

Ferguson Consent Decree Analysis

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Introduction

This is a cursory analysis of the proposed Consent Decree between the City of Ferguson, MO (The City) and the Department of Justice (DOJ). A more in-depth and carefully verified analysis is desired. However, the timeframe provided for public input is not sufficient for such an analysis.

The primary concern of this analysis is whether or not the Consent Decree is well designed to move Ferguson toward a different and constitutionally valid model of community and problem oriented policing. This analysis does not seek to question the suggested reforms of the Consent Decree so much as the form of the agreement around those suggested reforms.

This analysis, for the most part, sets aside questions concerning the validity or desirability of specific reform language and focuses on what might be called the project aspects of the agreement. It is possible to agree that every single reform in the Consent Decree is a good and right thing; it is possible to believe that every requirement should be implemented; and still believe the Consent Decree should not be signed because of the structure around those requirements – because of the project requirements superimposed on the reform requirements.

Presumption of DOJ Power

It is a working assumption of this analysis that the DOJ is in a position of power and authority over these negotiations. This presumption is based on the simple fact that the DOJ could choose to walk away at any time with little concern for repercussions or costs. After all, it is the DOJ that is threatening legal action unless an agreement is reached.

Community & Citizen Feedback

The proposed Consent Decree was released for community and citizen comment with less than twenty days between its release and the proposed vote to adopt or refuse it. Given that the Consent Decree is a nearly 130 page legal document and the average citizen is not an expert in these matters, the review and comment period can easily be considered a complete farce. It offers a nod and a wink of supposed consideration for community and citizen feedback but in reality does not offer nearly enough time for thoughtful interaction.

The fault of this pretension of interest in community and citizen feedback almost certainly falls into one of two places (or perhaps a combination of both):

1. Coincidence. The people responsible for establishing the release and deadline are simply unaware of the dynamics of careful consideration for a contract of this size and unknowingly established an unworkable deadline.
2. The DOJ. Of the two parties involved, the DOJ has the majority of the power concerning this timeline and agreement. The DOJ could have required a vote within this timeline and intentionally or unintentionally compressed the time for community and citizen consideration and feedback. Conversely, the DOJ is also the only party in a position to demand that more time be provided for community and citizen feedback.

It is possible, but unlikely, that the City knowingly and intentionally compressed the time for community and citizen feedback. As the defendants in any potential legal action it most likely behooves them to take their time, to draw the process out and make the DOJ work for it. So, while it is technically possible the lack of sufficient time for community and citizen feedback is a result of intentional action on the part of the City, it is unlikely. In either case, the DOJ is in the position of power to require a more thorough consideration of citizen support, concerns and opposition.

Given the DOJ’s clear desire for transparency of operations on the part of the City, it is reasonable to ask for the DOJ to operate under those same expectations. Therefore, it seems that if the DOJ is honestly interested in developing a governance and policing system that constitutionally serves all the citizens, they would request, perhaps even mandate, that this timeline for feedback and vote be extended.

Structural Analysis

The structural analysis will seek to analyze the elements of the Consent Decree that are primarily about the implementation of suggested changes, independent of the suggested changes themselves. For example, the structural analysis will consider the proposed deadlines for various terms of the Consent Decree largely without judging the validity of the terms themselves.

Deadline Analysis

To analyze the deadlines presented in the Consent Decree, Ferguson’s proposed deadlines were compared with those found in the DOJ settlement agreements and Consent Decrees with other cities. The agreements of Cincinnati, Cleveland and East Haven were all considered. Table 1 presents an overview of the deadlines found in each agreement.

	Ferguson	East Haven	Cleveland	Cincinnati
Total Pages	127	55	103	30
Deadlines	64	30	41	11
Deadlines <= 180 days	50	22	14	7
% Deadlines <= 180 days	78	73	34	64

Table 1.

Ferguson's proposed agreement is the largest of these agreements in terms of total pages and deadlines. This is not surprising considering that the breadth of issues addressed in Ferguson's proposed Consent Decree is also greater than those addressed the other agreements considered herein.

However, not only does Ferguson have more deadline driven deliverables, it has a far greater percentage of those deliverables due within the first 180 days. Fifty of Ferguson's 64 total deadlines are within 180 days of the Effective Date. This disparity is most clearly seen when the percentage of deliverables due within 180 days in the Cleveland agreement is compared with Ferguson's proposed agreement.

While Ferguson has the greatest percentage of deadline-driven deliverables due within 180 days, Cleveland has the fewest. Interestingly, Cleveland's agreement went into effect this past year, in 2015, under the supervision of the same DOJ representative overseeing Ferguson, Ms. Vanita Gupta. Cleveland has a mere 34 percent of deadline-driven deliverables due within the first 180 days. That is less than half the percentage of deadline-driven deliverables Ferguson would be agreeing to deliver within the same time period. In fact, at 78 percent, Ferguson has the highest percentage of deadline-driven deliverables of all the agreements considered – by 5 percent. Curiously, as will be shown later, other agreements have comparable deliverables that either have significantly longer timelines for delivery or lack a deadline completely.

There are additional reasons to be concerned with the large number of deliverables due within 180 days of the Effective Date. These reasons for concern include a lack of in-place leadership, project schedule feasibility, and unnecessary cost stacking.

- **Lack of in-place leadership.** Ferguson is currently in the process of hiring a Chief of Police. The eventual transition of leadership for these initiatives under the newly hired Chief is a risk point for an already stressed delivery schedule. This concern could be easily mitigated with a few additional terms in the Consent Decree but, it is not.
- **Project schedule feasibility.** Many of the deliverables due within the first 180 days appear to be heavily information system driven. Finding, developing and deploying information systems of this size and capability will be costly and time consuming. Experience in the business world would suggest that a 180-day project timeline is most likely unreasonable. Regardless of whether one believes these information system analysis and reporting capabilities are ultimately necessary, no case has been made for such a rapid implementation schedule. See the section titled "*Cost-feasible data-driven and qualitative assessments*" for further analysis of this concern.
- **Unnecessary cost stacking.** Placing the information system capabilities requirements on such a tight timeline unnecessarily compacts costs associated with Consent Decree compliance into a very short and early window. This decision likely will also result in unnecessarily increasing the costs of the desired outcomes. While the ability to report on and analyze compliance related issues is important, this reporting is not necessary to implement constitutionally valid policing improvements. Further, no case has been

made to support the need to implement this level of reporting and analysis on such a tight timeline and no other agreement reviewed for this analysis features this kind of aggressive reporting/analysis implementation.

Deadline Analysis Interim Conclusion: It seems significantly doubtful that Ferguson can meet the deadline requirements of the Consent Decree. The presented timeline introduces major concerns for the leadership, personnel, financial and time resources required for compliance.

These concerns exist over and outside of any desire of the city to improve itself and comply with or exceed the terms of the agreement that represent actual improvements for the citizens. In other words, the bulk of these issues with the Consent Decree have nothing to do with Ferguson's willingness to improve, change, or even implement the suggested terms of the Consent Decree – but involve the structure on which those changes are demanded.

The compacted schedule and cost-stacking of the deadline-driven deliverables in the proposed Consent Decree appear to introduce unnecessary and completely avoidable risk factors that threaten every member of the Ferguson community.

Costs / Funding

Everyone agrees that cost is simply not a basis upon which continued racism, discrimination or unconstitutional governmental or policing practices can be allowed. However, acceptance of the Consent Decree is not to be confused with a willingness or unwillingness to improve and eliminate racism, discrimination and unconstitutional governmental or police practices either. The City and its citizens can work toward those objectives without accepting the Consent Decree if need be. Therefore, it is completely legitimate to consider the costs and exercise due diligence and fiscal responsibility when deciding whether or not to accept the Consent Decree.

This cursory analysis indicates that much of the cost of the Consent Decree comes from the implementation of information systems and protocols to monitor performance rather than directly from requirements to deliver Constitutionally-sound policing and public services. These systems will be costly to develop, deploy and maintain.

To further exacerbate the issue of costs related to these systems, the development of the systems seems to be unnecessarily and primarily forced into a very tight timeline of 180 days. Some, perhaps most, of the concern for the cost of compliance could be mitigated by a more realistic project timeline. Additionally, project timeline changes seem reasonable in light of the related timelines found in the DOJ agreements with other cities.

Another cause for cost concerns is the Monitor. Ferguson has indicated that the costs of the Monitor may be limited through a "side agreement" with the DOJ. It was further explained that the DOJ preferred for this to be contained within a "side agreement," rather than integrated within the primary agreement. Citizen concerns about Monitor cost could best be mitigated

through integration of the contents of the “side agreement” into the main agreement. DOJ preference not to integrate the two agreements is valid reason for citizen concern.

Cost / Funding Interim Conclusion: The costs of compliance with the Consent Decree are significant and the ability to meet the funding requirements is significantly doubtful. This situation is made worse by what appears to be an unnecessarily compressed timeline on deliverables that create a significant cost bubble early in the project timeline. Unless the DOJ is willing to work toward reducing this cost-based risk directly through modifications to the agreement this will remain a significant factor against acceptance.

Content Analysis

This section seeks to consider the various terms of Ferguson’s proposed agreement in comparison to similar terms found in agreements between the DOJ and other cities. Most of these comparisons focus on Cleveland because their Consent Decree most recently went into effect and was spearheaded by the same DOJ leadership, Ms. Vanita Gupta. The DOJ agreement with East Haven, CT is occasionally considered also.

Poison Pill

Concerns with paragraph 12, the so-called “poison pill,” of the Consent Decree have been raised several times. This paragraph reads as follows:

“This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, assigns, and successors. If the City establishes, reorganizes, or contracts with a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing or assuming the operations of FPD or any aspect thereof, including the Municipal Court, the City agrees to ensure these functions are consistent with the terms of this Agreement and shall incorporate the terms of this Agreement into the functions of the government agency or contracting entity as necessary to ensure consistency.”

Concerned persons have said multiple times that organizations such as the St. Louis County Police have said they would not police Ferguson under these terms. According to the concerned persons, this means if the city is unable to meet the demands of the Consent Decree it will have no choice but to dissolve so its citizens can receive police services. This is a reasonable and likely accurate understanding of this paragraph.

Interestingly, a similar, but not identical paragraph is found in the Cleveland agreement. Paragraph 13 of the Cleveland agreement reads as follows:

“This Agreement is binding upon all Parties hereto, by and through their officials, agents, employees, and successors. If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting,

investigating, or otherwise reviewing the operations of CDP or any aspect thereof, the City agrees to ensure that these functions and entities are consistent with the terms of this Agreement and will incorporate the terms of this Agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency.”

The second sentence in these parallel paragraphs are conspicuously different. The additional language in Ferguson’s agreement is at the heart of the concern. Since this paragraph has the appearance of being “boilerplate” language included in each agreement, it is reasonable to ask why they are different. Why did the DOJ further limit Ferguson? Are the citizens of Cleveland not deserving of the same protections?

Poison Pill Interim Conclusion: The concerns over the poison pill language appear to have a valid basis in the facts of the agreement. These concerns are further supported by the finding of additional language constraining Ferguson that does not constrain Cleveland. This difference is in spite of the fact that the agreements were negotiated within the same timeline and under the same DOJ leadership.

Secrecy

Paragraph 14 of the Consent Decree reads, “In the event of any public-records requests for drafts of this Agreement or communications among the Parties leading to this Agreement, the Court will maintain continuing jurisdiction over any such request. Further, the Parties may assert in any action, motion, subpoena, or request for disclosure of information the ongoing applicability of a settlement privilege to all such drafts or communications among the Parties leading to this Agreement. The assertion of such privilege would be decided by the court with jurisdiction over the actions, motion, subpoena, or request for disclosure.”

There are no similarly limiting terms in the agreements reached with Cincinnati, Cleveland or East Haven. It is curious at best to find such a lack of transparency called for within an agreement that has governmental transparency as one of its primary concerns.

There is an additional paragraph, number 452, which further hampers transparency. It reads, “The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor will not be designated as public records subject to public inspection.”

While there is a similarly limiting clause in Cleveland’s agreement, it is still reasonable to question whose interests are being protected by these terms? It is equally reasonable to ask if merely abdicating government responsibilities to a third party negates the Sunshine Laws?

Secrecy Interim Conclusion: The proposed Consent Decree contains troublesome transparency-reducing language that seems to stand in direct opposition to the transparency of government operations aimed at within the Consent Decree. These clauses should be carefully vetted to ensure they embody the best interest of the citizens.

Specificity of Mandates

Another concern that has arisen has to do with the specificity of many requirements. Citizens have recognized that some requirements seem to have been created by the DOJ in response to complaints or perceived areas of improvement and fear that these demands may have been created in an ad hoc manner.

There is a concern that each of the required changes by the DOJ have a basis in proven best practices that have been implemented elsewhere and undergone data-driven qualitative and quantitative analysis verifying their effectiveness.

All the citizens of Ferguson deserve to know that the DOJ is calling only for the customized implementation of proven best-practices and not experimenting on them as unwitting test subjects. Therefore, the DOJ should provide a basis for each specific demand and where no basis exists, allow for creative problem solving to address the issue the prescribed action is intended to correct.

For example, the specific requirements for a Crisis Intervention Team and Use-of-Force requirements should be well-documented best practices. The DOJ should be able to point to cities and police departments where these policies and practices are successfully being used. Likewise, the specific changes demanded of the court system should also be proven best-practices.

If such cities and police departments exist the DOJ should easily be able to provide a list of those considered in developing the related demands. They should do so to offer assurance to the citizens that these practices work. They should further assure the citizens that none of these requirements were made up because of reported or expected problems and included without affirmative evidence they are effective.

Specificity of Mandates Interim Conclusion: There is evidence that some very specific requirements mandated by the Consent Decree were developed by the DOJ without a basis in proven best-practices. Having an agreement to investigate best practices and implement agreed upon changes is preferable to a specific, untested yet mandated, action demanded to address a problem.

Comparison of Specific Terms

This section is included to illustrate some of the differences in the demands found in the agreements between Cleveland, East Haven and the proposed agreement with Ferguson. It is included primarily to demonstrate that the issues brought up in this document should be up for negotiation without forcing the Parties into litigation.

Every effort was made to find comparable requirements among the agreements. It is possible that requirements presented here as comparable are not truly as alike as first thought. It is also possible that a more comparable requirement was overlooked. These mistakes and oversights, if existent, are the result of the lack of time to more adequately and carefully compare the agreements and will be corrected if discovered.

Paragraph 336 & 337. “Within 60 days of the Effective Date, the City will revise its online payment system to allow late payments, payment plan installments, and all other court payments to be made online except where prohibited by law.

Within 60 days of the Effective Date, the City agrees to contract with the provider of its current online payment system, or another qualified provider, to establish an online system by which a person charged with a violation can access specific details about a case, including pending charges, court dates, deadlines, owed fines and fees, and payments already made.”

There are no mentions of online payment systems in any of the other decrees considered in this analysis. While this may very well be a best practice for the city, it is completely unclear how it can be seen as essential to Constitutional Policing or why it would belong in a Consent Decree. These requirements seem to indicate the concerns that the DOJ devised requirements for the Consent Decree based on reported problems and not on proven best practices may have merit.

Paragraph 305. “The City will ensure that, within 60 days of the Effective Date, the requirements of this Agreement are explained to all FPD and Court officers, and officers and employees are provided the opportunity to raise questions or concerns regarding the Agreement and their obligations pursuant to it.”

The Cleveland agreement contains several mentions of training on the “requirements of this agreement” but nothing approaching this timeline or breadth. The East Haven agreement has no comparable language.

While the timeline is questionable, the requirement seems most reasonable. So reasonable that one might expect it to be almost boilerplate language. Which leads to

questions concerning why it seems to be completely absent from every other agreement. That further leads to questioning the proposed timeline of 60 days.

Paragraph 288. “The City agrees to the following background investigation and screening protocol for hiring of sworn police officers and shall implement such protocols within 90 days of the Effective Date.”

Cleveland, paragraph 44: “Within 18 months of the Effective Date, the appointing authority will consider principles of bias-free policing and equal protection in its hiring ...”

East Haven, paragraph 38: “Within 180 days of the Effective Date, EHPD shall incorporate concrete requirements regarding bias-free policing and equal protection into its hiring, promotion, and performance assessment processes...”

The specificity of the requirements provided to Ferguson are glaring in comparison to the complete lack of specificity for either Cleveland or East Haven. The timeline is also stark – 90 days for Ferguson, 180 days for East Haven and 18 months for Cleveland. Why is there such a great disparity in the proposed timelines?

Paragraph 172. “Within 120 days of the Effective Date, FPD will develop and implement, in consultation with the Monitor and subject to approval by DOJ, a comprehensive process for reporting and investigating all FPD officer uses of force.”

Cleveland, paragraph 323.d: “Within 365 days of the Effective Date, CDP will develop and implement mandatory supervisory training for all new and current supervisors. This training for new and current supervisors may be different, but both will be adequate in quality, quantity, type, and scope, and will include the following topics: ... investigating officer uses of force.”

East Haven, paragraphs 27 and 28 indicate the police department will provide supervisory training that includes investigating officer uses of force. No deadline for this training is given.

Here is another requirement that Ferguson must meet in less than 180 days, while Cleveland has 365 days and East Haven’s agreement has a complete lack of deadline. This seems to indicate that the extreme stacking of deliverables and cost into the first 180 days of the Ferguson Consent Decree is unnecessary and should be negotiable.

Paragraph 369. “Within 180 days of the Effective Date, the City and FPD will develop and implement policies to ensure that all allegations of misconduct are courteously received, centrally documented and tracked, and fully and fairly investigated as required by this agreement.”

Cleveland, paragraph 176: “The City and CDP will ensure that all allegations of officer misconduct, whether internally discovered or alleged by a civilian, are fully, fairly, and efficiently investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing”

This deliverable should be desirable by everyone. It is included here to illustrate another example of a term that is deadline-driven in the proposed Ferguson Consent Decree but completely without a deadline in a similar agreement. The discrepancy points to the reasonableness of negotiating a more realistic project timeline.

Paragraph 20. “Within 180 days develop and being implementing an FPD community-engagement plan for creating opportunities for routine and frequent positive interactions between officers and community members. Developed in consultation with the NPSC.”

Cleveland, under “Community Engagement,” paragraph 14: “This Agreement recognizes the importance of community input into the way police services are delivered. Ongoing community input into the development of reforms, the establishment of police priorities, and mechanisms to promote community confidence in CDP will strengthen CDP and the police-community relationship that is necessary to promote public safety. To promote public trust and confidence in CDP, constitutional and effective policing, officer and public safety, and the sustainability of reforms, CDP will create, in accordance with this Agreement, formal and informal mechanisms that facilitate ongoing communication between CDP and the many Cleveland communities it serves.”

East Haven: Community Engagement is heavily featured in the East Haven agreement but no related type of deliverable such as that in paragraph 20 was found.

To do this well, the NPSC would need to be established first. That means there are fewer than 180 days available because some, perhaps most, of the days will be used in meeting prerequisites. This will make the deadline more difficult to meet. Additionally, the preponderance of 180 day deadlines all but assure limited citizen and NPSC involvement.

In contrast to our deadline, Cleveland has no deadline and East Haven has no easily recognizable related terms.

Paragraph 50. “Within 180 days, FPD with NPSC will develop a schedule for delivering all training specifically required by the Agreement.”

Cleveland, paragraph 271: “Within 365 days of the Effective Date, the Training Review Committee will develop a written training plan for CDP’s recruit academy, probationary field training, and in-service training to ensure that recruits, and officers are trained to effectively and lawfully carry out their duties.”

No similar provision was found in Cleveland’s agreement. The closest provision, paragraph 271, provides a substantially longer timeline.

Like paragraph 20 above, this task is contingent on the formation of the NPSC. Therefore the timeline is likely to be considerably less than 180 days. Additionally, the task will be stacked up with all the other tasks waiting for prerequisites to be completed. This appears to be a substantial risk to the project timeline.

The East Haven agreement has a similar timeline. However, it does not have the requirements of forming and working with an NPSC. Therefore, it appears that major tasks FPD must complete before this task can be accomplished are not taken into account when setting this timeline requirement.

Paragraph 189. “Within 180 days of the Effective Date, FPD will develop and implement a Force Review Board (FRB) ...”

Cleveland, paragraph 124: “CDP will develop and implement a Force Review Board (“FRB”) ...”

Why does Ferguson have only 180 days, without a Chief of police, and with 49 other tasks due at the same time, when Cleveland literally has no deadline and East Haven apparently has no need?

Paragraph 195. “Within 180 days of the Effective Date, the City will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments of FPD's use-of-force practices.”

Not only do the other city’s not have a similar deadline. They apparently have no need for “protocols for regularly, and at least annually, conducting *cost-feasible data-driven and qualitative assessments* of [their] use-of-force practices.” Why then, must Ferguson develop them within 180 days?

Paragraph 276. “Within 180 days of the Effective Date, the City and FPD will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments to ensure that FPD officers are being closely and effectively supervised, and that supervisors are conducting themselves with integrity and are consistently performing the supervisory duties required by FPD policy.”

East Haven, paragraph 164: “Shift commanders shall closely and effectively supervise the officers under their command.”

East Haven’s agreement at least requires that shift commanders provide close and effective supervision. There is no such requirement in the Cleveland agreement. Do Cleveland police officers not require close and effective supervision? Can it be that in a city where problems necessitating a DOJ agreement were present supervision was already adequate? How come Ferguson is the only agreement with such a deadline?

Paragraph 282. “Within 180 days of the Effective Date, the City agrees to develop, in consultation with the Neighborhood Policing Steering Committee, once established, a written Recruitment Plan that includes clear goals, objectives, and action steps for attracting and retaining a high quality and diverse work force with the attributes described in paragraph 281 above.”

Cleveland, paragraph 300, “To maintain high-level, quality service, ensure officer safety and accountability, and promote constitutional, effective policing, CDP will review and revise as necessary its recruitment and hiring program to ensure that CDP successfully attracts and hires a diverse group of qualified individuals.”

Here is another deliverable Ferguson must complete in 180 days that Cleveland has no particular deadline for. The requirements in the Ferguson agreement are also considerably more detailed than those Cleveland consented to.

Paragraphs 245 & 246. “Within 180 days of the Effective Date, the City agrees to develop and implement protocols regarding the storage, retention, and public accessibility of body-worn and in-car camera recordings.”

“The City will ensure that all recordings are stored by officers in a centralized location or on a remote server at the end of the officer's shift and are properly categorized and accessible within 24 hours of the recording being made. Recordings will be categorized according to the kind of incident or event captured in the footage.”

The Cleveland agreement specifically does not require the use of body-worn cameras. The East Haven agreement includes reference to in-car cameras. It does not require “protocols regarding the storage, retention, and public accessibility” of the recordings

and therefore, sets no deadline for the development of such. Likewise, it does not require the categorization within 24 hours.

This kind of categorization seems like it will be very costly to implement, especially within the timeframe being demanded. Is there an opportunity to work toward a cost-feasible alternative deliverable and/or deadline that meets the real underlying requirement?

Paragraph 314. “Within 180 days of the Effective Date, and annually thereafter, all FPD calltakers, dispatchers, and their supervisors will receive crisis intervention telecommunicators training that is adequate to enable them to identify, dispatch, and appropriately respond to calls for service that involve individuals in crisis.”

Cleveland, paragraph 144: “Within 365 days of the Effective Date, and annually thereafter, all CDP call-takers, dispatchers, and their supervisors will receive crisis intervention telecommunicators training that is adequate to enable them to identify, dispatch, and appropriately respond to calls for service that involve individuals in crisis.”

Cleveland has twice the time available to do the exact same task. Cleveland certainly will have more personnel to train. However, it should also be recognized that Cleveland, a city with more resources of every kind, is given more time to complete fewer tasks. Some might argue tasks that are both less expensive and less complicated.

Paragraph 401. “Within one year of the Effective Date, the City will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments to measure the effectiveness of FPD’s accountability practices.”

No similar terms are found in either the Cleveland or the East Haven agreements. How is it that all three departments have issues requiring DOJ intervention and agreements yet only Ferguson needs the ability to analyze its accountability practices? It would seem that the accountability practices of all three would be deficient if the need for DOJ intervention actually exists.

Comparison of Specific Terms Interim Conclusion: The comparison of the terms of our agreement with those of Cleveland and East Haven indicate that negotiating a more realistic project schedule should be easily agreeable.

Cost-feasible data-driven and qualitative assessments

The phrase “cost-feasible data-driven and qualitative assessments” appears in Ferguson’s proposed Consent Decree no less than 11 times. These occurrences, with the corresponding paragraph number in parenthesis, are enumerated here:

1. Within 60 days of the Effective Date, the City will develop protocols for regularly conducting *cost-feasible data-driven and qualitative assessments* of court practices. (360)
2. Within 180 days of the Effective Date, the City and FPD will develop protocols for conducting, at least annually, cost-feasible data-driven and qualitative assessments of FPD’s practices related to First Amendment protected activity. (126)
3. Within 180 days of the Effective Date, the City will develop protocols for regularly, and at least annually, conducting *cost-feasible data-driven and qualitative assessments* of FPD’s use-of-force practices. (195)
4. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting *cost-feasible data-driven and qualitative assessments* of FPD’s SRO program. (227)
5. Within 180 days of the Effective Date, the City and FPD will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments to ensure that FPD officers are being closely and effectively supervised, and that supervisors are conducting themselves with integrity and are consistently performing the supervisory duties required by FPD policy. (276)
6. Within 180 days of the Effective Date, the City Manager and Chief of Police will develop cost-feasible protocols for regularly, and at least annually, assessing FPD’s officer assistance and support programs to ensure the City is providing officers with support to maintain their physical and mental health. (280)
7. Within 180 days of the Effective Date, the City and FPD will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments of its recruitment efforts. (290)
8. Within 180 days of the Effective Date, the City and FPD will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments of body-worn and in-car camera use. (250)
9. Within 180 days of the Effective Date, the City and FPD will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD’s CIT first responder model of police-based crisis intervention. (206)
10. Within 180 days of the Effective Date, the City Manager and Chief of Police will develop protocols for at least annually conducting cost-feasible data-driven and qualitative assessments of FPD’s promotional and performance evaluation practices. (302)

11. Within one year of the Effective Date, the City will develop protocols for regularly, and at least annually, conducting cost-feasible data-driven and qualitative assessments to measure the effectiveness of FPD's accountability practices. (401)

People with experience in information systems have unanimously read the phrase "cost-feasible data-driven and qualitative assessments" as most often requiring an information system. There are many deliverables with this phrase within the proposed Consent Decree and most of them are due within 180 days of the Effective Date.

If done well, the selection, development and deployment of the necessary information systems will, almost certainly, create great stress on the project timeline and stack the majority of costs onto the front of the project. These items alone are cause for concern about whether Ferguson is even capable of meeting the demands of the DOJ.

But there is no identified or compelling reason why these requirements need to be implemented so quickly or so tightly together. In fact, curiously, nothing similar to this language occurs even once in either of the other agreements that were reviewed for this analysis.

The simple term "Data-driven" does not occur in either of the comparison documents even one time. It appears in Ferguson's 11 times. Do neither of the other departments need data-driven analysis? If they truly had issues requiring DOJ intervention that is hard to believe.

The only requirement for "qualitative analysis" in the Cleveland agreement is in paragraph 376, which reads, "In addition to compliance reviews and audits, the Monitor will conduct qualitative and quantitative assessments to measure whether implementing this Agreement has resulted in constitutional policing." Likewise, the East Haven agreement contains no comparable instances of the word "qualitative" either, though it does appear in paragraphs 189, 190, 190.a.ii, 190.f.i, and 198.f.

Not only do the other cities not have a similar deadline. They apparently have no need for "protocols for regularly, and at least annually, conducting *cost-feasible data-driven and qualitative assessments* of [anything]."

The agreements would lead to the belief that Ferguson stands alone in its need for such analysis. But logic and common sense dictate otherwise.

"Cost-feasible data-driven and Qualitative Assessments" Interim Conclusion: The complete lack of this language in either of the compared agreements would seem to indicate that Ferguson should be able to negotiate a more reasonable project schedule.

Conclusion

This analysis presents significant areas of concern regarding the proposed Consent Decree. It further demonstrates that most of these concerns can be mitigated by further negotiation because more reasonable terms have been accepted by the DOJ in their negotiated agreements with other cities.

In the end, it would seem the City of Ferguson has no reasonable hope to meet the deadlines and requirements set forth by the DOJ in this proposed Consent Decree. If Ferguson accepts the Consent Decree anyway, they likely default on their agreement and end up in court – possibly forced to dissolve because of paragraph 12. If Ferguson votes to reject the Consent Decree they end up in court but have the benefit of not being in violation of an agreement.

Paragraph 40 includes the following requirement concerning the City's Municipal Code, "... ensuring that the Code is designed and enforced in a manner that is focused on protecting public health, safety, and welfare." With the addition of "personal rights" to that list, a clear requirement that every citizen should be entitled to expect of the Consent Decree emerges. In other words, it should be designed to protect public health, safety, welfare, and personal rights – and it should be developed and negotiated in such a manner as to assure that outcome.

The proposed Consent Decree fails that test by unnecessarily creating risk to the entire city, perhaps the entire North County region, through unrealistic deadlines and a poorly thought out project structure. The DOJ has presented the City with a no-win situation. It is reasonable to believe that the DOJ employees who drafted and oversaw this Consent Decree are both educated and intelligent enough to recognize this. They can do better than this.

Where do we go from here?

Further time is needed for greater analysis and to answer several very reasonable concerns many citizens have. If the DOJ is serious about transparency and community involvement in resolving these issues they should extend the deadline and provide assistance in engaging the community.

Additionally, further time is needed to analyze the line-by-line requirements for such items as Use-of-force and supervision requirements. This time is needed to verify that the specific requirements outlined by the DOJ are best practices, utilized in specific, identifiable cities where data-driven quantitative and qualitative assessments have proven them successful. No citizen or stakeholder in Ferguson should have any interest in being the forced-test-subject for any DOJ mandated, yet untested, ideas.

If the DOJ is willing to reopen negotiations in good faith, then the City and the DOJ should reopen negotiations, with the proposed Consent Decree as a starting point, and address these concerns so as to mitigate the unnecessary risks and likely unattainable deadlines that make this Consent Decree unacceptable.

The City and the DOJ should include a group of police officers and citizens in the effort to address these concerns and employ the services, voluntary or paid, of someone with project management expertise in developing reasonable expectations. If the goals of the agreement include transparency and community-engagement there is no reason those goals cannot be features of the development of the agreement itself.

The DOJ should consider setting up a series of meetings where they personally address the concerns of citizens that are skeptical of the Consent Decree. They should create an environment where citizens are free and safe to question anything to do with the agreement. They spent plenty of time upfront, collecting concerns. It should not be too much to ask for the citizens to remain involved now.

If the DOJ is unwilling to open negotiations in good faith, the City should defer the vote on the proposed Consent Decree, neither accepting nor rejecting it. These concerns can then be addressed with the DOJ directly or through the Courts – who knows, perhaps the Court can be persuaded that the DOJ is not negotiating in good faith, and will order the DOJ back to the negotiating table.

However, even while the City and the DOJ work through these concerns and differences, the City's willingness to move forward and do all that it can to create a better community for every citizen should be put on full display. To this end, the City should immediately create a publically available list of the Consent Decree requirements and their respective status, along with any other valuable changes being made. The City should highlight what is already being done, what is currently being worked on, and present a timeline for most other Consent Decree items.

The City should also work with a group of police officers and citizens to address questionable Consent Decree requirements and further investigate the best solutions to agreed upon issues. Many citizens truly want to see Ferguson become a shining light of reconciliation, mercy and justice. But the city must diligently seek their involvement and get out of their way.

These actions will help to assure the Court that the City is more than willing to address issues and provide easily assessable information to deal with any claims of racist motives.