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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF STEUBENVILLE, )  
STEUBENVILLE POLICE DEPARTMENT, )  
STEUBENVILLE CITY MANAGER, in )  
his capacity as Director of )  
Public Safety, and STEUBENVILLE )  
CIVIL SERVICE COMMISSION, )  
 )  
Defendants. )

CIVIL NO. \_\_\_\_\_

92-97-1966

THOMAS SMITH

CONSTATE JUDGE KING

CONSENT DECREE

INTRODUCTION

1. The United States brings this action to enforce Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The United States alleges that officers of the Steubenville Police Department have engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured and protected by the Constitution and the laws of the United States, and that the City of Steubenville, the Steubenville Police Department, and the Steubenville City Manager (in his capacity as Director of Public Safety) have caused and condoned this conduct through inadequate policies and failure to train, monitor, supervise, and discipline police officers, and to investigate alleged misconduct.

U.S. v. City of Steubenville



PN-OH-002-005

2. The defendants in this action are the City of Steubenville, a municipality in the State of Ohio; the Steubenville Police Department ("SPD"), a law enforcement agency operated by the City of Steubenville; the Steubenville City Manager, an employee of the City of Steubenville who serves as the Director of Public Safety, and in that capacity, oversees the SPD and other agencies operated for the safety of persons in Steubenville; and the Steubenville Civil Service Commission, an agency of the City of Steubenville with authority for hiring and review authority for disciplining SPD officers. The defendants are hereinafter referred to collectively as "the City."

3. The City denies the allegations advanced by the United States. The City acknowledges that allegations have been advanced against the City relating to the its management systems for police training, misconduct investigations, supervision, and discipline. The City denies such allegations. However, the parties agree that the manner and means of avoiding such claims is to achieve and maintain good practices and procedures for police management. The parties enter into this Decree jointly and for the further purpose of avoiding the risks and burdens of litigation.

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

5. This Decree resolves all claims in the United States' Complaint filed in this case, and all claims the United States may have under 42 U.S.C. § 14141 regarding a pattern or practice of racial discrimination in law enforcement by the defendants.

6. This Decree is enforceable only by the parties. Nothing in this Decree shall be construed to impair the right of any person or organization to seek relief against the City for its conduct or the conduct of its law enforcement officers. Nothing in this Decree is intended to alter the collective bargaining agreement between the City and the Fraternal Order of Police, Fort Steuben Lodge No. 1. Nothing in this Decree alters the authority of police officers to effect arrests, conduct searches or seizures, or otherwise fulfill their law enforcement obligations to the people of the City of Steubenville.

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

8. This Decree is binding upon the United States and on the City, by and through their officials, agents, employees, and successors.

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

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

#### DEFINITIONS

11. The following definitions apply to this Decree:
- a. "Complaint history" means a summary, with a narrative description of the allegations, of all events that trigger Internal Affairs (or "IA") investigation pursuant to this Decree, along with a summary of the resulting investigation, disposition, and management responses.
  - b. "Counseling" means a meeting or meetings between an officer and an Employee Assistance Program, substance abuse, or psychological counselor, as the City determines appropriate for the circumstances.
  - c. The terms "document" and "record" include all "writings and recordings" as defined by Federal Rules of Evidence Rule 1001(1).
  - d. "Field Training Officer" or "FTO" means an experienced police officer whose responsibilities include providing on-the-job training and supervision of probationary police officers, and continual training of all police officers.

- e. "Police officer" or "officer" means any law enforcement officer employed by the SPD, including supervisors and senior supervisors.
- f. "Serious injury" means any injury requiring or resulting in professional medical care or treatment, or in death.
- g. "Senior supervisors" means SPD captains and the Chief of Police.
- h. "Supervisor" means a police officer with oversight responsibility for other officers. The term encompasses sergeants and also senior supervisors. In the event the SPD develops other ranks above patrolmen, it will categorize each additional rank as a supervisor or senior supervisor rank.

#### TRAINING

12. The City shall develop and implement a training policy for all SPD officers. Prior to implementation, the policy must be reviewed by the independent auditor (described in ¶¶ 82-83), and approved by the United States. The policy shall incorporate the provisions of this Decree set out below (¶¶ 13-20):

13. The City shall appoint a supervisor as training officer, and arrange for the training officer to receive adequate training to enable him or her to carry out the duties here specified.

- a. The training officer shall design and administer an entry level training program specifically tailored for SPD officers, to be provided at the start of officers'

tenure (following academy training). The training program shall include systematic field training for all new officers. The field training shall be by designated Field Training Officers, and shall last at least 12 weeks. Field training shall include both daily and monthly evaluations of the probationary officer's performance. The results of these evaluations shall be reviewed by the Chief of Police and made a key part of the decision to confirm a new officer's appointment at the end of his or her probationary period.

- b. The training officer shall design and administer an in-service training program, in which each sworn officer must participate for at least 40 hours each year.
- c. The training officer shall design and administer a pre-promotion training program for every member of the department who is advancing in rank, at the start of the promoted officer's tenure in his or her new rank.
- d. The training officer shall design and administer annual supervisory and leadership training, which shall be mandatory for all supervisors, and shall include command accountability, integrity, and cultural diversity.

14. Both entry and annual in-service training shall cover the following areas, among others to be set out in the training policy:

- a. Cultural diversity. This training shall be by qualified instructors, and shall include, at a minimum, training on police interactions with persons from different racial, ethnic, and religious groups, and persons of the opposite sex. The City also shall provide training in communications skills and avoiding improper racial, ethnic, and sexual communications.
- b. Uses of force, including verbal de-escalation techniques as an alternative to the use of force and other tactics for avoidance of confrontation. Such training also shall cover the proper application of various types of force, as well as examples of situations that do not require the use of force but may be mishandled, resulting in force being used (for example, individuals verbally challenging an officer's authority or asking for an officer's identifying information).
- c. Integrity and ethics. This training shall cover the duties of truthfulness and reporting misconduct by fellow officers, the importance of avoiding misconduct, professionalism, and the duty to cooperate in misconduct investigations.
- d. Domestic violence response and investigation, including community resources.

15. In addition, in-service training shall include annual sessions on search and seizure law and methods and other relevant legal developments. Other topics that shall be covered every two

years (or more frequently if needed) are hostage and barricade situations, emotionally disturbed persons, persons with mental disabilities, and vehicular pursuits.

16. After the City has adopted new policies and procedures in compliance with this Decree, every SPD officer shall be trained in the new policies and procedures, including use of force and use-of-force reporting, and complaint procedures. In the first year after adoption of the new policies, compliance training shall be at least 40 hours in addition to the training discussed above in ¶¶ 11-15.

17. The City and the training officer shall monitor complaints of police misconduct and other events specified in ¶ 65 as triggering an IA investigation to gauge the effectiveness of training and to detect the need for new or further training.

18. The City shall establish formal eligibility criteria for training instructors and Field Training Officers based on their performance evaluations and previous superior performance as police officers. The City shall disqualify any instructor or FTO, or candidate for those positions, with a poor disciplinary record or complaint history.

19. The City shall ensure that all training instructors and FTOs receive adequate training to enable them to carry out their duties. Training instructors and FTOs shall be required to maintain, and demonstrate on a regular basis, their proficiency in their areas of instruction. The City shall maintain current documentation of instructors' and FTOs' proficiency and training. The City may use SPD officers as training instructors only if



they have been trained and are qualified to fulfill such duties; the City also may use outside training officers, if they are demonstrably qualified.

20. The City shall maintain records documenting all training of officers. At a minimum, these records shall reflect officer's names, the dates of the training, the reasons for any mandatory training (including any IA file number or other related cross references), the general subject matter of the training (including lesson plans where available), and whether the training was completed satisfactorily.

#### USES OF FORCE

21. The City shall develop and implement use of force policies that comply with applicable law and current professional standards. The policies shall include provisions governing use of deadly force, other uses of force, drawing of weapons, roadblocks, vehicular pursuits, and hostage situations. The City also shall develop and implement new policies on off-duty responsibilities and off-duty gun use. Prior to implementation, the policies must be reviewed by the independent auditor and approved by the United States.

22. The City shall develop, and require all officers to complete, a written report each time: any type of force is used against an individual; an officer engages in a vehicular pursuit; a firearm is discharged by an officer, except at a firing range; a person in custody receives a serious injury or has received a serious injury while being taken into custody; and any officer is injured in the line of duty. Types of force to be reported

include, but are not limited to, body locks, joint locks, mechanical restraints, pressure points, chokes or chokeholds, takedowns, throws, striking weapons, kicks or strikes, chemical weapons, electrical weapons, and lethal weapons (including drawing of a gun and pointing it at a person). No report for use of force need be filled out where force was limited to a firm grip and/or use of handcuffs. Reports shall include, at minimum, the following information: officer name and badge number; description of incident; each specific type of force used; the effectiveness of each type of force used; description of any injuries to either a civilian or officer, and medical/hospital data; name, race and gender of the person against whom force was used; names and contact information for all witnesses; whether the individual against whom force was used was arrested or cited, and if so, the charges; date, time, and location of the incident; and the signatures of the officer and his immediate supervisor.

23. Each report prepared as required by ¶ 22 above shall be reviewed, along with any associated arrest report, by the reporting officer's chain of command within one week of the precipitating incident. Supervisors shall refer to the IA Officer for investigation all incidents where a report reasonably indicates a possible violation of SPD policies or other misconduct; the IA staff shall investigate all incidents where they receive a referral, and issue findings. Any supervisor who believes there is a possible violation shall make the referral to the IA Officer; the decision to refer is not subject to modification. Supervisors shall be held accountable and

evaluated for their referral decisions. Referral shall be automatic and shall take place immediately at the time of the incident for all incidents resulting in serious injury either to a civilian or to an officer where a use of force or a vehicular pursuit report was required to be completed, and for all reports of firearm discharges.

#### STOPS, SEARCHES, AND SEIZURES

24. The City shall develop, and require all officers to complete, a written report each time an SPD officer performs a search without a warrant (excluding searches incident to arrests, frisks, and pat downs), seizes any property without a warrant (excluding towing vehicles), or conducts a traffic stop, or an investigative stop based on suspicion of criminal activity (a stop authorized by Terry v. Ohio, 392 U.S. 1 (1968)). The record shall include the officer's name and badge number; description of incident; the specific type of stop, search, or seizure; the basis for the stop, search, or seizure; whether the subject was asked to consent to any search; whether the subject granted such consent; the name, race, and gender of all persons involved in the stop, search, or seizure; any weapons, evidence, or contraband found; whether the individual involved in the stop, search, or seizure was arrested or cited, and if so, the charges; date, time, and location of the incident; and the signatures of the officer and his immediate supervisor. For stops, the report shall include whether the stop involved a frisk or pat-down search; for warrantless searches and seizures, the report shall include names and contact information for all witnesses.

25. Each stop, search, and seizure report prepared as required by ¶ 24 above shall be reviewed by the reporting officer's chain of command within one week of the stop, search, or seizure. Supervisors shall refer to the IA Officer for investigation all incidents where a report reasonably indicates a possible violation of SPD policies or other misconduct; the IA staff shall investigate all incidents where they receive a referral, and issue findings. Any supervisor who believes there is a possible violation shall make the referral to the IA Officer; the decision to refer is not subject to modification. Supervisors shall be held accountable and evaluated for their referral decisions. Referral shall be automatic and shall take place immediately at the time of the incident for all incidents resulting in serious injury to a civilian where a report was required by this paragraph to be completed.

#### REVIEW OF CERTAIN ARRESTS OR CHARGES

26. SPD officers shall give detainees warnings required by Miranda v. Arizona, 384 U.S. 436 (1966), on taking a suspect into custody, without delay. The City shall randomly audit compliance with this requirement.

27. Arrests or charges that fall in the following categories shall be the subject of arrest reports by officers, and the reports shall be reviewed by the reporting officer's chain of command within one week of the arrest or charge: arrests in which officers are the only complainants; possessory arrests not stemming from a search for another offense or a warrant search, and not made pursuant to an arrest warrant;

obstruction of justice; resisting arrest; assault on an officer; disorderly conduct; public intoxication; and like charges. Where the charge is resisting arrest or assault on an officer, supervisors should ensure that there is an associated use-of-force report. Supervisors shall refer to the IA Officer for investigation all incidents where an arrest report or other documentation in this category reasonably indicates a possible violation of SPD policies; the IA staff shall investigate all incidents where they receive a referral, and issue findings. Any supervisor who believes there is a possible violation shall make the referral to the IA Officer; the decision to refer is not subject to modification. Supervisors shall be held accountable and evaluated for their referral decisions.

#### INTERNAL AFFAIRS

28. The City shall develop and implement an Internal Affairs policy and manual for the SPD, detailing policies and investigative procedures. Prior to implementation, the policy and manual must be reviewed by the independent auditor and approved by the United States. Once adopted, the City shall make the manual available for inspection and copying by the public and officers at SPD headquarters, the Steubenville Public Library, and the City offices. The policy and/or manual shall include the following provisions (§§ 29-63):

29. The City shall appoint a police supervisor as IA Officer and shall arrange for the IA Officer to receive adequate training to enable him or her to carry out the duties here specified, including training in techniques for questioning

individuals. Other officers may be detailed to Internal Affairs as needed, and shall receive the training necessary to carry out these duties. (Collectively, the IA Officer and the detailed officers are referred to herein as the "IA staff.")

30. The IA Officer and staff shall be evaluated on the basis of the professionalism and thoroughness of the investigations they conduct or supervise, and on their competence in following the policies and procedures for investigations.

31. The City shall provide the IA Officer with sufficient staff, funds, and resources to perform the functions required by this Decree. The City shall encourage highly qualified candidates to become IA staff. The City shall establish formal eligibility criteria for the IA Officer and staff, including previous superior performance as police officers, including management potential. The City shall disqualify candidates with poor disciplinary records and complaint histories. An IA Officer shall serve in that capacity for no more than five years, for the first IA Officer appointed, and no more than four years thereafter.

32. The IA Officer shall report on IA functions directly to the Chief of Police. Except for the Chief of Police and subsequent review by the City Manager, and (if applicable) the Civil Service Commission, authority and responsibility for determining the disposition of an investigation shall rest with the IA Officer. The accused officers' supervisors shall not have the authority to modify or reverse any disposition of any investigation.

### Initiation of an IA investigation

33. The IA staff, supervised by the IA Officer, shall be responsible for investigating all potential misconduct allegations. These include each referral described in ¶¶ 23, 25, and 27, as well the other matters listed in ¶ 65. There shall be no discretion by the IA Officer or by any SPD officer to refuse to accept a complaint or referral.

34. No civilian shall be asked or allowed to waive his or her right to sue about police misconduct unless the civilian is represented by legal counsel and has consulted with counsel about such a waiver, and at least 24 hours have passed since the incident in question. No civilian shall be asked or allowed under any circumstances to waive his or her right to complain about police misconduct either in criminal court, or through a complaint filed with the SPD, or with a federal law enforcement agency.

35. Civilians may initiate a complaint against an officer either in person or by telephone (or TDD), mail, or facsimile transmission. Complainants shall not be required to file a complaint "form" to initiate an investigation, although the City may develop and offer a form to complainants to assist them in relating useful information.

36. A complainant may file an anonymous verbal or written complaint. The SPD shall accept and investigate complaints filed by individuals other than the alleged victim of misconduct (third-party complaints). The IA staff shall ask anonymous and third-party complainants for corroborating evidence, but even if

none is available or offered, the IA staff shall investigate such complaints to the fullest extent possible to determine whether the complaint can be corroborated.

37. The City shall require officers to report misconduct by other officers. Officers shall report misconduct by fellow officers either directly to the IA Officer or through the reporting officer's chain of command.

38. No complainant shall be required to go to a police station to file a complaint or provide a statement. The SPD shall make complaint forms and pamphlets describing the complaint process available at several non-police locations around Steubenville, so that complainants can initiate a complaint without coming to the SPD station. The IA Officer shall have a telephone number, with a 24-hour answering machine, so that a complainant need not call the SPD main number. The City shall hold yearly open meetings to inform the public about various methods for filing civilian complaints against police officers. The IA staff shall receive complaints at these open meetings. At least one week before such meetings, the City shall publish the telephone number of the IA Officer and the time and location of each meeting in a prominent location in all City buildings, and in each local newspaper. Complaints received by the IA staff at such meetings may relate to any SPD or officer misconduct and shall be treated like any other civilian complaint.

39. The IA Officer shall notify the supervisors of an accused officer whenever a civilian complaint has been filed against that officer.



### Conducting the IA Investigation

40. Under no circumstances shall an officer who is the subject of an IA investigation be allowed to participate in any way in conducting that investigation.

41. The IA Officer shall monitor and be responsible for the progress and completeness of all IA investigations. The City shall not permit any SPD officer to attempt to settle a civilian complaint through informal means.

42. The IA Officer shall not close any investigation without rendering a disposition. Withdrawal of a complaint or unavailability of a complainant to make a statement shall not be a basis for closing an investigation or rendering a disposition of "unresolved" without further attempt at investigation. The IA Officer shall investigate such complaints to the fullest extent possible to determine whether the complaint can be corroborated.

43. If complainants or witnesses are reluctant to come to the SPD station, or unavailable to be interviewed during business hours, the IA staff shall offer to interview them at alternate sites and times, including at residences or places of business, and during reasonable weekend or after-business hours. IA staff shall provide reasonable notice before all complainant and civilian witness interviews.

44. All interviews of complainants, involved officers, and witnesses shall be tape-recorded and transcribed. These tapes shall be maintained and kept as part of the IA investigative file. If a complainant or witness refuses to be tape-recorded, then the IA staff shall prepare a written narrative of the

statement to be signed by the complainant or witness. The IA staff shall not conduct group interviews, and shall not accept a "special report" or written statement from any officer in lieu of an interview. The IA staff shall have the authority to question all interviewees and to challenge their version of the facts.

45. In order to interview officers effectively, the IA Officer shall obtain (and be given full access to) information from the information system described in ¶ 71, and the following information regarding the accused officer and officer witnesses: performance evaluations, assignment history, and training/qualification records.

46. Officers shall be obligated to appear at the IA interview and to answer questions, under penalty of discipline. Officers who are the subject of an IA investigation shall be informed of their rights and obligations under Garrity v. New Jersey, 385 U.S. 493 (1967).

47. Supervisors on the scene of incidents that result in an IA investigation shall be interviewed. Supervisors shall be required to detail their handling of the situation during and after the alleged incident and their observations of the complainant (if any) and officers.

48. The IA staff shall canvass the scene of an incident for witnesses as soon as possible after receiving a complaint of misconduct or any other referral.

49. The IA staff shall itself aggressively collect all appropriate evidence to document each incident of potential misconduct, or any injury of a complainant, including medical

records and photographs of injuries. The IA staff shall not require complainants or other witnesses to provide evidence that the IA staff can itself obtain, but shall seek appropriate releases where useful in obtaining evidence.

50. The IA Officer shall assess the propriety of all officer conduct during an incident the IA staff investigates. If, during the course of an IA investigation, the IA Officer has reason to believe that misconduct other than that alleged by a complainant (or indicated by a triggering report) has occurred, the IA staff must investigate and make findings with respect to such misconduct, as well.

#### Evaluating the Complaint

51. At the end of the investigation, the IA officer shall give the investigative file to the Chief of Police, and shall make one of the following dispositions:

"Sustained," where a preponderance of the evidence shows that misconduct or inappropriate behavior occurred.

"Unfounded," where a preponderance of the evidence shows that misconduct or inappropriate behavior did not occur.

"Not resolved," where there is insufficient evidence to decide what happened.

"Exonerated," where the conduct described by the complainant or other referral source occurred, but did not violate SPD policy.

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

53. Where the IA staff has completed an investigation, and determines that "exonerated" is the likely disposition, and the claim involves an allegedly unconstitutional stop, search, or seizure, or a false arrest, the IA staff may call upon the SPD's legal advisor for legal advice. Such advice shall be in writing, and shall be made a part of the investigation file.

54. At the conclusion of each investigation, the IA Officer shall issue a report describing the alleged misconduct, any other misconduct identified during the course of the investigation, a summary of all evidence gathered during the investigation (including an explanation for any absence of evidence), documentation of all credibility determinations, the accused officer's complaint history, the IA Officer's findings with respect to all potential misconduct, and the analysis supporting the IA officer's findings. The report shall include the disposition of the investigation, and shall be made a part of the investigation file. The IA Officer shall not recommend discipline or supervisory responses to the disposition and findings. Except in the case of an especially complex

investigation, the IA Officer shall finish the report within 30 days of receipt of the complaint or referral.

55. The IA Officer shall give the report described in ¶ 54 to the Chief of Police, who shall read it and evaluate the investigation. If the Chief thinks that other investigatory steps should be taken, he or she shall require the IA Officer to take such steps, and report the results. The original report and disposition shall remain in the investigation file. The Chief of Police shall not attempt to influence the findings or disposition made by the IA officer.

56. On completion of a final investigation that satisfies the Chief of Police, the Chief shall review the investigation and report, and shall report, in writing, his or her agreement or disagreement with the IA Officer's findings and disposition. If the Chief draws different conclusions, he or she shall detail his or her rationale, in writing, and shall render express findings and a final disposition, along with a decision, pursuant to ¶ 69, on appropriate supervisory or disciplinary steps.

57. Pursuant to the requirements of the Steubenville City Charter, after the Chief has reviewed the investigation, the matter shall proceed to the City Manager, who can approve the investigation or return it to the Chief for further investigation, and can approve or disapprove the findings, disposition, and supervisory or disciplinary steps taken. It is primarily the responsibility of the Chief of Police to ensure appropriate investigation and compliance with SPD policy; rather than taking on the primary responsibility, the City Manager shall

insist that the Chief carry out this duty appropriately, and shall evaluate the Chief on the basis of success or failure in this function.

58. If, pursuant to State and City law, the Civil Service Commission reviews any determination made pursuant to the above procedure, it shall do so in compliance with the obligation, imposed by law and by this Decree, to ensure that SPD officers do not engage in misconduct, and to discipline them for misconduct.

Management and Public Oversight

59. Every complaint or other referral received by the IA Officer shall be assigned a control number.

60. In addition to preparing and maintaining investigation files, the IA staff shall maintain summary records that include the IA file control number, the names of all involved officers, contact information for all officers and complainants, the race and gender of all involved officers and complainants, a narrative description of the allegations, significant dates, the street address of the incident, and the disposition of the complaint. When the City prepares a complaint history, the history shall include, at a minimum, the officer's name, the IA file number, the date of the incident, a narrative description of the allegations, the disposition, and the management responses. The actual investigation files shall be maintained for at least ten years from the date of the disposition of the complaint. All IA information shall be maintained in a readily accessible manner during that officer's employment with the SPD and for three years

after the officer leaves the SPD. Data regarding an officer who has left the SPD shall be maintained indefinitely in an archive.

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

62. Once a complaint is finally resolved by the Chief and the City Manager, the IA Officer shall inform the complainant of the resolution, in writing, including the investigation's significant dates, general allegations, disposition, and any resulting supervisory steps or discipline.

63. The IA officer shall prepare, and the SPD shall issue, a twice-yearly public report of its investigations. Such reports shall include each investigation's significant dates, general allegations, disposition, and any resulting supervisory steps or discipline.

#### SUPERVISION OF OFFICERS

64. The City, by and through its officials, agents, employees, and successors, has an affirmative obligation to supervise, monitor, and discipline its officers.

65. The City shall use the following sources as supervisory tools alerting management to potential misconduct, inappropriate behavior, and areas in which additional training or policy modification may be necessary:

- a. The reports discussed in §§ 22, 24, and 27;
- b. criminal case orders suppressing evidence because of constitutional violations (including violations of the

First Amendment, the Fourth Amendment, the Fifth Amendment) or for other reasons, or other judicial findings or comments about SPD misconduct made in the course of a criminal proceeding;

- c. civilian complaints;
- d. civil suits alleging misconduct by an officer in the course of his or her duties, or against an officer and including allegations of untruthfulness, physical force, racial bias, or domestic violence;
- e. criminal arrests or charges against officers;
- f. reports of misconduct by officers about other officers.

The reports listed in subparagraph (a) shall be referred to the IA Officer under the terms specified in §§ 23, 25, and 27. Each of the other events listed in this paragraph shall trigger an IA investigation. The IA Officer shall conduct an independent investigation on receipt of the referral, and shall not wait for resolution of any criminal or civil court case. The fact that the City settled a civil litigation shall have no bearing on the need or findings of an IA investigation or on the supervisory or disciplinary results.

66. In addition, the City shall use the information system described in § 71, below, in order to decide on appropriate supervision of officers. In particular:

- a. The City shall develop a protocol for use of the information revealed by the information system quarterly audits described in §§ 74-77, below. Prior to implementation, the protocol must be reviewed by the



independent auditor and approved by the United States. The protocol shall specify what types of audit results will require review by senior supervisors, and where appropriate, supervisory meetings with officers, retraining, counseling, assignment to a FTO, transfer, or reassignment.

- b. The City shall identify for review by senior supervisors, all officers with three or more complaints of misconduct or other IA referrals in three years, whether or not the disposition of the investigation was "sustained". Such review shall result, where appropriate, in supervisory meetings with the officer, retraining, counseling, assignment to a FTO, transfer, or reassignment. The City's supervisory response shall address the types of misconduct alleged.

67. The City shall require all officers to notify the Chief of Police and the IA Officer when the officer has been arrested or criminally charged, or named as a party in any civil suit involving his or her conduct as an SPD officer or including allegations of untruthfulness, physical force, racial bias, or domestic violence. The Chief or the IA Officer shall notify the City Manager and the Law Director, and the City and the SPD shall monitor all criminal prosecutions of officers, and all such civil litigation.

68. The City shall monitor all criminal proceedings containing allegations of false or unconstitutional arrests or improper searches or seizures by SPD officers. Whenever such a

court finds an SPD officer to have falsely arrested an individual or conducted an improper search or seizure, such judicial findings, shall be included along with the information gathered by the IA investigation, in the information system described in ¶ 71 and in an officer's complaint history. A finding of not-guilty, without more, shall not be considered a judicial finding of misconduct under this paragraph.

69. After an IA investigation is complete, and findings and a disposition have been made, the Chief of Police shall decide an appropriate supervisory and/or disciplinary response. In particular:

- a. At the close of every IA investigation (whatever its disposition), the Chief shall evaluate the need for non-disciplinary supervisory steps, including remedial training, counseling, assignment to an FTO, transfer, or reassignment. The Chief's decision shall be made in writing, shall set forth its rationale and the factors considered, and shall be part of the investigation record.
- b. Whenever the disposition of an IA investigation is "sustained," the City shall impose appropriate discipline and supervision. Except where the discipline is termination, the City shall require the officer to receive remedial training and counseling, in addition to whatever other steps are taken. Where appropriate, the City also shall transfer or reassign any officer when a "sustained" disposition is made.

c. In deciding the appropriate discipline for each officer who is the subject of a "sustained" disposition, the City shall consider an officer's complaint history and the immediate misconduct. Prior remedial training, counseling, discipline, transfer, or reassignment for allegations of related misconduct also shall be considered in assessing the severity of the discipline imposed. Anonymous complaints determined by the IA officer after investigation to be uncorroborated may not be the basis of discipline of any officer.

d. The City shall discipline and appropriately re-train, counsel, re-assign, or transfer officers found guilty or liable by a court or jury of misconduct related to their SPD duties.

e. The IA report and additional reports by the Chief of Police and (if applicable) the City Manager shall be reviewed by the subject officer's chain of command within one week of completion of the IA investigation.

70. The City shall maintain records documenting all mandatory counseling of officers. At a minimum, these records shall reflect the name of the officer, the reasons for the referral (including any IA file number or other related cross references), the general subject matter of the mandatory counseling, and whether the mandatory counseling sessions were attended.

## INFORMATION SYSTEM

71. The City shall develop a plan for maintaining information necessary for supervision and management of the SPD. Prior to implementation, the plan must be reviewed by the independent auditor and approved by the United States. The information system developed shall include the following features:

- a. The system shall collect and maintain, in accessible form, information about SPD arrests, stops, searches, seizures, uses of force, vehicular pursuits, officer injuries, weapons discharges, complaints and commendations, training, discipline, and counseling.
- b. The system shall include, at a minimum, the following information, in a form searchable by officer, date and range of dates, supervisor, squad, shift, special unit, and charge: all arrests with the location of each arrest, the race of each arrested person, and the code violation(s); uses of force, vehicular pursuits, serious injuries, and weapons discharges as documented in the reports described in ¶ 22; stops, searches, and seizures, as documented in the reports described in ¶ 23; a detailed description of all allegations that have triggered IA investigations, including all information described in ¶ 60; discipline, training, reassignments, transfers, and mandatory counseling imposed, and related IA file numbers (if any); commendations and other indicia of positive

performance; status of any administrative appeals or grievances.

- c. Information regarding an officer shall be maintained in the information system during that officer's employment with the SPD and for three years after the officer leaves the SPD. Information regarding an officer that is removed from the information system shall be maintained indefinitely in an archive.

72. The City shall gather records relating to each civilian complaint, civil suit, judicial finding of misconduct, and criminal charge relating to SPD officer misconduct since 1990, and shall incorporate into the information system as much of the information as possible about each one. This information shall be included in the complaint history of each officer, and shall be audited and evaluated as discussed below.

73. The City shall use the information system described in ¶ 71 to supervise the behavior of officers. At a minimum, the City shall use the information system to conduct regular audits in the areas discussed in the following paragraphs (¶¶ 74-77):

74. The City shall conduct regular audits and reviews of the uses of force by all officers. The City and SPD supervisors shall have an affirmative obligation to act on this data with the goal of preventing the use of excessive force. In addition to reviewing each use of force, as discussed in ¶ 22, at a minimum, SPD senior supervisors shall analyze use of force information on a quarterly, cumulative basis to detect trends in SPD use of force. The analysis shall include a review of use of force

incidents by officer, by injury, and by type of force used. The City, and SPD senior supervisors shall act on this data to ensure that SPD officers are using appropriate types and amounts of force.

75. The City shall conduct regular audits and reviews of stops, searches, and seizures by all officers. The City and SPD supervisors shall have an affirmative obligation to act on this data with the goal of preventing improper stops, searches, and seizures by their officers. In addition to reviewing each stop, search, and seizure, as discussed in ¶ 25, at a minimum SPD senior supervisors shall analyze stop, search, and seizure information on a quarterly, cumulative basis to detect trends in SPD practices. The analysis shall include a review of incidents by officer, by injury, and by type of stop, search, or seizure used. The City and SPD senior supervisors shall act on this data to ensure that SPD officers are using appropriate types and methods of stops, searches, and seizures.

76. The City shall conduct regular audits and reviews of arrest and charging practices by all officers. The City and SPD supervisors shall have an affirmative obligation to act on this data with the goal of preventing improper arrests by their officers. At a minimum, SPD senior supervisors shall analyze arrest and charge information on a quarterly, cumulative basis to detect trends in SPD arrests and charging practices. The analysis shall include a review of arrests for the charges listed in ¶ 27 by officer. SPD senior supervisors shall act on this data to ensure that SPD officers are bringing only appropriate

charges, and are not violating other department policies or legal rules.

77. The City shall conduct regular audits and reviews of potential racial bias (including use of racial epithets) by all officers. The City and SPD supervisors shall have an affirmative obligation to act on this data with the goal of eliminating actions that reflect racial bias by officers. At a minimum, SPD senior supervisors shall analyze racial information on a quarterly, cumulative basis to detect trends of possible racial bias. The analysis shall include a review of race statistics in the categories of arrest listed in ¶ 27, and in uses of force, stops, searches and seizures, and complaints; use of racial epithets; or other indicators of possible racial bias.

#### PERSONNEL MATTERS

78. The City shall develop and implement a performance evaluation policy for officers. Prior to implementation, the policy must be reviewed by the independent auditor and approved by the United States. The policy shall set out objective, job-relevant criteria, and provide for review of these criteria by each officer. It shall provide that each officer receive periodic face-to-face and written performance evaluations by supervisors during which his or her performance is discussed and evaluated, including recommendations for necessary improvement. Evaluations shall include narrative discussion of the officer's performance, and shall explain fully the weight and substance of all factors used to evaluate an officer. Supervisors shall include in the evaluation consideration of uses of force,

civilian complaints, disciplinary actions, injuries, etc., focusing on possible patterns of misconduct or inappropriate action. The performance evaluations shall be part of promotion decisions made about any officer. Anonymous complaints determined by the IA officer after investigation to be uncorroborated may not be the basis of denial of promotion of any officer. Supervisors and senior supervisors' evaluations shall include assessment of their ability to monitor, deter, and appropriately address misconduct or inappropriate action by officers they supervise.

79. The City shall implement a performance evaluation system for the Chief of Police, who shall be evaluated by the City Manager. Each year, the City Manager and the Chief of Police shall together formulate the performance criteria, goals, and objectives for that year. The City Manager shall evaluate the Chief's performance on the basis of the City Manager's ongoing oversight of the SPD, and also of twice-yearly reports by the Chief discussing progress and problems and addressing specifically the goals and objectives. The Chief's performance evaluation shall consider and address progress on implementation of this Decree and its objectives.

80. Because peculiar and exceptional qualifications of a managerial and professional character are required, and because competition in such special case is impracticable and the position can best be filled by selection of a person of high and recognized attainments, pursuant to the provisions of Ohio law, when a vacancy occurs in the position of Chief of Police, the



City shall suspend the provisions of Ohio Revised Code §§ 124.01 to 124.64. Selection of a new Chief of Police shall be conducted in accordance with the following provisions:

- a. A written and/or oral competitive examination may be part of the selection process. The search and selection process proposed by the City, including any competitive exam, must be reviewed by the independent auditor and approved by the United States.
- b. The City shall search (or shall contract with a qualified search organization) for a Chief who is qualified to implement this Decree and its objectives, and shall select a Chief with sufficient expertise. Candidates who are already employed by the SPD at the time of the search shall receive preference in the hiring process for Chief of Police. The degree of preference will be one provision of the selection process developed as set out in subparagraph a.
- c. Officers who are employed by the SPD on the effective date of this decree and who would otherwise be eligible to sit for a competitive exam for the position of Chief of Police, at the time of selection, need not meet the education qualification set out in subparagraph d, below, in order to be eligible for selection.
- d. Mandatory qualifications, except as set out in subparagraph c, shall include a four year college degree, appropriate administrative experience, and a demonstrated commitment to police excellence.

e. The salary offered to any new Chief of Police shall be commensurate to his or her experience and qualifications.

81. The City shall contract for or provide an employee assistance program ("EAP"). This program shall at a minimum provide counseling and stress management services to officers. The program shall be staffed by sufficient licensed and certified counselors who are trained and experienced in addressing psychological and emotional problems common to police officers. The City shall publicize the availability of these services to all officers. Except when the City imposes mandatory counseling as a supervisory tool, officers shall be free to attend counseling confidentially, and without any adverse actions taken against them. The City shall refer officers to EAP counseling where the City believes an officer's job performance may benefit from EAP services.

#### IMPLEMENTATION

82. Within 60 days after the entry of this Decree, the City and the United States shall together select an independent auditor who shall report on a quarterly basis the City's compliance with each provision of this Decree. The auditor shall be an agent of the Court and shall not be retained by any current or future litigant or claimant in a claim or suit against the City or its officers. The auditor shall not issue statements or make findings with regard to any act or omission of the City, the SPD, or the IA Officer or staff, except as required or expressly authorized by the terms of this Decree. The auditor may testify

in court regarding any matter relating to the implementation, enforcement, or dissolution of this Decree. The auditor shall be acceptable to both parties. If the parties are unable to agree on an auditor, each party shall submit two names, along with resumes or curricula vitae and cost proposals, to the Court and the Court shall appoint the auditor from among the names submitted. The City shall bear all costs of the auditor.

83. The auditor shall offer the City technical assistance in coming into compliance with this Decree, including with: policy development, forms, training, management information systems. The auditor shall perform the policy review function specified in the Decree, and also shall audit and evaluate compliance with the Decree.

84. If the parties agree both that a particular technical assistance function should be provided by someone other than the auditor, and on who the alternative consultant should be, limited technical assistance tasks may be performed by someone other than the auditor. The City shall bear all costs of any additional consultant.

85. Within eight months of the effective date of this Decree, the City shall provide the auditor and the United States with its preliminary policies, manuals, and forms required to be developed under this Decree. Once the policies and manuals have been reviewed by the auditor, and approved by the United States, the City shall implement them within 30 days. If agreement proves impossible, the decision shall be made by the auditor.

86. The City shall provide the auditor with full access to: all IA staff and records (including databases, files, and quarterly summaries); the information system described in ¶ 71; all information regarding officer use of force, stops, searches and seizures (including all reports required by ¶¶ 23, 25, and 27); all records kept by a legal advisor of any advice or counsel sought by an officer; and all relevant City policies and procedures that the auditor deems necessary to fulfill his or her duties, as defined below. At a minimum, the auditor shall review and evaluate the following, and issue a quarterly report to the parties and the Court describing the review and analysis:

- a. All IA reports, along with any additional reports by the Chief of Police and the City Manager, and any findings by the Civil Service Commission. The City shall forward all such records to the auditor immediately upon their completion.
- b. All records specifying the imposition of, and completion of supervisory steps and disciplinary actions, taken after an IA investigation or an information system audit. The City shall forward all such records to the auditor immediately upon their completion.
- c. The substance and timeliness of at least 50% of all IA investigations completed during each evaluation period.
- d. All officer uses of force, stops, searches and seizures, and arrests in the categories specified in ¶ 27.

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

88. Ninety days following entry of this Decree and every six months thereafter until this Decree is terminated, the City shall file with the Court and the auditor, with a copy to the United States, a status report delineating all steps taken during the reporting period to comply with each provision of this Decree. The first two reports also shall include timetables setting out the steps the City has taken and will take to meet the deadline in ¶ 85.

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

90. During all times while the Court maintains jurisdiction over this action, the auditor shall have unrestricted access to and, upon request made to the City's Law Director, receive copies of any documents and any databases relating to the implementation of this Decree. The auditor shall have immediate access to all City staff and facilities as necessary to monitor the City's compliance with the terms of this Decree.

91. During all times while the Court maintains jurisdiction over this action, the United States shall have access to and, upon request made to the City's Law Director, receive copies of any documents and any databases necessary to evaluate compliance

with this Decree. The United States shall have immediate access to all staff and facilities as necessary to evaluate the City's compliance with the terms of this Decree.

92. This Decree shall become effective on entry by the Court.

#### COMPLIANCE

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

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

95. If the United States seeks a finding of contempt against the City, it shall be obligated to show that the City is not in substantial compliance with the relevant provision of this Decree.

96. The Court shall retain jurisdiction of this action for all purposes during the term of this Decree. At any time after both five years have elapsed since the date of entry of this Decree, and substantial compliance has been maintained for no less than two years, the City may move to dismiss this Decree.

Any motion to dismiss must detail all aspects of the City's compliance with each provision of this Decree, supported by affidavits and supporting documentation. The United States shall have ninety days from receipt of the City's motion to dismiss to file any objections. In the event the United States files objections to the City's motion, the Decree shall remain in effect at least until entry of a court order disposing of the motion and thereafter as dictated by the court's order. In the event the United States objects to termination of the Decree, the Court shall hold a hearing, at which both parties may present evidence, before ruling on the City's motion to dismiss. At the hearing, the burden shall be on the City to demonstrate that it has fully and faithfully implemented all provisions of this Decree and maintained substantial compliance for at least two years.

#### MODIFICATIONS

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

#### SEVERABILITY

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

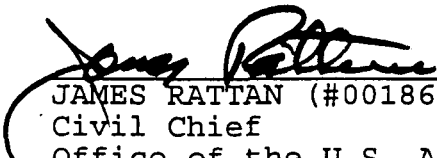
99. In the event any provision of this Decree is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Decree.

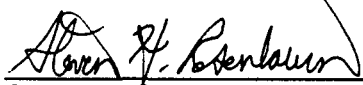
We consent and seek entry of this Decree:

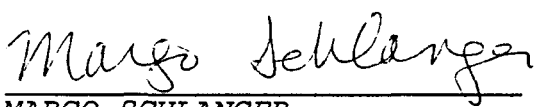
FOR THE PLAINTIFF, THE UNITED STATES OF AMERICA:

SHARON J. ZEALEY  
United States Attorney  
Southern District of Ohio

ISABELLE KATZ PINZLER  
Acting Assistant Attorney  
General  
Civil Rights Division

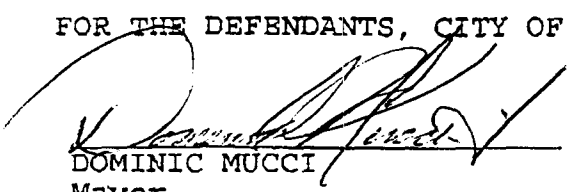
  
JAMES RATTAN (#0018632)  
Civil Chief  
Office of the U.S. Attorney  
Southern District of Ohio  
280 North High St., 4th floor  
Columbus, OH 43215  
(614) 469-5715

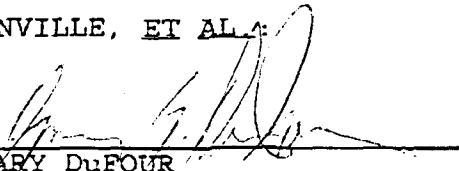
  
STEVEN H. ROSENBAUM  
Chief  
MELLIE H. NELSON  
Deputy Chief  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section

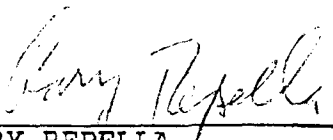
  
MARGO SCHLANGER  
Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
P.O. Box 66400  
Washington, D.C. 20035-6400  
(202) 616-8657



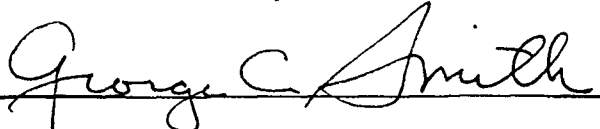
FOR THE DEFENDANTS, CITY OF STEUBENVILLE, ET AL:

  
DOMINIC MUCCI  
Mayor  
City of Steubenville  
300 Market Street  
Steubenville, OH 43952

  
GARY DuFOUR  
City Manager  
City of Steubenville  
302 Market Street  
Steubenville, OH 43952  
(614) 283-6133

  
GARY REPELLA  
City of Steubenville  
Law Director  
Attorney of Record  
308 Market Street  
Steubenville, OH 43952  
(614) 283-6031

SO ORDERED this 3rd day of September 1997.

  
United States District Judge