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November 18, 2016

VIA ECF

Honorable Analisa Torres
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Floyd, et al. v. City of New York*, 08-CV-1034 (AT),
Ligon, et al. v. City of New York, et al., 12-CV-2274 (AT),
Davis, et al. v. City of New York, et al., 10-CV-0699 (AT),
Submission of Fourth Report of the Independent Monitor

Dear Judge Torres,

I am pleased to submit my fourth report under the court orders and agreements in the cases of *Floyd v. City of New York*, *Ligon v. City of New York*, and *Davis v. City of New York*. These cases challenged the NYPD's stop and frisk policies and practices (*Floyd*), and its policies and practices concerning criminal trespass enforcement in and around private buildings enrolled in the Trespass Affidavit Program (*Ligon*) and in New York City Housing Authority buildings (*Davis*).

As in prior reports to the court, this one details the state of progress or lack of progress towards compliance with the court orders.

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The period since the monitor's report in February 2016 has seen at least these significant positive developments:

(1) The NYPD's Patrol Guide Section on investigative encounters has been amended to meet the requirements of the court orders.

(2) A new stop report was launched, supporting the Patrol Guide changes.

(3) New policies were written and should soon be implemented governing interior patrols in buildings enrolled in the Trespass Affidavit Program (TAP) and in New York City Housing Authority (NYCHA) buildings.

(4) Some improvements in auditing were put in place and work continues on others.

Still on the to-do list, the Department has not yet started in-service training on stop and frisk for all its members on patrol. Nor is there a plan yet for evaluating the courses and the instructors. Regarding body-worn cameras, the NYPD has indicated that the roll-out of the one-year pilot program will not begin until the first quarter of 2017, a delay largely related to the requirements of the procurement process. The status of other tasks is also covered in the body of the report.

As always, when reviewing the state of progress in each of the areas covered in the court orders, a caveat is appropriate. The details noted in the report, though important for tracking compliance, should not obscure the larger point of the reforms—namely,

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ensuring constitutional, respectful, and accountable policing in the areas the court orders cover.

As you know, this report comes at a time of transition. In September, William Bratton stepped down as New York City's police commissioner. The monitor team looks forward to continuing its collaborative dealings under Mr. Bratton's successor, James O'Neill.

Further details on these and other subjects are contained in the report.

Thank you for the court's time and attention.

Respectfully submitted,

/s/ Peter L. Zimroth

Peter L. Zimroth
Monitor

Enclosure

Fourth Report of the Independent Monitor

Peter L. Zimroth

November 18, 2016

Floyd, et al. v. City of New York

Ligon, et al. v. City of New York, et al.

Davis, et al. v. City of New York, et al.

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Monitor's Fourth Report

I. Introduction

This is the fourth report of the Independent Monitor overseeing implementation of the court orders and the parties' agreements in the cases *Floyd v. City of New York*, *Ligon v. City of New York* and *Davis v. City of New York*.

The orders in the three cases require reforms related to stop and frisk, trespass enforcement (i.e., stops and arrests for trespass), and bias-free policing. In these areas, the orders require changes in policy, supervision, training, auditing, performance measurement, and handling of complaints and discipline. The orders also call for a one-year pilot program testing the use of body-worn cameras (BWC). This report details the state of progress towards compliance in each of these spheres.

The period since the monitor's report in February 2016 has seen at least these significant positive developments:

- (1) The NYPD's Patrol Guide Section on investigative encounters has been amended to meet the requirements of the court orders;
- (2) A new stop report was launched supporting the Patrol Guide changes;
- (3) New policies were written and should soon be implemented governing interior patrols in buildings enrolled in the Trespass Affidavit Program (TAP) and in New York City Housing (NYCHA) buildings; and
- (4) Some improvements in auditing were put in place and work continues on others.

Still on the to-do list: the Department has not yet started in-service training on stop and frisk for all its members on patrol. Nor is there a plan yet for evaluating the courses and the instructors. On body-worn cameras, the NYPD has indicated that the roll-out of the one-year

I. Introduction

pilot program will not begin until the first quarter of 2017, a delay largely related to requirements of the procurement process. The status of other tasks is also covered in the body of the report.

As always, when reviewing the state of progress in each of the areas covered in the court orders, a caveat is appropriate. The details noted in this report, though important for tracking compliance, should not obscure the larger point of the reforms. Each individual requirement must work as part of a whole coherent system supporting the aim of the court orders—namely, ensuring constitutional, respectful and accountable policing in the areas the court orders cover. As this monitorship has consistently stressed, this is an achievable goal in New York City, dependent on sustained leadership, not just at Police Headquarters but also throughout the police ranks. Amid competing pressures, it is critical that these reforms remain a priority and that sufficient resources be devoted to their achievement.

This report comes at a time of transition. On September 16, 2016, William Bratton stepped down as New York City's police commissioner. From the outset, Mr. Bratton embraced the reforms ordered by the court and agreed to by the Department. He said repeatedly and publicly that those reforms do not conflict with, and in fact support, effective policing that promotes safety for the City and members of the service. His leadership allowed the Department to work collaboratively with the monitor and the plaintiffs and helped facilitate the progress reported here and in earlier reports.

The monitor team looks forward to continuing that collaborative relationship under Mr. Bratton's successor, Commissioner James O'Neill. In recent public statements, Commissioner O'Neill spoke of the deep wounds, especially among people of color, caused in part by what he referred to as the stop, question and frisk "debacle" of the past and the need to heal those wounds.

II. Benchmarks and Standards for Defining Compliance

II. Benchmarks and Standards for Defining Compliance

One of the monitor's important functions is to report to the court on whether the City and the NYPD are in "substantial compliance" with the court's orders. The monitor continues to be in discussion with all the parties about how best to measure compliance. Nonetheless, it is appropriate now to set out some general considerations that will inform the monitor's recommendation to the court.

Some aspects of judging "substantial compliance" are relatively straightforward, but many are not. For example, the court orders and agreements by the parties require certain changes in policies appearing in the NYPD Patrol Guide or other official NYPD documents. Determining whether the appropriate changes have been made just requires reading the documents.

Changing written policy, however, is not meaningful unless the change is implemented and sustained in the field. That requires that officers be appropriately trained and supervised, that the NYPD's systems of rewards and discipline support the requirements, and that the Department has in place auditing and review mechanisms to detect when officers are not following the policies and effective processes to correct violations and minimize future violations. Here, assessing the adequacy of compliance is more complex, and the monitor team will be reviewing each of these areas.

For example, there is no single correct way to design an audit system or a curriculum for recruits or more experienced members of the service. The same holds true for other aspects of the remedial requirements. In assessing compliance, the monitor will be relying on the expertise of the monitor team, informed by substantial input from the NYPD, its experts, and the plaintiffs and their experts. The question at the end of the day will be whether each of these requirements,

III. Policies

A. Stop and Frisk Policies

working together, can provide a system of constitutional, respectful policing as experienced by New York City's residents.

Therefore, in addition to assessing compliance with respect to each of the specific court-ordered requirements, the monitor team will be performing its own audits on sample stops and undertaking its own statistical reviews as part of determining whether the Department's performance complies with the Fourth and Fourteenth Amendments to the Constitution.

Finally, as the goal of the court orders is to ensure that the NYPD incorporates procedures and processes that *sustain* constitutional and respectful policing, compliance cannot be judged in a single snapshot. Rather, the monitor will be looking for trends over time—whether performance is improving, deteriorating or remaining static.

As in prior reports, this report now describes the requirements of the court orders and discusses developments and the state of progress in each.

III. Policies

A. Stop and Frisk Policies

Under the court orders, as agreed to by the City and the Department, the NYPD Patrol Guide must:

- State what constitutes a stop, when a stop may be conducted, when a frisk may be conducted and when a search may be conducted;
- Require officers to document stops and frisks and the reasonable suspicion for each, both on a stop report form and in officers' activity logs; and
- Require supervisory review of stops, including an assessment of the constitutionality of the stop and not just that a stop report form (previously called a UF-250) was completed.

In August 2015, the monitor submitted to the court the NYPD's new procedures on stop and frisk, which are included in Patrol Guide (P.G.) 212-11, *Investigative Encounters: Requests for Information, Common Law Inquiry and Level 3 Stops*, which the court approved. The revised

III. Policies

A. Stop and Frisk Policies

Patrol Guide meets the requirements of the court orders. It correctly states the legal standard for when an officer may stop a person (i.e., make a *Terry* stop) and includes a definition of reasonable suspicion. It states that an officer must have reasonable suspicion that the person stopped is armed and dangerous to frisk that person. The Patrol Guide also addresses encounters between officers and civilians that are less intrusive than a stop or an arrest. All such encounters are governed by the New York State Court of Appeals decision in *People v. DeBour*,¹ which sets out four levels of encounters: a simple Request for Information (Level 1); a Common Law Right of Inquiry (Level 2); a *Terry* stop, when an officer detains a person to investigate (Level 3); and an arrest (Level 4). The investigative encounters procedures, P.G. 212-11, describe the standards that govern each level.

In March 2016, the monitor submitted and the court approved a new stop report form, described in Section III.B below. At the same time, the court approved changes to P.G. 212-11 so that the documentation requirements in P.G. 212-11 correspond to what appears on the new stop form.

Patrol Guide 212-11 now in effect requires documentation of all stops and makes more explicit the responsibilities of supervising officers up the chain of command. The supervisor is required to discuss the circumstances of the stop with the officer who made the stop, and then review the stop and any frisk or search, if conducted. If a stop report is inaccurate or incomplete, the supervisor must direct the officer to make the necessary corrections. If the supervisor determines that the officer did not have reasonable suspicion for the stop, reasonable suspicion for the frisk or an appropriate basis for the search, the supervisor must refer the officer for further

¹ 40 N.Y.2d 210 (1976).

III. Policies
B. Stop Report Form

action: instruction, additional training or other remedial action, including, if appropriate, discipline.

B. Stop Report Form

The court orders and the parties' agreements require that the NYPD develop and implement a new stop report form to be used by officers every time a person is stopped. In March 2016, the monitor submitted and the court approved the NYPD's new stop report form. The Department requisitioned and distributed approximately 50,000 new forms to its commands and, on June 27, 2016, the Department directed that all members of the service use the new stop report form and cease using the prior report form. A copy of the new report form, PD 383-151 (03-16), is attached as Appendix 1.

As required, the new stop report documents stops when they occur and any related frisk or search. It has a narrative section in which the officer describes in his or her own words the reasons for the stop and a separate narrative section for describing the reasons for the frisk and the search, if conducted. The court found that without narrative sections, the prior version of the stop form, which had only checkboxes for the factors leading to the stop, did not provide sufficient information to assess the legal sufficiency of the officer's reasons for a stop, frisk or search. The new form also simplifies the checkboxes that had been in use and eliminates ones that led to rote justifications ("furtive movement," "high crime area" and "suspicious bulge"). Now that the new form is in use, officers are required to provide descriptions of the facts and circumstances that contributed to the officer's suspicions, and not merely to check a box.

The stop report additionally has a section in which supervisors document the review currently required by NYPD policy (P.G. 212-11) and any follow-up action called for by that review. An officer's supervisor must confirm that he or she reviewed the constitutionality of the

III. Policies
B. Stop Report Form

stop and discussed the facts of the stop with the officer. The supervisor must check boxes indicating whether or not: (1) the supervisor reviewed the encounter with the officer; (2) the report was accurate and complete; (3) the supervisor was present on the scene; (4) the corresponding activity log entry was reviewed; (5) there was a sufficient basis for the stop; and (6) there was a sufficient basis for the frisk or search, if conducted. The supervisor must also note whether any corrective action was taken, if appropriate.

The new stop report was the product of substantial work. In the summer and fall of 2015, a new form was piloted for 90 days in five precincts, one transit district and one housing police service area (PSA). During and after the pilot program, there was substantial discussion among the NYPD, the other parties and the monitor team about the content of the form—specifically, what information to collect and how the instructions should be phrased. All the parties understood that designing this form involved necessary trade-offs. The new stop report balances the several goals of such a form—documenting stop, question, frisk and search activity, providing guidance about when these interventions are permissible, and facilitating their review by supervisors and others in the Department. The form meets the requirements of the court orders and the parties’ agreements.

The NYPD has developed a new online records management system that will incorporate the new stop report form. The monitor has submitted the procedures for the new electronic stop report form to the court for approval. Once the stop report form goes online, officers will be able to access and prepare the new stop report form on their smartphones and tablets, making it easier for them to complete the form.

III. Policies

C. Racial Profiling Policies

D. Policies Related to the Trespass Affidavit Program

C. Racial Profiling Policies

The NYPD's policy barring racial profiling and other bias-based policing, P.G. 203-25, was approved by the court on August 24, 2015. This Patrol Guide section states that race, ethnicity or national origin may be considered by officers in taking police enforcement action only when it is part of a specific and reliable suspect description that includes not just race, age, and gender, but other identifying characteristics or information. A person may not be targeted for stops simply because he or she is a member of a racial or ethnic group that appears more frequently in local crime suspect data.

The section also includes a description of Section 14-151 of the New York City Administrative Code prohibiting bias-based profiling. The Administrative Code includes demographic categories in addition to race, color and national origin: religion, creed, age, alienage or citizenship status, gender, sexual orientation, disability and housing status.

The Department's racial profiling policy, P.G. 203-25, meets the requirements of the court orders and parties' agreements. As with the Department's stop and frisk policy, substantial compliance regarding the racial profiling policy also requires that Department personnel be trained on the policy and that the Patrol Guide section be followed in practice.

D. Policies Related to the Trespass Affidavit Program

The court's orders in *Ligon v. City of New York* require the NYPD to revise its procedure for patrolling buildings enrolled in the Trespass Affidavit Program (TAP), also known as Operation Clean Halls. TAP is a program in which building owners authorize the NYPD to conduct patrol activities inside and around their buildings, including, in some buildings, floor-to-floor inspections, called interior patrols or vertical patrols.

III. Policies

E. New York City Housing Authority (NYCHA) Policies

On May 31, 2016, the monitor submitted, and on June 2, 2016, the court approved, new NYPD procedures for interior patrols in TAP buildings (P.G. 212-59). According to the new procedures, stops inside and outside TAP buildings must comply with the NYPD's stop and frisk policies, P.G. 212-11. The procedures also state that "mere presence" in a TAP building, or entry into or exit from a TAP building, does not constitute an "objective credible reason" for a *DeBour* Level 1 approach and request for information, nor does it constitute reasonable suspicion for a Level 3 *Terry* stop. The revised procedures governing stops in and around TAP buildings make the changes required by the court's orders.

The NYPD is currently working with the parties and the monitor to finalize roll call training for interior patrols in TAP buildings. The NYPD expects to publish the new P.G. 212-59, conduct the roll call training and implement the new procedures in early December.

E. New York City Housing Authority (NYCHA) Policies

The settlement in *Davis v. City of New York* requires a new Patrol Guide provision for the interior patrol of NYCHA buildings (P.G. 212-60) that promotes constitutional interactions between NYPD officers and persons encountered during interior patrols. An agreed-upon Patrol Guide section was submitted by the parties with their settlement papers, and approved by the court. The Patrol Guide section states, among other things, that, without more, entering, being in or exiting a NYCHA building is not an "objective credible reason" justifying an officer's approach and request for information. The settlement also included agreed-upon changes to NYPD training materials and a revised Trespass Crimes Fact Sheet, an NYPD form used by officers to describe the circumstances leading to or supporting an arrest for trespass (see Section III.F below). When the court approved the settlement on April 28, 2015, it approved these documents as well.

III. Policies

F. Trespass Crime Fact Sheet

The promulgation of the Patrol Guide section (P.G. 212-60) and the Trespass Crimes Fact Sheet, however, was delayed because the NYPD and the plaintiffs in *Davis*, *Ligon* and *Floyd* agreed that the procedures for NYCHA patrols (P.G. 212-60) should align as much as possible with the procedures for patrol of buildings enrolled in the Trespass Affidavit Program (P.G. 212-59) and should be consistent with the stop-and-frisk procedures applicable to all investigative encounters (P.G. 212-11). Aligning these three policies took until May 2016.

On May 31, 2016, the monitor submitted, and on June 2, 2016, the court approved, revisions to P.G. 212-60. These changes were the result of significant discussions among the NYPD, the City Law Department, the plaintiffs in *Davis* and the plaintiffs in *Ligon* to produce policies for interior patrols in both NYCHA buildings and TAP buildings that are consistent with each other, that provide clear guidance to officers and that will result in interior patrols respecting the rights of the residents of those buildings and their guests.

The NYPD is currently working with the parties and the monitor to finalize roll call training for interior patrols in NYCHA buildings. The NYPD expects to publish the new P.G. 212-60 and the Trespass Crimes Fact Sheet, conduct the roll call training, and implement the new procedures in early December.

F. Trespass Crimes Fact Sheet

As part of the *Davis* settlement, the parties agreed on a new form to be completed by officers when they make a trespass arrest in a NYCHA building (the Trespass Crimes Fact Sheet). The promulgation of this form was delayed because the *Davis* and *Ligon* plaintiffs and the Department agreed that there should be a single form used for trespass arrests in both NYCHA buildings and TAP buildings. The parties worked to create a Trespass Crimes Fact Sheet that will now be used for all trespass arrests in both TAP buildings and NYCHA buildings,

IV. Supervision

and the court approved the form on June 2, 2016. The form also combines the Trespass Crimes Fact Sheet with a supporting deposition that can be used by district attorneys in criminal proceedings. Both P.G. 212-59 and P.G. 212-60, the policies for interior patrols in TAP buildings and NYCHA buildings, respectively, now reference the Trespass Crimes Fact Sheet and require a supervisor to sign off on the form. The new form will be in use when the Department publishes P.G. 212-59 and P.G. 212-60.

IV. Supervision

The court orders and the parties' agreements require that supervisors review stop report forms and activity logs not just for completeness and accuracy, but for the constitutionality of the stop and, if conducted, the frisk and search. If an officer's actions are improper, the officer's supervisor must take corrective action.

The new Patrol Guide section 212-11 governing stops and frisks meets these requirements. It requires supervisors to respond to the scene of stops when feasible, discuss the circumstances of the stop with the officer making the stop before the end of the officer's tour, and review the officer's stop report form and activity log. The supervisor must determine whether the stop was based on reasonable suspicion of a felony or Penal Law misdemeanor; if a frisk was conducted, whether the frisk was supported by reasonable suspicion that the person was armed and dangerous; if a search was conducted, whether it was reasonable; and if force was used, whether the use of force was reasonable. The supervisor must direct the officer to make corrections to the stop report form if it is inaccurate or incomplete, and, if appropriate, instruct the officer or refer the officer for additional training or other remedial action, including, if appropriate, disciplinary action. The NYPD's new written policies meet the requirements of the court orders and the parties' agreements.

V. Training

For these new stop and frisk policies to take hold, supervisors must play an increased leadership role. This is particularly true for sergeants, who are closest to the officers, and precinct and unit commanders, who set the tone. These supervisors must ensure that the stops, frisks and trespass arrests made by their officers are legal and proper and that these activities are properly documented. Under the new procedures, supervisors must take a more active role in supervision, oversight, teaching and, when appropriate, discipline.

V. Training

The monitor team has continued to spend many hours at the Police Academy observing classes and role-play scenarios on the subjects relevant to the monitor's mandate—stop and frisk, racial profiling, and housing and interior patrols. The plaintiffs and their experts have observed some of this training. As noted in the monitor's Second Report, the monitor team has provided the NYPD with recommendations for improvements in Academy training. Those recommendations covered the topics of teaching quality, curriculum development, course and teacher evaluation, and subject integration (for example, combining lessons on tactics and the legal principles being taught). Effective training requires well-written training materials and quality instruction so that the materials are communicated successfully. Another area discussed with the Department is the importance of regularly assessing the training program to evaluate whether members of the service are learning and retaining the material.

The NYPD now has a new Deputy Commissioner of Training, Dr. Tracie Keese. Deputy Commissioner Keese previously served in the Denver Police Department for 25 years and is a co-founder of the Center for Policing Equity, which promotes police transparency and accountability. Dr. Keese has begun to make organizational changes: for example, the creation of a new branch of the Training Bureau called the Center for Innovations in Training and

V. Training
A. Training for Recruits

Education. The Center will be responsible for coordinating and overseeing efforts to improve curriculum development and alignment, increase instructor development and instructor training, and enhance course and instructor evaluation. Richard Glover has been hired as the executive director of the Center. Mr. Glover was a member of the faculty at John Jay College of Criminal Justice and previously was the Chief of Training for the New York City Department of Education.

According to the NYPD, the Training Assessment and Instructor Development Units will be reviewing all training courses provided by the Department and implementing stringent professional standards, with the goal of improving the quality of training. To accomplish this goal, these units will need to conduct ongoing appraisals of instructor qualifications, training methodologies and whether officers and recruits learn the key concepts of the courses being evaluated. The Instructor Development Unit also will need to provide Department instructors with the knowledge and skills necessary to deliver effective classroom instruction.

A. Training for Recruits

Training materials for Police Academy recruit classes on stop and frisk, racial profiling and interior patrols for TAP and NYCHA buildings were rewritten and approved by the court in April 2015. The materials for these courses undergo revisions as new NYPD policies are approved (e.g., P.G. 212-11, *Investigative Encounters*), and in response to continued review by the parties and the monitor team. For example, Policing Legally, the course devoted to teaching the law of investigative encounters to recruits, has been updated to reflect the new stop report form, including instruction on what to include in the narrative sections and emphasis on the newly enhanced role of supervisors in reviewing the constitutionality of stops. The course on interior patrols of TAP and NYCHA buildings will be updated to reflect the new procedures

V. Training
A. Training for Recruits

governing those topics, P.G. 212-59 and P.G. 212-60. The recruit training material will also need to be revised as the parties finalize in-service training on procedural justice and implicit bias, and material on these topics can be incorporated in the recruit curriculum.

The NYPD is developing more scenario-based instruction for recruits. Scenarios for recruits are being taught in mock environments at the Academy and are scheduled to coincide with classroom instruction for the courses on the remedial topics: Policing Legally, Policing Impartially and Housing Interior Patrol. The parties are also developing additional scenarios on racial profiling and biased policing for use in both recruit and in-service training.

One recruit training segment identified in the *Floyd* liability and remedies decisions as needing revision is a training module conducted by the Firearms Training Section on the Characteristics of Armed Suspects.² This training teaches recruits about factors that should raise their awareness when attempting to determine whether or not an individual they encounter is armed. The original PowerPoint and lesson plan reviewed by the court included a section on “unusual firearms,” such as guns in the shape of cell phones or pens. The court found that the material was misleading, as it could encourage officers to perform stops and frisks based just on bulges created by cell phones or other common objects, which officers could not reasonably suspect to be weapons. The NYPD deleted this section of the training.

In reviewing the training module, however, the parties identified other material in the training that needed to be revised to ensure the training did not convey messages inconsistent with the legal standards for conducting a frisk. The Risk Management Bureau worked with the Firearms and Tactics Section of the Police Academy and the plaintiffs and their experts to edit the material and create a new lesson plan, which has been circulated to the parties. The monitor

² *Floyd v. City of New York*, 959 F. Supp. 2d 540, 614 (S.D.N.Y. 2013) (liability decision); see *Floyd v. City of New York*, 959 F. Supp. 2d 668, 680 (S.D.N.Y. 2013) (remedies opinion).

V. Training
B. In-Service Training

team and the parties observed a recruit class being trained using the new lesson plan and will be working to finalize the training materials based on observations from that class.

B. In-Service Training

1. Command Level/Roll Call Training

In-service training is conducted at several venues, one of which is at the officer's command. There, the training sergeant or others often conduct brief training sessions. The most common time for command training is at roll call. Roll call is at the beginning of the officer's shift; it is a time when supervisors give assignments and alert officers to relevant information. Roll call training is important, but, of necessity, it cannot be lengthy or include sustained discussion between the officers and the trainer.

The Department has produced five short videos regarding P.G. 212-11 for roll call training to ensure that the training and information provided to NYPD members is uniform. The first of these videos is an introduction to the new stop-and-frisk procedures, and was played at successive roll calls in October 2015. The next three videos cover the *DeBour* levels of investigative encounters (Level 1 requests for information, Level 2 common-law right of inquiry and Level 3 *Terry* stops) and were played at successive roll calls in February, May and June 2016, respectively. The final video covers the proper documentation and supervision of stops, and was finalized after the new stop report form was approved. That video was played at successive roll calls in July 2016, contemporaneously with the release of the new stop report. These five videos remain available online to members of the service.

The Department is now preparing roll call videos that address the newly revised Patrol Guide sections regarding interior patrols of TAP and NYCHA buildings, P.G. 212-59 and P.G. 212-60. The parties are reviewing PowerPoint presentations and scripts for these videos, and the

V. Training
B. In-Service Training

final videos are expected to be played at roll call after the policies are published, which the Department expects to do in early December.

2. Investigative Encounters and Racial Profiling

Currently, all NYPD officers are required to attend in-service training at the Police Academy each year. The Department is working with the parties and the monitor to increase the amount of in-service training and develop a refresher course on the law and procedures for investigative encounters. It is contemplated that the course will include a PowerPoint presentation and interactive discussion in the morning and an afternoon of scenario and role-play training. The parties have exchanged and discussed several drafts of the lesson plan and PowerPoint presentation, beginning with a draft prepared by the NYPD in January. This process has been long because the parties understand the critical importance of this training and want to get it right. The training must cover the fundamental principles of stop, question, and frisk, trespass enforcement, and bias-free policing. The training must clearly convey the changes in NYPD procedures and what is expected of officers and supervisors regarding the documentation and supervision of stops. It also should explain why the training is important to the officers and the Department and provide members of the service some of the history that led to the training.

The parties are now moving toward a final draft of this training. Academy instructors have conducted a run-through of the morning presentation for other instructors, members of the monitor team and plaintiffs. Substantive feedback has resulted in changes to the draft materials as well as to methods of delivery. The Academy is working on an afternoon session that will present scenarios and ask officers to assess the level of the encounter and determine which investigative measures they can legally use. There will also be role-playing exercises where officers and supervisors will prepare and review stop reports and determine as supervisors what

V. Training
B. In-Service Training

follow-up action may be necessary. The NYPD is planning to conduct additional workshops of the in-service training with the parties and members of the service, and will pilot the training before it is finalized and approved for use Department-wide.

3. Procedural Justice and Implicit Bias

The NYPD is developing two additional days of in-service training. One day will be dedicated to “procedural justice.” This is a phrase used to describe the necessity of treating civilians with respect, listening to them and explaining the officer’s actions. The Department has retained Professor Tracey Meares of Yale Law School to assist in the development of this training. As a foundation to fashion its curriculum, the Department is using material created by police departments in other cities and the National Initiative for Building Community Trust and Justice. The NYPD team is working with Professor Meares to draft modules that include discussion of the history of New York City and the NYPD, and how that history relates to legitimacy and procedural justice both within the Department and in the communities being policed. The training will include lectures, videos, audience participation and interactive exercises. The NYPD and Professor Meares gave a presentation on the current state of the draft curriculum to the monitor team and the parties in early August.

A second day of in-service training day will be dedicated to training on implicit bias. This is the concept that everyone has biases of which he or she is not aware, arising from the particular environment (neighborhood, family, friends, media, etc.) in which he or she lives. The point of the training is to make officers more aware of what those biases are so that they do not interfere with the officers’ law enforcement functions. The Department has retained Professor

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B. In-Service Training

Phillip Atiba Goff to assist in the development of this training.³ Dr. Goff is working with a team of instructors from the Recruit Training and Specialized Training Sections of the Police Academy. Dr. Goff presented a draft of the PowerPoint presentation to the monitor team and the parties in early August. The Department has also workshopped the training with experts from John Jay College, the Department of Justice, the Center for Policing Equity and other police departments.

The Department expects to conduct workshops of both the Procedural Justice module and the Implicit Bias module and distribute revised drafts of the lesson plans to the parties by the end of the year. The NYPD could then have a run-through of the training for the parties. The Department understands that the success of both these courses depends on the ability of its instructors to communicate the concepts, and it also recognizes the need to spend more time training a sufficient number of instructors to do this training.

Once the in-service trainings on procedural justice and implicit bias have been developed and approved, the Department anticipates adapting some of their content for training recruits, executives and specific specialized units, as appropriate.

4. Housing

The Department is also working on an additional day of in-service training that will be offered exclusively to Housing officers. This training will be in addition to the roll call training on the revised Patrol Guide section 212-60. The additional one-day training will include instruction on the new P.G. 212-60 (interior patrols) and on NYCHA house rules, and officers will role-play scenarios that apply the law of investigative encounters to interior patrols in

³ Dr. Goff is a professor at John Jay College of Criminal Justice and the president and co-founder of the Center for Policing Equity.

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C. Training For Newly Promoted Supervisors

D. Specialized Training

NYCHA buildings. The training also provides an opportunity to integrate tactics training with the legal and policy training, to improve officer and civilian safety.

C. Training for Newly Promoted Supervisors

Training for newly promoted sergeants, lieutenants, and captains is currently undergoing extensive revision. Members of the monitor team, the Academy's Leadership Development group and the Risk Management Bureau, with input from the plaintiffs, have drafted revised training focusing on the expanded responsibilities of supervisors, particularly sergeants under P.G. 212-11, and on the new stop report form. The training will be more interactive than it was in the past. The group working on this training developed a series of online quizzes, allowing participants to see immediately how many people in the class chose each potential answer. This allows the instructor to gauge the knowledge level of the class and whether more time should be spent on particular topics. The training also will include body-worn camera footage, and participants will evaluate those encounters as though they were supervisors. A draft of the training module was presented to the parties and the monitor in June, revised materials were circulated in July, and in August and September a version of the training was tested with two new classes of sergeants and a new class of lieutenants. Judging from the classes the monitor team has observed, providing training on supervisory responsibilities along with a refresher on investigative encounters is important and necessary. Once the training module is finalized, it will be submitted for court approval.

D. Specialized Training

1. Plainclothes Training

The NYPD conducts a three-day training course for officers who will be starting as plainclothes officers, including officers who will be joining a precinct-based anti-crime or

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conditions units, or any other unit that works in plainclothes. It is important to ensure that these officers get their own training on stop and frisk policies, because their work more often involves actively seeking to detect and apprehend criminals and because they are making a significant proportion of stops. The basic plainclothes course involves a combination of skills—tactical mindset, knowledge of the law and defensive tactics, among other things. The course should place greater emphasis on the integration of physical tactics, the law, and the dynamics of interpersonal encounters. Officers in plainclothes assignments must have an in-depth working knowledge of the law and how to use this knowledge to do their jobs more effectively and more safely, while at the same time protecting the rights of those encountered.

In previous training for plainclothes officers, the NYPD played a 40-minute video to provide instruction on investigative encounters. Although the video contained useful real-world examples, other parts of it were somewhat confusing and at odds with the new Patrol Guide section 212-11 and related trainings. The Department replaced the video with a lecture on investigative encounters using a PowerPoint presentation modeled on training materials previously approved by the court. The NYPD is currently working with the monitor team to expand the investigative encounters component of this training to include more practical training aimed specifically at plainclothes officers and a new section on the law of investigative encounters. The existing curriculum for the plainclothes course is being revamped to integrate these concepts. Focus groups with incumbent plainclothes officers took place in October, and a draft of the new course should be completed by the end of the year.

2. Training Updates Based on New Stop Report

In addition to updating recruit training materials to reflect the new stop report, the Department also updated a number of other training modules for more senior officers to reflect

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A. QAD Auditing

the new procedures for documenting stops. Among the materials updated were reference materials on the Department's Investigative Encounters Resources Center, which are now accessible to officers online. The Department also conducted a brief training session with the Department's training sergeants regarding the procedures for the new stop report.

VI. Auditing

In order to maintain the remedial reforms, the Department must have in place a system that permits it to discover and then correct deviations from NYPD policy and the law. For this reason, the Department's auditing function is essential.

A. QAD Auditing

The NYPD's Quality Assurance Division (QAD) is responsible for evaluating compliance with the Department's policies and procedures, including those relating to stop and frisk and trespass enforcement. QAD evaluates each precinct, transit district and housing PSA command, the unit that responds to demonstrations (the Strategic Response Group), each borough task force and the Detective Bureau. The audit procedures assess both compliance with constitutional standards and whether the paperwork has been properly prepared. The Department also performs audits to assess the extent to which stops and frisks are being conducted but not documented.

QAD has made significant progress in changing the way the NYPD audits its activities to address shortcomings identified by the court. The changes include updating its audit methodology and the forms used to record audit findings to reflect the revisions to P.G. 212-11 and the implementation of the new stop report. These changes are being reviewed and discussed by the parties.

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QAD is currently conducting four types of audits relevant to the remedial measures: (1) stop, question and frisk audits; (2) trespass stops/arrest audits; (3) police-initiated enforcement audits; and (4) RAND audits (so called because they are based on an audit recommended by the RAND Corporation) to identify undocumented stops. Each is described more fully below, along with the results of QAD audits from the first and second quarters of 2016.

Regarding the QAD audits for the first and second quarters of 2016, which are described below, there are two things to note. First, during that time period, the NYPD was still using the old stop reports (Stop, Question and Frisk Report Worksheet), because the new stop report form had not yet been promulgated. The older form did not have a space for a narrative, and therefore the auditors looked to the officers' activity logs for a narrative description of what led to the encounter and the frisk and search, if conducted. Second, although the stops that were reviewed were made after the NYPD revised its stop and frisk procedures (included in P.G. 212-11), the NYPD had not conducted its in-service stop and frisk training (which is still in the future) and many of the stops were made before the roll call training videos on investigative encounters were played in the precincts. The new stop report will more easily allow officers to articulate the reasons for their actions, and new training should improve the officers' compliance with the NYPD's policies and the Constitution. Our examination of QAD's audits during this period did permit the monitor team to review QAD's audit methodology, how it produces audit reports, and the worksheets that it uses to prepare and report on its audits.

In addition to conducting its own audits, QAD oversees a self-inspection program in which the Integrity Control Officer (ICO) in each command must identify and evaluate the last 25 stop reports and corresponding activity log entries. If there are fewer than 25 stop reports for

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the month reviewed, the ICO must evaluate all of the stop reports. The parties are now reviewing a new self-inspection worksheet that QAD created for the ICOs to use.

1. SQF Audit Results

QAD conducts SQF audits of every precinct and command each quarter. In 2016, QAD began using a sampling methodology developed with the monitor team and reviewed by the parties. The number of stops audited for a particular precinct depends on the number of stops made in that precinct during the previous three-month period. For precincts with fewer than 25 stops in that period, QAD reviews all the stops in the quarter. For precincts with more than 25 stops in the prior quarter, QAD audits a random sample of stops. The sampling methodology was developed so that over four quarters, QAD will have reviewed a sufficient number of stops to obtain not only a representative sample of stop reports for the city as a whole, but also a representative sample of stop reports from each precinct.

For the first quarter of 2016, QAD evaluated 1,984 stop reports and activity log entries in 132 commands for compliance with the new Patrol Guide procedure. QAD determined that officers articulated individualized reasonable suspicion for the stop in 81 percent of the activity log entries audited during this period. Officers articulated the basis for the frisk and the basis for the search in 65 percent and 66 percent of the activity log entries audited during the same period, respectively.

For the second quarter of 2016, QAD audited 130 commands and evaluated 2,156 stop reports and activity logs. QAD determined that 77 percent of the stop reports and activity logs articulated reasonable suspicion to justify the stop. The person stopped was frisked in two-thirds of the stops, and QAD determined that 71 percent of the stop reports and activity logs articulated reasonable suspicion to justify the frisk. Twenty-two percent of persons stopped were searched,

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and QAD determined that legal justification for the search appeared in the documents in 69 percent of the cases. QAD also looked for reported stops that appeared in both the QAD audit and the command's self-inspection. QAD and the command were consistent in their evaluation of the reports in 94 percent of these stops.

As noted above, the audits conducted in the first and second quarters of 2016 were based on stops recorded using the old stop report, so the auditors were evaluating the encounter based on what was written in the officers' activity logs. The new stop report form was developed out of recognition that an officer's activity log is not the best place for officers to articulate and record the facts and observations supporting the officer's reasonable suspicion. For that reason, the results of the audits from the first and second quarters of 2016 are not necessarily an adequate measure of compliance. However, they do raise a caution, and also provide a baseline from which to evaluate results from future audits.

Starting with the audits from the fourth quarter of 2016, the monitor team will be obtaining a sample of the stop reports that were audited by QAD, along with the QAD audits, so that the monitor team can evaluate the auditors' work, and also review a sufficient number of stops to be representative of the city.

2. Undocumented Stops

The NYPD has acknowledged that undocumented Level 3 *Terry* stops are a serious issue that needs to be addressed. As noted in Section III.B above, the parties worked hard to devise a new stop report, recognizing its importance in documenting stop, question, frisk and search activity, giving guidance about when these interventions are permissible, and facilitating their review by supervisors and others in the Department. If stop forms are not filled out when appropriate, these benefits will not be realized as contemplated. The Department's leadership

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will find it more difficult to know what is actually happening on the street. A significant percentage of undocumented stops would undermine the Department's and the monitor's ability to assess compliance with the court orders.

There are three types of audits that QAD performs to determine the extent of the problem and ensure proper recordkeeping: (1) RAND audits, reviewing NYPD radio transmissions; (2) police-initiated enforcement audits, reviewing arrests that started as Level 3 *Terry* stops; and (3) trespass enforcement audits, reviewing trespass arrests that started as Level 3 *Terry* stops. The results of each of these audits, described below, show that the failure to document stops remains a problem and signal the need for continued action to fix the problem.

a. RAND Audits Results

One way that QAD audits the underreporting of Level 3 *Terry* stops is by conducting what it calls RAND audits. In a RAND audit, the NYPD uses radio transmissions to identify instances in which stops appear to have been made, but a stop report was not recorded. QAD uses keyword searches of the NYPD's Intergraph Computer Aided Dispatch (ICAD) to identify events that likely involved stop encounters. These keywords include "stopped," "show-up," "holding" and "warrant check." QAD auditors then review the ICAD events, listen to the corresponding radio transmissions, and determine whether a corresponding stop report was prepared. QAD performs this test in two commands each week or eight commands per month, an increase from seven commands per month since the monitor's last report.

The results of QAD's test are reported to the commanding officer, who is then required to investigate further and report back to QAD whether the encounter did, in fact, require a stop report and whether one had been filed. Commands must submit a response through Department channels within six weeks of the date of the audit report.

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The data below summarize QAD's audits conducted in the first quarter of 2016 and the command responses to those audits. During this period, QAD audited 28 precincts. The keyword search located 630 ICAD events. After listening to the radio transmissions, the auditors identified 36 ICAD events as possible Level 3 *Terry* stops. Two events had stop reports in the SQF database; 34 did not.

Of the 34 ICAD events identified by the QAD as possible stops without a stop report, the investigation at the command determined that no stop report was required in 14 of those incidents. The following reasons were given:

- Two involved disputes among civilians, not stops to investigate crimes;
- Eight were instances for which probable cause existed at the beginning of the encounter;
- One was an encounter identified by the officer as a Level 2 encounter rather than a *Terry* stop;
- One involved a truant and a "truant referral" was required, not a stop report;
- One was an observation with no encounter; and
- One was a car stop for an equipment violation.

Of the remaining 20 of the 34 ICAD events for which no stop report was in the SQF database, the commands agreed with QAD that a Level 3 *Terry* stop had occurred, requiring the preparation of a stop report. In six cases, a stop report was completed and on file in the command, but the stop reports had not been entered into the SQF database at the time of the QAD audit. For the other 14, the following actions were taken:

- Seven resulted in instructions or training for the officers who did not record the stop;
- Three resulted in entries in the minor violations log⁴ for officers who did not record the stop; and

⁴ The minor violations log is a logbook kept at each command that records minor violations of Department rules by members of the service. The information in these logs is not

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- In four cases, no action was taken with respect to officers who did not record the stop.

For the second quarter of 2016, QAD conducted RAND audits in 22 commands, including 16 patrol precincts, four transit districts and two PSAs. There were 560 ICAD events featuring the words searched. Of those, QAD determined that 25 ICAD events appeared to be Level 3 *Terry* stops. A stop report was found for five of these 25 events.

Of the 20 ICAD events identified by QAD as possible undocumented stops, the command investigation determined that two encounters started with probable cause and, in one case, patrol officers were assisting a complainant, so that stop reports were not required. As yet, one command has not reported on two events. In the remaining 15 cases, the commands reporting agreed that a Level 3 *Terry* stop had occurred and a stop report was required. In two of these 15 cases, stop reports were on file at the command, but had not been entered into the SQF database at the time of the QAD audit. Commands took the following actions with respect to the remaining 13 cases:

- Eight resulted in instructions for the officers who did not record stops;
- Two command disciplines were issued;
- In one case, a minor violations log entry was made (see footnote 4 for a description of the minor violations log); and
- In two cases, no action was taken with respect to the officers who did not record the stop.

b. Police-Initiated Enforcement Audits

QAD also uses a “police-initiated enforcement” audit to detect undocumented stop encounters. In these audits, QAD looks at certain types of arrests and determines whether a stop preceded the arrest and, if so, whether a stop report form was prepared. The arrests examined are

tracked centrally, it does not become part of a member’s personnel record, and there are no penalties or additional consequences for being listed in the log.

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for criminal possession of a controlled substance, criminal possession of a weapon and arrests where the People of the State of New York are the complainants on the Complaint Report. Arrest documents and court affidavits are reviewed to evaluate whether the arrest involved a *Terry* stop and whether the officers prepared a stop report for the arrest, when required. For each command, QAD looks at up to 25 of these arrests. The results of QAD's audits are sent to the commands, which review the audits and report back to QAD. The command responses note any disagreements with QAD's findings and any corrective action taken to address deficiencies.

For the second quarter of 2016, QAD identified 124 police-initiated arrests that may have involved a *Terry* stop. The commands provided information showing that 25 of these arrests did not involve a *Terry* stop (in most cases, the officer had probable cause at the beginning of the encounter). For the remaining 99 arrests, which did involve a *Terry* stop, there was a stop report filed in the command for 13 of these arrests (13 percent).

c. Trespass Audit Results

In the second quarter of 2016, as part of the police-initiated enforcement audit, QAD began evaluating criminal trespass arrests at NYCHA and TAP buildings. QAD conducted this audit to ascertain whether a Level 3 *Terry* stop was conducted during these arrests and, if so, whether a stop report was on file in the command.

This review found 59 trespass arrests in TAP buildings, of which 32 were found to involve a likely *Terry* stop. A stop report was on file in only one of those 32 incidents (three percent).

As for trespass arrests in NYCHA buildings, for the second quarter of 2016, the review found 162 trespass arrests. QAD identified 64 of those trespass arrests as potentially involving a *Terry* stop. The commands have provided information showing that three of these arrests did not

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B. Self-Inspection of TAP Stops in the Bronx

involve a *Terry* stop. In 15 of the remaining 61 trespass arrests (25 percent), a stop report was on file in the command.

B. Self-Inspection of TAP Stops in the Bronx

As part of the *Ligon* remedial order, the NYPD is required to develop procedures for ensuring that stop reports are completed for all trespass stops outside TAP buildings in the Bronx, and for reviewing the constitutionality of those stops.

In an effort to meet this requirement, in April 2015 the NYPD began requiring ICOs in the Bronx to conduct monthly self-inspections of trespass stops at Bronx TAP buildings. After a review of these self-inspections, the monitor's second report noted that the ICOs did not clearly identify the deficiencies in the stop reports and address them, including attention to when the stop reports did not articulate reasonable suspicion for the stop or for a frisk, when conducted.

The Department's Risk Management Bureau recognized these shortcomings in the ICOs' reviews and conducted remedial training for Bronx ICOs and assistant ICOs in April 2016. The training included a refresher on stop and frisk, trespass enforcement and the TAP program, identified common errors in stop reports and activity logs, and emphasized the need to ensure proper documentation of stops. The Risk Management Bureau also noted that the ICOs did not include in their reports stops that were in the SQF database and should have been in the ICOs' assessment reports.

After the training in April 2016, the ICOs continued to conduct self-assessments of trespass stops at Bronx TAP buildings. They reviewed the seven stop reports on file for May and June 2016. It appears that the ICOs still had not identified and addressed deficiencies in the stop reports.

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C. Early Identification System (EIS)

In early June 2016, the court approved an operations order creating a pilot program for increased supervisory review of criminal trespass stops in the Bronx. The pilot program requires review at the precinct level of all *Terry* stops for criminal trespass in or outside of TAP buildings in the Bronx. The precinct ICO must review a sample of stop reports for completeness, accuracy and constitutionality of the underlying stop. The ICO must then track the results and confer with officers and their supervisors when deficient stop reports are identified. Monthly reports from the program will be submitted to the Risk Management Bureau for further analysis.

The monitor has not yet received the monthly assessment reports from the court-approved Bronx TAP pilot program. However, if the pilot program is to meet the requirements of the *Ligon* court order, several issues must be addressed. The ICO reviews of stop reports and activity logs must be more thorough. Commanding officers and the Bronx Borough Command need to take ownership of this effort. They have responsibility for ensuring that the stops themselves are lawful, that the self-inspections are done well and that deficiencies are dealt with. And the issue of underreporting needs to be addressed and fixed. Otherwise, it is impossible to know whether the stops reviewed by the ICOs are all the stops being conducted.

C. Early Identification System

The NYPD currently tracks officer performance using several databases and behavioral indicators to identify members of the service who display at-risk behavior. These indicators include disciplinary actions, substandard evaluations, civil lawsuits, Civilian Complaint Review Board (CCRB) complaints, use of force complaints, racial profiling complaints, supervisor recommendations and information from the NYPD's personnel system. The Performance Analysis Section of the Risk Management Bureau then identifies members of the service

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to be placed in a performance monitoring program. This, however, is just the beginning of what a robust early identification system would look like.

More robust systems include centralized databases that collect and analyze information relating to at-risk behavior and provide automated alerts to supervisors so that patterns of at-risk behaviors can be addressed and corrected before more serious misconduct occurs. In determining what data should trigger an alert to a supervisor, some systems examine not only the quantity of certain behaviors (e.g., three uses of force in a year or two vehicle accidents), but also compare an officer's behavior with the behavior of his or her peers in similar locations and assignments. Another feature of a robust system is the ability to identify troubling patterns and trends in commands, precincts, squads and units.

The Department has stated that it is in the early stages of developing an early identification system. It is beginning by automating the databases used by the Performance Evaluation Section and adding information to those databases regarding lawsuits and claims against the City. The Department has yet to decide what triggers might be used, what additional databases will be included, how supervisors will be provided the alerts and how supervisors will use those alerts to address at-risk behavior. NYPD will provide a briefing on these issues for the parties in the near future.

VII. Performance Evaluation

The Department's development of a robust system for evaluating officers is critical for success of the remedial efforts, because evaluations affect many of the incentives that can improve or worsen officer behavior.

In the past, as noted earlier, officer evaluations were based largely on "numbers" (i.e., the quantity of enforcement activity). Officers felt pressure to produce these numbers in order to

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receive a positive evaluation. Otherwise, they feared, they would be disadvantaged in many ways—for example, in assignments, promotions, overtime, time off and transfers.

As a policy matter, the Department's leaders have stated, including at Compstat meetings, that they are interested in quality, not quantity. But that shift has yet to be incorporated in the Department's performance evaluation system, something police officers care a lot about. A serious effort is under way by the Department to create a new evaluation system that reflects the quantity-to-quality change. This is not a simple task. Numbers are not meaningless, but rather need to be put into proper perspective and considered along with other important qualities and policing goals, such as good judgment, responsiveness, community engagement, problem-solving and adherence to law and policy.

As things stand, the Department's activity reporting system, known as "Quest for Excellence" or "Quest," requires officers to complete daily activity reports recording their activities, including stops, citations, summons, arrests and other enforcement actions. Supervisors then review these reports on a weekly, monthly and quarterly basis. It does not appear that the quality or legality of the enforcement activities gets evaluated, just the number of activities reported.

The NYPD surveyed members about ways to improve the current evaluation system and researched best practices used by police departments around the country. A primary goal of the new evaluation system is to convey to officers that they will be judged by the quality of their policing, rather than the quantity of their enforcement actions.

The NYPD's current draft of its new performance evaluation system includes three components: a Police Officer Profile and Evaluation, a Supervisor's Comment Form, and an Officer Self-Report Form.

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The Police Officer Profile is designed to provide a supervisor with information about the officer and how the officer's work compares to other officers in his or her platoon, in the borough and citywide. It includes links to the officer's reports regarding matters like arrests and criminal complaints and summonses but, importantly, does not have a link to the officer's stop reports. Instead, the officer's supervisor would be provided information on the officer's stop reports when an insufficient basis for the stop, frisk or search is noted, as well as information regarding any follow-up action from those stops.

The draft form calls for the supervisor to rate the officer in 12 performance areas, including problem identification, judgment, responsiveness, community interaction and implementation of proactive policing strategies. After discussions with the parties and at the monitor's recommendation, the NYPD draft now includes "Application of Law and Procedures" among the performance areas to be rated in the Officer Profile. As part of that performance area, the supervisor is to evaluate whether the officer understands and appropriately applies the law and Department procedures and guidelines, including for arrests, summonses, stops, frisks and searches.

The NYPD plans to create a supervisor comment form to allow a member's supervisor to provide feedback on any of the performance areas covered in the evaluation. This form could be used for positive or negative feedback.

The officer's daily self-report will replace the current daily activity report, and officers will no longer be required to report daily on activities that are already tallied in NYPD databases, such as arrests and stops. Officers will have to record their daily assignment and sector, and any A or B summonses until those items are recorded electronically by the NYPD. In addition, the

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self-report provides an opportunity for the officer to report on notable accomplishments, community engagement and interaction, and problem-solving efforts.

Under the draft performance evaluation framework, the supervisor comment forms and officer self-report forms would feed into the officer's profile, allowing supervisors to take the information into account for their evaluations. As described by the NYPD, evaluations would be quarterly, and the four evaluations per year would replace Quest's monthly and quarterly evaluations, as well as the current annual evaluation system.

The plaintiffs and the monitor have reviewed and provided comments on draft elements of the NYPD's contemplated performance evaluation system. The Department recently disseminated revised drafts to the parties. In addition to working on these drafts, the NYPD needs to focus on a related challenge: development of policies and business rules for how supervisors should weigh and evaluate the data in an officer's profile.

At a point when the development of the performance evaluation system is further along, the monitor will assess whether it appropriately weighs constitutional policing in the areas covered by the court orders and agreements.

It should be noted that the draft evaluation system as initially envisioned covered the evaluation of officers only, and did not change the evaluation system for sergeants, lieutenants, captains and other supervisors. The Department now anticipates that the new evaluation system will be expanded to cover sergeants and lieutenants after it is first implemented for officers. New performance measures and objectives for supervisors will need to be established, and these tools should include the supervisor's review of his or her subordinates' stop and frisk and trespass enforcement activities and whether the supervisor adequately addressed any insufficiencies.

VIII. Body-Worn Cameras (BWC)**VIII. Body-Worn Cameras (BWC)**

In its August 12, 2013 remedial order, the court directed that the NYPD “institute a pilot project in which body-worn cameras will be worn for a one-year period.” *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013). The purpose of the BWC pilot program is to provide the public, the NYPD and the court with information to evaluate its benefits. Under the order, the monitor is required to establish procedures for reviewing recordings of stops by supervisors, preserving stop recordings for use in verifying complaints, and assessing the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks. At the end of the one-year pilot, the monitor will work with the parties to “determine whether the benefits of the cameras outweigh their financial, administrative, and other costs.” *Id.*

The monitor team has been working with the NYPD and plaintiffs to plan a pilot randomized control trial that will provide data necessary to evaluate the impact cameras have on the behavior of officers and civilians. As described in the monitor’s Third Report of August 9, 2016, the plan calls for the deployment of approximately 1,000 cameras, with about 50 cameras in each of 20 “treatment” precincts. The activities of officers wearing BWCs will be compared to those of officers with similar assignments in 20 “control” precincts. All five boroughs have at least one precinct included in the treatment group.

The NYPD is currently in the midst of a procurement process for the BWCs mandated by law; at the same time, it is developing policies and procedures for their use. With respect to policies and procedures, the NYPD sought feedback on draft policies by meeting with stakeholders, plaintiffs and the monitor team, and also fielding surveys of officers and NYC residents. The NYPD is preparing a public report responding to the feedback and explaining its reasons for accepting or rejecting proposed changes to the draft BWC policy. The Department

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A. Investigations of Profiling Allegations

will then distribute its proposed policies to the parties for review and, when finalized, the policies will be submitted for approval by the monitor and the court.

On procurement, the Department has selected a vendor and negotiated a contract with the vendor chosen. A public hearing on the selection was held on October 13.

Approvals are now needed by the Law Department, the Mayor's Office of Contract Services, the Mayor's Office of Management and Budget, the Department of Investigation, the Deputy Mayor and the Comptroller's Office. Once a contract is in place, the vendor will have to prepare and deliver cameras and software to meet NYPD specifications.

In addition, the Department needs to draft training materials for the officers who will be wearing the cameras and their supervisors.

IX. Complaints and Discipline

A. Investigations of Profiling Allegations

The court orders and the parties' agreements require the NYPD to begin tracking and investigating civilian complaints related to racial profiling and other allegations of bias. As a result, the NYPD has changed the way allegations of racial profiling and bias-based policing are categorized, processed, tracked and investigated. All profiling allegations, no matter how they are made to the NYPD (e.g., in writing, in a 311 or 911 call, by a call or visit to a precinct or to the Internal Affairs Bureau (IAB)), are now referred to IAB. The complaints are logged into the IAB's case management system and then assigned for investigation. Since January 2015, these investigations have been assigned to investigative units attached to the borough (not precinct) command or to the relevant bureau command (e.g., the Transit Bureau command). If a complaint also includes an allegation of corruption, IAB investigators will conduct the investigation.

IX. Complaints and Disciplines
A. Investigations of Profiling Allegations

The IAB has drafted guidelines for profiling investigations and training for its Command Center, IAB investigators and the borough investigative units. The material covers the new policies for racial profiling and bias-based policing and investigative techniques to be used for profiling complaints. The parties have reviewed the draft training materials and investigative guidelines and have exchanged comments and edits to the documents. The NYPD will be preparing new drafts for the parties to review so that the training materials and investigative guidelines can be finalized this year.

In 2015, the Department opened investigations of 509 allegations of profiling involving 475 officers. From January 1, 2016 to June 30, 2016, the NYPD opened investigations of 347 allegations of profiling involving 338 officers. Race (now combined with color, ethnicity and nationality) is the category with the most profiling allegations. Other categories included age, gender, religion, disability, gender identity, sexual orientation and housing status. For the complaints from 2015 and the first six months of 2016, the Department has completed its investigations of 394 allegations. Of the 394 allegations, officers were exonerated on 11 allegations, 279 allegations were determined to be unfounded and 104 were determined to be unsubstantiated.⁵ No allegation of profiling has yet been substantiated. Proving bias is difficult, especially with respect to an individual stop or other enforcement action. That is why it is important to get the training and procedures right, and why the monitor team will continue to

⁵ “Unfounded” means there is sufficient credible evidence to believe that the officer did not commit the alleged act. “Unsubstantiated” means the available evidence is insufficient to determine whether the officer did or did not commit misconduct. “Exonerated” means the officer was found to have committed the act alleged, but the officer’s actions were determined to be lawful.

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review samples of profiling investigations to evaluate their thoroughness. In addition, the monitor will explore how the NYPD analyzes data on its stops and frisks and other enforcement activities, and how it uses data on profiling allegations to analyze trends and patterns of complaints.

Prior to December 2015, allegations of racial profiling or other bias-based policing made to the Civilian Complaint Review Board (CCRB) were documented by the CCRB in its database, but not investigated by the CCRB or referred to the NYPD for investigation. After a meeting with the monitor, IAB personnel and the CCRB, the Department and the CCRB agreed that, going forward, the CCRB would notify the IAB when a complainant states that he or she was profiled. The NYPD would then log in the complaint and assign it for investigation. The profiling complaints investigated by the NYPD from January 2015 to June 2016 include 188 allegations made initially to the CCRB.

B. NYPD Handling of Substantiated CCRB Complaints

Under the court orders, the NYPD must improve its procedures for handling CCRB findings of substantiated misconduct during stops. Specifically, the Department Advocate's Office (DAO) must provide more deference to credibility determinations made by the CCRB, use an evidentiary standard that is neutral between the claims of complainants and officers, and not require that physical evidence corroborate the complaint. These requirements arise from the court's findings that the NYPD failed to impose meaningful discipline when the CCRB had determined that officers engaged in unconstitutional stops and frisks. The court cited the percentage of cases in which the DAO declined to pursue discipline in substantiated cases in the years 2007-2012, and noted that in cases in which discipline was pursued, DAO "consistently

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downgraded the discipline” recommended by CCRB and recommended instructions, the least severe form of discipline, in the majority of cases in most years.

By agreement with the CCRB, the NYPD has changed the way it handles cases substantiated by the CCRB. The CCRB, not the NYPD, now prosecutes the more serious cases—those involving charges and specifications—when it substantiates the allegation. These cases are tried by the CCRB’s Administrative Prosecutions Unit (APU) in the trial room of the NYPD in front of an administrative law judge. However, the NYPD can decide, in limited circumstances, that the CCRB should not prosecute the case, but that the NYPD should retain it and either prosecute the case itself, reduce the level of discipline so that charges and specifications are no longer served, or take no disciplinary action.

The NYPD and the CCRB also have established a new “reconsideration process” when the DAO disagrees with the CCRB’s decision to substantiate an allegation or disagrees with the CCRB’s recommended discipline. In such instances, the DAO requests in writing that the CCRB reconsider the case and states why. Then the CCRB can modify its substantiation decision or its recommendation for discipline, or it can decide that its original decision was correct. Both the DAO’s recommendations and the CCRB’s recommendations are sent to the police commissioner for a final decision.

The CCRB formally approved the reconsideration process in a December 2014 Board resolution. Many of the substantiated CCRB cases sent to the NYPD in 2014 were closed before the reconsideration process was put in place, but a large number of them were still being reviewed by the NYPD in 2015, after the reconsideration process was in place. There were also a small number of 2014 cases decided before the reconsideration process was officially adopted

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by the CCRB, for which the DAO emailed an informal request for reconsideration that was considered by the CCRB.

The DAO has provided the monitor team with data regarding complaints in which allegations relating to stops, questions, frisks, searches, or trespass arrests were substantiated by the CCRB and sent to the NYPD in 2014, 2015 and the first five months of 2016. We report below on several issues raised by the data.

1. The Time It Takes to Resolve Complaints

A good disciplinary system should investigate civilian complaints, make decisions and impose discipline, where appropriate, in a timely manner. For many of the substantiated complaints, there is a significant amount of time between when the CCRB substantiates the complaint and sends it to the NYPD and when a final decision is made regarding the disposition of the complaint and any discipline is imposed.

The NYPD has provided data on which cases are closed and which are still active after the substantiated complaint is sent to the NYPD. In 2014, the NYPD received substantiated allegations relating to stops, questions, frisks or searches involving 179 members of the service. Of those, 142 cases have been closed, while 37 remain active. Of those cases that are still active, 34 cases involved charges and specifications, while three involved less serious discipline.

In 2015, the NYPD received substantiated allegations relating to stops, questions, frisks or searches involving 271 members of the service. Of those, 126 cases have been closed, while 146 remain active. In the first five months of 2016, the NYPD received substantiated complaints involving 58 members of the service. Only two of these cases have been closed.

Cases in which the recommended discipline is charges and specifications generally take longer than cases involving command discipline, training or instructions. The monitor team will

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be exploring with the NYPD whether there are steps it can take to shorten this time period, such as examining the time it takes to serve members of the service with the charges and specifications.

2. Penalties

There are several levels of discipline that can be imposed on NYPD members of the service. The most serious level, charges and specifications, leads to either a trial or a negotiated plea. The resulting penalty will often be a loss of vacation days, and can, in the most serious cases, result in termination. No penalty is imposed if the trial results in a not-guilty decision. Another level of discipline is known as command discipline. In command discipline cases, the final decision regarding penalty is made at the command level by the Commanding Officer (CO) in the precinct. For Command Discipline A, a CO can impose up to five days loss of vacation, training or instructions, or the CO can “warn and admonish” the member. For Command Discipline B, the CO can impose up to 10 days loss of vacation, or impose training or instructions, or “warn and admonish” the member.

2014. The NYPD has closed 142 of the substantiated CCRB cases that were received by the NYPD in 2014. Of these 142 cases, 28 cases resulted in the loss of vacation days either after trial or through a negotiated plea; six resulted in Command Discipline B; 18 resulted in Command Discipline A; 28 resulted in instructions only; 29 others resulted in training only; and two resulted in both training and instructions. In 10 other cases, the member was found not guilty after trial, and in 14 cases, the case was closed with no disciplinary action. Seven cases were closed administratively because the officer resigned, the CCRB withdrew its decision to substantiate the case, or the statute of limitations lapsed.

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2015. The NYPD has closed 126 of the substantiated CCRB cases that the Department received from the CCRB in 2015. Of these 126 cases, two cases resulted in the loss of vacation days after trial or through a plea agreement; eight resulted in Command Discipline B; 41 resulted in Command Discipline A; 11 resulted in instructions only; 40 others resulted in training only; and 19 resulted in both training and instructions. In one case, the member was found not guilty after trial, and in four cases, the case was closed with no disciplinary action.

2016. Through June 2016, the NYPD received substantiated allegations relating to stops, questions, frisks or searches involving 58 members of the service. Of those, only two cases have been closed, while 56 remain active. In both closed cases, the member of the service was given instructions and training.

The monitor team will be examining the level of discipline the Department is imposing and whether the penalties imposed by the Department have changed over time. To some extent, the level of discipline depends—at least initially—on the recommendations of the CCRB. The CCRB has noted in its reports that it has shifted its emphasis from charges and specifications to command discipline and training and instructions. In addition, the court-approved stop and frisk policy in P.G. 212-11 notes that “[m]inor or inadvertent mistakes in documentation or isolated cases of erroneous but good-faith stops or frisks by members of the service should ordinarily be addressed through instruction and training.” There will not be a full picture of Department discipline until more of the APU cases from 2015 are complete.

There is one issue that we will be exploring more closely: cases in which the closing disposition was Command Discipline A or Command Discipline B, but the discipline did not include any loss of vacation days or deducted time. According to the NYPD data, for the substantiated CCRB cases sent to the NYPD in 2014 and 2015, there were 69 Command

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Discipline cases. Of those 69 cases, 60 cases resulted in no loss of time or days, including nine Command Discipline B cases. Instead, the penalty imposed for these command discipline cases was instructions, training or a “warn and admonish.” At this point, the monitor is making no judgment about the reasonableness of these outcomes because more needs to be known about the circumstances of these cases.

3. Reconsideration

Both the CCRB and the DAO have noted that the Department is now concurring with the CCRB’s recommendations for disposition and discipline to a greater extent than in prior years. There appear to be two reasons for this increase in agreement. The first is the reconsideration process, and the second is a shift in the CCRB’s recommendations towards command discipline, training and instructions, and away from charges and specifications for stop and frisk cases. The monitor will continue to examine reconsideration cases to evaluate whether the reconsideration process and NYPD’s decisions are consistent with the court orders.

2014. As noted above, NYPD closed 142 of the substantiated CCRB cases it received in 2014. The DAO agreed with the initial disposition and recommendation of the CCRB in 71 of these 142 cases, or 50 percent. In addition, there were eight cases in which the DAO agreed with the CCRB’s recommendation of command discipline but changed the command discipline from a B-CD to the somewhat less severe A-CD. (According to the NYPD, if the DAO agrees with a CCRB command discipline recommendation, the DAO does not make a reconsideration request to the CCRB if it changes the recommendation from a B-CD to an A-CD.)

In 22 of the 142 cases (15 percent), the DAO requested that the CCRB reconsider its recommendations. Of those 22 cases, the CCRB agreed with the DAO’s reconsideration request in seven cases. In nine cases, the CCRB agreed to reduce its penalty recommendation, but not as

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far as the DAO suggested. And in five cases, the CCRB disagreed with the DAO's reconsideration request and maintained its recommended discipline. In those five cases, the police commissioner agreed with the DAO's recommendation.

In 37 of the 142 cases, the NYPD changed the disposition or discipline imposed without a reconsideration request. There were 16 cases in which the CCRB recommended charges and specifications, but the NYPD decided to retain jurisdiction of the case and not pursue a trial (the penalty was reduced in 10 cases and no discipline was imposed in six others). In 21 other cases, the NYPD changed the disposition or penalty before the reconsideration process was put in place (the penalty was reduced in 15 cases and no disciplinary action was taken in six cases).

2015. As noted above, the NYPD has closed 126 of the substantiated CCRB cases it received in 2015. The level of agreement between the NYPD and the CCRB rose from 2014 to 2015. The DAO agreed with the initial disposition and penalty recommendation of the CCRB in 72 of the 126 cases (57 percent). In addition, there were 12 cases in which the DAO agreed with the CCRB's recommendation of command discipline but changed the command discipline from a B-CD to an A-CD. There were five additional cases in which the CCRB recommended both command discipline and training, but the DAO recommended training as the appropriate penalty. In 23 of the 126 closed cases (18 percent), the DAO requested that the CCRB reconsider its recommendations. Of those 23 reconsideration cases, the CCRB agreed with the DAO's reconsideration request in eight cases. In five cases, the CCRB agreed to reduce its penalty recommendation, but not as far as the DAO suggested. And in ten cases, the CCRB disagreed with the DAO's reconsideration request and maintained its recommended disposition or discipline. The police commissioner in those cases agreed with nine of the DAO's recommendations and one of the CCRB's recommendations.

X. Joint Remedial Process

In 2015, there were fewer CCRB cases (14) in which the NYPD changed the disposition or discipline imposed without a reconsideration request. In six cases, the DAO reduced the penalty recommended to the police commissioner without a reconsideration request, and in one case, the DAO recommended and the police commissioner agreed that no disciplinary action should be imposed. There were no 2015 cases in which the CCRB recommended charges and specifications, but the NYPD decided to retain jurisdiction of the case and not pursue a trial. In two cases, the DAO agreed with the CCRB penalty recommendation, but the police commissioner reduced the penalty. And there were five cases in which the NYPD determined that the penalty should be increased from the penalty recommended by the CCRB.

X. Joint Remedial Process

A “Joint Remedial Process” was ordered by the court and agreed to by the parties. It is a process guided by the court-appointed facilitator, Hon. Ariel Belen (Ret.), to solicit input from stakeholders and affected communities on possible reforms regarding stop and frisk and trespass enforcement in addition to those already required by the court. At the end of the process, Judge Belen will prepare a report with recommendations on potential additional reforms for the consideration of the monitor and the court. Under the court order, these proposed remedial measures must be no broader than necessary to bring the NYPD’s use of stop and frisk and trespass arrests into compliance with the Fourth and Fourteenth Amendments.

Judge Belen is conducting the Joint Remedial Process in several phases. The first phase involved meetings with stakeholders intended to lay the foundation for phase two—the focus group phase. Phase two began with focus groups of those most affected by the NYPD’s stop and frisk and trespass arrest practices. Focus groups began in October 2015 and continued through June 2016. Sixty-four focus group sessions were conducted. Questions for the focus group were

X. Joint Remedial Process

prepared in consultation with the parties and an advisory committee composed of community organizations, NYPD leadership, religious leaders and academics. Each focus group had approximately eight to ten residents of New York City. Participants predominantly included young black and Latino men, though there has also been substantial representation of women and LGBTQ youth, homeless people and NYCHA residents. The facilitator also conducted focus groups specifically composed of NYCHA housing residents to discuss issues pertaining to policing in and around residential buildings.

In phase three, the facilitator has begun to meet with community organizations, local and national police reform advocates, the clergy, the NYPD, national and international police organizations, and representatives of the *Floyd*, *Davis*, and *Ligon* plaintiff teams, to discuss possible additional reforms that they may want the facilitator to consider.

The fourth phase of the project will be a series of community forums around New York City. There will be at least one community forum in each borough. They will be structured, and the discussions will be based in large part on the information gathered during the focus groups and subsequent meetings. The aim of the community forums is to solicit community input on additional remedial measures to the NYPD that would supplement the immediate reforms identified in the court's orders.

The facilitator anticipates that the forums will contain an educational segment including a short video presentation and accompanying infographic. This video and infographic will provide a brief historical overview of the litigation that will include a framing of the problem and current efforts towards reform, and will orient attendees toward imagining creative solutions. Each event will also include breakout segments. Recommendations gathered from the breakout sessions should be concrete reforms or areas of consideration for improving police-community

X. Joint Remedial Process

relations. Although the community forums will be primarily intended to collect community input about possible reforms, they may also serve as opportunities to develop further dialogue between the NYPD and the communities they serve.

The facilitator will share the information gathered from the process described above with stakeholders and the parties, seek their feedback, and prepare a report with possible recommendations for additional reforms to the monitor and the court.

Appendix 1

(COMPLETE ALL CAPTIONS)



STOP REPORT
PD 383-151 (03-16)

Pct. Serial No.	CAD No.
Date of Occ.	Pct. Of Occ.

Time Of Stop	Period Of Observation Prior To Stop	Duration Of Stop
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Address/Intersection Or Cross Streets Of Stop

<input type="checkbox"/> Inside	<input type="checkbox"/> Transit	<input type="checkbox"/> Housing	Type Of Location (Describe:)
<input type="checkbox"/> Outside	<input type="checkbox"/> Trespass Affidavit Program		

Stop Was: Self-Initiated Based on Radio Run Based on C/W on Scene

Officer in Uniform? Yes No If no, how Identified? Shield I.D. Card Verbal

Crime Suspected (e.g., Robbery, Burglary, Criminal Trespass, etc.)

Check All Factors That Led to Stop and Explain in the Narrative Section

- Concealing or Possessing a Weapon
- Engaging in a Drug Transaction
- Acting as a Lookout
- Identified Crime Pattern (Pattern No. _____)
- Casing Victim or Location
- Matches a Specific Suspect Description
- Proximity to the Scene of a Crime
- Other (Describe in "Narrative" Section)

Name Of Person Stopped	Nickname/Alias/Preferred Name	Date Of Birth
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Address	Apt. No.	Tel. No.
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Identification: Verbal Photo I.D. Refused Other (Describe)

Sex: Male Female Race: White Black Hispanic White Hispanic Black Asian/Pacific Islander American Indian/Alaskan Native Middle Eastern/Southwest Asian

Age	Height	Weight	Hair	Eyes	Build
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Other (Scars, Tattoos, Outer Garments, Etc.)

Did Officer Explain Reason For Stop? Yes No Information Card Given to Person Stopped? Yes No

If You Answered No to Either of the Previous Two Questions, Explain the Reasons in the Narrative Section on the Rear Side.

Were Other Persons Stopped/ Questioned/ Frisked? Yes No Total No. Stopped Pct. Serial Nos.

Did a Body-Worn Camera (BWC) Capture the Event in Whole or in Part Yes No Body-Worn Camera was Worn by: Reporting Officer Another MOS Body-Worn Camera Serial Number

Actions Taken to Stop and/or Detain Prior to Arrest Verbal Command/Instruction Impact Weapon Drawing/Pointing Firearm Physical Force/Restraint Handcuff Suspect O.C. Spray CEW Other (Describe)

Was Suspect Arrested? Yes No Offense Arrest No.

Was Summons Issued? Yes No Offense Summons No.

Demeanor of Person After Being Stopped Remarks Made by Person Stopped

Narrative (Describe the Circumstances That Led to the Stop):

Was Person Frisked? Yes No **IF YES, INDICATE BASIS FOR FRISK:** Object Observed Suspected of Being a Weapon
 Statement by Suspect Suspect Known to Carry Weapons Violent Crime Other (Describe Below)
 Was Person Searched? Yes No **IF YES, INDICATE BASIS FOR SEARCH:** Hard Object Resembling Weapon Consent to Search
 Admission Of Weapons Possession Outline of Weapon Search Incident to an Arrest Other (Describe Below)
 Was Weapon Found? If Yes, Specify: Firearm Knife/Cutting Instrument Other Contraband and Location
 Yes No Was Other Contraband Found? If Yes, Describe Contraband and Location
 Yes No

Narrative (Describe the Circumstances That Led to the Frisk and/or Search, if Conducted. Include Area Searched):

Reporting MOS (Rank, Name Printed)	Signature	Tax No.	Command	Date
Supervisory Action (Must Complete): Supervisor on Scene During Stop? <input type="checkbox"/> Yes <input type="checkbox"/> No Encounter Reviewed With Officer? . . . <input type="checkbox"/> Yes <input type="checkbox"/> No Sufficient Basis for Stop? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Report Accurate and Complete? <input type="checkbox"/> Yes <input type="checkbox"/> No Sufficient Basis for Frisk? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Corresponding Activity Log Entry Reviewed? <input type="checkbox"/> Yes <input type="checkbox"/> No Sufficient Basis for Search? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Reviewing Supervisor (Rank, Name Printed)				
Signature	Pct. Serial No.	Tax No.	Command	Date
				Time