

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	*	Docket No. 12-1924
	*	
Plaintiff,	*	
	*	
VS	*	May 19, 2016
	*	
CITY OF NEW ORLEANS,	*	
	*	
Defendant.	*	Section "E"

REPORTER'S OFFICIAL TRANSCRIPT OF THE
PUBLIC HEARING
BEFORE THE HONORABLE SUSIE MORGAN,
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the United States:	Theodore Carter Jonas Geissler
For the City of New Orleans:	Churita Hansell
For the NOPD:	Michael Harrison Tim Averill Arlinda Westbrook Kevin Burns, Jr. John Helou Regina Williams Christina Watson David Barnes Michael McCleary Travis Ward Chris Mark Chris Goodley
For the Monitoring Team:	Jonathan Aronie Chet Epperson Dennis Nowicki

REPORTED BY: Mary V. Thompson, RMR, FCRR
500 Poydras Street, Room 275
New Orleans, Louisiana 70130
(504) 589-7783

1 P R O C E E D I N G S

2 (Call to order of the court.)

3 THE COURT: All right. Be seated.

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THE CASE MANAGER: Civil Action 12-1924, *United States of America vs State of Louisiana*.

THE COURT: Just a second. This chair is so low, I can't see over the lectern.

8 (A pause in the proceedings.)

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THE COURT: Well, I don't know how to do that so I'll just have to deal with it.

11 I feel like I'm peeking over the top.

12 CHIEF HARRISON: I've got it, Your Honor.

13 MR. ARONIE: Media opportunity.

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THE COURT: He is a full-purpose chief. Perfect. Thank you so much.

16 MR. ARONIE: I monitored that whole environment right there and thought he did a fine job.

18 THE COURT: The record should reflect that the Chief of Police knows how to work a chair.

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All right. Welcome everyone. I'm so glad to see all of you this afternoon. As usual we introduce the people who are here, but I wanted to say a few things before we get started.

23 This is our sixth public hearing, and we're focusing on the -- well, this hearing is going to be about use of force.

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Since the Court's approval of the consent decree in

1 January 2013, we've been at work on a number of fronts as most of
2 you in the room know all too well. I share the department's
3 progress and their hurdles with the public. The monitoring team
4 publishes regular reports which are posted on the team's website
5 and on the court's website.

)1:34:32

6 To further promote transparency, last year I
7 established a practice of holding quarterly public hearings
8 focusing on a number of critical consent decree topics. Past
9 hearings have focused on body-worn camera usage, training and the
10 academy, supervision, and other topics.

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11 In addition to these public hearings, the Court holds
12 monthly meetings in chambers with the parties including the
13 superintendant and the deputy mayor. Today's hearing will focus
14 on the use of force, a core topic of the consent decree.

)1:35:10

15 Before we get to that, we have a few preliminary
16 matters.

17 First I want the representatives of the police
18 department who are here to introduce themselves.

19 And, Tim, I'm going to start with you, and then we'll
20 also go through the jury box.

)1:35:25

21 DEPUTY AVERILL: Thank you. My name is Tim Averill. I
22 head the Compliance Bureau in the NOPD.

23 DEPUTY CHIEF WESTBROOK: Arlinda Westbrook. I head the
24 Public Integrity Bureau, NOPD.

)1:35:38

25 CHIEF HARRISON: Michael Harrison, Superintendant of

1 Police.

2 MS. HANSELL: Churita Hansell on behalf of the City of
3 New Orleans, City Attorney's office.

4 THE COURT: Start here.

11:35:47

5 LIEUTENANT BURNS: Lieutenant Kevin Burns, Jr.,
6 assigned to the NOPD Force Investigation Team.

7 SERGEANT HELOU: Sergeant John Helou, also assigned to
8 the NOPD Force Investigation Team.

11:35:57

9 SERGEANT WILLIAMS: I'm Sergeant Regina Williams,
10 assigned to the Force Investigation Team, criminal section.

11 SERGEANT WATSON: Sergeant Christina Watson, assigned
12 to the NOPD Force Investigation Team.

13 THE COURT: Speak up so the court reporter can hear
14 you.

11:36:08

15 SERGEANT BARNES: Sergeant David Barnes, assigned to
16 the Force Investigation Team.

17 DETECTIVE MCCLEERY: Detective Michael McCleery,
18 Force Investigation Team.

11:36:25

19 SERGEANT WARD: Sergeant Travis Ward, Force
20 Investigation Team, criminal side.

21 THE COURT: Thank you.

22 Then the representatives of the monitoring team and the
23 Department of Justice.

24 MR. ARONIE: Jonathan Aronie, a consent decree monitor.

11:36:39

25 MR. NOWICKI: Dennis Nowicki, a member of the

1 monitoring team.

2 MR. EPPERSON: Chet Epperson, member of the monitoring
3 team.

4 MR. CARTER: Theodore Carter, United States Attorney's
5 office.

11:36:47

6 MR. GEISLER: Jonas Geissler for the United States.

7 THE COURT: So thank you. I'm glad to have all of you
8 here and the others who are in the audience as well.

9 I understand that we have a new commander at the
10 academy that you-all would like to introduce.

11:37:00

11 MR. THOMAS: Yes, Your Honor. We have Commander Chris
12 Goodley appointed on May 1st who is the commander of the academy.

13 We also have in attendance Mr. Chris Mark with the
14 civilian fleet. Mr. Chris Mark is our civilian fleet manager.

11:37:20

15 He's been on the job about a month or so.

16 THE COURT: All right. So we've introduced Commander
17 Chris Goodley. And then your new fleet manager, what's his name?

18 CHIEF THOMAS: Mr. Chris Mark.

19 THE COURT: Chris Martin?

11:37:33

20 CHIEF THOMAS: Mark, M-a-r-k.

21 THE COURT: Okay. All right. Well, Commander Goodley
22 and Mr. Mark, I'm glad to have you here today, and we welcome you
23 to the -- what we consider to be a team. And we know you're
24 going to be team players for us and help us get the job done. So
25 we're glad to have you, and you're welcome to come back any time.

11:37:48

1 So now I would like for the monitor to give us a brief
2 update on their current activities and areas of focus.

3 MR. ARONIE: Thank you, Your Honor. Jonathan Aronie,
4 consent decree monitor.

5 Your Honor, we've been working on this project since
6 August 2013, and I'm pleased to report that the police department
7 is making very good progress. In fact, in many areas they've
8 made significant progress. We've talked about these in prior
9 hearings. We've mentioned their rollout of the body-worn camera
10 program, and they're actually one of the cities to lead the
11 nation in a rollout of such a program.

12 We've mentioned the rollout of the crisis intervention
13 team program, CIT program, which is up and running and working
14 very well.

15 We talked about -- and I know the police department
16 will talk more about an innovative camera/video release policy.

17 We've talked and said great things about the Force
18 Investigative Team, the work that the K9 unit is doing, and there
19 are others.

20 So I'm very happy to report all this good progress.

21 And in areas that need more progress, I'm happy to
22 report that the department and the monitoring team agree on what
23 those areas are and have been working hand-in-hand to solve the
24 gaps that we've identified in areas of community policing,
25 training and the academy, and supervision. There's no argument

1 about where those gaps are. There is just -- to say partnership
2 might be a little of an overstatement, but we're all working very
3 closely together and we're rowing in the same direction to be
4 sure.

01:39:31

5 I think as important as those substantive areas, the
6 other point that's definitely worthy of mentioning again is that
7 we continue to receive full cooperation from the New Orleans
8 Police Department. And that's very important because, as one
9 knows, when one looks around at other consent decrees around the
10 country, what works best is when the monitoring team, the Court,
11 the Department of Justice, and the department do work together
12 and cooperate. And we definitely get that here. Superintendent
13 Harrison and his leadership team continue to fully cooperate with
14 us.

01:39:49

01:40:03

15 As I said last time, we no longer waste any time
16 fighting about things. We are really working hand-in-hand. The
17 department responds quickly to the gaps that we -- our team has
18 identified, and often they identify the gaps on their own and fix
19 gaps on their own.

01:40:20

20 And we're also working hand-in-hand on a number of very
21 creative solutions to some of the problems they have, and I'm
22 sure the department might mention some of those.

01:40:37

23 Today I have two members of the monitoring team with
24 me, Deputy Monitor Dennis Nowicki and Monitor Chet Epperson, and
25 they're going to be focusing on use of force. That's one of the

1 areas that they focus on throughout our day-to-day work.

2 And with that, we look forward to presenting, but I
3 will let us get closer to that, and I'll step down unless you
4 have questions.

01:40:49

5 THE COURT: Thank you. That's a good report. And I
6 echo what the monitoring team is saying, that we're working so
7 well together, the city, the police department, the monitors,
8 DOJ, and it really is a team effort, and I appreciate that
9 attitude of cooperation on all parts.

01:41:08

10 And especially all of you at NOPD, we're so glad you're
11 here today to participate in the hearing because we know you're
12 the people who really make this happen.

13 So as usual we spend a little time going back to the
14 pre -- the issues that we've had previous public hearings on.

01:41:31

15 And I've asked to do that once again, and we'll keep it brief,
16 but it's just a way to keep the public informed of the progress
17 that we've made on these other issues as well.

18 So let's start with the body-worn camera technology and
19 other issues.

01:41:52

20 MR. MURPHY: Afternoon, Your Honor. Danny Murphy,
21 compliance manager with NOPD.

22 A brief update on body-worn cameras and in-car cameras.

23 So a little history. We deployed the body-worn cameras
24 in May of 2014. Currently we have 564 cameras deployed in the
25 field with units interacting with the public.

01:42:12

1 38 of 55 patrol sergeants are currently equipped with
2 BWCs. We expect to reequip all patrol sergeants when we receive
3 more cameras as part of a DJA-funded body-worn camera grant.

4 We attended a national conference on body-worn cameras
5 last month, and Commander Sandifer from the compliance bureau
6 presented on our policies and the way that we've rolled out the
7 body-worn camera program. And we're very far ahead of most
8 departments in this respect, so a lot of departments came up to
9 us asking advice on what do you do about this policy question,
10 how do you look at utilization rates, how do you deal with
11 discipline when the cameras aren't being used. So we're
12 definitely on the cutting edge in that respect.

13 And so we continue to review the BWC utilization rates
14 each month, and I'll go over the process just very quickly.

15 THE COURT: Just to clarify, you said 38 of 55
16 sergeants, but all the patrol officers?

17 MR. MURPHY: Yeah, the patrol officers are equipped and
18 they are the priority. The patrol sergeants was a pilot program.
19 In April all of them had cameras, but as a result of the
20 redeployment and getting more officers out on the street, we had
21 to shift some of the cameras from the patrol sergeants to the
22 patrol officers out on the streets. But we expect to fully equip
23 them shortly.

24 So moving to the next slide, each month we select one
25 day and do a body-worn camera scorecard. We take all of the trip

1 sheets, or daily activity reports, from all of the districts, all
2 of the patrol districts, for one day and we look for a
3 corresponding video. And then we mark whether there is a
4 corresponding video or not and we come up with a percentage of
5 how many calls that should have had a video and actually had a
6 video.

7 And this chart shows our progress over time. Dating
8 back to May 5th of 2015, you can see our utilization rate was at
9 85 percent. And the literature does show that it takes a little
10 time to fully implement and utilize these new technologies.

11 You can see a steady increase from there. By August of
12 2015, we're at 96 percent, and we haven't looked back since.

13 Most recently, our last review had us at 99 percent.
14 And we're hovering at 99, 98, 97 percent, so we're pleased to see
15 a deep integration of the body-worn camera technology into our
16 practices and that officers are regularly using them out in the
17 field.

18 THE COURT: All right. So that has been very
19 informative and helpful and encouraging to all of us that you've
20 seen this kind of usage.

21 MR. MURPHY: And we'll continue to monitor it going
22 forward.

23 THE COURT: All right. And I want to mention that I
24 recently asked you to start looking at -- now that we've worked
25 out some of the kinks with the dashboard cameras in the cars,

1 we're going to make sure that all of those are working properly.

2 MR. MURPHY: Yes. We can present results on that to
3 you next month at our meeting.

4 THE COURT: Okay. Thank you.

5 MR. MURPHY: Thank you.

6 THE COURT: The next area will be supervision.

7 CHIEF HARRISON: Good morning, Your Honor. Michael
8 Harrison, Superintendant of Police.

9 With the Court's permission I would like to provide a
10 brief update into our efforts to provide close and effective
11 supervision throughout the ranks of our police department.

12 Close and effective supervision is at the core of our
13 transformation to becoming the best police department in America,
14 and we're committed to not only getting close and effective
15 supervision right but we're also committed to being the best
16 police department in the country.

17 In the 2011 investigation of the department, the
18 U.S. Department of Justice found that supervisors did not
19 routinely review reports of arrests and officers' use of force,
20 even signing off on reports that had obvious flaws. The Justice
21 Department concluded that supervisors were responsible for far
22 too many subordinates, with sometimes a ratio of supervisors
23 supervising up to sometimes more than 20 police officers.

24 Since the start of 2016, I've promoted nine lieutenants
25 and 17 new sergeants as part of an ongoing commitment to continue

1 to strengthen supervisors across the department. These
2 promotions are in addition to the 22 lieutenants and 10 sergeants
3 promoted in 2015 during our initial efforts to balance the
4 supervisor-to-police-officer ratio.

11:46:39 5 The new managers joined those supervisors already in
6 the field who directly oversee, manage, and lead officers every
7 day. These new supervisors have already participated in our
8 leadership in police organizations or LPO training. This
9 professional management program was developed by the
11:46:55 10 International Association of Chiefs of Police, and it emphasizes
11 the systematic development of leaders at all levels in the
12 organization. NOPD has now provided this topnotch leadership
13 instruction to 290 members of the department, representing over
14 30,000 hours of intensive supervisor training devoted to just
11:47:15 15 this one program.

16 These new leaders also undergo 40 hours of instruction
17 related to use of force reporting and our misconduct policies.
18 This training is conducted by both members of the Public
19 Integrity Bureau and through a system of outside support staff.

11:47:31 20 In addition to that, these supervisors are required to
21 participate in two separate tracks of training designed
22 specifically for new supervisors. New sergeants are provided
23 with 40 hours of instruction, and new lieutenants have a 16-hour
24 training program. This is in addition to the 40-hour in-service
11:47:48 25 training required for all supervisors to attend.

1 We continue to move forward on time, on task, and on
2 budget with the development and phase implementation of our
3 state-of-the-art early intervention system that we call Insight.
4 This advanced IT system will provide supervisors with more
5 reflective management tools in monitoring the activities and
6 behavior of their subordinates, thereby increasing overall
7 departmental effectiveness.

8 Insight will integrate nine NOPD existing IT systems
9 into a single, customized, next generation police report system
10 that will streamline the workflow and provide supervisors with
11 24/7 online access to critical performance indicators.

12 In addition to large scale IT projects like Insight, we
13 are continually upgrading all of our IT systems that supervisors
14 have available to them. These tools help supervisors manage
15 police services more effectively by ensuring that calls for
16 service are responded to as quickly as possible, and identifying
17 some existing data shortfalls and creating new ways to track
18 response efforts has really helped our supervisors dramatically
19 improve on the delivery of police services, especially when it
20 relates to emergency calls.

21 Our supervisors need to be able to focus on those
22 duties specific to their assigned area of responsibility so as
23 previously suggested by the Court in 2015, the NOPD command staff
24 and the federal monitoring team formed a working group of police
25 officers to study everyday tasks performed in an attempt to

1 improve efficiency. This highly successful approach has recently
2 been expanded now to include workload reduction and working
3 groups of field lieutenants from across district assignments.

4 The first meeting of this group was held two weeks ago
5 and was chaired by the chief of operations, Chief Paul Noel.

6 After reviewing a host of assigned duties, the group was asked to
7 report back at their next meeting with any recommendations they
8 had to improve effectiveness. So the new lieutenants

9 participating in this work group are very enthusiastic, they were
10 highly focused on their mission, and we will continue to report
11 back to the Court on the progress of these efforts.

12 Lastly, every day we assess our IT capacity and we
13 assess our supervisors technical and human skills to ensure that
14 all these entities working together allow us to not only provide
15 close and effective supervision, not only provide accountability
16 at every level, but also gives us the ability to cultivate and
17 develop the future supervisors, managers, and leaders of the
18 department.

19 So thank you for giving me an opportunity to share that
20 with you.

21 THE COURT: Thank you for that report. We really are
22 starting to see some real improvement. I know your supervisors
23 are going to appreciate it because you've added new lieutenants
24 and sergeants, we've increased their training, and we're looking
25 for ways to make what they have to do -- to lessen their burden

1 so that they can supervise more. And all the new technology that
2 you're implementing I think is really going to make a difference,
3 and even over the next six months we're going to see a lot of
4 changes.

)1:50:47

5 And I love the working groups of the patrol officers
6 and now the field -- the FTO officers and the lieutenants. I
7 think that's a great idea and can't wait to see what the
8 lieutenants come up with.

9 CHIEF HARRISON: Thank you for all your support.

)1:51:02

10 THE COURT: Thank you.

11 Discipline.

12 DEPUTY AVERILL: Good afternoon, Your Honor. My name
13 is Tim Averill. I head up the compliance bureau.

)1:51:28

14 I would like to spend a few minutes updating the Court
15 on policies that were not final when we last had our hearing on
16 discipline. They are now final. They all became final on
17 May 15th. And then I'll spend a few minutes on a topic that
18 Mr. Aronie mentioned, which is our critical incidents policy.

)1:51:47

19 So effective last Sunday, we have four new
20 discipline-related policies. The first is called Adjudication of
21 Misconduct. The policy establishes fair and impartial procedures
22 for conducting disciplinary and penalty hearings in order to
23 assess the appropriateness of discipline and penalties for
24 violations of NOPD policies, rules, and procedures.

)1:52:09

25 The policy provides for bifurcated disciplinary

1 proceedings, one to contest or dispute the charges called the
2 predisposition conference and one to consider the appropriate
3 penalty for a sustained violation called the pre-disciplinary
4 hearing. An important change from past practice is that the
5 Public Integrity Bureau will also now be conducting
6 predisposition conferences.

7 The second policy is called the Disciplinary Matrix
8 Penalty Schedule. This policy promotes the equitable, consistent
9 imposition of discipline. The goal is to provide similar
10 penalties for similar violations depending upon the aggravating
11 or mitigating circumstances of each case.

12 Seven offense levels have been established based on the
13 seriousness of the violation. Within each offense level our
14 penalty ranges for a given offense together with enhanced
15 penalties for repeat offenses. The policy also incorporates
16 18 factors that justify a lesser or harsher penalty depending on
17 the circumstances of the case.

18 If I might digress just for a minute to note that at
19 our last conference on discipline, one of the DOJ lead attorneys,
20 Emily Gunston, was here and she was very happy that we had
21 reached agreement on these two policies.

22 With regard to adjudication, I think she was very
23 hopeful that we agreed to a policy where a clear, neutral
24 evaluation was going to assess misconduct in serious cases, and
25 that is PIB.

1 With regard to the matrix, we all were in agreement
2 that the prior matrix was not narrowly tailored enough, was not
3 clean enough, and didn't offer predictability on penalty. I
4 think she was very happy with that also.

11:54:06 5 I wanted to mention that because I think it's
6 important.

7 THE COURT: I agree. She was very complimentary of the
8 department, and she couldn't have been more pleased with these
9 policies. And I think she'll be telling other departments about
10 these policies and using them as examples.

11 DEPUTY AVERILL: Yes, ma'am.

12 The third policy is called the Body-Worn Camera
13 Inadvertent Misuse and Non-Use Policy. This policy authorizes a
14 supervisor to counsel -- we call it redirection of an employee --
15 to correct inadvertent violations of the body-worn camera policy.

16 The process can only be used for inadvertent,
17 unintentional violations, and it cannot be used if the alleged
18 violation involves an alleged use of force, any criminal
19 allegation, any other violation of NOPD rules, or any public
20 complaints.

11:55:04 21 Officers are allowed three documented instances of
22 redirection in a one-year period. A fourth redirection may be
23 allowed if the member self-reports the violation.

24 The process is one in which the supervisor meets with
11:55:26 25 the employee and makes a determination that it was, in fact,

1 unintentional. If it's intentional, that's a serious violation
2 under our disciplinary matrix, and there are factors that it
3 looks at. Longevity, circumstances of the stop, et cetera.

4 So if the supervisor determines that it was inadvertent
5 and unintentional, he then meets with the employee, instructs the
6 employee on the proper way to go on the policy, the camera, the
7 turn on, when it's to be turned on. He then documents the
8 redirection in what we call a 105 Form, which is the interoffice
9 memorandum. That goes in the personnel file, and a copy gets
10 sent to PIB.

11 The fourth policy, probably not as sexy as our other
12 three, is called Misconduct Complaint Investigator
13 Responsibilities. This policy simply outlines the procedures
14 that our investigators follow for receiving, investigating, and
15 processing complaints regarding allegations of misconduct.

16 I would also like to mention, with regard to an update,
17 that the Office of the Consent Decree Monitor, the Department of
18 Justice, and the NOPD are considering the possibility of
19 expanding our use of negotiated settlement. The policy on
20 negotiated settlement agreements provides an expeditious,
21 efficient mechanism for resolving instances of more minor
22 misconduct without the need for a formal hearing. Currently only
23 rank-initiated cases are eligible for negotiated settlement, so
24 that issue would be one that would be on the table if we expand
25 the use of that process.

1 THE COURT: That's the one where basically the officer
2 does not contest -- does not dispute the incident occurred and
3 doesn't contest what the discipline will be, and is more
4 efficient?

01:57:19

5 DEPUTY AVERILL: Yes, ma'am.

6 THE COURT: It gets resolved quicker. The -- and
7 that's better for the officer.

8 DEPUTY AVERILL: It's a win-win for everyone involved.

01:57:29

9 MR. ARONIE: And, Your Honor, if I can note that the
10 department's negotiated settlement policy in a sense goes
11 hand-in-hand with the IPM's mediation policy, both working
12 towards the same end.

01:57:44

13 DEPUTY AVERILL: I would like to just briefly take a
14 minute to discuss our release of critical incident recording
15 directives. This is a PIB directive that we put together and
16 passed in February.

01:58:04

17 What does the policy do? It facilitates the proper
18 release of video recordings of critical incidents involving the
19 NOPD so long as the release is consistent with the legitimate
20 needs of ongoing law enforcement operations.

01:58:27

21 What is a critical incident? A critical incident is an
22 event in which an NOPD officer uses force resulting in
23 hospitalization or death, intentionally shoots his or her gun,
24 strikes someone in the head with an impact weapon, engages in a
25 vehicle pursuit that results in death or in injury requiring

1 hospitalization, or an arrested or detained subject dies in NOPD
2 custody. So that's the parameters of what this policy is geared
3 toward looking at.

4 And overview of the process.

11:58:46 5 So we have a critical incident. Then what?

6 First, PIB forwards the recording to the interested
7 parties.

8 Who are they? There's four of them. The DA's office,
9 the city attorney's office, the compliance bureau, and the
10 U.S. attorney's office.

11 The deputy chief of PIB confers with the interested
12 parties to obtain their input regarding whether or not the
13 incident recording should be released.

14 The deputy chief then makes a recommendation to the
15 superintendant regarding that release.

16 The interested parties may object.

17 Then the superintendant determines whether the
18 recording should be released.

19 THE COURT: Which I believe, when they object, what
20 they would also do is contact the chief and say, We object to
21 this --

22 DEPUTY AVERILL: Yes. We would file a written
23 objection so he would have that and then he assesses whether it
24 should be released.

11:59:42 25 And his determination, if in fact that determination is

1 not to release, is subject to your review.

2 Issues to consider regarding disclosure.

3 So what is it that we consider when we're looking at
4 these critical incident videos?

11:59:59 5 The safety of witnesses including officers.

6 Privacy concerns.

7 Input from the recipient of the force.

8 Witnesses.

9 And, if warranted, family members.

12:00:11 10 The needs of law enforcement officials in the course of
11 an ongoing investigations.

12 And the location of the incident. If it was in
13 someone's home or if it was in the middle of the street, that
14 would be a factor.

12:00:22 15 The policy provides for redaction and blurring. NOPD
16 may redact or blur portions of the recording if necessary to
17 address privacy and security concerns.

18 Time period of the process.

12:00:46 19 The directive envisions a process in which the time
20 period from the incident to the superintendant's release decision
21 is about ten days.

22 How many critical incident releases have been performed
23 to date?

12:01:00 24 We have done two. And when these critical incidents
25 occur, we'll be doing more.

1 THE COURT: All right. Of course that was within the
2 last month or so that those videos were released. I guess I'll
3 explain to the people that don't know it already, some people in
4 the audience, this is not -- this is intended to allow for
5 transparency sooner after the incident occurs, not years later
6 but --

7 DEPUTY AVERILL: Yes, ma'am.

8 THE COURT: -- relatively quickly after an incident
9 occurs.

10 And you-all did a good job of rolling out that policy
11 and of releasing the videos and explaining to the press so they
12 could explain to the public exactly what they were seeing. And
13 congratulations on the successful rollout of that policy. And
14 we'll continue -- I'm sure it will continue to be used in the
15 years ahead.

16 And I think we're on the cutting edge of this, too,
17 around the country, and we're going to avoid some problems that
18 others have faced because of this decision.

19 DEPUTY AVERILL: Thank you, Your Honor.

20 MR. ARONIE: Your Honor, if I just very briefly might
21 say that this policy is especially impressive because, while
22 departments and cities across the country are actually working to
23 keep videos from going public, the police department has taken a
24 pretty vocal and public stand in favor of transparency. We don't
25 see that a lot and it's worthy of note.

1 THE COURT: I agree.

2 DEPUTY CHIEF WESTBROOK: Good afternoon, Your Honor.
3 Arlinda Westbrook. I'm the Deputy Chief of the Public Integrity
4 Bureau, and I'm charged with handling all misconduct
5 investigations and complaints.

12:02:34

6 So what I wanted to do after Tim, who introduced the
7 policies, is talk a little bit about some of the statistics that
8 we have in reference to our misconduct complaints to date.

9 One of the first things we want to talk about and we
10 want to compare is the first half of 2015 to 2016.

12:02:50

11 We have about an 18 percent increase in complaints
12 which will be indicative of the new policies which call for
13 allegation-driven complaints. So that would be consistent with
14 now we have more formalized complaints that are being fully
15 investigated and so we have an increase of those complaints.

12:03:15

16 And we also have more -- when I look at the next
17 slide --

18 THE COURT: What you're saying is it doesn't mean that
19 there's more misconduct, more bad conduct, it just means there's
20 more reporting?

12:03:30

21 DEPUTY CHIEF WESTBROOK: There's more reporting so
22 that -- and that's sometimes indicative of people feeling more
23 trust to come in and report. And we also have changes in how we
24 classify misconduct under the consent decree so that would also
25 speak to the changes. So it will be better for us to do

12:03:47

1 comparisons going forward now that we have new policies in place.

2 THE COURT: Right. So it's kind of apples and oranges
3 now --

4 DEPUTY CHIEF WESTBROOK: Correct.

12:03:58 5 THE COURT: -- but 2016/2017 will be a better
6 comparison?

7 DEPUTY CHIEF WESTBROOK: Yes, ma'am.

8 And when we look at the next slide, what I did was
9 break down rank-initiated versus citizen-initiated complaints.

12:04:14 10 And you'll see when I compare 2015 to 2016, we have an
11 increase not only with citizen-initiated complaints but also with
12 rank-initiated complaints. So some of the things that have been
13 put in place are with supervisors taking a more proactive look at
14 whether, in fact, the subordinates that they're supervising are
12:04:36 15 violating certain policies instead of waiting for a citizen to
16 come in. We see a more proactive approach on the rank side also
17 when it comes to initiating complaints this year. So of course
18 that would also speak to the close and effective supervision.

19 The next slide, Your Honor, is hearing outcomes.

12:04:58 20 So what this would be indicative of is after we
21 investigate a misconduct complaint and we find a "sustain," which
22 would mean that we found that the officer violated policy, this
23 would be the hearing outcomes in terms of the discipline that
24 would be imposed on the individual officers.

12:05:18 25 And so what we did was a comparison of 2015 and 2016,

1 2016 being the red, 2015 being blue. And this is an
2 apple-to-apples comparison in term of the months. We did the
3 first half of 2016 and the first half of 2015.

4 We have an increase of the amount of suspension days
5 that was given in 2016.

6 And we also have an increase of the -- I'm sorry, a
7 decrease in the amount of letters of reprimand. So what that
8 means is a letter of reprimand would be more of an informal type
9 of discipline, and we found an increase of actually giving more
10 suspension days in 2016.

11 The other thing we wanted to talk about is the
12 mediation program. I've been particularly impressed with the
13 IPM's mediation program. I think she's here today, and I want to
14 thank her for some of the things that have been happening with
15 the program because I don't know that the numbers are as
16 reflective of what I'm hearing from the citizens and the officers
17 that have been participating in it. There are many of these
18 cases that would have possibly ended with a "not sustained" or
19 with the complainant leaving feeling unresolved in terms of the
20 incident.

21 So just the idea of the citizens coming together with
22 the officer and having an ability to talk about the incident has
23 been truly helpful, because many have come back and was
24 pleasantly surprised at the process, pleasantly surprised at the
25 officers' willingness to engage and their willingness to

1 communicate and participate.

2 So I think one of the things I learned when I was
3 helping to put the program together -- I don't know if the
4 mediation numbers -- because there are a number of them that
5 start off in mediation and they may end with an investigation,
6 but I don't know if those numbers necessarily reflect the fact
7 that the citizen had the opportunity to sit and talk with the
8 officer. They may have decided they wanted to go further in the
9 process, but just the idea that they had an opportunity to have a
10 conversation, I found many came out feeling better about the
11 process overall.

12 So I'm going to talk a little bit about some of the
13 numbers.

14 We had 11 in 2016 that have been completed. What it
15 means by "completed" is they went through a full mediation versus
16 going through the mediation process and at some point needing to
17 move to the disciplinary process because they weren't able to
18 find resolution.

19 So in 2015 we had 22 that were actually completed
20 through full mediation.

21 The number of cases that were returned for
22 investigation are pretty even in 2015 and 2016. Roughly about
23 half of the cases get to a point where they move through the
24 process and at some point, for whatever reason, are not able to
25 come to some agreement.

1 THE COURT: Is this just the first -- are you just
2 talking about the first five months of 2015 and the first five
3 months of 2016?

4 DEPUTY CHIEF WESTBROOK: Yes, ma'am. We have to, as we
5 go through the year, do a larger comparison.

6 One of the things that I've also -- I've gotten such
7 good feedback, so I'm hoping that with the talks on the
8 negotiated settlement and the expansion of that -- and hopefully
9 also the IPM's office can expand the amount of mediations they
10 can do. I think it will be extremely helpful, both of those
11 processes, in helping officers feel better about the process
12 because they have some ownership in deciding their discipline,
13 and on the mediation side allowing for the citizen and the
14 officer to just have conversations.

15 So I think both of those processes have been known to
16 increase transparency and trust, and so I'm hopeful that we can
17 expand both of those programs.

18 I'm going to give you a little update on the body-worn
19 camera discipline.

20 When we look here, what this is, is we -- I'm looking
21 back on the body-worn cameras from January 2015 to date. We've
22 initiated 150 investigations involving misuse or non-use of
23 body-worn cameras.

24 86 of those investigations stem from rank-initiated
25 complaints.

1 64 of them initiated from -- are citizen initiated. So
2 a citizen would come in and -- they would actually come in and
3 allege other misconduct. And then when my intake investigators
4 would search for any body-worn camera video and found that in
5 fact the officer had failed to activate his body-worn camera
6 video, then that would initiate or institute discipline at that
7 stage.

8 So the way the numbers break down, I broke down the
9 150 cases that have been initiated so far.

10 And what we had is 139 of those investigations have
11 been completed; 11 are still under investigation; 105 were
12 sustained; 19 were exonerated; nine were unfounded; and six were
13 not sustained.

14 Of the investigations that were found sustained,
15 65 received the one-day suspension, three received the two-day
16 suspension; two received the three-day suspension; six received
17 five days; two received 15 days; one received 20 days; and two
18 received 23 days.

19 We had 14 letters of reprimand.

20 And we have about five that are still awaiting hearing.

21 Now, I know Tim spoke of the policy in terms of
22 inadvertent use. The other thing we'll be updating on in the
23 future will be, when we document inadvertent misuse of the
24 body-worn cameras, we'll also be documenting for the next report
25 for Your Honor and for the court how many of those redirections

1 we have in reference to body-worn cameras in the future.

2 THE COURT: And the different level -- the different
3 number of days for suspension depends on how many violations
4 there have been by that officer or --

12:11:36

5 DEPUTY CHIEF WESTBROOK: How many violations by that
6 officer and also other allegations within the complaint that
7 would potentially increase the amount of days.

12:11:54

8 So in general when we have 23 days, we have an officer
9 that might have repeated an incident of failure to activate a
10 body-worn camera but also have other misconduct within the
11 investigation that would increase the amount of days also.

12:12:12

12 THE COURT: Well, I don't think we can overstate how
13 advanced New Orleans is in this area. I think we find, going
14 into other cities, they're still struggling with policies and
15 getting the money to buy the cameras and teaching people to use
16 them. And we've got good policies in effect. Effective
17 discipline. We've given -- you-all have given a lot of thought
18 to it to try to make it appropriate and fair but also effective.
19 And we've got great usage figures, so I really think that that's
20 something to be proud of.

12:12:33

21 DEPUTY CHIEF WESTBROOK: Yes.

12:12:47

22 I also want to speak on one of the updates from the
23 last hearing is the superintendant has since given me two
24 additional FIT members that are here today on the FIT team. I've
25 also gotten a new lieutenant and also an additional captain of

1 police. So we're definitely also increasing in terms of
2 personnel, and I wanted to thank the superintendant for that
3 also.

)2:13:01

4 THE COURT: Right. More and more responsibility gets
5 put on PIB, and thank you, Chief, for making sure they have the
6 resources to do the work that they do.

7 DEPUTY CHIEF WESTBROOK: Thank you.

8 THE COURT: All right. The training.

)2:13:24

9 DEPUTY THOMAS: Good afternoon, Your Honor, and the
10 people attending this public hearing. Thank y'all for attending
11 and I appreciate it. It means a lot to see the courtroom packed.

12 Recruit Class 173, which had 29 members, they're
13 currently on the street as of April 30th, 2016.

)2:13:49

14 Recruit Class 174, we just graduated on April 29th.
15 They're currently out in the field. They started their FT0
16 training May the 1st, 2016, and will be trained for about
17 16 weeks.

18 Recruit Class 175 has 28 members and one lateral for a
19 total of 29, and their projected graduation is July 15th of 2016.

)2:14:04

20 Recruit Class 176 has 35 members and four laterals for
21 a total of 39, and they're four weeks into training.

)2:14:24

22 The academy, with the assistance of the
23 superintendant -- I asked him to allow us to put out interviews,
24 do interviews with people who come to the academy. He continues
25 to support the efforts that we continue to put classes into that.

1 Personnel, he actually -- we're getting the best and
2 the brightest. He actually gave us one person as of Friday,
3 Mr. Jacob Lundy, who was working with our EPIC program. That
4 program has been off and running. He's going to be the main
5 instructor of that program at the academy. He's also going to
6 teach some other classes.

)2:14:39

7 We have some very good candidates. We'll continue to
8 work with the superintendant as we grow the department and these
9 classes graduate for him to actually back-staff us and give us
10 more people to make sure we get the proper staffing there.

)2:14:51

11 We mentioned Commander Chris Goodley taking over
12 May 1st, and he's doing an excellent job. We met with
13 Dr. Delcarmen. We're on the same page.

14 I'm happy to report, Your Honor, with your assistance
15 and the superintendant's that I conducted Dr. McGee. She has a
16 10:00 appointment tomorrow to do the background, and she's
17 starting -- actually when I called her, she asked me could she
18 come start today, but I told her we had to do background first.

)2:15:10

19 THE COURT: I wish you would have invited her to come
20 today. We could have met her.

)2:15:24

21 DEPUTY THOMAS: Yes, ma'am. I just talked to her.

22 The CIT program, that's off and running, crisis
23 intervention. We've had two classes that's actually graduated so
24 far, and we have another one that starts Monday. That's very
25 intricate. It's a part of the officer assistance program and

)2:15:37

1 CCT. They're both very involved in that. And we're actually
2 getting that program up. They wear their little CIT badge, and
3 that's actually a very, very good program for our mentally ill
4 that's actually out in the community, to get treatment for that.

}2:15:52

5 Some of things we want to bring up with our new academy
6 director -- we can't call him "academy director" because of POST,
7 but our new academy personnel we're going to hire has a Ph.D.
8 He'll assist us with the academic part of it.

}2:16:03

9 As part of that, she's going to be assisting us with
10 getting the practical exercises. Right now we're doing practical
11 exercises. We're doing --

12 THE COURT: Slow down a little so the court reporter
13 can get you. Slow down a little.

14 DEPUTY THOMAS: I'm sorry.

}2:16:14

15 Right now we're doing practical exercises as a part of
16 our curriculum. We want to build on that. But we know that
17 learning model is the model that a lot of the men need to learn
18 it from. And it's just more hands-on training that makes it that
19 much easier for the people to absorb what it is that we're trying
20 to get.

}2:16:28

21 Our lesson plans continue to be updated.

22 POST is going to release the lesson plans in the
23 June/July time frame. We're actually sending instructors now to
24 the mandated 40-hour POST if they didn't have FBI instructor
25 development courses. If they did, they're going to an eight-hour

}2:16:41

1 course. And that's going to be released in the June/July time
2 frame, the new lesson plans of all the state under the POST
3 umbrella.

4 De-escalation training. We continue to emphasize
5 de-escalation training in all of our training where it's
6 applicable. We want to make sure that we're on the cutting edge.

7 If y'all probably noticed in the news that there's
8 going to be a national use of force standard. We're going to
9 reach out to Dr. Jeff Albert, who is kind of like the expert
10 around the country, and we're going to make sure that we're above
11 and beyond what the national standards are or at least parallel
12 with what they're going to do. So we're looking forward to that,
13 and we want to be ahead of what the legislature puts out. They
14 recommend it takes about a year, but I think we're way ahead of
15 where we're going to need to be.

16 And that concludes my briefing, Your Honor.

17 THE COURT: That's good. I think it's really great
18 that we're moving towards getting the staffing that we need at
19 the academy, and I'm hopeful that that's really going to make a
20 big difference. And we welcome Commander Goodley and look
21 forward to working with him. Thank you.

22 DEPUTY THOMAS: Thank you.

23 THE COURT: And then hiring and recruiting new
24 officers.

25 MR. WISBEY: Good afternoon, Your Honor. Jonathan

1 Wisbey reporting on officer selection and hiring.

2 I wanted to begin by talking about what's been our
3 biggest success since last time we met in these chambers. The
4 starting class, 176, started earlier this month. This class is
5 significant for a number of reasons. It is the largest class
6 that we've started since 2010 with 39 new officers beginning
7 training. It is the class that really was processed in the
8 quickest amount of time. Five of those new hires were processed
9 from the point that they submitted an online application to the
10 point where they were hired in under three-and-a-half months, and
11 that number includes someone who was processed within 60 days or
12 two months.

13 It also is significant because it continues a trend of
14 NOPD classes being very diverse geographically. There are
15 15 different states represented in this recruit class. That's
16 nearly a third of all the states in America. It includes veteran
17 officers choosing to come to NOPD from departments in Ohio,
18 North Dakota, South Carolina, and Mississippi, and so that's a
19 very significant accomplishment.

20 And finally there is some significant language
21 diversity as well within that class. There are speakers of
22 Spanish, Vietnamese, Persian, and Portugese within that class,
23 and so we think that the skills they're going to bring to the
24 force are significant as well. So we're very proud of that class
25 starting earlier this month.

1 And the other thing that's important to note about it
2 as well, I think, is we now have a stable pipeline to start new
3 classes. The last two recruit classes have both been started
4 essentially the first working day after the previous class had
5 graduated. So we graduate a class on Friday, we get the academy
6 a new class to start on Monday. That's a sign of a sustainable
7 recruit system.

8 In terms of the testing and selection process, I want
9 to provide you with a couple of updates on various phases of that
10 process.

11 First the civil service multiple choice and written
12 examinations. We're still underway with rewriting and
13 reimagining those tests. Louisiana Tech is currently engaged in
14 analyzing over a hundred surveys completed by NOPD patrol
15 officers in leadership to identify the proper job knowledge,
16 skills, and abilities required for policing, and they're going to
17 be turning that into new test questions which we expect to be
18 able to put online and start administering in the classroom
19 sometime around the end of June.

20 So we're very excited about the progress there.

21 Regarding the agility test, one of the things that
22 you've noted to us on a number of occasions is that the agility
23 test is one of the most infrequently held elements of the
24 selection process. Right now we're only able to hold two agility
25 tests a month, and it does hinder the administration process.

1 We've asked civil service for the ability to hire a
2 private contractor to administer and oversee the agility tests
3 which would allow us to go to five times weekly. So from twice
4 monthly to almost 20 times monthly. That would be a real game
5 changer for us. Our understanding is they're considering that
6 among their agenda on Monday at the commission hearing, and we're
7 hopeful that that may be supported by the commission and go
8 forward.

9 With regard to background investigations, one of the
10 things that you mentioned in the original hearing that we had on
11 the subject was that you were interested in making sure that we
12 continue to push to reduce background processing times. If you
13 recall, when we first started hiring back in 2014, our background
14 processing times were extremely slow. Over 50 percent of
15 background investigations took more than 71 days to complete.

16 Since then the superintendant has authorized the
17 significant expansion of the staff. We've gone from having four
18 investigators to having ten, and we've improved the internal
19 office processes. And I'm happy to be able to show you that the
20 evolution of that is a significant decrease in processing times.

21 So in 2014 half of all investigations took over
22 71 days.

23 By 2015, that bar was at 56 days. So half of our
24 investigations took over 56 days, and only 25 percent took
25 73 days or more, so we basically had cut out that middle portal.

1 And then in 2016, again it's early in the year, but
2 through the first five months what we've seen is that image
3 continue to be reflected. So now we are processing 75 percent of
4 people within 54 days, which we had only gotten 50 percent of
5 people in 56 days last year. So we're continuing to expand the
6 number of people that we can examine quickly.

7 And you can see that as well in some of the quickest
8 investigations that we've been able to conduct. Last year we had
9 a total -- year-long total, 12-month total, of eight
10 investigations completed in under 30 days. Thus far in the first
11 five months of this year, we've already had six. So we're very
12 nearly surpassing that number just in the first five months of
13 this year, and that's as a result of the dedicated resources as
14 well as continuing to monitor and change policies as needed to
15 ensure the processing times are kept low.

16 And then finally on the psychological evaluation
17 process, we heard loud and clear from you and from the monitor
18 that we need more information in order to accurately evaluate
19 trends over time in the psychological testing process, and we
20 have released an RFP, which is a request for proposals, to obtain
21 a contract that will allow us to receive regular reports and
22 require cyclical reports from that psychologist as well, giving
23 us an idea of the trends that she is finding or -- he or she is
24 finding in those evaluations so we can start to analyze over time
25 the effectiveness of the psychological testing as well as its

1 ability to predict future behavior.

2 So that is expected to be -- the response is due by
3 June 10th, and we're hopeful that that will allow us to have a
4 contract where we can require and receive more accurate and
5 complete reporting on psychological exams.

6 THE COURT: It's the city's priority and the mayor's
7 priority to hire additional police officers, 150 this year. And
8 this is so important in decreasing the time between a person's
9 application and their notification that they will be hired or
10 accepted into the academy. It's so important because we were
11 losing people because it took too long.

12 And so congratulations on all of the changes that have
13 been made and shortening the time. And you're going to continue
14 to do that over the next couple of months, and I hope it -- I
15 believe it's going to help us reach the goal of 150 new officers
16 this year.

17 DEPUTY CHIEF WISBEY: Yes, Your Honor.

18 THE COURT: Thank you.

19 All right. For those who have been paying attention to
20 this process from the beginning, hearing all these things is
21 really gratifying, and I'm really proud of the progress that
22 we've made. And I want to thank again the Chief and the NOPD and
23 our monitoring team and DOJ for helping make this possible.

24 Today we want to talk about use of force. We all know
25 the occasional use of force comes with the job of being a police

1 officer, but eliminating excessive force among police officers is
2 a core goal of civilians everywhere and of the consent decree.
3 So sometimes it's obvious when force is excessive, and we've all
4 seen examples of that usually on the news. Often, however,
5 deciding how much force is necessary in a given situation is
6 complicated.

7 To deal with this complication, the consent decree
8 deals with use of force in a number of ways. Among other things,
9 the consent decree calls for new policies, new practices, new
10 training, new investigative techniques, new recordkeeping, new
11 supervision, and new data analysis. A lot's been going on over
12 the past two-and-a-half years to reduce excessive force in
13 New Orleans.

14 This is one of the -- when the Justice Department did
15 its investigation, there was a lot of criticism of the department
16 for its use of force policies and violations. It's very
17 important to the citizens of New Orleans that they are confident
18 that the police will protect them but only use as much force as
19 is necessary.

20 So I think this is really an important topic to the
21 public, and I'm looking forward to the presentation today from
22 the police department and the monitors.

23 So I want to ask the NOPD first to give its
24 presentation.

25 MR. HAMILTON: Good afternoon, Your Honor. My name is

1 Bruce Hamilton. I'm a compliance manager with the NOPD. I work
2 in the consent decree implementation unit which is part of the
3 compliance bureau.

12:27:08

4 One of my areas of focus is use of force, specifically
5 use of force reporting and investigations. One of my colleagues,
6 Compliance Manager Michael Pfeiffer, shares the responsibility of
7 focusing on use of force. He deals with more discrete types of
8 force -- use of forces such as taser, vehicle pursuits, K9s.

12:27:30

9 I don't think it's an exaggeration to say that use of
10 force is one of the most important elements of the consent
11 decree. Certainly it's an area of primary concern for the
12 public. One can measure the quality of a police department in
13 many ways such as the effectiveness of its criminal
14 investigations and how well it maintains safety and order. But
15 the public is understandably concerned with use of force, and
16 that's readily evident in the many newsworthy events that have
17 garnered public attention recently.

12:27:49

18 The New Orleans Police Department also is very
19 concerned with the use of force, and it's committed to ensuring
20 that its officers' uses of force are reasonable.

12:28:08

21 I think that commitment is reflected in its policies
22 which I'll touch on briefly. It's reflected in the deployment of
23 body-worn cameras which is a key tool for transparency and
24 supervision. It gives supervisors an opportunity to review
25 officers' activities day to day.

12:28:29

1 The commitment is also reflected in the critical
2 incident video release policy which enables the public and the
3 media to have access to some of these recordings and see how
4 these critical incidents unfold.

12:28:46 5 It's reflected in the discipline that is meted out to
6 officers whose use of force is deemed unreasonable or excessive.

7 And it's also reflected in the resources the department
8 has dedicated to use of force investigation and reporting.

9 You'll hear from members of the Force Investigation
12:29:04 10 Team, which is an elite unit created in the Public Integrity
11 Bureau with the exclusive responsibility of investigating serious
12 uses of force and reviewing lower-level uses of force that are
13 investigated by other supervisors.

14 You'll hear from them, and they will also explain to
12:29:24 15 you, in addition to their role, the Use of Force Review Board,
16 which is a higher-level, command-level body that reviews FIT's
17 investigations and provides another level of oversight.

18 You'll also hear from them use of force statistics that
19 I believe show the department is committed to reporting and
12:29:47 20 tracking its uses of force in a comprehensive and transparent
21 manner. These data show, for example, that the use of force by
22 New Orleans police is a relatively rare occurrence. When you
23 compare, for example, the number of arrests in 2015 to the number
24 of use of force incidents, the percentage is actually very low.

12:30:10 25 And when you consider that the greater majority of contacts

1 between officers and members of the public that do not result in
2 arrests, the percentage is even smaller.

3 Judge, I know that you understand the legal framework
4 by which one determines whether use of force is constitutional,
5 but for the benefit of the public, I will just say that the legal
6 test is, very broadly speaking, whether use of force is necessary
7 and reasonable.

8 That is by necessity a very subjective question. And I
9 bring this up because I want to emphasize that the very serious
10 decision of whether to use force is not made in a vacuum.

11 Officers often make this decision in a very confusing and chaotic
12 situation. What is reasonable to a person facing an imminent
13 violent threat may seem very different to a person who considers
14 and analyzes that decision at leisure. To reduce that decision
15 to an extraction is really to do a disservice to the men and
16 woman in law enforcement who face that decision every day.

17 So what do we mean by police use of force? The phrase
18 is maybe hard to define. Some members of the public may perceive
19 the mere presence of an officer as forceful, a person in a
20 uniform and a badge who carries a weapon as a use of force.
21 Others may think that when an officer draws his or her weapon but
22 does not point it or use it, that that is not a use of force.

23 So there's really no single accepted definition among
24 researchers, analysts, and police; but our policy, the
25 New Orleans Police Department's policy, defines use of force as a

1 physical effort to compel compliance by an unwilling subject
2 above unresisted handcuffing including pointing a firearm at a
3 person.

4 THE COURT: Is that another slide? Are you on the
5 third slide?

12:32:23

6 MR. HAMILTON: I'm getting there, Your Honor.

7 THE COURT: I just wanted to remind you.

8 MR. HAMILTON: I'm just trying to put everything in
9 context.

12:32:32

10 So it's important to emphasize that use of force can be
11 defined differently, and that there are varying levels of use of
12 force going all the way from using one's hands to using a
13 firearm.

14 So why do police use force?

12:32:45

15 Police officers daily encounter tense, dangerous, and
16 volatile situations while doing their jobs, as I discussed, and
17 they must make split-second decisions with limited information to
18 respond to those situations quickly.

19 Under law, police are legally authorized to use
20 reasonable and necessary force to protect themselves, to protect
21 others, to affect an arrest or detention, and to conduct a lawful
22 search.

12:33:00

23 NOPD's use of force policy is to value and preserve
24 human life when using lawful authority to use force.

12:33:19

25 And these are statements of policy taken directly from

1 the policy.

2 NOPD officers are expected to use the minimum amount of
3 force that an objectively reasonable officer would use in light
4 of the circumstances to effectively bring an incident or person
5 under control while protecting themselves or the lives of others.

6 Now, officers are not expected to retreat or be exposed
7 to physical injury before using reasonable force. However,
8 officers are instructed to try to deescalate the situation before
9 resorting to force. And our policy requires that when it's

10 feasible based on the circumstances, officers use de-escalation
11 techniques -- disengagement, area containment, surveillance,
12 waiting out a subject, summoning reinforcements, and/or calling
13 in a specialized unit such as the crisis intervention team -- to
14 reduce the need for force and to increase officer and public
15 safety.

16 When we talk about the police -- the New Orleans Police
17 Department's use of force policy, we're actually talking about a
18 panoply of various forces. The main use of force policy has a
19 number of subsidiary policies. And I'm not going to go through
20 all of them, but I provide this list, Your Honor, to give
21 everyone an idea of how many subsidiary policies are involved,
22 including canines, vehicle pursuits, tasers. All of these things
23 are governed by individual policies.

24 THE COURT: And all of those have been rewritten over
25 the last year or so and now have been approved by everyone?

1 MR. HAMILTON: That's right. All of these policies
2 were revised and submitted for review and have been thoroughly
3 vetted by the Office of the Consent Decree Monitor and the
4 Department of Justice. And these all became effective -- these
5 new policies became effective December 6th of last year.

12:35:07

6 Unless you have any more questions for me, Your Honor,
7 I'll call up Lieutenant Burns who is the leader of the Force
8 Investigation Team.

9 THE COURT: All right. Thank you.

12:35:20

10 LIEUTENANT BURNS: Kevin Burns, NOPD Force
11 Investigation Team. I'll just give you a brief history of the
12 Force Investigation Team.

13 It was originally formed in late 2011. Back then it
14 consisted of one lieutenant and one sergeant. Their
15 responsibility was to investigate officer-involved shootings and
16 serious uses of force.

12:35:50

17 The consent decree stated that the Force Investigation
18 Team would conduct such investigations which was previously
19 investigated by the NOPD homicide sections, and it would be the
20 supervisors within that particular division.

12:36:11

21 Again, I'm Kevin Burns, Jr. I recently headed the
22 Force Investigation Team as a lieutenant back in July of last
23 year.

24 The Force Investigation Team --

12:36:31

25 THE COURT: Tell me what your title is now.

1 LIEUTENANT BURNS: I'm currently a lieutenant. I'm
2 over the NOPD Force Investigation Team.

3 I'm now going into what types of investigations we
4 investigate.

12:36:42

5 THE COURT: All right.

6 LIEUTENANT BURNS: So the Force Investigation Team
7 consists of a criminal section and an admin section.

12:37:01

8 At this particular point in my presentation, I was
9 going to introduce my team, but we already did that. Those are
10 some of the best detectives the department has ever seen, and I'm
11 glad to be a part of the team with them.

12:37:22

12 Most of our -- well, all of our detectives on the
13 criminal side have experience in homicide. They've investigated
14 hundreds of homicide investigations during their careers. That
15 included at the time officer-involved shootings, homicides,
16 unclassified deaths, and also in-custody deaths.

12:37:43

17 Being a member of the homicide unit and also to be a
18 member of our unit, it takes extensive training such as
19 interviews and interrogations, managing death investigations,
20 homicide scene, scene management -- basically a laundry list of
21 training that we've had even prior to coming to FIT.

12:38:07

22 So what FIT investigates.

23 We investigate serious uses of force including critical
24 firearms discharges, any use of force indicating apparent
25 criminal conduct by an NOPD officer, any use of force by members

1 with the rank of lieutenant or higher no matter the level of
2 force. It could be one, two, three, or four.

3 And I'll get into the different levels of force later
4 on.

12:38:21

5 And any in-custody death or someone who will require
6 any type of hospitalization as a result of force used by a
7 New Orleans police officer.

12:38:45

8 Besides the uses of force we investigate, FIT is the
9 final approving body of all of the department's use of force. On
10 average we, as a department -- when I say "we," as a department
11 we average anywhere from 500 to 600 uses of force per year, and
12 we review and approve, kickback, critique, and provide training
13 for all those uses of force.

12:39:07

14 And again I'll talk a little bit more about what a use
15 of force report is a little later on.

16 In 2015 -- I'll just give you some stats.

17 For 2015 the Force Investigation Team investigated 47
18 serious uses of force for the year. That included 13 critical
19 firearms discharges.

12:39:25

20 We also investigate canine bites.

21 CEW, which is a conducted electrical weapon also known
22 as a taser.

23 We investigate force to any person whose -- correction.

12:39:45

24 We investigate instances involving a handcuffed person
25 where force was applied by an NOPD officer such as a strike,

1 blow, kick, or CEW discharge to that person.

2 We investigate neck holds, which a no-no unless it's a
3 lethal force encounter.

12:40:02

4 We also -- based upon a new policy, we also investigate
5 vehicle chases that involve injury, death, or someone to be
6 admitted to the hospital.

7 Other investigations we investigate. We investigate
8 the administrative shooting investigations. I'll get a little
9 bit into that once we get into the Use of Force Review Board.

12:40:20

10 We also investigate formal disciplinary investigations.
11 Also it was known as a DI-1 back in the day.

12 So this -- these types of investigations will involve
13 allegations of force by members of the public. It could be rank-
14 initiated, but any unauthorized force allegation, FIT typically
15 investigates.

12:40:44

16 THE COURT: So if a citizen makes a complaint about
17 excessive use of force, FIT investigates it?

18 LIEUTENANT BURNS: Correct. So not only the cases that
19 come from the public, they may come from supervisors with
20 close --

12:41:00

21 THE COURT: Right. I don't mean -- that's not the only
22 thing you do.

23 LIEUTENANT BURNS: Correct. Yes, ma'am.

24 THE COURT: I just wanted the members of the public to
25 know that.

12:41:07

1 LIEUTENANT BURNS: Okay.

2 The last thing is we author our use of force reports.

3 So on this particular slide is the levels of force.

4 It's numbered one, two, three. The more severe, of course, is
5 red, Level 4s. So I'll begin with Level 1 use of force.

12:41:24

6 These are typically pointing of weapons like some of
7 the previous presenters stated; cuffing with anatomical
8 compliance techniques, or in more simple terms, basically a wrist
9 flex or shoulder roll; or when a person complains of an injury.

12:41:47

10 These are the types of cases we would not typically investigate
11 unless it involved a lieutenant or above.

12 These are self-reporting incidents that can be
13 documented in an incident report by the officer. That officer is
14 required to complete a force statement, and that supervisor
15 should review the body-worn camera, the report, and the incident
16 for consistency to make sure that it is actually the proper level
17 of reporting.

12:42:06

18 THE COURT: I have two questions for you. If the
19 officer takes a gun out but doesn't point it, is that a Level 1?

12:42:24

20 LIEUTENANT BURNS: Well, so, if an officer draws his
21 weapon -- if you're in this position (indicating), this is called
22 gun ready. So that's typically a maneuver that's trained at the
23 academy, to go into gun ready. So if you're in the gun-ready
24 position, it does not require a use of force report. When you
25 point it at someone, it's a Level 1 use of force.

12:42:41

1 THE COURT: What about tasers?

2 LIEUTENANT BURNS: The same thing. If it's removed
3 from its holster, remains in gun ready or at the ground and not
4 pointed at anyone, it does not require a report.

12:42:56

5 However, if it's activated, that officer will have to
6 go to the academy and download that video footage just so we can
7 make sure that it was never pointed.

8 But again, if the officer points the taser, it will be
9 a Level 1.

12:43:09

10 THE COURT: Okay.

11 LIEUTENANT BURNS: Moving on to Level 2 uses of force.

12 This involves takedowns; actually deploying your taser
13 for anything under 15 seconds of exposure; and weaponless
14 techniques such as strikes, kicks, elbows, knees, or the sort.

12:43:33

15 So this is not a self-reported incident. Anything over
16 a Level 1 has to be reported and documented by a supervisor.

17 The officers would still provide their force
18 statements. The -- if a supervisor is involved in this incident,
19 that supervisor cannot author that use of force report.

12:43:56

20 So on all Level 2s and above, it requires witness
21 statements in addition to the force statement.

22 So the difference between a force statement and a
23 witness statement is the person that is involved or uses force
24 will have to complete a force statement.

12:44:10

25 THE COURT: So for a Level 2, the officer completes the

1 force statement, so in that sense it's self-reporting, but the
2 sergeant also investigates it and does a report?

3 LIEUTENANT BURNS: Yes. And also any officer that
4 witnesses a Level 2 or a 3 has to also complete the witness
5 statement.

12:44:27

6 THE COURT: Okay.

7 LIEUTENANT BURNS: Again, if you're a ranking officer
8 and you are involved, you cannot author that use of force report.

9 So moving on to the Level 3s, which can be baton
10 strikes -- we don't see many of those, what we consider your
11 PR 24, your expandable baton. I believe it was still called an
12 ASP. We don't see many of those. I think since I've been in
13 FIT, I've maybe had one or two, three at the most.

12:44:41

14 Again, the same process involving the force statements,
15 witness statements, and who it's investigated by, meaning the
16 uninvolved supervisors.

12:45:03

17 So on to the good part, the Level 4s. That's when FIT
18 comes out. This usually involves fatalities, weapon discharges,
19 canine bites, and all of the other list of calls we would be
20 called out for.

12:45:26

21 THE COURT: Does it include taser strikes?

22 LIEUTENANT BURNS: No, ma'am. So if you are exposed --
23 well, let me slow down a little bit.

24 If an officer deploys his taser or CEW, one trigger
25 pull equals 15 seconds. So if you are exposed to 15 seconds'

12:45:39

1 worth of CEW, FIT comes out for those. Or if it's one while the
2 person is handcuffed, we'll come out for those.

3 So again, the Level 4 involves serious uses of force.
4 Like I mentioned before, canine bites; blows to the head, which
5 is considered lethal, a form of lethal force; weapons discharges.
6 We would complete that entire investigation, my team. All of us
7 would respond and complete the entire investigation.

8 THE COURT: And your team does a report, and are those
9 reports ever public? Maybe Chief Westbrook knows that.

10 DEPUTY CHIEF WESTBROOK: The use of force reports?

11 THE COURT: The FIT investigation, their report. I
12 assume they produce a report at the end of this process.

13 DEPUTY CHIEF WESTBROOK: If they've even been requested
14 meaning we have had public record requests for reports at the
15 conclusion of the administrative investigation, and those have
16 been made public.

17 LIEUTENANT BURNS: All right. So the Level 4
18 investigations, particularly the shooting investigations or any
19 investigations involving employee misconduct, will typically go
20 before the -- sorry about that.

21 So let me get into the Level 4s, the shooting
22 investigations.

23 So again, as I stated earlier, FIT consists of two
24 sections, a criminal section and an admin section. These
25 investigations that we conduct run concurrent with one another.

1 So as your criminal investigation is going on, you'll have your
2 admin section doing an investigation alongside the criminal
3 portion.

4 So what the criminal investigators focus on -- of
5 course in addition to responding to the scene, what we focus on
6 are the criminal charges that could possibly be brought about in
7 this investigation. That could include charges against the
8 officer or charges against a member of the public. So that's the
9 main focus of the criminal portion of the investigation.

10 The admin investigation focuses on policy violations.
11 The most common thing that we look for again are body-worn
12 cameras, any violations of policy, excessive force. We also look
13 for opportunities to improve the NOPD policy or anything in the
14 chapter. Anything that would help the department to do its job
15 better or more efficiently.

16 While conducting these cases, many times we're
17 shadowed, we have some oversight by the monitoring team. I see
18 Jonathan a lot. Susan Hudson left. We also worked closely with
19 the FBI, Steve Zeringue. The DA's with Raymond Martin. So we
20 have a lot of oversight for our investigations from the minute of
21 notification all the way through the end, which could include the
22 Use of Force Review Board.

23 One last thing I would like to add to the admin
24 section, there may be discipline associated with this
25 investigation so the officer may not necessarily be held liable

1 criminally but can absolutely be held liable for violating any
2 policies, any department policies.

3 So again, once we finish our cases, especially
4 involving fatalities, we now have in place where there's even
5 oversight of our reports that would go through our Deputy Chief
6 Westbrook before submitting it to the DA's office for a
7 declination order or implementation of charges.

8 THE COURT: Let me ask you a question before I forget
9 about it. We were talking about the drawing of a weapon but not
10 pointing it at anyone. Does that get reported anywhere, the fact
11 that the officer has taken his weapon out but not pointed it at
12 anyone?

13 LIEUTENANT BURNS: Well, it should be included in the
14 incident report which will be written by the officer. So if an
15 officer writes a very thorough incident report, it should
16 indicate that he actually pulled his weapon out and didn't point
17 it.

18 In some cases we'll get a phone call. You know, the
19 officers want to make sure they're in compliance, and they'll
20 give us a call. And we'll inform them that it's not recordable
21 but you did make the phone call, mark us notified, and provide a
22 unit number just for reporting purposes.

23 THE COURT: Does your team use the body-worn camera
24 videos and dash -- the in-car camera videos in your
25 investigations?

1 LIEUTENANT BURNS: Absolutely. So when we respond to
2 the scene, Sergeant Helou, Sergeant Watson, and Sergeant Barnes,
3 which is the admin team, they will do those downloads directly
4 from the scene. We recently got a mobile command unit. We have
5 laptop wifi that we can download those videos right on the scene.

6 There's even cases where, if it was readily available,
7 we can let the monitors look at it right from the scene, the DA's
8 office look at it right from the scene. So that's definitely a
9 tool that we use.

10 THE COURT: Okay. Good.

11 DEPUTY CHIEF WESTBROOK: I just want to clarify, too,
12 Your Honor, it is required that they report that in the incident
13 report that they've pulled a weapon, so it is documented
14 someplace.

15 LIEUTENANT BURNS: All right. So getting to the Use of
16 Force Review Board, that's sort of the tail-end of what we do,
17 meaning by this time the criminal report has been completed. Any
18 administrative violations will have been, for the most part,
19 investigated, and some type of recommendation handed down whether
20 it be discipline, mediation, training -- a bunch of other things.

21 So our criminal -- scratch that.

22 Our administrative shooting investigations is another
23 type of investigation that the admin team produces. So as of
24 September 15th -- correction, September 2015, we really didn't
25 have a structure for the administrative shooting investigations

1 that we completed. So I'm working closely with the monitors.
2 They had some oversight and a lot of involvement in helping my
3 team -- myself and my whole team produce a draft that will help
4 us to produce a better product for the Use of Force Review Board.

}2:53:01

5 So in 2016, January 22, 2016, we had our first Use of
6 Force Review Board. At that time we were backlogged with about
7 13 serious cases, firearm discharges. Some included fatalities
8 and some non-fatal; accidental; animals. A different variety of
9 types of cases within that 13.

}2:53:27

10 Since then we've held nine Use of Force Review Boards.

11 And what the Use of Force Review Board does, it serves
12 as oversight of our investigations. So there's a -- I don't
13 know, for lack of a better term, there's even some oversight of
14 us. We self-critique. And we have our deputy chief, our
15 chairman, Paul Noel, Randy Mushatt, Chief Westbrook. We even
16 have members of the academy to attend. So everyone has input and
17 they have the opportunity to critique the case done by FIT, by
18 the department, everything as a whole. It's a more broad
19 critique of the investigation as a whole.

}2:53:49

}2:54:08

20 So during the administrative shooting investigation,
21 there are things that the admin lead investigator would look for.
22 Again, typically any department violations will have been
23 addressed. So the next thing we'll focus on is policy, tactics,
24 training, any opportunities for de-escalation, or any equipment
25 that can help the officers to do the job better.

}2:54:36

1 For example -- let me think of something off the top of
2 my head.

3 I can't think of anything, but there's a lot of
4 things -- a lot of things --

12:54:50 5 THE COURT: Anybody want to help him out?

6 (No response.)

7 LIEUTENANT BURNS: But it's just too many. It's just
8 too many.

9 But so what the board can do, the board at that time
10 when the meeting -- after the administrative investigator
11 presents his case, the floor is opened. The board at that time
12 can recommend more investigation. They can agree or disagree
13 with the recommendations made by the FIT investigation.

14 So for example, if an officer responds to a scene and
12:55:23 15 he pulled up directly in front of the door, that's bad tactics,
16 so they can -- we can recommend the officer be retrained at the
17 academy.

18 When we send these recommendations over to the academy,
19 it's not just the academy looking at the paper, but they may also
12:55:38 20 make some additional recommendations. And that has happened.

21 At the conclusion of the review board, there's a vote.
22 Three members get to vote if the force was justified and within
23 policy. And they'll also have the opportunity to concur or not
24 concur with the recommendations. And also have the opportunity
12:56:00 25 to add additional recommendations.

1 At the next review board, we will follow up with the
2 recommendations that was made from the previous review board.

3 We have one sergeant who's not here today,
4 Sergeant Sam Davis. He was recently appointed the Use of Force
5 Review Board secretary, which the consent decree calls for. He's
6 not here today, but Sam has been tracking all the training that
7 the Use of Force Review Board recommends.

8 And if you have any questions, I'm available for some
9 questions.

10 THE COURT: This has really been a big improvement, and
11 it's really important to get this underway. And the monitors are
12 going to talk about -- I know about what they've been doing, and
13 I know they're going to applaud you for the things that you-all
14 have done and for the changes you've made.

15 I think we'll see -- we finally got all this in place,
16 and as you say the first review board was in January. And so
17 we'll see as this year goes on, and then we'll be able to compare
18 it to next year. And then we'll really have a good basis of
19 measuring the progress you've made.

20 But I really think you've got a good process in place
21 now, and it seems to be working well. And I appreciate the hard
22 work that all of you do. I know there's a backlog, and I'm glad
23 you got some more help to get it done.

24 LIEUTENANT BURNS: Thank you.

25 THE COURT: So we'll hear from the monitors now -- oh,

1 do we have somebody else first?

2 LIEUTENANT BURNS: One more. Stats.

3 THE COURT: Okay. They can wait. They're paid by the
4 hour.

12:57:50 5 MR. ARONIE: Yes, we can.

6 SERGEANT HELOU: Good afternoon, Your Honor. My name
7 is Sergeant John Helou. I'm an administrative investigator with
8 the Force Investigation Team of the Public Integrity Bureau
9 Office, and I'm going to discuss this afternoon our use of force
10 data that we've analyzed and compiled.

12:58:08

11 The New Orleans Police Department tracks, analyzes, and
12 reports data concerning all uses of force. These data enable the
13 department to identify areas in which policies should be modified
14 or for which training and discipline may be required.

12:58:27

15 It also helps us ensure that the uses of force by the
16 New Orleans Police Department are appropriate, comply with
17 department policies, and reflect the best practices of policing.

12:58:51

18 Since the implementation of the consent decree, there
19 have been several key changes in how use of force is reported in
20 the New Orleans Police Department. These changes, a lot of them,
21 they've been touched on by other presenters. They include, but
22 are not limited to, body-worn cameras rollout back in 2014 and
23 our restructured force-tracking database, which is a component of
24 our IAPro internal affairs database software. This included
25 changing the data field categories where the force is reported

12:59:21

1 for a more accurate and detailed account of the force. That way
2 we can better analyze it. And any opportunities for training or
3 further policy development, we can take from the data.

4 The new, exhaustive policies mentioned by
5 Bruce Hamilton that took effect on December 6th, which included
6 the implementation of our Blue Team Program. That's basically an
7 electronic use of force reporting system. Previously use of
8 force reports were handwritten, and they had to be manually
9 forwarded to us for review. And if there was an error with them,
10 we'd have to either scan them and e-mail them back, and then they
11 would in turn return them back to us. With the electronic
12 system, everything's done electronically. It's paperless. It
13 comes to us for review -- well, scratch that.

14 Let me -- the sergeant does it. He sends it up his
15 chain of command. And as each person in that command reviews it,
16 he or she can send it back or approve it and send it up to the
17 next chain, and then it gets forwarded to us where we approve it
18 or disapprove it for various reasons. And there's an audit trail
19 that shows where it's been, the comments made by each reviewer,
20 and the like. It's light-years ahead of the system we were using
21 prior to it.

22 Additionally we added -- additional administrative
23 staff was added to the Force Investigation Team to help us review
24 all the use of force coming in and act as quote-unquote quality
25 control for the use of force process, reporting process.

1 Next we're going to speak about the specific force data
2 from basically 2014 to 2016.

3 And before I show the slide, it's going to show -- the
4 raw data is going to show the force data has actually increased,
5 but it doesn't mean that our officers are using more force. In
6 fact, the opposite is true.

7 So this is a comparison of the 2014 to the 2015 data.

8 And I would just like to point out the use of force per
9 arrest has slightly gone up from 1.1 to 2.6.

10 And as Mr. Hamilton previously mentioned, that's on
11 account of 27,974 arrests that were made in 2015. And this
12 doesn't count the countless number of other police interactions
13 with the citizens, calls for service, field interviews, and the
14 like, that did not result in force.

15 Several of the -- several of the more physical types of
16 force have actually dropped from 2014 to 2015.

17 I would like to point out the discharges of CEW --
18 that's when the taser is actually fired at somebody -- has
19 dropped dramatically.

20 So has the use of the impact weapons, the batons, as
21 mentioned by Lieutenant Burns.

22 Additionally, the number of strikes, the physical
23 strikes, has dropped from 5 to 0.

24 THE COURT: Do you have any thoughts about why the
25 number of the firearms exhibited has increased?

1 SERGEANT HELOU: We feel that this is due to the
2 body-worn camera, number one. It's created a greater
3 accountability among the officers as well as the supervisors
4 that -- to ensure that all force used is reported.

13:03:13 5 In addition, we attribute this to better training that
6 has been implemented since -- via the academy in-service training
7 bulletins. Members of FIT have gone to the academy and taught at
8 the in-services, basically explaining to them what constitutes a
9 use of force and what needs to be reported.

13:03:32 10 That's the -- that's the justification for the increase
11 in the reporting.

12 MR. NOWICKI: Your Honor, we agree with their finding,
13 and we have some evidence of some of the work we've done that
14 supports the fact that there's greater reporting of use of force
13:03:50 15 events, particularly in the area of drawing and pointing the
16 weapon.

17 SERGEANT HELOU: I would like to move on to the
18 year-to-year first quarter comparison of 2014 to 2016.

19 Again, I would like to point out the dramatic drops
13:04:08 20 between 2015 and 2016.

21 The firearm discharge in 2015, those two were actual
22 intentional discharges.

23 The one reported for the first quarter of 2016, that
24 was actually an accidental discharge and was not an intentional
13:04:32 25 discharge at a citizen, animal, or anything like that.

1 Again, firearms exhibited have gone up, but again we're
2 attributing that to body-worn cameras as well as better training
3 and also close and effective supervision with the supervisors and
4 their subordinate officers.

13:04:48

5 Again, the baton has dropped to zero.

6 Even hands have significantly dropped between -- you
7 know, officers actually putting their hands on citizens when
8 they're using force.

9 Canine has dropped from 11 to 8.

13:05:08

10 And again the strikes are 0 and 0.

11 And moving into the canines, as you know from 2014 to
12 2015, our -- the number of canine bites, actual bites to
13 citizens, have dropped by two.

13:05:35

14 However, our apprehensions have increased from 35 to 42
15 with that drop.

16 And I would like to point out the 10 percent drop in
17 the canine bite ratio from 2014 to 2015.

18 I would also like to note that we have had no off-leash
19 apprehensions in 2015 to 2016 where the canine is actually
20 released off the leash and is free to roam.

13:05:54

21 I'm going to move on to the stats for the conducted
22 electrical weapons or the taser s as they're called.

23 Again, 2014 to 2015, CEW uses -- this is not including
24 the pointing the taser, this is actually when the taser is
25 discharged at a subject or an animal.

13:06:15

1 It has gone down from 138 to 94.

2 Accidental discharges, these are due to the result of
3 improper testing of the weapon, which is required every day prior
4 to the start of the officer's tour of duty. Most likely it's
5 involving not removing the cartridge prior to testing it and it
6 discharges. Nine times out of ten it will go into a wall,
7 ceiling, or floor. It's not accidentally discharged at a person or
8 anything like that.

9 Moving on to firearms.

10 Again, the critical discharges, they did go up by two
11 from 2014 to 2015.

12 As did the intentional.

13 Accidental discharges remained the same.

14 And lastly I want to talk about the force misconduct
15 complaints of 2015.

16 What everybody commonly refers to as excessive force,
17 the NOPD's term is actually unauthorized force. And these are
18 basically the complaints both from citizens and rank-initiated
19 complaints where an allegation of unauthorized force was made
20 against an officer.

21 And you'll see that 21 total citizen complaints
22 alleging unauthorized force were made against an officer, and
23 five complaints initiated by rank alleging unauthorized force
24 made against officers in 2015.

25 Of those, the three that are -- I'm sorry, the four

1 that are still active, these involve criminal allegations other
2 than the unauthorized force, and they're still being
3 investigated. Those require a more thorough, exhaustive
4 investigation. But everything else has been closed out.

13:08:19

5 Five were not sustained.

6 Six were exonerated.

7 Nine were unfounded.

8 One was an NFIM which is no formal investigation
9 merited. This was involving a non-NOPD officer.

13:08:40

10 And I already mentioned the four that were active.

11 So a total of 26 complaints in 2015 for unauthorized
12 force.

13 That concludes my presentation.

13:08:54

14 THE COURT: All right. Thank you very much. I
15 appreciate it.

16 SERGEANT HELOU: You're welcome.

17 THE COURT: Now we'll hear from the monitors.

18 MR. NOWICKI: Good afternoon, Your Honor.

19 Dennis Nowicki with the monitoring team.

13:09:06

20 As the Judge noted, most citizens recognize that police
21 officers have to occasionally use force, but they expect that
22 force to be used prudently and with restraint. And in order to
23 manage the use of force in any police agency, it's necessary that
24 policy be in place.

13:09:45

25 We've talked about the policies already from the

1 perspective of the NOPD, from the police department. But policy
2 alone doesn't get it done. You need to also deal with the
3 training, supervision, and discipline. The consent decree
4 recognizes that and requires that compliance can only be met if
5 there is that combination of policy, training, supervision, and
6 discipline.

7 And also as the Judge has pointed out, the consent
8 decree's emphasis on use of force is fairly significant. 23 of
9 the 88 definitions are force related. Force is mentioned over
10 309 times and 86 of the 492 paragraphs of the consent decree deal
11 with use of force.

12 It's been pointed out that the policies were
13 implemented on December 6th. They were actually approved in the
14 spring of 2015 and only became implemented after training was
15 commenced in the fall of 2015.

16 Use of force policies.

17 They allow the department and community to better
18 understand where and why officers use force.

19 They enable the department to determine the
20 appropriateness of the officer's actions during the incident.

21 They enable the department to identify necessary
22 changes in NOPD policies, tactics, training, and equipment.

23 And most importantly, force reporting and investigation
24 is a critical component to citizen safety, officer safety, and
25 integrity of the department. And absent the policy of reporting

1 and investigating, that could not occur.

2 Policies inform officers of what is expected of them
3 and can hold them accountable when they don't meet those
4 expectations.

03:11:55

5 It's been pointed out already that FIT is part of the
6 Public Integrity Bureau, which is headed up by a civil deputy
7 superintendant. We met the new FIT commander, Lieutenant Burns.
8 He came in in July.

03:12:15

9 We've also heard that the FIT staff has been increased
10 significantly. We see a couple of the new members here. One of
11 the members that has been added to that cadre of investigators is
12 a sergeant whose primary tasks are to support the Use of Force
13 Review Board but also to ensure the quality of the investigations
14 that are done by anyone other than the Force Investigation Team.

03:12:43

15 As has been pointed out, the Force Investigation Team
16 has the criminal and administrative. I think Lieutenant Burns
17 very adequately pointed out the differences between the focus of
18 those two. The administrative unit looks at not just whether
19 there's a violation of a policy or a rule but also whether
20 there's opportunities for improving tactics, equipment, or
21 training.

03:13:01

22 I think it's also useful to understand what happens
23 when a force -- a level of force occurs.

03:13:24

24 If the force is of Level 2 or Level 3 -- well, at
25 Level 1 we know that the officer creates his force statement and

1 the supervisor reviews that. That was pointed out by
2 Lieutenant Burns.

3 In Levels 2 and 3, when the officer uses force, he has
4 to notify -- he or she has to notify their supervisor. The
5 supervisor has to respond to the incident.

03:13:42

6 THE COURT: By going to the scene?

7 MR. NOWICKI: He goes to the scene. He has to get
8 there at the scene.

9 He has to obtain an FTN number, which is the number
10 that ensures that an event is tracked all the way through the
11 system.

03:13:52

12 The officer has to produce a force statement as do
13 witness officers have to produce a witness statement.

14 Then the supervisor conducts an investigation, enters
15 his report into Blue Team, which is a front-end component of the
16 IAPro, which is the repository of the reports.

03:14:10

17 If the supervisor finds the force justified, he
18 forwards that all electronically through the Blue Team to FIT for
19 that quality control review.

20 If, however, he decides that there's not -- it's not
21 justified, he can and should request a DI-1 which triggers the
22 investigative process.

03:14:29

23 You'll hear a little bit later on from Chet, when he
24 gets up here -- from Chet Epperson when he gets up here that
25 things are going fairly well in this flow, but there are some

03:14:49

1 problem areas. One is the one that you just addressed,
2 Your Honor, the supervisor's response to the scene. Whether or
3 not they respond or not isn't always documented in the report,
4 and frequently it's an indication that they have not responded.

03:15:10 5 And we don't always find force statements from all
6 witness officers as we review the files.

7 And thirdly, it's not always clear by the report from
8 the supervisor that the force was determined to be justified.

9 I would have to say, though, those quality control
03:15:35 10 issues are often caught and most often caught by the quality
11 review and are sent back for further review.

12 THE COURT: I assume Lieutenant Burns is listening to
13 this and taking mental notes about some of the issues that --

14 LIEUTENANT BURNS: Yes, ma'am.

03:15:47 15 MR. NOWICKI: But again, that quality control is in
16 place. They find it or we find it, and it gets back. Mostly
17 it's being now found by the quality control review. In certain
18 snapshots taken in the past, that wasn't always the case.

19 After it's forwarded to FIT for its review, FIT does
03:16:15 20 review it. They can approve it. If they do, that's the end of
21 it. It's entered in IAPro. It will become a part of the Insight
22 analysis going forward, but the investigative phase of it is
23 completed.

24 If it does -- if they do not agree with it, as we just
03:16:37 25 indicated, it will get returned back to the unit for further

1 investigation. Or if they see fit, FIT can take over the
2 investigation.

13:17:08

3 If a DI-1 -- that earlier slide where a DI-1 is opened
4 by the supervisor at the field level, the district level, FIT
5 will determine whether that supervisor completes that
6 investigation or whether it should be taken into PIB for further
7 investigation into the misconduct. They can keep it or return
8 it.

13:17:25

9 If they keep it, of course they will complete the
10 investigation to the standards set in the PIB. If they return it
11 to the district, it still comes back to them for that quality
12 control review before it's considered finalized.

13 I think, Chet, you're going to take over and complete
14 the next -- the mid-section of the report.

13:17:49

15 MR. EPPERSON: Good afternoon, Your Honor. Chet
16 Epperson with the monitoring team.

17 We wanted to provide you our areas of monitoring.

18 We have our monitoring team audits and reviews.

13:18:09

19 Some of the things that we're doing here at NOPD is we
20 receive all the command desk notifications from the
21 communications center.

22 We review, evaluate, and critique all the FIT criminal
23 and administrative investigation reports. That's all the Level 4
24 uses of force.

13:18:23

25 We're reviewing and evaluating a significant sample of

1 Levels 1, 2, and 3 uses of force investigations.

2 We review use of force training to include SWAT, FIT,
3 patrol officers, and K9.

4 We review all canine authorizations and deployments.

03:18:43

5 We audit resisting arrest and use of force data. We'll
6 talk about that a little later, what I found on my third quarter
7 of 2015 audits.

8 Conduct continuous reviews of body-worn camera videos.

9 We are evaluating Blue Team entries.

03:18:59

10 Conducting review of citizen complaints.

11 We're conducting an audit of civil lawsuits.

12 And conducting an inquiry into arrestee audit -- or for
13 injuries and will be starting that very soon.

14 Our monitoring team targeted use of force reviews
15 consisted of a couple of things.

03:19:23

16 One, serious uses of force and those are Level 4.

17 We review all of those. In 2014, we reviewed 11
18 incidents. In 2015, 13. And this year so far, there are four
19 pending that we have not reviewed all the cases, but we do have

03:19:45

20 preliminary briefings from Lieutenant Burns and his staff and
21 Chief Westbrook.

22 Other uses of force, Levels 1 through 3, we have a
23 sample review of those.

24 In 2015 we conducted 178 reviews and in 2016, 50
25 reviews.

03:20:01

1 Under our K9 monitoring, there are four components.
2 One is we observe the training. Chief Nowicki and
3 myself were just here a couple months ago and reviewed that
4 training.

03:20:22

5 We reviewed the obedience, the recall from the handlers
6 and the actually dogs.

7 We review all the deployment reports from K9. In 2015
8 we reviewed 54 deployments, 42 apprehensions.

03:20:41

9 We review all the bites. There's been ten bites.
10 Zero off-leash searches.

11 And we review all those components in the FIT
12 investigation.

03:20:55

13 We really want to thank Officer Harold Chambliss and
14 Sergeant Blanchard. I reviewed their logs in terms of their
15 lesson plans and their data, and they have a really good
16 component. And in the past that was not well, it was poor record
17 keeping, but at this point the K9 unit is doing a tremendous job.

03:21:26

18 As I said earlier, we conducted a 2015 third quarter
19 resisting arrest audit, but let's go back a second. We did this
20 in 2014, and we mirrored this just recently for 2015.

03:21:48

21 In resisting arrest reports, there's a great likelihood
22 that there's going to be some sort of force with someone with an
23 NOPD officer and someone that they arrested in a resisting
24 arrest. So if we want to get a good opportunity to monitor those
25 arrest reports that have to do with resisting arrest, that's

1 probably likely where it's going to happen.

2 So in 2014, Chief Nowicki reviewed 141 resisting arrest
3 reports in the fourth quarter, and the end result was there were
4 35 incidents were found to involve force, but those electronic
5 police reports by the officers did not have associated force
6 tracking numbers. There was not a force indicated in those
7 police reports.

13:22:07

8 Further inquiry found 17 were not reported.

9 And there were 14 officers that were disciplined.

13:22:21

10 If we go fast forward to 2015, the third quarter
11 resisting arrest audit, I mirrored the methodology that
12 Chief Nowicki did. I took a random sample of some 230 incidents
13 in that quarter. The random sample was 31 resisting arrest
14 reports. I checked if force was reported, as Chief Nowicki did.

13:22:45

15 I also reviewed body-worn camera videos.

16 In this audit, the previous audit in 2014, the
17 body-worn camera was not available. And in all my audits I could
18 not find any unreported uses of force, meaning that the resisting
19 reports that I located, there was, on the body-worn camera or
20 anything in the police report, any indication of any force.

13:23:04

21 THE COURT: In other words, you confirmed --

22 MR. EPPERSON: I confirmed that the reports that were
23 left by the officers were accurate. And there was no force
24 located in any of the body-worn cameras or the police reports,
25 meaning that what the officer said was true.

13:23:22

1 I want to provide you, Your Honor, with a current state
2 of the NOPD reported uses of force. And this is just a snapshot
3 of January through March of 2015 and January through March of
4 2016.

03:23:46

5 And in '15 the total incidents were a total of 136. I
6 believe Sergeant Helou covered some of them.

7 And in '16 we have 174 total incidents quarter to
8 quarter.

03:24:02

9 The total officers involved are 261 in 2015.

10 And in this quarter, 345.

11 So you have more officers that are being accounted for
12 in the uses of force and the total incidents.

13 We also looked at the Level 1s and the levels going
14 across the chart.

03:24:16

15 168 Level 1 uses of force in 2015 compared to 208 for
16 this quarter.

17 Level 2s were 30 and 50.

18 And then we broke up the Level 4s. We looked at the
19 shooting levels. They were one-for-one. One last year -- the
20 last quarter of '15 compared to this quarter, one.

03:24:35

21 There was six other levels of force that are not
22 shootings but are serious uses of force.

23 In the first quarter of 2015 there were six, and in
24 this year there are two.

03:24:49

25 The monitoring team is -- has provided technical

1 assistance to NOPD, FIT, PIB, and the Force Investigation Team
2 twice now. In July of 2015 and in January of 2016. We provided
3 training on the mechanics of the administrative shooting
4 investigations. It included FIT, the Force Investigation Team;
5 the IPM, the Independent Police Monitor; SWAT; the City
6 Attorney's Office; and Communications.

03:25:19

7 We supported the development of the administrative
8 investigation template.

9 We supported development of the administrative
10 investigation manual.

03:25:30

11 We provided regular input on ongoing investigations.

12 I also just received one from Sergeant Helou a couple
13 hours ago, so we'll be reviewing that.

14 And lastly we provided decision point analysis training
15 that Chief Nowicki will take over now.

03:25:47

16 THE COURT: While you're both there, I will ask you
17 this. You mentioned one of the ways that you do this, but there
18 are ways that you are looking to see if -- to find any unreported
19 uses of force. I think -- could you tell us what those ways are?

20 MR. NOWICKI: Two of them -- one besides the audit of
21 resisting arrests?

03:26:10

22 THE COURT: Yes. I was thinking that's one. I think
23 there's some other ways.

24 MR. NOWICKI: Yeah. The other way is we're now going
25 to look at injury to officers as well. Injury to -- injury to

03:26:20

1 arrestees, rather.

2 We looked at that about a year and a half ago or two
3 years ago, but at that time there was not a searchable field
4 within the electronic police report for injury. The new system
5 has that information, so now we can go and just ask for a
6 printout of all those showing injury to arrestee. We can then
7 pull those electronic police reports and read them and see how
8 the injury occurred. And then also now watch videos to see if
9 there was actually force. And then determine if a force tracking
10 number and a force investigation was completed.

11 As you know, Your Honor, we also do a lot of body-worn
12 camera videos. This is an ongoing practice of ours. And in
13 there, if we see any indication -- it's not just looking at those
14 body-worn cameras associated with the use of force, which Chet
15 and I looked at, but all members of our team look at videos for
16 other purposes. And then we just do a random audit.

17 And while we're looking at those videos, if we observe
18 any use of force, we quickly go to see if there's been a force
19 investigation. If not, we alert FIT to find out why and then
20 expect a response back.

21 All those allow us to be more confident about the level
22 of reporting of use of force events.

23 MR. ARONIE: Your Honor, there's actually a fourth way
24 that we look for unreported uses of force, and we're starting now
25 to add to the three already mentioned.

1 We look at citizen complaints of uses of force to then
2 look to see if there was use of force and if the paperwork and
3 reports were filled out.

4 So we have four ways to look for unreported uses.

13:28:01

5 MR. NOWICKI: We did the training back in July and in
6 January. We trained FIT and the members of the Use of Force
7 Review Board and other members were brought in, people from the
8 academy.

13:28:21

9 When Bruce Hamilton was up, he said the officers have
10 to make split-second decisions with limited knowledge. What
11 we're suggesting is that the kind of review that needs to take
12 place of use of force events has to ensure that that officer is
13 making decisions based upon all the knowledge he or she could
14 have if everything worked correctly. And that's what the
15 decision point analysis and the phases of use of force event and
16 the different focus is all about.

13:28:40

17 So if anybody in the department, such as the
18 dispatcher, knows some information that that officer who is
19 responding to that scene should know, that information should get
20 to that officer.

13:28:58

21 And if you're not paying attention to that and
22 reviewing that as you're reviewing the use of force, and only
23 focusing on the decision to use force, you're missing
24 opportunities to improve and missing opportunities to prevent the
25 use of force. And that's what the training was all about.

13:29:11

1 There are multiple decisions made every time a use of
2 force -- most every time a use of force event occurs. And it's
3 not just the decision made by the officer to use force --
4 generally that focus and that review and that investigation into
5 that decision has been pretty good -- but the decisions made
6 along the way.

7 And also in the decision point analysis, if you look at
8 anticipation, that includes everything from the moment the
9 first -- the matter is first brought to the attention of anybody
10 in the department.

11 Entry and initial contact, that's the tactics of
12 approaching to make sure you don't put yourself in a position
13 where force is your only alternative or deadly force is your only
14 alternative.

15 Dialogue and information exchange, that's where
16 de-escalation comes in.

17 So anyway, we provided that training. The Use of Force
18 Review Board's structured review uses this structure to conduct
19 its review.

20 Again, just to summarize, it reviews the actions of all
21 members involved in a use of force incident, not just the member
22 who used force.

23 It identifies and reviews each key decision point
24 preceding and following the use of force.

25 What happens after the use of force is also an

1 important -- can sometimes be an important learning activity.

2 It assesses the quality of each decision.

3 And it reaches a decision of whether the seriousness of
4 force by the member was justified based upon the preponderance of
5 evidence.

03:30:57

6 And, again, through that structured process, it
7 facilitates the identification of policy, training, supervision,
8 and/or equipment implications.

9 The FIT investigators are using this structure in their
10 investigation, and they are identifying those policy, training,
11 and supervision issues.

03:31:13

12 Then the second -- the next phase of that, the Use of
13 Force Review Board, they come over them and sometimes even
14 identify more than the FIT folks identified in there.

03:31:30

15 So there's a lot of quality control being put in place
16 in the investigation of the use of force cases.

17 MR. EPPERSON: Your Honor, we wanted to provide to you
18 a review of the Use of Force Review Board for the nine cases that
19 the NOPD has heard. There have been three hearings since
20 January 22nd of 2016.

03:31:56

21 And if I can speak on behalf of Chief Nowicki, in our
22 experience with police departments across the country, it is very
23 difficult to start up the Use of Force Review Board, and I want
24 to compliment NOPD for taking the lead, the initial lead, and
25 starting off a great process with Chief Noel, Chief Mushatt, and

03:32:15

1 Chief Westbrook with the open, self-critical analysis that took
2 place on January 22nd.

3 These are the incidents. There has been nine of them.
4 And we have the nature of the use of force which is listed.

03:32:33

5 Shooting at a person, an animal, negligent discharge,
6 two more people, a couple of animals, and then a shooting at a
7 person.

03:32:50

8 One of the functions of the Use of Force Review Board's
9 quality control is to look at the FIT investigation to make sure
10 that it was done properly and satisfactory toward the consent
11 decree and also policy and best practice.

12 The Use of Force Review Board will make a decision on
13 the incident, if it's within policy or out of policy.

03:33:10

14 One significant part of that is does the board
15 recommend any policy changes, any technical changes, any training
16 for the involved officers?

17 It's listed here what the board did.

03:33:28

18 One of the significant things is it's one thing to
19 state that they want policy changes and training, and it's
20 another thing, does it actually happen?

03:33:44

21 And this use of force board administrator, Sergeant
22 Davis, has kept a log. And not only has FIT, with
23 Lieutenant Burns, put a template together, but when someone is
24 sent for training, the trainer has to sign off on the training,
25 date and time, what was the lesson plan, and if there's any

1 deficiencies, and how well the training took place.

2 The academy took it upon themselves on one particular
3 training to not only did they implement the training that the
4 force board recommended, but they went above and beyond that and
5 provided some additional training.

6 So they're in a very good position, and there will be
7 another hearing in the first week of June.

8 THE COURT: Before you leave that slide, I noticed that
9 on the last one on that page it talks about reviewing and
10 clarifying policy. I thought that was an example of when it went
11 beyond just that particular use of force to illustrate the fact
12 that this is about more than that. It's really about identifying
13 policy changes that would affect the entire department.

14 MR. EPPERSON: That's correct. To make NOPD -- if
15 there's an opportunity to make it better than it was at that
16 incident, if there's a policy change that has to be made.

17 THE COURT: I assume some of the training, I guess
18 maybe at the academy, if you're finding issues through this
19 Use of Force Review Board, it might indicate that they need some
20 changes in training, too, you know, if you see a particular
21 problem reoccur.

22 MR. EPPERSON: That's correct. During the force board
23 hearings, if there's repetitive deficiencies, it's an
24 opportunity. And the academy is at the force board and they are
25 at the table. They're a non-voting member, but they do have

1 discussions and input. It's an opportunity to mold and maybe
2 rearrange the training that's afforded to the NOPD officers based
3 on the hearings that take place.

4 MR. NOWICKI: Your Honor, I just recall one of the
5 board meetings where they were discussing one of the animal
6 shootings. They had a pretty healthy discussion about the kind
7 of training officers receive on how to deal with a violent
8 animal.

9 And I don't know -- it doesn't show up there, but,
10 Kevin, you remember they were talking about bringing some
11 expertise into the academy so that they might -- I don't know if
12 there was a follow-up on that or not -- so they might provide
13 better training to officers so they know how to recognize it.
14 They even identified an individual that they thought about
15 bringing in to help the department.

16 Those kind of discussions do go on. They're very
17 healthy discussions.

18 THE COURT: And I understand they don't treat each
19 other with kid gloves.

20 MR. NOWICKI: No.

21 MR. EPPERSON: No. My estimation is it's a very open,
22 self-critical analysis. It's very professional, but at the end
23 of the day the NOPD wants to make its officers safe and its
24 citizens and the community.

25 I'm going to switch now to some -- what we call

1 on track, off track, and this is going to deal with training.

2 So on track is the active shooter drills and training
3 that's taking place where the monitoring team is monitored.

4 The firearms skills, we've monitored that. They're on
5 track.

6 Conducted energy weapon, which is the taser. They're
7 on track.

8 Some off track areas for training.

9 Lesson plans are not -- are off track because there are
10 no lesson plans when it comes to use of force.

11 Use of practical exercises.

12 De-escalation is off track. We talked a little bit
13 about that with the audits that I reviewed.

14 Use of CIT assistance. We're seeing some of our
15 body-worn camera reviews and some of our force incidents that
16 Chief Nowicki and myself have examined.

17 And use of real world examples.

18 Under supervision, they're on track for use of force
19 reporting. They do -- officers do report the use of force
20 overall.

21 The Force Investigation Team is led by Lieutenant Burns
22 and his staff. And we look forward to working with the two newer
23 members, Chief Nowicki and myself.

24 The Use of Force Review Board is on track.

25 Off track are the supervisors' investigations with

1 Level 1 and Level 2. And that's based on a third quarter 2015
2 use of force audit. I found that there's a lack of response to
3 the scene from the supervisors. And if they're not responding to
4 the scene, it's very difficult for me in the audit to discern did
5 they go to the scene or not because it's not memorialized in
6 their Level 2 investigations.

7 A lack of assessing injuries from the supervisors.

8 A lack of conferring with other officers as to what
9 took place in the Level 2 use of force.

10 And a lack of assessing the force incident.

11 Beyond just stating that this force is within NOPD
12 policy, a Level 2 force assessment is more -- much more broader.
13 Is there any opportunities for de-escalation? Is there any
14 opportunities to not have the force at all? And to look more
15 broadly beyond just the actual force that was used.

16 MR. NOWICKI: As kind of a wrap-up, Your Honor, on --

17 THE COURT: Before you move on and before I forget it,
18 Chief Westbrook, at our next status conference, maybe you can
19 take a look back at the things that have been identified and
20 discussed today and give us a report on how you and

21 Lieutenant Burns are going to change those practices and --

22 LIEUTENANT BURNS: Just took it down.

23 DEPUTY CHIEF WESTBROOK: Yeah. One of the things I
24 wanted to speak to is a number of the things he's talking about
25 that we've been able to improve is because we've been trained. A

1 number of the supervisors still are being trained in the area of
2 looking broader at use of force. So I think when this training
3 continues to happen, then we should see improvement in that area.

4 LIEUTENANT BURNS: And also in July, improved training
5 should start at the academy in July. There's going to be some
6 additional use of force training.

7 In addition to that, we've gone out to the districts
8 and provided some training.

9 We've invited supervisors to our office for one-on-one
10 type of training.

11 We participated in some of the scenarios at the
12 academy.

13 We would like to start seeing, when we do simulation
14 training, which is live training with firearms, how the officers
15 will complete their force statements.

16 So we are working with the academy to improve the
17 investigations.

18 THE COURT: All right. Good.

19 MR. NOWICKI: Your Honor, as you know, a lot of what we
20 say is a snapshot of things that -- how things were when we were
21 doing our particular audit, so there's continuous improvement
22 going on in what they're doing. And we see that. I'm sure the
23 next time we're before you, you'll see that as well. I'm sure
24 Chief Westbrook will as well.

25 Just a kind of a summary at the end, current state

1 compliant, this means that in these areas the department has
2 reached that threshold where we can maybe begin holding -- like
3 counting them as in compliance for that period of time they need
4 to be in compliance before they are considered to be in
5 compliance with the consent decree.

6 As you heard a couple times already, they're doing
7 fairly well in K9. And we find a lot of what they do -- off-
8 leash searches approved by supervisors, canine warnings -- with
9 the benefit of the body-worn cameras, we can assess these things
10 very well. And we find them consistently giving warnings.
11 Response to bites is appropriate, the bite ratio -- all those
12 things are clearly within the area of compliance.

13 Conductive energy weapons as well, the taser. Multiple
14 application restrictions are in place. Dry stun restrictions are
15 in place. And the prohibited use areas are in place.

16 In these areas the department is doing well.

17 Other areas are doing well, moving forward, and
18 considered on track, but still need a ways to go before they get
19 to that compliant threshold.

20 Their policies are in place, but they haven't fully
21 trained on those policies.

22 General use of -- all the policies, the general use of
23 force policy, vehicle pursuit, tracking and analysis, they have
24 good policies. They're beginning to do the training, but the
25 training has not been fully completed based upon approved lesson

1 plans. So we can't give them -- we can't count them as compliant
2 in those areas.

3 It shows here the investigations, the use of force
4 administrative investigations, of serious use of force as on
5 track. I can say this with confidence, that if we were to use
6 data from the current cases, the current administrative
7 investigations done by FIT, we would move that up to a higher
8 level of compliance. Those investigations are improving.
9 There's a lot of back and forth between us and them, and they're
10 very receptive to our critiques. And the next time we see
11 investigations that have been critiqued or done by that
12 investigator, we see significant improvements.

13 Where there is a need for more attention, our -- again,
14 based upon a snapshot at one time, the use of conducted energy
15 weapons against handcuffed subjected, we've seen a couple of
16 those. We shouldn't see any of those. And we would hope that
17 closer attention is paid to that. Not so much in the
18 investigation as in the training and supervision to prevent those
19 from happening.

20 There's no SWAT policy, which we need to get that in
21 place.

22 That's a combination of -- they can't take all the
23 blame. We have to approve those and we have yet to see a SWAT
24 policy presented to us.

25 Correct Tim?

1 DEPUTY AVERILL: Yes, sir. And that's because we have
2 some policies in the queue.

3 MR. NOWICKI: Correct me if I'm wrong in this, please.

4 But anyway, investigation of use of force involved
5 supervisors conducting investigations. You heard that from
6 Lieutenant Burns, that occasionally that might take place. Those
7 get kicked back. But, again, by this time investigators should
8 know that they can't even present that case to them. We're still
9 seeing those showing up. FIT still catches those and has to
10 return those.

11 That concludes our presentation.

12 THE COURT: All right. Thank you very much. It's been
13 very informative.

14 I wanted to give Jonas Geissler a chance to speak to us
15 on behalf of the DOJ.

16 MR. GEISSLER: Jonas Geissler for the Department of
17 Justice.

18 Your Honor, the United States did not assess
19 independently compliance with the force provisions of the consent
20 decree for the sake of this hearing, but there are two take-home
21 points the United States would like the Court to know.

22 The first is a point of commendation to the NOPD from
23 the Chief all the way through the organization to the line
24 officers for progress made thus far.

25 Mr. Hamilton noted that the policies on uses of force

1 have only been in place since December 5th -- that is five
2 months, 14 days before today -- but the monitor's office has
3 found fidelity already in the reporting of uses of force in most
4 instances.

13:45:08

5 I note that as Lieutenant Burns was presenting, I saw
6 Chief Nowicki sitting at the table with a look of pride in his
7 face as Lieutenant Burns described the internalization of the
8 skills and processes to do the force review board and the FIT in
9 general.

13:45:22

10 There is also a commendation, Your Honor, for OCDM. In
11 the process of going through the consent decree, the city's
12 invested in OCDM not just as the oversight mechanism, but OCDM is
13 providing valuable consulting to the organization to improve it
14 as it goes through the process.

13:45:38

15 The second take-home point, Your Honor, is that today's
16 hearing is not yet an assessment of compliance. There is still
17 work to do. OCDM has not presented an overall testament of
18 reasonableness versus unreasonableness from the larger world of
19 uses of force by the NOPD nor has the United States.

13:45:56

20 And I commend Your Honor to Chief Nowicki's first
21 slide, the PTSD. The policies have been in place since
22 December 5th. The training and supervision, however, are still
23 large items that he mentioned at the very end of his presentation
24 that the NOPD still needs to work on, and we agree with that

13:46:16

25 assessment as well.

1 That is not to detract, however, from that first take-
2 home point which is the commendation to NOPD for the work that
3 they have done.

4 THE COURT: Thank you. I agree with you. I know it
5 was music to Chief Harrison's ears when he was hearing "this has
6 been done," "this has been done." We're all -- we want to do the
7 right thing and we want to -- but it's always nice also to be
8 able to check something off the list.

9 So we've made a lot of progress. We're not there all
10 the way, but I really see a lot of improvement, and I think we're
11 headed in the right direction, so we'll just follow this up.

12 And it's going to take a period of time for all of
13 these things to happen, for the training to be done and then for
14 the monitors.

15 They're now at a point where they can really begin
16 monitoring and comparing 2015 to '16 and 2016 and '17, and that's
17 when we'll know for sure that we -- everything has been done that
18 needs to be done.

19 But I think I agree with you, we're headed in the right
20 direction and that everybody involved should be commended.

21 And including you. Thank you for your help.

22 MR. GEISLER: Thank you, Your Honor.

23 THE COURT: I want to thank everybody for their
24 comments today and for all of the hard work that went into
25 getting us here. I don't know if anyone has any other comments

1 that they didn't get a chance to make.

2 I'm sure you don't. I thought I would give you a
3 chance.

4 (No response.)

03:47:49

5 THE COURT: Our next hearing is August 18th at 1:30,
6 and we have not decided what our topic will be yet. We might do
7 the sex crimes and domestic violence units. We might talk about
8 EPIC. We just haven't decided yet, but we'll announced that well
9 in advance so that everyone can be prepared and the public can
10 know.

03:48:14

11 Court is adjourned. Before I leave, I'm going to come
12 over and say hello to all the members of the FIT.

13 (Proceedings adjourned.)

14

15 * * * *

16 **CERTIFICATE**

17

18 I hereby certify this 31st day of May, 2016, that the
19 foregoing is, to the best of my ability and understanding, a true
20 and correct transcript of the proceedings in the above-entitled
21 matter.

22

23

/s/ Mary V. Thompson

24

Official Court Reporter

25