

Agreement for Effective and Constitutional Policing East Haven, CT

Joint Compliance Expert Report

**Prepared by O'Toole Associates, LLC
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Introduction

O'Toole Associates, LLC, the Joint Compliance Expert (JCE) overseeing the *Agreement for Effective and Constitutional Policing* (Agreement) between the Town of East Haven, CT (Town) and East Haven Police Department (EHPD), and the U.S. Department of Justice (DOJ), submits this report of the JCE's findings with respect to implementation during the first six months of the Agreement, ending June 21, 2013. As outlined in the JCE plan of March 2013, the JCE understands its task to be three-fold. First, the JCE must insure that the EHPD is meeting all material requirements and deadlines specified in the various paragraphs of the Agreement. Second, the JCE must, over time, make a more generalized assessment of whether or not the process outlined in the Agreement is achieving the desired outcomes, namely "constitutional policing, increased community trust, and professional treatment of individuals by the EHPD officers." Third, the JCE must review and evaluate all serious and significant incidents involving the EHPD. These include any serious uses of force, any complaints alleging significant misconduct, or any other event that the JCE or the parties deem appropriate.

The following is a summary of activity since the appointment of the JCE on February 19, 2013:

- The JCE has visited East Haven on eight occasions and has worked to establish strong working relationships with all parties to the Agreement and a variety of community representatives.

- The JCE attended an introductory meeting with the Mayor, Chief of Police, Counsel representing the Town of East Haven for the Agreement (Counsel), senior members of the Mayor's staff, and representatives of the East Haven Police Commission.
- The JCE has established a good rapport with members of the clergy who represent diverse congregations in East Haven. The JCE has attended several group and individual meetings with clergy.
- The JCE met with two of the original victims/complainants to learn more about their experiences with EHPD, as well as with representatives of the Latino business community.
- The JCE attended and addressed a meeting of the East Haven Police Commission.
- The JCE addressed East Haven business leaders at a meeting hosted by the police and fire chiefs and attended by the Mayor and other town officials.
- The JCE introduced representatives of the DOJ Community Relations Service (CRS) to Counsel representing the Town. The JCE later attended a follow-up meeting with CRS, the Mayor, the Police Chief, Counsel, and the Town Attorney. During the meeting it was agreed that CRS would provide cultural awareness training for all town department heads. The training took place on July 10, 2013.
- The JCE was accompanied by representatives of DOJ Civil Rights Division and the U.S. Attorney's office when conducting ride-alongs with East Haven police officers and a meeting with a representative of the Latino business community.
- The JCE met with recently appointed Acting U.S. Attorney Dierdre Daly. Her perspective was informative as she was previously a member of the prosecutorial team handling the pending criminal cases against East Haven officers.

The JCE continues to maintain strong lines of communication with all parties to the Agreement through the following means:

- Bi-weekly conference calls including EHPD, Counsel for the Town, the Department of Justice Civil Rights Division, and the U.S. Attorney's Office.
- Multiple calls with the Chief of Police each week and meetings at least twice monthly.
- Regular calls with Counsel for the Town and meetings at least twice monthly.
- Regular calls and two meetings with representatives of the U.S. Attorney's Office.
- Regular calls and one in-person meeting with representatives of the U.S. Department of Justice Civil Rights Division.

The JCE is very appreciative of the level of cooperation it has received from all parties, and has been particularly impressed by the commitment of Chief of Police Brent Larrabee and his management team. The JCE has met several high quality EHPD personnel who have expressed their commitment to change and their eagerness to move forward.

Unfortunately, the East Haven Police Department has experienced a significant setback resulting from an incident that occurred in New Haven on January 17, 2013. The allegations of police misconduct are very troubling, as they relate directly to the type of conduct referenced in the Agreement. The facts of the incident, as provided in the EHPD Internal Affairs report, reflect the type of activity and poor supervision that caused DOJ intervention in East Haven in the first place. The JCE is satisfied with the response of Chief Larrabee and the Town to date.

The JCE remains pleased with current progress toward compliance with the Agreement and optimistic about a positive outcome for overall implementation. Although concerned that the January incident is a setback, the JCE wishes to reassure the East Haven community that the incident has been handled properly to

date. The JCE will continue to monitor closely the disciplinary process related to the incident and all EHPD efforts to comply fully with the terms of the Agreement.

The remainder of this report is organized into sections concerning each of the three tasks described in the opening paragraph: Material Compliance, Outcome Assessments, and Reviews of Specific Incidents. The JCE is in receipt of the EHPD Compliance Report dated June 21, 2013 and supporting documents, and would characterize the EHPD report as a thorough and complete response to the EHPD's obligations under the Agreement.

I. Material Requirements of the Agreement

This section reviews the material requirements due for completion by 180 days from the effective date of the Agreement.

Bias-Free Policing and Community Engagement

- 1) Bias-Free Policing Practice and Training – All EHPD employees have received 15 hours of in-service training as required in Paragraph 33. This training was provided by the Spector Training Network and taught by Eliot Spector, a highly respected attorney and lecturer. The training included bias-free policing practices and stop, search and arrest procedures. The lesson plans, which reflect the Agreement's requirements, were approved by the JCE. All participants in the training were tested by Attorney Spector at the end of each training session and the written test results are on file at the EHPD. Two persons who missed the classes will be rescheduled to attend the training once the class is available in the summer or fall of 2013 .
- 2) Language Access Plan (LAP) and Language Assistance Coordinator – As required by paragraph 42 of the Agreement, the EHPD has established a Language Assistance Plan (LAP) and appointed a Language Access Coordinator (LAC). The plan is described in detail in Policy and Procedure 301.01, which is a thorough

and complete document mandating: 1) the appointment of the Language Assistance Coordinator, 2) procedures for notifying the public about the EHPD's language services, 3) hiring goals for bilingual staff at the EHPD, and 4) the qualifications for members of the department authorized to act as EHPD interpreters (EHPDAI). It also establishes protocols for hiring contract interpreters to provide interpretation and translation service as necessary, currently through Language Line Solutions, but also from other vendors should Language Line Solutions be no longer available. The policy prescribes one hour of training for all EHPD personnel in how to assist limited English proficiency (LEP) individuals in conducting their business with the department. Procedures for conducting interrogations and interviews of LEP individuals, as well as taking complaints against the department from, and reporting dispositions of complaint investigations to, LEP individuals are also established by the policy. A Language Assistance Coordinator, Lieutenant David Emerman, has been appointed. Lt. Emerman is a fluent Spanish speaker, who also serves as the Community Liaison Officer, required by paragraph 181 of the Agreement.

Stop, Search, and Arrest Measurements

- 1) Stop, Search and Arrest Training – As noted above, the Spector Training Network has provided eight hours of stop, search, and arrest training as required in Paragraph 78 of the Agreement, including instruction in the Fourth Amendment and related law, as well as First Amendment and related law.

- 2) Stop, Search, and Arrest Data – Paragraph 65 of the Agreement stipulates that the EHPD must provide data on stops, searches and arrests within 270 days of the Agreement date, including types of arrests and arrest data broken down by geographic area and demographic group, as well as the proportion of stops to arrests. Some data of this type are available already on traffic stops between December 21, 2012, the effective date of the Agreement, and June 21, 2013, six months later. There were 909 traffic stops in the six-month period, with 95.3 percent of stops resulting in some form of police intervention, although the

majority of these interventions (558) were either verbal or written warnings. There were five arrests resulting from these stops, or slightly more than one half of one percent of the total. The five arrests were attributable to five different officers. Misdemeanor summonses resulted from nine percent of the stops, and infraction tickets from 26 percent. Twenty-nine stops, or 3.3 percent of total stops, resulted from officer suspicion of criminal activity. The vast majority of stops, 771 or 78 percent of stops, were attributable to motor vehicle violations, and 36 other stops were attributable to equipment violations. Eighteen vehicles were searched; slightly less than two percent of the total. The racial, ethnic, and gender characteristics of the drivers stopped were as follows:

- 16.5 percent were minorities.
- 5.8 percent were Black.
- 8.9 percent were Latino.
- 82.2 percent were non-Latino whites.
- 38.6 percent were women.

In a letter to Mayor Maturo dated December 19, 2011, outlining its investigative findings concerning the EHPD, the Department of Justice cited an excessive number of traffic stops by the EHPD of Latino drivers, a rate of 19.9 percent of all stops, significantly higher than the estimated percentage of Latino drivers in East Haven and surrounding towns, which was approximated at 15.5 percent (U.S. Department of Justice, Civil Rights Division Findings Letter 12-19-2011, page 7). It was also estimated that in East Haven, the percentage of Latino drivers was 8.3 percent. The current stop data represents a marked improvement from the statistics of 2011. The percentage of Latino drivers stopped (8.9 percent) is no longer significantly larger than the estimated percentage of Latino drivers (8.5 percent) in East Haven and significantly smaller than the estimated percentage of Latino drivers (15.5 percent) in East Haven and surrounding towns. The total number of Latino drivers stopped in the sixth-month period was 83. In addition, whereas a single officer was cited in the 2011 letter as having a stop rate of Latino drivers of 40.5 percent, the

current data shows that six officers, of the 38 evaluated, have stopped six or more Latino drivers in the six-month period. Thirty-two officers have stopped fewer than six, or less than one Latino driver per month. No officer, among the six officers who have stopped six or more Latino drivers, has a Latino-driver stop rate higher than 19 percent, four officers in this group have Latino-driver stop rates higher than 15 percent, and five officers in this group have Latino-driver stop rates higher than 10 percent. The most active traffic-stop officer, with 112 stops in the six-month period, stopped nine Latino drivers, or a Latino-driver stop rate of eight percent.

Pursuant to Paragraph 69 of the Agreement, the EHPD and Board of Police Commissioners shall, on at least a semi-annual basis, issue a report summarizing the stop and search data collected, the analysis of that data, and the steps taken to correct problems and build on successes. The report shall be publicly available. The EHPD and the Board have confirmed that they will meet this requirement of the Agreement.

Recruitment and Training

- 1) Recruitment Plan – In compliance with Paragraph 183 of the Agreement, the EHPD has developed a recruitment plan that includes goals, objectives, and steps for attracting high-quality applicants for employment. Police recruitment in East Haven is not managed by the police, but is handled by the East Haven Civil Service. Recruitment ads will be published in English and Spanish. The JCE will track the recruitment process to ensure that qualified Spanish-speaking officers are sought and hired. The testing policy required under paragraph 31 is included in the recruitment plan, but the JCE will seek additional details prior to the 270-day task deadline.

2) Training Plan and Schedule – All training required during the 180-day period has been completed, including the following:

- Two to four hours of training in the terms of the East Haven/DOJ Agreement.
- Twenty-four hours of Internal Affairs training for Internal Affairs investigators.
- Four hours of Bias-Free Policing Training, completed by June 21, 2013.
- One hour of training in the Limited English Proficiency Plan and Policy, completed by June 21, 2013.
- Eight hours of Stop, Search and Arrest training, completed by May 30, 2013.
- Training of all supervisors and officers in the complaint intake procedures, including the provision to citizens of informative materials about the complaint process, the consequences for police officers failing to register a complaint, and techniques for using the complaint process to achieve positive police/citizen interactions, all completed by June 21, 2013.
- All supervisors and potential supervisors have taken a forty hour supervisory training course at either the first line or management level. This training was completed by June 21, 2013.

Other training in 2013 is scheduled to take place in accordance with the following schedule:

- Four to eight hours of Use-of-Force Training will be completed by 365 days from the effective date. Training is currently scheduled for summer and autumn 2013.
- Firearms training for all officers within 365 days of the effective date and twice yearly thereafter. Training is currently scheduled for summer and autumn 2013.

- All supervisors, potential supervisors and the IAO (Internal Affairs Officer) have completed forty hours of Internal Affairs (IA) training that includes all aspects of IA investigations. (force, post-shooting, criminal administrative, etc.). No further IA training is planned in 2013.
- Thirty-two hours annually of In-service Training, in addition to Special Unit Training and training required by the Agreement. Annual in-service training will be completed by December 2013.
- Electronic Control Weapons Certifications, including EHPD ECW policy and policy changes, physical competence with the weapon, weapon retention, and scenario-based training, are scheduled for summer and autumn 2013.

The JCE has reviewed all training materials and found them to be consistent with the requirements of the Agreement and to comport with professional police practices.

Accountability Measures

1) The Civilian Complaint System and the Early Identification System (EIS)

- In compliance with Paragraph 129 of the Agreement, the EHPD has developed a system for receiving complaints, has conducted complaint intake and policy training for all personnel, and is publicizing the complaint process in the East Haven community, on the EHPD website and via a link from the Town website, at Town Hall, at EHPD headquarters and at the Haganan Memorial Library. Officers are required to carry civilian complaints forms in EHPD vehicles.
- In compliance with Paragraph 141 of the Agreement, the EHPD Internal Affairs Office (IAO) has developed a centralized numbering and tracking system that will allow the prompt assignment of a unique numerical identifier to each civilian complaint and insure that complainants are informed of this number at the time the complaint is made.
- In compliance with Paragraph 169 of the Agreement, the EHPD has begun implementing protocols for designing the data fields for an Early

Identification System (EIS) that will capture both historical data and emerging information about all sworn employees, automatically drawing data from the EHPD's Law Enforcement Administrative System (LEAS). The EIS is a longer-term project that must be fully operational within 365 days of the effective date. When fully operational, it will provide a single repository of all relevant information about each sworn employee, both positive and negative. The system will be designed to identify patterns and will establish thresholds in such areas as civilian complaints, uses of force, firearms discharges, vehicle pursuits, excessive absences, and other factors to identify officers who may be at risk for misconduct and in need of supervisory intervention.

- In compliance with Paragraph 178 of the Agreement, EHPD supervisors have been equipped with iPhones capable of functioning as recording devices and suitable for recording the statements of witnesses and complainants in the field in use-of-force cases and other cases.
- 2) Policy and Procedure Manual – As required by Paragraph 20 of the Agreement, the EHPD has designed and formalized a template for all EHPD policies and procedures that will allow the clear numbering and labeling of policies going forward, as well as reference previous policies that have been rescinded or amended. The format is orderly, graphically attractive, and easy to read. The EHPD is required to develop a full set of policies and procedures for review by the JCE and the DOJ within 270 days of the effective date and to publish a full manual by the 365-day mark. This is an enormous challenge for a small agency, but the project is reported to be on track.
- 3) Code of Conduct – In compliance with paragraph 22, the EHPD has submitted a revised Code of Conduct to both the JCE and the DOJ. The code is presented in the form of a policy and procedure, numbered as 201.01, and will ultimately be included as one of the policies in the Policy and Procedure Manual. The JCE reviewed the Code of Conduct and found it to be a clear and comprehensive

statement of EHPD's expectations for its officers' conduct on and off duty. The Code of Conduct draft was completed and submitted to the JCE and DOJ by the June 21, 2013 deadline. The DOJ responded with comments on June 28, 2013. When the DOJ and the EHPD agree upon a final draft, the JCE will review it. The Code of Conduct will then be submitted to the East Haven Police Commission for approval.

- 4) Automatic Vehicle Locators, In-car Video Recorders, and Electronic Control Weapons Camera Policy – In compliance with Paragraph 176 of the Agreement, the EHPD has established a policy and procedure governing Automatic Vehicle Locators (AVL), In-Car Video Recorders, and Electronic Control Weapons (ECW) Cameras. The policy requires full use of these devices and establishes disciplinary penalties for failure to deploy this equipment as required and for any action to disable it. The EHPD had also established a protocol, within 90 days of the effective date, for daily testing of this equipment by appropriate supervisors as required by Paragraph 177 of the Agreement.

II. Outcome Assessments

Public and Police Opinion Surveys

Paragraph 191 requires opinion surveys of East Haven community members and of EPHD personnel to collect baseline data on public satisfaction with policing, on attitudes among police personnel, and on the quality of police/citizen encounters. The community, police department personnel and detained arrestees are to be surveyed early in the Agreement process, and then annually. The JCE, in coordination with the Agreement parties, is in the process of contracting with a local university professor, Dr. John DeCarlo. He has received permission to modify a survey instrument that was developed by the Kennedy School of Government at Harvard University for use in Los Angeles to help assess the impact of a consent decree that was in place in that city until May 2013.

Using an existing survey instrument has reduced costs and expedited the survey development process. The process for identifying and contracting with a survey provider has taken longer than anticipated because an original request for proposals resulted in two vendor submissions with costs that were thought, by both the JCE and the Agreement parties, to be excessive. The current survey instrument includes a number of questions related to public and police attitudes prior to the Agreement to capture and document baseline data. It is expected that the survey will be administered in the autumn 2013.

JCE Interviews and Encounters

In addition to the survey, the JCE intends to monitor community sentiment and attitudes within the EHPD regularly, by means of one-on-one interviews, focus groups, public meetings and other face-to-face encounters. To date, these encounters have revealed mostly positive and optimistic attitudes about the Agreement process both in the community and in the EHPD. Members of the East Haven community, including Latino residents, and police have been forthright in describing the problems of the past, but are also generally committed to moving beyond past problems.. Many, including clergy, observe that conflicts between the EHPD and the Latino community were reflective of issues within the broader community as it adapted to significant demographic change. There is always a temptation to paint a police organization that has undergone a DOJ investigation with a broad brush, but the JCE has encountered good, committed, capable people in the EHPD who are receptive to the implementation of the Agreement. So far, open resistance to the Agreement inside the EHPD has been negligible. Chief Larrabee and his leadership team are actively engaging the Latino community and their efforts have been well received. The Community Liaison Officer/Language Access Coordinator has established good lines of communication and cooperation with Latino residents and businesses. A prime example is a collaborative effort under way with Latino bar owners. In the

coming six months the JCE intends to engage further with the community and the police in one-on-one encounters and focus groups.

III. Specific Incident Reviews

As noted in the introduction, the JCE is closely monitoring the investigation and disciplinary process related to the incident in New Haven on January 17, 2013. Although the investigation is largely complete, the adjudication and disciplinary process is still underway. The JCE will refrain from specific comment on the incident until all disciplinary proceedings are concluded to avoid prejudicing the cases in any way.

Conclusion

The JCE would like to acknowledge the professionalism and collaborative spirit of all parties to the Agreement during the first six months of implementation. All requirements have been met to date. There is much more work to be done, but there is strong evidence of continuing focus and momentum.

The next JCE update report will be distributed in draft form to all parties to the Agreement for review and comment by January 13, 2014 and will be finalized and filed no later than January 24, 2014.