



POLICE DEPARTMENT

*The  
City of  
New York*

December 30, 2015

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Mayor of the City of New York  
City Hall  
New York, NY 10007

Honorable Melissa Mark-Viverito  
Speaker  
The New York City Council  
250 Broadway, 18<sup>th</sup> Floor  
New York, NY 10007

Honorable Mark G. Peters  
Commissioner  
Department of Investigation  
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Honorable Phil Eure  
Inspector General  
Office of the Inspector General – NYPD  
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Dear Mayor de Blasio, Speaker Mark-Viverito, Commissioner Peters and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, the New York City Police Department hereby submits its response to the October Report of the Office of the Inspector General for the NYPD (“OIG-NYPD”) entitled “Police Use of Force in New York City: Findings and Recommendations on NYPD’s Policies and Practices” (the “Report”).

Police officers are among a select few to whom society has granted the right to use force in the course of their duty. Any instance of abuse of that right by an excessive use of force is unacceptable. This Report, however, makes, conclusory allegations about the NYPD's use of excessive force that are simply unfounded. The Report suffers from sampling bias: OIG-NYPD draws broad conclusions from a non-representative and statistically insignificant sample of cases. This Report covers a five year period during which the New York City Civilian Complaint Review Board ("CCRB") substantiated 179 cases of excessive use of force amounting to less than 36 cases of alleged excessive use of force on an annual basis. During this period, the NYPD responded to over 17,000,000 calls for service and made over 2,000,000 arrests. Indeed, OIG-NYPD conceded on the first page of its Report that the number of substantiated cases of excessive use of force is a "notably modest number given the size of the NYPD and a positive indication of NYPD's restraint."<sup>1</sup> Moreover OIG-NYPD itself disagreed with the CCRB's decision to substantiate 6.7%<sup>2</sup> of these cases, bringing the total number of substantiated cases of excessive use of force during the period 2010-2014 down to 167, which amounts to less than 34 cases annually. This statistically small number of substantiated instances of excessive force in a Department of this size in a major metropolitan City is indeed a positive indication of NYPD's restraint.<sup>3</sup>

In addition, with respect to the cases analyzed in the Report that were decided during Commissioner Bratton's tenure (from 2014 – mid 2015), the rate of disagreement between the CCRB and the NYPD on whether to impose discipline in substantiated cases of excessive force

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<sup>1</sup> OIG-NYPD Report at 1.

<sup>2</sup> NYPD-OIG Report at 45.

<sup>3</sup> This Report was written in the context of the lowest use of firearms discharge of any other major metropolitan police force in the country. In a city of 8.4 million residents, from a Department of approximately 35,000 uniformed Officers who responded to 4,983,296 calls to 911 in 2014 and who affected 388,368 arrests, 58 officers were involved in a total of 35 incidents of intentional firearms discharges during adversarial conflict. NYPD experienced a continuation in the overall decline in discharge incidents in 2014, with the lowest recorded level of discharge incidents since the Department began collecting statistics.

was low. The CCRB substantiated 20 cases of excessive use of force during this period. In 16 of those cases (80%) we agreed with the CCRB's recommendation on discipline. In four of those cases (20%), however, we respectfully disagreed. Each of the four cases involved a recommendation by CCRB for the lowest level of punishment and each involved little or no injury to the complainant who, by his or her own admission, offered some measure of resistance to the Officer involved. These kinds of cases are intensely fact specific. Reasonable minds can certainly differ, as evidenced by OIG-NYPD's own disagreement with the CCRB's substantiation of over 6% of cases during this five year period.

Moreover, during Commissioner Bratton's tenure, CCRB and NYPD have implemented a reconsideration process, described more fully below, which has further reduced the rate of disagreement between the two agencies about whether to impose discipline. Three of the four cases referred to in the Report in which Commissioner Bratton departed downward from CCRB's recommendation pre-dated this reconsideration process. In three substantiated cases reviewed by the OIG-NYPD, CCRB reversed its own finding or disciplinary recommendation upon a request for reconsideration by the NYPD. From August 2015 through November 2015, the Department decided 112 substantiated cases under CCRB's general jurisdiction<sup>4</sup> and disagreed with CCRB's recommendation in only 4 of those cases (2.8%).

While the NYPD is proud of its record with respect to its low levels of use of force and the enhanced cooperation with CCRB over disciplinary issues, Commissioner Bratton recognized early in his tenure that there was more to be done to decrease further the NYPD's use of force and to increase transparency and accountability by better measuring all instances of use

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<sup>4</sup> The New York City Civilian Complaint Review Board (CCRB) is an independent agency. It is empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. The Board forwards its findings to the Police Commissioner.

of force. To that end, soon after he became Police Commissioner in 2014 - and well before the OIG-NYPD began work on this Report - Commissioner Bratton formed a task force led by the First Deputy Commissioner with instructions to comprehensively review all NYPD policies and procedures with respect to use of force. The task force considered community concerns and researched the policies of dozens of law-enforcement agencies, including Los Angeles, Seattle, and Denver. It evaluated use-of-force models from the United States Department of Justice, the Police Executive Research Forum and the Major Cities Chief's Police Association and sought input from the CCRB, the police unions, the New York City Commission to Combat Police Corruption and the Inspector General's office itself.<sup>5</sup>

In early October 2015, the Department announced sweeping new changes to the NYPD's use of force policies and procedures, which were a culmination of a year and half's worth of work. The unprecedented new guidelines implement a comprehensive system for collecting and reporting use of force by an Officer and against an Officer. These new guidelines presaged all of the recommendations related to reporting and documentation of use of force and most of the other recommendations relating to training and discipline made in this Report. The new guidelines include clarifying definitions of and guidelines for use of force, standardized reporting of all instances of uses of force, centralized and standardized investigations of all instances of use of force and publication of the data the Department will now be collecting. These new guidelines will be implemented in early 2016. Once implemented, these guidelines will serve to further decrease the NYPD's already low instance of use of force and will provide greater transparency and accountability, which will strengthen the community's trust in its police Department.

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<sup>5</sup> Once the NYPD policies and procedures were close to final, the NYPD briefed the Inspector General's Office on these new proposed procedures and solicited feedback, which OIG-NYPD declined to provide.

## I. NYPD's New Use of Force Guidelines and Tracking Mechanisms

### Specific Definition of Force and Comprehensive Guidance on Use of Force.

The previous NYPD policy with respect to what constituted “force” was unclear and gave our Officers little guidance on what should be reported. In order to correct this issue, the NYPD clarified its policies and procedures on use of force. The new procedures categorize three levels of force: physical force/OC Spray; use of less lethal device/weapon and use of deadly physical force. Each level reflects a specific set of circumstances in which the level of force may be employed. The new policy also defines other important terms, including de-escalation, reminding our Officers at the outset that the primary duty of all our Officers is “to protect human life, *including the lives of individuals being placed in police custody.*” The revised guidelines outline specific definitions for the levels of resistance to arrest our Officers may encounter and sets forth procedures Officers may employ to gain compliance using the least amount of force possible. These new specific definitions and guidelines outlined, coupled with the new training initiatives discussed below, will provide our Officers with better tools to de-escalate tense situations.

Moreover, the new guidelines clarify and underscore an Officer’s affirmative duty to intervene in situations in which they witness excessive use of force by another Officer and a duty to report any excessive force that they witness. The policy provides that an Officer’s failure to intervene in or report the use of excessive or unnecessary force, or a failure to request or ensure timely medical treatment for a subject, is serious misconduct that may result in criminal and civil liability and will result in Department discipline, up to and including dismissal.

### Tracking and Reporting Use of Force By and Against Officers.

Prior to Commissioner Bratton's tenure, the NYPD recorded force on certain incident-related forms, such as arrest reports, stop reports and in the instance of an injury to a person. As the Report correctly notes, the NYPD was, however, unable to track all instances of use of force. Previously, there was no separate reporting mechanism for Officers to record all instances of use of force whether excessive or not and the databases containing the instances of force that were reported were not aggregated. With clearer definitions and guidance on use of force, the NYPD has introduced a form of a force incident report that combines multiple reports into one. Officers will be required to record every incident in which force is used by the Officer and against the Officer (including all instances where no allegations of excessive use of force exist). The information collected on the new force report form will be maintained in NYPD's computer database. The NYPD will now have the ability to analyze force data to spot patterns and trends. The NYPD's new Risk Management Bureau will analyze the newly collected data and will publish an annual report on NYPD's use of force, which will be very similar to our annual firearms discharge review and report. This report will increase transparency and accountability and serve to strengthen the ties between the NYPD and all the communities we serve.

### Investigations of Officer Use of Force

The NYPD has historically comprehensively investigated each and every firearm discharge by tracking how, when, where and why Officers discharge their weapons to determine whether no reasonable option existed other than the use of a firearm (including accidental discharges, suicides and dog shootings). The Department did not, however, comprehensively and formally investigate and track all instances of use of force not involving a firearm. The new

use of force policy creates formalized investigative hierarchies for all use of force incidents. In addition to categorizing the three levels of force used by an Officer, the policy sets out three categories of injury: physical injury, substantial physical injury, and serious physical injury. Each incident is referred to a specific formal investigative body depending on the level of the incident.<sup>6</sup> For Level One incidents, which involve Level One force and a possible physical injury to the subject, the immediate supervisor investigates and reports to the Commanding Officer. For Level Two incidents, which involve Level Two force and substantial injury to a subject, the Duty Captain investigates and the incident will be reported to the First Deputy Commissioner. For Level Three incidents, which involve Level Three force and serious physical injury to a subject, the Internal Affairs Bureau conducts the investigation and reports to the First Deputy Commissioner. The Department has formed a Force Investigations Division that investigates all firearms discharges and deaths in custody. The new Force Investigations Division reports directly to the First Deputy Commissioner.

## II. De-escalation

OIG-NYPD made a conclusory allegation with respect to de-escalation by our Officers that is wholly without merit and continued that theme throughout its Report. The Report states that OIG-NYPD's investigation "suggests that NYPD Officers rarely use de-escalation."<sup>7</sup> No reliable suggestion can be made, however, based on a small subset of 179 cases identified by the CCRB that represent a fraction of the total number of Officer encounters. It is to be expected that these aberrant cases would include instances of failure to de-escalate in addition to allegations of excessive use of force. The OIG-NYPD did not create a statistically sound

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<sup>6</sup>Every use of force incident is categorized based on the highest level of either the force used or the injury sustained. If, for example, the level of force used is lower than the actual injury sustained, the incident is categorized based on the level of injury, notwithstanding the level of force used.

<sup>7</sup> OIG-NYPD Report at 28.

methodology to survey instances of reported use of force to draw any reliable conclusions about Department-wide use of excessive force or failure to de-escalate. Indeed, the admittedly low levels of substantiated use of force in a Department of our size suggests the opposite conclusion: that NYPD Officers exercise restraint in the overwhelming majority of encounters.

Moreover, the OIG-NYPD's recitation of the facts and penalties in the few cases that are highlighted as evidence of this alleged widespread failure to de-escalate are inaccurate or misleading in several instances. In the first case the Report cites as evidence of failure to de-escalate, the Report mischaracterizes the facts and circumstances surrounding the case. In the second case, the Report inaccurately states that the Department imposed no discipline.

#### De-escalation Cases

- OIG-NYPD describes a case involving a complainant who the Report describes as being locked out of his building.<sup>8</sup> According to the Report, two Officers approach the complainant who explains his predicament. After repeatedly instructing the complainant to leave, the Officers end up in a verbal altercation with the complainant. Ultimately, one of the two Officers improperly shoves the complainant and, according to the Report, “continues to yell and point his finger at him.” The Report fails to note, however, that the encounter was precipitated by 911 calls from the security guard and the doorman from the building reporting that the complainant was banging on doors and causing a disturbance. The complainant had alcohol on his breath, as the Report notes, was not recognized as a resident by either the security guard or doorman, and engaged in this combative behavior for approximately three minutes before the subject Officer, who stood with his arms crossed during this period, ultimately pushes the complainant to the ground. The Department agreed with the OIG-NYPD and CCRB that despite clear provocation by the complainant, the

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<sup>8</sup> OIG-NYPD Report at 29.



Officer's subsequent actions were unacceptable and constituted a violation of Department policy. The Officer received a command discipline and the loss of three vacation days. The Department disagrees, however, with OIG-NYPD's independent conclusion that the second Officer failed to intervene when the subject Officer shoved the complainant to the ground "and continued to yell." The second Officer could not necessarily have anticipated that the subject Officer would shove the complainant. The encounter after that point lasted less than sixty seconds before the complainant discontinued his combative behavior and left the location.

- The Report highlights a second case in which two Officers stop and frisk a 15 year old boy on a sidewalk.<sup>9</sup> A heated verbal exchange ensues, leading to a scuffle during which the subject Officer repeatedly pushes the boy. The Report erroneously states that CCRB substantiated the force allegation against the subject Officer but that the Department failed to discipline the subject Officer. In fact, both Officers were disciplined, receiving Charges and Specifications, which carry the most serious penalties, for discourteous language, improperly threatening the use of force and for failing to prepare the required documentation. Both Officers received a loss of five vacation days as a penalty.

#### **Failure to Intervene Cases**

- The Report highlights one case under the heading of "Failure of Officers to Intervene," describing an incident involving four Officers who approached a 26 year old male complainant who was riding his bicycle on the sidewalk.<sup>10</sup> The Report states that no disciplinary decision had been reached in this case "despite the matter being in the NYPD

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<sup>9</sup> OIG-NYPD Report at 30.

<sup>10</sup> OIG-NYPD Report at 31.

disciplinary process for the past seven months.”<sup>11</sup> This case, however, is actually being prosecuted by the CCRB’s Administrative Prosecution Unit (“APU”),<sup>12</sup> not the NYPD. Indeed, the CCRB investigated this incident, which occurred in August of 2012, and voted for Charges against the Officers in February 2014, just inside the statute of limitations. The Department served use-of-force charges on behalf of CCRB’s APU on April 8, 2014. From April 2014–November 12, 2015 the CCRB took no further action to prosecute this matter. After a call from our Department Advocate’s Office to CCRB following the publication of the Report, CCRB’s APU unit offered the Officer a penalty of 10 vacation days, which the Officer accepted. The matter is now closed. With respect to the Report’s conclusion that one of the Officers on the scene failed to intervene, we respectfully disagree. The Officer at issue in fact did intervene within nine seconds after the subject Officer first engaged in the use of force and the force ceased immediately thereafter.

#### Intentional Escalation Cases

- The Report describes a case in which three of our Officers were attempting to restrain two combative men in front of the entrance to a building.<sup>13</sup> The complainant approached the Officers as they were attempting to place the two other men in handcuffs and began recording the incident. One of the Officers improperly used force, profanity, and improperly drew his weapon during the encounter. The Report states that no discipline was imposed in this case “because the statute of limitations expired before CCRB forwarded the case to NYPD for disciplinary disposition.” In fact, the CCRB forwarded the case to the NYPD on

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<sup>11</sup> *Id.*

<sup>12</sup> Pursuant to a Memorandum of Understanding between the NYPD and the CCRB in 2012, the CCRB now has the power to prosecute substantiated cases where the board recommended “charges and specifications,” the most serious form of discipline. As a result, the CCRB’s APU now prosecutes most all of these cases, with limited exceptions. The trials are held at the Department, before an administrative law judge, known as a Deputy Commissioner for Trials.

<sup>13</sup> OIG-NYPD Report at 32.

February 14, 2014, and CCRB's APU prepared the Charges, which were served by the Department on February 24, 2014, before the statute of limitations expired. The APU negotiated a penalty of 10 vacation days.<sup>14</sup>

- The final case the Report highlights involves an off-duty Officer who entered a shopping mall, bumped into a civilian, and an altercation ensued. During the course of the altercation, the Officer improperly pushed one civilian and struck another civilian.<sup>15</sup> The Report states that no disciplinary decision has been reached in this case “despite the matter being in the NYPD disciplinary process for the past 20 months.” In fact, this matter was prosecuted by the CCRB's Administrative Prosecution Unit, not the NYPD's Department Advocate's Office, and a penalty of 30 vacation days and dismissal probation has been negotiated. The Department is awaiting the paperwork from the APU for imposition of disciplinary penalty. In each of the above-described instances, the Officers were in fact held accountable for their actions. Moreover, to draw a broad conclusion about Department-wide de-escalation metrics based on a very small subset of cases, particularly when the Report misstates salient facts about its key cases, is simply not sound research.

The Report notes that blacks represent 57.8% of the complainants in the reviewed cases yet blacks constitute only 22.6% of New York City's population. These numbers, however, are not anomalous once compared against the overall crime rate. In 2014, blacks accounted for 46.7% of all misdemeanor arrests; 46.7% of victim-driven (or reactive) misdemeanor arrests and 46.8% of “proactive” misdemeanor arrests.<sup>16</sup> Blacks also represent 64.5% of violent crime

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<sup>14</sup> The APU appeared before our Deputy Commissioner of Trials and, without explanation, dismissed the force specifications and negotiated the remaining specification of offensive language to arrive at the ultimately penalty of 10 vacation days.

<sup>15</sup> OIG-NYPD Report at 33.

<sup>16</sup> NYPD Misdemeanor and Quality of Life Report (2015).

suspects *as described by victims*.<sup>17</sup> When put in context, the racial composition of complainants in substantiated use of force cases is not at all anomalous. And as the Report notes, there is no evidence of disproportionate treatment by non-minority Officers against minority complainants. The race or national origin of Officers involved in the substantiated use-of-force cases is generally consistent with the overall demographic composition of NYPD. The NYPD is proud that 52.9% of all police officers are minorities.<sup>18</sup>

The Report further notes that 96.8% of Officers involved in the 179 substantiated use of force incidents were male and notes that these numbers “raise the specter that the gender disparity among uniformed NYPD Officers has a bearing on the volume of force encounters in New York City.”<sup>19</sup> While it is impossible to draw broad conclusions based on a statistically insignificant sample of cases, we agree with the OIG-NYPD that more female officers will enhance the NYPD’s already diverse workforce and the Department continues to work to recruit more female Officers. To that end, the NYPD’s July 2015 class of 1217 newly-trained police officers was comprised of over 21% female recruits, which is one of the highest percentage of females in a recruit class that the Department has ever hired.

With respect to the six specific recommendations the Report makes about changes to the use of force policies and procedures and the documentation of force incidents, the revised policies incorporated all of these recommendations into the new force guidelines.<sup>20</sup>

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<sup>17</sup> Crime and Enforcement Activity in New York City January 1 – December 31, 2014.

<sup>18</sup> Equal Employment Opportunity Commission NYPD Summary Table, November 2015.

<sup>19</sup> OIG-NYPD Report at 15.

<sup>20</sup> The Report recommends that witness Officers document and report all incidents of use of force. Our policy requires Officers to report any instances of excessive force to the Internal Affairs Bureau which will investigate all such allegations.

### III. Training

The Report made various references to NYPD training that inaccurately represent our curriculum. OIG-NYPD's assertion that recruits receive only one nine hour academy course that directly pertains to Officers' use of force is simply incorrect. The NYPD offers intensive de-escalation training to its recruits throughout recruit training, including 15 hours of dedicated classroom lessons, 28 ½ hours of scenario-based training devoted primarily to de-escalation tactics in various situations, as well as teaching appropriate use of force during the physical tactical training component. During these courses, recruits are taught specific de-escalation techniques to gain voluntary compliance, which is the goal of every encounter. The training was designed by experts within the Department in collaboration with external researchers and professionals in their respective fields. Moreover, the Report completely overlooks the Field Training Officer program implemented last spring by the NYPD, during which recruits are deployed to commands to work alongside seasoned Field Training Officers in real-life scenarios. Real life scenarios can't be matched even in the best mock environment settings.

With respect to in-service training, the NYPD historically provided de-escalation training to its in-service officers on an ad hoc basis through its command level training program. Earlier this year, and well before the release of this Report, the Department announced a three day training initiative called Foundations of Policing, Smart Policing and Tactics training (referred to as 20k training) that provides lectures and scenario-based in-service de-escalation training for our Officers including instruction on crisis and conflict management and modified restraint tactics focusing both on Officer and civilian safety. The Department retrained more than 20,000

Officers in a six-month period and will complete the retraining of the remaining 15,000 Officers by early 2016.

In addition, the NYPD is implementing Crisis Intervention Training (“CIT”), which also was formulated well before the release of this Report. The CIT is a four day advanced training based on NYPD Hostage Negotiation Team (HNT) training and adapted for the patrol setting. Although the Report refers to the Seattle Police Department’s exemplary use of force training as a model, the comprehensive new approach of the NYPD arguably exceeds those metrics. Each of the components of the Department’s de-escalation training is described more fully below.

**a. Recruit Training**

As the Report notes, recruits are trained for six months in our new Police Academy facility in College Point, Queens, spending a total of 954 hours at the Academy. Recruit training is broken into several components including classroom academics, enhanced scenario-based training, physical/tactics training, firearms training, drivers training, disorder control training, and chemical ordnance, biological, and radiological attack (COBRA) training. Recruits spend 195 hours in the classroom; 82.5 hours in scenario-based training; 155 hours in physical/tactical training; and 127.5 hours in firearms training.<sup>21</sup> NYPD recruits are provided with use of force and de-escalation training throughout each of these components. In July 2015 all recruits participated in the Field Orientation Program, through which recruits are assigned to a command to practice the skills they have learned at the Academy. The Academy works tirelessly to devote the appropriate amount of time to each important subject and is constantly refining its modules to meet that goal.

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<sup>21</sup> The remainder of the training consists of 34 hours of driver’s training, 8.5 hours of computer training, 8.5 hours of disorder control training and 17 hours of COBRA training. The remaining 326 hours are dedicated to field orientation and various seminars and non-training modules such as book distribution, equipment distribution, reading test and trimester examinations.

i. Classroom Training.

With respect to classroom training, recruits are provided with a 40 chapter textbook known as the Police Student's Guide, which contains the classroom curriculum. The classroom curriculum is divided into three disciplines: Legal Studies, Police Studies, and Humanities. Legal Studies covers essential topics in law, such as authority to arrest, use of force, search and seizure, interrogation and identification, court appearances and the legal requirements. The Police Studies discipline includes important topics relating to the actual day-to-day work of our Officers, including investigation and report writing, police field communications, community interaction, summonses, arrest processing, collecting and processing evidence, responding to people in medical distress, responding to reports of missing persons, quality of life policing, maintaining public order, and conducting interior patrols. The Humanities discipline includes chapters on policing professionally, discretion, community interaction and problem solving, crisis management, policing certain special populations including the emotionally distressed, children and adolescents and the elderly population.

NYPD recruits are given a total of 15 hours of classroom training dedicated exclusively to the use of force and de-escalation tactics. Recruits are first introduced to the concept of use of force early in the curriculum in the *Use of Force* chapter. This chapter is a nine hour classroom training module. The central theme of this classroom lecture is teaching recruits to focus on gaining voluntary compliance and to use force only as a last resort. The lesson repeatedly notes that the Department will examine Officers' conduct leading up to an incident involving use of force to determine whether the use of force was a result of unnecessary escalation. Recruits are taught that poor tactics, or unnecessary escalation, may lead to discipline even if the use of force is legally justified.

The *Use of Force* chapter teaches recruits the amount of force used must be proportionate to the nature of the situation the Officer confronts. The lesson provides recruits with specific force options using the Force Options Wheel model. The options begin with “Professional Presence,” which is a preventative policing tactic based on the concept that visible, professional presence of uniformed police officers deters crime and maintains order. The next tactic option to gain voluntary compliance is the “verbal persuasion/command voice.” Recruits are taught that verbal means of persuasion have proven to be effective by the NYPD’s Hostage Negotiation Team, which consistently defuses dangerous situations without having to utilize physical force. The next level of force option is “unarmed physical force,” which entails tactics such as firm grip, compliance holds, and other methods of restraint.

There are two subsequent classroom training modules with a central focus on de-escalation skills in the context of other policing activities. The chapter *Policing Professionally*, a 4.5 hour module, provides de-escalation training by teaching communication skills to use in particular circumstances in order to gain voluntary compliance. As such, the overall objective is to establish positive community relations, which is a core aspect of each Officer’s mission. The lesson teaches proper exercise of discretion, which is centered on “the ability and authority to select the tools to solve a problem on the basis of training and experience.” This lesson teaches a five-step appeal process, which Officers should progress through, where practical, prior to the use of any force.

Finally, the *Crisis and Conflict Resolution* lecture, which was added to the recruit curriculum in January 2015, is a 1.5 hour block of instruction consisting of various hostage negotiation techniques to de-escalate situations and achieve voluntary compliance.



In addition, as the Report notes, the concept of de-escalation is woven throughout many of the other training modules as appropriate, particularly in the modules relating to policing of special groups including the elderly, children, mentally distressed persons and policing domestic violence incidents. De-escalation is the goal of every single encounter: a concept that is consistently emphasized in each of the modules. In *Policing the Emotionally Disturbed* chapter, for example, the primary stated purpose is to provide recruits with the skills to interact with emotionally distressed persons appropriately without using unnecessary force or causing damage to property. The chapter *Children and Adolescents* train recruits yet more communication skills designed to effectively reach adolescents, including 20 skills to employ in recognition of the specific needs and circumstances of adolescents. The de-escalation skills that are taught in the classroom are reinforced in the scenario-based training modules described below.

ii. Scenario-Based Training.

The Scenario Based Training Coordination Unit (SBTCU) conducts mock situations and teaches recruits the proper use of appropriate verbal and/or physical tactics. SBTCU utilizes the new state of the art training environments at the new Police Academy, which offer a variety of mock settings that are typically found in New York City. OIG-NYPD's assertion that scenario-based exercises make up only three out of approximately 180 days of training is inaccurate. Currently, the curriculum consists of 82.5 hours of scenario-based exercises. This amount of scenario-based training well exceeds the nationwide average of 24 hours in basic training cited by the Report. Although the amount of time NYPD devotes to scenario-based training is currently well beyond the national average, the NYPD agrees that the value of scenario-based training may outweigh some of the classroom time currently devoted to other important subjects.

With the new mock environments available, the NYPD has begun re-writing much of the curriculum to add additional scenario-based training.

Historically, NYPD recruits have been placed in mock scenarios with actors (usually Members of Service) playing various roles to emulate actual street encounters. The prior Police Academy was not equipped with actual mock environments, making the scenario training difficult to implement. Given these physical challenges, recruits were given 19 scenarios during the course of their training, comprising 60.3 hours of scenario-based training for the January 2015 recruit class.

Today, the new Academy contains mock environments including street scenes, apartments and a subway car in which our recruits can practice their skills in realistic settings. These new facilities have vastly enhanced our Training Bureau's ability to furnish sophisticated, realistic scenario-based training. Beginning with the July 2015 recruit class, recruits are now trained with 30 scenarios, a 58% increase from the previous year, which comprise 82.5 hours of scenario based training. The Department anticipates that scenario-based training will continue to grow within the coming years. Moreover, scenarios are taught in parallel with classroom material, which reinforces the principles taught in the classroom. The primary focus of the scenario-based training is de-escalation, with the ultimate goal of ending the encounter with voluntary compliance.

The recruits are also given a one day Knowledge Integration Workshop (KIW), which occurs at the tactical village in Rodman's Neck. During this session, recruits are given mock routine 911 calls for service that they will likely field as in the precinct as a patrol officer. These calls for service consist of family disputes, landlord/tenant and taxi-cab fare disputes as well as

calls related to disorderly groups. The primary focus is to train recruits to successfully de-escalate these situations and achieve voluntary compliance.

Currently, there are numerous scenario-based training modules out of the 30 that primarily focuses on de-escalation tactics in specific situations, comprising 28.5 hours of training.

- Domestic Violence Workshop. The recruits are provided with 4.5 hours of scenario training on domestic violence issues in six scenarios. These scenarios involve situations including a violation of an order of protection, a family dispute involving an off-duty officer, and a dispute between a same sex couple.
- Policing Impartially Scenario. Recruits are given a 45 minute scenario within this category devoted to de-escalation of a racially charged situation. In this scenario, two civilians engage in a verbal altercation and exchange racial slurs. Recruits are taught verbal communication skills and tactics to employ to de-escalate the dispute and gain voluntary compliance.
- Scenario-Based Training for Emotionally Disturbed Persons. Recruits are given a total of 9 hours and 15 minutes of scenario-based training on policing emotionally distressed persons. These scenarios involve a suicidal barricaded person, an emotionally distressed person in a hallway, and an emotionally distressed person in a restaurant. Recruits also undergo a seven hour workshop at John Jay College in which professional actors simulate behaviors associated with common mental illnesses. The objective of this training is to teach recruits skills to de-escalate these situations and gain voluntary compliance allowing Officers to transport the person to a hospital or other appropriate service.

- Car stop scenario. Recruits are taught a variety of deflection techniques when confronting verbal abuse in conjunction with a car stop during this 14 hour training module. As in all aspects of training, recruit officers are reminded that the goal of all enforcement encounters is to gain voluntary compliance.

iii. Physical and Tactics Training.

The mission of the Physical Training and Tactics Department (PTTD) is to physically prepare recruits for the rigors of police work and to tactically prepare them for the dangers they may encounter. While physical tactics are used when voluntary compliance efforts have been exhausted or are impractical, our tactics training is an important component of NYPD's comprehensive de-escalation training program, as it teaches recruits how to structure confrontations in ways to keep the use of force to a minimum.

b. **In-Service De-Escalation and Use of Force Training**

Earlier this year, the Department announced its three day 20k Initiative that provides in service de-escalation training for our Officers, including instruction on crisis and conflict management and modified restraint tactics focusing both on Officer and civilian safety. By summer of 2015, the Department had already retrained more than 20,000 patrol officers. Officers were trained together with other officers from their respective commands to enhance their teamwork. The NYPD will complete training for the 15,000 investigative officers by early 2016. This training covers a wide range of topics that are essential to the Department's effectiveness and foundational to sound policing.

Day one of the training, the Foundations of Policing or "Blue Courage" course focuses on the three main components of policing: service, justice and fairness. This module explores resilience as it pertains to operational readiness, Officer safety, and stress management. The

training provides techniques for how an Officer can best self-regulate when challenged or stressed and discusses skills for gaining voluntary compliance by working collaboratively with others to the maximum extent possible. This module also explores the meaning of respect and how it is applied to policing, leadership and a service-oriented mindset. The training emphasizes that treating members of the communities with respect and empathy is the first and best step toward de-escalating situations when tactically appropriate. Day two of the initiative is called Smart Policing, which focuses on conflict resolution skills to gain voluntary compliance. Officers are trained on communication skills to employ to de-escalate tense and emotionally driven situations. The training teaches specific methods to control an Officer's own emotions and adrenaline during a stressful encounter. The training demonstrates specific verbal and nonverbal communication skills Officers should employ when interacting with the public in the precinct, on the telephone and in other situations such as car stops. Finally, day three of the training focuses on tactical skills for Officers to employ when a takedown is necessary. This module refreshed our Officers knowledge on the various levels of resistance and the appropriate level of force to employ in those circumstances. The Officers practiced various techniques in scenario-based training modules that seek to minimize force used thereby reducing the risk of injury both to the subject and the Officer. Officers were retrained on aftercare, which are techniques to ensure the safety of persons taken into custody.

The Report gives short shrift to this comprehensive three-day training program, stating that the instructors “merely skimmed over the de-escalation skills and did not engage with the officers being trained during the presentation” and offered “no concrete examples, scenarios, or anecdotes in order to teach officers how to de-escalate a situation.” OIG-NYPD, however, conducted an insufficient amount of research to support such a conclusion. Smart policing was

taught over a span of more than 6 months to 22,516 officers with 20 instructors in 176 training sessions. OIG-NYPD only attended *one* 20k training session, hardly a representative sample of all classes or instructors. Whether or not the instructors in the one session the OIG-NYPD staff attended actually offered specific examples, the curriculum certainly provides specific examples of how to use de-escalation skills successfully. Moreover, surveys from our Officers demonstrate the success of this training program. Over 80% of Officers would recommend the course to other Officers. We are extremely proud of both the content of the 20k training initiative as well as the speed with which this large Department trained 20,000 patrol officers. We are grateful to Mayor de Blasio and the City Council for providing the NYPD with the necessary funds to ensure the training was conducted in a timely fashion. The NYPD is committed to further refining and enhancing our training initiatives to ensure that our Officers continue to be the best trained officers nationwide.

The NYPD has also recently implemented Crisis Intervention Training for patrol officers, which was formulated well before the release of this Report. This program is a four-day advanced training program based on a nationally recognized instructional model. The NYPD employs mental health clinicians and Academy instructors who work collaboratively with NYPD's Hostage Negotiation Team to train Officers to recognize signs of mental illness and to respond to such calls with empathy for someone in the throes of an intense crisis. The Academy has trained 641 patrol officers and expects to complete the training of 5,500 patrol officers in Patrol Borough Manhattan North and Patrol Borough Bronx over the next year. We expect to train an additional 2,000 recruits from the 2016 recruit classes.

#### IV. Discipline

The Report concludes that NYPD historically has “frequently failed to discipline officers who use force without justification.”<sup>22</sup> OIG-NYPD draws this conclusion from its own independent review of an even smaller subset of 100 cases containing 104 allegations, excluding 12 cases in which OIG-NYPD disagreed with CCRB’s decision to substantiate, demonstrating that reasonable minds can certainly differ in these intensely fact specific cases.<sup>23</sup>

It is important to keep in mind that the disciplinary process is governed in large part by state and local law. The Department has multiple offices staffed with dozens of lawyers and investigators dedicated to thoroughly reviewing and prosecuting as appropriate all substantiated allegations of improper use of force received from both the CCRB as well as through internal channels in accordance with the New York State Civil Service Law. Historically, once CCRB’s three member panel<sup>24</sup> voted to substantiate an allegation of excessive force, the findings along with a non-binding disciplinary recommendation, were forwarded to the NYPD’s Department Advocate Office (“DAO”), which is the NYPD’s internal prosecutor. The DAO reviewed the case, considered the recommendations of the CCRB, and made its own disciplinary determinations and recommendations to the Police Commissioner. In cases in which the DAO prepares Charges and Specifications against an Officer, which carry the most serious penalties, pursuant to the New York State Civil Service law, and subject to certain exceptions, the Officer has a right to a trial, which is conducted before the NYPD’s Deputy Commissioner of Trials.

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<sup>22</sup> OIG-NYPD Report at 4.

<sup>23</sup> OIG-NYPD Report at 45. OIG-NYPD also excluded 59 cases that are currently pending and five cases where the statute of limitations expired before discipline could be imposed and one case where the Officer retired before the case was closed.

<sup>24</sup> The CCRB has 13 board members – five are designated by the City Council, five are selected by the Mayor and three with law enforcement experience are selected by the Police Commissioner. Panels are usually comprised of three board members – one mayoral designee, one City Council designee and one Police Commissioner designee. The panels conduct reviews of completed investigations and can substantiate any FADO allegation by a vote of two to one.

Under well-settled law, the Police Commissioner has the complete and final authority to impose discipline.<sup>25</sup> The Discipline Unit within the Police Commissioner's Office reviews each case and makes a recommendation to the Police Commissioner. The Police Commissioner reviews each case as well as the recommendations submitted by his Discipline Unit, the Department Advocate, the Assistant Deputy Commissioner who presided over the trial if applicable, and the CCRB, if applicable. The Police Commissioner then makes the final determination as to a finding of guilt as well as a penalty.

In April 2012, the NYPD and the CCRB executed a Memorandum of Understanding ("MOU")<sup>26</sup> granting the CCRB the authority to prosecute administratively all civilian complaints against Officers that have been substantiated by CCRB and in which CCRB has recommended that Charges and Specifications be brought. The CCRB established its Administrative Prosecution Unit ("APU") to prosecute these cases. The cases are prosecuted in the Trial Room at NYPD before an NYPD Administrative Law Judge, under the supervision of the NYPD Deputy Commissioner of Trials. After trial, the files are forwarded to the Police Commissioner who follows the same process discussed above in imposing discipline.

In the 12 cases OIG-NYPD reviewed for this Report that have been prosecuted by the APU, 50% resulted in *no discipline imposed after acquittals at trial*. During this period, the NYPD's Department Advocate's Office prosecuted nine additional matters involving force allegations, which were referred through NYPD's internal review process, not through CCRB referrals. Discipline was imposed in 100% of those cases either from findings of guilt after a trial or through a plea bargain process. NYPD's rate of discipline after trial in excessive force

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<sup>25</sup> NYC Admin Code § 14-115.

<sup>26</sup> The contents of the MOU have been codified in the Rules of the City of New York (RCNY Title 38A Chapter 1 §§ 1-41 – 1-46).<sup>26</sup> See, *Memorandum of Understanding between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints*, April 2, 2012.



cases during this period, therefore, was actually significantly higher than CCRB's APU unit's rate of discipline imposed.

In addition, the Report summarily concludes that there appears to be a "larger dissonance between CCRB and NYPD" about disciplinary matters.<sup>27</sup> The Report makes this conclusion despite acknowledging that the rate of disagreement between CCRB and NYPD is trending downward significantly. As discussed above, due to the newly-implemented reconsideration process, the rate of disagreement between the CCRB and the NYPD in the last six months is 2.8%.

With respect to the specific recommendations contained in the Report, OIG-NYPD recommends that NYPD note the accompanying penalty for each distinct disciplinary charge and then analyze the data regarding each of the disciplinary penalties to determine the effects of particular disciplinary penalties on the frequency of incidents of excessive force. We respectfully disagree with this recommendation. Incidents involving allegations of improper use of force rarely, if ever, occur in a vacuum. The Department examines the totality of the actions of each Officer in a given situation to determine the appropriate penalty. Other factors also weigh into the assessment of a penalty, including but not limited to, the Officer's prior disciplinary history, prior evaluations and CCRB history. Because there are so many variables that weigh into the particular penalty assessment, it is impossible to determine the impact of a particular disciplinary penalty on excessive use of force rates in general.

We disagree with the recommendation that NYPD document the extent to which an Officer's placement on force monitoring impacted the penalty imposed. Force monitoring is a tool used by the Department to identify Officers who, because of a specific number of civilian complaints lodged against them, are the subject of increased supervision. It is important to note

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<sup>27</sup> OIG-NYPD Use of Force Report at 47.

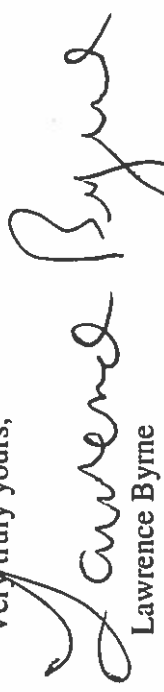
that Officers are placed on force monitoring immediately upon the filing of the triggering complaint, without regard to the merits of the allegations. In almost every instance, an Officer is placed on force monitoring long before any of the allegations leveled against him have been evaluated for substantiation or exoneration. The fact that an Officer is or had been placed on force monitoring does not represent a finding that the Officer engaged in misconduct and therefore has little bearing on imposition of penalty in an excessive force case. Moreover, as described above, the Department considers myriad factors when determining an appropriate penalty. There is simply no way to assess the extent to which each individual factor impacted the final penalty determination.

Finally, the Report recommends that NYPD share with the CCRB and the CCRB's APU an Officer's force monitoring history. The CCRB has direct access to the very data that leads to placing an Officer on force monitoring, which is the number of CCRB complaints lodged against the Officer, without respect to the merits of those complaints. The force monitoring program is an attempt by the Department to engage in predictive analytics to address an Officer who might be in need of closer supervision and instruction. It is not a penalty or badge of dishonor that should be used in recommending penalties.

## **Conclusion**

We are proud of the work we have done to revise and modernize the NYPD's use of force policies and training. These historic new policies were the culmination of an 18-month exhaustive review process undertaken at the direction of Commissioner Bratton early in his tenure to provide greater transparency and further reduce NYPD's use of force. The new policies, which will be implemented in 2016, along with the Department's new training initiatives, will give our Officers better guidance on use of force and more tools to employ to deescalate tense situations. These measures will serve to deepen the connection and trust between NYPD and all of the communities we serve.

Very truly yours,



Lawrence Byrne  
Deputy Commissioner Legal Matters