

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

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
vs.)	JUDGE SOLOMON OLIVER, JR.
)	
CITY OF CLEVELAND,)	
)	
Defendant.)	<u>CITY OF CLEVELAND'S</u>
)	<u>THIRD STATUS REPORT</u>

I. Introduction

Cleveland's third semi-annual status report to the Court and the Cleveland Community is provided pursuant to Section 387 of the Settlement Agreement/Consent Decree,¹ which allows: "the City will file a status report every six months thereafter while this Agreement is in effect." The City filed its Initial Status Report on December 9, 2015, with its Second Status Report being filed on June 13, 2016. The City's third report addresses the status of ongoing activities and accomplishments undertaken subsequent to the second report.

An agreed upon "First-Year Monitoring Plan" ("Plan") was approved by the Court on February 4, 2016 and the Plan identified a variety of goals to be met during the period February 1, 2016 through January 31, 2017. The Plan established the calendar for accomplishing certain milestones in achieving reforms that had been established in the

¹ The Settlement Agreement entered into between the City of Cleveland ("City") and the Department of Justice ("DOJ") on May 26, 2015 was approved by the Court on June 12, 2015 and forms the basis of the referenced "Consent Decree" that was issued by the Court. References to "Settlement Agreement" and "Consent Decree" refer to the same document, which can be found at Dkt. 7-1.

City's Settlement Agreement with the DOJ. The Monitoring Plan was revised during the course of the year. As was noted in the Monitor's First Semiannual Report "the parties and Monitoring Team will need to continuously adapt or adjust the Monitoring Plan to real-world circumstances and operational realities." (Dkt. 66).²

One such real-world circumstance and operational reality recognized during the course of 2016 was the significant time and resource allocations that were associated with the City's planning for and hosting of the 2016 Republican National Convention in Cleveland this past July. Hosting the Convention was a major undertaking and had been declared a National Special Security Event ("NSSE") by the Secretary of Homeland Security. CDP in working with the United States Secret Service assumed a central and primary role in assuring security and safety in Cleveland during the RNC, while also working to guarantee and protect the First Amendment rights of local community members, those who had come to Cleveland either to protest or to support the Republican nominee, and those visitors who had come to experience and witness a historic event. While preparing for and hosting the RNC, the City and CDP's efforts also remained directed at meeting agreed upon goals identified in the Settlement Agreement, while continuously seeking to reduce crime and ensure the everyday safety of those living, visiting, and working in Cleveland.

As anticipated, a large measure of the work being undertaken in the third six month period of the Consent Decree involved close attention to the development, refinement, and adoption of important policies and plans that will guide the CDP's efforts

² References to Dkt. in this report refer to the Court's Docket, with the corresponding number identifying the docket entry where the referenced material can be found.

as the Division serves and protects the Cleveland community going forward. The primary accomplishments during this most recent reporting period involved: (1) CDP's revised Use of Force of policies, (2) CDP's Crisis Intervention Policy and Procedures, (3) the manuals for the Office of Professional Standards ("OPS") and Police Review Board ("PRB"), (4) CDP's proposed Wearable Camera System Policy, and (5) CDP's proposed Equipment and Resource Plan. In addition to ongoing interactions and work with the Monitor Team and the DOJ in addressing the completion of new policies and plans, the City and the CDP have and will continue to work with the Cleveland Community Police Commission ("CPC"), residents, and community groups.

To provide a consistent cross-reference regarding activities and progress addressed in this status report, the City's report follows the basic outline found in Paragraph 387 of the Settlement Agreement:

This report will delineate the steps taken by CDP during the reporting period to comply with this Agreement; CDP's Assessment of the Status of its progress; plans to correct any problems; and response to concerns raised in the Monitor's previous semi-annual report.

II. Steps Taken by the Cleveland Division of Police and the City of Cleveland During the Reporting Period.

As noted above, a First Year Monitoring Plan was adopted to cover the period February 1, 2016 through January 31, 2017. While updated and revised during the year, the Plan continued to identify a sequence of agreed upon milestones to be completed during this reporting period in nine topic areas:

- A. Community and Problem-Oriented Policing,
- B. Use of Force,
- C. Officer Training,
- D. Crisis Intervention,
- E. Accountability

- F. Equipment and Resources,
- G. Data Collection and Analysis,
- H. Bias Free Policing, and
- I. Compliance and Outcome Assessments and Reporting.

Following the format used in the City's second status report, this third report addresses the status of activity in each of these nine topic areas.

A. Community and Problem-Oriented Policing

1. Mission Statement

The development and filing with the Court of CDP's new "Mission Statement" was addressed in the City's Second Status Report. As noted therein the new Mission Statement reflects CDP's direct and ongoing commitment to both constitutional and community oriented policing through adoption of the following language:

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

The Court approved CDP's new Mission Statement on July 12, 2016. (Dkt. 74). CDP will be directly addressing with the Division's officers the background and philosophy associated with the new Mission Statement concurrent with the forthcoming training to be undertaken with the implementation of CDP's new Use of Force policies.

2. Community and Problem-Oriented Policing Work Plan

The Settlement Agreement provides that "CDP will develop and implement a comprehensive and integrated community and problem-oriented policing model in order to promote and strengthen partnerships within the community, engage constructively with the community to ensure collaborative problem solving, and increase community

confidence in CDP. (Dkt. 7-1, ¶ 27). In early December CDP and the City received specific input on this topic from the Monitor entitled “A Framework for Community Policing in Cleveland.” The Monitor’s Framework provides a variety of ideas, practices, and suggestions for study and discussion within the following identified topic areas: community and problem-oriented policing, staffing and deployment, equipment and resources, recruitment and hiring, officer training and education, and officer and supervisor evaluation. Collaborative work with the CPC, Monitor Team, and the DOJ in developing a successful community and problem-oriented policing model will be an ongoing and major focus of the CDP and City during the next reporting period.

3. Cleveland Police Commission

Because the CPC lost two of its originally appointed members in 2016, the Selection Panel authorized by the Settlement Agreement (Dkt. 7-1, ¶ 16) was reconstituted for the purpose of recommending two new members to fill the vacancies. The Panel recommended Gordon Friedman and LaToya Logan to fill the vacant CPC positions. Both were sworn in as members of the Commission by Cleveland Mayor Frank Jackson on November 14, 2016.

The City’s Finance Department worked closely with CPC in formulating a proposed budget for 2017. The Monitor reviewed the proposal and recommended approval by way of the Motion filed on November 30, 2016, noting therein:

The budget, as proposed and scheduled to be presented for approval by Cleveland City Council, appears to provide sufficient independence along with the required resources to achieve the goals of the upcoming Monitoring Plan for 2017.

(Dkt. 87). The Court formally approved the proposed CPC budget by way of the Order

issued on January 17, 2017. (Dkt. 101).

B. Use of Force

On November 16, 2016, the Monitor filed a motion (Dkt. 83) recommending approval of five revisions to CDP's "Use of Force" policies. The five revised policies addressed: (1) Use of Force – General, (2) Use of Force: Definitions, (3) De-Escalation (4) Use of Force: Intermediate Weapons, and (5) Use of Force: Reporting. In conformance with the Settlement Agreement the revised policies were "designed with the goal of ensuring that officers use techniques other than force to effect compliance with police orders whenever feasible; use force only when necessary, and in a manner that avoids unnecessary injury to officers and civilians; de-escalate the use of force at the earliest possible moment; and accurately and completely report all uses of force." (Dkt. 7-1, ¶ 45). Judge Solomon Oliver, Jr., after hearing from the Monitor and counsel for both the City and the DOJ, approved the five policies at the Status Conference conducted by the Court on January 6, 2017.

CDP's initial work on the new use of force policies was described in the City's Second Status Report — Dkt. 69. The City's Second Status Report reviewed the initial steps undertaken by CDP in the review and development of the revised use of force policies. Early steps included CDP's receipt and consideration of community input and recommendations from the CPC, the results of a community survey conducted by the City's Community Relations Board, and CDP's outreach to and interactions with patrol and supervisory officers. As with much work being accomplished in accordance with the Settlement Agreement, CDP's continuing efforts leading to the finalized use of force

policies included discussions and exchange of ideas with the Monitor, DOJ, CPC, and individual officers.

Much of the drafting of the core language to be incorporated into the new policies had been completed last year by early September. It was at this point that two collaboratively sponsored community forum events were held to allow community members to see the progress that had been made in drafting their new policies. It was anticipated that having interactive public meetings to discuss the draft policies would not only assist in achieving community understanding of the new policies, but that residents would be provided a forum allowing for direct input of community opinions and ideas to be taken into consideration in finalizing CDP's use of force policies. Approximately 200 Cleveland area residents attended and were actively engaged with representatives from the City, CDP, the Monitor Team, DOJ, and other stakeholders in discussions concerning the proposed new policies. Ideas and opinions generated at the two public forums along with additional final policy recommendations made by the CPC were taken into account by CDP as final drafts of the revised policies were completed. The Monitor submitted the revised policies to the Court for approval on November 16. (Dkt. 83). The Monitor's motion identified in pertinent part:

The Monitoring Team has closely reviewed the updated policies. For the reasons set forth below, the Monitor concludes that the policies are consistent with the Consent Decree because they promote officer and public safety, enhance effective and proactive law enforcement, and advance constitutional policing in a manner consistent with the values of Cleveland's communities as articulated by those communities during extensive community outreach and engagement on the force policies.

(Dkt. 83 at p. 2) A brief discussion highlighting aspects of the revised policies follows.

1. Use of Force – General

The purpose of CDP's General use of force policy is expressed within the policy as follows:

To establish guidelines for officers of the Cleveland Division of Police relative to the use of force, and to provide direction and clarity, in those instances when a subject's actions require an appropriate use of force response.

(Dkt. 83-1, Use of Force General Policy). A concise overview of the policy guidelines adopted with the General policy provides:

Consistent with the Division's mission, including the commitment to carry out its duties with a reverence for the sanctity of human life, it is the policy of the Division to use only that force which is necessary, proportional to the level of resistance, and objectively reasonable based on the totality of circumstances confronting an officer. Officers shall also take all reasonable measures to de-escalate an incident and reduce the likelihood or level of force. Any use of force that is not necessary, proportional, and objectively reasonable and does not reflect reasonable de-escalation efforts, when safe and feasible to do so, is prohibited and inconsistent with Divisional policy.

(*Id.*). The detailed policy language provides CDP's officers with specific guidance concerning general procedures to be undertaken, when deadly force is authorized, and when force is prohibited. The policy provides further guidance to officers on their duty to ensure that any use of force is authorized and delineates the corresponding duty on officers to intervene when an unauthorized use of force is observed. The policy also describes the duty placed on officers to ensure necessary medical care is obtained and provided when force has been used.

2. Use of Force: Definitions

A separate policy was drafted that defines various terms used in CDP's Use of Force Policies. The definitions ensure understanding of certain terms and concepts that

are used throughout the Use of Force policies. (Dkt. 88-1, Use of Force Definitions Policy).³ Considering the above described “General” policy (Dkt. 83-1), the Definitions policy (Dkt. 88-1) provides useful definitional context:

Force: Means the following actions by an officer: any physical strike, (e.g., punches, kicks), any intentional contact with an instrument, or any physical contact that restricts movement of a subject. The term includes, but is not limited to, the use of firearms, electronic control weapon (CEW- e.g. Taser), ASP, chemical spray, hard empty hands, or the taking of a subject to the ground. Reportable force does not include escorting or handcuffing a subject, with no more than minimal resistance.

Necessary: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

Proportional: To be proportional, the level of force applied must reflect the totality of circumstances surrounding the immediate situation, including the presence of an imminent danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater level of force that may be proportional, objectively reasonable, and necessary to counter it.

3. De-Escalation

The Settlement Agreement recognized that CDP officers would “use de-escalation techniques whenever possible and appropriate.” (Dkt. 7-1, ¶ 46). De-escalation is defined in the “Use of Force: Definitions” policy as:

[T]he process of taking action to stabilize the situation and reduce the immediacy and level of a threat so that more time, options, and resources are available to resolve the situation and gain voluntary compliance. De-escalation techniques may include, but are not limited to, gathering

³ On December 5, 2016 the Monitor filed Supplement Exhibits (Dkt 88) substituting three of the Use of Force policies: Definitions, De-escalation, and Reporting for the same three policies that had been directly attached as Exhibits to the Motion Recommending Approval of the policies as had been filed on November 16 — Dkt. 83.

information about the incident, assessing the risks, verbal persuasion, advisements and warnings, and tactical de-escalation techniques, such as slowing down the pace of the incident, waiting out subjects, creating distance (reactionary gap) between the officer and the threat, repositioning, and requesting additional resources (e.g., specialized CIT officers or negotiators).

(Dkt. 88-1). CDP's separate and now approved De-Escalation policy establishes "guidelines for officers of the Cleveland Division of Police relative to deescalating situations in order to gain voluntary compliance and to reduce the need to use force."

(Dkt. 88-2, De-Escalation Policy). It is recognized as a matter of policy concerning the employment of de-escalation principles that:

Officers have the ability to impact the direction and outcome of the situation with their decision making and employed tactics. Policing, at times, requires that an officer may need to exercise control of a violent or resisting subject, or a subject experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. Officers shall use de-escalation tactics and strategies when safe under the totality of the circumstances and time and circumstances permit.

(Dkt. 88-2).

4. Use of Force: Intermediate Weapons

Intermediate Weapons are defined by way of policy as "[w]eapons that interrupt a subject's threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications, including but not limited to the ASP batons, and Conducted Electrical Weapon (CEW), Oleoresin Capsicum (OC) Spray and the beanbag shotgun." (Dkt. 88-1, Definitions).

The separate policy addressing "Intermediate Weapons" was "to establish guidelines for officers of the Cleveland Division of Police relative to the use of force when deploying intermediate weapons, while providing direction and clarity, in

those instances when a subject's actions require a use of force response." (Dkt. 83-4, Use of Force: Intermediate). The Intermediate Weapons policy identifies that these weapons "are used to interrupt a subject's threatening behavior so that officers may take control of the subject with less risk of injury to the subject or officer than posed by greater force applications. Intermediate weapons may be used when objectively reasonable, necessary, proportional, and permitted under this policy." (*Id.*)

5. Use of Force: Reporting

The Settlement Agreement provided that "CDP will develop and implement a single, uniform, reporting system pursuant to a Use of Force Reporting policy." (Dkt. 7-1, ¶ 87). CDP's approved Reporting policy was developed "[t]o establish guidelines for the reporting of all use of force responses and for documenting objective reasonableness, necessity and proportionality after a use of force response." (Dkt. 88-3, Use of Force: Reporting). The Reporting policy requires that:

Officers shall notify their supervisor when they have used force, except for *de minimis* force. Officers shall clearly, thoroughly and properly report use of force incidents. The necessity for each application of force shall be documented, identifying the uniqueness of each situation and justifying every force response.

(*Id.*). Reporting requirements relate to three classified established levels of force:

"1. Level 1 Use of Force: Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury, and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

2. Level 2 Use of Force: Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does

not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension that involves contact.

3. Level 3 Use of Force: Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital admission due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of an CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers, an CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.”

(Id.).

The use of force policies have been developed and approved with the necessary understanding that the circumstances necessitating an officer’s use of force can occur in conditions involving immediate danger and grave threat to the officer or others. Such circumstances can result in a use of force that would be otherwise prohibited by the revised policies. The Reporting policy ensures that any such use of force is fully reported and explained:

In the rare and exceptional circumstances that officers use force that would otherwise be prohibited by Division policy, they must justify the use of force by articulating the specific facts that led to such a use of force. Officers must describe, in detail, the objective reasonableness, necessity, and proportionality of the force that was used, the actions of the subject that constituted immediate danger and grave threat to the officers or others, the officer’s efforts to de-escalate the encounter, why the officer believed that no other force options, techniques, tactics or choices consistent with Division policy were available, and how rapidly the officer was able to return to compliance with Division policies.

(Dkt. 88-3). An officer is subject to discipline for failing to report a use of force, for failing to report uses of force the officer has observed, and for “material (significant)

omissions or misrepresentations in their Use of Force Reports.” (*Id.*)

C. Officer Training - Use of Force

As was noted in the Monitor’s Second Semi-Annual Report (Dkt. 97), “[t]he approved, new use of force policies for CPD [sic] will only become effective once the men and women of the Division receive significant, substantive training on the policies provisions.” (Report at p. 34). CDP is currently finalizing the curriculum that will be the basis for 16 hours of in-service to be provided to all officers. Work on the use of force training curriculum has been ongoing over the period of this report and has been undertaken in a collaborative fashion with input from the Monitor Team and DOJ. It is anticipated that a training plan will be finalized in the very near future with subsequent training of CDP officers on the new policies being undertaken in the first quarter of 2017.

D. Crisis Intervention

The Settlement Agreement requires that CDP “build upon and improve the Crisis Intervention program with the goal of (a) assisting individuals in crisis; (b) improving the safety of officers, consumers, family members, and others within the community; (c) providing the foundation necessary to promote community and statewide solutions to assist individuals with mental illness; and (d) reducing the need for individuals with mental illness to have further involvement with the criminal justice system.” (Dkt. 7-1, ¶ 131). The City recently submitted to the Monitor for review three related policies associated with CDP’s revised Crisis Intervention Policy and Procedures (collectively the “CIT Policy”). On January 19 the Monitor submitted the three CDP policies to the Court through a motion, commenting therein, in part:

The CIT Policy submitted to the Monitor makes it clear that a “crisis intervention response may be necessary even in situations where there has been an apparent law violation.” Id. ¶ 154. It provides that specialized CIT officers will “have appropriate discretion to direct individuals with mental health and substance abuse issues to the health care system.” Id. ¶ 155. Additionally, the policy makes it clear that specialized CIT officers, when available, must be dispatched to all calls or incidents that appear to involve an individual in crisis. Id. ¶ 156. Because the City has submitted a CIT Policy that has met the requirements and objectives of the Consent Decree, the Monitoring Team recommends approval of the policy subject to the conditions regarding the completion of certain attachments discussed below.

(Dkt. 101, Motion Regarding Cleveland Division of Police Crisis Intervention Policy and Procedures).⁴

By way of background, shortly after the Settlement Agreement was entered by the Court as a Consent Decree, the City had entered into an agreement with the Alcohol, Drug Addiction, and Mental Health Service Board of Cuyahoga County (“ADAMHS Board”) to form the Mental Health Response Advisory Committee (“MHRAC”) set out at ¶ 132 of the Settlement Agreement. The MHRAC was established as “an advisory Committee to the Department of Public Safety and CDP on behavioral health issues and crisis intervention. The committee is made up of representatives of behavioral health and

⁴ As further explained in the Monitor’s Motion:

The initial final draft and the current policy references three documents that are near completion. These are the CIT Stat Sheet (CIT Program Attachment A), a written statement for the officers regarding emergency commitment under ORC 5122.10 (Crisis Intervention Response Attachment A), and a resource card for the officers (Crisis Intervention Response Attachment B). While there is general agreement on these three documents, the specific content is still being completed and will be presented to the parties, the Monitor, and the Court in the near future. Therefore, complete approval of the policies attached hereto by the Monitoring Team is conditioned upon receipt and approval of the attachments that the policies reference. (Dkt. 101, p. 8).

social service agencies, criminal justice agencies, advocacy groups, community members, and members of CDP. The MHRAC was developed through a Memorandum of Understanding with the City of Cleveland, Department of Public Safety and the Alcohol, Drug Addiction and Mental Health Services Board of Cuyahoga County.” Dkt. 101-1, Crisis Intervention Team Definitions). The Settlement Agreement established that the CDP would work with the MHRAC to revise its then current crisis intervention policy. (Dkt. 7-1, see ¶¶ 153-155).

As a result of the collaborative work of the CDP, MHRAC, and ADAHMS Board, with regular and continuing participation and input from the DOJ and Monitor Team, work on a consensus draft CIT Policy consisting of three separate CDP policies was completed in November. Prior to finalization of the policies two public forums were conducted on December 13, 2106. Input from the community was received and considered before the final CIT Policy was submitted to the Monitor for final review.

As was further noted by the Monitor in filing the three policies with the Court:

The Monitoring Team notes that the work of the Advisory Committee is particularly impressive in light of the volunteer nature of the various members’ commitments. The cooperative relationship established between advocates, healthcare professionals and the Cleveland Police Department worked well in developing a consensus policy to address the needs of the individual in crisis without compromising the safety of the officer or the Cleveland community. As a result, the policy presents a new, comprehensive strategy for responding to individuals in a behavioral crisis.

(Dkt. 103). The three separate policies making up the overall CIT Policy are briefly addressed.

1. Crisis Intervention Team Definitions

Similar to the definitions policy adopted with the new Use of Force Policy, a separate definitions policy was adopted for the purpose of defining critical terminology used in the CDP's CIT Policy. (Dkt. 101-1). Several terms key to the revised policy include:

Crisis: A situation where an individual's safety and health are threatened by behavioral health challenges, to include mental illness, developmental disabilities, substance use, or overwhelming stressors. A crisis can involve an individual's perception or experience of an event or situation as an intolerable difficulty that exceeds the individual's current resources and coping mechanisms and may include unusual stress in their life that renders them unable to function as they normally would, which may make them a danger to self or others.

Developmental Disability: A disability that is characterized by an identified condition such as Autism Spectrum Disorder or Intellectual Disability Disorder that results in functional limitations in areas such as self-care, language, learning, mobility, self-direction, comprehension, capacity for independent living and economic self-sufficiency.

Mental Illness: A disorder of thought, mood, memory, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality or the ability to address basic life necessities, and requires care and treatment for the health, safety, or recovery of the individual or the safety of others. Some individuals with mental illness may have a dual diagnosis that includes another condition such as drug and/or alcohol addiction.

Mental illness conditions may be characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic, or other factors.

Specialized CIT Officer: A voluntary, specially trained, basic patrol officer who has demonstrated a desire and ability to work with people in crisis situations and who has been selected to be a member of the Crisis Intervention Team.

2. Crisis Intervention Team Program

As described, the purpose of the Crisis Intervention Team Program ("CIT

Program”) is:

To increase the effectiveness of the Cleveland Division of Police’s (CDP) Crisis Intervention Team (CIT) Program by: facilitating communication between CDP and the behavioral health community; developing a foundation that promotes effective solutions for assisting those in crisis or with behavioral health challenges; improving the crisis intervention training of officers; increasing the resources available to CDP; reducing the need for individuals in crisis to have further involvement with the criminal justice system; and improving the safety of officers and the Cleveland community.

(Dkt. 101-2, Crisis Intervention Team Program Policy). The CIT Program is to ensure the provision of “resources and develop collaborative partnerships with the community, behavioral health care systems, and advocacy groups to improve CDP’s relationships with the community. The CIT Program shall reflect the values of the community it serves by promoting dignity and fairness to all people through its training, encounters with individuals in crisis, and community partnerships, with the goal of connecting or re-directing individuals in crisis and their families to health care resources that can provide for long-term stabilization and support.” (*Id.*)

The Program formalizes recognition of specialized CIT officers within the CDP ranks who will be tasked to respond to everyday crisis intervention calls. CIT officers will be volunteers from within CDP, with the Division assessing each officer applicant to determine his/her fitness to serve as a Specialized CIT Officer. The assessment will include an in-person interview and review of the officer’s application, supervisory recommendations, past crisis intervention reports, personnel file, and history of Office of Professional Standards complaint history. The policy makes clear that “Officers with a history of complaints of, or who have been disciplined for, excessive use of force against individuals in crisis will be presumptively ineligible to be a Specialized CIT officer.” (*Id.*)

The policy identifies that each Specialized CIT officer will receive 40 hours of crisis intervention training, to include training in the following areas: how to conduct field evaluations, suicide interventions, community mental health resources, common mental health and developmental disability diagnoses, effects of drug and alcohol use, the rights of persons with mental illness and disabilities, crisis de-escalation; civil commitment criteria; scenario-based exercises, on-site visitation to mental health and substance abuse facilities, understanding age-appropriate responses in handling juveniles with mental illness; and perspectives of individuals with mental health issues and their family members. As might be expected, the Specialized CIT officers will be central to the success of the intervention process. Unless a supervisor on scene has assumed responsibility these officers will have the primary responsibility on scene for handling a crisis incident.

All other CDP officers are to receive eight (8) hours of annual in-service crisis intervention training that is adequate in quality, type, and scope addressing the circumstances when a Specialized CIT officer shall be dispatched or consulted, how to handle a crisis incident if a Specialized CIT officer is not immediately available, and updates on mental health issues. CDP recruits will receive at least 16 hours of training that meets Ohio Police Officer Training Academy requirements in the Academy . (*Id.*)

3. Crisis Intervention Team Response

The Crisis Intervention Team Response Policy “establishes guidelines for the Cleveland Division of Police (CDP) to interact with individuals who are suffering from a crisis by improving the safety of officers and the Cleveland community, promoting

community solutions to assist individuals in crisis, and diverting those individuals away from the criminal justice system.” (Dkt. 101-3) As a matter of policy:

The Division shall handle encounters with individuals in crisis in a manner that promotes the dignity of all people while reflecting the values of protection and safety. Individuals in crisis may require heightened sensitivity and additional special consideration. Officers should use reasonable precautions to avoid a violent encounter with individuals in crisis by de-escalating the situation and making every effort to preserve the safety of officers, the individual, and the general public with the goal of connecting the individual to the appropriate community resources for a sustainable recovery.

(*Id.*).

This Policy addresses the various circumstances and responsibilities associated with responding to a crisis through topics addressing and providing guidance concerning: Communications Control Section (CCS) [dispatcher] responsibilities, non CIT Officer responsibilities, specific Specialized CIT Officer responsibilities on scene, responding to juveniles in crisis, crisis incident de-escalation, use of force, handcuffing, diversion options & transportation, supervisor responsibilities, law enforcement emergency admissions, health authority emergency admission, probate warrants, individuals who are absent without leave (AWOL) from inpatient psychiatric facilities or individuals who are on a trial home visit, requests for assistance at shelters or mental health agencies, incident reports with “Crisis Intervention” in the title and CIT Stat Sheet, and referral options.

E. Accountability

1. Internal Affairs

The Consent Decree indicates that CDP through Internal Affairs (“IA”) will conduct objective, comprehensive, and timely investigations of all internal allegations of

officer misconduct. IA also conducts investigations when criminal conduct is alleged to have been committed by CDP employees.

The Consent Decree requires that CDP's Internal Affairs Superintendent be a "qualified civilian who is not a current or former employee of CDP, and who is not a current or retired law enforcement officer." (Dkt. 7-1, ¶ 178). Originally, the goal established by the first year monitoring plan was to have the Superintendent in place by August of 2016. While the amended first year plan changed that date to the end of January 2017, additional time will be necessary.

CDP, in consultation with the Monitor and DOJ, engaged in extensive but so far unsuccessful efforts to find a qualified candidate meeting the above qualifications. The prohibition against a suitable candidate being a current or retired law enforcement officer has disqualified from consideration a broad range of individuals such as state or federal prosecutors and police officers from other jurisdictions who may have extensive experience in public corruption or police accountability.

Meanwhile, the CDP, the Monitor, and DOJ are continuing their work on a new Internal Affairs Operations/Policy Manual. This manual will govern IA activities to include the types and scope of cases that will be investigated. In addition, the manual will specifically set out a process for interaction between the IA Superintendent and the Office of Professional Standards Administrator. Cooperation between these two entities is critical to efficient and transparent investigations into alleged police misconduct.

2. Office of Professional Standards and the Civilian Police Review Board

The Office of Professional Standards ("OPS") is responsible for receiving and investigating citizen complaints alleging misconduct by sworn officers and other

employees of the Cleveland Division of Police. After a full and complete investigation, OPS presents the results to the Civilian Police Review Board (“PRB”) for disposition and, if warranted a recommendation to the Chief of Police or Safety Director as to appropriate discipline.

At this time OPS continues to be challenged by a significant backlog of cases in various stages of investigation. Progress has been made, however, in providing structure and adding staff that together offer a stepping stone for helping OPS come into compliance with the Consent Decree and turn it into the trusted agency this City and all residents expect and deserve.

Since the last report, two fulltime investigators were added and trained. Thus there are currently six permanent investigators sharing the extensive caseload of incomplete investigations. Furthermore, a General Manager of Administrative Services has also been added to the OPS staff. Among other duties, the General Manager is tasked with creating and implementing a case management and performance review process. In conjunction with the review process, OPS is currently using IA Pro, the same electronic case management and performance platform used by CDP. All of this will provide additional investigative tools and efficiencies as OPS addresses the existing backlog of cases and receives new complaints.

It is anticipated that the City and the Monitor will engage in discussions during the first quarter of 2017 regarding what level of permanent staff will be required going forward. This decision is complicated by the backlog of cases and the critical necessity of conducting timely investigations on current cases.

As the Monitor outlined in his last Semiannual Report, through the joint effort of the City, his team, and DOJ, comprehensive operations manuals have been produced for both OPS and PRB. On November 29 the Monitor filed a motion recommending that the Court approve both manuals. (Dkt. 86). At the status hearing conducted by the Court on January 6, Judge Oliver delayed approval of the manuals to allow the City and DOJ to address identified minor non-substantive technical issues. (Dkt. 101, Order).

In the case of OPS, the manual outlines the process for interacting with the public, receiving, evaluating, and timely investigating complaints, and making presentations and recommendations to PRB. As such, the manual also provides clear guidance for citizens and CDP officers and employees as to what they can expect during the course of an investigation. The PRB manual, in turn, outlines procedures that will be followed in receiving, reviewing and deliberating upon OPS investigations. This guidance will be of great assistance to not only the board members as they prepare for and conduct meetings, but also to anyone attending the meetings, whether as an observer or interested party. Finally, in the event discipline is recommended, the manual provides the ultimate decision makers, either the Chief of Police or Safety Director, a clear understanding as to the process that was followed by PRB.

A Charter Amendment outlining revisions to the PRB was passed by voters in November. As a result the number of PRB members was increased to nine, with appointments coming both from the Mayor and City Council. Individual board members will ultimately be required to represent and reflect the diverse communities within Cleveland. Other provisions include term limits for board members as well as occupying the chair and vice chair positions.

This upcoming year will be challenging for PRB. As OPS reduces the backlog of unfinished investigations, there will be a corresponding increase in PRB hearing presentations. This, in turn, will require a greater time commitment by the board members, not just in attending meetings, but also in the considerable effort required to review investigation materials in advance of the hearings. The additional number of board members together with the revised manual provisions allowing for review of some cases by less than the whole board will help, but by no means eliminate, the increased workload board members will face in the months ahead.

The City continues to be committed to the reforms contained in the Consent Decree and to ensuring that both OPS and PRB effectively foster trust and confidence within the community and CDP by conducting thorough, fair, and timely investigations and dispositions of citizen complaints.

F. Equipment and Resources

1. Equipment and Resources Study

As noted in the City's Second Status Report CDP completed and submitted to the Parties and the Monitor a comprehensive equipment and resource study that assessed its current needs and priorities to perform the functions necessary both to fulfill its mission and satisfy the requirements of the Settlement Agreement. The Agreement further required that "[w]ithin six months of completion of this study, CDP will develop an effective, comprehensive Equipment and Resource Plan that is consistent with its mission and that will allow it to satisfy the requirements of this Agreement." (Dkt. 7-1, ¶ 292).

Planning and preparations for the RNC delayed feedback and discussions with the Monitor following CDP's submission of the Equipment and Resource Study. The

Monitor's responsive analysis to the CDP's study was received on September 13, 2016 by way of a combined presentation to the City, CDP, DOJ, and CPC. The City thereafter continued in discussions with the Monitor Team and DOJ concerning CDP's equipment needs through November 25, 2016, when the "Cleveland Division of Police Equipment and Resource Plan" was released. The Plan took into account the realities of the City's fiscal planning, contracting, and budgetary processes under the City's governing laws and was approved by the Chief as required by the Settlement Agreement.

In accordance with the Settlement Agreement the City believes it presented a substantive Equipment Plan that addresses multiple equipment and resource issues within the terms of the Consent Decree. The Plan was formulated to ensure that CDP maintained and continuously improved existing equipment and technology while identifying equipment needs and emerging technologies. The City sought and received input and feedback from the CPC, patrol officers, and supervisors concerning resource allocation, equipment needs, and technological improvements.

The Equipment Plan took into account overall equipment needs of officers that would be required to perform their jobs safely, effectively, and efficiently. In this regard the Plan specifically addressed the following areas: CDP's Records Management System, Computer Aided Dispatch, Technology Governance, Mobile Technology, In-Station (District) Technology, Administrative/Management Applications, and the Creation of a Patrol Car Vehicle Modernization Plan.

On December 19, 2016 the Monitor filed a motion recommending that the Court not approve the City's proposed plan. (Dkt. 93). CDP's proposed Plan was attached to the Monitor's motion and is available to be read in its entirety. (Dkt. 93-1). The City filed

a response to the Monitor's concerns on December 28, 2016. (Dkt. 95). The issue is further addressed below in "Section V. Response to Concerns Raised in the Monitor's Semi-Annual Report."

2. Body Worn Cameras

Paragraph 337 of the Settlement Agreement provides:

CDP's use of body worn cameras is not required by this Agreement. If CDP chooses to use body worn cameras, CDP will provide clear guidance and training on their use, and will implement protocols for testing equipment and preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals.

(Dkt. 7-1). CPD established its first Wearable Camera System ("WCS") policy in 2015 as the Division began its initial use of body worn cameras.

The Monitoring Team subsequently submitted comments and recommendations concerning body worn camera policies in April, 2016. The DOJ provided comments to CDP in October. After ongoing discussions and exchanges of ideas concerning what should go into a new CDP WCS policy, CDP submitted a close to final version of its proposed WCS policy to the Monitor in November. Because of continuing policy differences, CDP continued to discuss into December the merits of its proposed policy with the Monitor and DOJ. As the Updated First Year Monitoring Plan required the Monitor to file a memorandum with the Court by December 19 recommending approval or disapproval of CDP's proposed WCS policy, CDP submitted a final proposed WCS policy to the Monitor on December 16.

The Monitor timely submitted the CDP's proposed WCS policy to the Court with a motion expressing the Monitor's position that with three identified exceptions the

proposed WCS Policy satisfied the terms of the Consent Decree. (Dkt. 92). The Monitor disagreed with CDP's proposed WCS policy in three areas: (1) for not mandating the use of body-worn cameras while officers are working secondary employment with a private employer, (2) as to when officers may and may not view body worn camera video, and (3) concerning public disclosure of body camera footage. The City filed its response to the Monitor's expressed concerns on January 5 (Dkt. 96).

The City responded that CDP's proposed WCS policy meets the terms of the Settlement Agreement as it provides (1) clear guidance and training on the use of cameras is provided in the policy and (2) implements protocols for testing equipment and the preservation of recordings to foster transparency, increase accountability, and build trust, while protecting the privacy rights of individuals. CDP's expressed WCS policy establishes "guidelines for the use, management, storage, retrieval, and supervision regarding the Wearable Camera System (WCS). To provide officers with clear guidance on the use of the WCS and preservation of recordings to foster transparency, increase accountability, build trust, and protect the privacy rights of individuals." (Dkt. 92-1)

The WCS policy was addressed at the January 6 status conference with Judge Oliver. The remaining concern to be further addressed relates to the secondary employment issue. The City's WCS policy encourages use of body worn cameras when officers are engaged in secondary employment but does mandate the use of cameras. The secondary employment issue is being addressed presently as requested by the Court and is discussed below in "Section V. Response to Concerns Raised in the Monitor's Semi-Annual Report."

G. Data Collection and Analysis

CDP is close to filling the Data Collection and Analysis Coordinator position established in the Settlement Agreement. The position is created to coordinate the creation, collection, and maintenance of multiple data and records required by the Decree.

H. Bias Free Policing

As was noted in the City's Second Status Report CDP submitted a proposed Bias Free Policing Policy for further discussion and review in June. The policy was formulated to provide officers guidance in delivering police services with the goal of ensuring that they are accomplished equitably, respectfully, and free of unlawful bias, and in a manner that promotes broad community engagement and confidence in the Cleveland Division of Police. As noted in the Monitor's Second Semiannual Report "the Monitor and the Parties are currently reviewing CDP's draft bias-free policing policy." (Dkt. 97, p. 25). Further discussion concerning the proposed policy remains ongoing. It is anticipated pursuant to the Updated First Year Monitoring Plan that the Monitor will approve or disapprove the policy by February 28, 2017.

I. Compliance and Outcome Assessments and Reporting

The City received the Monitor's Second Semiannual report on January 10. Pursuant to the terms of the Monitor Plan and the agreement of the Monitor and Parties the City's third status report is being filed with the Court on January 24.

III. Assessment of the Status of Cleveland Division of Police's Progress

CDP continues to focus on ensuring that the reforms and goals contained in the Settlement Agreement are being met. The significant milestones achieved in this reporting period as addressed above, to include completion of CDP's Use of Force and CIT

Policies and the drafting of the final OPS and PRB manuals, are major developments toward ensuring continuing progress. CDP's exemplary handling of the challenges presented by the City's hosting of the Republican National Convention was nationally recognized, as was the successful handling of the massive crowd celebrating the Cleveland Cavalier's Championship. The accomplishments of the last period are true indicators that progress has been made and will continue in 2017.

IV. Plans to Correct Any Problems

1. OPS

As addressed above, the City remains focused on substantially reducing the backlog of OPS complaints and working to ensure timely and thorough investigations are completed. In the short term, the City's attempt to add temporary investigators to assist in eliminating the backlog has been somewhat problematic. Although the OPS budget allows for four such investigators, only one is currently working. Efforts are currently underway to expand the search for qualified candidates. Plans are also being made for an alternative approach in the event the temporary positions remain unfilled.

2. Internal Affairs

As noted above the City has experienced difficulty in filling the civilian IA Superintendent position. The City plans to engage the Monitor and DOJ in discussions concerning the qualifications for the position. As currently written, the Settlement Agreement language would preclude even experienced members of the Monitoring team who are assisting CDP in meeting the IA reforms from consideration to fill the IA Superintendent position. Paragraph 398 of the settlement Agreement contemplates discussions between the City, DOJ, and the Monitor where a provision of the Settlement

Agreement as drafted is not furthering the purpose of the Agreement. The City wishes to explore whether amended language somewhat broadening the pool of potential applicants for the IA position would provide a preferable alternative for achieving the civilian supervisory goal contained in the Settlement Agreement.

V. Response to Concerns Raised in the Monitor's Semi-Annual Report

1. Equipment, Technology, and Resources

The Monitor did not recommend approval of the current Equipment and Resource Plan proposed by the CDP and filed a motion detailing his position on December 19, 2016. (Dkt. 93). The City filed a response to the Monitor's motion on December 28. (Dkt. 95). The City's response outlined where it believes the Monitor's opinions and concerns regarding the City's equipment planning were misplaced, while also acknowledging the Monitor "raise[d] many good considerations for further discussion and refinement as the City proceeds with agreed upon reforms." (Dkt. 95, p. 2). CDP's Plan was a serious undertaking that reflected a great deal of study, discussion, and followed ongoing interactions with the Monitor, DOJ, and the CPC. The Court addressed the Monitor's motion and the City's response at the January 6, 2017 status conference. Per the Court's direction at this hearing the City will continue to work with the Monitor and DOJ in a collaborative fashion to reach a detailed and comprehensive Plan that meets the terms of the Settlement Agreement.

2. Body Worn Cameras

The remaining concern raised by the Monitor with regard to CDP's proposed Wearable Camera System Policy centered on whether CDP should mandate the wearing of such cameras when an officer is engaged in secondary employment. The Court

considered this matter at the January 6 status conference. As proposed the City's policy recommended but does not require the wearing of CDP issued body cameras by an officer while performing duties for a secondary employer. The Consent Decree specifically provides that "CDP's use of body worn cameras is not required by this Agreement." (Dkt. 7-1 ¶337). The City believes its policy otherwise meets the requirements in the Agreement and that the administrative and financial considerations associated with mandating that all officers employ cameras while performing secondary employment is significant and problematic. This Court requested that the City further address its concerns with mandating body worn cameras and provide additional information in support of its position within thirty days of the hearing (February 6, 2017). The City is presently working on providing the requested information.

VI. Conclusion

As evidenced by the achievements addressed above, and in the first and second status reports filed with this Court, the City remains committed to achieving the agreed upon reforms addressed in the Consent Decree.

Respectfully submitted,

Barbara A. Langhenry (0038838)
Director of Law

By: /s/ Gary S. Singletary
Gary S. Singletary (0037329)
Chief Counsel
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
Tel: (216) 664-2737 Fax:(216) 664-2663
E-mail: gsingletary@city.cleveland.oh.us

Counsel for the City of Cleveland

CERTIFICATE OF SERVICE

The undersigned certifies that the City of Cleveland's Third Status Report was filed electronically on January 24, 2017. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Pursuant to the requirements of the Consent Decree the Monitor Team has been delivered a copy of this filing.

/s/ Gary S. Singletary
Gary S. Singletary (0037329)
Counsel for the City of Cleveland