

[ANNOTATED BY ACLU- THE PROPOSED STIPULATED ORDER FILED BY THE PARTIES ON AUGUST 29, 2002, PROPOSES TO TERMINATE ALL TEXT WITH STRIKE-THROUGH.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff

v.

CIVIL NO. 97-0354

CITY OF PITTSBURGH, PITTSBURGH
BUREAU OF POLICE, and DEPARTMENT
OF PUBLIC SAFETY, Defendants.

CONSENT DECREE

INTRODUCTION

1. The United States brings this action to enforce Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §§ 14141. The United States alleges that there is a pattern or practice of conduct by law enforcement officers of the Pittsburgh Bureau of Police that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

2. The defendants in this action, collectively hereinafter the "City", are the City of Pittsburgh, a municipality in the Commonwealth of Pennsylvania; the Pittsburgh Bureau of Police ("PBP"), a law enforcement agency operated by the City of Pittsburgh; and the Department of Public Safety ("DPS"), a government agency operated by the City of Pittsburgh, which oversees the PBP and other agencies operated for the safety of persons in Pittsburgh.

3. This Court has jurisdiction of this action under 28 U.S.C. §§§§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. §§ 14141. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §§ 1391.

4. The City denies any and all allegations advanced by the United States. The City acknowledges that allegations have been advanced against the City relating to the City's management systems for training, misconduct investigations, supervision, and discipline. The City denies such allegations, however, the

parties agree that the manner and means for avoiding such claims is to achieve and maintain the best available practices and procedures for police management.

5. The parties enter into this Decree jointly and for the exclusive purpose of avoiding the risks and burdens of litigation.

6. This Consent Decree resolves all claims in the United States' Complaint under 42 U.S.C. §§ 14141, and resolves any claims the United States may have regarding a pattern or practice of racial discrimination that could have been raised at this time under 42 U.S.C. §§ 14141 or 42 U.S.C. §§ 3789d.

7. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement or evidence of liability of the City under 42 U.S.C. §§ 14141 or 42 U.S.C. §§ 3789d, nor shall the Consent Decree constitute or be construed as an acknowledgment, agreement, admission, statement or evidence of any violation of applicable law or of the existence of a pattern or practice of conduct by law enforcement officers of the City that deprives persons of rights, privileges, and immunities secured or protected by the Constitution and laws of the United States. Nothing in this Consent Decree shall constitute or be construed as an acknowledgment, agreement, admission, statement or evidence that the management system and/or systems employed by the City prior to execution of this Consent Decree were in any manner inadequate, unconstitutional or constituted deliberate indifference of the City within any context, and in particular, within the context of 42 U.S.C. §§ 1983 or 42 U.S.C. §§ 14141. Nothing in this Consent Decree shall be construed to impair the right of any person or organization to seek relief against the City for its conduct or the conduct of its law enforcement officers. Nothing in this Decree is intended to alter the collective bargaining agreement between the City and the Fraternal Order of Police, Fort Pitt Lodge No. 1.

8. The City hereby reaffirms and acknowledges its obligation to discourage activity by City law enforcement officers which deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.

9. This Consent Decree shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

~~10. The City, by and through its officials, agents, employees, and successors are enjoined from and shall not engage in a pattern or practice of conduct by law enforcement officers of the PBP that deprives persons of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States.~~

11. The following definitions apply to this Decree:

- a. The term "body cavity search" means any search involving the visual inspection or the internal physical examination of body cavities or organs such as the stomach cavity.
- b. The term "complaint history" means a summary of all misconduct complaints filed against a particular officer since 1986 and a summary, with a narrative description of the allegations, of lawsuits filed involving the officer as maintained in the automated early warning system described in Paragraph 12 below.
- c. The terms "document" and "record" shall be interpreted to include "writings and recordings" as defined by Federal Rules of Evidence Rule 1001(1).
- d. The term "field training officer" or "FTO" means an experienced police officer whose responsibilities include providing on the job training and supervision of probationary police officers and continual training of all police officers.
- e. The terms "police officer" or "officer" means any law enforcement officer employed by the PBP, including supervisors and senior supervisors.
- f. The term "serious injury" means any injury that results in death or that the City has reason to know requires or results in professional medical care or treatment.
- g. The term "strip search" means any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of genitals, anus, breasts, buttocks, or undergarments.
- h. The terms "supervisor" and "senior supervisor" mean a management or non-management police officer with oversight responsibility for other officers. The term "supervisor" shall include sergeants, lieutenants, and other officers with similar responsibilities. The term "senior supervisor" includes commanders, assistant chiefs, deputy chiefs, the Chief, and other officers with similar responsibilities.
- i. The term "zone" means a geographic subdivision of the City of Pittsburgh used by the PBP to delineate jurisdiction among police stations.

MANAGEMENT AND SUPERVISION

12. The United States acknowledges that the City has taken steps to establish a database containing relevant information about its officers, as well as a statistical model to identify and modify the behavior of problem officers (also known as an "early warning system"). The City shall have an automated early warning system in place and operational within twelve (12) months of entry of this Decree.

- a. The City's automated early warning system shall collect and record, at a minimum, the following information about an officer: officer name and badge number; citizen complaints, including textual descriptions of the allegations and all fields entered by the City of Pittsburgh Office of Municipal Investigations ("OMI") described in Paragraph 44; hit and non-hit officer-involved shootings; commendations and other indicia of positive performance; discipline imposed and related file numbers; all training, reassignments, transfers and mandatory counseling; status of any administrative appeals or grievances; a detailed description of all criminal investigations of possible officer misconduct; a detailed description of all civil or administrative claims filed against the City arising from PBP operations; a description of all other civil claims or suits that the officer is a named party to involving allegations of untruthfulness, physical force, racial bias, or domestic violence; a description of all lawsuits filed against the City, the PBP, or its officers arising from PBP operations; all arrests with the location of each arrest,

the race of each arrestee, and the code violation(s); and searches and seizures as documented in the search and seizure reports described in Paragraph 15; use of force as documented in the use of force reports described in Paragraph 15; and traffic stop information documented in the reports described in Paragraph 16.

b. The City's automated early warning system shall have, at a minimum, the capability to retrieve information in the following categories: individual officer; squad, zone, shift, or special unit; arrests by officer(s) and types of arrests to determine the number of times a particular officer or groups of officers have filed discretionary charges of resisting arrest, disorderly conduct, public intoxication, or interfering with the administration of justice.

c. Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP. Data regarding an officer that is removed from the automated early warning system shall be maintained in an archive indefinitely. The City shall input all data from the OMI database and all other available data into the automated early warning system for the three years prior to the entry of this Decree.

d. Within four (4) months of the entry of this Decree, the City shall develop a written protocol governing the use of the automated early warning system. This protocol shall specify, at a minimum: (i) the numbers and types of incidents per officer requiring review by senior supervisors, the frequency of these reviews, and the follow-up actions to be taken by PBP senior supervisors based on information in the automated early warning system (including meeting with the officer and recommending appropriate remedial training, counseling, transfer, or re-assignment); (ii) re-training and re-certification requirements; (iii) confidentiality and security provisions; and (iv) quality assurance checks of data input. The City shall provide this protocol to the United States for review and approval at least 30 days prior to its implementation. If the parties are unable to agree on a written protocol, the auditor described in Paragraph 70 shall have final authority to determine the protocol.

e. Until full implementation of the automated early warning system, the City shall continue to identify for review all officers with three or more complaints of misconduct. Such review shall be documented and result, where appropriate, in re-training, counseling, transfer or reassignment.

~~13. The City shall develop and implement a use of force policy that is in compliance with applicable law and current professional standards. Prior to the implementation of such policy, the City shall provide the United States an opportunity to review the proposed policy and provide comments.~~

~~14. PBP officers shall conduct strip searches in compliance with applicable law and current professional standards. Specifically, PBP officers shall conduct strip searches only when authorized by a supervisor or senior supervisor and then only if specially trained to conduct strip searches. Such strip searches shall be conducted in conformance with hygienic procedures and practices, in a room specially designated for strip searches, by the fewest number of personnel necessary all of whom must be of the same sex as the person searched, and under conditions that provide privacy from all but those authorized to conduct the search. Field strip searches of persons in custody shall be conducted only in exigent circumstances where the life of officers or others may be at risk, and only in privacy with the explicit approval of a supervisor or senior supervisor.~~

15. The City shall develop, and require all officers to complete, a written report each time a PBP officer (a) exercises a use of force; (b) performs a warrantless search (excluding searches incident to arrests, frisks, and pat downs); (c) performs a body cavity search or strip search; and (d) conducts any warrantless seizure of property (excluding towing vehicles). The record shall include the officer's name and badge number; description of incident; the specific type of use of force, search or seizure; description of any injuries and medical/hospital data; name, race and gender of all persons involved in the use of force, search or seizure; names and contact information for all witnesses; any weapons, evidence, or contraband found during the search; whether the individual involved in the use of force, search or seizure was arrested or cited, and if so, the charges; date, time, and location of the incident and search or seizure; and the signatures of the officer and his immediate supervisor.

16. The City shall develop, and require all officers to complete, a written report each time a PBP officer makes a traffic stop. The record shall include the officer's name and badge number; the race and gender of the individual searched or stopped; approximate time and location; whether the stop involved a frisk or pat-down search; any weapons, evidence, or contraband found during the search; whether the individual involved was arrested or cited, and if so, the charges.

17. Data captured on the reports described above in Paragraphs 15 and 16 shall be entered into the City's automated early warning system. Hard copies of these reports shall be maintained by OMI.

18. The City shall conduct regular audits and reviews of the uses of force by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of preventing the use of excessive force. Such actions shall include, at a minimum:

a. Each use of force report prepared as required by Paragraph 15 above shall be reviewed by the reporting officer's chain of command within one week of the use of force. Senior supervisors shall refer to OMI for investigation all incidents where a use of force report reasonably indicates a possible violation of PBP policies; OMI shall investigate all such incidents. OMI shall also investigate, and issue findings regarding the appropriateness of, all incidents resulting in serious injury where a use of force report was required to be completed.

~~b. PBP senior supervisors shall analyze use of force data from the automated early warning system on a quarterly, cumulative basis to detect trends in PBP use of force. The analysis shall include a review by officer, by injury, and by type of force used. PBP senior supervisors shall act on this data to ensure that PBP officers are using appropriate types and amounts of force.~~

19. The City shall conduct regular audits and reviews of search and seizure practices by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of preventing improper search and seizure practices by their officers. Such actions shall include, at a minimum:

a. Each search and seizure report prepared as required by Paragraph 15 above shall be reviewed by the reporting officer's chain of command within one week of the search or seizure. Senior supervisors

shall refer to OMI for investigation all incidents where a search and seizure report reasonably indicates a probable violation of PBP policies; OMI shall investigate all such incidents. OMI shall also investigate, and issue findings regarding the appropriateness of, all strip searches, all body cavity searches, and all incidents resulting in serious injury where a search and seizure report was required to be completed.

~~b. PBP senior supervisors shall analyze search and seizure data from the automated early warning system on a quarterly, cumulative basis to detect trends in PBP search or seizure practices. The analysis shall include a review by officer, by injury, and by type of search or seizure used. PBP senior supervisors shall act on this data to ensure that PBP officers are using appropriate types and methods of searches and seizures.~~

~~20. The City shall conduct regular audits and reviews of potential racial bias, including use of racial epithets, by all officers. PBP supervisors and senior supervisors shall have an affirmative obligation to act on this data with the goal of eliminating actions that reflect racial bias by officers. Such actions shall include, at a minimum:~~

~~a. Each citizen or other complaint of racial bias by officers shall be reviewed by the accused officer's chain of command within one week of completion of the OMI investigation.~~

~~b. PBP senior supervisors shall analyze racial bias and racial epithet data from the automated early warning system on a quarterly, cumulative basis to detect trends of possible PBP racial bias or racial epithets. The analysis should include: a review by officer, by use of force reports and complaints, search and seizure reports and complaints, traffic stops, discretionary arrests (resisting arrest, disorderly conduct, public intoxication, or interfering with the administration of justice), racial epithets, or other indicators of possible racial bias.~~

21. After evaluating the most recent quarterly reports described in Paragraphs 18(b), 19(b), 20(b) above and evaluating an officer's complaint history, the City shall, at a minimum:

~~a. Require and provide appropriate remedial training, assignment to an FTO, counseling, transfer, and/or reassignment to all officers: (i) as required in the protocol developed in Paragraph 12(d); (ii) who have had three (3) or more complaints containing allegations of similar types of misconduct (e.g., verbal abuse, excessive force, improper search and seizure) within the last two years, whether the complaints are sustained or not; and (iii) who have had five or more complaints of any kind within the last two years, whether the complaints are sustained or not. Such training, counseling, transfer, and/or reassignment shall address the type of misconduct alleged.~~

b. Impose appropriate discipline on each officer against whom a complaint is sustained as soon as possible after the OMI disposition. Except where the discipline is termination, remedial training or counseling shall also be imposed on each officer against whom a complaint is sustained. Where appropriate, transfer and reassignment shall also be imposed on each officer against whom a complaint is sustained. Where appropriate, remedial training, counseling, transfer, or reassignment shall be required of each officer where a complaint is disposed of by a disposition other than sustained.

c. For each officer against whom a complaint is sustained, consider an officer's prior record of complaints and the immediate misconduct when determining discipline. Prior remedial training

counseling, discipline, transfer, or reassignment for allegations of related misconduct shall be used in assessing the severity of the discipline imposed. Each disciplinary recommendation shall include the name of the officer, the date(s) discipline was imposed, any OMI file number or other related cross-references, and a detailed description of the factors considered in determining the particular penalty selected.

22. Within 60 days of the entry of this Decree, the City shall include in the PBP's central personnel files and OMI files an officer's disciplinary actions as described in Paragraph 21(c), and all underlying and supporting documentation. Each commander shall continue to maintain a zone personnel file on each officer under his or her command. This zone personnel file shall include all disciplinary action reports ("DARs") and all OMI and non-OMI complaints against the officer.

~~23. The United States recognizes that the PBP has developed a program to conduct annual performance evaluations. The PBP shall require annual performance evaluations of all officers, supervisors, and senior supervisors. The performance evaluation shall be in writing and shall fully explain the weight and substance of all factors used to evaluate an officer. At a minimum~~

~~a. Supervisors and senior supervisors shall be evaluated on their ability to monitor, deter, and appropriately address misconduct by officers they supervise; and~~

~~b. The PBP shall evaluate each officer on the basis of his or her complaint history, focusing on patterns of misconduct.~~

~~24. In addition to the Civil Service guidelines, the performance evaluations shall be considered as one of the factors in making promotions.~~

~~25. The City shall continue to provide an employee assistance program ("EAP"). This program shall at a minimum provide counseling and stress management services to officers. This program shall be staffed by sufficient licensed and certified counselors who are trained and experienced in addressing psychological and emotional problems common to police officers. The City shall publicize the availability of these services to all officers. The City shall authorize officers to attend counseling without any adverse actions taken against them. The City shall refer officers to, but not require their participation in, EAP counseling where the City believes an officer's job performance may benefit from EAP services. These provisions are separate from any counseling the City may require as part of its "Track III" mandatory counseling program.~~

26. The City shall require all officers to notify the City when the officers have been arrested, criminally charged, or named as a party in any civil suit involving allegations of untruthfulness, physical force, racial bias, or domestic violence. The City and PBP management shall monitor all such civil litigation and all criminal prosecutions of officers.

~~a. PBP shall discipline and appropriately re-train, counsel, re-assign, or transfer officers found guilty or~~

~~liable by a court or jury.~~

b. OMI shall independently investigate and make findings on all incidents giving rise to the litigation or prosecution where the court or jury does not find the officer guilty or liable, even when the complaint is withdrawn or settled.

~~c. Such litigation and investigations shall be reflected in the early warning system described in Paragraph 12 and an officer's complaint history.~~

27. OMI shall monitor all criminal proceedings containing allegations of false arrests or improper searches or seizures by PBP officers. Officers determined by a court to have falsely arrested an individual or conducted an improper search or seizure shall be disciplined, retrained, counseled, transferred, or reassigned, as the circumstances warrant. Such litigation and investigations, as well as the management response, shall be documented and reflected in the early warning system described in Paragraph 12 and an officer's complaint history.

~~28. PBP shall continue to discipline, re-train, counsel, transfer, or reassign officers who are the subject of civil litigation settled by the City prior to adjudication, as the circumstances and OMI investigation warrant.~~

~~29. The City shall continue to provide its officers with access to a legal advisor twenty-four hours per day, seven days per week. The legal advisor shall be an attorney licensed in the Commonwealth of Pennsylvania. This legal advisor shall provide officers with regular training and counseling on legal issues and requirements, including the use of force, searches and seizures, and racial bias.~~

~~30. The City shall develop and implement a rotation schedule that ensures that officers regularly are supervised by and work with different officers.~~

COMMUNITY RELATIONSHIPS

~~31. The United States recognizes that PBP officer representatives attend meetings of community groups within their zone. The PBP shall continue to make every effort to participate in these meetings, including meetings organized by or oriented towards minorities.~~

32. OMI shall continue to use television to inform the public about OMI's function. OMI representatives shall continue to attend community meetings to increase public awareness of OMI. The City shall continue to publish, and shall distribute at various places throughout the city, pamphlets describing the OMI complaint process.

TRAINING

~~33. The United States recognizes that the PBP has provided training to all officers in cultural diversity. The City shall continue to provide all officers with annual training by qualified instructors that includes, at a minimum, training on how to relate to persons from different racial, ethnic, and religious groups, and persons of the opposite sex. The City shall also provide training in communications skills and avoiding improper racial, ethnic, and sexual communications.~~

~~34. The PBP shall monitor complaints of police misconduct to gauge the effectiveness of training and to detect the need for new or further training.~~

~~35. The PBP shall train all officers in the use of verbal de-escalation techniques as an alternative to the use of force, and shall incorporate such techniques into all other training that implicates the use of force. Such training shall include specific examples of situations that do not require the use of force, but may be commonly mishandled, resulting in force being used (for example, individuals verbally challenging an officer's authority or asking for an officer's identifying information).~~

~~36. The PBP shall train all officers in integrity and ethics, cultural diversity, and verbal de-escalation techniques at the beginning of the academy training curriculum to serve as a foundation for all other classes.~~

~~37. The PBP shall train all officers in integrity, ethics, the PBP's missions and values statements, and cultural diversity. This training shall occur at least annually and shall cover the duties of truthfulness and reporting misconduct by fellow officers, the importance of avoiding misconduct, and professionalism.~~

38. The PBP shall instruct all officers in the OMI complaint process and their obligation to cooperate with OMI investigations.

~~39. The City shall encourage highly qualified candidates to apply for instructor and FTO positions. The City shall establish formal eligibility criteria for instructors and FTOs based on their performance evaluations and previous superior performance as police officers. The City shall disqualify any instructor or FTO, or candidate for those positions, with a poor disciplinary record or complaint history.~~

~~40. The City shall ensure that all training instructors and FTOs receive adequate training to enable them to carry out their duties. Training instructors and FTOs shall be required to maintain, and demonstrate on a regular basis, their proficiency in their areas of instruction. The City shall maintain current documentation of instructors' and FTOs' proficiency and training.~~

~~41. The City shall maintain written records documenting all training of officers. At a minimum, these records shall reflect the name of the officer, the dates of the training, the reasons for any mandatory training (including any OMI file number or other related cross references), the general subject matter of~~

~~the training (including lesson plans where available), and whether the training was completed satisfactorily. (except that the City shall continue to maintain: training records of OMI investigators; and training records of officers who received training based on OMI complaints).~~

~~42. The City shall maintain written records documenting all mandatory counseling of officers. At a minimum, these records shall reflect the name of the officer, the reasons for the referral (including any OMI file number or other related cross references), the general subject matter of the mandatory counseling and whether the mandatory counseling sessions were attended. (except that the City shall continue to document and maintain all mandatory counseling of officers based on OMI complaints).~~

~~43. The City shall provide all senior supervisors with mandatory annual supervisory and leadership training which includes command accountability, integrity, and cultural diversity.~~

COMPLAINT AND INVESTIGATION PROCESS

Quality Assurance

44. OMI shall continue to enter all complaints and investigations of misconduct into a computerized database recording incidents occurring since 1986. This database, in addition to the requirements described in Paragraph 12, shall include the file number, the names of all involved officers, contact information for all officers and complainants, the race and gender of all involved officers and complainants, a textual description of the allegations, significant dates, the street address and zone of the incident, and the disposition of the complaint. When the City prepares a complaint history from the automated early warning system, it shall include, at a minimum, the officer's name, the OMI file number, the date of the incident, a textual description of the allegations, and the disposition. The actual investigation files shall be maintained for at least ten years from the date of the disposition of the complaint; except for investigation files disposed as "unfounded", which shall be kept for at least one year. All information in the OMI database shall be maintained during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP. Data regarding an officer that is removed from the OMI database shall be maintained in an archive indefinitely.

45. OMI files and records relating to a particular officer shall be available to personnel within that officer's chain of command who are responsible for that officer's training, counseling, or discipline.

46. OMI shall continue to maintain a manual detailing its policies and investigative procedures. The City shall ensure that all OMI investigators receive adequate training in these policies and procedures to enable them to carry out their duties, including training in proper techniques for questioning individuals. The PBP shall provide all OMI civilian investigators with police academy training and re-training in PBP policies and procedures including but not limited to, use of force, searches and seizures, pursuits, transporting individuals in custody, restraints, arrests (including discretionary arrests), traffic stops, racial

bias, report writing, and other relevant policies and procedures; investigative and interview techniques; cultural sensitivity; ethics, integrity, professionalism and the missions and values statement. Such training shall be identical to that received by OMI police investigators. Investigators shall be evaluated based on their competency in following the policies and procedures for investigations. The City shall make the OMI manual of policies and procedures available for inspection by the public and officers at OMI headquarters and at each PBP facility.

Filing a Complaint

47. Complainants may initiate a complaint against an officer either in person or by telephone, mail, or facsimile transmission. Complainants shall not be required to file a complaint "form" to initiate an investigation. Complainants may be required to provide information available to them to enable OMI to identify the police officer(s) involved and the incident giving rise to the complaint.

48. A complainant may file an anonymous verbal or written complaint. OMI shall accept and investigate complaints filed by individuals other than the alleged victim of misconduct (third-party complaints). OMI shall ask anonymous and third-party complainants for corroborating evidence. OMI shall investigate anonymous complaints to the fullest extent possible to determine whether the complaint is corroborated. The City shall continue to require officers to report misconduct by other officers. Misconduct by fellow officers shall be reported directly to OMI or through an officer's chain of command.

49. OMI shall not close an investigation without rendering a disposition solely because the complainant withdraws the complaint or is unavailable to make a statement. OMI shall investigate such complaints to the fullest extent possible to determine whether the complaint is corroborated.

50. OMI offices shall be relocated to other suitable City office space and shall be separate from any building occupied by PBP personnel. This new facility shall be convenient to public transportation. OMI shall publicize the relocation of its offices.

51. No complainant shall be required to go to a police station, any police building or OMI office to file a complaint or provide a statement. The City shall hold quarterly open meetings in rotating zones to educate the public about proper police functions; police misconduct, including excessive use of force, improper searches and seizures; and the proper methods for filing complaints against police officers. The City shall require OMI personnel to receive complaints at these quarterly open meetings. At least one week before such quarterly meetings, the City shall publish the telephone number of OMI and the time and location of each quarterly meeting in a prominent location in all City buildings. Complaints received by OMI personnel at such meetings may relate to any misconduct within the jurisdiction of OMI and shall be treated like any other OMI complaint.

52. OMI shall notify the senior supervisors of an accused officer whenever a complaint has been filed against that officer alleging use of excessive force, improper search or seizure, or racial bias.

53. OMI shall be responsible for investigating all complaints. OMI shall monitor and be responsible for the progress and completeness of all investigations, including those it delegates for investigation. There shall be no discretion by any OMI staff to not accept a complaint. The City shall not permit any PBP officer to attempt to settle an OMI complaint through informal means without prior notice to, and approval by, OMI. OMI shall document all officer-initiated settlements of citizen complaints, and such documentation shall become part of the permanent OMI file.

54. PBP officers shall continue to be required to provide their name and badge number to any individual who requests it. Refusal to provide this identifying information shall result in disciplinary action against the officer.

Investigating Misconduct

55. If complainants or witnesses are unavailable to be interviewed at OMI offices during business hours, OMI investigators shall offer to interview them at alternate sites and times, including at residences or places of business, and during reasonable weekend or after business hours. OMI investigators shall provide reasonable notice before all interviews.

56. All interviews of complainants, involved officers, and witnesses shall be tape-recorded and transcribed. These tapes shall be maintained and kept as part of the OMI investigative file. If a complainant or witness refuses to be tape-recorded, then OMI shall prepare a written narrative of the statement to be signed by the complainant or witness. OMI shall not conduct group interviews. OMI shall not accept a "special report" or written statement from any officer in lieu of an interview. OMI investigators shall have the authority to question all interviewees and to challenge their version of the facts.

57. In order to interview officers, OMI investigators shall obtain, and the PBP shall provide full access to, information from the automated early warning system and the following information regarding the accused officer and officer witnesses: performance evaluations, assignment history, and training/qualification records.

58. Supervisors and senior supervisors on the scene of incidents that result in a misconduct complaint shall be interviewed. Supervisors and senior supervisors shall be required to detail their handling of the situation during and after the alleged incident and their observations of the complainant and accused

officers.

59. OMI investigators shall canvass the scene of an incident for witnesses as soon as possible after receiving a complaint of misconduct where the evidence on hand is insufficient to conduct a complete investigation of the complaint and where canvassing the scene could reasonably yield additional information.

60. OMI shall review reports of firearm discharges prepared by the PBP and reports prepared pursuant to a coroner's inquest regarding all deaths caused by an officer and make a finding about whether any misconduct occurred during the incident. The City shall appropriately discipline, re-train, counsel, transfer, or re-assign officers involved in such incidents, as the circumstances and OMI finding warrant.

61. OMI shall itself aggressively collect all appropriate evidence to document each incident of potential misconduct, or any injury of a complainant, including medical records and photographs of injuries. OMI shall not require complainants or other witnesses to provide evidence that OMI itself can obtain.

62. OMI shall assess the propriety of all officer conduct during an incident it investigates. If during the course of an OMI investigation, the OMI investigator has reason to believe that misconduct other than that alleged by the complainant has occurred, OMI must investigate and make findings with respect to such misconduct. If, during the course of its investigation, OMI has reason to inquire whether an officer had the requisite probable cause for any stop, search or seizure, or arrest relevant to the complaint under investigation, OMI shall rely on any probable cause determinations made by a court of competent jurisdiction. If OMI finds that no court of competent jurisdiction has made a probable cause determination, OMI shall request the district attorney's office to make the probable cause determination.

63. At the conclusion of each investigation, OMI shall issue a final report describing the alleged misconduct, any other misconduct identified during the course of the investigation, a summary of all evidence gathered during the investigation (including an explanation for the absence of any evidence), documentation of all credibility determinations, OMI's findings with respect to all potential misconduct, the accused officer's complaint history, and the analysis supporting OMI's finding. The final report shall be made a part of the investigation file.

64. The City shall provide OMI with sufficient staff, funds, and resources to perform the functions required by this Decree. The City shall encourage highly qualified candidates to become OMI police investigators. The City shall establish formal eligibility criteria for OMI police investigators based on their previous superior performance as police officers, including management potential. The City shall disqualify OMI police investigator candidates with poor disciplinary records and complaint histories.

OMI police investigators shall serve terms in OMI not exceeding three years.

Adjudicating the Complaint

65. OMI shall continue to make findings based on a "preponderance of the evidence" standard.

66. There shall be no automatic preference of an officer's statement over a complainant's statement. In making credibility determinations, OMI investigators shall consider the officer's history of complaints (including those with dispositions other than "sustained") and disciplinary records and the complainant's criminal history for crimes involving untruthfulness. Such credibility determinations shall be explained fully in writing.

67. Final authority and responsibility for determining the disposition of a complaint shall rest with OMI. The accused officers' supervisors and senior supervisors shall not have the authority to modify or reverse any OMI disposition of a complaint.

68. OMI shall change the classification of "Not Sustained" to "Not Resolved."

69. OMI shall continue to issue quarterly statistical report of investigations filed with OMI. Such reports shall include each investigation's significant dates, general allegations, disposition, and any resulting discipline.

AUDITOR

70. Within 90 days after the entry of this Decree, the City shall appoint an independent auditor who shall report on a quarterly basis the City's compliance with each provision of this Consent Decree. The auditor shall be an agent of the Court and shall not be retained by any current or future litigant or claimant in a claim or suit against the City or its officers. The auditor shall not issue statements or make findings with regard to any act or omission of PBP, OMI, or the City, except as required by the terms of this Decree. The auditor may testify in court regarding any matter relating to the implementation, enforcement, or dissolution of this Decree. The auditor shall be acceptable to both parties. If the parties are unable to agree on an auditor, each party shall submit two names, along with resumes or curricula vitae and cost proposals, to the Court and the Court shall appoint the auditor from among the names submitted. The City shall bear all costs of the auditor.

71. The auditor shall perform quality assurance checks of OMI investigations. The City shall provide the auditor with full access to all OMI staff and records (including databases, files, and quarterly

statistical summaries), the automated early warning system described in Paragraph 12, all information regarding officer use of force and searches and seizures (including the use of force reports required by Paragraph 15, and the search and seizure reports required by paragraph 15), all information required in Paragraph 16, and all relevant City manuals of policies and procedures that the auditor deems necessary to fulfill his or her duties, as defined below. The auditor shall review and evaluate the following information, and issue a quarterly report to the parties and the Court describing the review and analysis:

- a. All OMI final reports as described in Paragraph 63, and all remedial training and disciplinary records described in Paragraphs 41 and 21(c). The City shall forward all OMI final reports and all disciplinary and training records to the auditor immediately upon their completion.
- b. The substance and timeliness of at least 50% of all OMI investigations completed during each quarter of the City's fiscal year.
- c. Statistical information on the number and types of complaints of PBP misconduct, the timeliness of the investigations, the disposition, and any remedial training counseling discipline, transfers, or reassignments.
- d. Discipline, remedial training mandatory counseling transfers, and reassignments actually imposed as a result of each complaint.
- e. ~~Officer use of force, searches and seizures, and traffic stops.~~ *[NOTE: While the proposed Stipulated Order does not identify this subsection for termination (see ¶1), ¶3 indicates that the Auditor "shall continue to review and report on all information" only in ¶¶71(a) - (d). It expressly does not include ¶71(e).]*

72. OMI shall re-open for further investigation all investigations the auditor determines to be incomplete. The auditor shall provide written instructions for completing the investigation.

73. Ninety (90) days following entry of this Decree and every six (6) months thereafter until this Decree is terminated, the City shall file with the Court and the auditor, with a copy to the United States, a status report delineating all steps taken during the reporting period to comply with each provision of this Decree. The City shall state whether any internal or external audits of the PBP or DPS functions that relate to the PBP have been performed and will summarize the subject matter and results of such reports. The City shall provide the United States with copies of these reports or audits upon request.

74. The City shall maintain all records necessary to document their compliance with all terms of this Decree. The City shall also maintain any and all records required by or developed under this Consent Decree.

75. During all times while the Court maintains jurisdiction over this action, the auditor shall have unrestricted access to and, upon request made to the City Solicitor, receive copies of any documents and any databases relating to the implementation of this Decree. The auditor shall, with 48 hour prior written notice to the City Solicitor, have access to all staff and facilities as necessary to monitor the

City's compliance with the terms of this Decree.

76. During all times while the Court maintains jurisdiction over this action, the United States shall have access to and, upon request made to the City Solicitor, receive copies of any documents and any databases necessary to evaluate compliance with this Decree. The United States shall provide written notice to the City Solicitor, to obtain access to all staff and facilities as necessary to evaluate the City's compliance with the terms of this Decree. Such access shall be provided in a reasonable time, place, and manner.

COMPLIANCE

77. The City shall immediately provide copies of, and explain the terms of this Decree to all current and future officers, OMI employees, and all DPS employees with oversight or responsibility for PBP operations, in order to ensure that they understand the requirements of this Decree and the necessity for its strict compliance. All such individuals shall sign a statement indicating that they have read and understand this Decree and acknowledge receiving an individual copy of the Decree. These statements shall be retained by the City.

78. Except where otherwise specifically indicated, the City shall implement all provisions of this Decree within 90 days after entry of this Decree.

79. The Court shall retain jurisdiction of this action for all purposes during the term of this Decree. At any time after five (5) years from the date of entry of this Decree, and after substantial compliance has been maintained for no less than two years, the City may move to terminate this Decree. Any motion to terminate must detail all aspects of the City's compliance with each provision of this Decree, supported by affidavits and supporting documentation. The United States shall have ninety (90) days from receipt of the City's motion to terminate to file its objection(s). In the event the United States files objections to the City's motion, the Decree shall remain in effect at least until entry of a court order disposing of the motion and thereafter as dictated by the court's order. In the event the United States objects to termination of the Decree, the Court shall hold a hearing at which both parties may present evidence, before ruling on the City's motion to terminate. At the hearing, the burden shall be on the City to demonstrate that it has fully and faithfully implemented all provisions of this Consent Decree and maintained substantial compliance for at least two years.

MODIFICATIONS

80. No changes, modifications, or amendments of this Consent Decree shall be effective unless they are ordered by the Court.

CORRESPONDENCE

81. All correspondence with the City concerning this Consent Decree shall be addressed to:

City Solicitor
City of Pittsburgh Department of Law
313 City County Building
414 Grant Street
Pittsburgh, PA 15219

SEVERABILITY

82. The parties agree to defend the provisions of this Consent Decree. The parties shall notify each other of any court challenge to this Decree. In the event any provision of this Consent Decree is challenged in any local or state court, removal to a federal court shall be sought.

83. In the event any provision of this Consent Decree is declared invalid for any reason by a Court of competent jurisdiction, said finding shall not affect the remaining provisions of this Decree.

We consent and seek entry of this Decree:

For the United States of America:

ISABELLE KATZ PINZLER, Acting Assistant Attorney General, Civil Rights Division
FREDERICK W. THIEMAN, United States Attorney, Western District of Pennsylvania
(PA ID #26507)

STEVEN H. ROSENBAUM, Chief, Special Litigation Section, Civil Rights Division
AMY R. HAY, Chief, Civil Division, U.S. Attorney's Office, Western District of Pennsylvania
(PA ID #36623)

633 U.S. Post Office and
Courthouse
7th and Grant Streets
Pittsburgh, PA 15219
(412) 644-3500

PHYLLIS COHEN

ROBERT MOOSSY
KEN NAKATA (PA ID #54400)
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
P.O. Box 66400
Washington, D.C. 20035-6400
(202) 514-6255

For the Defendants:

JACQUELINE R. MORROW
City Solicitor
JOHN SHORALL
Assistant City Solicitor
City of Pittsburgh
Department of Law
313 City County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2010

SO ORDERED this _____ day of _____, 1997.

United States District Court Judge