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

UNITED STATES OF AMERICA,	)	CASE NO.: 1:15-CV-01046
	)	
Plaintiff,	)	
	)	JUDGE SOLOMON OLIVER, JR.
vs.	)	
	)	
CITY OF CLEVELAND	)	**NOTICE SUBMITTING MONITORING**
	)	**TEAM'S THIRD SEMIANNUAL**
Defendant.	)	**REPORT**

The Cleveland Police Monitoring Team submits its Third Semiannual Report.

Respectfully submitted,

/s/ Matthew Barge

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Cleveland Police Monitoring Team

Third Semiannual Report

June 2017

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A NOTE FROM **THE MONITORING TEAM**

Like any project originally contemplated to last possibly as long as a half-decade or more, the Consent Decree process in Cleveland has seen changes in the personnel working on reform on a day-to-day basis. Similar efforts in other cities have witnessed changes in political administrations, attorneys, police personnel, monitors, judges, and elected officials – with the work nonetheless progressing toward what the United States and the involved city originally agreed.

Although the reform required by the Decree is larger than any one person, we nevertheless pause here to credit and thank the contributions of some individuals who have uniquely furthered the reform process to date. First, Former Police Chief and Cleveland Public Safety Director Bill Denihan will retire as CEO of the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board of Cuyahoga County on August 1. Bill has spent 35 years in public service to the residents of Cleveland, Cuyahoga County, and the State of Ohio, with his work spanning across numerous public sectors. Most recently, Bill's commitment to the Consent-Decree-created Mental Health Responsive Advisory Committee has contributed directly to an extraordinary collaboration between the Cleveland community and the Cleveland Division of Police ("CDP" or the "Division"), as this report discusses in detail. Bill has noted that he "considers himself . . . a change agent of government," and the Monitoring Team will miss his determination and unstinting embrace of new approaches to achieve positive outcomes for the Cleveland community.

Carole Rendon's tenure as U.S. Attorney concluded in March 2017. Carole was involved in the police reform process in Cleveland from the early days of the Department of Justice's investigation and the negotiation of the Consent Decree through the active implementation of the Consent Decree. Now a partner at the law firm of Baker Hostetler, Carole's fairness, integrity, and thoughtfulness are all without question and measure. The City of Cleveland and Division of Police are better for Carole's dogged commitments to fairness, justice, and selfless public service – and the Monitoring Team will greatly miss working closely with her to ensure that the outcomes of the

Consent Decree are met in the years to come.

Although we referenced his departure in a footnote in the Second Semiannual Report shortly before filing, when his retirement date had become clear, Commander Brian Heffernan retired in mid-January after 31 years of public service with CDP. The early coordinator of an array of the Division's early compliance work, Brian's work ethic, focus, and willingness to entertain new approaches and arguments greatly assisted the City, Division, Department of Justice, and Monitoring Team during the first year of Consent Decree implementation. The Division of Police is tremendously fortunate to have benefitted from Brian's committed leadership over decades of various high-impact assignments. The Monitoring Team hopes that Commander Heffernan is enjoying an exceptionally well-earned retirement.

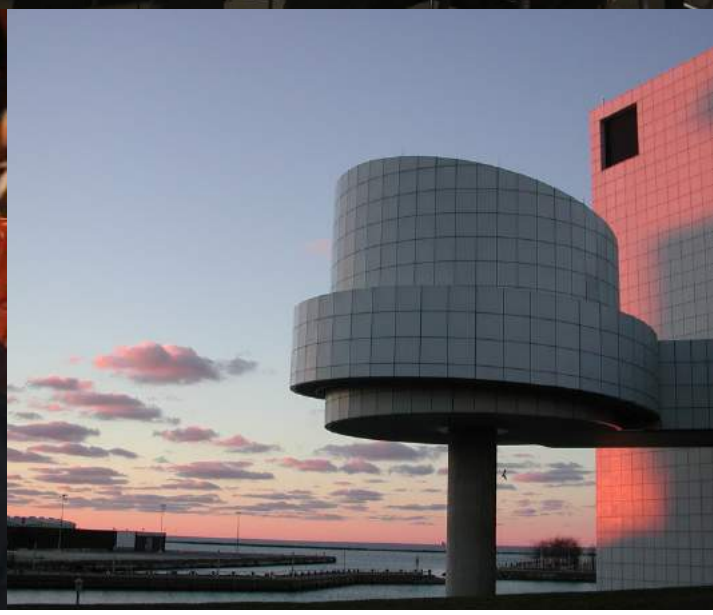
Dr. Rhonda Williams, the Co-Chair of the Community Police Commission from soon after it was established in September 2015, resigned from the Commission as of May 31 to take an endowed chair position at Vanderbilt University in Nashville, Tennessee. Formerly the Founder and Director of the Social Justice Institute, and a Professor of History, at Case Western University, "Dr. Rhonda" has been enormously influential in driving the Commission to be a forum for the substantive exchange of specific, forward-looking recommendations about how policing in Cleveland should function. Her dedication, hard work, and commitment have been greatly appreciated by the Monitoring Team, and her important voice and perspective will be missed.

Monitoring Team member Kelli Evans discontinued her work with the Team as of April 30 to take a position with the Attorney General of the State of California, where she is coordinating that office's approach to a host of criminal justice issues. As a former Senior Trial Attorney with the Civil Rights Division of the Department of Justice focusing on police issues, a former Federal Court Monitor of the Oakland Police Department, and the former Senior Director of the State Bar of California, Kelli brought to the Monitoring Team a wealth of substantive knowledge, legal acumen, and pragmatic expertise that substantially assisted the Team's efforts on a host of fronts. Kelli's shoes will be very large ones to fill.

Finally, an important member of the team guiding the City's Consent-Decree-related efforts is shifting roles. Blaine Griffin, the former Director of the City's Community Relations Board, was sworn in as a City Council member on May 15, 2017. The Monitoring Team worked closely with Blaine over more than 18 months on implementing strategies geared toward ensuring community involvement, participation, and voice in the Consent Decree process. His passion for and commitment to the Cleveland community – including those elements of the community that are under-served, ignored, or skeptical of participating in government or civic life – has been a tremendous asset to the City and to the police reform process to date. The Monitoring Team looks forward to working with Blaine in his important new role representing the residents of Cleveland's Ward 6.

Regardless of who is involved in this effort going forward, the Monitoring Team and Parties will continue to report to this Court, the public, and the men and women of the Division of Police about the status of the City's compliance with the Consent Decree.

Cleveland Police Monitoring Team
June 13, 2017



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INTRODUCTION TO THE ROLE OF THE MONITOR & **THIS REPORT**

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") requires that the Cleveland Police Monitoring Team "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 third summary of the City's progress to date in complying with the Consent Decree.[2]

In the December 2016 through June 2017 reporting period addressed here, the City of Cleveland has continued to reach important milestones. In-depth, scenario-based training on the Division's new force policies for all CDP officers is now underway. Crisis intervention training for all officers has also begun. The notable efforts of the Division's Training Section on the use of force training and of CDP and the community volunteers who make up the Mental Health Response Advisory Committee have resulted in dynamic, high-quality training. At the same time, substantial work has been conducted by a host of stakeholders across the Cleveland community on the first phase of constructing a new community and problem-oriented policing plan for the City of Cleveland. In all these areas, the City and Division must be commended to their commitment to adopting new approaches consistent with best practices.

This report also details ongoing challenges. The City's system for investigating and addressing civilian complaints about police performance continues to lag far behind where it must be. The Division's capture and use of officer performance data to guide it in the delivery of services, supervision and professional development of officers, and risk management will require significant attention over the coming months. Similarly, even as the City and Division make strides in implementing necessary technological platforms, the Decree-required Equipment and Resource Plan must put in place systems and processes that ensure that the Division does not fall behind on officer resources and equipment again in the future. Much work remains on significant changes to the Division's processes for investigating and reviewing use of force, investigating officer misconduct, imposing discipline, and supervising officers.

The remainder of this section reiterates the role of the Monitoring Team, summarizes the current Monitoring Plan, and describes the purpose and form of this report – which, in the use of summary assessments of the compliance status of each paragraph of the Consent Decree, differs to some relevant extent from previous reports.

A. Role & Responsibilities of the Monitoring Team

Although the Monitoring Team has previously summarized its duties and responsibilities under the Consent Decree, the Team's status as a fiduciary agent of the Court is worth reiterating:

> The agreement between the United States and City of Cleveland (the "Parties") involving various reforms to the Cleveland Division of Police ("CDP," "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 CDP, 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.

[1] Dkt. 7-1 ¶ 350.

[2] *Id.* ¶ 375 (requiring semiannual reports).

> 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.[3]

As through the first year of Consent Decree implementation, the Monitoring Team has continued to wear many hats during the past six months (the "reporting period"), working as: "facilitator," working to ensure that "all stakeholders, form within the Division and across the Cleveland community, are heard and can participate in the Consent Decree process"[4]; as technical advisors to the Division and City, "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"[5]; and, most fundamentally, as 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."[6]

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

The Monitoring Team is pleased to be passing the baton to the City and Division of Police to fashion a project implementation plan for its day-by-day progress going forward.

To date, the Monitoring Team, with the Parties' agreement, has taken on the task of creating "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"[7] – which has taken the form of the Monitoring Plan.

The current, Second-Year Monitoring Plan covers the period of February 1, 2017 through January 31, 2018.[8] As the Monitor has observed, however, it is necessary from time to time to modify deadlines and timeframes during the Consent Decree process "to reflect changed circumstances or operational realities."[9] Accordingly, the current Monitoring Plan calls for the submission to the Court of "an updated monitoring plan for the second year" by August 11, 2017 that reflects a current sense of timeframes for various deliverables and milestones in light of progress during the first six months under the Second-Year Plan.[10]

It should be noted, however, that the Consent Decree does not require that the Monitoring Plan manage the implementation of the Decree for the Division, City, or any other stakeholder. Instead, it must "delineate the requirements of this Agreement to be assessed for compliance"; "set out a schedule for conducting outcome measure assessments for each outcome measure" specified in paragraph 367; and "set out a schedule for conducting a compliance review or audit" of the various requirements of the Decree.[11]

As such, the Monitoring Team is pleased to be passing the baton to the City and Division going forward with respect to the fashioning of a project implementation plan that will ensure, among other things, that: the Monitor reviews all "CDP policies, procedures, practices, training curricula, and programs developed and implemented under this agreement"; the Department of Justice has the ability to review the same; that the Community Police Commission, police officer organizations, rank-and-file officers, other community stakeholders, and Cleveland residents all have appropriate opportunity to provide input to and feedback on reforms generally and on specific proposed changes to policies, practices, training, and procedures; and that the Court, as always, be in a position to consider reforms of the Consent Decree and order them effective before being implemented within the City or Division.

Put differently, a significant objective of the Consent Decree is to ensure that the City, going forward, manages for itself the risk of unconstitutional policing or undesirable police performance. An important component of doing so is building the capacity within the Division and the City to self-initiate and perpetuate new processes and procedures that foster and promote enhanced accountability through new policies, processes, procedures, and administrative mechanisms.

One such capacity relates to project management. As the Monitor has reported to the Court and public on a number of fronts,[12] the City, across many functions, must become more adept at identifying strategic objectives, establishing an express plan for meeting those objectives, managing the faithful implementation of that plan over time, rigorously measuring results, and

[3] First Semiannual Report at 14.

[4] *Id.* at 15.

[5] *Id.*

[6] Dkt. 7-1 ¶ 350.

[7] Dkt. 43 at 2.

[8] *See* Dkt. 120.

[9] First Semiannual Report at 5; *see* Dkt. 43 at 1; Dkt. 51.

[10] Dkt. 120-1 at 7.

[11] Dkt. 7-1 ¶ 369.

[12] *See* Dkt. 87 (summarizing long-term failures of City to manage processes for OPS investigation and PRB adjudication of complaints); Dkt. 92 (referencing various issues not adequately addressed in process of implementing body-worn camera technology); Dkt. 93 (outlining failure of City Equipment and Resource Plan to provide sufficient process for ensuring that the Division "properly maintains and seeks to continuously improve upon existing equipment and technology" and "is appropriately identifying equipment needs" (Dkt. 7-1 ¶ 293(e), (f)); Dkt. 125 (same); Dkt. 126 (describing failure of City to generate a plan for prospectively managing the backlog of hundreds of incomplete civilian complaint investigations).

holding individuals and entities accountable for any failures to adequately implement the plan or meet the required objectives. The recognition of this imperative is not academic, theoretical, bureaucratic, or unrealistic. Instead, from the five members of the Monitoring Team who have been leaders in major police departments and the more than twelve members of the Monitoring Team who have worked in or with police departments in a civilian capacity to the six members who have monitored reform agreements elsewhere, the Team is unanimous in its assessment that the City of Cleveland and Division of Police have a distance to travel to ensure that CDP can implement strategic plans and clear programs that ensure ongoing self-analysis and internal improvement.

Although it runs the risk of over-simplification, at this stage of the Consent Decree, it is useful to present a paragraph-by-paragraph accounting of the general state of the City's compliance with the specific requirements of the Consent Decree.

C. The Purpose and Form of This Report

The Monitor must also "file with the Court, every six months, written, public reports."[13] Generally, the reports must "descri[be] . . . the work conducted by the Monitor during" the period covered by the report and outline "which [Consent Decree] requirements have been incorporated into policy, . . . and [] carried out in actual practice."[14] This is the Monitor's third report in satisfaction of this ongoing obligation. Among other things:

> [The monitoring reports must] assess 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 CDP is – over time, across issue areas, and in light of all of the Consent Decree's obligations – on the road to reform.[15]

The Monitoring Team has previously eschewed the use of "a report card, ratings, percentages, scales," or similar devices to gauge compliance.[16] Indeed, the Team's experience is that such tools, because they are inherently "over-simplifications,"[17] can distract and detract from the substance of the underlying requirements and of the work in which stakeholders are engaged to achieve compliance.

Nevertheless, the Team believes that now, two years into the Consent Decree and approximately twenty months into the monitoring, it is useful to present a paragraph-by-paragraph accounting of the general state of the City's compliance with the specific requirements of the Consent Decree. Although this, too, runs the risk of being an over-simplification, the Team concludes that this approach amounts to a summary of the qualitative discussion of compliance that continues to be the featured element of our reports and does not artificially try to attach numbers, grade levels, or invented scales to describe the state of the City's compliance.

Consequently, each of the following sections of this report begins with a chart that summarizes – paragraph by paragraph – the state of the City's compliance with the requirements of those Consent Decree paragraphs. It positions compliance as the following:

> Non-Compliance. The City or Division has not yet complied with the relevant provision of the Consent Decree. This includes instances in which the City or Division's work or efforts have begun but cannot yet be certified by the Monitoring Team as compliant with a material component of the requirement.
>
> Evaluation Deferred. This category reflects those limited instances where work in a given area has been intentionally and affirmatively deferred in order to work on other, necessary prerequisites. In these areas, the City or Division could have made more progress in a given area but, for project management reasons, have appropriately focused attention on other areas. Although this still means that the City has a distance to travel to reach General Compliance with the term of the Consent Decree, the intentional and affirmative decision to postpone focus on a given area for project management and implementation purposes is sufficiently different to warrant a separate designation in some cases.
>
> Partial Compliance. The City or Division has made sufficient initial strides or sufficient partial progress toward compliance toward a material number of key components of the provision of the Consent Decree – but has not achieved operational compliance. This includes instances where policies, processes, protocols, trainings, systems, or the like exist on paper but do not exist or function in day-to-day practice. It may capture a wide range of compliance states or performance, from

[13] Dkt. 7-1 ¶ 375.

[14] *Id.* ¶ 375(b).

[15] First Semiannual Report at 16.

[16] *Id.* at 18.

[17] *Id.*

the City or Division having taken only very limited steps toward operational compliance to being nearly in operational compliance.

Operational Compliance. The City or Division has made notable progress to technically comply with the requirement and/or policy, process, procedure, protocol, training, system, or other mechanism of the Decree such that it is in existence or practice operationally – but has not yet demonstrated, or not yet been able to demonstrate, meaningful adherence to or effective implementation, including across time, cases, and/or incidents. This includes instances where a given reform is functioning but has not yet been shown, or an insufficient span of time or volume of incidents have transpired, to be effectively implemented in a systemic manner.

General Compliance. The City or Division has complied fully with the requirement and the requirement has been demonstrated to be meaningfully adhered to and/or effectively implemented across time, cases, and/or incidents. This includes instances where it can be shown that the City or Division has effectively complied with a requirement fully and systemically.

In considering this classification scheme, readers of this report should keep some important things in mind. First, a designation of "Non-Compliance" or "Partial Compliance" does not necessarily or in itself mean that the lack of progress is something that the Monitoring Team finds problematic under the circumstances. In some instances, it does. However, the Monitoring Team has previously pointed out that "even good-faith attempts to do everything that is required under the Consent Decree simultaneously and without a sound project management structure would only ensure that little is accomplish at the level of quality . . . that the Consent Decree requires."[18] This means that some elements of the Consent Decree, which "acts more like a roadmap to reform than an 'on/off' switch,"[19] must be focused on more immediately while others will receive focus further along in the process. Regardless of the reasons for the compliance status, however, the categorization of progress is still useful in illustrating the scope of the work both successfully implemented to date and outstanding going forward.

Second, the Monitoring Team's conception of "partial compliance" requires more than the City or Division simply taking some limited or initial steps toward adhering to a particular Consent Decree requirement. That is, a "partial compliance" determination is not used simply because some small amount of work has been conducted. Instead, "non-compliance" becomes "partial compliance" when the City or Division has made sufficient, material progress toward compliance – suggesting that the Division has graduated from the stages of initial work to more well-developed and advanced refinement or various reforms.

Third, the compliance that this report discusses is with respect to compliance with the various, specific provisions of the Decree – and *not* with respect to the "Substantial and Effective Compliance" with the whole of the Agreement.[20] Such "Substantial and Effective Compliance" will be reached when "the City either has complied with *all* material requirements of this Agreement, or has achieved sustained and continuing improvement in constitutional policing, as demonstrated pursuant to this Agreement's outcome measures"[21] "by a preponderance of the evidence"[22] of the type and quality that could be considered and credited in any other proceeding in federal court. As the following sections make clear, the City still has a substantial distance to travel to either comply with all of the Decree's requirements and/or to demonstrate "sustained and continuing improvement" across outcome measures and in a manner that can, through consideration of sufficiently trustworthy evidence, meet the identified standard to reach Substantial and Effective compliance with the Consent Decree.

Next, the various charts that begin sections of this report involve intentionally condensed summaries of the requirements in each paragraph. For the sake of space and clarity, we do not reprint the entire Consent Decree in the document. Any imprecision detected or confusion created by these condensed or summarized requirements is unintended and, in any event, can be cured with reference to the original Consent Decree language itself.[23]

The indications of the City and the Division's compliance status is limited to paragraphs 14 through 340 of the Consent Decree because those paragraphs spell out specific, substantive reforms that must occur. However, other paragraphs of the Decree also contain other specific requirements and agreements. For instance, paragraph 343 requires that the Division "ensure that officers from all varying ranks and units have a meaningful opportunity to review and comment on new or existing policies and procedures."[24] Other paragraphs make clear more broad-based or generalized obligations. For example, paragraph 341 compels the Division to "ensure that its policies and procedures" regardless of whether expressly referenced in other provisions of the Consent Decree "reflect and express CDP's commitment to building community trust, utilizing community and problem-oriented policing, ensuring bias-free policing, and incorporating the concept of procedural justice."

[18] First Semiannual Report at 16.

[19] *Id.*

[20] Dkt. 7-1 ¶ 397.

[21] *Id.*¶ 456 (emphasis added).

[22] *Id.* ¶ 397.

[23] *See generally* Dkt. 7-1, *available at* https://www.justice.gov/crt/case-document/file/908536/download.

[24] Dkt. 7-1 ¶ 343.

Further, the Monitoring Team bases its assessments on its current understandings, knowledge, and information gained through ongoing work and discussion with CDP, the Parties, and other stakeholders. The assessments are informal to the extent that not all of them are necessarily informed by the type of exhaustive compliance and outcome measurements that are a critical component of the Consent Decree – and the summary determinations do not take the place of these more structured, systemic analyses. The intent is to provide a bottom line sense of where the Division is on the road to compliance. Ongoing, rigorous quantitative and qualitative assessments will provide a more comprehensive picture as work under the Consent Decree proceeds.

The terms adopted here – including Non-Compliance, Partial, Operational, and General Compliance – are not terms that appear in the Consent Decree. Instead, categorizing the state of compliance with the Decree requirements by using these terms is a method that the Monitoring Team is adopting to explain and discuss the substantive work and progress that the City has made in a systematic, straightforward way. The approach is similar to that used by monitors of Department of Justice Consent Decrees involving police practices in Albuquerque, Cincinnati, Detroit, East Haven, Los Angeles, New Orleans, and others, as well as consent decrees in non-police contexts.[25]

Finally, because the status of compliance determinations for relevant Consent Decree paragraphs at the beginning of each of the report's major sections do a good, even if over-simplified job, of encapsulating the state of current progress, the Monitoring Team foregoes the inclusion of an Executive Summary so as to avoid inclusion of a summary of the various compliance summaries throughout the report.

[25] *See, e.g.*, Settlement Agreement, *United States v. Delaware* (D. Del.), https://www.ada.gov/delaware.htm (Consent Decree under the American with Disabilities Act)

COMMUNTIY ENGAGEMENT & **BUILDING TRUST**

Paragraph	Compliance Status
14. CDP creation of "formal and informal mechanisms that facilitate ongoing communication between CDP and the many Cleveland communities it serves."	PARTIAL COMPLIANCE

A. Community Police Commission ("CPC")

Paragraph	Compliance Status
15. Creation of CPC and made to make recommendations, work with Cleveland communities to develop recommendations, and "report to the City and community as a whole and to provide transparency" on reforms	OPERATIONAL COMPLIANCE
16. Establishment of CPC Selection Panel to select CPC Commissioners; composition of CPC; and periodic meetings with Chief of Police to "provide recommendations."	OPERATIONAL COMPLIANCE
17(a). "[H]old public meetings across the City, complete an assessment of CDP's bias-free policing policies, practices, and training, and make recommendations."	GENERAL COMPLIANCE
17(b). "[A]ssist as appropriate in . . . development of training related to bias-free policing and cultural competency."	PARTIAL COMPLIANCE
17(c). "[O]n an ongoing basis, assess CDP's communities activities" and "make recommendations" related to "community engagement" and "community confidence"	PARTIAL COMPLIANCE
17(d). "[O]n an ongoing basis, review CDP's civilian oversight structure to determine if there are changes it recommends for improving CDP's accountability and transparency"	PARTIAL COMPLIANCE
17(e). "[P]erform other function[s] as set out in this Agreement."	PARTIAL COMPLIANCE
18(a). "[R]eview and comment on CDP's policies and practices related to use of force, search and seizure, and data collection and retention."	PARTIAL COMPLIANCE
18(b). [R]eview and comment on CDP's implementation of initiative, programs, and activities that are intended to support reform."	PARTIAL COMPLIANCE
18(c). "[H]old public meetings to discuss the Monitor's reports and to receive community feedback concerning CDP's compliance with this Agreement."	OPERATIONAL COMPLIANCE
19. "The City will provide access to all information requested by the Commission related to its mandate, authority, and duties unless it is law enforcement sensitive, legally restricted, or would disclose a personnel action."	PARTIAL COMPLIANCE
20. CPC "will issue [at least annual] reports," which "City will post . . . to the City's website."	OPERATIONAL COMPLIANCE
21. "The City will consider and timely respond in writing to the Commission's recommendations for improvements," which "will be posted to the City's website."	NON-COMPLIANCE
22. CPC budget listed as "separate line item" to ensure "sufficient independence and resources."	OPERATIONAL COMPLIANCE

As detailed in the Monitor's two prior Semiannual Reports, the Cleveland Community Police Commission – comprised of 13 volunteer commissioners – has provided meaningful contributions and recommendations for changes in police practice and procedure as required under the Consent Decree.[26] "CPC is supposed to be a venue where members of the Cleveland community with diverse viewpoints can come together and discuss challenging issues."[27]

Although the pace at which deliverables for some of the substantive work has slowed somewhat over the past six months, the engagement and activity of the Commission continued to accelerate during the most recent reporting period. Through meetings of the general body and its various committees, the CPC devoted its work, among other things, toward:

- Presenting policy requirements of current Disciplinary General Police Order to the public;
- Providing recommendations for a new draft policy on officer discipline to CDP;
- Conducting a small group workshop on Use of Force specific discipline;
- Conducting a small group workshop on Early Intervention/Formative Practices; and
- Collaborating with City, CDP, DOJ, the Monitoring Team, and other stakeholders to conduct a series of community meetings on community problem-oriented policing.

The Commission has continued its schedule of having one full Commission meeting per month. Those meetings, rotat-

[26] Dkt. 7-1 ¶¶ 14-22.

[27] Dkt. 97 at 20.

ed throughout locations in various neighborhoods within the Cleveland community, are where the Commission's work to act as a conduit between the broader Cleveland community and the reform process has routinely taken place. In addition to conducting the routine business of the Commission while also looking to find new and innovative ways to actively engage the public in the substantive work of the Commission, a portion of each general meeting continues to be dedicated to allowing the Commissioners to hear the facilitated comments and concerns from community members in attendance.

CPC committees continued their work over the course of the first half of 2017 by:

- Sponsoring community viewings and discussions of a criminal-justice-related documentary;
- Hosting a Townhall Day of Justice;
- Conducting searches for an Executive Director and a Community Engagement Coordinator; and
- Revising the Code of Conduct Regulations detailing expectations of Commissioners

Through the leadership of its co-chairs and the assistance of a policy fellow from the Cleveland Foundation, the CPC has continued to make a considerable effort to get the word out about upcoming meetings and substantive topics of discussion. The Commission has also been able to provide comprehensive minutes from each general meeting on their website. It has also widely distributed relevant surveys and information to its network of community members.

As discussed in our Second Semiannual Report, the amount of effort and energy currently required of committed individuals – on a volunteer basis – is not of small consequence. Indeed, the work and contributions of the CPC has come about as a result of the considerable sacrifices of many dedicated Commissioners. It is unreasonable, based on the Monitoring Team's observations, to expect such sacrifice to be sustainable. Accordingly, it is the hope of the Monitoring Team that, with the recent acquisition of a full-time Executive Director and a Community Engagement Coordinator, the notable work and effort the CPC leadership has begun will continue to expand.

The engagement and activity of Cleveland's Community Police Commission has continued to accelerate during the most recent reporting period on a number of important fronts.

Specifically, it seems more than reasonable to expect that those employees will: work to communicate with the parties, Commissioners, and other community stakeholders regarding the upcoming deadlines and deliverables from the CPC; continue the efforts of the CPC to expand its network of active community voices; and conduct much of the initial background research and information on substantive best police practices that Commissioners have undoubtedly spent countless hours gathering on their own to provide a solid foundation for developing sound recommendations and feedback on what constitutional and community-oriented policing in Cleveland should look like.

Considering the scope and breadth of this charge, the Commission continued work during the reporting period on revisions of its bylaws to set clear expectations aimed at solidify the meaningful engagement and contribution of each Commissioner. The Court encouraged CPC to enact a code of conduct regulations to achieve this goal and the Monitoring Team echoes that encouragement.

With respect to the content of the in-progress bylaws intended to govern the day-to-day functioning of the CPC as a City entity, the Monitoring Team observes here again that fully engaged Commissioners are crucial to the Commission and to the Consent Decree process. Individuals having a desire to be a part of a process pregnant with the potential to make lasting reforms that improve policing in Cleveland is not sufficient in itself. Moreover, participating but not, for whatever reason, making meaningful contributions also confers little value to the process. Instead, each Commissioner must pull their own weight while using their own skillsets with respect to the numerous tasks that the Consent Decree expressly requires of the Commission. It is the sincere hope of the Monitoring Team that the work and engagement of the CPC will be solidified by clear, objective bylaws detailing not only the expectations of each Commissioner but also identifying the collective desired remedy of the group should those expectations fail to be met.

As of this writing, CPC continues to work on revisions of their bylaws with input and feedback from the City of Cleveland, its residents, the DOJ, and the Monitoring Team. It is hoped that these bylaws are finalized expeditiously.

The Monitoring Team understands that some in the Cleveland community do not believe that Cleveland residents, citizens, and voters should have a direct say in how the police function. Indeed, an odd fact of American democracy is that most police departments have generally engaged in rulemaking and policymaking outside of public view – subject neither to formal procedures, like notice-and-comment rulemaking,[28] or to the direct, substantive intervention of elected officials, like mayors or city councils,[29] that basic theories of democratic ac-

[28] *See, e.g., The Legal Environment of Business: Text and Cases: Ethical, Regulatory, Global, and Corporate Issues* 124 (2011) (describing "notice-and-comment rulemaking" as process requiring government agencies to "allow ample time for persons to comment in writing on [a] proposed rule" for how the agency will implement a law or conduct its work).

[29] Samuel Walker, "Controlling the Cops: A Legislative Approach to Police Rulemaking," 63 *U. Detroit L.R.* 361, 361 (1986) (describing that, historically, "[m]ayors and city council members" intervened "rarely to establish accountability of police behavior," with "police

countability assume necessary to ensure that executive and government agencies, like police departments, that are responsive to the broader democratic will:

> Democratic accountability implies governance based on feedback, learning from experience, and the informed consent of the governed . . . Formal legal institutions have limited democratic value if citizens are not motivated to use and capable of effectively using available access opportunities . . . The democratic hope is that citizens and their representatives shall be able to design and reform institutions at will, making governing through organizing and reorganizing an important aspect of political agency.[30]

Although the direct participation and involvement of residents in the specifics of law enforcement may not have been typical in the past, it is entirely consistent with the type of involvement that citizens can have if they have issues that they believe need to be addressed in their children's public schools, in their neighborhood parks, or in countless other aspects of local civic life. Especially given the foundational importance of police in maintaining order and keeping residents safe, law enforcement must be subject to the same kinds of broad-based democratic responsiveness that we expect of so many other realms that do not implicate life-and-death stakes for community members and the government officials – police officers – who carry out their duties.

Law enforcement must be subject to the same kinds of broad-based democratic responsiveness that we expect of so many other realms of community and public life.

Regardless, the City and Department of Justice agreed to establishing a Commission with authority to assess and make recommendations on a host of fronts. This includes, but is not limited, to the broad charge to "review and comment" on the Division's "policies and practices related to use of force, search and seizure, and data collection and retention" as well as any "initiatives, programs, and activities that are intended to support reform."[31] Although the scope of CPC's charge is significant and far-reaching, the Monitoring Team remains pleased with the value of the Commission's substantial contributions to date.

To this end, the Monitor observes that some individuals and entities appear unfortunately inclined, at times, to focus on individual personalities rather than the substance of the whole Commission's work.[32] Even if it may not agree on the details of every one of the Commission's recommendations in every instance, the Monitoring Team overall remains pleased with the thoughtfulness and pragmatism of the Commission's input and recommendations to the reform process, most recently with respect to the job description and proposed hiring and recruiting process for the Consent-Decree-required Inspector General.

Finally, some conversations surrounding community participation in policing in Cleveland inevitably circle around to a discussion of who the "real" Cleveland community is. Those discussions sometimes focus on whether the Commission, other city entities, the police officer organizations, other community groups, or even individual Cleveland residents either do or do not reflect the views of "the community."

The Monitoring Team's Consent-Decree-required community survey, conducted in 2016 and filed with the Court in June 2016 – which randomly surveyed a statistically-significant sample of Cleveland residents – found that there is indeed no single "Cleveland community." Some community members (55 percent of residents) believe that the police are doing a good job.[33] These views, however, "vary significantly by race and ethnicity" – with nearly three-quarters (72 percent) of white residents "believ[ing] the Cleveland Police are doing a good or excellent job overall, compared to 60% of Latino residents and 43% of black residents."[34] These differences in views lead Black and Latino residents to be much "less likely to reach out to the police for help compared to white residents."[35]

Approval of CDP also varies by geographic area.[36] Similarly, "[o]lder residents view the police more favorably than do younger residents," with less than half (49 percent) of residents ages 18 to 39 saying that CDP does a good or excellent job.[37]

Thus, in terms of overall approval or disapproval of the Division's performance alone, there are different communities within Cleveland, different views about CDP, and differences among and between communities, neighborhoods, and social groups with respect to confidence and trust in the Division of Police.

administrators issu[ing] rules that typically were ignored by the rank and file officers"); *see generally* Kenneth C. Davis, *Discretionary Justice: A Preliminary History* 55–56 (1969) ("When administrative bodies delegate discretionary power without meaningful standards, administrators should develop standards at the earliest feasible time, and then . . . should further confine their own discretion through principles and rules.").

[30] Johan P. Olsen, *Democratic Accountability, Political Order, and Change* 1, 9 (2017).

[31] Dkt. 7-1 ¶¶ 18(a)–(b).

[32] *See* Hugh G. Gauch, *Scientific Method in Practice* 184 (2003) (describing the *ad hominem* argument as a logical "fallacy," in which an individual attempts "to discredit an argument or conclusion by discrediting its proponent," that "is irrational because an argument's merit depends on its content, not on who says it").

[33] Dkt. 70-1 at i.

[34] *Id.* at i.

[35] *Id.*at iii.

[36] *Id.* at ii.

[37] *Id.*

Even among individuals who believe that the Division does a good job overall, a majority of Cleveland residents (55 percent) "believe officers are held accountable 'only some of the time' or 'almost never.'"[38] As a result, the percentage of Cleveland residents who believe that CDP is doing a good job is the same as those who "are skeptical about police conduct and accountability."[39] This means that, to about the same extent, "the community" thinks that officers are not routinely held accountable but that the Division generally does a good job. These different viewpoints, then, are both more than adequately represented in the community.

Although Cleveland is essentially split, 50-50, on basic views about the Division of Police, residents approving and residents disapproving of past performance often want the police to take more time to meet members of their communities and develop relationships with people like them.

Given that the margin of error for the poll was +/-4 percent, there is essentially an even, 50-50 split on basic views of the Division: whether it does a good job, whether police officers follow the law, and whether officers treat some people differently (African-Americans, young people, the homeless, and others).[40]
Ultimately, then, "the community" does not think one thing or have a unified, consensus view of CDP and its performance. Those who have more critical views of the police are just as represented, currently, in the Cleveland population as those who have more positive views. The Consent Decree, by its own terms, created the CPC to be a forum for the "many communities that make up Cleveland" to "develop recommendations for police practices that reflect an understanding of the values and priorities of Cleveland residents."[41] The existence of the Commission reflects, then, that references to "the community" is are references to the many diverse communities that make up the larger fabric of Cleveland.

The task of the Commission is to serve as a place where all viewpoints are respectfully heard and meaningfully considered, even if a consensus viewpoint cannot emerge – especially because, as discussed here, the Consent-Decree-required community sentiment evaluations have established that Cleveland residents are split on a number of foundational fronts with respect to their trust and confidence in the Division of Police. Some commissioners and community participants at CPC meetings should, it would seem, be critical of the police in some areas because some significant parts of the community are critical of the police and its performance. At the same time, it would seem that some commissioners and community participants at CPC meetings likewise should praise the police in some areas because some significant parts of the community have praise for the police and its performance.

In short, the CPC, like any other community organization, does not speak for "the community" because a democratic population is not a singular, monolithic entity. However, unlike other community organizations, the CPC is charged with being a forum in which all points of view within the community are given voice and due consideration – and can influence the substantive development of CDP policies, practices, procedures, and training. The success of reform depends on CPC becoming singularly focused on this task rather than bureaucratic mechanics, personalities, or other understandable but ultimately non-consequential diversions or distractions.

There are, however, some things that do seem to unite larger swaths of the Cleveland community: "only 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%)."[42] This means that two-thirds of the community – encompassing both those who generally approve of CDP's performance and who generally disapprove – believe that the Division can do a better job with respect to community policing, outreach, engagement, and support. At the same time, it would not seem that those who believe that the Division is doing a good job in this regard would object to the implementation of new strategies and programs to further enhance the Division's engagement with the community and relationships with residents who do not yet feel that they have them. On this and other issues, there is common ground – which is ripe for the CPC to address.

B. Community Focus Groups

The preceding section discussed the results of the Monitoring Team's first biennial community survey, filed with the Court in June 2016.[43] That survey was a random phone survey of Cleveland residents.

Although the overall community survey goes a great distance in providing insight into *what* a representative sample of Cleveland thinks with respect to police and policing issues, the time-limited and focused nature of such a survey leaves few opportunities for an exploration of *why* people have the views and opinions that they do. Accordingly, structured interviews taking place in the context of focus group settings "are often used to supplement conventional surveys."[44] While the large, phone-based survey was statistical and predictive because a representative sample of respondents participated, the findings of a focus group is not statistical, quantitative, or predictive in nature. However, they can provide background, context, and explanation for the broader survey results.

The Monitoring Team partnered with Cleveland-based survey

[38] Dkt. 70-1 at i.

[39] Dkt. 70-1 at i.

[40] *Id.* at i–iii.

[41] *Id.* ¶ 15(b).

[42] *Id.* at iii.

[43] *See* Dkt. 70.

[44] Herbert Weisberg, et al, *An Introduction to Survey Research, Polling, and Data Analysis* 22 (1996).

research firm Ideas in Focus to conduct focus groups assessing the perceptions of individuals in the Cleveland community with respect to the Division of Police. A total of six, two-hour focus groups were conducted in early May 2017. The groups involved 62 participants from six neighborhoods from across Cleveland

The Team will soon, and separately, file with the Court the final report on the focus group program that outlines the methodology and approach of the Ideas in Focus firm. However, some general lessons can be briefly summarized here:

- Police Presence. When asked about the presence of police, responses fell into thee basic categories: (1) police are *not* present and not available, even when you need them; (2) police *are* present but doing the wrong things or making things worse; and (3) police are present and seem reasonable in language, behavior, and actions.

  Participants in each group recounted experiences when they called the police for help but their emergency was not serious enough to receive a response. Two separate respondents who were victims of robberies observed that the police did not make them feel safe and did not seem to take the investigation seriously. In fact, participants from three different groups admitted that in order to get a faster police response when they call the police, they either exaggerate the situation or lie about it, making the situation seem more serious or dire.

  A number of participants expressed their perceptions that CDP officers harass and provoke people based on profiling and stereotypes. Several individuals expressed a belief that police officers have quotas for arrests and receive bonus pay for bringing in people with warrants and therefore spend their time on these activities.

- Interactions with CDP. A number of participants indicate that they try to avoid interactions with CDP officers because they generally perceive police to be unresponsive or dismissive of people's needs, actively profiling people, overly aggressive, corrupt, dishonest, uncaring, or self-interested. Some participants indicated that they have stopped taking their children to the park to avoid problems with the police.

  At the same time, other participants gave examples of positive police interactions with people, including officers conducting home visits, giving surprise holiday gifts, and officers electing to let an individual go rather than ticketing or arresting them. Participants recounted stories about officers giving children teddy bears at Christmas and about officers providing a car ride in bad weather.

  Several individuals explained that the lack of trust in some communities with respect to the police leads people to take matters in to their own hands, without involving CDP, because they feel that they cannot rely on the police for help or protection. As one participant summarized:

  > "Then they wonder why everybody is getting guns and doing what they have to do to survive. To protect yourself. I don't condone having guns or just going out killing people for no reason but if it comes down to your life and you're protecting yourself and your family I'd do it, too."

  One of the focus groups, focusing on residents of Glenville, was comprised of participants all ages 19 to 29 and Black. These young adults indicated that they have adjusted their strategies for moving around their neighborhood and community, including checking social media for police check point locations, avoiding traveling through certain areas, and memorizing the times of officer shift changes. Indeed, one participant recounted "[w] were 16, 17, 18, we knew the shifts in high school."

- Community Policing and Knowledge. When participants were asked about what "community policing" means to them, people generally understood the concept to refer to people in a neighborhood and police officers working together collaboratively to improve the safety and security of the neighborhood. They suggested that an understanding of the neighborhood was necessary for successful community policing.

- At the same time, even the many individuals who believe that community policing sounds good in theory indicated that, in reality, people fear retribution in their neighborhoods if they are viewed as cooperative or a "snitch."

- Relationships. Many participants expressed their belief that there is a deep-seeded culture of racism and long-established patterns of racist treatment of the Hispanic and Black communities by the police. A number indicated that, although they do not have bad relations, they just want police officers to do their jobs and be available when needed – and are uninterested in cultivating a closer relationship with individual police officers.

- Misconduct and Accountability. Police misconduct was perceived by participants as rampant among officers. Neither the legal system nor the police themselves are seen as holding the police accountable. The general sense that dishonesty and corruption among police officers is common contributes to people's distrust of the police.

- Complex Dynamics. Even participants who expressed distrust of the police indicated that police officers have a difficult job to do. They understand that police officers feel as though they are entering compromising situations in Cleveland's neighborhoods on a daily basis.

Few believe that the distrust in the community with respect to the police has been addressed in productive ways to date. People do not feel empowered to address issues through the channels that exist, such as the District Policing Committees and Community Police Commission.

- Feelings about the Future and the Possibility of Renewed Relationships. Most people were open to greater police presence in their neighborhood – especially if officers are committed to doing the right thing and have a deeper knowledge of the neighborhood, including an understanding of its people, culture, hot spots, unique dynamics, schools, and the like. Many who expressed hope and optimism for a different police-community relationship going forward situated their hope in terms of "the children" and subsequent generations – indicating that existing dynamics had developed over an extended period and that many years may be necessary to establish a new dynamic.

  Participants had a high awareness of incidents of excessive force and recent controversial events involving the police. However, there is less awareness of positive instances in which the police have been helpful or solved problems. Likewise, there is relatively low awareness for the Consent Decree, CDP reform process, and events and activities that support community policing.

Ideas in Focus and the Monitoring Team presented the results of the focus group effort to a broad group of Division and City stakeholders on May 24, 2017. The Monitor will file the final report on the focus group initiative with the Court in the coming weeks.

C. District Policing Committees

Paragraph	Compliance Status
23. Facilitation of "regular communication and cooperation between CDP and community leaders at the local level," with District Policing Committees meeting "at minimum, every quarter."	PARTIAL COMPLIANCE
24. CPC, CDP, and Community Relations Board ("CRB") will "develop a mechanism to recruit and expand" Committee membership." CDP "will work with [Community Police] Commission to select officers for each District Policing Committee."	NON-COMPLIANCE
25. CDP "will work closely with District Policing Committees to identify strategies to address crime and safety issues in their District," considering and addressing identified priorities.	PARTIAL COMPLIANCE
26. "At least annually, each District Policing Committee will present its identified strategies, concerns, and recommendations" to the CPC, with CDP officer who is Committee member presenting to CPC "CDP's assessment of ways to address" the recommendations.	NON-COMPLIANCE

The Monitoring Team understands that it is new for Cleveland to have a body specifically empaneled to become resident experts in law enforcement and policing. However, the Commission is by no means the lone venue for community participation or the sole route for resident involvement. As many of the Monitoring Team's reports and filings have described, the Cleveland community has been participating in the Consent Decree process in many ways and through many organizations – from the City's District Policing Committees to the Mental Health Response Advisory Committee. Given the many formal and informal mechanisms for resident involvement built into the Consent Decree, it is clear that the Parties never intended for CPC to be the sole voice in Cleveland on policing issues.

Although the CPC has made tremendous strides and gone to great lengths to meet the demands of the Consent Decree, there is more to be done. That additional work does not rest on the shoulders of the Commissioners alone. Instead, as required under the Settlement Agreement, a significant portion of the community outreach and collaboration that yet remains will be the collective work of the Division along with the CPC and the District Policing Committees.

The Monitoring Team has previously described the role of District Policing Committees under the Consent Decree.[45] Specifically, in an effort "to facilitate regular communication and cooperation between CDP and community leaders at the local level," the Consent Decree requires the expansion of the five District Policing Committees ("DPC"s.)[46] Those Committees must work with the City of Cleveland, the CPC, and the CDP directly "to identify strategies to address crime and safety issues in their District."[47]

During this reporting period, the Monitoring Team met with all District commanders, staff representatives of the Community Relations Board and respective civilian co-chairs of each District Policing Committee. To ensure that the DPCs operate in accordance with the terms of the Consent Decree, these meetings addressed the DPCs' current governance structure, membership composition, community engagement strategies, stakeholder partnerships, and crime prevention and intervention strategies. Members of the Monitoring Team also attended monthly meetings to observe the facilitation of the meetings, the composition of their attendance, and their agendas.

All but the Third District have a monthly meeting attendance of

[45] *See* First Semiannual Report at 20–21.

[46] Dkt. 7-1 ¶¶ 23–24.

[47] *Id.* ¶ 25.

approximately thirty civilians or more. The First District maintains an impressive average attendance of sixty or more civilians. Although the Third District DPC currently has a small following of fewer than twenty attendees, Commander McCartney, who assumed the position in recent months, has shown a strong interest in forging stakeholder partnerships and a desire to build the monthly DPC meeting attendance. This was evident in his active participation in Consent Decree mandated community outreach efforts on community and problem-oriented policing.

The Monitoring Team also observed the dedication of civilian DPC members in all districts – each with an openness for the expansion of the District Committee to be more reflective of the population of the District. The need for DPC membership expansion was also acknowledged by all district commanders, staff of the Community Relation Board, and the City of Cleveland Consent Decree implementation coordinator. While there were strongly expressed concerns for recognizing the value of existing DPC membership, all parties agree that the expansion of membership should not be misinterpreted as neglecting the value of long-serving membership. Rather, the onboarding of new members maximizes the full potential of the DPCs and the community and problem-oriented policing strategies of the Police Districts.

The Monitoring Team has identified some resistance among some members of the various DPCs to being referred to as District Policing Committees rather than District Community Relations Committees, as they were called before the Consent Decree. Indeed, it appears that all five committees are still referring to themselves as District Community Relations Committees.

The Monitoring Team understands the pride that longstanding committee members have in what they have developed and the association between that history of commitment and the committee's prior names. Although the Monitor cares much more about what the committees do than what they are called, the City and Department of Justice nonetheless agreed that the name would be changed in order to signify their specific, important role in police reform going forward.[48] Consequently, a plan has already been devised by the City of Cleveland, the CDP, and respective district commanders to officially change the name of the district committees over the next sixty days in order to comply, at least in part, with paragraphs 23 through 26 of the Consent Decree.

The Monitoring Team's engagement efforts continue to be geared toward ensuring that, as reform happens, an inclusive community voice is woven deeply into the process – with new practices reflecting the community's desires for effective, safe, responsive, and constitutional policing.

Overall, the District Policing Committees have a strong foundation on which to build. Some districts required more structured governance, while others with strong governance are in need to establish more inclusive membership practices. The commanders of all five districts, civilian CDP leadership, the Community Relations Board, and the Cleveland Consent Decree implementation coordinator have all expressed their commitment to build deeper connections, primarily with disconnected populations, within each district and build membership to be more reflective of each district. The Monitoring Team looks forward to working closely with the committees over the next monitoring period to ensure that the Committees can continue to be a hub of community involvement in policing in Cleveland going forward.

D. The Monitoring Team's Community Engagement & Outreach

The Monitor's Community Engagement Team continues its work to foster, facilitate, strengthen, and maintain the substantive and comprehensive involvement of Cleveland community stakeholders in the implementation process of the Consent Decree. The Team's efforts are geared toward ensuring that, as reform happens, an inclusive community voice is deeply woven into the process, with newly-developed policies and practices reflecting the community's desires and values for effective, safe, responsive, and constitutional policing.

The Team has reached out across the Cleveland community to connect with groups representing a wide-ranging variety of ethnic, faith, political, professional, cultural, social, and economic backgrounds. Outreach efforts to connect with and inform the community have consisted of public forums and presentations at community meetings small and large, including block club meetings, and church congregations and District Police Committee meetings. Meetings with rank and file police officers, formal and informal, have been an asset to building trust among officers regarding the Consent Decree process and intent. The Engagement Team has made appearances on local TV and radio stations, attended local events across the community to distribute literature, and conducted a number of listening sessions with citizens so they could share their views with the Monitoring Team and the Parties on critical issues mandated for consideration by the Consent Decree.

To date, Cleveland residents have shared their thoughts, feelings, experiences, histories, and beliefs on such critical issues as the Division's new Use of Force policy, crisis intervention policy and training, and community and problem-oriented policing strategies.

While the Monitoring Team has maintained very close contact with groups and individuals participating regularly in various aspects of the Consent Decree implementation process, the Team remains very interested in those opinions and experiences of persons whose normal daily activities do not provide the time, ability, or impetus to participate directly in the reform process. In an attempt to capture the opinions and experiences of persons not normally consulted about community affairs, the Monitoring Team arranged for a series of roundtable discussions – focus groups – involving citizens from across the community. A wide

[48] *Id.* ¶ 23.

range of topics were discussed to ascertain the perceptions of the "person on the street" about police-community relationships, community and problem-oriented policing, crime and crime reduction efforts in the community, officer recruitment strategies, complaint filing with the Office of Professional Standards, use of force incidents, and a number of other topics.

Fostering even greater and more sustained community involvement will be at the forefront of the Team's agenda as efforts move into the second half of 2017. Through collaborative efforts with community stakeholders, the Engagement Team plans to focus on expanding youth and young adult, senior citizen, and corporate involvement in the implementation process.

From time to time, the vast diversity of social, philosophical, experiential, and historical perspectives of the various stakeholders represent a mosaic which at times seemingly conflicts with the goal of consensus-building for policy development and other substantive change. However, given the diverse perspectives on policing in the Cleveland community, the Engagement Team remains encouraged by the willingness of all parties concerned to remain at the table and forge new policies and practices that reflect the best of 21st century policing. The Monitoring Team extends its sincere thanks and appreciation to all those who have meticulously labored with the Team to foster good will and cooperation throughout the hard work of the reform process so far.

COMMUNTIY & **PROBLEM-ORIENTED POLICING**

Paragraph	Compliance Status
27. Implementation of "comprehensive and integrated community and problem-oriented policing model" and consultation with CPC regarding the model.	PARTIAL COMPLIANCE
28. Ensuring that "mission statement reflects [the Division's] commitment to community oriented policing" / "integrat[ing] community and problem-oriented policing principles into its management, policies and procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems"	PARTIAL COMPLIANCE / NON-COMPLIANCE
29. Ensuring "that officers are familiar with the geographic areas they serve," "engage in problem identification," and "work proactively . . . to address quality of life issues"	NON-COMPLIANCE
30. Initial and annual in-service community and problem-oriented policing training "adequate in quality, quantity, type, and scope" that addresses specifically-identified areas.	NON-COMPLIANCE
31. Maintenance of "collaborative partnerships with a broad spectrum of community groups," including CDP meetings with community organizations and District Policing Committees.	PARTIAL COMPLIANCE
32. CDP "meet[ing] with members of the community in each District on a monthly basis and "solic[itation of] participation from a broad cross-section of community members in each District" to "identify problems and other areas of concern . . . and discuss responses and solutions."	PARTIAL COMPLIANCE
33. Development and implementation of "systems to monitor officer outreach to the community" that CDP "will use . . . to analyze . . . whether officers are partnering with a broad cross-section of community members to develop and implement cooperative strategies that build mutual respect and identify and solve problems."	NON-COMPLIANCE
34. "At least annually, CDP will present the results" of paragraph 33 analysis "broken out by District in a publicly-available community policing report" that describes problems, solutions, and obstacles. Report provided to Commission and posted on CDP website.	NON-COMPLIANCE

The Consent Decree requires that CDP develop and implement a "comprehensive and integrated community and problem-oriented policing model" to "promote and strengthen partnerships with the community . . . and increase community confidence in the CDP."[49] This section refers to policing according to this model as "community and problem-oriented policing."

Community policing involves the police and the community working as partners to "coproduce" public safety and neighborhood well-being. The core idea behind community policing is that the police and the community share jointly in the responsibility for promoting public safety, and that each has an important role to play. Although "community policing" often is associated with specific programs or strategies – such as athletic leagues or foot patrol – community policing cannot be implemented effectively unless it is embraced by the organization as a whole. As countless law enforcement professionals have recognized, community policing principles should inform decision-making at all levels of the agency, including decisions about hiring, deployment, and evaluation.[50] A division-wide commitment to community policing will help promote trust and legitimacy, improve the quality of police-citizen encounters, and address persistent public safety issues in Cleveland communities.

The Decree defines "community and problem-oriented policing" as a "policing philosophy that promotes and relies on collaborative partnerships between law enforcement agencies and the individuals and organizations they serve to develop solutions to problems, increase trust in police, and improve the effectiveness of policing efforts."[51] The Decree also requires CPC to assess CDP's community activities, and make recommendations for additional strategies for CDP."[52]

Specifically, the Consent Decree mandates that CDP implement numerous fundamental reforms related to community policing, including:

- "[E]nsur[ing] that its mission statement reflects its commitment to community oriented policing"[53];
- "[E]nsur[ing] that its officers are familiar with the geographic areas they serve . . . and engage in problem

[49] Dkt. 7-1 ¶ 27.

[50] *See, e.g.*, Police Executive Research Forum (PERF), *Community Policing: Past, Present, and Future* at 4 (2004) ("Community Policing"); Presidential Task Force On 21st Century Policing, *Final Report* at 43 (2015).

[51] Dkt. 7-1 ¶ 414

[52] *Id.* ¶ 17.

[53] *Id.* ¶ 28.

identification and solving activities with the community. . . ."[54]

- "[P]rovid[ing] initial and annual in-service community and problem-oriented policing training," to include problem-solving with the community, as well as concepts such as leadership and communication; procedural justice; conflict resolution and verbal de-escalation; and cultural competency sensitivity training;"[55]
- "[M]aintain[ing] collaborative relationships with a broad spectrum of community groups"[56];
- "[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"[57];
- "[D]eveloping and implementing systems to monitor officer outreach to the community"[58]; and
- "Analyze" the quality and nature of its, and officer's community policing efforts, "broken out by District, in a publicly available community policing report."[59]

Over the past few months, the CDP has been working closely with the Monitoring Team, the City, and the CPC to organize and execute a stream-lined and coordinated community engagement process around community and problem-oriented policing in Cleveland. The Division is currently in the first step of the development of the community and problem-oriented policing plan: soliciting and incorporating substantive community input. The parties are working together to reach as many Cleveland residents as possible and learn what community members would like the Division's plan to look like. Following the broad solicitation of community input, Community Policing Bureau Commander Johnny Johnson will take the lead on drafting the Division's community and problem-oriented policing plan.

Some traditional approaches to law enforcement management and organization are incompatible with community policing. Officers who spend their days rushing between calls for service, for example, will not have time to get to know residents or address community concerns. Many of the problems that residents identify require cooperation from others within the agency – or from other municipal agencies. So long as officers are evaluated primarily on the basis of metrics like stops and arrests, they are unlikely to invest the time and energy into working with residents or developing alternative strategies for addressing public safety issues.

A. Features of Community and Problem-Oriented Policing Being Explored in Community Outreach on the Community and Problem-Oriented Policing Plan

[54] Dkt. 7-1 ¶ 29.

[55] *Id.* ¶ 30.

[56] *Id.* ¶ 31.

[57] *Id.*¶ 32.

[58] *Id.* ¶ 33.

[59] *Id.* ¶¶ 33-34.

The issue of what constitutes community policing has, from time to time, "suffered from conceptual confusion in research and practice."[60] In December of 2016, the stakeholders agreed on a framework for the Division's community and problem-oriented policing plan required by the Consent Decree. They identified the core components of community policing – collaborative problem solving, community engagement around policing policy and practice, and opportunities for officers to get to know their communities – as well as related areas of division management and organization that the CDP will need to address in order to implement the plan effectively. These include staffing and deployment, recruitment and hiring, officer training, and officer and department evaluation.

As part of the collaborative engagement process, the CDP is soliciting community and officer input on the core components and the related areas of community and problem-oriented policing.

Core Components

Although "community policing" has come to mean many things, and has been associated with a variety of specific programs and strategies, there is wide agreement within the law enforcement community on its three critical components:

- Police-community collaboration in identifying and addressing community problems and concerns;
- Meaningful opportunities for community input on policing policies and practices;
- Opportunities for officers to get to know the community.

Collaborative Problem-Solving

The Consent Decree specifically requires the CDP to ensure that officers "engage in problem identification and solving activities."[61] To ensure that these problem-solving efforts are successful, the Decree requires that all levels of CDP engage with and "maintain collaborative partnerships with a broad spectrum of community groups" and that officers engage with these partnerships in a way to "proactively maintain these relationships and identify and address community problems and challenges."[62]

The CDP is using the community engagement process to identify potential community partners. Potential partners include residents, local businesses, non-profit organizations, community and faith-based leaders, and other government agencies. The Division has always worked closely with Cleveland's community development corporations, block clubs, and faith-based groups,

[60] A. Gerasimos Gianakis, et al, "Reinventing or Repackaging Public Services? The Case of Community-oriented Policing," 58 PUB. ADMIN. R. 485 (1998).

[61] Dkt. 7-1 ¶ 29.

[62] *Id.* ¶ 31.

but it is looking to further develop these partnerships and create new partnerships. To that end, the stakeholders are specifically asking community members to: (1) identify local groups and organizations that the CDP could collaborate with in problem-solving efforts; (2) help the CDP identify potential obstacles to collaboration and suggest ways to address them; and (3) provide input on how best to ensure that District Policing Committee members are representative of the community at large.

Community Engagement around Policing Policy and Practice

A community policing plan also should include opportunities for organized, routine police-community engagement around policing policies and practices. This will allow the community to have a say in how it is policed, which in turn helps create a sense of trust and legitimacy that is essential to effective policing. Over time, these efforts strengthen police community relations and promote public safety and constitutional policing.[63]

The Consent Decree mandates that CDP ensure that residents provide input on substantive policing issues, and that CDP responds to that input. To support these efforts, as discussed above, the Decree required the City to establish the CPC to "work with the many communities that make up Cleveland for the purpose of developing recommendations for police practices that reflect an understanding of the values and priorities of Cleveland residents."[64] As part of the reform process, the CPC and Monitoring Team have solicited the community's views on various issues including body-worn cameras, use of force, and now community policing. In designing its community and problem-oriented policing plan, the CDP will need to develop a strategy for conducting this sort of public engagement around policy on an ongoing basis.

In choosing its policing strategies, CDP will need to tailor its approach to the specific needs of different neighborhoods and communities – and ensure that officers have opportunities to engage with a broad cross-section of Cleveland residents.

CDP is using the community engagement process to learn more about how community members would like to provide input on policing policy and practice. Stakeholders are specifically asking Cleveland residents to: (1) identify obstacles to broad-based engagement and participation; (2) suggest strategies for reaching out to communities that do not routinely engage with either the CPC or CDP; and (3) suggest ways to make community forums and town halls more effective in ensuring meaningful, substantive engagement. Learning the answers to these questions will provide the CDP with valuable insights regarding the outreach and engagement strategies that will best meet the needs of Cleveland residents.

Opportunities for Officers to Get to Know Their Communities

Community policing also requires that officers have regular opportunities to get to know residents and become familiar with local problems and concerns. Officers who spend their days in patrol cars will not be able to form the sorts of meaningful partnerships with residents that are necessary to facilitate collaborative problem solving and engagement. Encouraging officers to interact with residents in a non-enforcement capacity can:

- Promote trust and mutual understanding between officers and community members;
- Encourage officers to identify and take responsibility for problems in their communities;
- Make residents more likely to report crimes or bring public safety concerns to the attention of the police.[65]

There are a number of strategies and approaches that the CDP can take to ensure consistent and meaningful interaction between officers and residents. These include: alternatives to motorized patrol, such as bicycle or foot patrols; other opportunities for social engagement, such as participation in Athletic Leagues or "Coffee with a Cop" events; and participation in community activities.

In choosing the appropriate mix of programs and strategies, the CDP should tailor its approach to the specific needs of different neighborhoods and communities, and ensure that officers have opportunities to engage with a broad cross-section of Cleveland residents. To that end, through the collaborative engagement process, the CDP is seeking community input to: (1) inform the allocation of resources among various alternatives to motorized patrol, such as foot patrols, bicycle patrols, and mini-stations; help to identify locations where these efforts are likely to be most effective at promoting consistent engagement with residents; and help to prioritize among the range of possible social and community engagement programs.

Institutional Features

Staffing and Deployment

As part of its community and problem-oriented policing plan, the CDP will need to ensure that its staffing and deployment models facilitate long-term police-community familiarity and relationship-building.[66] Community policing can be resource-intensive.

[63] *See* Dkt. 7-1 ¶ 14.

[64] *See id.*

[65] See, e.g. Police Executive Research Forum (PERF), Community Policing: Past, Present, And Future at 45 (2004).

[66] Lisa M. Graziano, Dennis P. Rosenbaum and Amie M. Schuck, "Building Group Capacity For Problem Solving And Police-Community Partnerships Through Survey Feedback And Training: A Randomized Control Trial Within Chicago's Community Policing Program," 10 J Exp . Criminol . 80 (2014).

Officers must have sufficient time in their schedules to engage with the community and address community problems, without undermining the division's ability to respond to calls for service. Community and problem-oriented policing also requires that the agency structure its deployment infrastructure, including district and patrol sector boundaries, in ways that facilitate long-term partnerships and collaboration with community-based organizations.

One idea that CDP should explore is making greater use of civilian personnel so that sworn officers can be redeployed to core law enforcement tasks on the streets.

One idea to explore is to make greater use of civilian personnel. Civilian employees cost less to train, equip, and pay, and can replace sworn officers in assignments like dispatch and record-keeping so that officers can be redeployed to policing tasks on the street. For example, in Newport News, Virginia, civilians at information desks take 40 percent of all reports.[67] Unsworn "community service officers" also can assist with parking enforcement, respond to traffic incidents to take initial statements, help preserve crime scenes, and help officers investigate minor quality-of-life offenses such as vandalism.

CDP is using the community engagement process to educate community members about the resources it would require to divert some portion of officer time to discretionary police-community interactions – and solicit community input on the portion of officer time that residents would like to see spent on engagement activities. The Division is also using the collaborative process to gain valuable insight on what tasks residents would feel comfortable having performed by civilian personnel.

Recruitment and Hiring

Community policing requires departments to recruit and hire candidates who are service-minded and committed to working in partnership with residents to promote public safety. Officers should be broadly representative of the community and be familiar with the culture and tradition of the different neighborhoods they will serve. Officers should also possess strategic thinking and problem-solving skills, emotional maturity, interpersonal skills, and the ability to collaborate with a diverse cross-section of the community.

The Consent Decree requires the Division "to integrate community and problem-oriented policing principles" into its recruitment practices, and to develop a recruitment plan that includes specific strategies "for attracting qualified applicants from a broad cross-section of the community."[68]

CDP is utilizing the community engagement process to ask community members to identify: (1) obstacles or impediments that discourage individuals from applying to the CDP; (2) strategies for attracting applicants from a cross-section of Cleveland's neighborhoods; and (3) neighborhood leaders who could help suggest potential candidates.

The Division has recently shifted its police recruiting efforts from solely within the Cleveland Division of Police to the City of Cleveland's Department of Public Safety. Instead of the Division spearheading the recruiting effort for police specifically, the Department of Public Safety is now recruiting fire, police, EMS, and corrections officers. CDP is optimistic that outsourcing the recruiting efforts to an office within the Department of Public Safety will lead to greater and improved advertising and recruiting strategies, as well as increase the number of community and service-minded recruits. It is hoped the new recruiting process will provide a large, diverse pool of recruits and the CDP will be fully and actively engaged with the hiring of officers to ensure new hires are committed to the Division's vision of community and problem-oriented policing.

Officer Training and Education

Community policing requires officers to possess a variety of skills, including teamwork, leadership, interpersonal, and problem-solving skills. Community policing also requires officers to become familiar with the history, culture, and traditions of their communities. Ensuring that officers are equipped with these necessary skills and knowledge is an important component of any community and problem-oriented policing plan. Studies show that the success of community policing programs depends in large part on whether officers receive adequate training.[69] Officers who receive training on community-oriented policing are more likely to incorporate principles of community policing into their day-to- day work.[70]

For this reason, the Consent Decree specifically requires that officers receive training on:

- Community engagement and problem-solving strategies;
- Leadership, ethics, and effective communication;
- Forming community partnerships;
- Procedural justice;
- Conflict resolution; and
- Cultural competency.[71]

Successful training programs incorporate principles of community policing into all aspects of the curriculum. Training programs focus on a variety of specific community policing skills, such as conflict-resolution, including strategies for helping cit-

[67] United States Department of Justice, Office of Community-Oriented Policing (COPS Office), *Implementing Community Policing: Lessons from 12 Agencies* 62 (2009).

[68] Dkt. 7-1 ¶ 302.

[69] Sutham Cheurprakobkit, "Community policing: Training, definitions and policy implications" 25 *Policing* 709, 710 (2002).

[70] *Id.* at 720.

[71] Dkt. 7-1 ¶ 30.

izens resolve disputes peacefully rather than resorting to violence or self-help; and familiarity with other city departments, social service providers, and other resources to which to refer residents.[72] In addition to training on specific skills, officers should receive training on cultural competency, tailored to the specific history, traditions, demographics, and quality of life challenges of the various communities in which officers will work. Cultural competency training can help to ensure that officers are sensitive to the particular needs and vulnerabilities of different populations, and avoid unnecessary tension.

The CDP is using the community engagement process to identify the specific skills and local knowledge that would best serve officers working in Cleveland neighborhoods and districts. Stakeholders are specifically asking Cleveland residents to identify: (1) specific aspects of Cleveland history that should be incorporated into officer training; (2) the unique cultures, characteristics, and challenges of Cleveland's many communities; and (3) strategies for involving residents in developing and implementing training curricula.

Officer and Division Evaluation

Officer and supervisor evaluations are essential to the success and sustainability of a community policing program. Evaluations provide supervisors, division leadership, and the community with information about whether officers are following community policing practices. Evaluations also incentivize officers and supervisors to pursue positive community relationships and engage residents in problem-solving efforts. As law enforcement professionals have long recognized, "what you measure is what you get."[73]

For these reasons, the Consent Decree requires the CDP to incorporate principles of community and problem-oriented policing into officer and supervisor evaluation, and adopt performance measures that:

- Measure and "monitor officer outreach to the community";[74]
- Document community engagement and communication with the public;[75] and
- Track the use of community and problem-oriented policing strategies, including de-escalation techniques and methods for engaging with individuals in crisis.[76]

The Consent Decree requires CDP to incorporate principles of community and problem-oriented policing into officer and supevisor evaluation by measuring and documenting community engagement and communication with the public.

While it is important to evaluate individual officers, it is also important to review the Division as a whole to ensure the community and problem-oriented policing plan is effective. The Consent Decree requires CPC to come up with an assessment plan to evaluate the CDP's community policing and engagement efforts.[77]

The stakeholders are utilizing the community engagement effort to learn what measures and metrics Cleveland residents would like to see CDP use when tracking individual officers. Stakeholders are seeking specific community input on: (1) the sorts of behaviors or interactions that residents most want to encourage (and thus the Division to measure); (2) effective strategies for measuring community sentiment; and (3) community representatives whom the CDP could turn to when seeking community feedback.

Additionally, stakeholders are seeking input on how the CPC should be assessing the Division's plan. The community engagement process specifically seeks answers to three vital questions:

- How should the CPC measure what community members think about the community policing plan?
- Who should inform the CPC about whether the community policing plan is working?
- What factors should the CPC consider and keep track of?

Currently, the stakeholders have nearly completed the first phase of the community engagement process – soliciting and reviewing community input. After this phase is complete, the stakeholders will receive all the community input and the CDP will prepare the first draft of its community and problem-oriented policing plan. Once the Division has prepared the draft plan, all stakeholders will work together to share CDP's proposed plan and solicit community input. CDP, with assistance from the Monitoring Team, will take the lead in hosting and presenting the proposed draft plan to the Cleveland community. The Monitoring Team expects this next phase of community engagement to take place later this summer. Following this second round of community input, the CDP will revise its proposed plan in light of specific feedback related to the proposed drafts and make changes, where appropriate. The final plan will then be submitted to the Court for review and approval.

B. Mission Statement

The Monitoring Team previously reported that, as of early January 2017, "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

[72] Edwin Meese, National Institute of Justice, *Community Policing and the Police Officer* 6–7 (1993).

[73] United States Department of Justice, COPS Office, *Reducing Fear of Crime: Strategies for Police* xi.

[74] Dkt. 7-1 ¶ 33.

[75] *Id.* ¶¶ 33, 42-44, 314, 317.

[76] *Id.*

[77] *Id.* ¶ 17.

statement is substantially and effectively implemented."[78] The Team is pleased that, on May 17, 2017, the Division circulated a Divisional Notice to all officers containing the revised General Police Order 1.1.02 that sets forth the Court-approved mission statement. Likewise, the mission statement is the subject of discussion at various junctures in the Division's upcoming officer use of force training.

Thus, although the Monitoring Team categorizes CDP's progress on the mission statement requirement of the Consent Decree as "Partial Compliance," the Division can be expected to reach Operational Compliance with the Mission Statement following completion of the officer use of force training that contains this instruction on the new mission.

[78] Dkt. 97 at 23.

BIAS-FREE POLICING

Paragraph	Compliance Status
35. Delivery of "police services with the goal of ensuring that they are equitable, respectful, and free of unlawful bias," among other things.	EVALUATION DEFERRED
36. "CDP will integrate bias-free policing principles into its management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems."	EVALUATION DEFERRED
37. CDP will ensure that it "administer[s] all activities without discrimination" on basis of various protected classes	PARTIAL COMPLIANCE
38. "CDP will develop a bias-free policing policy" incorporating CPC recommendations "that provides clear guidance to officers"	PARTIAL COMPLIANCE
39-40. Bias-free policing and procedural justice training "adequate in quality, quantity, scope, and type" covering specific areas	EVALUATION DEFERRED
41. Supervisor training on bias-free policing and procedural justice issues covering specific areas	EVALUATION DEFERRED
42. Annual in-service training on bias-free policing "adequate in quality, quantity, type, and scope"	EVALUATION DEFERRED
43. Analysis of paragraph 265 data ("including use of force, arrests, motor vehicle and investigatory stops, and misconduct complaints alleging discrimination (¶ 265))	NON-COMPLIANCE
44. Consideration of "bias-free policing and equal protection" principles in hiring, unit assignment, promotion, and performance assessments.	NON-COMPLIANCE

CDP, as summarized in prior reports, must ensure that it has policies and procedures in place that allow it to "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."[79]

To this end, CDP's policies, and related training, will need to provide specific guidance for officers on the Division's expectations. In approving the Second-Year Monitoring Plan, the Court endorsed the Parties' current timeline of completing a bias-free policing policy – and the important community engagement and involvement that must be part of the policy's creation and refinement – by November 21, 2017.[80]

As of this writing, 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, and 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 CDP related to its: interaction with citizens of varying backgrounds and demographics; organizational culture; recruitment; training; and, reporting.[81]

CDP has submitted a policy draft, informed by the CPC and other community organization recommendations, to the Parties and Monitoring Team for feedback and technical assistance. Over the coming months, the draft bias-free policing policy will be further revised and refined. Upon eventual finalization and approval of a bias-free policing policy, the City and Division's work will turn in earnest to comprehensive training on the policy and related topics.[82]

[79] Dkt. 7- 1 ¶ 35.

[80] Dkt. 123. This deadline is an adjustment from the First-Year Monitoring Plan, Dkt. 80-1 at 20, driven by competing policy development and training requirements.

[81] Dkt. 97 at 26.

[82] Dkt. 7-1 ¶¶ 39-42.

USE OF FORCE

A. Officer Use of Force Principles & Policy

Paragraph	Compliance Status
45. "CDP will revise, develop, and implement force policies, training, supervision, and accountability systems with the goal of ensuring that force" complies with the Constitution, federal law, and the Consent Decree "and that any use of unreasonable force is promptly identified and responded to appropriately."	PARTIAL COMPLIANCE
46. "The City will implement the terms of this Agreement with the goal of ensuring that use of force by CDP officers . . . will comply" with at least twelve major, listed principles.	PARTIAL COMPLIANCE
47. Division "will ensure that the [use of force] incident is accurately and properly reported, documented, and investigated."	NON-COMPLIANCE
48. "CDP will track and analyze officers' uses of force to hold officers accountable for unreasonable uses of force; to guide training and policy; and to identify poor tactics and emerging trends."	NON-COMPLIANCE
49. Development of use of force policies "that comply with applicable law[,] . . . are adequate to achieve the goals described in paragraph 45," and "specify that unreasonable use of force will subject officers to the disciplinary process, possible criminal prosecution, and/or possible civil liability."	PARTIAL COMPLIANCE
50. "CDP's policies will address the use and deployment of its authorized force techniques, technologies, and weapons."	PARTIAL COMPLIANCE
51. Weapon-specific policies "will include training and certification requirements that each officer must meet before being permitted to carry and use the authorized weapon."	PARTIAL COMPLIANCE
52. "No officer will carry any weapon that is not authorized or approved by CDP."	PARTIAL COMPLIANCE
53. "Prior to the use of any approved weapon, the officer, when possible and appropriate, will communicate to the subject and other officers that the use of weapon is imminent, and allow the subject an opportunity to comply."	PARTIAL COMPLIANCE
54–83 "CDP will implement policies" for firearms, ECWs (Tasers), and OC (pepper) spray that comply with a host of specific, expressly listed provisions.	PARTIAL COMPLIANCE

The Second Semiannual Report described, in detail, the process throughout 2016 of updating the Division's officer use of force policy – including the significant role that CDP officers, Cleveland residents, and community organizations played in the formulation of the revised policy.[83] The Court approved the new use of force policies, subject to some specific conditions, on January 17, 2017.[84]

B. Officer Use of Force Training

Paragraph	Compliance Status
84. CDP "will provide all current officers use of force training that is adequate in quality, quantity, scope, and type and that includes" a number of specific, expressly-listed elements.	PARTIAL COMPLIANCE
85. CDP "will provide the use of force training described in paragraph 84 to all new officers."	PARTIAL COMPLIANCE
86. "CDP will provide all officers with annual use of force in-service training that is adequate in quality, quantity, type, and scope."	EVALUATION DEFERRED

A well-functioning and effective police department is one that ensures that its officers are properly trained in the high-risk critical tasks that they may have to address as part of their duties. This training must be clear, comprehensive, well-organized, and be executed in a way in which an officer can understand and readily apply the principles learned outside the sterile environment of the classroom.

Police policy and training has its origin in two fundamental places: the law (including the United States Constitution, state, and local law) and the evidence-based policing and adult educational practices that have evolved over time. The requirements of the Consent Decree most clearly represent the legal basis which governs the critical tasks that make up an officer's work, especially with regard to all uses of force. The Consent Decree also sets out those practices which provide even further guidance to officers who may be compelled to use force, and ensures that those decisions and the resulting consequences are ones that reflect important policy principles that ensure adherence to constitutional protections and ensure that an officer's actions are reasonable, necessary, and proportional to the level of resistance confronting the officer at the time force is used.

[83] Dkt. 97 at 27–35.

[84] Dkt. 101.

Most importantly, the Consent Decree and the Court-approved use of force policy requires that in every instance where it is safe and feasible to do so, a CDP officer must take steps to de-escalate a situation in an effort to reduce the likelihood of having to use force to safely and effectively resolve it. The concept of de-escalation is not a new concept in policing. The use of verbal commands and persuasion, taking steps to create a safe distance between an officer and dangerous subject, and waiting for additional resources to arrive on the scene are considerations that have been in the tool kit of officers who have found themselves on the scene of evolving incidents. The importance of de-escalation and its prominence in police use of force training is a critical part of the CDP's new use of force policy – and will be an area that the Monitoring Team will be closely assessing.

The Division's sustained and focused efforts on designing and implementing the Use of Force Training program has resulted in a high-quality, dynamic instructional program for officers.

The manner in which the practical significance of the concepts of necessity, proportionality and de-escalation are communicated to the officers who will be called upon to both understand and carry out these important considerations is critical. Training indeed translates the sometimes-legalistic formalism necessary in the Division's policies into actionable skills and tactics that officers use on a day-to-day basis on the streets of Cleveland.

Consequently, the Consent Decree defines the training requirements associated with the curriculum. These provisions seeks to complement use of force policy and ensure the development of a training program that effectively highlights the important considerations that directly relate to an officer's work.

Specifically, the use of force training that CDP must provide to its officers must be "adequate in quality, quantity, scope, and type" and include instruction on:

- Proper use of force decision-making;
- Use of force reporting requirements;
- The Fourth Amendment and related law;
- De-escalation techniques, both verbal and tactical, that empower officers to make arrests without using force and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, using cover, calling in specialized units, or delaying arrest may be the appropriate response to a situation, even when the use of force would be legally justified;
- Role-playing scenarios and interactive exercises that illustrate proper use of force decision-making, including training on the importance of peer intervention;
- The proper deployment and use of all intermediate weapons or technologies;
- The risks of prolonged or repeated ECW exposure, including that exposure to ECWs for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious physical injury;
- The increased risks ECWs may present to a subject who is pregnant, elderly, a child, frail, has low body mass, or is in medical crisis;
- That, when using an ECW, the drive stun mode is generally less effective than the probe mode and, when used repeatedly, may exacerbate the situation;
- Firearms training . . . ; and
- Factors to consider in initiating or continuing a vehicle pursuit.[85]

CDP's Academy recruits must receive this use of force training,[86] and the Division's supervisors must receive specialized training, as discussed elsewhere in this report, relating both to use of force and broader supervisory skills.[87] In addition to initial training on use of force covering, among other things, the topics listed above, the Division must "provide all officers with annual use of force in-service training that is adequate in quality, quantity, type, and scope."[88]

Like some other aspects of the Consent Decree's implementation, the development and execution of the Use of Force Training curriculum lagged somewhat behind what the First-Year Monitoring Plan originally forecast. Competing operational issues within the CDP during the first year of the Consent Decree, coupled with the diminishing capacity within the Training Section, impacted CDP's ability to complete work on the use of force policies and, in turn, the use of force training.

More recently, however, CDP's sustained and focused efforts on designing and implementing the Use of Force Training program has yielded substantial results.[89] Since August 2016, the Monitoring Team has worked closely with the Division of Police and its Training Section. The Team's objective was to provide both guidance and technical assistance as to the development and implementation of a cohesive training curriculum that is consistent with the requirements of the Consent Decree and provides the most effective and operationally efficient means by which to en-

[85] Dkt. 7-1 ¶ 84.

[86] *Id.* ¶ 85.

[87] *Id.* ¶ 84.

[88] *Id.* ¶ 86.

89 The Second Semiannual Report indicated that it was then "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 . . . , the Monitoring Team is satisfied that the Division is completed to completing a high-quality training." Dkt. 97 at 35. Ultimately, CDP required only about four to five weeks of additional time, which all of the Monitor, CDP, City, and DOJ agreed was useful to refine the training further rather than address any outstanding foundational issues.

sure that all sworn members of the CDP are rigorously trained and have a working knowledge of the Division's new use of force policy. Members of the Monitoring Team have met periodically with the Training Division staff reviewing the specific modules developed, carefully scrutinizing both the content and the instructional modality to ensure that the most effective adult learning methodology was incorporated into each module.

The Monitoring Team has been favorably impressed by the hard work of the Training Section and their willingness to embrace definitively new approaches to officer training. The Monitor commends the Section's tremendously hard work on a comprehensive use of force curriculum that will provide officers not only with a specific, substantive grounding in the specific provisions of the new, Court-approved use of force policy but also with substantial opportunities to practice the application of those provisions in real-world scenarios as well as the assessment of actual police encounters with subjects. The Parties, Monitoring Team, and CDP's Training Section are united in the belief that, for an officer to truly understand the scope of the materials, it is not enough to be able to recall or otherwise recite the technical provisions of the policy. Rather, officers must be able to transfer, apply, and make active use of the guidance and provisions that are set out within that policy.

The result of the Training Section's significant innovation and noteworthy work is a comprehensive Use of Force Training program on the new use of force policies. It consists of several components:

Initial Policy Instruction/"Pre-Loading." The Training Section constructed a "pre-load" video presentation that all CDP officers have viewed or soon will view, in an expanded roll call training context, in the Districts in May and June before they attend the subsequent in-class training components. The approximately one-and-a-half-hour video presentation outlines, step by step, the new policy and the expectations of the upcoming use of force training sessions. The "pre-load" presentation begins with a message from Chief Williams that reinforces the importance of the use of force policy provisions and underscores the Division's commitment to these important changes. The presentation then proceeds through the new CDP policies, providing instruction to officers on the specific provisions of the updated, Court-approved use of force policy.

The hard work of the Training Section and its willingness to embrace new approaches to officer training has greatly impressed the Monitoring Team.

CDP personnel will view the pre-load and be given the opportunity to ask questions of training personnel, supervisors, and Command staff who will be in attendance during these District-based sessions. It is hoped that the pre-loading activities will ensure officer knowledge of the new policy and a better understanding of newly emphasized concepts prior to attending the classroom instruction, where instructors will delve deeper into content and afford officers the opportunity to demonstrate their understanding in a scenario- based environment.

Two-Day, In-Class, Scenario-Based Training. Between May and October 2017, all sworn CDP personnel will attend two days (16 hours) of in-class training. This training consists almost exclusively of integrated, interactive scenario-based instruction aimed at giving officers repeated opportunities to apply the new use of force policy provisions in a real-world context.

Over the course of the two days, officers will proceed through eight "modules" of instruction, all of which have either interactive or scenario-based elements. Those modules include instruction on:

- De-Escalation
- Contact and Cover
- Subject Control and Handcuffing
- Intermediate Weapons
- Decision-making Scenarios
- Threat Assessment
- Officer Performance Assessments (video-based) (two modules)

Day one begins with a formal introduction of the instructors, safety rules, attendance requirements and expectations. The class is then divided in smaller groups to maximize safety and facilitate close observation and evaluation of each officer attending the training. The officers then go through four modules of training.

The first module is solely focused on the introduction and thorough review of the five new use of force related policies and all of the major changes within those policies, particularly in how force is used and reported. This is an interactive classroom segment of the training that builds the foundation for all of the training modules that follow.

Module two explores de-escalation principles, strategies and techniques with the officers and is intended to fully explain what de-escalation is, why it matters and how it should be considered in every aspect of police work from daily citizen contacts to crisis events.

In module three, officers will learn to effectively evaluate the situations and the subjects they encounter as well as how to quickly assess the resources they have available to help them safely resolve various situations. Teaching the officers to assess the environment they are in will also be part of the training. This is commonly referred to as "contact/cover" training and is a key part in determining the options to de-escalate or use force available to the officers.

Module four trains the officers on contemporary subject control and prone handcuffing techniques. Handcuffing and control techniques have changed over the years, and this refresher

training will teach officers in accordance with policy changes and modern techniques.

Day two will begin with a significant review of the four modules learned on day one and then proceed into four additional modules. Module one is a complete session focused on the assessment of videos depicting scenarios of officers handling various situations that end in various ways. The CDP officers will have to identify whether stops were justified, whether use of force was justified and if the correct options were used, and will be evaluated based on CDPs new use of force GPOs.

Module two is comprised of reality-based scenarios in which the officers are faced with a variety of situations and are evaluated on verbal commands, choice of intermediate weapons and the utilization of de-escalation techniques if opportunities to do so exist.

Module three is also a reality-based scenario that focuses on how the officer reacts to and assesses the environment to which he or she is dispatched to, and the tactical decisions that follow. The scenarios are intended to evaluate the officers' decision making skills in accordance with the new use of force GPOs.

Module four builds on module three by further exploring the officers' verbal commands, body language, level of awareness about the event they are in and finally their understanding and execution of de-escalation techniques and/or transition to use of force tools and techniques in accordance with the new use of force policies. If the scenario turns to force, the level of force is evaluated as to whether it was necessary, proportional and objectively reasonable.

During the Use of Force training, officers must meet minimum performance requirements, including passing a written exam and meeting defined standards during scenario-based and role-playing exercises.

The maximum total class size for the two-day course is 48 officers. On both days, the class of 48 officers will begin with an introduction and overview that emphasizes the training's objective and various provisions and expectations of the new policy. Subsequently, the class will be divided into four groups of twelve officers each. Each group of twelve officers will proceed, throughout the remainder of each day, through four of the above modules.

During the training, officers must meet minimum performance requirements. One element of officer evaluation will be a written exam, administered during the training, to confirm that officers have a clear understanding of the new force policy's requirements and expectations. Another element of officer evaluation will be a formal, operationalized performance "check list" for evaluating every officer's performance during the various interactive, scenario-based elements. Officers who do not receive a passing score for their performance in one of the scenario exercises will receive specific, remedial training and/or one-on-one discussion to ensure their understanding of the appropriate application of the force policy.

Regardless of whether officers meet the required minimum performance standards, all scenario-based modules provide an opportunity for a full debriefing in which participating instructors and other students will be charged with fully analyzing officer performance – identifying the application of good tactics and areas of strength as well as areas for improvement or where other or different strategies or tactics could or should have been applied.

During the week of April 17, 2017, members of the Monitoring Team and DOJ conducted a walk-through of the entire in-class curriculum. CDP training instructors delivered content, modeled scenarios, and demonstrated hands-on and decision making modules that reinforce the policy changes and underscore the fundamental use of force principles (necessity, proportionality, objective reasonableness, and de-escalation whenever safe and feasible) that are the foundation of the Division's policy. The Monitoring Team was tremendously impressed by the level of the training demonstrated and the clear commitment of the instructors to the overriding objectives of the Division's Use of Force Training initiative.

Ultimately, the Monitoring Team is tremendously pleased by the Division's ability to construct a training that takes advantage of entirely new approaches and is geared toward providing officers with practical, day-to-day skills and an ability to practice application of the new force policy in realistic settings. This interactive, immersive training is a far distance from the rote "Death by PowerPoint" [90] style that, for many police departments, has served as the default method.

Another innovation that the Training Section is implementing relates to gauging and integrating officer feedback on the training program. To do so, the Division has designed an effective evaluation form to be completed by each officer at the conclusion of the in-class training. The resulting evaluation survey, created by the Training Section with some assistance from the Monitoring Team, allows for officers' feedback to be incorporated to improve or adjust the training curriculum to ensure maximum effectiveness and value.

The Monitoring Team has approved the use of force curriculum and submitted it to the Court.[91] Given the critical importance of the Use of Force Training, members of the Monitoring Team will attend training sessions throughout the implementation of force training initiative to ensure that the training is of the quality that all stakeholders expect. The Team looks

[90] Jane Wakefield, "How to Avoid 'Death by PowerPoint," BBC.com (Dec. 18, 2015), http://www.bbc.com/news/technology-35038429.

[91] Dkt. 130.

forward to updating the Court on training as it is implemented over the next several months.

Presuming that the Use of Force Training is completed in early Fall 2017, the Consent-Decree-required and Court-approved use of force policy will be implemented in the field – such that officer performance will be evaluated in light of adherence to the new use of force policies – as of January 1, 2018, consistent with the Court's previous order.[92]

C. Use of Force Reporting, Investigations, & Review

Paragraph	Compliance Status
87. "CDP will develop and implement a single, uniform reporting system pursuant to a Use of Force reporting policy" that complies with the force Level categorization set forth in the paragraph.	PARTIAL COMPLIANCE
88. Requiring "[a]ll officers using or observing force" to complete a Use of Force Report including a number of specific features and avoiding "conclusory statements, 'boilerplate', or 'canned' language."	PARTIAL COMPLIANCE
89. "Officers will be subject to the disciplinary process for material omissions or misrepresentations in their Use of Force Reports."	PARTIAL COMPLIANCE
90. "Officers who use or observe force and fail to report it will be subject to the disciplinary process, up to and including termination, regardless of whether the force was reasonable."	PARTIAL COMPLIANCE
91. Requirement no "notify . . . supervisors . . . as soon as practical following any use of force" and if becoming aware of "an allegation of unreasonable or unreported force by another officer."	PARTIAL COMPLIANCE
92. "Use of Force Reports will be maintained centrally."	PARTIAL COMPLIANCE
93. "A supervisor who was involved in a use of force, including by participating in or ordering the force under investigation, will not investigate the incident or review the Use of Force Reports for approval or disapproval."	NON-COMPLIANCE
94. Setting specific requirements relating to the investigation of low-level, Level 1 force.	NON-COMPLIANCE
95–109. Setting specific requirements relating to the investigation by supervisors and/or CDP chain of command for investigation and review of Level 2 force.	NON-COMPLIANCE
110. "CDP may refer criminal investigations of uses of force to an independent and highly competent agency outside CDP."	EVALUATION DEFERRED
111. Creation and design of dedicated Force Investigation Team (FIT) that "will conduct administrative investigations . . . and criminal investigations" of serious force, "force involving potential criminal conduct," in-custody deaths, and cases assigned to it by the Chief.	NON-COMPLIANCE
112. Composition of FIT Team.	NON-COMPLIANCE
113. "FIT members will receive FIT-specific training that is adequate in quality, quantity, scope, and type" on a host of specific, expressly-listed topics both initially and annually thereafter.	NON-COMPLIANCE
114. "CDP will identify, assign, and train personnel for the FIT to fulfill the requirements of this Agreement."	NON-COMPLIANCE
115. Response of FIT to use of force scenes. FIT notification of prosecutor's office. Notification of designated outside agency to conduct criminal investigation if City elects to use external agency for such investigations.	PARTIAL COMPLIANCE
116. "CDP will develop and implement polices to ensure that, where an outside agency conducts the criminal investigation, FIT conducts a concurrent and thorough administrative investigation."	NON-COMPLIANCE
117. Memorandum of understanding required between CDP and outside agency containing specific, expressly-listed provisions.	NON-COMPLIANCE
118. Setting forth various, specific, and expressly-listed responsibilities of FIT during its investigations.	NON-C OMPLIANCE
119. Monitor's duty to annually review any "criminal investigations conducted by the outside agency" to ensure that they "are consistently objective, timely, and comprehensive."	EVALUATION DEFERRED
120. Providing for delay of compelled interview if "case has the potential to proceed criminally" but otherwise requiring that "[n]o other part of the investigation . . . be held in abeyance" unless "specifically authorized by the Chief" in consultation with investigating agency and prosecutor's office.	NON-COMPLIANCE
121. Requiring completion of preliminary report presented to Chief or Chief's designee "as soon as possible, but absent exigent circumstances, no later than 24 hours after learning of the use of force."	NON-COMPLIANCE
122. Completion of investigation within 60 days. Preparation of FIT investigation report. Review of FIT investigative report by head of Internal Affairs who "will approve or disapprove FIT's recommendations, or request . . . additional investigation."	NON-COMPLIANCE
123. Revision of FIT manual to ensure "consisten[cy] with the force principles" and several specific, expressly-listed provisions.	NON-COMPLIANCE
124–30. Establishment and operation of Force Review Board "to serve as a quality control mechanism for uses of force and force investigations, and to appraise use of force incidents from a tactics, training, policy, and agency improvement perspective."	NON-COMPLIANCE

Just as officers must have clear expectations set forth in policy on when to use and not use force, the Division must have clear processes and procedures for the administrative investigation and review of force incidents.[93] The Monitoring Team's prior reports have described that "[m]uch of the public feedback regarding the policies on when officers may and may not use force

[92] Dkt. 101 ("The new policies will become effective upon the Cleveland Division of Police's successful completion of Use of Force Training.").

[93] First Semiannual Report at 36–37; Dkt. 97 at 35–36.

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 force administered by CDP officers are, after being promptly and uniformly reported, meaningfully examined and reviewed."[94]

The Court-approved Second-Year Monitoring Plan anticipates that finalized policies and manuals relating to the investigation of force incidents will be presented to the Court by July 31, 2017.[95] As the Second Semiannual Report forecast:

> 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.[96]

Shortly thereafter, and not later than September 20, 2017,[97] policies and a procedural manual are to be finalized 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."[98] FRB must also "asses the quality of the investigations it reviews, including whether investigations are objective and comprehensive and recommendations are supported by a preponderance of the evidence."[99] It will "examine . . . data related to use of force . . . to detect any patterns, trends, and training deficiencies . . . . "[100] "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 CDP policies and the Consent Decree."[101]

The City and CDP have indicated their full commitment to ensuring the full and comprehensive implementation of new structures and processes for reviewing the use of force so that it aligns with the requirements of the Consent Decree and builds from the insights, best practices, and lessons learned from other jurisdictions that have previously implemented force review boards and other similar mechanisms.[102] Consequently, by the end of 2017, it is anticipated that CDP will at least have in place the policies, procedures, and mechanisms that will allow it to comprehensively analyze the application of force so that officer training, professional development, and risk management may all be continually enhanced.

[94] Dkt. 97 at 35–36.

[95] Dkt. 120-1 at 5–6.

[96] Dkt. 97 at 36.

[97] Dkt. 120-1 at 6–7.

[98] Dkt. 7-1 ¶ 124.

[99] Dkt. 7-1 ¶ 128.

[100] Dkt. 7-1 ¶ 129.

[101] Dkt. 97 at 36.

[102] *See, e.g.*, District of Columbia Metropolitan Police, General Orders, Use of Force Review Board (Mar. 30, 2016), *available at* https://go.mpdconline.com/GO/GO_901_09.pdf; New Orleans Police Department Operations Manual, Chapter 1.3.7, Use of Force Review Board (Dec. 6, 2015), *available at* http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-7-Use-of-Force-Review-Board.pdf/; Philadelphia Police Department, Directive 10.4, Use of Force Review Board (UFRB) (Sep. 18, 2015), *available at* https://www.phillypolice.com/assets/directives/PPD-Directive-10.4.pdf.

CRISIS INTERVENTION

Paragraph	Compliance Status
131. "CDP will build upon and improve its Crisis Intervention Program" in furtherance of four specific, expressly-listed goals, which "will provide a forum for effective problem solving regarding the interaction between the criminal justice and mental health system and create a context for sustainable change."	PARTIAL COMPLIANCE
132. Establishment of Mental Health Response Advisory Committee (the "Advisory Committee") "to foster relationships and build support between the police, community, and mental health providers and to help identify problems and develop solutions designed to improve outcomes for individuals in crisis."	OPERATIONAL COMPLIANCE
133. Composition of Advisory Committee.	OPERATIONAL COMPLIANCE
134. "The Advisory Committee will meet regularly and provide guidance to assist CDP in improving, expanding, and sustaining its Crisis Intervention Program."	OPERATIONAL COMPLIANCE
135. Advisory Committee will conduct an annual "analysis of crisis intervention incidents to determine whether CDP has enough specialized CIT officers, whether it is deploying those officers effectively, and whether specialized CIT officers" and communications "are appropriately responding to people in crisis," and will also "recommend appropriate changes."	NON-COMPLIANCE
136. "The Advisory Committee's reports and recommendations will be provided" to CPC, "be publicly available, and will be posted on the City's website."	PARTIAL COMPLIANCE
137. CDP will designate a Crisis Intervention Coordinator for specific, expressly-identified purposes.	OPERATIONAL COMPLIANCE
138. "Coordinator will develop and maintain partnerships with program stakeholders and serve as point of contact" and "resource" for other stakeholders.	OPERATIONAL COMPLIANCE
139. "Coordinator will participate in the Advisory Committee and on a regular basis solicit feedback from the mental health community and specialized CIT officers, call-takers, and dispatchers regarding the efficacy of CDP's Crisis Intervention Program."	PARTIAL COMPLIANCE
140. "Coordinator will be responsible for coordinating implementation of the changes and recommendations made by the Advisory Committee, as appropriate."	PARTIAL COMPLIANCE
141. "Coordinator will be responsible for ensuring the selection of appropriate candidates for designation as specialized CIT officers" and "to ensure that officers, call-takers, and dispatchers are appropriately responding to CIT-related calls."	NON-COMPLIANCE
142. "Coordinator will create ways to recognize and honor specialized CIT officers, call-takers, and dispatchers."	NON-COMPLIANCE

The Department of Justice's 2014 investigation found that "officers use excessive force against individuals who are in mental health crisis" in large part because the Division's crisis intervention policies were underdeveloped."[103] This finding led to the Consent Decree requirements aimed at building and improving the Cleveland Police Division's Crisis Intervention Program.[104]

A building block for change in the Division's crisis intervention program was the requirement to develop 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.[105]

The Consent Decree indicates that the CDP 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
- Reducing the need for individuals with mental illness to have further involvement with the criminal justice system.[106]

During the past 12 months, the Cleveland community has continued to meet the challenge of providing an effective forum to

[103] 2014 Findings Letter at 4, 52.

[104] Second Semiannual Report at 38.

[105] *See generally* Dkt. 7-1 ¶¶ 131-59.

[106] *Id.* ¶ 131.

address problems regarding the interaction between the criminal justice and the mental health care system. This forum, the Mental Health Response Advisory Committee ("MHRAC") has the tackled the process needed to create sustainable change. Police, social service providers, mental health and substance abuse professionals, advocates and individuals in recovery continue to meet and have made progress on how to improve services for those in crisis. The work of the MHRAC does not only have a positive impact on the CDP crisis response program, but there has also been 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.[107]

The collaboration and partnership among the Division and the community-based Mental Health Response Advisory Committee continues to help the Cleveland community better meet the needs of individuals experiencing a behavioral crisis.

The recent six-month period that this report addresses has seen the successful completion of a major step in improving the Division's capacity to respond to individuals in crisis. A new CDP crisis intervention policy[108] was developed in cooperation with the Mental Health Response Advisory Committee. The Court has approved this policy.[109] The cooperative relationship established between advocates, healthcare professionals and CDP 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. As a result, the policy presents a new comprehensive strategy for responding to individuals in a behavioral crisis.

A. Background Information[110]

1. First Semiannual Monitoring Period

During the initial phase of the Consent Decree, several key tasks were accomplished that included forming the Mental Health Response Advisory Committee, completion of a needs assessment and work plan, as well as focusing on appointing a CDP Crisis Intervention Coordinator. The City of Cleveland and CDP, through a subcontract with the ADAMHS Board established the Advisory Committee, complete with six standing sub-committees (Executive, Policy, Data, Training, Community Engagement, and Diversion). All of the MHRAC committees have been active and have done a good job of working with CDP to accomplish the tasks of the Consent Decree.

The needs assessment was developed through a series of three community meetings co-hosted with the National Alliance on Mental Illness, an extensive internet survey which included a Spanish language version and focus groups with CDP officers. A work plan was developed at the MHRAC annual retreat and provided an interface with the Monitoring Team's First-Year Monitoring Plan to help organize the tasks. The Second-Year work plan will be completed at this year's MHRAC annual retreat and again will provide a detailed task list to interface with the Second-Year Monitoring Plan.[111] The Division moved quickly to appoint a CDP Crisis Intervention Coordinator, identifying three qualified candidates and selecting Captain James Purcell for the position.[112] Captain Purcell has been praised for his contributions and active participation. His opinions have been respected by CDP leadership, and he reports directly to Deputy Chief Joellen O'Neill who is an active participant with the MHRAC. Captain Purcell has been appointed to serve as co-chair of the MHRAC.

2. Revising CDP Crisis Intervention Policies and Procedures

The second six months of Consent Decree implementation had a primary focus on crisis intervention policy development. The cooperative relationship established between advocates, healthcare professionals, and CDP 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.

The initial work of the MHRAC Policy Subcommittee was guided by a desire to advance respect and safety between CDP and citizens, diverting citizens in crisis from the criminal justice system where possible, advancing best practice tactics and reducing unnecessary use of force and managing the stigma associated with mental illness and addiction. The MHRAC Policy Subcommittee used results from the community and officer needs assessment meetings to guide them in developing a new CDP Crisis Intervention policy. As a result, the new policy presented a comprehensive strategy for responding to individuals in a behavioral crisis. This policy document was presented at several community forums where citizens provided detailed feedback. This impressive process deserves additional attention and will be discussed later in this document in the Current Implementation Status section.

3. Crisis Intervention Data

The Consent Decree agreement requires that CDP track calls and incidents that involve individuals in crisis, collecting detailed data[113] Data will be reported annually and used to identify training needs, trends, successful individual officer performance,

[107] Second Semiannual Report at 36.

[108] Dkt. 103.

[109] Dkt. 115.

[110] Some of elements of this section are summarized from the Monitoring Team's First (June 2016) and Second (January 2017) Semiannual Reports of the Monitor.

[111] Dkt. 120.

[112] First Semiannual Report at 39-41.

[113] Dkt. 7-1 ¶ 157.

necessary changes in strategies, and systemic issues related to crisis intervention response.[114]

An original CDP/ADAMHS Board data instrument, commonly referred to as the "stat sheet" collected some basic information about crisis intervention incidents. However, both CDP and the ADAMHS Board became aware of the low completion rates. As a result, CDP and the ADAMHS Board have identified that the data collection will need to be improved. However, major changes in the data collection process require that 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.[115]

The policy work has been completed which paves the way for improved data collection strategies. However, planning work is underway to integrate the crisis intervention collection process with improvements in the CDP overall reporting process. Success in implementing the technology should improve the overall completion rate while reducing the workload for the officers. As discussed in the First Semi-Annual Report, the Monitoring Team has confidence that waiting to finalize data forms will produce effective, lasting, and more efficient reform.

4. Crisis Intervention Training

The Consent Decree requires several types of training related to crisis intervention. First, all officers must receive eight hours of annual training on crisis intervention issues. Second, new recruits must receive 16 hours of training in the Academy on crisis issues. Third, CDP dispatchers and call-takers must receive appropriate training on identifying signs of behavioral crisis. Fourth, CDP must provide 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.

By October 2017, all CPD officers will have received eight hours of foundational training on crisis intervention issues – with more to come in subsequent years.

The first year of annual training for all officers will focus on the new CDP Crisis Intervention Policies, Mental Health Signs and Symptoms, Communication and Active Listening, and the Command and Control Paradox. The intent of the training is to teach officers, whether for the first time or as a refresher, to understand that an individual is experiencing a behavioral crisis and help the officer find the most efficient method of resolving the conflict. MHRAC 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. The annual training is part of a five-year plan and important specialized topics will be covered as the training progresses. The curriculum has been reviewed by a joint task force of CDP training instructors and volunteer subject matter experts. The revision of the annual training curriculum has been well received and will be covered in the Current Implementation Status section.

The Ohio Peace Officer Training Commission has a crisis intervention training curriculum for Ohio Peace Officers.[116] This curriculum is required as part of the Academy training. All parties agree that the new recruit training is a reasonable substitute for 16 Hours of Academy Training. The new model of CIT has a significant role for CDP dispatchers.

The proposed dispatcher training will include: information about the crisis intervention policy and the role of the dispatcher and a general introduction to mental health, disabilities and addiction. Additional training topics will include legal issues along with a focus on critical elements in communication and practice scenarios. The dispatch training has been developed into a basic outline, and the curriculum will be completed after the annual officer training is underway.

The MHRAC Training Subcommittee recommended the Specialized CIT Officer Training include a faculty of providers/experts in the field and experienced CIT officers, and the inclusion of families and individuals in recovery from serious mental illness. The coursework should include basic mental health topics that focus on adult and children and the inclusion of lectures on autism, developmental disabilities, elder care, trauma-related care, and cultural competency. Additional recommendations include expanded work on intensive de-escalation tactics, in-person site visits to include St. Vincent Medical Center Emergency Services, homeless services and Veterans' Affairs, more time for question and answer sessions, and a maximum class size of 30 CIT participants.[117] 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.

5. Selection of CIT Officers

Paragraph	Compliance Status
145. "CDP will provide enhanced specialized training in responding to individuals in crisis to certain officers ('specialized CIT officers')," who will be "called upon to respond to incidents or calls involving individuals in crisis."	NON-COMPLIANCE

[114] *Id.* ¶¶ 157–58.

[115] First Semiannual Report at 42.

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

[117] First Semiannual Report at 42-3.

146–47. Outlining various requirements for the "enhanced training" for specialized CIT officers of "at least 40 hours."	NON-COMPLIANCE
148. Designation of specialized CIT officers, per specific, expressly-listed requirements.	NON-COMPLIANCE
149. "Supervisors will identify and encourage qualified officers across all shifts and all Districts to serve as specialized officers."	NON-COMPLIANCE
150. "All Field Training Officers" ("FTO"s) "will receive the enhanced specialized crisis intervention training described in paragraph 146," though FTOs will "not be designated as a specialized CIT officer" unless they volunteer and have been selected to do so.	NON-COMPLIANCE
151. "Specialized CIT officers who are dispatched to an incident involving an individual in crisis will have primary responsibility for the scene," with supervisors "seek[ing] the input of a specialized CIT officer . . . where it is reasonable for them to do so."	NON-COMPLIANCE
152. "[T]he Coordinator will develop an effective specialized crisis intervention plan . . . to ensure that a specialized CIT officer is available to respond to all calls and incidents that appear to involve an individual in crisis" that includes various, specific, expressly-identified requirements. The City "will use its best efforts to ensure that a specialized CIT officer responds to all calls and incidents that appear to involve an individual in crisis."	NON-COMPLIANCE

CDP is taking the lead on developing a selection process for officers and completing the formal selection process as part of the Second-Year Monitoring Plan. The selection process requires that specialized CIT officers must volunteer for the role, have three years of CDP 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. The Monitoring Team will work with CDP, the City, the Department of Justice, and MHRAC to review the strategy for CIT officer selection.

B. Current Implementation Status

1. Revised Crisis Intervention Policy

Paragraph	Compliance Status
153. City "will consider" crisis intervention program assessment by Ohio Criminal Justice Coordinating Center of Excellence.	PARTIAL COMPLIANCE
154. CDP "will revise its policies to make clear that a crisis intervention response may be necessary even in situations where there has been an apparent law violation."	PARTIAL COMPLIANCE
155. CDP "will revise its current crisis intervention policy to ensure that specialized CIT officers have appropriate discretion to direct individuals . . . to the health care system, rather than the judicial system . . . where it is appropriate to do so."	PARTIAL COMPLIANCE
156. CDP policies and procedures will ensure that "specialized CIT officers . . . must be dispatched to all calls or incidents that appear to involve an individual in crisis." CDP must "track incident in which a specialized officer was not dispatched to such calls" and "identify any barriers" to ensuring dispatch of specialized CIT officer to such calls.	PARTIAL COMPLIANCE
157. "CDP will track calls and incidents involving individuals in crisis by gathering, at a minimum," specific, expressly-identified data.	PARTIAL COMPLIANCE
158. Public reporting of paragraph 157 data and provision to Advisory Committee.	PARTIAL COMPLIANCE
159. "CDP will utilize" paragraph 157 data "to identify training needs and develop case studies and teaching scenarios" for training and other expressly-identified systemic purposes.	NON-COMPLIANCE

The Division and the MHRAC Policy Subcommittee went beyond what was required by the Consent Decree in establishing a best practice for crisis intervention.[118] The extra effort applies not only to the final policy document, but also to the process of obtaining meaningful community input. The policy covers a wide range of topics that go beyond the Consent Decree in order to provide important crisis intervention services to the community. It consists of three interrelated sections: definitions, a crisis intervention program description and guidelines for officers' response to a crisis event.[119]

Although the community-based Advisory Committee is required by the Consent Decree, the MHRAC has been written directly into CDP policy. The MHRAC is given defined roles and responsibilities in the policy program document. The policy also emphasizes coordination with community resources to assist those in need, and calls on officers to contact community resources for both adults and youth. Additionally, the policy addresses the needs of youth, providing special guidance for officers interacting with them. These are just a few of the issues that are addressed in the revised policy that go beyond the specific requirements of the Consent Decree.

CDP and the MHRAC approached the community feedback forums in a sophisticated and caring manner. Community members were briefed on the policy. Skilled facilitators helped with small group feedback so that all community members had a chance to discuss their reactions to the new policy. The community attendance was very good, and members of Cleveland media were present at both sessions. Chief Williams, Deputy Chief O'Neill, and the CDP's CIT coordinator attended the sessions. The CEO of the ADAMHS Board and key ADAMHS executive staff also attended the sessions along with the chairs and members of the MHRAC Policy Subcommittee. The Department of Justice had representatives from Cleveland and Washington in attendance and a number of members of the Monitoring team both from Cleveland and from other states were present at each session. The process was

[118] Some parts of this section are summarized from Dkt. 103.

[119] For a detailed breakdown of policy elements, see the Monitoring Team's Second Semiannual Report at 38.

remarkable not only for its transparency, but also for the atmosphere of community pride that was apparent at each meeting.

The community feedback was tracked systematically. The subcommittee reviewed each recommendation and met to discuss the crisis intervention policy in light of the community comments. The community feedback at public forums led to further substantive changes in the policy. The revisions included a greater emphasis on the concept of respect and dignity, a focus on the importance of building relationships with community and local neighborhoods, specific suggestions related to the role of culture, the need for a marker to improve the community's recognition of CIT Officers, specific guidance around transportation of non-violent individuals in crisis, a juvenile-specific section in the Crisis Intervention Response Policy, and guidance for the officer for responding to children who are witnesses to an event when police respond to individuals in crisis. After these revisions were made by the Policy Subcommittee, a final draft was sent to the Monitor for submission to the court in January 2017. Community participation in the development of CDP policy was always a goal of the Consent Decree, but the Mental Health Response Advisory Committee and the CDP deserve special recognition for the way in which they successfully engaged the citizens of Cleveland.

The Division's new crisis intervention policies and training, which were both the product of substantial community participation and input, are among the best that the Monitoring Team has ever seen.

2. Crisis Intervention Training

Paragraph	Compliance Status
143. "CDP will provide training on responding to individuals in crisis to all of its officers and recruits," including "at least eight hours of initial training" and "annual in-service training thereafter," that "will be adequate in quality, quantity, type, and scope."	PARTIAL COMPLIANCE
144. Initial and annual training for "CDP call-takers, dispatchers, and their supervisors" on specific, expressly-identified crisis intervention topics.	NON-COMPLIANCE

As outlined above, the Consent Decree requires several types of training related to crisis intervention. First, all officers must receive eight hours of annual training on crisis intervention issues. Second, new recruits must receive 16 hours of training in the Academy on crisis issues. Third, CDP dispatchers and call-takers must receive appropriate training on identifying signs of behavioral crisis. Fourth, CDP must provide 40 hours of enhanced training to designated, specialized CIT officers who will be specifically dispatched to the scene of incidents involving individuals experiencing a behavioral crisis.

The primary focus of the MHRAC Training Subcommittee and CDP has been the first year of annual training of all CDP officers. This training will focus on the new CDP Crisis Intervention Policy, Mental Health Signs and Symptoms, Communication and Active Listening, and the Command and Control Paradox. The 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. The annual training is part of a five-year plan, and important specialized topics will be covered as the training progresses.

The final draft of the eight-hour training represents a product that has been through several stages of development. The curriculum is the first of five yearly trainings in crisis intervention that are part of the Consent Decree. In order to develop this first eight-hour training curriculum, the MHRAC first formed a Training Subcommittee, which consists of CDP representatives, mental health professionals, advocates, those recovering from mental illness and substance abuse, additional law enforcement expertise, as well as representation from the Department of Justice and the Monitoring Team. The Training Subcommittee set a goal of using the eight-hour training for all officers to address the topics presented in the new Ohio Peace Officers Standards.

The initial product of the Training Subcommittee was an outline of topics for the CDP eight-hour training. This outline went through extensive review and feedback. The feedback led to a more limited but more realistic set of topics for the first eight hours of training. This limited set of topics was developed with the understanding that additional topics would be covered in future eight-hour blocks of training. The feedback led to a series of drafts resulting in an impressive and detailed product. The current curriculum consists of three documents. There are also a series of well-done PowerPoint slides, a set of overall learning objectives and an instructor's manual with a slide-by-slide discussion of the material.

This finalized eight-hour training is an impressive product that resulted from significant work and collaboration between CDP and the community. The members of the Training Subcommittee and the task force of individuals who worked on particular subjects deserve a great deal of credit for this product. Kyle Miller of the Sisters of Charity Health System provided the initial leadership for the committee. As the project moved forward, Dr. Richard Cirillo of the Cuyahoga County Board of Developmental Disabilities and CDP Captain James Purcell provided leadership and a great deal of work. Mike Woody of the Ohio Criminal Justice Coordinating Center for Excellence provided assistance in de-escalation training. Throughout the process the U.S. Attorney's Office of the Northern District of Ohio, with Heather Tonsing Volosin as team leader, provided ongoing support and feedback for the effort. Additionally, the ADAMHS of Cuyahoga County led by Scott Osiecki and Carole Ballard provided key agency support for the effort. The work on the training curriculum has clearly been a community effort.

The CDP is planning to have five training modules for all officers and additional topics will be covered in the remaining four modules. This curriculum has done a good job of covering a set of important topics in a manner that is consistent with adult learning strategies with an emphasis on the practical application of knowledge to the officers' daily patrol responsibilities.

The Monitoring Team has recommended approval of the curriculum, which is pending before the Court.[120] Along with the officer use of force training, the crisis intervention training is a critical component of the Consent Decree. Accordingly, the Monitoring Team and DOJ will be attending and auditing the crisis intervention training as it takes place through October 2017 to ensure that its quality is consistent with the strong curriculum that the Division and MHRAC have constructed.

C. Conclusion & Next Steps

CDP and the Cleveland community continue to make important progress in assisting individuals in crisis while maintaining the safety of officers, individuals with mental illness, family members and other citizens. The MHRAC has become a forum for change. A Crisis Intervention Policy has been approved that was developed in partnership with the MHRAC and its volunteer members and reflects meaningful community input. This policy and the process involved in gaining community feedback goes beyond what is required in the Consent Decree. The extra effort demonstrates that the process of community engagement was undertaken in good faith.

The newly developed eight-hour training curriculum for all officers reflects a similar level of accomplishment. In the training effort, CDP has been receptive to the expertise of community experts who have volunteered their time to assist with training and curriculum development. The curriculum has undergone several iterations, and a sense of pride in the work is warranted. As with the policy work, the training curriculum for all officers reflects an important step in community engagement in which mental health and substance abuse professionals have stepped up and provided assistance to their city's police department.

This foundation of cooperation, collaboration, and community involvement creates a sense of optimism for future challenges facing individuals struggling with mental illness and substance abuse.

[120] Dkt. 129.

SEARCH & **SEIZURE**

Paragraph	Compliance Status
160. "CDP will revise, develop, and implement search and seizure policies that comply with applicable law, . . . include the requirements below," and conform to expressly-identified principles.	NON-COMPLIANCE
161-65. Policy requirements for officers for stops, searches, and detentions.	NON-COMPLIANCE
166. "Officers will immediately notify a supervisor when effectuating a custodial arrest for obstructing official business, resisting arrest, or assault an officer and no other substantive violation is alleged," and "the supervisor will respond to the scene."	NON-COMPLIANCE
167. "Officers will not used 'canned' or conclusory language without supporting detail in documents or reports documenting investigatory stops, searches, or arrests."	NON-COMPLIANCE
168. "Officers will articulate the justification for an investigatory stop, search, or arrest in a specific and clear manner in their reports." CDP "will train officers" on documenting stops. "Supervisors will review all documentation of investigatory stops, searches, and arrests."	NON-COMPLIANCE
169. Supervisor will review of "each arrest report by officers under their command," with supervisors reviewing reports for specific, expressly-identified deficiencies.	NON-COMPLIANCE
170-72. Supervisory review of investigatory stops, searches, and arrests.	NON-COMPLIANCE
173. Provision of "initial training that is adequate in quality, quantity, scope, and type on investigatory stops, searches, and arrests, including the requirements" of the Consent Decree that "will address the requirements of Fourth Amendment and related law, CDP policies," and specific, expressly-identified topics.	NON-COMPLIANCE
174-75. Provision of "annual search and seizure in-service training that is adequate in quality, quantity, type, and scope" incorporating specific, expressly-identified topics.	NON-COMPLIANCE

The Consent Decree requires that CDP "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."[121] As the Monitoring Team has previously summarized, those revised policies will expressly prohibit officers 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.[122]

Additionally, "[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 CDP, which does not currently log all such stop activity.[123] Because CDP is ensuring that all patrol cars are outfitted with in-car computers, the Division still has some distance to travel to ensuring that the basic foundations are in place to allow information on stops to be captured electronically – which is necessary to avoid the "risk [of] overburdening officers with yet more time-consuming, manual processes."[124]

The First Semiannual Report indicated 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."[125] The Court-approved Second-Year Monitoring Plan positions the timetable for working on policies relating to stops, searches, and seizures as between September 2017 and March 2018 – which includes time for substantial community engagement and involvement. This is consistent with the Parties' and Monitoring Team's recognition that this timeframe "allows reform in this area to happen within a broader context of actively implementing community-based performance metrics and a comprehensive community policing model."[126]

[121] Dkt. 7-1 ¶ 160.

[122] *Id.* ¶ 161; Dkt. 97 at 42.

[123] First Semiannual Report at 44.

[124] Dkt. 97 at 42.

[125] First Semiannual Report at 44.

[126] *Id.*

ACCOUNTABILITY

Paragraph	Compliance Status
176. "The City and CDP will ensure that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process."	NON-COMPLIANCE

As indicated in the Monitor's prior reports, the Consent Decree indicates that, to further the goals of effective, safe, and constitutional policing consistent with the values of the community, the City will, among other things, "provide clear guidance to officers; [and] increase accountability . . . "[127] This commitment to expanded accountability is reinforced in the City and CDP's commitment in the Consent Decree to:

> [E]nsur[ing] that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, and provides due process.[128]

To achieve these outcomes, the City is expected to reform its internal investigation and civilian oversight mechanisms by ensuring appropriate resourcing for these programs, and through the creation and implementation of plans for backlog reduction, cooperation between these mechanisms, public outreach and training.[129]

This section summarizes CDP's progress toward complying with the Decree's provisions related to accountability, including Internal Affairs ("IA"), the Office of Professional Standards ("OPS"), and the Citizen Police Review Board ("CPRB").

As the Monitoring Team has previously summarized,[130] in Cleveland, the entity that investigates alleged misconduct depends on how the allegation came to the City's attention. If an individual outside the Division makes a complaint about employee conduct, OPS investigates the complaint. If a Division employee identifies, discovers, or makes a complaint about employee misconduct, the Division itself conducts the investigation through its IA unit or by other elements within the Division.

In the Consent Decree, the City agreed that it "will ensure that all allegations of officer[131] 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."[132] Thus, the day-to-day operations of all the oversight mechanisms – IA, OPS and CPRB – must be sound, rigorous, and objective.

A. Internally Discovered Misconduct

Paragraph	Compliance Status
177. "Internal Affairs will conduct objective, comprehensive, and timely investigations of all internal allegations," with "findings . . . based on the preponderance of the evidence standard" that must "be clearly delineated in policies, training, and procedures and accompanied by detailed examples to ensure proper application by investigators."	NON-COMPLIANCE
178. "Internal Affairs will be headed by a qualified civilian" who "will report directly to the Chief of Police.	NON-COMPLIANCE
179. Qualifications for IA investigators.	NON-COMPLIANCE

127 Dkt. 97 at 45.

128 Dkt. 7-1 ¶196.

129 *Id.* ¶¶ 176–278.

130 Dkt. 97 at 43.

131 This requirement pertains to all employees within the Division, not just sworn law enforcement officers.

132 Dkt. 7-1 ¶ 176.

180. Initial training for IA investigators "that is adequate in quality, quantity, scope, and type on conducting misconduct investigations" that addresses specific, expressly-identified topics.	NON-COMPLIANCE
181. "[A]nnual training" for IA investigators "that is adequate in quality, quantity, type and scope"	NON-COMPLIANCE
182. "In each investigation, Internal Affairs will collect and consider" all evidence. "[N]o automatic preference for an officer's statement over a non-officer's statement." No disregard of a "witnesses' statement solely because of" connection to the complainant or criminal history. IA investigators must "make all reasonable efforts to resolve material inconsistencies between witness statements."	NON-COMPLIANCE
183. IA "will evaluate all relevant police activity and any evidence of potential misconduct uncovered during the course of the investigation."	NON-COMPLIANCE
184. IA will not consider guilty plea or verdict as "determinative of whether a CDP officer engaged in misconduct" or justification for "discontinuing the investigation."	NON-COMPLIANCE
185. IA "will complete its administrative investigations within 30 days from the date it learns of the alleged misconduct."	NON-COMPLIANCE
186–87. IA investigative report requirements.	NON-COMPLIANCE
188. Forwarding of completed IA investigations "to the officers' supervisors, the Training Review Committee, the Force Review Board, the Officer Intervention Program, and the Data Collection and Analysis Coordinator."	NON-COMPLIANCE
189. "CDP will require any CDP employee who observes or becomes aware of any" potential misconduct to "report the incident to a supervisor or directly to" IA.	NON-COMPLIANCE
190. "CDP will develop a system that allows officers to confidentially an anonymously report potential misconduct by other officers."	NON-COMPLIANCE
191. "CDP will expressly prohibit all forms of retaliation, discouragement, intimidation, coercion, or adverse action, against any person, civilian or officer, who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct."	NON-COMPLIANCE
192. "Officers who retaliate . . . will be subject to the disciplinary process."	NON-COMPLIANCE

Internal Affairs is a generic term that refers to the entity within a police department with the responsibility to investigate employee misconduct.[133] The Monitor's prior Semiannual Reports summarized what a police department's Internal Affairs ("IA") does in a typical police department and what Cleveland's Internal Affairs Unit has done in the past.[134]

Within CDP, the Internal Affairs Unit has historically been responsible for conducting primarily criminal investigations of potential employee misconduct and investigating any incidents specifically directed to it by the Chief of Police. Generally, unless a non-criminal administrative investigation has been specifically referred to IA by the Chief of Police, the investigation would have been conducted either within the involved employee's chain of command or, with less frequency, by an element within IA known as the Inspections Unit. The Inspections Unit's primary task is to effectuate lower-level administrative compliance audits (such as uniform inspections, logbook audits, and the like).

The Department of Justice's 2014 investigation concluded that the CDP internal investigation structure did not "adequately investigate and hold officers accountable for misconduct."[135] In addition, the investigation concluded that the CDP's IA Unit did not conduct thorough and objective investigations of alleged officer misconduct.[136]

Consequently, the Consent Decree required a reformed Internal Affairs function that would have more robust requirements in the conduct of investigations and that would also serve as a primary engine for the Division's administrative (non-criminal) investigations as well as internal and citizen generated criminal investigations.

1. Analysis of Pre-Consent Decree IA Investigations

The Consent Decree requires CDP and the City to have in place both the mechanisms and defined policies pertaining to the investigation of misconduct that is discovered within the Department. As noted above, the entity within the CDP tasked with conducting administrative investigations of allegations of misconduct on the part of CDP is IA.

The Decree calls for CDP "allegations of officer misconduct" to be "fully, fairly, and efficiently investigated . . . ."[137] Pursuant to the Second-Year Monitoring Plan, the Monitoring Team has engaged in a methodologically-rigorous qualitative review of prior IA investigations, in order to gauge the depth and scope of the reforms that must be implemented with respect to IA.[138]

The Monitoring Team assessed the Division's IA investigations in light of the provisions of the Consent Decree and generally-accepted law enforcement practices, including but not limited to whether the investigations complied with the following:

- All allegations are clearly stated and clearly answered.
- All relevant facts bearing the truth of each allegation are clearly stated.
- All evidence (e.g. photos, recordings, etc.) is included or its means of retrieval specified.
- All evidence, to include testimony, is properly record-

[133] *See* Dkt. 97 at 43–44.

[134] First Semiannual Report at 45–56; Second Semiannual Report at 41–42.

[135] 2014 Findings Letter at 34.

[136] *Id.* at 35–36.

[137] Dkt. 7-1 ¶ 176.

[138] Dkt. 120-1 at 31.

ed and preserved.

- Contact and identification for all persons interviewed and for the investigator(s) is included.
- The report is impartial, with no bias for or against any party.
- The report is logically organized with the aim of helping the reader to understand it.
- The report language is clear, and where special terms are used, they are defined. The reader should not have to presume or guess the meaning of a term.
- The report avoids conclusory statements wherever possible.
- Sentences and paragraphs are direct, simple, and easy to understand, using the fewest words to clearly convey the point.
- Estimates of time, distance, or other quantities should be as precise as reasonably useful, but need not be precise beyond that.
- Unless explicitly permitted by agency policy, personal opinions should be avoided. If they are permitted, they should include explicit evidence to support the opinion.[139]

The Monitoring Team's review commenced in the fall of 2016 and involved several members of the Monitoring Team with extensive experience in Internal Affairs and the investigation of citizen complaints.

Team members selected a statistically-significant, random sample[140] of IA cases from 2015, which included an intentional "oversample" of those cases involving use of force (n=45). The 45 cases involved the investigation of the conduct of some 64 total officers. Accordingly, the Monitoring Team reviewed a randomly-selected subset of IA cases from 2015 – a number large enough to ensure, within generally accepted levels of confidence within social science[141], that the subset was representative of the whole set of cases that occurred in that period. This "random-sampling approach is the best way to ensure that the selected sample represents the population" of all IA cases and investigations that occurred during the studied 2015 period "and that the findings in the sample" of reviewed IA investigations "can be generalized to the population" of all of the IA cases "from which the sample was obtained."[142]

The Team's reviewers used a structured qualitative assessment instrument, which was piloted and refined utilizing a review of five randomly-selected cases.

CDP provided the Monitoring Team with full IA files via a portable hard drive that included video, photos, and all written reports. Team members were divided into random pairs in order to review each investigative file – with the individual pairs varying from case to case.

The individual pairs also varied from time to time throughout the review process. Each individual team member separately conducted a rigorous review of the file and commented on each investigation using the assessment instrument. Where assessments differed between the two reviewers, the reviewers convened to attempt to reconcile differences. The Monitoring Team's final assessment constitutes either the consensus view of both members of the pair or, where no consensus could be reached, an average of the two reviewers' assessments. The assessments were completed in late March 2017.

In addition to assessing the quality of IA investigations across an array of specific features, Monitoring Team reviewers also assessed the quality of the investigation overall, on a value range of one through four (poor to very good):

> **1 (Poor)** – All aspects of the investigation could be improved. The investigation does not establish sufficient information to support an evidence-based evaluation of the incident due to investigative deficiencies, material omissions, or other issues.
>
> **2 (Fair)** – Several aspects of the investigation could be improved. Identified flaws materially impacted the quality of the overall investigation, and the resulting file provided insufficient information to evaluate the incident.
>
> **3 (Good)** – Although some aspects of the investigation could be improved, any identified flaws did not appear to materially impact the quality of the overall investigation, and the resulting file provided sufficient information to evaluate the incident.

[139] U.S. Department of Justice, Community Oriented Policing Services Office, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 36–37 (2008), *available at* http://www.parc.info/s/cops-p164-pub.pdf [*hereinafter* "Standards & Guidelines"].

[140] *See* Michael S. Lewis-Beck, et al, 3 *Sage Encyclopedia of Social Science Research Methods* 985, 986 (2004) ("Simple random sampling is often practical for a population of business records . . . . ").

[141] The Monitoring Team determined the sample size in order to ensure a 95 percent confidence interval. "A 95% confidence interval is an interval that is very likely to contain the true population mean" – meaning, roughly, that there is a 95 percent chance that, even if the Monitoring Team evaluated ***all*** IA cases from 2015 rather than a statistically-significant sample or subset of the 2015 cases, the results would be, statistically, the same. Sandra D. Schlotzhauer, *Elementary Statistics Using JMP* 184 (2007).

[142] Lemuel A. Moye, *Statistical Reasoning in Medicine: The Intuitive P-Value Primer* 30 (2006); *accord* Timothy C. Urden, *Statistics in Plain English* 48 (2001) ("[W]hen we do inferential statistics, we want to know something that we observe in a sample represents an actual phenomenon in the population.").

4 (Very Good) – The investigation complied with most CDP protocols and investigators made reasonable attempts to follow all leads and answer all material questions.

Of the 45 files reviewed, 44 percent of the investigations were rated as very good or good overall (11 percent as very good and 33 percent as good). However, a majority (53 percent) of investigations were determined to be of fair (33 percent) or poor (20 percent) quality. One file lacked any supporting materials whatsoever (3 percent).

As a threshold matter, the Monitoring Team concludes that there can be universal improvements with respect to the record keeping and the content of the files. Team reviewers found significant pieces of data missing from many investigative files and were unable to determine whether the files were transmitted with the data inadvertently not included, or whether the data ever existed. Consequently, reviewers could not properly assess cases involving use of force in 9/54 cases because of missing information.

A majority (56 percent) of largely pre-Consent Decree, 2015 Internal Affairs investigations were determined to be inadequate.

a. Context and Sources of Complaints

Investigations are more likely to result from on-duty performance. About 50 percent of reviewed cases resulted from on-duty activities, 25 percent from off-duty behavior, and six percent were related to extra duty assignments. In ten percent of instances, missing data made the context of the underlying incident not possible to be determined. In the remainder of cases, the context of the complaint was not clear.

The origins of complaint include an array of sources: arrestees, lawyers, family members, third parties, community activists, CDP employees, and others. Moreover, complaints may come to the Division's attention in a variety of ways; civil actions, phone calls, internet or social media, the Mayor's office, walk-ins, and various forms of written communication.

Our review of the investigative files indicates that it has been more likely that cases come from sources outside of the CDP (some 45 percent of cases) as opposed to the Division's internal sources (i.e. other members, supervisors, Chiefs office, etc.). However, given that a relatively large percentage (more than 10 percent) of cases did not have data regarding the actual source of the complaint, the Monitoring Team cannot draw definitive conclusions.

Nevertheless, the Monitor notes that, going forward under the Consent Decree, the origins and scope of IA cases will necessarily change – as internal complaints or allegations of potential officer misconduct, whether criminal or merely administrative in nature, will be investigated by IA.[143]

From the data that was present in the files examined, 27 percent of complainants were identified as Black/African American, 7 percent as White/Caucasian, less than 4 percent as Hispanic and the remaining as "Other." The lack of basic demographic data on the complaining or instigating party in 62 percent of cases is problematic. Similarly, the gender of 24 percent of the complainants was not recorded and is deemed either missing or unknown. Of instances where gender was recorded, a majority of the known complainants were women (41 percent).

None of the 64 investigations that the Monitoring Team reviewed required translation or language accommodation.

b. Processing of Complaints

The processing of a complaint or allegation, whether internal or external, typically involves receipt of the complaint, thorough and complete documentation of the complaint, proper classification of the complaint, and assignment to the appropriate investigatory body. Upon receipt of the complaint, a supervisory review is conducted to determine the type of allegation and the appropriate venue within the CDP to conduct further investigation.

Our review of the investigative files selected suggested that cases appear to have been reviewed and classified within 30 days of receipt. Complaints which initially contained alleged violations of criminal law (and thus were within IA's jurisdiction) but were declined for prosecution were half as likely to be completed in 30 days after receipt from the prosecutor's office.

In 59 percent of cases reviewed, all relevant General Police Orders – that is, the CDP policy provisions implicated by the nature of the specific allegations or complaint – were accurately listed in the case file materials.

Monitoring Team reviewers found sufficient evidence that there were sustained and reasonable efforts made to contact and interview witnesses in two-thirds (66 percent) of IA investigations. Likewise, in two-thirds of cases, those contact efforts and interviews were properly documented and logged.

The Monitoring Team could find few instances where there was sufficient documentation that all relevant information from a completed investigation was appropriately transmitted, securely and electronically, to the employee's supervisor (21 percent of

[143] Dkt. 7-1 ¶ 177 ("Internal Affairs will conduct objective, comprehensive, and timely investigations of all internal allegations of officer misconduct.").

cases), the Training Review Committee (0 percent of cases), the Force Review Board (0 percent of cases, as the Review Board does not yet exist), the Officer Intervention Program (0 percent of cases), or a central data repository (7 percent of cases). The Division will need to make efforts to ensure that these other, appropriate individuals and entities receive completed internal investigations to ensure appropriate oversight, accountability, officer wellness, and data collection.

c. Interviewing Witnesses

i. Civilian Witnesses

The manner in which a witness interview is conducted and preserved is an important aspect of the investigative process. It has been the Monitoring Team's experience that electronic recording of "the live, word-for-word statements of all interviewees, including accused employees, is the best way to avoid interpretive errors in recounting statements."[144]

The Monitoring Team's review of the selected files leads it to conclude that there is much room for improvement with complainant interviews. Of 14 instances in which interviews with civilian witnesses were problematic, five suggested inadequate questioning, two had inconsistencies that were not adequately addressed, four included relevant questions that were left unanswered during the interview, and three had concerns about the interviewer's demeanor. A number of other cases featured questioning by investigators that was incomplete to adequately cover the implicated facts, allegations, and standards. In 58 percent of cases where witnesses were interviewed, possible bias was noted – including questioning that suggested a preference for the officer or a disregard f the complainant based on his or her past criminal history or guilty plea. On the positive side of the ledger, in 80 percent of cases where audio or video files were available for review, investigators appropriately avoided leading questions.

ii. Barriers to Complaints

In nearly every Internal Affairs file stemming from a civilian's complaint about officer conduct, the Monitoring Team encountered two highly unusual documents that, indeed, no Team member can recall ever seeing in any number of other agencies. The first document is a form, with the header "City of Cleveland / Division of Police / Internal Affairs Unit," that reads as follows:

> <u>Advisement of Ohio Revised Code 2921.15 – Making false allegation of peace officer misconduct.</u>
>
> Effective March 22, 2001, anyone who knowingly files a complaint against a police officer, knowing that the allegations in the complaint are false, is committing the crime of making false allegation [sic] of peace officer misconduct. Per the Ohio Revised Code, this is a misdemeanor of the 1st degree, punishable by a maximum term of incarceration of six months, or a fine up to $1,000.00, or both.
>
> By signing this advisement, you are acknowledging that any and all allegations made today are true and accurate to the best of your knowledge.
>
> Do you understand this advisement?

Witnesses making complaints about officer conduct are required to indicate "yes" or "no" and to sign, print, and date their name, along with a witnessing officer.

The general practice of most police agencies is to avoid practices or representations that would tend to dissuade a civilian from participating in an interview or proceeding with a complaint:

> The public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear. Unless required by law, a complainant need not be under oath or penalty or perjury. Unless required by law, no threats or warnings of prosecution or potential prosecution for filing a false complaint should be made orally or in writing to a complainant or potential complainant.[145]

Although it is true that, in Ohio, anyone who *knowingly* makes a false allegation against a police officer is committing a misdemeanor, state law does not *require* that complainants be advised of this law, that they sign that they understand the law, take an oath, be advised of penalties, or the like.[146] Given the significant possibility that complainants might not fully understand that only making allegations that they affirmatively knew to be false might subject them to penalty, the risk of chilling the participation of legitimate complaints is likely too high. Likewise, the value of this signed waiver is of limited use during subsequent prosecution for such a false complaint, as it provides little of probative value in establishing the mental state of a complainant. Instead, it introduces the concept – early and strongly – that civilians participating in an internal investigation might face repercussions, ramifications, or even retaliation. Indeed, it is not clear if this form was or would be regularly provided to CDP employees bringing a specific, potentially criminal complaint to IA's attention – even though the provision of the Code applies to everyone, whether sworn, civilian employee, or civilian.

Because the costs outweigh the benefits, future CDP criminal investigations involving civilian complainants should eliminate

[144] Standards & Guidelines at 34.

[145] *Id.* at 17.

[146] Ohio Rev. Code § 2921.15.

the practice of providing the document advising complainants of the Ohio Revised Code; any other similar document; or verbal advisement, advice, or counsel to the complainant regarding any potential penalties with respect to reporting.

The second problematic document are variations of a form in which the complainant declines to pursue further prosecution. One variant is entitled "Cleveland Division of Police / Internal Affairs Unit – Withdraw Complaint Form." On this form, a complainant attests that "[w]ith reference to the above crime, I, [complainant name], now wish to withdraw my complaint, and desire that no further action be taken on my behalf by the Cleveland Division of Police on that matter." The complainant, as well as a witness officer, prints and signs his or her name and dates the document. Another similar form is called "Cleveland Division of Police / No Prosecution Form." On that form, the complainant indicates that "[w]ith reference to the above crime(s), I [complainant name] do NOT wish to prosecute [name of investigation subject] for the crime of [crime specified]. With my signature below, I affirm that no member of the Cleveland Division of Police influenced my decision to not prosecute the above named person for the above stated crime." This form appears to be a more generalized non-prosecution form that is used both in cases involving a CDP officer as a party and standard cases not involving a CDP officer.

Any forms or documentation on which a civilian complinant attests to hte intent and desire to not pursue a complaint or prosecution further should be made available only if a complainant affirmatively expresses a desire to drop the allegations or complaint.

These forms appear in the files regularly. In some instances, they are appropriate, with uncooperative complainants not wanting to sit for an interview being asked to sign the Withdraw Complaint or No Prosecution forms. In other instances, however, the issue of not pursuing the complaint or prosecution is raised during interviews of the civilian complainant. This is likely to have the effect of chilling participation by some complainants who believe that IA investigators, whether intending to do so or not, are coercing them into dropping their complaint. Consequently, the Monitoring Team recommends that going forward, in those more limited instances where IA is conducting a criminal investigation based on allegations made by a civilian (since OPS conducts administrative investigations of civilian complaints), any forms or documentation on which a civilian complainant attests to the intent and desire to not pursue a complaint or prosecution further be made available only if a complainant specifically asks for them or expressly and clearly indicates a desire to drop the allegations or complaint.

iii. Officer/CDP Interviews

Properly recording and preserving testimonial evidence is critical in the investigative process to avoid any interpretive error that may adversely impact the investigation. "All interviews should be recorded in their entirety. If breaks are taken a notation should be made on the recording, concerning the time that the break was taken, who requested it, and the time in which the interview resumed."[147]

In addition to properly preserving the testimony itself, recording the interview also allows for a memorialization of any procedural warnings or advisements that the accused employee may be given related to the compelled nature of their statement, the protection the employee is afforded as a result of being ordered to give a statement against their self-interest, and the consequences that could be faced if the employee refused to provide such a statement. Where applicable, there is case law that governs how such interviews are to be conducted and any protections the accused employee may derive as a result of those protections.

In three-quarters (76 percent) of total cases where CDP employees were listed as possible witnesses to an event related to the investigation, interviews of those employees were conducted in slightly more than one-third (38 percent) of cases. Where employee interviews took place, they were generally not audio-recorded or video-recorded – nor were the interviews transcribed. This lack of sufficiently-documented interviews of CDP officers and personnel substantially compromised the integrity and thoroughness of IA investigations.

d. Collection of Evidence

As with any investigation, how evidence is gathered, processed, and properly preserved is critical to bringing the investigation to a logical conclusion and successfully proving or disproving the allegations that prompted the investigation. Evidence typically presents itself in three ways: testimonial, physical, and forensic. Testimonial evidence consists of statements taken during the course of the investigation and any sworn testimony that may be given at a hearing or trial. Physical evidence generally consists of actual objects, but may also include things like fingerprint or footprint impressions, pry-marks, or other such evidence left behind by a person or object. Forensic evidence refers to what is called "trace" evidence, or evidence that is left behind by transfer from a person to an object. Some examples of "trace" evidence might be blood, saliva, or fibers.

In the context of administrative investigations, testimonial and physical evidence are the more common types that will influence the outcome of the administrative investigation. For purposes of the Monitoring Team's review, things like video and photographic evidence would fall within the framework of physical evidence for purposes of how we conducted our file review and assessment. The types and kinds of forensic evidence outlined above would more likely than not have their place in investigations surrounding criminal misconduct and serious use of force incidents which were not necessarily the subject of our most re-

[147] IACP National Law Enforcement Policy Center, *Investigation of Employee Misconduct* 11 (Jan. 2007).

cent file review and assessment.

In the majority of reviewed IA cases, it was more likely than not that all relevant physical evidence was documented (76 percent of cases), collected (64 percent of cases) and analyzed (60 percent of cases). Still, this leaves substantial room for improvement. Further, the Team found that complainant injuries were far more likely to be documented than officer injuries – even when injuries to officers were just as important in many circumstances to determining what transpired. Complainant injuries were more likely to be documented than officer injuries with complainant injuries documented in 83 percent of cases but officer injuries documented in only one-third (33 percent) of instances.

e. Investigative Conclusions

IA investigations consistently (in 89 percent of reviewed cases) present a narrative description or summary of evidence tending to establish or fail to establish officer misconduct. However, there could be significant improvements in the documentation with respect to compliance with policy, legal standards, tactics, need for additional training or corrective action, need for policy review, or the currency of weapon certification and training. Figure 1 outlines the percentage of cases where relevant information was appropriately documented where the issues were material:

Figure 1: Summary of IA Investigation Documentary Compliance

Compliance with policy	73%
Training and legal standards	56%
Whether other tactics could/should have been employed	12%
Need for additional training or corrective action	33%
Need for review of policy, strategies, tactics or training	15%
Currency of weapon certification and training, if weapon was used	0%
Recommendations for initiation of disciplinary process	74%

Cases that were determined to be "Poor" by the Monitoring Team were consistently found to contain complete facts or the assessor was unable to determine certain important facts such as because obvious questions were not asked in the interview, there were incomplete facts or witnesses were described as present but not interviewed. In other cases, there seemed to be no effort to substantiate facts and rather reliance was placed on an officer's admission of guilt. One case review suggested there seemed to be unreasonable inferences made by the investigator in order to avoid sustaining the complaint. In another case, the Monitoring Team identified a bias in favor of the officer.

2. Development of New IA Structure & Policies

Another significant reform required by the Consent Decree was the creation of a civilian Superintendent position. This civilian head of IA will report directly to the Chief of Police and is charged with ensuring fair, unbiased, thorough and timely IA investigations. Along with the creation and adoption of a new policy and procedural manual for IA, a new level of cooperation between the IA unit and the Office of Professional Standards (OPS), and the creation and adoption of a FIT manual, the reorganization of IA is intended to serve as a foundation for ensuring high-quality, fair, objective, timely, and thorough administrative investigations.

In early February 2016, CDP began the process for the selection of a civilian IA Superintendent. Unfortunately, the process ended in December 2016 without a suitable candidate being identified to serve in that position. A review of CDP's hiring process for that position by the Monitoring Team concluded that the original job recruitment did not sufficiently highlight the need for a civilian candidate. Indeed, many of the applicants who responded to the Division's recruitment were, in fact, current and former law enforcement officers – which the Consent Decree currently prohibits.[148]

Although the First-Year Monitoring plan anticipated that the new head of IA would be in place by late August 2016,[149] a new recruitment had to be re-posted and re-advertised in January 2017. By April 2017, potential candidates were being vetted for initial interviews. By the end of April, the CDP reported to the Monitoring Team that no qualified candidate had been identified in this second round of recruitment. The Division requested that DOJ and the Monitoring Team agree to modify the Consent Decree's requirements to allow former law enforcement officers, to include retired and former prosecutors, federal investigators and officers from departments other than the CDP, to be considered for the position.

The lengthy delay in filling this position has had a negative impact on the Internal Affairs reform process and has impeded the process of correcting past poor relationships between IA and the OPS and ensuring seamless cooperation between these two oversight mechanisms. As such, the Monitoring Team agreed with the recommendation of the Department of Justice and City that the pool of potential candidates be expanded. However, the Monitoring Team believes that, other qualifications being equal, compliance with the Consent Decree's specific provisions would be most straightforward and expeditious if the IA Superintendent position is filled by a qualified person who has not previously served as a police officer at the municipal or county level.

In the meantime, work is underway on updating the Internal Affairs policy manual (and implicated General Police Orders) to reflect the Consent Decree's requirements relating to IA, re-

[148] Dkt. 7-1 ¶ 178 ("Internal Affairs will be headed by a qualified civilian who is not a current or former employee of CDP, and who is not a current or retired law enforcement officer.").

[149] Dkt. 43-1 at 39.

porting misconduct, and preventing retaliation. On November 11, 2016, the CDP provided the Parties and Monitoring Team with an initial draft of an IA policy manual, and related policies. Although the initial draft was a good start, it required extensive revisions in order to make it compliant with the Consent Decree and nationally identified best practices. Further work on this draft was deferred pending completion of the Monitoring Team's assessment of 2015 Internal Affairs cases, summarized above. The Parties and Monitor have re-engaged on this topic and expect for work in this important area to be a focus of compliance efforts over the next several months.

B. Office of Professional Standards ("OPS")

Paragraph	Status of Compliance
193. OPS "investigate[s] all civilian complaints it receives, other than those that allege criminal conduct," which are referred to IA. Excessive force complaints generally retained by OPS. IA investigations referred back to OPS if "determination is made that no criminal conduct occurred."	PARTIAL COMPLIANCE
194. "The City will ensure that OPS is led by an administrator with the skills, expertise, and experience to effectively manage the intake, tracking, timely, and objective investigation of complaints"; implement PRB training; "assess OPS's equipment and staffing needs"; and "develop and implement performance standards for OPS."	NON-COMPLIANCE
195-96. Initial training for OPS investigators "adequate in quality, quantity, scope, and type," including specific, expressly-listed topics.	NON-COMPLIANCE
197. "OPS Investigators will not be current members of the CDP, and no CDP personnel will have any active role in OPS's operations."	OPERATIONAL COMPLIANCE
198. "The City will ensure that the lawyer representing OPS does not have any actual or apparent conflicts of interest."	OPERATIONAL COMPLIANCE
199. "OPS will have its own budget, separate from . . . the Department of Public Safety" that "affords sufficient independence and resources, including sufficient staff and training to meet the terms of this Agreement."	PARTIAL COMPLIANCE
200. Development and implementation of OPS operations manual "made available to the public" that covers specific, expressly-listed topics.	PARTIAL COMPLIANCE
201. Development and implementation of "a program to promote awareness through the Cleveland community about the process for filing complaints with OPS."	NON-COMPLIANCE
202. "CDP and the City will 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 anonymously; and with or without a signature from the complainant," with all "complaints documented in writing."	NON-COMPLIANCE
203. "CDP will post and maintain by the intake window at CDP headquarters and all District headquarters a permanent placard describing the civilian complaint process" and containing specific, expressly-listed information.	NON-COMPLIANCE
204. "CDP will provide training that is adequate in quality, quantity, scope, and type to all police personnel, including dispatchers, to properly handle complaint intake, including" with respect to specific, expressly-listed topics.	NON-COMPLIANCE
205. CDP officers "carry complaint forms in their CDP vehicles," which officers must provide "upon request." Supervisors will be dispatched to scene when an individual wants to make a complaint, with the supervisor providing a copy of completed complaint form "or a blank form to be completed later by the individual."	NON-COMPLIANCE
206. "The City and OPS will make complaint forms and other materials outlining the complaint process and OPS's contact information available at locations" including a number of specific, expressly-listed locations.	NON-COMPLIANCE
207. "OPS's complaint form will not contain any language that could reasonably be construed as discouraging the filing of a complaint, including warnings about the potential criminal consequences for filing false complaints."	OPERATIONAL COMPLIANCE
208. Availability of complaint forms in English and Spanish. "OPS will make every effort to ensure that complainants who speak other languages . . . can file complaints in their preferred language."	NON-COMPLIANCE
209. "City will ensure that civilian complaints submitted through other existing systems, including the Mayor's Action Center and the Department Action Center, are immediately forwarded to OPS for investigation."	NON-COMPLIANCE
210. "OPS will establish a centralized electronic numbering and tracking system for all complaints," which "will maintain accurate and reliable data regarding the number, nature, and status of all complaints . . . including investigation timeliness and notification of the interim status and final disposition of the complaint." It "will be used to monitor and maintain appropriate caseloads for OPS investigators."	NON-COMPLIANCE
211. Biased policing tracked as a separate category of complaint that "are captured and tracked appropriately, even if the complainant does not so label the allegation."	PARTIAL COMPLIANCE
212. "[A]llegations of unlawful investigatory stops, searches, or arrests" tracked as a separate category of complaints.	PARTIAL COMPLIANCE
213. "[A]llegations of excessive use of force" tracked as separate category of complaints.	PARTIAL COMPLIANCE
214. "OPS will conduct regular assessments of the types of complaints being received to identify and assess potential problematic patterns and trends."	NON-COMPLIANCE
215. "OPS will produce, at least annually, a public report summarizing complaint trends, including" with respect several specific, expressly-identified areas.	NON-COMPLIANCE

216. Assignment of complaints to Standard and Complex investigatory tracks.	PARTIAL COMPLIANCE
217. Dismissal and/or administrative dismissal of complaint investigations.	PARTIAL COMPLAINCE
218. "OPS will ensure that investigations of complaints are as thorough as necessary to reach reliable and complete findings that are supported by the preponderance of the evidence."	NON-COMPLIANCE
219. "CDP will ensure that OPS has timely access to all reports related to the incident . . . ," and authority of OPS "to conduct additional investigation" of civilian complaint when CDP investigation has already taken place relating to the incident.	NON-COMPLIANCE
220. "OPS investigators will attempt to interview each complainant in person" and record the interview.	PARTIAL COMPLIANCE
221. "The Chief will order officers who witnessed or participate in an incident that is the subject of an OPS complaint to cooperate with the OPS investigation," including by responding to written questions or sitting for an in-person interview.	NON-COMPLIANCE
222. "OPS investigators will have access to any relevant disciplinary information in the record of an officer who is the subject of a current investigation."	NON-COMPLIANCE
223. "OPS will consider all relevant evidence," with no preferences for particular witness's statements, including of officer over a non-officer, or because of connection to complainant or criminal history. "OPS will make all reasonable efforts to resolve material inconsistencies between witness statements."	PARTIAL COMPLIANCE
224. OPS findings categories.	PARTIAL COMPLIANCE
225. "OPS will document in writing the investigation of each complaint, including all investigatory steps taken, and OPS's findings and conclusions," which must "be supported by a preponderance of the evidence.	PARTIAL COMPLIANCE
226. Items for consideration for OPS findings.	PARTIAL COMPLIANCE
227. "OPS will forward all investigations and its written conclusions to PRB in sufficient time for PRB to consider them no later than the second regularly scheduled PRB meeting following completion of the investigation."	PARTIAL COMPLIANCE
228. "OPS will send periodic written updates" to the complainant at specific, expressly-identified junctures.	NON-COMPLIANCE
229. "[A] complainant may contact OPS at any time to determine the status of his/her complaint."	PARTIAL COMPLIANCE

OPS is the civilian-staffed office charged with investigating civilian complaints about CDP employees. The City of Cleveland's Charter requires OPS to conduct "a full and complete investigation" of all complaints of employee misconduct.[150]

In the First Semiannual Report, the Monitoring Team expressed disappointment and frustration with the dysfunction and failed legitimacy of the Office of Professional Standards" ("OPS").[151] In the Second Semiannual Report, the Monitoring Team noted a sustained effort on the part of the Monitoring Team and the DOJ to provide the "detailed technical assistance necessary to assist in the development and implementation of a new basic approach and day-to-day process aimed at restoring legitimacy to the overall citizen review process – and drastically improving the manner in which OPS delivers services to the citizens of Cleveland."[152]

The Monitoring Team has previously informed the Court that, "[o]n paper, it would appear that Cleveland's systems of accountability and civilian oversight are adequate and appropriate." However, "[i]n practice, the system for the investigation and adjudication of civilian complaints has been, at best, a paper tiger."[153] The system has been broken for some time and has failed to adequately serve the citizens of Cleveland and the men and women of the Division of Police.

Although significant efforts have been taken to reform OPS, meaningful progress and comprehensive change have not yet occurred. The Monitoring Team has run out of words to capture the depth and breadth of the progress that needs to be made to cure the current inability of Cleveland residents to have complaints about City employees fairly and fully addressed in a timely manner – and pursuant to the City's own Charter.

1. *Current State of Backlog and Issues with Disposition Notifications*

As of April 13, 2017, OPS reported 383 pending investigations, with many complaints originating more than two years ago. Even worse, it was determined that the OPS administration had focused only on reducing the backlog of pending investigations and had failed to pay appropriate attention to a significant backlog of cases that, while the investigation was technically finished, were still awaiting review by the Police Review Board – as well as cases where PRB had made findings but substantive follow-up actions were still required.

Specifically, OPS internal reports identified a substantial number of cases (16 cases in total, including 11 cases from 2014) that had not been referred to the Chief's Office for "Chief's hearings" (to determine whether or to what extent discipline should be imposed on cases where the PRB had found misconduct had, in fact, occurred); 22 cases that had been previously referred to the Internal Affairs Unit for investigation (including 17 cases from 2014) where no follow-up from the OPS had occurred; 44 cases designated for administrative dismissal that had not been processed and closed out; and a previously unidentified number of cases that had been closed by the OPS without any notice to complainants (162 cases, including 61 cases initiated in 2014 and 74 cases initiated in 2015). In addition, 96 additional cases, all

[150] Charter of the City of Cleveland, Section 115-4.

[151] Dkt. 97 at 44 (citing First Semiannual Report at 47–48).

[152] *Id.* at 44–45.

[153] Dkt. 97 at 43 (quoting Dkt. 86 at 2).

initiated in 2014, which had been identified by the OPS and PRB in 2016 for "supervisory review" by the CDP were still in the process of being prepared by the OPS for referral, a delay of almost one year in the implementation of this decision.

The failure of the OPS to prepare and send out disposition letters to complainants whose complaints had been previously resolved as not-sustained by the CPRB was also troubling. Upon inquiry by the Monitoring Team, OPS could provide no reasonable explanation for not communicating with complainants about the ultimate outcome of the complaint investigation. This failure occurred despite technical assistance from the Monitoring Team and the efforts of DOJ in November 2016 to edit draft templates and finalized templates for such correspondence and sustained conversations emphasizing the importance of such communication. In other words, as of late 2016, OPS could have sent out letters to complainants about the resolution of their matters.

Upon further inquiry, it was determined that failures on the part of the PRB to consistently explain their reasoning for their decision-making made it virtually impossible for the OPS to appropriately notify complainants of the reason behind such decisions. Consequently, a disposition letter template had to be developed for OPS which offers complainants the ability to review their file, discuss the investigation with OPS staff, and discuss the Board at PRB meetings in an attempt to provide some level of transparency and accountability for the decisions that had been made by the PRB.

The disposition letter template was completed at the end of April. Letters to complainants affected by the backlog began being sent out by OPS in May, albeit slowly. Nevertheless, the failure of the OPS administration to ensure timely and appropriate disposition letters and the ultimate need to send out letters that do not provide information about the Board's underlying rationale to 162 citizen complaints.

Most troubling of all is the failure of the OPS administration to forward cases involving recommendations for "sustained" findings from the PRB to the Chief's Office so that the Chief might consider the case and issue ultimate findings. The message sent to the residents of Cleveland is that even if an allegation of misconduct against a Cleveland police employee is investigated and misconduct is identified, there can be no expectation that action will be taken with respect to that complaint. Accountability is the core function of OPS and PRB; the failure of OPS administration to ensure this core function is performed is not acceptable.

The Monitoring Team has run out of words to capture the depth and breadth of the progress that needs to be made to cure the inability of Cleveland residents to have complaints about City employees fairly and fully addressed in a timely manner.

Even more unacceptable is the fact that the Monitoring Team received incorrect information from OPS on the status of the cases that PRB had recommended that the complaint be "sustained." In early May 2017, the Monitoring Team reported to the Court that it was "currently the Monitoring Team's understanding that there are 16 cases awaiting disciplinary hearings with the Chief of Police."[154] This understanding was based on representations that OPS made and data that OPS provided – and was particularly frustrating given that OPS purported to have forwarded the "sustained" cases to the Chief's Office in mid-March 2017. In reality, OPS had not ensured that the Chief's Office had, in fact, received the "sustained" files. As of May 23, 2017, the Chief's Office had only received one case forwarded to it by OPS in the calendar year 2017 where there was a "sustained" finding recommended. It reports to have likewise received only one case from the calendar year 2016.

While we have acknowledged that "[i]mprovements to OPS will not happen overnight,"[155] and there has been a reduction in the number of pending OPS investigations (a thirteen percent ove4rall reduction, from 439 reported on November 1, 2016 to 383 reported on April 13, 2017), the fact that hundreds of cases with completed investigations but no adjudications from PRB have been ignored or inadequately handled during this same period of time is troubling. Further, the inaccurate information about what "sustained" complaints had been forwarded to the Chief for action – whether intentional, reckless, or merely negligent – casts serious doubts on the reliability of information currently coming from OPS.

2. Problems Associated with OPS Administrative Dismissals and Supervisory Reviews

In order for the City to fully comply with the Consent Decree, OPS must be able to establish its ability to function as an effective independent investigation agency. Although OPS has been recently provided with substantial additional resources (in the form of two additional permanent investigators and six additional temporary, full-time investigators), concerns remain with respect to the state of OPS's case management practices and its inability to create, on its own, a plan for reducing the backlog of incomplete and unresolved complaint investigations.

The Monitoring Team's concerns with the ability of the OPS to operate effectively and efficiently without constant and ongoing attention from the DOJ and the Monitoring Team, and oversight of the Court, can be illustrated through two significant examples of problematic case management practices.

First, in March 2017, OPS identified 44 cases that it had approved for "administrative dismissal" pursuant to the new policies and procedures that allow OPS to dismiss cases, under limited circumstances, without first seeking the approval of the PRB. The circumstances under which cases can be dismissed without PRB

[154] Dkt. 126 at 8.

[155] Dkt. 97 at 45.

action include "complaints [solely] disputing traffic citations; . . . complaints alleging a delay in police services where the preliminary investigator demonstrates that the delay was due to workload or otherwise unavoidable; complaints regarding off-duty officer conduct of a civil nature [that does not constitute misconduct] or [does not] have a substantial nexus to the officer's City employment; and "complaints in which a preliminary investigation demonstrates that the officer does not work for CDP, or where the identity of the officer cannot be determined despite the best efforts of OPS."[156]

The Monitoring Team would expect, given the specificity of these limitations, that OPS would be able to identify those cases appropriate for administrative dismissal without additional technical assistance from the DOJ or the Monitoring Team. However, upon reviewing these 44 cases, more than one-quarter were ill-suited for disposition without the PRB weighing in because they did not generally fit into the categories outlined above. A 25 percent error rate provides little assurance that OPS, as currently constructed, can fully and faithfully implement the requirements of the Consent Decree and the Court-approved OPS Manual.

Second, in 2016, PRB authorized OPS to send 96 cases from 2014 to CDP for "supervisorial review" – transferring authority and responsibility for resolving these complaints from OPS to the Division's supervisors.

Unfortunately, insufficient communication between the OPS and the Division resulted in the need for extended discussions necessary for CDP and its command staff to understand the genesis for supervisors being asked to address complaints in a manner that they otherwise would not. Although OPS reached agreement with the Chief of Police on a new plan to ensure appropriate referral of the cases, this plan was not finalized until mid-April 2017 – almost a year after these already-untimely cases were initially approved for supervisory referral. In the meantime, the complainants received no notification or update on how their cases were being addressed.

OPS continues to struggle with meaningfully addressing a significant backlog of incomplete investigations.

3. Backlog Reduction Plan

In its last report, the Monitoring Team noted that the City, Monitoring Team, and OPS were engaged in discussions regarding a plan to eliminate the backlog of uninvestigated, incomplete, or unresolved complaint investigations.[157] It noted that, although "[t]he Monitoring Team had asked for such a plan since at least the Spring of 2016," the Monitor had only 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 CDP'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.[158]

To resolve these failures, the Second-Year Monitoring Plan required OPS to submit to the Monitoring Team, by February 1, 2017, a detailed plan outlining how it would utilize available resources to attack the current backlog while also timely and competently addressing incoming complaints.[159]

Unfortunately, the Monitoring Team was provided with a draft plan that, once again, was cursory, minimalistic, and which failed to identify and address many of the significant challenges facing the OPS as outlined in this report. It provided no concrete steps to be taken, no specific timelines, and no particular methodologies for reducing the backlog. The plan generally left the impression of a lack of awareness as to the scope and depth of the cases comprising the current OPS backlog. In short, the plan failed to recognize or disclose the true nature of the OPS backlog and, as such, did not consider the resources actually needed to ensure the appropriate handling and timely resolution of complaints filed with OPS.

It has become readily apparent to the Monitoring Team that OPS simply does not have the capacity to come up with a plan to address its substantive problems without ongoing technical assistance from the DOJ and the Monitoring Team. Consequently, instead of demanding a new plan be prepared, "the Monitoring Team and Department of Justice needed to provide substantial technical assistance to OPS to ensure the establishment of even a generalized framework for addressing the backlog of investigations."[160]

This Backlog Reduction Plan creates two teams to manage and drive identified tasks within the office. The first, the "Ongoing/Expedited Investigation Team," is responsible for completing all complaint investigations filed after January 1, 2017. This team also manages all complaints pending pre-Disciplinary hearings to be conducted by the Chief of Police or the Director of Public Safety, administers all cases pending CPRB hearings as well as all cases pending with the Divisions Internal Affairs Unit. They will also be responsible for the hiring of new staff, the implementation of a new investigative report template, and the creation and implementation of a public awareness plan.

[156] Dkt. 7-1 ¶ 217.

[157] Dkt. 97 at 44–49.

[158] *Id.* at 48–49.

[159] Dkt. 120-1 at 16.

[160] Dkt. 126 at 7–8.

The second team, the "Backlog Reduction Team," has the responsibility for completing all investigations filed prior to January 1, 2017, including those cases pending "supervisory review" with the Division. It is also responsible for OPS draft budget development and budget planning, the creation of an annual report, training for OPS staff and the CPRB, and the creation of business rules, process maps, and the migration of OPS to the IAPro case management database.

The Monitoring Team will provide technical assistance to be available in support of investigative issues, concerns and case handling. However:

> It must be noted that the Resource Allocation Plan is not nearly as specific, clear, or dynamic as the Monitoring Team believes necessary to ensure efficient and responsive engagement with the OPS backlog. Indeed, it is general and preliminary. However, even a generalized approach for how OPS and its personnel will be structured in order to meaningfully address incomplete investigations while making progress on new and more-recent civilian complaints is better than no approach[,] which has been the mode of operation to date in the City of Cleveland.[161]

The Monitoring Team hopes that the addition of new investigative resources and the allocation of specific personnel to handle the backlog of cases will enable OPS to dig itself out of the large hole that the City has permitted to fester for years. Without substantial, decisive action, only time will tell whether the OPS can be brought to a place where it can operate in accord with reasonable public expectations.

4. Case Management System/Business Mapping

At the beginning of 2017, the Monitoring Team and DOJ focused attention on some of the most basic, foundational management and administrative requirements necessary for an investigatory agency with OPS's charge to operate successfully in a city the size of Cleveland.

OPS has previously been operating without up-to-date "process maps" – or an expressly defined procedure for addressing the flow of work and the various stages that civilian complaints go through from an administrative standpoint. At the same time, OPS has no operational "business plan" outlining the responsibilities of various staff members with respect to the processing of cases. The work of the office has been largely manual, with some work inadequately stored on an antiquated and insufficient case management database system.

With respect to the case management platform, OPS has continued to use this old system despite the availability of IAPro and BlueTeam to the Office – the same system that CDP's IA investigators are using. Although OPS was provided with a dedicated area in IAPro a substantial time ago, no plan has been put into place to ensure a seamless or timely transition to that database. As a result, while OPS began entering limited data in IAPro, it continued to primarily utilize and populate the former database, resulting in wasted resources being used to populate two different databases. At the same time, many OPS investigators continue to operate without utilizing the electronic capabilities of either database, instead relying on paper files to accomplish their day-to-day work.

As of the first quarter of 2017, the City reported that administration of the IAPro database had been taken over by the Department of Safety. The Monitoring Team is now working with he OPS to create a migration plan, which will serve as a step-by-step discussion of how the OPS gets from where it is today to full use of the IAPro case management system. In addition, OPS is reporting working on business rules explaining which members of staff will be responsible for case management data entry and to ensure consistency in the making of such entries was competed in April 2017. These projects were anticipated to be completed by the end of May 2017 but remain a work in progress.

5. OPS Budget and Resourcing

As previously reported, 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 through the first quarter of the year. The Monitoring Team was concerned that the proposed OPS budget failed to provide for a permanent solution to OPS resource issues, instead relying substantially on "temporary investigators" to reduce the backlog of cases:

> 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.[162]

In the meantime, the City approved the hiring of two new permanent investigators and six new temporary investigators over the course of a five-month period. As of the end of April 2017, all investigative positions have been hired. This is an encouraging development that gives OPS more resources than it has had during the past several years to both address the backlog of incomplete investigations and ensure that new complaints brought to the office are fully and fairly investigated in a timely

[161] *Id.* at 8–9.

[162] Dkt. 97 at 49.

manner.

Unfortunately, administrative support staffing has not been as successful. Although a chief clerk was finally hired in January 2017, that position now needs a temporary backfill – and OPS and CPRB have been unsuccessful in hiring a part-time clerk to support CPRB activities. Without these administrative support positions being filled in a timely fashion, precious investigative resources will have to be expended on administrative and clerical functions.

6. Handwritten Complaint Requirement

As previously reported, the current, voluntary agreement between the City and the Cleveland Police Protective Association ("CPPA") provides that "[a]ll complaints filed by a citizen against [officers] shall be submitted by the complainant in his or her own handwriting." 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 . . . . "[163] The Court-approved OPS Manual 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 . . . . "[164]

As the Monitoring Team has previously described, a vast majority of American police departments "take anonymous complaints without exception and permit such complaints to form the basis of disciplinary action."[165] Indeed, "[a]n 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.'"[166]

Not only does the City need to take unsigned complaints in order to align with the longstanding practices of most other police department and to comply with the Consent Decree, but it also must do so given the impermissible exclusion of individuals with physical disabilities and mobility impairment from the civilian complaint process in Cleveland. The Monitoring Team has previously noted its "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 . . . and the equivalent Ohio state statute."[167]

The new OPS Manual does require OPS to investigate such cases; however, unless and until the agreement between the City and the police union is modified, no discipline can be imposed on cases that do not involve a signed complaint. This is an unfortunate practice and *status quo*.

Consequently, although the City, through bargaining, previously sold away, among other things, the rights of Cleveland's disabled to seek redress from the police department for inferior or problematic performance, the Monitoring Team "expect[s] that the City and CPPA 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."[168] Further, the Team expects that this agreement will happen well in advance of resolution of a finalized contract, through a memorandum of understanding or agreement between the City and CPPA on this issue.

7. OPS Manual

The OPS Manual, summarized in some detail in the Second Semiannual Report, was posted to the City record on March 22, 2017 and became effective April 6, 2017.[169] This manual was a long time coming, and the Monitoring Team looks forward to working with the Parties and OPS to ensure that the Manual that it is fully and effectively implemented.

8. OPS Annual Report

Paragraph 215 of the Consent Decree requires OPS to produce an annual report summarizing complaint trends and timeframes for the public. The Monitoring Team expected that the report encompassing data from 2016 would be completed by the end of the first quarter of this year. That expectation was largely the result of continued assurance from OPS staff that it was on schedule to meet the deadline. The Monitoring Team understands that OPS expects to present its 2016 annual report by July 2017.

9. Public Awareness Plan

[163] Dkt. 7-1 ¶ 217.

[164] Dkt. 86-1 at 9.

[165] Dkt. 86 at 16 (listing departments that accept complaints, including 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 Country, Maryland; Raleigh, North Carolina; Las Vegas, Nevada; Albuquerque, New Mexico; Tulsa, Oklahoma; Pittsburgh, Pennsylvania; Memphis, Tennessee; Virginia Beach, Virginia, and Washington, D.C).

[166] Dkt. 86 at 16 (quoting Paul West, *Investigation of Complaints Against the Police: Summary Report of a National Survey*, 7 Am. J. Police 101 (1988)).

[167] 104 Stat. 328, 42 U.S.C. § 12101 *et seq*; O.R.C. § 4112.99; *see* Dkt. 86 at 16 (noting that "[t]he ADA and its Ohio analogue, apply to the City of Cleveland's programs and activities, including its interactions with civilians through OPS, and require the City to make reasonable modifications in policies, practices, or procedures where the modifications are necessary to avoid discrimination on the basis of disability).

[168] Dkt. 86 at 16–17.

[169] Dkt. 97 at 45–48.

The Consent Decree requires that "the City and CDP, in consultation with OPS and the CPC, will develop and implement a program to promote awareness throughout the Cleveland community about the process for filing complaints with OPS"[170] in order to enhance access to the complaint process. This program is to include a plan to post information about the civilian complaint process,[171] a plan to ensure that all CDP officers carry complaint forms in their vehicles,[172] a plan to make OPS complaint forms and other materials widely available at public locations,[173] and a plan for ensuring that civilian complaints submitted to the City via other existing systems are forwarded to OPS immediately.[174]

In order to achieve these requirements, the Second-Year Monitoring Plan required that by April 27, 2017, the City and the CDP would "submit a First Draft plan for a program to promote awareness of the OPS process and comply with paragraph 201 of the Agreement (the 'OPS Awareness Plan')."[175]

On April 27, 2017, the OPS Administrator submitted a plan that was represented as complying with this requirement of the Second-Year Monitoring Plan. Unfortunately, the plan submitted did not meet the expectations of the Monitoring Team. In fact, there did not appear to have been any consultation between the City, the CDP, the CPC and the OPS. Instead, it appeared to be an attempt by the OPS to comply with this requirement without any support or input from any other City entity.

The April 2017 plan also failed to provide target dates for any identified deliverables or any indication of who would be responsible for achieving the various required tasks. Although the City has been on notice for more than two years that OPS complaint forms need to be distributed to zone cars, for example, there was no indication of a target date for compliance with this requirement, nor how or by whom this task would be achieved. Similarly, there was no indication of any recognition of the need to ensure a continuous supply of complaint forms to the various CDP Divisions or how this need would be addressed.

It does not appear that OPS has sufficient staff or resources to either create or implement a workable and achievable program as required by the Consent Decree. Nor does it appear that the City has given any significant thought as to how to achieve these important deliverables in a sustainable way. Accordingly, the Monitoring Team has recommended that OPS explore the possibility of hiring a Community Outreach Ombudsman – a dedicated staff member who can be responsible for the creation and implementation of the plan envisioned by the Consent Decree and Parties and who can coordinate OPS's interactions with the broader Cleveland community on an ongoing basis.

[170] Dkt. 7-1 ¶ 201.

[171] *Id.* ¶ 203.

[172] *Id.* ¶ 205.

[173] *Id.* ¶ 206.

[174] *Id.* ¶ 209.

[175] Dkt. 120-1 at 19.

C. Police Review Board ("PRB")

Paragraph	Compliance Status
230. "Mayor will work with the City Council to develop an ordinance to place a Charter Amendment on the ballot" addressing PRB composition and appointment process.	GENERAL COMPLIANCE
231. "PRB members will not be current or former members of the CDP."	GENERAL COMPLIANCE
232. "PRB will have its own budget," overseen by OPS Administrator and separate from Department of Public Safety, that "affords sufficient independence and resources."	PARTIAL COMPLIANCE
233–34. Initial training for PRB members "that is adequate in quality, quantity, scope, and type" and that covers specific, expressly-identified topics.	PARTIAL COMPLIANCE
235. PRB meetings open to the public and posted in advance, with "case presentations and PRB votes" occurring during "open session."	NON-COMPLIANCE
236. "OPS investigators will attend PRB meetings at which their investigations are being considered and present their findings . . . . " PRB may "ask the investigator to conduct further investigation" as necessary.	PARTIAL COMPLIANCE
237. "PRB recommended dispositions will be based on a preponderance of the evidence. For each case, PRB shall set forth its conclusion and an explanation of its reasons and supporting evidence in writing, including, when applicable, the justification for departing from OPS's recommended disposition."	PARTIAL COMPLIANCE
238. "In cases where PRB is recommending a sustained disposition, in whole or in part, PRB will include a recommendation as to disciplinary or non-disciplinary corrective action."	NON-COMPLIANCE
239. Forwarding of PRB recommendations to Chief of Police and Director of Public Safety.	NON-COMPLIANCE

The Police Review Board reviews OPS investigations and makes recommendations to the Chief of Police about the disposition of OPS cases. 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.

1. PRB Manual

As previously reported, the Monitoring Team has identified that since the PRB was created by a 1984 City Charter amendment, the Board has been carrying out its duties absent a set of established protocols to guide its decision making.[176] The lack of clear processes and procedures allowed PRB to fall behind on the timely review and deliberation of cases – failing in its core duties and service to the City of Cleveland.

[176] Dkt. 97 at 8.

In addition, as recently exemplified by OPS's inability to prepare disposition letters to complainants explaining the reasoning behind Board findings, the PRB has failed to appropriately document its decision-making processes. With the adoption of the new PRB Manual, effective April 6, 2017, it is expected that the Board now has the tools to effectively complete its work. As indicated below, training on the policy manual and the new processes put into place for both the OPS and the PRB began with a full-day training session on May 13, 2017.

1. PRB Training Plan

The Second-year Monitoring Plan requires that, by April 1, 2017, a draft training plan be prepared to ensure that "PRB members will receive initial training that is adequate in quality, quantity, scope, and type and will include various specified areas, including constitutional and other relevant law related to police-citizen encounters; police tactics; investigations of police conduct; bias-free policing; policing individuals in crisis; CDP policies, procedures and disciplinary rules; and community outreach."[177] The training plan for PRB must be completed by June 15, 2017 and implemented by July 1, 2017.

A draft outline of proposed training was provided to the Monitoring Team on April 6, 2017. The outline documented short-term training provided at a full-day training retreat for the PRB on May 13, 2017, as well as the topics to be covered in future trainings to be provided either before or after regular monthly CPRB meetings. Although the outline provided is not as sufficiently detailed as envisioned in the Second-year Monitoring Plan, work will continue to ensure that appropriate subject matter experts are identified who can create and provide an appropriate, ongoing curriculum and training as required by the Consent Decree.

2. Documentation of PRB Decision-Making

In its April and May 2017 meetings, PRB struggled with the timely documentation of the reasoning for its decisions. As of the end of May, the Board had still failed to adequately document the decisions made in either meeting. The importance of contemporaneous documentation of these decisions cannot be overstated. While it is hoped that the hiring of staff for the board, which is overdue, will help alleviate this problem, unless and until the board is able to manage this responsibility, the opportunity for long-term success will be greatly impeded.

During the next monitoring period, the Monitoring Team will work to ensure PRB's implementation and strict adherence to its new operations manual, thoughtful and fair case deliberation, and appropriate documentation of reasoning for future decisions. Among many other benefits, this will help to ensure that OPS can provide fulsome explanations of findings to complainants on an ongoing basis.

[177] Dkt. 120-1 at 20 (quoting Dkt. 7-1 ¶ 233).

3. PRB Meeting Organization

Over the course of the last monitoring period, the Monitoring Team has noted inconsistencies in the conduct of PRB meetings, and an apparent lack of understanding on the part of the OPS and PRB as to what types of discussions need to take place publicly as opposed to during executive session. That being said, significant improvements in the conduct of the meetings has been noticed over time.

The OPS and PRB have an assigned lawyer from the Law Department, who should have been advising them as to how to organize their meetings to comply with public meetings laws as well as to ensure confidentiality of discussions that should be taking place during executive session. The Monitoring Team has noted no such advice having been provided – even though this deficiency was identified in late 2016 and brought to the attention of the Law Department.

The Monitoring Team and the DOJ have set up a meeting between the Law Department, OPS, and PRB in order to ensure all participants are fully aware of legal requirements in this area and in order to develop a standard agenda and standard practices for the conduct of future PRB meetings.

D. Discipline and Disciplinary Hearings

Paragraph	Compliance Status
240. "The Chief of CDP will issue a General Police Order that requires officers to (a) cooperate with the Internal Affairs and OPS investigators; and (b) submit all relevant evidence to the investigators such that it is available for consideration by Internal Affairs or PRB."	EVALUATION DEFERRED
241. Disciplinary hearing requirement, with officer given "opportunity to testify" and suspension of hearing if "officer provides new or additional evidence at hearing," with matter "returned to IA or PRB for consideration."	PARTIAL COMPLIANCE
242. Written justification by Chief or Director of decision to "not uphold the charges" or "does not impose the recommended discipline or non-disciplinary corrective action" where PRB previously "recommends the initiation of the disciplinary process and recommends a disciplinary level."	NON-COMPLIANCE
243. "CDP will track the number of instances in which the Chief or the Director of Public Safety rejects, in whole or in part, PRB's recommended disposition."	PARTIAL COMPLIANCE
245. "CDP will ensure that discipline for sustained allegations of misconduct comports with due process, and is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are identified and consistently applied and documented."	EVALUATION DEFERRED
246. "CDP will review its current matrix and will seek to amend it" "to ensure consistency" and inclusion of a number of specific, expressly-identified features.	PARTIAL COMPLIANCE

247. "All disciplinary decisions will be documented in writing."	PARTIAL COMPLIANCE
248. "CDP will provide its disciplinary matrix to the Commission, the Police Inspector General, and the police unions for comment."	OPERATIONAL COMPLIANCE
249. "CDP will work with the unions to allow for sustained disciplinary findings to stay in an officer's record for ten years."	EVALUATION DEFERRED

To date, CDP has consulted with the Monitoring Team and Department of Justice on its Disciplinary Matrix, which sets forth the types of discipline that may be imposed with respect to violation of various Division policies. The Division has conferred with the CPC to receive their comments and insights. Work will continue into the summer to finalize this updated Matrix. Work on other parts of the discipline system will likely occur either concurrent with changes to the Division's internal investigations procedures or soon thereafter.

TRANSPARENCY & OVERSIGHT

A. Police Inspector General

Paragraph	Compliance Status
250. "The City will hire an individual or individuals with significant experience in law enforcement practices and civil rights law to serve as a Police Inspector General" ("IG"). City must seek CPC's "input in developing minimum qualifications and experience" for IG.	PARTIAL COMPLIANCE
251. IG work in Office of Mayor but report to Chief of Police.	NON-COMPLIANCE
252. IG "will not be a current or former employee of CDP."	NON-COMPLIANCE
253–54. Duties and authority of IG.	NON-COMPLIANCE
255. Budget of IG must be "a separate line item" in City budget and "afford[] sufficient independence and resources" to comply with Consent Decree.	EVALUATION DEFERRED
256. IG "will have access to all documents and data necessary to perform the above functions, including any raw data."	NON-COMPLIANCE

The Consent Decree requires "the creation of a new, internal oversight function within the Division – a Police Inspector General."[178] The Inspector General ("IG") must be "an individual or individuals with significant experience in law enforcement practices and civil rights law . . . . "[179]

"The IG's substantial duties include, but are not limited to, review of CDP policies and practices, auditing, conducting investigations, analyzing data for aggregate and systemic trends, developing specific recommendations for reform, analyzing investigations conducted by OPS to determine if they are adequate, and reviewing imposed discipline."[180] The IG's reports and recommendations must be made public.[181]

The Consent 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."[182] Accordingly, "the First-Year Monitoring Plan d[id] not include a deadline for this position during 2016."[183]

The Second-Year Monitoring Plan provides a specific timeframe for the recruitment and hiring of the IG. CDP and the City are currently working on a draft plan for the IG (the "IG Plan") that addresses issues relating to recruitment, "staffing, administrative support, . . . budget," and other implementation issues.[184] As the Monitor has previously observed, "one person will not be able to do all that the Decree requires," making it necessary for the IG Plan to outline mechanisms for ensuring that the IG benefits from "high-quality staff and administrative staff."[185] Indeed, "Cleveland's search" for an IG "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."[186]

The process of constructing the IG Plan has been envisioned by the Parties and Monitoring Team as a mechanism for permitting the City, CDP, CPC, and other community representatives to discuss how the IG position should be set up to ensure that it can have the independence necessary to make meaningful, pragmatic recommendations to the Division of Police and City. The finalized IG Plan will be presented to the Court in mid-August.[187] The City and CDP's current goal is to have an Inspector General hired by December 1, 2017.[188]

[178] First Semiannual Report at 49.

[179] Dkt. 7-1 ¶ 250.

[180] *Id.* ¶ 253.

[181] Dkt. 97 at 53 (quoting Dkt. 7-1 ¶ 253) (internal quotations omitted).

[182] First Semiannual Report at 49.

[183] *Id.*

[184] Dkt. 120-1 at 22.

[185] Dkt. 97 at 53.

[186] *Id.*

[187] Dkt. 120-1 at 22.

[188] *Id.*

B. Data Collection and Analysis

Paragraph	Compliance Status
257. "CDP will collect and maintain all data and records necessary to accurately evaluate its use of force practices and search and seizure practices and facilitate transparency and, as permitted by law, broad access to information related to CDP's decision making and activities. To achieve this outcome, CDP will designate an individual or individuals as the 'Data Collection and Analysis Coordinator.'"	NON-COMPLIANCE
258. Coordinator "will ensure the collection and tracking of all documents related to uses of force and allegations of misconduct and related materials," including specific, expressly-listed materials and information.	PARTIAL COMPLIANCE
259. Coordinator "will ensure the creation and maintenance of a reliable and accurate electronic system to track all data derived from force-related documents," including specific, expressly-identified data.	NON-COMPLIANCE
260. Coordinator "will ensure the creation and maintenance of a reliable and accurate electronic system to track data on all vehicle stops, investigatory stops, and searches, whether or not they result in an arrest or issuance of a summons or citation." The system must conform to a number of specific, expressly-identified requirements.	NON-COMPLIANCE
261. Coordinator must "routine[ly] report[] . . . relevant data to the Chief of Police, FRB, Training Review Committee, OPS, the [Community Police] Commission, and the Police Inspector General."	NON-COMPLIANCE
262. Coordinator "responsible for the annual assessment of forms and data collection systems to improve the accuracy and reliability of data collection."	NON-COMPLIANCE
263. Coordinator "will develop a protocol to accurately analyze the data collected and allow for" various outcome measurements, "subject to the review and approval of the Monitor and DOJ."	PARTIAL COMPLIANCE
264. Annually, "CDP will conduct an assessment and issue a report summarizing its investigatory stop, search, and arrest data" that addresses various specific, expressly-identified topics.	NON-COMPLIANCE
265. Annually, "CDP will conduct an assessment and issue a report of all activities, including use of force, arrests, motor vehicles and investigatory stops, and misconduct complaints alleging discrimination, to determine whether CDP's activities are applied or administered in a way that discriminates against individuals on the basis of race" or other listed prohibited classes or characteristics, and that addresses various specific, expressly-identified topics.	NON-COMPLIANCE
266. Annual analysis of "prior year's force" data with FRB.	NON-COMPLIANCE

In Fall 2016, CDP began a search for a Data Collection and Analysis Coordinator, as required by paragraphs 257 through 263 of the Consent Decree. That search did not produce any qualified candidates for this role.

Consequently, in February 2017, CDP finalized a two-year consulting arrangement with Dr. Dan Flannery of the Begun Center at Case Western University to serve as an interim Data Collection and Analysis Coordinator and to begin building capacity for when the full-time position is filled.

At the time of this report, the activities outlined by Dr. Flannery and his team in the first year of the contract include: meetings with key stakeholders, a review of the baseline measures compendium, an initial data scan, a comprehensive data mapping exercise, initial data analysis and quality assurance validation, development of a codebook with all data points, technical assistance on CDP data migration and integration efforts, and preliminary baseline reports for any available data related to use of force, crisis intervention, community engagement, civilian complaints, and stop, search and arrest data. The team also plans on developing routine reporting templates and timelines for all of the above Consent Decree areas.

Second-year activities will include continued meetings with key stakeholders, revisions of the data map and codebook, continued technical assistance on CDP data migration and integration efforts, continued data analysis and quality assurance validation, ad hoc reports and data analysis runs, several topic-specific outcome reports (e.g., the required use of force report), and a comprehensive annual final report.

Dr. Flannery's team meets weekly with key stakeholders at the CDP and monthly with the Monitoring Team members focused on Outcomes Measures. Meanwhile, a plan is also being developed by his team to hire a full-time Data Collection and Analysis Coordinator. The Monitoring Team appreciates the initial challenges that the City encountered in trying to recruit and hire an individual (or individuals) to fill this important role. Nevertheless, given the significance of the responsibilities that the Consent Decree assigns to the Coordinator, the City will need to seriously evaluate what it will need to do with respect to new recruiting approaches, an expanded salary band, or other modifications to attract a seasoned and skilled professional for the position.

C. Public Availability of CDP-Related Information

267. "[A]ll CDP audits, reports, and outcome analyses related to the implementation" of the Consent Decree will be public.	NON-COMPLIANCE
268. "CDP will post its policies and procedures, training plans, community policing initiatives, community meeting schedules, budgets, and internal audit reports on its website."	PARTIAL COMPLIANCE

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 CDP's website.[189] Additionally, "[t]o ensure transparency in the implementation of" the Decree, "all CDP audits, reports, and outcome analyses related to the implementation of this [the Consent Decree] will be made publicly available, including at the City and CDP websites."[190]

The First Semiannual Report found that, "[a]s of April 20, 2016, little to none of the required information that should have been available" on CDP's website "in a finalized form had been posted."[191] The Second Semiannual Report found that, as of early January 2017, "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."[192] The Monitoring Team commended CDP's efforts to ensure transparency and access.

Currently, the City of Cleveland's website does have a link that directs web visitors to the "DOJ Settlement Agreement Data."[193] The bulk of the Consent Decree documents are within the CDP's section.[194] For its part, the Division appears to be updating its website in a timelier manner, especially as compared to previous years.

The information that the Division posts are documents that have been produced by the Cleveland Police Monitoring Team, and the Cleveland Police Commission, as well as General Police Orders, court filings, and status reports.

What is not available, or easy to find, are audits, budgets, and outcome analysis reports. We recommend that the CDP re-double its efforts to post these materials – as well as focus on making it easier for the average user to navigate the website and find the relevant materials.

[189] Dkt. 7-1 at 1; *id.* ¶ 268.

[190] Dkt. 7-1 ¶ 267.

[191] First Semiannual Report at 51.

[192] Dkt. 97 at 54.

City of Cleveland, Division of Police, Police Settlement Agreement, http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PoliceSettlementAgreement (last accessed May 12, 2017).

[194] City of Cleveland, Division of Police, http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police (last accessed May 12, 2017).

OFFICER ASSISTANCE & SUPPORT

A. Training

Paragraph	Compliance Status
269. "CDP will ensure that officers receive adequate training to understand: (a) how to police effectively and safely in accordance with CDP policy; [and] (b) the requirements of this Agreement, Ohio law, and the Constitution and laws of the United States," including in the areas of "procedural justice, bias-free policing, and community policing."	NON-COMPLIANCE
270. "CDP will expand the scope and membership of the Training Review Committee."	OPERATIONAL COMPLIANCE
271–72. "[T]he Training Review Committee will develop a written training plan for CDP's recruit academy, probationary field training, and in-service training" that addresses a host of specific, expressly-identified issues.	PARTIAL COMPLIANCE
273. "The Training Plan and schedule will be implemented once any objections have been resolved" on a yearly basis.	PARTIAL COMPLIANCE
274. "The Training Review Committee will annually review and updated CDP's training plan" by "conduct[ing] a needs assessment" that addresses a number of specific, expressly-identified data and information on real-world trends, needs, policy, and law.	NON-COMPLIANCE
275. "CDP's Commander responsible for training" will be in charge of "all CDP training.	PARTIAL COMPLIANCE
276. "CDP will designate a single training coordinator in each District. The Commander responsible for training will establish and maintain communications with each District training coordinator to ensure that all officers complete training as required and that documentation of training is provided to the" training Commander.	PARTIAL COMPLIANCE
277. "CDP will develop recruit academy and in-service curricula that comport with" the Training Plan and Consent Decree requirements.	PARTIAL COMPLIANCE
278. "[T]he training required under this Agreement . . . will be delivered within two years of the Effective Date."	NON-COMPLIANCE
279. "For all other substantive updates or revisions to policy or procedure, CDP will ensure and document that all relevant CDP personnel have received and read the policy or procedure. Notification of each revision or update will include the rationale for policy changes and the difference between the old and updated policy."	NON-COMPLIANCE
280. Training Commander reviews all training materials; ensures that they use "a variety of adult learning techniques, scenario-based training, and problem-solving practices"; and "ensure that all curricula, lesson plans, instructor's qualifications, and testing materials are reviewed by the Training Review Committee."	PARTIAL COMPLIANCE
281. "CDP will ensure that instructors are qualified and use only curricula and lesson plans that have been approved by the" Training Commander.	PARTIAL COMPLIANCE
288. "CDP will document all training provided to or received by CDP officers," with officers "sign[ing] an acknowledgement of attendance or digitally acknowledge[ing] completion of each training course," which "will be maintained in a format that allows for analysis by training type, training date, training source, and by individual officer name."	NON-COMPLIANCE
289. "CDP will develop and implement a system that will allow the Training Section to electronically track, maintain, and produce complete and accurate records of current curricula, lesson plans, training delivered, and other training materials in a centralized electronic file system."	PARTIAL COMPLIANCE
290. "CDP will develop and implement accountability measures . . . to ensure that all officers successfully complete all required training programs in a timely manner."	NON-COMPLIANCE

1. In-Service Training

This section discusses the major Consent Decree training initiatives that have been the focus of the Parties' and Division's attention during this reporting period: (1) a use of force training initiative comprised of (a) a roll call video presentation and (b) an in-class, 16-hour, interactive and scenario-based training program for all sworn CDP personnel; and (2) an in-class, eight-hour crisis intervention training program for all CDP officers. The recent completion and submission of both training initiatives to the Court constitute notable milestones in the Consent Decree process.

The in-class portion of the use of force training and the eight-hour crisis intervention training will occur in the same "block" of in-person training. Between now and early October 2017, one group of 48 officers will go to the use of force training each Monday and Tuesday, with a different group of 48 officers going to the same training on Thursday and Friday. On Wednesday, both

of these groups of 48 officers – for 96 total officers – will participate in the eight-hour crisis intervention training course. Given the interactive nature of the courses, these larger units will be broken up during the course of each training to ensure that all students have the ability to learn content, practice skills, and participate in an interactive manner during the many active instruction periods.

With a solid training foundation in place, the Division's focus can now shift toward integrated strategic planning for ongoing training on a host of important topics in the coming years.

Again, the Monitoring Team commends the Division for completing high-quality, foundational training programs on the new use of force policies and related skills, as well as the new crisis intervention policy and related skills. Both the Training Section and the Mental Health Advisory Committee are deserving of substantial credit and praise for their hard work, diligence, and willingness to adopt pedagogical approaches that are different from what some training initiatives have generally entailed in the past.

In addition to the Consent-Decree-focused training, CDP must – like all law enforcement agencies in the State of Ohio – provide officers with training that satisfies the annual advanced training requirements of the Ohio Peace Officer Training Academy ("OPOTA"). Through completion of these approximately sixteen to twenty hours of instruction and training on various topics, CDP officers will receive the "40 hours of in-service training annually" required by the Consent Decree for the 2017 calendar year.[195]

With a solid foundation now being implemented with respect to basic use of force and crisis intervention training, the Division's focus can shift in the next reporting period toward integrated strategic planning for ongoing training for current CDP officers in the coming years. Among other things, the City and Division need to plan on providing:

- Annual "use of force in-service training that is adequate in quality, quantity, type, and scope" for "all officers";[196]
- Use of force training for supervisors on "conducting use of force investigations; strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force; and supporting officers who report unreasonable or unreported force, or who are retaliated against for attempting to prevent unreasonable force";[197]
- Community and problem-oriented policing principles for all officers;[198]
- Initial training for all officers on bias-free policing;[199]
- Initial, supervisor-specific training on bias-free policing;[200]
- Annual follow-up "training on bias-free policing that is adequate in quality, quantity, type, and scope";[201]
- Training that "teach[es] proper techniques for unholstering, displaying, pointing, and aiming a firearm, and for determining when it is appropriate to do so";[202]
- "[A]t least 16 hours of firearms training which will include pistol, shotgun, and policy training," including "night, reduced light, and stress training" for "each firearm they are authorized to use or carry on-duty";[203]
- Annual ECW (taser) certifications that include, among other things, "scenario-based training" with the ECW;[204]
- Members of the forthcoming, dedicated Force Investigation Team ("FIT") with "FIT-specific training that is adequate in quality, quantity, scope, and type" and that covers a host of specific areas or issues;[205]
- Initial and ongoing training for members of the forthcoming Force Review Board;[206]
- Annual training on crisis intervention for all CDP officers;[207]
- Training for specialized Crisis Intervention Team officers;[208]
- Initial and annual training on search and seizure, CDP's policies on search and seizure, and the Fourth Amendment;[209]
- Initial and annual training for Internal Affairs investigators;[210]
- Initial and annual "in-service training that is adequate in quality, quantity, scope, and type, and that addresses management and supervision; community-oriented policing; effective problem solving techniques; and field communication" for Field Training Officers and Field Training Sergeants;[211]
- General and ongoing "supervisory training for all new and current supervisors" that is "adequate in quality, quantity, type, and scope" and covers a number of spe-

[195] Dkt. 7-1 ¶ 271(c).

[196] *Id.* ¶ 86.

[197] *Id.* ¶ 84(l).

[198] *Id.* ¶ 30.

[199] Dkt. 7-1 ¶¶ 39–40.

[200] *Id.* ¶ 41.

[201] *Id.* ¶ 42.

[202] *Id.* ¶ 55.

[203] *Id.* ¶ 60.

[204] Dkt. 7-1 ¶ 74.

[205] *Id.* ¶ 113.

[206] *Id.* ¶ 125.

[207] *Id.* ¶ 144.

[208] *Id.* ¶¶ 145–48, 150

[209] Dkt. 7-1 ¶¶ 173–75.

[210] *Id.* 1 ¶¶ 180–81.

[211] *Id.* ¶ 285.

cifically-identified topics;[212]

- All officers with training on the forthcoming, updated Officer Intervention Program ("OIP");[213] and
- All officers with training on using body-worn cameras per the Division's policy.[214]

All of these specific training initiatives must be informed, per the Consent Decree, by the Division's newly established Training Review Committee, which includes representatives from across the Division, the police officer organizations, and the CPC. That Training Review Committee must construct, on an annual basis, a Training Plan that identifies what training initiatives and content CDP personnel will receive.[215] A draft Training Plan that the Committee submitted for calendar year 2017 is being refined by the City. In future years, such draft plans will need to be submitted in greater advance of the start of the year to ensure that they are strategic planning and agenda-setting documents rather than memorializations of previously decided decisions or programs.

To date, changes in leadership in the Training Section have frustrated the Division's efforts to establish the Training Review Committee as the locus of activity with respect to identifying training needs, setting priorities, and determining what training initiatives need to happen when. The Monitoring Team will be looking to see that the responsibility for planning for ongoing, in-service training is shared much more broadly and throughout the Division rather than residing solely with a historically understaffed Training Section.

Undoubtedly the scope of the training that the Division will need to provide – and that the City will need to pay for – under the agreement that the City and the United States reached is significant. The Monitoring Team has already signaled that training will need to be approached in a dramatically different way going forward, which will likely also require some differences in resource allocation. However, because it is how policy is turned into practice and how officers can learn the strategies and skills necessary to use new approaches and implement best practices in a manner that is safe, effective, and automatic, training of personnel is among the best investments that any law enforcement agency can make. The Monitoring Team looks forward to continuing to work with the City and Division to ensure that the host of outstanding training obligations under the Consent Decree are implemented as effectively and efficiently as possible.

2. Academy Training and Field Training Program

Paragraph	Compliance Status
282. "CDP will revise, as necessary, its field training program for graduates of the police academy to comport with" the Training Plan and Consent Decree.	NON-COMPLIANCE
283. "The field training program will incorporate community and problem-oriented policing principles, and problem-based learning methods."	NON-COMPLIANCE
284. Review and revision of Field Training Officer ("FTO") "participation policy to establish and implement a program that effectively attracts the best FTO candidates" and "revise eligibility criteria" for FTOs.	NON-COMPLIANCE
285. New FTOs and Field Training Sergeants must "receive initial and in-service training that is adequate in quality, quantity, scope, and type, and that addresses" a number of specific, expressly-listed topics and conforms to a number of additional features or requirements.	NON-COMPLIANCE
286. "CDP will create a mechanism for recruits to provide confidential feedback regarding the quality of their field training," and the Division "will document its response, including the rationale behind any responsive action taken or decision to take no action."	NON-COMPLIANCE
287. "Training Review Committee will, on an annual basis, analyze all aspects of CDP's FOT program," "consider emerging national policing practices in this area," and "recommend, and CDP will institute, appropriate changes to policies, procedures, and training related to its FTO program."	NON-COMPLIANCE

Given the scope of the in-service training that the Consent Decree requires, the City and Division's focus to date has been on developing and implementing core training for current CDP officers. The completed training on use of force will be provided to the current Academy class during their Cleveland-specific time with CDP personnel after completing the Ohio State Patrol Academy.[216] Basic training on crisis intervention will primarily be addressed through a 16-hour state course at the Patrol Academy, as well.

Nevertheless, the "Consent Decree . . . contains certain obligations relating to the training of new officers at the Academy."[217] Likewise, it contains provisions relating to the Division's field training program, in which recent Academy graduates participate during their early days on the force.[218]

In light of other areas of focus with respect to training, the Monitoring Team pushed back initial plans, developed with the Parties, of assessing the capacity of the Ohio State Patrol's Columbus-based Academy. It looks forward to working with CDP and the City to determine whether sending recruits for basic training there will enable the Division to comply with the ultimate requirements of the Consent Decree.[219]

[212] Dkt. 7-1 ¶ ¶ 323–24.

[213] *Id.* ¶ 336.

[214] Dkt. 7-1 ¶ 337.

[215] Dkt. 7-1 ¶¶ 270–81.

[216] Dkt. 97 at 55.

[217] *Id.*; Dkt. 7-1 ¶¶ 271, 275, 277

[218] Dkt. 7-1 ¶¶ 282–87.

[219] Dkt. 7-1 ¶ 55.

B. Equipment & Resources[220]

Paragraph	Status of Compliance
291. "The City will implement" paragraphs regarding equipment and resources in order to allow implementation of the Consent Decree "and to allow officers to perform their jobs safely, effectively, and efficiently."	NON-COMPLIANCE
292. "CDP will complete a comprehensive equipment and resource study to assess its current needs and priorities," and it "will 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."	PARTIAL COMPLIANCE
293. "CDP's Equipment and Resource Plan will provide for necessary equipment including, at least" "an adequate number of computers"; "an adequate number of operable and safe zone cars"; "zone cards with reliable, functioning computers that provide officers with up-to-date technology" including computer-aided dispatch, the records management system, and various core law enforcement systems; and "zone cards equipped with first-aid kits." "This plan also will 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."	PARTIAL COMPLIANCE
294. "CDP will actively seek input and feedback from the Commission, patrol officers, and supervisors regarding resource allocation, equipment needs, and technological improvements."	NON-COMPLIANCE
295. "City and CDP" must "us[e] best efforts to implement the Equipment and Resource Plan as required."	NON-COMPLIANCE
296. "CDP will . . . implement an effective, centralized records management system."	PARTIAL COMPLIANCE
297. "CDP will utilize a department-wide e-mail system to improve communication and information sharing."	PARTIAL COMPLIANCE
298. "CDP will employ information technology professionals who are trained to conduct crime and intelligence analysis, who are capable of troubleshooting and maintaining information technology systems and who can identify and suggest appropriate technological advancements."	PARTIAL COMPLIANCE
299. "CDP will implement an effective employee assistance program that provides officers ready access to the mental health and support resources necessary to facilitate effective and constitutional policing."	PARTIAL COMPLIANCE

The Consent Decree requires the City of Cleveland 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."[221] The Plan must "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 ("CAD"), access to the Division's records management system ("RMS"), and access to law enforcement databases; and "zone cars equipped with first-aid kits . . . ."[222] The Plan must also address how the Division will satisfy the other substantive requirements of the Decree.[223] Moreover, 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."[224]

The Monitoring Team previously disapproved of the City's Plan proposed on November 25, 2016.[225] The Monitor's Second Semiannual Report in January 2017 explained that the Monitor could not approve the Plan at that time for a number of reasons, including, but not limited to:

- A lack of specific, well-supported deadlines;
- A failure to identify specific actors responsible for various deliverables;
- The summary rejection of the need for outside experts;
- The failure to address the Decree's requirements related to identifying equipment needs, maintaining and improving upon existing technology, and utilizing emerging technologies;
- A failure to meaningfully account for project interdependencies;
- The inadequacy of the Plan's treatment of precinct-based computers;
- The inadequacy of the Plan's treatment of the CAD upgrade; and
- A failure to substantively and specifically address CDP's inadequate number of patrol cars.[226]

Following a January 6, 2017 status conference before the Court, the City endeavored to craft a satisfactory plan. Between January 2017 and late April 2017, the City submitted multiple revisions of the Plan in an effort to address the concerns raised by the Monitor. The most recent version of the Plan submitted by CDP was dated April 17, 2017.[227]

"As an agent of the Court," the Monitoring Team needed to "assess and report whether the requirements" of the Consent Decree "have been implemented."[228] Although, "in some in-

[220] This discussion is adapted from Dkt. 125.

[221] Dkt. 7-1 ¶ 292.

[222] Dkt. 7-1 ¶ 293.

[223] *Id.* ¶ 292.

[224] *Id.* ¶ 293.

[225] Dkt. 93 at 7.

[226] Dkt. 97 at 54–60

[227] Dkt. 125-1.

[228] Dkt. 7-1 ¶ 351; *accord id.* ¶ 352 (requiring the Monitor "to re-

stances, the evaluation of policies or plans created to comply with the Consent Decree is relatively mechanical," in other instances, "those plans must comply with more general provisions or provide more significant detail than the Consent Decree provides."[229]

On May 3, the Monitoring Team informed the Court that the Plan is minimally adequate in some regards to meet some, though not all, of the Consent Decree's requirements. The Monitor found the Plan consistent with some paragraphs of the Decree and not yet in compliance with other paragraphs. Specifically, the Monitoring Team approved the Plan as "appropriate, effective, and consistent with the requirements" of paragraphs 293(b), (c), and (d) of the Consent Decree. It could not approve the Plan with respect to paragraphs 292; 293(a), (e), and (f); 294; and 298.

1. Current State of the Equipment & Resource Plan

The General Approach of the Current Plan Is an Improvement Over the November 2016 Plan. In a number of important regards, the April 17, 2017 Plan (the "April 2017 Plan" or the "Plan") represents a notable improvement over the previously-filed November 25, 2016 Plan (the "November 2016 Plan"). First and foremost, the most recent version now provides specific milestones/deliverables and associated dates. Although the Plan does not always indicate a particular person or resource that will be responsible for each milestone/deliverable, it does indicate the responsible City entity, division and/or vendor.

To date, the City's Equipment and Resource Plan has been consistent with the Consent Decree in some respects and insufficient in terms of the Decree's requirements in others.

In addition to not embracing outside assistance with refining the City of Cleveland's overall planning and project management approach to law enforcement IT projects, the Plan does not meaningfully account for project interdependencies. Although it does include target dates for various milestones and interdependencies, the City has yet to identify how the rate of progress on some initiatives may impact the rate of progress in others, in particular as it pertains to specific technological and resource requirements of the Consent Decree. For example, the City plans to go live with its upgraded CAD platform in December 2017 – at the same time that it is targeted to be in the middle of its RMS Field Based Reporting deployment. How the City and CDP will provide sufficient resources to perform the technical, end-user support, training, and deployment activities for both projects at once remains unclear. Nevertheless, the most-recent version of the Plan is a significant step in the right direction.

The Plan Does Not Yet Comply with Provisions of the Consent Decree Related to Computers. The Consent Decree specifically requires that the Plan provide for "an adequate number of computers" with the Division.[230] The City has now deployed 51 of the 105 computers it purchased for Field Based Reporting. The remaining computers will apparently be deployed as soon as electrical work is completed in the stations that will receive those computers. The Plan, however, still does not provide any sense of what "an adequate number of computers" under the Consent Decree is. Although the ratio of computers to personnel will be 1:1.92, after all 105 computers are deployed, the Plan does not indicate whether more than the previously-purchased 105 computers are necessary for current staffing outside of the report writing rooms (e.g., specialized units, detectives, etc.). The Plan does indicate that CDP will receive new computers via the City PC Refresh Program; however, these would not be net new computers but only a one-for-one swap of an old computer for a new computer. It is yet to be seen if the City has plans to add to the deployment of computers outside of the 105 going to report writing areas. It must be noted that 105 is no magic number. Instead, it is simply the number of computers that Cleveland could secure with a given grant funding.

Accordingly, the Monitor approves of the Plan only insofar as it outlines an approach for ensuring deployment of the 105 desktop computers that have been sitting in City storage since early 2016.[231] The Monitoring Team cannot determine if this number is "adequate" for purposes of the Consent Decree based on information provided in the Plan.[232]

The City's Patrol Vehicle Modernization Plan Adequately Addresses the Requirements of the Consent Decree. Paragraph 293(b) and (c) relate to ensuring that CDP has a sufficient number of well-equipped zone cars. CDP currently has an insufficient number of patrol cars overall. CDP reports to have 358 marked zone cars, spread throughout the Districts, Downtown Services Unit, Bureau of Traffic, CLE Hopkins International Airport, and other locations. CDP completed a Patrol Vehicle Fleet Assessment in January 2017, and developed a Patrol Vehicle Modernization Plan in February 2017. The Plan indicates the City will purchase 45 new vehicles each year, beginning in 2017, for five years, for a total of 225 new patrol vehicles by 2021.[233] In April 2017, the Cleveland City Council approved the purchase of the 45 patrol vehicles that will be purchased in 2017. The Plan also contains a process for ensuring that all CDP patrol cars have access to CAD, RMS, and other law enforcement databases necessary for core operational functions.[234]

view . . . policies, procedures, practices, training curricula, and programs developed and implemented under" the Decree).

[229] Dkt. 93 at 7–8 (providing examples of Equipment and Resource Plan requirements that are comparatively more or less detailed in the Consent Decree).

[230] Dkt. 7-1 ¶ 293(a).

[231] Dkt. 97 at 59.

[232] *See* Dkt. 93 at 8 (defining "adequate").

[233] Dkt. 125-1 at 83.

[234] *See* Dkt. 7-1 ¶ 293(c).

The Monitoring Team approves the Equipment and Resource Plan, and the incorporated Patrol Vehicle Modernization Plan, with respect to Paragraphs 293(b) and (c) of the Consent Decree because it finally puts long overdue patrol cars on the streets and at the disposal of the patrol officers who need them. The Monitor commends the City for addressing this issue in a strategic, specific way that suggests the level of particularity that the City needs to use with respect to the other, outstanding areas not yet adequately addressed in the Plan.

The Plan Sufficiently Addresses Updates to the City's CAD System. The Consent Decree requires that CDP use "a mobile computer-aided dispatch system that allows officers and supervisors to access real time information received from call-takers and dispatchers."[235] CAD systems allow dispatch/communications personnel to dispatch officers in the field to calls for service via an automated system.

The City is in the process of upgrading the CAD system to include silent dispatching, which allows officers to be assigned calls for service via the Mobile Data Computer instead of over the radio. Cleveland's EMS and Fire currently use silent dispatching; however, CDP does not. As such, CDP's radio is unusually busy, as compared to other law enforcement agencies, and officers must track information regarding a call for service manually, rather than having the information displayed on an in-car computer.

The City held the kick-off meeting for the CAD upgrade project on March 24, 2017, and CDP is currently working with the vendor to determine the appropriate software configuration to meet CDP's needs. The City is targeting December 2017 to go live with the upgraded CAD at the CDP dispatch center, and will then follow with the deployment of silent dispatch to patrol vehicles, one District at a time, in early 2018. The Monitoring Team approves the City's approach with respect to the CAD upgrade and finds the Plan consistent with the Consent Decree on the subject of CAD.

The Plan Does Not Ensure that CDP Maintain and Improve Its Existing Equipment or Identify New Equipment Needs. 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."[236] The City's Plan fails to satisfy this requirement. Instead, the Plan sets forth a series of necessary short-term corrective measures – but not a new process for ensuring that such corrective measures are not necessary again in the future.[237]

The Monitoring Team has repeatedly recommended to the City and CDP that it engage with outside consultants to help revamp the overall IT governance structure, properly manage and implement significant technology initiatives, and enhance the capacity of the City and CDP to maintain and improve existing equipment and technology.

In an effort to address this concern, the most recent proposed Plan indicates that the "Department of Public Safety has now been rolled into the IT Governance Structure" of the City, which includes the creation of a Project Management Office, the standardization of project documentation and processes, the identification of a "business owner" for each project, and the use of consultants for project management of large initiatives such as the CAD upgrade and the implementation of mobile field based reporting.[238]

In an effort to address the Decree's requirements related to identifying equipment needs, maintaining and improving upon existing technology, and utilizing emerging technologies, the City has established the Public Safety Strategic Technology Executive Committee. The Technology Executive Committee, comprised of the Chief of Police, various deputy chiefs, and the City CIO, will develop the CDP IT strategy in conjunction with City IT.[239] While the Monitoring Team sees this as a much-needed process to determine the selection and implementation of IT based on the business needs and priorities of CDP, there is still a need to focus on the maintenance and improvements to existing IT.

The City has indicated that processes such as the lifecycle replacement of CDP computers and routine system upgrades will be handled by existing City processes. Yet it is unclear what entity will be responsible for ensuring that all CDP IT, equipment, and resources will be properly maintained.

Nevertheless, the Monitoring Team believes that outside consultants and partners who can assist the City in ensuring a strong and sound IT governance and project management platform will greatly benefit the Division going forward and allow the City to comply more effectively, efficiently, and expeditiously with the Consent Decree's many requirements relating to equipment, technology, and resources.

The Plan does not yet provide a route for ensuring compliance with paragraph 294, which requires that the Division "actively seek input and feedback from the [Community Police] Commission, patrol officers, and supervisors regarding resource allocation, equipment needs, and technological improvements." Likewise, it does not currently propose any system, process, or procedure for ensuring compliance with Paragraph 298, which requires that the Division "employ information technology professionals who are trained to conduct crime and intelligence analysis, who are capable of troubleshooting and maintaining

[235] *Id.* ¶ 293.

[236] *Id.* ¶ 293(e)–(f).

[237] Dkt. 97 at 59.

[238] Dkt. 125-1 at 35–36.

[239] *Id.* at 38–40

technology systems[,] and who can identify and suggest appropriate technological advancements."

Because the Plan sets forth no process, plan, procedure, or other mechanism to ensure dynamic, strategic planning with respect to law enforcement technology and equipment, it does not yet satisfy the terms of the Consent Decree.

The Plan Does Not Address a Host of Other Provisions of the Consent Decree that Relate to Technology and Equipment. The Plan must also address how the Division will satisfy the other substantive requirements of the Decree.[240] For example, CDP must collect data regarding investigatory stops,[241] and "calls and incidents involving individuals in crisis," "develop and implement a single, uniform, reporting system" to meet the Decree's requirements regarding use of force reporting,[242] and implement "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.[243]

Because it does not meaningfully engage with technology issues relating to the documentation of crisis events, documentation of stops, investigation and review of force incidents, and administrative investigations, the implementation of a modern early intervention system, and other areas, the current Plan does not yet satisfy paragraph 292 of the Consent Decree.

The Monitoring Team approved the Plan as "appropriate, effective, and consistent with the requirements" of paragraphs 293(b), (c), and (d) of the Consent Decree. It indicated that it could not approve the Plan with respect to paragraphs 292; 293(a), (e), and (f); 294; and 298.

C. Recruitment & Hiring

Paragraph	Compliance Status
300. "CDP will review and revise . . . its recruitment and hiring program to ensure that CDP successfully attracts and hires a diverse group of qualified individuals."	PARTIAL COMPLIANCE
301. "The Mayor will work with the City Council to develop an ordinance to place a Charter Amendment on the ballot that would give the appointing authority greater flexibility in the selection of candidates from the certified eligibility list for the CDP."	GENERAL COMPLIANCE
302. "CDP will 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" and meets certain specific, expressly-listed requirements.	EVALUATION DEFERRED
303. "The City will implement the recruitment plan within 60 days of it being approved by the Monitor."	EVALUATION DEFERRED
304. "CDP's recruitment plan will include specific strategies for attracting a diverse group of applicants," including officers with various, specific, expressly-listed skills and backgrounds.	EVALUATION DEFERRED
305. "In developing an implementing its recruitment plan, CDP will consult with the [Community Police] Commission and other community stakeholders on strategies to attract a diverse pool of applicants."	PARTIAL COMPLIANCE
306. "[O]bjective system for hiring and selecting recruits" that "employs reliable and valid selection criteria."	PARTIAL COMPLIANCE
307. "CDP will report annually to the public its recruiting activities and outcomes," which will include information on various, expressly-listed areas.	NON-COMPLIANCE
308. "[A]ll candidates for sworn personnel positions" will have "psychological and medical examination" and be subject to "drug testing." Existing officers receive "random drug testing."	PARTIAL COMPLIANCE
309. "CDP will conduct thorough, objective, and timely background investigations of candidates for sworn positions" that cover various, expressly-listed topics.	OPERATIONAL COMPLIANCE
310. "CDP will request to review personnel files from candidates' previous employment and, where possible, will speak with the candidate's supervisor(s)" and maintain any "salient information . . . in candidate's file."	NON-COMPLIANCE
311. "If a candidate has previous law enforcement experience, CDP will complete a thorough, objective, and timely pre-employment investigation" addressing various expressly-identified things.	NON-COMPLIANCE

The Consent Decree requires that the City "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, . . . [and] establish[es] and clearly identif[ies] the goals of CDP's recruitment efforts."[244]

The Monitor's First Semiannual Report reported 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."[245] Although an April 11, 2016 update 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."[246]

[240] Dkt. 7-1 ¶ 292.

[241] *Id.* ¶¶ 160–75.

[242] *Id.*

[243] *Id.* ¶ 87.

[244] *Id.* ¶ 302.

[245] First Semiannual Report at 59–60.

[246] *Id.* at 60.

The Court-approved Second-Year Monitoring Plan requires that the City submit a "revised draft Recruitment Policy and Strategic Recruitment Plan" by September 15, 2017. The City has, since April 2016, "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."[247] Nevertheless, the Monitoring Team has been consistent in noting that 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.[248] At this time, the City is not in compliance with those paragraphs, and it cannot be until it develops both (a) "a recruitment policy" and (b) "a strategic recruitment plan that includes clear goals, objectives, and action steps."[249]

The Monitoring Team has been 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, like 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.

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."[250] The Monitor has not approved the current 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."[251]

D. Performance Evaluations and Promotions

Paragraph	Compliance Status
312. "CDP will ensure that officers who police professionally and effectively are recognized through the performance evaluation process" and "are identified and receive appropriate consideration for performance." Likewise, "poor performance" must be "reflected in officer evaluations."	NON-COMPLIANCE
313. "CDP will develop and implement fair and consistent practices to accurately evaluate officer performance in areas related to integrity, community policing, and critical police functions, on both an ongoing and annual basis."	EVALUATION DEFERRED
314-15. CDP will use "a formalized system documenting the annual performance evaluations of each officer by the officer's direct supervisor," including an assessment of several expressly-listed areas. "Supervisors will meet with the employee whose performance is being evaluated to discuss the evaluation."	NON-COMPLIANCE
316. "CDP will hold supervisors of all ranks accountable for conducting timely, accurate, and complete performance evaluations of their subordinates."	NON-COMPLIANCE
317. "CDP will develop and implement fair and consistent promotion practices that comport with the requirements of this Agreement and result in the promotion of officers who are effective and professional."	NON-COMPLIANCE
318. In considering promotion, "appointing authority will consider" specific, expressly-listed "factors."	NON-COMPLIANCE

Neither the First-Year Monitoring Plan nor Second-Year Monitoring Plan provides specific expectations for CDP with respect to reforming its performance evaluation process and system for promoting officers to higher ranks. The Monitor's prior Semi-annual Reports have explained that the reason is that "a number of policies, procedures, systems, and training that will inform changes in evaluations and promotions must still be fully implemented."[252]

Specifically, CDP must ensure that its database systems for tracking officer performance are comprehensive, complete, accurate, objective, and fair – covering the scope of information about officer activity, from commendations to misconduct investigations and from high-level, formal supervisory intervention like discipline to low-level, informal supervisory intervention like direct supervisory counseling. The availability of this high-quality information will allow for CDP to more systematically conceive of its evaluation and promotional processes. The Monitoring Team would expect that these areas may be ripe for work at some point in the next twelve to eighteen months.

E. Staffing

Paragraph	Compliance Status
319. "CDP will complete a comprehensive staffing study to assess the appropriate number of sworn and civilian personnel to perform the functions necessary for CDP to fulfill its mission, and satisfy the requirements of the" Consent Decree. / "CDP will develop an effective, comprehensive Staffing Plan that is consistent with its mission, including community and problem-oriented policing, and that will allow CDP to meet the requirements of" the Consent Decree.	PARTIAL COMPLIANCE / EVALUATION DEFERRED
320. Requirements of CDP Staffing Plan.	EVALUATION DEFERRED

[247] Dkt. 97 at 61.

[248] *See id.*

[249] Dkt. 7-1 ¶ 302.

[250] *Id.* ¶ 303.

[251] *Id.* ¶ 302.

[252] Dkt. 97 at 62.

321. "The City and CDP will employ best efforts to implement the Staffing Plan over the period of time set forth in the approved plan."	EVALUATION DEFERRED

The Monitoring Team's Second Semiannual Report summarized the City and CDP's work to date with respect to the Consent Decree's various requirements regarding staffing:

> CDP 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 . . . [253]
>
> However, the requirement of the Consent Decree is for CDP'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."[254] 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."[255]
>
> 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 CDP personnel.
>
> Thus, the Division cannot know at this time – and neither can the Monitoring Team – precisely how many officers CDP requires, or how those officers should be deployed across the Division, to satisfy everything that the Consent Decree requires. The process 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 CDP'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, . . . 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 with paragraphs 319 through 321 of the Consent Decree – and that the City and CDP subsequently will "employ best efforts to implement" over "the period of time set forth in the" future "approved plan."[256]

Because the Parties are continuing to work on the types of foundational requirements that may substantially impact how CDP officers, supervisors, command staff, and employees spend their time on a day-to-day basis, a final Staffing Plan simply cannot be finalized at this time. If the City and CDP believe that they could make good-faith, evidence-based estimates on projected impacts of various new processes, policies, or the like, the Monitoring Team is more than pleased to provide feedback and reach a working consensus on temporary staffing levels and deployment schemes. Even absent such a forward-looking, substantive Staffing Plan, however, CDP will need to make changes in staffing to accommodate Consent Decree requirements. The assertion that the Division does not have adequate or sufficient personnel for a given position is not, in a vacuum or without underlying support, adequate grounds for ignoring or bypassing a requirement of the Decree.

[253] Dkt. 7-1 ¶¶ 319–20.

[254] *Id.* ¶ 319 (emphasis added).

[255] *Id.* ¶ 320.

[256] *Id.* ¶ 321.

SUPERVISION

A. First-Line Supervisors

Paragraph	Compliance Status
322. "CDP will ensure that first line supervisors provide close and effective supervision of officers" in a number of express, specifically-identified ways.	NON-COMPLIANCE
323. "CDP will develop and implement supervisory training for all new and current supervisors" that is "adequate in quality, quantity, type, and scope, an will include" a number of specific, expressly-listed topics.	NON-COMPLIANCE
324. "Thereafter all sworn supervisors will receive adequate in-service management training."	NON-COMPLIANCE
325. "CDP will hold supervisors directly accountable for the quality and effectiveness of their supervision, including whether supervisors identify and effectively respond to misconduct and ensure that officers effectively engage with the community."	NON-COMPLIANCE

Given the important role that front-line supervisors play in guiding and shaping the performance of the officers under their command,[257] the Consent Decree outlines a number of critical duties for sergeants.[258]

An important first step in addressing the supervision-related provisions of the Decree is the Use of Force Training addressed elsewhere in this report. Supervisors will be among the first recipients of this training – so that patrol officers will have their supervisors available as resources when they proceed through the in-depth training on the new force policies and they will be able "to respond to and manage the scene of most use of force incidents," as well as "conduct the Division's administrative inquiry" in low-level force incidents.[259]

However, the Consent Decree also requires "mandatory supervisory training" specifically for "all new and current supervisors" covering a host of topics, including:

- [T]echniques for effectively guiding and directing officers and promoting effective and constitutional police practices;
- [D]e-escalating conflict;
- [E]valuating written reports, including identification of canned or conclusory language that is not accompanied by specific facts;
- [I]nvestigating officer uses of force;
- [B]uilding community partnerships and guiding officers on this requirement;
- [U]nderstanding supervisory tools such as the Officer Intervention Program and body worn cameras;
- [R]esponding to and investigating allegations of officer misconduct;
- [E]valuating officer performance;
- [C]onsistent disciplinary sanction and non-punitive corrective action;
- [M]onitoring use of force to ensure consistency with policies; and
- [L]egal updates.[260]

Thus, although the general use of force being provided to all officers, including supervisors, is important for supervisors and partially complete some of the areas that the Consent Decree specifically requires, it does not address many others.

The Second-Year Monitoring Plan calls for CDP to provide a first draft of a supervisory training program that addresses the requirements of the Consent Decree by June 30, 2017. This might either be (1) a specific curriculum that addresses some, or all, of the above-listed requirements, or (2) a more generalized plan or schedule for providing several training programs for supervisors on the Decree-required content. Regardless, it is likely that satisfying the terms of the Consent Decree will require a multiple-stage training consisting of in-class, electronic, and other instruction – especially given that "sergeants have historically received relatively little training other than on CDP policies and other bureaucratic considerations."[261]

[257] *See* 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.)

[258] Dkt. 7-1 ¶¶ 322–25.

[259] Dkt. 97 at 63.

[260] Dkt. 7-1 ¶ 323.

[261] First Semiannual Report at 62.

B. Officer Intervention Program

Paragraph	Compliance Status
326. CDP "will create a plan to modify its Officer Intervention Program ('OIP') to enhance its effectiveness as a management tool to promote supervisory awareness and proactive identification of potentially problematic behavior among officers.	NON-COMPLIANCE
327. "CDP supervisors will regularly use OIP data to evaluate the performance of CDP officers across all ranks, units, and shifts."	NON-COMPLIANCE
328. "The OIP will include a computerized relational database that will be used to collect, maintain, integrate, and retrieve data department-wide" in a number of specific, expressly-identified areas.	NON-COMPLIANCE
329. "CDP will threshold levels for each OIP indicator that will trigger a formal review, and the thresholds will allow for peer-group comparisons between officers with similar assignments and duties."	NON-COMPLIANCE
330–36. Additional express requirements of OIP.	NON-COMPLIANCE

As varied components of the Monitoring Team's work come together and create significant changes throughout CDP, CDP's receptivity to these transformations suggest that it will soon be timely to address the issues related to the Consent Decree requirement to substantially modify its existing Officer Intervention Program ("OIP").

This modification requires the CDP to create an effective, department-wide Early Intervention System ("EIS"). The system will serve as a risk assessment tool that will be proactive in helping both officers and their supervisors to address suboptimal or potentially problematic patterns of performance:

> 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 performance . . . .
>
> If the supervisor determines that some intervention is necessary for an officer, that intervention will take the form of non-disciplinary corrective action.[262]

The City and CDP intentionally waited to initiate the work on this process because of the absence of the strong technology infrastructure which is essential to an EIS, as is a broader understanding of the range of intervention initiatives which go beyond those currently offered by the OIP.

As of this writing, it is apparent that the CDP has made several significant strides in areas that bear some relationship to the effective implementation of an EIS. These include: improvements in technology infrastructure, including enhancing the focus and implementation of IAPro; developing a stronger data platform that can manage improvements in data collection methods; an enhanced focus on tracking discipline; a better understanding of the levels of use of force and operations of FIT; and a successful reshaping of the crisis intervention response. Taken together, all converge to provide supervisors with a broader understanding of factors that shape officer performance as well as the tools necessary to respond proactively and to intervene appropriately and in a timely manner.

Accordingly, these changes are setting the stage for CDP to substantially expand the OIP and create the required systematic approach to early intervention that will help supervisors deal with operational and management issues that are not medically based and that require a non-disciplinary, corrective intervention. This expansion will help supervisors identify officers who are at risk of developing problematic performance trends, manage that risk by intervening before the performance becomes intractably problematic, utilize a broader range of intervention strategies to assist officers with affirmative professional development, and assist officers in a non-disciplinary context to perform at a higher level.

C. Body-Worn Cameras

Paragraph	Compliance Status
337. "If 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."	PARTIAL COMPLIANCE
338. "Supervisors will review recordings related to any incident involving at least a Level 2 or 3 use of force; injuries to officers; and in conjunction with any other supervisory investigation."	PARTIAL COMPLIANCE
339. "Supervisors will conduct adequate random and directed audits of body worn camera recordings" and "incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers."	PARTIAL COMPLIANCE

[262] Second Semiannual Report at 62.

340. "Officers will be subject to the disciplinary process for intentional or otherwise unjustified failure to activate body worn cameras in violation of CDP policy."	PARTIAL COMPLIANCE

As the Monitor explained in the Second Semiannual Report[263] and elsewhere,[264] CDP has joined numerous other police departments in using body cameras in some capacity. 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 recording to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals."[265]

It fortunately appears that early concerns about the logistics involved in using body-worn cameras during secondary employment have been addressed by the technological capabilities of CDP's latest camera equipment.

Over the course of the first year of the monitoring plan, as set forth in greater detail in the Second Semiannual Report, 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 . . . [and] circulated a memorandum to the CDP and the City regarding the Division's Body-Worn Camera (Wearable Camera System) Policy, General Police Order Number 3.2.20."[266] After working on various revisions of that policy with the Parties, the Monitor submitted a Motion Regarding Cleveland Division of Police Proposed Wearable Camera System Policy to the Court on December 19, 2016[267] in which it provided its views on the latest version of the draft policy.

In that motion, the Monitoring Team advised the Court that it had "concluded that – with three exceptions – the provisions and requirements of the Proposed Policy represent substantial progress toward meeting the Consent Decree's requirements."[268] The three remaining concerns that the Monitor had with the draft proposed policy were:

> (1) that the Monitor could not endorse the refusal to mandate that officers be required to use the cameras and be subject to the Proposed Policy when they are engaging in secondary employment;
> (2) with respect to provisions related to officers viewing camera footage, that Monitor would defer approval or disapproval pending the City's subsequent work on policies and manuals related to use-of-force investigations; and
> (3) with respect to provisions related to camera footage being provided to the public, the Monitor found that these provisions are better suited for a comprehensive CDP transparency policy.[269]

The first issue – requiring officers to deploy cameras consistent with the CDP's policies while engaging in secondary employment – has not yet been entirely resolved. The primary objection the City has raised about imposing such a requirement is that it would be too financially burdensome for the City because the City would have to bear the cost of overtime hours required for officers to download and tag secondary employment camera footage and ensure cameras are sufficiently charged for police duties.[270]

At a 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 CDP officers use body cameras during secondary employment that is reasonably related to a law enforcement function. In the period since the January 6 conference, the Monitor has been working with the Parties to identify options to address the City's financial and logistical concerns about a secondary employment camera requirement and, consequently, the date initially set for the City to report back to the Court has been adjourned at the City's request.

The Monitor has explored a number of ways to address the City's concerns, including phasing in the requirement; asking that secondary employers bear any additional costs as a condition of CDP approval of new secondary employment requests; and determining the actual cost of adding such a requirement, specifically, the time that will be taken to download and tag stored secondary employment content and recharge cameras. Although pursuing these areas of logistical and technological inquiry with the manufacturer of CDP's in-car video units has proven challenging at times,[271] the Monitoring Team nonetheless consulted with the company to evaluate whether there are technological upgrades or adjustments that can ease the time and logistics of downloading and recharging such as enabling downloading from home computers or recharging in vehicles as opposed to only at docking stations in stationhouses as is currently the case.

[263] Dkt. 65 at 64.

[264] Dkt. 92.

[265] Dkt. 7-1 ¶ 337.

[266] Dkt. 65 at 63.

[267] Dkt. 92.

[268] Dkt. 65 at 64.

[269] Dkt. 92 at 2-3.

[270] Dkt. 96 at 7.

[271] Email from Larry Jones II to Vince Valentine, et al re: Meeting with the Cleveland Monitoring Team (Jan. 27, 2017) ("[T[here should be no discussion concerning any City related contracts and/or any of the City related Taser equipment" with "the Cleveland Monitoring Team").

Fortunately, it appears that the early representations – that officers would need, in many cases, to drive across the City from the location of secondary employment to a CDP station in order to upload and tag video immediately after a secondary shift – about logistics do not match the current technological capabilities of CDP's equipment. Specifically, now that the Division has updated to Taser's latest, Axon 2 camera system,[272] each officer's body-worn camera can capture up to 70 hours – nearly nine full-time shifts – of standard-definition video on each camera unit.[273] Video need not be immediately uploaded because captured video is retained indefinitely on the body camera unit until uploaded to cloud-based storage.

This means that officers can wait to "tag," or categorize captured video for data retention and storage purposes, and upload their video until they are next working a City shift so long as the City provides the time for them to do so. Consequently, CDP policy can provide that officers take care of any tagging and uploading of video captured during secondary employment during its next CDP tour of duty.

Of course, the body-worn camera units must be charged. The battery for the Taser Axon 2 unit can last for more than 12 hours.[274] The units may be charged via a USB cable and wall charger, the same USB cable to a computer, or a specialized dock residing in CDP stations.[275] "A fully charged camera battery . . . provide[s] enough power for approximately 12 hours of normal operation."[276] If the camera is not being used to capture encounters or incidents, the battery may last longer. Fully recharging a completely depleted battery might take up to six hours.[277] Although some could say that ensuring charged camera units might be unduly burdensome or impractical, CDP officers working secondary employment are already frequently equipped with Division-issued radios and Tasers – both of which require pre- and post-shift charging. If officers can keep their radios and Tasers charged for secondary employment use, ensuring the satisfactory charge of the camera units would hopefully not be unreasonable or unduly burdensome.

The Monitoring Team has significant concerns about how the Division will responsibly and nimply implement a number of reforms geared at providing officers with updated technology, equipment, and resources without being able to structure rigorous pilot projects.

Consequently, the City proposed rolling out a pilot program in which a small group of officers would use cameras on secondary employment in order to evaluate financial and logistical issues and how to address them. The Monitor agreed to such a pilot, as long as the Parties understood that, ultimately, the policy would still need to incorporate secondary employment use by all officers, and assuming that the Department of Justice did not have any objections. The City then worked on developing and implementing this pilot program, which involved discussions with the union, addressing contract issues, and enlisting volunteers for the pilot.

Unfortunately, after CDP put out a Divisional Notice to sworn personnel asking for volunteers for a pilot project, the Cleveland Police Patrolmen's Association ("CPPA") wrote a letter to their members indicating that "[it] is the OFFICIAL UNION POLICY to refrain from 'VOLUNTEERING' for anything with regard to work."[278] Consequently, CDP received no volunteers for the pilot project.

The CPPA's position with respect to officers stepping up and pitching in of their own accord to help improve the department is unfortunate and dispiriting. Indeed, pilot programs, projects, or studies are a typical "best practice" when contemplating or implementing large-scale initiatives.[279] Although the Monitoring Team understands the CPPA's concerns about officers being unclear about expectations and facing unfair repercussions or discipline as a result, it has significant concerns about how the Division will responsibly and nimbly implement a number of reforms – including City-issued mobile devices for officers; true computer-aided dispatch; a new staffing plan that permits officers to have more time to directly engage with community members, solve community problems, and receive "credit" from the Division for using their time accordingly; and more customizable, real-world training for officers going forward – without the benefit of having officers able to participate in any pilot projects.

The City has proposed that, in lieu of a structured, volunteer pilot project, the originally-proposed policy provisions that allow but do not require officers to use body-worn cameras on

[272] Dkt. 125-1 (noting that all patrol officers have received Axon 2 units as of February 24, 2017, with specialized units "trained and outfitted with Axon 2 Body Cameras" by August 31, 2017).

[273] Axon Body 2, https://www.axon.com/products/body-2 (last visited May 4, 2017).

[274] *Id.*

[275] TASER Axon Body 2 Camera User Manual at 14, available at https://prismic-io.s3.amazonaws.com/tasr%2F435edc07-dbdf-4630-8379-5bd866562b62_axon-body-2-manual-mmu0057.pdf (last visited May 4, 2017).

[276] Taser Axon Body 2 Camera User Manual at 14.

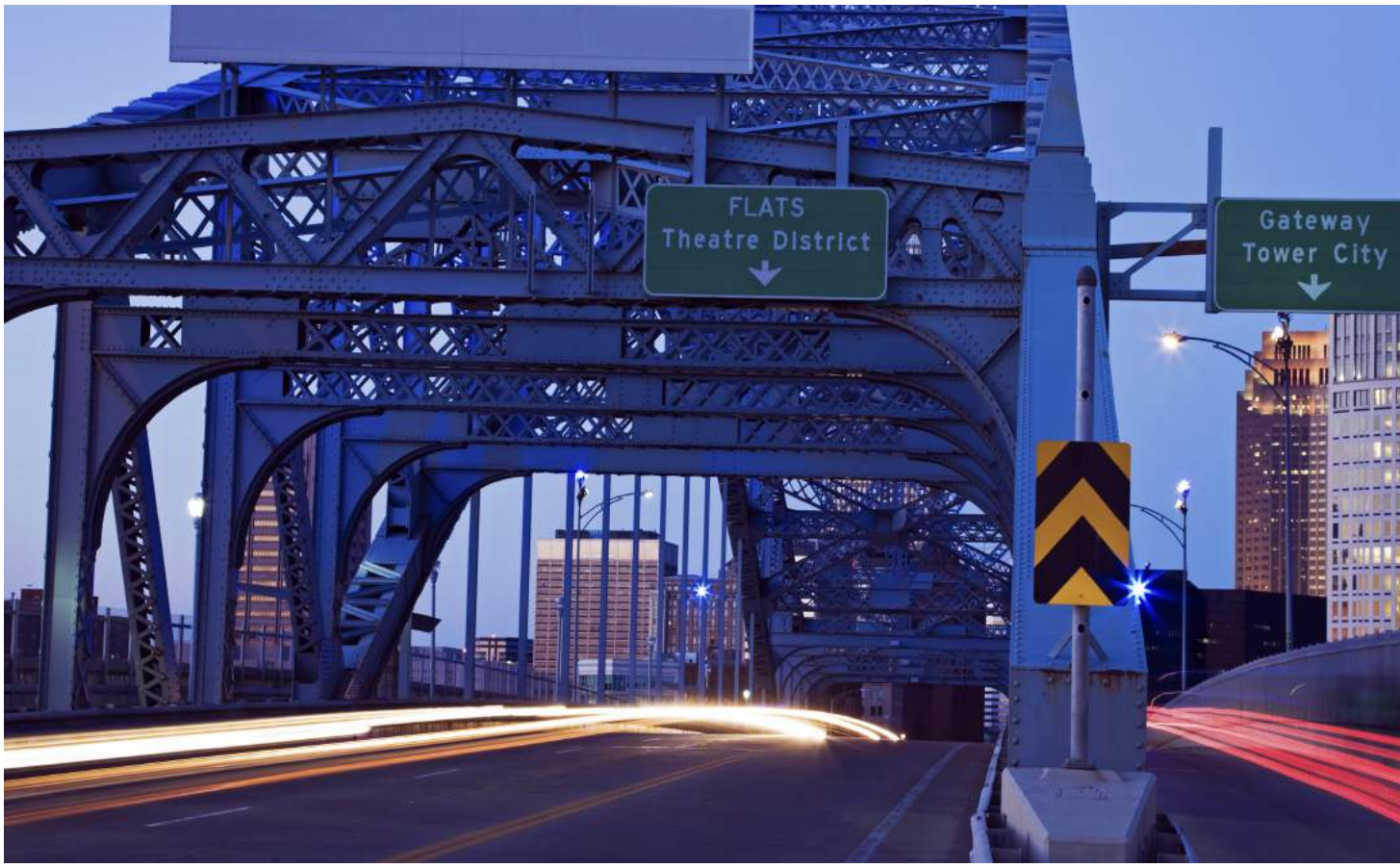
[277] *Id.*

[278] Letter from Steve Loomis to Cleveland Police Patrolmen's Association Members, Apr. 25, 2017.

[279] *See generally* Joel Winston, "How the Trump Campaign Built an Identity Database and Used Facebook Ads to Win the Election," *Medium.com* (Nov. 18, 2016), https://medium.com/start-up-grind/how-the-trump-campaign-built-an-identity-database-and-used-facebook-ads-to-win-the-election-4ff7d24269ac (describing use of social media in campaigns to "test" certain messages or communications among a smaller group of voters before disseminating them more widely); Shane Zbrodoff, *Pilot Projects: Making Innovations and New Concepts Fly* (2012) (describing basics of pilot projects).

secondary employment be modified to reflect the more-recent understanding that officers can retain secondary video and address tagging and uploading during their next City shift. Chief Williams and CDP command staff have indicated that they hope that this will inspire greater use of the cameras during secondary employment so that the logistics and details of wider use can be assessed in the same type of manner that data from a more limited pilot project would have been used. The City will be filing an explanation of this approach with the Court. In this way, CDP believes that officers electing to use the cameras can serve as a kind of naturalistic pilot that will yield, over time, the same insight and data necessary to make determinations about how to implement the cameras across all secondary employment.

The Monitoring Team is hopeful but not necessarily optimistic that the Division will be able to get a sufficient set of data on the practical logistics of body-worn camera use on secondary employment by utilizing this approach rather than a more traditional pilot project. Nonetheless, the Monitor recommends to the Court that the Division and City be provided until December 31, 2017 to proceed down this path, with monthly updates provided to the Monitoring Team on the number of officers using cameras on secondary shifts and the volume of secondary-employment-related video being uploaded and stored between now and then. At the end of the year, the Parties and Monitor can evaluate whether the initiative could adequately be considered a "pilot project" yielding sufficient information for determining whether or not the Division should require the use of the cameras on all secondary shifts.



COMPLIANCE & OUTCOME **ASSESSMENTS**

A. Outcome Measures

As specifically set forth by the Parties in paragraph 367 of the Consent Decree, the Monitoring Team must conduct qualitative and quantitative assessments to measure whether the agreement has resulted in constitutional policing. The measurements relating to use of force; addressing individuals in crisis; and stop, search and arrest are indeed primary concerns of the Consent Decree. The outcome measures aim to gauge, document and tell the story of reform across the Division and the City of Cleveland over time.

The specific outcome measures to which the United States and Cleveland agreed in the Consent Decree address a host of areas including: use of force; crisis intervention; stops, searches and arrests; bias-free policing and community engagement; recruitment; officer training; officers assistance and support; supervision; civilian complaints; and internal investigations, and discipline. The outcome measures related to these nine areas are broken down into many particular measures and sub-parts. As reported in the initial Baseline Measure Report,[280] there are approximately 471 discrete data points on which the Consent Decree requires annual assessment.

In late June 2016, the Monitoring Team submitted a report to the Court that included 2015 baseline measures required by paragraph 367 of the Consent Decree.[281] Those measures serve as a baseline reference point for assessing the progress, over time, of the reform efforts instituted by the City and CDP during the Consent Decree.

Since the Baseline Measures Report of June 2016, the Outcome Measurement Team of the Monitoring Team has worked closely with many of the CDP's subdivisions to create data collection plans, the support compliance with the Consent Decree, and to understand better existing systems and barriers to data collection and use.

The Monitoring Team is currently working on measuring the various outcome measures in terms of 2016 data. Consequently, the forthcoming outcome measurement report will be able to include comparative data with respect to the outcome measures required by the Consent Decree.

The Monitoring Team has conducted other reviews and audits during the most recent reporting period. As summarized elsewhere in this report, a subset of the Monitoring Team has conducted a substantial qualitative assessment of a statistically-significant sample of cases from the Internal Affairs Unit. It has likewise begun to collect and analyze data on the discipline cases. Consistent with the obligations of Paragraph 363, the Monitoring Team has also conducted Community Focus Groups and interviews of arrested detainees during this reporting period.

Collecting and compiling the data required by the Consent Decree remains a challenge. Some of the required data collection points remain difficult or impossible to collect at this time. Infrastructure encumbrances within CDP to the collection of some required data remain. A number of systems for collecting and storing information about various aspects of officer performance remain inadequate, duplicative, and inconsistent – with some simply overly rudimentary and confusing. For instance, Delays in the full implementation of the Law Enforcement Record Management System (LERMS) and backlogs in the review of other administrative reviews have contributed to the difficulty. In particular, the slow pace of review of various types of incidents in CDP's IA Pro system remains an impediment to the CDP being able to use data for real-time supervision, operations, and risk management.

Thus, problems with the underlying mechanisms for collecting data prevent the production of officer and Division performance information of sufficient quality and integrity to be analyzed or reported here. In the coming year, we will focus more directly on the gaps and work with the leadership at the CDP on using the data in a way that helps manage the department, hold people and units accountable, and keep processes and systems in motion.

B. Consent Decree Survey Requirements

Since the Second Semiannual Report in January 2017, the Monitoring Team selected and engaged providers for two sets of focus groups and the interviews of arrested detainees. The Monitoring Team directly contacted a number of Cleveland-based firms and invited them to respond to a request for proposals ("RFP"). Members of the monitoring team with an expert identified by the City and reviewed and selected firms to conduct focus groups both of (1) Cleveland residents generally, and (2) arrest-

[280] Dkt. 73.

[281] *Id.*

ed detainees.

As summarized elsewhere in the report, Ideas InFocus, a Cleveland-based consumer and public opinion insights firm, was selected to plan and deliver the community-based focus groups. The community focus groups were conducted during early May 2017 at the offices of Ideas InFocus using contemporary and methodologically rigorous approaches for such research.[282] Based on data on use of force incidents, reported crimes, and neighborhood ethnic and demographic information, we determined that six focus groups – one held in Spanish and one limited to young people up to age 26 – would be held. The other four groups draw from neighborhoods selected by the Firm with input from CDP data and the community engagement team. Ideas InFocus used the services of a local professional recruiter and the advice of our Community Engagement Team to recruit Cleveland residents to participate. The focus groups were conducted during the first week of May – two per night on a Tuesday, Wednesday, and Thursday. There was great candor and enthusiasm from the participants. Members of the Monitoring Team observed the process and are very satisfied with the integrity of and the implementation of the process. The Monitoring Team will file Ideas InFocus' final report with the Court soon.

A seasoned team of experts from the Monk School of Public Police at the University of Toronto was selected to conduct the interviews of arrested detainees. Those interviews were completed in late April 2017 and entailed an important and nuanced data collection capable of yielding deep and pragmatic insights. Because of the delicate nature of these interviews, we sought and hired a firm whose leader had extensive experience in human subjects research and in working with this or a similar population. Under the leadership of Dr. Todd Foglesong, the Monk School of Public Policy was hired to do the interviews with arrested detainees. With introductions from Chief Williams' office, the Monitoring Team met with Jail Commissioner David Carroll and Jail Manager Lisa Scafidi. Both were extraordinarily hospitable and accommodating to the Monitoring Team and the Monk School research team. During the weeks of April 17 and April 24, 2017, with eight days of consecutive interviews, the six-person research team interviewed 53 arrested detainees before their first court appearance.

Results and findings from both focus groups efforts are being prepared and will be submitted to the Court soon. The police officer focus groups remain in the planning stages and are slated to take place during the next reporting period. The Monitoring Team has been in contact with the leaders of the two police officer associations/unions to ensure their understanding and support and are working with the CDP on the logistics and planning. All parties need to participate and support this effort to minimize inconvenience and costs as well as to maximize candor and enthusiastic participation by the members.

[282] *See generally* David W. Stewart & Prem N. Shamdasani, *Focus Groups: Theory and Practice* (3d ed. 2014); Roasline Barbour, *Doing Focus Groups* (2008); Claudia Puchta & Jonathan Potter, *Focus Group Practice* (2004).

C. Compliance Reviews & Audits

The Consent Decree requires that the Monitoring Team also conduct qualitative reviews, audits, and outcome measures. During this reporting period, the Monitoring Team conducted a formalized assessment of CDP's Internal Affairs investigations. The results of that assessment are summarized in this report's discussion of Internal Affairs. Additional, formalized assessments of CDP's discipline system, use of force, and other issues will be conducted next.

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2017, I served the foregoing document entitled Notice Submitting Monitoring Team's Third Semiannual Report via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE