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Lisa Madigan

Cara Hendrickson

Karyn L. Bass Ehler

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# Stepping into the Shoes of the Department of Justice: The Unusual, Necessary, and Hopeful Path the Illinois Attorney General Took to Require Police Reform in Chicago

Lisa Madigan  
Cara Hendrickson  
Karyn L. Bass Ehler<sup>1</sup>

*“[W]e can’t continue to let this go on. Someone has to have the will, someone has to have the serious will, to want to have this change....” — Testimony of Karl Brinson, President of Chicago West Side Branch of NAACP, during the fairness hearing.<sup>2</sup>*

*“The decree takes an important step forward in the City of Chicago’s ongoing efforts to repair the damaged relationship between its police department and members of the community whom the department serves and protects. But it is a beginning, not an end.” —Judge Robert M. Dow, Jr., State of Illinois v. City of Chicago.<sup>3</sup>*

After a long and tragic history of mistrust between police and residents in 2017, Chicago (the City) was on the precipice of a dramatic change within its police department. The City had recently faced months of outrage and uproar in the wake of a police shooting of a young African American man named Laquan McDonald. Following an investigation

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<sup>1</sup> Lisa Madigan was the Attorney General of the state of Illinois from 2003 to 2019; she is currently a partner at Kirkland & Ellis LLP. Prior to serving as Attorney General, Ms. Madigan was an Illinois state senator, an attorney at Sachnoff & Weaver, and a teacher and community organizer. Cara Hendrickson was the Chief of the Public Interest Division in the Illinois Attorney General’s Office from 2014 to 2019; she is currently the Executive Director at Business and Professional People for the Public Interest (BPI). Karyn L. Bass Ehler was the Chief of the Civil Rights Bureau in the Illinois Attorney General’s Office from 2015 to 2019; she is currently a partner and head of the Civil Rights Practice Group at Grant & Eisenhofer, P.A. The authors also wish to acknowledge the team of lawyers and staff at the Illinois Attorney General’s Office who worked on the police reform team. We gratefully appreciate the tireless efforts of Gary Caplan, Cynthia Flores, Shareese Pryor, Matt Martin, Leigh Richie, Bria Scudder, Ann Spillane, Stevi Steines, Brent Stratton, Mikiko Thelwell, Chris Wells, Jeff VanDam, and Thomas Verticchio. The authors thank Munir Meghjee, Patrick Arenz, Kate Jaycox, along with their team at Robins Kaplan, for their commitment to this litigation as our pro bono partners. In addition, the authors wish to thank Lisa Scruggs of Duane Morris, for her invaluable help in the independent monitor selection process. The views expressed in this article are those of the authors alone and do not represent the opinions of any entity with which we have been or are now affiliated.

<sup>2</sup> Testimony of Karl Brinson, President of West Side Branch of NAACP, during the fairness hearing. Transcript of Proceedings—Fairness Hearing Before the Hon. Judge Robert M. Dow, Jr., Oct. 24, 2018, Vol. 1-B at 104: 19–22.

<sup>3</sup> Illinois v. City of Chicago, No. 17-cv-6260, 2019 WL 398703, at \*5 (N.D. Ill. Jan. 31, 2019).

into the Chicago Police Department (CPD), then-U.S. Attorney General Loretta Lynch stood with then-Mayor Rahm Emanuel and pledged to finally do the hard work of police reform through a court-ordered and court-enforced consent decree. We, along with many Chicagoans, hoped for change.

But in a few short months, those hopes were dashed. President Trump appointed Jeff Sessions as the new U.S. Attorney General. He disagreed that the U.S. Department of Justice (DOJ) had any role in enforcing civil rights violations by police departments. At Chicago's City Hall, the importance of pursuing enforceable reform was shifting. Mayor Emanuel began pursuing an out-of-court agreement promising reforms within CPD that lacked enforceability mechanisms. After numerous failed attempts at police reform, Chicago would continue under a status quo that for too long has endangered residents and police officers alike.

In our capacity at the time as the Illinois Attorney General and two of her top deputies, we took action, believing that our office was in the best position to make this moment in Chicago different this time around.

This Article looks at the history of policing in Chicago, how the police shooting of Laquan McDonald galvanized Chicagoans—particularly African American youth—to demand real, lasting change, and how our lawsuit finally brought enforceable police reform for the benefit of communities across the City.

## I. CHICAGO'S POLICE MISCONDUCT PROBLEM

### A. *Decades of Widespread Misconduct by CPD and Failed Attempts at Reform*

To understand the decades of misconduct by the Chicago Police Department is to understand the true challenges of real reform. We knew that change would not be easy, but our determination for finding a better way in Chicago at this critical moment in time was unwavering.

The CPD is the second-largest municipal police department in the United States.<sup>4</sup> Significant and wide-ranging problems with Chicago policing have been well-documented for more than fifty years, and in African-American and immigrant communities, police-community relations throughout Chicago's history have often been strained.<sup>5</sup> National attention on CPD stretches at least as far back as 1968, when the nation watched images of Chicago police officers beating demonstrators at the Democratic National Convention.<sup>6</sup>

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<sup>4</sup> With over 12,400 officers at the end of 2017, it is second in size only to the New York City Police Department. CPD serves 2.7 million residents of the City of Chicago and is responsible for an area of 231.1 square miles. CPD is divided into twenty-two police districts, each led by a commander who oversees a district. In 2016, it responded to 2,647,935 calls for service. CHI. POLICE DEP'T, ANN. REP. 2017 21 (2017), <https://home.chicagopolice.org/wp-content/uploads/2019/03/Chicago-Police-Department-Annual-Report-2017.pdf>; *Police Employment, Officers Per Capita Rates for U.S. Cities*, GOVERNING, <https://www.governing.com/gov-data/safety-justice/police-officers-per-capita-rates-employment-for-city-departments.html> (last updated July 2, 2018).

<sup>5</sup> Spencer Ackerman, *Inside Chicago's Legacy of Police Abuse: Violence 'as Routine as Traffic Lights'*, THE GUARDIAN (Mar. 3, 2015), <https://www.theguardian.com/us-news/2015/mar/03/chicago-police-violence-homan-square.html>.

<sup>6</sup> Caitlin Gibson, *What Happened in Chicago in 1968, and Why is Everyone Talking About It Now?*, WASH. POST (July 18, 2016), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/07/18/what-happened-in-chicago-in-1968-and-why-is-everyone-talking-about-it-now.html>.

Shortly thereafter, in December 1969, with significant investigative aid from the Federal Bureau of Investigation (FBI), and under the direction of the Cook County State's Attorney, CPD raided the home of Black Panther Party leader and activist Fred Hampton and killed the unarmed Hampton and his fellow Black Panther activist Mark Clark.<sup>7</sup>

In 1973, a blue ribbon panel led by former United States Congressman Ralph Metcalfe identified a pattern of use of excessive force and other abuse by police directed disproportionately at Chicago's African American community.<sup>8</sup> The Metcalfe Panel found that 75% of the people killed by CPD officers in 1969 and 1970 were African Americans,<sup>9</sup> even though African Americans composed only a third of Chicago's population.<sup>10</sup> In 1969 and 1970, the rate of officer-involved civilian deaths in Chicago was three times that of New York, Los Angeles, or Detroit.<sup>11</sup> The panel concluded that it was "the basic law enforcement policy of [CPD] that aggressive police conduct toward citizens is desirable and legitimate," and that the Internal Affairs Division, the Superintendent, and the Police Board did not "rigorously enforce [] among their subordinates proper standards of conduct toward civilians."<sup>12</sup>

Only a year earlier, in 1972, CPD promoted Officer Jon Burge to detective and assigned him to Area Two on Chicago's South Side.<sup>13</sup> Over the nearly two decades that followed, Burge and his subordinates at Area Two tortured and abused over 100 African Americans in order to coerce confessions.<sup>14</sup>

After substantial community outcry, complaints from lawyers and community members, and significant investigative journalism, two CPD employees in the late 1980s conducted an investigation of Burge's activities and ultimately concluded that "the preponderance of the evidence is that abuse did occur and that it was systemic. The time span involved covers more than ten years . . . Particular command members were aware of the systemic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end."<sup>15</sup>

In response to this investigation, however, the City's leadership largely dismissed the investigation's conclusions. CPD's Superintendent at the time claimed that any assertion that command officers were aware of the abuse was an "outright lie." Further, Mayor Richard M. Daley, who served as the Cook County State's Attorney from 1981 to 1989 and did nothing in response to reports of Burge's abusive tactics,<sup>16</sup> referred to the

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<sup>7</sup> *Police Kill Two Members of the Black Panther Party*, HISTORY.COM (Nov. 13, 2009), <https://www.history.com/this-day-in-history/police-kill-two-members-of-the-black-panther-party.html>.

<sup>8</sup> METCALFE BLUE RIBBON PANEL, *THE MISUSE OF POLICE AUTHORITY IN CHICAGO* 2–18 (1972), <https://chicagopatf.org/wp-content/uploads/2016/01/metcalfe-report-1972.pdf>.

<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.* at 30.

<sup>12</sup> *Id.* at 32, 34.

<sup>13</sup> John Conroy, *Tools of Torture*, CHI. READER (Feb. 3, 2005), <https://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876.html>.

<sup>14</sup> POLICE ACCOUNTABILITY TASK FORCE, *RECOMMENDATIONS FOR REFORM: RESTORING TRUST BETWEEN THE CHICAGO POLICE AND THE COMMUNITIES THEY SERVE* 34 (Apr. 2016), [https://chicagopatf.org/wp-content/uploads/2016/04/PATF\\_Final\\_Report\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf).

<sup>15</sup> CHI. POLICE DEP'T OFF. OF PROF. STANDARDS, *SPECIAL PROJECT CONCLUSION REPORT* 6 (1990), <https://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf>.

<sup>16</sup> David Jackson, *13 Years of Cop Torture Alleged*, CHI. TRIB., (Feb. 8, 1992), <https://www.chicagotribune.com/news/ct-xpm-1992-02-08-9201120603-story.html>.

investigation as “allegations, rumors, stories, things like that.”<sup>17</sup> Despite revelations of the systemic torture perpetuated by Burge and his subordinates, CPD did not meaningfully revise its policies and programs to disincentivize officers from using excessive force against residents, from using force disproportionately against African Americans and Latinos, or from neglecting to report incidents in which they witnessed misconduct committed by fellow officers. City taxpayers have paid more than \$115 million for the decades-long torture scandal tied to former police Commander Jon Burge.<sup>18</sup>

In yet another attempt at reform, in 1997, Mayor Richard M. Daley appointed a Commission on Police Integrity after seven members of CPD were indicted on charges of conspiracy, racketeering, and extortion.<sup>19</sup> The Commission recommended extensive reforms to CPD’s hiring, training, and accountability processes.<sup>20</sup>

Fast forward seventeen years, and the City had by that time paid out hundreds of millions of dollars in police settlements.<sup>21</sup> In 2014, the City commissioned a report, completed pro bono by a national law firm and global consulting firm, to examine the accountability systems for CPD.<sup>22</sup> The resulting report recommended sweeping reforms to CPD’s process for supervising and disciplining officers.<sup>23</sup> However, CPD did not adopt any of the recommendations in this city-commissioned report.<sup>24</sup> The status of the Department also reflected the decades of the chronic underinvestment by the City in CPD. For example, prior to 2016, other than firearms qualification, CPD did not provide annual, mandatory training of any kind for its officers.<sup>25</sup>

None of these reports, completed over decades, resulted in the widespread reform of CPD that each successive expert report recommended. Rather, while each examination repeated similarly alarming observations and reform recommendations, with the recommendations repeatedly unheeded, many of the realities of policing within the Department remained unchanged. Indeed, between 2008 and 2015, 74% of individuals shot by CPD officers were African American, a proportion virtually identical to the percentage in the Metcalfe report nearly four decades earlier.<sup>26</sup> Further, a 2015 study by the ACLU of Illinois concluded that between May 2014 and August 2014, African Americans represented 72% of all *Terry* stops in Chicago, despite constituting only 32% of Chicago’s

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<sup>17</sup> *Id.*

<sup>18</sup> Editorial Board, *Lean in on that Police Consent Decree*, CHI. TRIB., (July 20, 2018), <https://www.chicagotribune.com/opinion/editorials/ct-edit-consent-decree-rahm-police-20180718-story.html>.

<sup>19</sup> CITY OF CHI. POLICE ACCOUNTABILITY TASK FORCE, REPORT ON THE COMMISSION ON POLICE INTEGRITY 2 (1997), <https://chicagopatf.org/2016/02/22/new-report-on-the-commission-on-police-integrity-1997/>.

<sup>20</sup> *Id.*

<sup>21</sup> *How Chicago Racked up a \$662 Million Police Misconduct Bill*, CRAIN’S CHI. BUS. (Mar. 20, 2016, 7:00 AM), <https://www.chicagobusiness.com/article/20160320/NEWS07/160319758/how-chicago-racked-up-a-662-million-police-misconduct-bill.html>.

<sup>22</sup> RON SAFER ET AL., *PREVENTING AND DISCIPLINING POLICE MISCONDUCT: AN INDEPENDENT REVIEW AND RECOMMENDATIONS CONCERNING CHICAGO’S POLICE DISCIPLINARY SYSTEM* 1–2 (2014).

<sup>23</sup> *Id.*

<sup>24</sup> U.S. DEP’T OF JUST. CIVIL RIGHTS DIVISION, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 72–77, 80 (2017), <https://www.justice.gov/opa/file/925846/download>.

<sup>25</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 13–14.

<sup>26</sup> *Id.* at 25.

population. Additionally, the report showed that African Americans and Latinos were stopped at disproportionately high rates outside of minority communities.<sup>27</sup>

Between 2010 and 2014, Chicago police officers shot and killed seventy people<sup>28</sup>—more than local officers did in any of the other ten most-populous cities in the country.<sup>29</sup> The statistics for less-lethal use of force are similar: for example, between 2012 and 2015, approximately 76% of the 1,886 individuals tasered by CPD officers were African Americans.<sup>30</sup>

### *B. Laquan McDonald is Killed by Officer Jason Van Dyke*

The longstanding policing problems in CPD reached a tipping point, on November 19, 2015, when a Cook County Circuit Court Judge ordered the City to release the video of a police-involved shooting.<sup>31</sup> The long sought-after video depicted an incident from the night of October 20, 2014, when CPD officer Jason Van Dyke fatally shot Laquan McDonald, a seventeen-year-old African American young man who was walking away from police officers while carrying a knife.

The video showed the officer firing sixteen shots into McDonald within thirty seconds of arriving on the scene. McDonald was standing approximately fifteen feet from officers and walking erratically as he held a knife. There were eight officers on the scene, and the request for backup came specifically as a request for a taser because none of the eight officers on the scene had one. According to the criminal proffer against Jason Van Dyke, “[a]n analysis of the video establishes that 14 to 15 seconds passed from the time [Van Dyke] fired his first shot to clear visual evidence of a final shot. For approximately 13 of those seconds, McDonald [wa]s lying on the ground.”<sup>32</sup>

In addition to the video captured by the dashboard-mounted cameras in CPD vehicles, a nearby Burger King restaurant had a series of outdoor security cameras, including one located less than 100 yards from the location of the shooting.<sup>33</sup> However, the security footage from the camera had a gap of eighty-six minutes that covered the duration of the shooting.<sup>34</sup>

The Chicago police union spokesperson, Pat Camden, said after the shooting that “[t]he officers are responding to somebody with a knife in a crazed condition, who stabs

<sup>27</sup> ACLU OF ILL., STOP AND FRISK IN CHICAGO 3, 7, 9–10 (Mar. 2015), [https://www.aclu-il.org/sites/default/files/wp-content/uploads/2015/03/ACLU\\_StopandFrisk\\_6.pdf](https://www.aclu-il.org/sites/default/files/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf).

<sup>28</sup> Andrew Schroedter, *Fatal Shootings by Chicago Police: Tops Among Biggest U.S. Cities*, BETTER GOV’T ASS’N (July 26, 2015), <https://www.bettergov.org/news/fatal-shootings-by-chicago-police-tops-among-biggest-us-cities/>.

<sup>29</sup> *Id.*

<sup>30</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 36.

<sup>31</sup> Megan Crepeau et al., *How the Day Unfolded: Inside the Courtroom for Former Chicago Police Officer Jason Van Dyke’s Sentencing*, CHI. TRIB. (Jan. 18, 2019), <https://www.chicagotribune.com/news/breaking/ct-met-laquan-mcdonald-jason-van-dyke-sentencing-20190118-story.html>.

<sup>32</sup> People’s Factual Proffer in Support of Setting Bond, *Illinois v. Van Dyke*, No. 15-1278:23 (Ill. Cir. Ct. filed Jan. 24, 2015).

<sup>33</sup> Carol Marin & Don Moseley, *Missing Minutes from Security Video Raises Questions*, NBC CHI. (May 26, 2015), <https://www.nbcchicago.com/investigations/laquan-mcdonald-investigation-305105631.html>.

<sup>34</sup> *Id.* After the shooting, police officers who were canvassing the area for additional witness and investigative information obtained access to the security videos at the Burger King, which raised questions as to whether the police officers tampered with the security footage.

out tires on a vehicle and tires on a squad car. You obviously aren't going to sit down and have a cup of coffee with them. He is a very serious threat to the officers, and he leaves them no choice at that point but to defend themselves.”<sup>35</sup>

In April 2015, the City Council approved a \$5 million settlement with the McDonald family to resolve legal claims prior to a lawsuit even being filed.<sup>36</sup>

In August 2015, after CPD refused to produce the video of the shooting captured on officers' dashboard cameras, a Chicago journalist sued for release of the video under the Illinois Freedom of Information Act.<sup>37</sup> On November 24, 2015, the Cook County State's Attorney, Anita Alvarez, charged Jason Van Dyke with first-degree murder.<sup>38</sup> A few hours later, the City released the videotape of the shooting pursuant to the November 19 court order.<sup>39</sup>

Once the City released the video, public condemnation of the officer's actions—and the City's response to the shooting—were swift. Within hours of the video's release, hundreds of protesters demonstrated in downtown streets.<sup>40</sup> Additional public protests flooded Chicago's main shopping district, Michigan Avenue, on Black Friday, the largest shopping day of the year. Protesters marched down Michigan Avenue chanting “16 shots!”, blocked the entrances to stores, and stopped traffic.<sup>41</sup>

### C. Mayor Emanuel Reacts to Public Outrage

Distrust in the City's and CPD's leadership to honestly and fairly address the McDonald shooting was high. After the release of the footage of McDonald's death, community leaders and activists alleged that Mayor Emanuel had covered up the videotape and refused to release it in an effort to win his re-election bid.<sup>42</sup> Protestors called for the

<sup>35</sup> *Chicago Police Department Consent Decree: A Timeline of the Push for Reforms*, CBS CHI. (Jul. 27, 2018), <https://chicago.cbslocal.com/2018/07/27/chicago-police-consent-decree-timeline/html>; see also Marissa Bailey, *Police Shoot, Kill Knife-Wielding Teen on South Side*, CBS CHI. (Oct. 21, 2014), <https://chicago.cbslocal.com/2014/10/21/police-shoot-kill-knife-wielding-teen-on-south-side/>.

<sup>36</sup> Bill Ruthhart, *Despite Challenges, Mayor Confident About Re-election*, CHI. TRIB. (Dec. 11, 2017), [http://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=a8786e99-87f5-4d7d-afea-e8553d04fed5.html](http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=a8786e99-87f5-4d7d-afea-e8553d04fed5.html).

<sup>37</sup> Compl. at 1, *Smith v. Chi. Police Dep't*, 2015-CH-11780 (Ill. Cir. Ct. filed Aug. 5, 2015); Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. (2017); Matt Ford, *The Killing of Laquan McDonald*, THE ATLANTIC (Nov. 24, 2015), <https://www.theatlantic.com/politics/archive/2015/11/chicago-police-indictment/417531/>.

<sup>38</sup> Ford, *supra* note 37.

<sup>39</sup> Kori Rumore & Chad Yoder, *Minute by Minute: How Jason Van Dyke Shot Laquan McDonald*, CHI. TRIB. (Jan. 18, 2019), <https://www.chicagotribune.com/news/laquan-mcdonald/ct-jason-vandyke-laquan-mcdonald-timeline-htmlstory.html>.

<sup>40</sup> Alex Johnson, *Protestors Block Chicago Streets Over Video of Laquan McDonald's Killing*, NBC NEWS, (Nov. 24, 2015), <https://www.nbcnews.com/news/us-news/video-laquan-mcdonalds-killing-be-released-chicago-braces-protests-n469171.html>.

<sup>41</sup> *Activists March on Magnificent Mile to Protest Laquan McDonald Shooting*, CBS CHI. (Nov. 27, 2015), <https://chicago.cbslocal.com/2015/11/27/protest-organizers-plan-magnificent-mile-march-over-laquan-mcdonalds-death/>.

<sup>42</sup> Edward McClelland, *Rahm Emanuel's Nixon Moment: The Laquan McDonald Coverup Will Be His Legacy*, SALON (Dec. 2, 2015, 3:59 PM), [https://www.salon.com/2015/12/02/rahm\\_emanuels\\_nixon\\_moment/](https://www.salon.com/2015/12/02/rahm_emanuels_nixon_moment/). In April 2015, Mayor Rahm Emanuel had won a relatively close re-election following the first mayoral runoff in more than 16 years. Julie Bosman, *Rahm Emanuel Wins Runoff Election to Secure 2nd Term as Chicago Mayor*, N.Y. TIMES (Apr. 7,

firing of Police Superintendent Garry McCarthy and for the resignation of Mayor Emanuel.<sup>43</sup>

In response to the outrage caused by the videotape, Mayor Emanuel fired police Superintendent Garry McCarthy on December 1, 2015.<sup>44</sup> The same day, he announced the creation of yet another blue-ribbon task force to review the systems of training, oversight, and accountability for CPD officers. This time, the panel was called the Police Accountability Task Force (PATF). The Mayor appointed Lori Lightfoot, the President of the Police Board and a partner at the large Chicago law firm Mayer Brown, to serve as one of several co-chairs of the Task Force. Mayor Emanuel charged the PATF with recommending reforms to (1) improve independent oversight of police misconduct; (2) ensure that officers with repeated complaints are identified and evaluated appropriately; and (3) establish best practices for the release of videos of police-involved incidents.<sup>45</sup>

#### *D. Calls for the U.S. Department of Justice to Investigate CPD*

On December 1, 2015, Lisa Madigan, as Illinois Attorney General, wrote to the United States Attorney General Loretta Lynch asking her, with urgency, to initiate a pattern or practice investigation into whether CPD had committed systemic violations of federal law.

Addressing these problems and repairing [] CPD’s relationship with the community will require a fundamental redirection of Chicago’s approach to law enforcement and accountability for police abuse . . . Trust in the Chicago Police Department is broken, especially in communities of color in the City of Chicago . . . The children of Chicago deserve to grow up in a city in which they are safe, protected and served by a police force that is fit for this fine [c]ity—something that many in our community do not experience today.<sup>46</sup>

Specifically, we asked DOJ to (1) investigate CPD’s use of force, including deadly force; (2) examine the adequacy of CPD’s review and investigation of officers’ use of force and investigate all allegations of misconduct; (3) evaluate CPD’s provision of training,

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2015), [nytimes.com/2015/04/08/us/rahm-emanuel-retains-seat-as-chicagos-mayor.html](https://www.nytimes.com/2015/04/08/us/rahm-emanuel-retains-seat-as-chicagos-mayor.html). Mayor Emanuel’s runoff opponent, Cook County Commissioner Jesus “Chuy” Garcia, asserted that Mayor Emanuel was not addressing the concerns of Chicago’s working class and diverse neighborhoods. *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Press Release, Mayor’s Office, (Dec. 1, 2015), Mayor Emanuel Announces Task Force on Police Accountability, found at [https://www.chicago.gov/city/en/depts/mayor/press\\_room/press\\_releases/2015/december/Task-Force-Police.html](https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2015/december/Task-Force-Police.html).

<sup>46</sup> *Madigan Calls for U.S. Department of Justice Civil Rights Division to Investigate Chicago Police Department*, NBC CHI. (Dec. 1, 2015, 4:58 PM), <https://www.nbcchicago.com/blogs/ward-room/Madigan-Calls-for-Federal-Investigation-of-Chicago-Police-Department-359718081.html>; *see also* Mark Guarino, *Illinois Attorney General Asks Justice Department for Civil Rights Investigation into Chicago Police*, WASH. POST (Dec. 1, 2015, 7:22 PM), [https://www.washingtonpost.com/news/post-nation/wp/2015/12/01/illinois-attorney-general-asks-justice-dept-for-civil-rights-investigation-into-the-chicago-police-department/?noredirect=on&utm\\_term=.72047b768684.html](https://www.washingtonpost.com/news/post-nation/wp/2015/12/01/illinois-attorney-general-asks-justice-dept-for-civil-rights-investigation-into-the-chicago-police-department/?noredirect=on&utm_term=.72047b768684.html).

equipment, and supervision of officers; and (4) examine whether a pattern or practice of discriminatory policing exists.

Mayor Emanuel called the request for an investigation “misguided” and opposed it.<sup>47</sup> National political leaders joined our call in the following days.<sup>48</sup> In addition, there was overwhelming public support and calls from editorial boards for an independent investigation.<sup>49</sup> “Faced with a rising tide of criticism—including from then-Democratic presidential nominee Hillary Clinton—Emanuel had no choice but to drop his opposition to the probe.”<sup>50</sup>

A week later, on December 7, 2015, DOJ announced that its Civil Rights Division would open a pattern or practice investigation to determine whether CPD engaged in a discriminatory pattern or practice of unconstitutional policing, including in the use of excessive force.<sup>51</sup> We were confident that DOJ’s conclusions would lead us one step closer to real police reform in Chicago. At this point, we believed that DOJ and the City of Chicago would pursue the recommended path forward.

### *E. Reports Confirm Widespread Problems with CPD*

The PATF, which Mayor Emanuel had appointed, released its 183-page report in April 2016 with details and findings about a broad range of issues organized around five areas: video release policies, de-escalation, community and police reforms, early intervention and personnel concerns, and legal oversight and accountability. The PATF concluded that “CPD’s response to the violence [in Chicago] is not sufficiently imbued with Constitutional policing and tactics,” and that “CPD’s own data gives validity to the widely held belief [that] the police have no regard for the sanctity of life when it comes to people of color.”<sup>52</sup> Both the PATF’s in-depth analysis and its extensive recommendations provided a damning picture of the severe impact of racism in the city and the significant problems at CPD.<sup>53</sup>

<sup>47</sup> Bill Ruthhart & Annie Sweeney, *Emanuel Now Open to Justice Department Review of Chicago Police*, CHI. TRIB. (Dec. 3, 2015), <https://www.chicagotribune.com/news/ct-rahm-emanuel-justice-department-chicago-police-20151203-story.html>; Tony Arnold & Lauren Chooljian, *Madigan Calls for Investigation of Chicago Police*, ILL. PUB. RADIO (Dec. 2, 2015), <https://www.northernpublicradio.org/post/madigan-calls-investigation-chicago-police-0>.

<sup>48</sup> Timothy M. Phelps et al., *Feds to Conduct Civil Rights Probe of Chicago Police*, CHI. TRIB. (Dec. 7, 2015), <https://www.chicagotribune.com/news/ct-chicago-police-justice-department-investigates-met-20151206-story.html>.

<sup>49</sup> Alexandra Silets, *Newspaper Editorial Boards Weigh In on Laquan McDonald Shooting*, WTTW (Nov. 30, 2015), <https://news.wttw.com/2015/11/30/newspaper-editorial-boards-weigh-laquan-mcdonald-shooting>.

<sup>50</sup> Heather Cherone, *Chicago Police Reform Efforts Need Federal Oversight, Rahm Says*, DNA INFO (Aug. 29, 2017), <https://www.dnainfo.com/chicago/20170829/jefferson-park/chicago-police-reform-efforts-need-federal-oversight-rahm-finally-admits/>.

<sup>51</sup> U.S. Department of Justice Press Release, *Justice Department Opens Pattern or Practice Investigation into the Chicago Police Department* (Dec. 7, 2015), <https://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-chicago-police-department>.

<sup>52</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 25.

<sup>53</sup> Lori Lightfoot, the co-chair of PATF, would go on to announce in 2018 that she was running for mayor and challenging Mayor Emanuel, largely on his reluctant walk toward police reform. In September 2018, Mayor Emanuel ultimately decided not to run for re-election. Lori Lightfoot won the Mayoral race in April 2019. See Mitch Smith, *Lori Lightfoot, Chicago’s Incoming Mayor, Ran on Outsider Appeal*, N.Y. TIMES (Apr. 3, 2019), <https://www.nytimes.com/2019/04/03/us/chicago-mayor-lori-lightfoot.html>.

On January 13, 2017, DOJ confirmed the legitimacy of the decades-long call for reform of the CPD. At the conclusion of its year-long investigation, DOJ issued a 161-page report (DOJ Report) concluding that “CPD officers engage in a pattern or practice of using force, including deadly force, that is unreasonable,” in violation of the Fourth Amendment to the United States Constitution.<sup>54</sup> DOJ’s investigation revealed that this pattern or practice, which disproportionately impacts African American and Latino communities in Chicago, “is largely attributable to systemic deficiencies within CPD and the City” in the training and supervision of officers, accountability systems, and the collection and reporting of data on officer use of force.<sup>55</sup> In addition, DOJ determined that the lack of effective community-oriented policing strategies, unaddressed racially discriminatory conduct by officers, and insufficient support for officer wellness contributed to the pattern or practice of unconstitutional use of force.<sup>56</sup> The DOJ Report concluded that these systemic deficiencies pervade all aspects of policing, including officer training, supervision, accountability mechanisms, and officer support structures, and reinforce a “code of silence” in which CPD officers lie and undertake affirmative efforts to conceal evidence of misconduct.<sup>57</sup> The DOJ Report also found that the “impact of CPD’s pattern of unreasonable force fall[s] heaviest on predominately black and Latino neighborhoods.”<sup>58</sup>

We were not surprised by these findings, but we knew that DOJ’s recommendations for real police reform would not be sustainable unless a court enforced them. To remedy these systemic deficiencies, the DOJ Report made ninety-nine specific recommendations regarding reforms in the areas of use of force, accountability, training, supervision, officer wellness and safety, data collection and transparency, promotions, and community policing.<sup>59</sup> In making its recommendations, the DOJ Report emphasized that the required reforms

will likely not happen or be sustained without the reform tools of an independent monitoring team and a court order ... Together, an independent monitor and court decree will make it much more certain that Chicago is finally able to eliminate patterns of unconstitutional conduct, and can bolster community confidence to make policing in Chicago more effective and less dangerous.<sup>60</sup>

When DOJ released its report, findings and recommendations, DOJ officials held a joint press conference with Chicago officials to announce the conclusion of their investigation.<sup>61</sup> Mayor Emanuel stood with Attorney General Lynch and entered into an Agreement in Principle between the City and DOJ to work together to negotiate a consent

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<sup>54</sup> U.S. DEP’T OF JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 5.

<sup>55</sup> *Id.* at 5–15.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.* at 15.

<sup>59</sup> *Id.* at 150–161.

<sup>60</sup> *Id.* at 16.

<sup>61</sup> Press Release, U.S. Dep’t. of Justice, Office of Pub. Affairs, *Justice Department Announces Findings of Investigation into Chicago Police Department* (Jan. 13, 2017), <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department.html>.

decree to be entered as an order in the U.S. District Court for the Northern District of Illinois.<sup>62</sup> The Agreement also committed to specifying the selection and appointment process for an independent monitor to evaluate the City's progress under the consent decree.<sup>63</sup> The signing of this Agreement was an important moment for Chicago. We were encouraged to see things progressing with a sense of cooperation and coordination.

#### *F. City Officials Respond with Reluctance*

Following the commencement of DOJ's investigation, the City made changes to its law enforcement practices. But the changes were insufficient to eliminate the decades-old policies, customs, and practices of unlawful conduct and to ensure they would not recur.<sup>64</sup>

The City put in place a new use of force policy, rolled out more body-worn cameras for officers, and distributed more tasers.<sup>65</sup> The City initiated some reform efforts, including providing refresher training for officers on use of force policies for the first time and reconfiguring the police accountability arm—the Independent Police Review Authority (IPRA)—and thereby creating a new version of this oversight body called the Civilian Office of Police Accountability (COPA).<sup>66</sup>

However, even the incremental reforms announced by the City faced steep opposition from the rank and file officer union, the Fraternal Order of Police (FOP). For example, when IPRA became COPA, the FOP opposed the changes. Union spokesman Martin Prieb wrote in an email: “Based on our early observations, the FOP does not believe our officers will be investigated fairly under COPA . . . Our collective bargaining agreement does not recognize the authority of COPA. Nevertheless, we have already taken steps to bolster the legal defense of our members and to go on the offensive.”<sup>67</sup>

Despite the City's incremental changes to policing, a local investigative news analysis in September 2017 concluded that only six of the DOJ's ninety-nine recommended reforms had been fully implemented.<sup>68</sup> In arriving at that conclusion, reporter Jonah Newman explained that because there was no independent monitor reporting on the City's

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<sup>62</sup> *Id.* See also U.S. DEP'T. OF JUSTICE, AGREEMENT IN PRINCIPLE BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE CITY OF CHICAGO REGARDING THE CHICAGO POLICE DEPARTMENT (Jan. 13, 2017), <https://www.justice.gov/opa/file/925901/download> [hereinafter AGREEMENT IN PRINCIPLE BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE].

<sup>63</sup> *Id.*

<sup>64</sup> Cherone, *supra* note 50 (quoting Complaint at 7, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1).

<sup>65</sup> Bill Ruthhart & Hal Dardick, *Emanuel Getting Pressure on Police Reform*, CHI. TRIB. (June 19, 2017), [http://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=719759fb-c2e3-449b-8355-ddd91972fd50.html](http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=719759fb-c2e3-449b-8355-ddd91972fd50.html).

<sup>66</sup> The City ordinance creating the Civilian Office of Police Accountability required an increase in budget for the oversight entity of no less than 1% of the annual budget of the CPD. CHI., ILL. MUN. CODE. Chicago Municipal Code § 2-78-105. It also prohibited COPA from hiring investigators who served as sworn officers at CPD in the last five years and required COPA to post its investigative reports to its website. CHI. MUN. CODE §§ 2-78-120(s), 2-78-145.

<sup>67</sup> Dan Hinkel, *Latest Effort at Accountability for Chicago Police Starts Up Friday*, CHI. TRIB. (Sep. 14, 2017), <https://www.chicagotribune.com/news/breaking/ct-chicago-police-accountability-met-20170914-story.html+&cd=1&hl=en&ct=clnk&gl=us.html>.

<sup>68</sup> Eddie Arruza, *Chicago Reporter Analysis Shows Slow Progress on Police Reform*, WTTW (Sept. 13, 2017, 4:52 PM), <https://news.wttw.com/2017/09/13/chicago-reporter-analysis-shows-slow-progress-police-reform>.

progress, he relied on “the city’s own public statements that [] CPD has put out.”<sup>69</sup> He stated, “[f]or the most part, we took the city at their word” that any of the reforms had in fact been implemented.<sup>70</sup> But CPD had yet to even begin many of the far-reaching recommendations for reform made by DOJ and the PATF. This lack of action led to increasing skepticism by the public and concern that the Mayor’s attempt at actual, dedicated, and sustainable police reform would falter in the same ways each previous attempt had.

### *G. High Costs of Police Misconduct and Under-Resourced Department*

Further adding to the growing pressure for police reform, the City’s defense of lawsuits alleging police misconduct had taken a severe financial toll on the taxpayers. Between 2004 and 2016 alone, the City paid approximately \$662 million in settlements, judgments, and outside legal fees for police misconduct cases.<sup>71</sup> Yet, only half of these cases have resulted in official disciplinary investigations, and fewer than four percent of those investigations have resulted in disciplinary recommendations.<sup>72</sup> These payouts have included spectacularly large settlements in high profile cases—including over \$115 million dollars paid out to plaintiffs due to torture and wrongful conviction suits stemming from the notorious Jon Burge related cases.<sup>73</sup> However, the numbers also represent the aggregate of many smaller payments—on average one settlement every two days—with a median payout of \$50,000.<sup>74</sup> Those costs routinely exceed the budget the City has set aside for legal settlements, causing the City to borrow to cover the costs—costs that alternatively could be used to institute real reform required by a consent decree.<sup>75</sup> The City Council approved issuing \$100 million in bonds in 2016 and 2017 just to cover the costs of lawsuits.<sup>76</sup>

In addition to the toll on the City’s taxpayers, officers were also feeling the burden of the problems with the City’s underinvestment in policing and police officers in Chicago. Between 2013 and 2015, CPD’s officer suicide rate was 29.4 per 100,000, which was sixty percent higher than the national average for law enforcement officers.<sup>77</sup>

With the torrent of bad news and taxpayer obligations, many had asked: How does this happen? Where is the accountability? There had been assertions for years that CPD maintained a “code of silence”—that officers would lie, not report or refuse to cooperate

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *How Chicago Racked up a \$662 Million Police Misconduct Bill*, CRAIN’S CHI. BUS. (Mar. 20, 2016, 7:00 AM), <https://www.chicagobusiness.com/article/20160320/NEWS07/160319758/how-chicago-racked-up-a-662-million-police-misconduct-bill.html>.

<sup>72</sup> U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIVISION, *supra* note 24, at 46.

<sup>73</sup> *How Chicago Racked up a \$662 Million Police Misconduct Bill*, *supra* note 71.

<sup>74</sup> Jonah Newman, *Chicago Spent More than \$113 Million on Police Misconduct Lawsuits in 2018*, CHI. REPORTER (Mar. 7, 2019), <https://www.chicagoreporter.com/chicago-spent-more-than-113-million-on-police-misconduct-lawsuits-in-2018/>.

<sup>75</sup> Jonah Newman, *How Emanuel’s Police Lawsuit Budget Puts More Burden on Taxpayers*, CHI. REPORTER (Oct. 19, 2016), <https://www.chicagoreporter.com/how-emanuels-police-lawsuit-budget-puts-more-burden-on-taxpayers/.html>.

<sup>76</sup> *Id.*

<sup>77</sup> U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIVISION, *supra* note 24, at 123.

in investigations regarding allegations of misconduct by their fellow officers. Former CPD Superintendent Jody Weis, who had also served in the FBI, stated:

The culture here is if you get in trouble, if there's an administrative inquiry, you can lie and do whatever you can to get out of it because the penalty for lying will never be greater than the trouble you're in. . . to say [the 'Thin Blue Line'] doesn't exist, is naïve.<sup>78</sup>

Former Superintendent Weis identified that the retaliation an officer would receive from other officers for crossing that “Thin Blue Line” and breaking the code of silence would be far greater than any discipline the officer might face from CPD or the Police Board.

The data bore out this “Thin Blue Line” effect too. Only two percent of the 28,567 misconduct complaints filed between March 2011 and September 2015 resulted in actual discipline.<sup>79</sup> The results for officer-involved shootings were even worse: of the 409 officer-involved shootings between October 2007 and September 2015, only two (0.49%) were found to be unjustified shootings.<sup>80</sup>

Mayor Emanuel, following the release of the video of the shooting of Laquan McDonald, stated in a speech before the City Council, “This problem is sometimes referred to as the Thin Blue Line. Other times it is referred to as the code of silence. It is the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues.”<sup>81</sup>

Though Mayor Emanuel himself publicly acknowledged the existence of a code of silence,<sup>82</sup> his hand-selected Police Superintendent, Eddie Johnson, refused to acknowledge the code of silence in the wake of the investigation and outcry of the Laquan McDonald shooting. In March 2018, Superintendent Johnson was asked about the Mayor’s remarks and his own observations of the code of silence in a deposition. He denied that he had ever seen or witnessed a code of silence in the Chicago Police Department.<sup>83</sup> He said: “I’ve been a cop now for about 30 years. I’ve never heard police officers talking about, in my experience, code of silence . . . Again, in my personal experience, I’m not sure what code of silence means.”<sup>84</sup>

#### *H. DOJ Makes an About Face*

On January 20, 2017, Donald Trump was sworn in as President of the United States, and the federal government’s concern about decades of police misconduct changed. The

<sup>78</sup> Mark Konkol & Quinn Ford, *Rule 14 and Cops Who Lie, Testing the Public Trust*, DNA INFO (Dec. 19, 2013, 6:40 AM), <https://www.dnainfo.com/chicago/20131219/river-north/special-report-rule-14-cops-who-lie-testing-public-trust/.html> (second alteration in original).

<sup>79</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 63.

<sup>80</sup> *Id.* at 79; Jennifer Smith Richards & Chad Yoder, *IPRA Data of Chicago Police Officer-Involved Shootings*, CHI. TRIB. (Dec. 4, 2015), <https://www.chicagotribune.com/news/ct-police-shooting-data-ipra-20151203-htmlstory.html>.

<sup>81</sup> Press Release, Rahm Emanuel, Remarks before the Chicago City Council 6 (Dec. 9, 2015), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MRERemarks.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> Johnson Deposition, 38:20-39:1; 39:11-16; 57:16-24; 60: 4-22, Mar. 15, 2018; Legrier *ex rel* Estate of Legrier v. City of Chicago, No. 15 L 12964 (Ill. Cir. 2018), <https://www.chicagotribune.com/ct-transcript-of-eddie-johnson-deposition-in-robert-rialmo-shooting-20180614-htmlstory.html>.

<sup>84</sup> Johnson Deposition, *supra* note 83, at 38:20-39:1, 39:11-16.

President nominated the U.S. Senator from Alabama, Jeff Sessions, to serve as United States Attorney General. Almost immediately, DOJ took a contradictory position than it had only weeks earlier when it released its report about CPD. Typically, after issuing a report and recommendations, DOJ negotiates a consent decree with an independent monitor to cover all of the changes that the preceding investigation determined that a police department needed for reform. However, Attorney General Sessions made a clear shift in DOJ's approach and pronounced that "protect[ing] and respect[ing] the civil rights of all members of the public" and "implement[ing] best practices in policing" are "first and foremost, tasks for state, local, and tribal law enforcement."<sup>85</sup> Sessions' view was that police misconduct is not systemic or structural but is limited to a few bad cops.<sup>86</sup> Attorney General Sessions and President Trump also frequently used Chicago as a punching bag. Sessions said, "the rule of law has broken down," pointing to Chicago's immigrant-friendly policies known as sanctuary policies as "one sad example of that."<sup>87</sup>

The Trump administration had sought to delay a consent decree approval process in Baltimore.<sup>88</sup> There, DOJ had finalized a consent decree in the last days of the Obama administration and had filed it in the federal district court for its approval. However, after the change in administration, the Sessions' DOJ sought a delay in the court's review of the agreement. Sessions said, "I have grave concerns that some provisions of this decree will reduce the lawful powers of the police department and result in a less safe city."<sup>89</sup> While the court approved the Baltimore consent decree despite DOJ's request for a delay, the effect the new Sessions' DOJ would have on Chicago police reform was less clear. Sessions also opposed the appointment of an independent monitor to evaluate and support the progress of a municipality's reform efforts. Despite Mayor Emanuel's Agreement in Principle with DOJ,<sup>90</sup> both a court-enforced consent decree and an independent monitor to oversee the reforms were now in jeopardy for Chicago.

We faced a tough situation. We knew Chicago needed a consent decree and an independent monitor to achieve real reform. Could we go it alone without DOJ? Was there a path forward?

## II. FILLING THE ROLE OF DOJ

As Attorney General Sessions announced that policing reform was a matter to be dealt with at the state and local levels, the City was faced with a wide-ranging and damning

<sup>85</sup> Memorandum from Att'y Gen. Jefferson B. Sessions to Heads of Dep't Components and U.S. Attorneys, Supporting Federal, State, Local and Tribal Law Enforcement (Mar. 31, 2017), <https://www.justice.gov/opa/press-release/file/954916/download>.

<sup>86</sup> The Times Editorial Board, *As Sessions Fails to Curb Police Misconduct and Draconian Prosecution, States Step Up*, L.A. TIMES (Aug. 31, 2017), <https://www.latimes.com/opinion/editorials/la-ed-chicago-police-reform-20170831-story.html>.

<sup>87</sup> Shibani Mahtani, *Illinois to Form Consent Decree for Police Revamp in Chicago*, WALL ST. J. (Aug. 29, 2017), <https://www.wsj.com/articles/illinois-to-form-consent-decree-for-police-revamp-in-chicago-1504036717>.

<sup>88</sup> Aruna Viswanatha & Scott Calvert, *Justice Department Seeks to Delay Police Oversight in Baltimore*, WALL ST. J. (Apr. 3, 2017), <https://www.wsj.com/articles/justice-department-seek-delay-in-baltimore-police-consent-decree-1491271343>.

<sup>89</sup> Daniel Victor, *Baltimore Will Get Overhaul of Police.*, N.Y. TIMES (Apr. 7, 2017), at A18, <https://www.nytimes.com/2017/04/07/us/baltimore-justice-department-police-consent-decree.html>.

<sup>90</sup> AGREEMENT IN PRINCIPLE BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 62, at 2.

DOJ report, an inflammatory report from the PATF, a clamor over the history of police brutality in the city, community outrage over the Laquan McDonald video, and a new Superintendent but no firm roadmap for reform.

*A. The City Needed a Federal Court Order to Ensure Reform Was Carried Out*

Within the Illinois Attorney General's Office, we knew a consent decree was essential to ensuring real, sustainable, and lasting reform. We were unwilling to accept anything less. Though we recognized that police reform is always a difficult road, especially with the high number of recommended changes, we also understood that the only way for it to be sustainable, lasting reform would be for entry of a consent decree overseen by a federal judge and an independent monitor to assess and support that progress.

A consent decree would need to cover several substantive areas of reform to address the complex, deeply entrenched deficiencies at CPD, including departmental policies and practices, such as use of force and bias-based policing, training, supervision and accountability systems, officer wellness programs, and community engagement.<sup>91</sup>

In addition, a consent decree would require an independent, third-party monitor to submit reports to the court—not only to the parties—and to make the reports available to the public. A consent decree would require public access to status hearings regarding the progress of the consent decree. The hearings would provide an effective forum to discuss and resolve implementation challenges and disagreements between the parties. In the event the parties could not resolve a material disagreement, the court would possess jurisdiction to resolve the dispute. Finally, in the event the City failed to comply with a consent decree, the court could oversee contempt proceedings.

To the surprise of many, in June 2017, the City revealed it was in the process of negotiating an Memorandum of Agreement (MOA) with DOJ to address police reform. The City announced that it had reached an “agreement in principle” with the Trump Administration's DOJ—the same administration that proudly declared its disbelief in the need for police reform. DOJ responded that it had not agreed on any format for Chicago police reform and was reviewing a proposal from the Chicago Mayor's office.<sup>92</sup> The City acknowledged that its proposal did not include federal court oversight of reforms.<sup>93</sup> Lack of court oversight was a reversal of the City's position from a few months earlier, when the Mayor had agreed with the Obama DOJ that it would negotiate a consent decree.<sup>94</sup>

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<sup>91</sup> Chicago is not the only major city that DOJ has investigated and recommended a consent decree to reform the police department. For example, in New Orleans, a consent decree implemented in 2013 had a dramatic effect on brutality complaints. An oversight report concluded that “the monitoring team did not locate any litigation for the past two years alleging excessive use of force.” A study of twenty-three departments under consent decrees, including New Orleans, found lawsuits dropped dramatically—from 23% to 36% each year, in each city. Derrick Blakely, *Chicago Police Consent Decree to Govern CPD Reforms Expected Within Days*, CBS CHI. (July 25, 2018), <https://chicago.cbslocal.com/2018/07/25/chicago-police-consent-decree-expected-within-days/>.html.

<sup>92</sup> Bill Ruthhart, *AG Madigan Calls on Emanuel to Keep Pledge for Court Oversight of CPD Reform*, CHI. TRIB. (June 13, 2017), <https://www.chicagotribune.com/politics/ct-lisa-madigan-rahm-emanuel-police-reform-met-0613-20170612-story.html>.

<sup>93</sup> Bill Ruthhart, *Emanuel, Justice are Mum on Consent Decree Decision*, CHI. TRIB. (June 7, 2017), <https://www.chicagotribune.com/news/local/politics/ct-department-of-justice-chicago-police-reform-20170607-story.html>.

<sup>94</sup> See generally AGREEMENT IN PRINCIPLE BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 62.

Our concern was the lack of accountability and the watered-down version of reform that would result with the MOA that the City had proposed with DOJ.<sup>95</sup> In contrast to the robust mechanisms for accountability in a consent decree, such as an independent monitor who would report to the court on progress under the consent decree or a party's ability to file a motion with the court to enforce the consent decree should the City breach its obligations, an MOA only affords the remedy of a breach of contract action. Such a remedy is less expedient and less transparent.

Without federal judicial oversight, the City's and DOJ's MOA would have left Chicago with too much leeway to pursue less than comprehensive, lasting reform of all critical aspects of CPD's use of force, as well as officer training, supervision, accountability, and wellness. It was clear to us and most Chicagoans that police reform without independent oversight and accountability would fail, as it had in the past. As the Obama DOJ noted in its Report, "[t]ogether, an independent monitor and court decree will make it much more certain that Chicago is finally able to eliminate patterns of unconstitutional conduct, and can bolster community confidence to make policing in Chicago more effective and less dangerous."<sup>96</sup>

### *B. We Oppose the City's Effort to Pursue Anything Less Than a Consent Decree*

The City's attempt to end-run around its previous commitment to a police reform consent decree by proposing an MOA with DOJ was met with widespread criticism. We called the City's negotiation with a DOJ that does not believe in the need for constitutional policing "ludicrous."<sup>97</sup> We called on Mayor Emanuel to "stop wasting time" and to commit to a transparent process that would result in a consent decree.<sup>98</sup> The Mayor refused to respond to our call for a consent decree, instead suggesting that the format of the agreement was not important and that an MOA with DOJ would produce the same results as a court-ordered consent decree.<sup>99</sup> We suggested that a lawsuit to seek a consent decree was a possibility, but called it a "last option."<sup>100</sup>

Our call for a consent decree set off a series of discussions over several months with Mayor Emanuel, the City Corporation Counsel, CPD, and our office.<sup>101</sup> We continued to call for a consent decree, and a growing chorus of the City's civic leaders, religious leaders, elected officials, community activists, and civil rights leaders added their objections to the City's inadequate plan to pursue reforms through an MOA with DOJ.

Prominent newspaper editorial boards entered the conversation as well. The Editorial Board of the Chicago Sun-Times wrote:

We urge the mayor to join with Madigan and others in negotiating a practical and rigorously scheduled federal consent decree, which would

<sup>95</sup> Bill Ruthhart, *supra* note 93, at 4.

<sup>96</sup> U.S. DEP'T of JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 16.

<sup>97</sup> Lisa Madigan, *Mayor, Don't Do an End Run on Police Reform*, CHI. TRIB. (June 11, 2017), <https://www.chicagotribune.com/opinion/commentary/ct-perspec-madigan-0611-md-20170610-story.html>.

<sup>98</sup> *Id.*

<sup>99</sup> Ruthhart, *supra* note 93; Ruthhart & Dardick, *supra* note 65.

<sup>100</sup> Ruthhart, *supra* note 93.

<sup>101</sup> Fran Spielman, *Madigan: Emanuel 'Scared' of Federal Oversight of CPD, But Door Open*, CHI. SUN-TIMES (June 15, 2017), <https://chicago.suntimes.com/2017/6/15/18375819/madigan-emanuel-scared-of-federal-oversight-of-cpd-but-door-open.html>.

mean court oversight . . . When Madigan’s office, civil liberties groups, influential community organizations and editorial boards line up to warn that anything short of a formal consent decree might not earn the public’s trust, it’s good to listen.<sup>102</sup>

The Editorial Board of the New York Times urged the Mayor to act too.<sup>103</sup> In agreeing with Attorney General Madigan’s claim that “[t]here has never been systemic and comprehensive police reform in Chicago because there has never been an enforceable court order requiring it,” the Times Editorial Board said, “Mayor Emanuel should take those words to heart and act.”<sup>104</sup>

Activists and community members who had been organizing around police reform and community oversight of CPD did not believe that the City could reform itself. Many were concerned by reports of the City’s proposal of an MOA with DOJ and troubled that it would produce a watered-down version of reform. Taking matters into their own hands, individual plaintiffs as well as a coalition of community organizations led by Black Lives Matter Chicago, Blocks Together, Brighton Park Neighborhood Association, Chicago Urban League, Justice For Families, NAACP Westside Branch, Network 49, Women’s All Points Bulletin, and 411 Movement for Pierre Loury filed a civil rights lawsuit (the *Campbell* lawsuit) on June 14, 2017.<sup>105</sup> The coalition’s litigation sought a consent decree and accused the City of trying to cut a “back-room deal” with Attorney General Sessions.<sup>106</sup>

The City fought the *Campbell* lawsuit and refused to engage in discussions about a consent decree with the *Campbell* plaintiffs.<sup>107</sup> While the City did not immediately respond directly to the lawsuit after it was filed, the City proclaimed its commitment to reform and pointed to its own plans to pursue reform.<sup>108</sup> In its legal filing, the City moved to dismiss the lawsuit brought by the civil rights groups, asserting that a consent decree is not necessary because the practices that gave rise to the DOJ investigation “are no longer in place in light of CPD’s extensive, ongoing reform efforts.”<sup>109</sup> In addition, the City challenged the standing of the plaintiffs.<sup>110</sup>

<sup>102</sup> Chicago Sun-Times Editorial Board, *Chicago’s Road to Police Reform Begins and Ends With Trust*, CHI. SUN-TIMES (June 16, 2017), <https://chicago.suntimes.com/2017/6/16/18320249/chicago-s-road-to-police-reform-begins-and-ends-with-trust>.

<sup>103</sup> Editorial Board, *Who Can Reform the Chicago Police?*, N.Y. TIMES (July 4, 2017), <https://www.nytimes.com/2017/07/04/opinion/chicago-police-reform.html>.

<sup>104</sup> *Id.*

<sup>105</sup> See Class Action Complaint, *Campbell et al. v. City of Chicago et al.*, No. 17-cv-4467, 2017 WL 2587483 (N.D. Ill. 2017).

<sup>106</sup> Fran Spielman, *supra* note 101; Class Action Complaint, *supra* note 105.

<sup>107</sup> Dan Hinkel, *Chicago’s Deal With ACLU, Black Lives Matter Changes Political Calculus for Police Reform*, CHI. TRIB. (Mar. 26, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-police-oversight-20180321-story.html+&cd=2&hl=en&ct=clnk&gl=us.html>.

<sup>108</sup> Dan Hinkel, *Suit Seeks Court Role in CPD Reform Effort*, CHI. TRIB. (June 15, 2017), [http://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=f810a27d-11a0-454e-baa6-d88d18472199.html](http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=f810a27d-11a0-454e-baa6-d88d18472199.html).

<sup>109</sup> Editorial Board, *No, the Chicago Police Department Isn’t Fixed*, CHI. TRIB. (Aug. 28, 2017), <https://www.chicagotribune.com/opinion/editorials/ct-edit-police-reforms-chicago-rahm-20170825-story.html>.

<sup>110</sup> Defendant City of Chi. Motion to Dismiss the First Amended Class Action Complaint Pursuant to FED. R. CIV. P. 12(b)(1), (6), *Campbell et al. v. City of Chicago et al.*, No. 17-cv-4467 (N.D. Ill. Aug. 21, 2017).

Yet, activists and community leaders remained unconvinced based on their prior experiences with police reform efforts in the city. Mecole Jordan, a lead organizer with United Congress and the Grassroots Alliance for Police Accountability (GAPA), explained community skepticism in the City's ability to reform itself:

We've been hearing Mayor Emanuel and Supt. Eddie Johnson say, 'Trust me, trust us,' . . . But the residents that we work with every single day did trust the city leaders. They trusted them to serve and protect. They trusted them to tell the truth. They trusted them not to violate their civil rights. But that trust is now severely broken.<sup>111</sup>

Despite the overwhelming calls for a consent decree to govern Chicago police reform, the Mayor remained staunchly opposed.<sup>112</sup> He dismissed the skepticism about the City's ability and willingness to reform without a consent decree: "[W]e are actually in the middle of making all the changes without a court order, and continue to do it; and we will do it."<sup>113</sup> He stuck to this message—that change was already occurring—and he didn't need any more assistance. We rejected that notion and forged ahead.

The City contended that it had spent months negotiating an MOA, which the Mayor asserted would suffice to ensure meaningful changes.<sup>114</sup> Mayor Emanuel's floor leader in the City Council, Alderman Pat O'Connor, expressed concerns about the role of a federal judge in police reform: "If we do what those reports recommend, what role would the judge play—other than adding another layer of bureaucracy and encumbering the city with millions and millions of dollars in more reporting, more monitoring?"<sup>115</sup>

In response to calls for transparency, the City refused to publicly release its draft MOA with DOJ.<sup>116</sup> Instead, the City allowed a few key stakeholders to review the draft privately. One of those stakeholders, then-Police Board President and PATF Co-Chair Lori Lightfoot, stated that the draft had "no specific list of reforms that must be achieved; no deadline that must be met; no commitment of personnel and funding and no commitment to change [the] police contract."<sup>117</sup> Our office also reviewed the draft and found that it fell short of the commitment needed to reform CPD.

Skeptical of this potential watered-down agreement with DOJ, Christy Lopez, one of the leaders of DOJ's CPD investigation, spoke out in favor of a consent decree: "I've

<sup>111</sup> Chi. Tribune Staff, *Morning Spin: Rauner Won't Sign 911 Funding Plan that Could Increase Phone Taxes*, CHI. TRIB. (June 23, 2017), <https://www.chicagotribune.com/politics/ct-bruce-rauner-phone-fees-20170623-story.html>.

<sup>112</sup> Greg Hinz, *Chicago Police Reform Suit Filed by Attorney General Madigan*, CRAIN'S CHI. BUS. (Aug. 29, 2017), <https://www.chicagobusiness.com/article/20170829/BLOGS02/170829863/chicago-police-reform-suit-filed-by-attorney-general-madigan.html>.

<sup>113</sup> Chi. Trib. Staff, *supra* note 111.

<sup>114</sup> David Schaper, *Illinois Officials Ask Courts to Order Changes in Chicago Police Policies*, NPR (Aug. 30, 2017), <https://www.npr.org/sections/thetwo-way/2017/08/30/547377201/illinois-officials-ask-courts-to-order-changes-in-chicago-police-policies.html>.

<sup>115</sup> Fran Spielman, *Mayor Rahm Emanuel at a Crossroads on Police Reform*, CHI. SUN-TIMES (June 14, 2017), <https://chicago.suntimes.com/2017/6/14/18332691/mayor-rahm-emanuel-at-a-crossroads-on-police-reform.html>.

<sup>116</sup> Spielman, *supra* note 101.

<sup>117</sup> Fran Spielman, *Police Board Prez Lightfoot Says Reform Memo 'Fundamentally Flawed'*, CHI. SUN-TIMES (June 29, 2017), <https://chicago.suntimes.com/2017/6/29/18385958/police-board-prez-lightfoot-says-reform-memo-fundamentally-flawed.html>.

never seen a department that screams out for a consent decree more than Chicago. To let this opportunity pass with this fig leaf of an agreement is really pretty tragic for the people of Chicago.”<sup>118</sup>

With no other framework in place to secure necessary reforms, we were left with no other choice. We sued the City of Chicago in federal court.

### *C. We Sue the City of Chicago in Pursuit of a Police Reform Consent Decree*

After a summer of the City dragging its feet on real and lasting reform and refusing to discuss a consent decree framework with the community groups that filed suit, we informed the City of our intentions to bring a lawsuit and seek a consent decree overseen by a federal judge. After weeks of discussions we “agreed that meaningful and sustainable reform requires an enforceable consent decree.”<sup>119</sup> As the New York Times Editorial Board observed, “[t]he city had little choice but to embrace the lawsuit.”<sup>120</sup> The case was filed on August 29, 2017. As we said when we filed, “[w]e are stepping into the shoes of the Department of Justice, which abandoned this effort . . . It is clear that the Trump administration’s view of policing is not consistent with our own. [Our] office will take the lead.”<sup>121</sup>

At the same time that we filed the lawsuit against the City, Mayor Emanuel and CPD Superintendent Johnson committed to work with us to negotiate an enforceable consent decree. While Mayor Emanuel agreed to enter into consent decree negotiations with us, he reluctantly reversed his position on whether the City needed federal oversight.<sup>122</sup> Mayor Emanuel and Superintendent Johnson asked to participate in the press conference when the suit was announced, and we agreed. At the press conference, Superintendent Johnson said “I don’t think this is a blow [to the City].”<sup>123</sup> In our lawsuit, we conveyed our mission to deliver for Chicagoans a police department that respects their constitutional rights, protects their safety, and supports the officers who take on these vital responsibilities.

### *D. With No Statute that Explicitly Provides Authority, We Use Our Parens Patriae Powers to Pursue Fourth Amendment and State Civil Rights Claims*

Our Complaint, based on the findings and recommendations of the DOJ and PATF reports, sought injunctive relief for alleged violations of the Fourth Amendment to the U.S.

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<sup>118</sup> Dan Hinkel et al., *Other Cities' Approach to Police Reform Without Judge's Oversight May Color Chicago's*, CHI. TRIB. (June 9, 2017), <https://www.chicagotribune.com/politics/ct-chicago-police-consent-decree-met-20170609-1-story.html>.

<sup>119</sup> Bill Ruthhart, Annie Sweeney, and John Byrne, *AG Madigan Sues to Enforce Chicago Police Reform; Emanuel Pledges Cooperation*, CHI. TRIB. (Aug. 30, 2017), <https://www.chicagotribune.com/politics/ct-emanuel-madigan-consent-decree-met-0830-20170829-story.html+&cd=1&hl=en&ct=clnk&gl=us.html>.

<sup>120</sup> Editorial Board, *Victims Get a Voice in Chicago Police Reform*, N.Y. TIMES, (Mar. 25, 2018), <https://www.nytimes.com/2018/03/25/opinion/chicago-police-reform.html>.

<sup>121</sup> Cherone, *supra* note 50.

<sup>122</sup> Schaper, *supra* note 114.

<sup>123</sup> Hinz, *supra* note 112.

Constitution,<sup>124</sup> Article I, Section 6 of the Illinois Constitution,<sup>125</sup> the Illinois Civil Rights Act of 2003,<sup>126</sup> and the Illinois Human Rights Act.<sup>127</sup>

In particular, the Complaint contained four counts. Importantly, the Complaint contained a single federal count that alleged the City and its agents maintain a policy, custom, or practice of using force against persons in Chicago without lawful justification, in violation of the Fourth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.<sup>128</sup> We also made the same claim under Article I, Section 6 of the Illinois Constitution, which, similar to the Fourth Amendment of the U.S. Constitution, prohibits unreasonable search and seizure.<sup>129</sup> In addition, our Complaint alleged claims under the Illinois Civil Rights Act of 2003, asserting that the City’s law enforcement practices have a disproportionate impact on African Americans and Latinos.<sup>130</sup> Finally, we asserted a claim under the Illinois Human Rights Act, alleging a pattern or practice of discrimination that denies African Americans and Latinos in Chicago the full and equal enjoyment of the privileges of the City’s law enforcement services.<sup>131</sup>

Our lawsuit seeking police reform in the City of Chicago was unprecedented in more ways than one. CPD would become the largest police department to ever face a police consent decree.<sup>132</sup> The scope of the decree was also unparalleled, covering the broad and deep problems identified by DOJ and systemic deficiencies in nearly every area of CPD operations. Moreover, the decision to file a lawsuit first, rather than at the conclusion of successful negotiations, was much more aggressive than the DOJ’s typical approach. DOJ rarely files suits against police departments engaged in federal consent decree negotiations.

In addition, the fact that a state attorney general was leading the sought-after police reform, rather than DOJ, was incredibly rare, but well within our jurisdiction. DOJ pursues police reform under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.<sup>133</sup> The statute gives DOJ the authority to pursue equitable and declarative relief to eliminate a pattern or practice of unconstitutional or unlawful conduct in a civil

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<sup>124</sup> U.S. CONST. amend. IV.

<sup>125</sup> ILL. CONST. Art. I, Sec. 6.

<sup>126</sup> 740 ILCS 23/5(b).

<sup>127</sup> 775 ILL. COMP. STAT. 5/5-102(C) (West 2020).

<sup>128</sup> Complaint at ¶¶ 205-208, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1, ECF No. 1; U.S. CONST. amend. IV; 42 U.S.C. § 1983.

<sup>129</sup> Complaint at ¶¶ 209-212, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1 (N.D. Ill. Aug. 29, 2017), ECF No. 1; ILL. CONST. Art. I, Sec. 6.

<sup>130</sup> Complaint at ¶¶ 213-216, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1, ECF No. 1; 740 ILCS 23/5(b).

<sup>131</sup> Complaint at ¶¶ 217-218, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1, ECF No. 1; 775 ILCS 5/5-102(C).

<sup>132</sup> With over 12,400 officers at the end of 2017, it is second in number only to the New York City Police Department. *See* CHI. POLICE DEP’T, *supra* note 4. By way of comparison, the Baltimore Police Department, which is subject to a 2017 consent decree, had 2,646 officers according to 2015 data. Mike Maciag, *How Many Police Officers Does a City Need?*, GOVERNING (Oct. 20, 2016), <https://www.governing.com/topics/public-justice-safety/gov-cities-police-officers-hiring.html>. *United States v. Baltimore Police Dep’t et. al.*, 282 F. Supp. 3d 897 (D. Md. 2017) (No.17-99). Similarly, the Seattle Police Department, subject to a 2012 consent decree, has 1,350 officers, according to the same data. *Settlement Agreement, United States v. City of Seattle* (W.D. Wash. 2012) (No. 12-1282) (“Seattle Consent Decree”).

<sup>133</sup> 42 U.S.C. § 14141 (transferred to 34 U.S.C. § 12601).

action.<sup>134</sup> Outside of the authority provided under federal law, almost no states have statutes that provide similar authority. While California law allows the state attorney general to pursue consent decree-type reform under an explicit statute, the state attorneys general have exercised that power sparingly.<sup>135</sup> Unlike DOJ and California, Illinois does not have a statute granting its state attorney general explicit authority to address police reform in a manner that resembles 42 U.S.C. § 14141.

A consent decree for Chicago was the only thing that would address the serious need for reforms, unmet by DOJ. While private plaintiffs had lodged suits against the City for years, the United States Supreme Court's decision in *City of Los Angeles v. Lyons* limited the viability of the injunctive relief sought in those suits.<sup>136</sup> In *Lyons*, the plaintiff suffered an unconstitutional chokehold in an encounter with an officer of the Los Angeles Police Department.<sup>137</sup> The Court held that Lyons could not seek an injunction barring the use of the chokehold unless he could show that he was likely to suffer future injury from police officers' use of the chokehold.<sup>138</sup> This decision has significantly limited private plaintiffs' abilities to seek systemic reform in law enforcement cases.

Unfortunately, individual damages cases have proven to be ineffective at achieving police reform. For example, in Detroit, before DOJ settled its pattern or practice case there in 2003, Detroit had paid out over \$100 million a year in police-related misconduct damages between 1986 and 1997.<sup>139</sup> Despite significant payouts such as these, damages claims alone had, in many cities, been inadequate to generate deep, lasting reform.

What *has* been shown to work at achieving lasting police reform are consent decrees overseen by a government entity.<sup>140</sup> Although the empirical evidence is not comprehensive, studies of consent decrees in other cities have shown that they are effective and sustainable.<sup>141</sup> In one study, completed by the Vera Institute of Justice, the authors evaluated the impact of the Pittsburgh consent decree years after the city was no longer

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<sup>134</sup> 34 U.S.C. § 12601 (a), (b).

<sup>135</sup> Scott Gold, *State Steps Into Police Reform in Riverside*, L.A. TIMES (Feb. 18, 2001), <http://articles.latimes.com/2001/feb/18/local/me-27074.html>. See also The Times Editorial Board, *supra* note 86; see Press Release, State of California Department of Justice, Office of the Attorney General, Attorney General Kamala D. Harris Opens Investigations into the Kern County Sheriff's Office and the Bakersfield Police Department for Potential Civil Rights Violations (Dec. 22, 2016), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-opens-investigations-kern-county-sheriff%E2%80%99s>.

<sup>136</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 105–06.

<sup>139</sup> Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 GEO. MASON U. C.R.L.J. 479, 494 (2009).

<sup>140</sup> See ROBERT C. DAVIS ET AL., CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING? THE PITTSBURGH CONSENT DECREE, VERA INST. OF JUST. 17 (Apr. 2005), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/can-federal-intervention-bring-lasting-improvement-in-local-policing-the-pittsburgh-consent-decree/legacy\\_downloads/277\\_530.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/can-federal-intervention-bring-lasting-improvement-in-local-policing-the-pittsburgh-consent-decree/legacy_downloads/277_530.pdf); CHRISTOPHER STONE ET AL., POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD, HARV. KENNEDY SCHOOL 10 (2009), <https://www.hks.harvard.edu/publications/policing-los-angeles-under-consent-decree-dynamics-change-lapd>; Stephen Rushin, *Structural Police Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1344 (2015).

<sup>141</sup> DAVIS ET AL., *supra* note 140, at 17.

overseen by a monitor.<sup>142</sup> The study concluded that the reforms implemented in the consent decree remained in effect even after the decree was lifted, suggesting the reforms were effective.<sup>143</sup> In Los Angeles, after implementation of its consent decree, the number of arrests increased, crime fell substantially, and the use of force decreased.<sup>144</sup> The community's satisfaction with the department overall increased, although there were material differences based on the race of the respondent.<sup>145</sup>

While we did not have an explicit statute to address police reform akin to § 14141, the Illinois Attorney General's Office had been part of a trend among state attorneys general increasingly enforcing federal and state civil rights laws.<sup>146</sup> Once Attorney General Sessions was sworn in, it became even more imperative that state attorneys general act in the absence of reform efforts at the federal level because it was clear that DOJ would no longer act to protect civil rights, including in the area of police reform.

### III. NEGOTIATING A CONSENT DECREE

#### A. *Illinois Attorney General's Office Conducts a Supplemental Investigation*

In order to accomplish the enormous reform work ahead, we dedicated a team of attorneys to conduct the factual investigation, prepared drafts of consent decree provisions, participate in negotiations, and review and incorporate feedback from various stakeholders into the consent decree.<sup>147</sup> Attorneys from the law firm Robins Kaplan LLP also assisted our office *pro bono*.

We hired a team of experts with extensive experience in the investigation and oversight of large city police forces.<sup>148</sup> Our experts included Ronald Davis, who previously served as Executive Director of President Obama's Task Force on 21<sup>st</sup> Century Policing<sup>149</sup> and served as the Director of DOJ's Office of Community Oriented Policing Services (COPS Office); Kathleen O'Toole, who previously served as the Chief of the Seattle Police Department while that Department was under a federal consent decree with the Department of Justice; Scott Thomson, the then-current Chief of the Police Department in Camden; New Jersey and the President of the Police Executive Research Forum, a national organization of police executives; and Jonathan Smith, who previously served as Chief of the Special Litigation Section of DOJ's Civil Rights Division from 2010 to 2015, during

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<sup>142</sup> ROBERT C. DAVIS ET AL., *supra* note 140, at 17.

<sup>143</sup> *Id.*

<sup>144</sup> STONE ET AL., *supra* note 140, at 10; *See generally* Rushin, *supra* note 140.

<sup>145</sup> STONE ET AL., *supra* note 140, at 35.

<sup>146</sup> *See, e.g.*, Complaint, Washington v. Trump, No. 2:17-cv-00141 (W. D. Wa. 2017) ECF #1 (challenging Executive Order putting in place international travel ban); Complaint, State of New York et al v. U.S. Dept. of Commerce et al., No Case 1:18-cv-02921 (S.D.N.Y. 2018) (challenging addition of citizenship question to U.S. Census); Complaint, State of Oregon, et al v. Alex M. Azar, No. 6:19-cv-00317-MC (D. Or. 2019) (challenging restrictions on reproductive rights).

<sup>147</sup> Plaintiff's Memorandum in Support of Approval of the Proposed Consent Decree, State of Illinois v. City of Chicago, No. 17-cv-6260 at 5.

<sup>148</sup> *Id.* at 6.

<sup>149</sup> *See, e.g.*, PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (MAY 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

which time he was responsible for eighteen pattern or practice investigations of civil rights violations by law enforcement.<sup>150</sup>

After filing suit, we undertook a discovery process that included wide-ranging and detailed factual investigations to further inform our understanding of CPD's former and current practices.<sup>151</sup> Specifically, we propounded 242 document requests and reviewed over 10,000 documents totaling over 97,000 pages.<sup>152</sup> Further, in order to inform the parties' negotiations, we conducted interviews of officers throughout the ranks of CPD, including commanding officers of CPD's in-service and recruit training programs, the commanding officer of CPD's Force Review Unit, Training Academy staff, and field training officers.<sup>153</sup>

During our investigation, we also observed the department-wide use of force training provided to current CPD officers, train-the-trainer sessions, and numerous courses provided to new recruits at CPD's Training Academy.<sup>154</sup> In addition, we participated in ride-alongs in neighborhoods throughout the city, met with officers, sergeants, and watch commanders in various CPD districts, conducted site visits, and attended several detailed presentations provided by CPD and the City regarding ongoing and planned reform efforts intended to address use of force, officer training, accountability, promotions, crisis intervention, officer wellness, data management, community policing, and impartial policing.<sup>155</sup>

### *B. Community Feedback is Paramount*

We knew that all our efforts would be in vain if we did not make community engagement and feedback the central focus of our process. We built our work off of the tireless dedication of community activists, leaders, and organizations in Chicago that had long engaged in police reform efforts.<sup>156</sup> Many activists had laid the foundational analysis and outcry around the systemic problems with Chicago police for years, and it reached a fever pitch after the Laquan McDonald shooting.<sup>157</sup>

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<sup>150</sup> Plaintiff's Memorandum in Support of Approval of the Proposed Consent Decree, *State of Illinois v. City of Chicago*, No. 17-cv-6260 at 6.

<sup>151</sup> *Id.* at 7.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Notably, the community members engaged in discussions and protests were not just the practiced and tenured community leaders who had been protesting police violence for decades, such as Jesse Jackson and Rainbow Push Coalition, but it also included many young, grassroots activists who had been fighting the broken system of policing and Chicago's failed response to it, such as Assata's Daughters and a coalition of people organizing for justice for Rekia Boyd, a young woman killed by an off-duty cop who had discharged his weapon.

<sup>157</sup> In addition, because within days of the court ordered release of the video of Chicago police officer Jason Van Dyke killing Laquan McDonald, the Mayor had commissioned PATF, and then DOJ came in to town to start its investigation in December 2015, many community groups and community members had been engaged in police reform discussions for many months. In large part because of this built in structure and conversation around police reform, many community groups and leaders had covered tremendous ground through PATF, DOJ investigation, as well as the Grassroots Alliance for Police Accountability, a collective made up of several community organizations that proposed an ordinance for community oversight of the police department.

While our approach to negotiating the consent decree in many ways mirrored DOJ's process, we prioritized the community's voice in unique and notable ways that DOJ had never undertaken. This collaborative approach made our process stand out from other efforts, and it represented our office's unyielding commitment to those most impacted by police violence.<sup>158</sup> Because we live here and know the strong community voices that for too long have been ignored by traditional leadership structures, we recognized that the complete lack of trust between the community and police was a major challenge and restoring that trust a top priority. While asserting the critical need for the City to build that trust, the consent decree had to be a tool for building that trust and could not serve as yet another obstacle toward achieving it. Community engagement was key.

### *C. We Organize Roundtables Across the City to Gather Community Input*

One way we worked to engage the community was through more than a dozen organized, public roundtables held across Chicago. As we set out to hear from the community members most impacted by police practices, we worked closely to organize each meeting as an opportunity for all community members to share their stories and experiences in interacting with CPD as well as to hear their input on what police reforms were necessary. The Institute for Policy and Civic Engagement at the University of Illinois at Chicago facilitated the sessions and worked with our office to design the sessions and their format.<sup>159</sup>

At each roundtable, the community members in attendance were broken up into round tables, where facilitators asked specific questions on three topics: impartial policing, community policing, and use of force. The facilitator wrote down the ideas and suggestions made at the table. Notetakers carefully transcribed and reviewed the responses by community members to ensure they were accurately recorded.<sup>160</sup> Eventually, all the smaller groups came back together, and facilitators or community members reported their ideas out to the larger group at the end of each event. In total, we hosted fourteen roundtables throughout the city centered in some of the communities most impacted by police misconduct and partnered with community organizations who co-hosted the discussions in their communities and helped to spread the word to community members.<sup>161</sup>

Through the roundtable process, we received more than 6,000 comments on the proposed consent decree from more than 1,000 participants.<sup>162</sup> In addition, we collected approximately 1,600 additional comments through website submissions, emails, and voice messages.<sup>163</sup> We shared all of the community ideas with the city.

Further, we conducted small-group conversations to ensure feedback from diverse communities, including youth, the LGBTQ+ community, survivors of domestic violence

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<sup>158</sup> JOSEPH K. HOERETH & NORMA E. RAMOS, CONSENT DECREE COMMUNITY ENGAGEMENT, INST. FOR POL'Y & CIVIC ENGAGEMENT (2018), [http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/07/IPCE-Community-Engagement-Report\\_Final.pdf](http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/07/IPCE-Community-Engagement-Report_Final.pdf).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 9–10.

<sup>161</sup> *Id.*

<sup>162</sup> *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, at \*5. (N.D. Ill., E. Div. 2019).

<sup>163</sup> *Id.*; Hoereth & Ramos, *supra* note 158.

and sexual assault, people experiencing homelessness, violence interrupters, and the deaf and hard-of-hearing community.<sup>164</sup>

The University of Illinois at Chicago compiled and published a report with the community feedback. The report also contained each of the 6,000 comments verbatim for community review.<sup>165</sup> Their inclusion was important to provide transparency to the community—both to ensure community members that their comments were recorded, and to allow them to compare them to the draft consent decree.

A thorough review of the comments and suggestions was critical to informing our approach to the consent decree. The feedback included comments such as the following:

“There must be negative consequences for bad behavior, just like how we raise kids. No suspensions; fire them, lock them up for violence, just like us.”<sup>166</sup>

“Local police woman goes to play ball with kids on off hours to get to know her. Kids know she’s police, they respect her because she care[s] about them. Avenue for open communication, in case something happens and needs to share that.”<sup>167</sup>

“Police don’t see communities of color as humans/ like people/ residents – P.O.’s tend to dehumanize the people in comm[unity].”<sup>168</sup>

“Common to those concerns [called for by community members] was the perception among residents that the majority of police on the West Side simply do not know the residents they’re supposed to be protecting.”<sup>169</sup>

“Community members called for better training, more effective screening of police applicants, more effective performance reviews, enhanced cultural awareness and more accountability for police officers involved in shootings and racial profiling incidents.”<sup>170</sup>

“Develop supports that help address stress/triggers.”<sup>171</sup>

Some suggestions included better training of police officers; not assigning inexperienced officers at night when crime is highest; eliminating lack of trust through immediate termination of cops who kill unarmed people; termination of officers involved in a cover-up; development of police partnerships with ex-offenders; payment of police brutality

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<sup>164</sup> *Id.* at 5.

<sup>165</sup> *Id.* at 4.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 134.

<sup>168</sup> *Id.* at 144.

<sup>169</sup> Bonni McKeown, *West Siders Chime in on Police Reform*, AUSTIN WEEKLY NEWS (Apr. 17, 2018), <https://www.austinweeklynews.com/News/Articles/4-17-2018/West-Siders-chime-in-on-police-reform/.html>.

<sup>170</sup> *Id.*

<sup>171</sup> Hoereth & Ramos, *supra* note 158, at 171.

settlements out of police pension fund; holding the sergeant accountable if a rookie cop ‘messes up’; and changing the shoot-to-kill training to preserving life.<sup>172</sup>

We brought critical community input with us into the negotiations with the City and CPD. As a result, we introduced points into the consent decree that were novel and not included in past DOJ consent decrees. For example, we included provisions that specifically forbid the practice of “dumping” community members (usually teenagers) by police officers—a practice by which CPD officers would pick up a witness from one gang and drop them off in rival gang territory in an effort to coerce the witnesses into speaking to the police. Other components included access to counsel within a reasonable period of time once detained, much-needed training and selection for school resource officers, language access, transparency and timelines regarding individual police complaints, and more community and youth representation in community councils.

#### *D. We Propose a Unique Agreement to Provide Community Groups with a Role in the Consent Decree*

In addition to the *Campbell* lawsuit, on October 4, 2017, the ACLU of Illinois and Equip for Equality filed a lawsuit against the City on behalf of several community groups and service organizations, including ACLU of Illinois, Communities United, Community Renewal Society, Next Steps for Reform, and One Northside.<sup>173</sup> The suit focused on patterns of misconduct impacting people with disabilities, particularly mental illnesses or developmental disabilities. One of the plaintiffs’ representatives explained why they felt the need for a lawsuit: “[CPD does] have a history of making promises and not fulfilling them, and so with a lawsuit, that gives you the judicial enforcement that you wouldn’t have otherwise.”<sup>174</sup> Citing that an estimated one-third to one-half of the people killed by police in America have a disability, the group filed suit to address what their Plaintiffs experienced—excessive and unnecessary force in policing. The ACLU complaint challenged the City’s policing practices that they alleged authorized Chicago police officers to use excessive force, to use unlawful force on black and Latino people, and to use unnecessary force on individuals with disabilities and those in crisis.<sup>175</sup>

The ACLU’s suit, along with the *Campbell* plaintiffs’ suit, confirmed what many already knew—that many facets of the Chicago community were deeply invested in the need to implement broad reforms in Department. The City fought to dismiss both community lawsuits, arguing among other reasons that the *Campbell* and *Community United* plaintiffs lacked standing.

Given the legal positions the City continued to take in fighting the community lawsuits, and the need for community members to participate in the police reform effort, we attempted to find a position of compromise. In an innovative, first of its kind

<sup>172</sup> Chinta Strausberg, *Attorney Gen. Madigan Seeks Public Input for Police Consent Decree*, CHI. CRUSADER (Apr. 16, 2018), <https://chicagocrusader.com/attorney-gen-madigan-seeks-public-input-for-police-consent-decree/>.

<sup>173</sup> Complaint, *Communities United et al v. City of Chicago*, No. 17-cv-7151 (N.D. Ill. Oct. 4, 2017).

<sup>174</sup> Jason Meisner & Jeremy Gorner, *ACLU Lawsuit Alleges Chicago Police Brutality 'Magnified for People with Disabilities'*, CHI. TRIB. (Oct. 5, 2017), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-police-aclu-lawsuit-20171004-story.html>.

<sup>175</sup> Press Release, ACLU, *Community Groups File Lawsuit to Ensure Court Oversight of Reform for the Chicago Police Department*, ACLU (Oct. 4, 2017), <https://www.aclu.org/press-releases/aclu-community-groups-file-lawsuit-ensure-court-oversight-reform-chicago-police>.

agreement, we proposed a Coalition Memorandum of Agreement (Coalition MOA) between our office, the City, and a Coalition of community members led by the *Campbell* plaintiffs and *Communities United* plaintiffs.<sup>176</sup> The Coalition MOA ensured that the community had an active voice and provided input into the substantive areas of the consent decree while it was being drafted.<sup>177</sup> The Coalition MOA required that the two plaintiffs groups work together as a Coalition.<sup>178</sup> In addition, the Coalition MOA gave the impacted community—including people of color and people with disabilities in Chicago—an unprecedented ability to enforce the consent decree in the future.<sup>179</sup> Though we had been leading the discussion to incorporate the *Communities United* and the *Campbell* Plaintiffs into the consent decree since the fall of 2017, it took until March 2018 to reach the final Coalition MOA. The MOA also anticipated that the consent decree would be filed by September 1, 2018 and approved by the Court by January 1, 2019.<sup>180</sup>

“This agreement allows community groups to act as watchdogs during the long-term reform process,” said Kathy Hunt Muse, one of the lawyers for the ACLU of Illinois.<sup>181</sup> As part of the MOA, the *Campbell* and *Communities United* groups agreed not to file motions to intervene or motions to consolidate their lawsuits with our litigation and agreed to stay their suits, hoping to settle them.<sup>182</sup>

Community groups celebrated the MOA as a major step forward in their efforts to gain oversight over CPD. Counsel for Black Lives Matter explained: “The Agreement resulted from Black and Brown communities’ demands for justice. These communities have secured the right to enforce the CPD consent decree and as a result, the consent decree process now has the potential to help create meaningful community-based accountability over CPD.”<sup>183</sup> One of the plaintiffs, the aunt of a 16-year-old teenager killed by the police, reacted that “after years of struggle, I finally have some hope that if the City and State follow the Agreement, we can prevent CPD from murdering another mother’s child.”<sup>184</sup> Never before had a police consent decree created a mechanism for ongoing community enforcement. The MOA gave communities the ability to enforce the decree and bring motions to enforce in court against the City for breaches of the decree, while also providing for ongoing quarterly discussions with the community groups and the independent

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<sup>176</sup> Memorandum of Agreement Between the Office of the Illinois Attorney General and the City of Chicago and *Campbell v. City of Chicago* Plaintiffs and *Communities United v. City of Chicago* Plaintiffs (Mar. 16, 2018), [http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/05/Executed\\_MOA.pdf](http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/05/Executed_MOA.pdf) [hereinafter Memorandum of Agreement Between the Office of the Illinois Attorney General].

<sup>177</sup> *Id.* at ¶¶ 2–5.

<sup>178</sup> *Id.* at ¶¶ 1, 7–8.

<sup>179</sup> *Id.* at ¶ 12.

<sup>180</sup> *Id.* at ¶ 18.

<sup>181</sup> *ACLU, Community Groups Get Voice in Chicago Police Reforms*, FOX 2 NOW (Mar. 21, 2018), <https://fox2now.com/2018/03/21/aclu-community-groups-get-voice-in-chicago-police-reforms/.html>.

<sup>182</sup> Memorandum of Agreement Between the Office of the Illinois Attorney General, *supra* note 176, at ¶¶ 15–16.

<sup>183</sup> *Black Lives Matter to Have Say in Reforms in CPD*, CHI. CRUSADER (Mar. 22, 2018), <https://chicagocrusader.com/black-lives-matter-to-have-say-in-reforms-in-cpd/.html>.

<sup>184</sup> *Id.*

monitor.<sup>185</sup> The community groups that were party to the MOA called it “historic and significant.”<sup>186</sup>

*E. We Conduct Focus Groups with Police Officers and Solicit Their Feedback*

Another critical voice was law enforcement. Although the process involved sticking points, we found that officers voiced their interest for many important reforms. We worked with the Police Foundation, a national non-profit organization that conducts research and provides technical assistance to police departments across the country. The Police Foundation facilitated a series of focus groups among Chicago Police Department officers in thirteen groups, eleven of which were randomly selected and facilitated by retired police chiefs. The officers were asked to identify their greatest challenges in doing their jobs, and to identify what the consent decree could do to address those challenges, enhance officer safety, and enhance service to the community. The Police Foundation also established and hosted a password-protected online comment portal that was available to all CPD officers. The Police Foundation prepared a report that provided the parties and the public with the results of their meetings and outreach with CPD members.<sup>187</sup>

The officers identified a lack of support from supervisors and command staff, elected officials, and the public as the most commonly voiced concern.<sup>188</sup> Officers also identified the fear of negative repercussions and accountability measures, along with infrequent, outdated, and reactionary training as additional problems.<sup>189</sup> They suggested provisions for inclusion in the consent decree addressing increased support for officers, mandatory training, and improved accountability mechanisms. They expressed that the addition of these reforms in the consent decree could improve those problems.<sup>190</sup> Officers identified the critical need for more mental health counselors to support CPD members and their families, CPD’s need to reduce the ratio of supervisors to rank and file officers, and to establish a 1:1 ratio of Field Training Officers (FTO) to new officers (known as probationary police officers or PPOs) that are still in training.

In addition, many officers highlighted the critical need for more mental health counselors to support CPD members and their families.<sup>191</sup> CPD officers have stressful jobs that require that they place themselves in danger, and concerns about the lack of adequate mental health resources for CPD officers had also been well documented in the DOJ Report.<sup>192</sup> Adequately addressing the mental health needs of officers is a particular need at the CPD, where the officer suicide rate is 60% higher than the national law enforcement average.<sup>193</sup> Yet, in spite of this need, the DOJ Report found that the counselors and mental

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<sup>185</sup> Memorandum of Agreement Between the Office of the Illinois Attorney General, *supra* note 176, at ¶¶ 9, 12.

<sup>186</sup> *Black Lives Matter to Have Say in Reforms in CPD*, *supra* note 186.

<sup>187</sup> POLICE FOUNDATION, OPINIONS OF OFFICERS OF THE CHICAGO POLICE DEPARTMENT ON THE UPCOMING CONSENT DECREE: A REPORT TO THE STATE OF ILLINOIS OFFICE OF THE ATTORNEY GENERAL 15 (July 2018), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/07/Opinions-of-Officers-of-the-Chicago-Police-Department-on-the-Upcoming-Consent-Decree-Final.pdf>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at 18–19.

<sup>190</sup> *Id.* at 26–29.

<sup>191</sup> *Id.* at 51.

<sup>192</sup> U.S. DEP’T OF JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 118-24.

<sup>193</sup> *Id.* at 123.

health resources at CPD was considerably less than other comparable departments and “insufficient” to address the needs of its officers, with only three clinicians on staff.<sup>194</sup>

*F. Unique Challenges Hold Up the Negotiations: The FOP’s Resistance and Concerns of De-policing*

From the beginning, the bargaining unit representing CPD’s patrol officers, the FOP, presented a significant challenge to reform. While the investigation and recommendations from DOJ, PATF, and our own investigation highlighted the need to increase resources for CPD, the potential service and training, personnel, equipment, mental health and wellness improvements for the rank and file officers did not outweigh the FOP’s perceived threat of losing provisions in their collective bargaining agreement that made accountability for police misconduct nearly impossible in Chicago.<sup>195</sup>

The terms and conditions of employment of CPD’s patrol officers are set out in its collective bargaining agreement (CBA), a contract negotiated every few years between the City and the FOP. As of the time of this writing, the most recent collective bargaining agreement with the FOP had expired on June 30, 2017, but by its terms remains in effect until a successor agreement is reached.<sup>196</sup> Throughout the course of the consent decree negotiations, the City and the FOP were in ongoing discussions regarding the terms of the next CBA.

Whether and how the terms of the CBA and the consent decree would intersect was a central issue in the development and approval of the consent decree. DOJ and PATF identified several provisions of the CBA that were obstacles to reform, and community groups demanded that a number of CBA provisions be changed.<sup>197</sup> For example, the CBA requires that a person complete an affidavit in support of a complaint against an officer before that complaint would be investigated, and it forbade anonymous complaints.<sup>198</sup> In the past five to ten years, an estimated forty to sixty percent of misconduct investigations had been closed because no affidavit was in the record.<sup>199</sup> The CBA prohibited CPD from disciplining an officer for violating the rule against making false statements unless the officer first had an opportunity to review and amend the statement.<sup>200</sup> The CBA requires the destruction of police personnel records, including disciplinary files, after five years.<sup>201</sup> The FOP viewed its chief role as protecting all of the provisions of its existing agreement and opposing any effort that threatened those measures.

While we held several in-person meetings with the leadership of the FOP to discuss officers’ needs and the issues in the consent decree, the FOP relentlessly criticized the consent decree in strident terms. Calling our lawsuit “appalling,” the FOP told its members

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<sup>194</sup> *Id.* at 119–20.

<sup>195</sup> *See, e.g.*, CHI. POLICE DEP’T, ANN. REP., *supra* note 4 at 70–73; Agreement Between the City of Chicago Department of Police and the Fraternal Order of Police Chicago Lodge No. 7 (July 1, 2012), <https://chicagopatf.org/2016/01/04/fraternal-order-of-police-chicago-lodge-no-7-cba/> [hereinafter Fraternal Order of Police Chicago Lodge No. 7]

<sup>196</sup> *Illinois v. City of Chicago*, No. 1247-cv-6260, 2019 WL 398703 at \*5, n. 2 (N.D. Ill. Jan. 21, 2019).

<sup>197</sup> U.S. DEP’T OF JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 60; POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 159–60.

<sup>198</sup> Fraternal Order of Police Chicago Lodge No. 7, *supra* note 195, at Appendix L, Section 6.1.

<sup>199</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 77.

<sup>200</sup> Fraternal Order of Police Chicago Lodge No. 7, *supra* note 195, at Appendix L, Section 6.1, 6.2.

<sup>201</sup> *Id.*

that “something is rotten in this whole plan, and it could seriously threaten our collective bargaining rights . . . If elected officials in Chicago and the state of Illinois are going to play politics with police departments, they are playing a dangerous game.”<sup>202</sup>

Nonetheless, our office, the FOP, and the City engaged in talks for many months. Those discussions included not only provisions of the consent decree that would acknowledge the CBA interests of the FOP, but also training, supervision and promotions, mental health support services for officers, and police oversight.<sup>203</sup>

After negotiation with the FOP, the parties included “carve-out” language in the consent decree that recognized the existing contractual rights of the union under Illinois law. Those provisions of the consent decree provide, among other things, that “[n]othing in this Consent Decree is intended to (a) alter any of the CBAs between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees in those units under the [Illinois Public Labor Relations Act, 5 ILCS 315].”<sup>204</sup> Every DOJ police consent decree has contained similar “carve-out” provisions to address the legal or contractual rights of any impacted union members.

Further, the parties offered the FOP the same terms of input and enforcement of the consent decree as had been offered to the community groups, and they sought to enter into a second MOA with the FOP. However, the FOP declined.<sup>205</sup>

But the FOP was outraged by the announcement that our office had reached an MOA with community groups. FOP President Kevin Graham responded to the announcement by saying, “the City of Chicago should be careful where they go with a consent decree. Without the support of the rank and file Chicago Police Officers, their move today will go nowhere. Anyone who thinks it will is sadly mistaken.”<sup>206</sup> *Second City Cop*, a blog for Chicago police officers, described the MOA as a vehicle to “give terrorists a seat at the table.”<sup>207</sup>

On June 6, 2018 after rejecting the offer for the MOA, the FOP filed a motion to intervene in the state lawsuit.<sup>208</sup> The FOP stated that its decision to move to intervene in a lawsuit that had been pending nearly a year was triggered by the community comments made at the time the MOA was announced.<sup>209</sup> The FOP also alleged that it did not know that it needed to intervene until it “received information from confidential sources” that its

<sup>202</sup> *All Together Now*, CHI. POLICE DEP’T LODGE 7 FRATERNAL ORDER OF POLICE 5 (Sept. 2017), <http://online.flipbuilder.com/prsn/oeqy/mobile/index.html#p=4>.

<sup>203</sup> Plaintiff’s Brief in Opposition to the Fraternal Order of Police Chicago Lodge No. 7’s Mot. to Intervene, *Illinois v. City of Chicago*, No. 17-cv-06260, at 3 (N.D. Ill. Oct. 3, 2018).

<sup>204</sup> Consent Decree, *Illinois v. City of Chicago*, No. 17-cv-6260 at ¶ 711, 2019 WL 398703 ¶ 687 (N.D. Ill. Jan. 31, 2019), [http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/01/City\\_of\\_Chicago\\_lawsuit\\_filedcomplaint.pdf](http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/01/City_of_Chicago_lawsuit_filedcomplaint.pdf).

<sup>205</sup> *Illinois v. City of Chicago*, 2019 WL 398703, at \*53.

<sup>206</sup> Cheryl Corley, *Chicago Community Groups Will Get Their Say on Police Reform*, NPR (Mar. 23, 2018), <https://www.npr.org/2018/03/22/595904643/chicago-community-groups-will-get-their-say-on-police-reform.html>.

<sup>207</sup> Dan Hinkel, *Chicago’s Deal with ACLU, Black Lives Matter Changes Political Calculus for Police Reform*, CHI. TRIB. (Mar. 26, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-police-oversight-20180321-story.html>.

<sup>208</sup> Motion to Intervene, *Illinois v. City of Chicago*, No. 1:17-cv-6260. 2019 WL 398703 (N.D. Ill. June 6, 2018).

<sup>209</sup> *Illinois v. City of Chicago*, 912 F.3d 979, 983 (7th Cir. 2019); Motion to Intervene, *Illinois v. City of Chicago*, No. 1:17-cv-6260. 2019 WL 398703 (N.D. Ill. June 6, 2018).

collective bargaining rights were in jeopardy.<sup>210</sup> FOP's legal objection to the consent decree centered on its argument that the decree impairs its existing CBA with the City.<sup>211</sup>

The FOP, however, did not view the "carve-out" provisions in the decree as sufficient. In early July 2018, it filed a further motion seeking to hold the proceedings in abeyance pending a ruling on its motion to intervene.<sup>212</sup>

### *G. Police Mistrust and Violence Persists*

In addition to the negotiations with the coalition of community groups and the FOP, the drumbeat of misconduct allegations and intervening tragedies at CPD maintained the high level of public interest and pressure on the consent decree process. The pressure from several stakeholders to finalize the consent decree weighed on the negotiations. On March 27, 2018, the Chicago Tribune Editorial Board opined that "Chicagoans, too, should want the decree buttoned up as soon as possible. Chicago cops have the difficult mission of stopping crime and criminals. A rebuilt sense of trust from communities long alienated from the CPD should open the flow of information from law-abiding citizens who know who's breaking which laws. The sooner reform enhances that relationship, the better."<sup>213</sup>

While civil lawsuits involving police misconduct had become commonplace in Chicago, a series of federal cases crystalized what had become a pattern of failed accountability mechanisms. In December 2017, in the middle of closing arguments after trial, the City paid \$20 million to settle a wrongful death case filed against a CPD detective.<sup>214</sup> The case settled only after it was revealed that the City had failed to disclose evidence of a past incident involving the same officer.<sup>215</sup>

That incident marked only the latest in a string of failures to produce evidence in accordance with court orders. In the six and a half years from the beginning of Mayor Emanuel's term to that point, the City had been sanctioned nine times in federal court alone for failure to comply with its legal obligations to produce evidence in police misconduct cases, incurring over \$1 million in sanctions.<sup>216</sup>

By summer of 2018, another civil trial was captivating the attention of the Chicagoans. The wrongful death case against officer Robert Rialmo proceeded in the

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<sup>210</sup> Illinois, 912 F.3d. at 984–85.

<sup>211</sup> Motion to Intervene, Illinois v. City of Chicago, 2019 WL 398703 (N.D. Ill. June 6, 2018).

<sup>212</sup> Motion to Hold Proceedings in Abeyance Pending Ruling on Motion to Intervene by Fraternal Order of Police Chicago Lodge No. 7, Illinois v. City of Chicago, No. 1:17-cv-6260, 2019 WL 398703 (N.D. Ill. July 12, 2017).

<sup>213</sup> Editorial Board, *Emanuel, Madigan and a new CPD*, (Mar. 27, 2018), CHI. TRIB. <https://www.chicagotribune.com/opinion/editorials/ct-edit-police-chicago-consent-decree-20180327-story.html>.

<sup>214</sup> Jason Meisner, *Chicago to Pay \$20 Million to Settle Code-of-Silence Lawsuit Over Fatal Crash Caused By Drunken Cop, Sources Say*, CHI. TRIB. (Dec. 19, 2017), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-cop-fatal-dui-settlement-20171218-story.html>.

<sup>215</sup> *Id.*

<sup>216</sup> Jason Meisner, *Federal judge blasts city lawyers for failing to turn over crucial evidence*, CHI. TRIB. (Jan. 19, 2018), <https://www.chicagotribune.com/news/local/breaking/ct-met-city-law-department-withholding-evidence-20180119-story.html>.

circuit court of Cook County.<sup>217</sup> The case involved a police shooting from December 2015, when Rialmo responded to a father's 911 call for help with a domestic disturbance when his son was having a mental health crisis.<sup>218</sup> Rialmo saw the son, 19-year-old Quintonio LeGrier, ten feet or more away from him with a baseball bat.<sup>219</sup> Rialmo shot and killed LeGrier and also accidentally killed LeGrier's downstairs neighbor and bystander, 55-year-old Bettie Jones.<sup>220</sup> The trial turned on whether LeGrier swung the bat at Rialmo and how far LeGrier was from Rialmo when he fired.<sup>221</sup> At the conclusion of the trial, jurors voted to award the family over \$1 million and also ruled that the officer reasonably believed he had to fire to protect himself.<sup>222</sup> The judge negated the verdict.<sup>223</sup> Afterward, COPA recommended terminating Rialmo's employment with CPD, but Superintendent Johnson disagreed, leaving the decision to the Chicago Police Board, which unanimously voted to terminate Rialmo.<sup>224</sup> In September 2018, the City Council voted to settle the case brought by Bettie Jones's family for \$16 million.<sup>225</sup>

At the same time, the general public maintained a constant focus on the continued drumbeat of violent crime statistics.<sup>226</sup> While homicides in 2018 occurred at a lower level than the record-breaking years of 2016 and 2017, they still outpaced the levels of 2014 and 2015.<sup>227</sup> The public increasingly recognized the broken relationship between the police and the community as a barrier to reducing violence.<sup>228</sup> This recognition created pressure to finalize the consent decree and institute reforms to improve community relations. For

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<sup>217</sup> Dan Hinkel, *Conflicting Verdict Favors Chicago Cop in Fatal Shooting as Trial Ends in Confusion*, CHI. TRIB. (June 28, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-quintonio-legrier-police-shooting-trial-20180628-story.html+&cd=4&hl=en&ct=clnk&gl=us.html>.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Chicago Police Board Holds Hearing on Rialmo's Future With CPD*, NBC CHI. (July 8, 2019), <https://www.nbcchicago.com/news/local/robert-rialmo-chicago-police-board-512421791.html>. Dan Hinkel, *Chicago Police Board fires Officer Robert Rialmo nearly 4 years after he fatally shot Quintonio LeGrier and Bettie Jones*, CHI. TRIB. (Oct. 8, 2019), <https://www.chicagotribune.com/investigations/ct-met-robert-rialmo-ruling-chicago-police-shooting-20191017-uvo7afhukvgfng7j2ylrjk4zqq-story.html>.

<sup>225</sup> Hinkel, *supra* note 224.

<sup>226</sup> See, e.g., Elyssa Cherney & Madeline Buckley, *More than 30 shot, 6 fatally, in most violent weekend of 2018*, CHI. TRIB. (Jan. 22, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-weekend-shootings-violence-20180122-story.html>; Madeline Buckley, *Number of people shot in Chicago this year surpasses 1,400*, CHI. TRIB. (July 9, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-weekend-shooting-violence-20180709-story.html>; Madeline Buckley, *Aug. 6, 2018: 74 people shot, 12 fatally, in Chicago over the weekend*, CHI. TRIB. (Aug. 6, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-weekend-violence-20180806-story.html?>; Editorial Board, *Why is there so much shooting and killing in Chicago?* CHI. TRIB. (Aug. 7, 2018) <https://www.chicagotribune.com/opinion/editorials/ct-edit-shooting-chicago-violence-police-20180807-story.html>.

<sup>227</sup> Sam Charles, *Chicago's 2018 Murder Total Falls for Second Straight Year but Still Tops 530*, CHI. SUN-TIMES (Dec. 30, 2018), <https://chicago.suntimes.com/2018/12/30/18314619/chicago-s-2018-murder-total-falls-for-second-straight-year-but-still-tops-530.html>.

<sup>228</sup> See, e.g., Editorial Board, *Why is Chicago Violent Crime in Decline?*, CHI. TRIB. (Apr. 20, 2018), <https://www.chicagotribune.com/opinion/editorials/ct-edit-homicide-chicago-police-gun-violence-20180417-story.html>.

example, the Chicago Tribune Editorial Board recognized the potential consent decree as a tool to both build community trust and reduce crime. “Negotiations between Emanuel and state Attorney General Lisa Madigan on a consent decree to monitor police reforms could help reimagine the relationship [between minority neighborhoods and the CPD]. When community members distrust cops on the beat, criminals take advantage.”<sup>229</sup>

In the midst of this turmoil, in May 2018, the FOP organized a protest at a City Council meeting to object to the City’s actions and complain that the Mayor had “turned his back on the police.”<sup>230</sup> In a flyer encouraging officers to attend the council meeting in protest, the union asserted that “Emanuel is selling officers out in a federal consent decree that would give anti-police groups a voice in police oversight.”<sup>231</sup>

Local media perceived the Mayor as “caught between police reform advocates demanding a strong consent decree with rigid mandates and timetables and the need to coax police officers out of their defensive crouch to combat violent crime.”<sup>232</sup> As a result, the Mayor announced that, with respect to his approach to the consent decree, he is “playing it down the middle of the fairway.”<sup>233</sup>

#### H. *We Hit an Impasse on Recordation of Pointing a Firearm*

In a public status appearance in federal court on July 20, 2018, we announced that we had largely reached agreement with the City on the terms of the consent decree, but that the parties had an outstanding dispute on a single issue: whether or not CPD officers should be required to record each time a firearm is pointed at a person.<sup>234</sup> We maintained these incidents needed to be reported, which CPD policy did not require.<sup>235</sup>

Our office pursued this requirement, a common one in recent DOJ-negotiated consent decrees, in light of one of DOJ’s central findings: the manner in which CPD officers handled their firearms was intricately connected to the use of unreasonable force.<sup>236</sup> CPD did not require officers to document when they display or point a firearm in

<sup>229</sup> Editorial Board, *Why is Chicago Violent Crime in Decline?*, CHI. TRIB. (Apr. 20, 2018), <https://www.chicagotribune.com/opinion/editorials/ct-edit-homicide-chicago-police-gun-violence-20180417-story.html>.

<sup>230</sup> Fran Spielman, *FOP Protests Emanuel’s Decision to ‘Turn His Back on the Police’*, CHI. SUN-TIMES (May 15, 2018), <https://chicago.suntimes.com/2018/5/15/18316056/fop-protests-emanuel-s-decision-to-turn-his-back-on-the-police.html>.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> John Byrne, *Emanuel Says He’s ‘Playing It ‘Down the Middle’ on Police Reform as FOP Urges Members to Protest Him*, CHI. TRIB. (May 16, 2018), <https://www.chicagotribune.com/politics/ct-met-rahm-emanuel-fop-city-council-protest-20180516-story.html>.

<sup>234</sup> Andy Grimm, *City, AG Madigan Near Deal on Chicago Police Consent Decree*, CHI. SUN-TIMES (July 20, 2018), <https://chicago.suntimes.com/2018/7/20/18420256/city-ag-madigan-near-deal-on-chicago-police-consent-decree.html>. In *Baird v. Renbarger*, 576 F.3d 340, 345 (7th Cir. 2009), the Seventh Circuit held that it is excessive force for a police officer to point a firearm at a person when it is not objectively reasonable to do so. The court made it clear that pointing a firearm to detain a person is both a “clear” sign that “a seizure has occurred,” and excessive force if pointing the firearm is not objectively reasonable under the totality of the circumstances. *Id.* at 345.

<sup>235</sup> Dan Hinkel, *Deal Close on CPD Consent Decree Draft*, CHI. TRIB. (July 21, 2018), [http://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=a28b3fc3-938d-4a7c-b977-17ebdba4864f.html](http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=a28b3fc3-938d-4a7c-b977-17ebdba4864f.html).

<sup>236</sup> U.S. DEP’T OF JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 41; See other consent decrees that contain a reporting requirement when an officer points a firearm at a person: include:

the course of conducting an investigatory stop or arrest. By contrast, the New York Police Department requires officers to document investigatory stops on a form that includes a specific box in which officers are to mark “Drawing/ Pointing Firearm” if it is one of the “Actions Taken to Stop and/or Detain.”<sup>237</sup> Other cities with variations of this reporting requirement include Detroit, Dallas, Oakland, and Washington, D.C.<sup>238</sup>

The community plaintiffs were swift to decry the impasse. “If this is the issue that they’re stuck on, I’m frankly shocked,” said Karen Sheley, an attorney of the ACLU of Illinois.<sup>239</sup> Craig Futterman, a clinical law professor at the University of Chicago Law School and counsel for the *Campbell* plaintiffs, said “I’m surprised that that’s a point of any serious contention. It’s been accepted in other consent decrees. For a department engaged in a pattern of excessive force and committed to redressing it, it seems to me an obvious proposition, as opposed to something that would invite controversy.”<sup>240</sup>

### *I. We Release a Draft Consent Decree While Negotiations Continue*

On July 27, 2018, we released a draft consent decree, without resolving the pointing of a firearm issue. Along with the Mayor and police superintendent, our office appeared at a “jam-packed, hour-long news conference in the Thompson Center” to announce the release of a voluminous draft for public comment.<sup>241</sup>

We recognized the historic effort by commenting that, while many previous attempts at police reform have not brought the systemic and sustainable change that is required, and, speaking as Attorney General, Lisa Madigan announced that “it will be different this time.” She added, “[u]nlike those in the past, attempts to just talk the talk and not walk the walk

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Baltimore Consent Decree (2017) at ¶¶ 140, 169, *United States v. Baltimore Police Dep’t et. al*, 282 F. Supp. 3d 897 (D. Md. 2017) (No.17-99) (hereinafter Baltimore Consent Decree); Consent Decree at 67(j), 73, 76, *United States v. City of Newark*, (D.N.J. 2017) (No. 16-1731) (hereinafter Newark Consent Decree); Consent Decree at 173, 183, 187, *United States v. City of Ferguson*, No. 4:16-cv000180 (E.D. Mo. Apr. 19, 2016).; Settlement Agreement at 56, 94, *United States v. City of Cleveland*, No 1:15CV1046 (N.D. Ohio June 12, 2015), <https://www.justice.gov/crt/case-document/file/908536/download>; Consent Decree at ¶¶ 14, 42, *United States v. City of Albuquerque*, No. 1:14-CV-1025 (D.N.M. Nov. 14, 2014), [https://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd\\_settlement\\_11-14-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd_settlement_11-14-14.pdf); New Orleans Police Department at 76,83, *United States v. City of New Orleans*, 35 F. Supp. 3d 788 (E.D. La. 2013) (No. 12-1924); Settlement Agreement at 63, 69, *United States v. City of Portland*, No. 12-CV-02265, 2013 U.S. Dist. LEXIS 188465 (D. Or. Feb. 19, 2013), [https://www.justice.gov/sites/default/files/crt/legacy/2012/07/31/spd\\_consentedecree\\_7-27-12.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2012/07/31/spd_consentedecree_7-27-12.pdf); Settlement Agreement at 80, 99, *United States v. Town of East Haven et al.*, 12-cv-1652 (D. Conn. filed Nov. 20, 2012 (D. Conn. 2012); Settlement Agreement at 64, 93, 100, *United States v. City of Seattle*, No. 12-cv-1282 (W.D. Wash. Jul. 27, 2012), <https://perma.cc/9WG2-DU5R>; Agreement for the Sustainable Reform of the Puerto Rico Police Department at 36, 37, *United States v. Commonwealth of Puerto Rico et al.*, No. 3:12-cv-2039 (D.P.R. 2013), <https://perma.cc/KC9K-2RHS>.

<sup>237</sup> New York Police Department, Stop Report, Form PD 383-152 (06-15).

<sup>238</sup> Detroit Police Department Manual, Sec. 305.2-7.1 – Use of Force Reporting; Dallas Police Department, General Order 908.00 – Response to Resistance Reporting (Rev. 5/2/14); Oakland Police Department, Departmental General Order K-4 (eff. 10/16/14); Washington Metropolitan Police, General Order – Use of Force, GO-RAR-901.07 (eff. Nov. 3, 2017).

<sup>239</sup> Hinkel, *supra* note 235.

<sup>240</sup> David Thomas, *Why Chicago Can’t Pull the Trigger on the Police Consent Decree*, CHI. DAILY L. BULL. (July 23, 2018), <https://www.chicagolawbulletin.com/chicago-police-consent-degree-draft-sticks-on-pointing-guns-20180723.html>.

<sup>241</sup> Bill Cameron, *Draft of Police Consent Decree Unveiled*, WLS-AM (July 28, 2019), <http://www.wlsam.com/2018/07/27/draft-of-police-oversight-consent-decree-unveiled.html>.

will be unsuccessful.”<sup>242</sup> The parties announced that, in an unprecedented process of transparency and community engagement, the public would have twenty-one days to review and provide comments on the draft consent decree, and the parties would then review the public input and return to the negotiating table to revise the consent decree.<sup>243</sup> The Attorney General’s Office established a website and hotline through which members of the public could provide any reactions to the draft decree.<sup>244</sup> The Editorial Board of the Chicago Sun-Times called on the public to review the draft and provide comments.<sup>245</sup>

While the public welcomed the opportunity to review the consent decree prior to court filing, the disagreement between the parties on a requirement to report the pointing of a firearm dominated public discussion. When asked about the issue at the press conference, the disagreement between the parties was plain. In an effort to explain the City’s reluctance to agree to the requirement, Mayor Emanuel asserted that the requirement of recording the pointing of a firearm was not a key issue identified in the DOJ or PATF reports, even though the DOJ report explicitly highlighted this problem.<sup>246</sup> The Superintendent explained that he did not want to put officers in a position in which they would hesitate to draw their weapons, and he did not want it to be a deterrent to good policing.<sup>247</sup> Illinois Attorney General Madigan asserted that the pointing of a firearm ought to be tracked because other consent decrees carry such a provision, and pointing a gun constitutes a seizure under the Fourth Amendment. She also made clear we would litigate this issue if needed.<sup>248</sup> Our expert, Ron Davis, explained, “[i]t is better to know the truth [of how often and when officers are pointing their firearms at members of the public] than to operate in a vacuum and just assume everything is fine. That is not OK in 2018.”<sup>249</sup>

The editorial boards of both major Chicago newspapers took up the issue and argued that gun pointing should be documented. The day the consent decree was announced, the Sun-Times Editorial Board released an editorial entitled, “Every time a cop pulls a gun, it

<sup>242</sup> ‘*Different this time*’: *Officials Reveal Plan on CPD Reforms*, NBC CHI. (July 27, 2018), <https://www.nbcchicago.com/blogs/ward-room/chicago-police-department-of-justice-consent-decree-489326541.html>.

<sup>243</sup> Fact Sheet, Chicago Police Department Consent Decree 1, [http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/07/FACT-SHEET\\_CHICAGO-POLICE-DEPARTMENT-CONSENT-DECREE.pdf](http://chicagopoliceconsentdecree.org/wp-content/uploads/2018/07/FACT-SHEET_CHICAGO-POLICE-DEPARTMENT-CONSENT-DECREE.pdf).

<sup>244</sup> See Illinois Attorney General, *Reforming Chicago’s Police Department* (2020) <http://chicagopoliceconsentdecree.org/>.

<sup>245</sup> Editorial Board, *Consent Decree is Nothing but a Beginning of Real Chicago Police Reform*, CHI. SUN-TIMES (July 28, 2018), <https://chicago.suntimes.com/2018/7/28/18405743/editorial-consent-decree-is-nothing-but-a-beginning-of-real-chicago-police-reform.html>.

<sup>246</sup> Bill Ruthhart, *Should Chicago Police Document Every Time They Point Guns at People? Reform Talks Resume Monday*, CHI. TRIB. (July 30, 2018), <https://www.chicagotribune.com/politics/ct-met-rahm-emanuel-lisa-madigan-gun-pointing-20180728-story.html>; Jonah Newman, *Five Things to Watch as CPD Consent Decree Moves Forward*, CHI. REPORTER (July 27, 2018), <https://www.chicagoreporter.com/five-things-to-watch-as-cpd-consent-decree-moves-forward/.html>.

<sup>247</sup> Newman, *supra* note 246; Paris Schutz, *Consent Decree, Gang Database Front and Center at City Council*, WTTW (July 25, 2018), <https://news.wttw.com/2018/07/25/consent-decree-gang-database-front-and-center-city-council.html>.

<sup>248</sup> Newman, *supra* note 246.

<sup>249</sup> Bill Ruthhart, *Emanuel, AG Madigan at Odds on Gun-Pointing Issue*, CHI. TRIB. (July 30, 2018), [http://digitaledition.chicagotribune.com/tribune/article\\_popover.aspx?guid=48f13209-35d8-4e7c-bcaaed082e2fa9e2.html](http://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=48f13209-35d8-4e7c-bcaaed082e2fa9e2.html).

should be documented.”<sup>250</sup> It challenged: “City Hall ought to get fully on board.”<sup>251</sup> The Chicago Tribune Editorial Board also stated that with respect to a gun being pointed, “simply pointing a gun is a use of force. It’s deadly serious.”<sup>252</sup> Of the fact that Superintendent Johnson does not know how often his officers point a gun at someone, the Chicago Tribune declared, “officers deserve clarity. They aren’t going to get it from a department that doesn’t know when or why they are pointing their guns.”<sup>253</sup> Such practices erode the community’s trust in the police and traumatize individuals and their families who have had guns pointed at them.

While the negotiations about the pointing requirement continued, a new lawsuit arose. A father living on the city’s southwest side sued the City, asserting that two officers pointed their guns at his two young children after they burst through the front door while executing a search warrant at the wrong address.<sup>254</sup> In response to a separate incident, weeks earlier the City Council had approved a \$2.5 million dollar settlement in an excessive-force lawsuit that accused police of pointing a gun at the chest of a 3-year-old and striking her handcuffed mother.<sup>255</sup> Their lawyer explained, “[i]t’s been so normalized by Chicago policing over the decades, and it happens with such regularity, that many of the citizens on the South and West sides that I talk to do not even know that it’s illegal policing to point a gun at a child for no reason.”<sup>256</sup>

Still unable to reach an agreement on the issue, on August 29, 2018, we moved for permission from the Court to take the issue to trial. We asked for “focused litigation on a single, limited issue”<sup>257</sup> because the negotiations had not resulted in an agreement. No DOJ pattern or practice case regarding police misconduct had ever gone to trial,<sup>258</sup> but the parties prepared to do just that as litigation got underway.

After weeks of contentious meetings and dozens of proposals and counter proposals, on September 6, 2018, we announced an agreement to resolve the pointing issue with the City.<sup>259</sup> We agreed that any time an officer points a gun at a person during an arrest or

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<sup>250</sup> *Every Time a Cop Pulls a Gun, It Should Be Documented*, CHI. SUN-TIMES (July 27, 2018), <https://chicago.suntimes.com/2018/7/26/18347935/editorial-every-time-a-cop-pulls-a-gun-it-should-be-documented.html>.

<sup>251</sup> *Id.*

<sup>252</sup> *Yes, Cops Should Report When They Point Their Guns*, CHI. TRIB. (Aug. 3, 2018), <https://www.chicagotribune.com/opinion/editorials/ct-edit-police-guns-consent-decree-chicago-20180802-story.html>.

<sup>253</sup> *Id.*

<sup>254</sup> Tony Briscoe, *Chicago Cops Pointed Guns at Children While Raiding the Wrong Address, Lawsuit Says*, CHI. TRIB. (Aug. 15, 2018), <https://www.chicagotribune.com/news/ct-met-chicago-police-excessive-force-lawsuit-20180815-story.html>.

<sup>255</sup> *Chicago City Council Approves \$2.5M Payout for 3-year-old Girl Traumatized By Police*, WGN-TV (June 28, 2018), <https://wgntv.com/2018/06/28/chicago-city-council-approves-2-5m-payout-for-3-year-old-girl-traumatized-by-police/.html>.

<sup>256</sup> Briscoe, *supra* note 254.

<sup>257</sup> See Docket, Motion by Plaintiff State of Illinois to Partially Lift the Stay of these Proceedings, Illinois v. City of Chicago, No. 17-cv-06260, ECF No. 98.

<sup>258</sup> Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3228 (2014).

<sup>259</sup> The day before this announcement, the criminal case charging Jason Van Dyke with the murder of Laquan McDonald began with intense media interest. *Van Dyke Trial: A Timeline from Jury Selection to Conviction*, CBS CHI. (Oct. 5, 2018), <https://chicago.cbslocal.com/2018/10/05/van-dyke-trial-timeline-laquan-mcdonald-shooting-guilty-verdict/.html>. A little over one month later, on October 5, Van Dyke was

street stop, they will call in to dispatchers by radio to inform them of the incident. The officer's supervisor will be notified and must review each incident and associated body camera footage to ensure the officer followed CPD policy and that any misconduct is addressed.

The agreement also requires CPD headquarters to review and audit all incidents involving an officer pointing a firearm at a person to, among other things, identify any patterns of misconduct and any need for tactical training. In addition, CPD will provide officers with instruction on weapons discipline and when officers should and should not point a firearm at a person. CPD also agreed to clarify in its policy that officers will only point a firearm at a person when it is objectively reasonable to do so.

Reaching agreement on the requirement to record when officers point their firearms allowed the parties to finalize their changes to the consent decree based on the public comment period feedback.

#### IV. REVISING THE CONSENT DECREE

##### *A. The Public Weighs In*

After the parties published the draft consent decree, they invited additional comments until August 17, 2018. As a result of the process, the parties received approximately 1,700 additional comments and suggestions on the range of topics included in the consent decree, and many that were not.<sup>260</sup>

The Coalition, largely composed of the *Campbell* and *Community United* plaintiffs, gave a presentation and told their experiences and truths to the parties. The Coalition shared input as to what they felt needed to be in the consent decree to both our Office and representatives from the City, including the Corporation Counsel, First Deputy Corporation Counsel, CPD leadership and the Deputy Mayor for Public Safety.

Ultimately, the parties re-negotiated and changed several dozen provisions of the consent decree based on public input.

Some of the most significant changes related to the publication of data on police practices, increased transparency, and additional requirements that CPD consider community input as it creates policy. For example, the consent decree requires that CPD publish the source data for its annual assessment of policing practices and break out the data by race and gender.<sup>261</sup> Based on multiple complaints of excessive force used by police officers against students in schools, the parties included policies related to CPD officers in Chicago Public Schools. The consent decree requires that CPD seek out and consider the input of students, parents, and community stakeholders in developing those policies.<sup>262</sup>

In another significant area of improvement, the parties ensured additional protections and resources for people with disabilities. Specifically, the revised consent decree requires that CPD use qualified interpreters to communicate with people who are deaf or hard of

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convicted of one count of second-degree murder and 16 counts of aggravated battery but acquitted of official misconduct. *Id.*

<sup>260</sup> Illinois v. City of Chicago, No. 17-cv-06260, 2019 WL 398703 at \*7 (N.D. Ill. Jan. 31, 2019).

<sup>261</sup> Consent Decree at ¶¶ 79–80, Section XII(A), Illinois v. City of Chicago, No. 17-cv-6260, 2019 WL 398703 (N.D. Ill. Jan. 31, 2019), <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>.

<sup>262</sup> *Id.* at ¶ 39.

hearing, train officers to recognize and respond to conduct related to an individual's disability, and designate an Americans with Disabilities Act (ADA) liaison to coordinate its compliance with the ADA.<sup>263</sup> The changes also require the inclusion of individuals who have personally experienced a behavioral or mental health crisis in the City's crisis intervention response advisory committee, and that CPD perform additional recordkeeping of service to people with disabilities.<sup>264</sup> On September 13, 2018, the parties filed the revised consent decree with the Court, seeking the approval of Judge Robert M. Dow, Jr., the judge assigned to the case, and asking the Court to enter the decree as a final court order.

Given the intense public interest in the consent decree, on September 19, 2018, the Court encouraged members of the public who wanted to comment on the Court's consideration of the proposed consent decree to do so in writing.<sup>265</sup> In response to Judge Dow's order providing for the opportunity to comment, over 500 public comments were filed,<sup>266</sup> more than three times the number that had been filed in any DOJ police reform consent decree.<sup>267</sup>

Members of the Coalition filed extensive written comments with the Court, asking it to adopt provisions of an alternative Chicago Community Consent Decree, which had been drafted by community groups and included their recommendations.<sup>268</sup> While the Coalition recognized and acknowledged that many of their provisions had been adopted by the parties in the consent decree, they posited that the "historic potential will only be fully realized if the final consent decree contains the provisions outlined here, which are deemed essential by Chicago's communities most affected by police violence and misconduct."<sup>269</sup>

In addition to receiving written comments, Judge Dow also held extensive fairness hearings over two days, on October 24-25, 2018, to provide the public an opportunity to comment on the proposed consent decree in person. Because of the significant demand to participate in the hearings, speakers were limited to five minutes, and the Court administered a lottery to determine who would be permitted to speak and in what order.<sup>270</sup>

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<sup>263</sup> *Id.* at ¶¶ 64, 126, 70.

<sup>264</sup> *Id.* at ¶¶ 118, 132

<sup>265</sup> See Docket, *Illinois v. City of Chicago*, No. 17-cv-06260, ECF No. 114.

<sup>266</sup> See generally *id.*

<sup>267</sup> In New Orleans, 158 comments were received from individuals and organizations. In addition, in Baltimore, forty-eight individuals and thirteen organizations filed public comment with the federal court. In Ferguson, twenty-three written comments were filed with the court.

<sup>268</sup> Comments Submitted on Behalf of Plaintiffs in *Campbell et al. v. City of Chicago Relating to the Proposed Consent Decree Filed in Illinois v. City of Chicago* at 3-5, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Oct. 12, 2018), ECF No. 157; Written Comments on the Parties' Proposed Consent Decree by Plaintiffs in *Campbell v. City of Chicago et al.*, No. 17cv4467 (October 12, 2018), ECF No. 157; Comments on the Proposed Consent Decree by Plaintiffs in *Communities United, et al. v. City of Chicago* at 12-13, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Oct. 12, 2018), 17-cv-7151 (Oct. 12, 2018), ECF No. 158.

<sup>269</sup> Comments Submitted on Behalf of Plaintiffs in *Campbell et al. v. City of Chicago Relating to the Proposed Consent Decree Filed in State of Illinois v. City of Chicago*, *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, at \*1 (N.D. Ill. Jan. 31, 2019). Written Comments on the Parties' Proposed Consent Decree by Plaintiffs in *Campbell v. City of Chicago et al.* at 82, *Illinois v. City of Chicago*, No. 17-cv-6260, 2019 WL 398703, at \*1 (N.D. Ill. Jan. 31, 2019).

<sup>270</sup> Order Providing Further Instructions for Fairness Hearing in Case No. 17-CV-6260, *Illinois v. City of Chicago*, to be Held on October 24, 2018 and October 25, 2018 at 2-3, *Illinois v. City of Chicago*, 2019 WL 398703, ECF No. 606.

The fairness hearings gave community members an important public forum to share with the federal judge their experiences with CPD. Ninety-six individuals addressed the court during the two-day public hearings.<sup>271</sup> The hearings took place in the Dirksen Federal Building's ceremonial courtroom, the largest courtroom space available in the Chicago courthouse, with an overflow courtroom to accommodate additional observers.

For two days, the Court heard from community members, organizers, representatives of religious communities, attorneys, and police officers. Many members of the community spoke of their own experiences with the CPD and supported the consent decree as a vehicle to address the problems they had personally experienced. Angelica Nieves described how an off-duty officer killed her brother after that officer had stalked, harassed, and threatened him.<sup>272</sup> Her brother had called 911 to report the officer several times prior to the incident.<sup>273</sup> According to Ms. Nieves, the officer had twenty citations, a prior suspension, and orders of protection in place prior to the incident.<sup>274</sup> "My family chain is broken. My only brother was taken, my parents' only son was taken, and my children's only uncle was taken from us."<sup>275</sup>

The Court heard stories of youth who were so frequently touched during CPD searches that they routinely put their hands up to be cuffed to a chain link fence without being asked to do so;<sup>276</sup> of a sixty-year-old Latino man who felt embarrassed when his neighbors saw police hold him up against a car;<sup>277</sup> of a mother who was not allowed to see her 19-year-old son after he was shot by officers;<sup>278</sup> of a fifteen-year-old and her friends who were handcuffed to a chain fence;<sup>279</sup> of a developmentally disabled man knocked down and handcuffed;<sup>280</sup> of a man who was apprehended and whose home was searched based on the false identification of a witness;<sup>281</sup> of a woman who reported that she had been raped by an officer but had not been contacted by anyone from the City investigating her claim;<sup>282</sup> and of a college student who was grabbed, tackled to the ground, beaten, and thrown into a police wagon while he was participating in a protest.<sup>283</sup> One senior citizen told a story of having an officer stick a gun under the hood hair dryer she was sitting under when her hairdresser's home was raided by the police.<sup>284</sup>

Two pastors—one African American, one white—told personal stories from their lives and congregations about interactions with the police. An African American pastor

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<sup>271</sup> Illinois v. City of Chicago, No. 17-cv-6260, 2019 WL 398703, at \*7 (N.D. Ill. 2019).

<sup>272</sup> Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 25, 2018, at Volume 2-A 190:16-191:22, Illinois v. City of Chicago, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at Volume 2-A 191:099-14.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* at Volume 1-A 46:17-22.

<sup>277</sup> *Id.* at Volume 1-A 82:09-13.

<sup>278</sup> *Id.* at Volume 2-A 192:099-193:24.

<sup>279</sup> *Id.* at Volume 1-B 108:18-109:01.

<sup>280</sup> *Id.* at Volume 1-B 112:033-10.

<sup>281</sup> *Id.* at Volume 1-B 114:066-115:16.

<sup>282</sup> *Id.* at Volume 2-A 205:055-16.

<sup>283</sup> *Id.* at Volume 2-A 215:16-216:2.

<sup>284</sup> Testimony of Michael Garza, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-B at 177:15-23, Illinois v. City of Chicago, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

told of being detained, questioned, and having his home searched when the alarm system in his new home sounded. “Absent my collar and my suit, I and my son, and even my daughter, become potentially targets.”<sup>285</sup> A white pastor from a congregation in a predominately white area of the city explained that their church has budgeted to pay for an Uber to transport one of their African-American elders who has been stopped by police repeatedly on his commute to church via public transportation.<sup>286</sup>

Many community members urged the Court to make additions to the consent decree. The Coalition submitted nearly 100 pages of written comments to the Court based largely on the Chicago Community Consent Decree. While they were supportive of the consent decree, they asked the court not to miss the opportunity to do more.<sup>287</sup> As one of them explained, “[t]he reason we are here today and saying that a consent decree is necessary, it is our course of last resort.”<sup>288</sup>

More than a half-dozen current and former CPD patrol officers also testified. They uniformly opposed the consent decree. Nearly all of the patrol officers who testified identified an affiliation with the FOP. The President of the FOP, Kevin Graham, testified that he had spoken to U.S. Attorney General Jeff Sessions, who he reported was “against this consent decree.”<sup>289</sup> Officers commonly expressed the concern that the consent decree would “tie the hands of police officers,”<sup>290</sup> and they disagreed that additional oversight of the Department was needed. One officer testified:

The people of this city don’t need this decree or any more oversight of the police. There are more levels of oversight than there are days in the week. What they need are members of the police department who feel that they’re being treated fairly and justly by their employers, by the media, and by those organizations that exist sometimes to create purpose for themselves.<sup>291</sup>

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<sup>285</sup> Testimony of Reverend Saeed Richardson, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-A at 34:15-18, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>286</sup> Testimony of Reverend Dr. Beth Brown, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 25, 2018 at Volume 2-A at 257:19-259:17, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>287</sup> *See, e.g.*, Testimony of Anna Mangahas, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-A 43:15-45:20, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors); Testimony of Jonathan Projansky, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-A 75: 14-16, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>288</sup> Testimony of Renell Perry, with the NAACP, Chicago West Side Branch, Transcript of Proceedings – Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 25, 2018 at Volume 2-A 237:1-2, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>289</sup> Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 25, 2018, at Volume 2-A 211:13-15, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>290</sup> Testimony of Michael Garza, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-B at 142:21-22, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>291</sup> Testimony of Mark Donahue, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-A at 65:16-23, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

They also argued that the parties overlooked the significance of violent crime, which they asserted was the problem. Financial Secretary of the FOP Michael Garza said, “Police didn’t make this environment. The criminals made this environment.”<sup>292</sup>

While several speakers noted the substantial disconnect between the community and the officers at the hearing, one community member summarized the problem: “when we have mothers who feel like they can’t tell their children to call the police, to trust the police, to look to them to solve a dangerous situation, you can’t possibly protect the community.”<sup>293</sup>

### B. *The Calls for Reform Continue*

Even while the consent decree was under consideration by the Court, the calls for action did not end. Community members and activists, including the Shriver Center on Poverty Law, urged the City to act on some issues even in advance of finalization of the consent decree.<sup>294</sup> The City’s Inspector General Office issued a report on school resource officers, criticizing the CPD for not having clear directives for how it selects, trains, and evaluates school resource officers.<sup>295</sup> The Inspector General reported that neither the police department nor the school district has a set agreement with written rules, roles or responsibilities for the school officers, instead relying on a police department general order over thirty years old, dating from 1988.<sup>296</sup> The consent decree also addressed this very concern with school resource officers. In response to the Inspector General’s report, there was a public call to take action. The Chicago Sun-Times Editorial Board asserted that “some things can’t wait,” urging CPD to improve standards for school resource officers without further delay.<sup>297</sup> A 2017 report by the Shriver Center on Poverty Law, *Handcuffs in Hallways*, noted that the City had paid more than \$2 million between 2012 and 2016 to settle legal complaints against CPD officers assigned to schools.<sup>298</sup>

In addition, the Department continued to be plagued by tragedy and mental health crises as three officers committed suicide on police department grounds or while on duty in August and September 2018 alone.<sup>299</sup> The number of counselors available for CPD officers was historically low and continued to be during this time, as the DOJ report

<sup>292</sup> Dan Hinkel, *As reform gains traction, Chicago police union pushes back*, CHI. TRIB. (Nov. 5, 2018), <https://www.chicagotribune.com/investigations/ct-met-chicago-police-union-fop-20181105-story.html>.

<sup>293</sup> Testimony of Johanna Ryan, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018 at Volume 1-B at 127:6-9, *Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019) (on file with authors).

<sup>294</sup> Juan Perez Jr., *Police Who Patrol Chicago Schools Lack Recruitment, Training standards, City Inspector General Says*, CHI. TRIB. (Sept. 14, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-chicago-police-school-officers-inspector-general-20180913-story.html>.

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> Chicago Sun-Times Editorial Board, *Don’t Wait Another Minute for Cop Reforms in Chicago Public Schools*, CHI. SUN-TIMES (Sept. 17, 2018), <https://chicago.suntimes.com/2018/9/17/18398544/editorial-don-t-wait-another-minute-for-cop-reforms-in-chicago-public-schools.html>.

<sup>298</sup> HANDCUFFS IN HALLWAYS: THE STATE OF POLICING IN CHICAGO PUBLIC SCHOOLS, SHRIVER CTR. ON POVERTY L. (Feb. 1, 2017), <https://www.povertylaw.org/article/handcuffs-in-hallways-the-state-of-policing-in-chicago-public-schools/>.

<sup>299</sup> Nicole Cardos, *Recent Police Suicides Prompt Advocates’ Call for Increased Resources*, WTTW (Sept. 13, 2018), <https://news.wttw.com/2018/09/13/recent-police-suicides-prompt-advocates-call-increased-resources.html>.

highlighted. Changes to staffing levels for mental health resources available to CPD officers was a key component of the consent decree, which required the City to increase the number of counselors available to ten.<sup>300</sup>

Adding to the tension in the city, in September 2018, officer Jason Van Dyke went on trial for the murder of Laquan McDonald. He was convicted of second-degree murder and sixteen counts of aggravated battery. “Throughout Chicago’s neighborhoods, L trains and offices, just before 2 p.m. Friday, as the verdict came down, the city stood, transfixed.”<sup>301</sup> However, though the verdict felt like a vindication for many community members—that for the first time in the city’s history, a police officer would be held criminally responsible for killing a young, Black man, the sentence eventually handed down by the Judge in January 2019 was only six and a half years and would likely result in Van Dyke serving only three years in prison.<sup>302</sup> The community’s outrage was palpable.<sup>303</sup>

## V. APPROVAL BY THE COURT

### A. DOJ and FOP Take One Last Crack at Undermining the Consent Decree

In late August, the Court denied the FOP’s motion to intervene in the litigation, finding that the motion, filed more than nine months after the complaint, was not timely.<sup>304</sup> The Court described in detail the outreach efforts of the parties, including to the FOP, and found that the union must have known about its interests in the suit when the case was filed.<sup>305</sup> The Court agreed that, in light of the late stage of the negotiations and the completion of a voluminous draft consent decree, the parties would be prejudiced by the late intervention of a new party.<sup>306</sup>

The parties’ efforts to seek input from the FOP and officers demonstrated to the Court that to “the extent the FOP’s interests have not been fully vetted in the drafting of the consent decree to date, that deficiency is at least in part a self-inflicted wound. Allowing intervention now would undoubtedly delay the proceedings to the detriment of the original parties’ interests.”<sup>307</sup>

The Court recognized that FOP has a significant interest in the consent decree, as its members will be working under its terms for years to come.<sup>308</sup> However, the Court relied on the “carve-out” language negotiated by the parties, reasoning that the language required

<sup>300</sup> Consent Decree at ¶¶ 377–404, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>301</sup> Andy Grimm & Jon Seidel, *16 Shots, a Guilty Verdict and a Chicago Cop Goes to Jail for Killing a Teen*, CHI. SUN-TIMES (Oct. 5, 2018), <https://chicago.suntimes.com/2018/10/5/18422864/16-shots-a-guilty-verdict-and-a-chicago-cop-goes-to-jail-for-killing-a-teen.html>.

<sup>302</sup> Megan Crepeau et al., *Jason Van Dyke Given Relatively Lenient Sentence of Under 7 Years in Prison for Laquan McDonald Shooting*, CHI. TRIB. (Jan. 18, 2019), <https://www.chicagotribune.com/news/breaking/ct-met-jason-van-dyke-laquan-mcdonald-sentenced-20190118-story.html+&cd=2&hl=en&ct=clnk&gl=us.html>.

<sup>303</sup> Grimm & Seidel, *supra* note 301.

<sup>304</sup> Memorandum Opinion & Order Approving Proposed Consent Decree, *Illinois v. City of Chicago*, 2018 WL 3920816 (N.D. Ill. Aug. 16, 2018), ECF No. 88.

<sup>305</sup> *Id.* at \*6.

<sup>306</sup> *Id.* at \*7.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at \*9.

the City to make any changes to the CBAs at the bargaining table, rather than in the consent decree, and adequately protected the ability of the FOP to raise any provisions they perceive to be conflicts with the CBA at the time the court reviews and considers the consent decree for approval.<sup>309</sup> The FOP then appealed the Court's ruling to the Seventh Circuit Court of Appeals.

Even without party status, the union provided extensive briefing and written comments to the consent decree. The union filed a fifty-four-page brief opposing the consent decree and asserting that dozens of provisions violated the CBA or state law.<sup>310</sup> In its comments, the FOP objected to nearly eighty separate reforms included in the consent decree, arguing that they violated a variety of laws, their CBA, and that they would jeopardize officer safety.<sup>311</sup>

The Seventh Circuit affirmed the ruling of the district court on January 2, 2019.<sup>312</sup> In denying the FOP's motion to intervene, the Seventh Circuit held that these provisions made clear that the parties "do not intend for the consent decree to be interpreted as impairing CBA rights."<sup>313</sup> Notably, the Seventh Circuit found the FOP's decision to wait nearly nine months to file its motion fatal, citing the FOP's own repeated public comments about the consent decree as evidence that it was aware of the intersection between the consent decree and its CBA.<sup>314</sup> Informal discussions throughout the second half of 2017 and into 2018 also indicated that the FOP was aware of ongoing negotiations between the parties and had ample opportunity to file a motion to intervene earlier.<sup>315</sup>

The Court held that "[i]f the parties interpret the consent decree in a way which violates CBA rights, the [FOP] can avail itself of normal remedies for CBA violations."<sup>316</sup> "As things stand now, the consent decree cannot impair the CBA or state law rights enjoyed by Chicago police officers. That will change only if the district court concludes that federal law requires the abrogation of those rights."<sup>317</sup>

The FOP, however, felt they had additional support from the Trump Administration as they tried to stop the consent decree. On September 18, 2018, Attorney General Sessions traveled to the northern suburbs of Chicago to deliver a speech at a police convention, blaming Chicago's homicide rate on the cessation of stop-and-frisk practices.<sup>318</sup> Attorney General Sessions remarked, "[t]here's a clear lesson here: if you want more shootings and more death, then listen to the ACLU, Black Lives Matter, or Antifa. If you want public safety, then listen to the police professionals who have been studying this for 35 years."<sup>319</sup>

Similarly, on the Monday following the conviction of Jason Van Dyke, President Trump announced that he would send Sessions to "go to the great city of Chicago to help

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<sup>309</sup> *Id.*

<sup>310</sup> Comments of the Fraternal Order of Police Chicago Lodge No. 7 to Proposed Consent Decree, *Illinois v. City of Chicago*, 2018 WL 3920816 (N.D. Ill. Oct. 12, 2018), ECF No. 156.

<sup>311</sup> *Id.*

<sup>312</sup> *See generally* *Illinois v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019).

<sup>313</sup> *Id.* at \*6.

<sup>314</sup> *Id.* at \*4.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at \*14 (citations omitted).

<sup>317</sup> *Id.* at \*15.

<sup>318</sup> U.S. DEPARTMENT OF JUSTICE, *Attorney General Jeff Sessions Delivers Remarks at the Valor Survive and Thrive Conference*, Waukegan, Ill. (Sept. 19, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-valor-survive-and-thrive-conference>.

<sup>319</sup> *Id.*

straighten out the terrible shooting wave,” commenting on the “horrible deal” that the City had entered into with the ACLU to reduce the use of stop-and-frisk.<sup>320</sup> The next day, Sessions announced that DOJ would oppose the consent decree by filing a statement of interest with the federal court, despite Sessions’ 2017 memo designating police reform and consent decrees to state and local authorities, not the DOJ.<sup>321</sup> The FOP issued a statement approving of DOJ’s position: “we are exceedingly grateful that President Trump and AG Sessions are opposing this consent decree.”<sup>322</sup>

The following week, Attorney General Sessions traveled to Chicago to address the Chicago Crime Commission, referring to the consent decree as “an insult” to the Department and that “the proposed consent decree would transfer control to two retiring politicians and a federal judge.”<sup>323</sup>

In the statement of interest DOJ filed with the Court, DOJ opposed entry of the consent decree, asserting that the Court should instead “allow state and local officials—and Chicago’s brave front-line police officers—to engage in flexible and localized efforts to advance the goal of safe, effective, and constitutional policing in Chicago.”<sup>324</sup> In its blind efforts to stop the consent decree that was, in part, the product of its own investigation, DOJ ignored the fact that the consent decree was the result of negotiations between state and local officials, including police officers, that DOJ purported to endorse in its statement of interest.

### B. *The District Court Approves the Consent Decree*

On January 31, 2019, a few weeks after the Seventh Circuit affirmed the denial of the FOP’s motion to intervene, the district court entered an order approving the consent decree in its original proposed form.<sup>325</sup> The Court acknowledged its review of the many comments submitted to the Court suggesting changes to the contents of the decree, but the court ultimately declined these requests, noting the extensive role of public input in the development and revision of the proposed consent decree before it was filed for court approval.<sup>326</sup> As Judge Dow wrote, “[t]he final decree that the court approves today thus represents the culmination of an enormous undertaking by the parties and the thousands of others who have participated in the wide range of opportunities for community input.”<sup>327</sup>

<sup>320</sup> Suzannah Gonzales & Steve Holland, *Trump Advocates ‘Stop-and-Frisk’ to Curtail Chicago Crime*, U.S. NEWS (Oct. 8, 2018), <https://www.usnews.com/news/top-news/articles/2018-10-08/trump-advocates-stop-and-frisk-to-curtail-chicago-crime.html>.

<sup>321</sup> Daniel Tucker & Nereida Moreno, *AG Madigan Rebukes Jeff Sessions Over Plan to Block CPD Consent Decree*, WBEZ (Oct. 10, 2018), <https://www.wbez.org/shows/morning-shift/ag-madigan-rebuked-jeff-sessions-over-plan-to-block-cpd-consent-decree/d4f56d2d-394e-46ec-a49a-5097c0ce522f.html>.

<sup>322</sup> Fran Spielman, *Rahm Says Trump Administration Threat to Cop Decree Ain’t on the Level’*, CHI. SUN-TIMES (Oct. 10, 2018), <https://chicago.suntimes.com/2018/10/10/18468415/rahm-says-trump-administration-threat-to-cop-decree-ain-t-on-the-level.html>.

<sup>323</sup> Aamer Madhani, *Sessions: Chicago Police Consent Decree Plan ‘Colossal Mistake’ Pushed by Lame-Duck Mayor*, USA TODAY (Oct. 19, 2018, 3:32 PM), <https://www.usatoday.com/story/news/2018/10/19/jeff-sessions-chicago-police-department-homicide-consent-decree-rahm-emanuel/1694719002/.html>.

<sup>324</sup> United States’ Statement of Interest Opposing Proposed Consent Decree at 11, *Illinois v. City of Chicago*, 2019 WL 398703, ECF No. 160.

<sup>325</sup> *Illinois v. City of Chicago*, 2019 WL 398703398703.

<sup>326</sup> *Id.* at \*4.

<sup>327</sup> *Id.* at \*4.

In response to the FOP's numerous concerns about areas of potential conflict between their CBA and the consent decree, the district court found the union's rights remain adequately protected by the "carve-out" language in the consent decree.<sup>328</sup> The Court held that the consent decree cannot alter the existing CBA without the union's assent, and that the "carve-out" language in the consent decree adequately protects existing CBA provisions and rights under state law.<sup>329</sup>

While the Court did not analyze or resolve each of the FOP's assertions of conflict with the CBA, it did emphasize that many of the reforms addressed in the consent decree will need to be determined during CBA negotiations between the City and the unions, who will "bargain in the shadow of all applicable law."<sup>330</sup> The Court pointedly observed that a desire to terminate a consent decree and end court oversight is a strong incentive to reach agreement on CBA-related matters, citing two consent decrees in which City agencies had been subject to federal court oversight for nearly fifty years.<sup>331</sup>

### *C. The Selection of an Independent Monitor and Special Master*

At the same time the Court was considering the proposed consent decree, the parties were negotiating the selection of the independent monitor. On October 18, 2018, the parties announced that they had narrowed the field to four finalist teams, including two teams from the Chicago area, and two from Washington, D.C. and New York. The parties hosted two public forums to seek public input, held in the basement of the State of Illinois building. The parties also created an Engaged Stakeholder Committee made up of individuals and organizations engaged in advocacy on policing matters in Chicago. The committee interviewed and provided input to the parties on the four independent monitor finalists.

On March 1, 2019, the court appointed Maggie Hickey and her team as independent monitor.<sup>332</sup> In his order appointing Hickey as independent monitor, Judge Dow also appointed retired U.S. District Judge David H. Coar to serve as a special master assisting the Court. "[T]he Master will be a facilitator and problem-solver on specific tasks that fall outside the areas which the Monitor is best suited to handle."<sup>333</sup> The Court explained:

The parties and the court have concluded that, in view of the complexity of this case, a Master as authorized under the Federal Rules of Civil Procedure should be appointed to perform certain tasks that fall outside the scope of the Monitor's duties or would involve more time intensive involvement than either the Monitor or the Court can devote to the issue. Under the terms of the decree, the Monitor is tasked with an enormous array of duties across an almost staggering array of topics.<sup>334</sup>

Under the consent decree, the monitor must conduct surveys of a broad cross-section of the Chicago community within 180 days and every two years thereafter.<sup>335</sup> The monitor

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<sup>328</sup> *Id.* at \*5–6.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.* at \*5, \*7.

<sup>331</sup> *Id.* at \* 7.

<sup>332</sup> Order, *Illinois v. City of Chicago*, 2019 WL 398703, ECF No. 713.

<sup>333</sup> Order at 2, *Illinois v. City of Chicago*, 2019 WL 398703, ECF No. 725.

<sup>334</sup> *Id.* at 2.

<sup>335</sup> See Consent Decree at Section XII(A), *Illinois v. City of Chicago*, 2019 WL 398703.

will prepare annual monitoring plans that include a schedule for compliance reviews and audits and the methodology for such reviews.<sup>336</sup> The monitor will publish semi-annual reports on compliance and a comprehensive assessment after three years.<sup>337</sup> The monitor is also required to hold public meetings and meet with Coalition representatives, CPD officers, and the collective bargaining representatives of the CPD.<sup>338</sup> All policies will be submitted to the monitor and the Illinois Attorney General’s Office for review, comment, and, if necessary, objection.<sup>339</sup> The consent decree requires that CPD’s plans for reform must be approved by the monitor prior to implementation by the Department.<sup>340</sup>

The monitor will conduct a comprehensive assessment of the department after three years to determine whether and to what extent the City and CPD are in compliance with the decree. After that assessment, the court will determine whether to renew the monitor’s appointment.

Recognizing the cost of the independent monitor’s annual \$2.85 million budget, the Court acknowledged that, while it is a “large expenditure of money by any measure,” in context, if a monitoring team had been in place since the inception of Chicago and billed the City at the rate of “\$2.85 million per year since 1790, when Jean Baptiste Point du Sable first set up camp at the mouth of the Chicago River, the total bill of \$652.65 million would not equal the City’s litigation-related payouts in civil rights actions since 2004.”<sup>341</sup>

## VI. THE CPD CONSENT DECREE IS A NATIONAL BLUEPRINT FOR POLICE REFORM

We knew taking on Chicago police reform would be difficult work, but we believe we have created a template for other states and cities to replicate, and we are optimistic that the tireless commitment by our entire team to the process of police reform will result in transformation for all residents of the City of Chicago.

The consent decree calls for substantial and wide-reaching reform of CPD’s policies, practices, training, and accountability mechanisms.<sup>342</sup> Its goal is to ensure that CPD delivers services in a manner that (1) fully complies with the Constitution and federal and state laws; (2) respects the rights of the people of Chicago; (3) builds trust between officers and the communities they serve; and (4) promotes community and officer safety.<sup>343</sup>

Many of the provisions included in the consent decree echo similar provisions in consent decrees in other jurisdictions after DOJ investigated and recommended comparable remedies for unconstitutional conduct by police. In drafting the decree, we drew from reforms instituted in other cities as a result of DOJ agreements, as these reflect professional standards to which all police departments should subscribe. Other aspects of the consent decree break new ground, such as provisions providing transparency by requiring CPD to publish data regarding use of force incidents and provisions significantly expanding the support services provided to CPD officers. To ensure that the reforms become ingrained in CPD principles and structure, the standard for compliance in the consent decree requires

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<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Illinois v. City of Chicago*, 2019 WL 398703, at \*15.

<sup>342</sup> *See* Consent Decree at ¶ 2, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1.

<sup>343</sup> *Id.*

that CPD incorporates each substantive provision into policy, adequately trains on the policy, and carries out the policy requirement in actual practice.<sup>344</sup>

The consent decree addresses a broad range of topics, including impartial policing, community policing, crisis intervention, use of force; recruitment, hiring, and promotion; training; supervision; officer wellness and support; accountability and transparency; and data collection, analysis, and management.

### A. Impartial Policing

Both DOJ and PATF concluded that CPD’s pattern of unconstitutional policing and use of force disproportionately impacted people of color.<sup>345</sup> “These enforcement actions have deepened a widespread perception that police are indiscriminately targeting anyone and everyone in communities of color without making individualized determinations of reasonable suspicion of criminal conduct.”<sup>346</sup> This widespread belief was echoed by the President of the Cook County Board, Toni Preckwinkle, who remarked to the press: “I always believed that the police could shoot black and brown people with impunity. And I’m the president of the county, and I believe that. So, what do people on the street believe? Probably the same as me.”<sup>347</sup>

The consent decree requires CPD to conduct impartial policing training for all officers annually.<sup>348</sup> The decree requires training for officers on hate crimes and a revision of those policies.<sup>349</sup> The Department will require officers to immediately report to a supervisor all incidents where they observe other CPD officers engaging in misconduct, including discrimination or profiling.<sup>350</sup> The decree also seeks to improve CPD interactions with diverse communities through policies and training on providing services to members of religious communities, LGBTQ+ individuals, children and youth, and individuals with limited English proficiency.<sup>351</sup> The decree includes the provision of reasonable accommodations, ensuring effective communication, and designating an ADA liaison.<sup>352</sup> Significantly, the consent decree requires CPD to assess its patterns of misdemeanor arrests and citations by race and gender and address disparities.<sup>353</sup> Journalists reported that the City handed out more tickets for minor offenses—including riding a bicycle on the sidewalk and failure to shovel snow—in parts of the city with some of the highest concentrations of African-American residents.<sup>354</sup> The assessment of CPD’s practices

<sup>344</sup> *Id.* at ¶ 642.

<sup>345</sup> POLICE ACCOUNTABILITY TASK FORCE, *supra* note 14, at 35.

<sup>346</sup> *Id.*

<sup>347</sup> Ruthhart & Dardick, *supra* note 65.

<sup>348</sup> Consent Decree at ¶¶ 79–80, *Illinois v. City of Chicago*, 2019 WL 398703, at \*1.

<sup>349</sup> *Id.* at ¶¶ 76–78.

<sup>350</sup> *Id.* at ¶ 59.

<sup>351</sup> *Id.* at ¶¶ 26, 37, 45, 60–71, 74–75.

<sup>352</sup> *Id.* at ¶ 70.

<sup>353</sup> *Id.* at ¶¶ 79–80.

<sup>354</sup> Elliott Ramos & Greta Johnsen, *When It Snows, Chicago Police Ticket Minority Communities More*, WBEZ (Feb. 12, 2018), <https://www.wbez.org/shows/wbez-news/when-it-snows-chicago-police-ticket-minority-communities-more/aaf5175b-aff1-418b-aef5-31706f4ff677>; Mary Wisniewski, ‘Biking While Black’: Chicago Minority Areas See the Most Bike Tickets, CHI. TRIB. (Mar. 17, 2017), <https://www.chicagotribune.com/news/local/breaking/ct-chicago-bike-tickets-minorities-0319-20170317-story.html>.

promotes accountability and transparency through an annual review and assessment of misdemeanor arrests and citations for race and gender-based disparate impact and the publication of the underlying data.<sup>355</sup> In addition, the consent decree requires CPD to develop a new policy that prohibits sexual misconduct by CPD officers.<sup>356</sup>

### B. Community Policing

Community policing principles include trust and legitimacy, community engagement, community partnerships, problem-solving, and collaboration.<sup>357</sup> The CPD's Chicago Alternative Policing Strategy (CAPS) program, which had once been considered a national model, had by 2016 become a decentralized, neglected, and underfunded program, receiving only about 0.3% of CPD's budget—less than one-third of its allocation in 1999.<sup>358</sup> As Chicago's community policing program withered, the national consensus on the benefits of community policing grew. For example, in May 2015, the President's Task Force on 21st Century Policing recommended that “law enforcement agencies should develop and adopt policies and strategies that reinforce the importance of community engagement in managing public safety.”<sup>359</sup>

Throughout the agreement, the consent decree requires CPD to integrate community policing principles throughout CPD's operations.<sup>360</sup> For example, the consent decree requires the Department to put in place criteria for selecting and evaluating school resources officers.<sup>361</sup> Prior to the consent decree, neither Chicago Public Schools nor CPD had policies defining the role of CPD officers stationed in public schools, nor did CPD have any specialized training for officers assigned to schools despite reports documenting systemic problems with the conduct of those officers.<sup>362</sup> The decree also promotes positive interactions with youth through revised policies and trainings, regular meetings to seek input from a diverse cross-section of Chicago youth, community partnerships, and the exercise of discretion to use alternatives to arrest or referral to juvenile court.<sup>363</sup>

### C. Crisis Intervention

The consent decree aims at promoting the use of crisis intervention techniques in order to reduce the need to use force, to facilitate access to the healthcare system rather than the criminal justice system, and to decrease unnecessary criminal justice involvement.<sup>364</sup> The decree requires CPD to begin providing all officers with regular crisis

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<sup>355</sup> Consent Decree at ¶¶ 79–82, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>356</sup> *Id.* at ¶¶ 63.

<sup>357</sup> *Id.* at ¶¶ 21–23.

<sup>358</sup> Nissa Rhee, *The Rise and Fall of Community Policing in Chicago*, CHI. READER (Sept. 22, 2016), <https://www.chicagoreader.com/chicago/caps-cpd-community-policing-analysis/Content?oid=23635982.html>.

<sup>359</sup> President's Task Force on 21st Century Policing, *supra* note 149, at 42.

<sup>360</sup> Consent Decree at ¶¶ 21–23, 47–48, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>361</sup> *Id.* at ¶¶ 38–44.

<sup>362</sup> City of Chicago Office of Inspector General, *Review of the Chicago Police Department's "Gang Database"* (Apr. 2019), <https://assets.documentcloud.org/documents/5816977/OIG-CPD-Gang-Database-Review.pdf>. See generally SHRIVER CTR. ON POVERTY LAW, *supra* note 298.

<sup>363</sup> Consent Decree at ¶¶ 27–33, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>364</sup> *Id.* at ¶¶ 83–86.

intervention training.<sup>365</sup> Certified crisis intervention officers will receive additional ongoing training, and CPD must develop a plan to ensure that a sufficient number of CIT officers can respond to calls for service involving individuals in crisis.<sup>366</sup> The agreement also requires initial and refresher mental health and awareness training for 911 operators so they can better spot and triage crisis calls.<sup>367</sup>

#### *D. Use of Force*

Use of force was a critical issue, and an area that DOJ and PATF had identified a need for significant training and reform. The consent decree requires officers to use de-escalation techniques in potential and ongoing use of force incidents, including using time as a tactic to slow down the pace of an incident, creating distance between the officer and the potential threat, requesting assistance from other officers or specialized units, and using trauma-informed techniques, including acknowledging confusion or mistrust.<sup>368</sup> Officers are prohibited from using deadly force against a person who is only a threat to herself or himself or to property.<sup>369</sup> Officers are prohibited from firing at moving vehicles, except in extreme circumstances as a last resort to preserve human life or prevent great bodily harm.<sup>370</sup> In addition, an individual fleeing a scene, without any other basis for suspicion, does not justify use of a Taser.<sup>371</sup> CPD must train and equip officers to provide life-saving aid and require officers to provide such aid following officer use of force incidents and prior to the arrival of emergency services.<sup>372</sup> The consent decree requires monthly publication of use of force data and requires supervisory review of use of force incidents and referral of instances that may violate the law or CPD policy to COPA.<sup>373</sup>

At least as important as clarifying and strengthening CPD's rules about use of force is the unprecedented reporting and oversight when force is used, to ensure accountability for both individual officers and CPD. The consent decree broadened the categories of uses of force that must be reported to include the use of any force by a CPD officer to overcome the active resistance of a subject.<sup>374</sup> The decree also requires supervisors to review all uses of force, with more serious uses of force requiring a supervisor to come to the scene and take statements from witnesses.<sup>375</sup>

#### *E. Recruitment, Hiring, and Promotion*

The community provided significant feedback about hiring and tremendous input from officers about the promotions' process. Officers are deeply skeptical about the fairness of the current system of promotions. The consent decree requires that CPD have clear guidance on its policies and procedures for recruiting, hiring, and promoting officers.

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<sup>365</sup> *Id.* at ¶¶ 126–27.

<sup>366</sup> *Id.* at ¶¶ 87–105.

<sup>367</sup> *Id.* at ¶¶ 138–52.

<sup>368</sup> *Id.* at ¶ 161.

<sup>369</sup> *Id.* at ¶¶ 165–66.

<sup>370</sup> *Id.* at ¶¶ 186–87.

<sup>371</sup> *Id.* at ¶ 199.

<sup>372</sup> *Id.* at ¶¶ 173–75.

<sup>373</sup> *Id.* at ¶¶ 581–82.

<sup>374</sup> *Id.* at ¶ 218.

<sup>375</sup> *Id.* at ¶¶ 222–35.

The decree mandates that CPD conduct an assessment of recruitment and hiring efforts every three years that specifically considers, among other things, methods for addressing discriminatory and biased hiring practices. Prior to December 2019, promotions in CPD occurred either through testing or through a merit promotion system, which relied on internal nominations from CPD command staff<sup>376</sup> and some aspects of an officer's background, including disciplinary history, were not determinative or might not even be considered. Under the consent decree, CPD must obtain independent expert assessments of its promotions process to ensure lawfulness and transparency.<sup>377</sup> Also, under the consent decree, CPD must account for discipline of officers before promoting them.<sup>378</sup>

#### F. Training

In response to the Laquan McDonald video being released, CPD instituted, for the first time in its history, a mandatory in-service training program on use of force for officers. Superintendent Johnson has remarked that, before 2017, the last time he received use of force training was more than three decades ago at the police academy.<sup>379</sup> The consent decree requires that the annual training will be informed by a needs assessment, which will take into account patterns observed by CPD, as well as the input from the community, and that, by 2021, officers will receive forty hours of in-service training annually.<sup>380</sup>

Importantly, the consent decree strengthens the rigor of the training for new officers, by requiring the Police Academy to incorporate adult learning principles and experiential, hands-on training—not just classroom lectures. In addition, the decree requires that probationary police officers—officers that have graduated from the Academy and have taken an additional nine months of hands-on learning in a police district beat with a Field Training Officer—will be assigned a field training officer with a 1:1 ratio.<sup>381</sup> This additional requirement marks significant change from past trends in CPD, which had in some cases had three probationary police officers to a single Field Training Officer.<sup>382</sup>

#### G. Supervision

Currently, CPD officers do not have one regular supervisor. Instead, they may be under the command of a different supervisor on each shift, and that sergeant could have as many as 20 officers under his or her command during a shift. A lack of consistent, accountable supervision contributes to many of the accountability failures in CPD. For years, CPD had failed to meet the best practice standard of a 1:10 ratio of supervisor to

<sup>376</sup> On December 12, 2019, interim CPD Superintendent issued an order eliminating the merit promotion system from CPD's promotional process to be replaced by a system consistent with reforms required in the consent decree. Abbie Sweeney & Jeremy Gerner, *How Days After Taking Over as Chicago Police Interim Superintendent, Charlie Beck Halted Perhaps the Single Biggest Irritant For Many Cops*, CHI. TRIB. (Dec. 16, 2019), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-merit-promotions-20191216-25tw6brqn5auxiy3tc5fqapf5e-story.html>.

<sup>377</sup> Consent Decree at ¶¶ 261–62, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>378</sup> *Id.* at ¶ 261.

<sup>379</sup> *Mandatory Use of Force Training Now Required for Chicago Police Yearly*, CBS CHI. (Sept. 21, 2017), <https://chicago.cbslocal.com/2017/09/21/use-of-force-training-chicago-police/.html>.

<sup>380</sup> Consent Decree at ¶¶ 272, 320, 22, *Illinois v. City of Chicago*, 2019 WL 398703.

<sup>381</sup> *Id.* at ¶ 305.

<sup>382</sup> U.S. DEP'T OF JUST. CIVIL RIGHTS DIVISION, *supra* note 24, at 97.

officers. The consent decree requires that CPD design and implement a staffing model that will require officers have a regular supervisor, and that supervisors not be responsible for more than ten officers at a time.<sup>383</sup> The decree also requires annual performance evaluations be conducted by supervisors who have directly supervised an officer.<sup>384</sup>

#### *H. Officer Wellness and Support*

Addressing the CPD suicide rate and the need for mental health services for law enforcement officers was a priority for the consent decree. The consent decree aims to put in place adequate support systems to treat mental health, substance abuse, emotional challenges, and other job-related stressors in order to achieve a healthy, effective, constitutionally compliant police force. The decree requires an immediate increase in the number of licensed mental health professional staff available to CPD members and ensures that they have reasonable access to counseling. The decree provides for the development and implementation of a training and communications program related to officer wellness as well as the development of a comprehensive suicide initiative. Finally, the decree requires training for supervisors to recognize the signs and symptoms of alcoholism and substance abuse and how to recommend appropriate support services.

#### *I. Accountability and Transparency*

The consent decree includes a fifty-two-page section implementing numerous reforms intended to ensure accountability for police misconduct by strengthening and improving coordination among the various oversight agencies, such as COPA and the Police Board, that have come into existence in response to Chicago's long and uniquely troubling history of police misconduct directed toward African American communities.

The consent decree provides for greater transparency at all stages of misconduct investigations through the requirement that each complaint is assigned a unique tracking number that, by 2020, members of the public can use to track the status of complaints online. The decree requires that COPA and Bureau of Internal Affairs (BIA) complete investigations within 180 days and that district-level complaints and investigations are completed within 90 days.

The provisions of the CBA with the union have been identified as containing several provisions that are impediments to reform, particularly with respect to accountability and transparency. While the consent decree does not re-write those provisions, it does require the City to make changes to its policies and practices when not explicitly prohibited by the agreement and to use best efforts to renegotiate highlighted problematic provisions, including the affidavit requirement, the bar on anonymous complaints, and the destruction of disciplinary records. The decree also requires CPD to adopt policies and practices to encourage and protect officers who report misconduct and expressly prohibits retaliation against members of the public who report misconduct. However, what the consent decree was not able to solve is the disjointed system of accountability, as set up through ordinance and the CBAs. Thus, the accountability system governing the CPD remains fragmented, with at least three different bodies having jurisdiction over complaints.

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<sup>383</sup> *Id.* at ¶¶ 354–68.

<sup>384</sup> *Id.* at ¶¶ 369–76.

*J. Data Collection, Analysis, and Management*

Police professionals and scholars have known for decades that genuine accountability requires more than just addressing serious misconduct after it occurs. While this is critical, supervisors should “identify those officers who are engaged in problematic behavior before this behavior has resulted in clear violations of law or policy” so that officers’ practices can be corrected.<sup>385</sup> The consent decree requires implementation of an automated electronic system that enables supervisors to proactively identify at-risk behavior by officers under their command and to provide individualized interventions and support to address problematic behavior.

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The case we brought against the City of Chicago, the approach we took and the roadmap for reform laid out in the consent decree is a path that no state Attorney General had taken before on this scale. However, we committed the resources and demonstrated how, with a strong dedication to the community and the police department, to put in place a roadmap to genuine reform. In an era where DOJ has abdicated its responsibility to address patterns and practices of misconduct in police departments, other state and local government lawyers can follow this example and step into that void.

## VII. LOOKING FORWARD

“The citizens of this city are demanding justice. Communities are crying for peace in their neighborhoods. . . [w]e need healing and hope in this city, and this consent decree will provide it. I look forward to seeing that day.”<sup>386</sup>

Shortly after the appointment of the independent monitor, Chicago held its next municipal election. Lori Lightfoot, the former chair of the Police Board and head of PATF, was elected mayor.

Attorney General Kwame Raoul, who in January 2019 was sworn in, has expressed his commitment to continuing the important work we achieved in reaching a consent decree to govern Chicago police reform.

The consent decree is in effect, and reform deadlines and requirements are coming due with a heavy drumbeat of community demand for change. With a new mayor, a new attorney general, and the appointment of an independent monitor, in Judge Dow’s words, “Let us begin.”<sup>387</sup>

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<sup>385</sup> Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFFALO CRIM. L. REV. 815, 838 (1999) (internal citations omitted).

<sup>386</sup> Testimony of Amy Campanelli, Public Defender of Cook County, Transcript of Proceedings—Fairness Hearing Before the Honorable Robert M. Dow, Jr., October 24, 2018, at Volume 1-A 21:19–25, Illinois v. City of Chicago, 2019 WL 398703.

<sup>387</sup> Illinois v. City of Chicago, 2019 WL 398703 at \*16.