



BALTIMORE POLICE DEPARTMENT MONITORING TEAM  
FIRST SEMIANNUAL REPORT  
July 18, 2018

**BPD**  
Monitoring  
Team

Venable LLP and 21CP Solutions LLC

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## OVERVIEW

### FIRST SEMIANNUAL REPORT – 7/18/18

#### THE MONITORING TEAM'S ACTIVITIES

- Prepared a detailed First-Year Monitoring Plan
- Reviewed and provided technical assistance on draft policy revisions
- Audited equipment in BPD transport vehicles
- Performed preliminary diagnostic reviews of internal investigations files, stop/search/arrest data, and BPD's response to the shooting of Detective Suiter
- Developed a plan for measuring BPD compliance with Consent Decree requirements
- Met with community stakeholders
- Hired and engaged a team of neighborhood liaisons
- Established a website, email address, phone number and office hours
- Had focus groups with officers, went on ride-alongs, and visited District stations

#### THE MONITORING TEAM'S FINDINGS

- BPD/City leadership has shown a genuine commitment to broad institutional reform
- BPD's capacity for broad institutional reform remains unproven
- BPD has made substantial progress on revising key policies
- BPD has prepared thorough technology and staffing studies
- BPD and the City are establishing a good foundation for improving BPD's interactions with individuals with behavioral health disabilities and in crisis
- An initial audit showed BPD transport vehicles appear properly equipped
- BPD's Office of Professional Responsibility requires major structural reform
- BPD's IT systems are outdated and ineffectual and cannot facilitate either the data-driven supervision of officer performance or the data-driven analysis of Departmental trends that the Consent Decree requires
- BPD's response to the shooting of Detective Suiter in the Harlem Park neighborhood raises concerns about how BPD conducts and documents stops, searches and arrests
- BPD suffers from staffing shortages, especially in the Patrol Division; BPD's remedy of forced overtime depletes the budget and saps officer morale

#### THE NEXT SIX MONTHS

- BPD will largely complete revisions to its policies
- BPD will draft revised training programs on various revised policies and will begin implementing revised training on use of force policies
- BPD and the City will complete diagnostic studies on staffing, the City's behavioral health systems, youth diversion programs, and BPD hiring practices
- BPD will finalize detailed action plans for implementing numerous reforms
- The Monitoring Team will conduct its initial community and arrestee surveys
- The Monitoring Team will continue its community outreach and officer focus groups
- The Monitoring Team, based on available data, will begin conducting "baseline" assessments of BPD's performance in various areas of the Consent Decree

## INTRODUCTION

### The Consent Decree

In May 2015, the Civil Rights Division of the United States Department of Justice (“DOJ”) initiated an investigation of the Baltimore Police Department (“BPD”). The investigation, completed in 2016, found that BPD was engaged in a pattern-or-practice of constitutional violations, including using excessive force, infringing on the First Amendment freedoms of speech and assembly, and stopping, searching, and arresting people without probable cause and based on their race. After making these findings, DOJ entered into negotiations with BPD and the City in an effort to settle the parties’ differences. BPD and the City did not admit DOJ’s allegations, but they recognized that the allegations raised long-standing issues of considerable importance to City residents. As a result, BPD and the City agreed to resolve DOJ’s allegations through a Consent Decree. The Consent Decree is a court-approved settlement agreement between DOJ, the City and BPD. United States District Court Judge James K. Bredar is the judge who approved the Consent Decree. Judge Bredar now oversees the Consent Decree’s implementation. Because the Consent Decree is a court order, Judge Bredar has the power to enforce its provisions and ensure that BPD and the City do what it requires.

The Consent Decree obligates BPD and the City to adopt a comprehensive set of reforms designed to promote fair and constitutional policing, rebuild BPD’s relationships with Baltimore’s communities, and ensure public safety. The Consent Decree prescribes corrective action in a number of areas, including: community engagement; community policing; stops, searches, arrests, and voluntary police-community interactions; impartial policing; interacting with people with behavioral health disabilities and in crisis; use of force; interactions with youth; transportation of persons in custody; First Amendment protected activities; handling of reports of sexual assault; technology; supervision; misconduct investigations and discipline; coordination with Baltimore City School Police; recruitment, hiring, and retention; staffing, performance evaluations, and promotions; and officer assistance and support.

The Consent Decree, in short, requires transformational institutional change. BPD will achieve compliance with the Consent Decree and free itself from Court oversight when it demonstrates not only that it has successfully implemented all of the required foundational improvements required in policies, training, technology and operations, but that those improvements have translated, measurably and sustainably, into constitutional, community-oriented policing.

Achieving transformational change in a large police department does not happen overnight. As the Consent Decree envisions, it takes time, and it requires adherence to a rigorous, methodical reform process. In each area of the Consent Decree that addresses how officers discharge their duties (*e.g.*, stops/searches/arrests, use of force, and transportation of persons in custody, to name a few), BPD first must draft and adopt revised *policies*. Then BPD must develop and conduct *training* on those revised policies. At the same time, to ensure that the new policies and the new training take root, BPD must revamp vital components of its infrastructure. For instance, BPD must overhaul its technology to become a modern, data-driven, efficient police force, must fortify its system of internal investigations and discipline to enhance officer accountability, must improve the supervision of rank-and-file officers to ensure lawful, effective job performance, and must increase the number of qualified patrol officers to promote community-oriented policing. It is only after officers have been trained on the new policies, and after infrastructure upgrades are well underway, that community members can expect to see sustained, tangible changes in the conduct of BPD officers. The Consent Decree contemplates that this process will take several years or more.

### **The Monitoring Team**

On October 3, 2017, Judge Bednar appointed a Monitoring Team to assist him in overseeing implementation of the Consent Decree. The Monitoring Team consists of a lead monitor, Kenneth Thompson, and a team of experts in policing and police reform, civil rights enforcement, psychology, social science, organizational change, data and technology, and community engagement. Serving as an agent of the Court, the Monitoring Team plays three principal roles: arbiter, technical advisor, and facilitator. As *arbiter*, the Monitoring Team oversees the day-to-day efforts of BPD and the City to comply with the reforms the Consent Decree requires. The Monitoring Team reviews, provides feedback on, and ultimately recommends Court approval or disapproval of the changes BPD makes in its policies, its training and, ultimately, its policing practices. As *technical advisor*, the Monitoring Team draws upon decades of collective experience to provide BPD with technical assistance, including advice about national best practices, to help guide BPD toward satisfying the requirements of the Consent Decree. As *facilitator*, the Monitoring Team seeks to ensure that all stakeholders from within BPD and across Baltimore’s diverse communities have the opportunity to participate in the reform process. (CD 442).<sup>1</sup>

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<sup>1</sup> All citations to a specific paragraph of the Consent Decree follow the text that relies on that paragraph and appears in parentheses containing “CD” and the number of the cited paragraph. Thus, the citation above, which is to Paragraph 442 of the Consent Decree, follows the relied-on provision of Paragraph 442 and appears as “(CD 442).”

While the work of the Monitoring Team is key to the successful implementation of the Consent Decree, the Monitoring Team’s authority is limited. The Consent Decree expressly provides that “the Monitor will only have the duties, responsibilities, and authority conferred by [the Consent Decree]. The Monitor will not, and is not intended to, replace or assume the role and the duties of the City or BPD, or any duties of any City or BPD employee...” (CD 445). The Monitoring Team is, therefore, restricted to what the Consent Decree authorizes. It does not have the power or the ability to weigh in on all police-related matters. For instance, although the Monitoring Team assesses compliance with mandated reforms in the investigation and discipline of BPD officer misconduct, the Monitoring Team cannot bring, determine whether to bring, or recommend criminal charges against police officers accused of wrongdoing in specific cases. It is not a substitute for local or federal prosecutors. Likewise, the Monitoring Team cannot intervene in employment or disciplinary matters within BPD. It does not conduct independent investigations of allegations of misconduct by BPD officers or make employment or disciplinary recommendations or decisions affecting BPD officers. What the Monitoring Team does is assess whether BPD administers its disciplinary process—from intake to investigation to outcomes—consistent with the requirements of the Consent Decree. Similarly, the Monitoring Team cannot interject itself into active crime scene investigations or assume the role of BPD command staff by intervening in the performance of BPD officers’ duties. Under the terms of the Consent Decree, the Monitoring Team’s job is to assess BPD’s conduct, not direct it.

It should also be noted that the Court and the Monitoring Team are not alone in overseeing BPD’s implementation of the requirements of the Consent Decree. DOJ continues to play an active role. As the plaintiff in the lawsuit that produced the Consent Decree, DOJ retains the right to enforce the Consent Decree when BPD fails to comply with its terms. Accordingly, like the Monitoring Team, DOJ is assessing BPD’s progress toward compliance and will let the Monitoring Team and the Court know when it believes BPD is making progress and when BPD is not. In addition, like the Monitoring Team, DOJ provides technical assistance to BPD as BPD works toward compliance. The reform process under the Consent Decree thus involves three fully-engaged entities: BPD, the Monitoring Team/the Court, and DOJ.

## **This Report**

One of the essential duties of the Monitoring Team is to issue semi-annual public reports that inform the Court and the community about the progress BPD is making toward compliance with the Consent Decree’s requirements. The reports explain, in each area of the Consent Decree: (1) which compliance measures BPD has taken in the preceding six months; (2) whether those measures demonstrate

compliance, reasonable progress toward compliance, or non-compliance with Consent Decree requirements; (3) what challenges BPD will continue to face as it strives to achieve compliance; and (4) what to expect from BPD in the next reporting period.

This document is the Monitoring Team's first semi-annual report. When reading it, keep two things in mind. First, as explained above, achieving transformational change in a large police department takes time and requires adherence to a rigorous process for reform. Second, the First-Year Monitoring Plan, which provides a detailed, structured blueprint for the initial year of that rigorous process, was approved on February 16, 2018—only five months ago. *See* ECF No. 91-1, as modified by ECF Nos. 112, 124 & 125. Thus, the reform process is lengthy, and BPD is still at the very beginning; BPD has not yet had time to make significant progress toward lasting change. The First-Year Monitoring Plan implicitly acknowledges that not every Consent Decree requirement can be or will be addressed, much less met, in the first year. BPD, its officers and community members need sufficient time and opportunity to focus on each area of the Consent Decree, and on each requirement within each area, to ensure that reform is real and enduring. Change that is rushed, haphazard and superficial is not sustainable and does not qualify as true reform.

For these reasons, this report will not address BPD's progress on each and every one of the Consent Decree's requirements. It is simply too soon to engage in that kind of exercise. For the vast majority of the Consent Decree's requirements, BPD has neither satisfied them, made reasonable progress toward satisfying them, nor failed to satisfy them. Rather, it is just getting started.

Indeed, although BPD has met the deadlines in the First-Year Monitoring Plan so far, and is working diligently to revise key policies and complete critical studies on technology and staffing, it has not yet completed the vast majority of even these initial, foundational steps. Invoking the analogy that the Consent Decree requires BPD to rebuild a house from the ground up (which the Court used at its first public hearing in April 2018), BPD is mixing the cement to lay the foundation for the new house; it has not yet laid the foundation, much less started construction. For instance, BPD has not yet implemented or trained officers on the policies presently undergoing revision, and it has not revamped its technology systems so that they are capable of storing and aggregating the data necessary for comprehensive evaluation of the integrity of BPD's practices (including, *e.g.*, how its officers stop, search, and arrest individuals, when and how its officers use force, and how it investigates and disciplines officers who violate policy). Therefore, the Monitoring Team remains a long way from being able to comprehensively assess whether BPD officers are consistently and sustainably engaged in constitutional, community-oriented policing.

That is not to say that, in the first year, the Monitoring Team will not examine the conduct of BPD officers on the street, or determine how to measure whether BPD is making tangible improvements in its performance. As the First-Year Monitoring Plan prescribes, the Monitoring Team is working with BPD and DOJ to identify which indicators of constitutional policing (which the Consent Decree calls “outcome assessments”) can be measured in the first year given the current state of BPD’s data, and for the indicators that can be measured, the Monitoring Team will develop and employ methodologies to assess them. In addition, the Monitoring Team will conduct preliminary general evaluations of BPD’s compliance with Consent Decree requirements (called “compliance reviews”) in certain areas: use of force, investigatory stops, misconduct investigations and discipline, and sexual assault investigations. The preliminary outcome assessments and compliance reviews that the Monitoring Team will conduct in the first year will be designed to establish “baselines” for assessing BPD’s future progress toward compliance, as BPD begins to implement reforms in training, policies and operations. The Monitoring Team hopes to address these preliminary evaluations in the next semiannual report.

Rather than inventorying BPD’s efforts to satisfy each and every one of the Consent Decree’s separate provisions, this report assesses BPD’s progress toward satisfying the limited number of provisions that the First-Year Monitoring Plan requires BPD to address. In addition, this report gauges BPD’s current position along the long arc of compliance in each area of the Consent Decree and identifies the challenges BPD will have to overcome to make meaningful progress toward compliance in each area. In this way, the report implicitly demonstrates that, although crucial, BPD’s nascent work to satisfy the Consent Decree’s foundational requirements—revising policies, conducting studies, preparing plans, drafting training curricula, performing audits, implementing officer assistance programs—is only part of the compliance equation. Full compliance will not be achieved until, *in practice*, those reforms result in policing that is community-oriented, accountable and constitutional.



## EXECUTIVE SUMMARY

For the first several months after its appointment, the Monitoring Team worked intensively with BPD and DOJ to produce a First-Year Monitoring Plan. The Court approved the Plan on February 16, 2018. *See* ECF No. 91-1, as modified by ECF Nos. 112, 124 & 125. The Plan is a detailed roadmap for the progress BPD is expected to make during the first year of monitoring, which runs from the date of the Plan's approval, February 16, 2018, through February 15, 2019. The Plan is dense, identifying and establishing dozens of deadlines for Consent Decree "deliverables." Because the Plan covers only the first year, it naturally focuses on the front-end of the reform process: policy revision and, where achievable within the first twelve months, training curriculum revision, as well as studies and action plans for improving technology, data collection, staffing, interactions with youth, interactions with people with behavioral health disabilities, and community policing.

BPD has thus far complied with all of the many deadlines in the First-Year Monitoring Plan. Importantly, BPD's work has been respectable and has demonstrated a genuine commitment to reform. BPD is not just "checking boxes." Accordingly, as to the specific, early-stage Consent Decree requirements addressed in the First-Year Monitoring Plan up through the date of this report, BPD is making reasonable progress toward satisfying them.

However, it is simply too early in the reform process to gauge BPD's progress toward satisfying the vast majority of the Consent Decree's requirements. That is because BPD is still in the preliminary, preparatory stage of reform. As prescribed by the First-Year Monitoring Plan, BPD has only begun implementing certain requirements and has not started implementing a number of others. BPD has not yet finished revising policies, much less implemented and trained officers on them. Nor has BPD begun revamping its supervisory and internal affairs systems, or initiated training academy improvements, or started overhauling its technology for reporting and collecting data so as to facilitate effective officer supervision, consequential officer discipline for misconduct, and meaningful unit-, district- and Department-wide analysis of trends in stops, searches, arrests, and uses of force.

And that raises the principal, threshold concern of the Monitoring Team and the Court: although BPD and City leadership are, to their credit, fully committed to reform, it is not yet apparent whether BPD has the *capacity* to implement the linchpin requirements of the Consent Decree. Will it be able to purchase, design and effectively utilize modern policing technology? Can it develop a robust system of supervision and officer accountability? Will it be able to hire and retain enough qualified patrol officers to fulfill the Consent Decree's community-oriented policing

goals and maintain the morale of a Patrol Division that is currently overworked and stretched thin? These are open questions right now and, with only several months of active monitoring completed, the Monitoring Team cannot say what the answers are likely to be. What the first several months of monitoring have revealed is that, despite BPD's hard work, the challenges ahead are daunting.

The following summary describes BPD's noteworthy achievements so far, as well as noteworthy challenges ahead. It does not cover all achievements to date or all challenges ahead. Rather, it is a short recap of what the Monitoring Team views as the key achievements and key challenges at this preliminary stage in the reform process. The body of this report provides more detailed treatment of these and many other achievements and challenges.

## **Notable Achievements to Date**

### *Policy Revisions*

Since the beginning of the first year of monitoring, BPD has made considerable progress on revising its policies in several areas of the Consent Decree, including:

- Use of force
- Stop, searches, arrests and voluntary police-community interactions
- Impartial policing
- First Amendment-protected activities
- Body worn camera use
- Transportation of persons in custody
- Sexual assault investigations
- Officer support involving traumatic and high-stress incidents

After receiving considerable input from the Monitoring Team, DOJ and the community, BPD has finalized five different policies on use of force, including the core use of force policy (Policy 1112) and policies regarding the use of various weapons. The Monitoring Team recently filed a notice approving these policies. *See* ECF No. 118. Revised policies on impartial policing, transportation of persons in custody, body worn cameras, and First Amendment protected activities are nearing completion, with formal public comment periods either recently completed or underway. Additional policies on use of force, as well as policies on stops/searches/arrests, sexual assault investigations, and officer support are at different stages in the revision process, but well underway and due to be completed in the next reporting period.

The revised policies are marked improvements over the old ones. They are logically structured, clear, and designed to make it easy for officers and the community to understand them. Drawing on national best practices, each contains a straightforward, concise policy statement, strong directives identifying required and prohibited actions for officers, and supervisory and Departmental obligations designed to ensure adherence.

BPD also has revised and adopted a new statement of mission and core values that expresses its commitment to constitutional, community-oriented policing. The Monitoring Team approved the new statement earlier this month. *See* ECF No. 119.

The progress BPD has made in revising its policies is vital because it is foundational. Strong, clear policies are the building blocks for reform. They reflect core Departmental values, furnish the basis for officer training, and establish concrete rules for holding officers accountable for proper conduct.

The Monitoring Team notes that, in revising its policies, BPD has had substantial technical assistance from the Monitoring Team and DOJ, as expected. BPD has recognized the utility of outside input and is readily integrating the recommendations it is receiving. It is too soon to tell whether BPD will be able to use this technical assistance to build the capacity to make improvements in its policies on its own, with community input but without third party help. That is the Consent Decree's ultimate objective. The Monitoring Team believes that BPD is thoroughly dedicated to developing such capacity, but whether BPD will actually develop it is not yet certain.

### *Technology and Staffing Studies*

The First-Year Monitoring Plan requires BPD to produce comprehensive resource studies on both its current capacities and shortcomings in technology and its staffing needs. These studies provide a springboard for improvements and reforms in technology and staffing. They are critical because BPD will not be able to achieve the Consent Decree's objective of constitutional, community-oriented policing without revamping its technology and bolstering the number of qualified officers.

With the assistance of an outside consultant, BPD completed the Technology Resource Study in June. The Monitoring Team approved the study and filed it with the Court. *See* ECF No. 116. The study is detailed and thorough. It identifies the systems BPD currently uses to maintain data and track Departmental performance, accurately describes the current state of those systems, explains how and why those systems are inadequate to serve BPD's needs, and makes preliminary recommendations for improvements. The study, in short, accomplishes its purpose:

it establishes the proper foundation for the forthcoming Technology Resource Plan, which will serve as the essential blueprint “for adopting the Technology necessary to satisfy the Material Requirements of [the Consent Decree].” (CD 269).

The Staffing Study is still in draft form, but is on target to be finalized by its September due date. Together with an outside consultant, BPD has worked hard to produce an analysis that candidly addresses its staffing needs and lays the groundwork for a Staffing Plan that will provide for sufficient personnel to meet the requirements of the Consent Decree (CD 429). The first draft of the Staffing Plan is due in late November.

### *Equipment in Transport Vehicles*

The Consent Decree requires BPD to equip all transport vans with seatbelts, holding straps located along the rear area of each seat that individuals being transported may grip for security during transport, and transport vehicle cameras (TVCs). It also requires BPD to outfit all transport cruisers with seatbelts. The Monitoring Team conducted a preliminary, informal audit of BPD’s transport vans in late January. In late April, after working with BPD and DOJ to develop a comprehensive Transport Equipment Audit Methodology, which will be used for quarterly inspections of transport vehicles going forward, the Monitoring Team conducted a more thorough audit of both transport vans and transport cruisers. The Monitoring Team determined that each of the 17 vans and 18 cruisers inspected had the required equipment—though two of the vans had inadequate interior lighting, which made it difficult for the TVCs to capture activity in the vans, and one cruiser had a defective seat belt. The Monitoring Team also confirmed that BPD now conducts and creates logs to memorialize weekly inspections of both transport vans and transport cruisers. BPD furnishes the logs to the Monitoring Team each week for review.

The early steps BPD has taken to properly equip its transport vehicles are encouraging. Ensuring the safety of individuals in custody is among BPD’s most solemn obligations. It is also vital to rebuilding the community’s trust, particularly after the death of Freddie Gray following transport in a BPD van.

Going forward, the challenge for BPD will be not only to continue to properly equip its transport vehicles, but to ensure that BPD officers properly *utilize* the equipment and then document and audit its use, as Paragraphs 226-237 of the Consent Decree require.

*Termination of Details from the Office of Professional Responsibility*

The Office of Professional Responsibility (“OPR”) is the BPD unit presently responsible for receiving, investigating, and making findings and disciplinary recommendations regarding complaints of officer misconduct. Earlier this year, BPD terminated its practice of detailing OPR investigators to patrol and special events duties, where they sometimes worked alongside the same officers they were charged with investigating. Rife with potential conflicts of interest, this practice called into question the integrity and impartiality of OPR investigations. OPR investigators should not have active working relationships with officers in other units whom they are investigating or might be called upon to investigate.

BPD’s termination of OPR investigator details is a small but necessary first step toward reforming OPR. It demonstrates progress toward satisfying Paragraph 331 of the Consent Decree, which forbids OPR employees to be “assigned to duties that may create [a] conflict of interest, or appearance of conflict of interest, with their investigatory responsibility.” Going forward, the Monitoring Team will actively evaluate whether BPD adheres to the new “no OPR details” policy.

*Establishing a Foundation for Improving Interactions with Individuals with Behavioral Health Disabilities and in Crisis*

The Consent Decree requires BPD to develop appropriate techniques for responding to individuals with behavioral disabilities or in crisis. The long-term goal is to connect people with behavioral health disabilities or in crisis to the behavioral health system, and decrease the involvement of people with behavioral health disabilities in the criminal justice system. The First-Year Monitoring Plan thus far has required BPD to meet several short-term Consent Decree requirements to lay the groundwork for accomplishing that long-term goal.

BPD has conscientiously satisfied these short-term requirements.

First, it tapped a qualified lieutenant, Lt. Azalee Johnson, to lead the Crisis Intervention Team (“CIT”), a specialized unit trained to respond to incidents involving individuals believed to have behavioral health disabilities or to be in crisis.

Second, together with the City, BPD properly expanded the composition of the Collaborative Planning Implementation Committee (“CPIC”), which will comprehensively assess the City’s behavioral health support systems and advise BPD on crisis intervention policies for both patrol officers and dispatch personnel. CPIC now includes key stakeholders throughout the City: relevant City and State officials,

Disability Rights Maryland, community mental health providers, substance use services providers, local hospitals, advocates, and committed philanthropists. Further, CPIC's leadership, which includes representatives from key components of the City's crisis intervention apparatus (*i.e.* BPD, Behavioral Health Systems Baltimore, and the Mayor's Office of Human Services), have demonstrated a meaningful commitment to CPIC's mission.

Third, CPIC designated Behavioral Health Systems Baltimore to lead the process for conducting an assessment of the gaps in the City's behavioral health system and recommendations for solutions ("Gap Analysis"). In June, in coordination with CPIC and BPD, BHSB issued a Request for Proposal for an organization to provide technical expertise to assist with completion of the Gap Analysis. The Gap Analysis is due in the next reporting period.

Fourth, CPIC, the City and BPD have completed a draft Work Plan for developing a CIT Program staffing plan, an officer selection process for CIT, crisis intervention policies for the Patrol Division and Dispatch Unit, and a detailed set of data to be collected for evaluation purposes. The final Work Plan is due in August.

Finally, the City, BHSB and BPD are now working with CPIC to improve service delivery to individuals experiencing homelessness, substance abuse and mental illness by coordinating several disparate government programs designed to assist each constituency separately. It is encouraging that the City and BPD are expanding CPIC's role beyond what the Consent Decree requires to draw on the expertise of CPIC's new members.

## **Notable Challenges Ahead**

### *Misconduct Investigations and Discipline*

BPD's system for holding officers accountable for misconduct is broken. As the Court recently observed, "[the] system must be rebuilt from the foundation up to ensure it functions as a fair, transparent and robust arbiter of integrity." ECF No. 125 at 3. Without a properly functioning Office of Professional Responsibility holding officers accountable for violating Departmental policies, the reforms the Consent Decree mandates in other areas will be ineffectual, the prospects for regaining the community's trust will be lost, and the reform effort will collapse.

Under the First-Year Monitoring Plan approved in February, BPD's obligations in the area of Misconduct Investigations and Discipline mirrored BPD's obligations in other areas: revise policies (specifically, OPR policies and

corresponding OPR operational manual provisions) and start in on training development. However, after the Monitoring Team conducted a preliminary diagnostic review of OPR files and began to furnish BPD technical assistance in the policy revision process, it recognized that OPR was desperately in need of fundamental structural reform and that such reform had to precede even preliminary measures like policy revisions and training development. Among the foundational organizational deficiencies the Monitoring Team has observed in the past several months are the following:

- OPR has a substantial and confusing number of units and sub-units, which creates both operational inefficiencies and a risk of untimely, inadequately supervised investigations.
- OPR does not include under its jurisdiction all units within BPD that address officer misconduct—there is, for instance, an Office of Inspector General—so OPR’s precise responsibilities are not definitively settled.
- Because investigators are assigned to geographic districts, the same investigators frequently deal with the same officers and supervisors, which could raise concerns about investigator impartiality and also could result in uneven investigator caseload distribution.
- Although OPR and the Civilian Review Board (which provides civilian oversight for certain types of alleged officer misconduct) are required to coordinate with each other, no protocol for coordination has ever existed.
- There is no clear protocol for determining what OPR investigates in the first instance and what unit supervisors should promptly address (with subsequent OPR follow up).
- The process for classifying complaints appears inconsistent and non-uniform because it is complicated and ill-defined.
- A review of randomly selected OPR investigative files suggests that:
  - OPR investigators do not provide complainants with case updates at regular intervals.
  - There is a lack of completeness and uniformity. Files of investigations of similar classes of alleged misconduct sometimes contain entirely different forms, reports and investigative material; only a small number

of files contain transcripts, recordings or other evidence showing that involved officers were interviewed; and key investigative steps are not thoroughly and uniformly logged.

- OPR's technology platform cannot readily generate certain basic statistics about misconduct investigations, such as the number of cases resulting in certain dispositions and the current status of every investigation.

The recent convictions of a number of officers from BPD's Gun Trace Task Force underscore the deficiencies in BPD's accountability system. Trial testimony earlier this year revealed that GTTF officers routinely stole and extorted money and drugs from civilians, usually after making blatantly unconstitutional stops, searches, and arrests. The trial evidence vividly corroborated DOJ's finding of a pattern-or-practice of unconstitutional stops, searches and arrests. The fact that conduct so egregious could endure with such frequency for so long demonstrates just how much BPD must do to develop a properly functioning system of internal accountability.

The recent turnover in the leadership of OPR, as well as in BPD's top command staff, have only magnified the difficulty of achieving OPR reform. Indeed, each of the three recent Commissioners or Acting Commissioners has had a different idea about the staffing, the structure and even the jurisdiction of OPR, leading to serial changes in BPD's organizational chart. Such indeterminacy confuses the definitive guidance that OPR supervisors and investigators must have to do their jobs effectively.

Despite the current state of OPR, BPD has shown a willingness to reform. It had started working actively with the Monitoring Team and DOJ to revise OPR policies before the need for structural changes became apparent, has acknowledged the need for structural improvements, and although audits still must be done, seems to have made the process for lodging civilian complaints easier and more accessible. Again, however, the question is not BPD's willingness to fix OPR. It is BPD's capacity to fix OPR. Establishing that capacity is the challenge.

### *Technology and Data Collection*

The recently issued Technology Resource Study, *see* ECF No. 116, candidly catalogs the numerous defects in BPD's IT systems and IT governance structure. BPD maintains an inefficient, resource-intensive reporting and data collection system in which officers first complete paper reports and then have data from the reports uploaded into the pertinent IT platform, *e.g.*, a Records Management System ("RMS") for data on stops, searches, arrests, citations and criminal complaints, and



IAPro for data on uses of force and investigations of officer misconduct. Although these central IT systems exist, a significant amount of data is siloed in dozens of alternative systems that have been created over the years. These siloed systems are not integrated with one another or with the central systems. There is also a massive data entry backlog in the central RMS. To take the most glaring example, the RMS presently has no data on stops conducted after February 2015, more than three years ago; the citizen contact forms documenting stops since February 2015 sit loosely organized in boxes and files at BPD headquarters. Further, BPD officers do not always write required reports, particularly citizen contact forms documenting stops, so even the data that is entered into the system is incomplete. And then there is the issue of the thoroughness of the data on completed forms. As BPD, the Monitoring Team and DOJ have determined, the central IT systems do not have fields for all of the data needed to measure whether officers, both individually and collectively, are engaging in conduct that is both constitutional and compliant with BPD policy.

These deficiencies spring from a historically poor IT governance structure. As the Technology Resource Study determined, BPD has lacked a central authority to advocate for sound decision-making; permitted siloed systems to proliferate unchecked, some with confusingly duplicative or inconsistent data; required additional funding for hardware improvements; trained personnel ineffectively; and operated without a sound data retention policy.

Without improving its IT governance structure and bolstering the capacity of its IT systems, and without ensuring that officers actually enter data into the upgraded systems and utilize the new systems properly, BPD will not achieve compliance with the Consent Decree. That is because BPD will continue to lack the accessible data needed to enable the Monitoring Team to assess BPD's performance. The work that the Monitoring Team has done to prepare an Outcome Assessments Methodology Plan—which identifies the assessments the Monitoring Team will and will not do in the remainder of the first year—demonstrates how the current state of BPD's data makes it practically impossible to perform a number of the assessments required to gauge compliance. *See* ECF No. 121.

Without improving its IT systems, BPD itself will continue to be hamstrung. Without adequate, accessible data, BPD supervisors cannot properly assess and address officer performance. Moreover, BPD, as an institution, cannot properly review the efficacy of its policies or training or analyze unit-, district- and Department-wide performance to determine whether, for instance, there are patterns of excessive force, racial profiling, stops made without reasonable suspicion, or arrests and searches made without probable cause. The Consent Decree requires BPD to be able to perform all of these internal analyses on its own. Most large law

enforcement agencies perform them independently. Because of the deficiencies in its IT systems, BPD does not.

To its credit, BPD recognizes the distressed state of its IT systems and thus far has committed to fixing them. The Technology Resource Study is a good first step. The designation of the City's Deputy Chief Information Officer to oversee BPD's technology reforms is also a positive development, as is the creation of a new position for Consent Decree Information Technology Lead. In addition, even as it prepares the Resource Plan, BPD is trying to make short-term fixes to its existing systems. For instance, it is planning to upgrade to the most recent, standard version of IAPro to capture and track use of force incidents, and is seeking to implement an upgraded data storage solution and update other outdated network equipment so that it is prepared for future application upgrades.

Improving BPD's IT governance and fully upgrading IT systems to usher in the era of 21<sup>st</sup> century policing in Baltimore is likely to take another 18 months or more. To facilitate self-evaluation and self-correction, BPD hopes to move to a system of real-time, electronic field-based reporting. Such a system would eliminate the cumbersomeness of the current paper-based system, making officers more efficient, and would facilitate data-driven supervision and review of officer and Departmental performance and trends.

### *Staffing*

The Consent Decree obligates BPD, based on existing and projected resources, to employ enough officers to engage in community-oriented policing, patrol each police district without resorting to drafting officers for required overtime, properly supervise junior officers, and conduct timely officer misconduct investigations. It will be a tall order to craft and then execute a Staffing Plan (CD 429) that satisfies these requirements. BPD suffers from well-known officer shortages, attrition often outpaces hiring, and resources are finite.

The need for additional Patrol Division officers is acute. To make up for the current shortage, BPD routinely requires or "drafts" patrol officers to work double shifts and extended hours. These forced overtime assignments deplete BPD's budget, exhaust officer morale, and potentially have an adverse impact of officer performance. In focus group sessions and informal conversations with rank-and-file officers, the biggest concern has been the understaffing of the Patrol Division. Without fortifying the Patrol Division, BPD will have a hard time implementing an effective community policing strategy.

### *Stops, Search and Arrests*

Stops, searches and arrests are significant intrusions on personal freedom. When police officers routinely perform them without legal justification, they do considerable damage to police-community relations. The Consent Decree contains extensive provisions to ensure constitutional stops, searches, and arrests. Among other things, it requires recording, collection and review of data and close, effective supervision of officer performance.

BPD has a steep hill to climb to achieve compliance with the Stops, Searches and Arrests (“S/S/A”) provisions of the Consent Decree. In the past several months, the Monitoring Team has conducted several preliminary diagnostic reviews. The Monitoring Team worked with BPD and DOJ to determine which Consent Decree-mandated, S/S/A “outcome assessments” (CD 459) could presently be performed given the inadequacy of BPD’s S/S/A data. Monitoring Team members also spent several days on the ground at BPD to survey BPD’s S/S/A reporting, data collection and data maintenance practices. And the Monitoring Team reviewed BPD’s conduct in establishing and enforcing a perimeter around the Harlem Park neighborhood in the wake of the November 15, 2017 shooting of BPD Detective Sean Suiter. These preliminary reviews confirm the need for a culture change within BPD around stops, searches and arrests.

As explained, BPD’s S/S/A data is in disarray. BPD’s inefficient, time-consuming paper reporting system has fed an RMS with information that is incomplete, unreliable, and incapable of being aggregated for analytical purposes. To conduct comprehensive analyses of standard measurements of constitutional S/S/A activity—such as the percentage of searches that actually result in the seizure of contraband (*i.e.*, “hit rates”) or comparative percentages of stops based on race—would entail manual review of thousands and thousands of poorly organized paper records, which is impracticable. Indeed, as noted, BPD presently conducts none of these standard measurements. Until BPD upgrades its RMS (and moves to electronic field-based reporting) so that it can efficiently capture and facilitate analysis of all S/S/A data, the Monitoring Team will not be able to fully assess BPD’s progress toward compliance with the S/S/A requirements of the Consent Decree. Moreover, BPD supervisors will continue to be unable to conduct data-driven performance evaluations of officer S/S/A activity, and BPD command staff similarly will be unable to perform broader analyses of Departmental trends in S/S/A activity. BPD’s current system for recording, approving reports and storing data on S/S/A events thus severely limits its capacity to satisfy the Consent Decree’s S/S/A supervisory and data collection requirements.

While the Monitoring Team’s preliminary review of BPD’s S/S/A records calls into question BPD’s capacity to collect and analyze S/S/A data, the Monitoring Team’s diagnostic review of BPD’s response to the shooting of Detective Suiter calls into question the underlying capacity to ensure that its officers make stops, searches and arrests consistent with the Consent Decree. In analyzing documentary records, viewing BWC footage, and interviewing involved officers, the Monitoring Team found that BPD likely took actions inconsistent with the Consent Decree by: (1) stopping civilians and restricting access to a large, six square-block area around the crime scene for several days after the threat of an armed and dangerous suspect had dissipated; (2) conducting warrant checks (*i.e.*, investigations) of the stopped individuals without reasonable suspicion or probable cause to believe that the individuals had committed a crime; (3) searching certain individuals at or inside the perimeter of the six square-block area without probable cause and patting down at least one other person without reasonable suspicion to believe he had a gun; (4) failing to properly document whether there was probable cause for certain arrests and whether individuals interviewed about the shooting voluntarily consented to be interviewed; and (5) de-activating body worn cameras on the night of November 15. Importantly, the responsibility for these actions and omissions lies principally, if not exclusively, with BPD as an institution. Command staff and supervisors either expressly ordered, tacitly approved or failed to prevent the actions of patrol officers at the perimeter.

The Monitoring Team’s evaluation of BPD’s actions in Harlem Park in response to the shooting of Detective Suiter can provide BPD important guidance for instructing both officers and supervisors on proper S/S/A conduct. In other words, it furnishes BPD a “lessons learned” opportunity. Even though reforms to BPD’s S/S/A training, data collection and supervisory practices have not been required yet, the Monitoring Team urges BPD to address the apparent shortcomings in its response to the shooting of Detective Suiter now—through, for instance, roll call tutorials. The Monitoring Team is committed to providing BPD technical assistance in any such effort.

### **The Next Reporting Period**

Over the next six months, BPD will continue its preliminary work on foundational reforms. It will complete policy revisions in most areas of the Consent Decree and will develop training curricula for use of force, impartial policing, and use of body worn cameras. It also will produce additional diagnostic studies, including the Staffing Study, the Gap Analysis identifying needs within the City’ behavioral health systems, an assessment of existing programs designed to divert youth from involvement in the criminal justice system, and a study of BPD hiring practices.

Further, BPD will complete action plans for making needed improvements in technology, staffing, training, supervision effectiveness, OPR operations, use of force reporting, crisis intervention, data collection on stops, and community policing.

The Monitoring Team will continue to assess and offer its technical assistance with all of these early stage reforms. In addition, the Monitoring Team will conduct its first annual surveys to gauge community and custodial arrestee attitudes toward BPD, and will continue to convene focus groups of BPD officers to ascertain their views. Based on available data—which, as explained, remains imperfect—the Monitoring Team also will begin to conduct broader, more methodical assessments of BPD’s current performance in several areas of the Consent Decree. It will perform initial “baseline” reviews of BPD’s compliance with various Consent Decree provisions in the areas of use of force, misconduct investigations, sexual assault investigations, and stops. And to establish baseline measurements of various indicators of constitutional policing, it will conduct certain outcome assessments required by Paragraph 459 of the Consent Decree.

## SUMMARY OF MONITORING TEAM ACTIVITIES

Since its appointment on October 3, 2017, the Monitoring Team has done work in each of its three roles—arbiter, technical advisor and facilitator. That is what both the Consent Decree and the First-Year Monitoring Plan have called for. As arbiter, the Monitoring Team, among other things, has assessed BPD’s progress in revising policies and preparing foundational studies on staffing and technology, audited BPD transport vehicles to determine whether they are properly equipped, and determined compliance with basic provisions requiring appointment of a Crisis Intervention Team coordinator and expansion of the Collaborative Implementation Planning Committee (“CPIC”). As technical advisor, the Monitoring Team has drawn on the expertise of its members to provide BPD guidance on policy revisions, technology improvements, training, internal investigations and discipline, staffing, and interactions with individuals in crisis. As facilitator, the Monitoring Team has sought to engage both community stakeholders and BPD officers in the reform process.

The Monitoring Team’s work in this reporting period is summarized below. The details of the Monitoring Team’s work, recorded on time sheets for each Monitoring Team member in 1/10 hour increments, are reflected in the Monitoring Team’s approved invoices, which are available on the Monitoring Team’s website at <https://www.bpdmonitor.com/monthly-statements>. The Consent Decree provides that the Monitoring Team will be paid \$1,475,000 per year in fees and expenses. For the first seven months of its work (October 2017 to April 2018), the City paid the Monitoring Team \$797,185.50 in fees and \$40,199.16 in expenses, or 56% of the total budget for the City’s 2018 Fiscal Year (ending June 30, 2018). In addition, from October 2017 through April 2018, the Monitoring Team has contributed *pro bono* services for its work on the Consent Decree in an amount equal to \$480,651.55, meaning that 37.6% of the Monitoring Team’s work during the first seven months was at no cost to the City.

### Engagement with Stakeholders

#### *Community Engagement*

Community participation in the Consent Decree process is vital. To gauge whether the reforms mandated by the Consent Decree are taking hold, the Monitoring Team requires input and feedback about BPD’s policies, training, and performance from members of the diverse communities BPD serves. BPD can amend its policies, improve its training programs, and make a number of the other improvements the Consent Decree requires, but if, on the street and in practice, these

reforms are not taking hold, BPD will not achieve full and effective compliance with the Consent Decree. The Monitoring Team is not going to know whether the reforms are taking hold without obtaining community feedback.

To obtain an understanding of the community's experiences, perceptions, concerns and needs, the Monitoring Team has sought to engage Baltimoreans in the Consent Decree reform process from the outset. It established an office in downtown Baltimore, and holds regular office hours both there and at Baltimore Community Mediation Center, which serves as the team's community liaison. The Monitoring Team also has a website, [www.bpdmonitor.com](http://www.bpdmonitor.com), which features, among other things, a Consent Decree calendar, reports, court submissions, press releases, invoices, and responses to frequently asked questions; an email address, [info@bpdmonitor.com](mailto:info@bpdmonitor.com); and a telephone number, (410) 538-4670. And the Monitoring Team has established a presence on social media, with a Facebook account and a Twitter account, which it uses regularly to let community members know about its work.

Importantly, the Monitoring Team also has engaged in active, affirmative community outreach. Within two weeks of its appointment, the Monitoring Team held a meeting with key community stakeholders, including leaders from member organizations of the Campaign for Justice, Safety and Jobs, to elicit their concerns, hear their views about what community engagement in the reform process should entail, and obtain their input on reform priorities. The Monitoring Team has regularly met with those and other stakeholders since then. Recognizing the importance of meeting community members where they are, Monitoring Team members also have regularly attended community meetings in various parts of the City, and have met with affinity groups (e.g., youth groups) to inform them about the Consent Decree process and to listen to their views about BPD. To build on this early engagement, the Monitoring Team's community liaison has established a structured community engagement plan that has Monitoring Team members meeting on a set monthly schedule with different neighborhood associations, affinity groups, and other interested community members.

Consistent with the input received from community stakeholders, the Monitoring Team recently expanded its community engagement effort by issuing a Request for Applications for, reviewing applications from, interviewing, selecting, training, and deploying "neighborhood liaisons" in each of BPD's nine police districts. Currently, the Monitoring Team has eleven neighborhood liaisons—one for each district and two in two of the districts. The Monitoring Team may hire additional neighborhood liaisons in the future. The planned distribution of the neighborhood liaisons is based on the population of each police district. Overseen by the team's community liaison, Shantay Guy, and community engagement coordinator, Darnyle

Wheaton—both of whom work for Baltimore Community Mediation Center (“BCMC”)—the neighborhood liaisons provide Baltimoreans access to the Monitoring Team that is both localized and familiar. Through the existing ties they have with residents in their communities, the neighborhood liaisons educate their neighbors about the Consent Decree and the work of the Monitoring Team and serve as the Team’s initial points of contact for information and opinions about the performance and conduct of BPD officers, which the Team will need to fully assess BPD’s compliance with the Consent Decree. The neighborhood liaison model is one-of-a-kind. No other police department monitoring team in the country includes such localized emissaries.

In addition to conducting affirmative, localized outreach to inform and hear from community members, the Monitoring Team has pursued targeted engagement with community members around specific Consent Decree requirements. This is consistent with the parties’ recognition that, if policing in Baltimore is to be “responsive to community priorities,” the community must have a direct, ongoing role in BPD’s reforms. ECF No. 2-2 ¶ 1; *see also* ECF No. 68 at 1 (Court order emphasizing the importance of “ensur[ing] that the community’s voice is heard throughout the implementation of the Consent Decree”). The Monitoring Team’s targeted engagement in the reform process began with the development of the First-Year Monitoring Plan. As explained in greater detail in the Monitoring Team’s First-Year Monitoring Plan submission, *see* ECF No. 86, the Monitoring Team held four community forums in different parts of the City to inform the drafting of the plan and, then, once the initial draft was published, solicited public comments on the draft for a month. The feedback included written responses to the Monitoring Team’s online survey from Baltimore residents, BPD officers and community organizations; oral comments from community stakeholders who requested meetings with the Monitoring Team; and detailed letters from community organizations. The final First-Year Monitoring Plan, approved on February 16, *see* ECF Nos. 91 & 92, reflected a number of changes suggested by community members. *See* ECF No. 86 at 5-10. The Monitoring Team also issued a First-Year Budget for public comment before finalizing it. The Consent Decree does not call for community feedback on either the Monitoring Plan or the Budget, but with the agreement of the parties, the Monitoring Team understood the importance of obtaining such feedback prior to finalizing both documents.

A substantial amount of the work required under the First-Year Monitoring Plan requires BPD to revise its policies and training curricula in a number of areas covered by the Consent Decree. Under the First-Year Monitoring Plan, the Monitoring Team has built a community feedback component into the process for revising each policy and training program. (BPD and DOJ also have their own



feedback mechanisms). As the Monitoring Team's First-Year Monitoring Plan submission explains:

[T]he final proposed Plan provides a specific two-step process for involving community members in the implementation of policy and training reforms under the Consent Decree. First, for each policy or training program to be developed, the Plan gives community members a chance to provide their views up front, before a draft has been finalized, in order to influence the content of the final draft. The Plan identifies each of these up front feedback opportunities as an "Initial Comment Period." During the Initial Comment Period, the Parties and the Monitoring Team will hear the views, concerns and experiences of community members, including police officers, relating to the pertinent policy or training program, and then will synthesize what they receive into a written document for review by the public, the Parties and the Monitoring Team during a "Collaboration Period." In the Collaboration Period, BPD will work actively with DOJ and the Monitoring Team to craft a final draft of the policy or training program.

Once the draft is finalized, community members will be given a second opportunity for review. BPD will post the proposed policy or training program to its website and provide affirmative, intensive opportunities for the public, including BPD officers, to comment. This "Comment Period" allows community members to gauge for themselves whether the final draft accounts for the concerns they expressed during the Initial Comment Period. Following the Comment Period, BPD will consider whether any further revisions are appropriate in response to the community's feedback, and either re-commence collaboration with the Parties to make further refinements or provide the final draft to DOJ and Monitor for review and approval.

ECF No. 86 at 15-16.

Thus far, like BPD itself, the Monitoring Team has sought "initial public comment" on policies in the following areas: use of force, body-worn cameras, transportation of persons in custody, stops/searches/arrests, impartial policing, First Amendment-protected activities, sexual assault investigations, misconduct investigations and discipline and mission statement/core values statement. *See* ECF No. 91-1. To solicit community feedback on these policies, the Monitoring Team has posted a survey mechanism on its website and welcomed more informal oral feedback from community members. Consistent with the First-Year Monitoring Plan, many of these policies are still undergoing revision. *Id.* A few, however, have been finalized and published for more final public comment. Those include policies on use of force,

transportation of persons in custody, impartial policing, body-worn cameras, and First Amendment-protected activities. *Id.* As during the initial comment period, the Monitoring Team has posted a survey mechanism on its website to obtain public feedback. Together with the parties, it is also hosting meetings with community stakeholders to receive comments in person.

In coordination with BPD and DOJ, the Monitoring Team is continually seeking additional ways to engage community members in the policy revision process. In recent weeks, the Monitoring Team, BPD and DOJ have met with a number of community-based leaders to exchange ideas. As a result of those meetings, the Monitoring Team, BPD, DOJ and a core group of community-based leaders will begin holding working sessions designed to make specific policies understandable to the community-at-large and to engage in robust dialog about those policies.

#### *Communications with the Parties*

The Monitoring Team communicates with BPD, the City and DOJ multiple times on a daily basis during the work week and often on weekends and holidays as well. It is important to remember that while the Monitoring Team is charged with overseeing implementation of the Consent Decree as an agent of the Court, DOJ—the plaintiff in the lawsuit that produced the Consent Decree—maintains a vested interest in realization of the Consent Decree’s goals. Accordingly, DOJ attorneys are actively enforcing the Consent Decree.

Early on, the Monitoring Team collaborated extensively with the parties in person, over the phone and by email to develop the First-Year Monitoring Plan.

Since the Court’s approval of the First-Year Monitoring Plan, Monitoring Team members have worked exhaustively with the parties to make sure BPD produces all of the “deliverables” the Plan requires. For instance, fulfilling its dual role as assessor and technical advisor, the Monitoring Team, together with DOJ, has regularly conveyed oral and written comments and written line edits on: (1) numerous draft policy revisions due under the Plan, including revisions to BPD’s mission statement and policies on use of force, transportation of persons in custody, body-worn cameras, stops/searches/arrests, misconduct investigations and discipline, impartial policing, and First Amendment-protected activities; and (2) draft technology and staffing studies.

Moreover, the Monitoring Team has frequent, regularly scheduled in-person and telephonic meetings with the parties on various Consent Decree topics, including training, staffing, misconduct investigations and discipline, policies,

recruitment/hiring/retention/officer assistance and support, interactions with individuals with behavioral health disabilities and in crisis, youth interactions, technology and data collection, and outcome assessments. Each meeting is geared toward making progress on specific deliverables under the First-Year Monitoring Plan.

### *Police Engagement*

Getting buy-in for the reform process from rank-and-file officers, sergeants and lieutenants is every bit as vital as engaging the community. Therefore, in addition to meeting daily with members of BPD's Consent Decree Implementation Unit, City Law Department attorneys representing BPD, and BPD command staff to work on implementing the requirements of the Consent Decree, the Monitoring Team has engaged BPD members in a variety of ways. Monitoring Team members have established relationships with union leaders, visited BPD Districts, spent time at BPD's training academy (where recruit, in-service, and field training officer training is conducted) and Office of Professional Responsibility (which investigates allegations of officer misconduct), and gone on ride-alongs with patrol officers. Moreover, the Monitoring Team has established and met periodically with a focus group of rank-and-file officers to obtain their candid feedback on the Consent Decree, the positive attributes of BPD, and the challenges facing BPD.

Shortly after its appointment, the Monitoring Team established a protocol for notification and potential response to critical incidents involving BPD officers, such as officer-involved shootings. The notification is immediate and allows for local Monitoring Team members or out-of-town members in Baltimore to respond to the scene and observe BPD officers in action.

### *Meetings with the Court*

Judge Bedar is actively engaged in ensuring BPD implements the reforms required by the Consent Decree. He determined that each month he would hold a three-hour working session with the Monitoring Team and the parties to discuss developments and challenges in a specific area of the Consent Decree. Thus far, Judge Bedar has convened working sessions to discuss transportation of persons in custody (February 2018), misconduct investigations and discipline (March 2018), use of force (April 2018), technology (May 2018), and stops, searches and arrests (July 2018).

The Monitoring Team's leadership, including Ken Thompson, Seth Rosenthal, Chuck Ramsey, Hassan Aden and Theron Bowman, communicate regularly with

Judge Bedar—in person, by telephone, and by email—to update him on developments and to take direction from him.

### **Assessments and Technical Assistance**

For the first several months following its appointment, the Monitoring Team focused its efforts on crafting a First-Year Monitoring Plan. As the Monitoring Team explained in its submission of the Plan to the Court:

The [Plan] identifies the obligations of BPD, the City, DOJ, and the Monitoring Team for the first year of monitoring, which will run from the date of approval of the Plan in mid-February 2018 through mid-February 2019. The [Plan] is necessarily detailed. It provides specific deadlines, week-by-week and month-by-month, that obligate BPD and the City to comply with the Consent Decree requirements that the Monitoring Team believes ought to be prioritized, and can be achieved, by February 2019. These requirements include establishing policies, developing training curricula, and making systemic assessments, all of which are aimed at ensuring effective, safe, constitutional policing. The [Plan] thus lays the groundwork for making tangible improvements in BPD operations and performance, including positive changes in the ways BPD officers interact with civilians.

ECF No. 86 at 2-3. Because the First-Year Monitoring Plan is so central to the Consent Decree project, the Monitoring Team's work to devise the Plan was painstaking and methodical. It required developing an initial, detailed blueprint and then working collaboratively with the parties and the communities to refine it. The Court approved the Plan on February 16.

Under the Plan, the Monitoring Team's work to date has been concentrated in three areas: assessing and assisting BPD with revisions to its policies; gauging BPD's capacity to implement the reforms required by the Consent Decree; and conducting limited diagnostic reviews of BPD's performance in certain areas.

#### *Policy Revisions*

Following the Court's adoption of the First-Year Monitoring Plan, the principal work of the Monitoring Team thus far has been to assess BPD's efforts to revise policies in a number of areas and, at the same time, to assist BPD in those efforts based on the Monitoring Team's members' expertise and knowledge of national best practices. Thus far, as explained in more detail below, the Monitoring Team has assessed and advised on revisions to approximately three dozen policies addressing:

- Use of force
- Stops/searches/arrests
- Transportation of persons in custody
- Misconduct investigations and discipline
- Impartial policing
- First Amendment-protected activities
- Sexual assault investigations
- Body worn cameras

In addition, the Monitoring Team has assessed and assisted BPD with revisions to BPD's mission and core values statements.

### *Capacity Reviews*

Some of the foundational work required by the Consent Decree entails assessing BPD's present capacity to implement reforms and, where BPD falls short, developing a plan for ensuring that those reforms are achievable. To date, as explained in more detail below, the Monitoring Team has reviewed and worked with BPD and DOJ to develop the following:

- A comprehensive Staffing Study, which identifies BPD's staffing shortcomings and needs.
- A comprehensive Technology Study, which identifies BPD's technology shortcomings and the improvements BPD needs to make in order to: facilitate more efficient recording, collection and synthesis of data on all facets of police work (*e.g.*, stops, pat-downs, searches, arrests, uses of force, internal investigations and discipline), effectively review officer performance and ensure officers are following the law; and, in the short term, permit the Monitoring Team and the Court to comprehensively assess BPD's compliance with the Consent Decree.
- A Data Requirements Matrix, which identifies all of the data BPD must systematically collect in order for the Monitoring Team to be able to determine whether BPD is making the kinds of measurable improvements the Consent Decree requires in, *e.g.*, when and how its officers use force, when and how its officers make stops, searches and arrests, and how its Office of Professional Responsibility investigates allegations of officer misconduct. The matrix will also inform the technology improvements BPD must make.

- An outcome assessments methodology plan, which identifies the location and integrity of BPD's data in a number of areas covered by the Consent Decree, establishes which quantitative and qualitative compliance assessments the Monitoring Team will be able to perform in the first year given the current state of BPD's data, and for those assessments that are feasible in the first year, the methodologies the Monitoring Team will utilize to perform them.

### *Equipment and Records Reviews*

As noted above, it is too early for the Monitoring Team to engage in comprehensive assessments of BPD's compliance with any Consent Decree requirement, particularly in those areas where comprehensive assessments are dependent upon data that BPD either does not reliably maintain yet or does not maintain in a way that can be meaningfully synthesized. Nonetheless, the Monitoring Team has conducted preliminary reviews in a few areas, largely to get a better sense of BPD's current practices so that it can begin to determine what BPD must do over the long term to achieve compliance.

At the end of January and again at the end of April, the Monitoring Team inspected BPD's transport vehicles (vans and cruisers) to determine whether the vehicles were equipped with properly functioning restraints and video cameras, as the Consent Decree requires. These audits are discussed in more detail in the Transportation of Persons in Custody part of the Findings section below.

The Monitoring Team reviewed 60 recent internal investigations files from the Office of Professional Responsibility. The purpose of the review was to understand what the files contain and to get a very preliminary sense of whether BPD OPR personnel keep complainants adequately informed about the status of complaint investigations, whether OPR personnel perform quality investigations, and whether OPR personnel draw the right conclusions from the evidence they gather and assess.

The Monitoring Team also spent several days reviewing BPD documentation of stops, searches and arrests. The Monitoring Team sought to test the availability of data on stops, searches and arrests and to review a small sample of BPD records on stops, searches and arrests to ascertain, in a very preliminary way, whether BPD officers are properly recording their actions. The Monitoring Team also obtained information about how documentation on stops, searches and arrests are prepared, reviewed by supervisors, reviewed by Records Management System officers in each district, and then transmitted to headquarters to be input into the Record Management System.

As part of the work it must do to assess BPD's compliance with the stops/searches/arrests provisions of the Consent Decree, the Monitoring Team conducted a diagnostic analysis of BPD's response to the shooting death of BPD Detective Sean Suiter in the Harlem Park neighborhood. Monitoring Team members reviewed thousands of documents, watched hours of body worn camera footage, and interviewed several involved BPD officers. The purpose of the review was not to assess the quality of BPD's investigation or to determine the manner of Detective Suiter's death (*e.g.*, suicide or homicide), but rather to ascertain the propriety of BPD's interactions with civilians in Harlem Park, including residents, in the hours and days following Detective Suiter's death. The Monitoring Team evaluated, among other things, whether it was proper to: establish and enforce for several days a large perimeter of six square blocks around the vacant lot where Detective Suiter was found; stop, question, and conduct warrant checks of individuals who sought to enter or exit the perimeter; pat-down or search certain individuals who sought to enter, exit or travel within the perimeter; and arrest certain individuals around and inside the perimeter. The Monitoring Team's preliminary observations of BPD's performance are discussed in the Stops, Searches and Arrests part of the Findings section below.

## FINDINGS

BPD and City leadership have thus far demonstrated a firm commitment to implementing the reforms required by the Consent Decree. BPD's Consent Decree compliance team has worked diligently with the Monitoring Team and DOJ to develop revised policies, produce staffing and technology resource studies, formulate compliance metrics, and begin crafting plans for improvements in technology, staffing, interactions with youth, and interactions with individuals with behavioral health disabilities. Because of the compliance team's diligence, BPD has met every single deadline under the First-Year Monitoring Plan to date, approximately 75 in total, and has generated respectable work product in the process. That preliminary record is proof of the dedication of BPD and City leadership to systemic institutional change.

BPD is, however, still at the very beginning of the reform process. For most Consent Decree requirements, it is simply too soon to begin gauging compliance because compliance efforts have not yet begun, nor under the First-Year Monitoring Plan are they required to have begun. Nonetheless, for each requirement on which it has started work, BPD is making reasonable progress.

While the Monitoring Team commends BPD and City leadership for their willingness to reform, it continues to have concerns about BPD's *capacity* for reform. There are monumental challenges ahead. For example, while BPD understands the critical need to thoroughly modernize its technology, it remains to be seen whether and when BPD will upgrade its technology and, equally important, whether BPD and its officers will universally employ that revamped technology—to record stops, searches, arrests, and uses of force; to supervise and evaluate junior officers and intervene when there are missteps and policy violations; to analyze aggregated data to assess and improve both individual officer performance and performance across the Department, districts and specialized units. Similarly, while BPD command staff appear to understand how desperately the Office of Professional Responsibility must be improved, it is too early to tell whether OPR will, in practice, consistently receive complaints more openly and with fewer impediments, communicate better with complainants, conduct more robust investigations, and make fact findings and disciplinary recommendations based on fair, unbiased evaluations of evidence. Likewise, the capability of BPD's Training Academy to draft and properly train officers on curriculum designed to implement Consent Decree-compliant policies is an open question. The constant turnover in BPD's leadership in recent months have amplified all of these challenges.



Whether BPD is making measurable improvements in these and other areas will be the subject of semiannual reports in the future, once there has been time for the foundational reforms now underway to take root. In this report, the Monitoring Team will focus on BPD's progress toward implementing the foundational reforms.

This section sets forth the Monitoring Team's findings regarding BPD's progress to date in nearly every area of the Consent Decree. For each area, the Monitoring Team explains (1) what BPD will be required to do over the long term and what BPD has been required to do under the First Year Monitoring Plan, (2) what progress has been made and whether it is reasonable or not, (3) the challenges facing BPD, and (4) immediate next steps. It bears repeating that the Monitoring Team is *not* evaluating BPD's progress toward satisfying each and every paragraph and each and every requirement within each area of the Consent Decree. Again, that kind of report card would not reveal much, if anything, about BPD's performance so early in the reform process. The Monitoring Team instead assesses BPD's progress on the limited number of Consent Decree requirements that are included in the First-Year Monitoring Plan in each area, and then describes the road ahead.

This section begins in the areas of the Consent Decree that present perhaps the most pressing threshold challenges facing BPD: Misconduct Investigations and Discipline, Technology, and Staffing. BPD must ensure that its officers act with unimpeachable integrity in order to fulfill its mission and win the public's trust, must design and implement IT systems necessary for policing in the 21<sup>st</sup> century, and must hire and retain a sufficient number of qualified, ethical officers to police effectively. This section next addresses areas where DOJ found or expressed concerns about a pattern or practice of constitutional violations: Stops, Searches and Arrests; Impartial Policing; Use of Force; Transportation of Persons in Custody; and First Amendment Protected Activities. This section concludes by assessing BPD's progress in the remaining areas of the Consent Decree.

### **Misconduct Investigations and Discipline**

The Office of Professional Responsibility is the BPD unit that receives and investigates complaints about officer misconduct, both external complaints from civilians and internal complaints made by BPD personnel. The new policies that BPD is formulating in other areas of the Consent Decree will mean little if BPD, partly through OPR, does not ensure that all officers are following them. As Paragraph 329 of the Consent Decree explains, “[a] robust and well-functioning accountability system in which officers are held to the highest standards of integrity is critical to BPD’s legitimacy and a priority of the Department.” The need to repair OPR and establish a rigorous, effective accountability system is thus at the heart of the Consent Decree reform effort. This is especially so in the wake of recently disclosed body worn camera footage of officers planting evidence to justify arrests and the recent federal criminal convictions of officers from BPD’s Gun Trace Task Force, who stole and extorted money and drugs from others, often while fabricating evidence and making—and then covering up and lying about—patently unconstitutional stops, searches, property seizures and arrests. Without a properly functioning OPR, officers will believe that they face no consequences for even willful violations of core Departmental policies, such as those requiring officers to abide by the Constitution when they stop, pat-down, search, seize property from, arrest and use force against civilians. Equally important, a properly functioning OPR is essential to re-establishing the community’s trust. If the Monitoring Team were to take away just one thing from its conversations with community members so far, it is that BPD must learn to police itself—and if it does not, it has little hope of regaining the community’s confidence.

Reflecting the need to overhaul BPD’s system of accountability, the Misconduct Investigations and Discipline section of the Consent Decree is the longest and most comprehensive, spanning 87 paragraphs and 38 pages. It covers the location, independence, resources and authority of OPR (CD 330-34); the process for receiving complaints, classifying them, and communicating with complainants about them (CD 335-42); requirements for conducting fair, thorough, reliable misconduct investigations and making misconduct determinations (CD 343-58); requirements for handling and referring allegations of criminal misconduct (CD 359-71); the lodging of disciplinary charges, the administration of disciplinary hearings, and the imposition of discipline (CD 372-88); the process for community-centered mediation as an alternative to investigation for certain minor allegations of officer misconduct affecting civilians (CD 389-91); record-keeping for misconduct investigations (CD 392-95); measures for ensuring transparency, including issuance of quarterly public reports of aggregate data (CD 396-405); a testing program designed to evaluate the

efficacy of the civilian complaint intake process (CD 406-08); and training of OPR investigators and supervisors (CD 409-15).

Thus, the ultimate goals of the Consent Decree's provisions implicating OPR are the full, fair, objective, and timely investigation of all potential officer misconduct, the rigorous review of all misconduct investigations, and an impartial, transparent, uniform process for the imposition of discipline and corrective action where appropriate.

In recognition of the importance of improvements to OPR, the Monitoring Team began working with BPD and OPR on the Misconduct Investigations and Discipline provisions of the Consent Decree soon after being appointed by the Court. Monitoring Team members have participated in numerous meetings with BPD and DOJ, including weekly calls to discuss the work underway. Monitoring Team members also have visited OPR to engage with OPR personnel.

As this section discusses, the early collaborative work the Monitoring Team has done with BPD and DOJ revealed that OPR is in need of far more fundamental structural reform than initially contemplated at the time the First-Year Monitoring Plan was prepared. Consequently, despite good-faith progress by BPD on early drafts of policies, more time will be needed to resolve basic deficiencies in OPR operations. Without modifying OPR's structure to make the unit run more efficiently, the revised policies and investigator training that the Consent Decree requires will not be as effective as intended.

Paragraph 464 of the Consent Decree recognizes that such modifications in the First-Year Monitoring Plan are sometimes needed "[t]o promote flexibility in the implementation of the Agreement" and to ensure the integrity of the reform process (CD 464). Additionally, the First-Year Monitoring Plan itself explicitly provides for an "update" to be filed with the Court, "understanding that implementation may involve unforeseen changes in schedules or good-faith delays in implementation that deviate from the original schedule." ECF No. 91-1, Rows 298-300.

Although the process for revising OPR policies and OPR's procedural manual has been slowed to accommodate the need for organizational reform within OPR, BPD has begun to make progress in other areas. For instance, as explained below, it has sought to remove prior impediments to the filing of misconduct complaints and reportedly has stopped detailing OPR investigators to non-OPR duties.

## Areas of Progress

### *Revisions to Intake Policies and Practices*

Previously, individuals who wanted to lodge misconduct complaints against police officers had to make their complaints in person, sign them, and have them notarized. BPD has removed these impediments. It has also taken measures to improve access to the complaint process by changing its website to facilitate the acceptance of complaints online and via email and by establishing a dedicated telephone number for individuals to call to make a complaint.

The Monitoring Team also has seen preliminary indications that OPR, in practice, has accepted and is actively investigating complaints that received via email and online.

Forthcoming updates to OPR's policies and corresponding manual provisions on complaint intake will need to formally establish BPD's commitment to receiving all complaints of officer misconduct without impediment. BPD provided timely initial drafts of these policies and manual provisions in April, but as explained above, the need for structural reform within OPR put the policy revision process on hold temporarily. It will be resumed in the next reporting period.

### *Progress in Other Areas*

Pending implementation of the structural changes OPR must undergo, BPD has made progress on the following additional requirements in the Misconduct Investigations and Discipline section of the Consent Decree:

- *Location and accessibility of OPR* (CD 330). In an effort to enhance its independence, OPR is now housed in a facility separate from other BPD offices. There is a public area for community members.
- *Eliminating conflicts of interest* (CD 331). BPD has indicated that it has ended the dubious practice of detailing OPR investigators to patrol and special events duties, where they were sometimes required to work alongside the very same officers they were charged with investigating. To be effective and to maintain their credibility, both inside and outside BPD, OPR investigators must be independent. They must not be compromised by having active working relationships with officers in other units. Terminating the practice of detailing OPR investigators to other units demonstrates that BPD is making reasonable progress toward satisfying Paragraph 331, which forbids OPR employees to be

“assigned to duties that may create [a] conflict of interest, or appearance of conflict of interest, with their investigatory responsibility.” The Monitoring Team will conduct follow-up inquiries to confirm that the practice of detailing OPR investigators has ended.

- *Qualifications and background of OPR investigators* (CD 355). BPD has indicated that OPR supervisors who themselves have been implicated in ongoing misconduct investigations have been reassigned. This suggests that upper level command staff recognize the need for OPR to vigilantly maintain a reputation for integrity.

## Challenges Ahead

With the reform process just beginning, every Consent Decree requirement in the Misconduct Investigations and Discipline area will require substantial work. That is especially so given that BPD needs to revamp OPR’s basic operational model to improve the fairness, objectivity, thoroughness and timeliness of its investigations. The challenges are numerous. There are few easy fixes. Most of the challenges are long-term and will require sustained attention over the life of the Consent Decree. Some, however, offer short-term opportunities for progress, even as BPD focuses on comprehensive structural reform of OPR.

### *Revamping OPR’s Structure*

As the Monitoring Team began working with OPR, it became apparent that OPR suffers from certain foundational deficiencies that impede its work. Some deficiencies are structural. For one thing, OPR has operated with a dizzying assortment of units and sub-units, which has created significant operational inefficiencies that introduce the risk that investigations are not as timely, well-supervised or effectively managed as they must be. OPR also does not include under its jurisdiction all of the units and functions that address officer misconduct within BPD, with some responsibilities falling to other components of BPD, such as BPD’s internal Inspector General. In fact, the nature of officer misconduct that falls within OPR’s jurisdiction changed substantially under what recently turned out to be short-lived BPD leadership, even as the parties and the Monitoring Team worked through initial drafts of policies on complaint intake and classification. In short, the precise responsibilities of OPR remain unsettled, rendering it difficult to move forward with the development of policy.

In addition, some critical portion of misconduct complaints, *i.e.*, those investigated by the Internal Affairs Division of OPR, are assigned to investigators and supervisors based on the implicated officer’s geographic assignment. The result

is that the same OPR investigators deal with the same officers and supervisors repeatedly, which could create real or perceived problems with investigator impartiality and could result in uneven investigator caseload distribution. To enhance the quality and efficiency of OPR's investigations and ensure compliance with the Consent Decree, an overhaul of case assignment protocol will be necessary.

Other challenges include OPR's relationship with both external and additional internal accountability structures. The Civilian Review Board ("CRB") is a separate, independent entity established by state law. It is composed of one community member from each of the nine police districts in the City. The CRB receives and is authorized to investigate complaints against police officers that allege the use of excessive force, abusive language, harassment, false arrest, and false imprisonment. The CRB may also review OPR investigations and make recommendations to the BPD Commissioner about discipline. Additionally, the CRB may review BPD procedures and make recommendations to the BPD Commissioner. Though OPR and CRB must interact and coordinate to fulfill their respective statutory roles, the actual process for guiding such interactions has been ill-defined; no protocol for communication or coordination between the entities has ever existed. Establishing clear written protocols for how OPR and CRB interact will require extensive collaboration, as well as consideration of state law, including the Maryland Public Information Act, Md. Ann. Code, Gen'l Provisions §§ 4-311, *et seq.*, and case law interpreting the Act; the Law Enforcement Officer's Bill of Rights, Md. Ann. Code, Public Safety §§ 3-101, *et seq.*; and Public Local Law §§ 16-41, which is the enabling statute for the CRB. CRB and OPR must have sufficient time to participate fully and collaboratively in the development of these protocols.

At the same time, there must be far greater clarity within BPD itself for determining how supervisors are involved in addressing problematic performance when it arises. Supervisors need to be empowered to address problematic performance, but also must be prevented from sweeping problematic behavior under the rug. To accomplish this, BPD must refine the procedures that delineate what gets investigated by OPR and what gets promptly addressed by supervisors with subsequent OPR oversight.

The process that OPR uses to classify complaints poses additional challenges. The current classification system is simultaneously complicated and ill-defined, leading to a potential lack of uniformity and consistency. Some classifications are overly broad, while others are too narrow. Several classifications automatically appear to encompass other classifications—but there are no rules for rigorously determining how classifications should be made. The proper classification of complaints (and potential re-classification as necessary) is critical to the investigative process. It is also critical to generating the resulting data that must be reviewed to assess OPR's performance. The current classification system will need to be substantially revised.

BPD, DOJ and the Monitoring Team did not fully recognize the need for bedrock structural reform at the time the First-Year Monitoring Plan was drafted. Consequently, the First-Year Monitoring Plan did not initially include the task of reviewing OPR's structure, nor did it build in time to resolve the shortcomings explained above. The First-Year Monitoring Plan was recently modified to accommodate the need to overhaul the structure of OPR before policy development work resumes in earnest.

It should be noted that the need to address OPR's structural deficiencies first, before revising OPR policies and OPR's procedural manual, emerged as BPD was undertaking the policy and manual revisions in good faith. In fact, BPD met the April 1 deadline for submitting the initial draft of the intake and classification policies and manual provisions. Neither a lack of effort by BPD nor unproductive collaboration among the parties and the Monitoring Team has led to the proposed changes to the timetable. Rather, the proposed changes are the natural result of a process of systemic institutional reform—one that seeks not simply to implement changes quickly, but also to implement them the right way. To do reform the right way, OPR must preliminarily undergo organizational changes that neither the Monitoring Team nor the parties fully appreciated until the reform process got started.

It is currently contemplated that OPR's structural deficiencies will be resolved by October 2018. Successful implementation will undoubtedly pose routine transitional challenges as OPR personnel learn to adapt, but the Monitoring Team is optimistic that the changes can be implemented relatively expeditiously.

#### *Communication with Complainants*

Paragraph 392 of the Consent Decree requires that complainants receive regular, interim updates about their cases as the investigations of their complaints proceed. Monitoring Team members have interviewed OPR personnel and reviewed a sample of OPR investigations conducted in 2017. While Monitoring Team members found some evidence of initial communication with complainants, follow-up interviews and final disposition letters, they did not find evidence that OPR investigators are providing complainants with updates at regular intervals. That is problematic, as even cases of moderate complexity can take eight months or more to complete, meaning that complainants go long periods without knowing what is happening in their cases.

The Monitoring Team believes that, despite systemic problems, BPD can implement enforceable protocols to regularly communicate with complainants, as Paragraph 392 requires, even as BPD, DOJ and the Monitoring Team focus for the

next several months on structural reform. Making regular communication with complainants is necessary to demonstrate to community members that BPD is serious about policing its own officers and thus essential to starting the process of re-establishing the community's trust.

### *Data and Technology*

As with many BPD components, OPR stands to benefit significantly from an overhaul of its IT system. The Monitoring Team has found that OPR cannot easily produce a number of basic statistics about its misconduct investigations, such as the number of cases resulting in certain dispositions, the current status of every investigation, and the like. It is impossible to evaluate whether OPR is improving its performance as a unit without being able to readily review and analyze such rudimentary data. In the coming months, OPR will need to improve how it utilizes its existing technology to carry out its work and, at the same time, prepare for the adoption of new technology.

Even before OPR revamps its technology, however, it must improve its basic record-keeping so that it is easier to track what is happening with misconduct investigations in each case. Currently, it is hard to discern the extent and quality of the work OPR investigators have done in individual cases. As mentioned, in advance of conducting a comprehensive qualitative review of OPR investigations for outcome assessment purposes, Monitoring Team members reviewed a random sample of 60 misconduct investigations OPR completed in 2017. The purpose of this review was diagnostic. The Monitoring Team wanted to see how the files were organized, how investigative summaries were prepared, and the general rigor and objectivity of the investigations. The review confirmed that OPR investigations have a long way to go to become as thorough, timely and objective as the Consent Decree requires. Each file looks and is organized differently, with files of investigations of similar classes of alleged misconduct sometimes containing entirely different forms, reports and investigative material. Only a small number of files contained transcripts, recordings or other evidence showing that involved officers were interviewed. Moreover, key investigative steps were not thoroughly and uniformly logged.

If BPD is to demonstrate compliance with the Consent Decree's requirements in the Misconduct Investigations and Discipline area, OPR investigators must conduct more rigorous investigations and must document their actions more thoroughly. Correspondingly, supervisors must make sure that such improvements are made. As a basic first step, supervisors must ensure that, in practice, investigators adhere to a uniform file-keeping system so that all investigative files contain the same forms and the same kinds of information. With a uniform system,



supervisors will more easily be able to determine which investigators are performing their jobs the right way and which ones are not. BPD can make these changes even as it upgrades its technology and continues to revise OPR policies and OPR's manual.

### *Staffing and Personnel*

OPR is currently operating with a significant staffing shortfall. This leaves existing personnel with substantial workloads. OPR estimates that each investigator currently has about 40 active investigations.

BPD leadership compounded OPR's personnel challenges by detailing OPR investigators to patrol units when the Department needed more personnel on the street, either because of Patrol Division shortfalls or for special events. As noted, the Commissioner terminated this practice several months ago in response to the concerns expressed by DOJ and the Monitoring Team.

To achieve compliance, BPD will need to permanently staff OPR at a level that ensures high-quality, timely investigations. It is likely that OPR also could increase its effectiveness through the restructuring discussed above. The Monitoring Team will assist OPR in assessing those possibilities.

Personnel changes at every level of BPD have amplified the already significant challenges OPR faces due to staffing shortages. Constant turnover in the command staff that oversees OPR, as well as in the leadership of OPR itself, muddles and delays the clear, definitive guidance that OPR investigators must receive about the importance of their performance to the success of the Consent Decree. The recent rapid turnover in Commissioners has presented an especially demanding test. Each Commissioner has had unique views on the structure, staffing and unit composition of OPR, and all have acted on those views, making it difficult to monitor, provide technical assistance on, and work with the parties to revise OPR policies and practices. BPD's compliance team continues to work diligently with the Monitoring Team and DOJ to implement the reforms required in the First-Year Monitoring Plan, but the Monitoring Team has concerns that the changes in administration are adversely affecting the pace of BPD's efforts to reform OPR.

### **The Next Six Months**

Based on the updates to the First-Year Monitoring Plan submitted to the Court on July 5, 2018, *see* ECF No. 125, BPD will finalize draft policies on complaint intake and classification by October 5, 2018. By October 5, BPD will also produce final draft protocols on OPR's relationship with CRB and final protocols on classifying

complaints. A public comment on all of these policies will run through November 2, 2018. Once BPD finalizes the policies after considering the comments, the Monitoring Team will have until December 10 to approve or disapprove them.

Subsequently, BPD will produce draft procedural manual provisions on complaint intake, classification and communication. The final draft is due February 1, 2019, followed by a public comment period that will conclude on March 1, 2019. The Monitoring Team will approve or disapprove the manual provisions by April 5, 2019.

Even as work on the intake, classification and communications provisions of the OPR manual proceeds, BPD will begin work on separate portions of the OPR manual that address the investigative process itself. BPD will begin working on both the policies and manual provisions on the conduct of OPR investigations in early 2019, with a final draft due to be issued for public comment on May 3, 2019. The Second-Year Monitoring Plan will address the remaining deadlines for adoption of the policies and manual provisions on OPR investigations. It will also address policies in other areas affecting OPR, including review and adjudication of completed investigations.

As BPD refines OPR's structure and seeks to make progress on OPR policies and OPR's procedural manual, the Monitoring Team anticipates working with BPD to make other improvements in OPR operations, including: increasing the consistency of complainant communications; re-imagining the configuration and usage of the existing IAPro database that tracks complaints, investigations, and outcomes; creating protocols to ensure minimum staffing levels; and preparing for routine training of OPR supervisors and investigators.

## Technology

Paragraph 267 of the Consent Decree requires BPD to “provide its officers with the Technology necessary to implement the Material Requirements of this Agreement . . . [including] the data collection and review required by this Agreement . . .” Paragraphs 268-278 then outline the Consent Decree’s technology requirements. Those provisions first require BPD and the City to complete a Resource Study (CD 268, 270). The Resource Study identifies the systems BPD currently uses to maintain data and track Departmental performance, describes the current state of those systems and explains why they are inadequate to serve BPD’s needs, and makes preliminary recommendations for improvements. Following completion of the Resource Study, BPD and the City must produce and submit a Resource Plan (CD 269-70, 272). The Resource Plan, which must be updated annually (CD 275), is intended to address a number of subjects, including how BPD will provide the necessary computer equipment and access required for personnel to discharge their duties, the implementation of a centralized records management system, and the development of an Early Intervention System (“EIS”). BPD is required to use its best efforts to implement the Resource Plan (CD 274).

The Technology provisions of the Consent Decree also require BPD to revise its policy on body worn cameras (CD 271) and to disclose to the public the acquisition of certain new equipment or activity to be used in enforcement activities (CD 276-78). Other provisions of the Consent Decree, in the Supervision section, require BPD to upgrade its Early Intervention System consistent with the Resource Plan (CD 312-17). The EIS must “include a computerized relational database that will be used to collect, maintain, integrate, and retrieve Department-wide, District-wide and Unit-wide data, as well as data for each officer.” The purpose of this upgraded EIS relational database is to “capture all information necessary to ensure supervisory awareness and early identification of potentially problematic individual and Department-wide conduct or signs of stress or other behavior that would benefit from being addressed.”

The plain language and relative brevity of the Consent Decree’s Technology provisions downplay the central importance of technological improvements to the entire Consent Decree enterprise. Without such improvements, BPD simply will not be able to come into compliance with the Consent Decree. It will continue to lack the data needed to enable the Monitoring Team to assess performance. It will also lack the data needed to facilitate proper review of the efficacy of its policies and training, meaningful supervision and analysis of officer and unit-, district- and department-wide performance, and appropriate discipline for misconduct. To put it bluntly, BPD is stuck in the dark ages of data collection, record-keeping and performance

evaluation. It will not enter the era of modern policing, much less satisfy the Consent Decree's numerous requirements, unless and until it upgrades its IT systems. The Court has made this observation publicly on several occasions already.

Data collection and analysis provisions are woven throughout the Consent Decree. These provisions require BPD to record, collect, maintain, review and analyze data in a number of subject areas, including investigatory stops and detentions (CD 41), vehicle stops (CD 46), stops, searches and arrests (CD 82-86), use of force (CD 211-217), transportation of persons in custody (CD 232), and misconduct investigations (CD 392), among others. Indeed, one of the Monitoring Team's main duties is to undertake the "outcome assessments" identified in Paragraph 459. All of those outcome assessments rely upon the accurate reporting, collection and review of data, much of which is not practicably reviewable, if reviewable at all, at present. Thus, as the Consent Decree states, compliance is truly "dependent upon BPD acquiring or developing the appropriate technology." (CD 267).

BPD understands the need to revamp its technology and has demonstrated a firm commitment to satisfying all of the Technology provisions of the Consent Decree over time, recognizing that there is no easy or inexpensive fix. Thus far, to its credit, BPD has met every First-Year Monitoring Plan deadline pertaining to technology and has taken meaningful actions to lay the groundwork for systemic improvements. Nonetheless, BPD will have to make considerable progress toward completing the measures recommended in the forthcoming Resource Plan before it approaches compliance with Technology provisions of the Consent Decree.

## **Areas of Progress**

### *Resource Study*

The Monitoring Team began working with the parties in the Technology and Data areas soon after being appointed by the Court. Monitoring Team members have participated in numerous meetings with City and BPD personnel to discuss BPD's overall approach to technology, and to discuss the progress being made on the development of the Resource Study, prepared by the National Police Foundation. Monitoring Team members had the opportunity to review drafts of the Resource Study and to collaborate with the City and BPD on revising it. The Monitoring Team believes that the final product, filed with the court in June under the First-Year Monitoring Plan, properly describes the current state of BPD's IT systems and identifies the issues with those systems from both an IT and business process perspective.

### *Data Requirements Matrix*

The Monitoring Plan calls for BPD to develop a Data Requirements Matrix. The purpose of the Matrix is to detail the various data collection, review and analysis requirements of the Consent Decree and indicate how, when and where each required data element is currently recorded. It is also intended to help the parties quickly identify the gaps in current data collection processes and systems, determine which areas should be prioritized for a baseline data assessment, and identify the data available to begin the outcome assessments required by Paragraph 459 of the Consent Decree.

BPD spent numerous hours developing the Data Requirements Matrix and gathering the details to complete it. BPD repeatedly conferred with the Monitoring Team and DOJ to ensure that the Matrix includes all of the information required to ensure that BPD's future technology upgrades capture the data necessary not only to enable the compliance reviews and outcome assessments required by the Consent Decree, but perhaps more importantly, to facilitate BPD's own performance evaluation functions after the Consent Decree ends. While the Matrix will be a "living document," changing over the life of the Consent Decree as BPD's data collection systems and processes evolve, the Monitoring Team, DOJ and BPD agreed on the current version in early June, consistent with the requirements of the First-Year Monitoring Plan. The current version, which is voluminous, does what it is supposed to do: catalog all of the data requirements of the Consent Decree and identify how, when and where each data element is recorded.

### *Prioritizing Near-Term Needs*

Members of the Monitoring Team and DOJ have participated in meetings with the City and BPD to review current IT priorities and identify areas in which the City and BPD can make progress while the Resource Plan is being developed. These meetings have focused, in particular, on critical technology infrastructure needs that must be addressed in the near term.

BPD has made an effort to implement an updated data storage solution (Storage Area Network or "SAN") and to update other outdated network equipment so that the proper foundation is in place to support future application upgrades. BPD also has begun planning for an upgrade to the most recent, standard version of IAPro to capture and track use of force and misconduct investigations. This will include a move to an SQL database server and will leverage the updated storage infrastructure.

Additionally, BPD has begun planning for the upgrade of its records management system (“RMS”). While the Resource Plan ultimately will confirm the proper approach for RMS improvements or replacement, BPD has not sat idly by awaiting its development. BPD has made a significant effort to receive feedback from its end users to understand their needs and requirements, and has conducted research on available RMS on the market to gain an understanding of market options that might meet its needs.

### *Body-Worn Camera Policy*

As the First-Year Monitoring Plan requires, BPD submitted its proposed body worn camera policy to the Monitoring Team and DOJ in March. Over the next six weeks the Monitoring Team and DOJ reviewed the policy and discussed recommended modifications with BPD. BPD made modifications and issued a final proposed policy for public comment in mid-June. Although BPD awaits public comments on the final proposed policy and the policy might be modified prior to its approval and implementation, the Monitoring Team believes that the final proposed policy satisfies the requirements of Paragraph 271.

## **Challenges Ahead**

While BPD has made progress in a number of areas, it still has a long way to go to achieve Consent Decree compliance and fully realize a modern, efficient and sustainable IT environment. As noted above, BPD cannot achieve Consent Decree compliance without resolving the numerous foundational issues that plague its IT environment today.

BPD’s IT systems must be fixed from the ground up. Core infrastructure needs must be planned for and maintained; data silos must be integrated; duplicative data entry must be eliminated; data quality must be improved. Such expansive change will require a cultural shift within BPD, as well as sufficient funding and resources from the City.

### *Resource Plan*

In June 2018, BPD retained Gartner, an IT consulting group, to develop a Police IT Assessment and Strategic Plan—*i.e.*, the Resource Plan. The development of the Resource Plan must include a review of BPD’s operational objectives, including Consent Decree requirements, and a comprehensive IT strategy for achieving them. When complete, the Resource Plan should provide both a strategic vision and detailed roadmap to overhaul, modernize and sustain BPD’s IT. Additionally, the Resource

Plan should include a high level staffing plan identifying the resources necessary to implement and sustain the IT strategy and roadmap.

The Resource Plan is projected to take twelve weeks to complete. It is currently being drafted. Once the Resource Plan is completed, BPD will produce an IT implementation plan. Once the IT implementation plan is finalized, the City must be prepared to provide the staffing, funding and resources necessary to implement it.

### *IT Governance*

Proper governance is key to ensuring the success of any IT effort. With proper IT governance, IT priorities are set by key stakeholders and aligned with an agency's operational and business objectives. Without a proper governance structure, IT is often misaligned with the business, is implemented in an IT "vacuum," and is rarely successful. When significant technology initiatives fail, it is often due not to failures in the technology itself, but rather to gaps in the planning, management and governance of the technology's implementation.

The Resource Study makes six separate findings, all of which underscore the need for a proper governance structure.

*Finding 1.* BPD does not have a central authority that can advocate for sound IT decision-making throughout the department.

*Finding 2.* Silo systems have created disparate information and difficulty integrating data sets, both within the department and with City and State systems.

*Finding 3.* IT initiatives have suffered from a lack of funding that may affect hardware.

*Finding 4.* Training is lost over time creating distrust in systems.

*Finding 5.* BPD lacks a data retention policy.

*Finding 6.* Over time records management functions and crime analysis were centralized, but since district commanders still seek updated and easily accessible information, some functions may be replicated.

While all of these findings may be categorized as "IT" issues, all arise from the lack of a formal, properly functioning IT governance structure; none concern the

capacity of the IT itself. Proper governance should enable sound IT decision-making, ensure silos are not created, advocate for adequate funding, plan for ongoing training and education, develop proper IT policies, and work to understand the needs and requirements of system users.

Fortunately, the City has designated its Deputy Chief Information Officer to oversee BPD's technology reforms. The City is also seeking candidates for the newly created position of Consent Decree Information Technology Lead. Under the leadership of the Deputy Chief CIO, BPD has begun to prioritize IT needs and projects, develop project charters, and better understand its resource requirements. The soon-to-be-hired IT Lead should enhance that work. Moreover, the forthcoming Resource Plan is expected to include concrete plans for developing a governance structure that BPD can implement to successfully deploy and sustain a modern IT environment. This will be an essential component of the Resource Plan: BPD must commit to establishing and sustaining proper IT governance if it hopes to make the kind of technology reforms that the Consent Decree requires—and that its own capacity to perform as an effective, 21<sup>st</sup> century law enforcement agency depends on.

### **The Next Six Months**

The Monitoring Team will continue its regular meetings with BPD, the City and BPD as the Resource Plan is developed. The initial draft of the Resource Plan is due in late September; comments and objections are due from the Monitoring Team and DOJ in late October; and the Resource Plan will be finalized and submitted to the Court on December 1.

As the Resource Plan is being written, the Monitoring Team will continue to work with BPD IT leadership on identifying IT priorities that can be implemented in the near term, focusing on improving data quality and establishing the governance structure needed to implement and sustain a modern IT environment.

The Monitoring Team also looks forward to seeing BPD complete its upgrade of IAPro over the next few months. The upgrade is essential for improving how data on use of force incidents and misconduct investigations is collected, retained and analyzed and, correspondingly, for facilitating the use of force and misconduct investigations compliance reviews and outcome assessments that the Monitoring Team is obligated to undertake under the Consent Decree.

Finally, in the next reporting period, BPD is expected to complete revisions to its policy on body-worn cameras and to begin the process of revising its training curriculum. The new policy is scheduled to be finalized and adopted by December.



The initial draft of the revised training curriculum is due in October. The parties will collaborate on revisions to the draft through the end of November. The curriculum should be finalized by January 2, 2019, and training using that curriculum should ensue.

### **Staffing, Performance Evaluations and Promotions**

BPD agreed to complete a comprehensive Staffing Study to determine the appropriate number of sworn and civilian personnel needed to effectively provide police services, enable supervision, and satisfy the requirements of the Consent Decree (CD 428). Based on this Staffing Study, BPD will develop a Staffing Plan that will ensure a sufficient number of deployed personnel to, among other things: implement and sustain effective community and problem-oriented policing; conduct timely misconduct investigations; supply sufficient patrol officers to each District without resorting to drafting, except under unforeseeable circumstances; promote Unity of Command when feasible; provide a sufficient number of supervisors; and account for BPD's and the City's existing and projected resources (CD 429). BPD must implement the Staffing Plan, but may do so in a phased manner that reflects the City's and BPD's fiscal resources (CD 430).

As for performance evaluations and promotions, the Consent Decree obligates BPD to have supervisors meet with officers to discuss their annual performance reviews, which will include written discussions of the officer's performance during the rating period, any areas for growth and achievement, and any areas requiring further training and supervision (CD 431). Each officer's direct supervisor must use a formalized system to document annual performance evaluations for each officer and quarterly evaluations of probationary employees by their direct supervisor (CD 432). In addition to these formal evaluations, supervisors must meet with their subordinates on an ongoing basis to discuss performance, and must document their communications regarding performance challenges and areas for growth (CD 433). The Consent Decree further requires BPD to conduct performance evaluations of each supervisor (from first line supervisor through commander), which will include assessments of ability and effectiveness in conducting performance reviews, including monitoring, deterring and addressing misconduct by officers they supervise (CD 434). Finally, BPD will ensure its promotional system has clear criteria prioritizing effective, constitutional, and community-oriented policing as factors for promotion (CD 435).

Thus far, BPD has met the deadlines for the Staffing Study in the First-Year Monitoring Plan and has demonstrated substantial progress toward satisfying the Staffing Study requirement. BPD has not yet commenced efforts to comply with the other provisions of the Staffing, Performance Evaluations and Promotions section of the Consent Decree, as the First-Year Monitoring Plan has not yet required BPD to do so.

## **Staffing Study**

BPD contracted with the National Police Foundation to perform the Staffing Study. NPF began work on the study in February 2018, shortly before the Court approved the First-Year Monitoring Plan. Since then, the Monitoring Team, BPD, NPF and DOJ have had bi-weekly phone calls to discuss the progress of the study, as well as the challenges it presents. During these discussions, the Monitoring Team raised questions and gave advice to help ensure compliance with the requirements of the Consent Decree. Additionally, the Monitoring Team and NPF met with a focus group of rank-and-file officers and first-line supervisors in April 2018 to solicit their ideas and concerns regarding Departmental staffing.

BPD submitted an initial draft of the Staffing Study to the Monitoring Team and DOJ on May 18, as the First-Year Monitoring Plan required. At that point, the study remained a work in progress; NPF still had additional material to include to complete the study. Since submission of the initial draft in May, the Monitoring Team and DOJ have worked closely with NPF and BPD to refine the study. The Monitoring Team anticipates that the study will be completed on time and that its findings will be sufficient to inform the Staffing Plan.

## **Challenges Ahead**

In the short-term, BPD must develop a Staffing Plan using the results of the Staffing Study. Given officer shortages (particularly in Patrol) and BPD's attrition rate in recent years, devising a realistic strategy, especially one that satisfies the community-oriented policing objectives of the Consent Decree, will be difficult. Moreover, BPD has expressed concern that it does not have the in-house expertise to develop, write and implement a Staffing Plan and likely will need to retain a consultant to do the work.

Over the long-term, the biggest challenge will be implementing the Staffing Plan in a timely manner given the sizeable shortage of sworn officers. Part of that long-term challenge will be to remedy the critical shortage of officers in the Patrol Division. To make up for the shortage, BPD requires patrol officers to work extended hours on a routine basis. These regular overtime assignments have had, and continue to have, a significant adverse effect not only on BPD's budget, but on officer morale. In fact, in both focus group sessions and informal conversations, the principal complaint of rank-and-file officers and first-line supervisors is the staffing shortage in the Patrol Division.

BPD must substantially increase the number of qualified officers assigned to the Patrol Division, with the goal of discontinuing the morale-sapping, budget-depleting practice of regularly assigning Patrol officers to work double shifts and extended hours. BPD needs to seriously examine the possibility of redeploying to the Patrol Division sworn officers who currently work outside of Patrol. Without bolstering the number of patrol officers, BPD will not be able to establish a viable, sustainable Community Policing Plan, as required by the First-Year Monitoring Plan.

### **The Next Six Months**

The Monitoring Team and DOJ will continue to collaborate with BPD and NPF through the end of July to complete the Staffing Study. The final study will be completed and submitted to the Monitoring Team and DOJ on August 14. The Monitoring Team will indicate its approval or disapproval to the Court by September 11.

Beginning in August, the Monitoring Team and the parties will begin regularly scheduled meetings to discuss development of the Staffing Plan. BPD will submit an initial draft of the Staffing Plan by November 23. The Monitoring Team and the parties will collaborate on revisions through the end of January 2019. The Staffing Plan will be finalized near the beginning of Monitoring Year Two, likely late February or early March 2019.

## **Stops, Searches, Arrests and Voluntary Police-Community Interactions**

The Consent Decree broadly requires BPD to engage in community-oriented policing techniques by making friendly, professional voluntary contacts with community members and by conducting investigatory stops, searches, and arrests in a constitutional and otherwise lawful manner (CD 27-28). Complying with these requirements is essential to BPD's effort to rebuild community trust. That is because compliance would mean constraining the abuse of the most fearsome and potentially degrading power that police officers routinely exercise: the power to restrict an individual's freedom. In its investigation, DOJ found that, by carrying on the legacy of "zero tolerance" policing, BPD regularly abused that power. The predictable result, according to DOJ, was the deterioration of BPD's relationship with certain affected communities. While BPD has disputed DOJ's finding of a pattern of constitutional violations, the clear aim of the Consent Decree's requirements on stops, searches and arrests is to resuscitate that relationship.

In recognition of the importance of the Consent Decree's requirements on stops, searches and arrests, the Consent Decree's provisions addressing those requirements are extensive. They compel BPD to revise its policies and training curricula; provide thorough prescriptions for communicating with individuals, performing field interviews, and conducting stops, pat downs, searches and arrests; and establish detailed training, documentation, supervisory, and data collection and review obligations (CD 29-86).

As explained below, BPD thus far has met all of the First-Year Monitoring Plan deadlines relating to the Stops/Search/Arrests/Voluntary Police-Community Interactions ("S/S/A") section of the Consent Decree and has made reasonable progress toward implementing the policy revision requirements. It is too soon to assess BPD's progress toward satisfying any of the numerous other requirements.

The Monitoring Team did, however, conduct a preliminary diagnostic review of BPD's S/S/A data collection practices. In addition, the Monitoring Team reviewed BPD's actions in the Harlem Park neighborhood in the wake of the shooting death of Detective Sean Suiter in November 2017. The purpose of that review was also purely diagnostic—to get a glimpse into whether BPD is ensuring that its officers abide by the Constitution in their street interactions with community members. Was the perimeter that BPD established around the neighborhood to restrict the free movement of civilians of the proper size and duration, or was it too big and did it last too long? Did BPD officers lawfully stop people around and inside the perimeter once the threat of an armed and dangerous suspect was eliminated? Did they justifiably conduct warrant checks on those stopped? If BPD officers searched or patted down

individuals they stopped, were those searches or pat-downs lawful? Did BPD adequately document its S/S/A activities? Was BPD institutionally at fault for any missteps, or were any missteps the result of noncompliant conduct by individual officers? The Monitoring Team explored these questions not to assess compliance, but so that BPD may draw on its response to the shooting of Detective Suiter as a teaching, or “lessons learned,” opportunity on stops, searches and arrests. The Monitoring Team recognizes that what occurred after the Suiter shooting was uniquely fraught in that officers were responding to the possible homicide of a fellow officer in the line of duty. But such circumstances often provide the best measure of performance, as it is in those circumstances that the commitment to constitutional policing faces its stiffest test.

## Policy Revisions

In early April, by the deadline established in the First-Year Monitoring Plan, BPD furnished the Monitoring Team and DOJ with initial drafts of ten different policies implicated by the S/S/A section of the Consent Decree. The policies included the core policy, Policy 1112, titled “Field Interviews, Investigative Stops/Detentions, Weapons Pat-Downs and Searches,” as well as the following:

- 808 Criminal and Civil Citations
- 809 Marihuana - Uniform Civil Citation
- 812 Misdemeanor Shoplifting Arrests
- 1007 Search and Seizure Warrants
- 1013 Strip Searches and Body Cavity Searches
- 1018 Quality of Life Offenses
- 1106 Warrantless Arrest and Probable Cause
- 1109 Warrantless Searches
- 1505 Foot Pursuits (initially considered with the Use of Force policies but now considered, with the parties’ agreement, with the S/S/A policies)

The Monitoring Team and DOJ provided BPD feedback on the drafts of these policies in late April. The Monitoring Team and DOJ then had regular meetings with BPD to discuss and implement revisions.

During the collaboration period, BPD, DOJ and the Monitoring Team came to realize that it would be premature to finalize the four misdemeanor policies—808, 809, 812 and 1018—now. There were two principal reasons. First, because the four policies involve misdemeanor “quality of life offenses” like loitering, trespassing, shoplifting and marijuana possession, they are closely aligned with the community policing requirements of the Consent Decree, and the first of those requirements—

the development of a Community Policing Plan—will not be implemented until March 2019, which is the beginning of the second monitoring year. It is important to ensure consistency between the policies involving misdemeanor quality of life offenses and the Community Policing Plan. Second, BPD presently lacks the capacity to meaningfully supervise adherence to policies involving stops, searches and arrests for misdemeanor quality of life offenses. That is because, as the Technology Resource Study confirmed, BPD’s record-keeping practices are deficient, particularly as to timely, accessible and comprehensive data on stops, searches and arrests. Without the capacity to ensure adherence to policies involving misdemeanor quality of life offenses, it does not make sense to rush to have revisions to those policies completed. For these reasons, the Court has extended the deadlines for finalizing the revisions to Policies 808, 809, 812 and 1018—until the second monitoring year. The deadlines will be included in the Second-Year Monitoring Plan, which will be drafted later this year and adopted in early 2019. *See* ECF No. 124.

The other six policies—1007, 1013, 1106, 1109, 1112 and 1505—are on target to be adopted according to the original First-Year Monitoring Plan. The collaboration period ended a few days ago, on July 15. BPD will issue final proposed versions of these policies for public comment on July 30. The community will have until September 15 to submit comments. BPD then will provide final policies to the Monitoring Team and DOJ on September 30. The Monitoring Team will approve or disapprove the final policies by October 31.

BPD deserves credit for its diligence in revising this first set of policies and in working with the Monitoring Team and DOJ to ensure they comply with the Consent Decree. There may be no issue more central to restoring the community’s trust in BPD than ensuring that BPD officers rigorously adhere to the Constitution in their street interactions with community members. This set of policies lays the essential foundation for proper officer conduct.

There are additional policies implicating the S/S/A section of the Consent Decree. These include: Policies 906 (“Traffic Citations”), 1002 (“Securing and Interviewing Witnesses”), 1104 (“Arrest Warrants”), 1105 (“Custodial Interrogations”), 1108 (“DUI/DWI Arrest Procedure”), and 1114 (“Persons in Police Custody”). With the Court’s approval, the deadline for BPD to submit initial drafts of these additional policies to the Monitoring Team and DOJ was moved to August 3. The Court agreed to put these policies on a separate track from the first set of policies because the First-Year Monitoring Plan had “set ambitious deadlines for reforming a large number of policies,” the Court had “seen firsthand the significant progress the Parties, with the Monitoring Team’s technical assistance, have made in reforming several foundational policies involving use of force and stop, searches, arrests and

voluntary police-community interactions,” and the Court wanted to ensure that BPD, the Monitoring Team, DOJ had sufficient time to give the additional policies the careful attention they deserve. ECF No. 112 at 1-2. Moreover, the Court, the Monitoring Team, BPD and DOJ wanted to give the community the time it needs to consider drafts of these policies before they are finalized. Because there are a number of policies being presented to the community in the first year, minor modifications of certain S/S/A policy timelines should facilitate public input. Importantly, as the Court observed in its order approving the new deadlines, none of the modifications will slow the scheduled pace of reform in the S/S/A area. ECF No. 112 at 1-2.

## **Data Collection**

The Monitoring Team and the parties have been in active discussions regarding compliance with the data collection requirements of the S/S/A provisions of the Consent Decree. These discussions actually began well before the scheduled start date of May 20. Beginning soon after the approval of the First-Year Monitoring Plan, Monitoring Team members have been conferring with BPD and DOJ about preparation of the Data Requirements Matrix, which was completed in early June (*see* Technology findings above). In addition, BPD separately has produced for the Monitoring Team a detailed spreadsheet identifying the locations of various data on S/S/A.

As discussed in the Technology findings above, BPD’s S/S/A data is in poor shape. Police agencies typically retain S/S/A in centralized Computer-Aided Dispatch systems (CAD) and Record Management Systems (RMS) systems that are reliable, accessible, and capable of aggregating data for analytical purposes. Correspondingly, many agencies have electronic field-based reporting systems, which require officers to record field intelligence, search and arrest information in these databases in real time using paperless electronic entry and also allow officers to query data in real-time and obtain alerts when certain trends or conditions are present. BPD has not developed these capabilities to date; developing them is what BPD will do under the Consent Decree. As explained above, BPD officers still use paper forms to record S/S/A activity, and although BPD endeavors to enter the data from the paper forms into its RMS, there is a significant backlog. As DOJ found, BPD also does not ensure that its officers routinely document S/S/A activity; voluntary contacts, field interviews and stops often appear to go unreported. Moreover, this incomplete S/S/A is stored in multiple, disparate, decentralized information silos. Until BPD revamps or replaces its RMS so that the system efficiently captures and facilitates analysis of all S/S/A data, it will be exceedingly difficult to evaluate BPD’s S/S/A activity and fully assess BPD’s progress toward compliance with the S/S/A requirements of the Consent Decree. Moreover, it will be exceedingly difficult for BPD to perform self-



evaluations of its S/S/A activity. Indeed, because of the deficiencies in its RMS, BPD does not presently perform these self-evaluations. Supervisors do not utilize RMS to track officer S/S/A performance, and command staff does not use it to track Department trends in S/S/A activity (e.g., “hit rates” reflecting the percentages of stops and searches revealing contraband to determine whether officers are making proper probable cause and reasonable suspicion determinations, and comparative stop, search, arrest rates based on race to determine whether racial profiling is occurring).

The Monitoring Team’s visit to BPD at the end of June 2018 to conduct a preliminary diagnostic review of BPD’s current S/S/A practices was sobering. It furnished hard evidence of how inadequate BPD’s S/S/A records are and, correspondingly, how long it is likely to be before the Monitoring Team is able to comprehensively assess BPD’s compliance with the Consent Decree’s S/S/A provisions.

Eleven days before arriving, Monitoring Team members requested a spreadsheet identifying each civilian encounter in March 2018 that involved a stop, search or arrest. The plan was to randomly select 60 incidents and then review all associated documents for each one to determine the lawfulness of the reported conduct and the thoroughness of the report. Monitoring Team members selected March 2018 because they thought it would be recent enough to reflect current practices but far enough in the past to allow all associated documents to have been processed. When Monitoring Team members arrived, BPD did not furnish the requested spreadsheet. Rather, BPD provided a link to a report that contained 611 scanned pages summarizing 4316 reported incidents. The document was a printout of a query into the RMS. While the report identified incidents, it did not identify the BPD forms or documents that were associated with each one, which is what the Monitoring Team required for its review. BPD advised it did not have the capability to produce a spreadsheet with the requested information. BPD indicated that, while the documents reflecting the incidents exist, they are maintained either in hard copy form or in siloed databases that are inaccessible from BPD’s Department-wide computer network. Consequently, locating citizen/police contact receipts, criminal, civil, marijuana or traffic citations and incident reports associated with a particular incident—and even ascertaining whether associated documents exist—would require digging through reams of documents.

Monitoring Team members subsequently confirmed the difficulty of locating records associated with specific incidents. The Monitoring Team modified its request for March 2018 S/S/A activity and agreed to allow BPD to extract documents reflecting November 2017 S/SA activity. BPD then produced approximately 30 paper

documents from March 2018 incidents and roughly another 30 from November 2017 incidents. None of the data was readily accessible electronically. The documents included incident reports, contact receipts, and criminal, civil and marijuana citations. BPD also slowly provided electronic access to pertinent body worn camera footage, though it was only able to provide access to five to ten videos per day. BPD could not provide traffic citations, which are maintained by the Traffic Unit and not easily accessible. The contact receipts BPD provided for pedestrian stops were stored in file cabinet drawers and bundled by month, but not organized by date, alphabetically or in any other fashion. They had not been entered into BPD's RMS, because BPD has a three-plus year data entry backlog for stop receipts, dating back to February 2015.

In addition to experiencing extraordinary difficulty locating the data needed to assess BPD's S/S/A practices, the Monitoring Team also found serious inefficiencies in the reporting process, as well as troublesome deficiencies in supervisory review of documents concerning S/S/A activity. Officers who conduct stops, searches and arrests are provided with paper documents to record their actions, including incident reports forms (to record arrests, criminal complaints, and property seizures), citizen/police contact forms, civil, criminal and marijuana citation forms, traffic citation forms, vehicle tow cards, and evidence submittal forms. Officers complete forms during the course of their shift and submit them to their supervisors for review and approval. Officers typically leave the report forms on the desk of the assigned supervisor. The supervisor is expected to review and approve the forms. Approval is established by a date and signature. The supervisor places the approved forms in an envelope and deposits them into a drop box. The district RMS officer arrives at 4:00 am each day, removes the forms from the drop box and performs an additional review. Forms determined to be incomplete for, *e.g.*, insufficient probable cause, insufficient reasonable suspicion or improper formatting are returned to the officers for correction and resubmission. Once the district RMS officer approves the forms, the forms are hand-delivered to central RMS at BPD headquarters, where they are scanned so that an electronic copy can be saved, reviewed, and either queued for entry into RMS or designated for storage. Part I (or serious) crime records have the highest entry priority. Pedestrian stops appear to have the lowest—as noted, the data entry backlog is almost three and a half years. Most submitted documents are handwritten with widely varying degrees of legibility. RMS reviewers and data entry personnel exercise considerable discretion in interpreting less legible handwriting.

The inefficiencies of this data collection and record-keeping system for S/S/A activity—particularly in the age of real-time, electronic field-based reporting—are self-evident, and they underscore the near-impossibility of performing meaningful data-driven supervision, review and analysis of the performance of individual officers

and of trends and patterns within units, within districts, and Department-wide. Yet these inefficiencies are not the only thing the Monitoring Team's recent attempt to review S/S/A data revealed. The significant number of documents the district RMS officer identified as requiring correction calls into question the thoroughness of the initial reviews conducted by supervisors. In examining even a limited number of S/S/A documents, Monitoring Team members observed multiple glaring errors that the reviewing supervisor had not corrected. The implication is that district RMS officers, rather than supervisors, have become responsible for supervisory document review. That is not the way it should be. Additionally, based on the documents reviewed, Monitoring Team members found that some supervisors appeared hesitant, or even refused, to review and approve documents submitted by officers they do not directly supervise. Such reluctance could further delay document submission and potentially could result in lost paperwork.

Paragraphs 69-81 of the Consent Decree establish requirements for the supervisory review of S/S/A activity, and Paragraphs 82-86 establish data collection requirements for such activity. Based on its preliminary effort to review a limited set of BPD's S/S/A data, the Monitoring Team believes that the current system for recording, approving and storing S/S/A data severely limits BPD's capacity to satisfy these requirements and makes it prohibitively difficult for the Monitoring Team to comprehensively assess BPD's compliance with those requirements.

### **Response to the Shooting of Detective Suiter in Harlem Park**

To evaluate BPD's S/S/A activity following the November 15, 2017 shooting of Detective Sean Suiter, the Monitoring Team has reviewed thousands of pages of documents, watched hours of BWC footage, and interviewed several BPD supervisors and commanders who responded to the scene and/or investigated the matter. To be clear, in assessing BPD's S/S/A activity, the Monitoring Team has not evaluated the quality or conclusions of BPD's homicide investigation, nor has it sought to determine how Detective Suiter was shot. In other words, the Monitoring Team has not attempted to determine whether Detective Suiter's death was a homicide or a suicide, and it has not evaluated BPD's performance in making that determination. Those issues are outside the Monitoring Team's authority under the Consent Decree. They are being independently evaluated by an Independent Review Board ("IRB") retained by BPD.<sup>2</sup> What the Monitoring Team has examined is whether, in their response to

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<sup>2</sup> BPD's investigation of the shooting of Detective Suiter is open and ongoing. Further, in recognition of the importance of an independent review of the events of November 15, 2017, BPD appointed the IRB. The IRB will (1) review BPD's investigation of the shooting and BPD's findings, (2) conduct a comprehensive review

the shooting of Detective Suiter, BPD officers acted appropriately when they made stops, searches and arrests.

The Monitoring Team emphasizes that it has not done a comprehensive, top-to-bottom review of all of BPD's many S/S/A actions in Harlem Park. In fact, the Monitoring Team encountered some difficulty obtaining from BPD all of the documents it requested for its evaluation (which underscored again the challenges BPD faces in examining its own S/S/A activities). Nonetheless, the Monitoring Team's review has been extensive. Based on what it has read, seen and heard, the Monitoring Team has preliminary concerns about whether BPD command staff and supervisory officers are adequately ensuring adherence to Fourth Amendment requirements and corresponding Consent Decree provisions.

It bears repeating that the Monitoring Team does not offer this observation as an assessment of BPD's compliance efforts. It is too early for that. As emphasized throughout this report, the reform process is long, and BPD is just getting started. Indeed, in the S/S/A area, BPD has not finished revising its policies and has not begun training officers on them, nor is it expected to have done so under the First-Year Monitoring Plan. Nevertheless, BPD can still learn vital lessons from its response to the shooting of Detective Suiter. Those lessons can provide guidance for aligning BPD's S/S/A practices with Consent Decree requirements *now*, even before new policies, training and technology are implemented. Thus, the Monitoring Team encourages BPD to address its response to the shooting of Detective Suiter in the coming months through, for instance, roll call tutorials. The Monitoring Team is committed to providing BPD technical assistance for any such effort.

### *BPD's Actions*

Just after 4:30 pm on November 15, 2017, Detective Suiter—an 18-year veteran and Homicide detective—was found shot on the ground in a small vacant lot on the 900 block of Bennett Place in the Harlem Park neighborhood. In the ensuing hours and days, dozens of officers—including the Commissioner and Deputy Commissioners, detectives and supervisors from the Homicide Unit, officers and supervisors from the Patrol Division, members of the SWAT Unit, and federal agents

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of the crime scene investigation, incident command operations, and the security perimeter maintained in Harlem Park following the shooting, (3) review existing departmental policies and procedures and identify any policy violations that occurred, (4) identify best practices to improve BPD's policies on incident response and incident management, and (5) review BPD's training practices related to use of force, crowd control and firearms and make recommendations for improvement.

from the Bureau of Alcohol Tobacco and Firearms (“ATF”)—came to the area to secure the crime scene and investigate the shooting. Almost immediately, BPD established an expansive perimeter of numerous City blocks around the vacant lot, concerned that an armed and dangerous was in the vicinity. Several hours after the shooting, BPD shrunk the perimeter to roughly six square City blocks. BPD held that perimeter for approximately four days, through November 19, at which time it cordoned off only the vacant lot. The following morning, November 20, BPD excavated the soil in the vacant lot and located a fired bullet next to where Detective Suiter’s body had been. BPD then expanded the perimeter once again to the same six square-block area around the lot. That night, after the crime lab determined that the bullet appeared to have been fired from Detective Suiter’s service weapon, BPD released the crime scene altogether, including the lot. In total, BPD held the six square-block perimeter around the lot for nearly five days.

The night of the shooting, November 15, the SWAT unit searched and cleared six homes on the 900 block of Bennett Place and three homes that backed up the vacant lot on the 900 block of Franklin Street (which runs parallel to Bennett Place) in order to dispel any threat of an armed and dangerous shooter in the area. Three of the homes on Bennett Place were occupied; the rest of the homes on Bennett Place and Franklin Street were vacant.

The following morning, November 16, the SWAT unit entered 961 Bennett Place, an unoccupied home adjacent to the vacant lot, believing that certain evidence around the scene indicated the shooter might have taken refuge there. Based on items seen in plain view in the home, BPD obtained and executed a search warrant. The sweep and search of 961 Bennett Place generated no useful leads.

The next morning, November 17, the SWAT unit and ATF officers collectively cleared another 34 homes on the 900 blocks of Franklin Street and Bennett Place. The vast majority of the homes, 32 of 34, were vacant or impossible to enter because they were either dilapidated or cinder-blocked. Only two were occupied, and the residents were referred to the Homicide Unit for interview. It is unclear from BPD documentation whether those residents were interviewed and, if interviewed in the Homicide Unit, whether they went there voluntarily.

In the three days immediately following the shooting, Homicide detectives also canvassed numerous homes in the Harlem Park neighborhood and interviewed a number of residents. These interviews, too, failed to generate useful leads.

BPD did not clear any other homes within the several square-block perimeter after the morning of November 17. It nonetheless continued to hold the perimeter for

an additional two days (through November 19), and then re-established it on November 20 after discovering the fired bullet next to where Detective Suiter was found. From its interviews with BPD supervisors, the Monitoring Team learned that the orders to maintain the perimeter through November 19, and re-establish it on November 20, came from the highest levels of the Department, including the Commissioner.<sup>3</sup> Two commanding officers further indicated that they had never held much smaller homicide crime scenes for more than a day, much less one spanning several residential blocks for nearly five days.

During the five-day period when BPD maintained the several square-block perimeter, BPD patrol officers routinely stopped pedestrians who were inside the perimeter, pedestrians and motorists who sought to enter or exit the perimeter, and pedestrians and motorists who were walking or driving immediately outside the perimeter. BPD officers stopped some people right outside their homes. Many of these interactions were captured on body worn camera (“BWC”). The BWC footage generally shows that when patrol officers stopped an individual, they requested identification, took down the information, completed a Departmental citizen contact form documenting the interaction, ran a computerized search for outstanding warrants, provided the individual a receipt of the contact form, instructed the individual to keep the receipt handy so that he or she could avoid having to undergo the same process if stopped again, and then let the individual go. Individuals who lived on the block of Bennett Place with the vacant lot—the 900 block—were escorted home.

If an individual could not provide identification at the perimeter, patrol officers usually did not let them in and turned them away. BPD officers refused entry not only to individuals who were passing through the neighborhood, but to several who said they lived in the neighborhood, including one who said he had not been home for over 24 hours and needed to let his dog out.

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<sup>3</sup> BPD commanders informed the Monitoring Team that BPD typically utilizes an Incident Command System (ICS), in which a commanding officer takes and keeps command of a crime scene investigation for its duration in 12-hour operational periods. In the Suiter investigation, the ICS appeared to break down almost immediately. Deputy Commissioners and ultimately the Commissioner arrived on the scene and issued orders both at the scene and for several days after, which left the commander who initially took charge believing that he was no longer in charge. The apparent failure of the ICS in the Suiter investigation may have sown confusion about the responsibilities of the patrol officers policing the perimeter, though that is unclear. Assessing the success or failure of the ICS in the Suiter investigation is beyond the scope of the Monitoring Team’s duties. It will be an issue that the IRB will address.

Most recorded stops lasted from three to eight minutes, though several lasted longer. Patrol officers did not ask stopped individuals for information about the Suiter shooting. In those instances where the shooting was discussed, the stopped individual brought it up, not the officer.

The BWC footage shows that at least ten (10) stopped individuals were either searched or patted down between November 16 and November 20. BPD officers did not find contraband on any of these individuals and let all of them go with citizen contact receipts. Another individual was required to exit his car after handing over his identification. He, too, was given a citizen contact receipt and released. One stopped individual was arrested and transported to Central Booking when the warrant check conducted during the stop indicated an outstanding warrant for failure-to-appear in Baltimore City. The second individual stopped during this incident was made to wait on the curb for an hour before BPD let him go, even though the warrant check on him came back negative.

Monitoring Team interviews of BPD personnel and BWC footage confirm that BPD supervisors ordered patrol officers to run warrant checks on stopped individuals or condoned the warrant checks. In one video, an officer tells another officer he is running checks with “PocketCop” on all individuals for whom he completes citizen contact forms. In another video, a different officer similarly states that he is running checks on everyone stopped. In a third video, the recording officer tells another officer that he is not running all checks on the spot, but is instead sending some to the warrant task force to be run later.

In addition to conducting dozens of stops in the Harlem Park neighborhood, BPD made several arrests of individuals suspected to have knowledge of the shooting of Detective Suiter. BPD did not establish probable cause that these individuals were involved in the shooting; rather, according to documentation reviewed by the Monitoring Team, BPD established probable cause that these individuals committed other crimes—*e.g.*, an attempted murder earlier in 2017 and distribution or possession of controlled substances (heroin and cocaine). Each of these individuals was taken to the Homicide Unit for questioning before being processed. BPD officers also had a number of individuals who were not arrested come to the Homicide Unit to answer questions about the shooting. Additionally, BPD obtained and executed search warrants for homes in which certain suspects were alleged to have lived. BPD officers made several arrests during these searches. Neither the Homicide Unit interviews nor the searches produced useful evidence in the shooting investigation.

### *Diagnostic Evaluation*

Following the shooting of Detective Suiter, BPD officers appear to have taken certain actions that complied with the Fourth Amendment and the S/S/A provisions of the Consent Decree. For example, although there were certain exceptions, patrol officers were generally cordial and respectful with the individuals they stopped. This is a Consent Decree requirement, as well as a basic requirement of BPD's Fair and Impartial Policing policy. Complying with the requirement is essential—though, on its own, insufficient—for BPD to regain the community's trust.

BPD Homicide detectives also appear to have acted lawfully by conducting certain “pretextual” arrests of individuals suspected to have knowledge of the Suiter shooting. These were probable cause-supported arrests on charges unrelated to the shooting for the purpose of questioning the arrested individuals about the shooting. Making such arrests and attempting to conduct such interviews are legal and consistent with Consent Decree requirements.

Further, the Monitoring Team believes that BPD acted lawfully by clearing dozens of vacant homes on Bennett Place and Franklin Street or by obtaining permission to clear several homes that were occupied. Following the shooting, especially on the night of November 15, the threat that an armed and dangerous suspect remained at large in the immediate vicinity was real. Moreover, all of the homes BPD searched without warrants were abandoned and vacant, so clearing them did not implicate any individual's constitutional rights. Nonetheless, it would have been prudent for BPD to document the legal justification for all of these searches, which it did not do—or at least the Homicide file contains no such documentation.

Despite the fact that some of BPD's S/S/A actions in response to the shooting of Detective Suiter appear to have been consistent with the Consent Decree, other conduct raises concerns for the Monitoring Team. These concerns are catalogued below.

*Supervision.* The sections below describe conduct that is likely incompatible with Consent Decree requirements: stopping individuals at the perimeter and restricting entry into and exit from the neighborhood even after the threat of an armed and dangerous suspect was eliminated; conducting warrant checks on the stopped individuals; searching individuals without probable cause and patting down individuals without reasonable suspicion that they had a gun; failing to adequately document stops, searches, arrests and voluntary interviews; and de-activating BWCs on the night of November 15. By and large, responsibility for these actions and omissions lies not with individual officers, but rather with BPD as an institution. It



was commanders (up through the Commissioner) and supervisory officers who ordered a large perimeter held for five days; directed patrol officers to restrict entry and exit and make stops; ordered or condoned warrant checks; failed to make clear that the circumstances of the shooting did not obviate the traditional constitutional requirements for searches and pat-downs; failed to ensure that officers properly documented their S/S/A activities; and appear to have authorized the de-activation of BWCs on November 15. Improving supervision is a linchpin of reform under the Consent Decree. The apparent shortcomings in BPD's response to the shooting of Detective Suiter show why.

*Restrictions on neighborhood entry and exit, and stops made around and inside the perimeter, after the threat of an armed and dangerous suspect had dissipated.* BPD appears to have held the large, several square-block perimeter and restricted access to the neighborhood longer than justified. The threat of an armed and dangerous suspect in the vicinity of the vacant lot was dispelled by the morning of November 17, after BPD's SWAT Unit and ATF finished clearing houses on Bennett Place and Franklin Street. Arguably, the threat was dispelled even sooner, as ten homes in the immediate vicinity were cleared by the early morning of November 16 (nine on the evening of November 15), and BPD did not think it necessary to confirm the absence of suspects in the other 34 homes until more than 24 hours later. Further, none of the tips BPD received after November 17 included reports of a possible suspect hiding in a building within the perimeter. Notwithstanding these facts, BPD held the perimeter for another two days, until November 19, and then re-established it for another day on November 20 after discovering the discharged bullet next to where Detective Suiter was found.

In Monitoring Team interviews with BPD personnel, certain officers suggested that BPD needed to maintain the perimeter, even after dispelling the threat of an armed and dangerous suspect, in order to preserve the integrity of forensic evidence that had not yet been located—namely, the fired bullets from the three cartridges found next to Detective Suiter. However, the immediate crime scene, a small vacant lot, is flanked on either side by three-story buildings, with a narrow passage leading to an alley (backed up by other three-story buildings) in the rear, so the chances that fired bullets might be located beyond the immediate area around the vacant lot, somewhere in the surrounding streets, were at best remote. What's more, based on the Homicide file the Monitoring Team reviewed, it does not appear that Homicide or crime scene unit personnel spent much time, if any, combing the several streets within the perimeter for forensic evidence.

Based on the facts the Monitoring Team learned, it does not appear that the cordoned-off area had to be as big and held for as long as it was. To minimize

restricting the free movement of neighborhood residents and visitors, the broader cordoned-off area—beyond the vacant lot and its nearby surroundings—likely should have been maintained for only as long as needed to dispel the threat of an armed and dangerous suspect.

Correspondingly, by stopping individuals around and inside the perimeter after the threat of an armed and dangerous suspect was eliminated, BPD likely engaged in conduct that was inconsistent with Consent Decree requirements. This is so even though the stops typically lasted only a few minutes. If officers had possessed reasonable articulable suspicion that the stopped individuals had committed a crime, or had stopped individuals to ask for information about the Suiter shooting, then U.S. Supreme Court precedent might have justified their actions. *See Terry v. Ohio*, 392 U.S. 1 (1968) and *Illinois v. Lidster*, 540 U.S. 419 (2004). But that is not what happened. These were not short “*Terry stops*,” which are made to investigate an individual because the officer has reasonable articulable suspicion that the individual committed a crime. BPD officers did not claim to possess reasonable articulable suspicion for stopping people around the perimeter. These stops also were not akin to brief vehicular checkpoint stops to gather information about a possible crime. BPD officers did not question the stopped individuals about the shooting of Detective Suiter. Rather, for several days after eliminating the threat of an armed and dangerous suspect, BPD had its officers make these stops based solely on the unsupportable theory that enforcing a large six square-block perimeter was required to preserve a crime scene consisting of a small vacant lot. The stops thus raise concerns under the Fourth Amendment and the Consent Decree—concerns that were effectively confirmed by the two commanding officers who reported that they had never held much smaller homicide crime scenes for more than a day.

*Warrant checks.* BPD’s practice of routinely conducting warrant checks on individuals stopped near, at or inside the perimeter also raises constitutional concerns. As noted, BPD officers did not stop these individuals because they had a reasonable articulable suspicion that the individuals had committed, or were committing, a crime. Nonetheless, by routinely conducting warrant checks, BPD officers used the stops to investigate the stopped individuals as potential suspects and, as a result, to detain them longer. Although the detentions generally lasted only a few minutes, the warrant checks likely made them unlawful. Police officers may conduct warrant checks on individuals stopped for allegedly violating the law—*e.g.*, drivers pulled over for traffic violations. But police officers may not detain and check for warrants on—*i.e.*, investigate—individuals who they have no reason to believe committed a crime. Yet, either ordered or approved by superiors, that is what BPD officers did in the wake of the Suiter shooting.

The incident involving the individual arrested on a failure-to-appear warrant after being stopped inside the perimeter underscores the problem. He and his friend voluntarily approached a BPD officer to provide him a discarded ID card they found on the street. They appeared to be trying to assist the investigation. Consistent with the general directive he had received, the officer immediately detained the two individuals and ran warrant checks on them, even though he had no reason to believe they had committed a crime. The warrant check on one of the individuals came back positive on a failure-to-appear charge in Baltimore City (after coming back positive, but unable to be confirmed, on a separate warrant from Pennsylvania). That individual was arrested, transported to Central Booking, and processed. The warrant check on the other individual came back negative. That individual was nonetheless detained with his friend for an hour before being let go. The law would have authorized the stop, investigation and lengthy detention of these individuals only if there were reasonable suspicion to believe that they had committed a crime. But BPD officers do not appear to have had reasonable suspicion. Therefore, the warrant checks, the subsequent detentions, and the arrest were likely in violation of the Consent Decree. And, by subjecting to probable unconstitutional treatment individuals who appeared to be trying to assist the investigation, BPD created disincentives for these individuals to seek to assist in the future. BPD's actions thus undermined the community trust-building objectives of the Consent Decree.

*Searches and pat-downs.* An officer may conduct a warrantless, nonconsensual search of an individual only in connection with a lawful arrest—that is, only if the officer has probable cause to believe that the individual has committed a crime. An officer also may conduct a warrantless, nonconsensual pat-down or “frisk” of an individual’s outer clothing only if, after a lawful stop, the officer has reasonable articulable suspicion that the individual has a firearm.

Of the nine separate individuals who, according to the released BWC footage, BPD officers searched at or inside the perimeter following the Suiter shooting, BPD officers did not appear to have probable cause to arrest any of them. Indeed, the officers did *not* arrest any of them; rather, after searching them, the officers filled out citizen contact forms, gave receipts to them, and let them go. The actions of these officers suggest a supervisory or training failure to make clear that the Suiter shooting and the subsequent establishment of the perimeter did not provide license to perform a full-blown search of anyone generally deemed suspicious.

Similarly, for the one individual who the released BWC footage shows was patted down, the video reveals no evidence to support a determination of reasonable suspicion that the individual had a gun. Finding nothing, the detaining officer also released this individual with a citizen contact receipt. Again, the actions of the officer

suggest a supervisory or training failure to make clear that the circumstances of Detective Suiter's death did not automatically justify a pat-down of anyone at or inside the perimeter.

These searches and pat-downs raise clear constitutional concerns. Those concerns are exacerbated by the detaining officers' apparently uniform failure to document their actions—again, a failure likely attributable to a failure of supervision. For each of the individuals searched or frisked, the BWC footage shows the detaining officer properly completing a citizen contact form. But based on the Monitoring Team's review of the Homicide file, none of the detaining officers completed the Departmental form established to memorialize searches and pat-downs that fail to reveal any contraband. This apparent failure is noteworthy. Searches of a person's body are not minimal invasions of privacy. They implicate core Fourth Amendment protections and, when unwarranted, do as much damage to police-community relations as any other violation of the Constitution. That is undoubtedly why BPD has a separate form for searches that generate no evidence of criminality.

*Documentation.* Emblematic of BPD's shortcomings in data collection and maintenance, BPD officers appear not to have adequately documented or kept records of all of their Fourth Amendment activity following the Suiter shooting. The supervisory failure to ensure that officers completed the Departmental form for searches that did not reveal contraband is one example. There are others.

The released BWC footage shows a far greater number of stops than there are citizen contact forms in the Homicide file. In fact, the footage collectively shows officers, on camera, *completing* more forms than the Homicide file contains. It is possible that some or all of the citizen contact forms not found in the Homicide file are elsewhere in the Department and could not be readily produced. But even if so, the fact that the forms are held in hard-to-find, disparate locations, and will not be entered into BPD's RMS for years (if at all) given the massive data entry backlog, highlights BPD's chronic data collection problems.

In addition, while the arrests of several potential suspects and witnesses may have been lawful, the absence of documentation about other arrests makes it impossible to determine whether those arrests were justified. To take one example, when BPD officers arrested one reported suspect on unrelated attempted murder charges after obtaining an arrest warrant, they also arrested two other individuals who were with that potential suspect. Both of those individuals were minors—one 14, the other 16. BPD Homicide personnel informed the Monitoring Team that these youths were arrested because they fled when officers approached and were found with illegal drugs. The Homicide file, however, does not contain any documentation

reflecting the justification for stopping these individuals, much less arresting them. It simply contains a report that the two youths were interrogated at headquarters and possessed no relevant information. If, in fact, the youths were legitimately stopped and arrested for possession of illegal drugs, documenting the reason for the stop and arrest in the Homicide file (*i.e.*, including an incident report) would go a long way toward refuting any claim that the youths may have been detained unlawfully and coerced into answering questions after being transported to BPD headquarters. Conversely, if the stop or arrest was unlawful, the absence of documentation potentially highlights its unlawfulness.

To take another example, a patrol officer responded on November 17 to an anonymous report of illegal drug activity at a particular location on a street in East Baltimore. The officer arrived at the location, observed and talked to three individuals, but saw no illegal activity. Soon after, there was a second anonymous call reporting that one of the individuals was involved in the recent killing of a BPD officer. After the officer approached again, the three individuals started walking away quickly. In the documentation reviewed by the Monitoring Team, the responsible officer indicated that he performed the stop based on the anonymous calls, the individuals' actions, and the alleged pervasiveness of crime in the area. When he ran the individuals' drivers' licenses, the results showed a be-on-the-lookout for one of them, with a note to call the BPD Watch Center. The Watch Center advised the officer that the individual was on the "Trigger Puller List." The officer then contacted Homicide Unit detectives, who indicated they wanted to interview all three individuals. All three individuals were then transported to Homicide for questioning.

Documentation of the incident indicates that the individuals were subject to an "involuntary detention," meaning they were arrested and did not come to the Homicide Unit voluntarily. There is, however, no information in the documentation that establishes the required probable cause for an arrest. For the one individual who was supposedly on the "Trigger Puller List," the documentation contains no explanation of what that list was or how a person's name came to be included; the mere mention of the list—which could have been created based on nothing more than unverified anonymous tips—does not demonstrate probable cause. For the other two individuals, the documentation contains no information at all to suggest probable cause. According to the documentation, Homicide detectives wanted to talk to the three individuals, so patrol officers simply arrested all three and brought them in. A detective's desire to talk to someone is not enough to justify an arrest. The absence of probable cause documentation in this case leaves open the possibility that all three individuals were arrested unlawfully.

In addition to making arrests, BPD had numerous individuals come to the Homicide Unit to answer questions about the Suiter shooting. The documentation does not clearly show that these potential witnesses came to headquarters *voluntarily*. The absence of adequate documentation subjects BPD to allegations of undue coercion. For instance, BPD obtained a warrant to search a home in West Baltimore, outside the six square-block perimeter. BPD believed that an individual with knowledge of the Suiter shooting might reside in the home, and established probable cause that there were illegal drugs on the premises. When BPD officers executed the search, they found nothing illegal. Nonetheless, they transported the two occupants to Homicide for questioning. Documents do not show that the two individuals were arrested; there appeared to be no justification for an arrest. And while the two individuals might have agreed to voluntary interviews, the Homicide file does not show what happened. As a result, it leaves open the possibility that the individuals did not submit voluntarily to questioning and were brought in without informed consent.

*BWC recording.* In one BWC recording on the evening of November 15, several hours after the Suiter shooting, one patrol officer makes a call and asks if her BWC is supposed to be on or off. The officer mentions that all officers close to the crime scene (the vacant lot) have their cameras turned off. When the officer hangs up, she informs the other officers around her that they can de-activate their cameras. It is unclear from the video who the officer called or what exactly she was told. The video shows only what the officer said on the call and to her fellow officers.

According to current BPD policy on BWCs (as well as the revisions now underway), patrol officers must activate their BWCs in all but a few limited circumstances. None of those circumstances appear to have existed for patrol officers enforcing the perimeter the night of November 15.

It is unclear whether patrol officers heeded the instruction to de-activate BWCs on the evening of November 15. However, in contrast to multiple available recordings from November 16-21 (especially from November 17), there is only one available recording from the night of November 15, and that is the recording of the officer who instructed other officers to turn off their BWCs. The instruction is preceded by roughly two hours of video, including video of a man who reportedly had no identification and is searched because he “came out of nowhere” shortly after the shooting and was near the crime scene. It is believed that this is the same man who was ultimately arrested for possession of illegal drugs, taken to BPD headquarters, and tested (negatively) for gunshot residue on his hands, but the arrest does not appear to be captured on any BWC.

## **Challenges Ahead**

BPD's response to the Suiter shooting demonstrates the considerable long-term challenge it faces to ensure that its officers abide by the Constitution and the Consent Decree in their interactions with community members. There is also the equally significant challenge of revamping BPD's IT systems—particularly the RMS—to ensure that they fully and accurately capture and facilitate robust analysis of all Fourth Amendment-related activity.

## **The Next Six Months**

BPD is supposed to finalize its initial set of six S/S/A policies. As noted, the Monitoring Team will approve or disapprove these policies by the end of October.

BPD also will submit initial drafts of the additional set of six S/S/A policies (identified above) in early August. The Monitoring Team and DOJ will collaborate with BPD on revisions to those additional policies through the beginning of October. BPD then will issue for public comment final proposed versions of those policies. The public comment period will run through November 4. Once BPD finalizes the policies after considering the comments, the Monitoring Team will have until November 25 to approve or disapprove them.

At the end of July, BPD will provide the Monitoring Team and DOJ with the initial draft of its S/S/A Training Plan. The Training Plan will outline in detail the objectives and content of the training curriculum that will be developed in the next Monitoring Year, as well as the techniques that will be used to teach the curriculum. The Monitoring Team and DOJ will work with BPD to revise the Training Plan through the end of September. The Training Plan will be finalized and submitted to the Court for approval by November 14.

Finally, as explained, the Monitoring Team recently began conducting preliminary assessments of BPD's S/S/A activities. The preliminary assessments include reviewing documents and body worn camera footage, and gauging the S/S/A data that can be usefully gleaned from BPD's RMS. These preliminary assessments will continue.

### **Impartial Policing**

Paragraph 87 of the Consent Decree asserts that “policing fairly and without bias is central to promoting broad community engagement and building partnerships between law enforcement and community members that are an important part of effective policing.” To that end, the Consent Decree requires BPD to: document the demographic category of all individuals who are stopped, frisked, searched, arrested or make a complaint (CD 88); adopt policies that require fair, impartial, non-discriminatory policing (CD 89); establish an impartial policing training curriculum and properly train officers, with community input, to perform their duties in a non-discriminatory manner (CD 90-94); and consider whether officers engage in non-discriminatory policing in evaluating performance and making hiring and promotion decisions (CD 95).

Thus far, BPD has made early-stage progress toward satisfying Paragraph 88, as its report forms require the recording of demographic categories. It is, however, too soon to tell whether officers are routinely and accurately reporting the demographic categories of the individuals they stop, frisk, search, arrest, and receive complaints from.

BPD also has made substantial progress toward satisfying Paragraph 89. As explained below, the proposed final revisions to the key policies that address impartial policing meet the requirements of Paragraph 89.

It is too early to gauge BPD’s progress toward the other requirements of the Impartial Policing section of the Consent Decree. Under the First-Year Monitoring Plan, establishing and implementing a training curriculum that incorporates the revised policies is scheduled to occur in the next reporting period. It remains to be seen whether BPD accounts for discriminatory and non-discriminatory policing practices in officer performance evaluations, hiring and promotions.

### **Policy Revisions**

With technical assistance from the Monitoring Team and DOJ, BPD has nearly completed the process of revising two policies that address the Consent Decree’s impartial policing requirements and correspondingly provide a foundation for related policies, especially policies addressing stops, pat-downs, searches and arrests. These are Policy 317 (“Fair and Impartial Policing”) and Policy 720 (“Interactions with Lesbian, Gay, Bisexual, Transgender and Queer/Questioning Individuals”). The revisions to these policies are intended to comply with the requirements of Paragraph 89 of the Consent Decree.



BPD issued its initial draft of these policies within the deadline established in the First-Year Monitoring Plan. Since then, the Monitoring Team and DOJ have collaborated extensively with BPD to revise the drafts and, ultimately, BPD has produced final proposed revisions. BPD issued the final proposed revisions for public comment in early June.

The core policy, Policy 317, is fundamentally changed in structure and, to some degree, in substance. Rather than simply conveying general non-discrimination principles, it now provides concise statements of purpose and policy, followed by express, logically organized directives to officers to ensure fair, respectful, non-discriminatory policing. The revised policy emphasizes its foundation in federal, state and municipal law; includes requirements for supervisors to ensure compliance by officers under their command; specifies the subjects that must be covered during training; and directs the collection and analysis of data to measure compliance.

Policy 720 on Interactions with LGBTQ individuals is also changed. The policy is stated succinctly and the directives to officers are clearer and more tightly structured around the types of interactions officers have with LGBTQ individuals. Additionally, the revised policy furnishes key guidance on adherence to the requirements of both the Fourth and Fourteenth Amendments, so as to ensure that officers stop, pat-down, search and arrest individuals, including LGBTQ individuals, only with proper justification *and* that officers refrain from taking law enforcement action against individuals based on perceived sexual orientation or gender identity.

## Challenges Ahead

One of the central findings of DOJ's investigation was that BPD was engaged in a pattern-or-practice of stopping, patting down, searching and arresting African Americans based on their race. Revamping policies and implementing revised training curricula on both impartial policing and stops, searches and arrests are important first steps in ensuring that BPD officers treat people fairly and equitably, without regard to personal traits like race, national origin, gender expression, and disability. But these are only first steps. As with so many aspects of policing covered by the Consent Decree, the question is whether, *in practice*, BPD officers interact with community members respectfully and refrain from discrimination in the performance of their duties. The answer to that question will not come quickly. It will depend on the adoption of revamped data collection systems that permit easier, more comprehensive analysis of officer conduct; routine quantitative review and analysis, over time, of the data gathered through those systems, once they are established; routine qualitative review of field reports and body worn camera footage; and a proven change in culture that values and rewards the quality of police work,

rather than the number of arrests. This will be the central task of the Monitoring Team—and more importantly, of BPD itself, especially supervisory officers—in subsequent years.

### **The Next Six Months**

The public comment period on the final proposed revisions to Policies 317 and 720 ends August 3. After considering the public comments, BPD will produce final proposed policies. By August 20, the Monitoring Team will either approve or disapprove the final policies.

In August, BPD will begin having routine meetings with the Monitoring Team and DOJ to discuss changes to BPD's impartial policing training curriculum. BPD will provide the Monitoring Team and DOJ the first draft of the revised curriculum in late September. The Monitoring Team and DOJ will then collaborate on the draft through mid-December. On December 20, BPD will issue a final proposed curriculum for public comment. The public comment period runs through January 21, 2019. BPD will then consider the public comments and provide the Monitoring Team and DOJ with a final version of the curriculum by late January. By February 25, 2019, the Monitoring Team will either approve or disapprove the final version of the curriculum and notify the Court.

## Use of Force

The Consent Decree obligates BPD to ensure that its officers resolve incidents without using force when possible, employ de-escalation techniques to minimize the need to use force, avoid unnecessary injury or risk of injury to officers and civilians when force is necessary, stop other officers from using excessive force, report all reportable uses of force, and be held accountable for using unreasonable force (CD 124). To accomplish these objectives, the Consent Decree's section on Use of Force contains requirements regarding policies on use of force (including weapons-specific policies) (CD 125-65), training on use of force (CD 166-68), reporting, reviewing and investigating use of force incidents (CD 169-210), and collecting, analyzing and reporting data on use of force incidents (CD 211-17).

To date, BPD has met every deadline involving the Use of Force provisions of the Consent Decree and, as explained in this section, has made reasonable progress toward satisfying the policy revision provisions. Given that BPD is still in the early stages of the reform process and that most of the reforms in the Consent Decree have not yet been implemented, it is premature to assess BPD's progress toward satisfying the other provisions.

### **Policy Revisions**

As the Consent Decree notes, BPD revised its core Use of Force policy, Policy 1115, in 2016 in response to DOJ's then-pending investigation. In recent months, BPD has worked with the Monitoring Team and DOJ to revise it further. BPD also has revised other policies involving use of force. In February, as the First-Year Monitoring Plan required, BPD submitted to the Monitoring Team and DOJ revisions to Policy 1115 (Use of Force), as well as revisions to four other policies: 719 (Conducted Electrical Weapon (CEW)), 1111 (Batons / Impact Weapons), 409 (Firearms Regulations), and 1118 (Oleoresin Capsicum Spray). The Monitoring Team and DOJ collaborated with BPD on further refinements to these five policies, and BPD issued final proposed versions of those policies in April 18. The public comment period ended May 18. BPD incorporated several comments from community stakeholders and submitted its final proposed policies for approval in early June. The Monitoring Team recently filed a memorandum with the Court approving these policies. *See* ECF No. 118.

As with the S/S/A policies, there are a number of policies implicating use of force, all of which are important. Additional policies involving use of force include Policies 414 (Less-Lethal Munitions), 710 (Special Investigation Review Team (SIRT)), 724 (Performance Review Board (PRB)), 725 (Use of Force Reporting, Review

and Assessment), 1005 (Non-Uniform Policing Standards), 1107 (De-Escalation), 1503 (Emergency Vehicle Operations), and 1602 (Canine Procedures). To make sure that BPD, DOJ, the Monitoring Team and the community have adequate time to properly review and consider each of these eight additional use of force policies before they are finalized, the Monitoring Team and the parties requested approval to extend the deadlines for revisions, which the Court granted. *See* ECF No. 112. Under the modified schedule, BPD submitted initial drafts of these policies on June 15. BPD is currently working with the Monitoring and DOJ to refine the drafts. The new deadlines will not affect the pace of reform in the Use of Force area.

The Monitoring Team finds that BPD has worked diligently to issue, rework and finalize its large suite of use of force policies, and has been receptive to technical assistance from the Monitoring Team and DOJ along the way. The First-Year Monitoring Plan has required BPD to revise a number of complex policies in a number of different areas in a short period, and the Monitoring Team has been impressed with BPD's commitment to generating timely work product in this area.

### **Challenges Ahead**

Each aspect of the Use of Force section of the Consent Decree presents a challenge.

- Use of force policies affect other policies that the Consent Decree requires BPD to revise, including policies involving Interactions with Individuals with Behavioral Health Disabilities and in Crisis, Transportation of Persons in Custody, and S/S/A. With technical assistance from the Monitoring Team and DOJ, BPD must ensure that the use of force policies incorporate, where necessary, guidance from these other policies—*e.g.*, directives on de-escalation when encountering individuals in crisis. This is a challenge not only for use of force policies, but for policies in every area that intersects with other areas.
- BPD's Training Academy is understaffed. Nonetheless, the First-Year Monitoring Plan requires BPD to develop a revised use of force training curriculum by the end of 2018 in order to roll out the curriculum and begin using it in the Academy by the start of 2019. The timeline is tight.
- The version of IAPro that BPD currently uses does not capture all of the data required for easy, robust analysis of use of force incidents. BPD must retool its version of IAPro to allow for such analysis—not simply for the Monitoring Team, but for BPD's own supervisors and commanders, who

must review both individual use of force incidents and Department-wide performance in circumstances involving the use of force. Fortunately, the Monitoring Team believes that, for this purpose, BPD can upgrade/modify its version of IAPro, rather than discard it and implement a new one.

- In recent years, according to DOJ's findings, use of force incidents have not been adequately reported, reviewed by supervisors, or investigated by OPR detectives. The Consent Decree's reporting, review and investigation requirements are extensive and stringent.

### **The Next Six Months**

As noted, BPD will complete the revisions to all of its use of force policies in the next reporting period. The first five policies were just completed. The Monitoring Team and DOJ are presently collaborating with DOJ on revisions to the additional eight policies. Those revisions will be finalized and DOJ will issue proposed final versions for public comment from July 27 – August 24. By August 31, once BPD considers and incorporates any feedback, it will submit the final policies to the Monitoring Team and DOJ. The Monitoring Team will approve or disapprove by September 17.

The Monitoring Team, BPD and DOJ have initiated discussions about training on the new policies, both for recruits and in-service, particularly training to advance the concepts of de-escalation and sanctity of life. BPD just submitted its draft use of force training plan three days ago. A draft curriculum will follow. The Monitoring Team and DOJ will collaborate with DOJ to refine the curriculum through October 30. Once refined, BPD will issue a final proposed curriculum for public comment. The public comment period runs from November 15 – December 15. The curriculum will be finalized in late December, and the Monitoring Team will approve or disapprove it by December 29. BPD intends to use the curriculum for all recruit and in-service training beginning in 2019.

The Monitoring Team will begin preliminary use of force assessments in the next reporting period. Monitoring Team members will review use of force reports, body worn camera footage of force incidents, investigative files (including OPR files) regarding use of force incidents, and data maintained in IAPro.

### **Transportation of Persons in Custody**

Ensuring the safety of individuals in police custody is among the most important obligations of any law enforcement agency. It was the death of Freddie Gray following transport in a BPD van that triggered unrest and demonstrated the deep divide between BPD and parts of the Baltimore community. For that reason, early compliance efforts have focused partly on the Consent Decree's transportation of persons in custody provisions. Acknowledging the importance of these provisions, transport was the subject of the very first monthly meeting/working session with the parties and the Court held on February 2.

The Consent Decree requires BPD to: (1) equip all transport vans with seatbelts, holding straps located along the rear area of each seat that individuals being transported may grip for security during transport, and transport vehicle cameras (TVCs) and all transport cruisers with seatbelts (CD 223-24); (2) inspect transport vehicles monthly and create logs to memorialize the inspections (CD 225); (3) establish and adhere to appropriate procedures for transporting prisoners (including using seatbelts, straps, and TVCs) (CD 226-33), (4) establish and adhere to protocols for documenting and comprehensively auditing prisoner transport events (CD 234-37), and (5) revise policies and training curricula to ensure safe, effective prisoner transport (CD 238).

The Monitoring Team is assessing the Consent Decree's transport requirements in two phases. The transport equipment phase, which is underway, focuses on whether BPD has installed the required equipment in its transport vehicles and maintained the equipment in working order. The transportation procedures phase, which has not yet begun, focuses on whether BPD has implemented the transport policies required by the Consent Decree and whether officers area adhering to those policies and using the transport equipment correctly and consistently.

Thus far, BPD has made reasonable progress toward satisfying the equipment requirements in Paragraphs 223-225 and the policy revision requirements in Paragraph 238. It is too soon to assess whether BPD is making progress toward satisfying the transportation procedures requirements in Paragraphs 226-233. Under the First-Year Monitoring Plan, the Monitoring Team and the parties have not yet been required to establish a methodology for assessing compliance with these requirements, as BPD still must develop the technological capacity to gather the data necessary to assess compliance.

#### **Equipping Transport Vehicles**

BPD sought to properly equip its transport vans and cruisers prior to the effective date of the Consent Decree, April 7, 2017. On January 22, 2018, prior to the

adoption of the First-Year Monitoring Plan, Monitoring Team members conducted a preliminary audit to verify that, consistent with paragraphs 223-25 of the Consent Decree, BPD had outfitted its transport vans with seatbelts, straps and TVCs and was maintaining a monthly log documenting the presence and functionality of that equipment. During the audit, the Monitoring Team inspected 16 of BPD's 22 vans. Three wagons were under repair, two are kept as spares and were out of service, and one was in use transporting arrestees at the time. The Monitoring Team did not inspect any cruisers during this preliminary audit. The preliminary audit revealed the following:

- Each of the 16 inspected vans was properly outfitted with functional seatbelts and holding straps, as Paragraph 223 requires.
- Each of the 16 vans was equipped with an operational TVC that, as required, could “display a live video to officers located in the driver’s section of the vehicle, and also record the video to be preserved for future viewing.” BPD IT personnel also verified the functionality of the TVCs and confirmed that BPD’s IT system had sufficient capacity to retain captured video for at least one year, as Paragraph 224 requires.
- BPD IT personnel inspects all transport vans every Monday morning. The inspection formerly took place at headquarters and now takes places at the Northern District station. Each entity creates and maintains a separate log sheet memorializing the inspections. The Monitoring Team verified the existence of and reviewed the logs. While it appeared that BPD was complying with the inspection and logging provisions of Paragraph 225 as to the transport vans, the Monitoring Team did not see evidence of compliance with Paragraph 225 as to transport cruisers.

Following the Monitoring Team’s preliminary inspection of BPD transport vans on January 22, the Monitoring Team worked with BPD and DOJ to develop and finalize a comprehensive Transport Equipment Audit Methodology that will guide the Monitoring Team’s scheduled quarterly inspections of BPD transport vehicles. The first quarterly audit took place on April 30, 2018. Using the methodology, the Monitoring Team inspected 17 transport vans, at least one from each District, and 18 transport cruisers from five Districts. The inspections revealed that, as required by Paragraphs 223 and 224, all vans were equipped with seatbelts, holding straps and TVCs, and all cruisers were equipped with seatbelts. However, two of the vans had inadequate interior lighting, which made it difficult for the TVCs to capture activity in the vans, and one cruiser had a defective seat belt. BPD took each of these vehicles out of service until the deficiencies were remedied.

The Monitoring Team also has confirmed that, consistent with the monthly inspection/logging requirement in Paragraph 225, BPD now conducts and creates logs to memorialize weekly inspections of both transport vans (previously confirmed in January) and transport cruisers. The logs are uploaded to a file sharing site each week for the Monitoring Team's review.

## **Policy Revisions**

In addition to equipping its transport vehicles as the Consent Decree requires, BPD has complied with all of the deadlines in the First-Year Monitoring Plan for revising its transport policies, which include the core transport policy, Policy 1114 (Persons in Police Custody), as well as Policy 825 (Transport Vehicle Camera) and Policy 1511 (Vehicle Inspection and Maintenance). Exchanging multiple drafts with comments and detailed line edits, BPD worked diligently with the Monitoring Team and DOJ to produce and issue for public comment final proposed versions of these policies by June 1, 2018. The Monitoring Team is satisfied with these final proposed versions and, pending comments from the community, anticipates that BPD will finalize and adopt them shortly after publication of this report.

## **Challenges Ahead**

BPD's primary, immediate challenge in the transport area is a familiar one: BPD must develop the technological capacity to record and maintain essential data and, correspondingly, ensure that officers properly and consistently complete reports on an IT system with that capacity. As the Consent Decree suggests, recording this data is essential for facilitating meaningful, comprehensive review of BPD transport events. It is thus essential for promoting proper performance and, in turn, ensuring both officer and arrestee safety.

Paragraph 232 of the Consent Decree requires BPD to record and audit a number of data points for each transport event, including start and end location, odometer mileage, start time, time of arrival, number of individuals in custody, destination, and whether at any time the officer perceives the prisoner is in need of medical attention. Because not all BPD vehicles are equipped with computers, officers currently must obtain this information through dispatch. BPD does not otherwise have the capacity to record and retrieve this information, so conducting the quarterly performance audits required by Paragraph 236 would be exceedingly cumbersome and time-consuming. BPD, DOJ and the Monitoring Team have determined that the best way to address this deficiency in the short run is to alter BPD's Incident Report form to require recording of many of these facts. In the long



run, as BPD moves toward field-based reporting, the electronic forms that officers will be required to complete will include all of these facts.

### **The Next Six Months**

In the next reporting period, BPD will finalize, adopt and implement the revised transport policies. In addition, the Monitoring Team will supplement its planned quarterly audits with unannounced, random inspections to ensure that BPD is properly equipping its transport vehicles at all times.

The Monitoring Team also will assess BPD's own transport vehicle audits to ensure their validity. These assessments will cover both the weekly inspections BPD conducts to ensure fully functional seatbelts, holding straps and TVCs (CD 225) *and* the quarterly audits BPD must conduct under Paragraph 236 to ensure that its officers are properly transporting prisoners in compliance with Paragraphs 226-33 and BPD's forthcoming, revised transport policies (which are incorporating the requirements in Paragraphs 226-33). The Monitoring Team's evaluations of BPD's internal quarterly audits will include, among other things, reviews of TVC recordings that BPD reviews, so as to verify that TVCs are properly recording transport events, that BPD is accurately documenting TVC functionality, and that officers are adhering to BPD's transport policies.

### **First Amendment-Protected Activities**

As the Consent Decree and BPD's draft policy on First Amendment Protected Activity explain, the exercise of First Amendment rights is fundamental to democratic governance because it promotes the free exchange of ideas. Moreover, the preservation and protection of First Amendment rights is vital to maintaining public trust in the rule of law because it fosters transparency and accountability in government functions, including policing (CD 239).

For these reasons, the Consent Decree requires BPD to protect several different First Amendment rights: the right to free speech and expression, which includes the right to criticize law enforcement and engage in speech in the presence of law enforcement without being subject to retaliation (CD 240-44); the right to freely organize and participate in lawful public assemblies (CD 245); and the right to observe and record the actions of BPD officers in the public discharge of their duties (CD 247). The Consent Decree also protects Fourth Amendment rights by prohibiting the warrantless search and seizure of recorded videos, images, except in limited circumstances (CD 249-50). The Consent Decree prescribes protection for all of these constitutional rights by obligating BPD to: revise its policies and training programs (CD 239, 244, 246, 251); require supervisory approval for dispersing assemblies, seizing recording devices and recordings, and arresting individuals engaged in expressive activity (CD 252-54); and conduct annual assessments of its practices relating to First Amendment protected activity (CD 255).

To date, BPD has met the deadlines in the First-Year Monitoring Plan regarding First Amendment-protected activities and has made substantial progress toward satisfying the provisions requiring policy revisions. BPD has not yet begun working on revisions to training, as the First-Year Monitoring Plan has not yet required BPD to do so. It is thus too soon to gauge whether BPD has made progress toward implementing the policies and other requirements in this area.

### **Policy Revisions**

Consistent with the First-Year Monitoring Plan, in April, BPD provided the Monitoring Team and DOJ initial drafts of revisions to BPD's three First Amendment-related policies—Policy 804, the core policy, titled First Amendment Protected Activity; Policy 1016, Public Observation and Recording of Officers; and 413, Mobile Field Force. Since then, the Monitoring Team and DOJ have exchanged numerous edits and comments with BPD. The result has been more comprehensive, more tightly organized policies that contain clear directives to BPD officers on preserving the right to speech and expression, the right to assemble, or the right

observe and record officers in the public discharge of their duties, as well as clear delineation of the roles and responsibilities of supervisors. BPD issued for public comment final proposed versions of Policies 804 and 106 in late June. The public comment period closes July 25, a week after issuance of this report.

While BPD has substantially revised Policies 804 and 1016, it has elected to rescind the Mobile Field Force policy (Policy 413), with the approval of the Monitoring Team and DOJ. The Mobile Field Force is a specialized unit that monitors, maintains peace, and protects the right to assemble and speak at both planned and spontaneous public demonstrations, and intervenes to maintain public safety, while respecting First Amendment rights, when public demonstrations turn violent. With the input of the Monitoring Team and DOJ, BPD has incorporated the general provisions of the Mobile Field Force policy into Policy 804, and it will create a Standard Operating Procedure (“SOP”) to provide detailed tactical guidance to Mobile Field Force officers about how to carry out their responsibilities while preserving First Amendment rights. The Monitoring Team, BPD and DOJ ultimately have determined that rescission of the standalone Mobile Field Force policy makes sense because the policy is not so much a policy as it is an outline for a tactical procedural manual. The Monitoring Team is comfortable with how the mission and general responsibilities of the Mobile Field Force are reflected in revised Policy 804 and, together with DOJ, it will review and work with BPD to develop an appropriate SOP shortly. The existing Mobile Field Force policy will not be rescinded until the SOP is developed and implemented.

## **Challenges Ahead**

After policy revisions are completed, the next major challenge will be to develop and implement a comprehensible, scenario-based training curriculum to ensure that officers respect First Amendment protections.

## **The Next Six Months**

After the public comment period on Policies 804 and 1016 closes in late July, BPD, the Monitoring Team and DOJ will consider any public comments received and then BPD will submit the final policies to the Monitoring Team and DOJ for approval in late August. No later than September 15, the Monitoring Team will file with the Court a memorandum either approving or disapproving the new policies.

### **Interactions with Individuals with Behavioral Health Disabilities and in Crisis**

Paragraph 96 of the Consent Decree reinforces BPD's "commit[ment] to responding to individuals with behavioral health disabilities or in crisis in a manner that respects individuals' civil rights and contributes to their overall health and welfare." Paragraph 96 envisions that BPD will accomplish this goal by using appropriate crisis response techniques. Such techniques will help prevent situations that could lead to the unreasonable use of force, promote connection of people with behavioral health disabilities or in crisis to the behavioral health system, and decrease the inappropriate involvement of people with behavioral health disabilities in the criminal justice system.

The Consent Decree identifies a series of short-term objectives designed to accomplish the long-term goal of protecting the civil rights of those with behavioral health disabilities while simultaneously contributing to their overall health and welfare. These short-term objectives include expansion of the Collaborative Planning and Implementation Committee (CPIC), which will advise BPD on crisis intervention policies for both patrol officers and dispatch personnel (CD 104-05); an assessment by CPIC of the gaps in the City's behavioral health system coupled with recommendations for solutions (CD 97); maintenance of a Crisis Intervention Team (CIT), whose officers have primary responsibility for responding to incidents involving individuals in crisis (CD 101-03, 110, 119); development of a Crisis Intervention Plan to ensure the efficacy of the CIT (CD 120); appointment and training of a Crisis Intervention Team leader (CD 115-18); training for all officers on responding to individuals with behavioral health disabilities and in crisis, and specialized training for CIT officers and dispatch personnel (CD 106-13); revision of policies, including dispatch policies, for responding to incidents involving individuals in crisis (CD 98, 114); and identification of quantitative and qualitative performance measures for the CIT program and collection of data needed to make those assessments (CD 121-22). Over the long-term, BPD will analyze the data, using the established performance metrics, and will issue quarterly public reports gauging BPD's performance in responding to individuals in crisis.

The First Year Monitoring Plan tackles a number of the Consent Decree's foundational short-term objectives, including appointment of a CIT Coordinator, expansion of CPIC, development of a strategic work plan for CPIC, completion of the Gap Analysis, development of patrol and dispatch policies, completion of a staffing plan and a plan for selecting officers for the CIT, and creation of a form to track data on responses to individuals in crisis.

BPD and the City have met every deadline in the First-Year Monitoring Plan so far and have made reasonable progress toward compliance with the preliminary requirements of the section of the Consent Decree covering Interactions with Individuals with Behavioral Health Disabilities and in Crisis.

### **Areas of Progress**

BPD has some tangible achievements under the First-Year Monitoring Plan. Thus far:

- With the approval of the Monitoring Team and DOJ, BPD has complied with the provision in Paragraph 115 requiring installation of a qualified CIT Coordinator by appointing Lt. Azalee Johnson.
- The City and BPD have satisfied their initial obligation under Paragraph 104 by expanding the composition of CPIC to include relevant City and State officials, Disability Rights Maryland, community mental health providers, substance use services providers, local hospitals, advocates, and committed philanthropists. The cooperative working relationships that CPIC's new membership is beginning to facilitate will be critical to addressing the needs of City residents with behavioral health disabilities. CPIC's leadership—which includes Major J. Rhoden (BPD), C. Taylor (BHSB CEO) and T. Hickey (Director, Mayor's Office of Human Services)—represent key components of the crisis intervention system and appear fully committed to the Committee's mission.
- In late May, consistent with Paragraph 97, CPIC designated Behavioral Health Systems Baltimore (BHSB) to lead the Gap Analysis process. In June, in coordination with CPIC and BPD, BHSB issued a Request for Proposal for an organization to provide technical expertise to assist with completion of the Gap Analysis.
- Also consistent with Paragraph 97, the City, BPD and CPIC have completed the first draft of a Work Plan that provides a roadmap for developing a CIT Program staffing plan, the CIT officer selection process, Crisis Intervention policies for the Patrol Division and Dispatch Unit, and a detailed set of data to be collected for evaluation purposes. The final Work Plan will be presented to the Court in August. Together with the Gap Analysis, which is due to be finalized in April 2019, the final Work Plan should reflect the benefits of a fully collaborative approach to improving the quality of BPD's

responses to incidents involving individuals with behavioral health disabilities or in crisis.

In addition to these early achievements, the City, BHSB and BPD are working to connect a number of programs in Baltimore that provide support for individuals in need, and they are appropriately beginning to draw on the collective experience of CPIC's members to do so. As background, the City and BPD have several specialized programs aimed at diverting individuals in crisis from the criminal justice system to the health care system. Each program focuses on an important issue, including homelessness, substance abuse and mental illness. The City, BHSB and BPD realize services can be provided more effectively through an integrated approach to service delivery. They are aware that individuals can struggle with multiple issues and can benefit from a comprehensive response that benefits their overall health and welfare. The City, BPD and BHSB have recognized that the Consent Decree presents a good opportunity to improve BPD's supportive services, and they have now assigned CPIC to an important advisory role for all of BPD's Crisis Intervention Programs. The City and BPD should be credited for their willingness to broaden CPIC's role beyond what the Consent Decree explicitly prescribes.

The Monitoring Team finally notes that its team lead in this area, Randy Dupont, has accompanied BPD officers on several lengthy ride-alongs over the past several months. Dr. Dupont's anecdotal observations have been encouraging. The officers he has accompanied have shown a willingness to support the goals of the Consent Decree. During the ride-alongs, these officers received a number of calls for service, including calls involving individuals with behavioral health disabilities and in crisis. In difficult circumstances, the officers went the extra mile to help those individuals reach resolutions that did not involve criminal justice system outcomes. While there is much work left to do, BPD—at least anecdotally—appears headed in the right direction.

## **Challenges Ahead**

CPIC, BPD, BHSB and the City must accomplish major tasks within a tight timeframe. These include finalizing the Work Plan, hiring an organization to perform the Gap Analysis, completing the Gap Analysis, developing a Crisis Intervention Plan and process for selecting CIT officers, and revising policies. It will be important to make sure that the tight timeframe does not overwhelm the need to fully include CPIC members in accomplishing of these tasks. The purpose of expanding CPIC, after all, was to bring a diverse set of experiences to the reform process.

## **The Next Six Months**

In the next reporting period, the City, BPD and CPIC will finalize the Work Plan and prepare the Gap Analysis, with the first draft due in December. Additionally, BPD will prepare a Crisis Intervention Plan and establish a process for selecting CIT officers and ensuring that the CIT's capacity is sufficient, at all times of the day and in all districts, for CIT officers to respond to incidents involving individuals with behavioral health disabilities or in crisis. The Crisis Intervention Plan will adopt a CIT first-responder model of police-based crisis intervention with supportive community, health care, and advocacy partnerships. The Crisis Intervention Plan and CIT officer selection process will be finalized by November.

With CPIC's input, BPD also will revise important policies. One policy will emphasize diversion of people with behavioral health disabilities or in crisis to the behavioral health system, rather than jail or a hospital emergency room (except when an emergency petition is filed, in which case an officer must take the individual to a hospital emergency room under current law). Another policy will contain revised protocols for dispatch employees so that they dispatch CIT officers to crisis calls requiring a police response and are otherwise prepared to refer to crisis services calls that relate to crises that do not necessitate police services.

Finally, BPD and CPIC will develop a Crisis Data Form designed to capture the information required to assess the quality of BPD's interactions with individuals with behavioral health disabilities or in crisis. The Crisis Data Form will be finalized by November.

## **Interactions with Youth**

The Consent Decree requires BPD to alter its approach to interacting with youth. The Consent Decree obligates BPD officers to account for the personal characteristics (age, size developmental/mental status, disability status and maturity) of youth they encounter and, where practicable, use alternatives to arrest (e.g., warn and release, counseling, referral to community services and resources; warnings; civil citations) in order to divert youth from the criminal justice system (CD 218). To accomplish this goal, the Consent Decree requires the City to conduct a comprehensive assessment of its efforts to reduce youth involvement in the juvenile and criminal justice systems (“Youth Assessment”) (CD 219), and requires BPD to revise its policies and training as needed, and conduct training, to properly guide officers in their interactions with youth (CD 220-21). The Consent Decree envisions that, in preparing the Youth Assessment, the City will obtain input from a collaborative consisting of City officials, BPD representatives and community stakeholders, including community organizations with experts in the field, academics and youth advocates (CD 219).

Under the First-Year Monitoring Plan, the Youth Assessment will begin in the summer and extend through the beginning of the 2018-19 school year, as the parties and the Monitoring Team want maximum participation and recognized that young people will be out of school and harder to reach during the summer. The report containing the results of the Assessment is due December 31. This timeline allows the City and its community partners sufficient time to complete a robust plan/timeline for the assessment process. The plan/timeline is scheduled to be finalized and filed with the Court by July 30. The assessment will begin thereafter.

Thus far, the City and BPD have made reasonable progress toward meeting the deadlines regarding the Youth Assessment in the First-Year Monitoring Plan. Without a complete assessment, much less revised policies and training curricula, it is premature to assess whether the City and BPD are making progress toward satisfying the long-term requirements of the Interactions with Youth section of the Consent Decree.

### **Youth Assessment**

The City and BPD have begun to lay the groundwork for the Youth Assessment. In late March, the City and BPD hosted a meeting at the University of Baltimore Law School that was attended by over 40 individuals representing a myriad of youth-focused organizations and agencies. The purpose of the meeting was to begin convening community members with pertinent expertise for the purpose of



initiating the Youth Assessment planning process. Led by the City and supported by BPD's Consent Decree Implementation Unit, the meeting was well organized and garnered significant input from attendees.

Following the March meeting and subsequent dialog, the City, BPD and community stakeholders established two short-term goals: (1) determine an appropriate scope for the Youth Assessment and define what "diversion" means; and (2) complete a comprehensive draft of the Assessment plan/timeline due July 30. Consistent with these goals, the following actions are being taken:

- BPD and the City are identifying the appropriate data to be collected and evaluated for the Youth Assessment.
- The parties and community stakeholders have determined that the Youth Assessment will focus on diversion programs that tangibly demonstrate the diversion of youth in Baltimore. The identification of these programs will be informed by the formal definition of "diversion" developed by DOJ's Office of Juvenile Justice and Delinquency Prevention.
- A scope of work has been created for the evaluation of one of the City's diversion programs, the Juvenile Pre-Detention Diversion Program, which will be performed by Loyola University.
- BPD was selected to participate in the Center for Children's Law and Policy's Law Enforcement Leadership for Equity Initiative and, through its participation, will receive technical assistance with the Youth Assessment. The technical assistance will specifically address police interactions with youth through policy and training.
- The City and BPD have formed a partnership with the University of Maryland School of Social Work, which will conduct a literature review of best practices in youth diversion that will inform the Youth Assessment. The anticipated scope of work will be completed by the end of the summer.
- In addition to continuing to convene a large group of community stakeholders at periodic meetings, the City has formed an advisory body of committed stakeholders to advise on the Youth Assessment. To form the advisory body, the Mayor's Office and BPD distributed an announcement seeking members representing system partners, community members, youth, families and community organizations. After receiving applications, the City and BPD made selections. The advisory body held its first meeting on June 19.

Together with the projected support from Loyola University (assessment of the City's Juvenile Pre-Trial Detention Diversion Program), University of Maryland (literature review) and Children's Center for Law and Policy (technical assistance/training), the creation of the advisory group has positioned the City and BPD to properly perform the Youth Assessment and issue a report by the end of the year. That does not mean completion of the Assessment will be without challenges. The City and BPD must coordinate each of the above-described efforts to ensure that the Assessment accurately analyzes the qualitative and quantitative data and information that are being collected and develops meaningful recommendations based on that analysis.

### **Challenges Ahead**

The Youth Assessment is only the first step in the reform process. The Assessment will inform how, going forward, the City and BPD should engage with youth to divert them from involvement in the juvenile and criminal justice systems. The challenge will be to take the findings and recommendations from the Assessment and adopt them in practice so that, where appropriate and consistent with public safety, officers exercise their discretion to utilize alternatives to arrest. In future years, the Monitoring Team—and BPD itself—will be measuring the success of the initiatives that arise from the Youth Assessment by conducting qualitative and quantitative outcome assessments (CD 459.i.) and compliance reviews.

Although it is far too early to draw any conclusions about the City's and BPD's compliance with the Consent Decree's Interactions with Youth provisions, the City and BPD, with their work to date, have demonstrated a meaningful commitment to assessing and improving the City's youth diversion opportunities.

## Sexual Assault Investigations

The Consent Decree requires BPD to enhance the trust of victims of sexual assault in its performance, to strengthen its response to and investigations of reports of sexual assault, and to combat gender bias (CD 257). To achieve these goals, the Consent Decree requires BPD to: revise the policies and procedures for responding to and investigating reports of sexual assault (CD 258); provide initial and on-going annual training to support the revised policies and procedures (CD 259); ensure through proper supervision and internal oversight that reports of sexual assaults are thoroughly investigated (CD 260, 262, 263); ensure that officers transport victims to a medical facility for a forensic exam in all instances in which a forensic exam is warranted and the victim consents (CD 261); enhance its collection, analysis and reporting of data regarding the nature and extent of sexual assault crimes (CD 264); share information about its sexual assault investigations with other law enforcement agencies, the public, and the Sexual Assault Response Team (“SART”) (CD 265). The City and BPD will ensure that their policies and protocols with the SART will enable them to engage in periodic reviews of services provided by BPD and to review samples of open cases and those classified as unfounded (CD 266).

The First-Year Monitoring Plan focuses on the required revisions to BPD sexual assault investigation policies. Thus far, BPD has complied with each deadline and is making reasonable progress toward satisfying the requirements of Paragraph 258. It is too soon to assess whether BPD is making progress toward satisfying any other requirement.

### **Policy Revisions**

BPD delivered an initial draft of revisions to Policy 708 on Rape and Sexual Assaults, as well as an outline of revisions to BPD’s standard operating procedures (SOPs) for sexual assault investigations in May. Significantly, BPD collaborated with the Monitoring Team even before producing the initial draft of Policy 708. The Monitoring Team lead on sexual assault investigations had numerous phone calls and exchanged numerous emails with BPD personnel regarding BPD’s existing policy and national best practices. In addition, the Monitoring Team and DOJ had a fruitful in-person meeting with BPD in late April to discuss necessary revisions. BPD’s decision to seek technical assistance on Policy 708 even before producing an initial draft demonstrates BPD’s good faith commitment to reforming its policies in this area.

Presently, the Monitoring Team and DOJ are collaborating with BPD to refine the initial draft of Policy 708, as well as the SOPs. The refinements are due to be

completed by the end of July. BPD will publish a proposed final version of Policy 708 soon after. The public comment period runs from mid-August – mid-September. The final revisions will be submitted to the Court for approval at the beginning of November, after the Monitoring Team and the parties have an opportunity to consider any public comments.

As they refine Policy 708 and the SOPs, BPD's policy staff are working closely with the Commander of the Sexual Assault Unit, as well as members of SART, to ensure that the unit's operational structures accommodate the policy revisions.

### **Challenges Ahead**

As in every area of the Consent Decree, revising sexual assault investigation policies and procedures is only the first step on the path to reform. The next step will be to develop and deliver revised training on those policies and procedures. That is slated to take place in Year Two. Then BPD will have to demonstrate that it is making tangible improvements in its investigative practices and, correspondingly, that patrol officers are complying with the new policies and SART supervisors are holding detectives accountable to them.

The Consent Decree contains a set of quantitative outcome assessments designed to measure whether the prescribed changes in sexual assault investigations are occurring (CD 459.k.). These assessments include the number of sexual assault reports made to BPD, the rate of victim participation in sexual assault investigations, the clearance rate in sexual assault cases, and the rate of declination of sexual assault cases referred to the U.S. Attorney's Office. Within the next six months, the Monitoring Team intends to begin making these quantitative assessments. It will also begin qualitative reviews of BPD's sexual assault investigations. The Monitoring Team intends for the quantitative assessments and qualitative reviews to establish a baseline against which to assess BPD's future performance. The quantitative assessments and qualitative reviews will, over time, show whether BPD is, in fact, improving the way it handles sexual assault investigations, as the Consent Decree envisions.

### **Recruitment, Hiring and Retention**

“Maintain[ing] high-level, quality service, ensur[ing] officer safety and accountability, and promot[ing] constitutional, effective policing” depends on the recruitment, hiring and retention of “a diverse group of qualified individuals.” (CD 419). While the Staffing provisions of the Consent Decree (discussed above) require BPD to fortify its ranks in order to fulfill its mission, the Recruitment, Hiring and Retention provisions of the Consent Decree complimentarily require BPD to do so the right way. The Recruitment, Hiring and Retention provisions thus obligate BPD to develop a detailed Recruitment Plan with “clear goals, objections and actions steps for attracting a retaining a quality work force that reflect the diversity of the Baltimore Community” (CD 420-422); conduct an in-depth review of BPD’s current hiring processes (CD 423); include specific criteria in its background investigation of officer candidates (CD 424-425); create a Retention Plan to “identify challenges and recommend solutions to improve BPD’s retention of employees” (CD 426); and conduct internal annual assessments of its recruitment and retention practices (CD 427).

Improving BPD’s performance in the recruitment, hiring and retention of high-quality personnel is an inherently long-term undertaking. The First-Year Monitoring Plan focuses on the initial steps: reviewing current hiring and background investigation processes (CD 423) and issuing a hiring report resulting from that review.

It is too soon to assess whether BPD is making progress toward meeting this first-year objective, much less the longer-range goals in the Recruitment, Hiring and Retention provisions of the Consent Decree. However, BPD has begun the process of reviewing its hiring practices in earnest. Since April, consistent with the First-Year Monitoring Plan, BPD, DOJ and the Monitoring Team have participated in regularly scheduled, bi-weekly meetings regarding the completion of the review of BPD’s hiring processes. These meetings have included discussions of State hiring criteria, Civil Service Commission procedures, and “whether any process, criterion, or requirement [has] had a disparate impact” on candidates based on their race, ethnicity, color, national origin, age, gender, gender expression or identity, sexual orientation, disability status, religion, or language ability (CD 423). Additionally, the discussions have covered the processes and policies for background investigations of officer candidates, as well as the retention of a potential vendor to assist with the administration of background checks and written exams.

In the next reporting period, the Monitoring Team, DOJ and BPD will continue to meet to ensure that BPD's review of current hiring processes, including but not limited to background investigation procedures, is robust and satisfies Consent

Decree requirements. In addition, by mid-August, following completion of the review, BPD will prepare and submit to the Monitoring Team and DOJ a draft report summarizing the review. The report will outline the current hiring process, criteria and requirements; analyze whether the current process, criteria and requirements that may have a disparate impact on candidates on prohibited bases (such as race, national origin, disability status or gender); assess whether alternative selection criteria would have less of a disparate impact; and include a timeline for establishing the background investigation requirements of Paragraphs 424-425. BPD will collaborate with the Monitoring Team and DOJ on the draft report through mid-October and submit a final report for approval by November 12. The Monitoring Team will approve or disapprove the final report by December 10.

### **Officer Assistance and Support**

Under the Consent Decree, BPD must take several important measures to support the health and wellness of its officers. The Consent Decree requires BPD to: provide, review and revise, as needed, an Employee Assistance Plan (“EAP”) that furnishes no- or low-cost counseling and mental health wellness services (CD 436-437); develop peer support services (CD 438); offer all officers a voluntary mental health evaluation before returning to duty after a traumatic incident (CD 439); develop well-being protocols to be utilized during officer deployments in periods of civil unrest (CD 440); and develop protocols for annually assessing the efficacy of all of BPD’s officer assistance programs (CD 441).

The First-Year Monitoring Plan requires BPD, DOJ and the Monitoring Team to begin holding regular meetings or informal focus groups with sworn personnel from across the Department (by rank and geographic assignment) to address available officers wellness resources. Further, the First-Year Monitoring Plan requires BPD to review and, if needed, refine both its EAP (CD 436-427) and its traumatic and high-stress incident protocols (CD 439-440).

Thus far, BPD has complied with the deadlines in the First-Year Monitoring Plan and has made reasonable progress toward satisfying the EAP and traumatic and high-stress incident protocol requirements of the Consent Decree. It is too early to gauge whether BPD is making progress toward satisfying the other Officer Assistance and Support provisions.

#### **Focus Groups**

In consultation with the Monitoring Team and DOJ, BPD has convened a number of informal focus groups with sworn personnel from across the Department. The focus groups have been separately comprised of rank and file officers and supervisors. The focus groups have discussed currently-available officer wellness resources generally, as well as potentially useful protocols and resources for officers following traumatic incidents and during public demonstrations or periods of civil unrest. The Monitoring Team has observed these focus groups and found them to be informative and productive.

BPD intends to continue to use the focus groups to confirm the adequacy of existing programs, obtain additional feedback, and ensure that new or revamped wellness initiatives are both utilized and effective.

## **Employee Assistance Plan**

As the First-Year Monitoring Plan requires, BPD produced draft protocols for complying with the EAP requirements of the Consent Decree (CD 436-437) in mid-May. Since then, BPD has collaborated with the Monitoring Team and DOJ to refine the protocols. BPD will issue for public comment a final proposed version of the protocols on July 19. The comment period runs through August 15. BPD will submit the final protocols to the Monitoring Team and DOJ for approval by August 31. The Monitoring Team will approve or disapprove the protocols by October 16.

## **Traumatic and High-Stress Incident Protocols**

BPD delivered to the Monitoring Team and DOJ initial drafts of both traumatic incident and high-stress incident protocols on May 15. Since then, BPD has collaborated with the Monitoring Team and DOJ to revise those protocols. BPD will issue for public comment a final proposed version of the protocols on July 19. The comment period runs through August 15. BPD will submit the final protocols to the Monitoring Team and DOJ for approval by August 31. The Monitoring Team will approve or disapprove the protocols by October 9.



## **Community Policing**

One of the overarching goals of the Consent Decree is the adoption of a community-oriented model of policing. To accomplish this goal, the Consent Decree imposes on BPD a number of specific requirements intended to affect the way BPD officers interact with community members when taking law enforcement action—*e.g.*, when making stops, searches and arrests, when using force, when monitoring First Amendment assemblies, when dealing with youth and individuals in crisis, etc.

The Consent Decree begins, however, with certain broad requirements intended to promote community-oriented policing. It requires issuance of a new mission statement and integration of community-oriented principles into BPD “management, policies and procedures, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems” (CD 15). The Consent Decree further outlines the kind of community policing training BPD officers must receive (CD 16-17), as well as the data BPD should collect (CD 18). Moreover, the Consent Decree requires the City and BPD to develop community engagement plans (CD 19), to obtain input from community groups on policies, practices, training, engagement programs and enforcement strategies (CD 20), to develop a community outreach program to educate and communicate with City residents about the Consent Decree (CD 21), to publish annual reports on BPD’s community policing efforts (CD 22), and to use the results of community surveys to inform policies, training, and practices (CD 25).

BPD has satisfied the mission statement requirement in Paragraph 15. The Monitoring Team cannot yet assess BPD’s progress toward compliance with any of the other requirements—though it should be noted that, in its effort to comply with Paragraph 21, BPD and the City have appropriately initiated community meetings intended to communicate with community members in each police district about the First-Year Monitoring Plan and the Consent Decree. BPD began attending or holding meetings about the Consent Decree before the Monitoring Team’s appointment.

### **Mission/Core Values Statement**

BPD complied with the First-Year Monitoring Plan deadline for submitting a revised mission statement to the Monitoring Team and DOJ in February. The Monitoring Team and DOJ worked with BPD to refine the draft statement over the next month. It was determined that the mission statement was appropriately concise, but that it required elaboration in a more detailed statement of “core values” that should reflect BPD’s firm commitment to community-oriented policing. BPD subsequently supplemented the draft mission statement with the recommended

statement of core values, and the Monitoring Team and DOJ again collaborated with BPD on refinements. Consistent with the Monitoring Plan, BPD issued for public comment a final proposed statement of mission and core values in May. The public comment period ran from May 16 – June 15. On July 6, following the comment period and BPD’s provision of the final statement to the Monitoring Team and DOJ, the Monitoring Team approved the statement in a memorandum filed with the Court. *See* ECF No. 119.

The Monitoring Team commends BPD for drafting, refining and adopting a statement that properly reinforces its devotion to constitutional, community-oriented policing. The imperative now is to ensure that officers embrace the ideals contained in the statement.

### **Challenges Ahead**

BPD’s next obligation under the First-Year Monitoring Plan is to develop a Community Policing Plan. The Plan will be the foundation for BPD’s community policing strategy. It should include milestones, deadlines for achieving them, and sub-deadlines for each measure required to achieve them, and it should set forth indicators for assessing performance. Developing the Community Policing Plan will require forward-thinking and consultation with community policing experts, including those who are members of the Monitoring Team and consultants for DOJ. The Monitoring Team thus far has recommended that, among other things, BPD create Action Plans that identify problems to be addressed, determine strategies for resolving them, and establish metrics for progress made.

Creating a viable, sustainable Community Policing Plan will not be easy. The success of a community-oriented policing strategy depends on having a sufficient number of qualified, committed patrol officers. At present, as explained in the Staffing section above, there are an insufficient number of sworn officers assigned to the Patrol Division, and morale among those currently assigned is generally low, due in part to the fact they are regularly required, or “drafted,” to work double shifts and extended hours.

### **The Next Six Months**

The first draft of the Community Policing Plan is due September 10. From that date until the end of November, the Monitoring Team and the parties will receive initial public feedback and work with one another to refine the Plan. BPD will issue for public comment a final proposed Plan on December 17. Following the public comment period, which ends January 18, 2019, BPD will prepare and submit to the

Monitoring Team and DOJ a final Plan. The Monitoring Team will approve or disapprove the Plan by March 1, 2019. If approved, BPD will begin implementing it.

Under the First-Year Monitoring Plan, BPD also will issue its first Community Policing Report (CD 22). By December 24, after conferring with the Monitoring Team and DOJ regarding draft of the Report, BPD will publicly issue the final Report and file it with the Court.

## Outcome Assessments

As explained at the outset, a primary duty of the Monitoring Team is to ensure that BPD and the City implement all of the reforms that the foregoing sections of this report describe. The Consent Decree's requirements cannot exist merely on paper—in policies, training curriculum and public statements. Instead, change must be baked into BPD's *practices*—to be seen, felt, and experienced over time by Baltimore's diverse communities.

The Consent Decree requires the Monitoring Team to evaluate BPD's progress in real-time. The Monitoring Team is continually assessing and appraising BPD's reform initiatives. Before new policies, training curricula, procedures or programs can be implemented, they first go through the Monitoring Team, as well as DOJ. Therefore, while this section addresses the critical long-range assessments the Monitoring Team must undertake, the task of assessing where BPD is on the path to compliance and in its efforts to deliver more effective and equitable policing services has been underway since the Monitoring Team was appointed.

The Consent Decree requires the Monitor to conduct two types of interrelated performance assessments. The first are "compliance reviews." They are conducted "to determine compliance with the Material Requirements of this Agreement" (CD 454)—that is, to identify whether BPD has satisfied each requirement over time, Department-wide, and in the vast majority of cases or incidents. These assessments are aimed at understanding whether the particular reforms required by the Consent Decree have been successfully implemented not just in theory but in practice. The assessments can be narrowly focused on concrete short-term requirements—*e.g.*, whether BPD implemented a revised policy, training curriculum or procedure. Or they can focus on broader long-term requirements—*e.g.*, whether BPD officers are generally stopping individuals based on reasonable suspicion, de-escalating civilian encounters and using force only when reasonably necessary, or properly investigating complaints of sexual assault.

The second type of assessment is an "outcome assessment." An outcome assessment is conducted to determine "whether BPD's revised practices and procedures are achieving the purposes of this Agreement and are having an overall beneficial effect on policing in Baltimore" (CD 459). While compliance reviews are geared toward understanding whether BPD and City are really doing the things they promised they would do, outcome assessments attempt to gauge whether various indicators of constitutional policing are moving in the right direction. Paragraph 459 of the Decree inventories a number of specific outcome assessments that the Monitoring Team must perform.

There is inevitable overlap between compliance reviews and outcome assessments. In fact, the outcome assessments required by Paragraph 459 are part of the broader compliance reviews required for each area of the Consent Decree. For example, one required “outcome assessment” is an analysis of civilian complaints about use of force (CD 459.d(ii)). Yet the required analysis of such complaints will necessarily inform a compliance review about whether, as the Use of Force provisions of the Consent Decree require, BPD is ensuring that its officers use de-escalation techniques, avoid using force, and use force only when reasonably necessary.

Between broader compliance reviews and narrower outcome assessments, the Monitoring Team will be engaged in the upcoming months in an effort to establish BPD’s current performance in central areas of the Consent Decree so that it can begin to measure BPD’s progress over time.

### **Progress to Date**

Over the past several months, the Monitoring Team has engaged in collaborative, productive discussions with BPD and DOJ on whether, given the state of BPD’s data, the Monitoring Team will be able to conduct general, comprehensive assessments—“baseline” assessments—of BPD’s current performance so that the Monitoring Team can begin to measure progress over time. Mindful that establishing a baseline is necessary in a host of areas, these discussions have focused on the assessments the Monitoring Team can realistically conduct in the remainder of the first year of monitoring. The Monitoring Team, BPD and DOJ have thus addressed whether, in various areas, there exists data or documentation of sufficient reliability and quality to permit the necessary analysis or review. BPD and DOJ have worked with the Monitoring Team collaboratively and intensively, and the Monitoring Team is pleased that progress has been made.

The Monitoring Team provided the Court and the community with a finalized plan for conducting a host of assessments during the remainder of the monitoring year on July 9. Under the plan, the Monitoring Team will conduct compliance reviews in four areas: use of force; stops, searches and arrests; misconduct investigations; and sexual assault investigations. In each area, the Monitoring Team will conduct the reviews in order to establish a baseline, not because it expects BPD to be in compliance with Consent Decree requirements. The inquiries will serve to establish a benchmark against which to measure future performance, especially once the new policies and training programs required by the Consent Decree are firmly in place. The assessments, therefore, will tell the Court and the community where BPD is starting, but will not provide any definitive evidence of compliance or non-compliance.

In addition to these compliance reviews, the Monitoring Team also will perform a number of specific outcome assessments required in Paragraph 459. Some require quantitative analysis of data that BPD collects. Others require a more qualitative analysis of BPD performance.

## **Challenges Ahead**

As explained elsewhere in this report, a primary challenge with outcome assessments is ensuring the availability of reliable, comprehensive, high-quality data about the performance of BPD and its officers. For certain assessments, such as those addressing stops, searches and arrests, BPD does not have a reliable system for capturing or aggregating all of the Consent-Decree-required data. Although the Monitoring Team will likely be using a sampling process to try to construct a database for purposes of establishing a baseline, successfully measuring outcomes over time will require a high-functioning database with comprehensive information about stops, searches and arrests.

In other areas where data exists and is accessible, the data require substantial cleaning, sorting and synthesis to make it usable for analytical purposes. In the initial years, as the Consent Decree requires, the Monitoring Team will take the lead on making captured data usable and on conducting the required analyses. The challenge going forward will be to revamp BPD's databases so that, down the road, BPD will be able to access data readily and conduct the analyses itself.

The lack of reliable data will make completion of certain outcome assessments less feasible during the first year. This may mean that, in some areas, establishing baselines in this first year of monitoring will not be possible. The challenge in these areas will be ensuring that BPD makes sufficient progress in collecting the necessary data and enhancing its IT capacities so that the Monitoring Team will be able to perform assessments and establish baselines sooner rather than later.

## **The Next Six Months**

In its July 9 filing with the Court, the Monitoring Team has identified the various assessments it will conduct. Over the remainder of the first year of monitoring, the Monitoring Team will work collaboratively with the parties to establish a specific methodology for each assessment, conduct the assessments independently, provide the results to the parties for discussion and comment, and ultimately report the results to the Court and the community. Therefore, at regular junctures through the early part of 2019, the Monitoring Team will report BPD's starting point—or baseline—for many of the requirements of the Consent Decree.