U.S. Department of Justice

Civil Rights Division

Special Litigation Section - PHB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

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Gerard J. Pisanelli, Esq.
Law Offices of Gerard J. Pisanelli
2 Cannon Street
Poughkeepsie, NY 12601

Re: Beacon Police Department

Dear Mr. Pisanelli:

As you know, the Civil Rights Division and the United States Attorney's Office for the Southern District of New York are conducting an investigation of the Beacon Police Department ("BPD") pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. We would like to take this opportunity to express our appreciation for the cooperation we have received thus far from the City of Beacon ("City") and the BPD.

To date we have reviewed relevant BPD policies and conducted interviews with City officials, BPD command staff and a cross-section of BPD supervisors and patrol officers, and reviewed hundreds of BPD arrest reports. We have also talked with representatives of the Patrolmen's Benevolent Association, community leaders, and other concerned citizens.

At the beginning of our investigation, we committed to providing the City with technical assistance to improve the BPD's practices and procedures and ensure compliance with constitutional rights. During our meetings with you and the BPD command staff in November 2004, we told you that we would provide in writing more specifics about recommendations our police practices expert had made orally. In this letter, we convey our recommendations regarding the BPD's written policies. Important aspects of our fact-gathering process have yet to be completed, most notably completing review of arrest reports and other documents you have produced. Therefore, this letter is not meant to be exhaustive, but rather focuses on significant recommendations we can provide at this preliminary stage of our investigation.

Additionally, we hope this letter will assist in our mutual goal of ensuring that the BPD provides the best possible police service to the people of Beacon. We look forward to continued cooperation toward this goal. We would be happy to provide examples of policies used by other police departments that might address some of the issues we raise below.

I. BPD Policies and Procedures

The BPD should revise and update its policies and procedures to be consistent and comprehensive.

Policies and procedures are the primary means by which police departments communicate their standards and expectations to their officers. Accordingly, it is essential that the BPD's policies be comprehensive, comprehensible, up-to-date and consistent with contemporary police practices.

BPD's policy and procedure manual was developed in 1987 and has not been revised significantly since its development. Although some policies and procedures have been revised or added over the years, the manual contains a number of policies that are out-of-date, inconsistent with accepted police practices, and lacking in sufficient detail to appropriately guide officer conduct. Specific examples of such policies are discussed below. Further, significant BPD policies such as those relating to the use of force, the use of firearms, and canines are not organized by subject matter, but are found in a number of different policies spread throughout the manual, as detailed more fully below. We understand that the BPD is currently in the process of updating its policies and procedures manual and we trust that the technical assistance recommendations contained in this letter will assist that endeavor.

II. Use of Force

The BPD should revise its use of force policies regarding the use of force by BPD officers and adopt an appropriate use of force continuum.

In the course of their duties, police officers may be required to use deadly or non-deadly force. Because such uses of force can place officers, civilians, and subjects at serious risk of harm, it is incumbent upon police agencies to ensure that their officers use force appropriately. Use of force policies and procedures must clearly set forth standards for the appropriate use of force. We recommend that the BPD force policies be revised to provide a comprehensive policy that

contains the following critical elements: appropriate definitions of deadly and non-deadly force, a use of force continuum, and specific guidance on the circumstances in which officers may justifiably use force that is consistent with the use of force continuum.

A. Use of Force Definitions

Officers should be provided with clearly written policies that establish guidelines for the use of force, including appropriate limitations on the use of deadly and non-deadly force, and prohibitions on the use of unauthorized types of force. An essential component to a clearly written use of force policy is a definition of deadly force and non-deadly force.

BPD's force-related policies fail to fully address what constitutes "deadly force." Article 18 sets forth BPD policy on the use of deadly force, and limits the use of such force to "self defense or in defense of the life of another and always only to the extend [sic] permitted by law." Article 18A, which relates to the investigation of uses of deadly force, indicates that it applies to uses of firearms or "other deadly physical force," but neither policy describes the actions that constitute "deadly force" or offers sufficient guidance to officers who may be required to use deadly force.

Article 19 describes the circumstances in which BPD officers are authorized to use physical force, but does not describe the actions that constitute physical force. The only apparent limitation in this policy is that BPD officers ". . . will use only the amount of physical force necessary to accomplish the police goal, and will cease the use of such physical force once the goal is accomplished." Article 5 (44) similarly provides that officers "shall not use more force in any situation than is reasonably necessary under the circumstances."

We recommend that the BPD adopt a definition of deadly force that would include any use of force that is likely to cause death or serious bodily injury. We recommend also that the BPD's use of force policy be revised to limit strikes to the head with impact weapons, such as nightsticks or flashlights, as tactics of last resort to be used only when the use of deadly force would otherwise be authorized. Due to the possibility of death or serious bodily injury from the delivery of blows to the head, we recommend that BPD's policy be revised to reflect the potential deadliness of such uses of force. Similarly, the revised policy should identify uses of physical force that may constitute deadly force, such as the application of the carotid hold.

In addition to defining deadly force, BPD's policy should define "non-deadly force." We recommend that the BPD's definition include all uses of force beyond un-resisted handcuffing including, but not limited to, the use of hard hand tactics, Oleoresin Capsicum ("OC"), and strikes with impact weapons. We also recommend that the BPD's use of force policy identify any uses of force that are specifically prohibited or restricted to limited circumstances (e.g., choke holds).[1]

B. Use of Force Continuum

Although BPD officers are authorized to carry a variety of weapons, from OC spray, to nightsticks, to their service firearms, the BPD does not employ a use of force continuum, matrix, or any other description of levels of suspect resistance and appropriate officer use of force responses. As noted above, the BPD's policies on non-deadly force are provided in Article 19 that provides general guidelines for when the use of non-deadly force may be appropriate. Article 19 does not include a comprehensive list of actions that are considered uses of force, a description of the permissible uses of force, or a force continuum which would indicate the appropriate level of police response to a subject's actions. The BDP's use of force policies do not mandate or describe de-escalation techniques that can minimize officers' use of serious force.

Central to developing a comprehensive use of force policy is the inclusion of a use of force continuum. When properly designed and implemented, a use of force continuum is a fluid and flexible policy guide. Many departments employ the continuum because it provides a useful tool in training officers to consider lower levels of force first, which protects the safety of both the officer and the civilian. Moreover, a use of force continuum that emphasizes officers' presence, verbal commands, de-escalation strategies, and the use of "soft hand" techniques (using hands to escort rather than control subjects) can often be used as alternatives to more significant uses of force. We recommend that BPD's use of force policy include a use of force continuum. BPD's force policy should describe how the various force options may be used, how the various applications of the options affect their placement in the use of force progression, and what level of force is appropriate in response to what type of resistance by suspects. The continuum should include the

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[1] Most police departments have prohibited the use of the carotid hold except under circumstances in which deadly force is authorized.

actual types of force used by BPD, including canines and OC spray.

Because officers are often confronted with difficult use of force decisions with respect to persons with mental illness or who are under the influence of drugs or alcohol, we recommend that BPD's use of force policy and force continuum include the de-escalation techniques appropriate to interactions with such persons. We understand that BPD officers are trained to identify persons who are under the influence of drugs and/or alcohol. We recommend that all BPD officers receive additional training on identifying persons with mental illness and the appropriate techniques for interacting with such persons. We recommend that the BPD establish a working relationship with the local public mental health provider as a resource for training and support. Whenever practical, the local mental health provider should be called to the scene of incidents involving persons with mental illness so that BPD officers can utilize their knowledge and training.

C. Legal Standards Governing the Use of Force

Current BPD policy instructs officers that they may use force as permitted by law, but the policy does not provide sufficient guidance on the applicable legal standards. Given the current absence of in-service training for BPD officers, we recommend that BPD's use of force policy describe in some detail the applicable legal standards.

Uses of excessive force by police officers are violations of the Fourth Amendment, and are analyzed under the Fourth Amendment's objective reasonableness standard. Graham v. Connor, 490 U.S. 386, 394 (1989). The analysis requires a balancing of the quality of intrusion on the individual's Fourth Amendment interests against the governmental interests. Id. at 396. The criteria courts apply to assess an excessive force claim include the severity of the crime at issue, whether the suspect presents an immediate safety threat to the officers or others, and whether the suspect is actively resisting or attempting to evade arrest. Id.; Sullivan v. Gaugnier, 225 F.3d 161, 165 (2d Cir. 2000). Lack of specific policy guidance on the appropriate use of force may lead officers to believe that they are justified in using force in situations in which it would be unreasonable or unnecessary. Conversely, unclear or overly general policies may result in officers refraining from using necessary and appropriate force out of an unwarranted fear of using excessive force.

The Supreme Court has determined that deadly force is permissible only when a suspect poses an immediate threat of serious physical harm to the officer or another person. Tennessee v. Garner, 471 U.S. 1 (1985). The only exception to this general rule is the "fleeing felon" rule, which allows police officers to use deadly force to prevent the escape of a suspect in cases where there is probable cause to believe the suspect either poses an immediate threat of serious harm to the officer or another or has committed a crime involving the infliction or threatened infliction of serious physical harm. Id.; Davis v. Little, 851 F.2d 605, 608 (2d Cir. 1988). Yet even in those circumstances, police are required to provide a warning (if feasible) before using deadly force. Garner, 471 U.S. at 11. Deadly force is permissible only for as long as the threat remains. When the threat is over, the use of deadly force must stop.

New York has its own statute covering the situations in which law enforcement agents may employ deadly force. Specifically, McKinney's Penal Law § 35.30 provides in relevant part:

> . . . deadly physical force may be used for such purposes only when [the officer] reasonably believes that:
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> (a) The offense committed by such person was:
> (i) a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or
> (ii) kidnaping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; or
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> (b) The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon; or
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> (c) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

Although our jurisdiction is, of course, limited to federal law, we recommend that the BPD's use of force policy be revised to track both the federal constitutional and state standards.

D. Specific Uses of Force

We have reviewed BPD's use of force policies regarding specific uses of force and have the following comments.

1. Firearms

The BPD should revise its policies and procedures relating to firearms to ensure consistency and officer accountability.

As noted above, the BPD's policies relating to the use of firearms are found in separate policies in the current policy manual; Article 7, Article 18, and Article 18A all relate to the use of firearms. We recommend that the policies relating to firearms be consolidated as part of a single use of force policy.

Current BPD policy requires officers to carry at least two extra magazines (Art. 7, 1(A.)) but there is no limit on the number of magazines or the number of rounds an officer can carry and no indication of what ammunition is authorized. Through our interviews with BPD staff, we understand that supervisors do not inspect officers to determine how many magazines and/or rounds they carry, or whether the standard issue ammunition is being carried. In the event BPD officers discharge their firearms, it is critical that supervisors and investigating officers be able to ascertain quickly the number of rounds fired and how much ammunition was on the scene. We recommend that the BPD establish a system of accountability for both the number and type of BPD-issued ammunition.

In addition to inadequate controls on the number of rounds carried by BPD officers, we understand that officers are permitted to carry any number of secondary firearms, so long as officers qualify with these weapons. The requirement that officers be qualified to use such secondary weapons off duty is contained in Firearms Policy (12). However, BPD policy is somewhat ambiguous on the use of secondary firearms by BPD officers while on duty.[2] Our interviews confirmed that BPD officers can and, at times, do carry secondary weapons without supervisory review or approval. As discussed above with regard to a system of accountability for Department-issued ammunition, we recommend that the BPD establish a system of accountability

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[2] Section 11 indicates that "an officer who carries an off duty weapon must safeguard that weapon and insure the safety of the citizens of the community."

for the use of secondary weapons. In the event a BPD officer carries his secondary weapon, it is vital for police supervisors and investigators to know what weapons and what type of ammunition was used.

2. Shotguns

The BPD should revise its policies and procedures to ensure the proper use of shotguns.

We understand that BPD officers have discretion to carry shotguns while on patrol and that, pursuant to a recent policy directive, at least one patrol officer is required to have a shotgun in his/her car on every shift. Despite this directive, BPD policy does not provide sufficient controls regarding the circumstances in which officers are authorized to deploy the shotgun. As with service firearms, there is no indication in policy regarding the type or amount of ammunition to be carried by officers for use with the shotgun. Shotgun ammunition comes in a variety of types, with differing degrees of lethality, and which can be used for different purposes.

We recommend that the BPD develop a clear policy for the authorized deployment of shotguns, and that such policy include a list of approved shotgun ammunition and guidance for the use of the different types of shotgun ammunition.

3. Impact Weapons

The BPD should revise its policies and procedures to identify standard issue impact weapons and ensure that all BPD officers are properly trained to carry and use such weapons.

Impact weapons, used by a trained officer and in accord with an appropriate use of force continuum, can be effective tools for officers to control suspects without resorting to more significant or lethal uses of force. BPD policy does not require officers to carry impact weapons. Article 17(31) requires that officers carry only their service revolver, a minimum of one set of handcuffs, 12 extra rounds of ammunition, a police whistle, and a ballpoint pen with black ink.[3] Other weapons, like an

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[3] This policy appears to be out of date. We understand that the BPD service firearm is the Glock pistol, not a revolver. Further, BPD officers are required to carry at least two extra magazines of ammunition which would contain either 26 or 30 extra

expandable baton, are not required. Although BPD officers are permitted to carry intermediate weapons, there is no requirement that officers carry any intermediate weapon and no uniformity in the weapons they carry.[4] Consequently, officers who elect not to carry intermediate weapons may use inappropriate alternatives, like police radios, and are also left with fewer alternatives to the use of deadly force. Moreover, BPD policy allows officers to carry intermediate weapons, such as the blackjack, the use of which is inconsistent with generally accepted police standards.[5]

We recommend that the BPD select a standard issue intermediate weapon for all officers to carry while on duty, specify the use of such weapon in the use of force continuum, ensure that all officers are appropriately trained on the use of such weapon, and prohibit the use of all other weapons.

4. OC Spray

The BPD should revise its OC Spray policies and procedures to ensure that OC spray is appropriately used and that all uses are reported.

BPD policy on OC spray is contained in an addendum to the policy manual. Because using OC spray is a use of force and should be appropriately identified in a use of force continuum and its use reported, we recommend that policies relating to OC spray be contained in a comprehensive use of force policy. BPD's OC policy is generally adequate in content. However, we recommend that the policy require that officers, where practicable, warn subjects before employing OC spray. In developing a form for reporting uses of force, we recommend that OC spray be specifically identified on that form. Further, we recommend that the OC policy explicitly describe the requirement and procedures for decontamination following the use of OC spray. As noted with regard to intermediate weapons, BPD does not require that all officers carry OC spray. We recommend that OC spray be required equipment for all officers and that all

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rounds, depending on which model of Glock the officer carries.

[4] The BPD requires that officers be trained on the particular weapon they carry.

[5] BPD Policy on Uniforms and Equipment, Article 17(18) permits officers to carry blackjacks, nightsticks, flashlights or the combination thereof.

officers be trained to use OC spray consistent with the use of force continuum.

5. Canines

The BPD should revise its policies and procedures regarding the use of canines to ensure consistency with the current BPD staffing and to ensure consistency with generally accepted police practices.

As a preliminary matter, we note that BPD policies relating to canines are found in three locations: a "Duties of Police K-9 Unit" policy, a separate document relating to additional compensation for canine officers, and a separate "Canine Unit" policy. We recommend that these policies be consolidated into a single comprehensive policy regarding the use of canines, and that they be incorporated into or cross-referenced to a comprehensive use of force policy.

We understand that the BPD's current canine unit has been reconfigured recently and reduced in size. The current policy references a designated trainer, a supervisor, (and others), but the current unit is comprised of only two officers. We understand also that the canines currently on duty are trained only to search for and apprehend suspects, and that the BPD does not currently have narcotics detection canines. We recommend that the BPD policies be updated to reflect the current configuration and duties of the BPD canine unit.

The current "Canine Unit" policy is consistent with several provisions of the International Association of Chiefs of Police model policy, but does not address the following concerns for which the technical assistance recommendations are provided below.

We understand that the BPD canine unit follows a "find and bark" policy. This is appropriate and should be explicitly set forth in the BPD canine policy. We recommend also that the BPD policy requirement that all canines meet the requirements established by the Bureau of Municipal Police explicitly list those requirements.

We recommend that the policy require canine handlers to have approval from a supervisor before a canine can be deployed, except in extraordinary circumstances where time does not allow for the securing of such approval. This policy should make clear that the supervisory canine officer can not authorize deployment

of his or her dog, except in the extraordinary circumstances just described.

It is generally accepted practice for canines conducting building searches for suspects to be unleashed but within visual observation of their handlers unless there are exigent circumstances. We recommend that these requirements also be included explicitly in BPD's canine policy.

BPD's policy appropriately requires that, before commencing a search, the canine handler shall make and repeat an amplified announcement. However, the policy does not detail the content of that announcement. Current generally accepted police practices call for canine officers to announce that police officers are on the premises, that a trained police canine is on the scene, and that there is a risk that the canine may bite. This complete announcement should be repeated at least once and a reasonable time allotted to allow a suspect the opportunity to voluntarily surrender before the canine is deployed. If the structure being searched is a multi-level structure, the complete announcement should, if feasible, be made and repeated on each level to ensure that appropriate warning and opportunity to surrender is provided.

As noted above, current BPD canine policy refers to canine searches for narcotics, although there are presently no canine units on duty trained to conduct such searches. In the event BPD deploys canine narcotics searching units, we recommend that the policy be revised to provide explicit guidance to officers on the appropriate use of canines to conduct narcotics searches. This is an area in which there is a great deal of case law. A description of the rules and guidelines established by these cases should be provided in policy and annual in-service training, as discussed below. We note that the U.S. Supreme Court recently decided Illinois v. Caballes, 125 S. Ct. 834 (U.S. 2005), holding that the use of a narcotics-detection dog to sniff around the exterior of a vehicle did not violate the Fourth Amendment rights of a motorist who was lawfully stopped where the length of the stop did not exceed the time necessary to issue a traffic ticket and make the necessary related inquiries.

E. Use of Force Reporting

The BPD should develop and implement a system for BPD officers to record, and BPD management to effectively review, the use of force by BPD officers.

The routine review of officer uses of force is critical to a

department's ability to ensure officers are using force in a manner consistent with constitutional standards and the department's policies. Use of force reviews may identify both officer training needs and patterns of unauthorized or excessive uses of force. BPD lacks a clear policy on reviewing uses of force and investigating those that appear excessive, avoidable, inconsistent with BPD policy and/or indicative of potentially criminal conduct.

BPD current policies and procedures do not clearly indicate the manner in which uses of force are to be reported. Article 19(6) requires that uses of physical force be reported in writing to the Chief, but this policy does not describe the manner in which such reports are made to direct supervisors or the nature of any supervisory review of such uses of force. The arrest reports we have reviewed to date do not indicate that they have been expressly reviewed or approved by supervisors. In contrast, BPD policy regarding the use of firearms requires that such use be immediately reported to the officer's immediate supervisor, that a written report be submitted to the Chief, and that the incident be "completely investigated by the Detective Division."[6] In the case of firearms discharges, however, no further description of the nature of any investigation is provided.[7] Finally, no specific form for reporting use of force is used by BPD officers which would permit a systematic review of uses of force by type and by individual officer.

We recommend that the BPD establish a policy requiring the review and/or investigation of all uses of force beyond unresisted handcuffing. We recommend that the BPD establish guidelines regarding the supervisory review and investigation of such uses of force. Further, we recommend that the BPD develop and implement a standardized form for reporting all uses of force, including the use of OC spray. The form should record discrete information regarding the particular use of force. The form should require an officer to provide a detailed description of the incident, beginning with the basis for the initial contact, continuing through the specific circumstances and

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[6] Article 18A(6).

[7] It is accepted police practice for uses of deadly force by police officers, including firearms discharges, to be investigated thoroughly by a designated team of officers, and that such investigation be reviewed by the chain of command and the local prosecutor. Such practices should be memorialized in policy.

actions that prompted each use of force, the specific use of force employed (i.e., hard hands, OC spray, ASP baton), describing the effectiveness of each use of force, and including any resulting injuries and medical treatment. The narrative should include a detailed description of both the subject's level of resistance and the police response. The use of such phrases as "resistance overcome with minimal force necessary" should not be considered adequately detailed descriptions. The form should also record the identity of all witnesses to the use of force.

If OC spray is used, the form should record the number of OC bursts used, the distance from the subject, the effectiveness of the OC spray, and whether the subject was decontaminated.

The use of force reporting policy should specify a time frame in which the report must be completed that ensures that the report and any other supporting documentation is prepared. This time frame should be as soon as possible following the incident, and before the officer goes off duty. The policy should also describe the responsibility of the first-line supervisor to ensure that the use of force is documented, and a procedure for the information to be provided up the chain-of-command. The policy should require that supervisory review be explicitly indicated by signature or other indication of approval. Policy guidelines should identify the circumstances in which an officer's supervisor is required to make command notifications, to respond to the scene to gather and preserve evidence, and to ensure that the injured person(s) receives prompt medical attention.

The information regarding each use of force should be tracked in an Early Warning System (EWS) as discussed below. The BPD should train all officers in use of force reporting and in the use of the use of force form.

With regard to firearms discharges and other uses of deadly force (such as head strikes with impact weapons), we recommend that the BPD develop standard operating procedures for the investigation of such uses of force, including uses of force in which the subject is injured or complains of excessive use of force, uses of force that require hospitalization or result in death, and all head strikes and firearms discharges, except discharges in the course of training, certification, or humane animal destruction. The policy should require the officer(s) assigned to investigate an incident to evaluate each use of force, as well as any instance of potential officer misconduct discovered in the course of the investigation. The policy should include appropriate investigative safeguards to ensure that any

administrative investigation not taint any possible criminal investigation. The investigating officer(s) should be required to refer any incident of potential misconduct through the chain of command to the Chief.

III. Vehicle Pursuits/Roadblocks

The BPD should revise its vehicle pursuit/roadblock policy to clarify the circumstances in which pursuits should be authorized and the responsibilities of BPD supervisors.

Well-defined guidelines that identify circumstances in which it is appropriate to initiate a vehicle pursuit are critical elements of a vehicle pursuit policy. BPD's vehicle pursuit polices are set forth in Article 9 and describe the policies and procedures that guide BPD officers' pursuit of known or suspected criminals. Article 10 sets forth BPD's policies relating to roadblocks of pursued vehicles. High-speed vehicle pursuits present a great risk of harm to the officer, the subject, innocent bystanders, and other drivers.

Article 9 (2) provides that

A pursuit will not be instituted if:

a. the violator has too much lead time
b. the identity of the operator is known.

This vehicle pursuit policy does not provide officers with affirmative guidance on when it is permissible to engage in a vehicle pursuit. Rather, the policy states in the negative the circumstances in which pursuits will not be instituted. The policy, on its face, would prohibit the pursuit of a violent felon whose identity was known. We recommend that the BPD revise and clarify its pursuit policy to affirmatively state the circumstances in which vehicle pursuits may be authorized. This policy should appropriately balance the danger to the public of foregoing the pursuit of a violent or otherwise imminently dangerous suspect against the danger to the public of the pursuit itself. Further, we recommend that the policy clarify that a supervisor shall take command of the pursuit and that in all cases of pursuit a supervisor should be responsible for continuance or discontinuance of the pursuit. Following each pursuit, BPD should conduct a supervisory review of the pursuit for consistency with BPD policy. Finally, we recommend that the BPD consolidate the vehicle pursuit and roadblock policies and that the revised policy provide guidance on interjurisdictional pursuits.

IV. Public Complaint Investigations

The BPD should implement a formal, structured, and consistent system for handling complaints.

A. Complaint Procedure

An open and accessible process for receiving and investigating complaints by members of the public serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations, increasing public confidence in, and respect for, the BPD. Improving the current procedure for handling complaints would maximize these goals.

1. Intake and Tracking of Complaints

The BPD should change aspects of its complaint process that have the potential to discourage the filing of complaints and to impair the effective tracking and resolution of complaints.

The BPD manual of rules and regulations does not include a complaint policy. In addition, at the time of the initiation of our investigation there did not appear to be a formalized system for the intake and tracking of complaints. Our investigation thus far has revealed that if an individual seeks to file a complaint, he or she would be required to appear at the BPD. The Sergeant on duty at the time would be notified, and would discuss the matter with the complainant. The Sergeant would also ask the complainant what he or she believed should be done about the matter. Following that discussion, the complainant would then evaluate whether he or she wished to pursue the matter further and, if so, would fill out a complaint form provided by the Sergeant. It does not appear that complainants had access to complaint forms unless they first had this discussion with the Sergeant on duty. It also does not appear that the complaint was logged by the desk officer. We also learned of instances in which some complainants would contact higher-level BPD personnel with complaints, which would then be referred down the chain of command for investigation.

This informal complaint intake and tracking system could be improved in several ways that should be memorialized in policy. First, we recommend that the BPD adopt a standard complaint form. Although we have seen various versions of a complaint form in the course of our investigation, it does not appear that there is a standard form. One form that we have seen, entitled the "City of

Beacon Police Department Civilian Complaint Form," includes only information from the complainant, and does not have any space to record statements from the officers in question, comments from a supervisor, or the eventual disposition of the complaint. This complaint form should be redesigned to include the name of the officer investigating the complaint, and the names of those individuals interviewed about the complaint.

We further recommend that the BPD adopt a policy that requires that the complaint form be readily accessible and provided to any person who wishes to lodge a complaint without inquiry as to the nature or basis of the complaint. The form should be available at BPD headquarters, other public facilities, and in locations which should permit the forms to be obtained without a specific request by a member of the public. We recommend that BPD policy explicitly state that a member of the public has the right to file a complaint, and that no BPD officer should discourage any such complaint. The BPD should also provide a copy of its complaint policy, or a summary thereof, for example in the form of a brochure, to each complainant.

BPD policy should require the investigation of all complaints received, including anonymous or confidential complaints and those submitted in forms other than the standard complaint form (i.e., by telephone, e-mail, TDD, or other means). Further, we recommend that the policy require that every complaint be documented, even if it is resolved. We recommend also that all complaints be logged by the desk officer and assigned a unique control number to ensure that there is a record of every complaint received by the department.

Finally, our investigation has indicated that a complainant, when presenting a complaint, is asked what he or she proposes be done about the matter. This question is not appropriate. It is not the burden of the complainant to propose a resolution to the matter. Complainants are not familiar with the intricacies of police administration and discipline.

2. Outside Referrals of Potentially Criminal Allegations

The BPD should develop a policy and protocol that requires instances of allegedly serious misconduct that potentially implicate criminal liability to be referred outside the BPD for investigation and appropriate action.

In developing its policy regarding complaints, the BPD should delineate which complaints are appropriate for internal review and which complaints should be referred outside the BPD

for potential criminal investigation. Some allegations of misconduct, including those that are the subject of complaints from a member of the public, may be so serious as to warrant an outside referral to the Office of the District Attorney or other appropriate entity. The BPD policies and procedures make no reference to this possibility. The determination of whether the allegations of a complaint would potentially require a criminal investigation should be made as early as possible.

We also recommend that, in instances where internal review or complaint reveals misconduct that qualifies as serious under the BPD's policies, the Chief should make the ultimate determination as to whether and how an allegation is referred for investigation within the BPD. The Chief's determination should be memorialized in writing.

The policy and procedure that the BPD implements should also clarify the rights of officers involved. If the complaint involves allegations of criminal misconduct, the Chief may choose to refer the matter to an outside law enforcement agency for investigation. During investigations of potentially criminal misconduct, officers may be read Miranda rights before questioning, may be required to have counsel present, and may be required to be polygraphed. This policy should be consistent and coordinated with the policy regarding the investigation and evaluation of complaints. This coordination will prevent a situation in which the investigative protocol used to investigate a complaint turns out to be incompatible with the requirements for the investigation of serious misconduct, thus compromising the integrity of each. For example, if a complaint alleges that serious misconduct might have occurred, BPD policy should require that such a complaint be investigated under the heightened standards, rather than the standards applicable to complaints that do not involve allegations of potentially serious misconduct.

3. Investigation of Complaints

The BPD should have a formal, structured, and consistent policy regarding the investigation by appropriately trained supervisors of complaints from members of the public.

Under the current system of complaint investigation and resolution, as described to us in the course of the investigation, the Sergeant on duty receives the complaint and refers it to the Captain. The Captain investigates the complaint, decides whether it is founded or unfounded, and then resolves it in some manner. Based upon the complaint files we

have reviewed, it appears that some of the complaints are treated much the same as any criminal investigation, pursuant to an identical protocol. Many of the questions applicable to a criminal investigation, however, have little to no relevance to assessing the merits of a complaint. Additionally, our investigation found that the Chief may or may not become aware of the existence of a complaint, that the Sergeant who ordinarily supervises the officer concerned (as opposed to the Sergeant on duty when the citizen presents his or her complaint) may or may not learn of the complaint, and that the member of the public who initiated the complaint may or may not learn how (or whether) it was resolved.

We recommend that the BPD adopt a policy concerning the investigation of complaints from members of the public. The policy should provide that the Chief be notified of complaints as soon as possible. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Chief should be notified no less than twenty-four hours after receipt of a complaint.

The policy should delineate and specify responsibility for the citizen complaint investigation process. A designated supervisory officer(s) should be responsible for the investigation and recommended resolution of complaints. We recommend that all BPD officers charged with handling complaints, whether conducting intake or investigating complaints, receive specialized training before beginning intake or investigative responsibilities. The training should include investigative and interview techniques for formal complaints, including examining and interrogating witnesses; identifying misconduct even if it is not specifically named in a complaint; ethics; integrity; professionalism; the factors to consider when evaluating complainant or witness credibility; and the appropriate burdens of proof (i.e., preponderance of the evidence). The training should also clarify the limited circumstances in which informal complaints are appropriate, and discuss the methods for investigating those complaints.

We also recommend that the BPD policy on complaints specify a clear time line under which the complaint will be investigated and adjudicated. We recommend that the policy require that, absent exigent circumstances, any investigation be completed within 30 days. Extensions beyond the 30-day period should require the Chief's written approval and be communicated in writing to the complainant.

The BPD policy should clearly define the nature and scope of the investigation. In the course of our investigation we heard complaints both from citizens and from officers that the complaint procedure can be erratic and irregular. The lack of a formal, structured, and consistent policy poses difficulties to the complainant as well as the officer involved in the incident, both of whom are entitled to know in advance what their rights and responsibilities are in the course of the investigation.

In defining the scope and nature of the investigation, the BPD policy should provide that any investigation include an interview with the complainant and all witnesses, citizen or police. The policy should require that all forensic or other evidence be obtained and analyzed. A subject officer should also be required to produce all statements, reports and notes completed in his or her course of duties that are related to the allegations. We recommend that the BPD policy require that all interviews be mechanically recorded using an audio or video tape. The BPD should also establish guidelines as to when to compel statements from officers pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967). The BPD should ensure that, to the extent that the citizen complaint implicates possible criminal activity by the officer, officers are adequately informed of their rights against self-incrimination. As noted above, the investigative protocol for complaints should require an early assessment of whether serious misconduct may have occurred that may warrant a referral to the Office of the District Attorney.

The BPD rules and regulations do not explicitly state that officers must report violations of law or BPD codes of conduct that would be subject to disciplinary action. We recommend that a BPD policy require that officers who witness misconduct by other officers must report such conduct to the Sergeant on duty and, in the event that such misconduct is the subject of a citizen complaint, to any supervisory officer investigating such complaint. Finally, we recommend that the failure of an officer to report the misconduct of another officer be subject to a serious level of discipline.

4. Adjudication and Resolution of Complaints

The BPD should develop a protocol for the adjudication and resolution of complaints.

We recommend that the BPD develop a protocol for the adjudication and resolution of complaints that requires a summary of the investigation and an assessment of the alleged misconduct be presented to the Chief. The policy should address the fact

that a complaint may, or may not, require disciplinary action. The officer conducting the investigation of the complaint should be required to recommend a finding concerning the complaint. Whether any disciplinary measures should be imposed based upon the complaint should be left up to the supervisor of the officer concerned. (In some cases, however, the officer conducting the investigation could be the subject officer's supervisor, in which case that officer would both recommend disposition of the complaint as well as disciplinary measures.) Both the recommended adjudication of the complaint and the recommended discipline of the officer should be provided to the Chief.

The policy should require a finding as to whether: (1) the police action was in compliance with policy, training and legal standards; (2) the incident involved additional misconduct; (3) investigation of the incident revealed other incidents of misconduct by the same officer, or instances of similar misconduct by other officers; (4) the use of different tactics should or could have been employed; (5) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; or (6) the incident suggests that BPD should revise its policies, training, tactics, or equipment.

The BPD protocol should state that the preponderance of the evidence is the standard of proof for an administrative investigation. The recommended finding should note whether any disciplinary measures have been recommended by the subject officer's supervisor.

We recommend that the BPD policy regarding complaints require a clear resolution to every complaint from a member of a the public, with notice provided to all relevant parties. At the conclusion of the investigation, the complainant should receive a letter from the Chief setting forth the key facts of the complaint, including the name of the complainant, the internal control number, the date of the incident, the name of the officer(s) involved, and whether the complaint was withdrawn, exonerated, deemed unfounded, or sustained. If sustained, the letter should indicate whether remedial actions will be taken.[8]

The letter advising the citizen of the resolution of the complaint should be prepared by the supervisor conducting the

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[8] The protocol should also permit a finding that the subject officer acted in accordance with policy, but that the citizen complaint reveals a policy failure.

investigation, and then provided to the Chief at the conclusion of the investigation. If the Chief modifies the supervisor's recommendation, the reason for such modification should be in writing, and kept with the original recommendation in the complaint file. Thus, every complaint should begin with a citizen complaint form, and end with a letter, each document reflecting the same control number for ease of reference and later review, if any.

After the BPD revises its complaint policy, the new policy should be distributed to the community through a variety of outlets, including but not limited to distribution to local newspapers and posting at public buildings, where the policy should be maintained and preserved, to put the public on notice of these procedures.

B. Policy Development

The BPD should seek input from the community on policies that are of particular concern to members of the public.

The absence of any substantial revisions to the policies and procedures manual promulgated by the BPD in 1987 reflects that the BPD does not have a formal process for policy development. There is, as a result, no mechanism to ensure that policies are developed with feedback from the community. We recommend that the BPD create a policy development committee. This committee should seek input from the community on policies of particular interest to the community. While not all changes and recommendations by the community may be practical or appropriate, asking for feedback could increase community understanding and awareness of law enforcement issues and provide an opportunity for public education.

C. Name Plates

All BPD officers should wear name plates indicating their rank and surname.

In the course of our investigation, we observed that BPD officers did not wear name plates. The lack of name plates complicates efforts by citizens to report complaints of misconduct, and may lead to instances of officers incorrectly being the subject of citizen complaints. We understand that a request was made for funds to purchase name plates, but that the name plates have not yet been purchased. We recommend that these name plates be obtained and worn as part of the BPD uniform.

V. Supervisory Oversight

A. Risk Assessment and Management

BPD command staff should examine and review officer conduct on a regular basis as a proactive measure to minimize and detect misconduct, and to identify training and policy issues.

Our investigation thus far has revealed a lack of structured, formal oversight of BPD officers by command staff. There did not appear to be regular review procedures formalized in policy. To the contrary, review of officer activity appeared informal and ad hoc.

We recommend that the BPD implement policies and procedures for BPD supervisors to routinely review all aspects of BPD officer conduct, including a review of (1) probable cause for arrests and the appropriateness of charges filed, (2) reasonable suspicion for stops and searches that do not result in an arrest, and (3) uses of force as discussed above. We recommend that BPD policy require supervisors to review and approve all arrest reports, recording their approval on the arrest reports by handwritten or electronic signature, and review and approve a random sample of traffic citations to ensure that sufficient reasonable suspicion supports officer actions and that appropriate charges are filed.

We recommend that the BPD implement policies and procedures to collect data on individual officers for the purpose of maintaining, integrating, and retrieving information necessary for effective supervision and management of BPD personnel. We recommend that uses of force, citizen complaints, arrests and charges, searches and seizures, internal affairs investigations, service calls, training, awards and commendations, sick leave, civil lawsuits and other items relevant to an officer's conduct be included in the data collected. The BPD can then use this data regularly and proactively to promote best professional police practices; improve accountability and management; manage the risk of police misconduct and potential liability; and evaluate and audit the performance of officers and units on a regular basis.

The BPD can develop a risk assessment system appropriate to its needs and size. Such systems are often referred to as Early Warnings Systems (EWS). Whether paper-based or computer-based, even a simple EWS could provide a useful assessment of each officer's conduct. The EWS should contain information on all

investigations and complaints, including non-sustained complaints and complaints prior to final disposition, uses of force, criminal arrests and charges, civil lawsuits, training history, supervisory reviews, discipline, and other corrective actions, as well as awards and commendations. We recommend that the BPD require supervisors, including command staff, to review this data for every officer they supervise on a regular, predetermined basis, such as every quarter.

The policy implementing these recommendations should also establish guidelines regarding specific events that will trigger an additional supervisory review, such as a specific number of uses of force or citizen complaints within a discrete period. Once an officer has been selected for this additional review, a report should be prepared that details all use of force reports, formal and informal complaints, calls for service, sick leave, counseling reports, civil lawsuits, commendations, and "no complaints" pertaining to the officer within the past ten years. The officer's supervisory sergeant and command staff should then meet to discuss the report and determine if any corrective action is warranted. The supervisory sergeant and command staff's recommendations should then be forwarded to the Chief for his review and implementation. The effectiveness of the implemented recommendations should be determined by monitoring the officer and drafting written reports on the officer's conduct on a monthly basis. Both the supervisory recommendations and the written monthly report should be included in the officer's file.

We recommend that the BPD consider utilizing peer reviews of the information contained in the reports by comparing complaints, use of force reports, and other pertinent information about a particular officer with similar information from other officers on the same patrol team or shift. In addition, the policy should provide explicit guidance to supervisory officers reviewing reports to ensure that patterns of possible misconduct are identified, analyzed, and addressed properly by command staff. The aim of this process is to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct actually develops.

VI. Officer Training

A. Field Training

The BPD should develop a field training program for new BPD officers.

A structured field training program is essential for

training new recruits. Field training for new officers is an integral component of any comprehensive officer training program, and minimizes the risk of officers engaging in problematic behaviors, including the use of excessive force. Field training typically occurs during an officer's first twelve weeks on duty following police academy training. The BPD does not have a structured field training program for new officers.

Well-qualified field training officers (FTOs) are critical to ensuring well-trained police recruits. BPD has no policy regarding a field training program and, we understand, has only one officer who is currently certified to be an FTO. We recommend that the BPD develop and implement a field training program that utilizes FTOs to supervise and train new BPD officers. FTOs should have at least three years experience on the BPD. Additionally, FTO instructors should have completed a course on how to serve in that capacity. An FTO candidate's experience and interpersonal skills should also be considered as selection criteria. We recommend also that the BPD take measures to recruit and train qualified FTOs, including providing incentives to current officers to encourage them to apply to become FTOs. The BPD should develop and implement a comprehensive policy regarding field training, including a mechanism for evaluating FTOs and for removing FTOs who fail to perform adequately, and whose actions while serving as FTOs would have disqualified them from selection.

B. In-service Training

The BPD should develop and implement in-service training for all BPD officers.

In-service training is a valuable tool for ensuring that officers maintain familiarity with issues that are essential to police work. Although BPD officers receive firearms training bi-annually, there is no other structured training program on use of force, defensive tactics, policies and procedures, current legal issues or other issues that are essential to police work. We recommend that the BPD develop and implement an in-service training program for all officers. This program should provide a minimum of sixteen hours per year of training (excluding firearms re-qualification) on police topics as determined by BPD's Chief. We recommend that the training topics include the use of force, searches and seizures, legal developments and police integrity. This training should be in addition to the bi-annual firearms training. We recommend that training be conducted by instructors who have been trained and certified to be instructors, and who are competent in the subject matter.

As discussed above, we recommend that the BPD in-service training include de-escalation techniques for interactions with persons with mental illness and those who may be under the influence of drugs or alcohol.

We note that one potential resource for the BPD in establishing and improving in-service and field training officer programs may be the longstanding training and grant programs administered by other components of the Department of Justice, such as the Office of Justice Programs. While these programs are completely separate and independent of the Civil Rights Division's investigations, we would be pleased to provide you with contact information for exploring the possibility of such assistance.

IV. Conclusion

We strongly urge the BPD to adopt these technical assistance recommendations as it revises its policies and procedures. We look forward to working with you and the BPD as our investigation proceeds.

Sincerely,

DAVID N. KELLEY
United States Attorney
Southern District
Of New York

BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

By: _____
DAVID J. KENNEDY
Assistant U.S. Attorney
86 Chambers Street
3rd Floor
New York, NY 10007
(212) 637-2733

_____
SHANETTA Y. CUTLAR
Chief
Special Litigation Section

cc: Chief Richard Sassi
City Manager Joe Braun