

UNITED STATES DISTRICT COURT  
ESTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
Plaintiff, )  
v. ) No. 4:16 CV 180 CDP  
THE CITY OF FERGUSON )  
Defendant )

**Written Testimony on Behalf of Justin Hansford, Assistant Professor of Law at Saint Louis University School of Law**

Thank you for the opportunity to testify in reference to the Ferguson Consent Decree. I am a law professor at Saint Louis University School of Law. I teach Constitutional Law, Human Rights Law, Racism and the Law, Torts, and other courses. I am also a board member of the Society of American Law Teachers, and the Michael O.D. Brown We Love our Sons and Daughters Foundation.<sup>1</sup> I have been involved in the demonstrations as a protester, organizer, legal observer, and policy advocate.

After testifying alongside Mike Brown’s parents and Ferguson activists on the world stage before the United Nations in Geneva in 2014, the responses from UN officials made it apparent that the state of policing and the criminal justice system in the United States, and in Ferguson in particular, has damaged America’s moral standing, not just amongst Black and Brown communities in the United States, but in the eyes of many nations around the world. The UN is right to be appalled. This misconduct takes place in the context of a combined state and federal prison and jail population that is nearly 43% Black, in a nation that is only 13% Black overall. The United States currently has 5% of the world’s populace, but 25% of the world’s inmates. The incarceration rate of 750 inmates per every 100,000 citizens is nearly 8 times the rate of Russia, China, Iran, or Germany. Even worse, this high rate of imprisonment is blatantly racialized. The United States imprisons more of its Black community than South Africa did at the height of Apartheid. The misconduct in Ferguson has become shorthand for this national crisis.

I pray that the honorable court will stay mindful of this factual backdrop for the final resolution of the consent decree in this case. The Ferguson Consent Decree will serve not only to aid this community, but as a symbolic measuring stick for communities around the country to aspire to.

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<sup>1</sup> This testimony is submitted on my own behalf, and not on behalf of my affiliate organizations.

I hope that this testimony and that submitted by others will provide you with enough information to enforce a meaningful consent decree. In fact, I remain hopeful that the incidents in Ferguson can presage a profound social change, transforming this region and this country into a beacon for human rights and democracy around the world. For this to happen, our policing and criminal justice community must become a force for justice, not injustice, and healing, not racial division, in our lifetimes.

To facilitate ease of comprehension, I will list the elements of the consent decree that I feel should be altered in bullet point form. The proposed changes are in italics and in bold print.

### **III. COMMUNITY POLICING AND ENGAGEMENT**

#### **A. Community Engagement**

19. Within 180 days of the Effective Date, the City will begin to host and participate in a series of small-group structured dialogues, arranged and led by a qualified neutral facilitator, between police officers and community members and groups, with an emphasis on community members and groups who previously have not had strong or positive relationships with FPD or the City.

- ***These groups should include African American youth, formerly incarcerated individuals, those who have filed complaints about police misconduct and are unsatisfied with the resolution of their complaints, and those identified by local organizations as victims of Ferguson's past misconduct. In these dialogues, police officers must emerge with concrete changes in behavior that they plan to include in the community-engagement plan.***

20. Within 180 days of the Effective Date, the City and FPD will develop and begin implementing an FPD community-engagement plan for creating opportunities for routine and frequent positive interactions between officers and community members.

- ***These interactions will be reviewed to ensure that Ferguson police adopt the suggestions of the community, and the community engagement plan should be widely available on the website. In the event the parameters of the plan are not pursued in good faith, disciplinary procedures should be created to ensure compliance.***

#### **D. Community-Oriented and Problem-Solving Policing**

26. Building on its ongoing development of a Neighborhood Policing Plan and the community engagement efforts outlined above, within one year of the Effective Date, the City will develop an FPD crime-prevention plan and a community-policing plan to ensure that policing is oriented around community priorities and partnerships, and based on problem-solving principles.

- ***This Neighborhood Policing Plan will refrain from applying closer scrutiny to majority African American neighborhoods in the enforcement of traffic laws and other minor offences. Due to Ferguson's past misconduct, any arguments that assert that African American neighborhoods have disproportionately high rates of crime are warped by the admission that Ferguson has targeted those neighborhoods for heightened scrutiny, thereby artificially skewing past law enforcement data. Any targeting of majority African American neighborhoods for heightened***

***law enforcement scrutiny must be accompanied by a special affidavit and demonstrated by data compiled in a demonstrably non-discriminatory manner.***

- ***The Neighborhood Policing Plan should also explore other ways to solve problems within the community that do not call for police involvement, or arrest and prosecution. The plan must include public education that teaches ways to solve community conflicts without resorting to police intervention.***

29. FPD will structure individual officer patrol areas around specific neighborhood boundaries, and, through supervision and evaluation, will encourage direct officer-resident communication. FPD will assign officers to specific areas to allow for neighborhood problem solving projects, and will assign officers to patrol such areas for a minimum of one year. FPD also will require officers to:

- a. Periodically patrol via walking and/or bicycle patrols in their assigned patrol area;
- b. Provide residents in their assigned area with their business email and business telephone number, and respond to calls and emails directed to such officers from residents in their assigned area within a reasonable time period; and
- c. Attend community meetings, as scheduled, within the officers' assigned patrol area.

30. FPD will revise its current shift schedules and deployment to better support a community-oriented approach to policing, and will post officer patrol area assignments on the FPD website.

- ***These walking patrols and other methods must be employed equally in both majority African American and White neighborhoods, (demonstrated by equal amounts of patrolmen assigned to both categories of neighborhood), to ensure that these practices will not be used as a proxy for heightened enforcement of minor infractions against African American communities.***

#### **IV. REFORM OF THE FERGUSON MUNICIPAL CODE**

36. To ensure constitutional enforcement of the Ferguson Municipal Code ("Code") and further promote community-oriented policing, the City agrees to revise the Code and ensure that it comports with the United States Constitution and other laws; establishes clearly defined municipal offenses and appropriate penalties for violations; and adequately protects the public health, safety, and welfare. To achieve these outcomes, the City will implement the requirements below.

- ***The city will also repeal unreasonably broad ordinances that allow for abuse, including but not limited to "manner of walking" violations, any loitering violations, and other unreasonably vague laws that have potential for abuse.***

#### **VI. BIAS-FREE POLICE AND COURT PRACTICES**

64. This Agreement, in its entirety, will be implemented in a manner that ensures equal protection of the law for all individuals, regardless of race, color, ethnicity, national origin, religion, gender, sexual orientation, disability, or other protected characteristics. The provisions below, alongside the related training requirements in Section XVII.C of this Agreement, most directly address the obligations of the City, through FPD officers and employees, to provide police and court services free from unlawful bias or discrimination, and to fully recognize and

value the legal rights and inherent dignity of all individuals, regardless of their protected characteristics.

- ***Both Ferguson Police and Court personnel have demonstrated eagerness to use the enforcement of the law as a source of revenue. As a result, the Police and Court budget will be frozen, and any monies accrued from the enforcement of the law should be donated to local public schools. Police, Courts, and the city administration should have no recourse to gain revenue from the enforcement of the law. Any manipulation of funds in other aspects of the city budget in an effort to evade this measure will be construed as a clear violation of the terms of the consent decree (eg. any lowering of school related budget funding without sufficient justification).***

## **VII. VOLUNTARY CONTACTS, STOPS, SEARCHES, CITATIONS, AND ARRESTS**

76. With respect to the subsections below, the City agrees to ensure that FPD officers adhere to the following principles:

a. No City or FPD employee will recommend, develop, or implement any law enforcement program, strategy, tactic, or action in order to generate revenue. Any revenue generated by law enforcement actions will be incidental to the public safety purpose;

- ***This provision will be altered pursuant to the comment above—any revenue generated by law enforcement actions incidental to the public safety purpose will accrue to the school budget only, and the school budget cannot be lowered in an effort to evade this suggested provision of the consent decree.***

## **IX. FORCE**

### ***1. Force Reporting***

174. All officers observing a use of force by an FPD officer will be required to document their observations in writing before the end of shift.

- ***Whenever force is used, citizens will have a right to request an in person hearing with the officer who used the force. Both the citizen and the officer may request legal counsel for this hearing. The statements made in the hearing will be under oath, subject to rules of perjury. If the officer is found to intentionally engage in misleading testimony during this hearing, there will be a mandatory suspension without pay and the officer will be exposed to a potential perjury charge.***

## **XI. SCHOOL RESOURCE OFFICER PROGRAM**

207. Ferguson's existing school resource officer (SRO) program offers a unique opportunity to build trust and cooperation between Ferguson's youth and law enforcement on a daily basis. This program, through education and the promotion of mutual respect, also provides Ferguson the opportunity to reduce students' unnecessary involvement in the juvenile and criminal justice systems, which can have profound negative effects on students' engagement and success in school and the broader community. In light of these dynamics, FPD agrees that its SRO program will build positive relationships between officers and youth, avoid unnecessary negative police actions such as arrests, and develop alternatives that promote keeping students in school and out of the criminal justice system.

- ***Police presence in schools should be made equitable—heightened police presence in schools with majority African American students will be seen as targeting these schools for heightened law enforcement scrutiny, and will be construed as a violation of the consent decree. These***

***programs should be implemented in all schools within the jurisdiction equally, with the same amount of officers present in both majority white and majority black schools***

### **C. Minimizing School Arrests and Force**

- ***Use of force against school children will be subject to heightened scrutiny, more closely than the force used against adults. Mandatory hearings should be instituted whenever force is used against children, with parental presence allowed at the hearing, and legal representation should be provided for the parents, facilitated by school personnel. Heightened protections should be included for children in these cases, and counseling should be available for students who have been subjected to the use of force against them.***

### **XII. BODY-WORN AND IN-CAR CAMERAS**

- ***Body worn cameras should not be used to collect evidence or engage in surveillance of community members. Any such usage will be in express violation of this consent decree.***

### **XIX. ACCOUNTABILITY**

361. Holding public servants accountable when they violate law or policy is essential to ensuring legitimacy of governance and community confidence. Well functioning accountability systems also promote employee safety and morale. The provisions set out below are designed to ensure that Ferguson's accountability systems are effective, fair, and transparent.

#### **B. Misconduct Complaint Intake, Investigation and Adjudication**

- ***Police Misconduct Complaint intake, investigation, and adjudication should be handled by a private agency with no connections to the city. Those complaints should be thoroughly processed according to the rules and regulations outlined in this consent decree.***
- ***If no third party can be located, this process must be supervised closely by the consent decree monitor, and any failures in this process should result in a possible fine taken directly from the police department budget.***
- ***Intake, Investigation, and Adjudication which finds police misconduct should result in monetary damages being afforded to the citizen, which should come from the city budget. The amount of the award must be approved by the compliance monitor. This will not preclude the opportunity to bring a civil suit, but any monetary damage awards which result from a civil suit will be proportionately lowered to account for damage awards which result from a misconduct complaint which is verified through third party or city adjudication.***
- ***Misconduct complaints may be pursued for a period of five (5) years, and complaints from as far back as 5 years can be currently brought for misconduct adjudication.***

#### **Conclusion**

With these changes, the consent decree can indeed serve as a reset on community-police relations in the city of Ferguson, the region, and perhaps in other communities throughout the country that may be closely watching us. I hope that these changes are adopted, serving as a bridge to a much needed period of healing.

Respectfully Submitted,

Justin Hansford

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