the process that Consent Decree stakeholders used in creating the new rules of the road for officers with respect to using force that the Court approved at a status conference on January 6, 2017.

a. CPC's Engagement

The feedback process started in February 24, 2016 when the CPC held a full meeting on the topic of use of force. The Commission subsequently hosted a separate town hall and held special meetings with community groups and organizations – such as the Black Shield police officer organization, Cuyahoga Metropolitan Housing Authority (“CMHA”) residents, 100 Black Men, clergy, the LGBT Community Center, members of the Mental Health Advisory Committee, and others. CPC also “developed a Use of Force Questionnaire,” which allowed community members to directly provide input.

The Commission ultimately proposed a set of specific recommendations to Consent Decree stakeholders based on this feedback. Those recommendations focused on a broad range of topics including emphasizing “life preservation” in policy, providing “updated state-of-the-art training” and ensuring the policies are “aligned with community values and expectations.”¹⁰³

b. The City of Cleveland's Engagement

Cleveland's Community Relations Board also conducted an informal survey on use of force issues. A total of 1,092 residents provided feedback in some capacity. Although the City's survey did not secure a random, statistically-significant sample, the City did a noteworthy job and the Monitoring Team commends their efforts.

Key findings from that engagement effort included:¹⁰⁴

¹⁰³ Cleveland Community Police Commission, “Use of Force: Summary Report & Initial Policy Recommendations” at 7–8 (Mar. 31, 2016).

¹⁰⁴ First Semiannual Report at 33.

- A relatively low number of Cleveland residents (about one-third) said that the City of Cleveland's police are fair when using force.
- Fewer than half (44 percent) of respondents agreed that CPD approaches citizens in a respectful manner.
- 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.

c. CPD's Engagement

The Division also engaged in a process to secure the substantive input from CPD officers about the use of force policy. CPD partnered with the leadership of CPPA, FOP, and other police officer organizations and conducted several forms of officer outreach. These outreach efforts included a non-scientific online officer survey, focus group discussions, anonymous written submissions, and a series of meetings with union and officer organization leadership.¹⁰⁵

As the Monitoring Team has previously summarized, key findings from the officer online survey included that:¹⁰⁶

- Most officers who completed the feedback form did not believe that force types and categories in CPD's current force policies are sufficiently clear.
- 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.
- 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.

d. The Policy Revision Process

After receiving input from the CPC, the City, and the CPD, the Division set out to draft revised policies with respect to when

officers may and may not use force on the streets of Cleveland. Starting in March 2016, the Consent Decree stakeholders met regularly to discuss issues and exchange preliminary drafts of the policies. All stakeholders were, and are, mindful of the duty to structure the reform process in a manner that can make maximum use of the time that Cleveland residents provide to the process.

On September 8, the Parties and Monitoring Team agreed that the then-current drafts of four policies – a general policy, a definitions policy, a policy addressing intermediate weapons, and a policy addressing the duty to de-escalate – were sufficiently advanced that community input and feedback was warranted and necessary. Consequently, the Parties and Monitoring Team made proposed new policies available to the general community.

e. The Stakeholder's Collaborative Engagement

Starting on September 8, the Monitoring Team – working closely with the City of Cleveland, CPD, the Department of Justice, and the CPC – solicited public input on the CPD's proposed Use of Force policies. Between September 8 and November 4, 2016, the Parties engaged in a comprehensive feedback process.

1. Overview of The Public Comment Process

To ensure that the Consent Decree stakeholders received input from a cross-section of Cleveland residents, the Monitoring Team oversaw a comprehensive process of community involvement aimed at providing community organizations and residents, including CPD personnel, with numerous avenues to provide input on the force policies.

1. **The Monitoring Team's Website.** The Monitoring Team made the draft policies available on the Monitoring Team website, the CPC's website, and the City's website, along with a brief summary of key policy changes. Organizations and interested individuals were invited to submit written comments.

The Team received three sets of detailed comments—from The Schubert Center for Child Studies at Case Western Reserve University ("Schubert Center"), Strategies for Youth, and the American Civil Liberties Union of Ohio.

2. **The Monitoring Team's Feedback Form.** The Monitoring Team created an online feedback form to provide residents with an opportunity to weigh in on the policies without necessarily having to read the policies in full or attending a public event. The feedback form asked residents a series of questions designed to get their views on whether the new policies address

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

their concerns, would improve police-community relations, and would promote officer safety. Comments were received from a number of Cleveland residents.

3. **Community Roundtables.** The Monitoring Team coordinated – in partnership with the City, CPC, CPD, and Department of Justice – two major community roundtables to provide an opportunity for direct engagement between the Consent Decree Parties and the community around the proposed policy. Those roundtables took place on September 15, 2016 at Jerry Sue Thornton Center, on Cleveland’s Eastside, and on September 20 at Urban Community School, on Cleveland’s Westside. The Chief of Police and United States Attorney for the Northern District of Ohio attended both roundtables.

Some 200 residents and community leaders attended the two roundtables, including police officers, several members of the clergy, residents and staff of the Cuyahoga Metropolitan Housing Authority, Cleveland city council members, and representatives from The Hispanic Alliance, The Council on American Islamic Relations, and the LGBT Center of Greater Cleveland.

In structure, the roundtable events included an overview of the use of force policies with a question-and-answer panel and an opportunity for small group discussions.

The community roundtable started with a 20-minute overview presentation by the Monitor. It sought to provide attendants with a brief overview of the policies – focusing on the major differences between CPD’s old policies and the proposed new policies and highlighting how the new policies satisfy the Consent Decree requirements and also keep CPD personnel and the Cleveland community safe.

A subsequent question-and-answer portion of the session began with community members discussing the new policy in small groups to which attendees were randomly assigned. Representatives from the City, the DOJ, the Monitoring Team, and the CPD served as facilitators and led the small group discussions.

Each group was instructed to come up with and agree on two questions. A panel of representatives – including from the DOJ, the City, and the Monitoring Team answered as many questions as possible in 20 minutes.

Some of the groups sought clarification on key policy terms, like “chokehold” and “proportionality.” Others asked about training and accountability—for example, inquiring whether “officers have scenario-based training.” Many attendees understandably emphasized the

importance of issues relating to training, reporting, accountability, and discipline – topics that the Consent Decree encompasses but on which the reform process will address in coming months.

After the question and answer panel, the same small groups engaged in a substantive discussion around the use of force policies. The Monitoring Team created an agenda to guide the conversations and give residents an opportunity to weigh in without reading the policy in full. Participants were first asked to reflect on Cleveland community values, and then to apply these values to specific policy questions – such as what factors officers should be required to consider before using force. Each group was provided with a large easel pad and instructed to choose a note taker to document the group’s thoughts and discussion.

After a 45-minute discussion, a reporter nominated by the group was asked to share the group’s two most significant or important suggestions or ideas with the audience and the Consent Decree stakeholders. The Monitoring Team recorded these summary suggestions on a projected screen so that community members could not only hear but see their own thoughts and the feedback of other small groups.

A number of community members – including some who had concerns about the impact on the policies on police officers or certain groups within Cleveland – expressed their appreciation for having an opportunity to participate in the policy-making process and found the small-group format to be a positive way to ensure that the voices of all attendees could be heard by other Cleveland residents and from a representative of a Consent Decree stakeholder directly involved in the day-to-day reform effort. Indeed, the Mental Health Response Advisory Committee has sought, and the Monitoring Team has gladly provided, technical assistance on planning that group’s community engagement process on proposed crisis intervention policies. The Monitor is pleased that other Consent Decree stakeholders are seeking to replicate the kind of intensive community feedback that occurred in conjunction with the use of force policies in other important areas of reform.

2. Summary of Comments Received

Generally, as a local Cleveland newspaper summarized, resident discussions focused on small tweaks – and a general sense that the force policies were an important step in the right direction for Cleveland going forward.¹⁰⁷ Several community members

¹⁰⁷ See Eric Heisig, “Residents Offer Input On Proposed Cleveland Police Use-Of-Force Policy,” *Cleveland.com* (Oct. 16, 2016), <http://www.cleveland.com/court-justice/index.ssf/2016/09/>

and small groups praised the policies for providing greater clarity and for being “very straightforward.”

Both at the roundtables and in written comments, community members made a number of suggestions for how to improve the draft policy. Many emphasized the need for greater communication before using force and during de-escalation. Several tables suggested officers learn how to de-escalate themselves when they arrive on a scene.

Some community members who took the online survey found that the policies did not address their concerns and will negatively affect officer and community safety. From the comments received, it seemed as though many of the respondents did not support the Consent Decree and expressed concern that the policies would keep officers from “protecting themselves.” These comments reaffirmed to the Monitoring Team, including its five former law enforcement professionals, the importance of ensuring that the policies are as clear as possible and provide officers with the tools that they need to keep themselves safe while they keep Cleveland’s communities safe.

More specifically, the Monitoring Team noted a number of common themes or threads throughout the various community feedback mechanisms:

1. When Officers May Use Force. Community members suggested a number of factors in which they believed that officers should be trained to assess and consider when evaluating the threat that a subject poses. These included the number of other officers present, the amount of time provided for the suspect to reply to a command, information from witnesses, and potential trauma to bystanders. During the community roundtables, at least half the groups emphasized the importance of improved communication between officers and suspects. Groups stressed that officers should consider the subject’s ability to speak English and whether the subject understands the officer’s commands.

2. De-Escalation Techniques. At the community roundtable, participants also suggested additional techniques officers should consider. Several groups suggested officers should consider the tone and volume of their voice when de-escalating a situation. One group suggested that “officers should approach subjects with a low voice, to avoid subjects from yelling at officers.” Several groups felt as though officers should give subjects room to vent and to distinguish venting from violent mannerisms. Another group believed that officers should tailor their de-escalation strategies to specific neighborhoods.

Several of the small roundtable groups felt the de-escalation policy should more expressly emphasize the role of officers as “guardians” rather than “warriors.” This was articulated in several different ways. One group stressed that “officers should leave the situation better than how they found it,” while another noted that “the responsibility of the officers is not to escalate the situation and this should be more prominent in the policy.” Another group worried officers might not attempt to de-escalate for a reasonable enough time and asked for clarification on an appropriate “length of time the officer should attempt de-escalation tactics.”

A number of groups highlighted the information problem that officers often face and the challenges that officers confront when needing to make quick assessments of people and circumstances that may unfold quickly. Groups discussed how “de-escalation is only possible if officers are properly informed.” One group urged the department to work on clarifying communication from the caller to the dispatcher and then again from the dispatcher to the officer.

3. Youth. At the community roundtables, at least four groups suggested the policies need to better address communicating and de-escalating with children. One group suggested a youth-specific policy. The Schubert Center and Strategies for Youth provide additional, valuable, and specific comments to Consent Decree stakeholders on a variety of issues relating to children, youth, and juveniles.

4. Mental Health. Several community roundtable groups expressed concern that the proposed policies fail to emphasize how officers should interact with community residents with mental disabilities. One group suggested that “each police district have a specific number of CIT trained officers and CIT trained supervisors on duty during each shift.” Another group urged for CPD to keep a database of neighborhoods or streets where mentally disabled community members reside. These and other comments have been discussed even more specifically within the content of CPD’s specific policy on crisis intervention.

5. Communication. Over half of the groups at both roundtables suggested that, to enable verbal de-escalation strategies, officers be provided with more training on communicating with non-English speakers. One group suggested that each officer carry a mini “cheat sheet of common Spanish phrases.”

6. Cleveland Community Values. Several groups suggested the policies include statements expressly referencing CPD’s recognition of the values of “reverence for life” and “respect for all individuals.”

[residents offer input into pro.html](#).

7. Feedback About Topics Not in the Use of Force Policies. Community members provided input on several topics not expressly covered by the proposed policies relating to when officers may and may not deploy force in the field. These important topics included training, reporting, accountability in the review of excessive use of force, and community policing.

Training. Over half of the groups offered suggestions on how training should be conducted and what additional topics should be covered. Several reiterated the importance of scenario-based training and role-playing. One said that the policies include “too much writing” and urged the CPD to use videos, examples, and illustrations instead of classic classroom instruction. Several groups and community members noted the influence of race and poverty on CPD’s policing practices. Two roundtable groups suggested training should address implicit biases and cultural competency,

Lastly, some residents provided input on what should happen after training. One group suggested, officers should be tested to make sure they know the policies, while another group recommended that the policies should be reviewed and revised in order to reflect the realities of Cleveland.

Reporting. A number of community comments focused on the reporting of use of force incidents and ways to provide transparency in the process. One small group suggested the creation of a CPD database where use of force data is tracked and open to the public. Another urged the police department to post a sample Use of Force Reporting form on their website. Another roundtable of residents expressed concern about officers reporting each other. That group urged the CPD to allow for anonymous reporting in order to protect officers from retaliation.

Review Process and Accountability. Many community members expressed concerns about the process by which force incidents are investigated and reviewed. Several groups indicated that the current review structure is inadequate. Two groups suggested review by independent third parties, rather than individuals connected to the police department. They recommended the department find ways to combat the “blue wall of silence” culture. Additionally, community members sug-

gested adding more emphasis on the responsibilities of officers who witness excessive use of force. Lastly, one group recommended immediate isolation for officers who have been involved in a use of deadly force.

Community Policing. At the community roundtables, several groups commended the Parties for including the community in this policy-making process. Many residents emphasized the need for more community engagement. One small group said they would like more opportunities and venues to learn how officers implement the use of force policies.

A few groups suggested officers become more familiar with the areas they patrol. One group noted that community policing principles are integral to these policies. This group stressed that officers should learn more about quality of life challenges in their patrolling communities as that often influences how residents respond. Another group suggested CPD create an officer database consisting of each officer’s name, picture, and some brief information about the officer, such as—the officer’s patrol area, education, and qualifications.

Many community residents discussed the influence of race and poverty in CPD’s policing practices. Several groups provided suggestions on additional training topics, such as cultural competency and implicit bias. Others expressed concern about officer’s perceptions of minority communities. They suggested that CPD adopt stronger community policing practices and more community engagement.

2.. The Final Use of Force Policies Approved by the Court

As submitted to and approved by the Court, the policy revisions include critical changes to 5 new policies:

- (1) CPD’s General Police Order (“GPO”) regarding **Use of Force – General**, which outlines clear use of force principles and specific expectations about when CPD authorizes officers to use force;
- (2) a **Use of Force – Definitions** GPO, which defines commonly used terms in the various force policies;
- (3) a **Use of Force – De-escalation** GPO, which requires that officers

use affirmative strategies and tactics aimed toward ensuring officer and subject safety while reducing the need for or the severity of force to be used;

- (4) a **Use of Force – Intermediate Weapons** GPO, which provides specific guidance on the use of less-than-lethal force tools, such as the Taser, OC Spray, and baton; and
- (5) a **Use of Force – Reporting** GPO, which addresses the requirement that officers report force when used.

As the Monitor reported to the Court when it recommended approval of the policies,¹⁰⁸ the use of force policies are consistent with the Consent Decree because they promote officer and public safety, enhance effective and proactive law enforcement, and advance constitutional policing in a manner consistent with the values of Cleveland's communities as articulated by those communities during extensive community outreach and engagement on the force policies.

a. Use of Force: General

At the outset, the new force policy emphasizes the Division's "commitment to carry out its duties with a reverence for the sanctity of human life."¹⁰⁹ This express commitment—

which not only aligns the CPD's new, Court-approved mission statement—is directly responsive to feedback from the Use of Force Community Roundtables and the CPC's explicit recommendation.¹¹⁰ After outlining the purpose of the policy, the General GPO articulates the policy's four fundamental requirements: that force be used only when it is (1) necessary, (2) proportional, and (3) objectively reasonable, and that officers (4) use strategic de-escalation tactics and strategies when it is safe and feasible to do so.

1. Principles

The inclusion of necessity, proportionality, and de-escalation is a notable shift from CPD's prior force policy.¹¹¹ The Division's previous, fifteen-page policy – which a majority of CPD officers told the Division was unclear and gave them insufficient guidance on when precisely force can and cannot be used – prohibited "excessive force," without defining precisely what would be excessive, and situated authorized force in terms of force "that is objectively reasonable to bring an incident under control."¹¹² By requiring

all force to be necessary and proportional, the new policy matches community expectations and best practices.¹¹³

The fourth principle, de-escalation, is now required before officers resort to the use of force. Although the CPD has a separate de-escalation policy, the Division has included de-escalation as one of the major principles in the general policy.¹¹⁴ This serves to reiterate and highlight the important expectation that officers employ de-escalation techniques.¹¹⁵ Many Community Roundtable participants expressed concern that the proposed policies failed to address how officers should interact with community residents with mental disabilities. The Parties responded to this feedback by adding, in the list of "officer/subject factors and circumstances" that must be considered "when choosing a force response," that officers should consider "[k]nown or reasonably apparent mental illness, developmental disability, or crisis incident" and "[k]nown or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment," when choosing a force response.¹¹⁶

2. When Officers Are Authorized to Use Force

The new policy provides specific guidance as to when deadly force may be authorized. It also provides a specific list of actions in which, "[c]onsistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, Officers shall not" engage. These

actions include using force against subjects "who only verbally confront officers," applying force to those "who are handcuffed or otherwise restrained" except in very limited circumstances, using "neck holds," and using "head strikes with hard objects."¹¹⁷ This prohibited activity list – consistent with the Consent Decree – also conforms to many of the CPC's recommendations, including prohibiting the "use of force against those who are exercising their First Amendment rights."¹¹⁸ It also prohibits officers from "reaching into, or placing themselves in the path of a vehicle."¹¹⁹

3. Rare and Exceptional Circumstances

revised August 14, 2014).

¹¹³ See, e.g., Seattle Police Department, Manual Section 8.000 ("An officer shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject."); PERF Guiding Principles No. 2 and No. 3 at 35-40.

¹¹⁴ Dkt. 83 at 17.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 18.

¹¹⁸ *Id.* at 19.

¹¹⁹ Dkt. 83 at 19; Dkt. 7-1 ¶ 59.

¹⁰⁸ Dkt. 83.

¹⁰⁹ *Id.* at 16.

¹¹⁰ Dkt. 74; Dkt. 83 at 16.

¹¹¹ Dkt. 83 at 17 (or cite to the old policy).

¹¹² Cleveland Division of Police General Police Order 2.1.01 (last

No law, court, or policy can prescribe specific rules that can apply to every conceivable circumstance involving all possible police encounters under any possible permutation of circumstances.¹²⁰ Indeed, CPD was mindful that any force policy “must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.”¹²¹ Consequently, the policy provides that “[i]n rare and exceptional circumstances” where deadly force would be authorized, the subject’s actions “constitute an immediate danger and grave threat to the officer or others,” and “no other force options, techniques, tactics, or choices consistent with the Division’s policy are available, it may be necessary for an officer to take extraordinary or unanticipated actions in order to overcome the threat” that might resemble approaches that are prohibited in nearly every other circumstance by CPD’s policy.¹²²

The expectation of the Parties and Monitor are that this “immediate danger and grave threat” policy provision would apply exclusively “[i]n rare and exceptional situations,” that CPD’s policy will be routinely and fairly applied “without regard to” an officers “underlying intent or motivation,” and that “[t]he officer’s actions” in such exceptional circumstances “shall be subject to strict review.”¹²³ Indeed, it is the hope and expectation of all stakeholders that no Cleveland officer or resident will find themselves in the type of dangerous encounter with a subject where an officer’s options are so severely limited that a safe resolution of the incident is only possible by using otherwise prohibited force techniques.

4. Duty to Intervene and Duty to Provide Medical Attention

The duty to intervene provides that “[e]ach officer at the scene of a use of force incident has a duty to intervene by taking all reasonable actions to stop any use of force that is perceived to be unauthorized by this policy.”¹²⁴

The duty to provide medical aid is an affirmative duty for officers themselves. CPD’s prior policy required only that officers “ensure medical care was provided.”¹²⁵

5. Addressing Community Concerns

Some community comments during the public feedback pro-

cess focused on the need for officers to tailor their responses to young people in a manner consistent with their age, maturity, and relative development. The Monitor understands that CPD is working closely with the Schubert Center for Child Studies at Case Western Reserve to craft a standalone GPO about officer interactions with youth. To the extent that any Use of Force policy cannot exhaustively detail the particular knowledge that officers should have about young people, the Team applauds the Division’s forward-looking focus on the specific issues that relate to interacting with children and juveniles in various stages of physical and cognitive development. To the extent that this protocol on addressing young subjects is successful, other such protocols might be developed to address the disabled or those with language barriers.¹²⁶

Other community comments focused on issues relating to holding officers accountable with complying with the requirements of the force policy or on actions not squarely within the realm of use of force. For instance, the CPC suggested that the force policy address issues related to “verbal abuse, intimidation, . . . sexual favors,” sexual violence, and retaliation.¹²⁷ The importance of each of these subjects demands a full treatment in a separate General Police Order, both to make clear that professional obligations and standards relating to such areas apply not just when force is used but across officer interactions with the public and to ensure that CPD’s revised General Use of Force policy maintains the focus and clarity that officers and community members routinely urged.

Similarly, a number of community recommendations focused on issues relating to use of force data, investigations, accountability, transparency, body cameras, and the role of the Office of Professional Standards (“OPS”) in reviewing force incidents.¹²⁸ The Monitoring Team concurs that these issues, which are all addressed in the Consent Decree, are squarely related to force and the long-term ability of the Division to implement the Use of Force policy in practice. Because the General Use of Force policy focuses on when officers may and may not use force on the streets of Cleveland, these topics will be subsequently addressed in the Consent Decree process in other General Police Orders and Operation Manuals.

b. Use of Force: Definitions

Many community comments focused on issues of accountability. The importance of each of these subjects demands a full treatment in a separate General Police Order, and the Consent Decree process will soon work on addressing these issues.

¹²⁰ Linda S. Miller, et al, *Community Policing: Partnerships for Problem Solving* 46 (11th ed. 2011) (“Police use discretion because no set of policies and procedures can prescribe what to do in every circumstance.”).

¹²¹ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

¹²² Dkt. 83 at 20.

¹²³ *Id.*; *Graham v. Connor*, 490 U.S. 386, 397 (1989).

¹²⁴ Dkt. 83 at 20.

¹²⁵ *Id.*

¹²⁶ Cleveland Community Police Commission, “Summary Comparison Of Proposed General Police Orders With Cleveland Community Police Commission Recommendations” at 7–8 (Sept. 23, 2016), [hereinafter CPC Final Use of Force Summary Comparison] (recommending “specific protocols for dealing with those with physical . . . conditions, . . . differently abled, and language barriers”).

¹²⁷ CPC Final Use of Force Summary Comparison at 2, 7.

¹²⁸ CPC Final Use of Force Summary Comparison at 12–14.

Common definitions of frequently-used terms that apply throughout the force-related policies are located in the newly revised Definitions policy. These definitions provide a common framework for officers, and the public, aimed at fostering clarity, fairness, and accountability. The three-page Definitions policy defines thirteen terms, three levels of force, and three levels of subject resistance.¹²⁹

The revised policy directly responds, as noted above, to feedback and comments from CPD officers. One of the key findings from the electronic survey that the Division conducted was that “officers appeared to want clearer definitions of key terms used” in a new force policy, “with fewer than 40 percent of officers saying that the Division’s old definitions made the policy clear.”¹³⁰ Consequently, CPD endeavored to make the new definitions both concise and precise – so that policy provisions using the defined terms are readily understandable. For instance, the new policy provides clear definitions for key terms integral to the general policy.¹³¹

The Definitions section also outlines the three Levels of force discussed.¹³² It should be noted that, consistent with the Decree, low-level, Level 1 reportable force now includes “un-holstering a firearm and pointing it at a subject.”¹³³ This is consistent with the CPC recommendation that the policy “[i]ncorporate in GPO Definitions, explicit language regarding pulling out and pointing of firearms—even when not fired.”¹³⁴

c. Use of Force: De-Escalation

De-escalation is the use of affirmative and strategic techniques to preserve a greater array of tactical options, thereby increasing the likelihood that a subject will voluntarily comply while minimizing the likelihood that force will need to be used during an incident and/or reducing the severity of force that is used. CPD’s revised policies now impose an affirmative duty on police officers to de-escalate situations unless it is not safe or not feasible for them to do so. The concept has been set forth both in a distinct policy section and as a requirement in the General Use of Force policy.¹³⁵

CPD’s stated intent of having both a separate, standalone De-escalation policy and incorporating de-escalation expressly into

the General Use of Force policy is to clarify that officers understand that “the guidelines relative to de-escalating situations in order to gain voluntary compliance and reduce the need to use force” apply to all encounters, regardless of whether force is ultimately required to resolve the situation or not.¹³⁶ During the Use of Force Community Roundtables, many community members discussed the importance of incorporating specific protocols for de-escalating individuals with mental health conditions.¹³⁷ Consistent with this feedback, the de-escalation policy requires officers to consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comprehend and/or comply based on “[k]nown or reasonably apparent mental illness, developmental disability, or crisis incident or [k]nown or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment.”¹³⁸

d. Use of Force: Intermediate Weapons

Intermediate weapons, sometimes called less-lethal or less-than-lethal weapons, can be an important tool used by officers to gain control of a subject posing a threat without needing to use more deadly force. The appropriate use of less-lethal weapons has been associated with a lower rate of injuries to both officers and civilians.¹³⁹ CPD previously did not have a standalone, separate policy section or manual specifically dedicated to intermediate weapons.¹⁴⁰ Instead, different rules applied to different intermediate weapons, and all were contained in the Division’s single force policy. Indeed, the only guideline that applied to all intermediate weapons was that officers were not permitted to use an intermediate weapon against someone who was passively resisting.¹⁴¹

The revised Intermediate Weapons policy focuses on four authorized intermediate weapons: (1) ASP Baton/Riot Baton/Impact Weapons; (2) Oleoresin Capsicum (OC) Spray; (3) Conducted Electrical Weapon (“CEW” or “Tasers”); and (4) the beanbag shotgun. The new policy sets out clear provisions that apply to all intermediate weapons, regardless of type, including when officers are and are not authorized to use any intermediate weapon.¹⁴² Under the revised policy, officers are required to carry at least two intermediate weapons, which ensures that officers will have multiple less-lethal options immediately available to them.¹⁴³

¹²⁹ Dkt. 83 at 21–22.

¹³⁰ Dkt. 43–1 at 33.

¹³¹ See Dkt. 83 at 22. (discussing the addition of definitions for integral words—such as “neck hold” and “necessary”—in the general policy).

¹³² Dkt. 83 at 38.

¹³³ Dkt. 7–1 ¶ 56; Dkt. 83 at 38.

¹³⁴ CPC Final Use of Force Summary Comparison at 2.

¹³⁵ Dkt. 83 at 24. The General Use of Force Policy emphasizes the significant breadth of the duty and the primary importance of de-escalation in the Division’s approach to policing and using force going forward.

¹³⁶ *Id.*; see also Dkt. 7–1 ¶ 36.

¹³⁷ Dkt. 83 at 25.

¹³⁸ *Id.*

¹³⁹ See e.g., John M. MacDonald, et al, “The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events,” 99 *Am. J. Pub. Health* 2268 (2009) (concluding that “[i]ncidence of . . . injuries can be reduced dramatically when law enforcement agencies responsibly employ less-lethal weapons in lieu of physical force”).

¹⁴⁰ Dkt. 83 at 25.

¹⁴¹ *Id.*

¹⁴² *Id.* at 26.

¹⁴³ Dkt. 83–4 at 1, Procedures (I)(A)(2).

The policy also provides force-instrument-specific guidelines – or particular policy provisions that apply to the specific nature of the instrument and the risks associated to officers and subjects.¹⁴⁴ Because OC Spray and CEW are more widely carried and used by CPD officers than other intermediate weapons, the guidelines for those instruments are discussed in detail.¹⁴⁵

e. Officer Use of Force Reporting

Finally, the Division's Officer Use of Force Reporting policy is consistent with the requirements of the Consent Decree and incorporates community feedback.¹⁴⁶ This policy outlines what officers must do to notify supervisors after force has been used, what they must be prepared to do in terms of describing and reporting what happened, and the administrative response from the Division that officers can expect to be followed immediately after a use of force incident.

The proposed policy captures the affirmative duty placed on all witness officers to report such force in writing. The Division has created a Witness-Officer Narrative Statement, which requires officers who are bystanders or witnesses to the use of force by a CPD officer to provide, among other things: (1) detailed account of the incident from the witness-officer's perspective; (2) the reason for the initial police presence; (3) a specific description of the acts that led to the use of force; (4) the level of resistance encountered; and (5) a complete and accurate description of every type of force used or observed.

The comments of the CPC and other community organizations focused on how force reports would be evaluated, reviewed, and made public. Specifically, in a separate document reviewing the reporting policy, the CPC indicated that "Use of Force Reports need to be consistently evaluated for departmental values and integrity of reporting of the facts of the case," and that "Use of Force . . . be reported out to the community . . . on a monthly or quarterly basis."¹⁴⁷ The Monitoring Team agrees. However, the Officer Use of Force Reporting policy applies to officers. The response of supervisors to use of force incidents, the administrative inquiries and reviews of force, and the Department's tracking of data about use of force will all be the subjects of subsequent GPOs that will be separately completed, made available for wider review, and submitted to this Court.

B. Officer Use of Force Training

The approved, new use of force policies for CPD will only be-

¹⁴⁴ *Id.* at 2-8, Procedures (II-V).

¹⁴⁵ Dkt. 83 at 27- 28 (discussing specific details and protocols officers must follow when using CEWs or Tasers).

¹⁴⁶ *Id.* at 28; Dkt. 7-1 ¶¶ 87-99.

¹⁴⁷ Dkt. 83 at 29.

come effective once the men and women of the Division receive significant, substantive training on the policy's provisions.

Monitoring Team's last semiannual report summarized the importance of training to the Consent Decree effort:

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 annually¹⁴⁸

The Division's upcoming, 16-hour training for all officers on the new use of force policies will, it is hoped, serve as a strong foundation for officers to learn about new obligations under the policy and practice skills related to responding to subjects and potential threats in dynamic, scenario-based environments.

CPD continues to partner closely with the Department of Justice, City, and Monitoring Team in development a comprehensive use of force training that clarifies for officers what is expected of them under the new force policies, provides opportunities for officers to apply the policies to real-world situations, and allows CPD personnel to practice the tactics and strategies that can ensure that they keep themselves safe while de-escalating situations when it is feasible to do so.

It is currently contemplated that use of force training may be able to begin sometime in February 2016. Even if several weeks more are required beyond that date to finalize training, train CPD's instructional staff to give

the training to officers on a round-the-clock basis, or commence the training of officers, the Monitoring Team is satisfied that the Division is committed to completing a high-quality training that incorporates the good practices of peer departments and uses adult educational principles. That is, even if the start of training must be a some interval after February 2016, a shift in timelines would be reasonable so long as it is in service of enhancing the quality and effectiveness of the force training.

C. Use of Force Investigations & Review

The Monitoring Team outlined the significant Consent Decree requirements relating to the internal investigation and review of force used by CPD officers in the First Semiannual Report.¹⁴⁹ Much of the public feedback regarding the policies on when officers may and may not use force understandably also began to address issues relating to how the Division of Police would respond to, investigate, and review force incidents – affirming that "[a]n important goal of the Consent Decree is to ensure that all uses of

¹⁴⁸ First Semiannual Report at 6.

¹⁴⁹ *Id.* at 36-37.

force administered by CPD officers are, after being promptly and uniformly reported, meaningfully examined and reviewed.”¹⁵⁰

Currently, work is underway, per the Updated First-Year Monitoring Plan, on new policies relating to the investigation and review of force. This includes establishing policies on lower-level force inquiries and, for serious uses of force, policies and protocols for a dedicated Force Investigation Team (“FIT”) that must be specially trained to handle comprehensive and objective administrative reviews of force incidents. After policies are finalized, supervisors will need training on the many new requirements relating to investigating and reviewing force, and the membership of FIT will need to be determined and trained.

Additionally, policies and a procedural manual for the Division’s eventual Force Review Board (“FRB”), which will “serve as a quality control mechanism for uses of force and force investigations” by “apprais[ing] use of force incidents from a tactics, training, policy, and agency improvement perspective.”¹⁵¹ FRB also “will assess the quality of the investigations it reviews, including whether investigations are objective and comprehensive and recommendations are supported by a preponderance of the evidence.”¹⁵² It must also “examine . . . data related to use of force . . . to detect any patterns, trends, and training deficiencies . . .”¹⁵³ During the first significant span of time in which the Board is operating, the Monitoring Team will provide in-depth, active, and real-time technical assistance by participating in meetings of the Board and, where necessary, asking questions or probing unexplored issues if the Board is not otherwise considering material issues that it must under CPD policies and the Consent Decree.

The establishment of all of these mechanisms of internal review and critical self-analysis will require substantial effort, attention, and dedication by CPD and all Consent Decree stakeholders. Indeed, the success of the substantial parts of the Decree depend on the Division’s ability to meaningfully embrace the transition to becoming a continually self-analytical and, when necessary, self-critical organization – so that the risks of unconstitutional policing in the future can be addressed and prevented.



¹⁵⁰ *Id.* at 36.

¹⁵¹ Dkt. 7-1 ¶ 124.

¹⁵² *Id.* ¶ 128.

¹⁵³ *Id.* ¶ 129.

CRISIS INTERVENTION

The Department of Justice's 2014 investigation concluded that "officers use excessive force against individuals who are in mental health crisis," in large part because the Division's "crisis intervention policies and practices are underdeveloped."¹⁵⁴ Consequently, the Consent Decree includes a number of important requirements aimed at building and improving the Cleveland Police Division's Crisis Intervention Program.¹⁵⁵ The Crisis Intervention Program will 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.¹⁵⁶

The Consent Decree indicates that CPD should build and enhance 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.¹⁵⁷

To date and over the six-month period that this report address-

¹⁵⁴ 2014 Findings Letter at 4, 52.

¹⁵⁵ First Semiannual Report at 38.

¹⁵⁶ See generally Dkt. 7-1 ¶¶ 131-59.

¹⁵⁷ *Id.* ¶ 131.

es, the Cleveland community has met the challenge of providing a forum to address problems regarding the interaction between the criminal justice and the mental health care system. This forum, the Mental Health Response Advisory Board ("MHRAC" or the "Board") holds great promise in creating ongoing and sustainable change. Police, social service providers, mental health and substance abuse professionals, advocates and individuals in recovery have met and had candid discussions on how to improve services for those in crisis.

These discussions have not only led to change in the CPD crisis response program but also to corresponding changes in the capacity of the Alcohol, Drug Addiction and Mental Health Service Board of Cuyahoga County (ADAMHS) to meet the needs of individuals experiencing a behavioral crisis. Those providing services are not waiting for formal agreements or policy revisions to make meaningful change. Rather, programs are being improved as issues are identified. This sort of cooperative process suggests that the change which is occurring is not just a response to a formal agreement but rather portends the development of a meaningful problem-solving relationship.

A. Background Information

1. Cleveland Division of Police Special Events

As this report summarizes elsewhere, shortly after the Monitor's First Semiannual Report, CPD was faced with the challenges of a high-profile national event. In the weeks leading up to the Republic National Convention ("RNC"), the timetable for the Crisis Intervention work was adjusted to allow resources to be devoted to preparing for the RNC. Despite the demands of this major event, the changes in the timetable for progress in accomplishing the tasks related to the Crisis Intervention Program were minimal. The work in developing the policies and practices of the Crisis Intervention program remains on track.

2. Developing a Mental Health Response Advisory Committee

As detailed in the Monitor's First Semiannual Report,¹⁵⁸ the ADAMHS Board, under a memorandum of understanding with the City of Cleveland formed the Mental Health Response Advisory Committee with six standing subcommittees (Executive, Policy, Data, Training, Community Engagement and Diversion), along with an ad hoc Public Survey Task Force.

The MHRAC has conducted numerous meetings as well as a day-long retreat to develop a structure and working relationships. The relationships highlighted in the First Semiannual Report remain strong and have resulted in substantial progress. The Monitoring Team, the City of Cleveland and CPD, and the U.S. Department of Justice have worked closely with the Mental Health Response Advisory Committee and its various sub-committees. Importantly, CPD has taken a leadership role and remains active

¹⁵⁸ First Semiannual Report at 39-40.

in every phase of the MHRAC. The ADAMHS Board remains committed and has provided significant staff support. The volunteer professionals and advocates have devoted significant time to addressing a wide range of issues and have served without financial compensation.

This sort of community effort warrants special recognition – and provides clear evidence that the community, police officers, CPD, and the City all benefit when dedicated community members are directly involved in crafting the Division's policies and procedures.

3. Crisis Intervention Needs Assessment and Work Plan

Per the First-Year Monitoring Plan¹⁵⁹, the Mental Health Response Advisory Committee conducted a Crisis Intervention Needs Assessment. The MHRAC organized the assessment of the needs of the public, and CPD took on the task of assessing the needs of the officers. Community meetings were facilitated by MHRAC and CPD. Additionally, the MHRAC worked with the ADAMHS Board and NAMI Greater Cleveland to host focus group sessions. The results from both the Community-wide and CPD Officer Needs Assessment continue to influence the work of MHRAC's subcommittees.

The ADAMHS Board took on the task of developing its Work Plan in conjunction with all parties to the Settlement Agreement. That plan is extensive and has helped CPD and the MHRAC in working to comply with the Consent Decree's crisis intervention requirements.

4. Appointing a CPD Crisis Intervention Coordinator

As indicated in the previous report, CPD quickly filled this position with Captain James Purcell.¹⁶⁰ Captain Purcell is a well-respected officer who worked in the mental health field early in his career. He has demonstrated that he is up to the challenges of being a CIT Coordinator and is developing partnerships with stakeholders, participating in the MHRAC, soliciting feedback from the community and potential specialized CIT officers and dispatchers, and coordinating the change implementation process. He was appointed co-chair of the MHRAC and has been active in the major MHRAC task for this semi-annual period, that of developing the revised crisis intervention policy. He is beginning to tackle the tasks of ensuring the selection of appropriate candidates as specialized CIT officers and is creating ways to honor and recognize specialized CIT officers and dispatchers.

The Ohio Criminal Justice Coordinating Center of Excellence

¹⁵⁹ Dkt. 43-1 at 32-33.

¹⁶⁰ First Semiannual Report at 41.

and the ADAMHS Board Mental Health Task Force recommended that a CIT Champion be found among the command staff. Deputy Chief Joellen O'Neill has taken on this role. Deputy Chief O'Neill continues to attend the MHRAC meetings at both the committee and subcommittee level and her leadership has set a positive tone for the Cleveland Division of Police.

B. Current Implementation Status

The Consent Decree outlines five major steps with respect to crisis intervention. The first two steps –developing a Mental Health Response Advisory Committee and appointing a CPD Crisis Intervention Coordinator – have been accomplished, as outlined below. This constitutes significant and commendable progress.

All parties involved are working towards completing the next three steps. Progress towards delineation of the Crisis Intervention Policies and Procedures, and Completion of Crisis Intervention Training is reaching completion. The step of Selection of Specialized Crisis Intervention Trained Officers is on schedule. Given the necessary revisions to the schedule due to the CDP time commitment needed to support recent major national events in Cleveland, the steps are being accomplished in a timely manner.

1. Revising CPD Crisis Intervention Policies & Procedures

The work of the MHRAC Policy Subcommittee has been guided by four 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
- Managing the stigma associated with mental illness and addiction in police-citizen encounters.

The MHRAC Policy Subcommittee was presented with results from the community and officer needs assessment meetings to guide them in developing a new CPD Crisis Intervention policy. The members also reviewed over 23 separate Crisis Intervention Policies from CIT programs throughout the country. This impressive collection of CIT Policies has been posted on-line by the ADAMHS Board. Members highlighted features of each policy and then worked with CPD to select the best elements and modify, where appropriate, these policy elements to best suit the unique challenges and features of the Cleveland community.

The volunteer members of the subcommittee deserve the thanks

Features of Proposed Crisis Intervention Policy¹

- Establishes a community-based Advisory Committee with defined roles and responsibilities
- Coordinates with community resources to assist those in need
- Addresses:
 - individuals in crisis who might have with a wide range of special needs
 - the needs of both juveniles and adults
- Describes
 - a specialized role for volunteer officers to provide leadership in crisis events
 - curriculum for training all officers as well as officers identified as leaders
 - the role of Dispatch in assisting officers in responding to a behavior crisis
 - the role of CPD supervisors
- Emphasis on
 - de-escalation strategies for all officers
 - a strong, positive interface with new CPD use of force policy
- Focuses on
 - safety for both the officer and individuals in crisis
 - diverting individuals into treatment wherever possible
 - considering the needs of the individual in providing transportation
 - coordination of transportation with Emergency Medical Services (EMS)
- Clarifies the relationship between CPD and emergency crisis services
- Details crisis information to be monitored by CPD/ADAMHS to improve police services

¹ Ballard, Carole, Crisis Intervention Team Policy Comparison, ADAMHS Board, (Oct. 2016) at 1-2.

of the Cleveland community for their dedication to this important task¹⁶¹. The cooperative relationship established between advocates, healthcare professionals and the Cleveland Police Department worked well in developing a consensus policy to address the needs of the individual in crisis without compromising the safety of the officer or the Cleveland community.

Consequently, CPD's Proposed Crisis Intervention Policy presents a new, comprehensive strategy for responding to individuals in a behavioral crisis. The policy work is on schedule and has been made available to the Cleveland community for review and feedback. A newly-formed Community Outreach Task Force has worked to inform the community about the new Crisis Pol-

icy and obtain feedback to bring to the Policy Subcommittee, holding multiple community forums where members of the public have been able to provide substantive feedback on the crisis intervention policies. The Monitoring Team will have more to say about this extensive and impressive process when it files the finalized policies with the Court.

2. Crisis Intervention Data

The Consent Decree requires that CPD track calls and incidents involving individuals in crisis and collected detailed data.¹⁶² This data will be 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 personnel were supposed to log information about interactions with individuals experiencing a behavioral health crisis on the so-called CIT Data Sheet. That data instrument – which CPD personnel have needed to fill out by hand on a strictly paper-based form – collected some basic information about crisis intervention incidents. However, both CPD and the ADAMHS have become aware that the completion rate of these forms is extremely low – with officers appearing to properly complete the data sheets in between 10 and 20 percent of the interactions that they have with individuals experiencing crisis. This low completion rate seems to stem not from officers refusing to comply but from confusion both about the scope of incidents that require a CIT Data Sheet to be completed and the extent to which that form should be completed even when other aspects of the interaction require separate reporting (e.g., an arrest report or a use of force report).

Consequently, CPD and the ADAMHS Board have identified that the data collection will need to be improved. Major changes in the data collection process will require: a (i) a new crisis intervention policy in place that clarifies the nature of a crisis intervention incident and when crisis intervention-related data must be provided about that incident, and (ii) a non-manual, technology-based solution is in place to ensure that reporting requirements do not impede the ability of officers to efficiently and effectively provide law enforcement service.¹⁶⁴

As in other areas of data collection, and consistent with the Consent Decree's requirement that police services be effective and ensure officer safety,¹⁶⁵ the Monitoring Team will insist that CPD provide the tools and technological platforms necessary to ensure that officers can log and track a broader set of incident and performance data efficiently and effectively – without impacting their ability to respond to calls or address other law enforcement objectives. In short, the ultimate collection of data

¹⁶¹ Co-Chairs Judge Hollie Gallagher and advocate Gabriella Celeste, liaisons: CPD Deputy Chief Joellen O'Neill and Captain James Purcell, Department of Justice Heather Tonsing Volosin and Jack Morse, ADAMHS Board Carole Ballard.

¹⁶² Dkt. 7-1 ¶ 157.

¹⁶³ *Id.* ¶¶ 157–58

¹⁶⁴ First Semiannual Report at 42.

¹⁶⁵ Dkt. 7-1 at 1.

about crisis contacts must not remove officers from the field for an unduly lengthy period. It is unlikely, then, that a manual, pen-and-paper approach can fulfill this important objective. The Monitoring Team continues to have confidence that waiting to finalize a data gathering mechanism until a sound, technological platform can be established for officers to use will produce more effective, lasting, and efficient reform.¹⁶⁶

3. Completing Crisis Intervention Training

The Consent Decree requires several types of training related to crisis intervention. First, all officers must receive eight (8) hours of annual training on crisis intervention issues. Second, new recruits must receive 16 hours of training in the Academy on crisis issues. Third, CPD dispatchers and call-takers must receive appropriate training on identifying signs of behavioral crisis. Fourth, CPD must provide forty (40) hours of enhanced training to designated, specialized Crisis Intervention Team (“CIT”) officers who will be specifically dispatched to the scene of incidents involving individuals experiencing a behavioral crisis. All officers will receive 8 hours of annual training on crisis intervention topics. New recruits will receive 16 hours of Academy training. Dispatchers and call-takers will also receive appropriate training on crisis topics.¹⁶⁷

During the first six months of the work on the Settlement Agreement, the MHRAC Training Subcommittee worked with experts from the Ohio Criminal Justice Coordinating Center of Excellence (“CJCCOE”), the ADAMHS Board, and CPD staff to integrate the work of the Policy Subcommittee into the training curriculum for all CPD crisis training. As with other committees, members worked using a consensus-based strategy to develop a curriculum that is designed to meet the unique needs of the Cleveland community.

Training of All Officers. The MHRAC Training subcommittee recommended utilizing the Ohio Attorney General’s “Interacting with and De-escalating the Special Needs Population” curriculum as a benchmark.¹⁶⁸ Trainers will be selected by CDP and ideally be the Specialized CIT officers. The CPD trainer would be paired with a mental health professional, chosen by the ADAMHS Board, to ensure practical and clinical expertise. The intent of this training is to teach officers, whether for the first time or as a refresher, to connect with an individual that is experiencing a mental health crisis and demonstrate ways that the officer can direct them to the most efficient method of resolving this conflict.

The Training sub-committee decided that a focus on the quality of instruction and the ability of the training to have a meaningful impact on the officer in training was more valuable than covering a large quantity of topics. Consequently, the first year of the training for all officers, 2017, will focus on the new CPD Crisis Intervention Policy, Mental Health Signs and Symptoms, Communication and Active Listening, and the Command and Control Paradox. The second year of training, 2018, will focus on models of crisis response that address specific issues such as engaging and resolving conflict, addressing a crisis involving a loss of reality and assisting individuals at risk for suicide. Additional, specialized topics will be covered as the training progresses in later years.

Currently, the eight-hour training curriculum is being revised by a joint task force of CPD training instructors and volunteer subject matter experts. The current strategy of including law enforcement, healthcare professionals, advocates, and individuals in recovery in the teaching process aims to set a positive example of a cooperative relationship in action for the CPD officers in the class.

Recruit Training. The Ohio Peace Officer Training Commission has a Crisis Intervention training curriculum for Ohio Peace Officers.¹⁶⁹ This curriculum is required as part of the Academy training for recruits. All parties agree that the new training is a reasonable substitute for the 16 Hours of Academy Training. This request will be submitted to the Court.

Dispatch Training. The new model of crisis intervention provides a significant role for CPD dispatchers, as the ability of the dispatchers to identify calls involving a potential behavioral crisis as well as their ability to implement key parts of the new policy is critical to the success of the updated crisis program.

The MHRAC Training Subcommittee met with CPD dispatchers as part of the curriculum development process. The Training Subcommittee decided that the intent of the training is to teach dispatchers essential job skills and to coordinate dispatcher training with the new General Police Orders.¹⁷⁰ The committee felt that “through intensive education and scenario based training, including critiquing actual dispatch calls, new dispatchers will learn that every mental health call is unique and should be treated with the utmost care.”¹⁷¹ The committee recognized that “calls involving a mental health issue will require more time by the call-taker and will require more information be passed on to responding law enforcement personnel. Patience and poise in the face of challenges will be paramount to put law enforcement

¹⁶⁶ First Semiannual Report at 42 (“[T]he City, CPD, and Advisory Committee need to take time to get the rollout of new or improved reporting requirements to officers right.”).

¹⁶⁷ Requirements for the training of Specialized CIT officers are covered in Settlement Agreement Step D: Specialized Crisis Intervention Trained Officers.

¹⁶⁸ First Draft 8-Hour Mental Health Training for Cleveland Division of Police Responding to Individuals in Crisis, MHRAC Training Subcommittee, May, 2016.

¹⁶⁹ Peace Officer Basic Training Crisis Intervention. Ohio Peace Officer Training Commission: Education & Policy Section. 1-156 (Jan. 2016)

¹⁷⁰ Dispatch Curriculum Overview Recommendations, MHRAC Training Subcommittee (Sep. 2016).

¹⁷¹ *Id.*

in the best position to respond appropriately.”¹⁷² Importantly, the Training Subcommittee felt that “critiquing real-life situations by listening to audio recordings would provide an enlightening method of learning about these topics.”¹⁷³

The proposed, upcoming dispatcher training will include coverage of the following topics:

- Crisis Intervention Team Model and the Role of the Dispatcher
- The new CPD Crisis Intervention Policy
- General Facts about Mental Health, Disabilities, and Addiction
- Adults, Children and Youth
- Mental Health and Healthcare Professionals’ Duty to Protect
- Community Resources
- The Rights of Individuals Needing Care
- Identifying Red Flags in Communication
- Common Scenarios and use of Clarification Questions

Specialized CIT Officers Training. As the Monitoring Team has previously discussed, the Consent Decree requires that CPD “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.”¹⁷⁴ These designated, specialized Crisis Intervention Team (“CIT”) officers must receive specialized and tailored training.

The MHRAC Training Subcommittee began its work to develop the Specialized CIT Officers Training by developing a set of recommendations to guide the training curriculum. These recommendations included ensuring a maximum class size, utilizing a faculty of providers/experts in the field and experienced CIT officers, and including families and individuals in recovery from serious mental illness as part of the training. The Subcommittee recommended that coursework include basic mental health signs and symptoms, with a focus on adults, adolescents, and children. It also indicated that lectures on autism, developmental disabilities, elder care, trauma-related care, and cultural competency should also be provided. Additional recommendations included providing expanded training on intensive de-escalation tactics; conducting in-person site visits to include St. Vincent Medical Center Emergency Services, homeless services, and Veterans’ Affairs; and providing sufficient time in the specialized training for question and answer sessions.¹⁷⁵

The recommendations of the Subcommittee have led to a detailed curriculum outline. The MHRAC Training Subcommittee

intends to have police trainers and subject matter experts work together to provide the substantive lecture material needed to complete the 40 hours of Specialized CIT Officer Training. The goal is to begin the Specialized CIT Officer Training in early 2017.

4. Selection of Specialized CIT Officers

The selection process requires that specialized CIT officers must volunteer for the role, have three years of CPD experience, undergo a CIT Fitness Assessment, complete a written application, obtain supervisory recommendations, undergo a review of the disciplinary file to include use of force related discipline, and undergo an in-person interview. CPD is taking the lead on developing a selection process for officers. The Monitoring Team looks forward to working with CPD, the City, the Department of Justice, and MHRAC to develop a comprehensive CIT Officer Selection process with appropriate mechanisms to determine if the officers chosen meet the relevant criteria.

C. Conclusion

CPD and the Cleveland community are making meaningful progress towards developing a forum where law enforcement, service providers, advocates, and those individuals struggling with mental illness and substance abuse can meet and discuss change. CPD’s encouraging progress in fulfilling the requirements of the Consent Decree relating to crisis intervention is due not only to the Division’s own dedication and hard work but to the sustained focus and attention on these issues by the Alcohol, Drug Addiction and Mental Health Service Board of Cuyahoga County (the “ADAMHS Board”). Indeed, the ADAMHS Board has formed an important partnership with the Cleveland Police Department and has provided meaningful assistance to the formation and work of the Mental Health Response Advisory Committee.

Likewise, the community of volunteers who make up the Mental Health Response Advisory Committee deserve significant credit for their hard work. The members of the committee have engaged a wide range of Cleveland residents in order to assess the needs of the Cleveland community. They have studied the efforts of other cities in addressing crisis intervention issues. They have examined diversion and alternatives to arrest and analyzed the available data. They have worked to develop a model policy document and recommended important changes to crisis intervention training.

Through these and other efforts, MHRAC members have brought a great deal of civic pride to an important effort for the Cleveland community. They are forming a true community partnership in order to meet the needs of individuals experiencing a behavior crisis and provide CPD officers with the training, tools, resources, and support that they need to respond effectively and safely to individuals experiencing behavioral crises.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ First Semiannual Report at 43.

¹⁷⁵ *Id.* at 42-43.

SEARCH & SEIZURE

The Consent Decree requires that CPD “revise, develop, and implement” policies on how its officers “conduct all investigatory stops, searches, and arrests with the goal” that such actions comply with the “Constitution, state and federal law.”¹⁷⁶ As the Monitor summarized in the First Semiannual Report, officers will be expressly prohibited from “using immutable characteristics – such as race, ethnicity, gender, and perceived sexual orientation – as a factor when evaluating whether or not” there are sufficient grounds for initiating a stop of an individual.¹⁷⁷

Importantly, under the Consent-Decree-required policy, “[o]fficers will be required to use specific details in reports documenting the events that led to an investigatory stop, search, or arrest” – providing substantially more information and supervision of this type of officer performance than currently exists within CPD, which does not currently log all such stop activity.¹⁷⁸ To be able to track all investigatory stops in a manner that does not impose substantial inefficiencies, the tracking and database system for stops will need to be electronic. In conversations to date with the City and CPD, the current thinking is that stop information will be logged in the upgraded CAD system available on in-car computers in patrol vehicles or, otherwise, on mobile devices for officers assigned to non-motorized patrol duties. Alternatively, the information might be captured in the record management system via those same mobile computers. In any event, the one thing that the Parties and Monitoring Team agree on is

that pen-and-paper will not only be insufficient but could risk overburdening officers with yet more time-consuming, manual processes.

As this report details elsewhere, however, CPD is a long way off from having computers in all of its patrol vehicles. Indeed, it is a long way off from having enough patrol vehicles. Further, even when there are enough computers in enough cars, the City and CPD will need to manage to fully implement field-based reporting to the record management system and/or true, contemporary computer-aided dispatch – and provide exhaustive training to officers on how to enter, for themselves, information into the dynamic, continually-updated systems. Thus, in the area of stops, confusion or delays in technology upgrades will prevent a core, substantive obligation of the City under the Consent Decree.

The First Semiannual Report stated that “[i]n 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.”¹⁷⁹ As the focus of the Parties and other Consent Decree stakeholders turns to development of the Second-Year Monitoring Plan, the Monitor continues to look forward to “[r]eserving key portions of 2017 and 2018 to fundamentally addressing these issues through changes in policy and officer training,” which will “allow[] reform in this area to happen within a broader context of actively implementing community-based performance metrics and a comprehensive community policing model.”¹⁸⁰



¹⁷⁶ Dkt. 7-1 ¶ 160.

¹⁷⁷ *Id.* ¶ 161.

¹⁷⁸ First Semiannual Report at 44.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

objective as those of IA.

The need for uniform quality within IA and OPS is made even clearer when considering the duties of the Chief of Police and Public Safety Director. Ultimately, the Chief, and in certain instances the Safety Director, must use the investigations of the underlying incident to make an ultimate finding and, where warranted, impose discipline or take some other corrective action. The Chief and Safety Director must be able to have absolute confidence in the fairness, thoroughness, objectivity, and timeliness of all investigations of officer misconduct, whether conducted by OPS or by IA. The accountability system in Cleveland simply will not work if one entity is substantially stronger than the other – or, certainly, if both entities suffer from foundational deficiencies.

ACCOUNTABILITY

In Cleveland, the entity that investigates potentially problematic officer performance depends on how the performance came to the City's attention. If an individual outside the Division makes a complaint about officer conduct, the Office of Professional Standards ("OPS") investigates the complaint. If a Division employee identifies, discovers, or makes a complaint about officer misconduct, the Division itself conducts the investigation. Although there has been confusion in the past about precisely what entity or entities within the Division would conduct the investigation, the Consent Decree clarifies that "Internal Affairs [IA] will conduct objective, comprehensive, and timely investigations of all internal allegations of officer misconduct,"¹⁸¹ which is "any improper conduct by an officer, including an alleged violation of CDP policy, procedure, regulations, orders, or other standards required by City employees including the improper use of force."¹⁸²

In the Consent Decree, the City agreed that it "will ensure that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated" – with a preponderance of the evidence standard uniformly applied and "documented in writing."¹⁸³ Thus, the day-to-day operations of OPS must be as sound, rigorous, and

A. Internal Affairs

The Monitor's First Semiannual Report summarized what a police department's Internal Affairs ("IA") does in a typical police department and what Cleveland's Internal Affairs has done in the past:

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 . . . [I]nternal investigations of officer misconduct are, in agencies of CDP's size, most typically reviewed and investigated by internal affairs units.

Currently, what CPD has historically called Internal Affairs is housed with[in] 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.

The Inspections Unit is charged with conducting inspections designed to maximize the performance of police personnel by securing compliance with Division rules, regulations, policies, and procedures 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 vari-

¹⁸¹ Dkt. 7-1 ¶ 177.

¹⁸² *Id.* ¶ 437. "Solely for purposes of this Agreement, misconduct does not include minor infractions, such as uniform violations, routine motor vehicle accidents, or violations unrelated to the terms of this Agreement." *Id.*

¹⁸³ Dkt. 7-1 ¶ 176.

ous logbook audit requirements.¹⁸⁴

That prior report noted that, going forward, the Division's Internal Affairs would be streamlined such that it conducts all non-minor, non-criminal administrative investigations of potential officer misconduct¹⁸⁵ – and that IA would play a significant role in the oversight and coordination of supervisory responses to lower-level performance inquiries, reviews, or interventions. Thus, it will soon be within the CPD that all CPD inquiries into potential misconduct, whether serious or trivial, interact with IA – with a defined set of the more significant or substantial misconduct cases being directly investigated by internal affairs investigators.

CPD provided the Parties and Monitoring Team with an initial draft of an IA policy manual, and related policies, on November 11, 2016. Pursuant to the Updated First-Year Monitoring Plan, the Parties and Monitoring Team are now “work[ing] together to ensure that the First Draft of the Internal Affairs Policy Manual adequately addresses the requirements and objectives of the Settlement Agreement.”¹⁸⁶ A final draft of the policy, along with related Division policies, is due no later than February 3, 2017, with the Monitor approving or disapproval of the final draft later in the month.¹⁸⁷ As Consent Decree stakeholders complete work on policies and manuals relating to IA, the Monitoring Team will be looking to ensure that past problems are addressed through the implementation of clear standards, precise rules, common understandings, and clear objectives for IA personnel.

In the meantime, and as this report elsewhere discusses, the Monitoring Team has been conducting a structured, methodologically rigorous qualitative review of Internal Affairs investigations. Reviews are ongoing, and the Monitoring Team will provide the Court with a comprehensive report on its findings.

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

Cleveland's OPS, pursuant to the City's Charter, investigates complaints made by civilians about CPD officers. After OPS has completed an investigation, Cleveland's PRB reviews and analyzes the investigation in order to make a recommendation to the Chief of Police as to the ultimate disposition of the case and, if warranted, the discipline that an involved officer should receive as a result of misconduct established in the investigation.

The Monitoring Team has observed to the Court previously that, at least “[o]n paper, it would appear that Cleveland's systems of accountability and civilian are adequate and appropri-

ate.”¹⁸⁸ However, “[i]n practice, the system for the investigation and adjudication of civilian complaints has been, at best, a paper tiger.”¹⁸⁹

At worst, it has been an active impediment to the abilities of CPD command staff to manage the department, of officers to have confidence that the disciplinary system affords them due process, and of community members to know that all complaints are investigated thoroughly and adjudicated fairly. The experience of the Monitoring Team in its first year overseeing Consent Decree implementation leads it to conclude that DOJ's 2014 conclusion that Cleveland's ‘civilian complaint system, as a whole, is disorganized and ineffective’ was, in many ways, a diplomatic understatement.¹⁹⁰

The following sections describe the significant efforts of Consent Decree stakeholders to provide a new foundation for both OPS and PRB – so that the poor practices and performance of the past can give way to a renewed sense of urgency and spirit of accomplishment within these two vital entities. Precisely because they are both currently under the ultimate authority of the Director of Public Safety, the Monitoring Team expects that change will be swift, supported, and substantial and that, if not, accountability will be clear and certain.

1. Office of Professional Standards (“OPS”)

a. Overview

In the First Semiannual Report, the Monitoring Team expressed our disappointment and frustration with the dysfunction and failed legitimacy of the Office of Professional Standards (“OPS”).¹⁹¹ The Team's dismay was exacerbated by a mindboggling backlog of cases that had been left dormant for a considerable time with little to no investigative activity. In addition to having missed the opportunity to promptly identify and, perhaps, correct misconduct, the backlog has threatened the confidence that both the citizens of Cleveland and members of the CPD can have in OPS's ability to effectively carry out its important public service.

During this past reporting period, members of the Monitoring Team set out to identify the causes of the deficiencies which have crippled OPS's efficiency and to inaugurate a path to addressing those deficiencies. The Team has provided the sustained and detailed technical assistance necessary to assist in the development and implementation of a new basic operating approach and day-to-day process aimed at restoring legitimacy to the overall cit-

¹⁸⁴ First Semiannual Report at 45–46.

¹⁸⁵ *Id.* at 46.

¹⁸⁶ Dkt. 80-1 at 15.

¹⁸⁷ *Id.*

¹⁸⁸ Dkt. 86 at 2.

¹⁸⁹ *Id.*

¹⁹⁰ Dkt. 86

¹⁹¹ First Semiannual Report at 47–48.

ized review process – and drastically improving the manner in which OPS delivers services to the citizen of Cleveland.

Improvements to OPS will not happen overnight – and, indeed, cannot, given that OPS will be needing to address a staggering backlog of unfinished or uninvestigated cases while attempting to keep up with new complaints. As of November 21, 2016, the OPS backlog numbered 439 cases. More than four out of every five (81 percent) of investigations of complaints received in 2016 are unresolved. More than two out of three (68 percent) of investigations of complaints received in 2015 are likewise unfinished. Some cases still stretch from complaints made in 2014. At this point, the Monitoring Team struggles for language sufficiently strong to communicate how unacceptable and appalling the state of OPS as an entity is.

None of the Decree’s substantial requirements relating to OPS can be successfully accomplished without the rigorous overhaul to existing processes premised upon sound managerial practices and informed by the operations of other similarly-situated investigatory agencies.¹⁹² The systems and processes must be in place to ensure that all investigations, and all reviews of those investigations, are fair, thorough, objective, complete, and timely

It should be noted that no process, however sound or well-intentioned, for day-to-day operations of OPS or PRB will succeed without the demonstration of impregnable leadership at the highest levels of management within the Division of Public Safety and OPS. Regardless of how the Monitoring Team and the Parties work to reform the citizen review process by ensuring compliance with the provisions of the Consent Decree, true reform in OPS, and the Police Review Board, cannot and will not be sustained without knowledgeable, committed, and bold leadership. Such leadership requires both the desire and tenacity to overcome the failed systems that have been allowed to fester and the mediocre approach to date in correcting a broken and failed system of accountability.

b. Work Over the Last Six Months¹⁹³

The Monitoring Team’s work this period focused on: (1) conducting an organizational assessment of OPS and PRB; (2) assisting both in the development of clearly defined business processes pertaining to the receipt, evaluation, assignment, investigation, and conclusion, and adjudication of complaints; (3) the development of a performance appraisal for the OPS Administrator’s position in order to provide clear guidance and establish a more stringent system of accountability; and (4) the assignment of a dedicated Monitoring Team expert to provide

technical assistance to OPS and PRB as they advance forward.

In May 2016, the Monitoring Team launched an assessment of OPS’s past and current business practices. The work began with interviewing OPS staff in order to better understand how complaints were received, evaluated, documented, assigned, investigated, concluded, and ultimately resolved through the Police Review Board hearing process.

Without exception, investigators expressed concern over depleting investigative resources, the absence of clear and consistent guidelines that would establish a uniform framework for investigations, and the difficulty in obtaining timely access to relevant materials that are retained by the CPD or other entities, both private and public.¹⁹⁴ Their frustration regarding the backlog of cases was evident, as was their personal and professional commitment to work hard to resolve the accumulated issues. While our discussions with the OPS Administrator failed to yield any clear explanation for these glaring deficiencies, there was little disagreement that OPS had fallen into a state of dysfunction and ineffectiveness that warrants immediate corrective action.

By early July 2016, the Monitoring Team, with the assistance of the Department of Justice and pursuant to a series of working sessions with OPS and Consent Decree stakeholders, had assembled a Provisional Operations Manual for OPS, which outlined step-by-step guidelines for the intake, investigation, and resolution of constituent complaints. The goal, articulated in late May, was to establish a working set of guidelines and processes to guide the reception of civilian complaints in a systematic and thorough manner before the Republican National Convention was held in Cleveland.

Prior to the implementation of the intake form, if someone came to OPS and was subsequently referred to an outside entity because OPS lacked the jurisdictional authority to investigate the complaint, contact with that person was not likely to be captured in any electronic database or written log. This incomplete and complacent practice precluded OPS, the Parties, and the Monitoring Team from having the ability to conduct a reliable assessment as to how a particular constituent contact may have been handled at intake and ultimately resolved through the established process. Accordingly, in addition to the Provisional Operations Manual, the team developed a new, comprehensive intake form capturing not just those interactions with civilians that articulate a complaint that falls within the purview of OPS investigative authority but, instead, every contact that OPS has with a constituent regardless of whether that contact results in a full investigation.

¹⁹² Dkt. 7-1 ¶¶ 193–239.

¹⁹³ Substantial elements of this discussion are reproduced or adapted from the Monitor’s filing to the Court found at Dkt. 86.

¹⁹⁴ These materials include such things as 9-1-1 calls, dispatch records, daily duty rosters and assignment logs, police reports, video footage, and a variety of other police records that may be relevant to the constituent’s complaint.

Again, during the development of both the Provisional Manual and the Intake Form, representatives from the Department of Justice and the City of Cleveland regularly participated in the creation and review of the documents, and had line- by-line input as to the final work product. The Provisional Manual has been effective since July 15, 2016.

In early August 2016, the Monitoring Team set out to formalize the Provisional Operations Manual into a more detailed, permanent, and sustainable document. This comprehensive, permanent Manual (the “OPS Manual”) reflects the organizational mission and values of OPS, clearly defines its organizational structure and detailed job functions, identifies and describes with clarity those matters in which the office has investigative authority, and provides a thorough, comprehensive, and rigorous step-by-step review of how complaints of misconduct are accepted, assessed, documented, tracked, investigated, periodically reviewed, concluded, and ultimately forwarded to the Police Review Board for review and adjudication.

The OPS Manual covers a significant amount of ground, creating clear rules of the road for OPS personnel, community members, and CPD personnel alike to understand with respect to how matters are thoroughly and timely investigated. Among other things, the OPS Manual addresses the following:

The new OPS Manual covers a significant amount of ground, creating clear rules of the road for OPS personnel, community members, and CPD personnel alike to understand with respect to how matters are thoroughly and timely investigated.

Introductory Matters. The OPS Manual outlines that the purpose of the Manual is to provide OPS, CPD, and “members of the Cleveland community with express standards, expectations, and processes for the receipt and investigation of public complaints about police performance or conduct regarding CDP employees.”¹⁹⁵ It also defines key terms.¹⁹⁶

Mission, Jurisdiction, Ethical & Employment Requirements. Taken together, the various provisions of the OPS Manual Section entitled “Mission, Jurisdiction, Ethical & Employment Requirements,” adequately, and for the first time in a codified set of regulations and standards for the organization, “defines OPS[’s] . . . core values, mission, and authority.”¹⁹⁷ Consistent with feedback from CPC,¹⁹⁸ the Manual includes an enhanced mission and values statement.¹⁹⁹ This enhanced mission statement emphasizes that “OPS is not a part of the Cleveland Division of Police” but that OPS is a critical component of “increase[ing] accountability and improve[ing] public confidence in the police by receiving and fairly, thoroughly, and objectively

investigating complaints in a timely manner”²⁰⁰

The Manual specifically outlines the types of misconduct complaints over which OPS has jurisdiction from the City of Cleveland Charter.²⁰¹ The Manual then sets forth a number of ethical requirements, including the express incorporation of the NA-COLE Code of Ethics.²⁰² Most importantly, “[a]ll OPS employees, staff, contractors, or other agents have an affirmative duty to ensure that all OPS investigations are fair, thorough, unbiased, comprehensive, and timely.”²⁰³

To ensure OPS’s actual independence and the perception of independence among the Cleveland community and within CPD, the Manual provides that “[n]o OPS personnel may be current or former members of CDP.”²⁰⁴ Further, the Manual includes provisions outlining CPD personnel’s existing duties to “cooperate with an OPS investigation” and to not retaliate against individuals for filing a complaint or participating in the complaint, investigative, or adjudicative process.²⁰⁵

General Intake Process. A significant portion of the Manual’s remainder sets forth, with significant specificity, the “investigative procedures” that OPS and its personnel must employ to ensure that its investigations are fair, thorough, objective, and timely.²⁰⁶ Accordingly, the OPS

Manual begins by setting forth how OPS interacts with members of the public and takes complaints.

First, regardless of how a matter comes to the attention of OPS, the OPS Manual now requires that every constituent contact at the intake and assessment of a complaint, inquiry, or concern be thoroughly documented, assigned a unique tracking number, and reviewed regardless of whether a formal complaint investigation results.²⁰⁷ The purpose for such detailed documentation and oversight is to ensure that thorough and accurate information is captured pertaining to all constituent contacts, the reason for those contacts, and the way in which OPS responds to or otherwise resolves a constituent’s complaint or inquiry – as well as to ensure that OPS is not discouraging or turning away individuals whose issues rise to the level of a complaint. New requirements that OPS provide monthly statistical reports regarding the intake process to the PRB and Public Safety Director aim

¹⁹⁵ Dkt. 86-1 at 3.

¹⁹⁶ *Id.*; accord Dkt. 7-1 ¶ 200(b).

¹⁹⁷ Dkt. 7-1 ¶ 200(a).

¹⁹⁸ Dkt. 86-1 at 6.

¹⁹⁹ *Id.* at 3–4.

²⁰⁰ *Id.* at 3.

²⁰¹ *Id.* at 4.

²⁰² *Id.* at 4–6.

²⁰³ *Id.* at 6.

²⁰⁴ *Id.* at 7.

²⁰⁵ *Id.*

²⁰⁶ Dkt. 7-1 ¶ 200(c).

²⁰⁷ Dkt. 86-1 at 8–10.

to ensure transparency in the complaint collection process.²⁰⁸

Currently, the voluntary agreement between the City and the CPPA provides that “[a]ll complaints filed by a citizen against [officers] shall be submitted by the complainant in his or her own handwriting.”²⁰⁹ The Consent Decree requires that the City “work with the police unions . . . to allow civilian complaints to be submitted to OPS verbally or in writing; in person, by phone, or on[-]line; by a complainant, someone acting on his or her behalf, or anonymous; and with or without a signature”²¹⁰

Accordingly, the OPS Manual expressly provides that “[a] signed complaint form is NOT required for any further action to be taken by OPS in an effort to resolve the constituent’s complaint”²¹¹ OPS will take the complaint, complete a full investigation, and forward the investigation to the PRB for review – in the same manner as the CPPA Contract currently provides for complaints “filed more than six (6) months after the date of the alleged event.”²¹² To ensure that individuals are aware of the implications of not providing a complaint signed and written out in their own handwriting, the Manual therefore provides that “complainants must be advised that, for reasons unrelated to OPS rules and regulations, officers may not be able to be disciplined for conduct that is alleged in unsigned and/or anonymous complaints, even if OPS and the PRB make a finding of misconduct.”²¹³

A significant number of major departments take anonymous complaints without exception and permit such complaints to form the basis of disciplinary action, including, but not limited to: Mesa, Arizona; Bakersfield, California; Los Angeles, California; Long Beach, California; Aurora, Colorado; Miami-Dade, Florida; Jacksonville, Florida; Atlanta, Georgia; Honolulu, Hawaii; Baltimore County, Maryland; Montgomery County, Maryland; Raleigh, North Carolina; Las Vegas, Nevada; Albuquerque, New Mexico; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Memphis, Tennessee; Virginia Beach, Virginia; and Washington, D.C. An academic survey from nearly 30 years ago found that some 96 percent of the 101 departments surveyed “investigate anonymous complaints, if not as a matter of routine, then if there is any other supportive information.”²¹⁴

²⁰⁸ *Id.* at 10.

²⁰⁹ Collective Bargaining Agreement Between the City of Cleveland and Cleveland Police Patrolmen’s Association (CPPA), Non-Civilian Personnel [hereinafter “CPPA Contract”], Article VIII (m) at 11.

²¹⁰ Dkt. 7-1 ¶ 202.

²¹¹ Dkt. 86-1 at 9.

²¹² CPPA Contract, Article VIII (m) at 11 (indicating that employee in such circumstances “may be ordered to respond to the complaint and to the investigation, but shall not be subject to disciplinary action for that complaint”).

²¹³ Dkt. 86-1 at 9.

²¹⁴ Paul West, “Investigation of Complaints Against the Police: Summary Report of a National Survey,” 7 *Am. J. Police* 101 (1988).

Furthermore, because individuals with physical disabilities and mobility impairment may be excluded from the ability to fill out and sign complaint forms, the Monitor has significant concerns that the current CPPA provision providing that complaints may only result in discipline if an individual physically is able to, and does, physically write out his or her complaint and sign his or her name constitutes an ongoing violation of the Americans with Disabilities Act, 104 Stat. 328, 42 U.S.C. § 12101 *et seq.*, and the equivalent Ohio state statute, O.R.C. § 4112.99. The ADA, and its Ohio analogue, applies to the City of Cleveland’s programs and activities, including its interactions with civilians through OPS, and requires the City to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.”²¹⁵

Consequently, the Monitor will expect that the City and CPPA will work expeditiously to ensure that the provisions of the Consent Decree, generally-accepted practice, and compliance with the ADA and equivalent Ohio state law are harmonized with the CPPA Contract.

Complaint Intake. The OPS Manual outlines the variety of mechanisms through which civilians may make complaints.²¹⁶ It assigns specific duties to OPS upon receiving a complaint.²¹⁷ Among other things, received complaints must be assigned to a “standard” or “complex” track based on their overall complexity and a generalized complaint category “based solely on the content of the complaint,” such as “biased policing” or “harassment.”²¹⁸ OPS’s intake Coordinator subsequently gathers basic information relating to the content of the complaint, and the complaint is forwarded within three (3) business days to the OPS Administrator for review and assignment to an Investigator within 24 hours of receipt from the Intake Coordinator.²¹⁹ These and other specific, new timeline rules in the OPS Manual are intended to hold all OPS personnel strictly accountable for ensuring timely investigations. OPS must also provide notice both to the complainant that it has received a complaint and, in almost all circumstance, to implicated CPD personnel.²²⁰

As noted above, internally-discovered misconduct – or misconduct allegations made or identified by CPD personnel – will be investigated by CPD’s Internal Affairs, which will soon “be headed by a qualified civilian.”²²¹ Further, some classes of officer performance, such as use of force, will be subject to standardized, post-incident administrative inquiry.²²² Externally-reported

²¹⁵ 28 C.F.R. § 35.130(b)(7); *Title II Technical Assistance Manual* § II-3.6100, at 14.

²¹⁶ Dkt. 86-1 at 10–12.

²¹⁷ *Id.* at 12–13.

²¹⁸ *Id.* at 13.

²¹⁹ *Id.* at 14, 17.

²²⁰ *Id.* at 17–18.

²²¹ Dkt. 7-1 ¶ 177.

²²² *Id.* ¶¶ 93–130.

misconduct – or misconduct allegations made or identified by non-CPD personnel – will be investigated by OPS. However, it is readily conceivable that some incidents will generate a civilian complaint to OPS and an internal investigation of some type, whether automatic or related to possible misconduct. Accordingly, the OPS Manual provides specific procedures and guidance to OPS about how its inquiries should proceed when a criminal or administrative investigation is already underway within CPD.²²³

The OPS Manual provides that “[i]n order to ensure a thorough investigation, OPS Investigators may need access to any and all relevant disciplinary information in the record of an officer who is the subject of a current investigation.”²²⁴ Because the Director of Public Safety has authority over both OPS and CPD, the Monitoring Team will expect that the Director ensure that OPS has direct, automatic, and real-time access to information about completed internal investigations – and that, in turn, CPD have the same direct, automatic, and real-time access to information about completed OPS investigations. The Monitoring Team will be watching closely to ensure that no information or records are withheld either from OPS or from CPD on the grounds that it is not substantively relevant when it does meet the definitions provided by the OPS Manual. The Monitor will also be evaluating closely whether information about past officer performance is appropriately and non-prejudicially considered by OPS, and CPD.

Complaint Investigation Process. The OPS Manual provides, for the first time, granular instruction to OPS personnel on initiating, planning, conducting, and completing a fair and comprehensive investigation of complaints.²²⁵ Specifically, it outlines procedures for OPS investigators to interview the complainant; identifying and securing evidence; creating a comprehensive investigatory plan; evaluating evidence uncovered during the investigation; conducting interviews; and preparing a comprehensive summary report of the investigation. This specific, standardized guidance on the day-to-day duties and step-by-step tasks of OPS Investigators sets forth, essentially for the first time, the express expectations of OPS personnel and the standards that their work must meet.

Timeliness & Milestones. To address the significant, ongoing concerns about the timeliness of OPS investigations, the OPS Manual memorializes the Consent Decree’s requirement that “Standard” complaint investigations be resolved within 45 days and “Complex” investigations be concluded within 75 days. The Parties and Monitoring Team are mindful, and the OPS Manual expressly contemplates, that “[a] number of factors influence how swiftly an investigation may be completed”; however, issues that impact timeliness, including OPS’s workload and the pace of resolution of complaints by PRB, “are the responsibility of the OPS to effectively manage and resolve to ensure that citizen

complaints are not impeded.”²²⁶

OPS Administrator’s Review of the Investigative File & Finalizing Civilian Police Board Action. The OPS Administrator must review all completed investigations, identify and address any deficiencies, and make a final recommended finding by applying the preponderance of the evidence standard. The OPS Administrator makes findings as to adjudication and “shall not make any recommendations as to potential discipline.”²²⁷ OPS then notifies the complainant “that the investigation has been concluded and the date that the PRB will convene to review the matter.”²²⁸ The case is forwarded “to the PRB in sufficient time for PRB to consider them no later than the second regularly scheduled PRB meeting following the completion of the investigation.”²²⁹

Administrative Dismissals & Finalizing Police Review Board Action. The Manual provides significant detail about when complaints may be “administratively dismissed.”²³⁰ It seeks to ensure that the dismissal of a complaint without a full investigation is contemplated only in clear and “limited instances.”²³¹

Duties of OPS and OPS Personnel. For the first time, the OPS Manual spells out specific duties, tasks, standards, and expectations for OPS personnel, including the OPS Administrator, OPS Investigators, OPS administrative personnel, and OPS’s Research Analyst. It specifically requires at least annual training on investigative skills and CPD rules and policies.²³² The Monitor will expect that the City, through the ongoing oversight of the Director of Public Safety, will ensure that all OPS personnel adhere to the Manual’s requirements.

c. Approach to Progress Going Forward

Currently, the City, Monitoring Team, and OPS are engaged in discussions regarding a plan to eliminate the backlog of uninvestigated, incomplete, or unresolved complaint investigations. The Monitoring Team has asked for such a plan since at least the Spring of 2016. It has been provided with a series of cursory and highly minimalistic documents, purported to be plans for eliminating the backlog, that did little more than summarize the nature of the problem or, in one instance, propose that OPS eliminate its backlog by summarily pushing a significant number of incomplete cases on to CPD’s chain of command to resolve, likely without formal discipline. Accordingly, all efforts to date by OPS to outline mechanisms for addressing the backlog have been patently insufficient in all respects and, in form and con-

²²⁶ *Id.* at 32.

²²⁷ *Id.* at 34.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* at 34–37.

²³¹ *Id.* at 33; accord Dkt. 7-1 ¶ 200(d).

²³² Dkt. 86-1 at 43.

²²³ Dkt. 86-1 at 15–17.

²²⁴ *Id.* at 30.

²²⁵ *Id.* at 18–31.

tent, not serious proposals.

Pending approval of the PRB Manual by the Court, the Monitoring Team will be working closely with OPS and its personnel – providing day-to-day technical assistance on how to transform the extensive Manual from paper into practice.

The Monitoring Team has also recently communicated to the Court regarding the OPS budget for 2017.²³³ The Monitoring Team declined to either approve or disapprove of the full OPS budget for 2017 – instead providing only short-term, provisional approval of the budget for the first quarter of the year.²³⁴ The reason for this short-term and provisional approval is that the OPS budget relies substantially on “compensation for four temporary Investigators” who “are slated to provide support to permanent investigators in completing those investigations that remain open.”²³⁵ However, “[a]lthough the professional investigatory skillset of these temporary investigators can hopefully provide some assistance toward alleviating a portion of the backlog, this temporary solution, budgeted for only the first four months of the year, is precisely that: temporary.”²³⁶ “Because OPS will need to build its longer-term capacity, the Monitor therefore approves the proposed OPS budget for, and only for, the first quarter of 2017.”²³⁷ The Monitoring Team approved the OPS budget for the first quarter of 2017 at a status conference on January 6, 2017.

It is almost certain to be the case that OPS will need to hire additional, full-time investigators to ensure that its personnel have reasonable and manageable caseloads – and that the officer can handle the typical level of civilian complaints that it receives. The Monitoring Team has discussed with the City that OPS lags far behind, in terms of the complaints to investigator ratio, peer civilian oversight agencies that conduct investigations. For instance, the D.C. Office of Police Complaints has an investigator to complaint ratio of 1:34. Chicago’s former IPRA entity had an investigator-complaint ratio of 1:24. San Francisco’s Office of Citizen Complaints has an investigator-complaint ratio of 1:23. Cleveland’s OPS, with its six technical investigator positions,²³⁸ has an investigator ratio of 1:49. Thus, for Cleveland to get to Washington, D.C.’s investigator level, at least three new, full-time investigators would need to be recruited, hired, and trained.

For staffing issues to be definitively addressed, current investigators will need to adopt the extensive rules, practices, and pro-

cedures codified in the OPS Manual and to abide by those rules for an extended period before stakeholders can fully understand what an investigator’s typical workload is. In other words, although the City might be able to benchmark its staffing needs against other cities, the others referenced above have been operating for some time with codified, defined operational rules. Cleveland is just beginning down that road.

Constitutional policing, due process, transparency, and comprehensive officer performance investigations all require resources. That OPS has been under-resourced in the past does not excuse under-resourcing in the future – in the same way that OPS’ lack of day-to-day operational policies and procedures could not excuse the ongoing lack of codified standards and procedures going forward.

2. Police Review Board (“PRB”)

a. Overview

During the Summer, the Monitoring Team began to more closely examine the manner in which the PRB goes about its important public duty. It was immediately apparent to the Monitoring Team that the Board had been carrying out their duties absent a set of established protocols to guide their decision making – even though the 1984 City Charter amendment creating the PRB provided that the Board “shall make rules providing for the procedure of the Board and for the review of complaints filed with it,” to be approved by the Public Safety Director and made effective “fifteen days after their publication in the City Record.”²³⁹ It is unclear why, 32 years after voters approved the Board’s creation and 28 years after the Charter amendment became effective (following conclusion of litigation), no such procedures appear to exist – and, if they did, why the Board has not used any codified and procedures for some time.

The lack of clear processes and procedures has allowed PRB to also fall behind on the timely review and deliberation of cases – failing in their core duties and service to the City of Cleveland. This assessment is not geared toward individual Board members who, as volunteers, have been uniformly impressive in their heartfelt desire to do good work, thoughtfully consider cases, and provide good-faith recommendations to the Chief of Police.

There is, of course, no question that the backlog of uncompleted cases in OPS has a direct correlation to the Board’s ability to promptly receive and adjudicated cases. PRB cannot conduct a timely review if OPS has not provided them with a timely investigation. Correcting this entirely unacceptable condition will require that the OPS Administrator, with the clear, consistent, and unambiguous direction of the Director of Public Safety, develop and establish a comprehensive and effective plan to resolve the

²³³ Dkt. 87.

²³⁴ *Id.* at 2–3.

²³⁵ *Id.* at 2.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ These positions are referred to as “technical” because it includes two recently-hired investigators who have been given relatively little responsibility to date.

²³⁹ Charter of the City of Cleveland, § 115-3.

backlog, more effectively manage cases and administer the office for which the Director has ultimate responsibility, and ensure that OPS is properly staffed and equipped to complete cases in a time frame that is consistent with the Consent Decree and the expectations of the greater Cleveland community.

Even when PRB addressed cases, it was not clear precisely how the Board or its members were making decisions – what standards it was applying, how it was considering and weighing evidence, and precisely what its various recommendations as to findings meant. Cases were adjudicated as “sustained” and “unfounded” without specific reference to particular CPD policies. Indeed, in the deliberations that the Monitoring Team observed, it appeared as though Board members were making a finding as to whether they believe that improper conduct occurred – not whether specific violations of CPD policy had taken place. In short, the process that PRB had used to deliberate on cases previously was improvisational at best, unfair at worst, and in need of substantial rigor and precision, regardless.

b. Work Over the Past Six Months²⁴⁰

Accordingly, the Monitoring Team, in concert with the Parties, spent several months working with PRB on drafting an Operations Manual (the “PRB Manual”) to guide its deliberative process. Designed for a broad based constituency who may seek to better understand how the PRB conducts business, this manual provides a step by step process that directs the movement of investigative files from OPS to PRB, how those cases are assigned for PRB member review, the structure and agenda for PRB meetings, the means by which investigations are reviewed and discussed in a public forum, the deliberative process which results in the board’s decisions and recommendations pertaining to each case presented, and a public announcement of their findings and recommendation for further consideration and action by the Chief of Police and Director of Public Safety.

Since voters approved the creation of a Police Review Board in 1984, and the approved changes to the City of Cleveland Charter became effective in 1988, the PRB had not functioned with clear rules for its day-to-day operations – despite the Charter’s express contemplation that, “[s]ubject to the approval of the executive head of the police force, the Police Review Board shall make rules providing for the procedure of the Board” Charter of the City of Cleveland § 115-3, Powers and Duties of Board.

The Manual submitted to the Court thus provides, for the first time, rules of the road for how Board members must acquit themselves of their duties. Significant features of the PRB Manual include the following.

Purpose of the Board, Purpose of the PRB Manual, and Duties & Responsibilities of the Staff. The PRB Manual’s initial sections provide that “[t]he purpose of these procedures is to facilitate the operation of the [Board], including the review of public complaints . . . as authorized by the City of Cleveland Charter.”²⁴¹ The Manual makes clear that the PRB has “the power to receive, cause investigation of, and recommend, and in some cases determine, the resolution of public complaints regarding” CPD misconduct.²⁴² It outlines specific “duties and responsibilities” of the Board, PRB members, and contemplated staff.²⁴³

Organization & Meetings. The Manual codifies the recent changes to the City Charter that Cleveland voters approved on November 8, 2016, with PRB’s membership expanded to “nine members who are representative of the diverse communities within Cleveland” – with “at least one member who resides” in each police District and at least one member “between the ages of 18 and 30” – appointed by either the Mayor or City Council.²⁴⁴ Member terms are four years, with individuals limited to serving two consecutive four-year terms.²⁴⁵ The Board will select a member to serve as Chair and another to serve as Vice-Chair.²⁴⁶ Board members will receive training on constitutional and other relevant law, police practice and procedure, administrative investigations, and other pertinent topics.²⁴⁷

Importantly, the Manual sets clear expectations regarding the attendance and participation of Board members during PRB’s meetings.²⁴⁸ The Monitoring Team will expect that Board members indeed “use best efforts to attend all regularly-scheduled Board meetings.”²⁴⁹ The Manual indicates that Board members “shall receive compensation as may be established by the Council.”²⁵⁰ To the extent that the scope of the commitment required by PRB will be more significant than it was previously, some degree of compensation may well be appropriate, fair, and necessary – and set forth as part of the Board’s “own budget separate from the budget of the Department of Public Safety” and of OPS.²⁵¹ That Budget must also include resources for the Board to “hire and/or appoint support personnel.”²⁵² All PRB “meetings shall be open to the public,” with the general “order of business” outlined in

Since Cleveland voters approve the creation of the PRB in 1984, the PRB has not functioned with clear rules for its day-to-day operations – despite the Charter’s express contemplation that it would.

²⁴⁰ Substantial elements of this discussion are reproduced or adapted from the Monitor’s filing to the Court found at Dkt. 86.

²⁴¹ Dkt. 86-2 at 3.

²⁴² *Id.*

²⁴³ *Id.* at 2-4.

²⁴⁴ *Id.* at 5.

²⁴⁵ *Id.* at 5-6.

²⁴⁶ *Id.* at 7.

²⁴⁷ *Id.* at 7-8.

²⁴⁸ *Id.* at 5-6.

²⁴⁹ *Id.* at 6.

²⁵⁰ *Id.* at 7.

²⁵¹ *Id.*

²⁵² *Id.* at 10.

the Manual.²⁵³ Quorum and voting requirements are expressly provided.²⁵⁴

Authority, Jurisdiction, Duties, Responsibilities, and Review of Complaint. Consistent with Cleveland's Charter, the OPS Manual clarifies that:

The Board has the power to receive, cause investigation of, and recommend resolution of any and all complaints filed with it alleging misconduct by officers and non-sworn employees of the Cleveland Division of Police, regardless of their duty status, when such misconduct is directed toward any person who is not a CDP employee. On its own complaint, the Board may direct the OPS Administrator to conduct an investigation of any incident involving the use of deadly force by members of the police force and any incident resulting in the injury or death of persons in the custody of the police force.²⁵⁵

The Manual outlines the process by which PRB typically receives completed investigations from OPS and by which PRB might receive complaints or "cause an investigation of incidents involving the use of deadly force" or "incidents resulting in the injury or death of persons in custody of the police force."²⁵⁶

The Manual contemplates that "Board members may make written inquiries of the OPS Administrator" when or after reviewing a given complaint investigation file "to obtain additional information, documents, or other evidence."²⁵⁷ The Board must "allow complainants or subject employees" present at PRB meetings "to speak after the case is called by the Board...."²⁵⁸ "Board members may" also "ask follow-up questions of any person who has addressed the Board."²⁵⁹ If the voluntary cooperation of individuals involved in complaint investigations are insufficiently forthcoming or willing to cooperate, "[u]pon majority vote" and notification of the Public Safety Director and Police Chief, "the Board has the power to subpoena and require the attendance of witnesses, the production of documents, and/or the production of other papers pertinent to its adjudications...."²⁶⁰

The administrative rules that the Manual establishes outline procedures for consideration of certain categories of complaint investigations by a three-member panel (a "Panel") rather than

by the "full Board."²⁶¹ Specifically, complaints "classified as De-meanor, Rudeness, and Improper Tow, with no other type of alleged conduct, shall be assigned for review by a Panel" unless the Chair determines otherwise.²⁶² "[C]omplex investigations shall be assigned to the full Board for review."²⁶³ Other types of complaints "shall be assigned by the Chair for review by either a three-member panel or by the full Board."²⁶⁴ These rules work to ensure that all cases can be comprehensively considered but that the Board's full meetings can focus on the most significant, difficult, or complex cases as appropriate.

Hearing Procedures. The Manual provides a host of specific procedures that the Board must follow when hearing and considering cases at its regular, public meetings. "The purpose of [a] hearing is to review the case . . . in order to reach a disposition and a recommendation on discipline for each allegation identified by OPS or by Board members during their review of the case."²⁶⁵ Complainants and subject employees must receive notice of when a case involving them will be considered by the Board.²⁶⁶ PRB must use the categories of dispositions required by the Consent Decree.²⁶⁷ Although "[t]he Board shall give weight to the OPS Administrator's recommended disposition, and shall justify in writing any departure from it," the PRB "is not bound by the OPS Administrator's recommendation and shall reach its own conclusions regarding the appropriate disposition."²⁶⁸

Where the PRB votes to recommend a "sustained" disposition, the Board also considers recommended discipline or "other remedial action."²⁶⁹ When doing so, it applies a standard of "just cause."²⁷⁰ The Manual also provides a process for making recommendations regarding revisions in CPD "policies, strategies, tactics, or training" and for "identify[ing] officer or employee performance that is commendable, superior, noteworthy, or otherwise deserving of special and positive recognition" and recommend to the Chief of Police or Public Safety Director that CPD personnel receive a commendation.²⁷¹ Ultimately, the PRB delivers a written "Final Summary prepared for each complaint adjudicated as 'sustained' to the Chief of Police and/or the Director of Public Safety, as appropriate, within fourteen calendar days" of the hearing.²⁷²

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.* (emphasis in original).

²⁶⁵ *Id.* at 15.

²⁶⁶ *Id.* at 22.

²⁶⁷ *Id.* at 18.

²⁶⁸ *Id.* at 15.

²⁶⁹ *Id.* at 16.

²⁷⁰ *Id.*

²⁷¹ *Id.* at 20.

²⁷² *Id.* at 22.

²⁵³ *Id.* at 9.

²⁵⁴ *Id.* at 10.

²⁵⁵ *Id.* at 11.

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 13.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 14.

Action of the PRB Following Hearing by the Chief of Police. The PRB Manual before the Court outlines, for the first time, a specific and codified process for the PRB to fulfill one of the central duties granted to it by Cleveland's Charter: overriding the determination of the Chief of Police. The PRB was created by an amendment to the Cleveland City Charter that was approved by voters in 1984.²⁷³ Then-Mayor George Voinovich and then-City Council President George Forbes drafted the amendment language as an emergency ordinance "for the immediate preservation of the public peace, property, health, and safety" in the wake of significant public unrest over the relationship between CDP and Cleveland residents.²⁷⁴

Pursuant to Charter Section 119, where a suspension is for less than ten (10) days, the Chief's decision is final.²⁷⁵ If the Chief determines that a suspension for more than ten (10) days is appropriate, Section 119 provides that the matter must be referred to the Safety Director, who will hold a hearing and render the final judgment in the matter. Thus, the Chief may suspend officers for only up to ten days, with the Safety Director suspending officers for more than ten days.

The Charter establishes exceptions to this disciplinary regime for matters in which a complaint has been filed with OPS and heard by the PRB. In effect, it places the PRB's disciplinary authority on equal footing with the Chief of Police.²⁷⁶ Section 115-4 indicates that, if the PRB determines that discipline should be imposed, it will forward its recommendation to the Chief of Police. The Chief must then notify the PRB whether or not s/he intends to impose discipline, and if so, what that discipline will be. Under Section 115-4, if the PRB disagrees with the Chief's decision or with the length of his/her proposed discipline, "the Board, notwithstanding the provisions of Section 119 of this Charter to the contrary, may suspend the officer or employee."²⁷⁷ Essentially, while this provision creates a path through the Chief in PRB matters, by allowing the PRB to override the Chief, it grants the Board the power to impose discipline in cases before it.

²⁷³ The amendment did not become effective immediately, due to injunctions issued in connection with litigation that Cleveland's police union filed. The case was ultimately decided against the Union, and the injunction was lifted in 1988.

²⁷⁴ Charter of the City of Cleveland (1984).

²⁷⁵ *Id.*

²⁷⁶ Section 119 further underscores the Charter's intent to afford the Chief and the PRB equal disciplinary power by mandating that:

Prior to suspending any officer or employee of the police force, the Chief of Police shall ascertain whether a complaint on file with the Police Review Board relates to the conduct of the officer or employee in question. If so, the Chief of Police shall not suspend the officer or employee unless the Police Review Board concurs with the Chief's decision, in accordance with Section 115-4 of this Charter.

²⁷⁷ Charter of the City of Cleveland (1984).

The Monitoring Team has previously outlined to the Court that, although the Monitor does not tend to credit the City's argument suggesting that such certification is legally required by the terms of the Charter and/or past state-court precedent, it can approve the Manual-provided process that requires that the PRB's override of the Chief of Police's discipline to be sent to the Director of Public Safety for final hearing and resolution.²⁷⁸

c. Approach to Progress Going Forward

In order to assist both OPS and the PRB, the Monitor has appointed Mr. Richard Rosenthal to provide leadership and technical assistance to both OPS and PRB as they endeavor to implement the host of new policies, processes, and provisions required by the new manuals. Mr. Rosenthal, whose background and qualifications are described elsewhere in this report, has led three civilian oversight agencies – making him uniquely situated to provide the in-depth technical assistance and monitoring that OPS and PRB require to become the high-quality, transparent, and professional entities that they must under the Consent Decree.

During the next monitoring period, Mr. Rosenthal, along with other members of the Monitoring Team, will work to ensure the implementation and strict adherence to the operations manuals and that the more frequent and productive meetings of the PRB are resulting in thoughtful and fair case deliberation.

²⁷⁸ See Dkt. 86 at 28–37.

TRANSPARENCY & OVERSIGHT

A. Police Inspector General

The Consent Decree continues to “require[] the creation of a new, internal oversight function within the Division – a Police Inspector General.”²⁷⁹ The Inspector General (“IG”) must be “an individual or individuals with significant experience in law enforcement practices and civil rights law”²⁸⁰

The IG’s substantial duties include, but are not limited to, review of CPD policies and practices, auditing, conducting investigations, analyzing data for aggregate and systemic trends, developing “specific recommendations for reform,” “analyz[ing] investigations conducted by OPS to determine” if they are adequate, and reviewing imposed discipline.²⁸¹ The IG’s reports and recommendations must be made public.²⁸²

The First Semiannual Report noted that “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.”²⁸³ It noted that, “in light of the competing concerns, . . . the First-Year Monitoring Plan d[id] not include a deadline for this position during 2016.”²⁸⁴

Although no IG has been hired to date, Consent Decree stakeholders have engaged in conversations about funding levels for the position when it is created. The First Semiannual report noted that “a single budgeted position will not be sufficient to meet the terms of the Agreement” and that the Monitoring Team was “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.”²⁸⁵ Ultimately, one person will not be able to do all that the Decree requires. The IG will need a high-quality staff and administrative support. The IG will also need independence and the ability to present sometimes challenging recommendations, problematic trends, or stark recommendations – giving voice to and shedding light on uncomfortable facts, when necessary, about the Division of Police or City of Cleveland.

As work begins in earnest in the second year of monitoring to hire an individual for the IG position, the Monitoring Team believes that Cleveland’s search will yield substantially higher-quality candidates if the individuals applying to the job know that the position will be well-resourced and provided with sufficient independence. The Monitoring Team looks forward to discussions about the best mechanisms for doing so in the upcoming months with the City, Department of Justice, Community Police Commission, police officer organizations, and others.

B. Data Collection and Analysis

As the Monitor recently noted to the Court, the City has “recent[ly] hire[d] . . . an outside consultant to serve as a Data Analysis Coordinator across CPD and City functions for purposes of the Consent Decree.”²⁸⁶ This hiring complies with the Consent Decree’s requirement that CPD “designate an individual or individuals” to “ensure the collection and tracking of all documents related to uses of force and allegations of misconduct and related materials.”²⁸⁷

“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.”²⁸⁸ Although the completion of such a protocol has been delayed in order to ensure the on-boarding of a well-qualified individual into the Data Analysis and Collection Coordinator position, the Monitoring Team continues to look forward to working closely with CPD and the Coordinator as the Division develops such a protocol aimed at growing and operationalizing the extent to which management and supervisors of all levels use real-time data to make management and supervisory decisions.

²⁷⁹ First Semiannual Report at 49.

²⁸⁰ Dkt. 7-1 ¶ 250.

²⁸¹ *Id.* ¶ 253.

²⁸² *Id.*

²⁸³ First Semiannual Report at 49.

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 50.

²⁸⁶ Dkt. 93 at 17.

²⁸⁷ Dkt. 7-1 ¶¶ 257–58.

²⁸⁸ First Semiannual Report at 50.

C. Public Availability of CPD-Related Information

As another means of the “increase[d] transparency” that the City has pledged with respect to Division operations going forward, the Consent Decree continues to require that data and information about the Division – including its “policies and procedures, training plans, community policing initiatives, community meeting schedules, budgets, and internal audit reports – be posted on CPD’s website.”²⁸⁹ Additionally, “[t]o ensure transparency in the implementation of” the Decree, “all CDP audits, reports, and outcome analyses related to the implementation of this Agreement will be made publicly available, including at the City and CDP websites.”²⁹⁰

The First Semiannual Report noted that, “[a]s of April 20, 2016, little to none of the required information that should have been available” on CPD’s website “in a finalized form had been posted.”²⁹¹ Encouragingly, extensive new material has been made available on the Division’s website, with the public now able to view policies, reports, and materials related to the Consent Decree. The Monitoring Team commends CPD for ensuring that the Cleveland community, via its own outlets, has access to information about the Division’s functions and processes for doing business.

The Monitoring Team will have more to say, in future discussions with the Parties about a more comprehensive Division policy about the public availability and release of CPD information and in future reports, about the significant steps that the Division and City must make to transform itself from a department too often fearful of providing information and data to the public to one that quickly, fairly, and transparently provides the community with updates on its activities and performance – whether good, bad, or otherwise.



²⁸⁹ Dkt. 7-1 at 1; *id.* ¶ 268.

²⁹⁰ *Id.* ¶ 267.

²⁹¹ First Semiannual Report at 51.

current approach to training new CPD officers.

B. Equipment & Resources²⁹⁴

1. Background

The Department of Justice's 2014 investigation concluded that:

CDP's failure to appropriately allocate resources – including staffing and equipment – contributes to the pattern or practice of unconstitutional force. In addition, Cleveland police officers are not given the basic equipment, the physical structures, and the technology required to perform their jobs safely and effectively.²⁹⁵

It noted that the lack of “adequate technology” and “a sufficiently professional workspace” ultimately “is dangerous to the officer, undermines public safety and is unfair.”²⁹⁶ “As much as any building, stadium, or other public works project, a well-run, professional and constitutional police presence is the foundation of a healthy city in our democracy.”²⁹⁷

The Monitor's First Semiannual Report affirmed that “Cleveland does not yet benefit from many of the basic technological innovations associated with contemporary, urban policing.”²⁹⁸ The Division did not have enough decent-quality patrol cars, modern technology in those cars, and modern systems for those technology platforms.²⁹⁹ The report noted that “many of the areas that the Division must address . . . are basic technology platforms that Cleveland was overdue to address regardless of whether there had been a Consent Decree” and “are necessary to protect the public, keep officers safe, and allow the Division of Police to effectively and efficiently conduct law enforcement.”³⁰⁰ It inventoried the “technological, business practice, and project management problems” across projects and functions that were made manifest in the problematic rollout of CPD's new record management system.³⁰¹

The Consent Decree required that CPD “complete a comprehensive equipment and resource study to assess its current needs and priorities to perform the functions necessary for CDP to fulfill its mission and satisfy the requirements” of the

OFFICER ASSISTANCE & SUPPORT

A. Training

1. In-Service Training

The Division of Police has submitted to the Monitoring Team its 2017 In-Service Training Plan, which was to have outlined the full scope of training programs that its existing officers would receive in the way of ongoing professional training. The Monitoring Team has provided feedback on this plan and will be working with CPD and the Parties to further define and refine the areas of focus for training in this calendar year to ensure that they are consistent with the Consent Decree's goals and the ultimate Second-Year Monitoring Plan, which will cover the period of February 2017 through January 2018.

The Monitoring Team will have more to say on the subject of in-service training when it is able to present a complete curriculum on the upcoming use of force training to the Court and public.

2. Academy Training

The “Consent Decree . . . contains certain obligations relating to the training of new officers at the academy.”²⁹² For the current and previous class Academy classes, “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.”²⁹³ The Monitoring Team will soon be providing to the Parties a proposal for its assessment of the overall quality of the

²⁹² First Semiannual Report at 55.

²⁹³ *Id.*

²⁹⁴ Substantial elements of this discussion are reproduced or adapted from the Monitor's filing to the Court found at Dkt. 93.

²⁹⁵ 2014 Findings Letter at 54.

²⁹⁶ *Id.* at 54–55.

²⁹⁷ *Id.* at 55.

²⁹⁸ First Semiannual Report at 55.

²⁹⁹ *Id.* at 59.

³⁰⁰ *Id.* at 56.

³⁰¹ *Id.* at 57–58.

Decree.³⁰² After completing that study, the City needed to “develop an effective, comprehensive Equipment and Resource Plan that is consistent with its mission and that will allow it to satisfy the requirements of this Agreement.”³⁰³

The Plan needed to address a number of different requirements. First, the Plan “will provide for necessary equipment including, at least . . . an adequate number of computers; an adequate number of operable and safe zone cars; zone cars with reliable, functioning computers that provide officers with up-to-date technology, including” mobile computer-aided dispatch, access to the Division’s records management system, and access to law enforcement databases; and “zone cars equipped with first-aid kits”³⁰⁴ These requirements stemmed, to at least some relevant extent, from the Department of Justice’s observation that it found “not enough computers at the district stations” and a patrol car fleet that was “old and in poor repair.”³⁰⁵

Second, the Plan must address how the Division will “satisfy the requirements of this Agreement,” including the Decree’s many other substantive requirements.³⁰⁶

For instance, CPD will need to collect information and data about investigatory stops,³⁰⁷ and “calls and incidents involving individuals in crisis.”³⁰⁸ The Division is required to “develop and implement a single, uniform, reporting system” to effectuate the Decree’s use of force reporting requirements.³⁰⁹ “[A]ll relevant information from [a] completed [Internal Affairs] investigation” must be “provided electronically to the [involved] officers’ supervisors, the Training Review Committee, the Force Review Board, the Officer Intervention Program, and the Data Collection and Analysis Coordinator”³¹⁰ “CDP supervisors” must “regularly use . . . data to evaluate the performance of CDP officers across all ranks, units, and shifts.”³¹¹ To adequately “modify its Officer Intervention Program,” CPD must utilize “a computerized relational database that will be used to collect, maintain, integrate, and retrieve data department-wide and for each officer regarding” a host of specific performance data.³¹² These and numerous, similar Consent Decree provisions require that CPD embrace a host of new or upgraded technologies, resources, and equipment.

Third, the Plan must “ensure that CDP” both “properly maintains and seeks to continuously improve upon existing equipment and technology” and “is appropriately identifying equipment needs and seeking to utilize, as appropriate, emerging technologies.”³¹³ This relates to DOJ’s determination that the City’s “failure to thoughtfully assess the Division’s needs and prioritize effectively affects officers’ and supervisors’ ability to do their jobs”³¹⁴

2. Challenges to Date

The City submitted its final Equipment and Resource Plan, as required by the First-Year Monitoring Plan, on November 25, 2016.³¹⁵ After closely reviewing the submitted Plan, the Monitoring Team, in turn, filed a motion with the Court indicating that – because it did not specifically, strategically, and comprehensively provide CPD officers with the tools they need to do their jobs – the Monitor could not approve the Plan.

The Monitoring Team’s analysis of the Plan was significantly informed by the Monitoring Team’s experience with substantial technology and equipment initiatives in other major American police departments. It is also informed by familiarity with generally-accepted approaches in the fields of information technology, project management, and strategic planning.

Successful compliance with the Consent Decree will require that the City and CPD successfully execute the implementation of numerous distinct but interrelated equipment, resource, and technology projects. For purposes of the instant filing, “project” refers to “a temporary endeavor undertaken to produce a unique product, service, or result.”³¹⁶ Similarly, “project management” is “a system of avoiding missed deadlines, vague expectations and budget overspending.”³¹⁷

“In the process of planning” to manage and successfully execute such a project, “projects should be properly defined and divided into logical, progressive steps.”³¹⁸ Any successful project plan needs to provide overall objectives in clear terms that can be measured:

Objectives are quantifiable criteria used to measure project success. They describe the ‘what’ you’re trying to do, accomplish, or

³⁰² Dkt. 7-1 ¶ 292.

³⁰³ *Id.*

³⁰⁴ *Id.* ¶ 293.

³⁰⁵ 2014 Findings Letter at 56–57.

³⁰⁶ Dkt. 7-1 ¶ 292.

³⁰⁷ *Id.* ¶¶ 160–75.

³⁰⁸ *Id.* ¶ 157.

³⁰⁹ *Id.* ¶ 87.

³¹⁰ *Id.* ¶ 188.

³¹¹ *Id.* ¶ 327.

³¹² *Id.* ¶ 328.

³¹³ *Id.*

³¹⁴ 2014 Findings Letter at 57.

³¹⁵ Dkt. 80-1 at 19.

³¹⁶ James P. Lewis, *Fundamentals of Project Management* 2 (3d ed. 2007).

³¹⁷ William Fox and Gerrit van der Walddt, *A Guide to Project Management* 8 (2008).

³¹⁸ *Id.* at 44.

produce. Quantifiable criteria should at least include schedule, cost, and quality measures . . .

..³¹⁹

Generally, project management literature contends that objectives should be specific, measurable, accurate (e.g., precise), realistic, and time-bound or time-limited (e.g., have a time frame with an end date assigned to them).³²⁰

Further, a project plan needs to be specific about how the various broader components of the plan will be successfully implemented over time. Specifically, the plan needs to identify specific deliverables that “translate [the] project mission . . . into actionable realities.”³²¹ For “every deliverable that will be produced, the date [by which] it will be produced” also needs to be identified in concrete terms.³²²

With specific respect to planning for the strategic implementation of a number of IT-related projects, organizations “that excel in project delivery . . . clearly define what needs to be done in a project, by whom, when, and how” – “carefully select[ing] tools, align[ing] them with project and business goals, link[ing] them to metrics, and provid[ing] them to project managers to deliver positive results.”³²³ “The most common reason for [IT] project failure [i]s poor planning,” including a “weak” project plan.³²⁴

Thus, although the City has some disagreement about the applicability of such concepts to its Consent Decree efforts,³²⁵ the Monitor believes that it is fair, reasonable, and appropriate to demand that the City’s plan for implementing a host of new technology platforms and initiatives be structured and planned in a manner according to well-accepted standards and practices in the field of project management.

The Monitoring Team’s motion to the Court indicating that it could not approve the City’s submitted Equipment and Resource

³¹⁹ Kim Heldman et al, *PMP Project Management Professional Exam Study Guide* 107 (7th ed. 2007).

³²⁰ See, e.g., Jason Westland, *The Project Management Life Cycle* 32 (2007); James P. Lewis, *Fundamentals of Project Management* 51 (2007); Mark Resch, *Strategic Project Management Transformation: Delivering Maximum ROI & Sustainable Business* 111 (2011); Richard Jones, *Project Management Survival: A Practical Guide to Leading, Managing and Delivering Challenging Projects* 59–61 (2007).

³²¹ Jack Ferraro, *Project Management for Non-Project Managers* 172 (2012).

³²² Paula Martin & Karen Tate, *Getting Started in Project Management* 128 (2002).

³²³ Kathy Schwalbe, *Information Technology Project Management* 16–17 (2015).

³²⁴ Brenda Whittaker, “What Went Wrong? Unsuccessful Information Technology Projects,” 7 *Information Management & Computer Security* 21, 24–25 (1999).

³²⁵ Dkt. 95 at 5.

Plan outlined a number of the deficiencies with the City’s proposed Plan. Some of those deficiencies related to fundamental project management, strategic, and planning failures:

A Lack of Specific, Well-Supported Deadlines. The Plan uniformly situates “project milestone completion dates” not in terms of actual dates but as references to general, quarter-year time periods. These overly broad, 90-day “deadlines” combine the worst of overly rigid project management with the worst of insufficiently detailed management approaches. On the one hand, because the deadlines are fixed time units, rather than relational to other internal milestones, small delays or unexpected events may substantially complicate project execution.³²⁶ At the same time, the broad time periods ensure that there is no specific date certain by which particular projects can be expected to have been finished or major milestones reached – just a span of twelve to thirteen weeks over which the progress might be made. Ultimately, the three-month-long deadline windows make the determination of the sufficiency of the Plan, the City implementation of the Plan, and all stakeholders holding the City accountable for adhering to the Plan unacceptably problematic. Given the accepted “importance of deadlines and time urgency for focusing attention on nonroutine behavior” of organizations, some specific time parameters must be established and enforced.³²⁷

Further, the deadlines offered were not adequately supported, defended, or explained. Especially because social science and organizational behavior literature establishes that “[p]eople underestimate their own . . . [task] completion times,” the deadlines that are included need to be situated in terms of the underlying work, resources, and effort necessary to complete a given deliverable or reach a particular milestone.³²⁸

A Failure to Identify Specific Actors Responsible for Various Deliverables. “A successful project requires that the project team participate (at some level) in the planning process . . . and be responsible for completion of assignments Project team members need to be accountable for the effective performance of their assignments.”³²⁹ Although some primary actors, business owners, or stakeholders are identified as responsible

³²⁶ See, e.g., Stephen Leybourne and Eugene Sadler-Smith, “The Role of Intuition and Improvisation in Project Management,” 24 *Int’l J. Project Mgmt.* 483 (2006) (describing need for project managers to be flexible and objective-oriented).

³²⁷ Nancy Satudenmayer et al, “Time to Change: Temporal Shifts as Enablers of Organizational Change,” 13 *Organization Science* 583, 584 (2002); accord Dkt. 93–3 at 3 (noting that “[e]ach component of the Equipment & Resource Plan . . . should have an accompanying management control [and] accountability”).

³²⁸ Roger Buehler et al, “Exploring the ‘Planning Fallacy’: Why People Underestimate Their Task Completion Times,” 67 *J. Personality & Social Psych.* 366, 371 (1994).

³²⁹ California Office of the State Chief Information Officer Archives, *Project Management Overview: Roles and Responsibilities* at 1 (Jan. 1997).

for some of the major project milestones, most deliverables are not attached to any specific entity, person, or City representative. For example, the Plan outlines the City's efforts to secure and implement a Learning Management System, which will provide an electronic environment for training and professional development activities. Although a Business Owner is specifically identified, the Plan does not describe precisely who has been reviewing proposals from vendors, has been viewing vendor demonstrations, will be selecting the system, and will be coordinating the in-field implementation and training (of some undefined set) of officers.

The Summary Rejection of the Need for Outside Experts. The Monitor's First Semiannual Report outlined the five-year odyssey involved to "upgrade" CPD's record management system software, which "is the main storage system that the police department depends on for data storage and retrieval of critical information."³³⁰ The Monitoring Team identified significant basic IT governance and project management problems as a critical cause of the problems with the system's implementation. "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," with incident reports becoming backlogged for entry into the struggling new system, called LERMS.³³¹ Indeed, the City concedes that "[t]he LERMS project failed due to a lack of project management structure, governance, documentation, executive sponsorship and oversight."³³²

Accordingly, the Monitoring Team has repeatedly recommended to the City and CPD that it engage with outside consultants to assist it in revamping its overall IT governance structure, implementing major new platforms, and dramatically enhance the capacity of the City and CPD to "properly maintain[] and . . . continuously improve upon existing equipment and technology," "identify[] equipment needs," and "utilize, as appropriate, emerging technologies."³³³ The City declines. Instead, the Plan vaguely observes that the Project management Office "currently utilizes outside consultants in the implementations of various citywide IT projects."³³⁴

Assuming the City's assertions are true, and without knowing what consultants may be available for what types of projects encompassed by the Plan, the possibility for the City to secure outside help and experts is undoubtedly positive. However, even if consultants are already on retainer to help the Project Man-

agement Office with particular IT projects, those consultants are, by the City's own admission, not assisting the City or CPD in overhauling the approach used to equipment, resource, and technology problems; strategically planning for immediate and long-term needs; and thoughtfully implementing changes in systems and processes that are ripe with interdependencies. The City's Plan appears to argue that the five years of problems with LERMS was an isolated or exceptional circumstance. It says that individuals "involved with the original LERMS project" will not be a part of at least the field-based reporting initiative.³³⁵ Additionally, "when the initial LERMS project was started," there "was no Chief Information Officer of the City of Cleveland" and "[n]o project management approach . . . in place."³³⁶

Although the City's current candor about the LERMS implementation is admirable, it simply is not clear that new systems, processes, and habits are, in fact, in place to manage major, future projects in a new, better, and more resource-efficient way. Further, if the City's current law enforcement IT approach apparently cannot manage to get 105 computers deployed to the field so that officers can use them in a timely manner, the Monitoring Team is highly skeptical of the approach's ability to massively overhaul CPD's reporting, dispatch, and other core systems.

To this end, the Monitoring Team requests that the Court address the possibility of the City hiring an outside consultant, with responsibility for overseeing the construction and execution of the Equipment and Resource Plan and restructuring IT governance with respect to the Division of Police, to serve as a kind of "IT Czar." The City's encouraging, recent hire of an outside consultant to serve as a Data Analysis Coordinator across CPD and City functions for purposes of the Consent Decree might serve as a template for engaging the kind of outside assistance that can build long-term capacity within CPD and the City with respect to IT. Although the City appears to have misunderstood this suggestion as amounting to a "suggested takeover of the City's Executive administrative functions,"³³⁷ the Monitoring Team simply believes that CPD and the City would benefit from having a single, high-skilled individual coordinate the successful planning for and management of the host of complicated projects that will be implicated by the Equipment and Resource Plan – which would obviously not do anything approaching an impingement on the City's "local self-governing authority."³³⁸

The Monitor does dispute, however, the claim that "there is no ongoing City IT crisis that warrants the added expense and interruptions associated with appointing" an outside consultant

³³⁰ Dkt. 83 at 56.

³³¹ *Id.* at 57.

³³² Dkt. 93-1 at 13.

³³³ Dkt. 7-1 ¶ 293(e)–(f).

³³⁴ Dkt. 93-1 at 13.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ Dkt. 95 at 9.

³³⁸ *Id.* at 10.

to assist the City.³³⁹ That the Division of Police is decades behind its peers and where it should be with respect to core law enforcement systems does constitute a crisis that can only be addressed with a serious, strategic, and comprehensive plan, which the City has been unable, to date, to produce.

The Failure to Address the Decree's Requirements Related to Identifying Equipment Needs, Maintaining and Improving Upon Existing Technology, and Utilizing Emerging Technologies. The Consent Decree requires that the Plan “ensure that CDP” “properly maintains and seeks to continuously improve upon existing equipment and technology” and “is appropriately identifying equipment needs and seeking to utilize, as appropriate, emerging technologies.”³⁴⁰ Especially because the City declines to consider utilizing an outside consultant to assist it in improving its law enforcement IT governance and project management, the Plan does not comply with these maintenance and improvement requirements of the Consent Decree.

For the Monitoring Team to be in a position to approve an Equipment and Resource Plan from the City, it needs to have confidence that the processes and habits that have given Cleveland a five-year implementation of a software program, an approaching one-year-long process for deploying desktop computers to District stations, and a generally under-resourced police department have been addressed – such that CPD never again finds itself with its police officers lacking the tools and support that they need to do their jobs..

Failure to Meaningfully Account for Project Interdependencies. A number of the City's timelines with respect to specific projects fail to adequately account for the interdependencies across other projects. Indeed, the overall structure of the Plan – with a litany of specific projects listed in isolation and without cross-reference to the timelines or initiatives in other, related projects – suggests that the City has not adequately identified how the rate of progress on some initiatives may impact the rate of progress in others.

Other issues relate to the City's inability to adequately address specific technological and resource requirements of the Consent Decree:

Inadequacy of the Plan's Treatment of Precinct-Based Computers. According to CPD's own Equipment and Resource Study, one-third (or 36 percent) of CPD's total “working computers” are housed in the Division's five patrol Districts.³⁴¹ One out of ten (11 percent) of working PD computers are available to CPD patrol personnel, rather than to supervisors, com-

mand staff, or administrative personnel.³⁴²

The City's Plan does not provide any sense of what “an adequate number of computers” under the Consent Decree is.³⁴³ Although it contends that the current ratio of computers to personnel are 1: 2.24 and that the addition of 105 computers secured by an Ohio state grant would bring the ratio to 1: 1.92, without describing the numbers on which such ratios are based, the Plan likewise does not outline a mechanism, method, or process for identifying what an adequate number of computers in fact would be – or specifically how CPD and the City will ensure that the number is “properly maintain[ed].”³⁴⁴

The Plan observes that computers purchased through an Ohio state grant will be deployed in 2017. Not only does the Plan fail to note that the computers have been sitting in City storage since at least early 2016, it does not provide for any process of identifying whether more than the previously-purchased 105 computers are necessary for current staffing, current and anticipated use needs, or current and anticipated use volume. To the extent that the City and CPD might “identify the number of Computers to be deployed at each District” as more than 105, no process or timeline is provided for identifying the number, purchasing the computers, and deploying them to the field.³⁴⁵

Additionally, the Monitor notes that the Plan suggests that the 105 “new” computers are intended “for Field Based Reporting.”³⁴⁶ Generally, the phrase “in the field” means “[a]way from the laboratory, office, or studio”³⁴⁷ In law enforcement, “field reporting” generally refers to front-line officers providing data and information from the neighborhoods where they work on a mobile platform.³⁴⁸

A police station is not the field, and “In-Station Reporting” is not field reporting – leaving the Monitoring Team substantially confused about how the 105 computers have anything to do with true “field reporting.”³⁴⁹ The Monitoring Team has outlined these concerns to the City, most recently in its November 3, 2016 memorandum. The Community Police Commission has also emphasized the need for officers to have dynamic, real-time access to databases that might contain information about a sub-

³⁴² *Id.* at 5–6.

³⁴³ Dkt. 7-1 ¶ 293(a).

³⁴⁴ Dkt. 7-1 ¶ 293(e).

³⁴⁵ Dkt. 93-1 at 5.

³⁴⁶ *Id.*

³⁴⁷ “in the field” Oxford Living Dictionary, https://en.oxforddictionaries.com/definition/in_the_field (last visited Dec. 17, 2016).

³⁴⁸ See Larry T. Hoover, “From Police Administration to a Police Science: The Development of a Police Academic Establishment in the United States,” 8 *Police Quarterly* 44 (2005).

³⁴⁹ Dkt. 93-1 at 8.

³³⁹ *Id.* at 10.

³⁴⁰ Dkt. 7-1 ¶ 293(e)–(f).

³⁴¹ Dkt. 93-2 at 5.

ject, such as if the individual is known to face mental health challenges.³⁵⁰

The Plan's Treatment of the Necessary Computer-Aided Dispatch Upgrade Is Inadequate. Computer-aided dispatch (“CAD”) systems “allow public safety operations and communications to be augmented, assisted, or partially controlled by an automated system.”³⁵¹ “CDP dispatch” currently uses one such CAD system “for call handling, assignments and field notifications,” and the implementation of a CAD system to CPD officers “will provide an accurate and consistent picture of an incident in progress for personnel in the field.”³⁵²

Cleveland implemented the current CAD platform in 2005.³⁵³ The City “upgraded the CAD system to include Silent Dispatching[,] which allows for the dispatcher to dispatch calls for service via the Mobile Data Terminal instead of over the . . . radio”³⁵⁴ Cleveland’s EMS and Fire elected to use Silent Dispatching.³⁵⁵ The Division of Police declined to do so. As such, CPD’s radio is among the busiest and loudest that this Monitoring Team has observed – and officers must track, for themselves, information provided by communications and dispatch on their own notepads or on their personal cell phones rather than having the information displayed on an in-car computer.³⁵⁶

The City indicates that “[f]unding is currently in place to order and install the recommended number of Mobile Data Terminals need[ed] to outfit the Patrol Vehicle fleet.”³⁵⁷ Assumedly to ensure that new computers are not placed in old cars that will soon need to be decommissioned, the Plan indicates that a Police Vehicle Replacement Plan would be “developed to identify when vehicles will be scrapped out due to age and/or mileage.”³⁵⁸ Given that the Equipment and Resource Plan being reviewed was submitted to the Monitoring Team on November 25, 2016, it is unclear why the instant Plan does not include more detailed information about the implications of vehicle fleet modernization on MDT installation and CAD implementation.

CPD has too few patrol cars. The patrol cars that it does have are in poor repair and old, with more than one-third currently having over 90,000 miles.

The Plan Fails to Substantively and Specifically Address CPD’s Inadequate Number of Patrol Cars. CPD currently has an insufficient number of patrol cars overall. CPD reports to have 358 marked zone cars, spread throughout the Districts, Downtown Services Unit, Bureau of Traffic, CLE Hopkins International Airport, and other locations. CPD reports that “[a] source of frustration by all personnel is the lack of vehicles,” especially due to slow “turnaround time” while “waiting to be serviced or repaired at Motor Vehicle Maintenance.”³⁵⁹ CPD reports that its current benchmark for marked vehicles is 394 – leaving CPD at a deficit of nearly 10 percent (9.2 percent), even before considering those staffing changes that will be necessary to effectuate the Decree’s other requirements.

Further, the condition of the insufficient number of patrol cars that CPD does have in service is poor. More than one-third (38 percent) of CPD patrol cars have over 90,000 miles. Nearly one out of ten (8 percent) of total CPD vehicles were out for maintenance in July 2016 – a process that takes too long, is inefficient, and may be too expensive. Indeed, Monitoring Team personnel have been surprised by the incredibly poor condition of many individual cars in CPD’s fleet. Despite these problems with CPD vehicles, CPD and the City have not, to date, had a plan for vehicle inventory replacement. CPD itself correctly notes that “[a]s it stands today, 38% of the fleet could be replaced around the same time,” which “will be costly to the City of Cleveland if the fleet is not managed and maintained.”³⁶⁰ Thus, the City of Cleveland does not have enough patrol cars for its officers, and the ones that it has are in poor condition and will soon need to be replaced – but the City has not, to date, had any plan to remedy the problem.

The Consent Decree requires that “CDP’s Equipment and Resource Plan . . . provide for necessary equipment including . . . an adequate number of operable and safe zone cars . . . with reliable, functioning computers that provide officers with up-to-date technology.”³⁶¹ The Plan that the City submits fails to provide for an adequate number of operable and safe cars. It engages in no effort to estimate, benchmark, or otherwise determine how many cars are necessary. It outlines only a short-term, one-shot process for coming up with a Patrol Vehicle Modernization Plan – not a process for ensuring that the fleet remains modern nor, even more fundamentally, a process for actually procuring the vehicles.

CPD has contended that the Plan does not contain specifics about the number of cars that will be procured or the timeline for such procurement because other City stakeholders, including City Council and Motor Vehicle Maintenance, need to take independent action. Although the Monitoring Team under-

³⁵⁰ Dkt. 93-3 at 2–3.

³⁵¹ Bureau of Justice Assistance, U.S. Department of Justice, *Standard Functional Specifications for Law Enforcement Computer Aided Dispatch (CAD) Systems* at viii.

³⁵² Dkt. 93-1 at 15.

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ See Dkt. 93-3 at 3 (raising the issue of whether “new equipment and technology capacity [will] result in the decommissioning of use of private cell phones and other technologies by police officers in the carrying out of their official duties”).

³⁵⁷ Dkt. 93-1 at 16.

³⁵⁸ *Id.*

³⁵⁹ Dkt. 93-2 at 19.

³⁶⁰ *Id.*

³⁶¹ Dkt. 7-1 ¶ 293.

stands those realities, it assumes that all City stakeholders and Cleveland residents would benefit from a realistic and specific appraisal of how many cars are necessary to procure to ensure that officers have enough high-quality vehicles in which to patrol Cleveland's neighborhoods and respond to calls for service. Although the Monitor could approve an ultimate Equipment and Resource Plan that included a specific process for benchmarking the number of patrol cars needed given the Division's current staffing and deployment, a specific deadline for determining the number of cars necessary, and a specific deadline for those cars to be procured, the Monitor cannot approve an Equipment and Resource Plan that lacks specifics or in which "the budget," which "is to be determined," is the exclusive driver of how well-supported CPD's personnel may be.³⁶²

3. Approach Going Forward

At a status conference on January 6, 2017, the Court instructed the City to continue to work with the Department of Justice and Monitor on a more detailed and comprehensive Equipment and Resource Plan. The Monitoring Team looks forward to continuing to discuss these important issues.

C. Recruitment & Hiring

The Monitor has previously reported on the City's initial attempts to "develop 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 CDP's recruitment efforts."³⁶³

Specifically, the First Semiannual Report noted that the City's initial, draft plan "suggested to the Monitoring Team both a lack of dynamic, outside-the-box thinking about how to attract diverse and qualified officers and a significant lack of clear project management structure."³⁶⁴ It noted that, although a subsequent draft provided on April 11, 2016 was "somewhat more specific," a substantial "amount of work [was] still necessary to craft a sufficient, actionable plan for complying with paragraph 304 of the Consent Decree."³⁶⁵

The Updated First-Year Monitoring Plan did not cover a sufficient time period, or available resources, to allow for Consent Decree stakeholders to re-focus on the Recruitment and Hiring Plan process.³⁶⁶ In the meantime, the City has implemented some discrete projects related to recruitment and hiring, including the implementation of an on-line application process and securing the services of outside vendors to assist in the testing of prospective recruits.

³⁶² Dkt. 93-1 at 60.

³⁶³ Dkt. 7-1 ¶ 302.

³⁶⁴ First Semiannual Report at 59–60.

³⁶⁵ *Id.* at 60.

³⁶⁶ See Dkt. 80.

The Monitoring Team must be clear that the Consent Decree requires that the City submit, and the Court approve, a Recruitment and Hiring Plan – and that such a Plan subsequently be substantially and effectively implemented in practice. A discrete assortment of process or platform changes, such as providing for on-line applications, is a solid component of a broader strategy and plan but is not a sufficient substitute for such a strategy and plan. Thus, even if the City indicates that it is making reforms to the recruiting and hiring process, those reforms are happening outside of the Consent Decree process currently – and they must be brought into it for the City to be considered in compliance with paragraphs 300 through 311 of the Consent Decree.

Put simply, the Consent Decree mandates that "[t]he City will implement the recruitment plan within 60 days of it being approved by the Monitor."³⁶⁷ The Monitor has not approved this plan and will not unless it "includes clear goals, objectives, and action steps for attracting qualified applicants from a broad cross-section of the community."³⁶⁸

To this end, the Monitoring Team rejects any notion that operationalizing the goal of the plan – e.g., expressly indicating that the goal of the Plan is to increase the diversity of recruit candidates by a certain percentage – would somehow amount to an impermissible racial quota and violate state employment law. Care must be afforded to noting that targeted outreach to a host of Cleveland's diverse communities in order to encourage them to voluntarily apply for employment and proceed through the hiring process does not constitute any impermissible or discriminatory practice.³⁶⁹

D. Performance Evaluations and Promotions

"The First-Year Monitoring Plan d[id] not directly address . . . issues" relating to ensuring regular and comprehensive performance evaluations of CPD personnel and that "high-performing officers have access to promotional opportunities."³⁷⁰ The Monitor suspects that work on this will commence in late 2017

³⁶⁷ Dkt. 7-1 ¶ 303.

³⁶⁸ *Id.* ¶ 302.

³⁶⁹ See, e.g., David Pitts, "Diversity Management, Job Satisfaction, and Performance: Evidence from U.S. Federal Agencies," *Public Administration Review* 69.2 (2009) 329–30 ("[R]ecruitment and outreach[] considers whether an organization is extending itself to all potential sources of employees . . . [I]t involves seeking out employees from the labor market who may not be 'found' through the typical venues. Increasing organizational diversity has the potential to increase performance [citing sources]."); Steven A. Ramirez, "Diversity and the Boardroom," 6 *Stan. J. L. Bus. & Fin.* 85, 105 (2000) ("Recognizing the benefits of diversity empowers a company to approach hiring in a more eclectic fashion, including recognizing that a firm has too many individuals of a homogenous background and not enough individuals of different backgrounds.").

³⁷⁰ First Semiannual Report at 60.

or early 2018, as a number of “policies, procedures, systems, and training” that will inform changes in evaluations and promotions must still be “fully implemented.”³⁷¹ Thus, it largely remains “too early in the Consent Decree process to devise an evaluation” and promotion “system” that comprehensively addresses the Decree’s requirements in these areas.³⁷²

E. Staffing

CPD submitted to the Monitoring Team a Resource Study and Deployment Proposal on June 17, 2016. The document contained elements both of the Consent-Decree-required “staffing study to assess the appropriate number of sworn and civilian personnel” and the Consent-Decree-required Staffing Plan focused on how deployment should work going forward within the Division.³⁷³ Of particular utility to the Monitoring Team and other Consent Decree stakeholders was CPD and the City’s accounting of its current personnel, span of control (e.g. how many officers are assigned to how many supervisors), and deployment patterns.

However, the requirement of the Consent Decree is for CPD’s staffing study “to assess the appropriate number of sworn and civilian personnel to perform functions necessary for CDP to fulfill its mission, and satisfy the requirements of this Agreement.”³⁷⁴ Indeed, the eventual Staffing Plan must permit the Division to deliver services “consistent with its mission, including community and problem-oriented policing,” and must “allow CDP to meet the requirements of this Agreement.”³⁷⁵

As this report makes clear, much work remains – involving numerous stakeholders and, indeed, as many of Cleveland’s residents who can devote the time to become involved – on creating the required community and problem-oriented policing plan. Likewise, the remainder of this report also makes clear how much substantive work remains on core areas of the Consent Decree – including use of force, search and seizure, supervision, crisis intervention, and the like – that will almost certainly impact the day-to-day structure, operations, and deployment of CPD personnel.

Thus, the Division cannot know at this time – and neither can the Monitoring Team – precisely how many officers CPD requires, or how those officers should be deployed across the Division, to satisfy everything that the Consent Decree requires. Consent Decree stakeholders will know more once there is clarity on how community and problem-oriented policing will look in Cleveland pursuant to the upcoming community policing plan. By that time, policies related to use of force response and investigation by supervisors will also be more defined, with

resource implications for personnel devoted to the Force Investigation Team and Force Review Board more well-known. At around the same time, it is hoped that new policies related to the consolidated and expanded Internal Affairs function will make similar deployment implications clear.

In short, the CPD’s initial Resource Study and Deployment Proposal was an incredibly useful guide for understanding, at a high level, the Division’s current personnel and the manner in which they are deployed. However, it must be clear that the Study and Proposal was not the ultimate Staffing Plan. Accordingly, this process must, at the appropriate juncture, ensure the development of a Staffing Plan that conforms to paragraphs 319 through 321 of the Consent Decree – and that the City and CPD subsequently will “employ best efforts to implement” over “the period of time set forth in the” future “approved plan.”³⁷⁶



³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ Dkt. 7-1 ¶¶ 319–20.

³⁷⁴ *Id.* ¶ 319 (emphasis added).

³⁷⁵ *Id.* ¶ 320.

³⁷⁶ Dkt. 7-1 ¶ 321.

ing Team and Division have discussed.³⁸⁰ Because “sergeants have historically received relatively little training other than on CPD policies and other bureaucratic considerations,” such training will be the first time that some within the Division may receive formalized instruction “on effective management skills, leadership development, supervisory techniques and approaches, evaluating performance, understanding community and work styles, and other areas.”³⁸¹

The Monitoring Team intends to spend even more time, as new substantive policies are rolled out to the Division’s officers and supervisors, within CPD’s districts – both understanding the day-to-day realities of first-line supervisors and the officers under the command, as well as providing real-time technical assistance to the men and women on whom the Division relies to carry out its mission on a daily basis.

SUPERVISION

A. First-Line Supervisors

As the Monitoring Team outlined in its previous report, “[i]t 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 encounters.”³⁷⁷ Consequently, the Consent Decree outlines a number of critical duties for sergeants.³⁷⁸

With training for all officers, regardless of rank, on new use of force policies imminent, supervisors will begin to receive some critical, new elements of “the practical toolkit that they need to promote high-quality performance from those under their command.”³⁷⁹ Specifically, first-line supervisors will need to respond to and manage the scene of most use of force incidents and, with respect to lower-level force, will need to conduct the Division’s administrative inquiry into the force. This constitutes a significant charge, and sergeants will need the training and support from their own supervisors necessary to effectuate these duties.

It is also likely that part of 2017’s training initiatives will include the type of “in-service management training” that the Monitor-

³⁷⁷ First Semiannual Report at 62 (quoting 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>.)

³⁷⁸ *Id.*

³⁷⁹ *Id.*

B. Officer Intervention Program

A critical part of supervisor responsibility involves responding proactively to officer performance, identifying potential challenges, and actively assisting officers in a non-disciplinary context to change habits or behaviors before they become problematic. The Monitoring Team has previously described how so-called early intervention systems can serve as one critical, automated means of promoting such supervision:

An early intervention system builds on the basic principles of personnel management and human resource development that have developed in the private sector. 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. Such a system relies on a database that logs information about various elements of an officer’s performance 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 performance³⁸²

If the supervisor determines that some intervention is necessary for an officer, that intervention will take the form of “non-disciplinary corrective action.”³⁸³

While the CPD currently maintains a process that is referred to as the Officer Intervention Program (“OIP”), the Consent De-

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.* at 63 (internal citations omitted).

³⁸³ Dkt. 7-1 ¶ 327.

cree will require substantial modification of the OIP that will increase its effectiveness and transform it into a broader early intervention system.³⁸⁴ This modification of the OIP will provide a broader, systemic approach to early intervention.

Because the First-Year Monitoring Plan elected not to focus on progress in this area during the first year of Consent Decree implementation, CPD has yet to meaningfully engage on several issues relating to the OIP. It is likely that work will begin in earnest on the OIP during the upcoming, second year of monitoring.

One primary issue that CPD will have to address relates to its information technology infrastructure. CPD continues to implement IAPro as the hub of officer performance data, and it is this information that will inform the early intervention process. One of the challenges of the backlog of BlueTeam entries uncompleted by supervisors and not reviewed by the CPD chain of command is that these incidents could not be considered for purposes of officer performance assessments and the possible non-disciplinary behavioral intervention of the OIP. In short, if the basic requirements of the OIP involve supervisors routinely viewing and considering data and information on officer performance, that data and information needs to be accurate, comprehensive, and up-to-date. As this report outlines elsewhere, CPD has some distance to travel to provide this type of data platform for the OIP and department management more generally.

At present, OIP is considered a program of the Medical Unit, with that Unit primarily responsible for tracking officer information and reporting to supervisors. The Monitoring Team has previously described CPD's current OIP:

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. Supervisors, or other employees, can refer officers who may benefit from 'guidance and assistance' are referred to the program by the Occupational Medical Director of CPD's Medical Unit.³⁸⁵

Although this process is well-intentioned, IAPro and the use of information in IAPro as part of the EIS process do not constitute medical issues. They are core operational and management issues. Consequently:

[R]ather 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 pri-

mary officer performance management tool – and something that is a primary vehicle for self-managing the risks of unconstitutional policing.³⁸⁶

Rather than the Medical Director managing the information, the supervisors need ongoing access to system data to help improve the performance of officers under their command and enhance its effectiveness as a proactive management tool that helps promote constitutional policing. Given that first line supervisors play a critical role in the direction and controlling of officers under their command, it is important that they have tools to help them direct and control their interactions with citizens. An OIP that is modified to create an effective early intervention program will be in compliance with Consent Decree requirements and will help CPD ensure stronger supervisor, enhanced accountability, and better professional development for the Division's officers.

C. Body-Worn Cameras³⁸⁷

As the Monitor has previously indicated, the CPD has recently joined numerous other police departments in using body cameras in some capacity.³⁸⁸ Pursuant to the Consent Decree, "[i]f CDP chooses to use body worn cameras, CDP will provide clear guidance and training on their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals."³⁸⁹

The Court-approved First-Year Monitoring Plan provided that the Monitor would "review and assess CPD's current body-worn camera policies and practices," which would "include the collection of input from" a host of community stakeholders "about CPD's current body-worn camera policies and practices."³⁹⁰ In March and April 2016, the Monitoring Team met with police officers, received input from community organizations such as the American Civil Liberties Union (ACLU), and talked with residents who were knowledgeable about the Division's prior process for developing the body-worn camera policy. On April 11, 2016, the Monitoring Team circulated a memorandum to CPD and the City regarding the Division's Body-Worn Camera (Wearable Camera System) Policy, General Police Order Number 3.2.20.

³⁸⁶ *Id.* at 64.

³⁸⁷ Portions of this section are reproduced or adapted from the Monitor's motion to the Court regarding the proposed body-worn camera policy found at Dkt. 92.

³⁸⁸ Dkt. 65 at 64 ("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.")

³⁸⁹ Dkt. 7-1 ¶ 337.

³⁹⁰ Dkt. 44-1 at 53.

³⁸⁴ *Id.* ¶¶ 326–36.

³⁸⁵ First Semiannual Report at 63 (internal citations omitted).

Stakeholder focus subsequently shifted to work on new policies related to force, new policies and protocols for crisis intervention, operational manuals for the Office of Professional Standards and Police Review Board, and on the City's preparation for the Republican National Convention in July 2016. Pursuant to revised deadlines in the Updated First-Year Monitoring Plan,³⁹¹ CPD and the Parties continued work on revising the body-worn camera policy in October 2016. The deadline for the Monitor to "recommend[] approval or disapproval of the Final Draft Body Worn Cameras Policy to the Court, either in whole or in part" was, with the Parties and Monitor having agreed that a seven-day extension of the deadline was "warranted and acceptable," December 19, 2016.³⁹²

In its December 19, 2016 motion to the Court, the Monitoring Team indicated that the Proposed Policy "establish[es] guidelines for the use, management, storage, retrieval, and supervision regarding the [WCS]."³⁹³ It sets forth that the policy of the Department is that "WCS shall be deployed to ensure transparency and foster trust in our community."³⁹⁴ It then sets forth clear and straightforward guidance regarding when the WCS must be activated – that is, placed into "event mode" from "buffering mode," in which ongoing footage is captured but "recorded over" in a security-camera-style recording loop of approximately thirty seconds or so.³⁹⁵ The Proposed Policy provides that, if placing the camera in "event mode" is "not feasible due to an immediate risk to the safety" to the officer or others, the officer shall activate it "as soon as the immediate threat has been addressed."³⁹⁶ The Proposed Policy then gives a non-exhaustive list of examples for when the camera must be deployed³⁹⁷ and sets forth those circumstances in which the camera can be returned to buffering mode, primarily to protect citizens' privacy or in situations where consent is needed to record and is not given.³⁹⁸ This is a substantial improvement on earlier versions of the Proposed Policy which contained convoluted and unnecessarily confusing language governing when to place the WCS unit into event mode.

The Proposed Policy prohibits officers from editing, deleting, or altering the recordings,³⁹⁹ has a number of other provisions regarding officers' responsibilities for handling their cameras,⁴⁰⁰ and also requires comprehensive and continuous training.⁴⁰¹ Although the Monitoring Team still believes that the exceptions

to the "default rule" regarding when cameras must be activated could be further streamlined and structured, it finds that, overall, the Proposed Policy succeeds in "provid[ing] clear guidance and training on their use," as required by the Consent Decree.⁴⁰²

The Proposed Policy further sets forth that officers "shall be subject to the disciplinary process for intentional, repeated or otherwise unjustified failure to activate their WCS in violation" of the policy⁴⁰³ consistent with the Consent Decree's requirement that "[o]fficers will be subject to the disciplinary process for intentional or otherwise unjustified failure to activate body worn cameras in violation of CDP policy."⁴⁰⁴ It properly requires documentation of the reason that the camera "has been returned to buffering mode" from event mode.⁴⁰⁵ It also delineates the responsibilities of supervisors, satisfying the Consent Decree's requirements that supervisors "review recordings" in various situations,⁴⁰⁶ and "conduct adequate random and directed audits" of recordings.⁴⁰⁷ Finally, the Proposed Policy sets forth various rules regarding the retention and storage of the recordings.⁴⁰⁸

After reviewing the body-worn camera policy, the Monitoring Team concluded that – with three exceptions – the provisions and requirements of the Proposed Policy represent substantial progress toward meeting the Consent Decree's requirement that, having chosen to use body-worn cameras, CPD "will provide clear guidance and training on their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals."⁴⁰⁹

At the January 6, 2017 status conference, the Court provided the City with 30 days to provide more details about the potential cost implications of requiring that CPD officers use body cameras during secondary employment that is reasonably related to a law enforcement function. The Monitoring Team looks forward to receiving this additional, detailed, and fact-based report from the City and will update the Court and the public about the implications of the report.

³⁹¹ Dkt. 80-1 at 19.

³⁹² *Id.* at 3, 19.

³⁹³ Dkt. 92-1 at 2.

³⁹⁴ *Id.*

³⁹⁵ *Id.* ¶ I-A.

³⁹⁶ *Id.* ¶ I-B.

³⁹⁷ *Id.* ¶ II-B-1-a.

³⁹⁸ *Id.* ¶ II-C.

³⁹⁹ *Id.* ¶ I-C.

⁴⁰⁰ *Id.* ¶¶ I-C, I-E, I-F.

⁴⁰¹ *Id.* ¶ IX.

⁴⁰² Dkt. 7-1 ¶ 337.

⁴⁰³ Dkt. 92-1 ¶ I.I.

⁴⁰⁴ Dkt. 7-1 ¶ 340.

⁴⁰⁵ Dkt. 92-1 ¶ II-B-h.

⁴⁰⁶ Dkt. 7-1 ¶ 338; Dkt. 92-1 ¶ III-A-5.

⁴⁰⁷ Dkt. 7-1 ¶ 339; Dkt. 92-1 ¶ IV.

⁴⁰⁸ Dkt. 92-1 ¶ VIII.

⁴⁰⁹ Dkt. 7-1 ¶ 337.

COMPLIANCE & OUTCOME ASSESSMENTS

The Monitoring Team has previously outlined the types of formal assessments that it makes of CPD's progress toward implementing the Consent Decree:

A good portion of the Monitoring Team's efforts . . . [are] 'compliance assessments.' 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

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

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 . . . [T]hese 'outcome measurements' explore whether implemented changes are having the actual effects across the Cleveland community that they are intended to have.⁴¹⁰

The following sections summarize the Monitoring Team's effort during the most recent reporting period to both quantitatively and qualitatively assess the nature of CPD's compliance

with specific Consent Decree requirements and measure the real-world outcomes expected by successful implementation of such reforms.

A. Consent Decree Survey Requirements

1. General Community Survey

Since the First Semiannual Report in early June 2016, the Monitoring Team completed the Consent Decree-required, biennial community survey process⁴¹¹ and submitted a report highlighting the results of the survey to the Court.⁴¹² Approximately 1,400 Cleveland residents responded to a telephone survey designed to learn more about the trust and confidence residents feel and experience toward the police, residents' sense of safety, and their relative support for the police department and its employees. The results of this survey are outlined elsewhere in this report.

2. Police Officer Survey

The Monitoring Team also must facilitate focus groups of the community and officers to better understand police-community relations.⁴¹³ Accordingly, the Monitoring Team has prepared a call for survey firms that has been publicized widely as well as circulated to eligible and recommended capable firms. Potential responding firms for whom the targeted outreach was agreed to be useful were identified by the City's Legal Department and the Mayor's Technical Expert Consultant on Surveys. The drafting of the call for firms was conducted by the Monitoring Team with feedback from the City's expert consultant as well as the Department of Justice, the City, and CPD.

The call for firms was released on October 26, 2016, with responses submitted by November 22, 2016. Scoring and selection was conducted by a Monitoring Team subcommittee, including the City's designated expert consultant on survey research. The Team selected the Cleveland-based Marketing Solutions in early December 2016. Over the coming months, the Monitoring Team will work closely to ensure that the firm both recruits participants and moderates with fidelity to the Consent Decree and group expectations.

3. Detained Arrestees

Another area of study required by the consent decree is of detained arrestees.⁴¹⁴ This will be a valuable source of information about community-police relations and yet, a complex project to execute. The Monitoring Team has explored a number of strategies and identified challenges for this step and are postponing it to the next period. There are a number of requirements and

⁴¹¹ Dkt. 7-1 ¶ 361.

⁴¹² Dkt. 71.

⁴¹³ Dkt. 7-1 ¶ 363.

⁴¹⁴ *Id.* ¶ 363(b).

⁴¹⁰ First Semiannual Report at 66 (internal quotations and citations omitted).

stakeholders that must be considered, including strategies for sampling – representative or convenience samples – safety and security considerations for interviewees and interviewers, as well as consent, privacy and other human subject requirements before a final design is deemed satisfactory. The Monitoring Team has been in contact with a few university-based scholars for assistance who have done similar work in the past, and it looks forward to conducting this work in early 2017.

B. Baseline Outcome Measures

1. Overview

In late June 2016, a report was submitted to the Court that included 2015 baseline measures outlined in the consent decree.⁴¹⁵ Those measures will serve as a baseline reference point for assessing the progress, over time, of the reform efforts instituted by the City and CPD during the Consent Decree.

The Monitor's Baseline Assessment Report inventoried the significant challenges encountered with the collection and compilation of data, as well as with the quality of the data that could be collected. In the months since the report was filed, the Monitoring Team has instigated routine conversations with CPD staff from the various units from which the baseline measures were collected to help improve data collection and retrieval capacity in future years.

2. Capacity-Building Efforts

At the suggestion of the City's Compliance Team, the Outcomes Measurement Team spoke with community experts about the encumbrances to data collection within the Division and agreed to work collaboratively with a vendor chosen by the City at some future date who will serve as the Data Collection and Analysis Coordinator required by Paragraph 257 of the Consent Decree. The Team has been told the City issued a request for proposals to secure the necessary capacity, and it looks forward to working in partnership with the named individual or team to minimize redundancy and to maximize support and technical assistance provided to CPD as it works to track, store, and use data in a more comprehensive and integrated manner.

Members of the Monitor's Outcomes Measurement Team have continued to work across a host of substantive reform areas to ensure that compliance can be rigorously assessed and outcomes comprehensively measured. For instance, in reviews of job descriptions, intake and disposition forms, as well as policy manuals for the Office of Professional Standards, recommendations and adjustments were made by the Outcomes Measurement Team to include data called for in Paragraphs 257 and 367. Similarly, there have been and will continue to be conversations with the Training Academy staff to ensure that student evaluations of training are useful and comprehensive and that consent decree required training is captured and counted. The many policies,

documents, and lesson plans developed around the new Use of Force Policy were similarly reviewed and commented upon by the Outcome Measurement Team to certify compliance with the required data collection by Paragraph 367.

C. Qualitative Review of Outcome Measures Collected

As described by the First Semiannual Report and required by the Updated First-Year Monitoring Plan,⁴¹⁶ outcomes are to be measured not only quantitatively, but also qualitatively to ensure that the quality of the data collected and the processes used to collect the data will result in meeting the stipulations of the Consent Decree. In order to determine if the reforms have the desired impact on the way work is being completed by the CPD staff, it is necessary to ensure not only that the formal or technical requirements have been minimally met but, instead, whether CPD personnel are adhering to standards and quality expectations with the requisite fidelity.

During the past six months, the Outcome Measures Team has begun the process of performing qualitative reviews of the systems and processes used in four key units: (1) OPS; (2) the Inspections Unit ("IU"); (3) Chain of Command Reviews and (4) Internal Affairs Unit ("IAU"):

OPS. OPS investigates non-criminal misconduct complaints filed by civilians. As the Baseline Assessment Report clarified with the Court, the Monitoring Team is deferring qualitative analysis of OPS investigations after learning that there is a significant backlog of investigations in both 2015 and 2016 and that the office was operating with irregularity and inconsistency of policy. Substantial efforts to remedy this situation are reported elsewhere in this document.

Inspections Unit (IU). Some administrative or internal investigations are conducted by CPD's Inspections Unit. These cases are small in number and therefore did not warrant a qualitative review. These are non-criminal in nature and often come into the Department through a telephone call to the Chief's Office. A review of these cases, for baseline purposes, will be forthcoming in early 2017.

Chain of Command Reviews. There is a chain of command review of non-criminal misconduct detected through supervision or an internal complaint and for some use of force some complaints. These reviews are forwarded to the Case Preparation Office located in the Office of the Chief of Police for review and adjudication. The Monitoring Team is deferring review of these cases pending the completion of its review of Internal Affairs cases.

Internal Affairs Unit (IAU). All allegations that are

⁴¹⁵ Dkt. 73.

⁴¹⁶ Dkt. 80.

or could be criminal are investigated by the CDP's Integrity Division's Internal Affairs Unit (IAU). During this reporting period, the Team has conducted a focused review of a statistically significant, randomly selected set of the 79 total cases investigated by IAU in 2015.

Beginning in September 2016, the Outcomes Measures Team collected and reviewed quality assessment tools used to review investigations from a variety of external and internal sources. These tools were then modified to suit the language used in the CPD's investigations and the consent decree expectations. Modification was conducted in conjunction with members of the IAU who ensured that the Outcomes Measures team had a complete and thorough working knowledge of process, rules, and policies currently used for IAU investigation.

The Monitoring Team's previous data collection of the 2015 IAU cases identified 79 total cases for all categories of criminal allegation that resulted in either criminal prosecution or administrative reviews. Of these 79 cases, 20 included the use of deadly force, with the remaining 59 cases including use of force and other criminal misconduct.

The Team conducted a power analysis to determine a statistically significant number of IAU cases (out of the 79 total cases) that would need to be reviewed at a 95 percent confidence interval. This power analysis suggested that 40 cases should be assessed. Accordingly, 40 cases were randomly selected from the list of 79 cases.

Because use of deadly force is one of the key areas of focus in the consent decree and given these cases are often complex and serious with regard to nature of those offenses, use of deadly force cases have been "oversampled" in the selection of cases. This means that the total group of 40 cases includes enough deadly force cases to allow sufficient confidence that conclusions made about this sub-group of deadly force cases would hold for all deadly force cases, even if we looked at all 20 of those cases. The overall results of the 40 cases will be weighted to the actual proportion of the 79 cases so that deadly force cases are not overly represented.⁴¹⁷ Thus, of the 40 cases, five are use of deadly force cases.

After the successful piloting of the qualitative evaluation instrument using five additional IAU cases, the Team has begun to review the 40 randomly selected IAU cases for the qualitative review.

It is hoped that the quality assessment of the sample of IA cases will be completed by the end of 2016. In turn, once the IAU qualitative review is conducted, the same process will be used to perform a qualitative review of OPS investigations conducted in 2016. The Monitoring Team expects the OPS qualitative review to be completed by June 2017.



⁴¹⁷ For more on the process of "oversampling," see Pew Research Center, Methods, U.S. Survey Research, Sampling (last visited Dec. 12, 2016), <http://www.pewresearch.org/methodology/u-s-survey-research/sampling/>.

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, I served the foregoing document entitled Notice Submitting Monitoring Team's Second Semiannual Report via the court's ECF system to all counsel of record.

/s/ Matthew Barge
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