



September 19, 2016

Via Regular and Electronic Mail

Vanita Gupta
Principal Deputy Assistant Attorney General
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Kevin Davis, Commissioner
Baltimore Police Department
242 W. 29th Street
Baltimore, MD 21211

Re: Comments on the Agreement in Principle between the United States and the City of Baltimore Regarding the Baltimore City Police Department

Dear Deputy Assistant Attorney General Gupta and Commissioner Davis:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we welcome the opportunity to comment on the Agreement in Principle (“the proposed Agreement”) between the United States and Baltimore City regarding the Baltimore Police Department (BPD). For years, the city’s African-American residents have endured police violence and misconduct. The U.S. Department of Justice’s (DOJ) investigative report, *Investigation of the Baltimore City Police Department*, has confirmed what residents have known for decades: that the city’s police department has engaged in a pattern or practice of discriminatory policing and use of excessive force.¹ As a result of these findings, the DOJ and Baltimore City established the proposed Agreement, which outlines categories of reforms that should address the plethora of constitutional and statutory violations detailed in the investigative report.

Although many of the DOJ’s findings were not surprising, taken in their entirety, they were extraordinary and astonishing. Between January 2010 and May 2014, the Baltimore Police Department (BPD) recorded over 300,000 pedestrian stops, in a city of 620,000 residents; 44% of these stops occurred in two African-American neighborhoods, and only 3.7% of stops resulted in a citation or arrest.² Adding insult to injury, DOJ’s investigative report found that BPD officers engaged in unconstitutional and degrading public strip searches of pedestrians during stops.³

The DOJ investigation also found that BPD officers used aggressive tactics that needlessly escalated encounters with residents and resulted in the excessive use of force;⁴

¹ See generally, U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, August 10, 2016, available at <https://www.justice.gov/opa/file/883366/download>. (hereinafter *Baltimore Police Report*)

² *Id.* at 25-28.

³ *Id.* at 32-34

⁴ *Id.* at 76-79.

and, the absence of policies for the use of Tasers and batons contributed to officers violating the constitutional rights of Baltimore residents.⁵ The report explained further that BPD officers exhibited unlawful gender bias toward female victims of sexual assault and transgender individuals,⁶ and often used racial slurs or other statements that exhibited bias toward city residents.⁷ BPD supervisors, with few exceptions, misclassified complaints alleging racial bias as minor misconduct, such as discourtesy.⁸ Indeed, DOJ found that “[t]he longstanding deficiencies in BPD’s systems for investigating complaints has contributed to a cultural resistance to accountability that persists in the Department.”⁹

Additionally, DOJ’s investigation highlighted a concern raised by LDF and Baltimore residents – the BPD has entered into agreements with police forces serving educational institutions around the city, including the Baltimore School Police Force, which gives the latter concurrent jurisdiction to patrol city streets. But, BPD has provided no oversight of the policing practices of these auxiliary forces, even if their officers are involved in alleged misconduct.¹⁰

The legal violations uncovered in the DOJ report warrant a comprehensive, court-enforceable agreement that will remain in effect for multiple years to ensure that reforms are sustainable. The terms of any final consent decree must hold the promise of transforming the BPD into an agency of sworn officers who seek to serve and protect communities, with a guardian (not warrior) mindset, without regard to race, ethnicity, gender, age, and socio-economic status, and consistent with the U.S. Constitution, state and federal laws, and departmental policies. In an effort to contribute to this type of transformation, LDF offers recommendations below for strengthening the proposed Agreement between DOJ and Baltimore City officials.

A. Creation of an Advisory Team for the Baltimore City Police Commissioner

Recommendation: Any federal consent decree between DOJ and Baltimore City should include a provision requiring the creation of an advisory team for the current and successor Baltimore Police Commissioner on creating a police culture that respects the rule of law and diverse communities.

The years of egregious and unlawful activities of BPD officers highlighted in the DOJ report exposes a police department that some would argue is broken beyond repair. Many Baltimore residents who attended a recent community town hall meeting on policing convened by LDF and others at the University of Maryland Francis King Carey School of Law, shared their belief that bold and drastic changes must occur to create a BPD that is

⁵ *Id.* at 129.

⁶ *Id.* at 123.

⁷ *Id.* at 66.

⁸ *Id.*

⁹ *Id.* at 149.

¹⁰ *Id.* at 154-55.

trusted by the community it serves.¹¹ Certainly, any police commissioner and command staff tasked with addressing the numerous constitutional and legal violations uncovered in the report could benefit from the expertise of similarly-situated police chiefs and commanders.

Therefore, LDF recommends that any federal consent decree between DOJ and Baltimore City include a provision requiring the creation of an advisory team for the current and successor Baltimore City Police Commissioner. This team should comprise current and former police executives and community activists experienced in transforming police departments that have been found to engage in unlawful policing practices. Advisory team members should be selected by the Baltimore Police Commissioner, the Mayor, deans of leading academic institutions in the City, City Council Members, and residents of Baltimore City.

B. Policies, Training and Data Collection and Analysis

LDF supports the language in the proposed Agreement that requires BPD to continue improving its policies, training, data collection and analysis so that it may evaluate officer activity and ensure that their actions are consistent with legal and constitutional requirements.¹² Residents of Baltimore and other stakeholders must have opportunities to provide meaningful input in the development of and revisions to BPD's policies and training through regular community meetings and other opportunities to submit oral or written comments, such as via email or through public surveys.

1. Stops, Searches, and Arrests

Recommendation: BPD policies and training materials must accurately state the legal standards for stops, searches and arrests of individuals. Officers found to be in violation of these policies and trainings should be subjected to corrective actions or discipline.

The manner in which police officers engage civilians during stops, searches and arrests directly impacts police-community relations.¹³ To address the DOJ findings that BPD officers frequently initiated investigative stops without reasonable suspicion that any unlawful activity was afoot, and conducted invasive searches without reasonable suspicion

¹¹ See generally, Transcript, NAACP LDF, *et al*, Community Town Hall Meeting: Policing in Baltimore Sept. 7, 2016 (attached) (hereinafter *Baltimore Town Hall*); See also, Jessica Anderson, *Rep. Elijah Cummings hosts town hall on DOJ Baltimore report*, The Baltimore Sun, Sept. 7, 2016, <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bs-md-ci-cummings-police-town-hall-20160907-story.html>.

¹² See, Agreement in Principle Between the United States and the City of Baltimore Regarding the Baltimore City Police Department, Aug. 9, 2016, <https://www.justice.gov/opa/file/883376/download>, (hereinafter *Proposed Agreement in Principle*).

¹³ See, President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Washington, DC: Office of Community Oriented Policing Services, May 2015 at 24, available at http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf. (hereinafter *President's Policing Task Force Final Report*).

that the person searched was armed,¹⁴ officers must be trained and monitored on how to conduct constitutional stops.

During pedestrian and traffic stops, BPD should ensure that officers: introduce themselves by name and rank, provide the stopped individual a BPD business card at the end of the interaction, state the reason for the stop or detention, ensure that the stop or detention is no longer than necessary to take appropriate action; and act with professionalism and courtesy throughout the interaction.¹⁵

Additionally, BPD officers seeking consent for a search should notify individuals of their right to refuse and to withdraw consent at any time. The officer should record this notification and whether persons granted or denied consent. BPD should maintain a log listing each search warrant, the case file where a copy of the warrant is maintained, the officer who applied for the search warrant, and each supervisor who reviewed the application.¹⁶ Interacting with Baltimore residents in this manner will allow BPD officers to investigate suspicious persons and activities without violating residents' constitutional rights.

But, training without supervision and discipline is pointless. Thus it is critical that supervisors regularly audit their assigned officers' stop and search documentation for completeness, accuracy, legal sufficiency, and compliance with law and BPD policy.¹⁷ The supervisor should take appropriate actions to address violations or deficiencies, including recommending corrective action for the involved officer(s), and/or referring the incident for administrative or criminal investigation. Direct supervision of BPD officers' police-civilian interactions ensures accountability of officer who do not adequately perform their duties. Supervisors should be required to undergo annual training to ensure their familiarity with governing legal principles, and to reinforce their management skills.

2. Discriminatory Policing

Recommendation: BPD must adopt policies that prohibit discrimination based on race, ethnicity, national origin, and gender or sexual orientation in law enforcement activities; require its officers to receive implicit-bias training annually; and immediately address violations of the policy and training.

The DOJ investigative report found that BPD engaged in a pattern or practice of discriminatory policing that disproportionately impacted African Americans at every stage of law enforcement activities - from stops to arrests to charges.¹⁸ BPD officers' stops and arrests were concentrated in Baltimore City's central business district and several poor, urban neighborhoods with mostly African-American residents. A large number of these

¹⁴ *Baltimore Police Report*, *supra* note 1, at 24.

¹⁵ See e.g., Consent Decree, *U.S. v. The City of Ferguson*, ¶ 81, NO. 4:16-cv-000180-CDP (E.D. MO 2016), <https://www.justice.gov/crt/file/883846/download>. (hereinafter *Ferguson Consent Decree*).

¹⁶ *Id.* ¶¶ 85-89.

¹⁷ *Id.* ¶¶ 105-106.

¹⁸ *Baltimore Police Report*, *supra* note 1, at 47-66.

arrests were for non-violent misdemeanors and discretionary offenses, which were often dismissed by police supervisors and local prosecutors.

To end its discriminatory policing practices, LDF urges BPD to adopt policies that prohibit discrimination in law enforcement activities based on race, ethnicity, national origin, and gender. Additionally, first and foremost, all members of the BPD command staff should undergo anti-bias training. This training should be reinforced bi-annually. BPD should also require its rank-and-file officers to receive this training annually. The training should be interactive and scenario-based, and designed to help officers uncover and address their unconscious biases and stereotypical views of classes of people. It must show officers how to manage these biases in their interaction with members of the public.

Anti-bias training will allow BPD to identify officers who exhibit problematic biases in order to provide them with corrective training. Indeed, BPD should follow the lead of the federal government, which recently issued a policy requiring its law enforcement officers, including prosecutors, to participate in annual implicit-bias training.¹⁹ Any violations of BPD's anti-discrimination policies and trainings should be addressed immediately through corrective actions, such as retraining, or disciplinary actions.

3. Use of Force

Recommendation: BPD policies and training must provide officers with clear instruction on legal standards for the use of force; officers should be trained on de-escalation techniques; officers who use deadly force should immediately submit to a drug test and complete use-of-force reports, which supervisors must review and take corrective actions, including disciplinary actions; and officers must report the transfer of arrestees at the end of each shift, including whether they were secured in seat belts.

In the wake of highly-publicized police shootings of unarmed civilians, law enforcement leaders have agreed that police departments should hold themselves to a higher standard than what the law allows in use-of-force incidents; and, the preservation of life should be the goal in police-civilian encounters.²⁰ Instead of exercising these principles, the DOJ report found that BPD officers escalated encounters and used force when it was not necessary to resolve an incident, and used excessive force against individuals with disabilities, including mental illness, and youth.²¹ The DOJ report further stated that BPD failed to provide proper policy guidance on how and when it was appropriate to use force, and failed to properly train officers on how to operationalize its policies.²²

¹⁹ See, U.S. Department of Justice, Office of the Deputy Attorney General, *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, Office of Public Affairs, June 27, 2016 <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>.

²⁰ See generally, Police Executive Research Forum, *Critical Issues in Policing Series: Guiding Principles on Use of Force*, March 2016, available at <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

²¹ *Baltimore Police Report*, *supra* note 1, at 75-76

²² *Id.* at 76.

LDF supports language in the proposed Agreement that requires BPD to ensure that its policies and training on use of force complies with legal and constitutional standards. We add that BPD must readily update these policies and trainings to reflect recent changes in law, such as the legal standard relating to the proper use of Tasers against a person engaged in nonviolent resistance in the recent case of *The Estate of Ronald H. Armstrong v. The Village of Pinehurst, et al.*²³

Additionally, BPD should mandate its officers to receive annual training on de-escalation, adolescent development, and proper interactions with persons with mental illness and other disabilities through crisis intervention techniques (CIT). The CIT training should instruct officers on how to identify signs of mental illness. This instruction should be included in the current number of hours for required training and not as an addition to these hours. Doing so, would prioritize de-escalation, CIT, and adolescent development training equally with the current required officer training. For example, in 2015, the Missouri State Police Department revised its mandatory officer training by making the number of hours for de-escalation and CIT training a part of the pre-existing required training.²⁴ Also, BPD should develop a partnership with local medical institutions that could assist with calls for service involving persons suspected of experiencing a mental health crisis.

The DOJ report also determined that BPD failed to exercise proper oversight to address potentially unreasonable force and correct bad tactics when they occurred.²⁵ Specifically, BPD has failed to maintain the files for officers' firearms discharges, and BPD supervisors approved all but a handful of uses of force even though reports and reviews contained insufficient information to determine whether the force was reasonable.²⁶ Consequently, BPD should require its officers to complete a use-of-force report, in addition to an incident report, and to immediately present the report to a supervisor if the force is beyond handcuffing.²⁷ Reportable use of force should include brandishing firearms, Tasers, and OC spray. The reports should include a detailed narrative that specifically explains the type of force used; the legitimate police objective necessitating the use of force; and details regarding the resistance encountered.²⁸

The reports should also contain information on all efforts to de-escalate the situation in order to avoid the use of force, and to minimize the level of force used. BPD officers should note the existence of any body-worn camera or police car dashboard camera audio or video footage. Additionally, all officers observing use of force by a BPD officer(s) should be required to document their observations in writing and report the use of force to supervisors before the end of their shift.²⁹ A supervisor who is not involved in the incident should review the

²³ 810 F.3d 892 (4th Cir. 2016), <http://www.ca4.uscourts.gov/Opinions/Published/151191.P.pdf>.

²⁴ See, Missouri Department of Public Safety, "2017 Continuing Law Enforcement Education (CLEE) Training and Reporting Requirements for Missouri Peace Officers," visited on 9/8/2016 <http://dps.mo.gov/dir/programs/post/clee-training.php>.

²⁵ *Baltimore Police Report*, *supra* note 1 at 76.

²⁶ *Id.* at 75.

²⁷ *Ferguson Consent Decree*, *supra* note 15, at ¶ 173.

²⁸ *Id.*

²⁹ *Id.* ¶ 174.

report and perform an on-scene investigation of the use of force before the end of his or her shift.

When use-of-force reports include material omissions or inaccuracies, BPD should take corrective action, including appropriate discipline. If omissions or inaccuracies are determined to be deliberate, the officer(s) should be disciplined, including termination. Officers who use or observe a reportable use of force but do not report it should be disciplined, including termination.³⁰ These reports will encourage better supervision of BPD officers and appropriate imposition of disciplinary measures for officers who engage in misconduct.

BPD should conduct drug tests of officers who have used deadly force. Currently, the Memorandum of Understanding between the BPD and the local Fraternal Order of Police allows officers who use deadly force to be drug tested only when there is reason to believe that the officer was under the influence of drugs or alcohol.³¹ This provision should be removed from the contract and instead, BPD should follow the lead of the St. Louis County Police Department, which requires officers to submit to a drug testing if they are involved in shootings or vehicle accidents.³²

The DOJ found evidence that BPD officers routinely failed to safely secure persons who were arrested with seatbelts during transports in police vans.³³ This failure has resulted in serious injuries and, in some circumstances, death, including the death of Freddie Gray.³⁴ BPD should require officers driving a transport vehicle to report to the supervisor the number of persons transferred before the end of their shifts. The transporting officer must also indicate in the report whether the person was properly secured by a seat belt. The supervisor must review this report before the end of an officer's shift. These actions would encourage the safe transport of arrested persons and provide for police accountability.

4. First Amendment

Recommendation: BPD must provide clear policies and annual training on persons' First Amendment rights; and investigate and address violations of these policies and training in a timely manner.

Police must respect citizens' fundamental and constitutional right to exercise free speech. According to the DOJ investigative report, BPD officers regularly violated the First Amendment rights of Baltimore residents by unlawfully stopping and arresting individuals for speech officers considered disrespectful or rude; using excessive force as a form of

³⁰ *Id.* ¶¶ 176-77.

³¹ See, City of Baltimore, *Memorandum of Understanding between The Baltimore City Police Department and the Baltimore City Lodge No. 3, Fraternal Order of Police, Inc., Unit I Police Officers, Police Agents and Flight Officers, Fiscal Years 2014-2016*, Appendix E, at 62.

³² Christine Byers, *St. Louis Police to undergo drug and alcohol testing after shootings, wrecks*, St. Louis Post Dispatch, Jan. 30, 2016, http://www.stltoday.com/news/local/crime-and-courts/st-louis-police-to-undergo-drug-and-alcohol-testing-after/article_f75d2997-6632-5270-8705-f94092b181c9.html

³³ *Baltimore Police Report*, *supra* note 1, at 112-15.

³⁴ *Id.*

retaliation against a person engaging in protected speech; and improperly interfering with persons who recorded police activity.³⁵

LDF supports the proposed language in the Agreement requiring BPD to: adopt a policy on civilians' right to record officers; update current policies on an individual's First Amendment rights; train officers on the consequences they will face if they retaliate against a person for exercising his/her First Amendment rights; and investigate and address violations in a timely manner.³⁶

BPD should clarify in its policies and training that forms of retaliation may include detaining, searching, arresting, issuing a citation, or using force in response to non-criminal statements or other expressive conduct when the officer would not have taken such action in the absence of the statements or expressive conduct.³⁷

5. Gender Bias and Response to Sexual Assaults

Recommendation: BPD must create policies and train officers on their legal obligations to investigate sexual assaults, including assaults perpetrated by police officers, in a nondiscriminatory manner; officers should be required to refer to transgender persons in their preferred pronoun, and investigate cases with compassion and respect; any officers found to be in violation of relevant laws, departmental policies and training must be disciplined.

According to the DOJ investigative report, BPD officers and detectives in the Sex Offense Unit often questioned victims in a manner that placed the blame for the sexual assault on the victims.³⁸ It stated further that BPD officers mistreated transgender individuals, and BPD's improper searches of transgender individuals reflected underlying unlawful gender bias.³⁹ The DOJ report also found that BPD seriously and systematically under-investigated reports of sexual assault, and the sexual assault investigations conducted were tainted by practices that significantly compromised the effectiveness and impartiality of its response to sexual assault.⁴⁰

To address these problems, BPD must prohibit its officers from making statements or engaging in conduct that indicate they doubt the victim's credibility, or that otherwise exhibit any gender bias towards the victim.⁴¹ BPD should also require its officers to receive training on responding to and investigating sexual assault cases in an unbiased manner.⁴² Similarly, BPD should mandate its officers to address and refer to transgender individuals by their

³⁵ *Id.* at 116-21.

³⁶ *Proposed Agreement in Principle*, *supra* note 12, at 4.

³⁷ *Ferguson Consent Decree*, *supra* note 12, at ¶ 123.

³⁸ *Baltimore Police Report*, *supra* note 1, at 122.

³⁹ *Id.* at 123.

⁴⁰ *Id.*

⁴¹ International Association of Chiefs of Police, *Sexual Assault Incident Reports*, 3 and 7 (2008), <http://www.theiacp.org/portals/0/pdfs/SexualAssaultGuidelines.pdf>.

⁴² *See*, Civil Rights Division, U.S. Department of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, December 15, 2015 at 11, available at <https://www.justice.gov/opa/file/799366/download> (hereinafter *Identifying and Preventing Gender Bias*)

adopted name and preferred pronouns,⁴³ and inform transgender individuals of their right to express a preference of officer gender for searches.⁴⁴

Additionally, BPD must train its officers to write reports of interviews or statements incorporating the victim's words, spontaneous statements, and narrative as much as possible, as opposed to providing the officer's interpretation.⁴⁵ Likewise, BPD should train its officers to properly document sexual assault cases and only classify these cases as non-criminal or unfounded after a thorough, full investigation.⁴⁶

BPD should develop policies and practices aimed at preventing and addressing on-duty sexual harassment and assault of members of the public by its officers. These policies should require BPD to open an internal investigation whenever an allegation is made that an officer has engaged in sexual abuse or sexual misconduct, regardless of whether the officer was acting in his or her official capacity at the time.⁴⁷ These actions will encourage BPD to respond appropriately to sexual assault allegations and transgender individuals by treating all sexual assault victims and transgender individuals with compassion, dignity, and respect without being influenced by explicit or implicit gender bias.

6. Recruitment, Supervision, Accountability/Data Collection, and Coordination

Recommendation: BPD recruits, officers, and supervisors must have a demonstrated commitment to engaging in policing activities with a guardian/protector mindset.

If BPD is to transform itself into an agency that is committed to serving and protecting the public with a guardian mindset, then the culture of the police department must shift from a soldier mindset. One law enforcement official effectively described the differences between a soldier and police officer as follows:

*The soldier's mission is that of a warrior: to conquer. The rules of engagement are decided before the battle. The police officer's mission is that of a guardian: to protect. The rules of engagement evolve as the incident unfolds. Soldiers must follow orders. Police officers must make independent decisions. Soldiers come into communities as an outside, occupying force. Guardians are members of the community, protecting from within.*⁴⁸

⁴³ See, Seattle Police Chief Kathleen O'Toole, *Seattle Police Department Manual*, Title 16.200.3, <http://www.seattle.gov/police-manual/title-16---patrol-operations/16200---interaction-with-transgender-individuals>.

⁴⁴ *Id.* at Title 16.200.7.

⁴⁵ *Identifying and Preventing Gender Bias*, *supra* note 42, at 14.

⁴⁶ See, Consent Decree, *U.S. v. The City of New Orleans*, Jul. 24, 2012 at ¶ 195-207, <http://www.nola.gov/getattachment/NOPD/About-Us/NOPD-Consent-Decree/NOPD-Consent-Decree-7-24-12.pdf/>.

⁴⁷ *Identifying and Preventing Gender Bias*, *supra* note 42, at 22.

⁴⁸ *President's Policing Task Force Final Report*, *supra* note 13 at 11.

A transformed BPD culture should promote the guardian mindset during recruitment efforts and promotions of rank-and-file officers to supervisory positions. BPD supervisors should also consider the extent to which officers have exhibited this mindset as they conduct performance reviews and disciplinary proceedings.

a. Recruitment and Retention

Recommendation: BPD must develop and carry out recruitment strategies that include high school and college police cadet programs; increase the hiring of female officers; offer officers residency incentives; relax prohibitions on marijuana use during the hiring process; and ensure that personnel making hiring decisions do so in a nondiscriminatory manner.

Police departments are more likely to attract and retain a diverse group of officers committed to public service if efforts are made to recruit diverse applicants, create clear paths to promotion,⁴⁹ and provide officers with incentives to live in or near the communities they serve. The DOJ report found that BPD failed “to support its officers through effective strategies for recruitment, retention, and staffing patterns...”⁵⁰ Specifically, it has faced challenges in recruiting qualified officers – meeting only a fraction of its goals for the 2016 police academy class, and does not have a departmental plan for addressing staff shortages.⁵¹ Officers were often “drafted” to work additional hours or rely on auxiliary police forces in the city, such as members of the Baltimore School Police Force, to fill staffing shortages.⁵² Consequently, officers’ decision-making skills were often diminished after working fourteen to twenty-four hours. This grueling schedule led officers to leave the force after three to five years for less-demanding and higher-paid positions.⁵³

Any final agreement between DOJ and Baltimore City should require the development of a recruitment strategy that includes training high school and college students for a career in law enforcement through police cadet programs at local schools. The courses offered should place students on an “officer’s career track,” and include courses in psychology, history, communications, ethics, urban studies, sociology, criminal justice and human development, implicit-bias, and effective interactions with youth and persons with disabilities. These academies could begin training students on the guardian approach to policing and constitutional and unbiased policing, and BPD could recruit students who complete the programs.

Police-community relations could be strengthened when officers are familiar with the areas that they patrol and the people who live in these areas. DOJ found that as of 2015, the BPD was successful in recruiting African-American officers who comprised 42% of sworn

⁴⁹ Caitlin Gokey and Susan Shah, *How to Support Trust Building in Your Agency*. Police Perspectives: Building Trust in a Diverse Nation, no. 3. Washington, DC: Office of Community Oriented Policing Services, 27 (2016) <http://ric-zai-inc.com/Publications/cops-p346-pub.pdf>.

⁵⁰ *Baltimore Police Report*, *supra* note 1 at 137.

⁵¹ *Id.*

⁵² *Id.* at 137 and 154.

⁵³ *Id.* at 137.

officers, and 20% women; but, 75% lived outside of Baltimore City.⁵⁴ To address this problem, the BPD should adopt residency incentives to motivate more Baltimore residents to serve as members of the police force, and attract more officers to live in the city.

Additionally, LDF applauds Baltimore Police Commissioner Kevin Davis' efforts to relax restrictions on past marijuana use in police hiring procedures by asking the Maryland Police Training Commission to reconsider this prohibition, which has been in place since the 1970s.⁵⁵ Commissioner Davis acknowledged that marijuana use is the primary reason why Baltimore residents are disqualified from police service. Therefore, we urge DOJ and Baltimore City officials to change restrictions on past marijuana use in police hiring.

BPD should make specific efforts to increase gender diversity on the force by engaging in special outreach and recruitment for women. Also, BPD officials responsible for recruitment, retention, and staffing should be screened regularly to identify any implicit biases in their hiring decisions. In particular, BPD should increase transparency in the selection of background investigators and mandate quarterly implicit bias training for them.⁵⁶

b. Supervision, Accountability and Data Collection

Recommendation: BPD must improve officer accountability by requiring supervisors to regularly monitor officer performance through multiple sources, including a comprehensive early intervention system and annual data collection and audits.

BPD supervisors must do a better job of identifying and disciplining problem officers and preventing excessive use of force, and unconstitutional and discriminatory policing. During a recent town hall meeting in Baltimore, family members of persons killed by Baltimore police officers lamented that the officers involved in these incidents were neither criminally charged nor disciplined, even though some officers had other complaints of excessive use of force pending against them. For example, Mr. Abdul Salaam is an African-American man who was brutally assaulted by three police officers in the presence of his 3-year-old son on July 1, 2013.⁵⁷ Immediately after his attack, Mr. Salaam reportedly filed a complaint with BPD internal affairs to no avail. Seventeen days later, the same officers were involved in the police in-custody death of Mr. Tyrone West, an African American man.⁵⁸ Clearly, the BPD did nothing to intervene and correct these officers conduct and ultimately

⁵⁴ *Id.*

⁵⁵ See, e.g., Kevin Rector, Davis wants to relax restrictions on past marijuana use for police recruits in Maryland, *The Baltimore Sun*, July 22, 2016, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-marijuana-standard-20160721-story.html>.

⁵⁶ See e.g., San Francisco Blue Ribbon Panel, *Report of The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement*, July 2016 at 60, available at http://sfdistrictattorney.org/sites/default/files/Document/BRP_report.pdf.

⁵⁷ *Baltimore Town Hall*, *supra* note 11 at 97-99.

⁵⁸ *Id.* See also, George Lettis, *Baltimore City police brutality alleged in 2 civil lawsuits*, WBAL TV 11, July 24, 2014, <http://www.wbaltv.com/news/baltimore-city-police-brutality-alleged-in-2-civil-lawsuits/26634108>.

prevent Mr. West's death. Indeed, the DOJ report found that the BDP "relies on deficient accountability systems that fail to curb unconstitutional policing."⁵⁹ This must change.

LDF agrees with language in the proposed Agreement requiring BPD to provide supervisors with the tools they need to effectively oversee officer activity, including through the use of an effective and flexible early intervention system (EIS).⁶⁰ An EIS holds the potential of improving officer conduct because first-line supervisors have the ability to regularly monitor and respond to officer activity.⁶¹

BPD must create an EIS system that has the capacity to collect and analyze data about individual officer performance, including complaints and compliments. In so doing, BPD must collect relevant data about officers, such as traffic and pedestrian stops reports, use of force incidents (including police-involved sexual assaults), civil and criminal law suits, rates at which officers complete the investigation of cases and the outcomes of these cases, including sexual assaults, and whether an officer has been placed on the state's attorney's "do not call" list because the officer's integrity has been questioned.

BPD should create policies and train supervisors on how to use the information in the EIS to provide timely supports, interventions and discipline to officers. It must train supervisors on how to appropriately classify civilian complaints - racial slurs should not be classified as discourtesy - so that adequate interventions may be used to address alleged officer misconduct.

In order to hold officers and supervisors accountable, BPD must engage in comprehensive data collection of traffic and pedestrian stops, arrests, use-of-force incidents, and civilian complaints and their outcomes disaggregated by race, ethnicity, national origin, gender, age, physical and mental disability, and zip code of the civilian. These data should be publicly reported annually, including on the BPD's website. The collection, analysis, and public reporting of these data will provide to Baltimore residents information about the policing practices of the BPD.

c. Coordination with Auxiliary Police, including the Baltimore School Police Force

Recommendation: BPD must eliminate its reliance on auxiliary police, including the Baltimore School Police Force. To the extent that BPD renews agreements with auxiliary police, the agency should be held to the same training, data collection, supervision, and discipline standards as the BPD.

Effective and sustainable policing reform can only occur if all police agencies within a jurisdiction have uniform policies, training, data collection and reporting of police-civilian interactions. The DOJ investigation determined that BPD fails to appropriately coordinate

⁵⁹ *Baltimore Police Report*, *supra* note 1, at 139.

⁶⁰ *Proposed Agreement in Principle*, *supra* note 12, at 5.

⁶¹ See, Samuel Walker, et al, *Strategies for Intervening with Officers Through Early Intervention Systems*, Police Executive Research Forum, 9 (2006), <http://ric-zai-inc.com/Publications/cops-p093-pub.pdf>.

its efforts with other law enforcement agencies that it has granted authority to exercise concurrent jurisdiction, which results in insufficient data collection, analysis, and reporting of stops, arrests, and use-of-force incidents.⁶² The report concluded that these gaps in data collection and reporting hindered BPD's ability to supervise its own officers and auxiliary police with concurrent jurisdiction.⁶³

Therefore, BPD must eliminate its reliance on auxiliary police by increasing its recruitment and retention efforts. To the extent that the BPD continues to contract with the Baltimore School Police Force (BSPF), then any memorandum of understanding must require BSPF to follow the same policies, training and data collection and reporting as BPD officers under the final consent decree between DOJ and Baltimore City. Additionally, both BPD and BSPF officers must receive training in adolescent development and the use of alternatives to arrests, such as diversion to community-based programs.

Relatedly, the Baltimore City Public School System should conduct an assessment of BSPF to weigh the benefits vs. costs of maintaining its own police force in light of the fact that on several occasions, BSPF officers have been disciplined for misconduct and criminally charged for excessive use of force.⁶⁴ Indeed, instead of funding BSPF, the school district should redirect the funding to improve school climate by increasing the number of counselors working in troubled schools, and by investing in programs that address the underlying causes of student misbehavior, such as restorative justice practices, social and emotional learning, student conflict resolution programs, mentoring, and crisis prevention and intervention.

C. Technology and Infrastructure

Recommendation: Baltimore City officials must invest in technology that will allow officers to complete reports while they are on patrol; and consult with and readily update the public on all new technologies used by BPD for enforcement purposes, such as body-worn camera programs and surveillance equipment.

The DOJ report found that the BPD operates with outdated technology, equipment, and facilities, forcing them to return to the district office to type reports.⁶⁵ For the sake of efficiency and to promote consistent data collection, Baltimore City officials should cost-effectively invest in updated technology for BPD officers. City officials should consider the purchase of new technology in a public forum, allowing residents to comment on the equipment and policies governing their use. Additionally, the use of technology, such as police body-worn cameras should be assessed and publicly reported by the BPD annually.

Further, any consent decree should require the discontinuation of any technology that was not subjected to public feedback, such as BPD's aerial mass surveillance system, which

⁶² *Baltimore Police Report*, *supra* note 1 at 154.

⁶³ See, U.S. Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department*, August 10, 2016 at 154, available at <https://www.justice.gov/opa/file/883366/download>.

⁶⁴ See, Saliqa Khan, School police officer pleads guilty to assault of 3 students, WBAL TV 11, Sept. 25, 2015 <http://www.wbal.com/news/school-police-officer-pleads-guilty-to-assault-of-3-students/31567264>; and See, Keith Allen, *Two Baltimore officers charged over slapping incident*, CNN, Mar. 9, 2016 <http://www.cnn.com/2016/03/09/us/baltimore-student-slap-video/>.

⁶⁵ *Baltimore Police Report*, *supra* note 1, at 138.

uses planes and powerful cameras to continuously record 30-square-mile sections of the city simultaneously.⁶⁶ The technology stores the video footage for an indeterminate amount of time, and police can use it to retroactively track any pedestrian or vehicle within the surveillance area.⁶⁷ There are concerns that the system has the potential of violating persons First and Fourth Amendment rights, will be used by police for abuse⁶⁸ and discriminatory policing⁶⁹ because the police decide who and what should be tracked.⁷⁰

BPD should immediately discontinue its use of the aerial mass surveillance system, and Baltimore City should hold public hearings to receive input on adopting this system and any new surveillance technologies that could be deployed.⁷¹

E. Consent Decree Enforcement, Independent Monitoring, and Community Input

Recommendation: Baltimore City officials must continue to offer residents and other stakeholders meaningful opportunities to assist with the development and implementation of the consent decree, including a public comment period and hearing during which members of the public can provide feedback on the final consent decree prior to its approval by the federal court; the consent decree should be in effect for no less than 10 years.

LDF applauds the DOJ and Baltimore City officials for indicating in the proposed Agreement that the settlement will be in the form of court-enforceable consent decree, which will include the appointment of an independent monitor.⁷² Resolving these issues early demonstrate Baltimore city officials' commitment to begin the long process of reforming policing practices in city. To this end, it is important that Baltimore residents have ongoing opportunities to assist with the development and monitoring of the consent decree.

For example, DOJ and Baltimore City officials should jointly request that the federal court conduct a public comment period and hearing to allow the public to provide comments on the negotiated consent decree before it is approved by the federal court. This is a process

⁶⁶ See, M. Reel, *Secret Cameras Record Baltimore's Every Move from Above*, Bloomberg Businessweek, Aug. 23, 2016 <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/?src=longreads>.

⁶⁷ *Id.*

⁶⁸ See, ACLU "Spyfiles," Privacy and Surveillance web page, last visited on 8/26/2016 www.aclu.org/spyfiles.

⁶⁹ Clive Norris and Gary Armstrong, "The Unforgiving Eye: CCTV Surveillance in Public Spaces," Centre for Criminology and Criminal Justice at Hull University, 1997.

⁷⁰ See, M. Reel, *Secret Cameras Record Baltimore's Every Move from Above*, Bloomberg Businessweek, Aug. 23, 2016, at <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/?src=longreads>.

⁷¹ See, ACLU of Maryland, *Police Secretly Put Large Part of Baltimore Under Constant Aerial Video Surveillance*, Aug. 24, 2016 http://www.aclu-md.org/press_room/286; See also, United States Congressman Elijah E. Cummings, *Cummings Statement on BPD Aerial Surveillance Program*, Aug. 25 2016 <https://cummings.house.gov/media-center/press-releases/cummings-statement-bpd-aerial-surveillance-program>.

⁷² *Proposed Agreement in Principle*, *supra* note 12, at 6.

DOJ followed prior to the approval of its consent decree with the Ferguson Police Department,⁷³ and it should be utilized in Baltimore.

Additionally, members of the public should be actively involved in the selection of the Independent Monitor team that will be tasked with overseeing the implementation of the consent decree. Baltimore residents should be able to provide meaningful input into the selection process through a community questionnaire provided to Independent Monitor applicants and by creating opportunities for community members to interview applicant finalists. Indeed, DOJ and Baltimore City officials should agree to include residents as members of the monitor team.

To ensure ongoing public feedback, the Independent Monitor Team could distribute and analyze community surveys about policing practices to measure desired outcomes. The survey should be conducted in English and other languages as necessary to allow for representation of the entire Baltimore community.

Additionally, the consent decree should terminate in no less than ten years from its implementation due to the widespread police misconduct established in the DOJ findings letter. This is the case in DOJ's consent decree with officials of Puerto Rico.⁷⁴ Termination of Baltimore's consent decree in no less than 10 consecutive years assures a sufficient amount of time to determine if the BPD is in full and effective compliance.

Likewise, the standard for termination of the consent decree should be "full and effective compliance," and explicitly defined as a specific percentage of compliance, such as 100%. In several current and previous DOJ consent decrees, the term "full and effective compliance" is not defined in a clear and concrete manner. A clear definition will prevent ambiguity as to how much a local jurisdiction needs to be in compliance with the consent decree's provisions.

F. Community Policing Strategies and Civilian Oversight of Police

Recommendation: Baltimore City official must define and carry out, in collaboration with city residents and stakeholders, community policing strategies and police civilian oversight mechanisms.

Public safety is maintained and reinforced in communities when residents and the police who serve them work together to develop and carry out community policing strategies to prevent and fight crime. One of the most disturbing, yet telling findings of the DOJ report is the perception among Baltimore residents that there are "two Baltimores," one predominantly white and the other "impoverished and largely black," that receive different

⁷³ See, U.S. District Court of the Eastern District of Missouri, *U.S. v. The City of Ferguson*, Case No. 4:16CV180 CDP, <http://www.moed.uscourts.gov/united-states-america-v-city-ferguson-case-no-416cv180-cdp> (stating that the court held a public hearing to consider whether to adopt the Consent Decree on Tuesday, April 19, 2016).

⁷⁴ See, Settlement Agreement, *U.S. v. The Commonwealth of Puerto Rico and the Puerto Rico Police Department*, Jul. 17, 2013 at ¶ 300, https://www.justice.gov/sites/default/files/crt/legacy/2013/07/17/prpd_agreement_7-17-13.pdf.

policing services.⁷⁵ The consent decree must require BPD to collaborate with residents of Baltimore's many neighborhoods to identify the type of law enforcement activities they would like BPD to undertake in their communities, and monitor these activities through advisory teams, comprising BPD officers and residents.

Additionally, the proposed Agreement's provision stating that Baltimore City officials are committed to strengthening community oversight of the BPD is a positive development because residents have little to no confidence in the city's Civilian Review Board (CRB).⁷⁶ The CRB is an independent agency through which members of the public can file a complaint against police officers, alleging the use of force, abusive language, harassment, false arrests and false imprisonment.⁷⁷ Since its inception, the CRB has struggled with completely filling vacancies,⁷⁸ and a *Baltimore Sun* investigation found that from January 2013 through March 2016, only 4 percent of excessive force complaints were upheld.⁷⁹ Consequently, Baltimore residents believe that the CRB is useless.⁸⁰

In collaboration with community residents, Baltimore City officials should adopt and fully-fund a civilian review board that plays an effective role in the investigation of complaints and the discipline of officers.

Conclusion

Baltimore City officials and its residents are in a unique position to transform a police department into an agency that provides courteous and nondiscriminatory policing services. While many residents are understandably skeptical that anything will change, others believe that policing reform must and can happen.

Thank you for considering these recommendations. We look forward to future opportunities to provide input prior to the approval of the final consent decree. If you have any questions, please do not hesitate to contact Monique Dixon at 202-682-1300 or Sherrilyn Ifill at 212-965-2200.

Sincerely yours,



Sherrilyn A. Ifill
President and Director Counsel

⁷⁵ *Baltimore Police Report*, *supra* note 1 at 156.

⁷⁶ See e.g., Brian Hammock, *Give Baltimoreans a voice in fixing community-police relations*, The Baltimore Sun, Jun. 3, 2015 <http://www.baltimoresun.com/news/opinion/oped/bs-ed-civilian-review-board-20150603-story.html>.

⁷⁷ See, Subtitle 16 of Article 1 of the Code of Local Laws of Baltimore City § 16-43(a).

⁷⁸ See, Karen Houppert, *The Civilian Review Board ups its game*, The City Paper, May 11, 2016

<http://www.citypaper.com/news/mobtownbeat/bcp-051116-mob-civilian-review-board-20160511-story.html>

⁷⁹ See, Catherine Rentz, *Baltimore police failed to share misconduct complaints with civilian oversight board; promise to do so now*, The Baltimore Sun, Aug. 31, 2016 <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-civilian-review-board-20160831-story.html>.

⁸⁰ See, Justin Fenton, *Baltimore police review board called irrelevant, ineffective*, The Baltimore Sun, Jun. 2, 2013 http://articles.baltimoresun.com/2013-06-02/news/bs-md-ci-police-civilian-review-board-20130602_1_civilian-panel-police-misconduct-baltimore-sun.

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