

***United States v. City of Newark, et al.,
Civil Action No. 16-1731 (MCA) (MAH)***

CONSENT DECREE

Independent Monitor - Second Quarterly Report

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Independent Monitor
October 6, 2017**



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I. INDEPENDENT MONITOR’S AUTHORITY UNDER THE CONSENT DECREE

Paragraph 183 of the Consent Decree entered into between the United States Department of Justice (“DOJ”) and the City of Newark (“City”) requires that, “[t]he Monitor will file with the [United States District Court for the District of New Jersey] quarterly written, public reports covering the reporting period.” The Consent Decree specifies that the reports must include:

- a. a description of the work conducted by the Monitor during the reporting period;
- b. a listing of each Consent Decree requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of sufficient training for all relevant Newark Police Division, Newark Department of Public Safety (“NPD” or “Division”) officers and employees; (3) reviewed or audited by the Monitor to determine whether they have been fully implemented in actual practice, including the date of the review or audit; and (4) found by the Monitor to have been fully implemented in practice, and the date of this finding;
- c. the methodology and specific findings for each audit or review conducted, redacted as necessary for privacy concerns. An unredacted version will be filed under seal with the Court and provided to the Parties. The underlying data for each audit or review will not be publicly available but will be retained by the Monitor and provided to either or both Parties upon request;
- d. for any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Monitor’s recommendations regarding necessary steps to achieve compliance;
- e. the methodology and specific findings for each relevant assessment conducted; and
- f. a projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.

The Monitoring Team will assess the City’s progress in implementing, and achieving compliance with, the Consent Decree; report on the status of implementation to the Parties, the Court, and the public; work with the Parties to address any barriers to compliance; and

assist the Parties to informally resolve any disputes or differences. (*See* Consent Decree ¶ 183.)

II. INTRODUCTION

In 2014, the DOJ issued a report concluding that NPD officers engaged in a pattern or practice of unconstitutional policing, including theft by officers, unlawful stops and arrests, excessive use of force, and retaliation against individuals who exercise their First Amendment rights. In light of these findings, on March 30, 2016, the DOJ, NPD and City entered into a Consent Decree with the intention of transforming NPD into a twenty-first century police force. The Consent Decree requires NPD to implement significant reforms, including new policies and procedures, additional trainings, and increased accountability through accurate record keeping and transparency.

On May 5, 2016, Peter Harvey was appointed as the Independent Monitor. The Independent Monitor is required to assess the City's and NPD's implementation and compliance with the Consent Decree and to release quarterly public reports describing NPD's progress during that reporting period. Mr. Harvey served as Attorney General for the State of New Jersey during the time that the New Jersey State Police was subject to a federal consent decree between the State of New Jersey and the DOJ. He leads a team of locally and nationally-recognized Subject Matter Experts ("SMEs"), consisting of former law enforcement professionals, community advocates, and leading academics. Therefore, this report refers to the Monitoring Team when addressing the work that the Consent Decree requires of the Independent Monitor.

This is the Independent Monitoring Team's Second Quarterly Report, which covers the time period from February 1, 2017 through May 31, 2017. The Report summarizes the Monitoring Team's activities during the reporting period, provides a detailed status update on

the City and NPD's progress, and describes the tasks and audits that will be addressed in the upcoming reporting period.

For a more extensive discussion of the City, the NPD, the Monitoring Team, and the Consent Decree, please refer to Section III of the First Quarterly Report.

III. SUMMARY OF PRIOR QUARTER'S ACTIVITIES (FEBRUARY 1, 2017 THROUGH MAY 31, 2017)

On February 17, 2017, the Independent Monitor filed the First-Year Monitoring Plan with the Court. The Monitoring Plan sets forth a detailed road map for how the Parties will implement the Consent Decree's requirements for the first year of monitorship. These efforts will serve as a foundation for complete compliance with the Consent Decree within five years. The Monitoring Team has both set forth below a summary of the Monitoring Team's work since February 1, 2017, and provided a more detailed status update in Section IV.

A. Overview of NPD's Compliance with the Consent Decree to Date

For an overview of NPD's status with respect to relevant Consent Decree paragraphs that the Monitoring Team has reviewed during the Reporting Period, please see **Appendix A**. When reviewing Appendix A, the reader will note both NPD's achievements and deficiencies regarding such Consent Decree requirements as revising and writing policies; developing scenario-based training materials for NPD personnel; and administering training to NPD personnel.

B. Policy Revisions and Review

As articulated in the Monitoring Plan, the Independent Monitor's primary goal for year one of the Consent Decree is for NPD, the Parties, and Newark community members to review and revise NPD's policies. More to the point, NPD must build the capacity to identify policy gaps and develop a process to revise existing policies or write new ones as the law

changes or as best policing techniques evolve. For the Use of Force policy, for example, NPD has agreed to draft the policy from scratch, rather than revising its existing policy. During the past reporting period, this work has consumed a substantial portion of the Parties' time and effort. The Parties and Monitoring Team have developed a collaborative process for policy evaluation and revision under the Consent Decree, known as the "Path Forward." The Path Forward sets forth these seven steps:

- **Step 1:** "kick-off" meeting with the Parties and Monitoring Team to discuss the policy to be revised and existing best practices for that subject area. The Monitoring Team and DOJ provide NPD with resources to assist it in drafting the policy.
- **Step 2:** NPD creates a draft policy. During the drafting process, NPD may reach out to the Monitoring Team, City, and DOJ for guidance and technical assistance. The draft policy is vetted internally with the Newark Public Safety Director, and, once approved, circulated to the Monitoring Team, City, and DOJ for review.
- **Step 3:** the Monitoring Team, DOJ, and City review and provide comments to NPD's draft.
- **Step 4:** if necessary, NPD revises the draft to incorporate the comments.
- **Step 5:** certain policies, as revised, are vetted with Newark community members.
- **Step 6:** if necessary, NPD revises the draft policy based upon the received comments.
- **Step 7:** the Monitoring Team and DOJ review and approve the policy.

1. Growing Pains

NPD is in the early stages of developing its ability to draft multiple, complex policies simultaneously, and is hindered by a lack of experience and capacity in this area. Policy writing is not easy. It requires both knowledge of policing best practices and the ability to convey those ideas clearly, succinctly, and simply. While NPD has begun the process of drafting

and revising a number of its policies and, after the reporting period concluded, finalized both the Use of Force and Bias-Free Policing General Orders (i.e., policies), a significant portion of policy-writing work remains.

As discussed in greater detail below, NPD's policy-writing work was slowed down by DOJ's, NPD's, and the City's decision, with which the Monitoring Team agreed, to create a master calendar for completing all of the policy revision or creation work required under the Consent Decree to allow for a more orderly and effective process. The Parties' inability to agree on a master calendar contributed to the policy revision process being delayed.

C. Surveys and Focus Groups

During this reporting period, the Monitoring Team built upon last quarter's efforts to conduct a "reliable, comprehensive, and representative survey . . . of the Newark community's experience with and perceptions of NPD and public safety." (Consent Decree ¶ 22.) The Monitoring Team completed four survey initiatives this quarter, each of which is attached to this report: (1) a probability survey¹ of the Newark community, (**Appendix B**); (2) a survey of incarcerated individuals arrested by NPD officers, (**Appendix C**); (3) a non-probability survey² of the Newark community, (**Appendix D**); and (4) a series of focus groups comprised of NPD officers, (**Appendix F**). Each survey is described in greater detail in Section V(K) of this report.

Through these surveys, combined with the initial police survey and suppression hearing analysis provided in last quarter's report, (*see* First Quarterly Report Appendices D, F),

¹ A "probability" survey is a survey that uses a random sampling technique to produce a representative sample of a general population. This technique allows statistically valid conclusions to be drawn about the general population from the survey results.

² In a "non-probability" survey, survey takers are not randomly selected. As a result, a non-probability survey does not produce a representative sample or allow for statistically valid conclusions to be drawn about the general population.

the Monitoring Team has developed a comprehensive and in-depth snapshot and baseline of the Newark community's and NPD officers' attitudes, beliefs, and perceptions of policing in Newark. This information will provide a baseline from which the Monitoring Team, City, DOJ, NPD, and the Newark community can measure the effectiveness of NPD's implementation of the Consent Decree in the years to come.

The Monitoring Team has one additional survey project planned for the next quarter: a survey of people who commute to work in Newark, but live elsewhere.

D. Compliance with Consent Decree and First-Year Monitoring Plan Deadlines

Upcoming audits conducted by the Monitoring Team will provide detailed assessments of NPD's practices and implementation of the Consent Decree requirements. In this quarterly report and in the attached compliance chart (*see Appendix A*), the Monitoring Team assessed NPD's progress with meeting the deadlines set out in the Consent Decree and the First-Year Monitoring Plan. NPD's compliance with these deadlines is assessed using the following categories: (1) not assessed, (2) initial development, (3) preliminary compliance, (4) operational compliance, and (5) non-compliance.³ Each of these terms is defined below.

1. Not Assessed

"Not Assessed" means that the Monitoring Team did not assess the Consent Decree provision during this reporting period. Acceptable reasons for why a requirement was not assessed may include that the deadline has not passed or some other substantive reason.

³ During the audits, the Monitoring Team will also review NPD's progress using two additional criteria which are *not* applicable here: administrative compliance and full compliance.

2. Initial Development

“Initial Development” means that during the auditing period, NPD has taken meaningful steps toward achieving compliance with a Consent Decree requirement that is not yet scheduled for completion. Initial Development will be noted only if NPD’s efforts are consistent with established timeframes in the Monitoring Plan or Consent Decree. Where NPD was expected to have achieved at least Initial Development during the auditing period, and has not, NPD has been found not to be in compliance.

3. Preliminary Compliance

“Preliminary Compliance” means that during the reporting period, NPD has developed, and the Independent Monitor, DOJ, and City have approved, respective policies or standard operating procedures (“SOPs”) and related training materials that are consistent with a Consent Decree requirement. This category only applies to SOPs and training.

4. Operational Compliance

“Operational Compliance” means that NPD has satisfied a Consent Decree requirement by demonstrating routine adherence to the requirement in its day-to-day operations or by meeting the established deadline for a task or deliverable that is specifically required by the Consent Decree or Monitoring Plan. NPD’s compliance efforts must be verified by reviews of data systems, observations from the Monitoring Team, and other methods that will corroborate its achievement. In this report, the Monitoring Team only will assess NPD for compliance with established deadlines.

5. Non-Compliance

“Non-Compliance” means that NPD has either made no progress towards accomplishing compliance, or has not progressed beyond Initial Development at the point in

time when NPD is expected to have at least achieved Preliminary Compliance for the reporting period.

IV. DETAILED STATUS UPDATE (FEBRUARY 1, 2017 – MAY 31, 2017)

A. Use of Force

Section VIII of the Consent Decree requires NPD to develop and implement policies and training and review its investigatory mechanisms to ensure that the use of force by NPD officers is consistent with the United States Constitution as well as applicable state and federal law. The Monitoring Team, spearheaded by Dr. Wayne Fisher, is working with the Parties to support these efforts.

NPD is in the process of drafting three new general policies to address these requirements: (1) Firearms and Other Weapons, (2) Reporting, Investigation and Review, and (3) Use of Force. NPD will also be required to revise an additional six ancillary policies which will supplement or impact the Division's use of force. (Consent Decree ¶¶ 66-67.)

1. Use of Force Policy

During the past quarter, NPD has focused on revising and finalizing the Use of Force General Order. This policy lays out the philosophical underpinnings of the NPD's use of force and delineates the circumstances under which force may be used and the appropriate level and types of force that may be used under the circumstances. To this end, during the reporting period, the Parties and the Monitoring Team held numerous telephonic calls and in-person meetings to discuss the policy. Throughout the drafting process, the Monitoring Team and Dr. Fisher provided feedback and technical assistance to NPD through a review of use of force policies from other jurisdictions to use as a guide when creating its own policy. The Monitoring Team's efforts included ensuring that the policy complied with the New Jersey Attorney

General's guidelines for officer's use of force. The Monitoring Team was encouraged by the productive working relationship NPD and DOJ developed over the course of these revisions.

The policy includes new reporting requirements designed to increase accountability and transparency to the Newark community. Officers will be required to file a report and notify a supervisor who was not involved in the incident every time they use physical force, mechanical force, or enhanced mechanical force.⁴ Officers will also be required to report certain uses of constructive authority, including each time an officer's firearm is unholstered in the presence of a member of the public, exhibited in the presence of a member of the public, or pointed at a person.

Officers who witness the use of force by another officer will be required to file a use of force report. The current policy also creates a duty to intervene for officers who observe the use of force outside the parameters of the General Order.

After the reporting period closed, the Monitoring Team assisted NPD in organizing a forum to present its draft revised Use of Force Policy to the community for its review and input. After evaluating the community's feedback and making additional changes deemed necessary, NPD submitted the policy to the DOJ and the Independent Monitor, and the policy was approved.

2. Use of Force Training

Last reporting period, with assistance from Former Commissioner Robert Haas and the Monitoring Team, NPD identified an external source funding earmarked by the Violence Reduction Network ("VRN"),⁵ a project of the Bureau of Justice Assistance, which is overseen

⁴ Mechanical force is defined as the use of a device or substance, other than a firearm.

⁵ VRN has been re-named the National Public Safety Partnership ("PSP").

by CNA, a federally-funded research and development center. Initially, NPD decided to leverage these resources in the form of training and technical assistance to meet the Consent Decree's requirements for the use of force training. After consulting with the Monitoring Team, NPD selected a subject matter expert with significant expertise in developing cutting-edge curricula for use of force training.

However, after CNA had invested a substantial amount of time and effort into developing a scope of work plan for the funding, CNA was informed that the overall cost to complete the project would have exceeded the spending threshold permitted by DOJ financial guidelines. As a result, CNA put the project out for a Request of Proposals. Due to the extended period of time it would take CNA to complete this process, NPD reassessed its decision with respect to hiring an outside expert. As of May 30, NPD was evaluating its own internal resources and capacity to develop this training within the Division.

Given these delays, NPD is unlikely to meet the deadlines for the use of force training set forth in the Consent Decree and the First-Year Monitoring Plan.

The Monitoring Team will evaluate the curriculum and training materials for NPD's proposed use of force training to determine whether the educational materials meet the Consent Decree's requirements. As discussed above, however, the Monitoring Team is concerned with NPD's capacity to develop such a critical curriculum in a compressed time period and continues to advise NPD to retain or engage a subject matter expert to provide assistance with training on the use of force. Public Safety Director Anthony Ambrose recognizes

this challenge and appears to be amenable to seeking funds from the City to hire a consultant with expertise in designing and teaching modern use of force training.⁶

The City will need to support Director Ambrose with adequate resources to retain a qualified expert who can help the next generation of NPD trainers develop modern materials.

3. Policy for Reporting and Investigating NPD Force Incidents

The First-Year Monitoring Plan requires NPD to create and implement a General Order establishing an All Force Investigation Team (“AFIT”) by February 1, 2017.⁷ Currently, NPD intends to place AFIT as an independent unit in NPD’s Internal Affairs department. The Monitoring Team and the Parties agreed that this AFIT policy would necessarily be impacted by the Use of Force General Order. Therefore, the Monitoring Team approved NPD’s decision to delay drafting the AFIT policy until the Use of Force General Order has been finalized. The Monitoring Team also recognized that NPD would not possibly meet the February 1, 2017 deadline for establishing the AFIT and writing the policy that would govern its investigations, and agreed that NPD’s failure to do so would not result in a finding of non-compliance.

NPD also is required under the Consent Decree to (1) adopt a use of force reporting system and a supervisor use of force report that requires individual officers to provide accounts of their uses of force and (2) create and implement a multi-disciplinary unit to conduct

⁶ NPD is also aware that the use of force training requirement contains three elements: (1) ensuring that all NPD Members read and understand the new policy, and certified that they have done so; (2) administering a training bulletin that provides a basic overview of the policy to NPD Members as an interim training measure; and (3) conducting scenario-based classroom training on use of force.

⁷ Both the Consent Decree and the First-Year Monitoring Plan refer to this unit as the Serious Force Investigation Team (“SFIT”). NPD has chosen to expand the scope of the unit’s responsibilities by having AFIT conduct administrative reviews of *all* use of force incidents and re-named it accordingly. The Monitoring Team has no objection to this approach.

criminal and administrative investigations of serious force incidents and determine whether these incidents raise policy, training, tactical or equipment concerns. (Consent Decree ¶¶ 75, 79, 90.)

During the last quarter, NPD was in the process of drafting the Reporting, Investigation and Review General Order. This policy will address the creation and implementation of AFIT and NPD's use of force reporting more generally. A preliminary draft of this policy was substantially completed.

B. Stop, Search, and Arrest

The Consent Decree requires NPD to conduct all investigatory stops, searches, and arrests in a manner that is consistent with the United States Constitution as well as applicable state and federal law (*See* Consent Decree § IV.) As part of implementing this requirement, NPD officers must: (i) document all of their investigatory detentions and inquiries of individuals; (ii) articulate in their reports why they have reasonable suspicion for stopping individuals in a specific and clear manner in their reports; and (iii) properly document why they have probable cause for an arrest by the end of their shifts. (*See* Consent Decree ¶¶ 26, 28, 42.) In addition, NPD must revise its stop, search, and arrest policies by September 4, 2017. (*See* Consent Decree ¶ 5; Monitoring Plan App'x A at 8.)

NPD's adherence to the Consent Decree's policy and reporting requirements for stop, search, and arrest are fundamental to its achieving compliance with this section of the Consent Decree. Without up-to-date policies that encompass all of the Consent Decree's requirements, NPD officers will not know what they need to do on a day-to-day basis to do their work in conformance with Consent Decree requirements. Without proper reporting, the Monitoring Team will not be able to analyze whether NPD is conducting its stops, searches, and arrests in a lawful manner that complies with the Consent Decree's requirements.

During the Second Quarter, the Monitoring Team, led by SME Former Deputy Commissioner Philadelphia P.D., Kevin Bethel, worked with NPD, the City, and DOJ to begin revising NPD's stop and arrest policies. The Monitoring Team also requested NPD to provide the total number of select stop, search, and arrest reporting forms that were generated during the first year of the monitorship, which the Monitoring Team will use to develop a methodology for assessing NPD's stop, search and arrest reporting practices during the next quarter.

1. Policy Revision

On March 27, 2017, the Parties and Monitoring Team members held the "kick-off" meeting to discuss revisions to a number of NPD's current General Orders relevant to its stop, search and arrest policies: (1) G.O. 04-12 - Search and Seizure; (2) G.O. 09-03 - Arrest Procedures; and (3) G.O. 97-8 - Field Stop, Voluntary Contact Reporting. At the meeting, the Parties agreed that NPD would prioritize revising G.O. 09-03 - Arrest Procedures and G.O. 97-8 - Field Stop, Voluntary Contact Reporting to create comprehensive, revised stop and arrest policies before beginning to revise its search and seizure policy.

Subsequently, to promote long-term efficiency, the Parties agreed to create a master calendar for completing all of the policy revision work required under the Consent Decree, which necessarily resulted in a slowing down of the progress on the policy revision process. Ultimately, the Parties (City, NPD, and DOJ) were unable to agree upon a master calendar for completing policy-revision work. Instead, the Parties agreed to prioritize three policies (Community Policing; Stop, Search, Arrest; and Property and Evidence Control) for review and revision. Although NPD submitted revised versions of both G.O. 09-03 - Arrest Procedures and G.O. 97-8 - Field Stop, Voluntary Contact Reporting to the DOJ and City for review and comment in mid-April, the Parties subsequently agreed that additional work would be necessary before these two policies will be ready for the next level of review. Therefore, as of

this reporting period, DOJ and City had not provided NPD with written comments regarding the revised documents.

2. Reporting Document Requests

In anticipation of auditing the NPD's stop, search and arrest reporting practices, in May 2017 the Monitoring Team requested that NPD provide the total number of Field Inquiry Reports, Consent to Search Forms, Arrest Reports, Tour Assignment Sheets, and Incident Reports generated for the time period May 5, 2016 through May 31, 2017.⁸ The Monitoring Team will use the information provided by NPD to develop a methodology for conducting a baseline assessment of whether NPD officers are properly reporting its stop, search, and arrest activity; articulating reasonable suspicion for stops; and documenting probable cause for an arrest by the end of their shifts. Depending on the amount of data and time requirements for review, the Monitoring Team may focus on a subset of these requirements and conduct additional assessments in future quarters.

C. Training

During this reporting period, the Monitoring Team examined NPD's training administration and development capabilities, personnel, and record-keeping practices. Training continues to be a challenging area for NPD, as it is for any police department endeavoring to modernize its training techniques. NPD has pronounced deficiencies in this area, but has committed to making improvements.

⁸ After the reporting period, the Monitoring Team amended its request to cover the time period May 1, 2017 through May 31, 2017 so that the Monitoring Team's analysis focused on NPD's most current practices.

1. Training Administration and Capacity

NPD lacks a sufficiently experienced training team. As a result, it has had to rely on individuals without meaningful experience in developing adult, scenario-based training materials. Moreover, the training team is not large enough to train all of NPD's officers in the time periods required under the Consent Decree. NPD's lack of capacity continues to present a considerable obstacle towards accomplishing *any* training by the prescribed deadlines. Furthermore, several key personnel have transferred—either temporarily or permanently—out of two units which play a central role in training administration: the Consent Decree Implementation Unit and the Training Division. Such personnel include the Captain of the Training Academy, the Captain's Executive Officer of the Training Academy, the Sergeant in charge of training recordkeeping, and the Special Assistant to the Public Safety Director, who served as the Training Director. The Training Director role has yet to be replaced.⁹ Under these circumstances, to meet the training requirements under the Consent Decree, NPD will have to hire outside experts who have delivered training courses to major metropolitan police departments. At the suggestion of the Monitoring Team, NPD has begun to search internally and externally for additional help to develop training in the short term while continuing to build its own training development capacity.

Simply put, the City must allocate adequate funds to NPD to hire multiple training experts to (a) develop adult, scenario-based training materials; (b) assist NPD in building its capacity to write and teach modern training techniques; and (c) teach the first generation of

⁹ On October 17, 2016, NPD hired a Special Assistant to the Public Safety Director, who served as NPD's Training Director. After seven months in this role, the Special Assistant resigned effective May 30, 2017. As explained in the First Quarterly Report (pp. 16-17), the Monitoring Team was optimistic that the Special Assistant would “spend the majority of his time on developing and implementing trainings for NPD.” Disappointingly, this was not the case.

modern policing training to NPD personnel. Absent this resource commitment, it is unlikely that NPD can properly train on the revised or new policies in development.

2. Training Recordkeeping Practices

The Monitoring Team's assessment of the Training Division's recordkeeping practices is ongoing. SME Robert Wasserman conducted a preliminary inspection of NPD's training programs files over the last five years, and the SMEs from the Independent Monitor's Data Systems Improvement team interviewed NPD personnel. The inspection and interviews revealed what appear to be inadequate recordkeeping practices. In particular, although NPD maintains a file for each training program, it does not maintain curricula materials or instructor guides for any of the programs. Instead, NPD teaches from and maintains only PowerPoint presentations, which are stored only on the Training Captain's desktop computer. As an initial step toward improving NPD's training practices, the Monitoring Team recommended that NPD purchase tools for evaluating audience response with so-called "clickers," which are teaching devices that enable instructors to rapidly collect and analyze student responses to questions in real time during classes. The clickers will improve NPD's ability to track trainees' understanding of the training materials during training courses, which will, in turn, allow the training instructor to tailor the content of the training course based on the trainees' responses. After the reporting period, NPD purchased a set of the recommended clickers.

As to other types of training records, NPD does not maintain a digital management system for training administration. NPD appears to keep vital training records in spreadsheets, paper files, and folders, which are often only on a single desktop computer. While some NPD personnel have access to more complete training records via *IAPro*, training personnel do not routinely have access to *IAPro*.

D. Property and Evidence Management¹⁰

To prevent theft of civilian property and evidence by NPD officers, the Consent Decree requires NPD to maintain policies and procedures for the proper intake, storage, and release of property and evidence seized by NPD officers. (*See* Consent Decree ¶ 110.) Last quarter, the Monitoring Team reported that compliance with this section of the Consent Decree would be difficult for NPD to achieve without a new property and evidence storage facility. During this quarter, NPD has taken steps to secure a new facility, while at the same time working on much needed upgrades to its current property storage and management systems. NPD has also undertaken substantive revisions of its property management policies and procedures. The Monitoring Team has supported these efforts by identifying property and evidence best practices and providing technical assistance in policy writing.

1. Pursuit of a New Property and Evidence Storage Facility

The City needs to construct a new property and evidence storage facility. While doing so is a long-term goal, it does not excuse or obviate the need for upgrades to the current facility. The Monitoring Team is encouraged by the initial steps taken by NPD toward acquiring a new facility. NPD has provided City officials with the specifications it needs in a new facility that satisfies best practices, including square footage, shelving capacity, dedicated spaces for different types of property, and security apparatuses. The Monitoring Team ensured that NPD's

¹⁰ Previous filings by the Independent Monitor have referred to this area as "Internal Affairs: Theft" rather than "Property and Evidence Management." Section X of the Consent Decree addresses theft prevention, which encompasses both Internal Affairs and property management components. Property management, however, does not fall within NPD's Internal Affairs function. To better reflect NPD's practices, the Internal Affairs component of theft prevention (Consent Decree ¶¶ 106-09) will be monitored as part of Internal Affairs: Complaint Intake and Investigation, while the property and evidence management function (Consent Decree ¶¶ 105, 110, 111) will be monitored under this heading.

requested specifications satisfied the International Association for Property and Evidence standards, New Jersey Attorney General Guidelines regarding evidence and property management, and International Association of Chiefs of Police property and evidence storage facility construction standards.

2. Property Room Audits

During this reporting period, NPD completed a full audit of all cash, jewelry, and bulk narcotics evidence, by the Property Control Officer, who has the rank of Captain and was assigned, along with a Lieutenant, to oversee NPD's reform. These assignments provide NPD with appropriate levels of supervision to ensure internal controls are being employed and audits are performed in accordance with policy. NPD submitted the results of the audit to the Monitoring Team and DOJ for review. (*See* First-Year Monitoring Plan App'x A at 14; Consent Decree ¶ 111.)

The Monitoring Team's review of the NPD's first audit has revealed a number of issues. Several pieces of evidence were improperly removed from sealed bags. This is a breach of NPD's existing protocol and generated ongoing internal investigations into the circumstances of the tampering. Further, approximately 21% of items were missing from their proper locations. A search of the facility for the missing items or for documentation of their whereabouts is ongoing. These issues will guide the Monitoring Team's upcoming audit of property and evidence management.

NPD also submitted an inventory inspection and auditing plan for future audits to the Monitoring Team and DOJ for review. The plan calls for an inventory of all property and evidence within the property room. The Monitoring Team is doubtful, however, that such an inventory can be completed in a timely fashion given the extremely large number of items currently maintained (approximately 1.4 million items), the lack of resources in the property and

procurement division necessary to complete the inventory, and the lack of air conditioning and lighting in property storage areas. The Monitoring Team has requested that NPD provide a more concise written methodology for the completion of the full audit.

NPD's audit plan also calls for the immediate purging of items that have been stored for longer than required by the New Jersey Attorney General's Guidelines. Proper disposal of the aged items will alleviate the property room's shortage of storage space. Before NPD may destroy any property, however, it must consult with and obtain approval from the Essex County Prosecutor's Office ("ECPO") and ensure that any property destruction complies with the New Jersey Attorney General's guidelines.¹¹ This process also ensures that active matters will not be compromised by mistaken destruction of property or evidence. NPD is currently waiting on approval from the ECPO to destroy hundreds of firearms and thousands of narcotics seizures that are no longer of evidentiary value. Purging these items will reduce the total amount of property and evidence maintained by NPD, which will allow NPD to complete its full-scale inventory sooner and maximize storage space for items of greater evidentiary value.

3. State of Current Property Facilities

During the reporting period, NPD has also taken steps to improve its current property facility and management systems. (*See* Consent Decree ¶ 110.) NPD completed the installation of interior fencing in its primary property storage facility to restrict access to the property processing area. NPD also solicited proposals from vendors to install an electronic door locking system as well as video cameras to control access to all of its property storage locations, a development that is of paramount importance to securely storing property and evidence. NPD purchased five additional consoles from which to operate the Automated Evidence Management

¹¹ Homicide evidence is retained indefinitely.

Inventory Control System (“AEMICS,” also known as “BEAST”), which will allow property to be tracked readily at various points of intake throughout NPD’s precincts. Problems persist, however, in integrating the NPD’s previous electronic inventory system, the Records Management System, with the newer BEAST system. NPD, with assistance from the Monitoring Team, continues to work with outside vendors on resolving this issue and harmonizing the two inventory systems.

On May 16, 2017, the Monitoring Team toured NPD’s new central Municipal Processing & Prisoner Processing Center located at 480 Clinton Avenue, which took on the operations of the recently-closed cell block facility on Green Street. This tour allowed the Monitoring Team to gain an understanding of the work flow currently in place for processing prisoner property, and how this property moves from intake to storage. The Monitoring Team observed that this facility is modern and secure, with electronic locking mechanisms, ample lighting, and video surveillance.

However, the tour also revealed organizational inefficiencies that make property processing at this location needlessly complicated. Specifically, at least *three* NPD subdivisions are responsible for different aspects of the chain of custody process: (1) the Municipal Arrest Processing Unit (“MAPS”) for processing prisoner property, (2) Property & Evidence for processing evidence, and (3) the Crime Scene Unit for processing firearms. These divisions have overlapping responsibilities in this area, yet operate under *separate* commands and do not receive identical training regarding property and security. MAPS personnel, for example, have not received training on the BEAST system. Following the site visit, the Monitoring Team raised these issues with NPD, and NPD has made initial inquiries into combining and simplifying these functions.

4. Property and Evidence Management Policies

During the reporting period, NPD provided the Monitoring Team and DOJ revised General Orders (i.e., policies) in the areas of (1) property and evidence packing and storage, (2) custody and inventory of prisoner's personal property, and (3) evidence and property management. On April 28, 2017, NPD, the Monitoring Team, City, and DOJ met to discuss these policies and provide recommendations to NPD regarding a methodology for further policy revision to move toward Consent Decree compliance. DOJ provided NPD with written edits to these policies, which NPD is in the process of incorporating. These policies are not yet in final form. However, the NPD Property Control Officer has promulgated several directives for the Property & Procurement command that reinforces policy and best practices as it relates to internal controls and transparency. Another policy meeting will be scheduled in this area for next quarter.

E. Internal Affairs: Complaint Intake and Investigation

Internal Affairs remains an area of great importance to the Monitoring Team. Community feedback and our own experience indicate that a strong system of internal investigation and accountability is vital to maintaining community trust and implementing the reforms mandated by the Consent Decree. During this quarter, NPD has made substantial efforts to revise its policies governing Internal Affairs, and the Monitoring Team has prepared to examine NPD's Internal Affairs case files to evaluate the methodology of past Internal Affairs investigations.

The Monitoring Team observed a number of issues in NPD's current Internal Affairs system that we believe have contributed to the undesirable Internal Affairs outcomes identified by DOJ in its 2014 report. For example, Office of Professional Services ("OPS"), NPD's unit charged with conducting internal investigations of NPD officers and employees,

suffers from a lack of resources. During this quarter, only seven officers were assigned to OPS, one of whom was on detail to *another* non-Internal Affairs assignment. This staffing structure does not appear to be adequate given NPD's existing docket of internal and external complaints. Additionally, most of the officers assigned to OPS have received little, if any, internal affairs-focused training. Some have no previous experience in detective or investigatory work.

As will be discussed further below, NPD lacks a clear and coherent Internal Affairs policy, and has no training or operations manual specific to OPS. There also is no existing training program focused on the interaction between NPD and the ECPO, a key relationship in the investigation of complaints where criminal conduct is alleged against an officer. Most importantly, there is no apparent rank- or compensation-based incentive structure to encourage OPS service, and no clear career trajectory for officers leaving OPS. Additionally, there is no structure to prevent former OPS officers from experiencing retaliation after they return to the general force. The combination of these inadequacies results in a weak and ineffective Internal Affairs system. The Monitoring Team hopes that as NPD continues to revise its Internal Affairs policies and procedures, each of the above issues will be addressed.

1. Internal Affairs Policy Review

NPD's complaint intake and investigation policy is largely contained within one General Order (i.e., policy) currently titled G.O. 05-04. The Monitoring Team received a revised version of G.O. 05-04 on February 16, 2017. On March 7, the Monitoring Team, NPD, and representatives of the City and DOJ met to review the revised policy and provide feedback on areas of the Consent Decree that had not been adequately addressed. As a result, NPD provided updated versions of G.O. 05-04 on March 20. The parties met again on April 28 to further discuss the policy, and the DOJ provided NPD with written edits to the updated version.

Upon further review, the Monitoring Team and DOJ agreed that G.O. 05-04 needs to be substantially reorganized and rewritten for NPD to arrive at a clear and useful policy statement. As presently constituted, G.O. 05-04 incorporates a wide range of disparate policy areas and procedures, including, for example, OPS organizational structure, investigatory techniques, records management, and reporting requirements. NPD should give additional consideration regarding how best to organize and memorialize these topics in General Orders and, separately, in operating manuals. NPD should also consider how to more effectively incorporate the requirements and spirit of the Consent Decree in the new policy and operating manual. To that end, the Monitoring Team and DOJ agreed that NPD is in need of an outside consultant to help accomplish these goals, and resolved to provide technical assistance to NPD in finding a suitable candidate. We will report on these efforts in future quarterly reports.

2. Internal Affairs Case Review

During the reporting period, the Monitoring Team prepared to conduct a comprehensive review of NPD's completed OPS cases from 2015 and 2016. The purpose of this review is to provide insight into NPD's historical approach to identifying, classifying, investigating, and tracking allegations of misconduct by its members and, where misconduct is proven, its commitment to holding its members accountable in an appropriate and consistent fashion. This review will allow the Monitoring Team to develop a baseline from which to assess NPD's progress in complaint investigation, with particular emphasis on investigations of alleged domestic violence and discrimination by NPD officers on the basis of race, gender, and sexual orientation. This information will also aid the Monitoring Team in assessing NPD's progress towards delivering constitutional and bias-free police services.

To conduct this review quickly and efficiently, the Monitoring Team selected a sample of approximately 160 case files out of more than 1,300 available to review. These cases

were identified through both targeted selection and random sampling of relevant categories, informed by the goals set forth above. The cases to be reviewed involve complaints of (i) differential treatment, (ii) officer demeanor, (iii) neglect of duty, (iv) domestic violence, (v) sexual harassment, and (vi) cases where parallel criminal investigations by the ECPO were likely to have taken place.

F. Internal Affairs: Discipline

During this quarter, the Monitoring Team had several meetings and communications with NPD's Consent Decree Implementation Unit and the City's Attorney to discuss revisions to the draft Disciplinary Process General Order ("Directive"), which also incorporates the creation of a Disciplinary Matrix. The original concept of the Disciplinary Matrix was to be developed within 90 days of the Operational Date of the Consent Decree, (October 10, 2016). NPD has achieved the initial step of developing the Disciplinary Matrix. There are still, however, several procedural steps that need to be achieved prior to formal promulgation of the Directive, such as final approval by DOJ and the Independent Monitor, consultation with the unions, training on the application of the directive, and the oversight processes required to assure the appropriate application of the Disciplinary Matrix. These procedural steps are discussed in more detail below.

1. Disciplinary Process General Order and Disciplinary Matrix

Last quarter, the Monitoring Team provided NPD with a sample directive to show NPD how to incorporate a Disciplinary Matrix into NPD's Rules & Regulations. Given that Consent Decree Paragraph 155 requires that NPD will "conduct annual reviews of its disciplinary process and actions," the Monitoring Team recommended that NPD's Directive identify the process by which it will conduct its annual reviews.

There have been several modifications to this Directive to ensure that NPD satisfies the requirements of Paragraphs 154 and 155 of the Consent Decree. Specifically, NPD has added language to address audits for compliance with the application of the Disciplinary Matrix (discussed below) and has incorporated guidance from seminal administrative law proceedings to assist it in effectively identifying and applying aggravating and mitigating factors to individual disciplinary matters.¹² Doing so will help NPD to properly articulate its rationale for disciplinary decisions, and it will also provide notice to individual officers and serve to satisfy reviewing bodies of NPD's consideration and balancing of the appropriate factors prior to imposing discipline.¹³

NPD is required, under Paragraph 153 of the Consent Decree, to implement disciplinary guidance for each type of potential violation of NPD's Rules & Regulations. As mentioned above, NPD has drafted a Disciplinary Matrix for inclusion within the Directive to provide objective standards and defined categories for disciplinary action for potential violations of NPD's Rules & Regulations. The Disciplinary Matrix also provides a schedule identifying the factors that will be utilized as potential mitigating and aggravating factors—describing at what stage, and by whom, those factors will be applied.

During this quarter, the Monitoring Team made recommendations to assist NPD in complying with Paragraph 154 of the Consent Decree, which requires NPD to establish “a unified system for reviewing sustained findings and applying the appropriate level of discipline.”

¹² See *Douglas v. Veterans Administration*, 5 MSPR 280 (1981) (recognizing the authority of the federal equivalent to state civil service commissions to modify or reduce agency penalties in certain circumstances). In setting the standards by which the authority to modify agency penalties should be exercised, the *Douglas* decision identified several criteria that disciplinary bodies should balance and consider to ensure that penalties are reasonable. See *id.* at 331-32. These criteria are commonly referred to as the “Douglas factors.”

¹³ See *id.*

The Monitoring Team recommended that the directive specify that each notice of disciplinary action identify the specific rules, regulations, policies, procedures, and/or practices that were violated and the facts supporting each charge.¹⁴ Additionally, the Monitoring Team recommends that the Directive address the procedures under which these reviews will be conducted, for example:

- who is responsible for conducting the analysis (by position within NPD);
- what matrices will be used in making those assessments (the analytical process);
- where are these reviews channeled/routed within the organization before *being* forwarded to the Civilian Complaint Review Board (“CCRB”);
- what are the components of those reviews (usually specifying that once the analysis is done, who is interpreting the results and what recommendations will be made in response);
- if corrective actions or measures are recommended/identified, who (what entity) is responsible for ensuring that those recommendations get implemented, and the corrective measures are having the intended effect; and
- if patterns or concerns are identified, how will those corrections be made and how will they be monitored for future compliance.

Before the directive can be formally adopted and training conducted, NPD must receive final approval from both DOJ and the Monitoring Team. Moreover, consultation with the unions and the oversight processes required to assure the appropriate application of the Disciplinary Matrix must be completed.

¹⁴ During the Monitoring Team’s review of NPD’s disciplinary process, it became apparent that NPD uses the disciplinary category “Neglect of Duty” as a catch-all charge. As it was explained to the Monitoring Team, NPD has used this charge whenever an NPD personnel’s offense does not align with a specific charge for a perceived offense or violation of NPD’s directive system. Many offenses, which range from what could reasonably be viewed as “major” or “minor” violations, have been categorized as “Neglect of Duty” over the years. This broad definition enables NPD to treat like offenses or violations differently. The Monitoring Team is of the view that, as currently used, “Neglect of Duty” cannot be accurately mapped onto the Disciplinary Matrix.

Presently, both the patrol officers and superior officers unions have submitted letters objecting to parts or all of the Disciplinary Matrix. Based on this development, NPD will likely be involved in protracted discussions with both unions prior to the full promulgation and implementation of the proposed disciplinary process. Given that the Directive specifically carves out a role for civilian oversight, and the fact that there is ongoing litigation between the Fraternal Order of Police, Newark Lodge No. 12 (“FOP”), and the City, the Monitoring Team recommends that NPD wait to seek final approval of the Directive and Disciplinary Matrix until the City has either reached an agreement with the FOP or the court determines the scope of the powers of the current CCRB.

2. Training on Disciplinary Process

Once the Directive is approved, NPD must implement a series of trainings for NPD members. To do so, the Monitoring Team suggests that NPD develop a training curriculum for the Directive for all commanding officers that addresses the following: (a) the methods to be used to ensure uniform application of the Disciplinary Matrix, (b) uniform interpretation of what is meant by aggravating and mitigating factors, (c) how those factors are to be applied when imposing sanctions, and (d) written documentation requirements whenever formal discipline is imposed. Any commanding officers—*i.e.*, any NPD member who will serve in the capacity of a hearing officer or who has been authorized to impose disciplinary sanctions—expected to implement the provisions contained within the directive will need to be trained on the processes contained within the directive.

All middle managers and supervisors also must receive formal training on the application of the disciplinary process. The training should also extend to those officers assigned to OPS. Finally, rank and file officers and other NPD members subject to the disciplinary

process should be apprised of the new directive through training bulletins and other supplemental materials.

In accordance with Paragraph 11 of the Consent Decree, NPD must submit a comprehensive set of instructional guidelines to be reviewed and approved by DOJ and the Monitoring Team prior to the implementation of any training. The Monitoring Team recommends that the instructional guidelines be developed while any pending consultation with the unions is being resolved. Once the training plan and associated training materials have been approved, a member of the Monitoring Team will observe the trainings.

G. Community Policing and Bias-Free Policing

1. Community Policing and Bias-Free Policing Training

During the prior quarter, NPD made progress in creating a curriculum and training plan for Phase I of the two-day community policing and bias-free policing training required under Consent Decree Paragraph 14. As previously discussed in the First Quarterly Report, NPD entered into an agreement with the Virginia Center for Policing Innovation (“VCPI”), a non-profit institute and reputable training organization, to develop the community policing and bias-free policing training curriculum on NPD’s behalf. This training is being funded by a grant from DOJ’s Community Oriented Policing Services (“COPS”) office. Phase II of the training will address the training requirements contemplated in Paragraph 63 of the Consent Decree.¹⁵

¹⁵ It is estimated that it will take NPD four months to cycle through Phase I training for all of its officers, starting in October 2017 and running through until March of 2018 (taking into account the holiday season disruptions).

On April 17, 2017, VCPI provided an initial draft of the curriculum for NPD's review. The Monitoring Team, led by SMEs Former Cambridge P.D. Commissioner Robert Haas and Robert Wasserman, provided technical assistance by assessing the draft curriculum to determine whether it is sufficiently comprehensive to address the letter and the spirit of the Consent Decree's community policing and bias-free policing requirements. The SMEs concluded that the draft curriculum provides a solid *introduction* to the key concepts of community policing and how bias-free policing relates to them. The VCPI training, however, lacks any Newark or NPD-specific context. Both the Monitoring Team and NPD agreed that, although Phase II of the community policing and bias-free policing training will address NPD-specific policies and strategies with respect to these subject matter areas, further efforts are necessary to make the Phase I training relevant to NPD personnel and Newark's residents. Feedback from Newark community leaders, discussed in more detail below, further underscored the need for such context. After assessing the draft curriculum and, in light of community feedback, the Monitoring Team recommended that NPD take steps to incorporate local context and community input into the Phase I training curriculum once it receives a final version from VCPI.

Despite NPD's progress in developing a training curriculum with the assistance of VCPI, several obstacles remain towards starting the training. As a result, the training will not begin before the revised July 9 deadline. First, commencement of training has been stalled, in part, because the COPS Office of DOJ, as of the prior quarter's end, has yet to approve the VCPI curriculum for use, which is a requirement of VCPI's COPS Office grant. Second, due to increased demand for patrol officers during the summer months, NPD has decided to forego training of these officers until the fall. To this end, the Monitoring Team suggested that NPD

use any opportunity provided before the end of summer to train the command staff and, additionally, to use the summer to prepare a training team to deliver the training to the rest of the Division in the fall.

Lastly, as noted above, NPD's training capacity continues to be a significant hurdle to achieving compliance with the Consent Decree. There are few NPD officers with adequate knowledge of community policing philosophical underpinnings and operational principles to teach their peers on the subject. Also, few NPD officers are adequately trained in any type of modern policing training techniques. While a number of NPD officers have now attended a state course on training skill development, they have not applied those skills in the classroom. Further assessment of individual officers' training skills will be necessary before the community policing training course is rolled out in the fall. Recognizing these deficiencies, NPD submitted a request to VCPI for trainers to teach the initial training sessions. NPD is currently awaiting VCPI's response. Furthermore, it is unclear whether NPD has any present capability to amend the training materials, once finalized by VCPI, to contextualize the content and ensure that the training can be effectively delivered in a two-day course. During the next reporting period, the Monitoring Team will continue to monitor the development of Phase I of the community policing and bias-free policing training.

2. Community Feedback on Community Policing and Bias-Free Policing Training Materials

The Monitoring Team, under the leadership of SMEs Former Cambridge Police Department Commissioner Robert Haas, Ryan Haygood, and Andrea McChristian (New Jersey Institute for Social Justice ("NJISJ")) and Robert Wasserman, coordinated a two-day community review of the draft VCPI curriculum for Phase I of the community policing and bias-free policing training on May 15 and May 16, 2017. The community meetings, facilitated by the

former Special Assistant to the Director, aimed to elicit general feedback from Newark's community leaders on the draft curriculum and identify ways to make the curriculum more Newark-specific. Attendees included representatives of the NPD Consent Decree Unit and Training Division, DOJ, the Monitoring Team, and Newark community leadership organizations including the ACLU of New Jersey, Hetrick-Martin Institute, La Casa de Don Pedro, My Brother's Keeper-Newark, Ironbound Community Corporation, New Community Corporation, Newark Anti-Violence Coalition, Newark Youth Court, and YouthBuild Newark.

During the meetings, attendees provided suggestions to improve the VCPI curriculum, including potentially modifying the course content to address issues concerning NPD interactions with youth and the LGBTQ community, biases within NPD, residents with mental health issues, immigration status, and restorative justice. Attendees voiced concern that the voluminous course material may be difficult for trainees to digest during the two-day training and requested community involvement earlier in the training development process.

3. The Strategic Plan, and Community-Oriented Policing and Bias-Free Policing Policies

NPD is continuing its development of a Community Policing Strategic Plan, which, as explained in more detail in the First Quarterly Report, is Director Ambrose's vision for NPD to become a model of innovative, community-oriented policing. The Strategic Plan, once final, will be incorporated into the community policing training.

During this reporting period, the Parties and the Monitoring Team met several times and communicated extensively to complete drafts of the Community-Oriented Policing and Bias-Free Policing policies. The Community-Oriented Policing policy will be tailored to the Strategic Plan, so a new draft of the policy will be completed once the Strategic Plan is finalized.

In late-March 2017, the Parties and Monitoring Team, led by SME Former Philadelphia P.D. Deputy Commissioner Kevin Bethel, met to discuss revisions to the Bias-Free Policing policy. By the close of the second quarter, a draft of the Bias-Free Policing policy had been approved by the Parties and the Monitoring Team. After the review period, the draft policy was released for review and comment by the Newark community during a community forum. NPD revised the policy, and the policy was subsequently approved by the DOJ and Independent Monitor. The forum and subsequent review process will be discussed in the next quarterly report.

4. NPD Community Policing On-Site Orientation

To complement the upcoming community policing training, the Monitoring Team, specifically SMEs Former Philadelphia P.D. Deputy Commissioner Kevin Bethel and Former Cambridge P.D. Commissioner Robert Haas, provided technical assistance by arranging an on-site orientation for NPD's Community Service Officers ("CSOs") with the Philadelphia Police Department ("PPD") to expose the CSOs to the PPD's community policing practices, which took place after the reporting period. The Monitoring Team originally envisioned a two-day on-site visit, but NPD reduced the orientation to one day, which took place in July 2017. Throughout the day, personnel from PPD presented on the following topics: (a) policing and community relations; (b) using a problem-solving approach; and (c) using social media for community engagement. Attendees also participated in a roundtable discussion concerning the role of community policing officers and attended a Captain's community meeting. Five NPD CSOs (one from each precinct), two precinct-level command officers, a sergeant from the NPD Training Division, two members of the NPD Consent Decree Implementation Unit, and a representative from the Director's office attended the on-site orientation. The Monitoring Team will report on this training in greater detail in the next quarterly report.

5. Staffing Allocation and Personnel Protocol

Dr. Craig Fraser, Former Director of Management for the Police Executive Research Forum (“PERF”), the consultant identified by NPD to conduct an allocation study necessary to staff an expanded, Division-wide community policing strategy, has commenced his assessment of NPD’s staffing allocation and deployment.

H. Community Engagement and Civilian Oversight

1. Civilian Oversight Entity

Pursuant to Paragraph 13 of the Consent Decree, the City has until July 12, 2017 to implement a Civilian Oversight Entity, whose duties and responsibilities “shall, at a minimum, include the substantive and independent review of internal investigations and the procedures for resolution of civilian complaints; monitoring trends in complaints, findings of misconduct, and the imposition of discipline; and reviewing and recommending changes to NPD’s policies and practices, including, but not limited to, those regarding use of force, stop, search, and arrest.” As reported during the last quarter, the City established a CCRB by Ordinance on March 16, 2016, with the expectation that the CCRB would also assume the responsibilities of the Civilian Oversight Entity. However, the City and the FOP are in ongoing litigation as to the powers of the CCRB under New Jersey state law, and the CCRB remains partially enjoined by order of the Superior Court of New Jersey. The CCRB is only permitted to review NPD’s policies and procedures and develop recommendations to those policies and procedures, but will not submit those recommendations to the Federal Monitor or any other outside party without further court order. Hence, the CCRB is not currently permitted to fulfill the role envisioned by the Consent Decree. Thus, there has been no change to the implementation of the Civilian Oversight Entity.

During this quarter’s status conference before The Honorable Madeline Cox Arleo on June 1, 2017, the City explained that the CCRB litigation is still in the discovery stage

and that it expects the judge to set an aggressive dispositive motion schedule soon. Once those motions are decided, the City will have a better sense as to whether it can move forward using the CCRB members for the Civilian Oversight Entity. In the interim, the City agreed that it will send drafts of all revised NPD policies to the members that comprise the CCRB for review and comment. The City agreed that it will seek an amendment to the current injunctive Order if the CCRB has comments on the draft policies for the Independent Monitor.¹⁶

2. Community Events

A core mission and requirement for the NPD under the Consent Decree is to establish strong relationships with community members and encourage an open dialogue between the NPD and the communities it serves. Such a relationship has not previously existed with most communities in the City. During this quarter, the Monitoring Team has done a significant amount of planning and outreach to ensure community members have a forum to provide comments—positive or negative—and suggestions for improving community-policing relationships. The Monitoring Team also has had numerous discussions with the Parties about methods for community outreach. From those discussions, the Monitoring Team drafted a Community Engagement Protocol as well as a Community Engagement Contact List, which includes over 100 Newark-based community organizations identified by NPD precinct location. The Monitoring Team, through NJISJ, uses this list to alert Newark community members of upcoming events and projects concerning the Newark Consent Decree.

During this quarter, the Monitoring Team sought community feedback on its First-Year Monitoring Plan. The Plan, which was agreed to by the Parties, was posted on the

¹⁶ The City sought an amendment of the Order to allow the CCRB to share their comments regarding the Use of Force and Bias-Free Policing policies with the Parties and Independent Monitor.

Independent Monitor's and NPD's websites along with a feedback form. The Plan remained on the Independent Monitor's website for 21 days, after which time, the Plan was filed with the Court and formally adopted.

3. Community Fora

The Monitoring Team subsequently held an event to present the First-Year Monitoring Plan to the public. On behalf of the Independent Monitor, NJISJ hosted a community forum with La Casa de Don Pedro, located at 23 Broadway Newark, NJ 07104 on March 28, 2017 from 6:30 pm – 8 pm. Approximately 50 people were present for the event. Raymond Ocasio, Executive Director of La Casa de Don Pedro, translated the program in Spanish. Ryan Haygood of NJISJ provided background information on the Consent Decree and Monitoring Team, outlined the initiatives set out by the Monitoring Team in the First-Year Plan, and answered questions from attendees.

4. NPD Meetings with the Community

With respect to meetings between NPD and the community, the Monitoring Team has facilitated meetings to discuss draft policies and training curriculum. During this quarter, NJISJ prepared white papers of NPD's draft revised policies for community review. After the reporting period, the Monitoring Team assisted NPD in putting together a forum to present its draft revised policies for Use of Force and Bias-Free Policing, which will be discussed in the next quarterly report. To learn more about the status of policy revisions in those areas, please refer to sections IV(A)(1) and IV(F).

I. Surveys

1. Community Probability Survey Final Report

As required by Consent Decree Paragraphs 22 and 23, during the last quarter, the Monitoring Team worked with Ashley Koning, Ph.D., and her team at the Eagleton Center for

Public Interest Polling, part of the Eagleton Institute of Politics at Rutgers, The State University of New Jersey (“Eagleton”), to design and conduct a survey about Newark residents’ experiences with and perceptions of the NPD and public safety. Eagleton conducted the survey among a “probability” (randomly drawn) sample of the City’s residential adult (18 years or older) population. (*See* Consent Decree ¶ 22.) Eagleton administered the survey to over 600 Newark City residents and provided an Executive Summary of the results. (*See* Appendix E to the First Quarterly Report.) During this quarter, Eagleton completed its analysis of the data and published its Final Report. (*See* **Appendix B.**) The community probability survey provides a wealth of information on Newark residents’ opinions and beliefs about the NPD. The survey shows, for example, that 80% of Newark residents want to see an increase in the number of NPD officers patrolling their neighborhood; that residents of the East Ward are least likely to give NPD a positive performance rating, while residents of the Central Ward and older residents are most likely to do so; and that 35% of Newark residents say they have never had a positive experience with NPD.

2. Non-Probability Community Survey

In addition to the Community Probability Survey, the Monitoring Team—with the help of Team Members Ryan Haygood, and Andrea McChristian from NJISJ, and Delores Jones-Brown, Ph.D., —prepared a modified version of Eagleton’s Community Probability Survey that all City residents were allowed to complete (“Non-Probability Community Survey”).

In February 2017, NJISJ hosted several dinners with community representatives to discuss methods to reach the Newark community and space for the Monitoring Team to come out and survey the community. As a result of these dinners, NJISJ set up events at the following community spaces between March 4, 2017 – April 1, 2017:

- Saturday, March 4, 2017 from 12 pm – 2 pm at **Training, Recreation and Education Center**, located at 55 Ludlow Street Newark, NJ 07114
- Saturday, March 11, 2017 from 12 pm – 2 pm at **Bethany Baptist Church**, located at 275 W Market Street Newark, NJ 07103
- Saturday, March 18, 2017 from 12 pm – 2 pm at **West Side Park Community Center**, located at South 13th Street and 18th Avenue Newark, NJ 07103
- Saturday, March 25, 2017 from 3 pm – 5 pm at **Ironbound Community Corporation**, located at 29 Cortland Street Newark, NJ 07105
- Saturday, April 1, 2017 from 3 pm – 5 pm at **La Casa de Don Pedro**, located at 23 Broadway Newark, NJ 07104

During these events, community members were able to meet with members of the Monitoring Team as well as participate in the Non-Probability Community Survey to provide the Monitoring Team with their experience with and perceptions of NPD and public safety. The Monitoring Team collected surveys between March 4, 2017 and May 22, 2017. The surveys were printed and made available to the Newark community in English, Spanish, and Portuguese. The survey was also made available online.¹⁷ The majority of the surveys collected were completed by hand. Through the Monitoring Team's community events and NJISJ's street surveying, the Monitoring Team collected over 150 surveys (the survey report is attached as **Appendix E.**) The survey report summarizes the results from both the online and printed version collected. Because this survey was not administered to a scientifically-drawn sample, these results are not scientific.

3. Custodial Arrestee Survey

During this quarter, the Monitoring Team, under the leadership of Dr. Todd Clear and his team at the Rutgers School of Criminal Justice, developed a survey to assess the

¹⁷ The survey was available online from March 4, 2017-April 20, 2017. The online version of the survey was in English only.

attitudes, perceptions, and experiences of people arrested by NPD. (*See* Consent Decree ¶ 23(b).) The survey was administered between February 13, 2017 and February 21, 2017 to 57 individuals incarcerated at the Essex County Correctional Facility while awaiting trial. The survey questions focused on five key themes related to police conduct and procedural justice: (1) professionalism, (2) fairness, (3) effectiveness, (4) trust, and (5) the obligation to obey officers' commands. Dr. Clear's full report and analysis of the survey results is attached as **Appendix C**. In general, the arrestees surveyed had a negative perception of NPD's professionalism and relationship with the community, and a majority of those surveyed believed that NPD officers lie about observing criminal behavior, that NPD officers make up reasons to pull over drivers, and that race and ethnicity negatively affects how arrestees are treated by NPD officers. The survey participants displayed a relatively strong perception of NPD's legitimacy and their own obligation to obey NPD officers' directives.

4. Police Focus Groups

The Monitoring Team, under the direction of Genna Jones and her team at the Rutgers School of Criminal Justice, administered a series of focus groups comprised of NPD officers. (*See* Consent Decree ¶ 24.) The purpose of the focus groups was to gain further insight into the results of last quarter's Police Survey. (*See* First Quarterly Report Appendix D.) Five focus groups were conducted, with three groups of patrol officers, one group of special unit and plain-clothes officers, and one group of supervisors. These group discussions focused on officer attitudes and perception, within-department bias, favoritism, use of deadly force, fear of criticism, media coverage, department leadership, and community support. Ms. Jones's report and summary of the focus group discussions is attached as **Appendix F**. The discussions revealed that, in general, officers perceive a high degree of nepotism and favoritism in NPD, and feel that their ability to advance professionally depends upon maintaining personal connections

that will afford them preferential treatment, rather than upon the merit of their own work performance. The focus group participants generally displayed a desire to engage in community policing, and many participants viewed the Consent Decree as an opportunity to learn better policing practices and receive better training.

J. Data Systems Improvements: Early Warning and Records Management Systems

The Monitoring Team has encouraged NPD to retain Information Technology (“IT”) staff, contractors, or consultants dedicated solely to assisting NPD in its operations. During this quarter, the Monitoring Team continued to work with NPD to consider a platform that allows for integrated and uniform data entry, and to understand NPD’s current capacity to provide data for the Monitoring Team’s upcoming audits and assessments.

1. Systems Integration

During the last quarter, the Monitoring Team evaluated NPD’s data collection practices *via* a review of various NPD technology systems, including the Computer Aided Dispatch (“CAD”) system, the Records Management Systems (“RMS”) and the Early Warning System (“EWS”). After completing those evaluations, the Monitoring Team created Data Dictionaries (or Baseline Matrices) to identify which data elements are currently being collected in each respective NPD system, and to identify current gaps in NPD’s data collection. The Monitoring Team created Data Dictionaries for the following Consent Decree Task Areas: Stop, Search, and Arrest; Use of Force; Training; Internal Affairs-Complaint Intake and Investigation and Discipline; and Internal Affairs-Theft and Property. These Data Dictionaries were created to assist the Monitoring Team with upcoming Baseline Audits of NPD’s systems, and to highlight for NPD those data elements that are required by the Consent Decree, but are not currently being collected. The Monitoring Team also created these Data Dictionaries to support the

identification, validation and process related to each data element listed, *e.g.*, who collects the information, when it is documented, the location of the NPD member at the time of documentation, whether the data is collected electronically or in paper format, and identification of the system into which the data is entered.

NPD and the Monitoring Team have also met several times and communicated frequently to carefully review the data collection requirements in the Consent Decree and to create a plan for implementing new data entry protocols. Further, the Monitoring Team created a Data/IT summary report that includes the original assessment methodology used to evaluate each system, NPD's accomplishments to date, gaps in collection, recommendations, and a discussion of resources.

2. Early Warning System

An EWS is not a device or particular type of software. Rather, it is a compilation of information that allows a manager or supervisor to examine several categories of data to determine whether an officer is engaging, or at risk of engaging, in a pattern of behavior that is contrary to NPD policy or constitutional principles. This data compilation requires that police interactions with the public be accurately documented and entered in a system that allows a manager to review the conduct on a historical basis.

Until the NPD can revamp its technology and collect all of the data elements required by the Consent Decree, NPD will not be able to create and implement the kind of EWS called for by the Consent Decree. Thus, it is still the Monitoring Team's view that the City must commit substantial funding and resources to address NPD's technological deficiencies.

The Monitoring Team has provided technical assistance regarding NPD's systems integration and EWS, led by the Rutgers Police Institute, and specifically Tom O'Reilly, Linda

Tartaglia, Dr. Mary Eckert, Dr. Rosalyn Bocker Parks, Maria Cardiellos, as well as Zachary Ginsburg, Julio Thompson, and Former Los Angeles P.D. Chief Information Officer (“CIO”) Maggie Goodrich.

3. Records Management System

The Consent Decree requires the City to provide NPD with sufficient funding and personnel to implement and maintain a RMS (Consent Decree ¶ 163) that will make more efficient and effective use of NPD’s data (Consent Decree ¶ 162). A law enforcement agency’s vision for technology must be driven by its operational objectives and goals for public safety. If implemented properly, a law enforcement agency can leverage data to ensure resources and services are deployed in the right place, at the right time; provide accurate and timely data to the field officer, management and the community alike to enable data-driven decision-making and situational awareness; and improve how the community and the police interact.

NPD has determined that it will move to procure an RMS solution that includes CAD functionality, as the current legacy system in place at NPD is a CAD/RMS combination system. The first step in identifying a CAD/RMS that will meet NPD’s needs is to document the business and operational requirements of the NPD. This will require identifying a consultant/consulting group with experience in the selection of law enforcement technology to review the draft requirements created by NPD and to perform a Gap Analysis to ensure the CAD/RMS selected will meet the needs of the NPD, eliminate duplicative data entry and manual processes, improve data accuracy, and enable the NPD to adopt best practices.

The Monitoring Team is hopeful that, with the selection of a qualified consultant/consulting group, the NPD can successfully select and implement a CAD/RMS that will ultimately lead to the effective use of data for the management of the Department.

K. In-Car and Body-Worn Cameras

The Consent Decree requires NPD to equip all marked patrol cars with video cameras and the majority of officers to wear body cameras and microphones. The use of cameras to record law enforcement activity is intended to increase transparency and police accountability. Future stages of the NPD body-camera program will be supported by a \$372,500 matching grant awarded from the Bureau of Justice Assistance within the DOJ.

1. In-Car and Body-Worn Cameras Pilot Program

NPD began piloting its In-Car and Body-Worn cameras program on May 1, 2017 in the Fifth Precinct. To support this pilot program, Panasonic donated sixty-five *Arbitrator* body-worn cameras and fifteen *Arbitrator* dashboard cameras, altogether worth \$350,000, to NPD. Panasonic technicians trained NPD personnel on the operations of the cameras after the reporting period. For the initial roll out, NPD only deployed four body-worn cameras, but the pilot will ultimately be scaled up to include sixty body-worn cameras and a minimum of fourteen in-car cameras.

The pilot is intended to give NPD an opportunity to test-drive the technology and identify potential technical, logistical and policy issues. The Monitoring Team, led by Former Philadelphia P.D. Deputy Commissioner Kevin Bethel and Former Los Angeles P.D. CIO Maggie Goodrich, is providing advice and technical assistance in connection with these efforts. Over the next quarter, the Monitoring Team will continue to meet with NPD personnel and track the progress of the pilot to confirm that NPD is developing best practices and capturing the information necessary to ensure that the program will be scaled up effectively.

2. In-Car and Body-Worn Cameras Policy Revision

The Consent Decree requires NPD to develop a policy regarding the footage and audio recordings from its in-car and body-worn cameras by November 1, 2017. (*See* Consent

Decree ¶¶ 104; Monitoring Plan App'x A at 8.) This policy must address which cars and officers are exempt from the policy's general requirements. (See Consent Decree ¶ 103.)

During the last quarter, NPD continued to make progress in drafting the Division's body-worn camera policy. The current draft policy addresses the retention and upload of recordings, access, use and dissemination of recordings, data control and management, and activation of body-cameras, among other issues. As is required under the grant, the Bureau of Justice Assistance has reviewed and made comments to the policy through multiple rounds of revisions. NPD is currently in the process of incorporating requirements related to dashboard cameras to the policy. In the next quarter, NPD will consult with the DOJ and the Monitoring Team on additional revisions to the policy.

A draft of the policy is available on the NPD website at <http://npd.newarkpublicsafety.org/bodyworncamera/policy>. NPD worked to compile some community feedback on this draft policy in conjunction with Rutgers University for purposes of securing the grant.

V. NEXT QUARTER ACTIVITIES (JUNE 1, 2017 – SEPTEMBER 30, 2017)

A. Training

During the next reporting period, the Monitoring Team will complete an audit of NPD's training records on the Consent Decree. NPD is currently developing its use of force training, though it completed only a marginal part of this during the prior quarter. The Monitoring Team is hopeful that NPD will retain and use the assistance of an experienced professional to help design and teach the use of force training materials. The Monitoring Team will report on NPD's progress towards developing use of force training in the next quarterly report. As NPD continues to develop new policies, the Monitoring Team will report on roll call trainings, training bulletins, and any other training devised to teach NPD officers about the new

policies. Finally, with assistance from the Monitoring Team, NPD completed a two-day Internal Affairs training module administered by the New Jersey State Police on June 27 and 28, 2017.

We will report on that training in next quarter's report.

B. Review and Revision of NPD Policies

Reviewing and revising NPD's policies remains a priority for the Monitoring Team. As described above, the Parties have worked together with the Monitoring Team to prioritize and schedule the next round of policy reviews. In the following reporting period, the Parties plan to prioritize their review of the policies addressing Community Policing, Stop Search and Arrest, and Property Control and Evidence Control. The Monitoring Team will continue to provide technical assistance and to encourage NPD to both develop its own capacities in policy writing and training and to identify external resources of support and expertise.

C. Audits, Compliance Reviews, and Outcome Assessments

The Consent Decree requires the Monitoring Team to conduct compliance reviews and audits to determine whether the City and NPD are implementing and complying with the terms of the Consent Decree. (Consent Decree ¶ 173.) In addition, the Monitoring Team is required to conduct outcome assessments to determine whether implementing the Consent Decree's requirements is resulting in constitutional policing that facilitates cooperation and trust between NPD and Newark community members. (Consent Decree ¶ 174.) The Monitoring Team is required to submit its proposed monitoring methodology to the Parties at least 45 days before beginning any review, audit, or outcome assessment. The Parties then have 30 days to advise the Monitoring Team whether they have comments or concerns about the proposed methodology. After receiving this input, the Monitoring Team can modify the

methodology or explain to the Parties in writing why the methodology is staying the same.

(Consent Decree ¶ 180.)

In the next quarter, the Monitoring Team will begin its first audit and compliance review. On May 17, 2017, the Independent Monitor gave notice to the Parties regarding the methodology it would use and the four areas it would audit: (1) stop, search and arrest; (2) training; (3) internal affairs; and (4) property and evidence management.

In the area of stop, search and arrest, the Monitoring Team anticipates assessing whether officers are articulating reasonable suspicion for stops in a specific and clear manner in their reports (Consent Decree ¶ 26); whether NPD is documenting all investigatory detentions, all field inquiries and mere inquires (Consent Decree ¶ 28); and whether NPD is completing all relevant information in arrest reports and properly documenting the probable cause for an arrest by the end of their shifts (Consent Decree ¶ 42). For training, the Monitoring Team anticipates auditing whether the NPD is “maintain[ing] complete and consistent training records for all officers.” (Consent Decree ¶ 12.) In Internal Affairs, the Monitoring Team will assess whether NPD’s complaint forms discourage the submission of complaints.¹⁸ (Consent Decree ¶ 115.) In the area of property management, the Monitoring Team will assess whether NPD is maintaining proper policies and procedures for the intake, storage, and release of property. (Consent Decree ¶ 110.)

¹⁸ The Monitoring Team has chosen to take a deliberately limited approach to auditing NPD’s Internal Affairs investigative practices due to Internal Affairs’ complexity and ongoing efforts to substantially revise NPD’s Internal Affairs policy. *See* Part IV(D)(1). The Monitoring Team will conduct a more detailed and exhaustive assessment in this area in future audits.

VI. CONCLUSION

The Monitoring Team remains encouraged by NPD's initial implementation efforts. While issues of capacity and expertise in the areas of policy writing and training on revised or new policies have slowed progress in some areas, NPD has successfully achieved operational compliance in others. In areas where progress has stalled, NPD has been quick to identify the causes of non-compliance and has worked well with the DOJ to set more achievable deadlines. NPD has also been highly receptive to DOJ's substantive input, guidance from other jurisdictions, the Monitoring Team's technical assistance, and, importantly, community feedback. The Monitoring Team applauds those efforts, and believes that they will allow NPD to regain ground in areas that have slipped and to otherwise maintain a course toward compliance in the near future. NPD's Consent Decree Implementation Unit is vital to these goals and to NPD's achieving compliance with the Consent Decree. It is the Monitoring Team's hope that the Implementation Unit is viewed as a cornerstone of police improvement within the Division as well as one of its highest-priority units.

The Monitoring Team will build on the work done this quarter, with a continued focus on policy revisions and training. We also look forward to initiating the first round of audit and compliance reviews and sharing the results in future quarterly reports.

VII. APPENDICES

- A. Deadline Compliance Chart**
- B. Probability Community Survey Final Report**
- C. Custodial Arrestee Executive Report**
- D. Non-Probability Community Survey**
- E. Non-Probability Community Report**
- F. Police Focus Groups Analysis**