

9/20/2020

Status Hearing Comments

To the Honorable Judge Perry, the court, Monitor and others:

Nicolle Barton, Consent Decree Coordinator has been creating new ideas to make sure that the community continue to interact during the COVID-19 Pandemic while developing and implementing new strategies to meet several deadlines in the fourth year of the Consent Decree.

Nicolle engaged the Community Mediation Service to develop a pilot program with the residents of Ferguson. The pilot program consisted of 10 community members and 3 officers. Several of the members were already engaged with the Neighborhood Police Steering Committee (NPSC). Other members included managers from the apartment complexes in the city, and 3 police officers. The goal of the pilot program was to create an open dialogue among the officers, residents and managers. Chief Jason Armstrong displayed great leadership qualities when one of the officers became ill. Chief Armstrong did not hesitate to step in and take the officer's place. This type of leadership demonstrated to the officers that the Chief cares about the various programs designed to move the community forward. His efforts are important to the success of the programs.

March of 2020 a Youth Summit was scheduled to be held but was cancelled due to the COVID-19 pandemic. Nicole Barton immediately collaborated with Dr. Joe Davis, Superintendent of the Ferguson-Florissant School District, to create an alternative plan to engage the youth. They created questions around the Bias Free Police Policy and asked the District's 11th graders to participate in this effort. The students took it as an assignment and completed the task with 125 students responding.

Furthermore, Nicolle Barton was instrumental in bringing subcommittees together to work on a plan. The subcommittees include the Neighbor Policing Steering Community, NPSC Community Engagement Subcommittee and the Civilian Review Board (CRB) subcommittee. The NPSC Community Engagement Subcommittee contributed valuable insight and suggestions to the working plan. Nicolle Barton wrote a draft plan which was latter submitted to the group. The plan morphed into the Community Policing and Engagement Plan. See pages 25 and 26 of the Consent Decree.

The plan encompasses problem solving, getting in front of crime, and views between the police and the community. All in all, Nicolle Barton has made great strides in directing and implementing the Consent Decree. There are several items in the Consent Decree that need to be completed and I believe she is well on her way toward that outcome.

In addition to everything I've shared thus far, I have one additional item that I am very passionate about. It is the need for a Community Engagement Coordinator.

Our recent history has demonstrated that the Ferguson Police Department and the entire City of Ferguson needs a robust community engagement strategy.

Ferguson's City Hall and the Police Department are plagued with numerous complaints and concerns, from the encroachment of petty crimes and speeding, to the unsightly conditions of dilapidated homes, blight, and abandoned properties. We work hard to address these problems, but a comprehensive strategy to address the underlying causes that help to create these conditions has yet to be developed.

There is an unquestioned need for a Community Engagement Coordinator. The position will not serve the same function as

Ferguson's Community Development Coordinator or the Consent Decree Coordinator. The Community Engagement Coordinator will have a specific skill set similar to that of a Social Worker. The person will work with the Community Engagement Police Officer and other community health and social service programs to identify, train, and equip the citizens of Ferguson to serve as volunteer Community Resource Workers. The Community Engagement Coordinator will have the support of Washington University's Brown School of Social Work including the faculty member who created the Social and Economic Development (SED) concentration and SED graduate practicum students. In this way, rather than merely fighting crime and placing a band-aid on problems, we will have a greater capacity to focus more deeply on analyzing and addressing the root causes of our community's problems. This effort will not only provide an approach that will allow for more insightful diagnosis of problems, but will also afford greater opportunities for early identification and intervention in challenging situations which, if not addressed in a timely fashion, could become more toxic and escalate to more volatile or tragic outcomes.

A pilot program should be developed for Community Resource Workers to support the Community Engagement Coordinator for Ferguson in the following ways:

1. The Community Resource Workers and the Community Engagement Coordinator will work with the police which will include visiting problem locations experiencing frequent police calls.
2. Visit all city neighborhoods and establish good relationships with residents

3. Create a case file to collect and analyze data from the neighborhoods and home visits. The findings would allow for the identification and coordination of the delivery of needed resources with the goal of improving the overall quality of life, reducing crime and the need for police calls. Anytime the police receive frequent calls to particular locations and spend over an hour at the sites, that is a clear indicator that preventive interventions and more services are needed in those locations.
4. Identify and work with local social service agencies to provide needed support for families and individuals in distress or facing challenges.

In summary, the importance of having a teaming approach with the Community Engagement Coordinator, the Community Engagement Police Officer, Community Resource Workers, a major university, and social service agencies working collectively will better serve the wellbeing of those who call Ferguson home. We will seek funding for a Community Engagement Coordinator and a pilot program.

Thanks,

Mayor Ella M. Jones

To: United States District Court, Eastern District of Missouri, Judge Perry
From: Cassandra Butler, Resident of Ferguson
Re: Written Statement submission for the Sept 22, 2020 Status Hearing
Date: September 21, 2020

Your Honor,

Thank you for continuing to allow residents and the public to address the Court.

In my last correspondence with this Court, I discussed the frustration in assessing what progress is being made with the Consent Decree. This is still a frustration that, from my vantage point, has yet to be addressed. I understand that the COVID19 pandemic is still a challenge to us all. As we personally attempt to adapt and adjust to the challenges, we could use assistance from the other parties involved to do their best to keep the public in “the loop” regarding the achievements that are hopefully being made, and transparency in challenges that still remain.

During the last status hearing in June, Ferguson City mentioned some challenges that they were encountering in policing current protesting related to the George Floyd murder. It was interesting to hear the internal challenges facing the Police administration and correspondingly, rank and file officers as they worked through those challenges. It was evident to an observer like myself that there were some “hiccups” in the response of our police department. But overall, I was REALLY PROUD of the way the Ferguson Police Department handled those earlier days after George Floyd’s death.

As fate would have it, an incident involving the Florissant Police Department became public and captured a lot of local attention in June. Video surfaced of a Florissant Police Officer that hit a suspect with his car to subdue him? So the focus of the protesting switched to the Florissant Police Department. And again – the difference in their response to the protesting compared to the response at the Ferguson police department – was visible. And again I was proud of the progress that had been made. And I was thinking about how much the Florissant Police Department could learn from Ferguson’s Police Department.

But then, a few more incidents happened at Ferguson’s Police Department. The unrelated death of a well-known activist provided the occasion for protesters to mourn her, during the pandemic, on the outdoor grounds that we have come to know her well – on the streets of Ferguson. A memorial event was held on Friday, June 26th, which culminated with the painting on the street of the words “Black Lives Matter.”

I was VERY surprised to see Ferguson immediately paint over this attractively done art the very next morning. This is in the pattern I saw executed by the Florissant Police Department, which had escalated tensions by immediately painting over the same slogan numerous times (as protesters reinstalled the message more than once.) Next, I saw the Ferguson Police interrupted activists who wanted to paint

the slogan on Canfield Street in remembrance of Michael Brown's death on August 9th. Police were actually dispatched to the site and were pulling up masking tape from the road. To me, this marked a distinct difference in attitude towards working with activists and protesters. It was reestablishing with the community "who was the boss." Over the weekend, Police also made arrests during protesting activities at the Police Station.

This is very alarming to me Judge Perry. I am getting the distinct feeling that instead of Ferguson Police Department being a model for surrounding areas, that the Ferguson Police Department is taking lesson from the Florissant Police Department. I detect a clear slipping "backwards."

Not being on the inside, but being trained in both Strategic Management (MBA) and Political Science (PhD), I get a sense that there is some political influence taking place. As you may recall, I was concerned about the political machinations that took place in the Police Chief process. No disrespect intended for Chief Jason Armstrong, but the Interim City Manager, in alignment with the then Mayor, were bent on selecting anyone else BUT Frank McCall. And Jason Armstrong was the only candidate that chose to stay in the running.

What that does is allow the political class to have MORE influence on the decisions made by the police chief. He is new to the Ferguson police department, he has no profession network in the area OR the state, he is new to consent decrees, new to duties as a police chief, and more dependent on the City's administration for guidance than Asst. Chief McCall, who has spent his police career in the area and retired as a police chief in an adjacent jurisdiction.

So I urge the Court and the Consent Decree monitor to take a closer look at the political actions that may be placing undue influence on the police chief, or to become aware of local political actors that may be diluting the efforts that are doable in creating a City of Ferguson with a strong commitment to protecting individual citizens civil rights.

Sincerely,

Cassandra Butler,

Ferguson Resident



September 21, 2020

Via Electronic Mail (Fergusonmonitor@hoganlovells.com)

The Honorable Catherine D. Perry
Thomas F. Eagleton U.S. Courthouse
111 South 10 Street
St. Louis, MO 63102

**RE: *United States v. City of Ferguson*, Case No. 4:16-cv-0180-CDP,
Comments on Implementation of the Consent Decree**

Dear Judge Perry:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we submit the comments below concerning the implementation of the above-captioned consent decree pursuant to the Court's order filed on July 10, 2020. First and foremost, we wish to convey our sense of urgency. Although it is now five years since the approval of the consent decree, much of the work remains undone. We are also concerned that several actions taken or contemplated by Ferguson officials are inconsistent with the letter and spirit of the consent decree.

Since its founding in 1940, LDF has partnered with federal and local policymakers to advance laws, policies, and practices to improve police accountability in cities across the country. Additionally, for the past six years, LDF has supported the police accountability and public safety efforts of community members, activists, and civil rights attorneys in Ferguson and St. Louis, Missouri¹ including monitoring the consent decree's implementation. It is with this wide-ranging experience and specific local engagement that we make the following comments and recommendations.

1. After Five Years, Ferguson City Officials Have Failed to Meet Many of the Consent Decree's Requirements

As noted by the Monitor, "[w]ith the exception of the [Ferguson Municipal Courts], much of the implementation of the Consent Decree remains to be completed."² Specifically, the following critical areas remain incomplete five years after the consent decree's Effective Date:

- a. **Comprehensive Amnesty Program (CAP)**— The Monitor's final audit of the CAP is incomplete, and it is unclear how many pre-2014 cases were not dismissed, and why. We urge Ferguson officials to dismiss all pre-2014 cases identified in Paragraph 326 of the consent decree to prevent unnecessary incarceration or fines.
- b. **Community Engagement Plan**— The community engagement plan is at the center of the consent decree's requirements, yet there are no public-facing updates on its progress. Though the Parties have sought input from the Neighborhood Policing Steering Committee (NPSC), this does not replace wide-spread community engagement and release of a final plan.

- c. **Incomplete Policies**—The Parties and Monitor have not completed the revision process for the following policies: Fair and Impartial Policing; Policies relating to First Amendment Activity; Search Warrant and Warrantless Searches; and Powers of Citation and Warrantless Arrest.
- d. **Training**—Paragraph 48 of the consent decree requires all training be “fully delivered within two years of the [consent decree’s] Effective Date.” However, in Year Five the Ferguson Police Department (FPD) has not completed rollcall or in-service training, or developed a robust training program to do so. To encourage progress, in the Year Three Workplan the Monitor required FPD to create a training schedule by February 28, 2019. As of the Monitor’s January 2020 report, FPD still had not finalized a comprehensive training schedule and to date, has not presented a completed schedule to the public.³ The City’s failure to hire a Training Consultant has also contributed to the backlog of policies awaiting training and implementation.

2. Ferguson Officials Have Not Complied with the Community Engagement Provisions of the Consent Decree

Since the Monitor’s community forum on February 12, 2020, neither the Parties nor the Monitor have meaningfully engaged with residents regarding the implementation of the consent decree. While residents nationwide participated in mass demonstrations protesting police violence and demanded accountability measures, Ferguson residents remained unsure of the status of their own consent decree, whose goal, in part, is to end needless police use of force and dismantle the racial inequities in Ferguson’s policing and court practices. As one Ferguson resident wrote to the Court:

[A]nother challenge during this pandemic time is keeping up with the progress being made – if any, regarding the Consent Decree. . . . Even before the pandemic, we were struggling to be ‘in the know.’ . . . Frankly, we remain really reliant on this status hearing to learn of the current progress on the many tasks that were not yet accomplished by our City since the last status hearing.⁴

Paragraph 438 of the consent decree requires the Monitor to file a public report every six months detailing and assessing the Parties’ past and upcoming work, but the Monitor has failed to do so since January 2020. The Monitor assured the Court, at the June 4, 2020 status hearing, that she and the Parties would “keep[] the community up to date and in the know on the progress that’s being made,” but more than three months later, Ferguson residents⁵ and members of the public still have not received the Monitor’s semiannual report or an updated Monitoring Plan informing residents how and when the Parties will fulfill their obligations under the consent decree.

These glaring failures to prioritize community engagement are not new. When assessing the implementation of the consent decree in Year Three, the Monitor rightly recognized, that while “[c]ommunity engagement remains a critical aspect of the decree” the City of Ferguson had not “adequately contemplated or resourced [it]” and “[o]ne of the most important areas of the Consent Decree continues to see little progress and attention.”⁶ As the Parties have sought to implement the consent decree for five years now, this failure to accomplish this basic task of merely communicating with the community that bore the brunt of Ferguson’s racially discriminatory police department, municipal courts, and jails, is unacceptable.

3. The FPD’s Apparent Circumvention of the Consent Decree’s Requirements to Protect Protestors’ First Amendment Rights by Relying on Outside Law Enforcement Agencies is Disturbing

FPD’s response to protests in 2014 following former officer Darren Wilson’s killing of Michael Brown included “violations of constitutional rights, escalation and use of excessive force, use of military-style weapons and gear[,] . . . indiscriminate use of tear gas on crowds, which is banned by international law” and “the lack of an appropriate plan for dealing with demonstration[s].”⁷ The Ferguson consent decree includes several provisions intended to address these findings. Recent actions taken by Ferguson officials, however, suggest that little progress has been made to protect protesters.

a. Ferguson Officials Should Not Solicit Assistance from Outside Agencies That Engage in Conduct Prohibited by the Consent Decree

The consent decree requires FPD to “request other law enforcement agencies responding [to protests] within Ferguson” be trained on de-escalation techniques, key concepts of the National Incident Management System command and management, including Incident Command Systems, multiagency coordination systems and policing consistent with the First Amendment.⁸ This summer, however, FPD routinely asked multiple nearby law enforcement agencies, who are not bound by the consent decree, to assist with monitoring protests in Ferguson. By engaging these outside agencies, the City of Ferguson and FPD permit entry to agencies that previously avoided Ferguson because they did not want to adhere to the decree’s requirements, (as Ferguson’s City Manager admitted to this Court at the June 2020 status hearing).⁹ But this invitation is problematic.¹⁰ It results in multiple supervising officers in one area, conflicting orders, and an influx of officers who are unfamiliar with FPD’s revised policies or the consent decree’s mandates. Consequently, protestors are not always able to identify the agencies present, determine which agency is in charge, or identify the agency or officer responsible for unlawful or problematic conduct. This creates a large gap in officer accountability and simultaneously exposes protestors to the same constitutional violations that FPD engaged in 2014—only this time, by law enforcement agencies from nearby jurisdictions.

Additionally, FPD should not request assistance from agencies which have a history of civil rights violations and other unlawful conduct.¹¹ This is a public safety issue that threatens demonstrators’ ability to safely protest. Accordingly, we respectfully urge the Court to clarify the City’s requirements under the consent decree and ensure its adherence to them, including to Paragraphs 119 (f) and (g) by creating a:

[p]lan for clearly communicating to all law enforcement agencies participating in any response to a public demonstration in Ferguson the limitations and requirements for such participation, including limitations and requirements related to force, arrests, and . . . officer identification, [and a]... “[c]entralized complaint intake process for use by individuals . . . regarding an officer of any agency during a multijurisdictional response.

We also urge the Monitor, in her capacity as assessor of FPD’s compliance with the consent decree,¹² and the DOJ to evaluate whether the City or outside agencies have violated any of the consent decree’s provisions regarding First Amendment Protected Activity, and if so, inform residents and identify what actions will be taken to prevent future violations.¹³ This will require the Parties and Monitor to solicit residents’ accounts and video footage of recent protests that included outside law enforcement, arrests, deployment of OC spray, use of force, and/or orders to disperse.

b. The Monitor and DOJ Must Evaluate Whether FPD's Uses of Force Against, and Arrests of, Protestors on August 9, 2020 Violated the Consent Decree

On August 9, 2020, the sixth anniversary of the police shooting of Michael Brown, cell phone video footage shows FPD officers and other officers violently charging at a crowd of protestors.¹⁴ Amidst public outcry, FPD justified its actions¹⁵ by stating a “small group” of protestors made hostile remarks towards the officers, threw a stick and screw, and removed a bike rack barricade. The Monitor and DOJ must thoroughly evaluate whether FPD's actions violated any of the consent decree's provisions, especially in relation to protected First Amendment activity.¹⁶ To do so, the Monitor and DOJ should identify and speak with individuals who were arrested, subjected to force, or witnesses at the scene.

4. The Parties Should Consider the Racial Impact of the Use of ShotSpotter and Include Mechanisms to Prevent its Abuse

On July 28, 2020,¹⁷ the Ferguson City Council passed Resolution 2020-29, approving a six-month pilot installation of ShotSpotter, a gunshot detection technology.¹⁸ To detect gunshot sounds, ShotSpotter places live sound-monitoring microphones throughout neighborhoods, recording residents' sounds and movements.¹⁹ The placement of ShotSpotter technology is determined by police data borne from decades of FPD's targeting and over-policing Black neighborhoods. And because the captured audio ultimately is under FPD's control, it reportedly gives law enforcement the power to listen to residents' conversations, from the moment they leave their homes.²⁰ Not only does this intrude on residents' privacy and erode community trust, it places too much power in the hands of the same police department whose racially discriminatory practices led to federal monitoring.

Paragraphs 36, 39, and 40 of the consent decree require the Ferguson Municipal Code (Code) and ordinances to “adequately protect[] the public health, safety, and welfare,” “comply with th[e] Agreement,” and ensure “the Code's design and enforcement are not unnecessarily burdensome on members of the Ferguson community.”²¹ The Parties and Monitor should extend this framework to the ShotSpotter Resolution. Though it is not an ordinance or code, the ShotSpotter Resolution's passage is inconsistent with the spirit of the consent decree; the Parties and Monitor should listen to residents and evaluate its impact on their safety and wellbeing before the City commits to long-term use.

Additionally, though lauded as a public safety tool, ShotSpotter does not prevent gun violence.²² As the DOJ's 2015 report, countless community stories, and extensive data make clear, increased police presence in Black neighborhoods itself poses a great risk to the residents' public safety, health, and welfare.²³ The City must not implement technologies like ShotSpotter at the expense of addressing the socioeconomic issues that contribute to violence, or investing in low-income neighborhoods' schools, affordable housing, access to quality food, or jobs. Doing so continues Ferguson's legacy of choosing over-policing, hyper-criminalization, and incarceration of Black people over true community support.

We strongly urge the Parties and Court to review the use of ShotSpotter technology, and any future purchases of technology for FPD similarly, through racial, historic, and community safety lenses.

Thank you for considering these recommendations. If you have any questions, please contact Katurah Topps at 212-965-2200.

Sincerely yours,

Katurah Topps, Policy Counsel
Puneet Cheema, Manager, Policing Reform Campaign
Monique Dixon, Director of State Advocacy

cc: Ferguson City Attorney, Apollo Carey and DOJ Civil Rights Division, Jude Volek

¹ See <https://tminstituteldf.org/ldf-action/fergusonst-louis-county-missouri/>.

² Monitor's Winter 2020 Semiannual Rpt, Dkt. #128, at 7 (Jan. 31, 2020) [hereinafter Monitor's 2020 Rpt].

³ The City only provided residents with an outdated roll call training schedule, <https://www.arcgis.com/apps/MapSeries/index.html?appid=7aed307d6ad94f22a6cfb046644f2597>; see also Monitor's 2020 Rpt at 3 (noting the training plan "ha[s] failed to progress year after year" and "remained largely stagnant during Year Three").

⁴ June 2, 2020 public comment letter to the Court, from long-term Ferguson resident Cassandra Butler.

⁵ Because there are over 20,000 residents in Ferguson, individual communications with the NPSC or a handful of Ferguson Collaborative members is not sufficient communication with the "Ferguson community."

⁶ Monitor's 2020 Rpt at 4 and 9.

⁷ The Ferguson Commission Report, *Forward Through Ferguson: A Path Toward Racial Equity*, at 30 (Oct. 14, 2015) https://3680or2khmk3bzpk33juiea1-wpengine.netdna-ssl.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf; see also U.S. Dep't. Of Justice, *After-Action Assessment of the Police Response to the August 2014 Demonstrations In Ferguson, Missouri* (2015).

⁸ *U.S. v. Ferguson*, No. 4:16-cv-000180-CDP, (E.D. Mo. 2016), Dkt. #98, ¶¶ 112 and 122 [hereinafter the consent decree].

⁹ Transcript of June 4, 2020 status hearing, Dkt. #134, at 33-37.

¹⁰ Consent decree ¶¶ 118 and 123.

¹¹ See e.g., St. Ann Police—a dep't infamously riddled with unlawful conduct—yet FPD's revised 'Response to 1st Am. Protected Activity' policy designates St. Ann police to assist in mass arrests and jailing of protestors; see also *Cops Ousted for Bad Behavior Often Land in One Place: St. Ann* (July 6, 2020), at https://www.stltoday.com/news/local/crime-and-courts/cops-ousted-for-bad-behavior-often-land-in-one-place-st-ann/article_cd3fa355-644c-5b16-8f41-2685c1b71c6d.html, and Ferguson Collaborative and LDF's joint comments and line edits to FPD's revised 1st Am. policies, at 8 available <https://www.naacpldf.org/wp-content/uploads/2020.07.06-FINAL-LDF-and-FC-Line-Edits-to-FPD-Draft-First-Amendment-Activity-Policies-Appendix-A.pdf>.

¹² Consent decree ¶ 416 requires the Monitor to ensure that the consent decree's implementation results in constitutional and lawful policing, the administration of justice, and increased community trust; see also ¶ 423.

¹³ See consent decree ¶¶ 119, 126, and 127.

¹⁴ Cell phone video footage at <https://twitter.com/ChuckModi1/status/1292669449624068096>; see also Alta Spells and Eric Levenson, *Protesters gather outside Ferguson Police Department on anniversary of Michael Brown's death*, CNN (Aug. 11, 2020), <https://www.cnn.com/2020/08/10/us/ferguson-protests-michael-brown/index.html>.

¹⁵ See Ferguson Police Dep't. Press Release, (Aug. 10, 2020), <https://www.facebook.com/CityofFergusonPoliceDept/photos/pcb.734592187102673/734591993769359/>.

¹⁶ Consent decree ¶¶ 111, 118, 120, 124, and 153.

¹⁷ July 28, 2020 Ferguson City Council Agenda, available at <http://www.fergusoncity.com/AgendaCenter/ViewFile/Agenda/07282020-819?MOBILE=ON>.

¹⁸ Ferguson City Council Resolution #2020-29, available at <http://www.fergusoncity.com/DocumentCenter/View/4189/Resolution-No-2020-29-Shot-Spotter>.

¹⁹ See Electronic Frontier Foundation's explanation of Acoustic Gunshot Detection, as used in ShotSpotter, available at <https://www.eff.org/pages/gunshot-detection>.

²⁰ *ShotSpotter: gunshot detection system raises privacy concerns on campuses*, THE GUARDIAN, available at <https://www.theguardian.com/law/2015/jul/17/shotspotter-gunshot-detection-schools-campuses-privacy>.

²¹ Para. 40, requiring the City to "conduct outreach meetings . . . in locations throughout Ferguson, to hear the views of persons within the community, and [] consider and incorporate these views . . ." to ensure public health, safety, and welfare.

²² Matt Drange, *We're Spending Millions on This High-Tech System Designed to Reduce Gun Violence. Is It Making a Difference?*, FORBES, Nov. 17, 2016, (noting that ShotSpotter only brings officers to gunshot locations, not prevent them).

²³ See e.g., Christopher Ingraham, *Police shootings are a leading cause of death for young American men, new research shows*, WASHINGTON POST, Aug. 8, 2019, <https://www.washingtonpost.com/business/2019/08/08/police-shootings-are-leading-cause-death-young-american-men-new-research-shows/>; see also Sarah Beller, *The American Public Health Association Declares Police Violence a Public Health Issue*, FILTER, Nov. 15, 2018, <https://filtermag.org/the-american-public-health-association-declares-police-violence-a-public-health-issue/>.

Dear Judge Perry,

I am sending this letter to you to express concerns about the lack of transparency and dismissive attitude of the Ferguson Police Chief (FPC) in his relationship with the Ferguson Civilian Review Board (FCRB). The City Manager's office, with prior coordination with the Ferguson Police Chief (FPC), has created verbal agreements and a draft Memorandum of Understanding between the Ferguson Police Department (FPD) and the FCRB. Despite this framework being put in place, the FPC has violated these agreements on several occasions without prior notification.

I would like to call your attention to three specific issues that demonstrate this behavior and if not corrected will prevent the FCRB from providing proper oversight of the FPD as required in the consent decree and city of Ferguson ordinance establishing the FCRB. First, the FPC has refused the FCRB's request to attend the police departments' mandatory roll training on new general orders approved by the Department of Justice (DOJ.) Second the FPC has violated the city's agreement with the FCRB to supply 14 days' notice prior to convening police citizen hiring panels. Finally, the FPC has refused to provide the discipline records and revised the FPD's agreement with the FCRB, on the procedure for requesting police discipline records three times in the last 60 days, without prior notification.

First, the FPC has refused to allow the FCRB to attend the FPD's mandatory roll call training. The FCRB must supply oversight for the conduct of FPD training for the citizens of Ferguson. In support of this responsibility the FCRB requested two things from the FPC in January of this year. First, the FCRB requested that the FPC provide a schedule of all roll call training he was scheduling for police officers to finalize the new police general orders approved in coordination with the Ferguson city government, citizens of Ferguson and the Department of Justice. Second the FCRB asked that members of the FCRB be allowed to attend the training. While the FPC released a training schedule, the FPC initially did not respond to the FCRB's request to attend the scheduled training. When asked about the request the FPC said the training was not appropriate for members of the public to attend because sometimes officers say things during the training that can be misconstrued. He also said he was refusing the request because he was concerned that if the FCRB attended the training his officers may be reluctant to ask probing questions during the training sessions.

The second issue is the notification process for the Ferguson police citizen hiring panel. In the “draft” Memorandum of Understanding the agreement states that the FCRB will be given 14 days notification, if possible, so that the FCRB can attend the panels as required in the Ferguson City ordinance. There have been three citizen panels in the last 60 days and for the three panels the FCRB has been given five business days, two business days and three hours notification respectfully of the need to convene a panel. When asked about the failure to comply with the agreement, the FPC believed the words “if possible” gave him the leeway to schedule the panels as he needed to it without supplying justification to the FCRB for any deviation. Furthermore, he noted the FCRB always had the choice of letting the FPC know they were not available if short notice was given. So, in effect all the burden is placed on the FCRB and none on the police department if a deviation from the agreement is needed.

Finally, prior to the pandemic the FCRB was told it would not be allowed access to police discipline records despite this being an integral part of the complaint review process. The FCRB then sent a formal request to the city to have access to all material available to the investigating officer when reviewing complaint evidence. As a result of this request, the FCRB was informed by the consent decree coordinator, that the city had reversed course and now would be allowing the FCRB to review the discipline records for any officers named in a citizen complaint.

The FCRB has had three closed sessions since the beginning of August and the process has changed each time. At the first meeting, the FCRB was informed by the consent decree coordinator that the FPC had agreed to give her the discipline records prior to a FCRB closed session meeting and that she would release the files to the FCRB to review once the FCRB had completed its review process and then needed the files to finalize its recommendations. The compromise would allow the city to confirm the FCRB was not using the police officer’s discipline record as a basis for determining fault in a citizen complaint and would also allow the FCRB to complete its review and recommendation process without having to schedule an additional in-person closed session meeting. During the second closed session meeting, the FCRB was told by the consent decree coordinator, that the FPC now required the FCRB to request the discipline files in writing prior to the closed session for the FPD to release the files. The FCRB then sent a request in writing to the FPC via the consent decree coordinator, to have the discipline files for the three cases it was reviewing available for the next session. However,

during the third session the FCRB was told by the consent decree coordinator, that the FPC was not comfortable releasing the files without official confirmation that the review process had been completed. He later clarified that this meant that he had to be formally notified that a vote to accept or reject the investigator's findings had taken place. The FCRB then asked for a compromise that would allow FCRB access to the discipline records for the each closed session it was working to prevent the FCRB from having to hold an additional in-person session just to finalize the recommendation. Currently, the city must have a representative available to deliver, collect and transport the investigation files to each session so it would be no additional burden to the city to have a representative with a copy of the discipline files in a sealed envelope so that the FCRB can complete its review and recommendations in the same session. The FPC refused and recommended placing the discipline files in the FCRB files at city hall at his convenience. This shows lack of trust and that the FPC does not respect the time and wellbeing of the all-volunteer FCRB members. This information was shared with the City Manager and no response was received.

The FPC has established a pattern of behavior of ignoring agreements with the FCRB without supplying justification for deviating from agreed processes and procedures. This will become even more important as the FCRB is drafting a response to the Memorandum of Understanding with the FPD to formalize the relationship with the police department. The concern of the FCRB is that the city is going to paint a rosy picture of the current process, allow the FPC to continue stonewalling the FCRB's efforts to increase the transparency of the FPD and not address the issues that continue to present barriers to the FCRB providing proper oversight of the FPD.

Respectfully,

Eugene N. Franks Jr.

Eugene N. Franks Jr.
CDR (Ret.), USN, PMP
Chairman FCRB