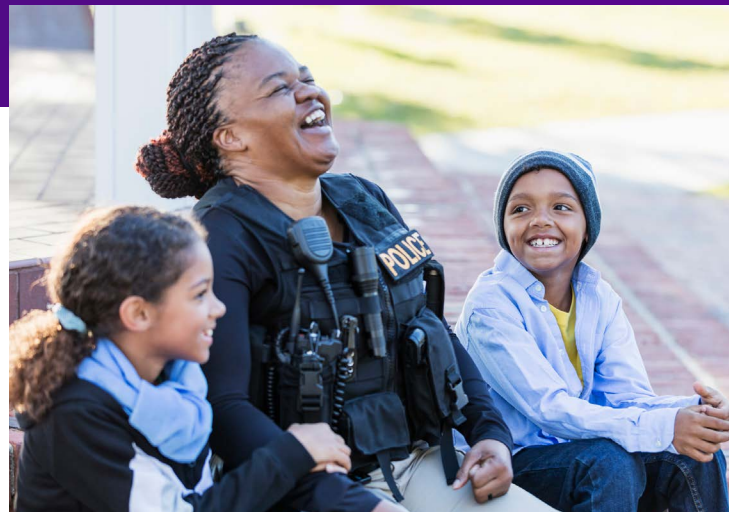


MONITORING LAW ENFORCEMENT CONSENT DECREES

AN INTRODUCTION & STARTER TOOLKIT



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INTRODUCTION

This guide is about the monitoring of law enforcement consent decrees. It provides a detailed overview of what monitors do and how they do their work. It also seeks to provide a “starter kit” of specific tools that monitors can use as they begin and progress through consent decree implementation.

Specifically, this guide addresses the oversight and implementation of consent decrees and settlement agreements addressing the performance of law enforcement agencies. These formal mechanisms address a “pattern and practice” of unlawful policing identified by the United States Department of Justice (DOJ) and typically consist of specific measures that jurisdictions and their law enforcement agencies agree to implement to address the unlawful pattern or practice.

At the same time, much of the guide’s advice may be applicable for law enforcement consent decrees involving state attorneys general or other state and local agencies with authority to address a “pattern or practice” of unlawful policing.

The materials collected here address the role, duties, and responsibilities of a consent decree monitor—typically, an outside, independent entity charged with overseeing and assessing a law enforcement agency’s progress under a consent decree.¹ In particular, the guide has been constructed to provide information that may be especially useful to individuals who may be interested in consent decree monitoring, new to monitoring, or who may be interested in learning more about how consent decree implementation may proceed on a day-to-day basis. The guide also seeks to offer guidance that can be useful to jurisdictions

¹ This guide uses the term “monitor” to refer to any “third party whose job is to monitor a state or local governmental entity’s compliance with the terms of any settlement agreement or consent decree,” whether that individual or entity is called a “monitor,” “auditor,” “independent consultant,” “trustee,” or something else. Memorandum from the Associate Attorney General, *Review of the Use of Monitors in Civil Settlement Agreements and Consent Decrees Involving State and Local Entities* 1 n.3 (Aug. 13, 2021) [hereinafter “August 2021 DOJ Memorandum”].

who entered into a consent decree and the law enforcement agencies that such decrees address.²

Specifically, this guide provides:

- An overview of law enforcement consent decrees generally.
- A discussion of the roles and responsibilities of a monitor—including what a monitor does and what they do not do.
- An inventory of the skills, attributes, diversity, and capacity that monitors and monitoring teams should have, as well as how monitoring teams might structure themselves.
- A discussion of how, once selected, monitors may begin to think about doing their work, including engagement with stakeholders, such as community members and law enforcement agency personnel.
- A discussion of how to develop and implement a monitoring plan.
- A detailed appraisal of a variety of practical considerations that may surface during consent decree implementation, from how the monitor might respond to critical incidents to how a monitor might provide updates to community members.
- An introduction to ways that monitors may consider measuring, evaluating, and determining whether a jurisdiction and law enforcement agency have complied with consent decree requirements.

No two consent decrees are the same—because no two communities or law enforcement agencies are the same. The distinct needs of a jurisdiction's communities, the particular features and histories of the monitored law enforcement agency, the specific findings from the DOJ's investigation that precedes a consent decree, and other factors all result in decrees varying in terms of substance and format.

This means that there is no one way to implement a consent decree successfully. Indeed, there is no single, correct way to be a monitor. This guide

therefore cannot advance a single, universally applicable approach. Instead, the guide is designed to provide guidance grounded in practices that have worked well for prior monitors or jurisdictions and lessons learned from approaches that have not been as successful.

Likewise, this guide does not address in detail the particular substance of consent decree requirements—for instance, what an adequate use of force policy under a decree looks like or the parameters that a sufficient training on stops, seizures, searches, and arrests should meet.

At the same time, however, consent decrees often do share significant similarities in terms of their format and implementation process, even if their substantive requirements differ. Although a specific consent decree may not cover some of the specific substantive issues alluded to in this guide, the larger purpose



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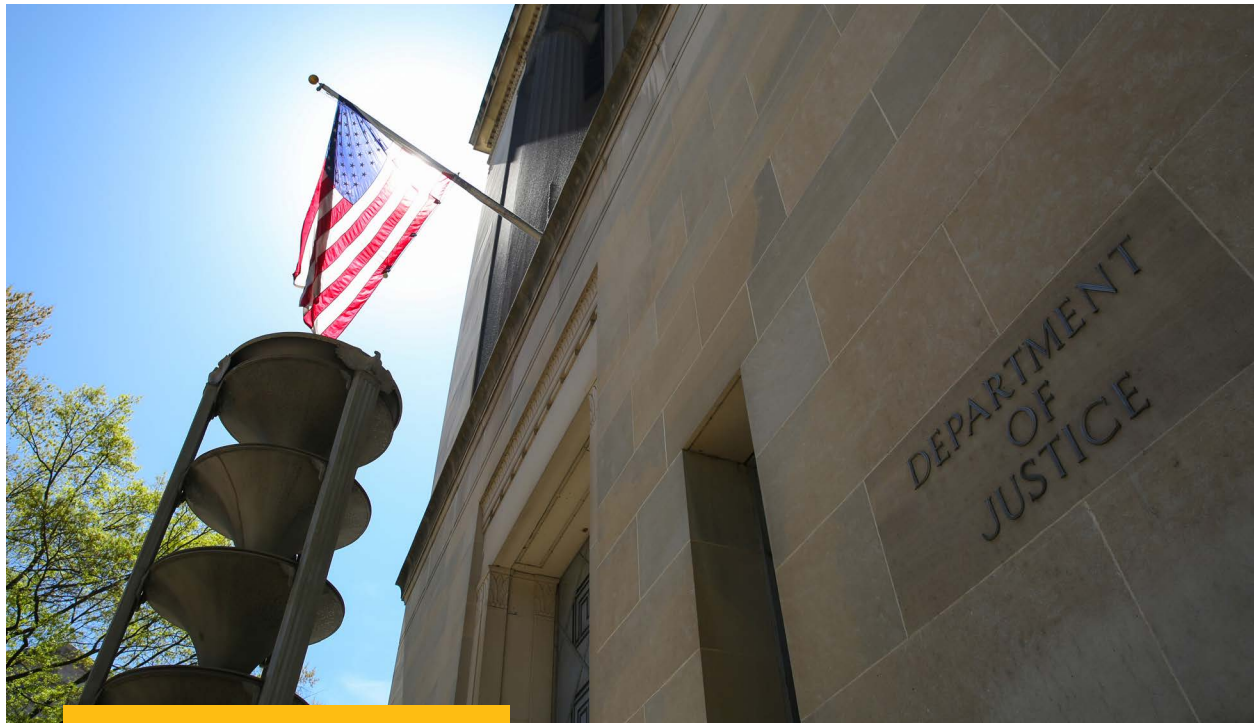
This guide therefore cannot advance singularly, universally applicable best practices. Instead, the guide is designed to provide guidance grounded in things that have tended to work well for prior monitors or jurisdictions and lessons learned from things that may not have been as successful.

² For purposes of this guide, references to the monitored “jurisdiction” encompasses the state, county, local, territorial, or tribal entities that are the subject of the decree. August 2021 DOJ Memorandum at 1 n.1. Likewise, references to the monitored “law enforcement agency,” “police department,” or “police agency” encompass the specific entity with law enforcement or policing power that is the subject of the decree’s substantive provisions.

of this guide is still relevant: how to think about monitoring and helping to ensure the full, effective implementation of a consent decree.

This guide introduces a larger set of practical tools—including examples, templates, and practical resources—related to monitoring law enforcement consent decrees. Throughout the guide, references or sidebars appear that cite specific tools, which are accessible as part of the larger set of materials accompanying this guide and may be adapted or otherwise used as a springboard for a monitor’s own work under a specific consent decree.

Monitoring consent decrees can be difficult and complex. This guide aims to illuminate some of the many things that monitors need to know and consider as they conduct an independent evaluation of law enforcement performance—a vital component of ensuring that decrees produce safer, more effective, and lawful policing.



A BRIEF OVERVIEW OF LAW ENFORCEMENT CONSENT DECREES

The United States Department of Justice (DOJ) may investigate and litigate cases involving “a pattern or practice of conduct by law enforcement officers” that violates the U.S. Constitution or federal law.³ These investigations and cases focus not on the lawfulness of a particular incident or law enforcement encounter but instead on whether the performance of a law enforcement agency across many incidents or encounters reveals a “pattern or practice” of unlawful behavior.

The first step in a “pattern or practice” case is for the DOJ to start an investigation.⁴ The DOJ may

initiate an investigation based on any of a number of factors. Regardless of why it began, during the investigation, members of the DOJ’s Civil Rights Division and, sometimes, representatives of local U.S. Attorney’s Offices conduct onsite tours, ride-alongs, and interviews of officers, supervisors, and command staff; review policy and training materials, body-worn camera footage, and reports and other documentation of agency activities; meet with community members, advocates, service providers, and other stakeholders across the jurisdiction; and gather other types of information about the law enforcement agency and its practices.⁵

³ 38 U.S.C. § 12601 (formerly codified at 42 U.S.C. § 14141); Department of Justice Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994–Present* 3 (Jan. 2017), <https://www.justice.gov/crt/file/922421/download> [hereinafter “2017 Civil Rights Division Report”].

⁴ For a more detailed description of the initiation and conduct of a pattern-or-practice investigation, see 2017 Civil Rights Division Report at 5–16.

⁵ Press Release, “Justice Department Finds Civil Rights Violations by the Louisville Metro Police Department and Louisville/Jefferson County Metro Government,” Office of Public Affairs, U.S. Department of Justice (Mar. 8, 2023).

At the end of an investigation, the DOJ may conclude that there is “reasonable cause to believe that there is a pattern or practice” of unlawful conduct.⁶ If it does, it typically issues a “Findings Letter” or “Findings Report” that outlines its determinations.⁷ Such a “Findings Letter or Report represents the culmination of the evidence the [DOJ] gathered in the course of its investigation” and “lays out the basis for . . . [its] findings.”⁸

To date, investigations have reported on patterns and practices of unlawful policing in a range of areas. Common areas of focus have included law enforcement practices found to violate the:

- Fourth Amendment of the U.S. Constitution, which addresses law enforcement use of force and stops, seizures, searches, and arrests of individuals.
- Fourteenth Amendment, which addresses discrimination, equal protection, and due process.
- First Amendment, which addresses free speech and the ability to engage in protest activity.
- The Americans with Disabilities Act, which addresses the obligation of government and government entities to reasonably accommodate individuals experiencing physical or mental health challenges.

“A Findings Letter shifts the focus of a pattern-or-practice case from identifying problems to creating solutions.”⁹ Typically, the DOJ “seeks community input regarding remedies to the issues identified in the Findings Letter,” including from residents, police officers, and community organizations.¹⁰ That outreach forms the basis of potential changes and reforms that may be considered to address the problems that the investigation identified.

In most instances where the DOJ has found that a law enforcement agency engaged in an unlawful pattern

or practice, the DOJ and the jurisdiction where the agency is located have addressed the findings by entering into an agreement that the law enforcement agency will make certain changes.



In most instances where the DOJ has found that a law enforcement agency engaged in an unlawful pattern or practice, the DOJ and the jurisdiction where the agency is located have addressed the findings by entering into an agreement that the law enforcement agency will make certain changes. Usually, this agreement takes the form of a consent decree, which is a court order entered with the consent of all parties.

Usually, this agreement takes the form of a consent decree, which is a court order entered with the consent of all parties. In effect, a consent decree is an agreement that is enforced and overseen by a federal court. The ongoing involvement of the court can help to promote “accountability, transparency in implementation, and flexibility [in] accomplishing complex institutional reforms.”¹¹ In other instances, the DOJ and the jurisdiction will enter into a “settlement agreement,” which is “an out-of-court resolution” where the jurisdiction agrees that the law

6 2017 Civil Rights Division Report at 15.

7 *Id.* at 15.

8 *Id.* at 15.

9 *Id.* at 17.

10 *Id.* at 17.

11 *Id.* at 20.

enforcement agency will make changes but which involves a court only if the DOJ later files a lawsuit saying that the jurisdiction broke its promises in the agreement.¹² For simplicity, this guide uses the term “consent decree,” but most of the guidance provided is equally applicable to monitors of settlement agreements.

The consent decree is usually the product of extensive discussion and negotiation among the DOJ, the jurisdiction, and the law enforcement agency. Input from community members and organizations, police officers and organizations, elected officials, and other stakeholders help to inform the specific requirements of the decree.

Consent decrees are binding, court-enforceable documents. This means that jurisdictions must do what they promise to do in the agreements. A consent decree is overseen by a federal judge, who may exercise the full powers and authority of the court to ensure that the jurisdiction complies with the decree (such as the power to hold a party in contempt of court).

“Consent decrees are typically detailed and prescriptive documents that outline mandated changes in areas such as policy, training, supervision practices, and data collection and analysis.”¹³

Decrees generally set forth an array of substantive steps or specific changes that a law enforcement agency or jurisdiction must make. Often, these will include changes to a police department’s policies, procedures, processes, training, supervision, data systems, technology, internal and external accountability mechanisms, officer resources, and community engagement and public information structures and approaches. The specifics of consent decrees vary based on the underlying problems that the investigation identified:

- To address a pattern or practice of unconstitutional use of force, a consent decree in New Orleans required that the New Orleans Police Department “develop and implement [new] force policies, training, and review mechanisms” to ensure the lawful deployment of force.¹⁴ The consent decree articulated a number of specific things that must be included in those policies and training initiatives and spelled out the types of force review mechanisms that the department must set up (including the investigation of all uses of force, the use of a dedicated Force Investigation Team for serious force incidents, and a Use of Force Review Board to analyze and review certain types of force incidents).
- To address a pattern or practice of unconstitutional stops, searches, and arrests, a consent decree in Baltimore required the Baltimore Police Department to revise its policies and training on these types of police encounters.¹⁵ It also required the department to gather better, more systematic information about stop encounters; to ensure more comprehensive supervisory review of stops; and to analyze such information for patterns of unlawful performance or discrimination.

Consent decrees take the form of a legal document and set out, usually across a series of numbered paragraphs, all of the things that a law enforcement agency and jurisdiction must do. They also clarify some of the basics about how the court is involved, how the parties will interact, and the role of the court.

Further, and crucially, decrees also provide the basic standard that must be reached for a jurisdiction to be considered as having satisfactorily done the things that it said it would do. Although this standard is called different things in different decrees, a law enforcement agency and jurisdiction typically must demonstrate what is called “full and effective” compliance, which must be sustained for a specified

12 August 2021 DOJ Memorandum at 1 n.1.

13 Crime and Justice Institute, *Building Capacity: How Police Departments Can Drive Positive Change Without Federal Intervention* 8 (July 2019), <http://www.crj.org/assets/2019/08/CJI-Consent-Decree-Report-Final.pdf>.

14 *United States v. City of New Orleans*, Case No. 2:12-cv-01924-SMO-JCW, Dkt. No. 565 ¶ 28 (Oct. 2, 2018).

15 *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶¶ 27–86 (Jan. 12, 2017).

period of time (often called a “sustainment period”). This guide discusses these concepts in much greater detail elsewhere, but, most generally, the type of compliance that must be demonstrated for a consent decree to end typically is that the requirements have been transformed from paper to practice in the real world—across time, cases, incidents, and officers. In other words, evidence and data must show that the law enforcement agency has meaningfully addressed the prior, unlawful pattern or practice.

If and when compliance can be demonstrated as having continued over that period, the consent decree may terminate, often at the formal request of the monitored jurisdiction, the DOJ, or both. In some circumstances, the jurisdiction and the DOJ may enter into what is sometimes called a “transition agreement” that either supplements or, in some cases, replaces the original consent decree. These follow-up or supplementary agreements can be a means of focusing ongoing work and court involvement on a more limited set of areas where work is necessary before court involvement concludes.

“The appointment of an independent monitor—or, more accurately, an independent monitoring team—is a nearly universal feature of” consent decrees.¹⁶ Monitors assist the court in overseeing consent decrees by evaluating and verifying progress under the decree and helping agencies, jurisdictions, and communities as they attempt to make decree-required changes. This guide focuses on the implementation and monitoring of law enforcement-related consent decrees.



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I. THE ROLE OF THE MONITOR

A. What a Monitor Does

Consent decrees usually include a process for the court to appoint an independent monitor to assist the court, the jurisdiction, the law enforcement agency, and the Department of Justice (DOJ) in measuring compliance with the decree. There are a number of practical reasons why decrees involve monitors rather than simply relying on a judge alone to oversee and evaluate progress. For one thing, judges who have jurisdiction over consent decrees typically have large caseloads and significant responsibilities in other matters. Further, courts may need independent, outside experts to help them understand if specialized areas—like training curricula or data technology systems—meet requirements.

The appointment of a monitor does not shift or minimize the court's role. The court retains full oversight of a decree's implementation. Instead, a monitor works as “the agent of the [c]ourt and subject to the supervision and order of the [c]ourt”, and provides the court with a neutral source of evaluation and counsel on progress toward full compliance with a decree.¹⁷

In practice, a monitor “serve[s] a crucial role as an independent validator of a jurisdiction's progress in implementing the reforms required by a settlement” agreement or consent decree.¹⁸ The monitor's ongoing involvement helps the court oversee the decree's implementation, enabling independent auditing and evaluation of whether the jurisdiction and law enforcement agency are doing what was

¹⁷ *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶ 445 (Jan. 12, 2017).

¹⁸ August 2021 DOJ Memorandum at 1.

promised in the agreement. A monitor’s responsibility to help ensure full and effective implementation of the decree implicates several different roles and responsibilities.

1. Assessor of Compliance

A primary role of a monitor is to evaluate whether the law enforcement agency and jurisdiction are doing what the consent decree requires. Generally, a monitor independently assesses and audits whether—across time, incidents, cases, and officers—the agency is complying with the decree’s requirements not just in theory but in practice.

To assess compliance, a monitor may take the following actions:

- **Create methodologies.** Monitors typically determine the process or approach that they will use to evaluate whether the law enforcement agency has made sufficient progress. Consent decrees usually provide that the methodology that a monitor uses to determine compliance be “based on accepted and trustworthy means and methods,” with statistical analyses “conform[ing] to statistical techniques that are accepted in the relevant field.”¹⁹
- **Conduct quantitative and qualitative reviews.** The methods that the monitor uses may be quantitative, qualitative, or a mix of both. Quantitative methods typically involve the analysis of aggregate information or data to identify overall trends or dynamics. Qualitative methods may involve the structured auditing of cases, incidents, or files in which the monitor and monitoring team’s experts evaluate whether decree requirements were followed.

Over the past 10 to 15 years, consent decrees have identified two types of reviews or assessments that a monitor conducts: (1) compliance reviews, and (2) outcome assessments.

Compliance reviews are evaluations of how a department is performing with respect to



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a particular requirement of the decree. They are often a mixture of qualitative audits and quantitative analyses of overall departmental performance. Some may be relatively straightforward auditing exercises (e.g., going to law enforcement buildings to ensure that public complaint forms are available, ensuring that investigatory files have particular checklists or documentation included, or reviewing a data report that the decree requires that the law enforcement agency produce). Others may be more complex (e.g., substantive evaluations of officer applications of force, analyses of officer misconduct investigations, or analyses of stops, searches, and arrests).

Meanwhile, outcome assessments measure whether the specific reforms of the decree are having a measurable impact overall—“whether, independent and apart from [the department’s] progress toward compliance with [any specific]

19 *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶ 454 (Jan. 12, 2017).

Consent Decree requirements, policing is changing in the real world.”²⁰

- **Determine sufficiency of performance and articulate what results are necessary to establish compliance.** Sometimes, there is ambiguity in the consent decree about the level of performance necessary to establish compliance with a particular requirement. Accordingly, it often falls to monitors, because they are closest to the independent auditing and assessment process, to describe what results are necessary to establish that the evaluated performance constitutes a “practice” consistent with the decree. That is, monitors must articulate what results in a given assessment or audit would be necessary to reach compliance—to establish and explain “compliance criteria.”

Although this may sound straightforward at first glance, an array of important considerations is involved, which this guide addresses in greater detail below. For now, it should be noted simply that monitors must articulate for the department, jurisdiction, Department of Justice, court, and community how it will weigh the relationship between specific incidents or infrequent events, on the one hand, and systemic trends or recurring phenomena on the other—and how limited compliance or non-compliance in some instances will weigh against otherwise sustained performance in the other direction. The more communication that occurs among the monitor and consent decree stakeholders on what will be required to demonstrate compliance, the greater clarity that monitored agencies, jurisdictions, and community members can have about what the decree process does and does not entail.

2. Representative of the Court: Mediator, Arbiter, and Adjudicator

A monitor is an “agent of the Court and subject to the supervision and orders of the Court.”²¹ This means that, at all times, a monitor works for a court and the

judge responsible for overseeing the decree—and not for the jurisdiction, the law enforcement agency, the Department of Justice, or any other stakeholder. Typically, the monitor serves at the discretion of the court overseeing the decree.

A monitor must be faithful to the direction, instructions, and orders of the court. As the monitor navigates issues and conducts work on behalf of the court, the monitor must act with the required high level of integrity, independence, judgment, and professional responsibility. Indeed, the monitor must act in accordance with the interests of the court in mind.

At the same time, a court depends on a monitoring team, its expertise, and its independent determinations to guide its own determinations about the law enforcement agency’s progress and compliance. Similarly, because judges are busy and will be balancing many other obligations, they often rely on the monitor to be the main point of contact with the law enforcement agency, jurisdiction, and community stakeholders.

Therefore, monitors have an obligation to use their best judgment and discretion to equip the court with the information and knowledge necessary for it to make informed, evidence-based decisions. They must provide an unbiased, independent accounting of how decree implementation is proceeding while offering evidence-based advice and counsel about how the court should, or should not, be involved as the decree proceeds.

As the day-to-day agent of a court, a monitoring team inherits several of the roles of a court or a judge:

- **Mediator.** One of these roles is that of mediator. Serving as a representative of the court positions the monitor to address disagreements or disputes. The law enforcement agency, jurisdiction, and/or Department of Justice may disagree about what the decree requires or whether a proposed action is consistent with it. Although decrees

²⁰ *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 279-1 at 22–23.

²¹ *Id.*, Dkt. No. 2-2 ¶ 445 (Jan. 12, 2017).

almost always have formalized processes set forth for dealing with disputes, courts (and even the decrees themselves) often contemplate a role for monitors—as their agents—to help the parties work through impasses more informally. A monitor must therefore work to address concerns, identify common ground, and seek potential resolutions that allow for progress to continue while not running afoul of the guidance of the decree and court.

- **Adjudicator or arbiter.** Another role of the court that is attached to a monitor is that of arbiter or adjudicator. Even as consent decrees contemplate monitors actively helping law enforcement agencies to make progress consistent with the consent decree, the court must pass judgment about whether a department’s efforts comply with the decree, and the monitor typically makes that determination in the first instance. For example, consent decrees typically mandate that a monitor review proposed policies to be implemented in satisfaction of specific decree requirements, which in practice establishes the monitor as the arbiter of such matters, unless one of the parties seeks direct court intervention. Although a court, and not the monitor, has the final say on matters of compliance, the determination of the monitor—the court and consent decree’s independent evaluator—typically carries great weight.
- **Ensuring fidelity to the decree.** Most broadly, then, in ways both formal and informal, a monitor helps the court ensure fidelity to the consent decree as an agreement is implemented. The monitor’s task is to assist the court in ensuring that the things to which the jurisdiction and the Department of Justice agreed, and which were memorialized in the consent decree, are meaningfully and effectively implemented in practice. In this way, a monitor may be called upon to defend the integrity of the underlying agreement.

3. Technical Advisor

Rather than passively assess the extent to which a law enforcement agency is fulfilling consent decree requirements, monitors should provide real-time, substantive feedback. For instance, if a law enforcement agency revises a use of force policy that does not sufficiently address all decree requirements, the monitor should raise issues at the outset, not wait until after the policy is finalized, officers receive training on it, the policy becomes operationalized, and the monitor formally assesses use of force encounters to raise issues about the quality of the force policy. Indeed, most consent decrees instead expressly outline a process for the monitoring team to review and approve new policies and training programs.²²

In this way, consent decrees usually contemplate that monitors will provide advice and help to a law enforcement agency or jurisdiction as it works to comply with the decree’s requirements. This counsel and assistance takes two primary forms. First, it may take the form of “recommendations . . . regarding measures necessary to ensure timely” compliance with the decree “and its underlying objectives.”²³ It may also take the form of specific “technical assistance”:

- **Real-time, in-depth advice and counsel to the agency or jurisdiction.** Technical assistance refers to monitoring team members providing in-depth and targeted support to a law enforcement agency or jurisdiction on the details of a new policy, training, procedure, or process as it is developed. Instead of a department or jurisdiction investing substantial time and energy working on something that it is unsure about how to do, or how to do in a manner that satisfies the decree, the monitor can actively work with the department to complete something satisfactory.

For example, a monitoring team may engage in detailed, collaborative work with the law enforcement agency on the minute-by-minute

²² See, e.g., *United States v. City of New Orleans*, Case No. 2:12-cv-01924-SM0-JCW, Dkt. No. 565 ¶ 21 (Oct. 2, 2018); *United States v. City of Newark*, Case No. 2:16-cv-01731-CA-MAH, Dkt. No. 5 (May 5, 2016) 6.

²³ *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶ 468 (Jan. 12, 2017).

elements of an officer training curriculum. Similarly, a monitoring team may provide suggestions for the language of a policy and procedural manual that would better comply with decree requirements. Likewise, a monitor may work with law enforcement agency personnel in determining what data fields should be included in a new, officer-facing computer database.

Monitors also frequently provide advice on the management challenges that departments under consent decrees often face—for example, communicating effectively with agency personnel about the consent decree, addressing resistance within the agency to changes required by the decree, and identifying management practices that may help or hinder compliance.

Although technical assistance can be a vital way of ensuring effectiveness and efficiency, monitors must take care to ensure that the technical assistance is guidance—and neither communicated nor interpreted as a mandate or court-required command.

- **Fostering collaboration.** The role of technical assistance points to a larger, important interest: collaboration. Consent decrees are more effective and efficient when involved stakeholders work together with the monitoring team to advance the common goal of implementing the consent decree's requirements and realizing the desired outcomes. When personnel from a law enforcement agency, the Department of Justice, the monitoring team, other jurisdiction stakeholders, and community members actively contribute to the specifics of a new policy, program, or approach as it is being developed, all stakeholders can have greater confidence that the final results reflect a diversity of views, values, and input.
- **Calibrating the nature and extent of assistance.** A monitoring team must carefully calibrate the role, extent, and content of its technical assistance. Some competing dynamics may be at play. On the one hand, the monitoring

team may need to be heavily involved to ensure timely and effective progress. Law enforcement agencies may lack the capacity, skills, and knowledge to do what the decree requires—which often looks quite different from what the department has done in the past. Rather than the department investing substantial time drafting or planning something that does not comply with the decree, a monitoring team can provide extremely specific content or counsel. For instance, rather than a monitoring team telling a department that a policy fails to explain adequately the legal justification for an investigative stop, the team might provide specific language that it believes would be consistent with the law and decree requirements.

On the other hand, if a monitoring team does too much, the law enforcement agency may not be able to build the knowledge and capacity to implement changes fully. If the monitoring team does provide specific policy language on the legal justification for an investigative stop, for instance, department policy writers may not understand as comprehensively as they otherwise might the underlying logic and requirements—inhibiting the broader organizational and cultural changes that decrees typically require for sustained compliance. Likewise, most decrees expressly stipulate that a monitor “will not, and is not intended to, replace or assume the role and duties” of the department, city, or their personnel.²⁴ Too much involvement, or intervention that is too heavy-handed, may cross the line from the monitor providing “technical assistance” to impermissibly assuming direct responsibility or control.

At the same time, a monitor who is doing the work for the law enforcement agency and jurisdiction may be less plausible as a neutral arbiter or assessor of compliance. That is, a monitor who is too involved in the details of what an agency is doing to comply with the decree—by dictating policy language, designing training curricula, drafting provisions for procedural manuals, or working directly with a department on the

design of a new data system—may not be able to retain the necessary distance and independence necessary to evaluate impartially the decree's outcomes and compliance.

Monitors must balance these various considerations as they provide technical assistance. Undoubtedly, technical assistance can help the law enforcement agency and jurisdiction reach compliance more quickly and effectively while building the long-term capacity to sustain progress long after the decree and monitoring are complete. However, monitors must continually calibrate involvement to ensure that the agency and the jurisdiction itself retain responsibility. Likewise, monitors must ensure that they do not unilaterally dictate approaches but, instead, provide guidance, knowledge, and support.

4. Facilitator

A monitor must also help facilitate the consent decree implementation process. In this role, a monitor “helps the jurisdiction to move towards compliance as efficiently as possible”²⁵ by assisting and supporting the parties and law enforcement agency in the coordination of activities under the consent decree. This manifests in several ways. The Monitor:

- **Helps to provide a framework or process for consent decree implementation.** First, because a consent decree “involves a host of interrelated reforms,” the monitoring team “provide[s] a framework and process for implementing the [d]ecree.”²⁶ This framework and process typically take the form of a monitoring plan. A monitoring plan, as discussed in greater detail elsewhere in this guide, typically provides a detailed schedule and timeline for work to be performed under the decree, milestones to be reached, and compliance and outcomes to be assessed. A plan helps the court, community, parties, and law enforcement agency all have common expectations about what work will be performed and when various points of progress might be realized. At the same

time, a monitoring plan must be sufficiently flexible to allow a department—which operates in complex, changing circumstances—to address operational needs that may arise as a plan is being implemented and as the agency and consent decree stakeholders learn new information, evolve their collaboration, and refine ways of implementing and evaluating progress.

- **Fosters stakeholder participation.** The monitor also facilitates by ensuring ongoing, substantive participation across diverse stakeholders and community members. The long-term success of consent decrees requires the ongoing, active, and meaningful participation of community members with diverse interests and perspectives.

A monitoring plan and the monitor's own engagement with residents, organizations, and impacted communities must ensure that individuals with diverse experiences, backgrounds, and views about policing may be heard as a law enforcement agency contemplates changes under the decree. This includes members of “impacted communities, law enforcement [personnel],



A monitoring plan and the monitor's own engagement with residents, organizations, and impacted communities must ensure that individuals with diverse experiences, backgrounds, and views about policing may be heard as a law enforcement agency contemplates changes under the decree.

25 August 2021 DOJ Memorandum at 8.

26 Cleveland Police Monitoring Team, *What We Do*, <http://www.clevelandpolicemonitor.net> (last visited Nov. 18, 2023).

and victims of official misconduct.”²⁷ Likewise, a monitor must ensure that different jurisdiction and law enforcement agency stakeholders—from elected officials to police officers—are appropriately involved in the implementation of the decree.

- **Serves as a conduit or interpreter among stakeholders.** This type of intensive community and stakeholder participation also often requires that the monitor serve as a conduit or interpreter among stakeholders. For instance, community members may not have a detailed or technical understanding of how the police department operates or what is in a proposed, new police policy. They may, however, describe problems with prior performance or values and considerations that they think should be better addressed in the future. A job of the monitoring team is to ensure that feedback based on experiences, history, values, and interests can be reflected or translated, as appropriate, into specific provisions of policy or new police procedures implemented under the decree.
- **Motivates.** A final element of being a facilitator is being a motivator. Consent decrees require substantial work, energy, and focus. They often require significant changes in the way that a law enforcement agency operates and performs. A monitor can support decree implementation by helping to motivate individuals involved and ensuring that stakeholders continually connect their specific, daily efforts to the larger picture of how a law enforcement agency, and community, will operate because of consent decree changes.

B. What a Monitor Does Not Do

Even as a monitor must inhabit many roles during a consent decree, a monitor’s role is defined. The consent decree’s terms and the court’s direction limit a monitor’s responsibilities and duties. Generally, this means that a monitor does not:

- **Run the law enforcement agency.** Courts and consent decree monitors oversee compliance and ensure that the jurisdiction and law enforcement agency do what the decree requires. A court and a monitor do not assume day-to-day operational control over a police department. Indeed, many consent decrees specifically provide that a monitor “shall not, and is not intended to, replace or assume the role and duties of the City and” the police department, including the head of that department.²⁸

Practically, this means that, for example, monitors do not make deployment decisions. They do not make decisions about hiring or firing officers. They do not craft agency budgets. Although a consent decree may relate to or affect those things, a monitor does not dictate what the law enforcement agency should do.

Instead, the role of the monitor is principally to evaluate whether what a jurisdiction or department does complies with the consent decree or agreement. If providing technical assistance, the role of the monitor is to provide aid, support, and specific guidance about how the department can reach compliance with the decree.

Further, because “[a] consent decree cannot last forever, . . . success should be measured not only by the substantive reforms that have been made” under a decree “but also by the jurisdiction’s ability to engage in reform and monitor itself long after the decree has ended.”²⁹ This means that a law enforcement agency and jurisdiction must be afforded the opportunity to learn how to do what is expected under the consent decree and to sustain it themselves—while the monitor can verify to the court and community whether this is happening—so that they can continue to sustain that improvement long after the decree ends. A monitor assuming too much express or *de facto* authority, or responsibility, introduces the risk that progress ends when the monitoring and decree

27 August 2021 DOJ Memorandum at 7.

28 See, e.g., *United States v. City of New Orleans*, Case No. 2:12-cv-01924-SM0-JCW, Dkt. No. 565 ¶ 446 (Oct. 2, 2018).

29 August 2021 DOJ Memorandum at 9.

ends—compromising the ability of a decree to lead to meaningful, enduring change.

- ***Unilaterally dictate terms or approaches.***

Just as the monitor does not run the law enforcement agency in a consent decree, the monitor does not have singular authority over decree implementation. Monitors who operate from a “my way or the highway” mindset may impede collaboration, frustrate community and stakeholder participation, and risk foreclosing the possibility that approaches other than what the monitor thinks are best could lead to progress or compliance. As this guide emphasizes elsewhere, a monitor’s approach must be grounded in humility, open-mindedness, and an ongoing commitment to listen to different perspectives.

A balancing of considerations and sound judgment is important in this regard. Monitors may have a clear and strong sense of what a jurisdiction must do to reach compliance with a decree requirement, and jurisdictions benefit from the monitor being clear and consistent about concerns with other approaches. On some matters, the monitor’s view may be, in practice, dispositive. For instance, if a monitor believes that specific language in a policy on investigative stops does not adequately reflect the requirements of a consent decree paragraph, the monitor’s counsel to this effect means that they are unlikely to approve the policy or recommend that the court do so—which is something that a jurisdiction will need to consider closely. However, on many other matters, the monitor’s view may be less dispositive. For example, if a consent decree requires that a police department track more information about police officer performance in a given area, and the department concludes that a new computerized database is necessary, the monitor may have views about what system the department should procure. The monitor’s duty is to evaluate whether the ultimate system tracks the required data—not to insist, before the fact, that the monitor’s preferred way is the only path to compliance.

- ***Make personnel decisions.*** One particular operational dimension that can sometimes confuse community members and monitors alike is that of personnel decisions. Monitors might review the performance of personnel and/or evaluate the determinations that a department made about appropriate disciplinary action after they have been made. Indeed, a monitor might provide technical assistance about policies and standards that apply, or about the policies and procedures that a department uses to adjudicate investigations and impose discipline.

However, monitors do not have authority to hire or fire personnel, or to make disciplinary decisions. Monitors do not dictate whether particular individuals should be hired or fired, the assignments that specific personnel should have, or how a certain misconduct investigation should be adjudicated. Consequently, monitors should be circumspect and exercise significant restraint with respect to the criticism of particular individuals, as opposed to the departments or units within the law enforcement agency—particularly in conversations with law enforcement managers.

In this way, consistent with their role as an independent evaluator of what a jurisdiction and law enforcement agency do, the monitor generally focuses less on altering in real-time what is happening during one incident or occasion and more on assessing how the department has performed across time, cases, and incidents that have concluded.

- ***Invent requirements of the consent decree.*** The court’s oversight extends to the terms of the consent decree or settlement agreement to which the jurisdiction and Department of Justice (DOJ) agreed. By extension, a monitor evaluates compliance with the terms of the decree as they exist—and not as the monitor thinks they should or could exist.

By virtue of a monitor’s access to information and knowledge about how a law enforcement agency operates, they may very well identify areas not addressed in the decree that they believe need improvement or that could help the agency either

comply with the decree or improve the quality of law enforcement in a jurisdiction. However, even when a monitor thinks other things should be addressed, the monitor's responsibility is to ensure compliance with the expressly articulated terms of the consent decree.

Importantly, as this guide discusses elsewhere, a monitor's duty to remain faithful to the decree and not invent requirements does not mean that they cannot propose, and that the monitored jurisdiction and the DOJ cannot agree to, approaches or types of work that can serve as a means for doing what the decree requires. For example, for a decree that requires various upgrades to technology and data systems, a monitor and decree stakeholders may agree that—as a first step in the implementation process—drafting and finalizing a technology and data systems plan with specific timelines and deliverables may be a useful task for the jurisdiction to adopt, even if the decree did not expressly require it. In this way, especially as long as the jurisdiction, DOJ, and court agree that a measure is consistent with the decree, additional work or evaluations may actively assist a jurisdiction's compliance with express decree requirements. When addressing matters not specifically mentioned in the decree, the monitor must take care to ensure a clear connection to compliance with specific terms of the decree.

- **Replace the consent decree parties.** After a jurisdiction and the DOJ have agreed on the terms of a consent decree, it may be tempting to view decree implementation as centrally concerned with a law enforcement agency making changes and a monitor essentially grading that agency's work. However, both the jurisdiction and DOJ, as legal parties to the decree and the ongoing matter in court, retain substantial interests and roles.

Specifically, under Section 12601, the statute that authorizes the U.S. Department of Justice to investigate and address unlawful patterns or practices of unlawful policing, the DOJ retains independent enforcement authority. Consequently, most consent decrees specifically

require DOJ review and approval of items such as policies and training curricula.

Likewise, a police department is, in some way, a part of the jurisdiction—usually as one of many departments or agencies. Jurisdictions face legal responsibility and liability for the actions and inactions of police, and police receive operational funding from the jurisdiction. As such, the city as a formal, legal entity retains an ongoing interest and role in day-to-day consent decree implementation.

The monitor does not replace the DOJ or jurisdiction. Both have an interest in ensuring that the agreement they have reached is implemented fully and effectively. The value of a monitor to the parties is to have a neutral, independent arbitrator evaluate whether a law enforcement agency is, in fact, meeting its obligations under the decree.

At the same time, a monitor is not an agent of the DOJ or the jurisdiction. A monitor must therefore not reflexively capitulate or yield to the parties. For instance, a party may assert that a proposed course of action was not contemplated in the consent decree when it was being negotiated and therefore is unnecessary. If the monitor believes that a fair reading of the consent decree supports the course of action, then the monitor need not automatically defer.

- **Replace the judge.** A monitor is an agent of the court and not the court itself. A monitor has an important role in helping the court oversee decree implementation, but the monitor does not ultimately determine when compliance has been reached or when a consent decree is over. A monitor provides independent, evidence-based evaluations and assessments of a law enforcement agency's progress, but the court ultimately certifies compliance. A monitor does not replace the judge, and the judge can overrule the monitor's assessments but cannot alter them or dictate them in the first instance.

There are a few further implications of this. A monitor must keep the court fully and fairly informed about how consent decree progress

is proceeding. This means that the monitor must share facts in a structured but neutral manner while also providing the monitor's views or opinions about what conclusion may be drawn. For example, a monitor should detail *both* the specific outreach mechanisms that a law enforcement agency has used to gather community feedback on a proposed policy (e.g., holding community meetings, putting a policy out on its website for public comment, engaging with city organizations interacting with impacted populations) *and* the monitor's view about the sufficiency of that engagement. Doing just one or the other—sharing raw information without expert conclusions or offering only conclusory views without sharing details—can place the judge at a disadvantage in which they, despite retaining authority and responsibility over the matter, may be among the least informed on the substantive issues impacting decree implementation.



Consent decrees are designed to benefit communities. They are also designed to end. Before, during, and after a consent decree, community members in a democratic society retain an ongoing, direct say in how they are policed. Furthermore, a consent decree does not foreclose jurisdictions from making separate or additional changes to policing practices as long as those changes do not conflict with the decree.

Additionally, the monitor has a duty to flag instances where the monitor's view differs with that of the court. Judges may have pre-existing ideas about how policing does or does not work. Indeed, judges are often members of the community that is implementing a consent decree, which means that judges may, in their private capacity, take note of news stories or accounts of friends or neighbors about law enforcement. Where the monitor believes that the judge's views, impressions, or direction may not adequately be supported by evidence, or where other facts may contradict or introduce complexity to a judge's view, the monitor must vigorously but respectfully ensure that the court is proceeding from a perspective that benefits from all available facts and evidence. Given the monitor's role as agent, this type of exchange is best suited for one-on-one conversations between the monitor and the court.

- ***Bypass community ownership of public safety.***

Consent decrees can appear to introduce some significant changes to the usual responsibilities over policing and community safety. Outside of a consent decree, communities—through their elected leaders, community organizations, and residents—make ongoing decisions about how law enforcement should operate and how to achieve public safety. In a consent decree, a jurisdiction agrees to a set of approaches in advance, with a court involved to ensure that the jurisdiction does in practice what it said it would do. Practically, this means that, at least on some topics, a direction will have already been dictated through a consent decree.

However, consent decrees are designed to benefit communities. They are also designed to end. Before, during, and after a consent decree, community members in a democratic society retain an ongoing, direct say in how they are policed. Furthermore, a consent decree does not foreclose jurisdictions from making separate or additional changes to policing practices as long as those changes do not conflict with the decree.

Consequently, monitors must ensure, at all points in the consent decree process, that they and

other stakeholders are continually “hearing from a diverse set of community voices.”³⁰ Further, monitors must take care to ensure that the consent decree does not, either in reality or in the perception of community members, minimize, negate, or preclude communities from actively guiding how public safety is realized in their jurisdiction.

- **Ensure perfection.** As the DOJ’s Civil Rights Division has emphasized, the goal of a law enforcement-related consent decree is for a law enforcement agency to make required changes, realize identified outcomes, and have “an enduring ability to self-correct when misconduct occurs.”³¹ This means that consent decrees do not have, as their goal, a law enforcement agency where individuals do not sometimes make mistakes, fail to perform in accordance with policy or training, or intentionally or unintentionally do the wrong thing. Instead, they aim to ensure that law enforcement agencies set appropriate standards, train officers on these standards, and have processes in place for ensuring that officers either have met standards or receive appropriate remedial action when they do not.

A law enforcement agency at the end of the consent decree may still have many things which it can improve. Oversight does not end with a decree, however. Instead, the primary responsibility and authority to keep the jurisdictions and law enforcement accountable goes to all the systems, processes, and ways of community engagement that have been established during the decree process. Consequently, monitors must ensure that a jurisdiction and monitored agency reach a level of performance that is satisfactory across time, encounters, incidents, and officers—but not, either implicitly or expressly, insist that compliance can only be reached when a department has no further progress it can make along any dimension.

30 August 2021 DOJ Memorandum at 7.

31 *Id.* at 9 (quoting Department of Justice Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994–Present* (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>).



II. THE COMPOSITION AND STRUCTURE OF A MONITORING TEAM

Monitoring a consent decree is a significant job. It requires a diversity of skills, knowledge, attributes, experiences, backgrounds, and expertise. One person is unlikely to have all the skills and attributes necessary. Consequently, most consent decrees have a lead monitor who works as part of a larger monitoring team of law enforcement experts, social scientists and statisticians, community members, lawyers, organizational change experts, and others.

Many of the preferred skills and attributes expected of a monitor and their team are usually described in the decree itself. Further qualifications may be articulated through a request for proposals (RFP), or other public solicitation for monitoring applicants, that the parties and court may use to structure the monitor selection process.

This section discusses what is required to be a monitor or a member of a monitoring team. It describes some of the best and most effective practices for staffing and structuring such a team. It also seeks to provide some practical advice to individuals who are considering becoming a monitor or member of a monitoring team about what participating in this type of effort entails.

A. Knowledge, Expertise, and Skills

Although specific decrees may articulate particular requirements, monitoring teams will generally benefit from a diversity of substantive expertise, including:

- **Legal expertise.** Monitoring occurs in a distinct legal context. Monitoring teams will need to interact with the court in hearings, make formal filings on the court's docket, and interact with stakeholders as an agent of the court. Lawyers representing a jurisdiction, potentially the law enforcement agency itself, and the Department of Justice will generally be engaged throughout the decree implementation process. Further, consent decrees aim to address a pattern or practice of unlawful law enforcement conduct, which implicates legal standards and case law surrounding things like the Fourth and Fourteenth Amendments of the U.S. Constitution.

Accordingly, the monitoring team should include personnel with legal training and experience. For the reasons described above, lead monitors have often been lawyers. However, some have not been, and lead monitors with other sets of skills and attributes may be well-suited to the role if other monitoring team members have legal expertise.

Additionally, consent decrees are overseen in federal, rather than state, court. Expertise with federal court proceedings may be particularly useful for a monitoring team.

- **Subject matter expertise.** Collectively, a monitoring team should have expertise that spans the full scope of reforms required by the decree. The monitor should consider bringing on individuals with specific subject matter expertise to advise on policy, reforms, performance measures, and/or assessments in particular topic areas. Depending on the specific sections and provisions of the consent decree being implemented, a monitoring team may need to include individuals with a high level of expertise in issues including:
 - ◆ Training and Adult Learning Techniques
 - ◆ Policy Development
 - ◆ Crisis Intervention and Behavioral Health
 - ◆ Technology
 - ◆ Internal Affairs and Accountability
 - ◆ Police Investigations
 - ◆ Sexual Assault Response

Many decree-specific substantive areas, like internal affairs or police investigations, are often best filled by individuals with prior experience in a law enforcement agency. Other areas, such as training, performance measurement, and social services, may be adequately addressed by individuals with topical expertise but who have not necessarily applied their experience previously in a law enforcement setting.

- **Community engagement.** Because community engagement and participation are at the core of any consent decree, monitoring teams need to include members who have an in-depth knowledge of the jurisdiction's community. This includes monitoring team members who have experience, knowledge, and relationships in a jurisdiction's many, diverse communities and neighborhoods. It also includes members who have experience in community outreach and engagement, including in techniques for gathering diverse views, organizing inclusive events, and publicizing information via formal and informal networks. This guide details the many ways that a monitoring team may include and reflect the community elsewhere.
- **Data, statistical, and social science expertise.** The rigorous assessment and auditing that a monitoring team conducts requires team members with in-depth knowledge and experience working with large data sets and conducting statistical analyses. These may range from relatively straightforward (evaluating trends of total incidents over time) to complex (conducting multivariate regressions in an effort to infer the effects of a certain factor on an outcome).

Beyond working with numbers, monitoring teams conduct in-depth qualitative reviews. Often, this requires reviewing many cases, files, incidents, or investigations of a certain type to determine if the department followed consent decree requirements. Members with a social science background help a monitoring team ensure that *what* is evaluated and *how* it is evaluated are consistent with reliable, generally accepted principles and methods.

For instance, to evaluate whether a department is in compliance with use of force requirements, a monitoring team will want to review force cases. Often, efficiency concerns mean that teams will be unable to review all force cases but can, instead, review some subset (or sample) of cases. Team members with experience in research methods and applied social science can help the monitoring team (1) figure out how many cases need to be reviewed to be confident that the results of the smaller set reflect the variance observed across all cases, and (2) design an auditing or evaluation tool that allows other team experts to evaluate cases in a systematic and uniform way.

- Community-based participatory research.** With community engagement and assessment at the heart of a decree, monitoring teams can benefit from experience with and knowledge of community-based participatory research. Instead of consent decree evaluation being “done in communities or on community residents, using the community as a laboratory,” a decree can benefit from an approach in which community members “have their voices heard and . . . participate in shaping the topics for study, identifying the emergent questions, and conducting investigations into the issues.”³² This means developing metrics, modes of assessment, and outcomes to be evaluated in dynamic collaboration with community members and organizations.
- Policing, law enforcement, and/or criminal justice expertise.** A consent decree addressing policing will obviously benefit from monitoring team members with experience with policing, expertise in law enforcement, and knowledge about the criminal justice system. Policing can be a technical profession that requires a long learning curve to understand what is and is not effective. A monitoring team is unlikely to be effective in measuring compliance or providing technical assistance to law enforcement agencies

if it lacks in-depth knowledge and credibility about police practices and standards.

Individuals who have experience as sworn police officers and law enforcement leaders, who have worked in police departments in substantive roles as civilians, or who have studied or interacted with police in other capacities (e.g., academia) can meet this need.

- Social services.** Consent decrees involve jurisdictions, not simply law enforcement agencies. Many agreements expressly implicate some governmental and social services beyond law enforcement. Even if they do not, because public safety involves an array of community services and resources beyond law enforcement, monitoring teams will usually benefit from experts with an understanding of and experience with services beyond policing. For instance, monitors of consent decrees addressing individuals experiencing mental or behavioral health challenges will benefit from experts with a knowledge of community health services.

Beyond formal knowledge or experience, serving as a monitor requires a number of other substantive skills, including:

- Project management and administration.** Systematically monitoring and assessing compliance with an agreement that may include hundreds of discrete requirements, and many different divisions within a law enforcement agency and/or jurisdiction, involves many moving parts. Implementing a decree requires a clear vision, organization, and a structured process.

Monitoring teams must effectively identify, construct, and triage workstreams within the full scope of the decree. This includes developing and tracking a monitoring plan, effectively delegating work to team members according to need and expertise, and ensuring that all stakeholders are participating effectively and efficiently. Monitors must ensure that their teams have members

32 Karen Hacker, *Community-Based Participatory Research* 3 (2013); accord National Institutes of Health, Programs, Extramural Research Programs, *Community-Based Research Program (CBPR)*, <https://www.nimhd.nih.gov/programs/extramural/community-based-participatory.html> (last accessed Nov. 18, 2023); see also Steven S. Coughlin, Selina A. Smith, and Maria E. Fernandez, *Handbook of Community-Based Participatory Research* (2017).

with the administrative skills required to ensure the team itself is being managed appropriately and that the operations of the team (e.g., team staffing, invoicing, and documentation) are conducted with attention and care.

- **Facilitation, mediation, and problem-solving.** The prior section emphasized that monitors and their teams must ensure progress by helping to guide and structure such progress—not direct it. Accordingly, monitors and their teams benefit from real-world skills relating to facilitation. This includes how to convene, structure, and operate meetings. It also includes how to structure overall processes, as part of the monitoring plan and otherwise, that incorporate stakeholder and community input while simultaneously promoting effective, efficient progress toward the decree.

Sometimes, facilitating the consent decree process may be difficult or contentious. Cities with consent decrees often have histories of controversy and community concern surrounding policing and law enforcement. Residents and city stakeholders often have divergent views about what the law enforcement needs to do differently—and may believe that the consent decree requirements are insufficient, are incomplete, or do not adequately address some issues.

Monitors and their teams therefore benefit from skills relating to mediation and conflict resolution. Although consent decree environments are different than some mediation settings because the city, DOJ, and court have previously agreed to the broad contours of what the law enforcement agency will need to do, monitors can benefit from an understanding of approaches and techniques that can help disagreeing stakeholders navigate conflict, identify common values, and collaborate on shared solutions.

More generally, and even where there is not conflict, consent decrees—while comprehensive—cannot address every granular implementation detail necessary for compliance. Problems, issues, and questions will arise that require a monitor to use reason, judgment, and common sense to address. A capacity for and comfort with practical

and pragmatic problem-solving is therefore valuable.

- **Communication.** Monitors and their teams need to interface, orally and in writing, with a wide variety of audiences. They often need to distill complicated or technical ideas for stakeholders with varying levels of pre-existing knowledge about policing or a consent decree. They need to have a level of comfort with calibrating their mode of communication to the needs of particular and diverse audiences—from police personnel and community activists to attorneys and elected officials.
- **Listening.** Although potentially a part of facilitation and communication, monitoring teams should be well-versed in active and authentic listening to individuals from a variety of backgrounds and with diverse perspectives. Because collaboration requires stakeholders and community members to give voice to their values, histories, experiences, concerns, hopes, and ideas for the future, monitors and their teams must be able to meaningfully receive input.
- **Delegation.** Monitoring an agreement is a large job that, as this section makes clear, implicates a substantial set of experiences, skills, and knowledge. No single individual, or lead monitor, is likely to possess them all, but a diverse collection of experts on a monitoring team may have a large number of them. Such diversity can only make a difference, however, if team members are substantively and meaningfully engaged as their experience and expertise indicate. Accordingly, monitors and their teams should be able to delegate responsibility for work and oversight on various topics or tasks to members who are best equipped to address them.

B. Attributes of Monitors and Team Members

In addition to substantive knowledge, expertise, or experiences, monitors and their teams must embody a number of attributes. These include:

- **Ethics and integrity.** The core obligation of a monitor is to report independently, objectively, and thoroughly about the status of a jurisdiction and law enforcement agency's progress in doing what the decree requires. The integrity and trustworthiness of a monitor is paramount.

A monitor and their team must therefore adhere to high ethical standards and exhibit a commitment to performing their duties ethically throughout the process. This means that while the monitor is building productive, working relationships with the parties, they are also maintaining independence from undue influence and preserving objectivity in their actions and assessments as a monitor.

Although monitors and monitoring teams are not judges, they benefit from adhering, wherever possible, to the Code of Conduct for United States Judges—which emphasizes, among other things, fairness, impartiality, diligence, the avoidance of actual or apparent impropriety, and independence.³³

Additionally, ethics and integrity are vital in all aspects of project management, particularly as they relate to billing, interacting with impacted populations, and handling sensitive information. This guide addresses practical considerations relating to ethics and integrity in Section V-E, below.

- **Fairness, impartiality, and the appearance of impartiality.** Consistent with the need to perform their duties ethically and with integrity, monitors must be fair and impartial. Among other things, this means that monitors and their teams must avoid conflicts of interest and the appearance of such conflicts. Potential conflicts might include:
 - ♦ Prior monitor or non-monitor work with the law enforcement agency.
 - ♦ Prior work with a firm or organization that provided legal or other professional services to the law enforcement agency, during the time of the team member's affiliation with the firm or organization.
 - ♦ Any other factors that could “bias or impair, or be perceived to bias or impair, the Monitor's judgment, objectivity or independence.”³⁴

This also requires that monitors not unduly favor, or be seen as favoring, particular people, stakeholders, or views. Instead, monitors must “demonstrate due regard for” the jurisdiction, law enforcement agency, DOJ, community members, and others “to be heard and to have issues resolved” based on the merits.³⁵ This commitment to basic fairness also means that a monitoring team “should not engage in behavior that is harassing, abusive, prejudiced, or biased.”³⁶ Additionally, monitors and team members must be wary, when communicating with the parties or stakeholders, of making extemporaneous comments that could call into question their impartiality.

- **Independence.** Even as a monitor must collaborate and engage with a variety of stakeholders, the duty of the monitor is to be independent. This means that, at times in a consent decree process, a monitor may disagree with some stakeholders. Indeed, they may, from time to time, not be well-liked by some stakeholders. A law enforcement agency, for instance, may believe that its performance in a given area is sufficient to meet decree requirements, but a monitor must be willing to say otherwise if data or auditing of incidents indicates otherwise.

33 United States Courts, *Code of Conduct for United States Judges* (Mar. 12, 2019), <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>; see also American Bar Association Model Code of Judicial Conduct (2020), https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/.

34 American Bar Association, *Criminal Justice Standards, Monitors*, Standard 24-2, Selection Criteria https://www.americanbar.org/groups/criminal_justice/standards/MonitorsStandards/ (last visited Nov. 18, 2023).

35 United States Courts, *Code of Conduct for United States Judges*, Canon 3A(5) (Mar. 12, 2019), <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.

36 *Id.*, Canon 3 (Mar. 12, 2019).

- Humility and open-mindedness.** Even highly qualified monitors and teams are unlikely to possess the total array of knowledge, skills, and experience that a decree implicates. All will likely learn a great deal during implementation about the nuances of community experiences, the daily operations of the law enforcement agency, and the secondary challenges that must also be addressed for the jurisdiction and agency to reach compliance. Even as a monitoring team must possess expertise, its work will benefit from the team proceeding from, and acting with, humility. Monitors who assume that they always know best are unlikely to be effective over time. A monitoring team that is open-minded and committed genuinely to considering various points of view is more likely to promote community participation and stakeholder collaboration.
- Professional judgment.** As noted previously, although a monitor works for a court and is bound by some of the rules that apply to judges, monitors and their teams engage in work—including independent audits, assessments, and analyses—that is different from what courts typically do. The process of establishing methodologies for assessing progress and evaluating how the jurisdiction and agency are doing under the decree requires monitors to exhibit sound professional judgment:

Professional judgment includes exercising reasonable care and professional skepticism. Reasonable care includes acting diligently in accordance with applicable professional standards and ethical principles. Attributes to professional skepticism include a questioning mind, awareness of conditions that may indicate possible misstatement . . . , and a critical assessment of evidence.³⁷
- Diligence and thoroughness.** Monitors must be conscientious, rigorous, hard-working, and attentive. In their work, they must exhibit a commitment to exploring issues as exhaustively as reasonably necessary to examine relevant issues, find facts, and make evidence-based conclusions.
- Decisiveness.** Although monitors must be thorough and meticulous, some circumstances require that monitors be decisive. For example, when a law enforcement agency submits a proposed policy to satisfy a consent decree requirement, the monitoring team will need to formulate a timely and clear determination about whether the proposed policy is or is not satisfactory. Just as consent decree processes do not proceed optimally when a monitor is insufficiently collaborative or thorough, they do not benefit from monitors that are opaque, not specific, or prone to take substantial periods of time to determine what should be done. Balancing collaboration and thoroughness with decisiveness and efficiency is often important for monitoring teams.
- Proactivity.** Monitoring teams must be proactive—anticipating issues that may emerge down the road and highlighting them to the parties involved, affirmatively building relationships, and convening relevant stakeholders. Consent decrees are most effective and efficient when monitors are proactive rather than passive. At the same time, monitors must balance the benefits of proactivity with the need to ensure stakeholder voice and involvement in the implementation process.
- Focus and the ability to prioritize.** As this guide discusses in several places, an important role of the monitor is to help jurisdictions and law enforcement agencies efficiently implement what the decree requires. Typically, not everything that a decree requires can be done all at once. At the same time, trying to gain compliance without a reasonably phased approach can be counterproductive for the department; moving too fast can be as problematic as moving too slow in carrying out the requirements of the decree. Instead, decree implementation typically benefits

37 United States Government Accountability Office, *Government Auditing Standards*, GAO-21-368G § 3.110 (Rev. Apr. 2021), <https://www.gao.gov/assets/gao-21-368g.pdf>.

from a paced, phased approach—one that often requires making decisions about the most urgent priorities. Monitors and their teams must be able to help jurisdictions do this.

C. Monitoring Team Diversity

Monitoring teams, as the prior sections make clear, require and benefit from diversity of many kinds. In addition to experiences, knowledge, and skills, monitors benefit from diversity in terms of backgrounds and demographics.

One type of diversity relates to geographic location and/or familiarity with a jurisdiction's community. This is often a source of discussion at the outset of a consent decree and during the process of selecting a monitor.

On the one hand, every community has unique histories, experiences, and challenges. A monitoring team that is from or has significant, pre-existing understanding and ties to a jurisdiction may be more readily able to include and reflect the community's voice in the decree process. On the other hand, team members who are from or live in a jurisdiction run the risk of their prior community relationships or dynamics reducing the perceived independence and credibility of a monitoring team. Furthermore, monitors or team members with experiences in other communities may have valuable perspectives about how other places address similar issues than can help law enforcement agencies make the often-significant changes that decrees require in a more efficient and effective manner, as they have previously encountered both the issues and potential solutions elsewhere.

Consequently, successful monitoring teams often blend individuals who have experience with consent decrees, policing, and other relevant subject matters with individuals who are members of the community that the decree impacts. These teams therefore get the "best of both worlds." Regardless of team member experiences, monitoring teams can include and reflect the community in a variety of tangible ways, which are explored further below.

Another important type of diversity relates to demographics, backgrounds, and associated experiences. A monitoring team should understand, and reflect, the diversity of the community that the decree impacts, including with respect to racial and ethnic identity, age, disability status, gender identity and expression, and sexual orientation. Diversity of background and experience is also vital. Prior sections of this guide noted the benefits of a monitoring team with experts who have experience with working in law, social science, and policing. Other types of life experiences are also critical. For instance, monitoring teams should consider including people from communities that have been most impacted by policing. They should also ideally include individuals who have first-hand experiences or involvement with the justice system.



Successful monitoring teams often blend individuals who have experience with consent decrees, policing, and other relevant subject matters with individuals who are members of the community that the decree impacts. These teams therefore get the "best of both worlds." Regardless of team member experiences, monitoring teams can include and reflect the community in a variety of tangible ways.

D. The Size and Structure of a Monitoring Team

The size and structure of a monitoring team is likely to vary according to several factors, including the location of the lead monitor (i.e., whether the monitor is local to the jurisdiction subject to the decree or lives elsewhere); the scope of the decree (i.e., the volume and significance of the decree's issue areas and related requirements); and the types of subject matter expertise that the decree's requirements implicate.

A larger monitoring team can more easily meet the need for broad expertise and diversity discussed above. However, a larger size also brings a greater need for resources devoted to management and coordination to ensure the effective and efficient operation of the team.

To date, monitoring teams have tended to include a lead monitor, a core team that includes "deputy" or "associate" monitors, and an array of team members who serve as subject matter experts and speak to the decree's specific areas. Lead monitors, who are often the designated "monitor," are typically appointed as such and have ultimate responsibility and authority with respect to the monitoring and are involved across consent decree areas, issues, and tasks. Deputy or associate monitors generally have senior leadership responsibility and are either involved across subject matters, areas, and tasks or have a defined portfolio of significant responsibilities. Subject matter experts typically work on matters, areas, and tasks where they have specific expertise, knowledge, and skills.

What this means in practice varies widely. Some teams assign monitoring team members to defined areas of the consent decree—with particular experts leading specific areas like use of force, crisis intervention, or misconduct and accountability. On other teams, small groups focus on specific areas or tasks. Although there is no standard or one-size-fits-all approach to the structure of a monitoring team, it should be constructed with the goals of efficiency and effectiveness in mind. This means that the structure should bring monitoring team members

with the most relevant experience, knowledge, and skills to work on relevant consent decree work—while ensuring that team members assigned to any one area are not redundant or duplicative. Monitors should communicate the roles and responsibilities of team members to the monitored agency, jurisdiction, and DOJ.

E. Community Involvement in the Structure and Composition of the Monitoring Team

It is critical that the voice, concerns, and experiences of the community inform the consent decree implementation process in a meaningful way. Below, this guide will address *how* monitors may engage the community and *what* such engagement might entail. To ensure such engagement and promote community participation, monitoring teams may involve and represent the community in its basic structure or composition in a variety of ways:

- **Community engagement specialists.** Some monitoring teams have included team members who are charged with being a liaison between residents and the monitoring team. They organize the team's interactions with community members and groups, help to facilitate the exchange of information between the monitoring team and community members, and help generally to serve as a conduit between the team and the community. Often, these community engagement specialists are individuals with deep, pre-existing ties to the jurisdiction who have the credibility and reputation for independence necessary to be a part of the monitoring effort.
- **Networks of community liaisons.** Receiving community input and feedback and updating residents on the progress of the consent decree are significant and ongoing responsibilities. Accordingly, rather than investing one or a small set of team members with all engagement duties, some monitoring teams establish a network of engagement specialists to focus on specific geographic areas or demographic groups. For example, the team monitoring the consent decree



The selected structure should ensure that community representation and participation are not reduced to a box-checking exercise or sporadic opportunities to participate in town hall events. Instead, a monitoring team's structure and composition should allow it to ensure that the community's voice and concerns are integrated in an ongoing and substantive way.

in Baltimore includes “a group of neighborhood liaisons” who “provide localized points of access to the Monitoring Team across the City,” with one individual assigned to the neighborhoods surrounding each police district.³⁸

- **Community advisory groups.** Monitoring teams might also consider establishing advisory groups of community members to convene regularly and provide feedback, input, and counsel to the monitoring team. Advisory groups can serve as an important bridge between the monitoring team and community members who cannot be involved in the decree process in an ongoing way. Monitors might consider forming one or several advisory groups comprised of individual residents, representatives of impacted communities, and community organizations or institutional stakeholders like religious organizations, social service providers, or civic groups.
- **Community-based participatory research.** This guide briefly introduced the process of

community-based participatory research in which community members are involved in the design and implementation of the decree's evaluative research. Teams may be constructed to ensure that a participatory model can be incorporated into the monitor's development of methodologies for assessing compliance (e.g., ensuring that communities are involved in developing questions for a community-based survey or in determining how to operationalize certain outcome measures).

These various structures are not mutually exclusive. For instance, a team may benefit from having dedicated team members who serve as “community engagement specialists” and help to coordinate the activities of a network of community liaisons or community advisory councils—with such liaisons and councils serving as key facilitators of the community-based participatory research approach.

The selected structure should ensure that community representation and participation are not reduced to a box-checking exercise or sporadic opportunities to participate in town hall events. Instead, a monitoring team's structure and composition should allow it to ensure that the community's voice and concerns are integrated in an ongoing and substantive way.

F. Time Commitments, Required Capacity, and the Duration of Responsibilities

Work on a monitoring team—especially for lead monitors and primary team members—is a continuing and sometimes unrelenting responsibility. It requires significant time, attention, effort, and focus. Especially during the initial years or phases of implementation, consent decree monitoring will likely be a primary or dominant focus of the monitor and core team members. For this reason, individuals who are currently serving as lead monitors for other law enforcement consent decrees should not be involved in “more than one monitoring team at a time.”³⁹

³⁸ Baltimore Police Monitor, *Neighborhood Liaisons*, <https://www.bpdmonitor.com/neighborhood-liaisons> (last visited Nov. 18, 2023).

³⁹ August 2021 DOJ Memorandum at 5.

At the same time, it is unlikely that the monitoring of the decree is or should be an exclusive professional endeavor. One important reason for this is that demands on a monitor's time tend to be uneven, as a law enforcement agency and jurisdiction need time to go and do the work required of them before and after receiving the monitor's informal input or the results of the monitor's formal compliance assessments. Likewise, law enforcement agencies do more than simply work on consent decree compliance. They must engage in their everyday, core duties, and monitoring team involvement and activities will need to reflect and accommodate that reality. Consequently, most monitors and monitoring team members to date have been involved in other, unrelated professional endeavors. Individuals who may be considering being involved on a consent decree team should therefore anticipate that it will be an important, core pursuit but not a full-time pursuit.

Monitors and team members must assume and understand that the monitoring will be a long-term, multi-year commitment. The amount of time that this entails depends on a number of factors, including team composition and the phase of implementation. Specifically, because a consent decree often will be implemented over the course of years, the nature of monitoring work and obligations will change over time—shifting from initial strategic planning to technical assistance to formalized assessments of compliance. Different team members may be more or less involved depending on the stage or issues of focus.

While a lead monitor should generally be prepared to serve in that role “for the entire monitorship term,”⁴⁰ and deputy or associate monitors may be expected to serve in a more substantial capacity for a significant period, other subject matter experts on the team may be utilized in a variety of ways. Some core members may be involved consistently and throughout the decree, while others may be involved more sporadically.

40 American Bar Association, Criminal Justice Standards, *Monitors*, Standard 24-2, Selection Criteria https://www.americanbar.org/groups/criminal_justice/standards/MonitorsStandards/ (last visited Nov. 18, 2023).



III. GETTING STARTED

The beginning of monitoring is typically an intensive period. The monitoring team, jurisdiction, and DOJ have a lot to discuss and a lot of work to begin. The law enforcement agency and its officers may have questions about what the decree means for their work. Community members have a high degree of interest in the new monitoring team and what they can expect to see from the decree. Local media are often highly engaged as well.

This section addresses some of the major early tasks and considerations that monitors—as well as jurisdictions and law enforcement agencies—will need to consider as work begins on the implementation of a consent decree. Because many of these tasks are foundational, the type of work started, or precedent established, early will need to be carried on throughout the implementation of a decree. For example, this section's discussion and guidance relating to community and stakeholder

engagement and how to establish workflow systems are relevant for all, not just early, consent decree stages.

A. Selection of the Monitor and Monitoring Team

The process of naming a monitor and monitoring team is the first step following a court agreeing to the consent decree and ordering it effective. Consent decrees therefore outline a process for selecting and naming a monitor and monitoring team. The details differ among decrees and jurisdictions. Typically, however, the jurisdiction and the DOJ release a joint request for applications, proposals, or statements of interest. Generally, proposed teams of individuals—encompassing subject-matter experts with the array of skills outlined in Section II—will respond to indicate their interest in being considered.

After receiving proposals or written indications of interest, jurisdictions and DOJ representatives will often conduct a joint interview, or series of interviews, with applicants. In some monitoring selection processes, public forums are held in which monitors make presentations to the community or answer community questions. Potential monitoring candidates might also meet with representatives of the law enforcement agency, the jurisdiction, the DOJ, the judge overseeing the consent decree matter, and others.

Potential monitors and team members will need to be prepared to discuss their experiences, backgrounds, and qualifications. They should also be equipped to discuss, with some level of specificity, how they would approach their job as monitor should they be selected and how they might view or address various substantive areas that the decree outlines.

Usually, the jurisdiction and the DOJ either (1) reach a consensus decision on the monitor and monitoring team and recommend that the court appoint the identified monitor and team; or (2) identify a limited set of (often three) monitoring team finalists, with the final selection made by the court. In many instances, this second option is utilized if the jurisdiction and the DOJ cannot reach a consensus decision. Regardless, the judge overseeing the matter makes the final determination on who is appointed.

B. Building Internal Monitoring Team Capacity

A newly appointed monitoring team may include members who have not worked together previously. Indeed, it may include people who have not been involved with consent decrees before. Consequently, new monitoring teams need to spend time at the outset developing common understandings and protocols for conducting their work. This might include:

- **Receiving an initial orientation from the judge.** A court may prefer to communicate primarily with a lead monitor, or the lead monitor and their deputies, on a day-to-day basis. On

the other hand, they may wish to communicate on an ongoing basis with all of the monitoring team's experts on their areas of responsibility or expertise. Regardless, a monitoring team can benefit from hearing directly from the judge about the court's philosophy, expectations, and desires for the monitoring team's work. A monitor and team should consider asking the court for such an opportunity near the outset of their work.

- **Providing formalized training for team members.** Monitoring teams can benefit from formalized training that orients members regarding their responsibilities and obligations. It may be beneficial to conduct this orientation very early on in the process and before team members interact in a sustained manner with consent decree stakeholders. One foundational area relates to the consent decree itself. A monitor should provide an orientation across the components of the decree to ensure that, regardless of area of focus or responsibility, team members fully understand the decree's scope and substance.

Another critical area relates to ethics and integrity. The judge overseeing the matter, attorneys from the monitoring team, and team members with prior monitoring experience may provide a good overview. Additionally, local attorneys or law school professors specializing in legal and/or judicial ethics may be useful in ensuring that team members embody the requisite levels of independence, professionalism, and integrity that the position requires.

Team members might also benefit from media training. As this guide discusses elsewhere, monitoring teams will receive inquiries from the press, regardless of what the consent decree says about the monitor interacting with the media. Learning how to professionally handle media encounters—including how to decline to participate with media—is important for all team members.

Additionally, team members should receive training and guidance on administrative matters, including how to track their time, submit invoices,

and seek reimbursement for certain expenses. This guide addresses these issues in Section V.

- ***Delegating, structuring, and determining the team's management approach.*** Monitoring teams can also benefit from early discussions that clarify how the monitoring team will function. The monitor selection process will often involve the designation of particular team members into various management or leadership roles. However, the team's day-to-day operations may require additional structural decisions. For instance:
 - ♦ Will the team have designated working groups on various issue areas (like use of force, misconduct, or officer wellness)?
 - ♦ If the team has work groups, what team members will contribute to what work streams?
 - ♦ Who will lead those work streams?
 - ♦ How will the lead monitor and any deputies be involved in those work streams?

Monitoring teams also need to consider how formalized decisions will be made. Is any decision-making authority delegated? If so, what are decisions that team members or subject matter experts might make, and on what will a monitor and/or deputies need to be consulted?

- ***Establishing an initial engagement plan.*** Engaging with stakeholders, establishing relationships, and hearing about the experiences and concerns of community members is a critical, early task of the monitoring team. Even for monitors or team members who reside in, have existing relationships in, or have prior experiences with the jurisdiction entering into the decree, the monitoring role requires the setting of expectations about monitoring and the consent decree, how the monitoring team will function, and what people can expect during the decree.

Accordingly, the monitoring team should establish an initial engagement plan. The plan should list the stakeholders and individuals who should be engaged early in the monitoring. It should address who from the monitoring team will contact or

coordinate engagement, who from the team will meet with stakeholders, and the timelines and sequencing for the engagement.

The following sections of this guide provide further details on who a monitoring team should engage with early in the decree process and what that engagement should seek to accomplish.

C. Establishing Relationships with Key Stakeholders

At the start of the monitoring process, a monitor and their team will typically need some amount of time to establish relationships, begin engagement, and learn more substantively about the monitored agency and community. In particular, although the DOJ's investigative findings report may outline important details about the state or performance of the agency, a monitoring team will need to understand much more about the current state of policies, processes, and procedures; the condition of performance data and the technological systems that might facilitate collection and analysis of this data; and the real-world, day-to-day operational realities associated with policing in the jurisdiction.

Critically, there is often a difference between what an organization's official policies, procedures, and protocols say should happen; what the individuals who work there say is happening; and how things operate in practice. Consequently, a monitoring team will need to spend some amount of time exploring these organizational realities so that it more clearly understands the monitored agency's strengths, weaknesses, and opportunities when it comes to implementing the new ways of doing its work that a consent decree usually requires.

Likewise, as teams establish relationships and hold initial conversations, many monitors have identified important nuances, points of distinction, and differences of experiences or viewpoints across community members and stakeholders. Indeed, the views of a community are often more diverse and complex when it comes to policing than what a jurisdiction's media, elected officials, or civic leaders may be able to characterize. A monitoring team's

early community engagement work also must seek to understand how a community's various assets, experiences, and views might be best harnessed toward ensuring policing consistent with the decree and the values of that community.

1. Identifying and Establishing Relationships with Community Stakeholders

The term “community” refers broadly to individuals who live in, work in, or otherwise retain strong social or cultural ties to a jurisdiction.⁴¹ That is, community encompasses “[i]ndividuals who live, work, or otherwise have an interest in the community—volunteers, activists, formal and informal community leaders, residents, visitors and tourists, and commuters.”⁴² Subsequent sections of this guide provide specific guidance for engaging with the law enforcement agency, jurisdiction, and others, and all of these stakeholders help to form the community with which a monitoring team must engage. However, in this guide, the term “community” will generally be used to refer to stakeholders not directly involved as parties to the consent decree (i.e., excluding those who work for the jurisdiction, law enforcement agency, DOJ, or the court).

At the outset of a monitoring team's work, a useful practice may be to engage in a formal process of *community asset mapping*. Asset mapping is a method of identifying resources, organizations, establishments, stakeholders, and individuals who serve and represent the various communities of a district. An “asset” is a “status, condition, behavior, knowledge, or skill that a person, group, or an entity possesses and which serves as a support, resource, or source of strength” to the community.⁴³

The people who embody or possess various assets

Q HIGHLIGHT

The asset-mapping process involves identifying entities, places, and people who possess these attributes. Typical examples may include:

- Individual leaders (such as pastors, community organizers, activists, and leaders of local groups).
- Local private, public, and nonprofit institutions or organizations (such as churches, schools, or social service providers).
- Public health and welfare services and agencies.
- Associations of residents (such as neighborhood watches or parent-teacher associations).
- Hubs of community activity (such as hospitals, libraries, youth centers, recreation centers, or social clubs).
- Local businesses.⁴⁴

need not have been engaged in conversations around policing and law enforcement previously. The asset-mapping initiative should seek to cast a broad and comprehensive “net”—aiming to identify individuals who are influential and representative.

Monitoring team members with local expertise should help guide the process and can draw from their experiences and relationships in mapping the community. Input from elected officials, city personnel, and the police department may also be useful in capturing and incorporating pre-existing relationships and networks.

41 See generally David B. Clark, “The Concept of Community: A Re-Examination,” 21 *Sociological Review* 397 (1973); Ted K. Bradshaw, “The Post-Place Community: Contributions to the Debate about the Definition of Community,” 39 *Community Development* 5 (2009) (defining community “in terms of the networks of people tied together by solidarity, a shared identity and set of norms, that does not necessarily reside in a place”).

42 Office of Community Oriented Policing Services, *Community Oriented Policing Defined* (Apr. 2009), <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>.

43 Advancement Project, *Participatory Asset Mapping: A Community Research Lab Toolkit* (April 2012) at 12, <http://www.communityscience.com/knowledge4equity/AssetMappingToolkit.pdf>.

44 UCLA Center for Health Policy Research, “Asset Mapping,” available at https://healthpolicy.ucla.edu/programs/health-data/trainings/Documents/tw_cba20.pdf.

The asset-mapping process should be reduced to a working document that allows the monitoring team to have a working index of community members, entities, and organizations to engage. Simply, asset-mapping is a process of systematically inventorying and documenting who the monitoring team and consent decree process should engage—so that decisions can then be made about when and how to conduct outreach and invite participation from those individuals and groups.

The purpose of the asset-mapping initiative is also to expand the scope and participation of the local community. Often, a small number of community members and leaders have historically represented the community in conversations about policing or public safety. Even where these participants articulate concerns, advance issues, or express viewpoints that are representative of many within the community, broad-based, inclusive collaboration depends on new corners of the community being engaged.

Initial asset mapping is highly unlikely to capture the full scope of organizations, groups, and individuals who should be engaged during the consent decree process. Instead, the initial inventorying of community assets is likely to expand and evolve over time as relationships become more established, new individuals participate, and new assets are referred by other community members. Nevertheless, initial asset mapping can help ensure that a monitoring team's first engagement efforts are strategic rather than imprecise or improvisational.

An important benefit of asset mapping is that the monitoring team can make decisions about the sequencing of desired outreach and engagement with individuals and organizations. In most jurisdictions, teams will need to consider and navigate a variety of practical realities and politics as they think about when and how to engage individuals. For instance, some individuals in community leadership roles may expect to be consulted early on, while other leaders may not have expectations. At the same time, some community members will draw inferences about the team's priorities based on whom they engage and in what order. The inventorying process that asset mapping entails can help monitoring

teams thoughtfully develop a strategic community stakeholder outreach plan which reflects the various dynamics of personalities and relationships within a jurisdiction and among community members or organizations.

2. Establishing and Building Relationships with the Jurisdiction

Although primary responsibility for consent decree compliance will usually rest with the law enforcement agency itself, the sustained involvement of other officials and personnel in the jurisdiction helps to facilitate progress and compliance. This often includes:

- The mayor or chief executive of the jurisdiction.
- The city council or the legislative body of the jurisdiction.
- The jurisdiction's legal representation (including both senior leaders like city attorneys and day-to-day attorneys involved in consent decree implementation).
- Police leadership and personnel designated to help lead consent decree implementation (discussed further below).
- Other agencies that have functions or perform duties that relate to public safety (such as local prosecutors, emergency communications personnel, and service agencies who work with youth or individuals with behavioral health disabilities).
- Community oversight bodies with responsibility over policing or issues related to public safety (such as civilian complaint boards or local law enforcement commissions).

New monitoring teams should reach out proactively at the outset of their work to all relevant city officials and personnel. In addition to this initial outreach, monitoring teams will likely want to establish ongoing meetings and communications with key city officials. Many monitoring teams have found it useful to establish once-per-month or once-per-quarter meetings with senior city officials like mayors, city council presidents, or lead city attorneys—ensuring that, even if there is communication that happens between scheduled meetings, time is periodically reserved to discuss relevant decree issues.

There are a number of specific benefits to having ongoing dialogue with city officials during a decree. First and foremost, the type of collaboration and cooperation that is often associated with efficient and effective change requires continuing opportunities for the exchange of ideas and information. Second, actions by a jurisdiction's executive and legislative functions may be required to make certain decree requirements a reality. For instance, a city council may need to earmark resources for a new data system or approve changes in a department's internal staffing levels necessary to staff an internal review board. Ongoing communication can help to ensure that city support occurs in a timely, effective fashion. Third, monitors and the court can benefit from being in the "political know"—understanding what is happening in a jurisdiction and what is influencing policing. Consent decrees do not occur in a vacuum, and monitors can help the parties facilitate more pragmatic and effective approaches for getting things done if they have an ongoing awareness of competing concerns or other realities.

As a monitoring team interfaces with city officials and personnel, a few additional considerations are important. First, monitors must be mindful to carefully calibrate their relationship with elected officials. These officials are most familiar with consultants and personnel working for them or the city. A consent decree is different. Even as collaboration and communication are important, monitors must ensure that political actors understand that their actions, as agents of the monitored jurisdiction, are subject to court oversight and monitoring under the consent decree. For example, if a city council passed a local ordinance that directly contradicted a consent decree provision, a monitor would need to update the court and community that the council's action was inconsistent with the decree.

Second, and relatedly, monitors must take care to interact with city officials and personnel in a manner that is deferential to standard political parameters but does not misplace or confuse roles. For example, when interacting with a city council, a monitor may need to be mindful that a jurisdiction's "open meeting" laws might require that any meetings with

a certain number of council members be public—and structure communications and meetings accordingly. At the same time, a monitor must be mindful that "appearing before" a city council, or a committee of a jurisdiction's local legislature, risks confusion over the role of the monitor—creating an environment in which the council is seen as overseeing the monitor's work instead of the monitor, as the agent of the federal court, overseeing the city.

Finally, legal officials from most jurisdictions will assign attorneys from their office to work on consent decree issues in an ongoing, sustained way. Having legal representatives empowered to weigh in on substantive issues on a day-to-day basis is another basic way that a city can help promote effective and efficient decree implementation. In early meetings with city officials, the monitoring team should help to ensure that the right officials are involved on a more granular basis as implementation proceeds. In the experience of many monitors, establishing a good relationship with a jurisdiction's legal representation, or the office that advises law enforcement leaders on legal issues, is paramount. As the consent decree progresses, the monitored agency may well defer to or rely on legal representatives to help it make consent decree decisions, and it is most efficient for those officials to be a part of the process from the outset.

3. Establishing and Building Relationships with the Department of Justice

As the other party to the consent decree agreement, the Department of Justice (DOJ) typically remains involved throughout the decree's implementation. To this end, the DOJ retains an independent enforcement authority to ensure that the decree sufficiently addresses the unlawful pattern or practice of policing that its investigation found at the outset.

Given this ongoing enforcement authority, most consent decrees specifically give the DOJ a role in reviewing and approving new policies, procedures, trainings, and other significant elements. The positions and views of the DOJ are not dispositive,

with the court typically having the final say. Nevertheless, consent decrees ensure that the DOJ weighs in substantively during the decree and that the department, jurisdiction, monitoring team, and other stakeholders meaningfully engage with its substantive suggestions and views.



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From a day-to-day perspective, attorneys from the DOJ—and, specifically, from the Civil Rights Division and its Special Litigation Section based in Washington, D.C.—meet with the parties on an ongoing basis to discuss current work and progress.⁴⁵ Representatives of the local U.S. Attorney's Office—which are the regional representatives of the federal DOJ—often, though not always, are part of the DOJ teams that work on consent decree implementation. In addition to attorneys, the DOJ may engage subject-matter experts (such as experts with sworn policing experience, statisticians and data experts, or technology specialists), community engagement or relations personnel, and other experts. The DOJ team

typically reviews written work and may weigh in on approaches that the jurisdiction and law enforcement agency are considering taking to implement decree requirements.

Monitoring teams should seek to establish good working relationships with members of the DOJ team, as they do with all decree stakeholders. At the outset, monitors should discuss how the DOJ intends to divide responsibilities among its members, including whether particular attorneys will be focusing on specific subject areas of the decree. They should also discuss the detailed mechanics of how and when the DOJ will want to review any deliverables (policies, training, etc.). Specifically, many monitoring teams have found that it can be confusing and create more work for law enforcement agencies if the monitoring team always presents feedback separately and independently from the DOJ. Instead, many jurisdictions have adopted an approach in which the DOJ and the monitoring team work to provide synthesized feedback or drafts with comments. Importantly, this does not mean that the DOJ and monitoring teams must have uniform comments. Indeed, the DOJ and the monitoring team must retain their independent roles and exercise their own professional judgments. Instead, it is a matter of streamlining feedback and anticipating points of disagreement so that law enforcement agencies and jurisdictions can work to respond to a collated and streamlined set of comments.

As with city and law enforcement agency stakeholders, it can be useful for the monitoring team to establish a regular cadence of one-on-one check-ins with DOJ representatives to discuss issues and progress as the decree proceeds.

4. Establishing and Building Relationships with the Judge

In most consent decrees, and regardless of the roles of the parties in selecting or recommending monitors or monitoring teams, the judge overseeing the decree formally appoints the monitor and team to

⁴⁵ Attorneys from other DOJ sections may be involved depending on the areas that a consent decree covers. For instance, representatives of the Disability Rights Section may be involved if an investigation and decree address violations of the Americans with Disabilities Act (ADA).

the role. Given that the monitor serves as the court's agent, monitors need to cultivate a strong working relationship with the judge overseeing the decree.

Monitors should recognize that, given the relative rarity of law enforcement consent decrees, judges who hear such matters often have not done so before. Judges will often, at the outset, be thinking through a variety of issues for the first time—including fundamental topics like how to be involved, how to communicate with the monitoring team and parties, and others.

A judge's desired level of involvement on day-to-day consent decree matters is likely to be highly personal to the judge's style, approach, and temperament. Some courts ask monitors and their teams to engage with them regularly on the state of progress, regardless of whether there are any issues that demand the court's immediate or direct attention—offering oral and/or written updates at regular intervals and communicating in more informal ways on an ongoing basis. Other judges may seek less day-to-day involvement, asking the monitor to engage the court when there is a formal dispute or issue that the monitor cannot otherwise address themselves. Still others may seek some hybrid approach by convening the monitor and parties at regular hearings to learn about progress but leaving the monitor and parties to work through day-to-day issues in the interim. Across all of these approaches, judges may have differing desires to communicate with the monitor outside of the presence of representatives of the DOJ and the jurisdiction.

Because of the different ways that courts can be involved in an ongoing way, monitors need to engage with the court initially to determine the court's desired approach. Regardless of the details of that approach, monitors will need to carefully consider, and explore with the judge at the outset, how the court should and should not be involved on a day-to-day basis during decree implementation. Monitors should be prepared to establish a substantive working relationship that is both deferential to the court and its authority but empowered to make suggestions, raise issues, and even surface objections to a court's proposed courses of action. In particular,

monitors need to calibrate how to ensure that the court is appropriately engaged, within whatever parameters the court may set—ensuring that the judge has timely, sufficient, and complete information so that they may be involved when and as necessary.

Practically, initial meetings and engagement with the judge should establish how and when the court expects to hold public hearings (often called "status conferences") about the consent decree. This guide discusses some of the particular considerations surrounding public hearings below.

As with all other stakeholders, the monitor benefits from strong, open lines of communication with the judge and others in their court. To this end, it is useful for the monitoring team to become acquainted with the clerks and other members of staff who assist the judge both substantively and administratively—and to develop, at the outset, an understanding of the best ways to contact and communicate with the judge, to raise issues with the court, and the like.

5. Establishing and Building Relationships with the Law Enforcement Agency

A. ENGAGEMENT

Successfully, effectively, and efficiently implementing a consent decree typically relies on the active participation and collaboration of personnel throughout the involved law enforcement agency. This means that the monitoring team must work to establish communication from the earliest moments with individuals throughout the agency. This includes:

- ***Command staff.*** In policing, the term "command staff" typically refers to a law enforcement agency's senior leadership, including those with significant decision-making, operational, and management authority. Monitors benefit from establishing strong working relationships with the head of the law enforcement agency (e.g., the chief, commissioner, or sheriff), that leader's deputies, the heads of relevant functions or sections within the law enforcement agency (e.g., patrol operations, internal investigations,

information technology, etc.), and the leaders of major geographically oriented divisions within the department (e.g., police stations, precincts, or districts). Although police officers have historically filled law enforcement leadership positions, civilians are increasingly occupying such roles.

- Supervisors.** “It is an established principle in policing that first-line supervisors—sergeants—play a critical role in directing and controlling the behavior of officers in police-citizen interactions.”⁴⁶ In turn, the leaders who supervise sergeants also have a significant impact on an agency’s day-to-day performance—which includes lieutenants, watch commanders, and/or captains, depending on the supervision. Given that the understanding and buy-in of personnel at these ranks with respect to consent decree changes is essential, monitoring teams should work to establish communication and relationships with personnel in positions oriented toward field supervision.
- Staff identified to help lead or implement reforms.** Law enforcement agencies benefit from designating specific personnel to help oversee implementation of the decree generally and to lead work in specific substantive areas. Indeed, as other sections of this guide observe, decrees may require the designation of an individual as a consent decree coordinator or the creation of a unit or section within the law enforcement agency to manage decree compliance. If the agency designates personnel or creates a structure to coordinate and lead implementation, the monitoring team will want to engage with them early and regularly for the duration of the decree.
- Line-level law enforcement personnel.** It is just as, if not more, important for monitoring teams to foster ongoing relationships with the vast majority of law enforcement officers who are patrol officers, detectives, investigators, or others without supervisory responsibilities. These are the members of a law enforcement agency that shape its overall performance, interact with the

community, and who will influence the agency’s ability to implement the innovations that a decree requires. If officers believe that the consent decree is something happening somewhere else, and is not something in which they have a stake or a voice, decree compliance will be much more challenging and time-consuming.

During a DOJ investigation and decree negotiation process, it is not uncommon for rumors and misconceptions to develop, especially where departments or jurisdictions do not regularly provide avenues for communication between senior command and department personnel. Further, even where officers have a strong working understanding of the decree, many may have concerns that the decree might negatively impact them.

Consequently, as quickly as possible after being formally appointed, the monitoring team should engage regularly with law enforcement personnel of all ranks and assignments to help address concerns and misconceptions about the decree and to gain substantive feedback about the day-to-day dynamics that impact officers and their ability to do what the decree will require.

A primary challenge of law enforcement engagement across ranks is crafting meaningful opportunities for sometimes very large numbers of officers to interact with the monitoring team. Indeed, in medium- and larger-size cities, departments under decrees may have hundreds of officers on the force. Monitoring teams can benefit from establishing several routes of communication with patrol officers.

As monitors consider officer engagement, they must be mindful not to overstep, supplant, or minimize the credibility of department leaders’ own engagement with officers. The approaches taken, and the messages delivered, in engagement should reflect and even potentially utilize existing mechanisms that the department may have to engage with officers. For instance,

46 Samuel Walker, National Institute of Justice, “Police Accountability: Current Issues and Research Needs” at 12 (2007), <https://www.ojp.gov/pdffiles1/nij/grants/218583.pdf>.

some chiefs attend roll calls (the briefings held for officers at police stations at the start of each shift) on a rotating basis to engage with personnel. Monitoring teams and departments could work together on ways that the monitoring team might be introduced and included in those ongoing efforts.

However, some departments under consent decrees struggle with internal communications. One role of a monitoring team, and the decree in general, can be to work with the department to establish and foster long-term mechanisms for the command staff to share information with and receive feedback from officers. Consequently, monitors and departments should discuss officer engagement activities with an eye toward helping the department build sustainable engagement approaches that can continue after the monitoring has concluded.

Substantively, as with engagement with any stakeholders, the monitoring team's goals should be both to share information with officers about the consent decree generally—what it entails, what officers can expect, and, as the decree proceeds, what progress is being made or is expected—and to obtain information about officer views, concerns, experiences, and ideas.

Specific mechanisms that monitors can use to engage sworn personnel include:

- ♦ **In-person visits to districts, precincts, areas, or stations.** Physically showing up matters. Monitoring teams should establish ways to visit officers where they work, which is usually based around geographic units like police districts, precincts, areas, or stations. Once there, monitoring teams may consider working with the relevant command staff (the leader of the station or district) and other supervisors to introduce themselves and make short presentations, with question-and-answer opportunities for officers, in the context of roll calls before shifts. Crucially, monitoring teams must make themselves available to officers across all shifts— which will require working hours well outside the



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parameters of the traditional “business day.”

Separately, some consent decrees require, as part of the assessment process, that monitors conduct formalized surveys or focus groups to evaluate the experiences of officers. Even where not required, monitoring teams can consider holding informal focus groups. Typically, these focus groups will involve monitoring team facilitators asking a small group of officers (ideally, between five and ten people over the course of at least 45 minutes) a series of open-ended questions about their experiences generally, their views or understanding of particular topics, their needs, and what they see as opportunities or ideas for the future. Other monitoring team members should take notes on the conversation so that key themes and insights can be identified. Importantly, monitoring team facilitators should set forth, at the outset, that the purpose of the focus groups is to hear from officers about their experiences and views. They should promise confidentiality—advising participants that, although team members will be taking notes to make sure that what is heard is recorded and that the substantive content of what officers say might be repeated later, no names will ever be attached to comments.

Typically, the quality of focus groups benefits from officers believing that they can be as candid as possible without their names and comments being passed along to others in the department. To this end, focus groups should be structured to ensure that participants are of equal rank (i.e., no sergeants are involved in a focus group of patrol officers) and that no individuals who are not participating in the focus group are present (i.e., no observing officers or supervisors).

Whereas focus groups are an extended opportunity for monitors to hear directly and substantively from a group of officers about what they encounter in their work, “ride-alongs” allow monitoring team members to see and experience officers as they do their work. During ride-alongs, monitoring team members typically ride in a car with officers as they respond to calls and conduct patrol activities. Direct observation of what law enforcement personnel are doing in the real world can lend invaluable insights. Additionally, time spent driving on patrol or between calls or encounters often is a good opportunity for monitoring team members to engage with officers one-on-one about the types of topics that might be raised in focus groups.

Monitoring team members who participate in ride-alongs need to be mindful of the observational role that ride-along participants

must assume. The purpose of a ride-along is to witness directly what officers are doing and how they perform. It is not a real-time, in-the-field performance evaluation. Likewise, monitoring team members do not assume the role of police leadership or other law enforcement officers. Team members must ensure that they do not inhibit officers from performing their duties. If they witness officers doing something wrong or problematic, unless it is a matter of substantial importance that implicates an imminent threat to an individual’s life, team members should note the issue—addressing it with the officer later or simply making a note of it as something that should be evaluated or assessed in other ways. Additionally, team members should be mindful about their safety when conducting ride-alongs. If or when law enforcement officers provide instructions, such as remaining in a vehicle when arriving to a call for service, monitoring team members should defer to those instructions. Further, some departments require anyone on a ride-along who is not a sworn law enforcement officer to sign a waiver of liability.

Although a traditional ride-along typically involves spending time with a patrol officer as they go about their duties, a monitoring team can also benefit from “shadowing” supervisors like sergeants, lieutenants, watch

BALTIMORE POLICE DEPARTMENT CONSENT DECREE OFFICER POCKET GUIDE

In Baltimore, the police department created a guide for officers that seeks to summarize, in direct terms and utilizing a variety of tables and graphical approaches, the main requirements of the decree. The Pocket Guide has been distributed to all Baltimore Police Department (BPD) officers. Although the version provided was published after the decree was in effect for three years, much of the content would be relevant at the outset of monitoring based on a decree’s requirements alone.

commanders, or captains as they conduct their work.

- ♦ **Written or electronic engagement.** Because in-person outreach efforts will take time to roll out to a significant number of law enforcement personnel, monitoring teams should also consider the development of written and/or electronic engagement mechanisms.

One type of written engagement to consider is a consent decree “primer” or introduction that orients officers to the purpose, scope, and general areas of the decree—synthesizing and summarizing the decree’s complexity into something shorter and more digestible.

Of course, this type of “primer” need not be written. Monitors and/or departments might consider crafting a video guide that covers the basics of a consent decree and what officers can expect.

Monitoring teams might also want to work with departments on how to provide written updates as the decree proceeds. For example, regular email updates or “newsletters” can keep personnel updated on decree progress.

In addition to using documents or electronic portals to spread information, monitors and departments can use similar mechanisms to solicit and receive information back from officers. Establishing a feedback portal for receiving feedback from officers—ideally, anonymous feedback—can provide the consent decree process with an ongoing way for officer voices to shape implementation.

- **Police unions, non-bargaining associations, and officer groups.** Many police officers belong to a police union, a formal organizing and negotiating body. Although they may be affiliated with larger, umbrella union organizations, most police unions relate to a single police department. In many instances, leaders of unions are elected by their members—police officers. This means that unions, their leaders, and their substantive positions likely reflect, to some relevant extent,

the views of the police officers in the jurisdiction who they represent.

Police unions can have significant sway with members. Negotiated collective bargaining agreements (“CBAs”) with cities often spell out terms and conditions for officer employment, covering everything from standard employment conditions to in-depth details of disciplinary processes. As such, unions can also have significant sway and import with city officials and police executives.



Many police departments have voluntary associations or officer groups that, although they do not have formalized employment bargaining power like unions, may have significant membership or influence in the agency. Monitors should meet with and establish ongoing dialogue with these groups (e.g., Black or Latinx officer associations, LGBTQ+ officer associations, groups for working mothers, etc.).

Monitors and the consent decree process benefit from establishing relationships with police union leaders and officials. As with other significant stakeholders, monitoring teams may invite union representatives to set ongoing meetings as the decree progresses.

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bargaining power like unions, may have significant membership or influence in the agency. Monitors should meet with and establish ongoing dialogue with these groups (e.g., Black or Latinx officer associations, LGBTQ+ officer associations, groups for working mothers, etc.).

Engagement with lower-level supervisors and less-senior police personnel works best if the parties to the decree, the city, and the DOJ trust the monitoring team to exercise its best judgment in outreach with officers. In the experience of many monitoring teams, the presence of too many individuals or outsiders—especially the DOJ or city attorneys—chills officer candor and makes engagement less productive. Although monitors and departments should seek city and DOJ feedback on overall engagement plans or the development of written materials, monitoring teams and departments should plan to engage directly with officers on decree outreach activities.

Across engagements, monitors should, at the outset, seek to introduce themselves, their roles in the consent decree, what a consent decree is and is not, what monitors do and do not do, and what officers can expect over the consent decree. They should field questions from officers and seek to answer them in a direct, straightforward way. They should also set expectations about how officers can interact with the decree process and the monitoring team.

B. PROMOTING INTERNAL CAPACITY

Initial monitor engagement with the law enforcement agency should look not simply to build long-term relationships but also to reach common understandings about how the agency will, from an operational and administrative standpoint, do the work of consent decree compliance. Although this may sound straightforward, a number of early challenges in prior consent decrees have stemmed from the right types of personnel not being sufficiently involved in conversations about decree implementation.

Specifically, consent decrees usually implicate a variety of different capacities or skills that do

not usually fall within the skillset of a typical law enforcement officer. These include policy drafting, training development and implementation, technology, data analytics, investigation skills, internal auditing, and project management capabilities. Senior law enforcement leadership needs to think, in advance, about what personnel—whether sworn or civilian—may be best situated to fill these needs.

To comply with a consent decree, a law enforcement agency must not only do its day-to-day work but also must focus on changing, upgrading, or enhancing a variety of policies, procedures, protocols, training, data systems, and other processes. Many departments have found designating specific personnel to oversee and coordinate compliance across areas, requirements, and tasks to be critical in ensuring efficient and effective implementation. Indeed, some consent decrees require that the law enforcement agency designate a consent decree coordinator to serve as the agency's central, day-to-day point of contact across consent decree work. Many departments have used this as a starting point for building out a consent decree compliance section or bureau staffed with a variety of support personnel, including project managers, data analysts, and even policy drafters. Others have charged an existing department (e.g., a professional standards bureau) with consent decree oversight responsibilities.

Regardless of the approach, a sufficient array of people with the necessary skills needs to be made available to work on decree compliance within a coherent administrative structure—likely all reporting to a cross-functional coordinator. Likewise, any type of structure will likely require that law enforcement agencies identify and empower project managers to move progress along in each of the decree's major subject matter areas.

Finally, even in departments that charge personnel with appropriate skills to work under consent decree compliance and a consent decree coordinator to help ensure progress across areas of work, the involvement of an empowered member of a department's senior command is also highly useful. Departments where the chief of police has

empowered a trusted deputy member of command staff to oversee decree compliance has tended to be more effective than departments where personnel working on the decree are “on an island” with little involvement or interaction with executives. To this end, the formalized involvement of leaders close to the law enforcement executive—and, indeed, that executive—can be a critical way to get difficult things accomplished and to signal to other members of the department that the decree is important to the agency.

D. Initial and Ongoing Community Engagement

Community engagement is one of the most essential, yet complex, aspects of decree implementation for the monitor and parties alike. All recent agreements “require some form of community outreach and engagement, including mechanisms to institutionalize strong relationships between the law enforcement agency and the community it serves, ensure the community has a role in setting priorities for a police department, and make police practices and data transparent to the public.”⁴⁷ At the same time, there is no single comprehensive or effective approach to meaningful community engagement.

The manner of engagement, who from the community and amongst the parties are expected to be engaged, and expectations about the level of influence the community will have on key decisions must be defined early in the consent decree process. Jurisdictions with law enforcement consent decrees typically have suffered from some systematic failures with respect to providing law enforcement services consistent with the expectations of the community.

Consequently, although a goal of a consent decree may be for the department and the community to be able to effectively work together and engage directly, the monitor is likely to have to lead this process at the outset—so that relationships can be repaired, renewed, or re-established. The monitor is an important conduit in ensuring members of the

community who want a voice in the reform process can be heard during the early phases of the consent decree. Over time, this responsibility must shift to the law enforcement agency to ensure ongoing and robust dialogue between law enforcement and the community when the decree, and monitorship, are over.



Community engagement is one of the most essential, yet complex, aspects of decree implementation for the monitor and parties alike. All recent agreements “require some form of community outreach and engagement, including mechanisms to institutionalize strong relationships between the law enforcement agency and the community it serves, ensure the community has a role in setting priorities for a police department, and make police practices and data transparent to the public.” At the same time, there is no single comprehensive or effective approach to meaningful community engagement.

Generally, community engagement initially facilitated by the monitor involves gathering feedback from and listening to the experiences and ideas of members of the public broadly—often through general meetings, one-on-one conversations, focus groups, surveys,

or other mechanisms. Engagement also involves the monitoring team providing updates on the department's progress toward complying with the decree.

Additionally, some decrees direct the formation of structured partnerships between the law enforcement agency and the public—such as through the formation of police commissions, advisory bodies addressing policing, civilian complaint review boards, and community-based mediation programs. Although these forms of community involvement may not specifically involve the monitor in terms of day-to-day operations, the monitoring team is likely to be engaged in the development and launch of the structured partnership if decree requirements specifically reference or implicate these types of community bodies.

The following sections discuss the role of community engagement in consent decrees, the monitor's role in such engagement, and specific methods or modes of engagement that may be effective. Although the guidance below is geared toward monitors and monitoring teams, it applies equally to other stakeholders who may interact with communities on consent decree issues, including law enforcement agencies themselves, city officials, DOJ representatives, and others.

Importantly, although this guidance is appearing here amid other guidance on a monitor's initial steps, community engagement and participation is a core duty of the monitor, and should be a core focus of attention for all consent decree stakeholders, across all stages of a consent decree, from beginning to end.

1. Importance of Community Engagement

The goal of engaging with the community during the consent decree is, at least in part, “to ensure that once [DOJ] and the independent monitor leave the jurisdiction, vibrant police-community relationships will remain as the foundation of sustainable constitutional policing.”⁴⁸ Community engagement is also an important component to ensuring that democratic participation, transparency, and accountability are central parts of policing.⁴⁹

The monitor and law enforcement agency will generally want to work with the community to ensure that initiatives undertaken during the consent decree process embrace, reflect, or promote:

- **A diversity of perspectives.** Experiences of community members as they relate to policing, crime, and public safety are not uniform. Priorities, concerns, and expectations for reform may vary based on geography, demographics, and prior experience with law enforcement, use of force, and the criminal justice system, among other factors.

As the monitor and the department develop a monitoring plan, communication strategy, and operational definitions of success, it is essential that they do not reflect only the loudest or most recurring community voices but a diverse array of perspectives. Indeed, to include a diversity of perspectives and experiences, the monitoring team likely needs to structure a diversity of mechanisms and avenues for participation, as this section details further below.

- **Community voice.** Sometimes, the best way of identifying someone's problem, and potential solutions, is to ask them. Directly engaging with the community appropriately honors residents and community members as the experts in what

48 2017 Civil Rights Division Report at 30.

49 See, e.g., United States Conference of Mayors, *Report on Police Reform and Racial Justice*, <https://www.usmayors.org/issues/police-reform/transparency-and-accountability-to-reinforce-constitutional-policing/> (last visited Nov. 18, 2023) (“Police must play a role that reinforces democratic principles in our society.”); The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* xiii (2019), https://civilrights.org/wp-content/uploads/Policing_Full_Report.pdf (“Police departments should develop . . . practices that support fairness, equity, procedural justice, legitimacy, transparency, and accountability — the values that build trust in policing, restore confidence in police, and, ultimately, heal wounds.”).

their communities need.

Often, community members feel that government, jurisdiction stakeholders, and the existing system do not adequately understand their views, needs, experiences, and problems. Public safety is an emotionally charged issue for residents, and communities need to have spaces for articulating the real harms and challenges that they may have experienced. Further, many community members criticize efforts that appear to have pre-determined conclusions or appear to reflect specific, potentially unshared assumptions. Starting a process by asking for foundational input from the community fosters trust and transparency.

- **Understanding and inclusion.** Ensuring that members of the public, and particularly those from impacted communities, are directly involved with the court through the monitoring team, as the court's agents, can help to "address concerns of distrust and misgivings by granting to marginalized communities full access to aspects of" policing "from which they have long been excluded."⁵⁰ At the same time, community engagement and participation during a decree can "provide the opportunity to ensure that needed conversations and understanding occur between community and police regarding challenges of policing in contemporary American cities as the parties brainstorm solutions and policies."⁵¹
- **Shared understanding of the consent decree process.** Engagement with the community should include an educational component. Many, if not most, community members are unlikely to have experience with consent decrees, an understanding of what a consent decree is, or the underlying processes involved in implementation. Engagement, in various forms, can ensure a shared understanding of goals and expected outcomes.

Specifically, monitors can interface with the community about the reality that compliance with a decree's requirements is unlikely to address or solve every one of the problems that a community faces. However, it should improve the service that community members receive from their law enforcement, better ensure constitutional rights are upheld, and establish processes and systems to ensure that the department sustains changes over time. The monitor can also work to set expectations about the timeline and duration of the consent decree process—making clear that, even as reform efforts are ongoing, revising and implementing new policies and trainings, and then experiencing their benefits on the street, are long-term undertakings.

Developing shared understandings must, by definition, involve a bidirectional exchange of ideas. The monitor, jurisdiction, DOJ, and law enforcement agency can all use community engagement processes to better understand the expectations of, and top problems experienced by, those living in their jurisdiction.

- **Understanding of the role of the monitor.** As described previously, community members may have initial questions or confusion about what a monitor does. Many may believe that the monitor has the authority to make executive decisions about how the department is run, to impose discipline, or to make changes directly. Community conversations can help clarify the role not just of the consent decree but of the monitoring team specifically.
- **Support for the consent decree.** Members of the community may be cynical about the potential efficacy or impact of reform efforts, particularly if there have been prior, failed attempts at change in the jurisdiction. Spreading information about what a consent decree can and cannot do, and how community members can become involved, can

50 Ayesha Bell Hardaway, "Creating Space for Community Representation in Police Reform Litigation," 109 *Georgetown L. Rev.* 523, 579 (2021), https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/03/Hardaway_Creating-Space-for-Community-Representation-in-Police-Reform-Litigation.pdf.

51 *Id.*

support a more robust reform process and help to develop lines of communication that can be sustained after the formal consent decree process has concluded.

2. Defining Community

Many consent decrees to date have required community engagement but do not detail precisely who the “community” encompasses. Stakeholders may have surprisingly different views about who, and what, is and is not included in “community.” For example, will the input and views of individuals who work in a jurisdiction but do not live there be solicited and weighed equally to those who reside in the jurisdiction? Should national organizations with local affiliates receive the same type of outreach as organizations focused entirely on the jurisdiction?

Prior sections of this guide have based a working definition of community on other guidance from resources including the DOJ’s Office of Community Oriented Policing Services—and this may also be a starting point for monitors and jurisdictions.⁵² If a shared, working definition of “community” is not established initially, different actors in the process may assume they are working from a common understanding, when in fact they are not.

At the same time, consent decrees often address practices that the investigation has found to impact some people more than others. Fundamentally, individuals and communities who see or interact more with law enforcement are impacted more by police practices and the consent decree’s changes to those practices. Consequently, the working conception of who “the community” is under a consent decree needs to account for these disparities. Monitoring teams must ensure members of impacted communities are sufficiently heard and not pushed aside by conceptions of community that over-represent those without much direct interaction with the policing practices that the decree addresses.

3. Communication and Engagement Forms, Methods, and Formats

Community members choose to engage with the monitoring team, law enforcement agency, or a consent decree process. The voluntary nature of this participation has some fundamental implications. Those who decide to participate, through whatever mechanisms are available, may not be representative of the community generally—and may not be representative of any particular community within a jurisdiction. Many, if not most, people do not have time, interest, inclination, or ability to attend a community meeting, complete a survey, or participate in a focus group. Further, some community members may feel as though they have participated before, seen nothing change, and therefore do not see the point in participating further. Those who participate may be the “frequent fliers” who regularly engage on law enforcement issues. Even among those who do participate, the “loudest voices” in the room can amplify some points of view while crowding out others.

At the same time, the decree may require, and/or the monitor and parties may want to ensure, the particular participation of those individuals and groups within a jurisdiction who have historically been more impacted by policing. This may include “community members impacted by police misconduct and the organizations representing their interests”⁵³; members of BIPOC (Black, Indigenous, and People of Color) communities; youth; individuals who are LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning); individuals without permanent housing; immigrant groups; and others.

Consequently, for ensuring engagement that both is accessible to all community members and involves individuals from impacted communities, there is no one-size-fits-all approach to community engagement. That is true both among different consent decree sites, and within a single jurisdiction. The desire to

52 Office of Community Oriented Policing Services, *Community Oriented Policing Defined* (Apr. 2009), <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>.

53 Ayesha Bell Hardaway, “Creating Space for Community Representation in Police Reform Litigation,” 109 *Georgetown L. Rev.* 523, 526 (2021), https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/03/Hardaway_Creating-Space-for-Community-Representation-in-Police-Reform-Litigation.pdf.

capture diverse voices from across the community, as well as the engagement requirements articulated in the consent decree, will likely necessitate multiple engagement strategies and events throughout the process.

Meaningful community engagement on public safety issues is unlikely to result from a one-time event. For community engagement to reflect substantively and specifically what a community believes its issues are and how it would like them to be addressed going forward, engagement typically cannot be a “one-and-done” effort.

Instead, engagement must typically be an ongoing initiative and process, for several reasons. First, building trust that community voices will be heard, so that the community can meaningfully engage, can take time and many rounds of engagement to foster. Second, community members often need the space and opportunity to discuss their histories, experiences, and concerns with safety and policing in the past before they can discuss how to change that system now to be better in the future. Finally, to be successful, an engagement effort needs to bring people to the table who may not have engaged previously, which often takes many targeted efforts and the creation of varying spaces and contexts where these new voices feel comfortable—all of which may require extended time and effort.

Separately, community engagement within the consent decree context must reflect an in-depth understanding of prior community engagement on issues relating to policing, public safety, and community well-being. In many jurisdictions, prior efforts at soliciting community views and ideas will have transpired. Monitoring teams, law enforcement agencies, jurisdictions, and the DOJ should all take efforts—before engaging within the consent decree—to gather substantive information about prior community engagement and feedback initiatives such as community focus groups or forums by churches or non-profit groups or academic studies by local colleges or universities. Community members understandably do not want to feel as though they are continually repeating the same messages without seeing changes. Decree engagement is likely

to be more fruitful and meaningful if it reflects an understanding of the types of community work that have preceded the decree process.

Community engagement can be challenging for consent decree stakeholders. It can create space for dialogue regarding how a community’s safety needs have been historically unmet. These conversations can be especially difficult for government and community leaders to hear and navigate. As a result, it is imperative that all who help convene and facilitate engagement lead with humility. The following sections outline some possibilities for types of engagement initiatives that may be especially useful in receiving a diversity of perspectives in a substantive way that can lead to meaningful change and the development of enhanced trust among all stakeholders.

A. COMMUNITY FORUMS AND MEETINGS

When many people think of community engagement, they can tend to think of large, community meetings, forums, or events. The benefit of such events is that many people can attend, and as such the monitoring team can efficiently contact many community members at once. Additionally, large meetings make effective venues for providing education about the consent decree process, the monitoring team and their role, and setting expectations about the associated reforms and timeline. Additionally, by offering at least some large community meetings in a fully virtual setting, or that have a virtual option (e.g., video conference calls, or an interactive webinar format), some community members who would typically be unable to attend or participate due to work schedules, childcare responsibilities, transportation issues, or the like can engage.

Community forums and meetings undoubtedly have their place in engagement, but monitoring teams, departments, and consent decree jurisdictions must take care to use approaches, formats, and structures for these meetings that allow all individuals to share their experiences, imagine possibilities for the future, and exchange ideas directly with the consent decree process.

Communities differ in many ways. However, some considerations about how to engage with communities can be applied across localities:

Engagement should involve a variety of mechanisms and contexts to allow community members to participate in the manner most comfortable for them.

- For too many jurisdictions, community engagement simply means “open mic” nights in which community members, one at a time, provide comments to a large group. This type of format, although traditionally used in a variety of government contexts, can suffer from significant shortcomings. First, large “open mic” forums substantially limit the number of people who can participate and the extent to which people can participate. Hearing from one person at a time restricts the number of people who can be heard. Second, many individuals are uncomfortable speaking in front of crowds or do not want to recount personal, sometimes traumatic experiences before large groups. “Open mic” structures exclude these community voices. Third, the often-unstructured nature of “open mic” commentary may provide consent decree stakeholders with many views on a variety of topics but not sufficient views on areas of significant community and decree concern.
- Engagement should proceed concurrently across many complimentary formats. Depending on circumstances, these could include general-audience focus groups, programs beginning with

information sessions before breaking into smaller groups, or small moderated discussions.

- Some consent decree jurisdictions have held successful community meetings in which large numbers of participants spend most of the session in small-group, moderated discussions. This methodology—sometimes referred to as a “World Café” methodology—can allow participants to engage in a dynamic dialogue around consent decree issues, have more time to have their voices heard, and be able to engage in a smaller environment of community members. Typically, small groups engage in a structured conversation and have an opportunity to “report out” from small groups to the larger group about key themes, ideas, or areas of discussion.

Engagement goals, a framework, and an agenda should be designed.

- Monitors should be clear about what they hope to accomplish (i.e., to learn, to discuss, etc.) in the engagement session and design a specific, written agenda (including questions, prompts, items for discussion, and time limits for each) that helps meet those goals.

The monitor should work to make it easy for the community to understand the scope of the engagement and the issues.

- Monitors should consider making the agenda available in advance and include information about how the meeting will be structured so that community members know when and how they can participate.

🔗 PARTICIPATORY METHODS TOOLKIT: A PRACTITIONER'S MANUAL

A European-based foundation and the United Nations University created a toolkit outlining various methods for involving the public in governmental decision-making processes. It provides in-depth guides for a number of different community participation methods, including the World Café approach.

- During the engagement section, time at the start of the meeting might be used to provide an overview of the issues and present any relevant data and information.
- Monitors should consider the use of handouts and other visuals. These are especially useful for statistics-heavy information. In some situations, it may also be helpful to make this available in advance of the meeting.

The monitor should consider what mechanisms during meetings can foster diverse participation and empower the community's voice.

- The monitor should take care to set up the space to make it easy for participants to contribute in the desired way. For instance, as implicated by the engagement format, the monitoring team might consider having people running hand-held microphones to participants for questions and comments.
- The monitoring team might consider engaging a third-party facilitator. These types of facilitators can be helpful in engaging community members who may be intimidated or distrustful of law enforcement and can help mediate discussions if emotions are high. For instance, in Baltimore, a community mediation center provided moderation assistance in early consent decree monitoring engagement sessions.
- Facilitators, moderators, and government representatives should be respectful of community contributions and questions and avoid defensive responses.

Engagement logistics should promote inclusivity and accessibility.

- The monitoring team should select Americans with Disabilities Act (“ADA”)-accessible buildings that are accessible by public transit and have convenient parking. Make sure each meeting location is a neutral space where community members would feel comfortable rather than an administrative or law enforcement building.
- The team should select times that are outside of the standard 9am-5pm work window to make it

easier for people to attend.

- The team should consider arranging for interpreters to translate meetings into the major non-English languages of the municipality, as well as American Sign Language.
- The team should hold meetings on different days, at varying times, and in different areas of the jurisdiction to improve access.
- The monitor may also explore the possibility of streaming meetings for remote access, recording meetings for later viewing, and holding all-virtual or hybrid (part virtual, part in-person) engagement sessions.

Monitoring teams need to conduct outreach in advance of formalized engagement opportunities to ensure community awareness.

- The monitoring team should build and leverage relationships with community and religious groups—asking them to help get the word out and encourage participation.
- Team members and decree stakeholders can reach out to individuals and businesses using multiple channels, including in-person.

End with a summary of how the engagement will be used and what the next steps of the engagement or decree process may entail.

- At the conclusion of engagement sessions or opportunities, the monitoring team and/or other participants should let attendees know where they can access meeting materials and provide the names and contact information for the meeting facilitators.
- The monitoring team or engagement facilitators should provide clear guidance to attendees about how they can access information on the issue as it develops, including where they can go with additional questions or concerns.

B. SURVEYS

In common usage, many types of efforts to collect information or views from a variety of people or sources is often called a survey. The term “survey” can

be used to refer to anything from a voluntary, web-based poll to customer satisfaction questions posed at the end of a phone call to a business.

Many decrees require the monitor to conduct a “survey,” but, in the decree context, “[s]urveys collect information by interviewing a sample of respondents”⁵⁴ about their views toward, and experiences with, police. For the general community surveys that many decrees mandate, the individuals sampled and who participate in the survey must be representative, in the statistical sense, of the jurisdiction as a whole. At the same time, the questions that the survey poses must be structured and rigorously constructed. The surveys that decrees require, then, use methods from social science and statistics in an effort to understand the attitudes and opinions of the community overall.

Developing and fielding a survey that utilizes rigorous social science methods and effectively captures diverse, nuanced perspectives is difficult work. Consequently, monitoring teams often engage with an academic or professional research institution with experience conducting these types of studies, rather than attempting to do it “in-house.” Identifying an external partner also builds relationships and capacity that can allow this type of work to continue beyond the consent decree if the jurisdiction or law enforcement agency chooses to continue it.

Consent decree surveys have typically focused on gauging community views and impressions of the law enforcement agency’s performance. They may also

ask questions about the experiences of respondents with the police.

Surveys can be conducted online, on the phone, in person, through the mail, or any combination thereof. In any format, surveys have some critical benefits over other means of collecting feedback, like meetings or focus groups, which—as discussed previously—can be limited in terms of the numbers and types of people who may participate, and might over-represent some views and under-represent others. First, many individuals who do not have the time, ability, or interest in participating in a community meeting or roundtable discussion may be more likely to answer a series of directed questions. As such, many of the voices that wouldn’t otherwise be captured are included in the feedback gathering process. Further, a validated survey instrument, disseminated broadly and in a manner that aligns with social science best practices, can more systematically capture and tabulate sentiment of community members over time and gauge how sentiment may have shifted over time.

At the same time, surveys can be costly. Fielding surveys—especially in-person or telephonic surveys—may be time-consuming, especially when the population it is attempting to describe is skeptical of or disinterested in participating. Additionally, many surveys allow less opportunity to capture the context or detail surrounding an individual’s experiences. Survey participants may rate their experiences on a scale or indicate agreement or disagreement with various statements but have less ability to describe

CLEVELAND CONSENT DECREE COMMUNITY SURVEY

The consent decree in Cleveland, Ohio requires ongoing surveys of community members, and the survey has been fielded via telephone by an outside survey research organization.

🔗 NEW ORLEANS CONSENT DECREE BIENNIAL SURVEY REPORT

The consent decree in New Orleans, Louisiana requires that the monitoring team conduct surveys of police officers, arrested detainees, and the New Orleans community generally regarding the New Orleans Police Department. This report describes the methodology for each of these surveys, details many of the questions from the various survey instruments, and summarizes New Orleans-specific findings.

the reasons for their views or the specific experiences underlying their responses.

Consequently, even as surveys can be an extremely useful tool for gauging some aspects of community sentiment across time, any survey endeavor—whether required by the decree or undertaken by the monitoring team in collaboration with the department, jurisdiction, and DOJ as a community engagement tool—must be a part of a larger, more robust engagement and information-gathering strategy.

Finally, monitors should be aware that decrees may also require surveys where the focused “population” is more specific than the general community survey described above. Specifically, more recent consent decrees have, in addition to overall community surveys, required surveys of (1) detained individuals, who by virtue of their in-custody status have had some level of interaction with the police, and (2) police officers.

C. MONITORING TEAM WEBSITE AND ELECTRONIC FEEDBACK

Even as many decrees require the formalized surveys described above, they do not replace or bypass more informal mechanisms of systematically collecting feedback, opinions, and suggestions from the community. Indeed, views obtained from the community in any of a variety of settings are equally as important as any formalized survey processes—and may, in some critical ways, be more helpful to the

monitor and decree stakeholders due to the inherent limitations of structured surveys.

For general information sharing, most monitoring teams utilize a standalone website – with some decrees requiring that monitors establish such sites. Typically, the websites share details about the team, links to reports, publications, and the monitoring plan, information on how to reach out to the team directly, and in some cases, information on how to get involved. Examples of current monitoring team websites include:

- [Baltimore Consent Decree Monitoring Team](#)
- [Newark Independent Monitor](#)
- [Seattle Police Monitor](#)

Even as monitoring team websites primarily facilitate the outward sharing of information rather than providing a means of interaction or engagement, a monitoring team, and ultimately the law enforcement agency, will need to also establish and communicate means of receiving input from the community. For example, several monitoring team websites provide information, and in some cases, web-based forms and/or social media sites (e.g., Facebook and X, formerly known as Twitter, profiles), for the public to provide general feedback directly to the monitor. Additionally, some monitors’ websites also provide tools for the public to directly provide feedback specific to policies under review:

- **General feedback.** Monitoring team websites, such as for the Albuquerque, New Mexico Police

POLICY FEEDBACK

You are invited and encouraged to inspect our draft policies and submit feedback. All comments will be reviewed, and – as appropriate – may lead to changes in the policy.

If you wish to leave contact information so that members of the BPD may follow up with you about your comments, please feel free to do so. If not, your comments will be anonymous.

Thank you for your lending your voice to this process.

Policy Number

Policy Name

Your Name

Your Email Address

Your Feedback *

FIGURE 1.

**PUBLIC POLICY
FEEDBACK PAGE
FROM BALTIMORE
POLICE DEPARTMENT
WEBSITE**

Department, typically include information for how the public may reach out to the monitor directly, including details such as an office address, phone number, office hours, and web-based contact form.⁵⁵

- **Feedback on draft policies.** Some monitoring team sites also include a page for the public to provide feedback on specific draft policies that have a public comment period. In Baltimore, for example, a “public feedback” page includes links and resources for the public to provide input directly to either BPD, through an external link to BPD’s policy feedback page⁵⁶ (see Figure 1), or through the monitoring team, if they do not feel comfortable reaching out to the police department directly. In that case, the monitoring team website provides several options, including a dedicated monitoring team email address, a physical address

to mail or hand-deliver written feedback, and a link to a Facebook page.⁵⁷

Although a typical assumption is that the community may feel more comfortable providing feedback to the monitoring team initially—rather than to the law enforcement agency, jurisdiction, or the Department of Justice—the goal is that as the consent decree progresses, this role will increasingly shift to the law enforcement agency.

Especially when a website provides more general opportunities for the public to provide input or comment, the monitoring team will need to be prepared to handle situations where individuals provide specific details or allegations surrounding an officer or incident that could constitute misconduct. Indeed, some community members may be more comfortable talking to an independent monitor than to city personnel or others.

55 Albuquerque Police Monitor, *Contact*, <https://www.abqmonitor.org/contact>.

56 Baltimore Police Department, Transparency, BPD Policies, *BPD Feedback*, <https://www.baltimorepolice.org/transparency/bpd-policies/policy-feedback>.

57 Baltimore Consent Decree Monitoring Team, *Public Feedback*, <https://www.bpdmonitor.com/public-feedback>.

Because a consent decree monitor reviews a department's performance, and does not perform the department's duties for it, the appropriate course of action in most circumstances where an individual provides feedback amounting to a specific misconduct complaint is to refer the complainant or complaint to the place within the monitored agency or jurisdiction where such matters are usually handled. The subsequent task of the monitoring team then is to consider, along with other complaints, how well those entities within the agency or jurisdiction are handling such complaints.

Consequently, the monitoring team will need to establish a process for alerting the law enforcement agency, and likely the monitored jurisdiction and the DOJ, about any community feedback that amounts to a misconduct complaint. It will also need to consider whether individuals should be apprised in advance of submitting feedback about what might happen with comments that appear to implicate misconduct—and whether language on the team's website should alert individuals that the monitoring team typically does not, and cannot, independently investigate new complaints about officer performance.

D. ONE-ON-ONE AND TARGETED ENGAGEMENT

As referenced in the previous discussion on monitors engaging in early community asset mapping to identify important community stakeholders, monitoring teams should also conduct ongoing engagement with specific organizations and individuals identified as community assets. This means meeting directly with people or representatives of organizations about the decree, providing information about the reform process, and hearing feedback and ideas from these community stakeholders. As noted in the community asset-mapping discussion, one-on-one and targeted engagement of community members and organizations should proceed from a strategic plan that reflects, to the extent possible, the often-nuanced layers of personalities, politics, and relationship dynamics that exist in most communities.

E. ESTABLISHING ENGAGEMENT STRUCTURES

Consent decrees in Seattle, Washington and Cleveland, Ohio established community police commissions. These formal, city-supported entities were comprised of community representatives to be a conduit between the reform process and the jurisdiction's many diverse communities. Designed at the outset as primarily advisory bodies, the groups provided comment and feedback across a host of consent decree topics.

Even in the absence of the consent decree establishing formalized engagement structures, the monitoring team can benefit from designating community members or representatives with specific, ongoing roles in the decree. Indeed, jurisdictions and monitors can benefit from individuals becoming involved in the specifics of consent decree implementation on an ongoing basis—rather than relying on everyone having the time to “come up to speed” on relevant issues when substantive community input is useful in the decree process.

The monitoring team may also consider establishing groups of individuals or organizational representatives to participate in more formalized engagement structures. Specifically, the monitoring team might identify community individuals who have pre-existing expertise or experience in major consent decree areas and form a community group focused on providing feedback on consent decree work in that area. For example, the monitoring team might establish a use of force working group that will convene periodically to provide feedback and insights on policies, training, and procedures related to force that the decree may require.

Separately, the monitoring team could consider establishing a kind of roundtable of equals comprised of community leaders. The monitor might facilitate identifying and selecting members and initial meetings but aim to have community leaders take the lead thereafter in terms of setting the agenda and areas of focus.

F. ADDITIONAL CONSIDERATIONS

When developing a community engagement strategy, and thinking through the amount of time, effort, and commitment that will be asked of community representatives, the monitoring team should establish a policy on compensation. In some situations, community liaisons or experts may be expected to provide significant contributions to the process, and participate in roundtables, outreach efforts, training and policy development, and other engagement activities on a recurring basis. Some of these roles, such as the “neighborhood liaisons” utilized in Baltimore, are a formal part of the monitoring team structure. However, in other formats, such as the “roundtable of equals” proposed earlier, the position may be less official, but nonetheless require a substantial investment of time and effort.

In making decisions about whether to compensate some or all community representatives engaged in the process, the monitor may want to consider the level of commitment expected of the community members, terms of employment, expectations about level of contribution, and conditions under which a relationship with a community member may be ended. Further, the monitor may also want to anticipate how a paid role or paid participation will be communicated to the broader community. A balance must be struck in which these individuals are being valued for their contributions, without compromising their role as credible messengers, or facing potential criticism from others in the community as having been “bought off” by the law enforcement agency or monitor.

4. What to Communicate During Initial Engagement

Early in the monitoring process, the monitor will need to establish the cadence, structure, and frequency with which community engagement occurs. The composition of the monitoring team (Section II) will determine whether there is a specific entity within the team responsible for ongoing contact and communication with specific neighborhoods (e.g.,

“community liaisons”), if engagement is something that will need to be scheduled and explicitly built into the monitoring plan, or some hybrid of the two.

Initial engagement between the monitor and the community may take any number of forms, including but not limited to those detailed throughout this section. For example, a monitor might issue an introductory statement or letter, in conjunction with community listening sessions, and/or other communications through a website or social media platform. During the initial communication with the public, there are a few key points that a monitor may want to address, including:

- Explaining what a consent decree is and is not.
- Defining the role of the monitor.
- Describing the monitoring plan.
- Setting expectations about the end-state of the decree.

Critically, monitors also must be transparent about how community input may or may not impact consent decree implementation. Although community guidance will help shape the details of how consent decrees proceed, jurisdictions and the DOJ have already agreed on the specific foundations of a host of changes that the law enforcement agency will make. Monitoring teams will need to ensure that community members understand the parameters in which community input may need to be considered—that is, the specific requirements of the decree that the jurisdiction and DOJ have previously identified.

While engagement with the community should be continuous, and lines of communication between the community and law enforcement agency, and the community and the monitoring team should remain open, there are certain times during the lifespan of the consent decree in which it will be particularly important to ensure communication is occurring, such as when the monitor is first put in place. Other key times in which proactive communication and outreach by the monitor may be required include when:

- Policies or trainings are available for public feedback, and again when they are enacted.

- Reports and other key documents are filed by the monitor or parties.
- Following critical events.
- When key personnel changes occur.

E. Additional Areas for Early Attention

Monitoring implicates a number of day-to-day and administrative functions. This guide covers these practical considerations—which often continue throughout the life of the decree—in Section V, below. Nevertheless, monitors and their teams will need to contemplate the various considerations outlined there, establishing structures and processes necessary to address them as appropriate.



IV. DEVELOPING AND IMPLEMENTING A MONITORING PLAN

The early culmination of the monitor's initial listening, relationship-building, and information-gathering described in the prior section is what most consent decrees call a "monitoring plan." A monitoring plan—which might be more accurately described as an implementation plan—is a written plan required by many decrees that specifies how the work of the decree will be implemented over time. It outlines a specific process for implementation, and it typically is reviewed and approved by the court overseeing the decree—making the monitored agency and jurisdiction, DOJ, monitoring team, and other stakeholders all accountable to the court for getting specific things done at particular times. Consent decrees usually require that monitors complete a monitoring plan as one of their first major tasks.

Whereas a consent decree describes *what* an agency, jurisdiction, and monitor must do, and might specify broad time horizons for the completion of work (e.g., a training initiative to be completed within 365 days of the decree being executed), a monitoring plan details *how and when* that work will be accomplished. For instance, a decree may describe what practices an agency needs to adopt. A monitoring plan identifies what policies will need to be created or revised to implement those practices, what training will be required to educate officers about the new policies, when that work will occur, how the monitor and DOJ may have discussions about it, when and how community feedback on proposed policies and training curricula may be gathered and considered, when and how the monitor and DOJ may provide final approval, and when and how the court may be

involved in substantively considering or taking notice of revised policies and training.

Perhaps most crucially, a monitoring plan serves as a project implementation plan not just for the monitored agency but for all stakeholders—including the monitor, court, jurisdiction, DOJ, community members, and law enforcement agency alike. Given the scope and complexity of many consent decrees, having all of these stakeholders focus on different parts of the decree at different times, in different ways, and without the knowledge of or coordination with other stakeholders would be inefficient, ineffective, and frustrating for all. Everyone trying to do everything at the same time may mean that very little gets done well. A monitoring plan helps to address this collective action problem—getting everyone on the same page about what is being addressed, when, by whom, and how. In this way, a monitoring plan is both incredibly substantive and highly administrative—making important decisions about priorities, sequencing, and how various stakeholders will be involved but also reducing them to the level and form of a project management plan. Ideally, a monitoring plan helps to provide a more definitive structure to decree implementation that still retains some flexibility for unforeseen circumstances or issues.

One question that monitoring plans implicate is why a law enforcement agency and a jurisdiction cannot, and should not, be left to their own devices to take all of the steps and perform all of the work necessary to meet the decree’s requirements. If the role of the monitor is to *oversee* implementation, why might a monitor elect—and why, in many instances, might a consent decree specifically require a monitor—to facilitate and direct a specific project management approach?

The short answers are efficiency and effectiveness. Experience suggests that agencies faced with implementing a broad and complex consent decree are more successful when they work with the DOJ and the monitor to create a detailed monitoring plan. Furthermore, even if a law enforcement agency is highly capable with respect to its internal project management capacity, other stakeholders—including



Perhaps most crucially, a monitoring plan serves as a project implementation plan not just for the monitored agency but for all stakeholders—including the monitor, court, jurisdiction, DOJ, community members, and law enforcement agency alike.

the court, monitor, DOJ, community members, and others—will need to be involved. The monitored law enforcement agency is the focus of much consent decree work, but implementation requires the participation of far more than simply the monitored agency. Someone therefore will have to coordinate that involvement so that it is timely and effective. As the independent agent of the court helping, in part, to facilitate compliance, this role is one that can fall naturally to the monitor. Further, some agencies that have tried to rush into an attempt to comply have found such efforts to be counterproductive in the long term because they did not occur within a strategic framework. The guidance and structure of a monitoring plan is critical throughout a decree—and especially at the early stages.

It must be emphasized, however, that the creation of a monitoring plan is not the unilateral *imposition* of a monitoring plan. As with much decree work, the decree itself calls for collaboration and the decree process to use, build from, and enhance the monitored agency’s and jurisdiction’s existing capacity. To the extent that the law enforcement agency has existing personnel or infrastructure oriented toward project management generally or in implementing projects in some domains (e.g., information technology), that should be reflected as appropriate in a monitoring plan. Further, the monitored agency will likely have their own views about the most urgent priorities, how challenging

various aspects of compliance may be, and the work projected for policy and training development in particular areas. The process of establishing a monitoring plan should take into account the agency's opinions about the plan's timelines, milestones, and deliverables.

However, not all law enforcement agencies have strong, existing project management infrastructure. Indeed, law enforcement is usually in the business of response—responding to calls for service, responding to things that officers see while on patrol, and responding to community public safety dynamics. As such, agencies may have less in the way of resources and personnel who can break down a consent decree into granular, day-by-day tasks and deliverables. Likewise, some departments under decrees have come to identify quickly for themselves that, even as they have some project management expertise, the decree's requirements are larger, more far-reaching, and involve more stakeholders than prior project implementation in the organization. Within these situations, the ability of a monitoring team to help translate the array of decree requirements into specific steps and ongoing, small actions can help put an agency on the path toward compliance.

This section describes the role and construction of a monitoring plan. At the same time, it addresses decisions that a monitoring team will need to make, often within the context of finalizing this plan, about how work will proceed under the monitoring plan and how various decree stakeholders will be involved.

A. What a Monitoring Plan Does

1. *Monitoring Plan as Project Implementation and Management Plan*

To the extent that consent decree implementation is a “project,” or “a temporary endeavor undertaken to produce a unique product, service result,”⁵⁸ it

needs a plan that helps “translate [the] project mission” and requirements of the decree “into actionable realities.”⁵⁹ In many ways, a monitoring plan is a project management tool—an aid in “the process of administering a project, from its initiation through to its completion,” that specifies “each responsible individual's feeling of commitment” and responsibilities “toward[] the project.”⁶⁰ Consequently, what many consent decrees refer to as “monitoring plans” really are action or implementation plans addressing far more than simply monitoring activities.

Although a monitoring plan will share some characteristics with project plans used for other businesses, organizations, or government agencies, they differ in some unique ways. First, the consent decree has already determined many of the overall goals and the major areas of work that must be performed. Consequently, a monitoring plan predominantly works to break down required objectives into specific steps for implementing what is required. Second, while a typical project plan will focus on a single organization and its personnel, a monitoring plan contemplates the tasks, involvement, and participation of an array of consent decree stakeholders—from the law enforcement agency and monitor to community members and organizations. Third, where many project plans—even for long, multi-year projects—may specifically identify milestones and deliverables out to project completion, monitoring plans, for a variety of reasons, usually cover a period of one year and are updated each year to include new areas of work. Fourth, while project plans often orient toward one major but specific goal or objective, monitoring plans can be seen as encompassing many different project plans that incorporate different processes, sequences, or approaches to getting work done in different decree areas.

Additionally, a monitoring plan is different from a project management plan because, in most places, the plan is subject to court review and approval. This

58 James P. Lewis, *Fundamentals of Project Management* 2 (3d ed. 2007).

59 Jack Ferraro, *Project Management for Non-Project Managers* 172 (2012).

60 Ken Burnett, *The Project Management Paradigm* 9 (1998).

means that the judge plays a role in ensuring that the commitments and timelines that the plan outlines are achieved in a meaningful and timely way.

Formally, a project plan must “clearly define what needs to be done in a project, by whom, when, and how.”⁶¹ This means that a monitoring plan must identify:

- **Milestones.** Project milestones are “significant events” that are necessary to meet the overall objectives—that is, to meet the requirements of—the consent decree.⁶² For instance, the first-year monitoring plan for the Cleveland consent decree situated the design of officer training curricula on decree-required use of force policies as a substantial milestone toward complying with the decree’s force-related training provisions.⁶³
- **Deliverables.** Deliverables are things that are produced to help reach an objective. Generally, “they have tangibility and can be inspected, approved, and measured.”⁶⁴ “Deliverables may be intermediate, i.e. a stepping-stone to the end result” or, in fact, the end result or outcome itself.⁶⁵ In the consent decree context, a deliverable may be a police department submitting an initial draft of a policy for monitor, DOJ, and/or community feedback—and it can also be a finalized version of the policy submitted to comply with the decree’s express requirement that a policy be revised in particular ways. In this way, the production of a concrete thing—like a policy, a training curriculum, a procedural manual, or the like—may be *both* a deliverable and a milestone. However, in many other instances, an array of deliverables, combined, will allow for the department to reach a certain milestone.
- **Tasks.** Tasks are the specific steps or actions that

must be taken to complete a given deliverable successfully. In the first-year Baltimore monitoring plan, specific tasks included the solicitation and synthesis of public comment on use of force training; the production of draft, proposed force training curricula for DOJ and monitor comment and feedback during a “collaboration period;” public comment on proposed training curricula; and approval of finalized curricula.⁶⁶

- **Responsible actors.** Responsible actors are the consent decree stakeholders who will be accountable for performing designated tasks of the monitoring plan. Again, a monitoring plan will ideally account for the various, interrelated efforts of the law enforcement agency, jurisdiction, community, court, DOJ, and monitoring team. Each identified task in a monitoring plan should be associated with a clearly designated actor.
- **Deadlines.** Each task and milestone in a monitoring plan must be associated with an identified deadline. For all stakeholders, deadlines “and time urgency” are useful in “focusing attention on nonroutine behavior” of the sort that consent decrees implicate.⁶⁷

Even as the decree may contain some benchmark deadlines for overall milestones, monitors will have to work with decree stakeholders to ensure that the deadlines that a monitoring plan sets are specific (i.e., a specifically identified calendar date rather than a broad time period or range). At the same time, deadlines must be realistic—accounting for the complexity of the task, the availability of qualified personnel to do the work, and similar pragmatic considerations. Further, a procedure should be put in place to extend deadlines when necessary due to unforeseen challenges.

61 Kathy Schwalbe, *Information Technology Project Management* 16–17 (2015).

62 Shankar Jha, *The Project Manager’s Toolkit* 65 (2010).

63 Cleveland Consent Decree Monitoring Team, *First-Year Monitoring Plan* 23–26, <https://leknowledgegelab.org/wp-content/uploads/2023/11/Dkt.43-First-YearMonitoringPlan.pdf>.

64 Robin Hornby, *Commercial Project Management* 18 (2017).

65 *Id.*

66 Baltimore Consent Decree Monitoring Team, *First-Year Monitoring Plan* 24–25, <https://leknowledgegelab.org/wp-content/uploads/2023/10/Appendix-G.-Baltimore-Consent-Decree-First-Year-Monitoring-Plan.pdf>.

67 Nancy Satudenmayer, et al, “Time to Change: Temporal Shifts as Enablers of Organizational Change,” 13 *Organization Science* 583, 584 (2002).

CLEVELAND CONSENT DECREE SECOND-YEAR MONITORING PLAN (2017)

The monitoring plan for the second year of the Cleveland consent decree sets forth an array of specific tasks and deliverables, assigning responsible actors to each requirement.

One approach that has been adopted in multiple consent decree cities is a monitoring plan that identifies specific calendar days as deadlines for specific tasks, actions, or submission of deliverables—but provides some built-in allowances for deviations that the monitor, monitored jurisdiction, and DOJ believe appropriate. For instance, a monitoring plan for Seattle from 2021 allows the parties and monitoring team to extend deadlines by up to 45 days by mutual agreement, without court approval.⁶⁸

2. Monitoring Plan as Agenda-Setting and Sequencing Tool

A major part of making a monitoring plan is identifying priorities, breaking down large requirements into step-by-step tasks, and ordering those various tasks in a way that accounts for the potential relationships among many decree requirements. Some considerations that should be weighed when considering sequencing and prioritization include:

- **Interdependencies and relationships of consent decree requirements.** Many consent decree requirements involve or implicate many others—such that the full implementation of one requires many related, sequential steps. A major example relates to policies. Regardless of whether all of the steps are specifically addressed in the decree, the meaningful implementation of a new or revised policy requires all officers to be

subsequently trained on the policy, the policy to then go “live” and become effective in the field, a period of active implementation while the policy is effective in the field, and an assessment of whether officers are indeed following the policy in the field. A monitoring plan must, therefore, account for the fact that the time period from initial work on a new or revised policy to an assessment as to whether those policies have been effectively implemented consistent with the decree takes some time and different stages.

Likewise, consent decree provisions might implicate new officer reporting or data collection requirements. The meaningful implementation of those requirements often necessitates a new policy outlining the new requirements, the development of a new or updated electronic data collection mechanism to facilitate the reporting, training for officers on the new requirements and new system, active implementation, and the systematic review of reports to ensure compliance with the decree. In this way, “data collection” and “technology” cannot exist within the consent decree as a definitively separate issue from substantive reporting or data collecting requirements—the ability to implement new reporting policies may well depend on technology or documentation practices to be in place.

A monitoring plan can assist consent decree stakeholders by identifying discrete areas of the consent decree that are, in fact, interrelated and ensuring a project management structure that sequences tasks accordingly.

⁶⁸ Seattle Police Monitor, 2021 Monitoring Plan at 1, https://seattlepolicemonitor.org/sites/default/files/2021-07/2021_Seattle_Monitoring_Plan_Evaluating_Compliance_0.pdf.

- **Task complexity and the amount of time predicted to reach milestones.** Some consent decree areas of work and tasks implicate more time and work than others. For instance, making revisions to a law enforcement agency policy might be expected to require a few months of drafting, discussion, and community feedback. In contrast, implementing a new electronic database system for tracking all non-voluntary contacts like stops may require a department procuring a new technology system, implementing that new system or updating an existing system to do something new, determining what data and information should be tracked, training officers and supervisors on using the system, and then having the system go live in the field.

Indeed, across several consent decrees, the more time-consuming implementation areas have involved significant work around technology systems and data collection. Although there may be a number of specific reasons for this history, the implementation of new technology often is time-intensive, implicates information technology systems from both the monitored agency and jurisdiction, may require compliance with city procurement and budgetary processes, and usually involves related updates to policies, procedures, and training to allow personnel to use the system.

Other areas also typically require longer periods to fully implement. A law enforcement agency may need a substantial period of time to provide specific training programs to all of its officers. Even if all new policies and training could be developed simultaneously under a consent decree,

there will likely be limitations as to how much time officers can spend attending in-person, in-service training without negatively impacting departmental operations. There are also limits to how much new information officers can realistically absorb in a short period of time.

In these and other areas, the monitoring plan must reflect and accommodate the complexity of some requirements necessary for compliance with the decree—beginning work early on those areas that are projected to involve more time to navigate.

- **The significance or prominence of issues in the consent decree.** Although all provisions of a decree are important, some may be more significant or prominent based on community engagement, law enforcement agency engagement, or the findings of the DOJ investigation. The monitoring team will likely want to ensure that work begins in core decree areas early in the implementation process. Identification of areas where compliance might be more easily attained should also be an area of initial focus and discussion.

3. Monitoring Plan as Collaborative Framework

This guide has repeatedly emphasized that, in the experience of a number of law enforcement agencies, cities, communities, and monitors, a collaborative approach to consent decree implementation yields more effective and efficient decree compliance. Rather than a police department and city running off and doing work alone and submitting it to a

NEWARK CONSENT DECREE FIRST-YEAR MONITORING PLAN (2017)

The monitoring plan for the first year of the Newark, New Jersey consent decree identifies a number of critical milestones and deadlines, focusing on some priorities while leaving others for future work.

monitoring team and the DOJ to “grade” only after they consider work complete, many jurisdictions have benefitted from a process in which the monitoring team and the DOJ have provided ongoing, real-time, and highly specific technical assistance. The monitor and the DOJ must ensure that they are not “doing all of the work” for a department and city—so that the agency can have the capacity to perpetuate decree reforms long after monitoring, and the monitor and DOJ can retain sufficient independence to certify whether the agency’s work complies with the decree. However, the active, early involvement of a monitoring team and the DOJ can set a strong framework for successful implementation.

At the outset of monitoring, it can be difficult for individuals—especially those from the jurisdiction, law enforcement agency, and sometimes DOJ—who have been involved in potentially more adversarial investigations and decree negotiation processes to pivot to a more collaborative mindset. Specifically, many agencies and jurisdictions can be accustomed to only providing outside representatives with written work product or briefings about progress when they are “finalized” or have been fully vetted or approved internally.

A monitoring plan can, by spelling out various tasks, deadlines, and responsible actors, set out a framework for active collaboration among stakeholders—and help to establish relationships grounded in cooperation and assistance where possible. A monitoring plan can establish specific

mechanisms for facilitating collaboration—including those that, even if not expressly required by the decree, may be useful for stakeholders to use to realize the goals and comply with the requirements of the decree. These include:

- **Detailing the exchange of drafts, feedback, and revisions.** Even if not expressly detailed in a decree, it will usually be useful for departments and jurisdictions to have deadlines for submitting working drafts of proposed policies, protocols, plans, trainings, and other deliverables to the monitoring team and the DOJ for review. It will likely be useful for DOJ representatives to provide comment on proposals prior to in-depth monitoring review, so that the monitoring team has the benefit of insights from both the jurisdiction and/or agency and DOJ before assessing draft policies. By specifically identifying what will be exchanged, and when, the monitoring plan can facilitate a more straightforward, collaborative work process.

In considering the design of this type of process, the monitoring team needs to consider the benefits of exchanging drafts back and forth with the possibility that the exchange of too many drafts can become dispiriting and begin to feel inefficient for involved stakeholders.

- **Establishing a “collaboration period.”** Some monitoring plans have expressly called for major decrees to proceed through an initial “collaboration period” among implicated,

LAW ENFORCEMENT KNOWLEDGE LAB TECHNICAL ASSISTANCE

The Law Enforcement Knowledge Lab can provide agencies with technical assistance that supports the development of an agency’s capacity to plan, implement, and assess agency reforms. The Knowledge Lab can serve as a supplemental source of technical assistance for consent decree jurisdictions that comes with some independence from monitoring teams and the DOJ. While the Knowledge Lab is prioritizing support of consent decree agencies, technical assistance is available for all law enforcement agencies, regardless of consent decree status.

institutional stakeholders like the law enforcement agency, DOJ, and monitoring team. Typically, the period begins with the monitored agency or jurisdiction submitting an initial draft of a required deliverable. During a subsequent collaboration period, which lasts for a defined time frame, the parties meet, exchange redlines of written documents, or provide written or oral feedback in other ways. Based on the nature of this feedback, the stakeholders determine what the next step might be—with the conclusion of the “collaboration period” serving as a definitive procedural backstop to ensure against countless rounds of drafts and overly protracted discussion. At the end of the collaboration period, and potentially following formalized community engagement processes that the decree and/or monitoring plan identify, the final deliverables emerging from the “collaboration period” are, typically, formally approved or disapproved by the monitoring team and DOJ.

The “collaboration period” approach can help to account for the possibility that even a well-intentioned jurisdiction or law enforcement agency might not have the in-house expertise or capacity to do all of the work. It can also help ensure that the monitoring team, DOJ, and even outside experts that the monitored agency or jurisdiction engages can work in real-time with city or departmental personnel as they do the work—helping to comply with decree requirements while also building knowledge, skills, and capacity within the monitored organization.

- ***Integrating community engagement and participation.*** A monitoring plan can help consent decree stakeholders ensure that a decree’s express requirements, and additional substantive opportunities, for community engagement and participation are sequenced meaningfully and efficiently into decree work. For example, in the Baltimore consent decree, two periods of community comment on draft policies, plans, and other deliverables follow a department’s submission of a final, proposed draft. Rather than the law enforcement agency or jurisdiction needing to track for themselves

when the posting of draft policies for community engagement is necessary, the monitoring plan includes these community feedback periods.

Including these community engagement opportunities also gives community members and organizations an advance idea about when opportunities to participate on various topics or with various deliverables can be expected.

To this end, a monitoring plan can specifically identify junctures for various types of community participation, including:

- ♦ Forums, meetings, town halls, and other large feedback sessions.
- ♦ Community update sessions.
- ♦ Public comments on draft or proposed deliverables.

The process that a monitoring plan establishes can also design a clear pathway for the jurisdiction, law enforcement agency, and consent decree process to reflect back to the community how their comments or feedback were considered and either incorporated or not reflected in a final deliverable. Although inventorying or summarizing community feedback and responding directly to it might appear time-consuming at the outset, doing so can enhance transparency and the sense of some community members that their voices are being heard over the decree’s lifespan.

- ***Establishing regular stakeholder meetings and interactions.*** A collaborative consent decree implementation benefits from regular meetings among representatives of the monitored agency, the jurisdiction, the monitoring team, and the DOJ. Many jurisdictions have found weekly or bi-weekly meetings among the leading representatives of these significant decree stakeholders to be useful in working through emerging issues, gauging progress under the monitoring plan, and ensuring compliance. Likewise, major areas and functional areas of the decree—such as use of force or misconduct investigations, or training or technology—can benefit from having separate, regular meetings to address current issues, work, and progress. Both for the generalized, large meetings across consent decree areas and

BALTIMORE CONSENT DECREE FIRST-YEAR MONITORING PLAN (2018)

The Baltimore consent decree's first-year monitoring plan sets forth an array of tasks and deliverables—identifying responsible stakeholders, deadlines, and associated consent decree requirements for each—while incorporating dedicated, ongoing opportunities for community feedback.

more specific “work stream” meetings addressing discrete issues or areas, having recurring, ongoing meetings scheduled can save the time and hassle of scheduling interactions on a continually “one-off” basis.

The widespread adoption of videoconference technology in more recent years can help to ensure that these regular, meetings can be resource-effective. At the same time, in-person meetings can have significant value, as subsequent sections of this guide consider.

4. Monitoring Plan as a Pathway to Compliance

A monitoring plan should—and, indeed, it is often a decree requirement that plans must—outline how compliance and outcomes will be assessed. Early in a consent decree process, it may not be possible for a monitoring team to detail exhaustively what will be assessed, how, when, and what findings may be consistent with compliance. For example, in a consent decree that requires an agency to document all investigative stops that was not doing so before, the details around what information will be collected and how the information may be collected are unlikely to be settled within the first months of the decree. Accordingly, even as an assessment will need to occur, a monitor may not be able to spell out much about how and when an assessment might occur.

Nevertheless, even when not all details have been established regarding prerequisite work toward achieving compliance, the monitor should still seek

to provide significant clarity and detail regarding the processes by which compliance will be evaluated and determined. A monitoring plan can, therefore, detail processes for establishing baseline performance metrics, comparing progress across time, conducting audits in areas that may not be subject to extensive work, and analyzing various types of data (e.g., use of force, civilian complaint, crime, officer injury, and other data). Section VI of this guide provides greater detail about issues relating to evaluating and formally determining whether a department has or has not complied with specific decree requirements.

Additionally, consent decrees usually outline various reporting requirements for the monitor, such as semiannual progress reports to the court or regular updates at community forums. Monitoring plans should include those deadlines, as well as related deadlines for the jurisdiction and the DOJ to review final drafts of written reports before filing reports with the court.

B. Finalizing the Monitoring Plan

After a monitoring team has incorporated feedback and ideas from the monitored jurisdiction, law enforcement agency, DOJ, and community members, the monitor typically submits the finalized monitoring plan to the court. In most instances, if the judge reviews and finds the plan satisfactory, the judge will formally approve the plan. By ordering it effective, the monitoring plan becomes the binding, procedural structure that the day-to-day implementation of the plan will use going forward.

Monitoring plans, as noted previously, typically cover the timespan of about a year. Even when a monitor and involved stakeholders take care to fashion pragmatic tasks and deadlines, decree implementation can be an evolving process occurring within a dynamic environment that involves numerous people and stakeholders. Consequently, adjustments, refinements, or changes to the monitoring plan may be necessary. It may be useful for a monitoring plan to expressly contemplate a streamlined process for updating or revising the monitoring plan at some point during the year (e.g., after 6 or 9 months).



V. PRACTICAL CONSIDERATIONS DURING MONITORING

This guide's prior sections have addressed a monitor's duties and responsibilities, the qualities and characteristics that a monitor and their team should have, how a selected monitor should think about getting started, and how a monitor's initial efforts to establish relationships and begin work usually culminates in a monitoring plan. This section therefore turns its attention to what a monitor should know about the active implementation of a consent decree in practice.

For people like law enforcement officers or community members, what happens on a day-to-day basis during the implementation of a consent decree can seem mysterious. Some wonder why a monitor cannot just go in and demand that all of a decree's changes happen immediately. Others wonder why implementation involves so many hours from monitoring team members, jurisdiction and DOJ lawyers, and law enforcement agency personnel.

Principally, consent decree implementation is a process of a jurisdiction actively working to translate the requirements of the decree from legal requirements to practice, with the ongoing participation and engagement of community members and an agency's officers. The monitoring team and DOJ representatives provide technical assistance during this process and ensure compliance with the decree's requirements. Fundamentally, implementation involves the mechanics of transforming agreed-upon changes in the consent decree into paper (e.g., law enforcement policy, protocols, trainings, plans, or processes) and then to practice (e.g., law enforcement officers adhering to the policy, carrying out the protocols, completing the trainings, implementing the plans, or following processes).

Although decrees contain many specific requirements, they do not, and likely cannot, spell

everything out exhaustively. For example, decrees often describe many things that new or revised policies must cover—but decrees do not include all of every required policy’s text. It is often up to the department and other stakeholders to ensure that the department’s final policy appropriately incorporates specific requirements and then builds out a remainder of the policy consistent with those requirements.

Consent decree implementation often requires law enforcement agencies to implement a significant set of changes, improvements, enhancements, or new approaches. Active implementation of a decree involves making all of the small steps required to effectuate those approaches in a way that ensures they take hold in the agency not just in policy but in reality—across time, officers, and interactions that occur in the field as officers perform their duties.

Even as a monitoring plan should fill in more precise detail about *how* a law enforcement agency and jurisdiction will go about addressing a decree’s requirements, carrying out a monitoring plan implicates a number of additional considerations. This section addresses several of them. In nearly all instances, they arise from the experiences of jurisdictions under previous consent decrees, the lessons learned and recommended practices from prior monitors, and ideas from other stakeholders who have been involved in the implementation of decrees. The various topics addressed here include the type of ongoing, practical considerations that relate to implementing a decree and monitoring plan. Although some issues may be more, or less, salient depending on the jurisdiction, they all can have significant impacts on the overall possibility for the decree helping the monitored agency and jurisdiction to attain identified outcomes.

A. Structuring Day-to-Day Work

Ideally, a monitoring plan will provide detailed guidance on who is working on what piece of the consent decree, and when. It may establish certain benchmarks for representatives of the law enforcement agency, jurisdiction, DOJ, and

monitoring team convening to begin discussions or meet regularly about specific topics (e.g., revisions to a use of force policy, the creation of a new curriculum on interactions with individuals experiencing behavioral crises, or plans for implementing an updated electronic data system that can more effectively and efficiently track investigative law enforcement stops).

Still, a monitoring plan likely will not, and probably cannot, be exhaustive about how work will be administratively accomplished under a decree. This section addresses some of the practical, day-to-day issues that a monitoring team must consider as it sets about overseeing consent decree implementation:

- **Project management.** Both at the outset of monitoring and as decree implementation progresses, the monitoring team, law enforcement agency, jurisdiction, and DOJ should identify “point people” or “workstream leads” responsible for the substantive work in major areas of the consent decree and/or areas and deliverables addressed in the consent decree. Sharing this information with other consent decree stakeholders helps to address coordination issues. Likewise, the designation of different people to handle different areas of the decree helps to ensure that all major stakeholders involved can work on several different areas at once.

Additionally, it can be useful for the monitoring team—as well as the law enforcement agency, jurisdiction, and DOJ—to have a team member who tracks the flow of documents, drafts, and communications. As work progresses in many different areas, having a single individual with awareness of when a latest draft was submitted, or what the last communication was on a given topic, can be useful. For many teams, this person has been a “deputy monitor” or an operations administrator.

- **Meeting with stakeholders.** This guide’s discussion of the monitoring plan noted the importance of regular meetings among the monitoring team and law enforcement agency personnel, a jurisdiction’s representatives, and the DOJ. General meetings among leads from

the monitoring team, monitored agency and jurisdiction, and DOJ that occur once each week or once every few weeks can be important for ensuring that monitoring plan expectations are being met and substantive issues are being discussed as they arise across areas of work. Ongoing meetings on particular topics, areas, or deliverables are likely to be useful venues for collaboration, the provision of technical assistance, and the detailed discussion of feedback on things like policies, training curricula, protocols, and plans. In this way, regular, general “check-ins” for stakeholder leaders help to promote collaboration and ensure that everyone knows what is going on, while separate workstream (e.g., use of force, officer misconduct investigations, or fair and impartial policing) or deliverable (e.g., staffing plan, technology plan) discussions can drive work forward across decree and monitoring plan areas.

The monitoring team might, in its facilitator role, help to craft agendas for meetings. However, a law enforcement agency’s personnel can and should regularly take the lead on identifying areas for discussion—particularly areas where it believes that the monitoring team’s technical assistance would be most useful.

Separately, the monitoring team may need to initiate any of a variety of one-off meetings on various topics with specific individuals or organizations. This might include ride-alongs and meetings with law enforcement officers, updates with elected officials, meetings with community organizations, and forums or discussions with residents.

- ***Balancing in-person and remote work.***

Whether a monitor and their team reside in or near the monitored jurisdiction or need to travel a distance to be in the jurisdiction, they will likely need to balance the relationship-oriented advantages of in-person interactions with the convenience and efficiency of remote meetings.

A monitoring team will need to spend a significant part of their time in person and at a monitored law enforcement agency. Understanding the police

department is critical for performing a monitor’s duties, and doing so requires that the monitoring team get to know a variety of people—and spend time in the police stations, districts, or precincts themselves—to develop a granular understanding of how the police department is functioning in practice. Remote work, even if it is interactive with law enforcement personnel, cannot replace the insights and relationship-building that in-person time facilitates. Likewise, interactions with a community’s residents, a jurisdiction’s representatives, and even DOJ attorneys can benefit from occurring in person.

However, especially in the wake of the COVID-19 pandemic, many, including law enforcement agencies and personnel, have become well-versed in using video-conference platforms to conduct meetings. In many current consent decree jurisdictions, meaningful work is being accomplished via video conference. Indeed, many law enforcement agencies and jurisdictions find that video-conference work saves time and helps drive progress forward similarly to in-person work. Traditional conference calls also continue to make sense to facilitate necessary conversations about decree work.

Scheduling “site visits” or “intensive work days” is a strategy that several monitoring teams have previously adopted to balance in-person and remote work. Stakeholders work to sequence meetings, work sessions, and decree activities into these pre-scheduled periods. The idea is to focus stakeholders on making progress in person along a number of dimensions in a defined, targeted period. It allows all participants to devote specific days on their calendar to intensive decree work rather than having them spread more inconveniently across many days—and allows non-local team members to make the most efficient use of travel.

- ***Internal monitoring team coordination.***

Although having all monitoring team members work on all issues, attend all meetings, and review documents is unlikely to be necessary, realistic, or efficient, monitoring teams will benefit from

individual members and subject matter experts having an ongoing, broader understanding of how work is progressing under the decree. As this guide repeatedly observes, many consent decree areas are substantively related, and the organizational and administrative dynamics that impact a department's ability to make progress in one area often are the same forces impacting progress in others. Additionally, monitoring team members who are focused on coordinating community engagement or interacting regularly with residents or community organizations need to have a comprehensive, substantive command of what is happening under the consent decree.

Accordingly, monitoring teams should consider regular communications across team members, including regularly scheduled, all-team meetings where team members update each other on progress in their areas of responsibility and discuss timely issues.

A monitoring team may also want to consider substantive, specific internal work meetings to advance progress in any of the monitored areas. For instance, if multiple team members are contributing to the use of force area, periodic internal meetings to discuss issues and accomplish necessary work will likely be necessary.

B. Communications About Progress During Monitoring

This guide has previously discussed some parameters surrounding the monitor's communications with stakeholders like the law enforcement agency and DOJ. This section focuses on some specific considerations relating to how the monitoring team keeps individuals who are typically not involved in day-to-day implementation work—including the court and the general public—up to date on progress.

1. Communicating with the Court

The nature, style, and frequency of communications between the monitoring team, the DOJ, the monitored agency and jurisdiction, and the judge overseeing the decree will vary based on the

determinations of that judge. There are several ways that communication among the monitor, parties, and court might occur:

- **Court filings.** One primary and formal way that a court maintains knowledge about how a decree is proceeding is through documents that are filed with it (e.g., the monitor's reports, new law enforcement policies or plans that the jurisdiction files, etc.).
 - ♦ **Monitoring reports.** Consent decrees usually require that a monitoring team produce reports at regular intervals—often, either once every six months or once every three months. Although decrees articulate different, specific requirements for these reports, the reports typically require that the monitor describe:
 - The work conducted in the time since the last report.
 - The progress that the jurisdiction and department has made in complying with the decree and the approach or methodology that the monitoring team has used to reach compliance characterizations (whether informal or formal).
 - A summary of any formalized evaluations or assessments that the monitoring team has conducted.
 - A summary of the compliance status of the decree's various paragraphs and requirements.
 - A projection of the work to be done during the upcoming reporting period.

Monitoring reports provide reliable, periodic summaries of what has occurred under the consent decree and how the department and its personnel are doing in working toward compliance. They provide in-depth "snapshots" of how things stand at the point that the report is published. Accordingly, monitoring reports are a primary vehicle for the monitor to explain to the community and the court what the decree involves and what

steps the law enforcement agency is taking to meet them.

Monitors should endeavor for monitoring reports to be detailed and comprehensive but also accessible for a diverse audience. Ideally, reports should be crafted to provide clear, comprehensive insight to those who have substantial pre-existing knowledge about the decree and those who have relatively less. One way to make monitoring reports accessible is to provide a short executive summary crafted in “plain English” that provides the major takeaways from the underlying report. Another way that monitors can distill its findings is to include a chart or graph that summarizes the monitored agency’s compliance status with the decree’s specific requirements.

Typically, a decree provides that monitors present drafts to the jurisdiction and the DOJ for comment and feedback. The length and mechanics of the draft review and comment period should be clear and codified in a monitoring plan. The monitor files a final report with the court and makes the report available publicly. The mechanics of filing should be arranged with the court’s professional staff and are usually accomplished via an online system. Monitoring team members with legal experience will often be familiar with the mechanics of publicly filing a report of the court’s docket.

- ◆ **Notices or memoranda.** The monitoring team, and the parties, may have reason to update the court on items of specific interest. For example, in consent decrees in Baltimore and Seattle, policy-drafting processes have generally culminated in either the city or the monitoring team submitting a police department’s final policies, along with an appraisal of whether those policies adequately meet decree requirements. Other decrees give the monitoring team a specific role in reviewing and approving plans related to officer equipment or departmental technology. The monitor’s consideration of these plans often has taken the form of standalone notices or memoranda, filed with the court in the same way as regular monitoring reports, but serving as a standalone communication. These standalone filings might also alert the court and public to things like changes in deadlines under the monitoring plan, or an involved stakeholder’s failure to meet monitoring plan expectations.

A good practice is for the monitoring team, as well as the monitored jurisdiction and DOJ, to provide draft filings to others in advance of public filing with the court. Even if the filing party does not incorporate any feedback that it receives, a practice of providing courteous, advance notice can foster a better, collaborative working relationship.

- ◆ **Other types of reports.** The monitored law enforcement agency and jurisdiction may find

 [CLEVELAND POLICE MONITORING TEAM, FOURTH SEMIANNUAL REPORT \(2018\)](#)

 [SEATTLE POLICE MONITOR, THIRD SEMIANNUAL REPORT \(2014\)](#)

 [ALBUQUERQUE POLICE MONITOR, MONITOR’S ELEVENTH REPORT \(2020\)](#)

it useful to file periodic reports with the court that set forth its own views and accounting of its activities under a decree and the state of progress. Likewise, a monitoring team or a monitored jurisdiction might find it useful to provide regular reports, distinct from the overall monitoring or status reports, on progress on a particular issue. For example, in a consent decree in Cleveland, the city provided periodic reports on its progress in addressing a backlog of civilian complaints—providing the court and community with regular updates on how it was addressing the issue.

- ***Informal monitor–court interactions.*** Typically, the monitor and other members of the monitoring team will engage in periodic, informal discussions with the judge. Those discussions can be important opportunities for the monitoring team to update the court on the status of implementation, seek the judge’s direction or input, and work collectively on the best ways of structuring work, addressing problems, or formally evaluating progress.
- ***In-chambers communications.*** At various junctures, a judge may elect to meet with the parties and the monitor in the judge’s chambers—that is, in the judge’s private offices rather than in a public setting. As a judge may do in other types of legal proceedings, meetings in these settings can allow for the court to hear more about issues, help mediate conflict, or address concerns. In some jurisdictions, judges have established meetings among the parties and monitoring team on a regular basis (e.g., monthly or quarterly) to receive updates and hear about progress in defined areas.
- ***In-court hearings.*** Most consent decree judges convene periodic “status conferences,” or public in-court hearings, in which they hear from the monitored jurisdiction and agency, DOJ, and monitoring team about progress under the decree. The frequency tends to vary based on

a judge’s style and desired level of ongoing involvement, but these usually public hearings provide important opportunities for the parties and monitoring team to provide updates to the court.

2. Community and External Communications

This guide repeatedly addresses the primary importance of community participation, engagement, and involvement in a consent decree process. Although a monitoring team’s engagement cannot be the only community engagement in a decree, “[a] monitorship cannot succeed without the consistent input of those the decree is intended to benefit,” which is why decrees usually require the monitor to engage directly with the community.⁶⁹ For that input to be most helpful to the decree, a monitor must keep the community up-to-date on progress—on what areas of focus are being addressed, on where the monitored agency stands, and what changes can be expected to be implemented in upcoming months or years.

Consequently, a core, ongoing duty of monitoring is the monitor’s direct engagement with community and continual efforts to reach an ever broader, larger, and more diverse array of community members, perspectives, and views—from local business owners and leaders of community organizations to individuals from impacted and historically marginalized communities. To this end, monitoring teams should invest specific effort in engaging with those communities that interact with law enforcement regularly and who often, as a result, have important views on how to balance the need for public safety with the need to protect civil rights. This type of dialogue can help bring people together to create solutions and assist community members in understanding how potential policies or practices might impact other stakeholders.

Indeed, “[i]mplementing the type of institutional reform that is required by a consent decree demands



Although a monitoring team’s engagement cannot be the only community engagement in a decree, “[a] monitorship cannot succeed without the consistent input of those the decree is intended to benefit,” which is why decrees usually require the monitor to engage directly with the community. For that input to be most helpful to the decree, a monitor must keep the community up-to-date on progress—on what areas of focus are being addressed, on where the monitored agency stands, and what changes can be expected to be implemented in upcoming months or years.

a substantial and sustained commitment from the entire community. If the community is not aware of the progress that is being made, that commitment risks turning into frustration.⁷⁰ *Engagement* under the consent decree must therefore be bi-directional—with a monitor empowering community members with timely information about the decree and progress under it, and community members empowering a monitor with views, feedback, and perspectives that can help decree implementation more closely align with a community’s needs and values.

In selecting *how* and *via what mechanisms* to engage the community, monitors must continually balance the need to ensure community voice and

participation with the need to maintain the monitor’s independence and the court’s authority. Where a monitor or their team is too regularly in the news or on social media, community members can come to view the monitor as the equivalent of an elected official—that is, just another city stakeholder working on law enforcement issues. Consent decrees benefit from monitors who are perceived, appropriately, as independent, impartial evaluators and extensions of the court.

During a consent decree, communication and engagement with the community might take many forms:

- **Community forums, meetings, or events.** As a decree progresses, and the law enforcement agency begins to make changes, in-person community meetings and events allow an opportunity for community members to learn directly from the monitoring team about what is happening and for the team to receive feedback directly from the community about particular decree topics or about a law enforcement agency’s performance generally. Many monitoring teams have found the scheduling of regular community updates across diverse locations in the city to be a useful, ongoing practice. This guide has previously discussed some of the best practices for community forums, meetings, and events.
- **Monitoring website.** This guide has previously recommended that monitoring teams establish a dedicated website that can be used, in part, to collect community feedback. As the decree is implemented, the monitoring team’s website should be updated regularly to include important court filings and the monitoring team’s progress reports. The website might highlight key upcoming dates from the monitoring plan, answer basic or frequently asked questions regarding the consent decree process, and provide background information about monitoring team members.

It should be emphasized here that individual documents, reports, assessments, or the like that

are posted on the website “must . . . be accessible and understandable to stakeholders in the case”⁷¹ in a manner compliant with Section 508 of the Rehabilitation Act.⁷² A website that is intentional in its use of formatting, organization, and/or inclusion of introductory or explanatory material is one that will likely be more helpful to a community than one that serves as a static repository of court filings.

As previously noted, a website that involves mechanisms for the community to contact the monitoring team directly (e.g., a feedback form, an email address) may need to include language that sets expectations for community members about what the monitoring team will and will not do with feedback that amounts to a specific misconduct complaint (e.g., contacting the submitter of feedback for additional information or confirmation of wanting to make a complaint (or not), forwarding it to the appropriate law enforcement or city department for follow-up, not investigating it independently, etc.).

- **Newsletters.** Another potentially useful community engagement mechanism is a newsletter (whether electronic, paper, or both). Monitoring team members might summarize in regular newsletters consent decree activities or progress, highlight upcoming areas of work, and publicize in-person engagement opportunities. The monitoring team might send the newsletter to an ongoing list of community contacts that it obtains from other meetings, online feedback submissions, and other mechanisms.
- **Traditional media.** One obvious potential route for communicating with residents of a jurisdiction about the consent decree is using traditional media like television news, newspapers, radio, and magazines. Monitors, judges, and all consent decree stakeholders need to understand, at the outset, whether the monitor and any members of

the team may interact with the media and, if so, under what circumstances or parameters.

Some prior consent decrees have expressly prohibited the monitor and their team from making statements to members of the press. For example, the Seattle decree provides that “[t]he Monitor will not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by” the decree—effectively disallowing interactions with the media and permitting primarily in-person, direct (i.e. un-mediated) community interaction.⁷³

Other consent decrees permit, or at least do not prohibit, the monitor or monitoring team from interacting with the media. However, in many instances, judges have directed monitoring teams not to speak with the media. Because, “[i]n keeping with ethics rules, federal judges do not grant interviews about active cases,” with “[j]udges ‘speak[ing]’ through comments made in open court or through written decisions,” the monitor—as a court agent—has operated under the same restrictions.⁷⁴

In a few jurisdictions, monitors have been able to communicate with the media. There, judges and the parties have determined that traditional media are one important mechanism for ensuring that the community remains updated on the consent decree—and that reporters hearing about decree progress from the neutral, independent monitor may be a critical way of ensuring that public reporting on law enforcement reform is factually accurate. In these places, monitors have tended to be judicious about interactions with media—holding interviews or giving statements surrounding major monitoring reports or formal status conferences rather than giving ongoing comments about particular issues. In any interactions, monitors would be advised to use

71 August 2021 DOJ Memorandum at 6.

72 See generally *Section508.gov*, <https://www.section508.gov/>.

73 *United States v. City of Seattle*, Case No. 2:12-cv-01282-JLR, Dkt. No. 3-1 ¶ 199 (Jul. 27, 2012).

74 U.S. Courts, Statistics & Reports, *Federal Court: Media Basics — Journalist’s Guide*, <https://www.uscourts.gov/statistics-reports/federal-court-media-basics-journalists-guide> (last visited Nov. 18, 2023).

media to publicize or amplify reports, formal findings, or community engagement activities—and to avoid commenting on specific incidents or on issues about which the monitor has not closely studied or is not closely involved. If a monitor wanted to engage with traditional media, another potential option is for monitors to communicate with media in writing, such as through press releases or written responses to questions about monitoring reports.

Regardless of whether a monitoring team may engage with members of the press or not, monitors should consider securing media training for themselves and their teams. Despite the advance knowledge at the outset that monitors are not permitted to speak with the press, this typically will not prevent reporters from calling the monitoring team to ask for information or comment. A working understanding of appropriate ways of dealing with these inquiries and explaining the monitoring team's obligations can be useful to team members—who may or may not have prior experience with members of the media.

- **Social media.** The monitor's use of social media during a consent decree will typically be subject to the parameters of a consent decree and the instructions of a judge. Various prior monitors, and judges, have reached different conclusions about the utility of social media. On the one hand, to the extent that "[m]eaningful engagement also entails meeting community members where they are," reaching community members directly via highly trafficked social media platforms may be an especially important way of reaching a wider diversity of community members, including those "whose voices are not as regularly heard."⁷⁵

On the other hand, the institutional reforms that decrees require are often complex—involving issues that simply require more background understanding, description, or explanation than a character-limited post or a short video may allow. Indeed, the things that may make social

media postings more widely viewed or shared—including brevity and emotional arousal—may be antithetical to the expectation that independent monitors be accurate, fair, and even-mannered.

It may be possible for monitors to calibrate social media use by, for instance, using social media platforms to publicize the release of their reports or upcoming community forums while not posting standalone substantive messages about decree progress. That is, monitors might call attention to information or events happening elsewhere without using social media as the primary or exclusive platform for new or standalone information.

It should be noted that monitors should advise monitoring team members about the use of their own, individual social media accounts. Team social media use addressing any matter of the case, or law enforcement issues more generally, should be guided by the court's instructions about public communications and the monitor's direction. A good practice is usually for the monitor to request that any social media posts regarding the consent decree, the monitored department or jurisdiction, or law enforcement issues be submitted to the monitor for review and approval before being posted.

Across these forms of engagement, a monitoring team will also need to consider *who* are the best monitoring representatives to conduct or participate in engagement activities. In some jurisdictions, early practices that positioned the lead monitor at the front and center of an array of substantive community engagement led to community members feeling that decree interactions were only worthwhile if they were with the lead monitor themselves—and not with other team members. Accordingly, a monitoring team may find it useful to designate individuals beyond solely the lead monitor to be able to engage with the community in a substantive, up-to-date way on decree progress. A diversity of perspectives and styles among team members can also promote broader, richer engagement.

C. Monitoring Compensation, Budgeting, Invoicing, and Billing

The monitored jurisdiction bears the cost of the monitoring team's work, which has sometimes been a source of concern in jurisdictions. First, despite the oversight of a federal judge and specific parameters in consent decrees, some perceive that monitors may have a "conflict of interest between a monitor's duty to the jurisdiction and [their] bottom line"⁷⁶: the longer that a decree goes on, the thinking goes, the more that a monitoring team gets paid, leaving the monitor with an incentive to avoid finding progress or certifying compliance. Second, even as compensation rates for monitors in law enforcement consent decree cases have tended to be lower than judicial monitors in other areas of the law, monitoring team experts may receive compensation at a functional rate that is higher than others involved in policing and public safety issues in a jurisdiction. Third, and more elementally, although many other professionals engaged in work focused on public service and safety—from government lawyers and public health professionals to law enforcement personnel themselves—also receive compensation for their work, some concerns arise from discomfort with individuals previously unaffiliated with communities or unimpacted by underlying issues "profiting" from a jurisdiction's unlawful policing practices.

Some of these dynamics stem from understandable confusion about the role and duties of a monitor. A monitor is not an employee or contractor of the city. Unlike other city agents, monitoring teams are not subject to the oversight or typical regulations that attach to city workers or contracts. City officials are typically used to having relationships that they direct with people who they pay for performing services. In a consent decree, things work differently. A monitor is an agent of the federal court, and as this section explains in greater detail below, the monitored jurisdiction via a decree agrees to pay

reasonable monitoring costs. However, the city often provides the resources for paying the monitor to the federal court itself, which is the final judge of whether a monitor's fees are reasonable and should be paid. Even in more limited instances where a monitored jurisdiction directly compensates a monitoring team, the monitor is an agent of the court, not the monitored jurisdiction. This often can engender confusion among government officials and community members in a jurisdiction, who are used to having more direct control or authority over an individual doing work that impacts a city in a shorter time horizon.

Given the longer-term nature of decree implementation and how different the compensation process can be in decrees from a jurisdiction's typical employee or contractor payment practices, "[m]onitorships should be designed to avoid even the appearance that a monitor is primarily motivated by profit."⁷⁷ Monitors and their teams must be ever mindful, from the outset, that they are compensated via the public's money—from a jurisdiction's tax revenue that, in the absence of a consent decree, would be used to help address other community needs.

Most decrees establish a process in which the monitoring team submits a monthly invoice, detailing the amount of time that team members have worked and the nature of the work they performed, to the jurisdiction and the DOJ to review. Where appropriate, parties may ask questions, seek clarity, or ask for added documentation. Once the parties and the DOJ informally approve the invoice, the monitor submits the invoice to the judge. The judge then reviews the invoice and may also ask questions or seek additional clarity. If and when the judge finds that the invoice is reasonable and satisfactory, they will approve the invoice.

Because a monitor is an independent agent of the court, and not a city contractor, the actual mechanics of compensation usually work differently under a decree. Rather than the city paying the monitoring

76 August 2021 DOJ Memorandum at 4.

77 *Id.*

team directly, the city typically must maintain a threshold amount in a kind of account with the federal court. When the judge approves the invoice, the court will typically enter an order for the amount of the invoice to be paid, with the money coming out of the federal court's account—and the federal court itself cutting a check to the monitoring team. From there, the monitoring team is responsible for distributing invoiced sums to individual team members. In a limited number of circumstances, monitors in consent decrees have been paid directly by the city, with a judge available to address any disputes regarding invoicing.

Monitors can adopt several practices, or make intentional decisions with respect to a set of considerations, aimed at expanding community confidence and trust regarding compensation for work performed under the decree:

- **Monitoring budgets.** Consent decrees usually require that monitors propose a budget for the DOJ, monitored jurisdiction, and court to approve. Often, monitoring selection processes will involve monitoring teams projecting their best assessments of yearly and overall costs. Regardless of decree parameters, monitoring teams need to set and adhere to a budget.

Monitoring budgets can take many different forms. They might be constructed around individual team members—making estimated projections about the number of hours and/or project compensation for individuals based on their anticipated areas of work. They might be constructed around the major substantive tasks of the monitoring plan—identifying the volume of monitoring team work expected to be performed in each area. Indeed, budgets might take a hybrid of the two approaches—accounting for overall team member contributions broken down according to work in the major areas or tasks outlined in the monitoring plan.

Regardless of the approach, monitors should aim to diligently adhere to budgets to ensure that resources are efficiently utilized. At the same time, monitors must ensure that budgets or resources

do not impede or delay progress. That is, monitors must be timely and diligent in response to activities occurring under the decree, whether or not the budget originally contemplated those activities. Similarly, a monitoring budget requires some flexibility—for tasks to be shifted, work to be delayed, or for new or unexpected work to emerge. In the experiences of a number of monitors and jurisdictions, good-faith adjustments to monitoring budgets and how the monitoring team actually uses resources have not tended to be problematic so long as the monitoring team's overall work for a budget term is consistent with the overall amounts that the budget identified and the jurisdiction earmarked.

A good practice for monitoring teams is to track ongoing work and invoices against the budget. Periodic discussions with the jurisdiction, DOJ, and court about where things stand in light of the budget can be an important way of identifying and working through any potential questions or issues.

- **Types of budgeting/invoicing arrangements.** Consent decrees often specify basic compensation practices. Many expressly contemplate that a monitoring team will invoice for work performed, by the hour, on a monthly basis and will be paid according to an agreed hourly rate. In these instances, the monitoring team prepares an invoice each month in the manner that a lawyer, accountant, or other professional compensated by the hour might submit to clients.

In other decrees, and especially some more recent consent decrees, a “flat-rate” compensation arrangement may be possible. In those situations, the monitoring team, parties, and court may agree to the monitoring team being compensated a certain, prescribed amount each month. Although monitors typically must still submit a monthly accounting of work performed, monetary compensation does not relate entirely to the volume of time worked. It should be emphasized that, even if a team uses a flat-fee arrangement, monitoring team members should all keep track of their time and report it to monitoring team

leadership to ensure internal accountability and to keep track of things like *pro bono* time, addressed below.

- **Budgetary caps.** In either hourly or “flat-rate” arrangements, recent consent decrees have increasingly required that monitoring teams—during the stage of monitor selection—identify a proposed budget for a contemplated period of monitoring and specify a budgetary cap. Recent guidance from the DOJ indicates that future decrees are likely to “include an annual cap on monitors’ fees,”⁷⁸ with a process included for the cap to be exceeded if approved by the court (which may be necessary if a jurisdiction remains particularly non-compliant in a way that increases monitoring costs).

This “to-not-exceed” amount serves as the upper limit for compensating a monitor. Especially where a decree compensates monitors by the hour, this limit on resources can provide greater certainty to jurisdictions about the resource investments they will need to make to implement a consent decree. In the experience of several monitors who have worked within these limits, they can provide a helpful and realistic parameter to ensure that decisions about team management, workloads, and expenses are effective and efficient. They also help make law enforcement agency personnel, city officials, and community members more comfortable with the idea that the monitoring team is not incentivized to “stretch out” the consent decree for longer than is necessary or reasonable in order to receive more money.

- **Pro bono and reduced-rate work.** American law has a tradition of *pro bono* work, in which legal professionals perform work without compensation as a public service. “[B]ecause monitoring is a public service, monitorships should be structured to encourage the use of *pro bono* time or reduced rates.”⁷⁹ Indeed, it is increasingly common, across consent decrees, for monitors to balance the contours of a monitoring budget with the need

to implement a consent decree successfully and effectively by performing some of its work without compensation. In addition to, or instead of, dedicated *pro bono* time, monitoring team members may work at reduced rates for certain tasks, at certain times, or when the number of hours worked reaches a threshold point. Regardless of the specifics, a monitor’s advance commitment that a portion of their time will be *pro bono* or at a heavily reduced rate can help to further promote confidence among stakeholders and community members that the monitor’s activities and determinations will be guided by their mission to ensure compliance with the agreement rather than “any incentive to unduly extend a monitorship for their own profit.”⁸⁰

- **Specificity in billing.** Regardless of a decree’s specific compensation arrangement, when the monitoring team generates an invoice or other accounting of work performed, the monitoring team, court, jurisdiction, and DOJ benefit from reaching a collective understanding regarding the level of specificity or detail that is necessary. This can be more complex than it may first appear.

On the one hand, there may be substantive, good-faith reasons why a monitoring team’s invoicing may be somewhat less specific than it could theoretically be. In particular, care must be taken not to reveal confidential information in billing invoices. For instance, the monitoring team, as part of its duties, may meet with a small group of community members or even law enforcement agency personnel who want assurance that what they discuss will remain confidential. A monitor team invoice reflecting that certain members “met with community members regarding various consent decree issues” is likely sufficient. Likewise, it is unlikely that detailing all topics that the monitor and a court discussed in a one-on-one discussion between the court and its agent is appropriate, while an entry indicating that the monitor “met with the court to discuss consent

78 August 2021 DOJ Memorandum at 4.

79 *Id.*

80 *Id.*

decree implementation progress and various related topics” may likely be sufficient. Similarly, a monitoring team billing description should not reveal the names of officers, subjects, or victims involved in investigations that team members review.

On the other hand, billing entries that are overly vague and incomplete make it hard for the jurisdiction, DOJ, and court to perform their roles under most decrees. For instance, an invoice entry indicating that a member “reviewed documents” for 0.5 hours appears far less transparent and comprehensive than one that notes that the member “reviewed and prepared feedback on draft misconduct and discipline policies.” Although there is no single formula or test, monitoring teams must be mindful of fashioning billing entries that are specific without becoming overly lengthy or inefficient.

Especially because monitoring teams often involve members who are not used to invoicing by the hour or accounting for their time in a high-profile matter like a consent decree, monitors should provide their teams with specific training and/or guidance on preparing invoices so that no significant problems arise at the outset. Local law schools or bar associations may have experts who can help orient monitoring teams to best, ethical practices in billing.

- **Efficient staffing and execution of monitoring activities.** As noted previously, as monitors do their work, they need to ensure that the right, and right number of, team members conduct necessary work and activities. Having all team members attend all meetings or video conferences across all workstreams, or review all draft policies or trainings, is unlikely to be realistic or efficient. Likewise, having too many team members work on one topic or focus on one task may not be the most optimal use of resources.

At the same time, monitoring teams may derive significant value from ensuring that all team members—regardless of area of focus or assignment—are aware of what is happening across the decree. Because many parts of the

decree are interrelated and may involve the same personnel or resources, keeping team members aware of what is going on in other workstreams—including by involving them in communications or work less related to their primary responsibilities—may enhance long-term efficiency.

Consequently, monitors and team members must apply their best professional judgment regarding how to staff and perform monitoring activities in the way that can be most resource-efficient *and* effective.

- **Expenses.** Likewise, in any arrangement, a monitoring team will need to be reimbursed for expenses that team members incurred while working on the project. Typically, these expenses relate to travel and logistics—such as ground transportation costs (e.g., taxis, parking structure fees, miles logged on a personal vehicle related to monitoring work transportation), air travel for non-local members, and accommodations. At the same time, expenses may be overhead charges necessary for the team to do its substantive work and engage with decree stakeholders and the jurisdiction’s community—including fees associated with maintaining a monitor team’s website or dedicated email addresses for team members to use solely for their monitoring work.

When it comes to all monitoring billing, but especially with respect to expense reimbursement, monitors and their teams must take care to ensure that all invoicing is directly related to the monitoring, reasonable, and necessary. Any expenses not related to the monitoring work, or more reasonably related to personal rather than project objectives, should not be invoiced. As in all matters, the monitoring team, as an agent of the court, must exercise honesty and high integrity when it comes to reimbursable expenses. To ensure transparency, bills seeking reimbursement for expenses beyond hourly time worked should include receipts or invoices that substantiate and detail the charges.

This generally means that all transportation utilized should be at the cheapest rates or fares



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reasonable under the circumstances. Hotels or accommodations should be at rates that align with rates for comfortable, safe, and modest hotels typically utilized by federal and state employees when they travel to the jurisdiction.

In multiple jurisdictions, media reporting has sometimes focused on smaller elements of monitoring invoices as questionable or unreasonable. Even where the invoiced expenses were approved by the city and court formally, the *appearance* of various charges is something about which a monitoring team must be mindful. For instance, it is likely reasonable for a jurisdiction to compensate traveling monitoring team members for reasonable meal-related expenses as they conduct consent decree work away from home. It may be useful for a jurisdiction and monitoring team to agree that, rather than having monitoring team members submit individual receipts for all meals or coffee breaks, invoices can seek reimbursement based around the *per diem* reimbursement rates that the United States General Services Administration sets each year.⁸¹

Separately, monitoring teams should consider ways of minimizing expenses wherever possible. For example, if multiple monitoring team members are traveling from one location in a jurisdiction to another on monitoring team business, they might carpool, share a taxi, or use public transportation. Separately, if a monitoring team has several members who will need to seek overnight accommodations on a regular basis, the team might consider working with local hotel managers to see if long-term discounts might be arranged in the way that many private businesses

secure cheaper rates for long-term projects. Even if a long-term arrangement is not possible, non-local team members might stay at the same location when visiting at the same time to facilitate savings on ground transportation and to promote informal team member communication.

- **Administrative considerations and tax compliance.** Even as the monitoring team is an independent agent of the federal court, the monitoring team and other stakeholders should be mindful, from the outset, of tax implications of the monitor's work. In some states with jurisdictions under consent decrees, monitoring teams have been held to be subject to state or local tax. In others, localized taxes have not applied. The monitor and parties should seek early resolution on the subject so that budgets and processes can reflect various tax regulations.

Separately, the monitoring team may, depending on its composition, need to be mindful of various tax or administrative implications of its work and compensation. If a monitor or their team is affiliated with a large, pre-existing organization, infrastructure may already be in place to compile invoices, administer compensation to individual team members or experts, and ensure tax compliance. However, in many other circumstances, individuals from many different professional organizations come together specifically to work on a decree. There, a monitor will need to develop mechanisms to generate monthly invoices, issue payments to team members as necessary, and generate requisite tax reporting requirements (e.g., 1099-MISC forms at the end of each year). A monitoring team might

81 See U.S. General Services Administration, Travel, Plan & Book, *Per Diem Rates*, <https://www.gsa.gov/travel/plan-book/per-diem-rates>.

find it valuable to use any of the widely available electronic time-keeping platforms to streamline invoicing.

- **Transparency.** Monitoring teams should make finalized invoices approved by the court available to the public, likely on its website. The availability of compensation records throughout the consent decree process can promote greater community trust in the decree process.

D. Managing Resources

“[I]mplementing the changes involved with a consent decree often requires expending substantial public resources”—including those directly tied to changes within the police department or jurisdiction (e.g., “new systems, training, and policies”) and to ensuring implementation of the decree (e.g., monitoring).⁸² Although “[t]he benefits derived from a monitorship are substantial,” and “the human and financial costs of permitting unconstitutional police practices to persist are enormous,” a monitor must be mindful throughout a decree process about the resource implication of their work, approach, and decisions.⁸³

As the prior section on monitoring budgeting and resources and other portions of this guide emphasize, a consent decree monitor does not just oversee implementation of changes to a law enforcement organization. They also oversee the operations of their own organization: the monitoring team. A monitor must manage monitoring resources—including people, time, and financial resources—effectively and efficiently. A monitor must strive to assign work, direct staff meetings, and distribute responsibilities in a way that aims to maximize the quality of the monitoring team’s work while reflecting a jurisdiction’s resource realities.

Similarly, although a monitoring team does not directly manage the operations of the police department or city, the consent decree, the monitoring plan, and the monitor’s ongoing

involvement may have direct or indirect budgetary or resource implications for the department and city. For instance, an hourly meeting each week with representatives of the jurisdiction, DOJ, and monitoring team may take police department personnel who participate away from other important duties—requiring them to be compensated overtime for the additional work or for those duties to be assigned elsewhere, possibly with similar implications. Likewise, when a monitoring team is considering proposals for meeting officer training requirements, they will need to consider the monetary costs of having officers participate in in-person training—as, typically, departments paying for an officer to be in training still have to pay *another* officer to provide the standard patrol or other services that the officer training cannot on that day. Similarly, in decrees where departments must log new information about some aspects of police performance in a computer system, a monitor may need to weigh and discuss with the parties the resource as well as the substantive implications of the department upgrading or modifying an existing system—even if it operates less elegantly or ideally—rather than implementing an entirely new system.

Another resource management issue relates to project efficiencies that the monitor, often working with a monitored jurisdiction and city, can help to realize. Specifically, in many circumstances, advance planning and creative problem-solving can help ensure that consent decree stakeholders have what they need to do their work without duplicating efforts or expenditures.

One primary strategy that a monitoring team should explore to realize efficiencies relates to the provision of information. Subject to some express limits, consent decrees generally allow a monitoring team to access any of a department’s data, information, files, or materials. Instead of the monitoring team repeatedly requesting information from the police department or city, and forcing individual employees to spend what could be significant time collecting

82 August 2021 DOJ Memorandum at 4.

83 *Id.*

hard copies of information, generating print-outs from computer systems, or scanning data, a city and jurisdiction can—with their information technology professionals—explore giving monitoring team members direct, remote access to departmental data systems. This up-front work to create monitoring team credentials and train team members on how to access systems can create enormous savings over the life of the decree. It should be noted that, even as a decree gives access to information, monitoring team members may be required to complete background checks and a certification process so that the law enforcement agency can comply with the Federal Bureau of Investigation’s Criminal Justice Information Services (“CJIS”) regulations or similar state law requirements.⁸⁴

Finally, as this guide has discussed briefly elsewhere, monitors and monitoring teams should work to develop mechanisms for ensuring that members of the team are involved substantively and effectively in consent decree work without necessarily involving all team members in every task, activity, or meeting. One mechanism that many monitoring teams have used is convening regular (weekly or bi-weekly) internal conference or video calls with all team members to address the status of implementation, progress under the monitoring plan, and any issues or problems that decree implementation may be facing. Likewise, many monitoring teams convene periodic, in-person meetings across the team to conduct internal work and have necessary discussions about consent decree topics. These periodic, scheduled opportunities for internal monitoring teamwork can allow team members to know about what is going on across areas, topics, or tasks without needing to be involved

in every workstream or each and every meeting with the law enforcement agency, city, and/or monitoring team.

E. Ethics and Integrity

The topics of ethics and integrity arise repeatedly in this guide. Because monitors are independent agents of the court, and because the value of a monitor resides in large part in their ability to be fair and impartial, a monitor and their team must act ethically and with a high degree of integrity at all times. For members of a law enforcement agency, elected officials, community members, and others to trust a monitor and their team’s substantive determinations about whether a department has

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As a general guide, monitors and their teams should adhere as closely as possible to the Code of Conduct for United States Judges⁸⁵—the ethical guidelines that all federal judges must follow. Although they should adhere to all requirements reasonably implicated by the law enforcement monitoring function,⁸⁶ monitors should be especially mindful of the duties regarding:

- Integrity and fairness.
- Avoiding impropriety and the appearance of impropriety, including any real or perceived conflicts of interest.
- Fairness, impartiality, and diligence, including fidelity to the law without regard to “partisan interests, public clamor, or fear of criticism”.
- Being “patient, dignified, respectful, and courteous”.
- “Diligently discharge[ing] administrative responsibilities.”⁸⁷

84 Federal Bureau of Investigations, Services, *Criminal Justice Information Services (CJIS)*, <https://www.fbi.gov/services/cjis>.

85 U.S. Courts, Code of Conduct for United States Judges (Mar. 12, 2019), <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.

86 Many of the parameters of Canons 1, 2, and 3 of the Code of Conduct are directly applicable to the day-to-day activities of a monitor and incorporate many of the attributes and responsibilities that this report highlights. Because monitors are not members of the court, but instead agents of the court, parameters in Canons 4 and 5 regarding extrajudicial and political activities may be less relevant to a monitoring position.

87 U.S. Courts, Code of Conduct for United States Judges, Canons 1–3 (Mar. 12, 2019), <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.

done what a decree requires, the monitoring must not be compromised by partiality, conflicts of interest, a lack of professionalism, or other issues relating to basic integrity and fairness.

As noted previously, new monitors and their teams can benefit from a formalized presentation regarding legal and/or judicial ethics. The judge overseeing the matter, local law school professors, or bar association representatives may be helpful in providing training and orientation on ethical responsibilities.

E. Handling Critical Incidents Occurring During the Consent Decree

Over the life of a consent decree, it is very likely that a significant incident involving the law enforcement may occur. This might include an officer-involved shooting, another significant use of force, or an incident that involves a large response or deployment of law enforcement resources. It may include high-profile incidents or situations that arrive within the law enforcement agency (e.g., media reports about a police department issue, controversy about social media posts from a department employee, etc.).

Questions surrounding the role of a monitor in these critical incidents frequently arise. How, if at all, should a monitor be notified about a significant incident? How, if at all, should a monitor respond? How, if at all, should a monitor retain real-time awareness of how the investigation or resolution of an incident is proceeding?

These questions implicate issues surrounding the role of the monitor. On the one hand, the monitor principally concerns themselves with *systemic* compliance with the decree—compliance across time, cases, incidents, and officers and the functioning of systems and processes that ensure such compliance. A monitor becoming too focused on one incident or circumstance detracts from this broader, comprehensive charge. Additionally, a primary role

of a monitor also is to monitor, evaluate, and audit performance. If a monitor actively intervenes in or substantially influences the agency taking particular actions in a case, investigation, or incident, the agency cannot demonstrate to the monitoring team that they are capable of doing it themselves—because the monitor’s involvement has left no room for the law enforcement agency to comply without the monitor’s involvement.

At the same time, law enforcement personnel, a jurisdiction’s representatives, and community members can find a monitoring team’s unwillingness to be involved in real-time to be frustrating and counterproductive. If the monitoring team is aware of what good performance would be in a given situation, a monitor may be well-equipped to provide guidance, counsel, and technical assistance to a department that allows it to comply with the decree in those circumstances. Especially in critical incidents, where the gravity of the situation may be especially significant, a monitor *not* being involved in some way can frustrate the collaborative tone that monitors should foster. The monitor not being involved or being aware of major incidents may likewise erode the confidence of the public or rank-and-file officer in the monitor.

In short, a tension exists between the monitoring team providing real-time technical assistance and letting the monitored agency demonstrate compliance and/or handle an acute situation without interference. Depending on the situation, the stage of consent decree compliance, and other practical factors, monitors may want to engage more or less closely.

Some consent decrees provide some specific, if limited, guidance on these issues.⁸⁸ Consequently, it will be useful for the monitoring team and parties to develop an understanding at the outset and adhere to protocols during the pendency of the decree about how the monitoring team will and will not be involved in critical incidents. This may include developing expectations surrounding:

88 *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶¶ 483–84 (Jan. 12, 2017).

- ***Setting expectations with the monitored agency and jurisdiction.*** Some consent decrees have contained specific protocols, or required the creation of specific protocols, for the law enforcement agency to follow in the wake of critical incidents like officer-involved shootings or significant uses of force. Even where not expressly required, such protocols are useful. Importantly, these protocols should address both (a) when and how a law enforcement agency may notify the monitor about a significant event, and (b) when, about which topics, and how a monitoring team may respond, which may vary substantially depending on the issues that a decree addresses.

For instance, in some decrees, law enforcement agency representatives notify a designated monitoring team member whenever serious force occurs, and monitoring team members go to the scene of the incident in an observational capacity to understand how the agency and its personnel are responding. For this to work, all involved stakeholders need to understand what access to a scene the monitor may have and how responding monitoring team members may or may not be involved.

Established protocols must strike a balance between involving the monitoring team and ensuring that they have access to audit agency performance and the ability to give technical assistance as appropriate but not to take over decision-making authority such that the law enforcement agency cannot demonstrate good performance and/or consent decree compliance on their own.

Protocols should also address how a department may provide ongoing or continuing updates to the monitoring team about in-progress investigations or unfolding incidents. For example, for an officer-involved shooting, protocols may address not simply how a monitoring team might observe initial investigators at the scene but receive ongoing, substantive updates from departmental representatives as the investigation progresses. When establishing these protocols, monitors should be mindful of balancing the burdens

that receiving ongoing updates can place on a department, particularly during high-profile events, with the monitor's need to understand how critical situations are developing.

- ***Setting expectations with the community.*** Community members often assume—and indeed may want—a consent decree monitor to have a direct role in investigating critical incidents and complaints or an ability to intercede directly in departmental decision-making about officer discipline. As this guide discusses at several points, an actively involved monitor still does not ultimately run the law enforcement agency, conduct their own investigations in place of the law enforcement agency, or impose discipline. Instead, they oversee and monitor what the law enforcement agency is doing in these dimensions to ensure that its overall performance is lawful and consistent with the requirements of the consent decree. This oversight-oriented, rather than administrative, charge is something that a monitoring team and all consent decree stakeholders must emphasize in discussions with community members.

- ***Setting expectations with stakeholders and the court about how critical incidents may be addressed in reports or filings.*** Depending on the nature of the critical incident, it may be necessary or useful for the monitoring team to report (e.g., in a court hearing, via a special or standalone written report, or as part of a regular monitoring report) on their observations or findings related to a particular incident. For example, a high-profile officer-involved shooting that is the subject of significant community attention might be the subject of a standalone appraisal at the conclusion of a force investigation.

A monitor reporting on specific incidents might be particularly important or useful when there is widespread public interest in an incident that may affect community confidence in the decree process, when the department's performance in a situation indicates systemic problems that may warrant immediate redress, or where the nature of

the incident is important but relatively rare (e.g., a monitored agency's handling of a large event or protest or the monitored agency's response to a mass casualty event).

Consent decree stakeholders and the judge benefit from having discussed, in advance, when monitoring team appraisal of individual, critical incidents—outside the context of a more systematic, structured evaluation or assessment, of the sort discussed in Section VI—may be appropriate.

G. Resolving Disputes and Addressing Sustained Non-Compliance

Disagreements and disputes often arise during decree implementation. Consent decrees may outline specific processes for resolving issues with proposed policies, plans, training, or similar items. However, if the decree is silent on the issue, and across many other decisions or topics that may arise, the monitoring team may need to help facilitate a process to address the divergence of views and determine a course of action.

To foster collaboration in consent decree implementation, the monitoring team, monitored law enforcement agency and jurisdiction, and DOJ representatives should ideally agree to flag problems, concerns, issues, or differences of opinion as early as possible, directly, and respectfully. That is, if a law enforcement agency indicates that it is developing a policy in a way that the monitoring team believes will not be sufficient under the decree, they should communicate with consent decree stakeholders directly. Critically, the monitor may propose some alternative courses of action that they believe may satisfy the decree.

Monitoring teams should consider deploying a variety of practices related to mediation and dispute resolution. Even as they attempt to avoid an impasse through informal mechanisms, they should update

the court about developing points of disagreement so that they might, as necessary, directly and substantively involve the court.

A collaborative process for addressing disagreement is the best approach. However, where a collaborative decision cannot be reached, and especially if the consent decree does not direct otherwise, it may be up to a monitor to make a clear and final decision, with the parties then able to challenge the decision with the court. Alternatively, a monitoring team may need to proceed along consent-decree-required dispute resolution processes or, instead, involve the court. The involvement of the court itself could be informal, such as by convening the parties in chambers for a private meeting to talk about the issue, or formal, which might include the jurisdiction, DOJ, and monitoring team making filings describing the issue and articulating positions and/or holding a hearing on the matter. In many instances, a court will either firmly direct stakeholders to take a certain direction or even order a course of action. Regardless of the formal mechanisms in place for addressing disagreements, monitors should, consistent with their core responsibilities, make all reasonable efforts to settle disputes without necessarily or automatically involving the court.

The next section of this guide addresses how a monitored jurisdiction and agency's progress toward compliance may be measured. Enduring changes will typically take a jurisdiction and law enforcement agency some duration of time to implement, and rate of progress may ebb and flow over a decree's span. A monitor and court should not, and the provisions of decrees typically do not, expect that a monitored jurisdiction and agency will comply immediately with everything overnight. However, because a consent decree is a court order, the court retains all of its powers with respect to enforcing its order. If a police department or agency fails to progress over a material span of time, a court could issue supplemental orders—up to and including civil contempt sanctions—to ensure that the decree is fully implemented.



VI. MEASURING AND DETERMINING COMPLIANCE

A foundational task—and, some might argue, the most critical task—for a monitor is assessing compliance. That is, a monitor must independently evaluate whether the monitored law enforcement agency and jurisdiction are doing what they said they would do in the consent decree. In some ways, the monitor serves as a neutral, external expert who does not merely evaluate claims or evidence from the law enforcement agency, city, or DOJ about where things stand but actually conducts independent assessments that measure progress and determine the state of compliance.

The jurisdiction and its law enforcement agency must ultimately demonstrate compliance with the requirements of the consent decree. The end of the consent decree typically occurs when the jurisdiction meets those requirements and has sustained that compliance for an identified period of time—and the court overseeing the decree determines that there is sufficient evidence that the decree's requirements have been met.

It would likely take a separate guide to explore more fully the many considerations that surface when addressing what compliance is, how compliance may be measured, and when particular measurements may or may not be sufficient to demonstrate compliance. This section serves to provide an inventory of major issues and some of the approaches that jurisdictions and monitoring

teams to date have found useful when it comes to measuring and determining whether a monitored agency and jurisdiction have complied with a law enforcement consent decree.

Considerations and discussions among stakeholders about the definition of compliance, how specifically compliance will be assessed, and the standards for determining what performance is or is not “in compliance” should not wait. Early alignment on how progress will be measured promotes transparency, accountability, and efficiency.

A. What Is Compliance With a Consent Decree?

1. Compliance with the Whole of the Decree

In one sense, the answer to “what is compliance?” or “when does a consent decree end?” is straightforward: when the monitored agency and jurisdiction can demonstrate that they meet the decree’s own definition of compliance. Although decrees use different terms (“full and effective compliance,” “substantial and effective compliance”) and varying wording to explain those terms, ultimate compliance with a decree typically requires sufficient evidence that the agency and jurisdiction have done what they said they would do—not superficially or technically but in reality and ongoing practice. For instance, in the consent decree involving the City of Newark:

‘Full and Effective Compliance’ will be defined to require sustained compliance with all material requirements of this Agreement and sustained and continuing improvement in constitutional policing, as demonstrated pursuant to the Agreement’s outcome measures, all as determined by the Court.⁸⁹

In the consent decree involving the City of Baltimore, “full and effective” compliance is achieved when the city and police department can:

[D]emonstrate that they have (a) incorporated all Material Requirements of this Agreement into policy, trained relevant personnel as necessary to fulfill their responsibilities pursuant to the material requirements, and ensured that each material requirement is being carried out in practice; and (b) shown sustained and continuing improvement in constitutional policing as demonstrated by the Agreement’s Outcome Assessments.⁹⁰

Regardless of the specific definition, a showing of “full and effective” or “substantial and effective” compliance is generally a demonstration that the monitored agency and jurisdiction has complied with all of the numbered paragraphs of a consent decree and the requirements they contain.

2. Compliance with Individual Requirements or Parts of the Decree

Practically, “full and effective” compliance with the whole of a consent decree will not happen overnight or all at once. For one thing, as implementation proceeds according to monitoring plans, some specific paragraphs of the decree or even large decree sections (covering major substantive areas like use of force, supervision, or misconduct investigations) may be fully implemented in practice before others. For another, the full implementation of some requirements may depend on other, related decree requirements. For instance, the implementation of a policy in practice—in the field, across officer interactions and performance—will likely depend on the law enforcement agency’s implementation of training, making the policy fully effective in the field, and collecting adequate information and data to analyze its performance.

⁸⁹ *U.S. v. City of Newark*, Case No. 2:16-cv-01731-MCA-MAH, Dkt. 5 ¶ 223.

⁹⁰ *U.S. v. City of Baltimore*, Case No. 1:17-cv-00099-JKB, Dkt. 2-2 ¶ 506. In other consent decrees, compliance is attained when a jurisdiction either demonstrates compliance with all particular paragraphs and requirements or demonstrates improvements via outcome measurements. See *United States v. City of New Orleans*, Case No. 2:12-cv-01924-SM0-JCW, Dkt. No. 565 ¶ 491 (Oct. 2, 2018).

Consequently, the task of monitors is to assess and summarize the status of compliance across a decree's many individual requirements. Most consent decrees are organized around major subject-matter areas—impartial policing, misconduct investigations and discipline, officer assistance and wellness, or use of force, for example. Therefore, the most logical way of assessing and summarizing compliance status typically is to evaluate and determine progress based on the decree's substantive sections—the enumerated topics, headers, and issues within a decree that contain many specific requirements set forth in numbered paragraphs. In many consent decree jurisdictions, a major substantive area of the consent decree is considered to be “in compliance” when all of the individual paragraphs in that section, and all of its various requirements, have been certified as being effective in practice (typically, in the department and its personnel's regular, ongoing operations across time, cases, incidents, and/or officers). Because individual paragraphs involve requirements of differing import, complexity, and weight, a focus on the state of progress in individual sections generally makes most conceptual sense.

Specifically, it may be useful for monitors and decree stakeholders to think of compliance with each section or material requirement as a process encompassing several possible stages—from the development of policy or initial planning through to complete implementation and initial compliance with the requirement. Communities, law enforcement agencies, and jurisdictions will typically want a regular and ongoing idea of where their efforts put them on the road to compliance—and when they may have, for specific requirements or individual paragraphs, managed to comply with them in practice even as other provisions are still being implemented.

Although many prior decrees have not provided them, many consent decree stakeholders and monitors have found that creating a working “implementation status scale” or “compliance grading” system can be useful to capture where a department's progress stands in the period where it is working to come into “full” or “substantial and effective” compliance with the decree as a whole. For example, the team monitoring the

consent decree involving the City of Cleveland and the Cleveland Division of Police categorizes the state of compliance with individual requirements of the decree along the following scale:

- **Non-Compliance.** The City or Division has not yet complied with the relevant provision of the Consent Decree. This includes instances in which the City or Division's work or efforts have begun but cannot yet be certified by the Monitoring Team as compliant with a material component of the requirement.
- **Partial Compliance.** The City or Division has made sufficient initial strides or sufficient partial progress toward compliance toward a material number of key components of the provision of the Consent Decree—but has not achieved operational compliance. This includes instances where policies, processes, protocols, trainings, systems, or the like exist on paper but do not exist or function in day-to-day practice. It may capture a wide range of compliance states or performance, from the City or Division having taken only very limited steps toward operational compliance to being nearly in operational compliance.
- **Operational Compliance.** The City and/or Division has made notable progress to technically comply with the requirement and/or policy, process, procedure, protocol, training, system, or other mechanism of the Decree such that it is in existence or practice operationally—but has not yet demonstrated, or not yet been able to demonstrate, meaningful adherence to or effective implementation, including across time, cases, and/or incidents. This includes instances where a given reform is functioning but has not yet been shown, or an insufficient span of time or volume of incidents have transpired, to be effectively implemented in a systemic manner.
- **General Compliance.** The City or Division has complied fully with the requirement and the requirement has been demonstrated to be meaningfully adhered to and/or effectively implemented across time, cases, and/or incidents. This includes instances where it can be shown that

the City or Division has effectively complied with a requirement fully and systemically.⁹¹

A separate, but largely similar, way of categorizing progress by the City of Baltimore and the Baltimore Police Department on specific provisions or requirements was established among stakeholders and the monitoring team:

0 — Not Assessed: The Monitoring Team has yet to assess if the City/Department has made progress or complied with the requirement.

1 — Not Started: The City/Department has not yet demonstrated progress toward implementing the requirement, possibly in order to work on other, necessary projects.

2 — Planning/Policy Phase: The City/Department is addressing the planning and/or policy provisions for the requirement.

3 — Training Phase: The City/Department is addressing the training provisions for the requirement, based on approved policy.

4 — Implementation Phase: The City/Department is in the implementation phase for the requirement, having developed any required plan or policy and conducted any required training, but has not yet demonstrated compliance with the requirement.

4a — Implementation - Not Assessed: The City/Department has initiated the implementation phase for the requirement, but the Monitoring Team has not yet assessed the City/Department's progress in implementation.

4b — Implementation - Off Track: The City/Department is not making satisfactory progress toward compliance with the requirement.

4c — Implementation - On Track: The City/Department is making satisfactory progress toward compliance with the requirement.

4d — Implementation - Initial Compliance: The City/Department has demonstrated compliance with the requirement but has not yet demonstrated compliance with all requirements of the section of the Consent Decree in which it is included.

5a — Full and Effective Compliance: The City/Department has demonstrated compliance with all requirements in a Consent Decree section but has not yet sustained compliance for the time period specified in paragraph 504 of the Consent Decree. This score applies only to an entire Consent Decree section, not to individual requirements within a section.

5b — Sustained Compliance: The City/Department has demonstrated sustained compliance with all requirements in a Consent Decree section by consistently adhering to all such requirements for the time period specified in paragraph 504 of the Consent Decree.⁹²

These and other classification schemes provide a way of summarizing or characterizing work in progress. It can be especially important for a monitoring team to adopt some mechanism of ensuring that—beyond broad characterizations in the text of a public progress report—personnel in the department see that their work is having a positive impact in working toward compliance, community members are able to identify what is changing under the decree, and city stakeholders understand where specific work or support may be necessary going forward to continue progress.

An important implication of this approach—consistent with most consent decrees to date—is that all requirements of the decree must be meaningfully and practically implemented in the field for the agency and jurisdiction to reach compliance. Thus, although some decrees for the sake of simplicity include requirements that a department revise or implement a policy to include particular provisions, the successful completion of the policy is, by itself,

91 Cleveland Police Monitoring Team, *Eleventh Semiannual Report* (Sep. 2022), https://leknowledgegelab.org/wp-content/uploads/2023/11/1663894885941EleventhSemiannualReport_FINALFULL-compressed.pdf.

92 Baltimore Police Monitoring Team, *Compliance Review & Outcome Assessment Regarding Use of Force* (Dec. 21, 2022), <https://leknowledgegelab.org/wp-content/uploads/2023/11/BPD-UseofForceAssessment-12.21.22.pdf>.

insufficient to demonstrate that the requirement has been made effective *in practice*. For a requirement that an agency draft a policy, create a new process, create a new training curriculum, or accomplish some other task that requires the completion of work on paper, compliance turns on whether that paper has been turned into practice—as evidenced across time, cases, people, incidents, and/or encounters. And this is true regardless of whether each and every consent decree paragraph involving “paper” specifically expresses the requirement that the “paper” be implemented. Of course, as discussed further in this section, compliance requires not perfection but, rather, that the evidence, considered as a whole, demonstrates that the requirements of the decree are being adhered to in practice on a systemic level.

B. Methods for Determining Compliance with Specific Decree Requirements

1. General Approaches

Consent decrees tell monitors that law enforcement agencies and jurisdictions must not merely assert that decree requirements are effective in theory or on paper but, instead, must demonstrate that requirements have been effectively implemented in practice. However, decrees may say relatively little, if anything, about *how* an agency’s performance can be demonstrated to be sufficiently sustained, effective in practice, and/or continuing to constitute compliance. On the question of *how to determine* when a law enforcement agency or jurisdiction has moved from still working on a requirement to having in fact complied with the requirement, consent decrees are highly unlikely to spell everything out. The primary reason is that the methodologies that can be used will depend in large part on the particular requirements of the policies put into place under the decree, the data required and available to assess compliance, and potential technology solutions established as part of the decree—all of which involve details that will be addressed during the decree implementation itself. In this way, comprehensive methodologies often cannot be determined at the time that a consent decree

is negotiated between the DOJ and a monitored jurisdiction because those methodologies depend on what happens as the decree itself is implemented.

That is, decrees often do not specify precisely what level of performance establishes that something *is* effective in practice versus what level of performance does *not* establish that something has become effective in practice. Similarly, they are unlikely to spell out exhaustively all of the tests, inquiries, or types of data analysis that a monitor may need to conduct to get at the central questions of whether the monitored agency and jurisdiction is or is not adequately and actively fulfilling the various requirements of the decree.

A primary task of a monitoring team, then, is to establish, in consultation with the monitored jurisdiction, monitored agency, and DOJ, methodologies for determining compliance. Some approaches for figuring out whether a law enforcement agency is in compliance with a decree are unlikely to be sufficient:

- **Defaulting to the monitor’s ill-defined sense of compliance.** One approach to consent decree oversight is to ground a compliance determination on the monitor’s expertise—leaving the monitor to assess progress and determine whether the law enforcement agency is in or out of compliance based on unclear, insufficiently transparent, and/or insufficiently rigorous methodology. This approach positions the monitor as an expert who makes a determination about compliance based on unspecified, or insufficiently detailed, factors, approaches, or methodologies. The monitor may simply assert that, based on their knowledge and work on the decree, it appears that the agency or jurisdiction is or is not in compliance—citing a constellation of reasons or evidence. This type of approach has sometimes been criticized as “wise person,” “finger-in-the-wind,” or “I-know-it-when-I-see-it” monitoring because it appears to ground the compliance determination in a single person’s subjective impressions rather than transparent, objective criteria.

This type of monitoring—in which *how* compliance is determined remains vague and amorphous—is usually unsatisfactory, for at least a few major reasons. First, as noted, it is insufficiently transparent. If law enforcement agency personnel, jurisdiction stakeholders, and community members cannot see and understand, for themselves, what is going into a determination that police are or are not doing what they should, they are unlikely to defer automatically to the judgment of monitors—especially when conclusions about progress may differ from individual experiences or views. Indeed, a central pillar of procedural justice—which many consent decrees expressly address—is that “decisions are . . . guided by transparent reasoning.”⁹³

Second, the approach differs from what is expected in other kinds of court proceedings, where judges and their agents apply standards and rules to evidence that comes before them. If monitors make a determination about compliance based on ill-defined parameters, community stakeholders—including the law enforcement agency—are unlikely to accept the determination.

Third, consent decree compliance requires the ongoing efforts of law enforcement personnel, including those at the top of the organization and patrol officers alike. If law enforcement agencies do not have some idea about how their performance will be assessed, they are unlikely to be as effective and efficient in guiding their practices to meet those aims—and may well become discouraged by the sense that they are seeking to travel somewhere unclear and uncertain. At the same time, if monitors can provide more clarity about how progress may be evaluated, monitored agencies can take a more direct, efficient path to get there.

Finally, most decrees expressly contemplate that changes made should, and will, endure long after monitoring and the decree have concluded. Reforms are intended to be sustainable and operationalizable—establishing a new way for

a law enforcement agency and its officers to perform their duties. If law enforcement agency and jurisdiction personnel do not understand how they can continue to assess their own performance, long after the monitor and court are gone, to ensure continued adherence to lawful policing practices and ongoing progress, sustainable change is far less likely. A monitor who does not articulate the basis of their decision-making does not cultivate this type of enduring change.

- ***Setting overly rigid performance thresholds.***

Another approach that can encounter challenges goes in the opposite direction. Using a “mechanical approach,” some monitors try to rigorously identify, and where possible quantify, the level of performance that a department must reach to come into compliance on a specific requirement. Essentially, monitors establish bright-line rules where performance that meets a certain measure is definitively “in compliance” while performance that does not meet the measure cannot be “in compliance.”

For instance, a monitor might tell a department that it will reach compliance if, and only if, it reaches a certain percentage score across every provision of a consent decree. Then, when the agency manages to meet all of the many specific benchmarks, the department has successfully complied with the whole of the consent decree.

The mechanical approach solves the problems outlined above with deference to a monitor or court that rely on a vague or amorphous sense of compliance. It does so by firmly identifying a performance benchmark that the monitored agency must meet. Law enforcement personnel, community members, and others working on the consent decree can understand how compliance will be assessed and precisely what level of performance is necessary to get there.

A significant problem can arise, however, when monitors set overly rigid or precise performance benchmarks—a certain percentage of incidents

complying with a given requirement, a particular volume or number benchmark needing to be met in some area—because those benchmarks might omit a number of important complexities.

For instance, a department where the monitor reviews a number of force incidents and determines that officers are complying with a decree-required force policy in a high percentage of all incidents may, viewed one way, look like it is in compliance. Whether in schools or a product or movie review, a high percentage is a high score. It may seem, at the outset, fair and plausible that a department that demonstrates compliance with a given consent decree requirement in a sufficiently high percentage of cases, incidents, or encounters should be considered as complying with that requirement.

However, every compliance percentage threshold short of 100% will still mean that some number of incidents are non-compliant. Is compliance appropriate if a small but identifiable number of force encounters involve force that is *not* consistent with policy? What if officer performance was particularly problematic or significant in those small number or percentage cases? What if the cases where force was inappropriate were encounters where a subject died or was seriously injured? Can a department be in compliance with a decree if a limited but observable number of cases involve serious deviations from what that decree requires?

Additionally, suppose a monitor sets a percentage compliance threshold for the consent decree requirement regarding officer force. Further suppose that, instead of reaching that identified percentage, the department in multiple evaluations demonstrates compliance with decree requirements on the use of force policy just short of the threshold (say, by a percentage point). Also suppose that, across all of the non-compliant cases, the monitored law enforcement agency identified poor performance and imposed discipline or other appropriate corrective action.

If the monitor sets a rigid performance threshold that must be met, the fact that the agency failed to meet the identified percentage or number is dispositive—and the potentially highly salient fact that the department caught and addressed deficient performance on its own does not enter the compliance equation.

Ultimately, the application of rigid performance thresholds makes it far more challenging for the monitor to consider any of a number of factors—including the gravity or severity of a smaller number or portion of non-compliant instances, whether the department identified and addressed problematic performance, and the nature of the department's progress over time—that are likely highly relevant to determining if the monitored agency has successfully implemented a consent decree's reforms. For all of these reasons, more-recent consent decrees have cautioned that “[n]o specific numerical test shall be required to demonstrate Full and Effective Compliance”⁹⁴

The two approaches above represent, then, two extremes when it comes to methodologies for determining compliance—one that essentially devolves the meaning of compliance to be whatever the monitor says it is, and the other that reduces compliance to an overly mechanical exercise in which important context and nuance cannot enter the equation.

Rather than defaulting entirely to the monitor's subjective views, on the one hand, or establishing overly rigid performance benchmarks on the other, monitors and courts should instead decide upon and publicly articulate—as early in the monitoring process as possible—the factors that it will weigh to determine whether a specific decree requirement has reached a state of compliance. This *multi-factor approach*, when specifically described and rigorously applied, can address some of the shortcomings from the two approaches outlined above while providing the monitoring team, monitored jurisdiction and agency, and community with a clear sense of how

compliance determinations will be made.

It should be noted that courts often “apply multi-factor approaches where the application of determinative, bright-line rules are impossible, do not adequately incorporate the array of relevant circumstances at issue, or implicate competing considerations.”⁹⁵ Even if such a multi-pronged weighing of considerations is not as simple as setting a rigid percentage or performance benchmark, it nonetheless streamlines and structures the inquiry such that the monitoring team’s task is to explain how the various factors have, or have not, been met across each consent decree requirement.

To determine if a requirement of the decree has been effectively implemented in practice, a monitor and court will need to consider, at the least, the following critical factors:⁹⁶

1. The nature and quality of the law enforcement agency’s performance across a material span of time, number of incidents/events, and number of officers.

Successfully carrying out a requirement in practice requires more than meeting expectations on one day, in one case or event, or for one officer. Instead, it requires that the agency adhere to decree requirements across a material span of time, number and/or portion of incidents, and number of officers.

In this way, isolated compliance does not establish that the requirement has been effectively implemented in practice. At the same time, however, isolated non-compliance does not, by itself, eliminate the possibility of systemic compliance. Instead, the issue is whether, across time, events, and people, the monitored agency is, in aggregate, sufficiently doing what the decree requires.

For requirements that are applicable only to a relatively small absolute number of incidents or circumstances, performance in a single instance may weigh more significantly than it would in connection with a more commonly implicated requirement. That is, when decree requirements relate to something that does not happen all that often, the agency’s performance in any one circumstance may be more significant than for requirements that apply to many circumstances.

In some jurisdictions, monitors have articulated flexible parameters or presumptions surrounding performance percentages or thresholds. For example, the monitoring team in Baltimore has explained:

As a working standard, the Monitoring Team considers a compliance rate with any relevant requirement of 85% or above as possibly, though certainly not conclusively or even presumptively, consistent with initial compliance. In such instances, the Team weighs the other factors (severity of deviations, [the police department’s] identification of noncompliance, and progress over time). Where the Team determines that [the department] has adhered to expectations in 95% or more of relevant circumstances, initial compliance will be found unless one of the other factors—severity of deviations, Department identification of noncompliance, and progress over the time—starkly point in the other direction.

On the other hand, where [the department] has adhered to expectations less than 85% of the time, initial compliance will not be certified unless one of the other factors points definitively in a positive direction. For instance, if [the department]

95 Baltimore Police Monitoring Team, *Compliance Review & Outcome Assessment Regarding the Use of Force* 28 (citing *Murr v. Wisconsin*, 582 U.S. __ (2017) (adopting a multi-factor test for determining whether governmental regulations effectuated a decline in the value of private property so as to be considered a government taking under the Fifth Amendment); *EBay v. MercExchange*, 547 U.S. 388 (2006) (applying four-factor test to determinations about permanent injunctive relief in disputes arising under the Patent Act); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (articulating three factors for courts to consider when determining whether additional governmental and/or judicial procedures are necessary to satisfy the Due Process Clause).

96 Adapted from Baltimore Police Monitoring Team, *Compliance Review & Outcome Assessment Regarding the Use of Force* 27–28.

complied with requirements in 80% of relevant circumstances but the Monitoring Team could certify that the significance or severity of instances where requirements were not followed was relatively minimal, that [the department] identified and took appropriate corrective action in instances where requirements were not followed, and the Department had made and maintained progress over time, then finding initial compliance with the Decree requirement may be possible.⁹⁷

2. The severity or significance of deviations from consent decree requirements, agency policy, and/or law. A monitoring team and court must consider not simply whether a law enforcement agency's performance has deviated in some instances from the decree's requirements but also the severity or significance of that deviation. Several minor or more technical deviations from administrative requirements may be different in quality than a single significant or gross deviation from core requirements for officer performance in the field. Likewise, deficient performance in connection with less foundational requirements or issues may be different in quality than deficient performance in connection with significant requirements or issues. Simply, a more limited number of major issues may be just as, if not more, significant than a larger number of relatively minor issues.

3. The extent to which the law enforcement agency is identifying and appropriately addressing problematic performance. Consent decrees almost always are concerned with how well an agency manages to ensure, for itself, that its policies, practices, or protocols are followed. Indeed, a law enforcement agency is likely functioning much better, and can be considered to have met requirements more meaningfully in practice, when it identifies and addresses for

itself performance inconsistent with policy or expectations. With respect to consent decree implementation and meaningful organizational change, the agency is in a different condition if a policy deviation is identified and appropriately addressed than if the deviation goes unnoticed and unaddressed. Therefore, a monitoring team must consider whether, when agency or jurisdiction personnel have deviated from policy, law, or decree requirements, the monitored agency or jurisdiction has identified the deviation and, if so, whether it has appropriately addressed the issue.

4. Progress over time. Where possible, a monitoring team should evaluate an agency's performance in terms of progress over time. Steady improvement may suggest positive, meaningful adoption of consent decree requirements in a way that erratic swings in performance over time may not.

To weigh various, defined factors in a systematic, transparent way, monitors need to measure such factors rigorously and systematically. The following sections discuss how a monitoring team might conduct such assessments.

2. Evaluating and Measuring Compliance: Compliance Reviews and Outcome Assessments

For any clear standard of compliance to be applied—such as the major factors outlined above—a consent decree monitor will have to evaluate or measure both rigorously and transparently the monitored law enforcement agency's performance. That is, monitors have to analyze and assess the nature and quality of the agency's performance, how significant instances of non-compliance are, whether it is identifying and addressing issues, and its progress across time.

Specifically, a consent decree monitor typically conducts two types of assessments: compliance reviews and outcome assessments. Indeed, many

consent decrees use these terms and specify the roles, nature, and required frequency of conducting these assessments. However, even where a decree does not formally use the terms, any monitor evaluating compliance is likely to conduct assessments of both types.

A. COMPLIANCE REVIEWS

Consent decrees contain, as this guide notes elsewhere, a set of remedial measures aimed at eliminating unlawful patterns or practices in law enforcement agencies. These substantive requirements are things that the monitored jurisdiction and the DOJ agree are critical to ensuring that the law enforcement agency's performance in the future routinely meets constitutional and federal law standards.

For example, several police agencies have created an internal police body, often called a force review board or something similar, to examine use of force incidents for tactical, training, resource, supervision, and other issues that may be implicated. No federal law or legal precedent necessarily requires the use of such boards. It could be possible for officers to lawfully use force in practice without their agency maintaining a force review board. However, because a number of jurisdictions have found that this structure is useful in preventing unconstitutional force and promoting a culture of critical self-analysis and continuous improvement, decrees have often required them as one of many changes geared toward ensuring the lawful use of force.

Compliance reviews look at whether the law enforcement agency has in fact implemented each of the decree's specific requirements, rather than if the requirement has achieved a desired outcome of the agreement, such as a reduction in the use of unconstitutional force. They examine whether the decree's particular provisions—its many substantive requirements and numbered paragraphs—have been implemented successfully in practice. They focus on whether the particular reform measures, from

changes in policy and training to the adoption of new processes and data requirements, that the decree requires have been meaningfully implemented. These compliance reviews therefore focus on whether the decree requirements have been translated from theory (the future-oriented requirements of the decree) and paper (the distillation of decree requirements into policies, operational or procedural manuals, plans, law enforcement training curricula, etc.) into actual practice within the law enforcement agency. Some of these determinations may be relatively straightforward (e.g., whether Internal Affairs is housed in a distinct building, whether public complaint forms are available in various languages specified by the decree). Others may be relatively more complex (e.g., whether the agency is adhering to specific requirements for internal affairs investigations, whether the agency is successfully avoiding the discouragement of any members of the public wanting to make a complaint).

B. OUTCOME ASSESSMENTS

Even as compliance with the technical requirements of the decree are important, they do not amount to much if identified, tangible outcomes are not achieved. For instance, a law enforcement agency that maintains a use of force review board of the type described above may still have officers using force inappropriately, unlawfully, and/or contrary to the agency's policy in the first instance. Consequently, monitors need to measure not simply whether the agency is adhering to individual technical requirements of the decree but also whether progress on all of those technical requirements is adding up to a meaningful difference and "overall beneficial effect"⁹⁸ in terms of the department's performance and outcomes in the field.

Outcome assessments are "designed to determine whether the reforms required by the Consent Decree are having a tangible, measurable impact [overall]—whether, independent and apart from [the department's] progress toward compliance with [any

specific] Consent Decree requirements, policing is changing in the real world.”⁹⁹ Assessing outcomes focuses not on particular decree paragraphs or provisions but, instead, on gauging how a law enforcement agency’s performance, out in the real world across encounters and interactions, may or may not be changing. Thus, a monitor evaluating progress under a decree that addresses force may be interested in evaluating, among other things, trends in the number of force incidents, types of force used, officer and subject injuries, and other areas. Other examples of outcome assessments include:

- To assess whether . . . officers conduct Searches, Frisks, and Strip Searches consistent with constitutional requirements and the provisions of this Agreement, the Monitor will conduct analysis of data showing:
 - ♦ The rate at which Frisks result in officers recovering a weapon.
 - ♦ The rate Searches yield evidence of illegal weapons or contraband.¹⁰⁰
- To gauge officer and department outcomes with respect to interactions with individuals in crisis, “collecting and analyzing . . . data, trends, and patterns” relating to:
 - ♦ [The] number of calls for service and incidents that appear to involve an individual in crisis . . . and the rate of individuals in crisis directed to the healthcare system, rather than the judicial system.
 - ♦ [The] number of police interactions where force was used on individuals in crisis, including the type of force used; [and] the reason for the interaction. ”¹⁰¹

More-recent consent decrees have tended to inventory specific outcomes that the monitoring team must measure. At the same time, members of the law enforcement agency, the community, elected officials, and civic leaders will often advance discrete

and tangible outcomes that they hope or expect to see as a result of the consent decree. Consequently, the process of assessing outcomes must adhere to the requirements of the consent decree but can be open to measuring outcomes—and using processes for conducting such measurements—that consent decree and community stakeholders propose. Indeed, many consent decrees include language clarifying that listed outcome assessments are not intended to be exhaustive (“including, but not limited to”) or providing mechanisms for additional outcome assessments to be measured.¹⁰²

For example, not every consent decree has required monitoring teams to analyze and report on subject injuries and officer injuries during use of force incidents. However, for community members and law enforcement personnel, the extent to which decree-required approaches to using force are impacting the health and well-being of individuals in the real world is a critical outcome that can shape views about how well the decree is shaping policing in the jurisdiction. Consequently, several monitors—in the course of conducting compliance reviews and outcome assessments on force—have reported on injury outcomes in force encounters, even when the decrees did not explicitly require it.

Of course, monitors do not have the authority or ability to invent new, or reject existing, decree requirements. Some decrees make the demonstration of improved policing through outcome assessments a requirement for overall compliance. Others specify outcome assessments that the monitor should conduct and weigh. To the extent that community stakeholders participating in the consent decree process identify additional outcomes that may be important in helping them gauge whether the law enforcement agency is meaningfully addressing community needs, and the monitoring team and parties agree that measuring such outcomes may be useful, then reporting on those outcomes may be

99 *U.S. v. City of Baltimore*, Case No. 1:17-cv-00099-JKB, Dkt. 279-1 at 22–23.

100 *Id.*, Dkt. 2-2 ¶ 459(f).

101 *U.S. v. City of Cleveland*, Case No. 1:15-cv-01046-SO, Dkt. 7-1 ¶ 367(b).

102 *United States v. Police Department of Baltimore City*, Case No. 1:17-cv-00099-JKB, Dkt. No. 2-2 ¶¶ 457 (Jan. 12, 2017).

an especially important way to link consent decree work to the tangible concerns of a jurisdiction's communities.

3. Evaluating and Measuring Compliance: Qualitative, Quantitative, and Mixed-Methods Approaches

A monitoring team will almost always have to conduct both quantitative and qualitative evaluations or inquiries to assess a department's performance. Compliance reviews are more likely to have a significant *qualitative* component in which monitoring team experts evaluate, audit, and analyze officer and departmental performance to determine whether the agency is making progress. Frequently, this type of qualitative research involves monitoring team members using their expertise to evaluate whether the agency's officers, or the department overall, adhered to its policies, protocols, or consent decree requirements. Outcome assessments are more likely to be *quantitative*—involving the analysis of overall data on officer and departmental performance. However, as the following sections stress, many compliance reviews also have a distinct quantitative element, and many outcome assessments may have a qualitative component.

The following sections provide some basic guidance on the types of inquiries that monitoring may demand. It cannot, however, cover the full array of possible methods, implicated issues, and complexity that may be a part of structuring sound and rigorous compliance reviews and audits. Accordingly, it is particularly important to reiterate this guide's prior recommendation to include members on the monitoring team who have significant expertise in statistics, data analysis, and social science.

A. QUANTITATIVE ASSESSMENTS

"[Q]uantitative research methods use standardized procedures for data collection, and deal in terms of numbers, frequencies, and calculations

for understanding the significance of the data collected."¹⁰³ To this end, "quantitative numbers are interested in numbers as answers to questions like 'how many?,' 'how frequently?,' 'how similar?,' and 'how different?'"¹⁰⁴

In the consent decree context, quantitative assessments typically focus on analyzing overall, aggregate data that the law enforcement agency collects. In day-to-day usage, the concept of "data" has sometimes been reduced to something that is impersonal or divorced from the lived experiences of individuals. At least in the concept of consent decrees, the analysis of data is a way of ensuring that all of the actual, lived experiences of community members and law enforcement officers of a certain kind can be considered and, in a literal sense, counted.

For example, in a consent decree with requirements that officers de-escalate situations before using force, an outcome assessment or compliance review may investigate overall trends, across all force cases in a given time period, with respect to the frequency of force, the type of force used, how frequently subjects and officers are injured in force incidents, or others. Even if consent decrees involving use of force typically do not necessarily require that law enforcement use force less overall, instead focusing on ensuring that police use force lawfully when they do deploy it, a reduction in a department's use of force incidents over time may—especially if occurring without significant increases to subject or officer injury—be consistent with officers resolving more incidents in ways other than through the use of force. Analyzing information across all uses of force in a given period helps to ensure that all of the experiences of officers and individuals who were involved in force incidents are considered when analyzing how well a jurisdiction is complying with the decree.

In the preceding example, a monitoring team might use aggregate, overall data about the topic at issue—use of force—to make determinations about compliance with decree requirements relating to

103 Salma Seth, N.K. Chadha, and Harprett Bhatia, *Qualitative Methods: A Practical Journey into Research* 33 (2022).

104 *Id.*

force. However, monitor teams might also use data and statistical analyses to help determine compliance even when the data may be less directly related. For example, in a consent decree that addresses fair and impartial policing practices, a monitor might look at the monitored agency's data on civilian complaints—evaluating whether there have been any changes in the frequency of allegations relating to bias or discrimination.

Quantitative analysis may take a few different forms:

- **Descriptive statistics.** “Descriptive statistics comprise statistical procedures for summariz[ing], organi[z]ing and communicating characteristics . . . of data.”¹⁰⁵ These methods “summarize large sets of data so that descriptive statements can be made” about the department and its officers.¹⁰⁶ They typically do so by focusing and reporting on individual variables, characteristics, and phenomenon separately (even when derived from the same data set—e.g., how many uses of force occurred in a given year, the race of subjects in force incidents during that time period, the number of force incidents that involved the use of OC (pepper) spray, etc.).

In monitoring, although it may not appear sophisticated, *counting* the occurrence of particular events or law enforcement performance, and the frequency of various factors or characteristics within them, is a frequent and obvious descriptive statistic. Indeed, many of the outcome assessments that decrees require focus on summarizing the occurrence of various incidents or performance over time—the number of civilian complaints that a department receives, the number of force incidents in which officers engaged, or the rate at which searches of stopped individuals discovered illegal weapons or contraband.

“Other descriptive statistics include measures of central tendency or *average[s]* (means, medians and modes) and measures of *dispersion*,” or how widely the occurrence of phenomenon or characteristics vary such as “standard deviation and variance.”¹⁰⁷ “[M]any research questions can be answered with descriptive techniques [alone] and do not require statistical inference” and the more complicated methodology inherent in inferential statistics summarized below.¹⁰⁸

- **Inferential statistics.** Rather than counting occurrences, tallying how often certain characteristics surfaced, or summarizing trends across time, inferential statistics use somewhat more complex statistical methods to “[look] at the relationship between several variables.”¹⁰⁹ Unlike descriptive statistics, which help summarize or describe what has occurred in the past, inferential statistical methods help to establish causal relationships and “predictions about what is likely to happen on the basis of what has been observed.”¹¹⁰

One major class of inferential statistics is called *regression*. A regression analysis is a way of measuring the relationship between two different variables, characteristics, or phenomenon. There are many types of regression techniques, but, at heart, they all focus on mechanisms of gauging the relationship between two things while also “accounting for,” or “controlling for,” other things that might influence the nature of the relationship.¹¹¹ For example, one method that may be deployed when trying to determine if the race of a subject is influencing outcomes—such as the likelihood of being stopped by law enforcement—is to run a type of regression that tries to estimate the influence of race on being subject to a stop while accounting for, or controlling for, the effects of neighborhood-level crime, income levels, and other social variation.

105 Ray W. Cooksey, *Illustrating Statistical Procedures: Finding Meaning in Quantitative Data* 7 (2020).

106 Victor Jupp, “Descriptive Statistics,” in *The SAGE Dictionary of Social Research Methods* 66 (ed. Victor Jupp) (2006).

107 *Id.* (emphasis added).

108 W. Paul Vogt, et al, *Selecting the Right Analyses for Your Data: Quantitative, Qualitative, and Mixed Methods* 206 (2014).

109 Victor Jupp, “Descriptive Statistics,” in *The SAGE Dictionary of Social Research Methods* 66 (ed. Victor Jupp) (2006).

110 *Id.* at 148.

111 See Richard B. Darlington & Andrew F. Hayes, *Regression Analysis and Linear Models: Concepts, Applications, and Implementation* 1–2 (2016).

Another important class of inferential statistical methods allows for researchers, like a monitoring team, to consider a portion of something that occurred—use of force incidents, misconduct investigations, or days of a training session—and make valid inferences about the whole. Thus, techniques like *sampling* according to *confidence intervals* that permit review of some but not all of something that occurred, which this guide discusses at greater length below, rely on inferential statistics. Even as this may be implicated less in analysis of a police department's aggregate data, inferential statistical methods are at the heart of some of the other, more qualitative-centered approaches described below that monitoring teams may use.

For many consent decree requirements, purely quantitative analysis of overall data about a department's performance will be a necessary part of determining compliance but will not, by itself, be sufficient to establish compliance one way or another. This is because "quantitative data provide a more general understanding of a problem" that "arises from examining a large number of people,"

incidents, encounters, or cases "and assessing" how they measure in terms of a "few variables" or characteristics.¹¹²

For monitors, the analysis of whether something has or has not occurred, and generalized attributes that can be tracked and counted, by itself often does not say enough about the underlying quality or nature of what is being tracked. For instance, data about the features of a use of force investigation (i.e., when it was initiated, who conducted the investigation, how long the investigation took) is unlikely to say anything about the quality of the investigation (i.e., whether it was fair, thorough, objective, and provided a subsequent reviewer with sufficient information to make a well-supported finding as to whether misconduct occurred).

However, for other requirements, quantitative evaluations of aggregate data sets will be especially important. For example, in a consent decree that addresses issues related to fair and impartial policing and stops, searches, and arrests, a monitor may need to use aggregate information about all of a law enforcement agency's stops of individuals to

NEW ORLEANS POLICE DEPARTMENT MONITORING TEAM COMPREHENSIVE RE-ASSESSMENT (2019)

This monitoring report evaluates the police department's progress across all major areas of the decree, using a variety of methods, including the use of descriptive statistics to help evaluate progress in areas such as vehicle pursuits, crisis intervention, gender bias, and officer training.

BALTIMORE POLICE DEPARTMENT MONITORING TEAM USE OF FORCE OUTCOMES ASSESSMENT (2020)

This report addresses a consent decree's outcome measures regarding use of force by presenting a variety of descriptive statistics based on the police department's database of all reported use of force incidents.

determine whether disparities exist with respect to the characteristics of those who are stopped (e.g., race or ethnicity).

Even as quantitative assessments are unlikely to be dispositive for determining compliance with a particular requirement, the analysis of data across all of a department's performance in a given area can be a critical way of evaluating consent decree outcomes—allowing a monitor to take into consideration all of a department's performance in a particular area or interactions of a certain type when evaluating whether a department is complying with specific decree requirements.

B. QUALITATIVE ASSESSMENTS

“Qualitative methods” refers to “an umbrella concept that covers interviews . . . , participant observation . . . , and textual analysis.”¹¹³ Qualitative evaluations can “provide a detailed understanding of a problem” that “arises out of studying” a more limited number of individuals, incidents, encounters, or cases “in great depth.”¹¹⁴ In contrast to purely quantitative evaluation, where “the research is separate and distinctly different from the researcher controlling the instrument”—“[f]or instance, [where] the nurse is distinct from the thermometer” for the purposes of taking a person's temperature—in qualitative research, in-depth “[o]bservations are registered *through* the researcher.”¹¹⁵ In qualitative research, “[a]nalysis is predominantly interpretive,” with the person conducting the research involved in observing the world and interpreting what is occurring.¹¹⁶

In the consent decree context, “qualitative” assessments generally refer to instances where monitoring team experts review records of the monitored law enforcement agency's performance, like investigative files, incident reports, or video footage of law enforcement encounters, and make

determinations about whether the performance is consistent with consent decree requirements. For example, in a consent decree that includes specific requirements for officer misconduct investigations, a monitor will need to conduct a compliance review to determine if individual investigations are meeting the decree's requirements. Similarly, if a consent decree requires that law enforcement agencies establish specific, new policies and protocols for officers on interactions with individuals in mental or behavioral health crisis, the monitoring team will need to evaluate officer interactions with such subjects to determine if personnel are following those required policies and protocols.

In short, any monitoring team effort that evaluates, assesses, or audits a law enforcement agency's performance—as recorded or logged in things like files, reports, investigations, or captured video and audio—will have a qualitative component to the extent that it requires team members to review or observe something and make judgments about whether the agency or personnel followed specific requirements or procedures.

One possible qualitative approach used for some research projects involves a researcher making observations, logging them, identifying themes or conclusions, and presenting them. Even as this is accepted as a valid mode of inquiry in some contexts, it is likely unsatisfactory in the consent decree context. Because, in qualitative research, “it is the researcher”—in this case, the monitoring team—who serve as “the sole instrument of the study and the primary mode of collecting the information” (i.e., reviewing investigative files, incident reports, or body-worn camera footage),¹¹⁷ “[q]ualitative research is frequently criticized for lacking scientific [rigor].”¹¹⁸ In particular, qualitative methods may be especially ripe for criticism if there is “poor justification of the methods adopted, lack of transparency in

113 Sarah J. Tracy, *Qualitative Research Methods* 4 (2019).

114 John C. Creswell & Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research* 8 (2d Ed., 2011).

115 Sarah J. Tracy, *Qualitative Research Methods* 4 (2019).

116 Matthew B. Miles, *Qualitative Data Analysis* 196 (1994).

117 Brigitte S. Cypress, “Rigor or Reliability and Validity in Qualitative Research: Perspectives, Strategies, Reconceptualization, and Recommendations,” 36 *Dimensions of Critical Care Nursing* 253 (2017).

118 Helen Noble & Joanna Smith, “Issues of Validity and Reliability in Qualitative Research,” 18 *Evidence-Based Nursing* 34 (2015).

the analytical procedures,” and the potential that “findings . . . [are] merely a collection of personal opinions subject to researcher bias.”¹¹⁹

Monitoring teams who employ some version of this approach by reviewing an array of case files, reports, videos of officer performance, or other documentation; making notes about what it saw; reaching a general determination about whether performance with all consent decree requirements had been achieved; and summarizing broad, general findings in a report may be especially subject to criticism from a variety of stakeholders. Indeed, relying too much on exclusively qualitative approaches can lead consent decree stakeholders and community members to view the monitoring as employing the kind of “I-know-it-when-I-see-it” approach, described above, that can compromise stakeholder and community confidence in the underlying integrity and utility of the consent decree process. The following sections provide some guidance on structuring qualitative performance evaluations in a more transparent, rigorous fashion.

C. MIXED-METHOD ASSESSMENTS

For monitors, looking only at aggregate data will likely be inadequate for addressing all decree requirements, especially those that require a monitor to certify something about the quality of performance, including whether it proceeded according to required law enforcement policies or specific decree guidelines. A count of whether a particular law enforcement performance occurred, the average number of instances it occurred, or the way that various characteristics manifested themselves across incidents or cases is unlikely to say much about the underlying nature or sufficiency of that performance.

At the same time, considering only qualitative inquiry will likely not be structured, rigorous, or transparent enough in terms of methodology to engender credibility and trustworthiness or to meet the

standards of evidence that courts typically require in other matters.¹²⁰

To determine whether a law enforcement agency is complying with consent decree requirements, monitoring teams may need to employ “mixed” or “hybrid” approaches:

*Qualitative research and quantitative research provide different pictures, or perspectives, and each has its limitations. When researchers study a few individuals qualitatively, the ability to generalize the results to many is lost. When researchers quantitatively examine many individuals, the understanding of any one individual is diminished. Hence, the limitations of one method can be offset by the strength of the other method, and the combination of quantitative and qualitative data provide a more complete understanding of the research problem than either approach by itself.*¹²¹

For monitors, several common “mixed-method” approaches regularly surface when considering what should be undertaken to determine if the monitored agency is in compliance with a particular decree requirement.

1. Evaluations Using Both Quantitative and Qualitative Studies

The first is a research program that considers *both* quantitative analysis—often, the evaluation of overall, aggregate data about law enforcement agency performance—and qualitative analysis—often, the review of detailed, underlying records about specific incidents, cases, encounters, or other instances of law enforcement performance. For example, a consent decree might address issues regarding the use of OC (pepper) spray. A monitor’s approach in this context could be to both (1) analyze a law enforcement agency’s use of force data in those cases where the database indicates that the type of force deployed was OC spray (a quantitative evaluation), and (2) evaluate reports, investigative files, video, and other

119 Helen Noble & Joanna Smith, “Issues of Validity and Reliability in Qualitative Research,” 18 *Evidence-Based Nursing* 34 (2015).

120 See generally *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

121 John C. Creswell & Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research* 8 (2d Ed., 2011).

BALTIMORE POLICE DEPARTMENT MONITORING TEAM OFFICER ASSISTANCE & SUPPORT COMPLIANCE REVIEW (2022)

This report conducts a compliance review of decree requirements regarding officer assistance, support, and wellness, with the methodology involving a variety of reviews, analyses, and audits based around various paragraphs and substantive requirements.

documentation related to force cases where OC spray was used to determine if the agency's personnel followed substantive policy requirements for using OC spray (a qualitative evaluation). Especially if the agency used OC spray in a more limited number of instances over the studied period, it is conceivable that the monitoring team's qualitative analysis could involve a description of each OC spray application and whether, and how, an officer's application of the force did or did not comply with the consent decree's requirements. That is, a monitor might, in some instances, conduct a kind of census of a given type of performance—reviewing each and every instance of that performance.

Another type of “mixed-method” approach uses a variety of approaches indexed closely to paragraphs. That is, in contrast to some approaches outlined below, where the same overall review of one type of performance—like use of force, officer misconduct investigations, or documentation about stops of individuals—allows a review to cross many different decree paragraphs, a monitoring team may need to use smaller, less interrelated inquiries to get to the heart of particular paragraphs or provisions. In these circumstances, the methodologies may be a mix of *several* qualitative and/or quantitative inquiries.

2. Qualitative Assessments Incorporating Sampling Methodologies

In other instances, a monitor will need to consider a type of performance that is much more frequent. For instance, a monitor will likely need to conduct

larger assessments that implicate *all* of a certain type of performance, investigation, or event—all uses of force, stops of civilians, officer misconduct investigations, or interactions with individuals experiencing a behavioral health crisis. However, in many departments, the number of incidents or encounters implicated—for instance, stops or uses of force in a given year—may be substantial. And the review of each particular instance can implicate a significant volume and complexity of materials—from reports and investigative materials to body-worn or privately-captured incident video footage. This means that monitors regularly will want to evaluate all of an overall group of law enforcement incidents, encounters, or performance but will find this entirely impractical given time and resource realities.

Consequently, a second, very common “mixed-method” approach uses important insights from inferential statistics to allow monitors to look at only *some* of a type of law enforcement performance, case, or encounter but still make valid inferences about *all* of them. The “selection of a subset of a population” for the monitor to review is called *sampling* in social science, and, “[i]f done properly, it can save money, time, and effort, while providing valid, reliable, and useful results.”¹²² In turn, the term “sample” refers to the smaller group of things, selected from a larger overall group, that a researcher evaluates.

Some types of sampling—such as availability sampling (where selection is based on “availability” or “convenience”) or other instances where cases are selected intentionally or purposively—do not allow

122 Johnnie Daniel, *Sampling Essentials: Practical Guidelines for Making Sampling Choices* 1 (2011).

as much assurance that the smaller subset of things considered resembles all of the things in the overall amount. That is, the possibility of “selection bias” in some ways of choosing smaller sets of things to consider do not allow the results from the smaller sample to be generalized or inferred as being present within the larger whole.

Other types of sampling—namely, “probability sampling”—do allow a researcher to extrapolate from a smaller sample to the larger whole, typically called a “population.” *Probability sampling* allows a monitor “to use the principles of statistical inference to generalize from the sample” of things evaluated “to the population.”¹²³ Probability sampling depends principally on a researcher picking the individual parts of the smaller subset, i.e. the sample, at random.¹²⁴ “Two important reasons for randomized selection are (1) the elimination of selection biases, and (2) randomly selected samples are ‘objective’ and acceptable to the public.”¹²⁵ A random, “probability sampling procedure guarantees that each unit in the population could appear in the sample,” which is necessary for making any sort of statistical inferences about the extent to which the smaller sample may be consistent with the characteristics of the larger, whole population.¹²⁶

“A single probability sample is not guaranteed to mirror the population with regard to the characteristics of interest,” but statistics can help determine the likelihood that the subset of cases, incidents, or performance evaluated resembles the whole.¹²⁷ Specifically, monitoring teams can employ standard, well-accepted statistical approaches to estimate the size of a sample necessary to be sufficiently assured (a “confidence level”) that the sample, and the results of an evaluation of the sample, roughly approximate the overall population (by specifying a “margin of error”).

A frequently cited “gold standard” for researchers is for a sample to be large enough to reach a 95% confidence level and a 5% margin of error. Suppose a monitoring team drew this type of sufficiently large sample in a review of a monitored department’s misconduct investigations over a defined period of time. At the end of their review of the sample of investigations, they could say that they are 95% confident that, even if they looked at *all* investigations rather than a subset of investigations, their findings would not differ by plus or minus 5%.

For example, suppose that a law enforcement agency conducted 500 misconduct investigations over a relevant time period. Various statistical assumptions and math indicate that, to reach a 95% confidence level and 5% margin of error, a monitoring team would need to review 218 randomly selected cases.

Although they are somewhat less “standard,” the use of slightly lower confidence levels and slightly higher margins of error can be defensible and appropriate. As a rule of thumb, a 90% confidence level and 10% margin of error is usually the lowest “acceptable” sampling parameters across social science. Lower confidence levels and margins of error allow a sample size to be lower—requiring fewer discrete investigations, cases, or incidents to be reviewed to extrapolate to the overall population but introducing a somewhat lower level of precision. For instance, in the example where a monitoring team wants to review a sample of 500 misconduct investigations, reviewing 60 cases would allow the team to be 90% confident that—if they took a different random sample or they conducted a review of all 500 cases—the results would differ by a maximum of 10% in either direction.

Monitoring teams should involve experts skilled in statistics and social science research to help construct sampling strategies. However, free, web-based sample size calculators can give monitors a rough

123 Chaga Frankfort-Nachimas & Anna Leon-Guerrero, *Social Statistics for a Diverse Society* 348 (2006).

124 *Id.*

125 Carl-Erik Särndal, et al, *Model Assisted Survey Sampling* 9 (2003).

126 Sharon L. Lohr, *Sampling: Design and Analysis* 34 (2021).

127 *Id.* at 34–35.

idea of how different sizes of sample, and different statistical assumptions, can impact the number of discrete investigations, cases, or instances of law enforcement performance that they will need to review to be able to say something sufficiently meaningful about everything of that type.

Generally speaking, monitors should expect to have to review more of things that occur within the law enforcement agency more infrequently to be able to make sound inferences from the sample to the overall population. This is because, based on the nature of statistics, the size of a sample does not necessarily increase proportionally with the size of a population. For example, for a population of 2,000 things, the size of the sample necessary to be 95% confident that the sample resembled the overall population, within a 5% margin of error, would be 323. For a population of 20,000 things, the required sample size to meet the same confidence level and margin of error would be 377. At the same time, a population of 200 things would require a sample of 132 at those sampling parameters.

There are several different sub-types of probability sampling. The approach described above is *simple random sampling*: an overall group of things to be studied is defined, the necessary size of a sample is computed to meet desired statistical parameters, and then individual members of the population are selected at random for inclusion in the sample. Once the sample is identified, the monitoring team reviews the sample and can ultimately use the statistical assumptions to indicate the extent to which the sample is likely to be consistent with the whole of the population. In the running example presented here regarding officer misconduct investigations, a simple random sample would randomly select the requisite number of individual investigations for review as established by the overall number of investigations, the desired confidence interval, and the selected margin of error.

For some areas and evaluations of consent decree requirements, this simple random sampling

approach is sufficient. However, in other instances, the monitor may need or want to be somewhat more precise or to account for any of a variety of complexities or nuances. One common complexity is that a monitor may need to make conclusions about a type of performance overall but also make meaningful conclusions about specific sub-types or characteristics. For example, the decree may have many requirements that apply to all misconduct investigations and may have other requirements that focus especially on investigations of complaints that start with a civilian complaint (as opposed to an internal complaint or administrative referral), that relate to allegations of bias or discrimination, or that relate to allegations of improper use of force. Rather than conduct separate, potentially duplicative reviews of investigations generally and also of various sub-types, a monitoring team may want to construct a more “all-purpose” sample.

For this, many other types of sampling may be available. Of particular note is *stratified random sampling*, which involves “portioning the population into groups, called strata, and then drawing a sample independently from each” of those groups.¹²⁸ “In random sampling, you choose a subset . . . at random from a population,” whereas “[i]n stratified random sampling, you first subdivide the population into subgroups or strata and select a given number or proportion of respondents [at random] from each stratum to get” the overall sample.¹²⁹ At the risk of over-simplification, a stratified sampling approach divides a population into meaningful groups, randomly samples from those groups, and assembles an overall sample from those smaller samples.

Stratified random sampling can address some significant practical concerns for monitors. Most importantly, it can allow for monitors to make discrete, standalone conclusions about particular sub-types or groups within the context of a more generalized assessment, which saves time, duplicative effort, and resources.

128 R. Singh & Naurang Singh Mangat, *Elements of Survey Sampling* 102 (2013).

129 Arlene Fink, *How to Conduct Surveys: A Step-by-Step Guide* 53 (2009).


BALTIMORE OFFICER MISCONDUCT INVESTIGATIONS ASSESSMENT INSTRUMENT
CLEVELAND USE OF FORCE ASSESSMENT INSTRUMENT

For example, suppose that a monitor needs to review officer performance in use of force incidents. A stratified random sampling can allow a monitoring team, within the context of a single effort, to say something meaningful about both force overall and about all force of a given Level/Type. Specifically, in many decree jurisdictions, force must be categorized according to severity or significance into Level/Type 1 (lower-level), Level/Type 2 (intermediate-level), and Level/Type 3 (higher-level) force incidents. Various reporting and investigation requirements may be attached based on force Level/Type. Usually, lower-level incidents are substantially more common than higher-level incidents, but higher-level incidents, according to the factors outlined above, may be especially important for monitors to assess. If a monitoring team used a simple random sampling approach, the sample is most likely to contain a lot of low-level incidents and not many high-level incidents. Indeed, the number of high-level, Level/Type 3 incidents included in the *overall* sample may not be enough to say anything about serious Level/Type 3 incidents on their own—that is, the number of Level/Type 3 incidents will not be a sufficiently large enough sample of Level/Type 3 incidents to make conclusions about just that type. The solution is to sample enough of each for Level/Type, given that type's overall rate of occurrence, to make meaningful conclusions and to have these selected cases included in the more general sample of all Levels/Types of force cases. It should be noted that, because sampling within each category and including those cases within the overall sample will tend to over-represent less frequently occurring things and

under-represent more commonly occurring things, “results must be [statistically] weighted” when making conclusions about the overall population.¹³⁰

The specifics of these approaches are beyond the scope of this guide. The important point, however, is that monitors have at their disposal—through the use of insights and methods from inferential statistics—ways of reviewing parts, rather than all, of a department's performance where necessary and still reaching rigorous, structured conclusions about where the department stands on complying with a consent decree.

3. Structured Qualitative Review Instruments

As noted previously, one type of qualitative evaluation that is unlikely to be sufficiently specific and transparent would involve a monitoring team reviewing incidents or evaluating instances of law enforcement performance and simply presenting, in a report, their conclusions—asserting or telling rather than describing and showing.

A better approach is for monitoring teams to conduct qualitative analyses by constructing and then completing a qualitative review (or evaluation) instrument:

An instrument is a mechanism for measuring phenomena, which is used to gather and record information for assessment In the social sciences most instruments are of the pen-and-pencil variety, meaning that the individual completing the instrument is expected to record information

130 Giuseppe Iarossi, *The Power of Survey Design: A User's Guide for Managing Surveys* 120 (2006).

on a form. Even when other media are to be used [such as an electronic platform], a paper-and-pencil instrument will probably need to be developed initially.¹³¹

Monitoring teams can use qualitative review instruments to structure and formalize their inquiries across a variety of decree requirements, performance characteristics, and areas of evaluation—and whether they are evaluating all of a certain thing or are instead evaluating a sample. Rather than individual monitoring team reviewers needing to remember all of the various things that may need to be evaluated in a given incident, file, investigation, or case, a qualitative review instrument ensures that all relevant information is gathered, and that evaluations are conducted for each reviewed item. Monitoring teams functionally serve as an “external rater” using a systematic approach to evaluating performance.¹³²

Importantly, structured review instruments allow monitoring teams to summarize, analyze, and report fundamentally qualitative determinations—about the quality, nature, or sufficiency of the law enforcement agency’s performance—in a more rigorous, quantitative way. That is, rather than simply characterizing performance overall as “satisfactory” or “consistent with compliance” with a decree paragraph, monitoring teams can detail that it found, say, 96% of reviewed cases to comply with the paragraph. A review instrument allows monitors to aggregate findings across reviewers and summarize results numerically—which facilitates easier, more detailed, and more transparent accounting of an agency’s progress over time.

Any qualitative review instrument used for monitoring may incorporate several types of approaches within the same overall instrument:

- **Audit-like determinations and objective checklists.** Some types of inquiries can take the form of more “audit”-like, yes/no inquiries geared

toward “determin[ing] the presence or absence of an attribute and to count the prevalence of an item or event.”¹³³ For instance, if a consent decree has specific requirements about equipment or technology that must be available in agency facilities or vehicles, monitoring team evaluators can likely easily—and in a uniform way—answer a review instrument question about whether they identified the implicated equipment or technology. Similarly, in assessing the completeness of an investigative file, a review instrument may ask whether that file included a specific checklist, report, video footage, or other documentation.

- **Evaluation-focused checklists.** Other consent decree determinations will require monitoring team reviewers to apply standards or policy language to a specific situation and indicate whether, in that situation, performance adhered to requirements. For instance, in a use of force or officer misconduct investigation, a decree may require that investigators conduct a sufficient canvass (search) for witnesses to the underlying incident. A structured review instrument might ask monitoring team case reviewers, “Did the investigator(s) conduct a sufficient canvass for witnesses to the underlying incident?” Reviewer answers depend on them making an evaluation about whether the canvass occurred and was, in fact, sufficient under the circumstances.
- **Rating scales.** It may also be useful for a review instrument to use a rating scale, “a generic term describing instruments that are evaluative and that make use of an item format where response choices are ordered on a continuum”¹³⁴ (e.g., a scale of 1 to 5, a range of categories from “strongly agree” to “strongly disagree,” etc.). For example, a review instrument evaluating the quality and sufficiency of a type of law enforcement agency investigation might ask reviewers to provide an overall summary of their determinations on a defined scale, such as:

131 David Colton & Robert W. Covert, *Designing and Constructing Instruments for Social Research and Evaluation* 5 (2007) (emphasis in original).

132 *Id.* at 6.

133 *Id.* at 9.

134 *Id.* at 7.

5 — Excellent — Investigators made all reasonable attempts to follow all material leads and answer all material questions. The investigation was fair, thorough, objective, and timely, and the investigation complied with all relevant department policies and guidelines.

4 — Very Good — Most aspects of the investigation were sound. Investigators made reasonable attempts to follow leads and answer material questions. Although the investigation was, on the whole, fair, thorough, objective, and timely, some aspects of the investigation could be strengthened. The investigation complied with most, but not all, department policies and guidelines.

3 — Adequate — Although some aspects of the investigation could be improved, the identified flaws did not appear to materially or unduly impact the quality of the overall investigation. The resulting investigation provided sufficient information to evaluate the incident but could be improved.

2 — Fair — Several aspects of the investigation could be improved. Identified flaws materially impacted the quality of the overall investigation, and the resulting file provided insufficient information to evaluate the incident.

1 — Poor — All or nearly all aspects of the investigation could be improved. The investigation failed to establish sufficient information to support an evidence-based evaluation of the incident due to investigative deficiencies, material omissions, or other issues.

As illustrated here, a rating scale will usually be more valid across reviewers and reviews if the scale is defined and operationalized (i.e., different levels of the scale are described and distilled to different standards) rather than overly generalized (simply a scale of 1 to 5).

- **Free-response questions.** Even as a review instrument should aim to transform narrative responses to questions that can be answered via defined categories or variables, and aggregated

easily across team members and reviews, some questions calling for open-ended, free-response, or narrative answers will be useful. First, it is often useful for reviewers to provide an overall, factual summary of the thing being reviewed (e.g., a summary of a reviewed use of force encounter, a summary of a misconduct investigation, a summary of an investigative stop encounter). Second, some information—such as case numbers, involved persons' names or identifying numbers, and others—may be so variable that distilling them to a set of defined response choices may be impossible. Third, reviewers will likely need to explain, justify, and detail answer choices—especially those where they find particularly exemplary or deficient performance. Structuring a review instrument with open-ended free-response options where reviewers detail the foundation or basis for their determinations can be critical in developing an overall understanding of the department's performance. Indeed, one useful practice may be to *require* all reviewers to summarize or explain the nature of their findings following significant audit- or evaluation-focused checklist instrument questions or sections.

Constructing a qualitative review instrument can be complex. Generally, the instruments should be informed substantially by the specific requirements of the decree and the language and definitions that it provides. Especially as decrees in many areas require the adoption of new policies and procedures, specific departmental policy language will also need to inform the review instrument. As a monitoring team constructs and finalizes a review instrument, testing the review instrument by using it to evaluate a few cases outside of the sample or population that will be studied can generate useful refinements.

It should be noted that monitoring teams may want to evaluate, formally or informally, issues related to inter-rater reliability—that is, whether individual members of the monitoring team engaged in qualitative evaluations are answering questions in similar ways and would be likely to reach the same results for the same questions in the same cases, incidents, or files reviewed. Formally, this can be

accomplished via various types of statistical tests.¹³⁵ More informally, the monitoring team can pilot qualitative reviews by having reviewers all evaluate the same, limited number of “test” cases and comparing results for consistency.

Although a pen-and-paper-style form can be adequate, a variety of web-based platforms (such as those designed for creating and taking surveys) and other computer applications (such as database environments) can make conducting reviews easier. For one thing, such platforms typically log information automatically on the back-end, allowing data to be easily analyzed without anyone hand-entering information from paper forms into a spreadsheet or database. Additionally, many electronic platforms allow monitoring teams to design an instrument with question and answer “logic”—where the answers to prior questions dictate the questions that appear for reviewers to answer subsequently. In this way, instruments can become easier to complete more accurately. Relatedly, these electronic solutions may allow teams to require answers to all, or many questions, helping to ensure that reviewers do not inadvertently omit important questions or fail to complete a free-narrative explanation section.

Even as the details may sound complex at the outset, qualitative review instruments help to create greater consistency across monitoring team evaluators and reviews of individual instances of law enforcement agency performance. They also allow monitors to present more detailed results—in the form of numbers rather than more generalized characterizations. These and other features can go a great distance in making a monitor’s compliance assessments more rigorous, transparent, accurate, and ultimately useful to the monitored agency, jurisdiction, the court, and the community.

4. Practical Considerations Regarding Compliance Evaluations

The monitor’s work on formally assessing consent decree compliance implicates many additional practical considerations. These include:

- **Determining time periods for evaluation and related evaluation parameters.** The discussion regarding sampling alluded to the need to define, for any compliance review or audit, parameters surrounding the area to be evaluated. Regardless of whether the monitoring team employs sampling, whether the analysis is qualitative or quantitative, or whether the evaluation is a compliance review or an outcome assessment, monitoring teams need to determine definitively the scope of the performance being studied.

Typically, this will involve determining a span of time to be evaluated (e.g., six months, a year or the period of time since a prior evaluation or a critical event). It may also involve zooming in on particular types, sub-types, or categories of performance (e.g., types of use of force, investigatory stops where the involved officer(s) conducted a frisk or search, incidents involving a subject in behavioral health crisis where officers used force).

Because a department’s progress over time, and a comparison of current performance to prior performance, are typically important factors in determinations about compliance, defining regular, standardized time periods that allow for easy comparison across time periods and multiple compliance evaluations can be especially important.

In defining parameters surrounding time for those areas that will require a monitor to review an investigation and/or investigative file, the definition of the population of investigations to be considered will likely need to account for the reality that investigations—even timely, high-quality ones—do typically take at least some time after something has occurred to be completed.

135 See, e.g., Kilem L. Gwet, *Handbook of Inter-Rater Reliability* (4th ed. 2014).

This means that a monitoring team typically cannot, on January 1, define a population as “all misconduct investigations” or “all use of force investigations” from the prior calendar year—because many investigations from November and December will still be pending and even earlier-occurring, more complicated cases may also be incomplete. This reality may be accommodated by (1) defining the population of investigations to be evaluated as “all investigations completed as of” a certain date, thereby excluding incomplete investigations; (2) defining the population of investigations based on somewhat earlier underlying incident occurrence or investigation initiation dates, on the theory that most if not all investigations should be reasonably concluded by the time of review (e.g., on January 1); and/or (3) scheduling monitoring reviews to occur at a sufficient interval after investigations may have last been initiated to allow for late-occurring investigations to be completed before a review starts.

Because of these real-world considerations, monitoring assessments can sometimes appear to be somewhat of a “lagging indicator.” That is, because some interval of time may need to elapse before information or data can be considered “final,” and the monitoring team requires another period of time to conduct an assessment and draft a report, final compliance review or outcome assessment findings may be finalized sometime after the underlying performance being evaluated occurred.

For example, suppose a monitor conducts a qualitative-based compliance review and aggregate-data-focused outcome assessment regarding a law enforcement agency’s use of force. Suppose further that, for both components, the monitor, at the start of the current year, wants to evaluate use of force during the previous calendar year. The monitor may be able to start the review only in March or April of the current year to ensure that outstanding force investigations from late in the year have been completed and any use of force data finalized. Then, depending on the number of cases to be

reviewed, it may take several months for the monitoring team to conduct the evaluation, summarize findings in a report, and receive and respond to feedback from the monitored agency, jurisdiction, and DOJ. Consequently, it may not be until toward the end of the calendar year, at the earliest, that a comprehensive report may be filed, which may be nearly two years later than some of the earliest-occurring cases (such as those in January and February) of the evaluated year.

Monitors and consent decree stakeholders must continually consider ways of structuring evaluations, timelines, and work plans to ensure a balance of comprehensive reviews and timely feedback to the agency and community that reflect where the law enforcement agency is now rather than where they were several years ago. Some approaches include:

- ◆ Holding discussions with the DOJ, monitored agency, and monitored jurisdiction about individual cases reviewed even as the overall assessment is underway to explore illustrative problems, provide real-time feedback to the monitored agency well before a formal report is finalized, and to allow the agency to take more immediate action on identified issues.
- ◆ Structuring assessments to occur more frequently that focus on shorter periods of time, especially earlier in the consent decree process, to allow for more immediate feedback to the monitored agency and to allow for more regular assessment of performance trends or changes across time.
- ◆ Prioritizing the most detailed, time-intensive compliance assessments in areas where the monitored agency, jurisdiction, and the DOJ believe that the agency may realistically be in compliance while using more generalized methodologies to gauge the state of progress in those areas where stakeholders all believe that work remains before the agency is in compliance.

- ***Determining the timing and frequency of compliance reviews and outcome assessments.*** Monitoring plans need to schedule when compliance reviews and outcome assessments occur. The frequency may be informed by specific decree requirements (e.g., decrees calling for quantitative-oriented outcome assessments to be conducted annually). Especially for compliance reviews that gauge the monitored agency's compliance with particular paragraphs, the monitor will need to consider resources, capacity, the need for decree stakeholders to have timely updates on progress, and the potential that the evaluation will identify important progress or points of outstanding concern.

Generally, if the monitoring team, parties, and DOJ do not believe that the monitored agency has reason to be complying, in practice, with a decree requirement, a compliance review of that requirement may be deferred. For instance, if a law enforcement agency is still working on revising policies on interactions with individuals in mental or behavioral health crisis, and still needs to design officer training and implement the new policies and procedures in practice in the field, a monitoring team completing a structured, qualitative evaluation of documentation about encounters with individuals in crisis may be premature (though it might still be valuable to conduct for determining a pre-decree “baseline” against which to compare future progress). Similarly, if a decree requires the monitor to conduct outcome assessments of a particular type of data (e.g., documentation on investigatory stops of individuals, encounters with individuals in behavioral health crisis) that the monitored agency is still working to uniformly capture, the monitor may obviously need to defer evaluation until high-quality, reliable data are available.

Law enforcement agencies are unlikely to “score 100%” in every area in an initial evaluation. Instead, compliance reviews and outcome assessments help to track progress over time and assist monitored agencies and jurisdictions in setting an agenda for what they should address to move closer to compliance. Following

an assessment of a requirement or set of requirements, the agency and jurisdiction will typically need some interval of time to make adjustments, in practice, across a requisite period of time or number of instances before a monitoring team can conduct a follow-up assessment and determine whether the nature or quality of performance has changed.

- ***Conducting pilots and/or exploratory analyses.*** For monitoring team reviewers using a qualitative review instrument for the first time, reviewers systematically exploring a particular type of case file or report for the first time, or analysts working with a departmental data set for the first time, monitoring teams may benefit from conducting a pilot or exploratory process as part of their overall approach to evaluation. In the qualitative context, this might involve all team reviewers evaluating a small number of cases, investigations, reports, or the like; completing the review instrument; and gathering to discuss the results and address questions or issues that may have arisen. Although these case reviews should be separate and apart from the ultimately evaluated cases, a pilot process is a good way of surfacing and addressing potential areas of problems or confusion. Likewise, data analysts exploring available data—either the data that will ultimately be evaluated or of an analogous sort from a different time period or population—can surface questions or issues that stakeholders together might address before substantial time and energy goes into more sophisticated data analysis.
- ***Engaging other stakeholders.*** Although the monitoring team has a duty to conduct assessments as an independent agent of the court, the collaboration that is most preferred in decree implementation and the practical realities associated with needing access to law enforcement agency documentation and/or systems means that the monitor should engage—early and often—with the monitored agency, jurisdiction, and DOJ about the detailed mechanics of conducting compliance reviews and outcome assessments. Likewise, as discussed elsewhere,

the monitor will benefit from engaging with community members, especially about the nature of outcomes to be evaluated:

- ♦ **Overall timelines.** Because monitoring plans should set forth timelines for the monitoring team to conduct assessments, the monitor will need to collaborate regarding when they will conduct various substantive evaluations. In developing timelines, monitors and stakeholders should consider overall monitoring team capacity, how monitoring team members conducting the assessment will get access to data or information, and the intervals that may be necessary for the monitoring team to finalize a report after the assessment has completed and for the monitored jurisdiction and DOJ to review the monitor's conclusions (ideally, before being filed with the court so that any significant issues, concerns, or errors may be addressed, even if they cannot all be reasonably or appropriately solved).
- ♦ **Methodologies.** The monitoring team will benefit from outlining, before any work begins, the methodology that it proposes to use for an assessment. This includes what consent decree requirements will be assessed, the overall methodological approach, details about what data or information will be evaluated, an accounting of statistical approaches (including sampling) that may be employed, any proposed qualitative review instruments, and other relevant details. Monitors benefit by reducing proposed assessment methodologies to writing and receiving feedback from the monitored agency, jurisdiction, and DOJ. Indeed, many monitors have found that such feedback improves the quality of the methodology and clarifies what available information or data can and cannot establish.

Likewise, all decree stakeholders benefit from having the clarity that a finalized, approved, and ideally consensus methodology can

produce. Indeed, working out concerns about *what* a monitoring team will do and *how* it will do it upfront can ensure that the focus, at the end, rests on substantive findings rather than on whether the findings resulted from a sound approach.

- ♦ **The availability and production of information.** Consent decrees generally give monitors wide-ranging abilities to access law enforcement agency data, records, and information. The ability to access does not by itself, however, resolve *how* the monitor might access such data and information. The mechanics will likely be related to the technological capabilities and administrative capacities of the monitored law enforcement agency and jurisdiction.

Many monitored agencies initially may not collect all of the data that they need, or may not collect it in a usable way. This lack of comprehensive information about the agency's performance can delay assessments or make them much more difficult to perform. Because full assessments may be too lengthy or time-consuming to perform where existing, aggregate data is not available, the comprehensiveness of assessments early in the decree process may be far more limited than necessary, and than such assessments can be when the monitored agency collects sufficient information and data.

In some instances, the monitoring team might need to identify data, records, or files that it requires and have the agency or jurisdiction provide them to the monitor via file-sharing, electronic hard drive, hard copy or paper format, or some other mechanism. In others, a monitoring team may need to access computer systems or physical files directly—accessing them within a police department or city facility or, as possible, by working with the agency and jurisdiction to establish an ability for monitoring team members to access systems and records remotely (e.g., through a

virtual private network (VPN) or establishing remote log-in credentials to web-based systems).

Regardless of how a law enforcement agency or jurisdiction may be able to provide information, the monitoring team should take care to ensure that it is receiving full, unaltered, and un-analyzed data or information. That is, unless the consent decree or monitoring plan contemplates that the law enforcement agency or jurisdiction will conduct data analysis on its own—which, especially as a decree unfolds, may well be an important requirement—the monitoring team independently analyzes, aggregates, or synthesizes information. To ensure the independence and integrity of the monitor with respect to decree oversight, the team should receive and analyze “raw” data and information. This means, for instance, that the monitor will need to work with overall data sets, not summary charts or graphs, and will need to consider the whole of investigative files and underlying materials like incident reports, video recordings, photographs, interview transcripts, and other evidence rather than simply reading an incident or investigative summary.

- ◆ **Providing updates and opportunity for real-time feedback while conducting the assessment.** Again, all monitors need to ensure that assessments are independent, and that no stakeholders unduly or improperly shape the outcome. Nevertheless, monitoring teams have found that, rather than going into a “black hole” during the conduct of an

assessment, providing updates and feedback to the monitored jurisdiction, agency, and DOJ can be especially useful in ensuring accurate and timely findings, for both qualitative and quantitative evaluations.

As noted above, ongoing discussions while a monitoring team conducts an assessment according to an approved methodology can have a number of specific, real-world benefits. First, monitors can highlight missing data or files, incomplete information, or issues with various documentation from law enforcement agencies—and can seek clarity about whether the issues are a result of flawed agency production of those materials, issues with underlying computer or information systems, problems with the monitoring team’s access or interpretation of information, or something else. Second, monitoring teams might discuss certain types of emerging qualitative findings—not for influence or debate among the parties but as real-time insights to emerging conclusions. Some monitoring teams have found these discussions to be useful in revealing various interpretive issues, in which monitoring team members viewed a requirement in one way while the agency or jurisdiction viewed it in another. Even as the discussions may not be able to resolve the issue, early discussions ensure that an agency is not taken by surprise late in the process and can, in fact, begin to address emerging issues more urgently. Third, updates about progress and preliminary, substantive findings can provide real-time technical assistance to the monitored agency—highlighting areas of outstanding concern and allowing them

to address them more quickly than if they needed to wait until a monitor had completed their work and published a final report.

- ♦ **Providing final draft reports for feedback.** Consent decrees, courts, and/or monitoring plans will usually require that monitors memorialize compliance review and outcome assessment results in formally filed, public reports. Before a monitoring team files a final report, many jurisdictions have found it useful for the monitoring team to provide the law enforcement agency, city representatives, and DOJ attorneys with a finalized draft of the assessment report. Typically, the process of discussing suggestions, concerns, and feedback can help strengthen the final version that goes before the court.

C. Determining and Reporting on Compliance Status

After a monitoring team has conducted a compliance review or outcome assessment, it must analyze the results and reach conclusions about what the demonstrated performance means. For compliance reviews—again, those evaluations geared toward determining whether a law enforcement agency has fully implemented a particular requirement, paragraph, or measure that the decree requires—the monitoring team will need to say something about whether the agency has, or has not, implemented that requirement in practice. For outcome assessments—those evaluations geared toward determining how overall effects of policing in the real world may be changing—the monitoring team will need to say something about what the outcomes indicate about the law enforcement agency’s progress under the decree.

Section B of this section outlines some factors that a monitoring team might weigh when interpreting results, including (1) an agency’s performance across time, cases, officers, encounters, and/or incidents; (2) the severity or significance of those instances that did not comply with the decree; (3) whether the agency has identified and meaningfully addressed performance inconsistent with decree requirements;

and (4) progress or trends over time. As noted there, these, and potentially other, factors are not capable of mechanical application. Instead, specific evidence must be considered according to the appropriate context and circumstances.

However, the fact that various factors cannot be mechanically applied does not mean that a monitor should not specifically illustrate how the express consideration of factors and weighing of evidence leads to final conclusions about whether the agency has or has not complied with requirements. A monitor must endeavor to describe clearly and systematically the reasoning behind compliance determinations. A monitor’s reports must “show their work”—describing the results of qualitative or quantitative analyses, reaching definitive conclusions, and describing the reasoning for why particular findings do or do not support a finding that the monitored agency or jurisdiction has reached compliance.

As a monitor weighs compliance, they must strive to ensure a careful balance between weighing particular incidents and instances on the one hand and consider overall, systemic trends on the other. Many consent decrees expressly note that limited instances of non-compliance in a period of time where the agency otherwise is in compliance should not prevent a finding of compliance. Conversely, limited instances of compliance during a period where the agency largely is not in compliance cannot support a finding of compliance. Still, how more limited instances of performance should be weighed—especially in light of how significant that performance is and how the agency may have responded to it—is something that a monitor should describe in a final report.

Many monitors have found it helpful to spell out, using one of the compliance scales discussed above or some other method, final conclusions according to specific paragraphs of the consent decree. Although doing so can risk focusing on the granular at the risk of the whole, this level of precision can provide law enforcement agencies and communities with a clear sense of the work that remains to be done. Along these lines, a monitoring team should endeavor to prepare a clear summary of what a formal assessment has found that is positive,

consistent with progress, and/or points toward a finding of compliance as well as what is not positive, inconsistent with progress, and/or points against a finding of compliance.

Monitors typically report on the results of assessments either in standalone reports to the court or community or as part of larger, regular monitoring reports. Either way, reports on the results of formal evaluations must balance being thorough, comprehensive, and detailed with being accessible and comprehensible to diverse stakeholders. To this end, monitors should consider specifically identifying those decree elements where outstanding work remains.

The formal process outlined in this section—grounded in social science methods and aimed at ensuring that compliance determinations are rigorous and transparent—does not preclude a monitor from making ongoing characterizations of progress in reports, court hearings, or discussions with community members. That is, simply because an area has not been the subject of a structured, systematic compliance review or outcome assessment does not mean that a monitoring team cannot give their overall impressions about how things are going. If a monitor, based on their day-to-day interactions, believes that a law enforcement agency is making steady progress on designing a training curriculum to satisfy a decree requirement, they can say so. At the same time, if a monitor has concerns about the nature or rate of progress on implementing some other requirements, they can describe those concerns. The best practice, however, is for the monitoring team to routinely detail the basis for the characterizations and conclusions—i.e., that they are based on day-to-day interactions and not any systematic analysis of data or structured review across time. Consistent with a monitor's duty to act transparently and with humility, a monitor should take care not to over- or under-value their of-the-moment subjective impressions.

Consequently, formal monitoring reports to the court and community on the progress of implementation, which (as outlined in this guide previously) most decrees require at least twice per year, still can and

should summarize and characterize how things are progressing. Indeed, the “implementation status scales” discussed above often call on the monitor to characterize a department's phase of implementation with decree requirements. However, absent a formal compliance review or outcome assessment, and the qualitative and quantitative evaluations that they entail, a monitor cannot and should not certify compliance with a decree paragraph or set of paragraphs. In this way, summarizing or characterizing a phase of implementation or progress (i.e., that the department or jurisdiction appears to be a certain distance along toward meeting a requirement) is different, and can be less formal, than a certification of compliance (i.e., that the department or jurisdiction has fully implemented the requirement in practice consistent with the definition of compliance in the decree).

D. Promoting Long-Term Sustainability and Transitioning Monitor Responsibilities to the Jurisdiction

A recurring theme across this guide is that a goal of a monitor, and a consent decree, is to build beneficial changes to a law enforcement agency and its practices that are sustainable and enduring. Part of what a law enforcement agency is likely to need to sustain decree changes is the ability to analyze data, audit information, and scrutinize its own performance. However, if a monitoring team is, throughout the life of a decree, the only entity to conduct reviews and assessments relating to compliance and outcomes, the monitored law enforcement agency and jurisdiction may lack the important capabilities to critically consider its own performance well after the decree is complete.

Because “[a] consent decree cannot last forever,” the “responsibility for monitoring begins to shift to the [law enforcement] agency or oversight entities within the jurisdiction to demonstrate sustained compliance” as an agency makes more progress

and implementation progresses.¹³⁶ Thus, even as a monitoring team conducts their evaluation work, they must take care to assist the law enforcement agency in building and maintaining its own capacity to self-audit. Some consent decrees expressly contemplate that the duty to conduct outcome assessments will shift from monitor to law enforcement agency at some point during the decree, with the monitor transitioning from independently collecting and analyzing agency data to reviewing and ensuring the accuracy of data that the agency itself has collected and analyzed. Whether expressly required or not, enhanced involvement of the monitored agency and jurisdiction across time in assessing its own performance—at a level of rigor and formality which decree assessments require—can be a critical way to build capacity for longer-term sustainability.



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The goal of a consent decree, and therefore the goal of formalized evaluations of progress, is for a law enforcement agency to establish new practices that remedy prior deficiencies and allow the agency to provide safer, more effective, and more constitutional policing to the community it serves. These practices have a better opportunity to endure after the decree and monitoring have completed when the monitored

agency and jurisdiction have established their own mechanisms for carrying on the work of evaluating and scrutinizing the agency’s performance. A consent decree’s “success should be measured not only by the substantive reforms that have been made but also by the jurisdiction’s ability to engage in reform and monitor itself long after the decree has ended.”¹³⁷

Formally, then, as a law enforcement agency reaches initial compliance with substantive requirements of the decree, the monitor may need to adjust their role from conducting compliance evaluations to conducting in-depth “quality control” of those evaluations on which the law enforcement agency or jurisdiction has taken the lead. This process of “passing the baton” to the monitored jurisdiction ensures that a court and monitor retain oversight and helps to promote the further development of a jurisdiction’s own capacity to continue progress made under a decree long after court and monitor involvement have ended.

E. Compliance Milestones and Decree Termination

This guide has previously discussed the approach that decrees have tended to use when it comes to defining compliance: law enforcement agencies reach compliance with larger subject-matter areas of the decree and then must sustain that progress for a defined period. This means that a monitor will certify compliance in practice with some material requirement(s) of the decree and, subsequently, the jurisdiction and agency will need to demonstrate that they maintain this level of performance for a particular time period (e.g., one year, two years, etc.).

During this “sustainment period,” a monitor—often in increasing collaboration with, or oversight of, the jurisdiction and agency itself as part of transitioning oversight duties from the monitor to the jurisdiction for the long-run—will need to conduct additional, updated qualitative and quantitative reviews and

¹³⁶ August 2021 DOJ Memorandum at 9.

¹³⁷ *Id.*

assessments of the sort discussed above.¹³⁸ If new information and data suggest that the department has fallen out of compliance because they are not implementing decree requirement(s) in practice, as they were previously, a jurisdiction may need to remedy the issue before trying, again, to sustain compliance for the required period.

If a jurisdiction can demonstrate sustained compliance, a few options arise. In some consent decrees, monitors may elect “to no longer assess sections of the decree for which the jurisdiction has achieved and sustained compliance.”¹³⁹ In others, the jurisdiction and the DOJ may “affirmatively recommend” that the court terminate “sections of the decree for which jurisdictions achieve and sustain compliance.”¹⁴⁰

Regardless of whether the monitoring of individual sections is suspended, or specific sections of the decree are terminated, the jurisdiction and/or the DOJ are typically the entities that may move for termination of the decree. A monitor may be asked, by those parties and/or the court, to weigh in and provide their views on whether termination is appropriate. Although termination procedures vary across decrees, a decree is unlikely to end only on the motion of one party (e.g., the monitored jurisdiction) if both the other party (the DOJ) and the monitor oppose termination.

The termination of a consent decree does not represent the end to reform or accountability. The end of a consent decree is a certification of sufficient, sustained progress—not a guarantee of perfection. Decrees do not require that no law enforcement personnel ever perform contrary to expectations or fall short of the community’s aspirations. Instead, they mandate that an agency improve its performance across time, incidents, encounters, and officers.

The end of a decree and court involvement means that the jurisdiction, and its law enforcement agency, have made the changes necessary to address foundational problems regarding the critical areas of policing that have been at the heart of the process. Even as a decree will address many core areas, many other public safety functions will likely not be part of the decree. The purpose of a decree, court involvement, and monitoring is to ensure that the monitored jurisdiction and agency do what they promised to do to address defined issues.

A decree’s conclusion invests full responsibility to the jurisdiction, and its community, to make continued progress toward ever better, fairer, safer, and more effective public safety. It empowers the jurisdiction, and the community it serves, to sustain improvements made during the decree—and to drive further innovations to meet its needs, values, and emerging challenges.

138 See *U.S. v. City of Seattle*, City of Seattle’s Memorandum re: Agreed Phase II Sustainment Period Plan, Case No. 2:12-cv-012820JLR, Dkt. 444 (Mar. 2, 2018), https://www.seattle.gov/documents/Departments/Police/Compliance/Sustainment_Plan.pdf.

139 August 2021 DOJ Memorandum at 8.

140 *Id.*



The Policing Project at NYU School of Law

The Policing Project at New York University School of Law partners with communities, policymakers, and police across the country to bring democratic accountability to policing so that it better matches American ideals and community needs. Our work is intended to help center a community-driven vision for public safety, one that is equitable, non-discriminatory and respectful of public values.

The Law Enforcement Knowledge Lab

The National Policing Institute launched the Law Enforcement Knowledge Lab in partnership with the Bureau of Justice Assistance in the spring of 2022. The Knowledge Lab is a trusted resource for law enforcement and the communities they serve. It supports public safety by identifying and disseminating fair and effective policing practices, connecting peers, and providing technical assistance. For more information on the Law Enforcement Knowledge Lab or to inquire about technical assistance, please go to <https://leknowledge.org>.

