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August 27, 2018

Via First Class and Electronic Mail

BPD Monitoring Team
c/o Kenneth Thompson
Venable LLP
760 East Pratt Street, Suite 900
Baltimore, MD 21202

RE: *U.S. v. Police Department of Baltimore City*, case no. 1:17-cv-00099-JKB, Initial Comments on Baltimore Police Department's 2019 Use of Force Draft Training Plan

Dear Mr. Thompson:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to provide initial comments on the Baltimore Police Department's (BPD) 2019 Use of Force Draft Training Plan. We commend the parties and the monitoring team for prioritizing a use of force training plan during the first year of the above-captioned consent decree.

Indeed, recent events underscore the urgency of the development and implementation of the plan. In February of this year, news reports revealed that 17 of 50 police academy graduates repeatedly failed tests on legal standards relating to policing, according to the academy's head of legal instruction.¹ In response to these reports, LDF sent a letter to the parties and the monitoring team requesting assurances that the BPD would expedite revisions to its use of force policies and academy and in-service training curricula to ensure that officers are adequately trained for the job.² We warned that allowing new officers to patrol city streets without the training required by the consent decree may expose residents of Baltimore to the same unlawful stops, searches, and excessive use of force documented in the U.S. Department of Justice's (DOJ) investigative report. Sadly, our admonition became reality.

¹ Kevin Rector, *Baltimore police union, NAACP Legal Defense Fund call for better training of police recruits*, BALTIMORE SUN, Feb. 5, 2018, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-union-academy-response-20180205-story.html#>.

² Letter from Sherrilyn A. Ifill, President & Director Counsel, LDF, to Steven Rosenbaum, Chief, Civil Rights Division, U.S. Dept. of Justice, et al. (Feb. 5, 2018), <http://www.naacpldf.org/files/about-us/NAACP%20LDF%20Letter%20to%20Parties%20and%20Monitor%20re%20Baltimore%20Police%20Academy%20Graduates.pdf>.

Specifically, a few weeks ago, a BPD officer was caught on video savagely beating an unarmed African-American man until he was bloodied on the ground. The victim, Dawshawn McGrier, suffered a broken jaw, nose, and ribs, according to his attorney.³ The officer reportedly graduated from the police academy earlier this year and had several encounters with Mr. McGrier.⁴ Interim Baltimore Police Commissioner Gary Tuggle responded that the incident showed police training may be lacking and cited the need for less pen-and-pencil lectures and more scenario-based training.⁵

Given these recent events, we are deeply concerned with the brevity and lack of detail in the BPD's draft training plan. The plan sets out in general terms training goals and obligations required by Maryland laws and regulations, the consent decree, and the first-year monitoring plan, but provides little information on *how* BPD plans to meet these obligations and virtually no information on plans for curricula. While we acknowledge that training curricula (e.g. modules, lesson plans) may require further consultation and development, the training plan should minimally include a multi-year integrated strategic plan detailing: training goals and objectives for basic, in-service, and remedial training; information on methodology, chronology, and schedules of instruction by subject matter;⁶ and information on the scope and scale of each phase of training, such as the expected number of training hours assigned to each subject matter or module and the number of hours of in-class versus scenario-based training. We urge BPD to create a final training plan that includes these details and incorporates the recommendations presented below.

1. Add legal instruction on how to engage in unbiased use of force practices

The draft training plan notes that entry level and in-service training must include legal instruction on constitutional requirements as it relates to the use of force, but it says nothing about state, federal, and local laws that prohibit discrimination based on race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, disability, and other protected characteristics. This year, the BPD created Fair and Impartial Policing Policy 317 that mandates anti-bias training,

³ Kristine Phillips, *Baltimore officer seen on video pummeling a man could face assault charges, officials say*, WASHINGTON POST, Aug. 13, 2018, https://www.washingtonpost.com/news/local/wp/2018/08/13/baltimore-officer-seen-on-video-pummeling-a-man-could-face-assault-charges-officials-say/?utm_term=.7c5d19e0be49.

⁴ Bryna Zumer, *Officer in beating case graduated from Police Academy with 3 honors*, FOX 45 NEWS, <https://foxbaltimore.com/news/local/officer-in-beating-case-graduated-from-police-academy-with-3-honors>.

⁵ Phillips, *supra* note 3.

⁶ Subject matters such as a critical-thinking framework that allows officers to uphold the sanctity of life and limiting the use of force, Fourth Amendment, de-escalation, less-lethal force, crisis intervention, duty to intervene, use of force reporting and review, and other use of force components prioritized by the consent decree.

including “legal requirements to provide equal protection of the law and legal prohibitions against unlawful discrimination that references these laws.”⁷ But the training plan does not list Policy 317 as one that governs use of force training. This is a glaring omission given the DOJ’s investigative finding that the rate of nondeadly force, such as tasers, used against African-Americans was significantly higher than the proportion of African-Americans in Baltimore’s general population.⁸ We urge BPD to include legal instruction on nondiscriminatory use of force in its training curricula.

2. Include training on the duty to intervene in the list of BPD training priorities

On page eight of the draft plan, BPD presents a list of training priorities needed to comply with the consent decree, such as de-escalation techniques. However, the list does not include training on the duty to intervene as required by the agreement.⁹ Minimizing incidents of unnecessary or excessive force requires a transformation of police culture.¹⁰ This begins with informing all officers of their responsibility to intervene when a fellow officer is not following procedure when using force. The recent violent police beating of Mr. McGrier underscores the considerable deficit in training on officers’ duty to intervene to stop an officer from using excessive force. The video shows the second officer on the scene making anemic efforts to stop the officer from beating Mr. McGrier, and then appears to abdicate his responsibility to intervene entirely. The duty to intervene must be included in BPD’s list of training priorities and should contemplate a cultural shift in how officers perceive their collective responsibility to police lawfully and humanely.

3. Emphasize scenario-based and interactive training

The consent decree prioritizes scenario-based trainings and interactive exercises as a principal method to illustrate appropriate use of force decision-making, and places particular emphasis on its importance in the context of the duty to intervene.¹¹ Additionally, there is strong consensus among police training experts that scenario-based training is the most effective mode of delivering high-quality, impactful

⁷ BALTIMORE POLICE DEPARTMENT, POLICY 317, FAIR AND IMPARTIAL POLICING 7, <https://www.powerdms.com/public/BALTIMOREEMD/documents/349731>.

⁸ U.S. DEPT. OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 61 (2016), <https://www.justice.gov/crt/file/883296/download>.

⁹ Consent Decree at para. 166b, U.S. v. Police Dept. of Baltimore, Case No. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017), <https://www.justice.gov/opa/file/925056/download> [hereinafter Baltimore Consent Decree].

¹⁰ POLICE EXECUTIVE RESEARCH FORUM, RE-ENGINEERING TRAINING ON POLICE USE OF FORCE 4-5, 63 (2015), <http://www.policeforum.org/assets/reengineeringtraining1.pdf> [hereinafter PERF REPORT].

¹¹ Baltimore Consent Decree at para. 166b, *supra* note 9.

instruction.¹² The final plan indicates in a few places that scenario-based training will be a component of instruction, however there is little information on when and how it will be used, how it will be integrated with classroom instruction, and no information on how many hours of instruction will be dedicated to scenario-based training. We are also concerned by the discussion under the section entitled “Training Constraints,” which warns of the resource draw scenario-based training will require. The draft plan should reflect a stronger commitment to scenario-based and interactive training and a complete roadmap of when and how it will be used the use of force training curricula.

4. Provide specialized use of force training for supervisors

Police conduct in the field begins and ends with the instruction, effectiveness, and leadership of supervisors. The consent decree memorializes the crucial role of supervisors to instill and reinforce appropriate, lawful conduct that minimizes incidents of force and prevents excessive force incidents. It requires that supervisors of all ranks receive training in conducting use of force reviews or investigations, strategies for effectively directing officers to minimize use of force, intervening effectively to prevent or stop excessive force incidents, and supporting officers who appropriately report excessive force incidents.¹³

We recommend BPD develop a specific training plan for supervisors that covers use of force reporting and response requirements, coaching and mentoring, tactical leadership and incident command, legal updates, and personnel management. Finally, we recommend special training emphasis is placed on how supervisors investigate force incidents, including low-level incidents.¹⁴

Conclusion

The BPD’s draft use of policies include many promising practices adopted by law enforcement executives nationwide, including an emphasis on valuing and preserving human life in all situations and an officer’s duty to intervene to prevent the excessive use of force.¹⁵ These policies must be enforced through effective training curricula and systems of accountability to ensure all BPD officers engage in lawful conduct and understand what it means to treat Baltimore residents with dignity and respect, in practical terms, under challenging circumstances that may arise on the job.

¹² See, e.g., SEATTLE POLICE MONITOR, NINTH SYSTEMIC ASSESSMENT: USE OF FORCE 18-20 (2017), <https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/Ninth+Systemic+Assessment--Use+of+Force--FINAL.pdf>; PERF Report, *supra*.

¹³ Baltimore Consent Decree at para. 166n, *supra* note 9.

¹⁴ *Id.* at paras. 180-206.

¹⁵ See generally PERF REPORT, *supra* note 10.



Thank you for considering our recommendations for improving BPD's draft training plan. Please do not hesitate to contact us at 202-682-1300.

Sincerely yours,

A handwritten signature in black ink that reads "Monique L. Dixon". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Monique L. Dixon
Deputy Director of Policy and
Senior Counsel

Sonia Gill Hernandez
Senior Policy Counsel
Policing Reform Campaign

cc: Steven M. Ryals, Trial Attorney, U.S. Department of Justice, Civil Rights Division,
Special Litigation Section

Andre M. Davis, City Solicitor, City of Baltimore Law Department

Suzanne Sangree, Chief, Public Safety Practice Group, City of Baltimore Law
Department