



NEW YORK CITY JOINT REMEDIAL PROCESS

On NYPD's Stop, Question, and Frisk,
and Trespass Enforcement Policies



FINAL REPORT AND RECOMMENDATIONS

Hon. Ariel E. Belen (Ret.)
Facilitator

**NEW YORK CITY STOP & FRISK
JOINT REMEDIAL PROCESS**

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Cover Photo: The cover page contains a photograph of an abandoned warehouse visible from Third Street in the Gowanus section of Brooklyn. The graffiti on the parapet reads "End Stop and Frisk Hands off the Kids"

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SECTION I: EXECUTIVE SUMMARY



Justice Ariel E. Belen (Ret.) was appointed by Judge Analisa Torres of the Southern District of New York in November 2014 to serve as the Facilitator to guide the Joint Remedial Process described in the “Remedies Opinion” in *Floyd v. City of New York* and *Ligon v. City of New York* Nos. 08 Civ. 1034 and 12 Civ. 2274. *See* 959 F. Supp. 2d 668 (S.D.N.Y. 2013). The Remedies Opinion highlighted community input as a “vital part of a sustainable remedy in this case,” and placed the input of those communities “most affected by [the New York City Police Department’s (“NYPD”)] use of stop and frisk” at the “center of the Joint Remedial Process.” In the Court’s view, “If the reforms to stop and frisk are not perceived as legitimate by those most affected, the reforms are unlikely to be successful.” *Id.* at 686. The Remedies Opinion ordered the Joint Remedial Process to provide supplemental reform ideas in addition to the “Immediate Reforms” overseen by Monitor Peter Zimroth. These supplemental reforms may be no broader than necessary to bring the NYPD into constitutional compliance.

CONVENING PHASE

In his role as Facilitator, Justice Belen conducted, along with the parties and various stakeholders, a civic engagement process to build relationships with individuals and

organizations most directly impacted by the NYPD's unconstitutional stop, question and frisk ("SQF") and trespass enforcement policies. The Facilitator and his Team met with over 40 organizations to obtain input concerning proposed reforms related to the SQF and trespass enforcement practices of the NYPD and to help develop the process by which this community engagement should be conducted.

FOCUS GROUP PHASE

The Facilitation Team conducted a total of 64 focus group meetings — 40 groups focused on street stops and 24 groups focused on trespass enforcement. These focus groups were done in collaboration with community organizations, advocacy groups, community centers within New York City Housing Authority ("NYCHA") developments, and the NYPD. The Facilitation Team also participated with the Monitor in focus groups of NYPD patrol officers, sergeants, lieutenants, commanding officers, and executives. Focus Groups were conducted between October 2015 and February 2017.

LEADERSHIP MEETING PHASE

The Facilitation Team conducted a total of 19 leadership meetings over the course of the Joint Remedial Process. The goal of the leadership meetings was to seek reform ideas from thought leaders at community, advocacy, clergy and policy organizations. The views shared at these meetings represented the judgement of professionals often based on their direct work with individuals and communities impacted by unconstitutional SQF and trespass enforcement practices. The formal meetings took place between July 2016 and February 2017.

COMMUNITY FORUM PHASE

The Facilitation Team conducted 28 community forums throughout the 5 boroughs between October and December of 2016. The Community Forum Phase produced a series of public proceedings that included collaboration with the NYPD and many grassroots, community, clergy, and police reform organizations. These organizations worked in conjunction with the Facilitation Team to bring communities most impacted by SQF to solutions-oriented conversations in the form of community forums. Nine of the forums included the attendance and active participation of NYPD officers.

FINAL REPORT PHASE

From January 2017 to March 2018, the Facilitation Team met with the plaintiff teams in the *Floyd*, *Davis*, and *Ligon* cases, as well as the Monitor's team and the NYPD to further develop and contextualize proposed reforms related to the NYPD's SQF and trespass enforcement policies. Concurrently, the Facilitation Team collated reform suggestions from the Focus Group, Leadership Meeting, and Community Forum Phases to extract overarching themes for the Final Report.

In total, the Joint Remedial Process was able to reach nearly 2700 civilians and police officers across New York City, and over 80 different organizations both nationally and locally, over a three-year course of proceedings (*see* Figure 1).

Figure 1: Estimated number of participants

PHASE	ESTIMATED NUMBER OF PARTICIPANTS
Convening (Relationship Building) Phase	240 ¹
Focus Group Phase	516
Leadership Meeting Phase	132
Community Forum Phase	1,777
TOTAL	2,665

This Final Report will provide by sections an Introduction; General Overview of the Joint Remedial Process; Recent History of Police-Community Relations in Impacted Communities with Calls for Greater Respect, Transparency, and Accountability; Joint Remedial Process Design and Development; Joint Remedial Process Findings and Recommendations; Areas for Policy Consideration; Process Observations; and an Appendix. In addition, nine white papers from community groups and the NYPD on the needs and current status of reforms are appended. The Final Report makes 14 specific reform recommendations based on the community input that we received during the Joint Remedial Process. It also contains several areas for policy consideration that although outside the scope of the Joint Remedial Process merit consideration by stakeholders and policy makers alike.

¹ Estimate based on roughly 80 organizational meetings with an average of three community leaders per meeting.

SECTION II: INTRODUCTION

Although many Americans may not be able to articulate the basis for their opinion, they would agree that as a general rule a police officer cannot approach, detain, question, frisk, or search someone on a mere whim. Most Americans probably believe that because we do not live in a police state, the police are not at liberty to just stop a person on the street and question them much less search them without having a good reason to do so.

The legal reason that police officers cannot do so is because of an interpretation of the Fourth Amendment prohibition against unlawful searches and seizures rendered fifty years ago by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968). In thousands of opinions issued over the past half century, state and federal courts have relied on *Terry's* holding that a police officer may only stop and briefly detain a person for questioning if that officer has a reasonable suspicion, supported by articulable facts, that that person has engaged in criminal activity or is about to engage in criminal activity. And under *Terry*, a pat down (that is, a frisk) is only permitted when an officer reasonably suspects that the person he or she has stopped is armed or dangerous: the purpose of a frisk is only to see if the person who has been stopped has a weapon, it is not a generalized search for contraband.

Imagine then that you live in one of the tonier sections of New York City, say the Upper East Side of Manhattan, and that you are white, middle or upper class. Imagine that your teenage son tells you that he was stopped, questioned, manhandled, searched, and left standing with his book bag emptied on the sidewalk by some New York City Police Department (“NYPD”) officers who never explained why they had done this to him. Imagine further that he says that this is happening to him on his way back and forth from school, sometimes every day, sometimes

once or twice a week, sometimes once or twice a month. Imagine further that you are satisfied that he has not been breaking the law, and in fact he has not been arrested or issued a summons during any of these encounters, and that he can't tell you the name of any of the officers involved since the one or two times he asked for a name, the officers became extremely hostile if not violent. Imagine that you tried repeatedly to find out who was doing this to your son, and for what reason, and that you could never get any explanation from the local precinct or the NYPD. Imagine further that over the course of many months, if not years, your son was being subjected to what you can't ever imagine happening to you because you are not a criminal, you live in a nice neighborhood, and nothing in your life experience remotely suggests that police officers can do this to you precisely because you live in New York City, in America, and pay taxes to support the very same police department that is treating your son in this unimaginable way.

At some point, you go on the Internet and find out the police can only stop you in this way if they have reasonable suspicion to believe you have committed a crime. Your research also tells you that reasonable suspicion means things like a police officer sees you take cash in exchange for a glassine envelope, or sees you at night trying to break into some closed stores, or sees you in a parking lot moving from car to car trying to jimmy the locks. Then you might think: "Well I have never done these things and my son may have some issues, but he would never do these things — what is going on here? Is this America?"

All of the above is not just the product of someone's imagination. It happened repeatedly in New York City over the course of roughly two decades. But it happened in places that most middle class Americans neither work nor live.

It was commonplace in neighborhoods such as Harlem, Washington Heights, and the Lower East Side in Manhattan; East New York, Bedford Stuyvesant and Red Hook in Brooklyn; Stapleton in Staten Island; and in the South Bronx; as well as in New York City Housing Authority (“NYCHA”) developments around the City. Hundreds of thousands of these stops were reported by the NYPD from 2003 to the present. The vast majority, indeed 87%, of those stopped were black or Latino youth between the ages of 14 and 24. Although the stops were nominally based on reasonable suspicion that a crime had occurred or was in progress, an average of only 12% of these stops resulted in an arrest or a summons. It is, of course, difficult to reconcile the notion of “reasonable” suspicion with a failure rate of over 80%.²

Presumably, the reason that most New Yorkers were unaware that so many fellow New Yorkers had suffered the shock and indignity of these unlawful stops was that they occurred in poor, isolated neighborhoods and housing developments that although sometimes only blocks away, were far removed from the lives and consciousness of middle and upper class New Yorkers.

The number of recorded stops went from approximately 150,000 annually in 2003 to about 684,000 in 2011. The number of recorded stops then started to drop to the point that in 2017, the NYPD reported less than 10,000. Although there is a serious concern with underreporting now, it is generally agreed that the overall number of stops has been reduced significantly. Besides the obvious concerns raised by the unlawful and widespread violation of constitutional rights, these policies also had the effect of traumatizing an entire generation of

² It should be noted that statistics mentioned within this paragraph were based on several analyses of NYPD publicly available Stop, Question and Frisk Data retrieved from <http://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.pag>

young people. Sadly and ironically, the NYPD itself now accepts that there was no correlation between these stops and public safety as crime in the City has consistently decreased through this period of time even as these unlawful stops increased and then decreased so dramatically.

The Joint Remedial Process was ordered as a result of findings after a trial by Judge Shira Scheindlin of the Southern District of New York that the NYPD had engaged in widespread violations of the civil rights of hundreds of thousands of New York City residents by conducting these stops and in the manner they enforced trespass laws in public housing. The Court issued its post-trial findings in an opinion we will refer to as the “Liability Opinion.” *See* 959 F. Supp. 2d 540 (S.D.N.Y. 2013). The Court found not only that these practices violated the federal and New York state constitutional right to be free from unreasonable searches and seizures, but that there had also been widespread racial profiling in the manner in which the NYPD implemented its stop, question, and frisk and trespass enforcement practices.

The NYPD polices the largest, most diverse city in the United States. New York City has a resident population of approximately 8.5 million with a daytime population including commuters and tourists that far exceeds that number. It comprises 302.6 square miles spread out over five boroughs, four of which are non-contiguous and three of which are on separate islands with only the Bronx forming part of the mainland United States. Within its borders are vast skyscrapers, two international airports, several major transportation hubs, 472 subway stations, some of the richest real estate on the planet, and some of the poorest, most crime-affected neighborhoods in the country. It is a world capital of finance and culture, and home to national landmarks and historic icons such as the Statue of Liberty, the Empire State Building, and the World Trade Center. Tragically, this made it the victim of the worst terrorist attack in U.S. history on September 11, 2001.

All of these social, geographic, demographic, and structural elements present unique challenges to the NYPD. The NYPD must respond to and protect all of the City's residents against a constant terrorist menace as well as the more mundane but just as potentially deadly threats of street crime, drug profiteering, and gun violence.

The NYPD is arguably the most technologically advanced and efficient police force in the world. Its crime fighting strategies are renowned and serve as a model for urban police departments worldwide. The NYPD is also the largest police force in the country with approximately 50,000 employees including 35,000 police officers, with approximately 20,000 officers on patrol on any given day. It has managed to reduce crime to unimaginably low levels lessening the incidence of homicides, for example, from 1,444 in 1970 to fewer than 300 in 2017. It has broken all previous records in crime reduction and New York City is now arguably the safest large city in America.

Policing is a dangerous activity. It entails responding to natural or manmade emergencies on a regular basis, the kinds of situations that most people avoid at all costs. The overwhelming majority of police officers do their very dangerous and often unappreciated work out of a deep sense of devotion to their fellow New Yorkers. It often requires that an officer confront violent criminals who have little if no respect for accepted norms of civilized behavior. From the date of the commencement of the Joint Remedial Process in November, 2014, to the present, seven police officers, 6 men and 1 woman, have been killed in the line of duty. These honorable public servants lost their lives by putting on a uniform and agreeing to put themselves between criminals and the residents of New York City. This commitment to serve and protect even at the risk of one's own life must always be kept top of mind in the context of recommending reforms.

New York City is a far different place than the City of the late 1980's and early 1990's when certain stop, question, and frisk policies were beginning to be implemented. Any New Yorker who has lived through these decades can remember a time when crime was the order of the day. No one would think of riding a subway train after 9:00 p.m. for fear of being mugged or assaulted. Chain snatchings, robberies, car thefts, pickpocketing, prostitution, open drug dealing, shootings, and homicides were commonplace. Entire neighborhoods would shut down at dark and people walked the streets at night at their own peril. Even though it may have seemed appropriate to adopt proactive policies and procedures in response to this epidemic, it is now recognized that crime levels consistently dropped throughout this period even as the number of unconstitutional stops, and thus the total number of stops, began to significantly decrease after 2011. In other words, even if one thought it appropriate to subject the residents of the neighborhoods most beset by high crime to wholesale violations of their constitutional rights and the indignity and trauma this inflicted in the name of reducing crime, there just wasn't any good reason to do so since there was no correlation between the number of stops and reductions in crime.

Which is not to say that widespread unjustified stops and racial profiling means that the officers making these stops are racist or don't care about the communities they police. Officers in New York City felt great pressure to increase the number of stops they made. This pressure came from the NYPD itself. As has been well-chronicled both in the Liability Opinion and in the Monitor's Seventh Report dated December 13, 2017, one source of this pressure was the reliance on certain metrics in measuring performance. In essence, commanding officers felt pressure at CompStat meetings to demonstrate that the officers they supervised were very active on the job. Line officers in turn responded to this pressure by making many stops. The pressure was

institutionalized in a performance evaluation system which tracked activity such as summonses, arrests, and stops as the basis for determining assignments, promotions, and other personnel matters. A new performance evaluation system put into place during the Monitorship specifically excludes such metrics as a measure of performance.

This report should not be read in any respect as a condemnation of the NYPD and its officers. The effort, instead, is to illustrate how these unconstitutional stop, question, and frisk and trespass enforcement policies led to widespread trauma, fear, and deep mistrust across many neighborhoods in New York City and to give a forum for these impacted communities to propose any recommendations they may have for further reforms to the NYPD.

In order to maintain civil society and democratic processes, we expect police officers to act with great restraint and proceed carefully and deliberately in their encounters with the public. The NYPD fully embraces this concept in its current leadership and has made significant reforms both as part of the pending Monitorship and on its own. These reforms include the development of one the most enlightened police training curriculums in the country and the institution of community policing through the Neighborhood Coordinating Officers Program. As set forth in the Monitor's Seventh Report, Commissioner James O'Neill himself appears in a training video acknowledging the ongoing problems, saying the following:

There was a debate in New York City during the past several years about the NYPD's use of stop, question, and frisk. It was a tool that was over-used and sometimes misused. And that led to widespread resentment and distrust of our department, especially in communities of color. To be clear: I'm not laying fault for this on you. You did what the leadership of the department asked, and the leadership bears responsibility for the consequences. The NYPD has since scaled back on stops dramatically. The Department is now working with a court-appointed federal monitor to ensure that stop, question, and frisk in New York City meets

constitutional standards. The law surrounding this policing tactic can seem complicated. But it is critically important that we learn the law and work within its confines. Doing so will protect you from legal action. It will also help preserve an essential policing tool.

In 1968, the U.S. Supreme Court recognized [in *Terry*] that – to do our job — officers must have the authority to conduct lawful stops based on reasonable suspicion of criminality. Cops know that stops help prevent and solve crimes every day. But it is also clear that their overuse, or misuse, undercuts both the legitimacy of the stops and the legitimacy of the police. As we move forward with neighborhood policing and seek greater connectivity with every community across the city, it is essential that enforcement generally — and investigative encounters in particular — are conducted with precision. Large numbers of arrests, summonses, and stops are not our goal. A safe city is our goal. And we can best achieve it by working more closely with the people in every neighborhood, and by exercising our police powers with discretion and good judgment.

The NYPD deserves great credit for these reforms. However, the communities most adversely affected by the widespread abuse of stop, question, and frisk and trespass enforcement policies point out that these abuses, while significantly diminished, still continue and are underreported. There remains considerable doubt in these communities that there were less than 10,000 stops in 2017. There exists deep levels of mistrust of the NYPD, and great skepticism remains about the NYPD's willingness to be transparent and to hold its officers and managers accountable, especially around the discipline of police officers engaging in misconduct. Aided by the plaintiffs' presentation of testimony from policing experts, the Court ordered certain "Immediate Reforms" to be developed by the Court-appointed Monitor in consultation with the parties. At the same time, the Court was not satisfied with only relying on the advice of policing experts. The Court recognized that "The communities most affected by the NYPD's use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms." And

that “No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety.”³

The Court ordered the appointment of a Facilitator to conduct a Joint Remedial Process in consultation with the parties to obtain this community input. It is important to bear in mind that much has happened since the commencement of the Joint Remedial Process more than three years ago. Cell phones and other devices have been used to record instances of excessive force and of unjustified shootings of unarmed civilians by police officers that have gone viral through social media and otherwise and have resulted in civil unrest. As a consequence, there have been federal civil rights investigations and consent decrees in cities throughout the United States. In New York City alone, there have been prosecutions and administrative disciplinary proceedings brought against police officers for the deaths of Eric Garner and Ramarley Graham.

While the Joint Remedial Process has evolved in this historical and political context, its jurisdiction is limited to reporting on recommendations for additional reforms from those communities most adversely affected by the stop, question, and frisk and trespass enforcement policies of the NYPD. At the same time, the legacy effects of stop, question, and frisk and trespass enforcement abuses are still being felt in impacted communities, as is the historical trauma caused by decades upon decades of police misconduct not limited to stop, question, and frisk and trespass enforcement abuses.

While the continuing challenges of other criminal justice issues such as unjustified police violence and mass incarceration are not within the specific scope of the Joint Remedial Process,

³ Remedies Opinion, 959 F. Supp. 2d at 686.

it is difficult to divorce stop, question, and frisk and trespass enforcement abuses and reform from these contexts. This is because they are clearly important and contribute to worsening relations between the NYPD and impacted communities. This, in turn, has a direct impact on how the police perceive people and how they react to those they approach and question and how members of the community perceive and react both before and after being approached and questioned by the police. The legal definition of a stop, for example, is that a reasonable person approached by an officer does not feel free to leave. An individual living in a community awash with destructive police-community interactions is likely to be more apt to believe they have been stopped when an officer approaches than a well-heeled resident of the Upper East Side for whom stop and frisk, excessive force, and mass incarceration are just things they may read about in the New York Times. And for many reasons, including distrust and implicit bias, an officer approaching members of these disparate communities is more apt to find “reasonable suspicion” of criminal activity, the circumstance warranting a stop, in one community than in the other. The possibility of escalation is also heightened as these encounters are fraught with tension.

* * *

This Final Report provides by sections a General Overview of the Joint Remedial Process; Recent History of Police-Community Relations in Impacted Communities with Calls for Greater Respect, Transparency, and Accountability; Joint Remedial Process Design and Development, with its component phases; Joint Remedial Process Findings and Recommendations; Areas for Policy Consideration; Process Observations; and an Appendix.

The Final Report makes 14 specific reform recommendations based on the community input that we received during the Joint Remedial Process. It also contains several areas for policy

consideration that although outside the scope of the Joint Remedial Process merit consideration by stakeholders and policy makers alike.

The overarching theme of the input received during the Joint Remedial Process, which is reflected in the recommendations in this Final Report, is that the NYPD must demonstrate greater respect, transparency, and accountability in order to gain greater trust, goodwill, and collaboration in impacted communities. There are many organizations and individuals who seek this collaboration in these communities. We hopefully have charted a course for the NYPD to pursue this collaboration.

I would like to thank Michael D. Young, who served as Deputy Facilitator, for his great interest and assistance in the development, implementation, and administration of the Joint Remedial Process. Mr. Young helped developed and participated in the Convening and Leadership Phases of the Joint Remedial Process. His guidance and insights were invaluable. Mr. Young is a nationally recognized full-time neutral at JAMS since 1989. He received an A.B. with Honors from Brown University and a J.D. cum laude from Harvard Law School.

I would like to thank the following members of the Facilitation Team for their tremendous diligence and devotion to this multi-year project.

JRP Senior Advisor Reinaldo Rivera recently retired from the United States Department of Justice Community Relations Service where he served as a National Program Manager and Regional Director for Region II which includes New York, New Jersey, Puerto Rico, and the United States Virgin Islands. Mr. Rivera completed advanced graduate study in Administration, Planning and Social Policy at the Harvard Graduate School of Education, where he received a

Master's Degree. He received a B.A. from Middlebury College graduating with Departmental Honors in Anthropology-Sociology.

JRP Project Manager Jeanene Barrett is a Ph.D. Candidate with The Graduate Center of the City University of New York - John Jay College of Criminal Justice. Ms. Barrett has a M.Phil. in Criminal Justice from The Graduate Center of the City University of New York, an A.M. in Social Work from the University of Chicago School of Social Service Administration, an M.S. in Human Services Administration from Spertus College, and a B.S. in Administration of Justice from Southern Illinois University, Carbondale. Ms. Barrett is an Adjunct Faculty member with appointments at John Jay College of Criminal Justice, Brooklyn College, and St. Joseph's College.

JRP Assistant Project Manager Valerie Paul holds a B.S. cum laude from the University of Central Florida. Ms. Paul completed two years of postgraduate research in Educational Psychology at The Graduate Center of the City University of New York where she served as a Research Assistant. She has also served as an Adjunct Faculty member at Hunter College. Ms. Paul is finalizing her thesis for an M.A. in Liberal Studies at The Graduate Center of the City University of New York.

JRP Project Attorney Cliff Bloomfield is associated with JAMS where he has worked on a wide range of commercial arbitrations. Mr. Bloomfield began his legal career as a litigation associate in New York where his practice focused on complex commercial litigation. Before joining JAMS, he served as a law clerk at both the United States District Court for the Southern District of New York and the United States Bankruptcy Court for the Eastern District of New

York. Mr. Bloomfield received his J.D. from the University of Pennsylvania Law School and his B.A. cum laude from the College of Arts and Sciences of Cornell University.

JRP Project Assistant Jennifer Dionicio holds a B.A. in Criminology from John Jay College of Criminal Justice where she is also a candidate for a M.A. in Criminal Justice.

Finally, I would like to thank Hon. Analisa Torres, United States District Judge for the Southern District of New York, for giving me this incredible opportunity to serve the people of the City of New York.

SECTION III: GENERAL OVERVIEW OF THE JOINT REMEDIAL PROCESS

This section will describe the genesis and mandate of the Joint Remedial Process. It will then look at similar community engagement efforts seeking input and community collaboration in developing reforms to local police departments in the United States. Finally, we discuss the initial efforts made to develop a community input process for a city the size of New York.

The Joint Remedial Process, and the appointment of a Facilitator to lead that process, is the result of three federal class action lawsuits filed in the United States District Court for the Southern District of New York: *Floyd v. City of New York*, which challenged the NYPD’s “stop and frisk” policies and practices; *Ligon v. City of New York*, which challenged the NYPD’s criminal trespass enforcement practices in privately owned buildings in the Bronx enrolled in the Trespass Affidavit Program (“TAP”); and *Davis v. City of New York*, which challenged stops and arrests for criminal trespass in New York City Housing Authority (“NYCHA”) buildings.

In August 2013, after a nine-week trial in *Floyd*, the Court found that the NYPD’s use of stop and frisk violated the Fourth and Fourteenth Amendments of the U.S. Constitution. In the *Floyd* Liability Opinion, the Court held that the NYPD violated the Fourth Amendment because officers were both making stops without reasonable suspicion and conducting frisks without a reasonable belief that the person who had been stopped was armed and dangerous. The Court found that the NYPD had violated the Fourteenth Amendment by “targeting young black and Hispanic men for stops based on the alleged criminal conduct of other young black or Hispanic men” — that is, the NYPD had been discriminating on the basis of race.⁴

⁴ Liability Opinion, 959 F. Supp. 2d at 664.

In the Remedies Opinion, also issued in August 2013, the Court established a multi-stage framework to bring the NYPD's use of stop and frisk into compliance with the law. The Court appointed a "Monitor" to oversee the reforms and, in the first instance, to work with the parties to develop and implement certain Immediate Reforms. But the Court also recognized that lasting reform was unlikely to occur without input from a broad spectrum of stakeholders. The Court explained that "The communities most affected by the NYPD's use of stop and frisk have a distinct perspective that is highly relevant to crafting effective reforms. No amount of legal or policing expertise can replace a community's understanding of the likely practical consequences of reforms in terms of both liberty and safety."⁵ Likewise, stakeholder participation contributes to the legitimacy of the reform process because "[n]either an independent Monitor, nor a municipal administration, nor this Court can speak for those who have been and will be most affected by the NYPD's use of stop and frisk."⁶ The Court also determined that "'ongoing communication and negotiation with the community about stop and frisk activities'" is important to building strong "police-community relations."⁷

In order to solicit stakeholder/community input, the Court appointed a "Facilitator" to engage in a "Joint Remedial Process." This process included "work[ing] with the parties and other stakeholders to develop . . . a more thorough set of reforms to supplement, as necessary, the Immediate Reforms."⁸ Justice Ariel E. Belen (Ret.) was appointed by Judge Analisa Torres of the Southern District of District of New York in November 2014 to serve as the Facilitator to

⁵ Remedies Opinion, 959 F. Supp. 2d at 686.

⁶ *Id.* at 686-87.

⁷ *Id.* at 687 (brackets omitted) (quoting Greg Ridgeway, RAND, *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*, at 44 (2007), a report commissioned by the NYPD, available at https://www.rand.org/content/dam/rand/pubs/technical_reports/2007/RAND_TR534.pdf).

⁸ *Id.* at 678.

guide the Joint Remedial Process. In the Court’s view, the heart “of the Joint Remedial Process [is] input from those who are most affected by the NYPD’s use of stop and frisk, including but not limited to” the following stakeholders:

members of the communities where stops most often take place; representatives of religious, advocacy, and grassroots organizations; NYPD personnel and representatives of police organizations; the District Attorneys’ offices; the [Civilian Complaint Review Board (“CCRB”)]; representatives of groups concerned with public schooling, public housing, and other local institutions; local elected officials and community leaders; representatives of the parties, such as the Mayor’s office, the NYPD, and the lawyers in this case; and the non-parties that submitted briefs: the Civil Rights Division of the [Department of Justice (DOJ)], Communities United for Police Reform, and the Black, Latino, and Asian Caucus of the New York City Council.⁹

The Court thus defined “stakeholder” broadly to include, among others, community members, police officers, and grassroots organizations.

The Court envisioned that the Joint Remedial Process would include “‘town hall’ type meetings in each of the five boroughs in order to provide a forum in which all stakeholders may be heard,” while recognizing that “[i]t may be necessary to hold multiple meetings in the larger boroughs in order to ensure that everyone will have an opportunity to participate.”¹⁰ Aside from this town hall directive, the Court granted the Facilitator, in consultation with the parties, broad discretion in developing a process to reach and solicit input from stakeholders.

⁹ *Id.* at 686, 687; *see also id.* at 687 (“Input from academic and other experts in police practices may also be requested.”).

¹⁰ *Id.* at 687.

The Court thought that “[t]he Cincinnati Collaborative Procedure and subsequent DOJ consent decrees and letters of intent [in other police reform cases could] be used as models”¹¹ It is clear from the record that the DOJ consent decrees and settlements the Court had considered included, at the very least, those in New Orleans, Louisiana and Seattle, Washington, in addition to Cincinnati.

“Community engagement” can take on different forms and serve different purposes. Before reviewing the stakeholder and community engagement efforts in Cincinnati, Seattle, and New Orleans, it is useful to consider:

- (i) the stages at which community input can play a role in police reform, such as during an investigation, before a consent decree is entered, and as part of the relief ordered in a consent decree;
- (ii) the potential objectives of such engagement, such as understanding the community’s perspective, identifying reforms, reporting on progress, soliciting feedback on the implementation of the reforms, and auditing/accountability;
- (iii) the various types of stakeholders, including affected citizens, police officers, community leaders, community service-based organizations, and advocacy groups;
- (iv) the various possible forms and formats of engagement — including meetings in small groups, town hall meetings, and surveys — as well as the possible participants in any given meeting, such as whether the participants are homogenous or the forum is open to the public or is in a more controlled, confidential environment; and
- (v) the difficulties inherent in reaching members of certain vulnerable populations, such as homeless youth or citizens who are distrustful of authority.

¹¹ *Id.*

A review of Department of Justice practices, for instance, indicates that, as a general rule, stakeholder engagement begins during the pattern-or-practice investigation, and continues prior to the DOJ's negotiation with the police department of the terms of a settlement (usually taking the form of a consent decree), which is typically a private, bilateral negotiation between the DOJ and the police department. Thereafter, the resulting agreement will include a framework for continued stakeholder or community input.

During the investigation stage, the DOJ begins by meeting with key stakeholders, including “law enforcement leadership, local political leadership, police labor unions and affinity groups, and local community groups[,]” and also later conducts interviews with these groups.¹² It then attempts to reach members of the community through town hall meetings, and creates voice and email mailboxes to receive information from community members. Depending on community input, the DOJ also may “reach out through neighborhood listservs, community blogs, social media, and radio stations;” the DOJ “also canvasses places communities gather — places of worship, street corners, apartment complexes, parks, shopping malls, and local businesses.”¹³ The DOJ’s “engagement involves outreach to civic leaders, faith leaders, neighborhood groups, advocacy organizations, local business owners, and individuals.”¹⁴ Prior to negotiating reforms with the police department, the DOJ:

holds community meetings and draws on relationships built during the investigation stage to involve the community in building solutions. Often the Division will present specific briefings on its findings to community representatives and hold meetings focused on particular aspects of those findings designed to drill down on

¹² The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present (January 2017), at 10.

¹³ *Id.* at 13.

¹⁴ *Id.*

specific remedies. The Division always encourages community representatives to present specific proposals for reform, in writing or at a community meeting, and works to incorporate those proposals into its reform agreements.¹⁵

Reform agreements entered into with the DOJ between 2012 and 2016 include additional forms of community engagement — typically not conducted by the DOJ itself. First, the police department is required to develop and implement a plan to increase police-community engagement. Second, the court-appointed monitor is required to hold regular public meetings updating the community on the reform process. Third, reform agreements require periodic community surveys to create a baseline to track community perceptions of the department over time.

Finally, many agreements call for the creation of community committees or councils made up of stakeholders, including representatives of rank and file officers. These committees hold public meetings and communicate community concerns and reform proposals to law enforcement. Unlike Civil Complaint Review Boards, they typically are not responsible for investigating or resolving civilian complaints about misconduct. Perhaps the leading example of such a committee is Seattle's Community Police Commission, which became a permanent body through legislation enacted in 2017.

As a useful comparison to community engagement efforts developed during the Joint Remedial Process, we now consider various forms of community engagement utilized during the

¹⁵ *Id.* at 17.

police reform efforts in Cincinnati, Seattle, and New Orleans.¹⁶ Elements of the various forms of community engagement described in the foregoing are seen in each of these cities.

Cincinnati (2001-2008)

Size of Population/ Number of Sworn Personnel

331,159 (2001)/1047 (2003)

In March 2001, the American Civil Liberties Union (“ACLU”) and the Cincinnati Black United Front (“CBUF”) brought a class action lawsuit alleging that Cincinnati’s police department had discriminated against African Americans for decades, including with respect to its use of stop and frisk and incidents of excessive force. Rather than litigate the issues raised in the complaint, the parties agreed to engage in a “collaborative procedure” to reach a settlement based on stakeholder input.¹⁷

Under the collaborative procedure, a facilitator was appointed to gather input from the community, stakeholders, and policing experts. As explained by Judge Dlott:

The . . . complaint alleges social conflicts of great public interest to the community. To the extent possible, the collaborative will include an opportunity to receive the viewpoints of all persons in the Cincinnati community regarding their goals for police-community relations. The participants will state their goals for police-community relations; why these goals are important; and how they would achieve these goals (What, Why, and How data). The collaborative will include an opportunity for dialogue about these responses in structured group sessions. As described below, the collaborative will also include a process for expert analysis of

¹⁶ It must also be noted that police reform consent decrees post-dating the Remedies Opinion and the initiation of the Joint Remedial Process, particularly those entered into in Newark, New Jersey and Baltimore, Maryland, have called for extensive community engagement.

¹⁷ *In re Cincinnati Policing*, 209 F.R.D. 395, 397 (S.D. Ohio 2002); *Tyehimba v. City of Cincinnati*, No. C-1-99-317, 2001 WL 1842470 (S.D. Ohio May 3, 2001).

the current practices of the Cincinnati Police Division (CPD) and practices in other communities.¹⁸

CBUF, the ACLU, the Cincinnati City and Police Administration, and the Cincinnati Fraternal Order of Police acted as an advisory group. The advisory group organized the population into eight stakeholder groups: (1) African American citizens; (2) city employees; (3) police and their families; (4) white citizens; (5) business and education leaders; (6) religious and social service leaders; (7) youth; and (8) other minorities.¹⁹

As an initial step in gathering community input, all citizens were asked to complete a questionnaire seeking input on goals for police-community relations:

Instructions for access to the online questionnaire were broadcast and published by all of the local media outlets, hard copies were distributed through churches and social service agencies and in the police department, and, to assure participation of inner city African-American and Appalachian youth, interviewers canvassed youth clubs, street corners, and basketball courts to record responses from young residents of the city.²⁰

Roughly 3,500 questionnaires were completed, including 750 from youth.

Next, 10 to 25% of those who had completed the questionnaire, about 800 people, participated in separate “four-hour follow-up dialogue and agenda-setting meetings within their respective identity groups.”²¹ These feedback sessions

consisted of carefully facilitated small-group discussions regarding people’s motivations and values. A staff of some thirty volunteer Facilitators expertly guided this process. As part of the feedback

¹⁸ *Tyehimba*, 2001 WL 1842470, at *1.

¹⁹ See Jay Rothman, Ph.D., *Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio*, 22 Ohio St. J. on Disp. Resol. 105, 114 (2006).

²⁰ *Id.* at 115-16.

²¹ *Id.* at 116.

sessions, these facilitated dialogue groups enabled participants to have an opportunity to express deeply held feelings and find resonance with others in their group, as well as to provide an underlying value basis for constructive steps for addressing the broader issues of race and police-community relations. Following the small sessions, each group was provided with a set of shared goals compiled from [the facilitator's] analysis of their group's questionnaire responses. Representatives from each group then negotiated and reached agreement on their group's goals.²²

Ultimately, the facilitator sought consensus on five shared goals from representatives of the eight stakeholder groups (about 60 to 80 of the stakeholders in total). These goals were incorporated into the parties' negotiations leading to the entry of a Collaborative Agreement in April 2002.

The Collaborative Agreement included additional opportunities for community engagement. For instance, the parties agreed to “develop and implement a plan of community engagement to prepare Cincinnati residents, business owners, non-profit agencies, community and religious organizations, and others as partners with the City in problem solving activities.”²³ In addition, periodic citywide surveys were to be conducted to assess public “attitudes toward and satisfaction with the police.”²⁴ The department also conducted district “town hall” meetings in each of the City's five divisions.

A rather significant component of the agreement in Cincinnati was implementing a strategy of community problem oriented policing (“CPOP”).²⁵ As Rothman explains, “The main concept of CPOP is that problem solving should become the principal policing strategy and that

²² *Id.* at 130.

²³ Collaborative Agreement in *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Ohio), at 4, *available at* <https://www.cincinnati-oh.gov/police/linkservid/27A205F1-69E9-4446-BC18BD146CB73DF2/showMeta/0/>

²⁴ *Id.* at 11.

²⁵ *See id.* at 4-10.

citizens and police working together provides the foundation for improving community safety.”²⁶

One mechanism for stakeholders to play a role in CPOP was the Community-Police Partnering Center:

The Community-Police Partnering Center at the Urban League of Greater Southwestern Ohio led the CPOP work in partnership with the police department, and it received substantial private funding (\$1 million per year for five years) to do so. It also solicited individuals from throughout the community to join the Friends of the Collaborative, a loosely organized community advisory group that consulted on CPOP and [Collaborative Agreement] implementation. This group engaged in dialogue with police representatives about problem-oriented policing practices and reviewed use of force and investigation statistics of the civilian-governed Citizen Complaint Authority established under the CA. The Friends of the Collaborative did not meet regularly, and it was never intended to exclusively review department policies, or to make formal recommendations or prepare reports. Subsequently, the City Manager’s Advisory Group (MAG) assumed responsibility for advising the city and police department informally on general police issues of concern to the community. The city manager appoints its members without specific terms and there is no defined number of members or representation. The city manager chairs MAG, which meets about three times each year, and is not responsible for preparing reports or recommendations.²⁷

Although court supervision of the Collaborative Agreement ended in 2008, in June 2017, City officials retained a panel of experts to examine the progress that had been made and issues that had arisen. In January 2018, the group issued a report that began, “The November 2017 report from the City — Community Problem-Oriented Policing Strategy — strongly signals that

²⁶ Rothman, *Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio*, 22 Ohio St. J. on Disp. Resol. at 127.

²⁷ Betsy Graef, *The Seattle Community Police Commission: Lessons Learned and Considerations for Effective Community Involvement*, 14 Seattle J. for Soc. Just. 1, 43-44 (2015) (based on interviews by the author).

the City of Cincinnati has abandoned the principles of the Collaborative Agreement.”²⁸ Among other reform proposals, the panel recommended strengthening MAG:

Strengthen the MAG so it can provide robust oversight of the Collaborative Agreement. The MAG should focus on patterns of practice and not on specific incidents (except in so far as they relate to patterns). Important decisions about major provisions of the Collaborative Agreement should not be made unilaterally. The MAG is the obvious forum for raising concerns about resources, priorities, abilities, conflicts, and commitments should any party find it difficult to live up to its obligations in the Collaborative Agreement or in any subsequent refreshed agreement. Rather than MAG members discovering changes after one party has made them, the MAG should be informed about difficulties prior to any commitment to a solution, and the MAG’s participants should undertake an exploration of what needs to be done (if anything). The City should examine Seattle’s Police Commission for ideas about collaborative problem-solving that might be applicable to Cincinnati.²⁹

It remains to be seen whether the MAG, once further empowered, will be able to help align stakeholder interests with the goals of the Collaborative Agreement.

²⁸ Saul A. Green, Joseph E. Brann, Jeffrey Fagan, Ph.D., John E. Eck, Ph.D., *Progress Report: City of Cincinnati Collaborative Agreement, The Status of Community Problem Orientated Policing Strategy* (1/4/2018), at 1, available at <https://www.cincinnati-oh.gov/police/assets/File/Community%20Problem-Oriented%20Policing%20-%20Progress%20Report%20-%20Saul%20Green%20et%20al%201-04-18.pdf>

²⁹ *Id.* at 12.

New Orleans and Seattle

The settlements in New Orleans and Seattle arose after investigations pursuant to 42 U.S.C. § 14141 by the Department of Justice. As indicated above, the DOJ seeks stakeholder and community input during the investigative process; that type of community engagement, which the DOJ has described only in general terms, is not including in the following.

New Orleans (2012-Open)

Size of Population / Number of Sworn Personnel

343,829 (2010) / 1452 (2010)

In March 2011, the Department of Justice concluded an investigation into the New Orleans Police Department (“NOPD”) pursuant to section 14141. The DOJ began its report on that investigation by stating that “Basic elements of effective policing — clear policies, training, accountability, and confidence of the citizenry — have been absent for years. Far too often, officers show a lack of respect for the civil rights and dignity of the people of New Orleans.”³⁰ The DOJ found a pattern and practice of excessive use of force, unconstitutional stops, searches, and arrests, and discriminatory policing.

Even before the DOJ issued its findings, the Mayor and the NOPD, with assistance from the DOJ, created a neighborhood participation plan known as the Police-Community Advisory Board (“PCAB”) as well as a “Community-Based Restorative Justice Project,” although this latter project never came into existence. Launched in February 2011, the PCAB is made up of seven community volunteer members for each of NOPD’s eight districts. The District Commander and district Community Coordinating Sergeant for each district also participate in

³⁰ Investigation of the New Orleans Police Department, United States Department of Justice Civil Rights Division (3/16/2011), at v, available at https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf

the PCAB. The consent decree, which was signed in July 2012 and entered by the court in January 2013, “acknowledge[d] that NOPD and community representatives have acted jointly to create a PCAB to facilitate regular communication and cooperation between the Department, the City, and community leaders, including youth leaders, such as through the development of a community advisory panel and the collaborative development of policing strategies and priorities.”³¹ Under the consent decree, the “NOPD agree[d] to seek PCAB’s assistance, counsel, and input to build community consensus on potential recommendations in areas” ranging from community policing strategies to police accountability and sharing information with the community.³²

The PCABs hold quarterly community meetings. According to the current PCAB manual:

As participation platforms, PCABs do not have any decision-making authority over NOPD finances, policies, or practices. As authorized recommendation platforms, PCAB’s have the responsibility to vet community ideas/suggestions, work with NOPD to understand operations, processes, and challenges, and build consensus on priority items important to the community before submitting recommendations to NOPD for consideration.³³

Notably, criticism has been levied by some, including the extent to which the PCAB is an effective accountability tool:

Very few meeting minutes are publicly available, but those that are show the PCAB functions as a conduit to gather and share information for law enforcement activity. Nothing suggests the PCAB has embraced its accountability function, nor does anything suggest the PCAB has a relationship with the court monitor or

³¹ Consent Decree, *United States v. City of New Orleans*, No. 12-cv-01924 (1/1/13), at 107.

³² *Id.*

³³ New Orleans Police Department Police Community Advisory Board (PCAB) (8/9/2016), at 3, *available at* [https://www.nola.gov/getattachment/Neighborhood-Engagement/Projects/New-Orleans-Police-Community-Advisory-Board-\(PCAB\)/PCAB-Policy-Manual-June-2016-revisions-\(1\).pdf/](https://www.nola.gov/getattachment/Neighborhood-Engagement/Projects/New-Orleans-Police-Community-Advisory-Board-(PCAB)/PCAB-Policy-Manual-June-2016-revisions-(1).pdf/)

organized constituents working to reform the police department. Thus, the PCAB does little to foster democratic policing, but rather legitimizes law enforcement activity and a process that neither promotes self-determination nor a power shift toward impacted communities.

The second independent structure referenced in the consent decree, the Community-Based Restorative Justice Project, presents a unique concept among DOJ policing consent decrees. This structure's goal is to remedy mistrust between the NOPD and the broader New Orleans community and to create an environment for successful problem-solving partnerships. To date, this body has not been created.³⁴

The consent decree also requires the NOPD and the City of New Orleans to conduct, with the assistance of the court-appointed monitor, a biennial community survey meant to capture the community's "experiences and perceptions of NOPD and of public safety."³⁵ The first biennial survey was completed by 425 police officers, 57 detainees within the Orleans Parish Jail, and 549 community members.³⁶

In addition, the consent decree requires the monitor to "meet with community stakeholders to explain the [m]onitor's reports[,] to inform the public about the Agreement implementation process, and to hear community perspectives of police interactions."³⁷ The monitor has met with various stakeholder groups, primarily at its quarterly meetings, and has also met with and surveyed community organizations.

³⁴ Sunita Patel, *Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in DOJ Consent Decrees*, 51 Wake Forest L. Rev. 793, 835 (2016).

³⁵ Consent Decree at 62-63.

³⁶ See Report of the Monitoring Team for the Fourth Quarter of 2014 (4/28/2015), at 16, *available at* <http://consentdecree-monitor.com/Media/Default/Documents/April%202015%20Report%20of%20the%20Consent%20Decree%20Monitor.pdf>

³⁷ Consent Decree at 115.

It should also be noted that in August 2009, well before the DOJ's pattern-and-practice investigation, New Orleans established the Office of the Independent Police Monitor ("IPM"), after it was voted into the city charter by over 70% of New Orleans' electorate. Among other things, this civilian police oversight agency is charged with ensuring that complaints about police misconduct are investigated and that discipline arising from such complaints is fair; monitoring NOPD investigations into use of force; reviewing complaints, investigations, and community concerns and making recommendations for reforms; listening to the community; repairing police-community relationships; and monitoring police training and supervision. Although IPM was originally tied to the Office of Inspector General, in 2016 New Orleans voters approved a charter amendment creating separate funding streams for both agencies.

Seattle (2010-Open)

Size of Population/ Number of Sworn Personnel

608,660 (2010) / 1,300 (2010)

In December 2010, the ACLU of Washington along with 34 community organizations requested that the DOJ conduct a pattern-and-practice investigation into the Seattle Police Department. The DOJ's December 2011 findings stated that the Seattle Police Department had engaged in a pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment. In July 2012, the parties entered into a settlement agreement and a separate memorandum of understanding ("MOU").

Community organizations were active prior to the entry of these agreements. The parties received recommendations from thought leaders, notably

the Minority Executive Directors Coalition Multiracial Task Force on Police Accountability (MEDC Task Force), comprised of the ACLU of Washington, American Friends Service Committee,

Asian Counseling & Referral Services, CAIR–WA, Columbia Legal Services, El Centro de la Raza, Fred T. Korematsu Center for Law and Equality, John T. Williams Organizing Committee, Minority Executive Directors Coalition, Mothers for Police Accountability, The May First Action Coalition, NAACP—Seattle Chapter, Red Eagle Soaring Native Youth Theater, Seattle Human Rights Commission, The Defender Association, and Tlingit & Haida of Washington.³⁸

Furthermore, as a result of the agreements and the work of the court-appointed monitor, community input has continued throughout the implementation of the agreed upon reforms. The monitor has conducted community forums to update the community on implementation and to solicit feedback.³⁹ In 2013, the monitor hired a team to survey 900 Seattle residents by telephone to capture community perceptions of the Seattle Police Department.⁴⁰ The survey was repeated in 2015.⁴¹ In the view of the monitor, “Community surveys and community meetings are the most objective way to judge whether greater trust and cooperation are occurring. No single individual or group represents the entire community. There are many voices and many groups in Seattle.”⁴²

Perhaps most significantly, the parties agreed in the Settlement Agreement and MOU to establish the Community Police Commission (“CPC”). The CPC was designed “to leverage the ideas, talent, experience, and expertise of the community.”⁴³ The Ordinance officially

³⁸ See 3/15/12 Letter to the DOJ, at 4 (recommending community involvement in overseeing the settlement).

³⁹ See, e.g., Seattle Police Monitor, Fourth Semiannual Report, at 100 (12/2014) (“To facilitate continuous dialogue with the community in 2014, the Monitoring Team is holding an ongoing series of town hall-style community forums, which are open to all and held in community centers and other venues. During the community forums, the Monitoring Team provides a report on current progress. More importantly, it seeks feedback and discussion on the current relationship between the community and the Department, any noted changes in that relationship, and suggestions for areas of focus in 2014 and 2015.”). All reports from the Seattle Police Monitor are available at <http://www.seattlemonitor.com/reports-resources/>

⁴⁰ See Seattle Police Monitor, Second Semiannual Report, at 47-54 (12/2013).

⁴¹ See Seattle Police Monitor, Sixth Semiannual Report, at 5-8, (12/2015).

⁴² Seattle Police Monitor, Compliance Status & Seventh Semiannual Report, at 3 n.4 (9/2016).

⁴³ Settlement Agreement ¶ 3; see *id.* ¶ 4 (“Certain aspects of the reform efforts embodied in the Agreements are best developed by dialogue and wide-spread input. Moreover, ongoing community input into the development of

establishing the CPC stated that the goal of the CPC was to “institute a[n] . . . oversight system that ensures that police services are delivered to the people of Seattle in a manner that fully complies with the Constitution and laws of the United States . . . , effectively ensures public and officer safety, and promotes public confidence in SPD and the services that it delivers.”⁴⁴

The CPC, which started work in March 2013, has been composed of 15 commissioners appointed by the mayor and confirmed by the City Council, including one member from the Seattle Police Officers Guild, one member from the Seattle Police Management Association, and 13 Seattle residents representative of Seattle’s diverse population; recently the CPC increased the number of commissioners to 21. The CPC also has full-time staff, and an annual budget of over \$800,000 a year. CPC’s areas of concentration include community engagement, police accountability, investigatory stops and data collection, officer assistance and support, and transparency and public reporting. Under the MOU, the CPC is authorized to review recommendations and reports issued by the monitor, to provide input and make its own recommendations, to issue reports, including biannual progress reports, and to hold public meetings.

In January 2014, the CPC issued a report which described the community outreach undertaken by the CPC, much of which occurred in October 2013. The CPC contracted with 13 social service providers serving affected communities, such as low-income, minority, and non-English speaking populations, who in turn worked with other organizations to coordinate outreach. Together they hosted over 150 community meetings, with attendance ranging from one

reforms, the establishment of police priorities, and mechanisms to promote community confidence in SPD will strengthen SPD and facilitate police/community relationships necessary to promote public safety.”).

⁴⁴ Ordinance No. 124021 (10/22/2012) ¶ K.

to 300, and averaging 20 per event. In all, over 3,400 individuals attended these outreach events. In addition, the CPC itself met with police department officers and advisory groups, and “with neighborhood and crime prevention councils.”⁴⁵

“The CPC supplied its contracted partners and conveners with a toolkit of outreach materials, including background information on the CPC, its charge and its draft policy recommendations, as well as surveys to capture feedback.”⁴⁶ Facilitators led discussions, and “[p]articipants provided feedback through paper and online surveys, and by discussing their concerns and ideas during community meetings. [F]acilitators documented the comments received in these sessions and summarized them in final reports to the CPC.”⁴⁷ Feedback was kept confidential. In addition, “Meeting attendees were encouraged to spread the word about the outreach effort to their friends, family and associates and told that all materials, including an online survey, were available on the CPC’s website. The CPC also sent out e-newsletters and encouraged community members to sign up for its listserv.”⁴⁸ Significantly, the CPC took into account public feedback received during its community engagement process in October 2013 before adopting final reform recommendations in November 2013.

The CPC’s work is ongoing. For instance, in January 2016, the CPC issued its assessment of the police department’s community engagement. That report was based on information gathered from diverse sources, and reflected interviews with police department officials, officers,

⁴⁵ CPC, Community Outreach Report (1/2014), at 12-13, *available at* <https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/Outreach%20Report%2001-24-14.pdf>

⁴⁶ *Id.* at 13.

⁴⁷ *Id.*

⁴⁸ *Id.*

and staff. The CPC contracted with community-based organizations to conduct eight listening sessions, which altogether were attended by some 230 community members. In addition, the CPC attended six police-department-organized Demographic Advisory Councils. In 2017, a law was passed making CPC permanent.

Having discussed the community engagement efforts in Cincinnati, New Orleans, and Seattle, we now provide an overview of the Joint Remedial Process.

New York

Size of Population / Number of Sworn Officers

Over 8.5 million / roughly 34,500

Following an appeals process during which reform work was stayed, the Joint Remedial Process began in November 2014 after the Second Circuit affirmed the denial by Judge Torres of the police unions' motion to intervene and all stays in the Monitorship were lifted. The City withdrew its appeals and agreed to abide by the relief set out in the Remedies Opinion.

Convening Phase

The first step in the Joint Remedial Process was the Convening Phase. During this time, the Facilitation Team met with advocacy groups, community organizations, members of NYPD leadership, New York City government officials, Members of Congress, District Attorneys from each borough, the Borough Presidents, the Speaker of the City Council, Members of the City Council, the Civilian Complaint Review Board management, police union leaders, minority police fraternal and advocacy organizations, officials from the President's Task Force for 21st Century Policing, religious leaders, and counsel for the parties, as well as with the plaintiffs in *Floyd*, *Ligon*, and *Davis*.

A frequent topic of conversation as these meetings was how best to obtain input from a diverse group of stakeholders, in a city with over 8.5 million residents spread out across five boroughs. What may be appropriate in Cincinnati or Seattle, which during the relevant time period had populations of 331,159 and 608,660, respectively, was not guaranteed to work in New York. As noted by the DOJ, it is important to “seek[] out input from groups that may experience police misconduct in unique ways, such as young people, people with disabilities, LGBTQ people, people of color, and immigrant communities.”⁴⁹ The Facilitation Team could not meet the Court’s mandate of soliciting input from the groups most affected by the NYPD’s use of stop and frisk without reaching these communities.

The Convening Phase not only helped the Facilitation Team devise a multi-phase process for obtaining stakeholder input, but the relationships and alliances developed during these meetings provided a broad platform for outreach. The Facilitation Team also decided to form an advisory committee through which it could continue to receive advice and input from stakeholders about the remedial process itself on a going forward basis; a Joint Remedial Process Advisory Committee composed of representatives from various stakeholders in the Joint Remedial Process was created to gather “process” input for the JRP. While the Committee was structured as an avenue to receive advice and input from stakeholders about the remedial process itself on an ongoing basis, it was purely advisory. It was explained and understood by all invitees that its deliberations were confidential and any recommendations made through the Committee were not in any manner binding on the Facilitator. Again, the Committee’s primary concern was with providing process recommendations.

⁴⁹ The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present (January 2017), at 13.

The Committee met monthly except for a short hiatus from August 2016 to January 2017. Although the main purpose of the Joint Remedial Process Advisory Committee was to provide, in a structured way, continued input into the process choices the Facilitation Team made, it became a vehicle for dialogue on substantive issues.

Focus Group Phase

During the Focus Group Phase, the Facilitation Team organized and structured meetings with members of the communities most affected by the NYPD's stop and frisk practices. The Facilitation Team viewed this stage as a crucial, if not the most crucial, part of the JRP because we believed that we would gain the most input from directly affected communities through focus groups. It was therefore imperative that each aspect of this phase be planned with the utmost care.

We laid the groundwork for these meetings with the introductory meetings during the Convening Phase. During that time, various community organizations, advocacy groups, and religious figures agreed to help us engage their membership and staff in these meetings, and helped us identify other organizations that were willing to participate. Many of the community organizations and advocacy groups agreed to assist with the Focus Group Phase by populating focus groups using their member base.

Ultimately, the Facilitation Team conducted 64 focus groups, approximately 40 relating to *Floyd* and 24 relating to *Ligon*. Participation in the focus groups was both confidential and anonymous. The focus groups typically had between 8 to 10 participants, who were overwhelmingly young people of color. The interviews were transcribed and subjected to qualitative analysis. In all there were 516 participants from the following collaborative

organizations: Broome Street Academy; Covenant House; The Door; Streetwise & Safe; Safe Horizon; Cardinal Hayes High School; Cardinal Spellman High School; Brotherhood – SisterSol; Cure Violence SOS – Bronx; Cure Violence SOS – Far Rockaway; BronxConnect; The Fortune Society; Cure Violence SOS – East Flatbush; VOCAL-NY; Police Athletic League; Picture the Homeless; Man Up, Inc.; Ali Forney Center; Malcolm X Grassroots; Exponents; Make the Road NY; and Central Family Life Center.

We gained the most input from directly affected communities through these meetings. The groundwork for these meetings was laid during the Convening Phase during the first several months of the Joint Remedial Process. Meetings were highly structured and centered around specific, well-thought-out and directed questions that were replicated across all groups. They were held in different parts of the City, as well as in public housing. The meetings gathered responses to standard sets of questions that were developed through an extensive collaboration process. This collaboration included the parties and Communities United for Police Reform, an umbrella group representing roughly 60 grassroots police reform organizations throughout the City.

While the meetings centered upon minority youth in highly policed and high crime neighborhoods, we also sought to meet with other distinct groups of people that were affected by stop and frisk such as the homeless, the LGBTQ community, and the mentally ill.

As a supplement to the rich information gathered during the Focus Group Phase, a Leadership Meeting Phase was created. The Leadership Meeting Phase included a number of structured meetings with individuals and institutions that had given much thought to these issues

and were believed to be in a position to give substantive policy recommendations. These thought leaders included academics, criminal justice professionals, and community representatives.

To further add to the richness of the data gathered from the focus groups and leadership meetings, input from patrol officers, line supervisors, and executives were gathered during NYPD-specific focus groups. These meetings were critical to the Facilitator's mandate. The Remedies Opinion states that "[t]he Facilitator may receive anonymous information from NYPD officers or officials, subject to procedures to be determined by the parties."⁵⁰

The data from all of the civilian focus groups were collected and a system was created whereby reports to the file were maintained after each meeting. The data was then compiled from notes and taped recordings of each meeting that were later transcribed. The transcriptions were later provided on a confidential basis to the parties and Communities United for Police Reform.

Leadership Meeting Phase

While our mandate was to receive input from affected communities, as recognized by the Court, "[i]nput from academic and other experts in police practices may also be" useful to the development of reforms.⁵¹ We therefore devised a process to solicit input from persons and organizations that have given much thought about these issues and might be in a position to give more substantive policy recommendations, such as academics, criminal justice professionals, community representatives, and other thought leaders.

Following the Focus Group Phase, the Facilitation Team conducted 18 meetings with thought leaders and community organizations, including The President's Task Force on 21st

⁵⁰ Remedies Opinion, 959 F. Supp. 2d at 688.

⁵¹ *Id.* at 687.

Century Policing, the Police Executive Research Forum, Safe Horizon, National Police Accountability Project, Vera Institute of Justice, Legal Aid Society, Micah Group, Fortune Society, Osborne Association, Covenant House, National Association for Civilian Oversight of Law Enforcement (“NACOLE”), The Door, Open Society Foundations, Police Reform Organizing Project, Morris Justice Project, Trinity Wall Street, Brooklyn Defenders, Communities United for Police Reforms (“CPR”), and Citizens Union.

Community Forum Meetings

In the final phase, the Facilitation Team held community forums. These forums were attended by 1,777 participants. At the outset we recognized that these meetings were vitally important. If well planned and executed, they would give public expression to the ideas developed in the focus groups, elicit further input by providing a public forum for serious policy proposals from all stakeholders, and provide an opportunity to receive public comments on the current reforms as well as potential additional reforms. The forums could also serve as an opportunity for facilitated and structured dialogue between the NYPD, primarily rank and file officers, and members of affected communities. It bears noting that while the Joint Remedial Process was ordered mainly to seek input, it is also a *remedial* process that should help to improve community and police relations.

There were two sets of forums — Plaintiff Assisted (“PA”) and Joint Remedial Process (“JRP”) forums. Generally speaking, the Facilitator presented a brief introduction to the Joint Remedial Process at each forum, followed by a short presentation by a representative of the hosting community organization. Typically, at this point, a short educational video was shown at each JRP community forum. The video was developed in collaboration with the stakeholders. It was produced by grassroots community members and was intended to be a reflection of the

history and context of the unconstitutional stop, question, and frisk and trespass enforcement policies from the perspective of impacted community members.

After this introductory phase, we then invited the attendees — comprised of, on average, from 50 to 100 or more community members and police officers seated at pre-designated tables — to engage in conversation around pre-determined questions and issues. These conversations were recorded by a note taker at each table and guided by a forum facilitator (*e.g.*, community organization staffers or community mediators that were recruited from the Association for Conflict Resolution Greater New York Chapter). Community mediators were hired as co-facilitators for each small group discussion for the JRP forums. Notes from these conversations were taken and collected by members of the JRP Team following each community forum. The individual table facilitators then announced their results to the entire meeting. An attempt was then made to present and synthesize the results of all the table reports to the meeting participants. That is, each forum included small break-out group discussions followed by larger collective discussions stemming from the reports presented by the smaller groups. This was very constructive as commonalities developed between the police and community participants in their responses. All this data was then collected and analyzed in written reports for each forum.

Final Report Phase

The Facilitation Team has now completed its three-year-long community engagement effort. As discussed above, in order to fulfill his mandate, the Facilitator together with the Facilitation Team developed and then executed various programs for canvassing a wide array of stakeholders and held focus group sessions, community forums, and leadership meetings with civilians, police officers, and policy and thought leaders in the fields of criminal justice, policing, and police reform.

The Remedies Opinion requires in paragraph 8 that the Facilitator attempt to draft “Joint Process Reforms” along with the parties to the various litigations. Once drafted, those Reforms would then be reviewed by the Monitor, who in turn would recommend those reforms he deems appropriate to the Court for ultimate review and approval. To this end, in March 2017 the Facilitator circulated to all of the parties a draft and confidential set of twelve Ideas for Discussion that were intended to begin the conversation among the parties as to what might be agreed to as Joint Process Reforms. The Facilitator alerted the parties at the time that this was a beginning set of ideas that could be withdrawn, amended, or supplemented as the discussion around the ideas developed. The Facilitation Team convened separate meetings with each of the parties, as well as three “All Parties Meetings,” to discuss these ideas. Communities United for Police Reform (“CPR”) was also invited to attend the last two of these All Parties Meetings. Plaintiffs’ counsel provided extensive verbal feedback during these meetings. In addition, the parties were invited to submit written responses to the Ideas for Discussion document.

On August 3, 2017, plaintiffs’ counsel in the *Floyd* and *Davis* cases circulated a “Memorandum” in which they listed four proposed JRP reforms that they asserted “should be implemented,” in addition to other reforms that they sought to have the Facilitator recommend for implementation. The NYPD circulated its own response to the Ideas for Discussion document, entitled “NYPD Change Agenda” that included, in an appendix, an item-by-item discussion of the proposed Ideas for Discussion.

After reviewing the parties’ written submissions and hearing from them during the joint and individual meetings, it was apparent that the parties would likely not be agreeing to a set of Joint Process Reforms for submission by the Facilitator to the Monitor and the Court. As paragraph 9 of the Remedies Opinion directs that, where the parties cannot reach agreement on

Joint Process Reforms, the Facilitator is to make findings and recommendations and prepare a Final Report, the Facilitator then advised the parties that he was drafting a Final Report pursuant to paragraph 9 of the Remedies Opinion.

Following an application by the plaintiffs to the Court for a scheduling order and a status conference regarding the JRP, the Court issued an order which provided for further discussion of the Joint Process Reforms after submission to the parties of a confidential Draft Final Report, which was to occur on March 2, 2018. The effect of that order was that we were again acting pursuant to paragraph 8 of the Remedies Opinion. After receiving the confidential Draft Final Report, the parties provided comments on the proposed Joint Process Reforms and the confidential Draft Final Report. While the parties agreed to certain aspects of the proposed Joint Process Reforms, a consensus was not reached. Accordingly, we now issue this Report pursuant to paragraph 9 of the Remedies Opinion.

After receiving the confidential Draft Final Report, the parties provided comments on the proposed Joint Process Reforms and the confidential Draft Final Report. The NYPD in its written response to the Draft Final Report indicated a willingness to consider some of the reform recommendations, pending further discussion with the Facilitator.

On April 18, 2018, the New York Times published a previously submitted op-ed piece by counsel to the plaintiffs. In that op-ed, plaintiffs' counsel stated, among other things, the following: "The problem is the police department suggested that it might oppose reforms that black and Latino New Yorkers are asking for. As much as the department wants to be seen as listening to community members, it doesn't actually want to be responsive to their needs."

However, as mentioned above, the NYPD in its written response to the Draft Final Report, which had been shared with plaintiffs' counsel, had indicated a willingness to discuss and consider certain of the reform recommendations. Although the Facilitator was not confident that a consensus would be reached on all, or even most, of the reform recommendations, at no point did the NYPD ever indicate that it was not willing to discuss the recommendations. There have been no further discussions regarding the Joint Process Reforms between the parties and the Facilitator.

While, as indicated above, the positions of the parties overlap with respect to certain aspects of the proposed Joint Process Reforms, a consensus was not reached, and we now issue this Final Report pursuant to paragraph 9 of the Remedies Opinion. The Facilitator considered all of the written and oral submissions from all parties, including non-party stakeholders, in preparing the Final Report.

SECTION IV: RECENT HISTORY OF POLICE-COMMUNITY RELATIONS IN IMPACTED COMMUNITIES:

Calls for Greater Respect, Transparency and Accountability

The Monitorship and Joint Remedial Process (“JRP”) are only the latest efforts to reform the New York City Police Department (“NYPD”). A constant theme throughout all of these efforts has been the need for the NYPD to show greater respect to the communities it polices, to increase transparency, and to improve both internal and external accountability.

Part 1

Brief History, Legal Context, and the Immediate Reforms

Both the U.S. and New York Constitutions prohibit unreasonable searches and seizures and discrimination based on race. Under the Fourth Amendment of the U.S. Constitution, as explained in the landmark case *Terry v. Ohio*, a “stop” is when an officer “briefly detain[s] a person for investigative purposes” and is permitted only “if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.”⁵² A frisk is defined as a “limited protective search for concealed weapons.” An officer may frisk a person only when he or she is “‘justified in believing that the individual whose suspicious behavior he [or she] is investigating at close range is armed and presently dangerous to the officer or to others[.]’”⁵³

⁵² *United States v. Swindle*, 407 F.3d 562, 566 (2d Cir. 2005) (citations omitted).

⁵³ *Adams v. Williams*, 407 U.S. 143, 146 (1972) (quoting *Terry*, 392 U.S. at 24); *id.* (“The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law.”).

In the 1990s the use of stop, question, and frisk (“SQF”) by the NYPD escalated, and then — despite the issuance of a critical report by the New York attorney general in 1999 and the settlement of the *Daniels* litigation in 2003, both of which will be described below — increased even more dramatically over the next decade. The 1990s also ushered in increased trespass enforcement and SQF activity in both privately-owned buildings and New York City Public Housing Authority (“NYCHA”) developments.

This escalation of SQF and trespass enforcement was the predicate for the *Floyd*, *Davis*, and *Ligon* cases, filed in 2008, 2010, and 2012, respectively. Here we consider the historical and legal context that led to these cases, as well as reforms that have been implemented over the years.

The Street Crime Unit, “Broken Windows” Policing, and CompStat

In 1971 the NYPD established the Street Crime Unit (“SCU”), a plain-clothes “City Wide Anti-Crime Unit” assigned to “high-crime” neighborhoods, with the goal of recovering guns. Members of the SCU were required to fill out a form, known as the “UF-250,” following a stop based on “reasonable suspicion.”⁵⁴ As will be discussed, the UF-250 and the later-created UF-

⁵⁴ The NYPD reports that use of an earlier version of UF-250 had been mandatory since 1964 and was amended in 1973. See U.S. Comm’n on Civil Rights, *Police Practices and Civil Rights in New York City: Chapter 5 Stop, Quest, and Frisk*, n.62 (2000), available at <http://www.usccr.gov/pubs/nypolice/ch5.htm>; but see Jeffrey Fagan and Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 Fordham Urb. L.J. 457, 488 n.138 (2000) (“Although initially designed as a tool for investigation, completion of the UF-250 form has been required by the NYPD Patrol Guide since 1986. In 1997, the police commissioner assigned a high priority to filing UF-250s.”). New York’s first statute relating to stop and frisk was enacted in 1964. N.Y. Code Criminal Procedure (CCP) § 180-a. In 1968, on the same day that *Terry* was decided, the Supreme Court heard a case that, in part, challenged that statute. See *Sibron v. New York*, 392 U.S. 40 (1968). The Court explained that, “New York is, of course, free to develop its own law of search and seizure to meet the needs of local law enforcement, and in the process it may call the standards it employs by any names it may choose. It may not, however, authorize police conduct which trenches upon Fourth Amendment rights, regardless of the labels which it attaches to such conduct.” *Id.* at 60-61 (citation omitted). Two years later, in 1970, the New York State Legislature enacted replacement legislation authorizing police to use stop, question, and frisk. That law, codified as CPL § 140.50, is still in place, but has been amended several times over the years, with the last amendment in 2010. The 2010 amendment prohibited the recording in a database of “information that establishes the personal identity of an individual who has

250 database have played a crucial role in the ability of actors outside of the NYPD, including the public, to assess the effectiveness and constitutionality of the NYPD's SQF practices over time.⁵⁵

Although much happened in the intervening years, we shift our focus to the early 1990s. Providing an overview of events leading to the imposition of the NYPD's SQF policies, Professor Jeffrey Bellin explains that:

The origins of NYC Stop and Frisk can be traced to an epic crime wave that crested in New York City in the early 1990s. In 1990, the City hosted 2,245 homicides, a "record high." News accounts chronicled the populace's fear. New Yorkers claimed to be afraid to wear jewelry in public, and some citizens reported sprinting to subway exits when train doors opened to avoid victimization. In 1993, nearly half of the City's residents said they had been victimized by crime in the past year. The NYPD's own publications reflected the public mood: "Whatever we are doing to reduce violent — especially handgun related — crime is not working."⁵⁶

It was also this climate that led to the launch in 1991 of the Trespass Affidavit Program ("TAP"), known as Operation Clean Halls in the Bronx. Under that program, private landlords give permission to police to enter and search their buildings for the purpose of combating criminal activity. News reports note that TAP is "the only [program] of its kind in a major U.S. city that gives police standing permission to roam the halls of private buildings."⁵⁷ Then, in 1994, the City

been stopped, questioned and/or frisked by a police officer or peace officer, such as the name, address or social security number of such person[.]"

⁵⁵ But it was not until 1999 that UF-250 data was first shared outside of the Department, when New York's Attorney General required that the information be turned over following the shooting of Amadou Diallo by members of the SCU. And it was not until 2008, after being ordered to do so by a court, that the NYPD gave nongovernmental actors access to data from the UF-250 database.

⁵⁶ Jeffrey Bellin, *The Inverse Relationship Between the Constitutionality and Effectiveness of New York City "Stop and Frisk,"* 94 B.U. L. Rev. 1495, 1503 (2014).

⁵⁷ Colleen Long, "NYPD program patrols inside private buildings," Associated Press, Mar. 11, 2013, *available at* <https://www.yahoo.com/news/nypd-program-patrols-inside-private-buildings-063214226.html>

and NYCHA entered into a Memorandum of Understanding under which the NYPD enforced both criminal laws and NYCHA-specific rules and regulations.⁵⁸

The 1990s also saw the NYPD's shift from community policing to, at least in name, "broken windows" policing.⁵⁹ Proponents of the broken windows theory believe that serious crimes can be reduced by aggressively pursuing enforcement of petty offenses. As explained by criminologists Jeffrey Fagan and Garth Davies:

The originators of the Broken Windows theory, James Q. Wilson and George L. Kelling, argued that police should address minor disorders to strengthen police-citizen interactions, and consequently, informal social control. For Wilson and Kelling, signs of physical and social disorder invite criminal activity. Disorder indicates to law-abiding citizens that their neighborhoods are dangerous places, leading to their withdrawal from informal social control and regulation. The theory suggests that there is a tipping point at which disorder trumps order by defeating the willingness of citizens to interact with the police and with each other to co-produce security. Accordingly, disorder invites more disorder in a contagious process that progressively breaks down community standards and also suggests to would-be criminals that crime will not be reported. Disorder ultimately invites criminal invasion.⁶⁰

In 1994, "CompStat" was developed under then Police Commissioner William Bratton. CompStat evolved from meetings Bratton and his team had with commanders to ask questions relating to criminal activity and measures taken to address that activity within their precincts.

⁵⁸ It should also be noted that the Civilian Complaint Review Board ("CCRB") in its present, all-citizen form was established in 1993.

⁵⁹ The efficacy of "broken windows" policing is difficult to measure and existing studies have yielded mixed results. The Center for Evidence-Based Crime Policy (2016), *available at* <http://cebc.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/>, reviewed literature that looked specifically at the effect of "broken windows" policing in New York City in the 1990s, finding: "Broken windows policing alone did not bring down the crime rates (Eck & Maguire, 2000), but it is also likely that the police played some role. Estimates of the size of this role have ranged from large (Bratton & Knobler, 1998; Kelling & Sousa, 2001) to significant but smaller (Messner et al., 2007; Rosenfeld et al., 2007) to non-existent (Harcourt & Ludwig, 2006)."

⁶⁰ Fagan and Davies, *Street Stops and Broken Windows*, 28 Fordham Urb. L.J. at 264.

Because commanders were unable to readily provide this information, the NYPD resolved to create a database. By collecting data on criminal activity, CompStat enabled the NYPD to concentrate officers in neighborhoods where there were higher recorded incidents of criminal conduct. CompStat also permitted data-driven management. As a data-drive management tool, CompStat was used to hold “commanders accountable for addressing crime conditions and improving the quantitative measures of their performance.”⁶¹

By 1994, the NYPD was touting the effectiveness of street searches at removing guns from the streets.⁶² This focus on guns, reflected in “Police Strategy No. 1: Getting Guns of the Street of New York,” led to an expansion of the Street Crime Unit. It is thought that that expansion led to less effective training as well as a shortage of experienced officers to pair with the new recruits sent out on their assignments. At the same time, CompStat emphasized the number of stops officers made, leading to even greater number of stops, with UF-250 forms reflecting roughly 175,000 recorded stops around the City from January 1998 through March 1999 alone.⁶³

Writing in 2000, Fagan and Davies described the NYPD’s approach as a form of “order-maintenance policing” or OMP⁶⁴ — “aggressive[] enforce[ment] of laws against social disorder

⁶¹ Liability Opinion, 959 F. Supp. 2d at 592.

⁶² See generally Clifford Krauss, *New York City Crime Falls but Just Why Is a Mystery*, N.Y. Times, Jan. 1, 1995.

⁶³ While Bratton left in 1996, and new Commissioner Howard Safir instituted certain programs aimed at community relations and community engagement — e.g., the NYPD courtesy, professionalism, and respect or CPR campaign, Precinct Community Councils, the Citizens’ Police Academy, and the Model Block Program — the use of CompStat and aggressive policing continued.

⁶⁴ A review by Antony A. Braga, Brandon C. Welsh, and Cory Schnell in 2015 found no significant impact of order-maintenance policing on reducing crime. See *Can Policing Disorder Reduce Crime? A Systematic Review and Meta-analysis*, Journal of Research in Crime and Delinquency, Vol. 52(4), available at <http://journals.sagepub.com/doi/pdf/10.1177/0022427815576576>

with ‘zero tolerance’ that requires arrest for any law infraction.”⁶⁵ Consistent with this, the NYPD enforced petty offenses such as laws against graffiti, public drinking, riding a bicycle without a helmet, and aggressive panhandling. As Bellin argues, “[a] program of mass ‘stop and frisk’ is not geared toward reversing neighborhood perceptions of disorder, but instead aims to decrease actual incidents of gun-carrying and resulting violence citywide[;]” and, he argues, quoting Barnard Harcourt, “‘the primary mechanism’ of any aggressive-policing-based crime decrease in New York City ‘is probably not the broken windows theory,’ but is instead ‘a policy of aggressive stops and frisks and misdemeanor arrests’— something quite distinct”⁶⁶

As a consequence of the increased interactions between officers and civilians, complaints against the Department started to rise. In 1996, the Department launched the NYPD’s CPR campaign, a program intended to bolster the mission of courtesy, professionalism, and respect within and outside of the Department. Additionally, the Department implemented several other community-based functions, such as the Precinct Community Councils, the Citizens’ Police Academy, and the Model Block Program.

In 1997, Abner Louima, a Haitian Immigrant, was beaten and sodomized with a broomstick by NYPD officers. The incident provoked outrage among Haitian and other communities across the nation. On August 29, 1997, an estimated 7,000 demonstrators marched to City Hall and to the 70th Precinct station where the attack took place. The march was dubbed

⁶⁵ Fagan and Davies, *Street Stops and Broken Windows*, 28 Fordham Urb. L.J. at 467.

⁶⁶ Bellin, *The Inverse Relationship Between the Constitutionality and Effectiveness of New York City “Stop and Frisk,”* 94 B.U. L. Rev. at 1505 (quoting Bernard E. Harcourt, *ILLUSION OF ORDER* (Harvard University Press 2001), at 10-11).

“Day of Outrage Against Police Brutality and Harassment.”⁶⁷ The incident was mentioned in the 1998 Amnesty International Report on cases of reported police brutality, torture, and abuse. Mayor Rudolph Giuliani commissioned a task force to convene on the issue of police-community relations, seeking recommendations to improve police-community relations.⁶⁸ The task force, comprised of 33 community leaders, published a report with 91 recommendations for changes to the NYPD.⁶⁹ Later that year, a dissenting report, with its own recommendations, was filed in response to the report issued by the Mayor’s Task Force.⁷⁰

Although the quality of police-community relations had been in steep decline, it was the shooting of Amadou Diallo in February of 1999 that instigated a surge of protests and demonstrations calling for reforms to the NYPD. In December of 1999, New York’s Attorney General released a report analyzing the data from the 175,000 stops conducted between January 1998 and March 1999.⁷¹ In addition to finding that roughly a fourth of the UF-250 forms failed to provide information sufficient to determine if the stop was lawful, the report found that “blacks and Hispanics were significantly more likely than whites to be ‘stopped’ after controlling for race-specific precinct crime rates and precinct population composition by race.”

⁶⁷ Peg Tyre and Jonathan Karl, “Demonstrators in New York protest police brutality,” CNN, Aug. 29, 1997, archived from the original Jan. 5, 2007.

⁶⁸ See U.S. Comm’n on Civil Rights, *Police Practices and Civil Rights in New York City: Chapter 3 Police-Community Relations* (2000), available at <http://www.usccr.gov/pubs/nypolice/ch3.htm>

⁶⁹ See Task Force on Police/Community Relations, Report to the Mayor. New York, New York (1998). The recommendations included in this Report to the Mayor, as well as other reports issued between 1999 and 2015 are summarized in Part 2 of this Section.

⁷⁰ See Meyers, M., Fung, M., Siegel, N, *Deflecting Blame: The Dissenting Report of Mayor Rudolph W. Giuliani’s Task Force on Police/Community Relations* (1998); see Part 2 of this Section.

⁷¹ Spitzer, E, *The New York City Police Department’s “Stop & Frisk” Practices: A report to the People of the State of New York from the Office of the Attorney General* (1999); see Part 2 of this Section. As also discussed in Part 2 of this Section, in 2000, the United States Commission on Civil Rights also issued a report critical of the NYPD’s stop and frisk practices, including, among other things that racial profiling had been practiced. See U.S. Comm’n on Civil Rights, *Police Practices and Civil Rights in New York City* (2000).

Daniels, Reforms, and the End of the Street Crimes Unit

In March 1999, the Center for Constitutional Rights filed a class action lawsuit against the NYPD challenging the Street Crime Unit's SQF practices. Specifically, the plaintiffs alleged that "SCU officers have been repeatedly conducting stops and frisks of individuals without the reasonable articulable suspicion required by the Fourth Amendment. Rather, SCU officers have improperly used racial profiling, not reasonable suspicion, as the basis for the stops and frisks. The victims of such racial and/or national origin profiling are principally Black and Latino males."⁷²

The plaintiffs in *Daniels* sought to enjoin the continued operation of the SCU. But they also requested alternative relief including an order:

(3) enjoining the use of formal or informal productivity standards or other de facto quotas for arrests and/or stops and frisks by SCU officers; . . .

(7) requiring the City, NYPD, [Commissioner] Safir and [Mayor] Giuliani to institute and implement appropriate measures to ensure compliance with departmental directives that SCU officers complete UF-250's on each and every stop and frisk they conduct;

(8) requiring the City, NYPD, Safir and Giuliani to institute and implement appropriate measures to mandate that UF-250's or other documentation be prepared and maintained in a computerized database for each stop conducted by an SCU officer, regardless of whether the stop is followed by the use of force, a frisk, a search or an arrest; and

(9) requiring the City, NYPD, Safir and Giuliani to monitor stop and frisk practices of the SCU, including periodically and regularly reviewing form UF-250's to determine whether reported stops and frisks have comported with constitutional requirements.⁷³

⁷² *Daniels v. City of New York*, 198 F.R.D. 409 (S.D.N.Y. 2001) (internal citations omitted).

⁷³ Amended Complaint, Wherefore Clause, *Daniels v. New York*, No. 99 Civ. 1695 (S.D.N.Y.).

In 2002, while *Daniels* was still pending, the NYPD disbanded the SCU. The following year, the Court approved a settlement between the parties that included certain remedial measures. Among other things, the NYPD was required to develop a written policy prohibiting the use of racial profiling, and NYPD officers and recruits were to receive training on the legal basis for SQF, as well as training in cultural diversity, integrity, and ethics. In complying with this aspect of the settlement, the NYPD developed a Racial Profiling Policy which prohibited the use of race, color, ethnicity or national origin as a determinative factor in taking law enforcement action.

Under the terms of the settlement, NYPD officers were required to track each stop, question, and frisk — defined as “[a]ny incident in which a police officer temporarily detains a person for questioning and physically runs his/her hands over the clothing of the person detained, feeling for a weapon”— on a new version of the UF-250. The NYPD was further required to continue to compile and maintain a UF-250 database, and the data collected was to be provided to counsel for the plaintiffs on a quarterly basis. The NYPD Quality Assurance Division (“QAD”) was directed to conduct internal audits to determine whether the forms were properly completed and that each SQF was based on reasonable suspicion (as reflected in the forms).⁷⁴

The NYPD also agreed to conduct Joint Community Forums and 40 to 50 workshops at high schools to inform and educate about the rights of citizens when stopped, questioned, and frisked. In addition, the NYPD agreed to revise and disseminate its pamphlet entitled “Understanding Your Rights,” and to design and create a palm card providing contact information and procedures, including the telephone number of the Civilian Complaint Review

⁷⁴ As the Court later found in *Floyd*, “[a]fter signing the settlement, however, QAD simply continued to use audit protocols that it had introduced in 2002.” Liability Opinion, 959 F. Supp. 2d at 609.

Board (“CCRB”), to be distributed “when appropriate, as determined by the NYPD, in connection with” community engagement events.⁷⁵

The settlement did not, however, call for a monitor. And as recognized by the Court nearly four years later, while the settlement did call for certain reforms, it did

not include any provisions regarding plaintiffs’ use or analysis of the UF-250 data. Nor [did it] contain any remedies or obligations regarding any trends or patterns reflected in the UF-250 database. Moreover, [the settlement did] not require any specific outcomes and ma[de] no specific assurances with respect to the supervision, monitoring and training of NYPD officers with regard to the Racial Profiling Policy.⁷⁶

Notably, while the settlement required that the NYPD share the data with class counsel, it did not require that the data be shared with the general public. And it was not until March 2006 that the NYPD directed that all of the information from UF-250 forms be entered into a centralized database.

Access to UF-250 data later helped establish the allegations in *Floyd*. With regard to access to UF-250 data, in 2007 the New York Civil Liberties Union (“NYCLU”) submitted a Freedom of Information Law (“FOIL”) request to the NYPD for “the complete NYPD database of information entered from SQF worksheets for 2006, for the first two quarters of 2007, and for any calendar year prior to 2006 for which data exists in electronic form.” The NYPD denied the request, citing several exceptions to disclosure under FOIL. In May 2008, Justice Marilyn G. Diamond of the New York County Supreme Court issued a decision requiring the NYPD to provide UF-250 database information to the NYCLU in electronic form “with the exception of

⁷⁵ Stipulation of Settlement, *Daniels v. New York*, No. 99 Civ. 1695 (S.D.N.Y. Sept. 24, 2003).

⁷⁶ *Daniels v. City of New York*, No. 99 Civ. 1695, 2007 WL 2077150, at *1 (S.D.N.Y. July 16, 2007).

the names and addresses of the persons forcibly stopped and the names, addresses and tax ID numbers of the officers who made the stops and/or completed the form, which shall be redacted prior to disclosure.”⁷⁷ And in September 2008, in connection with the *Floyd* case, the Court ordered the NYPD to produce to plaintiffs’ counsel the UF-250 data from 1998 to 2004.⁷⁸

Operation Impact and Continued Litigation

Ironically, while the Street Crimes Unit was disbanded in 2002, and *Daniels* was settled in 2003, the use of SQF increased nearly seven-fold between 2002 and 2011, when over 685,000 stops were recorded. The Street Crimes Unit might have been defunct, but an emphasis on activity and a focus on the quantity of stops continued. In addition, in 2003, the NYPD implemented Operation Impact, where large numbers of newly minted police officers — roughly 1,500 in 2003 alone — were sent to “impact zones” with instructions to conduct stops and enforce misdemeanor laws. These impact zones, identified by CompStat as having high crime rates, were almost always in communities of color. Meanwhile, under Operation Clean Halls, the NYPD continued to regularly conduct “vertical patrols” inside of NYCHA residences, and as alleged by the *Ligon* plaintiffs in 2012, “[i]n some Bronx neighborhoods, virtually every private apartment building is enrolled in the program . . . [and i]n Manhattan alone, there are at least 3,895 Clean Hall Buildings.”

In 2005 and 2008, as Operation Impact continued in full force, two lawsuits were filed challenging the NYPD’s continued enforcement of loitering laws which had been invalidated by the courts years before. Despite having been struck down, roughly 22,000 people were charged

⁷⁷ *New York Civil Liberties Union v. New York City Police Dep’t*, 20 Misc.3d 1108(A), 866 N.Y.S.2d 93 (Sup. Ct. N.Y. Co. 2008).

⁷⁸ See *Floyd v. City of New York*, No. 08 Civ. 1034, 2008 WL 4179210 (S.D.N.Y. Sept. 10, 2008).

under these laws from 1983 to 2012. And for a 16-month period ending in 2006, the police issued at least 10 improper summonses a week. These cases, *Brown v. Kelly* and *Casale v. Kelly*, ultimately settled in 2012, with the City agreeing to pay \$15 million to the class action plaintiffs.

In 2007, Bronx Assistant District Attorney Jeannette Rucker (“ADA Rucker”), who oversaw the arrest to arraignment process in the Bronx, “started to become concerned about cases in which people were being stopped and then arrested based solely on their having entered or exited a Clean Halls building. Especially in 2009, judges began dismissing these cases frequently, sometimes saying that the police had no right to approach the arrested person in the first place.”⁷⁹ In 2010, consistent with complaints coming out of the defense bar, the Legal Aid Society, and the Bronx Defenders, “[ADA Rucker’s] staff began telling her that judges were not only dismissing trespass cases, but were finding evidence that the defendant lived in the building where the trespass was said to have occurred.”⁸⁰ Then, in 2011, she “investigated the law governing trespass stops based on entry to and exit from a Clean Halls building, and she determined that the [District Attorney’s] position on the prerequisites for a legal stop had been wrong. She sent memos to a number of commanders and other police officials clarifying that, contrary to previous statements, observing someone exiting a Clean Halls building is not by itself a sufficient justification for a stop.”⁸¹

Indeed, by 2010 the NYPD itself had been looking into issues concerning vertical patrols and trespass in NYCHA-owned properties and in connection with the TAP program.⁸² And by

⁷⁹ *Ligon v. City of New York*, 925 F. Supp. 2d 478, 492 (S.D.N.Y. 2013).

⁸⁰ *Id.* at 493.

⁸¹ *Id.*

⁸² In 2000 section 212-60 of the NYPD Patrol Guide stated that officers should “be alert for persons loitering within [NYCHA-owned] buildings, or suspicious conditions.” In 2010, the NYPD issued Interim Order 23 of 2010,

May 2012, the NYPD issued Interim Order 22 of 2012 defining when stops were lawful based on suspicion of trespass within a TAP building. However, Interim Order 22 of 2012 did not address the issue of stops outside of a TAP building.⁸³

In September 2010, the CCRB completed a systematic review of trespass-related cases in patrolled housing, including both NYCHA-owned buildings and private buildings participating in TAP. That review, which looked at data from July 1, 2008 through October 31, 2009, concluded that out of 76 criminal trespass related complaints, 32% were substantiated. This substantiation rate was far higher than other types of complaints, meaning that in the CCRB's view there was reason for concern about how officers were enforcing trespass under TAP. In addition, in both 2010 and 2011, the CCRB issued reports stating that officers were failing to complete UF-250 forms following stops.

Both *Davis* and *Stinson v. City of New York* were filed in the Southern District of New York in 2010. The *Stinson* plaintiffs alleged that the NYPD had a policy of issuing unconstitutional summonses in violation of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments. The action "concern[ed] hundreds of thousands of New Yorkers who, over the course of many years, were issued summonses later dismissed after a finding of facial

revising Patrol Guide 212-60. It states that when encountering "persons who may be violating Housing Authority rules and regulations, including potentially unauthorized persons within NYCHA property," officers are to "[a]pproach the person(s) and ask: (1) If he or she lives in the building[;] (2) If he or she is visiting someone in the building[;] (3) If he or she has business in the building." It further states "*When a person's authority to be present in the building is in question, take reasonable measures to verify such authority (e.g., asking for identification, a key to the building entrance doors, etc.).*" It warns that "an officer may not stop (temporarily detain) a suspected trespasser unless the officer *reasonably suspects* that the person is in the building without authority." *Davis v. City of New York*, 959 F. Supp. 2d 324, 345 (S.D.N.Y. 2013) (internal quotation marks omitted).

⁸³ See *Ligon*, 925 F. Supp. 2d at 519.

insufficiency or were ticketed without probable cause.”⁸⁴ The *Stinson* case was settled in 2017.

Under the settlement, the plaintiffs received \$56.5 million, and the NYPD agreed to:

undertake remedial measures related to quotas, including: sending Department-wide communications informing officers that quotas and other numeric measures of performance are improper and subject to investigation by the NYPD’s Internal Affairs Bureau; revising the training new NYPD recruits receive with regard to quotas and teaching recruits how to report observed issues without fear of reprisal; and improving public relations by simplifying the process for individuals who receive summons to identify officers responsible and for voicing complaints about summons if individuals believe the summons was issued unfairly.⁸⁵

Floyd, Davis, and Ligon

Floyd, filed in 2008, contests the NYPD’s SQF practices, including its disparate application to communities of color. *Davis*, brought in 2010, alleges that the NYPD uses unlawful stops, searches, and arrests to enforce the prohibition against trespassing in NYCHA buildings. *Ligon*, filed in 2012, challenges the NYPD’s SQF practices in connection with stops made on suspicion of trespass outside of privately-owned TAP buildings in the Bronx.

In January 2013, the Court found that the *Ligon* plaintiffs were entitled to preliminary injunctive relief based on violations of their Fourth Amendment rights. In addition to making findings with respect to the conduct alleged by named plaintiffs, the Court made findings based on ADA Rucker’s testimony and Dr. Fagan’s analysis of UF-250 forms completed in 2011 by NYPD officers in the Bronx. As to the former, the Court found that

ADA Rucker’s testimony and the supporting exhibits, including the decline to prosecute forms, contained more than enough evidence to support the conclusion that there is a clear and

⁸⁴ *Stinson v. City of New York*, 256 F. Supp. 3d 283, 287 (S.D.N.Y. 2017).

⁸⁵ *Stinson*, 256 F. Supp. 3d at 287-88.

substantial likelihood that plaintiffs will be able to prove at trial that NYPD officers in the Bronx repeatedly stopped and questioned people on suspicion of trespass simply because they were observed exiting or entering and exiting a Clean Halls building.⁸⁶

In August 2013, the Court held in the *Floyd* Liability Opinion that the NYPD's use of SQF violated the Fourth and Fourteenth Amendments to the U.S. Constitution. With respect to the Fourth Amendment, the Court began by "noting the inherent difficulty in making findings and conclusions regarding 4.4 million stops." The Court explained:

Because it is impossible to *individually* analyze each of those stops, plaintiffs' case was based on the imperfect information contained in the NYPD's database of forms ("UF-250s") that officers are required to prepare after each stop. The central flaws in this database all skew toward underestimating the number of unconstitutional stops that occur: the database is incomplete, in that officers do not prepare a UF-250 for every stop they make; it is one-sided, in that the UF-250 only records the officer's version of the story; the UF-250 permits the officer to merely check a series of boxes, rather than requiring the officer to explain the basis for her suspicion; and many of the boxes on the form are inherently subjective and vague (such as "furtive movements"). Nonetheless, the analysis of the UF-250 database reveals that *at least* 200,000 stops were made without reasonable suspicion.

The actual number of stops lacking reasonable suspicion was likely far higher, based on the reasons stated above, and the following points: (1) Dr. Fagan was unnecessarily conservative in classifying stops as "apparently unjustified." For example, a UF-250 on which the officer checked only Furtive Movements (used on roughly 42% of forms) and High Crime Area (used on roughly 55% of forms) is not classified as "apparently unjustified." The same is true when only Furtive Movements and Suspicious Bulge (used on roughly 10% of forms) are checked. Finally, if an officer checked only the box marked "other" on either side of the form (used on roughly 26% of forms), Dr. Fagan categorized this as "ungeneralizable" rather than "apparently unjustified." (2) Many UF-250s did not identify *any* suspected crime (36% of all UF-250s in 2009). (3) The rate of arrests arising from stops is low (roughly 6%), and the

⁸⁶ *Ligon*, 925 F. Supp. 2d at 495.

yield of seizures of guns or other contraband is even lower (roughly 0.1% and 1.8% respectively). (4) “Furtive Movements,” “High Crime Area,” and “Suspicious Bulge” are vague and subjective terms. Without an accompanying narrative explanation for the stop, these checkmarks cannot reliably demonstrate individualized reasonable suspicion.⁸⁷

With respect to equal protection, the Court found that “targeting young black and Hispanic men for stops based on the alleged criminal conduct of other young black or Hispanic men violates bedrock principles of equality.”⁸⁸ As should be clear, the Court’s findings in *Floyd* would not have been possible without the existence of, and access to, the UF-250 database.

Notably, a month after the Liability Opinion, the Vera Institute published a report, based on a study launched in the fall of 2011, examining the question of how being stopped by police affects those who experience these stops at a young age.⁸⁹ Although we will list the recommendations made by the Vera Institute in Part 2, there is ample reason to list them first here:

1. Continue to recalibrate stop and frisk practices to remedy the serious consequences to police-community relations and public safety that the study revealed.
2. Expand upon existing trainings to encourage respectful policing that makes people feel they are treated fairly (including informing them of the reason for the stop), and emphasize strategies aimed at reducing the number of stops that escalate to the point where officers make threats and use physical force.
3. Collaborate with the predominantly black and Hispanic/Latino communities where stop and frisk has been

⁸⁷ Liability Opinion, 959 F. Supp. 2d at 559-60.

⁸⁸ *Id.* at 664.

⁸⁹ Fratello, J., Rengifo, A. F., Trone, J., Velazquez, B. *Coming of Age with Stop and Frisk: Experiences, Perceptions, and Public Safety Implications*, Center on Youth Justice, Vera Institute (2013), available at <https://www.vera.org/publications/coming-of-age-with-stop-and-frisk-experiences-self-perceptions-and-public-safety-implications>; see Part 2 of this Section.

concentrated to improve relationships by finding tangible strategies to put into practice.

4. Partner with researchers to better understand the costs and benefits of various proactive policing strategies as well as individual practices such as stop and frisk.

Davis settled on April 28, 2015, and enforcement of the settlement was joined as related to *Floyd* and *Ligon*. In the settlement, the parties agreed that “further development of cooperative and trusting relationships between NYPD officers and NYCHA residents facilitates effective policing, and that negative interactions between NYPD officers and NYCHA residents and their authorized visitors have a long-lasting, harmful impact on those relationships.”⁹⁰

In 2015, Commissioner William Bratton announced that Operation Impact would be discontinued. In making this announcement, Bratton noted that under Operation Impact, supervision of new officers was inadequate, which led to problems in both (1) how SQF was being used and (2) with officer morale. According to the Monitor, the number of reported stops made by NYPD officers has gone from 532,911 in 2012 to 22,939 in 2015. Studies have suggested that the benefit of Operation Impact as a crime fighting tool is largely in the deployment of officers, and not in the number of stops conducted.⁹¹ Viewed differently, the unconstitutional use of SQF which has had such a detrimental and lasting impact on individuals and communities and their view of the police, has not been shown to reduce crime.

⁹⁰ Settlement ¶ 2.

⁹¹ See, e.g., John MacDonald, Jeffrey Fagan, and Amanda Geller, *The Effects of Local Police Surges on Crime and Arrests in New York City*, 11 PLOS ONE e0157223, 10-11 (2016).

Legal Context and Remedies

Before discussing the remedies ordered by the Court in these cases, it is useful to consider some New York law relating to stop, question, and frisk and trespass. New Yorkers have even greater rights under New York's constitution than the rights afforded by Supreme Court precedent under the federal constitution. In *People v. De Bour*, New York's highest court articulated a standard of reasonableness for police encounters with the public even before a stop is permitted, such as when an officer requests information.

De Bour defined four levels of police interaction. Level 3 is a *Terry* stop and Level 4 is an arrest. A Level 1 encounter is "a request for information" and "involves basic, non-threatening questions regarding, for instance, identity, address or destination."⁹² While officers have "broad authority" to ask such questions, they may not do so "on whim or caprice" and must "have an articulable reason, [although that reason need] not necessarily [be] related to criminality[,] for making the approach."⁹³ Such encounters must be brief and cannot involve either harassment or intimidation, and it is impermissible to create the impression that the subject of questioning is suspected of a crime. Finally, an officer cannot ask the subject of a Level 1 encounter for consent to conduct a search.⁹⁴

A Level 2 encounter is an interaction where an officer is permitted to ask pointed, accusatory questions, but not allowed to actually detain (or stop) the person. A Level 2 inquiry is permitted where there is a "founded suspicion" of criminality. In *Hollman*, New York's highest court explained the difference between Level 1 and Level 2 this way:

⁹² *People v. Hollman*, 79 N.Y.2d 181, 185 (1992).

⁹³ *Id.* at 190.

⁹⁴ *See id.* at 191-92.

Once the officer asks more pointed questions that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing and is the focus of the officer's investigation, the officer is no longer merely seeking information. This has become a common-law inquiry that must be supported by a founded suspicion that criminality is afoot.⁹⁵

Unlike in Level 1, the questions can focus on potential criminality. Notably, at Level 2 officers are permitted to ask for consent to conduct a search.

The *De Bour* nomenclature is certainly relevant in the context of these cases. Consider, for example, the testimony of Inspector Kerry Sweet, the executive officer of the NYPD Legal Bureau, who by 2010 was involved in examining vertical patrols and trespass issues in NYCHA and TAP buildings.⁹⁶ After conducting focus groups with sergeants and lieutenants, Inspector Sweet thought there was “some confusion” regarding TAP stops:

[O]fficers believe their role might have been as doorman [or] custodian, rather than a strict application of *De Bour*. And once again, understanding that they needed that articulate reason to approach somebody and that if you were a doorman, you could approach everybody, but that is not the case. . . . [I]n TAP buildings, you have to have a reason to approach people. . . .

I wasn't getting the sense necessarily that they were stopping people in their tracks, but they may have been asking everybody coming into a building, what are you doing here, what is your reason for being here. And that obviously isn't what we want them to do nor is it probably the right thing to do under the *De Bour* standard.⁹⁷

⁹⁵ *Id.* at 185.

⁹⁶ See *Ligon*, 925 F. Supp. 2d at 517-18.

⁹⁷ *Id.* at 518: With respect to trespass, the Court explained in *Ligon*:

Criminal trespass is defined under section 140 of the New York Penal Law. . . . :

A person is guilty of criminal trespass in the second degree when, in pertinent part, he “knowingly enters or remains unlawfully in a dwelling[.]” A person “enters or remains unlawfully” in or upon premises “when he is not licensed or privileged to do so[.]” “In general, a person is ‘licensed or privileged’ to enter

Moreover, just as police officers have had trouble understanding the distinctions under *De Bour*, from the perspective of the citizen being asked pointed, accusatory questions, it is difficult to know whether he or she is engaged in a “consensual” Level 2 encounter, and free to leave, or a Level 3 detention (*i.e.*, a *Terry* stop).

Significantly, the Court drew a connection between violations of the Fourth Amendment and reforms related to Level 1 and Level 2 interactions in the Remedies Opinion. First, the Court explained that:

an encounter between a police officer and a civilian constitutes a stop whenever a reasonable person would not feel free to disregard the officer and walk away. The threat or use of force is not a necessary or even typical element of stops. Encounters involving nothing more than commands or accusatory questions can and routinely do rise to the level of stops, provided that the commands and questions would lead a reasonable person to conclude that he was not free to terminate the encounter.⁹⁸

Second, the Court posited that:

There could be a simple way to ensure that officers do not unintentionally violate the Fourth Amendment rights of pedestrians by approaching them without reasonable suspicion and then inadvertently treating them in such a way that a reasonable person

private premises when he has obtained the consent of the owner or another whose relationship to the premises gives him authority to issue such consent[.]” The prosecution bears the burden of proving the absence of such license or privilege.

The trespass law also states:

A person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

Id. at 490-91 (citations omitted).

⁹⁸ Remedies Opinion, 959 F. Supp. 2d at 679.

would not feel free to leave. Officers could, for example, begin *De Bour* Level 1 and 2 encounters by informing the person that he or she is free to leave. There is no constitutional requirement for officers to inform people that they are free to leave. Nevertheless, the Constitution does not prohibit a police department from adopting this policy or a court from ordering it as a *means* of avoiding unconstitutional stops, where — as here — officers have been incorrectly trained on the definition of a stop.⁹⁹

Likewise, with respect to the reforms in *Ligon*, the Court directed that Interim Order 22 of 2012 specify the circumstances in which it is permissible to interact with or stop a person *outside* a TAP building on suspicion of trespass, and that it include the following language:

A uniformed member of the service may approach and ask questions of a person (that is, conduct a Level 1 request for information under *DeBour*) if the uniformed member has an objective credible reason to do so. However, mere presence in or outside a building enrolled in the Trespass Affidavit Program is not an “objective credible reason” to approach. A uniformed member of the service may not approach a person merely because the person has entered or exited or is present near a building enrolled in the Trespass Affidavit Program.

Under the Fourth Amendment to the United States Constitution, a person is stopped (temporarily detained) if under the circumstances a reasonable person would not feel free to disregard the police and walk away. A uniformed member of the service may not stop a person on suspicion of trespass unless the uniformed member reasonably suspects that the person was in or is in the building without authorization.

Mere presence near, entry into, or exit out of a building enrolled in the Trespass Affidavit Program, without more, is not sufficient to establish reasonable suspicion for a stop on suspicion of trespass.¹⁰⁰

Finally, as another example of the relevance of Level 1 and Level 2 encounters to the issues raised in these cases, in the *Davis* settlement the parties agreed that enforcement of New York

⁹⁹ *Id.* at 679 n.38.

¹⁰⁰ *Id.* at 689.

trespass law should conform to New York law, including with respect to police-citizen encounters starting at Level 1.

Remedies Ordered in These Cases

It should be recognized at the outset, that the Court’s goal in ordering reforms was not to have “the NYPD [] abandon proactive policing and return to an earlier era of less effective police practices.”¹⁰¹ Rather, the reform process was intended to “require[] the NYPD to be *even more* proactive: proactive not only about crime control and prevention, but also about protecting the constitutional rights of the people the NYPD serves. The public interest will not be harmed by a permanent injunction requiring the NYPD to conform its practices to the Constitution.”¹⁰²

In addition to appointing the Monitor and Facilitator and ordering the JRP, the Court ordered Immediate Reforms in both *Floyd* and *Ligon*. In *Floyd* this included:

- (1) revisions to NYPD policies to make clear
 - (a) the circumstances in which a stop can be conducted; and
 - (b) that targeting based on race is not permitted;
- (2) changes to stop and frisk documentation (required to be completed after a Level 3 stop) including
 - (a) revisions to the UF-250, including the addition of a narrative section, changes to the check boxes, and “a tear-off portion stating the reason for the stop, which can be given to each stopped person at the end of the encounter”; and
 - (b) a requirement that officers provide narrative descriptions of stops in their activity logs whenever a UF-250 is prepared;

¹⁰¹ *Id.* at 673.

¹⁰² *Id.*

(3) changes to supervision, monitoring, and discipline, including

(a) policies requiring sergeants who witness, review, or discuss stops to address not only the effectiveness but also the constitutionality of those stops;

(b) policies requiring Integrity Control Officers who witness or review stops to review for constitutionality;

(c) requiring that the Department Advocate's Office "improve its procedures for imposing discipline in response to [CCRB] findings of substantiated misconduct during stops," including "increased deference to credibility determinations by the CCRB, an evidentiary standard that is neutral between the claims of complainants and officers, and no general requirement of corroborating physical evidence" and

(d) requiring the Office of the Chief of Department to track and investigate complaints of racial profiling;

(4) issuance of a FINEST message explaining the outcome of the litigation and "summariz[ing] in simple and clear terms the basic constitutional standards governing stop and frisk, the constitutional standard prohibiting racial profiling, and the relation between these standards and New York state law."; and

(5) implementation of a Body-Worn Camera ("BWC") pilot.¹⁰³

In *Ligon*, Immediate Reforms included changes to written policies, such as to Interim Order 22 of 2012. With respect to supervision, the City "was ordered to develop procedures for ensuring that UF-250s are completed for *every* trespass stop outside a TAP building in the Bronx. A 'stop' is defined as any police encounter in which a reasonable person would not feel free to terminate the encounter."¹⁰⁴ In addition, the City was ordered to develop a system for reviewing the constitutionality of stops outside of TAP buildings in the Bronx. Finally, the City was ordered to make revisions to its training materials and programs.

¹⁰³ We note that neither this list of reforms nor the following descriptions of reforms related to *Davis* and *Ligon* are intended to be exhaustive.

¹⁰⁴ Remedies Opinion, 959 F. Supp. 2d at 690.

The *Davis* settlement included revisions to certain NYPD training materials and documentation requirements specific to NYPD trespass enforcement practices in or around NYCHA residences. The parties further agreed that additional reforms would be made as part of the Court-ordered Monitorship.

We next highlight the status of Immediate Reforms and additional reform measures both implemented and contemplated in *Floyd*, *Davis*, and *Ligon*.

Changes to NYPD Policies and Documentation

Many of the Immediate Reforms ordered by the Court have been implemented, including the creation of new stop report form and the “What Is A Stop?” receipt that is required to be given to people who have been stopped (but not those who are arrested or summonsed). The NYPD has additionally revised its written policies for street stops and vertical patrols.¹⁰⁵

Supervision: Focus on Quality Not Quantity of Stops

In the Liability Opinion, the Court found that NYPD “officers [were] routinely subjected to significant pressure to increase their stop numbers, without corresponding pressure to ensure that stops [were] constitutionally justified.”¹⁰⁶ In the Court’s view, the two sources of this pressure were weekly “CompStat meetings” at which NYPD leadership urged local commanders to increase the number of stops and NYPD Operations Order 52, which the Court found “made clear that supervisors must evaluate officers based on their activity numbers, with particular

¹⁰⁵ See NYPD Patrol Guide §§ 212-11, 212-59, & 212-60. Section 212-11 provides a description of the four *De Bour* levels.

¹⁰⁶ Liability Opinion, 959 F. Supp. 2d at 602.

emphasis on summonses, stops, and arrests, and that officers whose numbers are too low should be subjected to increasingly serious discipline if their low numbers persist.”¹⁰⁷

In 2014, internal NYPD surveys reflected widespread dissatisfaction with legacy performance evaluation systems. This included the feeling that there was too much pressure to produce high numbers of stops without concern for the quality of the stops, echoing the Court’s findings in the Liability Opinion. After internal deliberations and based on input received from outside parties, a new system was developed for evaluating patrol officer performance which takes into account qualitative measures of performance, including both good and bad conduct.

This new performance evaluation system has four main components. The first is a monthly-generated electronic form known as the Officer Profile Report. While the Officer Profile Report does not track the number of stops conducted by each officer, it compiles the number of stops resulting in corrective action by a supervisor. The second is the Supervisory Feedback Form, which enables supervisors to note commendable conduct and areas that may need improvement. The Officer Self Report Form allows officers to document conduct which they regard as important. Finally, the new system makes use of Quarterly Evaluations during which supervisors review the three forms just described. Supervisors must then rate officers based on 12 “dimensions,” including “Application of Law and Procedures” and “Quality and Timeliness of Reports.” In the context of these two dimensions, the supervisor will also rate the officer on the lawfulness of stops and the accuracy and completeness of the officer’s stop reports.

¹⁰⁷ *Id.* at 590, 592-94, 600. The Department has since developed a new version of the performance evaluation for sergeants and lieutenants which will be implemented in 2018.

Notably, the NYPD's Performance Evaluation Guide, which explains the systems to officers, states that "The overall message from the 12 performance dimensions is clear: it is about the quality and effectiveness of work. It's not purely about quantitative metrics." With respect to *Terry* stops, the Guide provides:

It should be noted that *Terry* stops (i.e., investigative stops or detentions that require the completion of a Stop Report) are no longer recognized as a quantitative performance metric in any way. However, if the member could not articulate a reasonable suspicion to justify a *Terry* stop, improperly prepared a Stop Report, or failed to complete stop documentation, supervisory members should take appropriate action, depending on the severity and frequency of the error, including guidance, training, preparing a feedback card, discipline or consideration in a quarterly evaluation.¹⁰⁸

On November 6, 2017, Judge Torres issued an order requiring the Monitor to review and assess the NYPD's performance-evaluation system to ensure that it does not reinstate pressures that result in a focus on the quantity of stops without regard to their lawfulness or that would undermine the goals of the remedial process. Furthermore, Judge Torres' order provides that Court approval is required before the NYPD implements a proposed change that would introduce a mechanism to count the number of stops conducted by an officer or otherwise affect the manner in which the quality and lawfulness of stops are assessed. These requirements only exist during the period of Court supervision.

¹⁰⁸ The Monitor reports that one or more members of the team have attended CompStat meetings from April 2016 through August 2017 and that there is seldom any mention of stops and never a criticism of number of stops or lack of stops. Notably, the evaluation system currently only covers officers.

Police Stop Data

On March 25, 2016, the Court approved the Monitor's proposal regarding (1) a revised stop report form and accompanying instructions and (2) a draft NYPD Interim Order that reconciles NYPD SQF procedures with the new stop report form.

The new form requires documentation of stops as well as any related frisk or search, but not of Level 1 or 2 encounters. The form has a narrative section in which officers are required to describe the facts that formed the basis for the stop and, if conducted, the frisk, replacing the old forms which relied heavily on checkboxes. The prior use of checkboxes, such as "furtive movement," were thought to be susceptible to abuse in that they provided rote justifications. The form also has a section for supervisors to document that they have conducted the review required by NYPD policy and follow-up action, if any, called for by that review. In the Monitor's view, this new form "balances well the several goals of such a form — documenting stop, question, frisk and search activity, providing some guidance about when these interventions are permissible, and facilitating their review by supervisors and others in the Department."¹⁰⁹

In addition, the NYPD has developed a new records management system called FORMS or "Finest Online Records Management System." On November 22, 2016, the Court approved the electronic version of the Court-approved stop report form. Once included in FORMS, officers can access and complete the stop report form on their smartphones and tablets, and supervisors can review the report electronically for approval or correction. FORMS is able to capture the narratives, the supervisory review, and the other fields on the Court-approved stop report form.

¹⁰⁹ 3/23/16 Ltr. from Monitor to Judge Torres at 3.

As required by section 140.50(4) of New York’s Criminal Procedure Law, the database does not record the name and identifying information (address, date of birth and phone number) of the person stopped. However, that information is required to be recorded in officer activity logs, and a copy of the activity log is attached to a hard copy of the stop report and kept in a binder at each precinct, which facilitates audits and investigations related to CCRB complaints.

Body-Worn Camera Pilot

In the Remedies Opinion, the Court required that the NYPD implement a Body-Worn Camera pilot program over a one-year period to measure “the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks” and to evaluate “whether the benefits of the cameras outweigh their financial, administrative, and other costs.”¹¹⁰ In ordering this relief, the Court explained the various purposes video recordings could serve:

Video recordings will serve a variety of useful functions. *First*, they will provide a contemporaneous, objective record of stops and frisks, allowing for the review of officer conduct by supervisors and the courts. The recordings may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore, such as baggy pants or a hoodie. *Second*, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. *Third*, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police, and that the authorities are more likely to believe the police. Thus, the recordings should also alleviate some of the mistrust that has developed between the police and the black and Hispanic communities, based on the belief that stops and frisks are overwhelmingly and unjustifiably directed at members of these communities. Video recordings will be equally helpful to members of the NYPD who are wrongly accused of inappropriate behavior.¹¹¹

¹¹⁰ Remedies Opinion, 959 F. Supp. 2d at 687-88.

¹¹¹ *Id.* at 685.

Significantly, the Remedies Opinion left the decision of whether to expand the Body-Worn Camera (“BWC”) pilot an open issue. The decision provides that “[a]t the end of the year, the Monitor will work with the parties to determine whether the benefits of the cameras outweigh their financial, administrative, and other costs, and whether the program should be terminated or expanded.”¹¹² At this time, the Department has already begun the process of expanding the BWC program beyond the pilot, and is now beginning the process of disseminating cameras to over 17,000 patrol officers.

The BWC pilot was launched in April 2017. The goal is to have approximately 1,200 officers — including uniformed patrol officers, plainclothes officers from specialized anti-crime units, and traffic enforcement officers — in 20 precincts wear cameras for the one-year program. The comparison control group will also include uniformed and plainclothes officers.¹¹³ Notably, from December 2014 through March 2016, the NYPD instituted a trial BWC program in which 54 officers in five precincts and one housing Police Services Area volunteered to wear BWCs.

It is important to understand some of the considerations that went into the development of the BWC pilot, including what the pilot is intended to measure and the protocols for the program developed by the Monitor.

¹¹² *Id.*

¹¹³ The Monitor is also developing a separate method of evaluating the use of BWCs by NYPD officers working in Public Housing Services Areas (*i.e.*, patrolling in and around NYCHA-owned properties).

Outcome Measures

According to the Monitor, the study¹¹⁴ will assess four sets of outcomes measures: (1) civility of police-citizen interactions, including de-escalation (2) arrest numbers and other policing activities, (3) police lawfulness, and (4) police-community relationships. With respect to civility and de-escalation, the pre-test and post-test data will be collected to analyze outcomes compromised of: CCRB complaints, officer arrest reports listing force, officer use of force reports, officer injury reports, resisting arrest data, and Disorderly Conduct and Obstructing Government Administration arrests and summonses. It also appears that lawsuits against officers will be considered.¹¹⁵ The metrics considered for arrest numbers and other policing activities include the monthly number of responses to calls for service (per unit); officer initiated-calls (per unit); complaints by citizens of crime; domestic incident reports; arrests; summonses; stop reports; and interior patrols.

To assess police lawfulness, each quarter the monitor team will review stop reports to assess constitutionality and compliance with the orders in *Floyd*, *Ligon*, and *Davis* and to compare the extent to which stop reports in camera and non-camera precincts differ. According to the Monitor, “[t]he monitor team will be looking at whether the presence of cameras influenced the officers’ justifications for the stops, frisks and searches and also whether wearing cameras affected the demographic makeup of those stopped, such as their race, gender and age.”

¹¹⁴ The Monitor has provided greater detail on the design of the experiment. *See, e.g.*, Sixth Report of the Independent Monitor, The NYPD’s Body-Worn Camera Pilot: Research and Evaluation Plan (June 29, 2017).

¹¹⁵ *See id.* (“Variables in these datasets will be analyzed to determine whether cameras influence the types of CCRB complaints filed, lawsuit settlement amounts (if data is available), the types of force used (hand strike, baton, etc.), and other relevant subcategories for camera officers and control officers over the course of the study period. The monitor team will also examine the impact of cameras on the CCRB complaint process and outcomes, looking, for example, at dispositions, time-to-disposition of complaint, and disciplinary actions taken. The aim is to gauge differences in post-complaint experiences of treatment officers relative to control officers.”).

The Monitor will also compare trespass enforcement in NYCHA and TAP buildings between officers outfitted with cameras and those without cameras to see whether the arrests were lawful and whether officers completed the required arrest and stop reports. In its June 29, 2017 report, the Monitor cautioned that this assessment depended on “the availability of data in a readily accessible format.”

Finally, to evaluate the impact of BWCs on police-community relations, surveys will be conducted before and after the introduction of the cameras. This includes both telephonic and in-person surveys. The details of the survey methods are available in the Monitor’s June 29, 2017 report.

BWC Pilot Policies and Procedures

The Court directed the Monitor to establish certain policies and procedures for the BWC pilot:

The Monitor will establish procedures for the review of stop recordings by supervisors and, as appropriate, more senior managers. The Monitor will also establish procedures for the preservation of stop recordings for use in verifying complaints in a manner that protects the privacy of those stopped. Finally, the Monitor will establish procedures for measuring the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks.¹¹⁶

The NYPD initially developed procedures in connection with its trial BWC program, and the Monitor has accepted the recommendations of the NYPD as to the procedures to be used during the BWC pilot. In establishing these procedures, the NYPD drew upon: (i) the policy for the trial BWC program in place from December 2014 through March 2016, which had been

¹¹⁶ Remedies Opinion, 959 F. Supp. 2d at 685.

developed after, among other things, consideration of model policies issued by the International Association of Chiefs of Police (“IACP”), the Police Executive Research Forum (“PERF”), and the American Civil Liberties Union (“ACLU”) and the policies in use at 20 police departments; (ii) feedback from stakeholders, including plaintiffs’ counsel in *Floyd, Davis, and Ligon*, police reform advocacy groups, and NYPD’s five unions; (iii) results from an NYPD-commissioned survey of police officers and the public regarding the proposed policy; and (iv) the NYPD’s feedback based on informal meetings with stakeholders. As part of the NYPD’s outreach effort described above, on April 7, 2017, the NYPD submitted revised draft procedures for approval and made public its analysis of the two surveys, including an explanation of why it had accepted or rejected certain recommendations.¹¹⁷

In approving the policy, the Monitor focused on four core areas: (1) when the camera is required to be activated, (2) when notice of activation is given, (3) supervisory review, and (4) documentation and retention. As a general matter, the BWC is required to be turned when responding to radio calls of a crime in progress, during interior patrols of NYCHA and TAP buildings, and prior to Level 2 encounters. For officers on patrol, apart from officers on interior patrols of NYCHA or TAP building, this means that BWCs must be activated for Level 2 encounters, but not with respect to Level 1 encounters (although officers may activate cameras at Level 1 when they deem it appropriate to do so).¹¹⁸ Activation of the BWC is also required for

¹¹⁷ See Monitor’s Memorandum Regarding Approval of Policies for NYPD Body-Worn Camera Pilot Program (April 11, 2017), Attachment 3, NYPD Response to Public and Officer Input on the Department’s Proposed Body-Worn Camera Policy, *available at* <http://nypdmonitor.org/wp-content/uploads/2018/02/2017-04-11-Floyd-Ligon-Davis-Monitors-Ltr.-to-Court-Encl.-Memo-re-Approval-of-Policies-for-NYPD-BWC-Pilot-as-filed.pdf>

¹¹⁸ As noted, the NYPD retained researchers to conduct two surveys. The researchers surveyed 5,419 uniformed officers and 25,000 members of the public (unfortunately, the survey of the public was not representative of New York City’s population in that it was disproportionately white: according to the report conducted by the Policing Project to the NYPD Summarizing Public Feedback on its proposed BWC Policy, 60% of respondents were white, even though whites make up just 33% of New York City’s population). On the issue of when an officer should be

consent searches, inventory searches, searches incident to arrest, and searches of a person's belongings, but not for strip searches.

The Monitor believed that it was beneficial to record Level 2 encounters because (1) it may be difficult for officers to turn on the BWC where the Level 2 encounter escalates to a Level 3 *Terry* stop; and (2) it would permit the Monitor to evaluate whether officers are confusing Level 2 encounters with Level 3 stops. The latter is particularly important because an officer who fails to realize that a Level 3 stop has occurred will also not submit a stop report because stop reports are not required for Level 2 encounters. In addition, the Monitor noted that he believed that because officers are required to activate their BWCs during interior patrols of NYCHA and TAP buildings and when responding to a radio call, “a sufficient number of Level 1 encounters will be recorded under the [policy] to determine whether, in practice, Level 1 encounters raise questions that need addressing by the Department or the monitor.”¹¹⁹

Notice of recording is required “[a]s soon as reasonably practicable” whenever the BWC is active “unless notification could compromise the safety of any person or impede an investigation.”¹²⁰ Consent is not required to start or to continue recording.

Supervisors are required to review BWC video “in conformance with the self-inspection program promulgated by the [NYPD’s] Quality Assurance Division,” and also periodically to

required to inform a person that the camera is recording, the choices given were “As soon as the officer approaches the person,” “As soon as possible without compromising safety or other law enforcement interests,” “Never,” and “No opinion,” 65% of officers responded never, whereas 27% of public participants answered as soon as the officer approaches and 46% responded as soon as possible.

¹¹⁹ Monitor’s Memorandum on Approval of Body-Worn Camera Policies, at 7.

¹²⁰ *Id.*, Attachment 1, Step 4.

provide feedback and address deficiencies.¹²¹ Currently, the NYPD is implementing a new self-inspection program run by the Risk Management Bureau.

Changes to Local Laws

On August 3, 2016, Mayor Bill de Blasio signed into law Intro. 606, also known as the “NYPD Use of Force Encounter Reports Law.” The bill requires the NYPD to issue quarterly reports on “use of force incidents” and “their relationships to quality of life offenses.”

In addition to this bill, Intro. 539 requires the NYPD to “provide a quarterly report on the number of use of force incidents disaggregated by type of force used, precinct or unit of that officer that used force, and whether the officer was on or off duty when the force was used.” Intro. 824 requires the NYPD to “post an annual report of the total number and percentage of officers in each precinct that: have two or more substantiated [CCRB] complaints in the last three calendar years, have been the subject of an Internal Affairs Bureau Investigation that resulted in a suspension in the last five years, use of excessive force in the last three years or have been arrested in the last 10 years for police-related behaviors.”¹²²

A version of the “Right to Know Act” has been enacted. Under this legislative package, (1) officers are required to inform individuals during Level 2 and 3 encounters that they have the right to refuse to be searched and proof of consent to search must be provided in writing or by

¹²¹ *Id.* at Step 26.

¹²² See Zaria Howell, “De Blasio Signs ‘NYPD Use of Force Encounters Reports Law,’” *Amsterdam News*, Aug. 11, 2016 (internal quotation marks omitted), *available at* <http://amsterdamnews.com/news/2016/aug/11/de-blasio-signs-nypd-use-force-encounter-reports-l/>

video (Intro. 541-C); and (2) officers are required to identify themselves and provide a business card as well as the reason for questioning at the initiation of Level 2 encounters (Intro. 182-D).¹²³

* * *

Part 2

Calls for Greater Respect, Transparency and Accountability

The JRP has endeavored to engage the communities most affected by the NYPD’s misuse of SQF and trespass enforcement practices in developing supplemental reforms beyond the Immediate Reforms, additional reforms implemented during the course of the Court-ordered Monitorship, and efforts by the New York City Council. The findings and recommendations of this process have been underscored by three primary issues which we review in sum and substance — respect, transparency, and accountability. These sections are organized as follows:

1. Public Investigations and Reports on Police-Community Relations in New York City from 1999 to 2015
2. Reasons to Address Police-Community Relations
3. Defining Transparency and Accountability
4. Reasons to Address Transparency and Accountability
5. Summary of Relevant Themes on Respect, Transparency, and Accountability

¹²³ Under earlier versions of Intro. 182, officers would have also been required to identify themselves at the start of Level 1 encounters that had a law-enforcement purpose. As enacted, Intro. 182 has received some criticism: “Under prior versions, officers would need to identify themselves in any nonemergency encounter involving investigative questioning. These types of encounters represent the vast majority of police[-citizen encounters]. The new version only requires officer identification when a person is ‘suspected of criminal activity.’ The problem is that police don’t need to suspect someone of criminal activity to approach them, disrupt their daily routines, and question or harass them.” <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/backroom-deal-threatens-weaken-real-police>

Public Investigations and Reports on Police-Community Relations in New York City 1999 – 2015

The following segment of this report is a brief chronicle in memorandum form of the various efforts in the form of public investigations and reports about the NYPD, its relationship with impacted communities, and recommendations for reform. It lends additional context to the necessity of reforms to address respect and police community relations, and lays the foundation for interpreting both suggestions from community members, and the Joint Remedial Process recommendations outlined in Section VI.

Report Name & Citation:

The Task Force on Police/Community Relations. (1998). *Report to the Mayor*. New York, New York.

Summary of Process:

Ten days after the assault of Abner Louima by two NYPD officers in August of 1997, Mayor Giuliani assembled the Task Force on Police-Community Relations. The task force was comprised of 33 members appointed by the Mayor. Among those selected were civil liberties administrators, former high-ranking New York City Police Department administrators, three City Council members, a borough president, several media representatives, as well as civic, religious, and community leaders. The task force worked for 6 months and generated 91 specific recommendations for improving police-community relations. Of those 91 recommendations, 87 were implemented in some way. Below you will find 26 recommendations directly or closely related to the most recent reform efforts to the NYPD.

Recommendations:

1. CPR (Courtesy, Professionalism, and Respect) advisory board to develop and disseminate a Code of Professional Standards; supplemented with lecture and video based roll call training briefs.
2. Institutionalize CPR training in the same way as firearms training.
3. Establish separate CPR Academies for leadership.
4. Independent body to develop and disseminate rank-specific, anonymous CPR evaluation surveys to leadership. Surveys should be complemented by open-ended, rank-specific focus groups designed to capture qualitative feedback.
5. Adopt policy/procedure manual for all Precinct Community Councils.
6. Convene and facilitate mandatory quarterly meetings, with all Precinct Commanders, and Precinct Council Executive Board Members.
7. Submit copy of monthly minutes.

8. Mandated to establish a Membership Recruitment Sub-Committee.
9. NYPD should design and implement a Comp-Stat like strategy to continuously measure and assess the effectiveness of all operational CPR components and the overall status of police-community relations, as well as to hold precinct and select operational unit commanders accountable for these measures.
10. Precinct Commanders should develop and implement a Citizen-Police Information Seminar Series.
11. Citizen-Police Town Hall dialogues should be instituted to address police-related issues/concerns raised by citizens and incidents of police-community tension.
12. Precinct Commanders and Community Precinct Council Presidents should receive facilitation skills training in order to more effectively and efficiently facilitate these forums.
13. Precinct Commanders should develop and implement a Citizen-Police Information Seminar Series.
14. Develop and implement a Community Affairs Response Team (CART) pilot in a precinct subject to community unrest. The mission is to de-escalate the risk of community unrest and through the strategic deployment of a team of select, specially trained police officers and community members.
15. Department should create a proactive curriculum which exposes student officers to the diverse and changing nature of the City's communities, challenges them to become cognizant of and question the feelings, assumptions and perceptions which influence their behavior, and equips them with the necessary tools to effectively serve all communities with courtesy, professionalism and respect.
16. Include video vignettes which comprehensively explore diverse groups in New York City.
17. Recommends the creation of a Board of Visitors for the New York Police Academy to act as advisors to the Mayor and the Police Commissioner. The BoV should conduct a top to bottom review and assessment of the Police Academy curriculum and to make appropriate recommendations for improvement.
18. Elimination of the 48 hour rule.
19. Create an independent auditor/monitor board to monitor and evaluate civilian complaint processes administered by the CCRB and the NYPD.
20. Propose the designation of both a senior NYPD official and a CCRB board member to act as liaisons between their respective agencies and the auditor-monitor.
21. The creation of a screening body composed of CCRB personnel and community representatives. (This body would screen complaints to identify the less serious complaints and refer them without a full investigation for resolution by either mediation or conciliation.)
22. NYPD should make the status information known to the CCRB, and the CCRB should then be responsible for reforming the complainant.
23. The NYPD's disciplinary choices, the reasons for making those choices and the specific disciplinary action the Police Department takes on CCRB-substantiated complaints should be public information.
24. Police disciplinary matters should be left solely in the hands of the Police Commissioner, and that the Police Commissioner's disciplinary determinations be accorded great

deference. Further, reviews by intermediate-level bodies should not interfere with a matter deserving of great deference to the Police Commissioner.

Report Name & Citation:

Meyers, M., Fung, M., Siegel, N. (1998). *Deflecting Blame: The Dissenting Report of Mayor Rudolph W. Giuliani's Task Force on Police/Community Relations*. New York, NY.

Summary of Process:

Following the finalization of the Task Force Report, three members of the task force wrote a dissenting report highlighting many of the issues existing throughout the 6 month long task force convening and the writing of the final recommendations. Task force members involved in the dissenting report included Michael Meyers, Executive Director of the New York Civil Rights Coalition, Margaret Fung, Executive Director of Asian-American Legal Defense and Education Fund, and Norman Siegel, Executive Director of NYCLU. The report was published in March of 1998; the same month as the initial report.

Recommendations:

1. To effectively develop a comprehensive approach to combating police misconduct there must be a mechanism for precinct level monitoring of police activity. It was recommended that there be an elected Police Community Advisory Board in each of the city's police precincts. Each board would have five members elected from the general population living within precinct boundaries. By monitoring and reporting on local police activity, this body would make precinct commanders accountable to neighborhood concerns and provide local residents and community organizations with a channel for addressing problems. (These boards are distinctly different from Precinct Community Councils)
2. Propose a six-month weekly class given to thirty police officers from all 97 precincts. It is recommended that this training is co-instructed with a well-trained NYPD officer and community member.
3. A residency requirement tied to an affirmative action plan for police officers as a condition of employment is strongly recommended to improve police community relations and increase the effectiveness of the NYPD.
4. Recommendation that the NYPD implement an aggressive affirmative action plan designed to create a police force more reflective of the city's population.
5. Removal of the 48-hour rule.
6. Increase Academy Training from six months to one year.
7. As part of this effort, the NYPD must undertake a serious effort to make police precinct station houses client friendly. Some of the city's station houses today are no different than liquor stores with their small bulletproof plastic vestibules. With minimal costs, station houses can be transformed into places where neighborhood residents would be welcome to ask for assistance or just some basic information about city services.
8. Police Officers should be required to undergo periodic psychological testing.
9. In addition, clear written guidelines and procedures should be established by the NYPD for the handling of police encounters and incidents in which non-English speaking individuals are involved.

10. New York City's Human Rights Commission should develop workshops and materials for distribution directed towards young people to inform them of their rights and responsibilities in their interactions with the police.
11. The NYPD and the CCRB compile a broad range of statistics, from the number and type of arrests made, to complaints filed, to the number of bullets discharged, on a daily, weekly, monthly, and annual basis. A suggestion that as soon as this information is collected that it be posted on the NYPD and CCRB Websites for the widest available dissemination. Regular access to statistics on crime fighting and police misconduct would compel a form of accountability that does not currently exist.
12. The Police Commissioner must act on CCRB complaints within 30 days from when he receives them.
13. The Police Commissioner must act on the Administrative Law Judge's decision within 30 days from when he receives it.
14. The CCRB must hold public town-hall meetings at least once a month. At these meetings, the community would be invited and police management would be required to attend.
15. The Mayor's Executive Order issued on October 21, 1997 requiring the NYPD and CCRB to work more cooperatively and specifically to develop procedures to better inform complainants about the status of their complaint must be implemented. (The members did not believe that this Executive Order had been adequately implemented).

Report Name & Citation:

Spitzer, E. (1999). *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General*. New York, New York: Civil Rights Bureau.

Summary of Process:

In March of 1999, Attorney General Eliot Spitzer commissioned an investigation into the NYPD's Stop and Frisk practices. Stop data were reviewed to compare the extent to which minorities and whites were the subject of "stop & frisk" activity for the period of January 1, 1998 through March 31, 1999. The Office of the Attorney General published the report on December 1, 1999.

Issues Identified:

- Steady deterioration in the relations between the City's minority population and the NYPD.
- In 1999, the climate in New York's minority neighborhoods were resentment and distrust of the NYPD.
- Relative to their percentages within the population of New York City, Blacks were stopped at a much higher rate than whites.

Recommendations:

1. That NYPD attends to the data and respond to the serious concerns set forth in the report.

Report Name & Citation:

U.S. Commission on Civil Rights. (August, 2000). *Police Practices and Civil Rights in New York City*. Washington D.C.: U.S. Commission on Civil Rights.

Summary of Process:

The USSCR is composed of eight Commissioners: four appointed by the President and four by Congress. At the time of the Policing Practices report, Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Christopher F. Edley, Jr., Yvonne Y. Lee, Elsie M. Meeks, Victoria Wilson, Carl A. Anderson and Russell G. Redenbaugh. Anderson and Redenbaugh dissented with the findings of the commission in a statement appended to the final report. The hearing took place May 26, 1999 and the final report was published in August of 2000.

Issues Identified:

1. Racial profiling had been practiced as part of NYPD's stop and frisk practices.
2. Cadets did not receive sufficient training time and experience - especially diversity training.
3. NYPD used materials that were offensive, and had prejudicial/racial, ethnic, religious, sexual, and gender stereotypes.
4. Sexual harassment training was inadequate.
5. The quality of instructors for the diversity and sexual harassment training, and number of instructors of color need improvement.
6. NYPD's in-service stop and frisk training did not occur regularly and was of a questionable benefit. It failed to instill respect for adherence to constitutional procedures.
7. There was a lack of regular continuing education courses on stop and frisk procedures, thereby contributing to misunderstanding by police officers.
8. NYPD lacked clarity in their articulation to the media and public the recommendations put forth by the mayor's Task Force on Police/Community relations and how they would be implemented and with what impact.
9. Open dialogue between NYPD and community members on a regular basis is a necessary effort toward building police community relations. When these regular dialogues do not take place on a regular basis the result is deterioration in police community relations.
10. NYPD training academy should be reformed.
11. Precinct Community Councils lacked oversight and accountability to a centralized authority, while not governed by any mission statement, with goals and a scope of responsibilities.
12. PCC lacked centralized technical support, and a mechanism for inter-council communication and idea sharing, they also like centralized accountability for membership diversity and activities.
13. NYPD had not been clear enough on articulating - both to the media and to the general public - the extent to which recommendations put forth by the mayor's Task Force on Police/Community Relations were being implemented, and with what impact.

Recommendations:

1. NYPD should change its diversity training and sexual harassment programs, including enhancing such training at the borough and precinct levels. Community members should be included in developing these trainings.
2. There should be more training time devoted to diversity training.
3. Negative stereotypes within training materials should be eliminated.
4. Materials should explore the meaning of racism, sexism, bias, oppression, stereotyping, peer pressure, and related concepts.
5. Mandates under settlement agreement with the United States should be implemented to address the inadequate sexual harassment training.
6. Trainees should be tested on training material.
7. Continuing education courses on stop and frisk is necessary and should highlight relevant constitutional requirements. This training should be implemented for all officers regardless of rank.
8. Officers should be prepared following their academy training to develop community relationships and partnerships; while also receiving rewards for developing these community relationships and partnerships.
9. Creation of a website that provides public access to data collected by both the NYPD and by the CCRB.
10. Public forums involving both the police and community members should occur regularly throughout the year.
11. Participation in Precinct Community Councils should be actively promoted throughout the department and communities. Community members should receive regular updates in newsletter or other communication.
12. Creation of an independent temporary commission to investigate and examine the practices and training materials which are currently in use by the academy.
13. With a focus on Courtesy, Professionalism, and Respect (CPR) - in-service CPR training should be institutionalized and mandated like the firearms training.
14. Since Precinct Community Councils were not accountable to a centralized authority, it was recommended that NYPD adopt a mandated police and procedure manual for the PCC, placing significant emphasis on defining a mission statement, goals, scope of responsibilities, and scope of activities specifically designed to ensure that councils continuously and aggressively work to maximize improvements in the areas of quality of life, police-community relations, and community assisted policing.
15. Implement Police-Community dialogues in the form of a citizen-police information seminar series to complement the Citizens Police Academy.
16. Implement "citizen-police town hall dialogues"
17. Precinct commanders and CPP presidents should receive facilitation skills training to more effectively and efficiently facilitate dialogues.
18. NYPD should work harder to include community members in planning and policy development.

Report Name & Citation:

Vera Institute, Center on Youth Justice. Fratello, J., Rengifo, A. F., Trone, J., Velazquez, B. (2013). *Coming of Age with Stop and Frisk: Experiences, Perceptions, and Public Safety Implications*.

Summary of Process:

A study conducted by the Vera Institute, launched in the fall of 2011. This study sought to answer the unexplored question of: How does the being stopped by police, and the frequency of those stops, affect those who experience these stops at a young age? Using survey and in-depth research methods this study focused on young people (between the ages of 18-25) in highly patrolled, high-crime areas who have been stopped by police. There were approximately 500 respondents for the survey, with a smaller sample of in-depth interviews conducted with 13 to 21 year olds. The report was published September 2013.

Recommendations:

1. The NYPD should continue to recalibrate its stop and frisk practices to remedy the serious consequences to police-community relations and public safety that the study revealed.
2. Expand upon existing trainings to encourage respectful policing that makes people feel they are treated fairly (including informing them of the reason for the stop), and emphasize strategies aimed at reducing the number of stops that escalate to the point where officers make threats and use physical force.
3. Collaborate with the predominantly black and Hispanic/Latino communities where stop and frisk has been concentrated to improve relationships by finding tangible strategies to put into practice.
4. Partner with researchers to better understand the costs and benefits of various proactive policing strategies as well as individual practices such as stop and frisk.

Report Name & Citation:

Adams, E. L., Brewer, G., Siegel, N. (2015). *Improving Police Community Relations: A Report from a Series of Town Hall Meetings in Brooklyn and Manhattan*, New York, NY.

Summary of Process:

A partnership effort between the Manhattan and Brooklyn Borough Presidents Gale Brewer and Eric Adams, as well as NYCLU Executive Director, Norman Siegel, this report followed a series of community dialogues in Brooklyn and Manhattan beginning in January 2015. The final report was published in September 2015.

Recommendations:

1. Increase eligibility to take officer entrance exam.
2. Create a career ladder for auxiliary police officers into Department.
3. Assign a Special Prosecutor for cases of fatal police encounters.
4. Utilize early intervention systems to monitor officers' performance and behavior.
5. Create an accountability-driven culture in the NYPD.
6. Create meaningful community engagement and oversight mechanisms:
 - a. While the department's new Neighborhood Policing initiative emphasizes community engagement and the value of relationships, participants at their roundtables emphasized that nonconfrontational everyday interactions with police

b. While officers should be respectful and friendly to community members, community members should also welcome officers into their communities. As such, community engagement should be a required component of the job, and quantitative parameters should be set requiring officers to attend a number of community meetings and neighborhood events each month. Some ideas for officer-community engagement included:

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(moderately) from an open container, and other activities that traditionally were not summonsed or prosecuted.

16. Put body cameras on officers, developing clear guidelines for their use, before full deployment.
17. Since schools are too often left empty after school hours when community sports, arts, and civic activity space is needed the most. NYPD should partner with the Department of Education to expand school building hours to create safe spaces for community activities.
18. Community Ownership and Accountability: To improve the quality of “neighborhood policing” and make neighborhoods safer, the community should take more of a leadership role.
19. Create an “Improve Police-Community Relations Coalition” made up of community-based and civil rights organizations, clergy, and concerned New Yorkers to monitor the progress of the city and NYPD in implementing the recommendations of this report.
20. Require the annual publication of a police-community relations status report prepared by the NYPD, to be provided to the Mayor, Comptroller, Public Advocate, City Council, the NYPD Inspector General, the Federal Monitor, the CCRB, and other appropriate agencies.
21. Create a seven-member oversight panel consisting of a City Council Member, a Borough President or designate, a civil rights lawyer, a community member, a union representative of NYPD members, a current NYPD Community Affairs officer, and a journalist of a local print news organization.

Reasons to Address Respect and Police-Community Relations

While the Department has in the past made efforts to address police-community relations, critics have long highlighted the lack of meaningful engagement in communities of color. In addition, the NYPD lacks an institutionalized component for community partnerships in the pursuit of public safety. These issues have meant, in the past, that efforts at reform are often limited to the incumbency of current elected officials who make changes that fail to become part of the culture of the NYPD.

Early notions of law enforcement are said to be inspired by Robert Peel’s principles of policing, which were developed around 1829.¹²⁴ Peel propounded some general principles of

¹²⁴ See generally Keith L. Williams, *Peel’s Principles and Their Acceptance by American Police: Ending 175 Years of Reinvention*, *The Police Journal*, Volume 76 (2003); see Nick Pinto, “The Point of Order,” *N.Y. Times*, Jan. 13,

police-community relations that were in his view foundational to the maintenance of public safety. In his summary Peel highlighted the necessity for both public cooperation and public respect as tantamount to the task of policing effectively. Peel's principles are so central to modern policing that former Police Commissioner William Bratton was said to have kept a copy of them in his office during his tenure at the NYPD.¹²⁵ What Peel recognized nearly two hundred years ago was the basic need for community trust and cooperation.¹²⁶ Unfortunately, generations

2015 ("Peel's vision was highly influential in the formation of the New York City Police Department in 1845, and he is now regarded as a father of modern policing."), *available at* <https://www.nytimes.com/2015/01/18/magazine/the-point-of-order.html>

¹²⁵ See "Sir Robert Peel's Nine Principles of Policing," New York Region, N.Y. Times, Apr. 15, 2014, *available at* <https://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html>

¹²⁶ Scholars disagree whether there are nine or 12 Peel principles. When viewed as nine, they are often listed this way:

PRINCIPLE 1 "The basic mission for which the police exist is to prevent crime and disorder."

PRINCIPLE 2 "The ability of the police to perform their duties is dependent upon public approval of police actions."

PRINCIPLE 3 "Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public."

PRINCIPLE 4 "The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force."

PRINCIPLE 5 "Police seek and preserve public favor not by catering to the public opinion but by constantly demonstrating absolute impartial service to the law."

PRINCIPLE 6 "Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient."

PRINCIPLE 7 "Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."

PRINCIPLE 8 "Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary."

of fractured relationships between police and minority communities has contributed to perceptions of the Department as a perpetrator of racism and homophobia in impacted communities. In recent years with the deaths of Eric Garner and Ramarley Graham, that schism has grown and produced a culture of fear and distrust that has, for some time now, diminished the police-community cooperation at the heart of Peel's thesis.

Poor police-community relations have several implications for officers from both a personal and professional standpoint. Distrust between officers and community members may instill officers with a sense of apprehension when approaching suspects, increasing the likelihood of escalation, the use of excessive force, and traumatization. Officers who are confronted regularly with depictions of themselves and their profession as abusive and racist are more likely to become defensive and disillusioned with the concept of community oversight or approval.¹²⁷ Such depictions can have a deleterious effect on officers whose work already exposes them to vicarious and actual trauma, with exposure to vicarious trauma occurring on a routine basis. Research shows that exposure to trauma produces hypervigilance and hypersensitivity to perceived threats for both the person being stopped and the police officer. Officers experiencing a sense of threat may, therefore, unnecessarily escalate civilian encounters, which, among other things, makes maintaining respectful relationships with the community even more difficult.¹²⁸

Moreover, poor police-community relations have several implications for the direction of public safety. For example, when citizens do not trust officers they are less inclined to report

PRINCIPLE 9 "The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it."

¹²⁷ See Susan Watt, *Future of Civilian Oversight of Policing*, 33 Canadian J. Criminology 347 (1991).

¹²⁸ See U.S. Comm'n on Civil Rights, *Police Practices and Civil Rights in New York City: Chapter 3 Police-Community Relations*.

incidents¹²⁹ and violence in communities may increase.¹³⁰ Citizens who are distrustful of officers are also more inclined to run from officers seeking to question them.¹³¹ While fleeing the scene does not necessarily denote guilt,¹³² it increases the likelihood of escalation and arrest. A history of racially-biased policing tactics or the perception thereof has contributed to a greater fear of police in communities of color, and as a consequence residents of impacted communities may be more likely than others to run in the presence of police.

Dr. Judith Lewis Herman in her revised 1992 book entitled *Trauma & Recovery*¹³³ defines “psychological interpersonal trauma” as occurring when an individual has an experience that threatens his or her life or bodily integrity, which overwhelms his or her ability to cope by creating feelings of hopelessness or intense fear. The hopelessness and fear described by Dr. Herman is what many community members expressed that they experienced during the varied phases of the JRP. Since thoughts and feelings are antecedents to actions, these experiences are

¹²⁹ Robert F. Kidd and Ellen F. Chayet (1984), *Why Do Victims Fail to Report? The Psychology of Criminal Victimization*, Journal of Social Issues 40(1) 39-50.

¹³⁰ See <https://thecrimereport.org/2015/01/22/2015-01-columbus-cops-session/>

¹³¹ See, e.g., *Commonwealth v. Warren*, 475 Mass. 530, 539 (2016) (“[W]here the suspect is a black male stopped by the police on the streets of Boston, the analysis of flight as a factor in the reasonable suspicion calculus cannot be divorced from the findings in a recent Boston Police Department (department) report documenting a pattern of racial profiling of black males in the city of Boston. According to the study, based on [] data collected by the department, black men in the city of Boston were more likely to be targeted for police-civilian encounters such as stops, frisks, searches, observations, and interrogations. Black men were also disproportionately targeted for repeat police encounters. We do not eliminate flight as a factor in the reasonable suspicion analysis whenever a black male is the subject of an investigatory stop. However, in such circumstances, flight is not necessarily probative of a suspect’s state of mind or consciousness of guilt. Rather, the finding that black males in Boston are disproportionately and repeatedly targeted for [police-citizen] encounters suggests a reason for flight totally unrelated to consciousness of guilt. Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity. Given this reality for black males in the city of Boston, a judge should, in appropriate cases, consider the report’s findings in weighing flight as a factor in the reasonable suspicion calculus.”) (internal citations omitted; emphasis added).

¹³² See, e.g., *id.* (“Where a suspect is under no obligation to respond to a police officer’s inquiry, we are of the view that flight to avoid that contact should be given little, if any, weight as a factor probative of reasonable suspicion. Otherwise, our long-standing jurisprudence establishing the boundary between consensual and obligatory police encounters will be seriously undermined”).

¹³³ Herman, J. L., *Trauma & Recovery*. New York: Basic Books (2015).

reflected in the behaviors of both police officers and community members and often misread by both sides.

An op-ed written by Dr. Phillip Goff in January 2018, highlighted the need for continued research studying the traumatic effects to SQF in New York City.¹³⁴ The article asserted that still very little has been done to either assess or address the residual trauma that continues to fester in affected communities. Although a recommendation for this type of scholarly research is beyond the scope of the JRP, it is not beyond the scope to suggest that the NYPD take some initial steps to address trauma in ongoing reform efforts.

Unfortunately, there are no quick fixes for this problem. In order to nurture community partnerships, foster meaningful engagement between civilians and their local police officers, and rebuild police legitimacy, the NYPD should make intentional strides toward reconciliation with directly affected communities. This should include but not be limited to a reconciliatory strategy with a long-term committed effort toward change.

Fostering legitimacy requires more than just the implementation of strong new programs, it also requires addressing the harms that have taken place prior to reform. Following national trends around improving legitimacy like The National Initiative for Building Community Trust and Justice,¹³⁵ the NYPD can begin the necessary work of addressing past harms and reconciling its relationship with the communities most affected by years of unconstitutional SQF and trespass enforcement policies.

¹³⁴ See Phillip Atiba Goff, “On Stop-and-Frisk, We Can’t Celebrate Just Yet,” N.Y. Times, Jan. 7, 2018, *available at* <https://www.nytimes.com/2018/01/07/opinion/stop-and-frisk-celebrate.html>

¹³⁵ See <https://trustandjustice.org/>

Defining Accountability and Transparency

Police departments, like all government entities, require citizen support and legitimacy to function effectively.¹³⁶ Social contract theorists maintain that public trust in institutions provides institutional legitimacy. In turn, institutional legitimacy encourages compliance with the law.¹³⁷ Moreover, academics, policing experts, and police departments generally agree that a mutual, trusting relationship between the police and community members is critical to effective policing.¹³⁸

There is wide agreement and support for the proposition that when communities trust the police, community members are more cooperative during police interactions.¹³⁹ Community members are also more likely to seek assistance when needed, provide valuable information, and work with the police to solve community-wide problems.¹⁴⁰ Community members who trust the

¹³⁶ See generally David A Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. 149 (2009).

¹³⁷ See generally Eileen Luna and Samuel Walker, *Institutional Structure vs. Political Will: Albuquerque as a Case Study in the Effectiveness of the Civilian Oversight of the Police*, CIVILIAN OVERSIGHT OF POLICING: GOVERNANCE, DEMOCRACY, AND HUMAN RIGHTS (2000); Tom R. Tyler and Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities*, 6 Ohio St. J. Crim. L. 231 (2008).

¹³⁸ See generally Tom R. Tyler, Jonathan Jackson, and Avital Mentovich, “The consequences of being an object of suspicion: Potential pitfalls of proactive police contact,” *Journal of Empirical Legal Studies* 12, no. 4 (2015) (hereafter “Tyler, Jackson & Mentovich 2015”); Samuel Walker and Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State ‘Pattern or Practice’ Statute*, 19 Geo. Mason U. Civ. Rts. L.J. 479 (2009); Anthony M. Pate, Wesley G. Skogan, Mary Ann Wycoff, and Lawrence W. Sherman, “Reducing the ‘Signs of Crime’: The Newark Experience, Executive Summary.” Washington, D.C.: Police Foundation (1985); Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls. “Neighborhoods and violent crime: A multilevel study of collective efficacy.” *Science* 277, no. 5328 (1997): 918-924; Tom R. Tyler and Robert J. Bies. “Beyond formal procedures: The interpersonal context of procedural justice.” *Applied social psychology and organizational settings* 77 (1990): 98.

¹³⁹ See, e.g., Kami Chavis Simmons, *The Legacy of Stop and Frisk: Addressing the Vestiges of A Violent Police Culture*, 49 Wake Forest L. Rev. 49 849, 867 (2014) (citing Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 Calif. L. Rev. 1513, 1525 (2002)); Jack R. Greene, “Community policing in America: Changing the nature, structure, and function of the police.” *Criminal justice* 3, no.3 (2000): 299-370; Tyler and Fagan, *Legitimacy and Cooperation*, 6 Ohio St. J. Crim. L. 231.

¹⁴⁰ See Tyler, Jackson & Mentovich 2015; Simmons, *The Legacy of Stop and Frisk: Addressing the Vestiges of A Violent Police Culture*, 49 Wake Forest L. Rev. 49 at 867.

police seek to operate within the institutional structures of the police department, reaffirming its legitimacy.

Environments of distrust, on the other hand, foster interactions that are “laden with tension, and tension can lead to regrettable behavior (often escalating) on both sides,” resulting in what Simmons calls “the perverse effect of perpetuating more violence.”¹⁴¹ As compared to white communities, communities of color “report lower levels of confidence in the police and the[] honesty and integrity [of the police] than white communities.”¹⁴² When communities distrust the police, they are less likely to ask for assistance or provide assistance and information,¹⁴³ thus undermining police effectiveness and mission.

Policing and police departments today must build trust in an environment permeated by historic wrong-doings by police across the nation and other government institutions. Erik Luna writes:

A history of racial oppression at the hands of law enforcement provides the backdrop, while the demoralizing statistics on race, drugs, and law enforcement in the inner-cities supply an ostensible reason for community distrust. Personal experiences and popular images of police brutality or prejudice only confirm widely held suspicions, solidifying distrust on both an individual and group level.¹⁴⁴

¹⁴¹ Simmons, *The Legacy of Stop and Frisk: Addressing the Vestiges of A Violent Police Culture*, 49 Wake Forest L. Rev. 49 at 867.

¹⁴² Stephens, Darrel W., *Police Discipline: A Case for Change*, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2011, at 5-6, available at <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>

¹⁴³ See Erik Luna, *Transparent Policing*, 85 Iowa L. Rev. 1107, 1119 (2000) (“In the end, mistrusting community members are less likely to cooperate with law enforcement, less likely to voluntarily provide information to police, and less likely to comply with legal commands.”).

¹⁴⁴ *Id.* at 1163.

Luna also argues that mistrust of and lack of confidence in the police by communities of color largely result from “perceptions of racial animus in the enforcement of drug laws . . . [in the 1990s,]” pointing out that “[o]nly a decade ago, sixty percent of blacks believed that it was or might be true that the federal government makes drugs available in minority neighborhoods in order to harm black citizens.”¹⁴⁵ Thus, the community’s perception of police today is colored by federal decisions, historic distrust, and egregious incidents of abuse of power over which current police leadership has little or no control. That being said, Weitzer and Tuch¹⁴⁶ found individual experiences with police officers “strongly influence citizen attitudes” often “increasing citizens’ belief that police misconduct and racially biased policing occur,” as do exposure to media reports on police abuse and misconduct. The NYPD’s values appear to recognize this, “pledg[ing] to . . . maintain a higher standard of integrity than is generally expected of others because so much is expected of us.”¹⁴⁷

While trust is easily lost, it is difficult to rebuild. Moreover, as Brian Jackson notes in his testimony before the Republican Policy Committee for the United States House of Representatives, “even under the best of circumstances, the role of police means that they interact with citizens at their most vulnerable, must contend with stressful and volatile situations, and may have to take actions that every individual involved is unlikely to view positively.”¹⁴⁸ Research on government institutions, and policing in particular, suggests that transparency and

¹⁴⁵ *Id.* at 1157 (citing Jason DeParle, “Talk of Government Being Out to Get Blacks Falls on More Attentive Ears,” N.Y. Times, Oct. 29, 1990).

¹⁴⁶ Weitzer, Ronald, and Stephen Tuch. “Rethinking Minority Attitudes Toward the Police.” *Washington, D.C.: George Washington University* (2004).

¹⁴⁷ <http://www1.nyc.gov/site/nypd/about/about-nypd/mission.page>

¹⁴⁸ Brian A. Jackson, RAND, Testimony: *Strengthening Trust Between Police and the Public in an Era of Increasing Transparency*, at 2 (2015), available at https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT440/RAND_CT440.pdf

accountability are required to build trust, increase legitimacy, and, ultimately, improve an institution's ability to achieve its mission.¹⁴⁹

Accountability refers to procedures and controls requiring members of an organization “to follow established rules defining acceptable processes and outcomes, and to demonstrate that they have followed those procedures.”¹⁵⁰ Accountability also requires that organizations ensure members are adhering to organizational standards, rules, values, and expectations.¹⁵¹ This may be achieved through ongoing enterprise risk management, the implementation of effective internal controls, clear ways to escalate identified risks, internal “watchdog” groups, rewards for operating within the established framework, clear directives from leadership, willingness to correct noncompliance, and a fair disciplinary process.

A fair disciplinary process is one that “help[s] address police misconduct while supporting officers who have exercised their discretion appropriately and within the framework of law and policy.”¹⁵² Police departments, as institutions, in addition to showing the public they are holding their employees accountable to departmental requirements, are also accountable to the elected officials and managers in their chain of command and to the public. Providing transparency in the accountability framework increases police legitimacy.¹⁵³

¹⁴⁹ See generally *id.*; Simmons, *The Legacy of Stop and Frisk: Addressing the Vestiges of A Violent Police Culture*, 49 Wake Forest L. Rev. 49 849; Tyler and Fagan, *Legitimacy and Cooperation*, 6 Ohio St. J. Crim. L. 231; Walker and Macdonald, *An Alternative Remedy for Police Misconduct: A Model State ‘Pattern or Practice’ Statute*, 19 Geo. Mason U. Civ. Rts. L.J. 479.

¹⁵⁰ Johnston, Michael. Good Governance: Rule of Law, Transparency, and Accountability, at 2 (2006) (hereafter “Johnston 2006”).

¹⁵¹ See Stephens, *Police Discipline: A Case for Change*, at 3-4.

¹⁵² *Id.* at 2.

¹⁵³ See *id.* at 17.

By contrast, if “police disobey the law, the law will seem to apply only to those who do not have power. When that happens, law emerges as little more than force cloaked in legal authority, and the police, the literal embodiment of state power, teach people by their illegal actions that the law means nothing,” thus undercutting their own legitimacy.¹⁵⁴ Ensuring individual and organizational accountability not only engenders community trust, but is required in order to maintain command, control and legitimacy, especially within a large organization.

Transparency refers to procedures and controls being understandable and available to the public.¹⁵⁵ Greater transparency builds trust and provides information communities can use to make informed decisions, instead of “connect[ing] the dots and fill[ing] in their own theory of racial prejudice in policing.”¹⁵⁶ Erik Luna argues that opaqueness in law enforcement policy and practice allow for “unwritten code[s] of enforcement” to flourish that often contradict statutory or constitutional law.¹⁵⁷ Opaqueness is likely also in contradiction to official departmental policy and the understanding of departmental officials. Transparency may be achieved through the use of plain language, adherence to freedom of information requests, protection of whistleblowers, distribution of information through available technology, and publication of key performance indicators.¹⁵⁸

¹⁵⁴ Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 161.

¹⁵⁵ See Johnston 2006 at 2.

¹⁵⁶ Luna, *Transparent Policing*, 85 Iowa L. Rev. at 1157.

¹⁵⁷ *Id.* at 1155.

¹⁵⁸ There is, of course, no expectation of full transparency. For example, police departments do not disclose details of ongoing criminal investigations in order to not affect the integrity of the investigation. In other cases, personally identifiable information is not shared when an individual’s safety may be jeopardized by disclosure. However, these exceptions should be in “well-defined scenarios” and must balance the potential risks of disclosure with the need for transparency. *Id.* at 1165.

Transparency also includes providing meaningful opportunities for both community and front-line officers to provide input, perspective, and influence in the policy formation process, explaining how community and officer input was considered, and providing a rationale and a statement of intent for all decisions. Bayley affirms this, writing that “historically, rank-and-file officers have only rarely been asked for input so that reforms can be developed based on their day-to-day experiences.”¹⁵⁹ Bayley also recognizes that police reform is typically a result of people or events external to police organizations, making transparency particularly important to ensure pressure for needed reforms is maintained.¹⁶⁰

Accountability and transparency together fall under “procedural justice.” Procedural justice requires that police departments demonstrate “the fairness and impartiality of their processes, . . . treat individuals during those processes with dignity and respect, and . . . give the public the opportunity to participate.”¹⁶¹ Tyler and Fagan write that studies “suggest that experiencing procedural justice during a personal experience increases legitimacy, irrespective of the favorability of the outcome. These results suggest that the police can generally enhance their legitimacy by using fair procedures.”¹⁶² Ultimately, building and sustaining mutual trust depends upon the interdependent pillars of accountability and transparency both internally within the organization and externally to the public.

¹⁵⁹ Bayley, David H. “Police reform: Who done it?.” *Policing & Society* 18, no. 1 (2008): 7-17.

¹⁶⁰ *See id.* (“In short, significant police reforms have been top-down and outside-inside.”).

¹⁶¹ Jackson, RAND, Testimony: *Strengthening Trust Between Police and the Public in an Era of Increasing Transparency*, at 3.

¹⁶² Tyler and Fagan, *Legitimacy and Cooperation*, 6 Ohio St. J. Crim. L. at 232.

Best Practices

Academics, researchers, and police practice experts have accumulated, through trial and error, a number of best practices. Many of the more recent best practices make use of improved technology and data collection to help managers make data driven decisions both about individual officer performance and the performance of the department as a whole. Data driven practices have garnered support by academics, practitioners, and community members alike.¹⁶³

Below, we discuss some of the most common strategies. Although not specifically addressed below a key best practice is clarity in policies, rules, and procedures, and in how those policies, rules, and procedures are taught (*i.e.*, training).¹⁶⁴ Describing how police departments can improve compliance, Harris writes that commitment to any policy or procedure must come from the top-down: officers will comply when “(1) the leadership of the department says so, in no uncertain terms, and (2) when the leadership act accordingly, if necessary, by punishing officers who refuse to comply.”¹⁶⁵ Indeed, many of the immediate and subsequent reforms in *Floyd*, *Davis*, and *Ligon* were designed to address these issues.

Early Intervention Systems

Early Intervention Systems (“EIS”) have “four basic components: performance indicators, identification and selection process, intervention, and post-intervention

¹⁶³ See, e.g., Lum, Cynthia, and Daniel S. Nagin. “Reinventing American Policing.” *Crime and Justice* 46, no. 1 (2017): 339-393 (hereafter “Lum & Nagin 2017”); McCarthy, Garry F. “Accountability for Respectful Policing.” *Police Chief* (2015) (hereafter “McCarthy 2015”); Tyler, Jackson & Mentovich 2015.

¹⁶⁴ See generally Johnston 2006.

¹⁶⁵ Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 170.

monitoring.”¹⁶⁶ These components align to basic enterprise risk management systems utilized throughout the government and private sector to identify, manage, and control risks. The Police Executive Research Forum (“PERF”) report on Civil Rights Investigations of Local Police states that standard features of EIS systems are:

- The system must be maintained and used by supervisors and managers
- An EIS should have policies and protocols for data collection, inputting of historical and current data, maintenance, retrieval, analysis, data security, and access.
- Personnel establishing or using the system must have proper training.
- Threshold criteria for flagging risk patterns must be developed.
- Follow-up actions for supervisors using EIS data analysis must be specified.
- Interventions by supervisors must be implemented in a timely manner.
- Intervention progress must be reviewed by a supervisor.¹⁶⁷

EIS provides data on key metrics (*e.g.*, citizen complaints, use of force, resisting arrest incidents, civil litigation, firearm-discharge, etc.) for managers to make data-driven decisions to both identify individual officers in need of intervention and to make decisions regarding what intervention tools should be used that are tailored to the specific issues identified.¹⁶⁸ After determining the appropriate metrics, a police department would set thresholds for alerting

¹⁶⁶ Walker, Samuel. *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*. U.S. Department of Justice, Office of Community Oriented Policing Services, 2003, available at https://cops.usdoj.gov/html/cd_rom/inaction1/pubs/EarlyInterventionSystemsLawEnforcement.pdf

¹⁶⁷ Police Executive Research Forum, Critical Issues in Policing Series, *Civil Rights Investigations of Local Police: Lessons Learned* (2003).

¹⁶⁸ See generally Walker, Samuel, Geoffrey P. Alpert, and Dennis J. Kenney. *Early Warning Systems: Responding to the Problem Police Officer*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2001 (hereafter “Walker, Alpert & Kenney 2001”); Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 St. Louis U. Pub. L. Rev. 57 (2012).

supervisors for each metric, who would in turn investigate and determine what further action, if any, is required.¹⁶⁹

Intervention tools may include “informal or formal counseling by supervisors, referral to professional counseling (e.g., family or substance abuse counseling), retraining, or other options.”¹⁷⁰ Walker explains that “the special power of an EIS is that it has the capacity to identify an officer’s specific performance problem (e.g., use of force, rudeness, special problem with dealing with young men or people of color), and its sources (personal family problems, substance abuse), and select an intervention related to the identified problem.”¹⁷¹ Most interventions are non-disciplinary, and the early intervention system is designed to identify and mitigate risks before formal disciplinary action is warranted.¹⁷² In other words, police departments do not act upon data alone; instead, supervisors use data and their own analysis to determine root causes and select appropriate risk treatments. Walker asserts that “Some law enforcement experts involved with EIS talk in terms of the system’s purpose being to ‘save’ officers’ careers . . . [by] saving them from the costs of use of force or citizen complaint investigations as well as having such incidents on their performance record.”¹⁷³ This type of performance evaluation represents a move from anecdotal and subjective evaluation to evaluation based on data and fact, and from generalized group-based interventions to those targeted to an officer’s specific needs.

¹⁶⁹ See, e.g., Tyler, Jackson & Mentovich 2015; Lum & Nagin 2017; McCarthy 2015.

¹⁷⁰ Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 St. Louis U. Pub. L. Rev. at 77.

¹⁷¹ *Id.*

¹⁷² See, e.g., Walker, Alpert & Kenney 2001; Walker, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide* at 18.

¹⁷³ Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 St. Louis U. Pub. L. Rev. at 82.

EIS allows for the data metrics, threshold counts, and interventions to be passed up the chain so that departmental leadership can make better policy decisions and department-wide interventions, creating a chain of accountability.¹⁷⁴ Initial research findings suggest that early intervention systems foster a culture of accountability and give managers better data with which to make decisions.¹⁷⁵ For example, a National Institute of Justice study in 2001 found that EIS programs “appeared to reduce problem behaviors significantly,” as measured by the number of complaints filed and use of force incidents.¹⁷⁶

The theory and use of early intervention systems have had a place in many police departments for decades due to the “belief that ‘10 percent of officers cause 90 percent of the problems,’”¹⁷⁷ which has been supported by subsequent analytical research.¹⁷⁸ However, Walker, Simmons, and Armacost, in separate reviews, argue that evidence supporting this theory is overly simplistic: misconduct occurs when police departments formally and informally support misconduct.¹⁷⁹ In 1981, the U.S. Commission on Civil Rights first recommended the adoption of early intervention systems by all police departments, which was later endorsed in 1989 by the

¹⁷⁴ See Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 166-67, 193-94.

¹⁷⁵ See Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 Minn. L. Rev. 1343, 1382-83 (2015); see generally Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 St. Louis U. Pub. L. Rev. 57.

¹⁷⁶ Walker, Alpert & Kenney 2001.

¹⁷⁷ Rushin, *Structural Reform Litigation in American Police Departments*, 99 Minn. L. Rev. at 1382-83.

¹⁷⁸ See generally Walker, Alpert & Kenney 2001; Stephens, *Police Discipline: A Case for Change*, at 6 (citing a 1991 study by the Independent Commission on the Los Angeles Police Department).

¹⁷⁹ See Samuel Walker, *The New World of Police Accountability* (2005); Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 Cath. U. L. Rev. 373, 395-98 (2010); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 Geo. Wash. L. Rev. 453, 457-59 (2004).

IACP and in 2001 by CALEA.¹⁸⁰ Not surprisingly, recommendations related to early intervention systems have been included in the majority of settlement agreements police departments have entered into with the Department of Justice, including with departments representing Los Angeles, Pittsburgh, Cincinnati, Steubenville, Washington, D.C., New Jersey, New Orleans, and the Virgin Islands.¹⁸¹

Complaint Procedures and Investigations

Another common strategy employed in settlement agreements relates to revising procedures for dealing with citizen complaints. Generally, the procedural changes fall into three tranches: the intake of complaints, the investigation of complaints, and the evaluation of the data collected.¹⁸² Harris examines the perception of complaints and feedback in police departments, drawing an analogy to private sector businesses:

[F]orward-looking organizations will look at complaints as a vital source of information and feedback — real data that can tell them exactly what at least some of their “customers” think regarding the organization’s product or service. In the world of business, many organizations see those who complain as customers the business has failed and who the business must win back. Thus, private industry regards complaints as valuable information. Many businesses therefore go to some lengths to encourage their customers to fill out surveys or complaint cards or online versions of these; they view them as information that will give them a chance to get better.

¹⁸⁰ See Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 166.

¹⁸¹ See Police Executive Research Forum, Critical Issues in Policing Series, *Civil Rights Investigations of Local Police: Lessons Learned* (2003); Los Angeles Consent Decree at 9-22 (describing the development of the TEAMS II system, the management and coordination of risk assessment responsibilities, and the performance evaluation system); Pittsburgh Consent Decree at 6-9; Cincinnati MOA at 57-66; Steubenville Consent Decree at 28-29 (information system meant to supervise officer behavior); Washington, D.C. MOA at 106-17 (personnel performance management system (PPMS)); New Jersey State Police Consent Decree at 40-56; New Orleans Consent Decree at 80-83 (new early warning system to be implemented as part of the consent decree); Virgin Islands Consent Decree at 12-16 (planned development of a management and risk supervision system).

¹⁸² See Rushin, *Structural Reform Litigation in American Police Departments*, 99 Minn. L. Rev. at 1383.

Public agencies, and perhaps especially police departments . . . see complaints as attacks on them, as attempts by people who know nothing about police work to stick their noses in where they have no business, or as harbingers of lawsuits. This dovetails well with the unfortunate “nobody understands us but us, so no one has any right to pass judgment on us” attitude that prevails in many modern police departments. Complaints against police regarding how officers stop and search may not always reflect a correct understanding of the powers police officers have to stop, search, and arrest them. [But] for police departments, learning about citizens’ lack of knowledge concerning police powers would tell the agency that it might increase public support . . . by making greater . . . effort to educate the public¹⁸³

In other words, police departments should take affirmative steps to encourage individual and community feedback and make it easy to file complaints.¹⁸⁴ Method by which individuals can file complaints can be broadened to include means such as email and confidential hotlines or other means for receiving verbal complaints.¹⁸⁵

Other recommendations relate to the integrity of the process. For example, the Los Angeles consent decree “required the police department to make audio or video recordings of all complainants . . . in addition to investigating the scene of the incidents to secure evidence.”¹⁸⁶ This measure is also an example of ensuring that evidence and testimony is not subject to interpretation or coercion — that is, the “data” is allowed to speak for itself.

The complaint process, including time frames, should be presented to all parties. Too often these processes take “an excessive amount of time to complete,” particularly in large

¹⁸³ Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 173-74.

¹⁸⁴ See *id.*; Stephens, *Police Discipline: A Case for Change*, at 4.

¹⁸⁵ See Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 Cath. U. L. Rev. at 398.

¹⁸⁶ *Id.*

departments; and if the determination is appealed, can take far longer.¹⁸⁷ During an investigation, all parties should be provided regular updates as to progress, delays, and information regarding the outcome.¹⁸⁸

Settlement agreement requirements have generally matched those recommended or required by the IACP, the Office of Community Oriented Police Services (“COPS”), and the Commission on Accreditation for Law Enforcement (“CALEA”).¹⁸⁹ All three organizations contend that following complaint procedure best practices results in increased accountability and awareness both internally and externally, which can lead to improved public trust.¹⁹⁰

Body-Worn Cameras

The most well-known recent response to the call for greater accountability and transparency has been the adoption of BWC programs by police departments across the country. BWCs were developed as an evidence-gathering tool and a deterrent, to complement and supplement existing recording systems, such as car-mounted video systems, CCTV, and, today, cameras on mobile telephones.¹⁹¹ Stephens reports that “most police agencies believe that it serves that purpose.”¹⁹²

In part, whether BWC programs are effective depends on the extent to which they actually increase transparency in police interactions. For instance, PERF recommends

¹⁸⁷ Stephens, *Police Discipline: A Case for Change*, at 7.

¹⁸⁸ See, e.g., *id.* at 4.

¹⁸⁹ See Rushin, *Structural Reform Litigation in American Police Departments*, 99 Minn. L. Rev. at 1383-84.

¹⁹⁰ See *id.* at 1384.

¹⁹¹ See Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 177.

¹⁹² Stephens, *Police Discipline: A Case for Change*, at 4.

maintaining statistics on the use and outcomes of BWCs in criminal prosecutions and internal affairs and releasing that information to the public on a periodic basis.¹⁹³

Another benefit of BWCs is that the information recorded, similar to the use of EIS, is a significantly less subjective way to assess performance during a stop and frisk, which benefits both police officers and community members. As with open data, research shows, the existence of an objective record supports both positive and negative claims by the police department and the public, minimizing time spent investigating unfounded complaints or misconduct.¹⁹⁴ This in turn provides a mechanism for greater accountability.¹⁹⁵ Research further suggests that because neither officers nor the public wish to be recorded engaging in inappropriate behavior, BWCs promote better behavior and thus impact the overall civility of police-citizen interactions.¹⁹⁶ BWCs can also help assist supervisors provide training, evaluation, coaching, and discipline to officers.

¹⁹³ Legitimacy and Procedural Justice: A New Element of Police Leadership. Police Executive Research Forum, 2014.

¹⁹⁴ See generally Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. 149.

¹⁹⁵ But see generally Jordan M. Hyatt et. al., *The Effects of A Mandatory Body-Worn Camera Policy on Officer Perceptions of Accountability, Oversight, and Departmental Culture*, 62 Vill. L. Rev. 1005, 1019, 1034 (2017) (explaining that the “available evidence suggests that when officers have the discretion to activate — or not to activate — the BWCs are not only ineffective but can even backfire” but reporting their finding “that the implementation of a mandatory BWC usage policy in a large transit police department was associated with significant and overall negative changes in officer perceptions regarding accountability, oversight, and departmental culture”).

¹⁹⁶ See generally Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens’ Complaints Against the Police: A Randomized Controlled Trial*, 31 J. Quantitative Criminology 509 (2015). It is unclear whether the presence of BWCs will affect the overall number of police-citizen interactions. One study suggests, rather counterintuitively, that officers issued BWCs increased activity (such as issuing citations) compared to officers without cameras. See Justin Ready and Jacob Young, *The Impact of On-officer Video Cameras on Police-Citizen Contacts: Findings from a Controlled Experiment in Mesa, AZ*, J. of Experimental Criminology, 11:445-458 (2015).

Early studies of BWCs are promising. In the United Kingdom, an evaluation of a pilot program found BWCs provided significant benefits, including providing more accurate evidence, freeing up officer time spent record keeping, reducing public order offenses, and reducing adjudication times.¹⁹⁷

Open Data

Ensuring the openness and transparency of data and decision making documentation may build trust by both providing event level detail, as well as providing data which the community can use to identify trends, changes, and equity across the community.¹⁹⁸ It is important to have open data but it is also important to identify additional data collection elements that are needed, such the key metrics for early intervention systems and overall effectiveness. Erik Luna, in his article *Transparent Policing*, writes that, “police might be required to record the age, race, and gender of all individuals subjected to traffic stops or *Terry* searches.”¹⁹⁹ Data also helps support both positive and negative claims by the police department and the public. Particularly in an environment with eroded trust, data helps bolster arguments and provides a mechanism for greater accountability.

Inclusive and Participatory Rulemaking

Similar to requirements on federal agencies promulgating new rules and policies, police departments may adopt inclusive rulemaking processes to more effectively capture the views of the public and its officers. In traditional federal rulemaking, agencies draft a proposed rule for

¹⁹⁷ See Harris, *How Accountability-Based Policing Can Reinforce – or Replace – the Fourth Amendment Exclusionary Rule*, 7 Ohio St. J. Crim. L. at 177-78.

¹⁹⁸ See, e.g., Stephens, *Police Discipline: A Case for Change*, at 21.

¹⁹⁹ 85 Iowa L. Rev. at 1170.

publication in the Federal Register. The public, including both individuals and interested organizations, are invited to submit formal written comments. Comments may be submitted by mail or online using the Federal Register website. The agency must review all the comments, analyze and evaluate each comment, and either incorporate comments into the rule or state with specificity why a comment was not incorporated. Agencies may conduct multiple rounds of solicitations of comments. The final rule is published in the Federal Register and incorporated into the Code of Federal Regulations. Responses to comments are also published in the Federal Register. Negotiated rulemaking further incorporates public input by having agencies directly engage with industry groups, academics, thought leaders, and other interested organizations at the beginning of the policy formation process. Police departments seeking to adopt a participatory rulemaking process may seek to broadly solicit and engage community members, targeting those most likely to be effected, and provide detailed responses and/or justifications to comments, improving transparency, accountability and overall legitimacy. This type of transparency helps both officers and the external community understand the values and objectives of policy changes.

Rulemaking, as described, may result in better decision making, provide accountability, promote community participation, increase organizational legitimacy, and help people to better understand rules (thus increasing compliance and reducing vagueness).²⁰⁰ Inclusive, open rulemaking also limits the risk of abuse and bad policy.²⁰¹ Rulemaking processes are not without criticism, however. Some academics have attested that rulemaking actually moves policy

²⁰⁰ See generally Erik Luna, *Principled Enforcement of Penal Codes*, 4 Buff. Crim. L. Rev. 515 (2000).

²⁰¹ See Luna, *Transparent Policing*, 85 Iowa L. Rev. at 1167.

formation away from community participation.²⁰² Critics contend that the promulgation of rules by unelected government officials result in overreach and a lack of accountability. However, many of the criticisms are based on how rulemaking plays out at the federal level, not the actual principles and processes.

This may fall into the broad rubric of the “New Governance” model that promotes “decentralized problem solving by local stakeholders, and the ongoing adjustment of rules and policies informed by on-the-ground monitoring and feedback,” as opposed to the “‘command-and-control’ governance model, which emphasizes top-down decision making and static rules.”²⁰³ Assuming that police department officials making policy-level decisions do not have the expertise of the officers who work more directly with the community, it is important that officer expertise be included in future policies. In Sabatier’s 1986 review of top-down and bottom-up policy formation, he writes that one of the primary criticisms of top-down approaches is that they “ignore, or at least underestimate, the strategies used by street level bureaucrats and target groups to get around (central) policy and/or to divert it to their own purposes.”²⁰⁴ In other words, officers perceive top-down policies, particularly those provided by external parties (*e.g.*, the courts, city councils, mayors, etc.) as less legitimate.²⁰⁵ The key is to provide meaningful

²⁰² See Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 Cath. U. L. Rev. at 403 (citing Philip J. Harter, *Negotiating Regulations: A Cure for Malaise*, 71 Geo. L.J. 1, 113 (1982)).

²⁰³ Jaime Alison Lee, *Can You Hear Me Now: Making Participatory Governance Work for the Poor*, 7 Harv. L. & Pol’y Rev. 405, 406 (2013).

²⁰⁴ Sabatier, Paul A. “Top-down and bottom-up approaches to implementation research: a critical analysis and suggested synthesis.” *Journal of public policy* 6, no. 1 (1986): 21-48.

²⁰⁵ See generally *id.*; Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 Cath. U. L. Rev. 373.

opportunities for participation, and for the department to evaluate and incorporate the range of responses in a way that actually alters and shapes policy formation.²⁰⁶

Police Auditors

Another best practice is the use of a police auditor. Citizen review boards have long been used as a means to provide greater accountability.²⁰⁷ New York City's CCRB as an all-civilian entity has existed since 1993. It is responsible for receiving, investigating, and making findings regarding complaints of police misconduct involving use of force, abuse of authority, discourtesy, or use of offensive language.²⁰⁸

Luna recounts, however, that “civilian [or citizen] review boards were once viewed as an antidote for police misconduct and a means of restoring public trust in the institution of law enforcement,” but are largely seen as ineffective, due to local politics, underfunding, and lack of transparency, and not inclusive of actual community members.²⁰⁹ In large part, the concept of a police auditor developed in the 1990s as an alternative to citizen review boards. Police auditors are charged with auditing, monitoring, and/or reviewing the entire department with a focus on policy-related reviews and recommendations.²¹⁰ Police auditors generally “have the power to

²⁰⁶ See generally Lee, *Can You Hear Me Now: Making Participatory Governance Work for the Poor*, 7 Harv. L. & Pol’y Rev. 405.

²⁰⁷ See James R. Hudson, *Police Review Boards and Police Accountability*, 36 Law & Contemp. Probs. 515, 517-18 (1971) (explaining that external oversight was viewed as necessary, as reflected in, for example, the 1968 Report of the National Advisory Commission on Civil Disorders, known as the Kerner Report, because police were “not perceived as impartial, neutral enforcers of the law, particularly by the citizens of ghetto neighborhoods”).

²⁰⁸ See City Charter Section 440; Rules of the Civilian Complaint Review Board, Section 1-02.

²⁰⁹ Luna, *Transparent Policing*, 85 Iowa L. Rev. at 1167-68.

²¹⁰ See Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 St. Louis U. Pub. L. Rev. at 84-86.

initiative investigations of any issue at their own discretion and are not limited to the terms of a consent decree or MOA,” like that of a monitor.²¹¹

Reasons to Address Transparency and Accountability

Effective, constitutional policing depends in large part on transparency and accountability both within the NYPD and in the NYPD’s relationship with the public. As with any organization, effective performance depends on a shared understanding of organizational objectives and task-specific requirements, the ability of supervisors to monitor performance, and the expectation that both good and bad performance will be met with the appropriate response. Morale, which is dependent on many of these same factors, will also affect performance.

As a public institution, broad notions of democracy also require that the NYPD be transparent with and accountable to the public. Transparency in this regard includes not only public education and media releases, but access to information that enables the public to assess the performance of the police, including whether officers that violate rules are held accountable. Public accountability can, of course, take many forms, including the very lawsuits that led to appointment of the Monitor and the Facilitator and to this Joint Remedial Process.

The JRP and the NYPD’s own internal surveys establish that there is a crucial link between constitutional and effective policing, and that accountability and transparency are fundamental to both. Policing experts agree that effective policing requires that the community trust and believe in the legitimacy of the police. Without trust, community members are reluctant to approach the police to share information needed for effective policing; without trust, interactions between officers and the community are ripe for conflagration.

²¹¹ *Id.* at 85.

It cannot be forgotten that people want and depend on the police to help make their communities safe, to make sure the halls in their buildings are policed so that they feel comfortable in their homes. But a clear lesson of the JRP is that past stop and frisk practices in New York City have played a substantial role in eroding the historically fragile trust between members of communities of color and the police.

Because it is not just that rights were violated. Yes, the Fourth Amendment of the U.S. Constitution protects against unreasonable searches and seizures and the Fourteenth Amendment guarantees equal protection under the law, but there's more. As recognized by Chief Justice Warren in *Terry v. Ohio* over 45 years ago, "it is simply fantastic to urge that [a stop and frisk] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.' It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly."²¹² Likewise, stops, frisks, searches, and arrests of people, particularly those later found to be innocent, in and around their homes — what ought to be a sanctuary, a place of comfort — can be humiliating, embarrassing, and traumatizing.

Excessive force and unjustified killings are not the focus of the reforms ordered in *Floyd*, *Ligon*, and *Davis*, but their impact on trust and legitimacy clearly cannot be ignored. While citizens felt (and feel) that their complaints about SQF were (and are) not being addressed, that officers had free reign, the even more publicized action or inaction in response to excessive force and unjustified killings has created the sense that there simply is no accountability when police officers break the rules and cause great harm. And as we describe here, a program which

²¹² *Terry*, 392 U.S. at 16-17.

permitted hundreds of thousands of stops a year, creates an environment of fear and intimidation, a group of communities under siege, and is an indispensable part of the sense that officers who break the rules are not held accountable.

Taking measures to improve accountability and transparency alone will not solve the problems identified in these lawsuits, but are nonetheless necessary to the development of the trust and legitimacy needed to ensure the future of effective, constitutional policing in New York City in the short and long term. Educating the public on police policies, listening to the public, and being responsive to the concerns of the community are important ways in which the NYPD can be more transparent and accountable to the public. Another is ensuring that police officers who break the rules are held accountable, and making that information public.

Summary of Relevant Themes in Respect, Transparency, and Accountability

In the following section, we highlight suggestions that community members offered for consideration to improve respect, transparency, and accountability. These suggestions were gathered during the Focus Group, Leadership Meeting, and Community Forum Phases. We first provide a review of feedback on respect and police-community relations, followed by suggestions around transparency and accountability. Many of these themes directly echo the best practices described by researchers and academics, adding additional credence to the promise of their application.

Themes on Respect

Floyd and Davis Focus Groups

Direct and Vicarious Trauma

Throughout the course of the JRP community members in the focus groups exhibited signs of direct and vicarious trauma over the perceived abuses they had suffered at the hands of officers in their community. In many cases, community members highlighted their fear and resentment toward abusive officers as underpinning a lack of trust in police.

Disrespect

Focus group participants often felt disrespected by officers, a consistent theme throughout all 64 groups. Participants did not limit this feeling of disrespect to stops by officers but also shared that they felt disrespected by officers in encounters separate from stops. Some basic solutions recommended by participants to address the issue of respect was community policing, officer assignments based on the needs of the community, customer service and implicit bias trainings, and providing civilians business cards or something similar with name, badge number, and precinct at the end of an encounter. Participants also felt that abuse of power and consistent disrespect were at the core of police interactions with community members, and expressed a need for officers to receive training on properly engaging with special populations such as the mentally ill, homeless individuals, and the LGBTQ community.

Stereotyping

Participants also expressed concerns that officers interacted with them based on stereotypes. They reasoned that these stereotypes were a result of officers' limited exposure and engagement with people from diverse backgrounds. As a result, it was suggested that officers should be required to participate in cultural awareness and competency trainings.

Need for Training

Training was a recurrent theme during the focus groups. Participants suggested that many of the constitutional abuses suffered by them were a result of inadequate training of officers by the NYPD. An overarching training theme was “Customer Service.” Focus group participants expressed a desire for officers to participate in “customer service” type trainings that included a community engagement component. Participants felt that this would equip officers with the basic skills to engage community members respectfully. There was a consistent theme of respect, or the lack of it, throughout the focus group transcripts. Many participants expressed that officers did not speak while patrolling their communities. This same lack of engagement was present if the interaction was initiated by the individual instead of the police officer. As a result of this, participants provided the following suggestions for community engagement trainings:

- Officers should engage and have conversations with community members before patrolling communities.
- New hires should train within the communities prior to being assigned for patrol. Said trainings should be conducted by community leaders.
- The NYPD should implement Leadership/Supervisory trainings. Supervisory and Command officers should understand how management style affects the way officers interact with community members.

Leadership Meetings

During the leadership meetings there was a consistent call for improvements in the relationship between community and the police. Several organization leaders provided insights and pointed to potential initiatives which they believed might begin to repair this fractured dynamic, and make way for other improvements in public safety.

Mistrust and Respect

One of the most often cited issues raised by thought leaders on the issue of police-community relations was the perceived lack of respect between civilians and police. Organizations with comments on the matter pointed to a lack of courtesy in law enforcement, which includes the use of intimidation and aggression toward community members, and in many cases young people. Groups also pointed out that community members may feel as if they cannot voice their rights for fear that officers may retaliate against them. Individuals suggested that this lack of respect creates a fear of officers that feeds into a lack of trust in directly impacted communities.

Many groups suggested that this mistrust means that people do not feel protected by police and are much less likely to reach out to the Department for help. Coupled with the idea that officers may not feel trusted or respected, many groups suggested that the divide has negative consequences for both police and the community. Several community groups suggested possible ways to address the divide, including the Department being open to and working with thoughtful independent community leaders to begin to address issues that the community feels are being neglected by the Department.

Community Engagement

Several groups suggested that more meaningful engagement with the community could be a way to address poor relations between the police and community. Group members cited several examples which included expanded outreach, funding community programs, developing policies to promote engagement, and meeting with community member in safe spaces to both teach and learn about public safety issues in local neighborhoods. Meeting attendees suggested

that more familiarity and quality interactions with police in their areas could go a long way in easing the tension between groups.

Public Education

Another significant concept highlighted by leadership groups was the idea of an education campaign. Several of the groups thought it would be helpful for the NYPD to develop an initiative to inform community members of their rights, and/or new reforms to the NYPD. A couple of community groups thought this endeavor would be best undertaken in partnership with community groups through the selection of a precinct liaison, and in the case of schools, a youth delegate.

Community Oversight

One of the last significant themes around improving police-community relations was the call for community oversight. Group members suggested that the development of a structure for community leaders to work with the Department to review and make suggestions on additional changes to the Department could foster greater community security in the Department, which would have a more positive effect on relations on overall.

Community Forums

During the public meeting phase of the JRP, community members consistently asked for greater respect from officers, and improved relations between the police and the communities they serve. Several relevant themes have been highlighted from the forum transcripts as they relate to bridging the gap between the NYPD and impacted communities.

Collaboration with Community Stakeholders

A consistent call from community members during the forum was for greater collaboration between community leadership and the police. Community members and thought leaders alike suggested community members should have a stake in the co-construction of public safety, and that the police should take initiative to rebuild trust in communities. Concrete examples for undertaking these collaborative efforts included providing community access and input into training, the appointment of community liaisons, developing more meetings in community spaces, and the undertaking of a campaign to educate communities about their rights.

Training for Improved Relations

As with the Focus Group Phase, training was a significant theme for reform. With regard to improving police-community relations, community members often stated that officers should receive training on respectful conduct, cultural competence (*i.e.*, learning more about the culture and customs of the communities they patrol), harm reduction in special populations (*e.g.*, mentally ill, undocumented, LGBTQ, disabled, etc.), communication skills, empathy, de-escalation, and trauma. Community leaders suggested that trainings on restorative justice might also be helpful for the Department in healing the break between the community and the Department.

Community Engagement Broadly Defined

Community policing was a popular idea among participants in the community forums. Youth and adults alike highlighted several examples of the type of community policing they wanted to see in their communities which includes expanding the Neighborhood Coordination Officer (“NCO”) program, mentorship programs, and participation in community events. Community members also suggested that officers participate in community service, attend community meetings, and have more positive engagement with youth. The majority of community members felt it was important that there be consistent officers in their communities, that officers be placed strategically in communities and know the culture, and that officers are walking the beat and engaging with the people. In their interactions with civilians, many members emphasized the need for greater respect, and less aggressive interactions with officers. Generally, community members said they desired more communication between the precincts and neighborhoods and that the precincts should provide community members with a means for providing feedback to commanders about community concerns.

Officer Recruitment

Many community members stated they believed it is extremely important for officers to know the communities they patrol. For that reason, many people suggested that the NYPD recruit officers from impacted communities and/or mandate community service as part of field training for all officers.

Addressing Residual Trauma

At several points different individuals highlighted the residual trauma that still exists in directly-impacted communities as a result of unconstitutional SQF and trespass enforcement. Several suggested that meaningful change would require addressing this trauma in order to

restore police legitimacy. Examples that were provided included larger restorative justice healing exercises with community, and instituting mediation for rude or aggressive officers.

Restorative Justice

As restorative justice appeared to be a popular theme for community members for improving relations, the NYPD should develop initiatives to address the residual trauma that still abounds in many of the most marginalized communities. Resources like the National Initiative for Building Community Trust and Justice are already doing considerable work in the area of rebuilding police legitimacy, and have a number of pilot sites across the nation. The NYPD should consider a pilot program in consultation with this group to address the lingering issues which still exist for many communities in New York City.

Communication Input

Community members in attendance at forums also suggested that the NYPD take steps to include community members in the planning and development of policy initiatives. They suggested that the Department make a concerted effort to collaborate with community organizations, schools, and faith-based groups toward the creation and implementation of reforms that work for community members, not against them.

Themes on Transparency and Accountability

Floyd and Davis Focus Groups

Accountability

Members of both the *Floyd* and *Davis* focus groups consistently voiced disappointment that officers were not held accountable for misconduct. The focus groups also believed supervisors in officers' chains of command should be held accountable for the actions of their

staff. Accountability should include progressive discipline in order to appropriately target disciplinary actions to individual officer behavior over time.

Participants felt officers should be held accountable to a customer service or community engagement standard as part of performance reviews and promotion assessments. A customer service standard may review how an officer handles and responds to power dynamics, how an officer engages with special populations (*e.g.*, deaf and hard of hearing, disabled, homeless, LGBTQ), and the level of professionalism (*i.e.*, respect) afforded to community members. The *Davis* focus group further described specific metrics that should be included in performance reviews, including how well an officer follows NYPD procedures, the level of professionalism or respect afforded to community members, the number of complaints filed against the officer, and the officer's level of community engagement. Both focus groups were interested in how either individual community members or an oversight committee could provide assessments on individual officer behavior, both positive and negative. Participants suggested that performance evaluations be held at both an individual and a precinct level.

The *Floyd* focus group expressed a need for an independent, third-party entity with which they could file misconduct complaints and which had the authority to take action based on the results of the complaints. They noted that the complaint process could be streamlined and simplified to make it easier for individuals to file complaints, and, thereby, minimize the risk of further trauma. Participants suggested using technology, such as websites or mobile applications, to make it easier to file complaints and to enhance continual feedback mechanisms. The focus group also felt the complaint investigation and determination processes should be more transparent, providing regular updates on the status of individual cases.

Transparency

The *Floyd* focus group members would like greater transparency regarding community members' rights during a stop. For example, focus group members thought that officers should advise people of their right not to consent to searches.

Both groups suggested that a precinct-level "report card" regarding effectiveness and engagement with community members be made publicly available. The "report card" would provide data-driven metrics and report on progress over time.

Participants also expressed the need for transparency in connection with NYPD policies and discipline guidelines. Some participants suggested that organizational statements, policies, operating procedures, and training materials be publicly available; while others expressed the need for transparency in terms of discipline disposition.

Community Forums

Accountability

During all of the community forums, participants stated that there needs to be greater accountability. Participants felt that the current disciplinary system was obscure, flawed, and arbitrary, and needed both reform and greater transparency. Community members called for meaningful and timely consequences that escalated for repeat misconduct. Attendees at the forums requested greater accountability at the officer, precinct, and departmental level.

Like the focus groups, the community forum participants suggested a "report card" system at the precinct level. Forum participants further stated that the NYPD should analyze the results to address identified issues and trends within each precinct and in its surrounding community.

Forum participants noted a need to protect whistleblowing officers and hold those who have knowledge of wrongdoing but do not report it as complicit in any wrongdoing. Community members also suggested the use of oversight procedures such as body-worn cameras, community oversight boards, and more stringent oversight of anti-crime detective units.

Transparency

Across the City, participants in the community forums requested more transparency and openness in data reporting and organizational structure. Participants felt that the public should have open access to data via a website or online portal. Examples of the types of information that participants thought should be made available include stop reports and officer complaints; participants also thought there should be a database of officers by precinct.

Community forum participants felt there should be greater transparency during stops. Many stated that officers should always clearly identify themselves and should ensure that community members understand the reason for a stop.

Leadership Meetings

During the Leadership Meeting Phase, the Facilitation Team received reform ideas from thought leaders and advocates. The Facilitation Team also received white papers attached to this report. Many of these ideas called for measures to improve transparency and accountability.

Transparency

Thought leaders recommended the development of robust early intervention systems both internally and with respect to the ability to monitor the effectiveness of the NYPD's supervision, training, and discipline policies, procedures, and outcomes. In addition to traditional internal mechanisms for supervisors and managers to supervise data, an external monitor was also

proposed. Among other items to be included in the data collected was information from the courts regarding suppressions and findings of incredibility. It was recommended that any tracking system be robust enough to track patterns from officers working together, in squads, or precincts.

Continued and proactive community engagement was a constant theme. This included developing ways to make sure that the public is fully aware of all the reforms that have been implemented.

It was emphasized that the NYPD needed to engage communities in a meaningful way. This included police interaction at a more local level, as well as police interaction through the private sector and the Department of Education. It was also recommended that there be mandated community surveys to be reviewed, analyzed, and evaluated at the community level. The development of feedback mechanisms where citizens can report back to the NYPD in a consequence free atmosphere was also recommended.

The following recommendations were made with respect to open data:

- Create a searchable record on accountability.
- Create a feedback loop between the courts and the Department. When the court makes a decision in a case, it should get back to the involved officer's supervisor.
- Ensure that any oversight team is comprised of people living in impacted communities, organizations representing impacted community, and representatives of police reform organizations.

- Create a commission in the mold of the Seattle Community Police Commission (“CPC”), which, recently made permanent by the City, is a civilian commission with a mandate to develop reform recommendations and represent the community’s interests.²¹³

Furthermore, several groups stressed the importance of documentation. This included a recommendation for a mandate that the NYPD document “Level 1” requests for information and “Level 2” encounters and consensual searches. It also included a requirement that officers provide identifying information in the form of a card with respect to all citizen-police encounters (or on demand). And because homeless, youth of color, LGBTQ individuals, and people with substance abuse problems are very frequently the subject of unconstitutional SQF and trespass enforcement, the NYPD should record on the stop form that the individual stopped falls within one of these groups (but only when that information is provided by the person stopped). In addition, it was suggested that officers inform individuals subject to a stop or a Level 2 encounter of their right to refuse a consent search.

There was also concern with the current criminal discovery rules set forth in article 40 of the Criminal Procedure Law and their application. In that regard, because most cases result in a

²¹³ The CPC now has 21 Commissioners with the Mayor, the City Counsel, and the CPC each appointing seven. As stated on the CPC website:

Commissioners should represent the diversity of Seattle and include individuals from communities of color, ethnic and faith communities, immigrant communities, the urban Indian community, the lesbian/gay/bisexual/transgender/queer/intersexual/asexual community, and the business community. Commissioners also should include youth representatives, civil rights advocates, and individuals familiar with the challenges faced by homeless people and those with mental illness or substance abuse issues. Two positions are designated for public defense and civil liberties lawyers, one position is designated for a member of the Seattle Police Officers Guild, and one position is designated for a member of the Seattle Police Management Association. Commissioners live or work in Seattle.

<http://www.seattle.gov/community-police-commission/faqs#whoisonthecommunitypolicecommission>.

plea deal, there is no discovery before trial and therefore no opportunity to discern and raise concerns before a plea is entered.

While many groups were in favor of body-worn cameras, there was a general sense that without access to the footage BWCs would not serve their purpose. At its most basic, access requires that footage be available to litigants and their counsel in civil and criminal proceedings. It was also recommended that footage be maintained by a third party government oversight agency (perhaps the CCRB or the Office of the NYPD Inspector General). There was a call for greater community involvement in developing the policies governing the BWC pilot as well as any program that is developed as a result. This included involving community members, advocates, and policing experts in the evaluation of the program.

Specific recommendations were also made regarding the BWC program, including establishing a clear process for filing complaints, a clear written policy that states the consequences for officers who fail to comply with the BWC policy, and a retention policy for video footage, and prohibiting officers from reviewing footage before a written complaint or arrest report has been submitted.

Accountability

There was a sense that behavioral changes required buy-in throughout the Department, but especially by leadership, managers, and supervisors. In other words, the people entrusted to ensure accountability must understand, support, and proactively push for more accountability.

It was suggested that there be increased disciplinary severity for repeated unlawful stops and frisks, and supervisor accountability for individual officers engaging in pretextual stops.

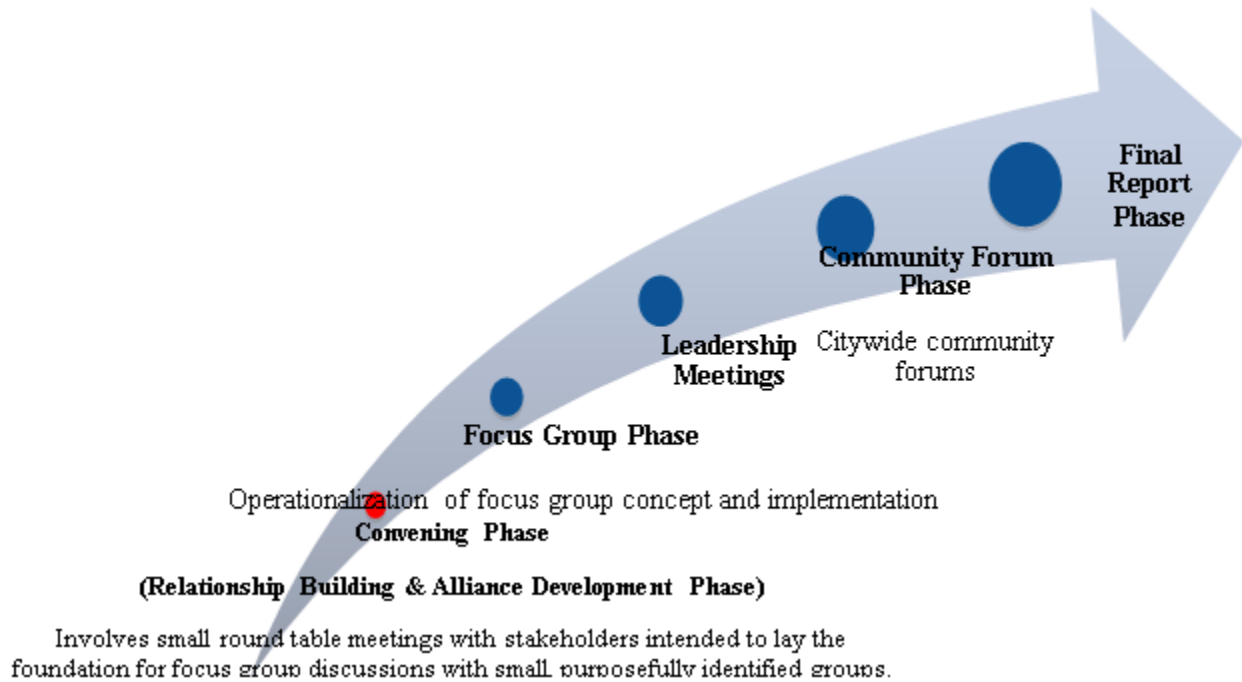
Likewise, it was suggested that officers who intervene when needed should be supported, and the ones who do not should be punished.

It was stressed that accountability should extend beyond the officer level, and that there should be police accountability at the precinct level. In this regard, precinct commanders should be trained on levels of sharing information with the public and public outreach, and evaluated on those grounds.

Recommendations included:

- Evaluate systems and publish reports, findings, data and any changes resulting from those evaluations on a regular basis.
- Establish uniform guidelines for the Commissioner's disciplinary determinations and the CCRB's disciplinary recommendations.
- Require the Commissioner to explain divergence from NYPD trial judge and CCRB disciplinary recommendations via reporting to the issuing body and the public.
- Ensure that District Attorneys report suspect and irregular patterns and practices.
- Strengthen the CCRB, including by increasing its budget and giving the CCRB authority to prosecute officers who lie under oath during the course of their investigations.
- Require officers to receive training resulting in certification; continuing training to obtain recertification; and, if officers violate the law, decertification.
- Appoint a special prosecutor for police misconduct cases.

SECTION V: JOINT REMEDIAL PROCESS DESIGN AND IMPLEMENTATION



1. Convening Phase

In January 2015, the Facilitator and Deputy Facilitator began the process of convening a series of small group meetings for the purposes of gathering information from, and building alliances with, community organizations that have contact with or provide services to persons in impacted communities that were adversely affected by unconstitutional stop, question, and frisk and trespass enforcement practices. Organizations across a variety of fields and specialties, including clergy, social workers, local government, police unions and affinity groups, and academia, were among the first outreach efforts on the part of the Joint Remedial Process (“JRP”) administrative team. Organizations were selected for outreach based on criteria that prioritized work with affected communities and/or work on issues related to the *Floyd, Davis*, and *Ligon* cases.

Over 40 organizations participated in the early convening stage of the process. These meetings are part of what the JRP Team called the Convening Phase (*see* Figure 1).

Figure 1: Participating Organizations

ORGANIZATIONS
49 Strong, First Central Baptist Church
Arab American Association of New York
Bronx Connect
Bronx Fathers Taking Action
Brotherhood/SisterSol
Brownsville Community Justice Center
Center for Court Innovation
Citizens Crime Commission
Communities United for Police Reform (“CPR”)
Covenant House
Dominican Officers’ Society
DRUM – South Asian Organizing Center

Esperanza
Exponents
First Corinthian Baptist Church
Fortune Society
George Walker Coalition
Getting Out, Staying Out
Good Old Lower East Side (GOLES)
High School for Law Enforcement and Public Safety
InterVarsity Christian Fellowship, John Jay College
John Jay College of Criminal Justice
Justice Committee
Law Enforcement High School
Legal Aid Society – Anti Gun Violence Unit
Make the Road New York
Malcolm X Grassroots Movement

Man Up, Inc.
Mayor's Office of Community Affairs
Micah Group, Interfaith Center of New York
NYCHA Citywide Council of Presidents
Osborne Association
Picture the Homeless
Police Athletic league ("PAL")
Rock Safe Streets
Safe Horizon
Save Our Streets
Sikh Coalition
St. Paul Community Baptist Church
Streetwise and Safe
Theatre for the Oppressed
The Door

VOCAL-NY
Youth Represent

Originally conceived of as a way for “a wide array of stakeholders to be offered the opportunity to be heard in the reform process” as required by the Remedies Opinion, the JRP was a multi-phase community engagement which placed at the center of its efforts, the goal of realizing and identifying reforms beyond those already ordered. To ensure that all stakeholders were included within the JRP, the following five phases were developed:

1. Convening Phase
2. Focus Group Phase
3. Leadership Meeting Phase
4. Community Forum Phase
5. Final Report Phase

Process Development

After a period of internal meetings, the Facilitator called for a series of preliminary meetings with the litigants in the *Floyd*, *Davis*, and *Ligon* cases. The goal of this process was to gather background information on the cases and seek out community organizations with a stake in these cases. At this time, the Facilitator and Deputy Facilitator had several internal discussions with the New York City Law Department, the NYPD, and plaintiffs’ counsel to identify key stakeholder groups, potential JRP participants, conduct an overview of available resources, and brainstorm options for the function and design of the JRP.

Initial Assessment of *Floyd, Davis and Ligon*

The Facilitator's first step in the convening of the JRP was to determine the Court's mandate, and figure out the goals of the process. In the Remedies Opinion, a Monitor was appointed to oversee the Immediate Reforms ordered by the Court in 2013. Rather than develop a simple conflict resolution process, the Remedies Opinion required that the parties engage in a community-based remedial process to develop sustainable reforms to the SQF practices of the NYPD.²¹⁴ Central to this task, the Court highlights the need for most directly affected communities to be at the center of the remedial process. These basic stipulations then made it possible for the Facilitator to devise ground rules and a basic structure for the next steps of community process.

Stakeholder Identification

Following the development of an initial framework, the Facilitator had to identify a sample of interested stakeholders to participate in the process. The Remedies Opinion provided the Facilitator with an extensive list of stakeholder groups including representatives from grassroots, religious, and advocacy organizations, the Civilian Complaint Review Board, the District Attorneys, police organizations, schools and elected officials, and naming Community United for Police Reform ("CPR") and the Black, Latino/a, and Asian Caucus of the New York City Council as specific parties in the JRP. Using the Remedies Opinion as a template, the Facilitation Team then began the process of conducting extensive outreach to organizations with an interest in SQF and trespass enforcement. Once groups were identified, the Facilitator scheduled a series of small group meetings to determine party representatives and resource allocations for groups.

²¹⁴ See Remedies Opinion, 959 F. Supp. 2d at 686-88.

The Facilitator met with several representatives of police unions and affinity groups. They included representatives of the Sergeants Benevolent Association, Detectives' Endowment Association, NYPD Captains' Endowment Association, National Latino Officers Association, 100 Blacks in Law Enforcement Who Care, The NYPD Guardians Association, and the Dominican Officers Association. Additionally, the Facilitator attempted to meet with the New York City Patrolmen's Benevolent Association and the NYPD Hispanic Officers Society. The Facilitator was advised by the Monitor that he had apprised the Patrolmen's Benevolent Association of his interest to meet with them to discuss the Joint Remedial Process. Unfortunately, the Association declined the request.

Resource Determinations

The Facilitator, in consultation with the City, then had to develop a relationship and structure for funding the project. As required by the Court, the Joint Remedial Process would be funded by the City; funding was required to cover the expenses of acquiring staff, purchasing materials, renting venues, and other costs integral to the work of the process. Once a funding structure was determined, the Facilitation Team began the process of seeking staff and proposals for implementation of the JRP.

Design and Implementation

The final step of the Convening Phase required the Facilitator to organize a strategic plan for completion. Initially the Facilitator decided on a survey design and met with a City University of New York ("CUNY") research team to review proposals for a community input survey. The Facilitator declined to move forward with the CUNY proposal. Instead, the Facilitator sought to develop an information gathering process that would allow the Facilitation Team to go out into impacted communities to connect with and learn from individuals.

Joint Remedial Process Advisory Committee

The Facilitation Team thought of creating an Advisory Committee to help guide the JRP. The Advisory Committee was conceived of as a structure through which the JRP Team could receive advice and input on, primarily, the process itself. The Committee was a vehicle for us to obtain advice and counsel from stakeholders as we developed the JRP. Additionally, the JRP Advisory Committee was a sounding board for the ideas that the Facilitator would present to the Monitor and the Court. The Committee met monthly except for a short hiatus from August 2016 to January 2017. While the primary purpose of the JRP Advisory Committee was to offer in a structured way continued input into the process, it also became a vehicle for dialogue on substantive issues.

With respect to the composition of the Advisory Committee, the Facilitator decided that the committee should be composed of representatives from various stakeholders in the JRP (*see* Figure 2).

Figure 2: Joint Remedial Process Advisory Committee Members

MEMBERS
Adilka Pimentel – Make the Road New York
Alyssa Aguilera – Vocal-New York
Benjamin Tucker – NYPD First Deputy Commissioner
Chris Bilal – Streetwise and Safe

Ed Mullins – Sergeants Benevolent Association ²¹⁵
Eleanor Britt – Plaintiff for Davis
Gabriel Strachota – Communities Voices Heard
Jackie Yates – Plaintiff for Ligon
Lalit Clarkson – Malcolm X. Grassroots Movement ²¹⁶
Nicholas Peart – Plaintiff for Floyd
Priscilla Gonzalez – CPR
Reginald Bowman – NYCHA Citywide Council of Presidents
Reinaldo Rivera – U.S. Department of Justice
Rev. Chloe Breyer – Interfaith Center of New York
Steve Kohut – Justice Committee
Steve Zeidman – CUNY Law School
Susan Herman – NYPD Deputy Commissioner

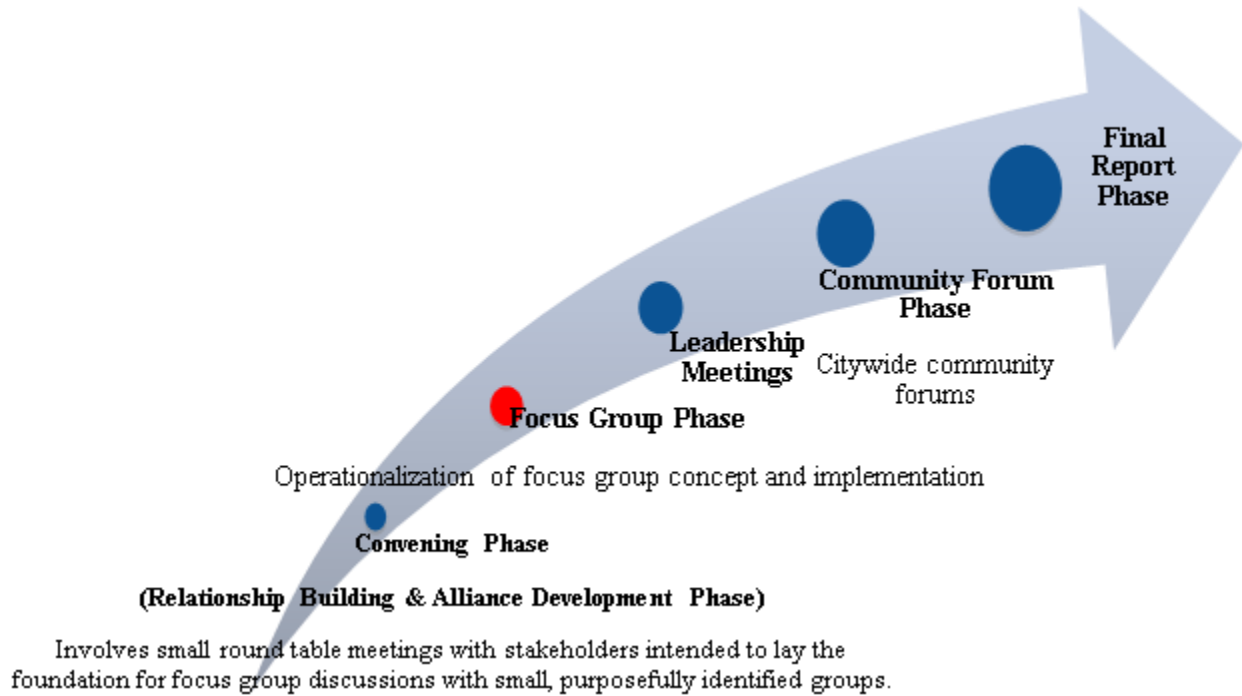
It was decided that the Advisory Committee would take a purely advisory role and it was explained to all invitees that its deliberations would be confidential and any recommendations made through the Committee would not be in any manner binding on the Facilitator. The Committee’s primary concern was with providing process recommendations. During Committee

²¹⁵ The Facilitator met with Sergeant Ed Mullins, President of the Sergeants Benevolent Association on two occasions. Sergeant Mullins accepted an invitation to participate on the Advisory Committee, but did not attend any meetings.

²¹⁶ Some advisory members were replaced by different individuals by the representative organizations during the term of the JRP.

proceedings, major issues concerning the implementation of the civic engagement process were presented to the Committee members and members were invited to comment.

SECTION V: JOINT REMEDIAL PROCESS DESIGN AND IMPLEMENTATION



2. Focus Group Phase

The aim of the Focus Group Phase of the Joint Remedial Process was to gather additional ideas for changes to the NYPD beyond those ordered in the Remedies Opinion as part of the Immediate Reform Process. People from communities most affected by SQF and trespass enforcement practices were selected as participants for the focus groups. The Facilitation Team conducted a total of 64 focus group meetings with 516 participants. Forty focus groups emphasized street stops, while 24 groups concerned trespass enforcement experiences. These groups were done in conjunction with community organizations, advocacy groups, and community centers within New York City Housing Authority (“NYCHA”) developments. We also participated in focus groups of NYPD patrol officers, sergeants, lieutenants, commanding officers, and executives.

It is important to note that the JRP was developed as an information gathering process. Best practices of qualitative research were used to gather and analyze all the information that was collected.

Generally speaking, participants were forthcoming and excited to participate in the focus groups. It was not uncommon at the beginning and end of focus groups for participants to inquire about the legitimacy of the JRP, specifically if anything would actually come of their recommendations. Participants were informed that this was a Court-ordered process and the Court would make the final decision regarding ordering additional reforms. This concern aside, focus group participants actively discussed ways in which the NYPD could better engage communities that were impacted by unconstitutional SQF and trespass enforcement. With the exception of some focus group participants, participants expressed a desire to work with the Department toward improving relations between the police and communities.

Methodology

The identification of communities most affected by SQF began with an analysis of the NYPD SQF public data for 2011, 2012, 2013, and 2014. Using these data, there were 11 variables created and organized to identify those communities with higher rates of SQF. The data were ordered based on the top 10 SQF precincts for each year and prioritized based on the presence of variable and special circumstances where applicable. These variables were defined as follows:

Table 1. Factors used to prioritize precincts

Variable #	Variable Name	Definition
1	SQF11	Top 10 precincts with the highest number of stops in 2011
2	SQF12	Top 10 precincts with the highest number of stops in 2012
3	SQF13	Top 10 precincts with the highest number of stops in 2013
4	SQF14	Top 10 precincts with the highest number of stops in 2014
5	SAL14	Precincts that participated in the 2014 “Summer All Out” policing initiative
6	SAL15	Precincts that participated in the 2015 “Summer All Out” policing initiative
7	ARR11	Precincts where in stops in 2011 did not result in an arrest 95% of the time
8	ARR12	Precincts where stops in 2012 did not result in an arrest 95% of the time
9	ARR13	Precincts where stops in 2013 did not result in an arrest 95% of the time
10	ARR14	Precincts where stops in 2014 did not result in an arrest 95% of the time

Based on our analysis, there were 25 precincts identified and of those 25, 13 precincts were prioritized as high or mid priority. Precincts were prioritized to assist with identifying

participants for the focus groups. Participants who either lived within or frequented these precincts were given preference.

Table 2. Selection and prioritization of NYPD precincts

Pct	SQ F11	SQ F12	SQ F13	SQ F14	SA L14	SA L15	AR R11	AR R12	AR R13	AR R14
23	X	X								
25** **										
33**										
34**							X			
40	X	X	X							
43*	X				X	X				
44	X	X		X		X				
60			X							
67			X	X	X	X	X	X		
70		X					X	X	X	
73	X	X	X		X	X	X	X	X	
75	X	X	X		X	X	X	X		
79** **		X	X				X	X		
83		X								

90	X					X	X			
100* *										X
101* *			X	X			X	X	X	X
102				X						
103* **	X	X	X							
105				X						
106				X			X			
107				X						
115* **	X						X			
120	X	X	X			X				X
121										X

*A top 10 precinct for at least one year and participating in SAL 2014, 2015

**Participating in the New Neighborhood Policing Model Pilot Program 2015

***Specialized population (large percentage of South Asians and other impacted people)

****Special circumstances

High Priority	
Mid Priority	
Priority	

Using the same data, 15 variables were created and organized to identify those communities with higher rates of housing trespass enforcement. The data were ordered based on the top precincts and Police Service Areas (“PSA”) with at least 10% housing stops. The variables were defined as follows:

Table 3. Variables used to prioritize PSAs and precincts

Variable #	Variable Name	Definition
1	HOU11	Precincts where at least 10% of stops were housing stops in 2011
2	HOU12	Precincts where at least 10% of stops were housing stops in 2012
3	HOU13	Precincts where at least 10% of stops were housing stops in 2013
4	HOU14	Precincts where at least 10% of stops were housing stops in 2014
5	DEBLASIO15	Housing developments within this precinct were on DeBlasio’s list of 15 most dangerous developments
6	SAL2014	PSA and/or Precinct that participated in the 2014 “Summer All Out” policing initiative
7	SAL2015	PSA and/or Precinct that participated in the 2015 “Summer All Out” policing initiative
8	ARR2011	Precincts where in stops in 2011 did not result in an arrest 95% of the time
9	ARR2012	Precincts where stops in 2012 did not result in an arrest 95% of the time
10	ARR2013	Precincts where stops in 2013 did not result in an arrest 95% of the time

11	ARR2014	Precincts where stops in 2014 did not result in an arrest 95% of the time
12	SQF2011	Top 10 precincts with the highest number of stops in 2011
13	SQF2012	Top 10 precincts with the highest number of stops in 2012
14	SQF2013	Top 10 precincts with the highest number of stops in 2013
15	SQF2014	Top 10 precincts with the highest number of stops in 2014

Based on our analysis, there were 29 precincts identified within the nine PSA's, and of those 29 precincts, 22 were prioritized as high or mid priority. Precincts were prioritized to assist with identifying participants for the focus groups. Participants who either lived within or frequented these precincts and identified housing developments were given preference.

Table 4. Selection and prioritization of NYPD precincts and PSAs

PSA	hou11	hou12	hou13	hou14	Defunctio's 15	sal14	sal15	arr11	arr12	arr13	arr14	sqfl1	Sqfl2	sqfl3	sqfl4
1						X									
60 th	X	X	X	X										X	
61 st				X				X	X	X					
63 rd				X				X	X						
69 th	X	X		X		X		X	X	X					
76 th	X	X	X	X	X			X	X	X					
78 th	X		X					X	X	X	X				
2						X	X								
73 rd	X	X	X	X	X	X	X	X	X	X		X	X	X	
75 th	X	X	X	X	X	X	X	X	X	X		X	X	X	
77 th	X			X		X		X	X	X					
3						X	X								
79 th	X	X	X	X	X			X	X				X	X	X
81 st	X	X	X	X				X	X						
84 th		X							X						
88 th	X	X	X	X	X					X					
90 th	X	X	X	X				X	X			X			
4															
5 th				X											
7 th	X	X	X	X											
9 th	X	X	X	X											
10 th	X	X	X	X											
5															
23 rd	X	X	X	X				X	X			X	X		
25 th	X	X	X	X	X										
28 th	X	X	X	X	X				X						
6															
24 th	X	X	X	X											X
26 th	X	X	X	X										X	X
32 nd	X	X	X	X	X									X	X
7						X	X								
40 th	X	X	X	X	X							X	X	X	
42 nd	X	X	X	X		X									
8						X	X								
43 rd	X	X	X	X	X	X	X					X			
45 th	X														
9															
103				X								X	X	X	
107	X	X	X												X
113						X	X	X		X	X				
114	X	X	X	X	X										

44 th				X			X					X	X		X
100 th	X	X	X								X				
101 st	X	X	X	X				X	X	X	X			X	X
120 th	X			X	X		X				X	X	X	X	
122 nd															

High Priority – Phase I	
Mid Priority – Phase II	

Once all precincts and PSAs were identified and prioritized, they were then disaggregated by zip code and neighborhood. Using a combination of the high and mid-priority precincts and PSAs and an organizational list developed during the Relationship Building Phase, the Facilitation Team asked organizations to populate focus groups with people from the identified geographical neighborhoods.

Of the 64 focus groups with 516 participants, 53.3% of the people participating in the focus groups discussing street stops lived within identified areas; and 78% of the people participating in the focus groups discussing housing trespass stops lived within identified areas.

Many organizations worked in collaboration with the Facilitation Team to populate focus groups of 8 to 10 participants discussing street stops, these organizations are found in Table 5 below.

Table 5: List of organizations who populated focus groups for the *Floyd* case

ORGANIZATIONS
Ali Forney Center
Arches
Bronx Clergy Criminal Justice Round Table
BronxConnect
Broome Street Academy

Brotherhood - SisterSol
Cardinal Hayes High School
Cardinal Spellman High School
Center for NuLeadership
Central Family Life Center
Community Voices Heard
Covenant House
Cure Violence SOS – South Bronx
East Side Settlement House
Exponents
Gangstas Making Astronomical Community Changes INC (“GMACC-Inc.”)
Life Camp, Inc.
Make the Road New York
Malcolm X Grassroots Movement
Man Up, Inc.

New York Center for Interpersonal Development (“NYCID”)
Osborne Association
Picture the Homeless
Police Athletic League (“PAL”)
Safe Horizon
Safe Space Far Rockaway
Streetwise & Safe
The Anti-Violence Project
The Door
The Fortune Society
True 2 Life - Central Family Life Center
VOCAL-NY

People who participated in the housing trespass groups were recruited directly from NYCHA developments with the assistance of community organizations and the New York City Housing Development Department of Resident Engagement. Those developments can be found below in Table 6.

Table 6: List of NYCHA developments in which organizations populated *Davis* focus groups

NYCHA DEVELOPMENTS
Baisley Park
Brownsville
Carey Gardens
Castle Hill
Ingersoll
Linden
Mill Brook
Mitchel
Mott Haven
Ocean Bay
Patterson
Red Fern
Red Hook, Hammel

Richmond Terrace
Seth Low
Smith
Sotomayor
St. Mary
Stapleton
Tilden
Tompkins
Unity Plaza
Wagner
West Brighton
Wilson and East River Houses

The criteria for participation in the “street stop” groups were that the individual either lived in the prioritized area or had street stop experiences within the identified areas. The criteria for participation in the “housing stop” groups were that the individual lived in or had been stopped in NYCHA developments within identified precincts/PSAs. We did not limit participation to only people who have been stopped but also welcomed participants who may

have had vicarious experiences by way of a friend or family member or simply by being a resident within a neighborhood or development where frequent stops occur. Individuals were provided a round-trip MetroCard and a meal for participating.

Figure 1. Race of focus group participants for ‘street stop’ groups

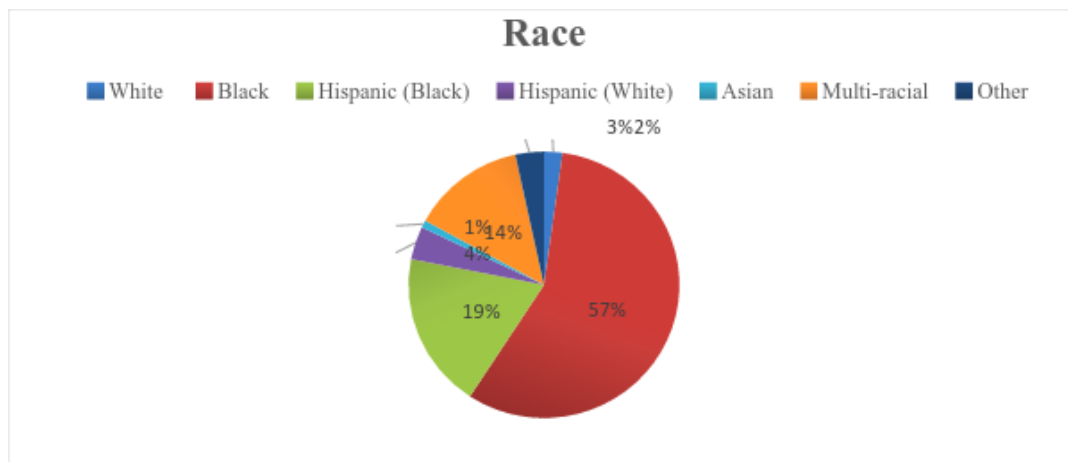


Figure 2. Gender of focus group participants for ‘street stop’ groups

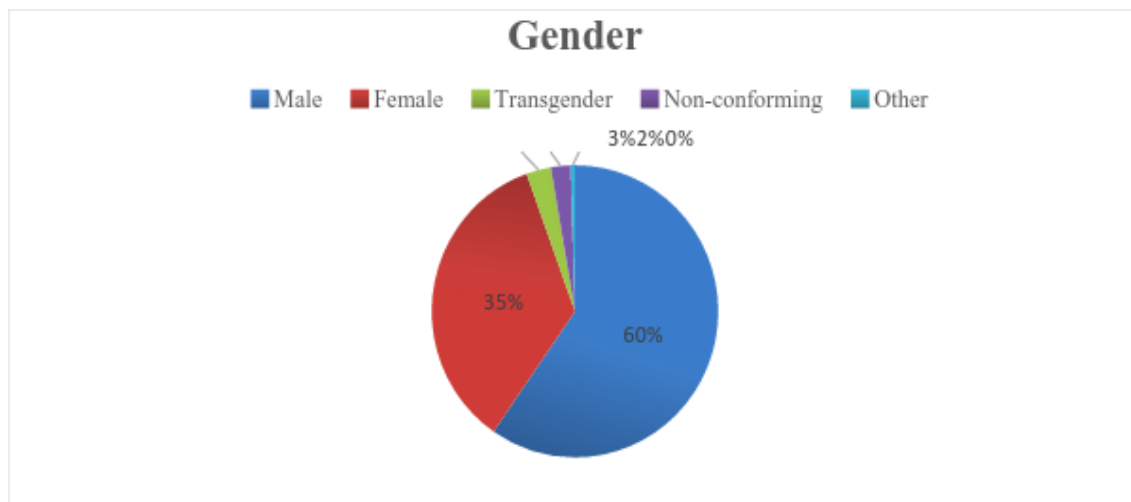


Figure 3. Race of focus group participants for ‘housing stop’ groups

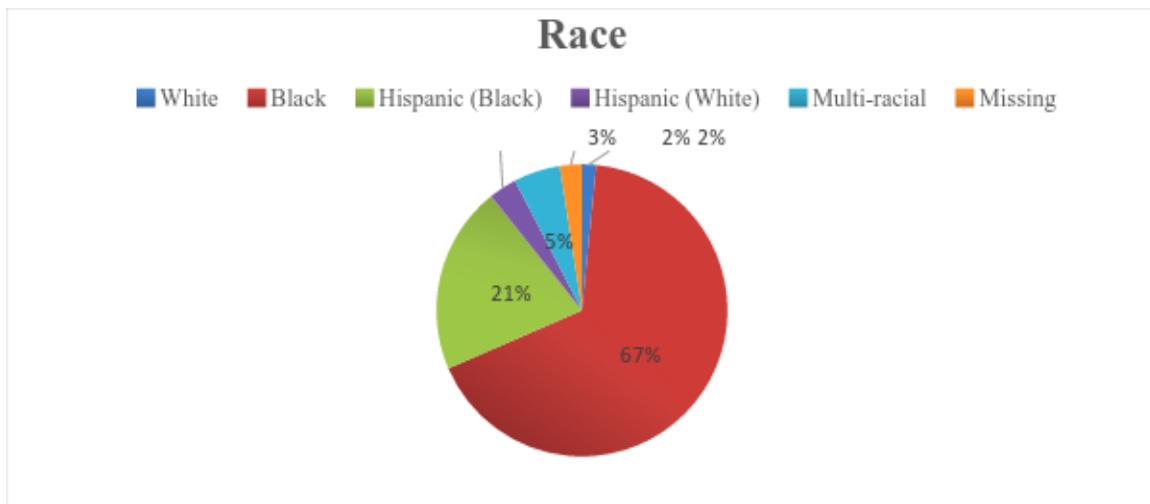
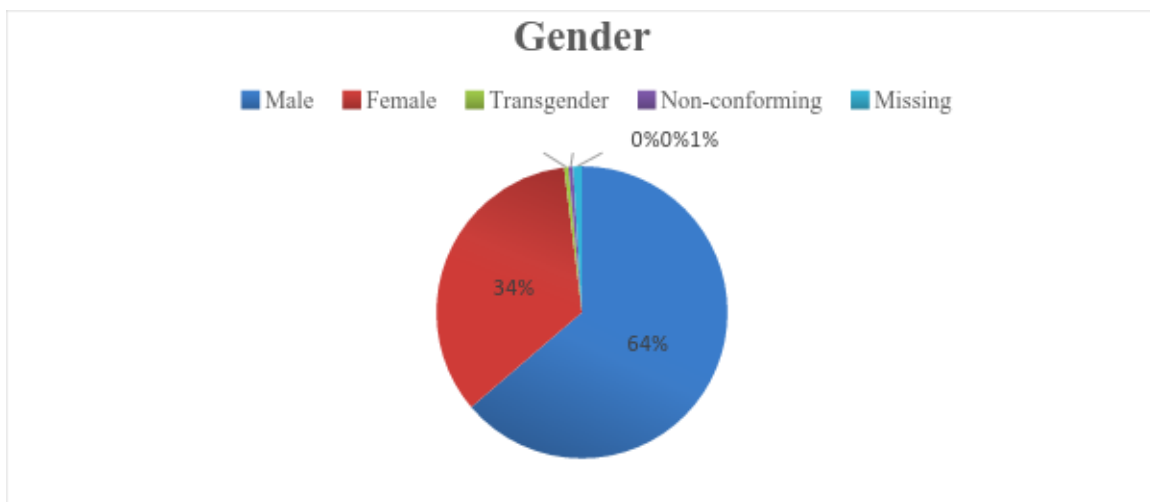


Figure 4. Gender of focus group participants for ‘housing stop’ groups



Focus Group Development

Focus Group Questions

The Facilitation Team developed focus group questions in collaboration with plaintiffs’ attorneys, the NYPD, and Communities United for Police Reform (“CPR”). The final list of questions for both focus groups included six open-ended questions and probes. Probes were

created and used with some questions to ensure complete coverage of particular topics. Copies of the questionnaires are included in Appendix E.

Floyd Questions

For the “street stop” groups the questions were grouped into three main themes that are discussed in this section. The discussion began with an introductory count question (Question 1) to ensure that the participants met the general criteria for participation in the focus group. Question 1 was followed by two transition questions (Question 1A. i & Question 1A. ii) that asked participants to share their experiences with being stopped — either personal or observed experience. If participants mentioned a stop which they believe occurred because of what they look like, the way they were dressed, where they live, or who they were with, Question 2 was asked. Questions 2 – 6 were key questions, and focused on reform ideas to the NYPD. Although they were focused on specific themes such as “feeling free to walk away,” “consent to search,” “complaints,” and “supervision and evaluation,” if participants provided commentary beyond what was asked, they were allowed to continue answering. Finally, the focus group concluded with a question asking for additional thoughts around reforms to SQF and any topic not covered.

Davis & Ligon Questions

For the “housing stop” groups, the questions were grouped into four main themes that are discussed in this section. The discussion began with two introductory count questions (Questions 1 & 2) to ensure that the participants met the general criterion for participation in the focus group. Questions 1 & 2 were followed by two transition questions (Question 2A. i & Question 2A. ii) that asked participants to share their experiences with being stopped while on the property of a public housing development and suspicion of and/or arrest for trespassing. Questions 3, 4, and 6 were key questions, and focused on reform ideas to the NYPD. Question 5 was asked in an

attempt to secure ideas for alternatives to policing in ensuring a safe neighborhood. Finally, the focus group concluded with a question asking for additional thoughts around reforms to SQF and trespass enforcement, and any topic not covered.

Participant Consent

Before the start of each focus group, participants were asked to sign an informed consent that outlined the purpose of the focus group. The consent explained that participation was voluntary and that individuals could discontinue participation at any time. When a participant was younger than 18 years of age, parental/guardian written consent was provided in advance. A copy of the informed consent is provided in Appendix E.

Once written consent was given, participants were asked to complete a demographic questionnaire seeking information about their race, age, type of residence (*e.g.*, renting, homeless, NYCHA, owner), zip code, LGBTQ identification, and gender identification. Participants did not include their name on the questionnaire, only the hosting agency/organization, time and date of the focus group. Copies of the demographic questionnaires are provided in Appendix E.

Protecting Focus Group Participants' Privacy

To ensure anonymity, each participant was assigned a color used as their identifier during the discussion.

Personal Prose Worksheet and Introduction

Once participants completed the demographic questionnaire, consent to participate, and “personal prose” worksheet, a short introduction was provided. Copies of the personal prose template and introduction script are provided in Appendix E.

Focus Group Debriefs

At the conclusion of each focus group, the group facilitator and assistant facilitator would complete a recorded debrief. The focus group debrief would include a discussion of impressions, challenges presented during the focus group, and anything found to be of importance during the focus group.

Additionally, the primary role of the assistant focus group facilitator was to take typed written notes of the discussion, especially when there may have been audio issues. The assistant facilitator was also responsible for taking detailed behavioral notes. The focus group transcripts, behavioral notes, and debrief sessions were used as data during analysis.

Analysis of Focus Group Responses

Atlas.ti qualitative software was used to organize, code, and analyze 64 transcripts containing approximately 1600 pages of transcription and notes from the focus groups. The purpose of the analysis was to identify reform ideas as offered by focus group participants. The analysis involved line by line coding, resulting in 24 street stops and 9 housing stops larger themes, originating from 927 codes. These codes were developed based on the participants' responses to each focus group question. The assistant focus group facilitator reviewed and coded the transcripts as well. Copies of the larger thematic categories and suggested reforms are provided in the Appendix.

In this next section, you will find a summary of the larger themes identified within the focus groups. These themes were organized into two sections — themes specific to “street stops” (*Floyd*) and themes specific to “housing trespass enforcement” (*Davis*).

Summary of Focus Group Themes

Floyd Focus Groups

Accountability

There was an overarching theme throughout the focus groups centered around accountability. Focus group participants felt that officers were not held accountable for their actions on a consistent basis. They also felt that accountability should not be limited to individual officers but should also include NYPD supervisors, executives, and in some instances, the Mayor.

Assertion of Right to Consent to a Search and the Freedom to Walk Away

When asked the question about consent for searches, many participants felt that they were often searched without consent. Participants regularly expressed that they felt that they were unable to refuse a search in appropriate instances and that the act of asserting their rights would escalate the encounter often making it worse. One participant shared, “They don’t ask permission; if you ask them they tell you don’t ask me no questions.”

When asked about feeling free to walk away, almost all participants felt that they did not feel free to walk away from police officers. This fear of walking away was grounded in the possibility that doing so could lead to some form of escalation. The fear of escalation would cause some to run instead of walk away. According to one participant, “Most of the time we ain’t walking away, we running away.” Although some participants stated that they would walk away if the officer informed them that they were free to leave, others stated they would not leave even if the officer stated that they were free to leave. It is only when the officer would decide to leave first that they would proceed to walk away. One participant explained this as, “You try to walk away from a cop, and they’re going to easily say you’re trying to resist arrest.”

De-escalation

Participants expressed concerns around escalating stops. A common theme was to “play by the rules to avoid escalation.” Some participants expressed avoidance tactics, such as not going outside on “TNT” — on Tuesdays and Thursdays — when detectives seem to be more present, or walking in a different direction to avoid police contact. Other participants shared ways in which they minimize the potential for escalation like “going with the flow and becoming a chameleon,” running away when the officers arrived, or putting their hands up before being asked.

Participants suggested changes to policies and procedures that focused on officers informing civilians of their rights when appropriate during investigative encounters. There were also suggestions for officers to be required to attend de-escalation trainings.

Civilian Complaint Review Board (“CCRB”) and Complaints

Many participants expressed concerns about filing complaints inside of their local precinct. They suggested instead that complaints be filed with an entity and/or parties independent of the NYPD and CCRB. There were two reasons for this concern. The first reason was the fear of retaliation and the second was the impression that the CCRB was working on behalf of the NYPD, thereby lacking objectivity. In a response to a question about the CCRB a participant responded, “I ain’t gonna call the police on the police.” The latter concern was a direct correlate to participants feeling that there is no action taken against officers with complaints filed against them. As such, they expressed the need for a higher level of accountability and transparency in regard to complaints and the final determination of complaints.

Participants also suggested that the complaint process be streamlined and simplified, making it easier for participants to file complaints, thereby minimizing trauma, while receiving proper notification of all complaints. They suggested a simple solution, follow up in the form of a written response (*e.g.*, letter or email) and/or a telephone call.

Community Engagement

Many of the focus group participants expressed a desire to engage in a community feedback process. Participants suggested events such as community forums and conversations with police officers, precinct rating boxes, annual surveys, and other data gathering mechanisms. Some participants also expressed a desire to get to know the officers that work within their communities as well as the importance of officers getting to know the communities that they patrol.

Community Engagement Campaign

Participants expressed a strong desire for community education campaigns. The suggestions were categorized into three areas:

- Community Education Programs for Officers.
- Programs for Officers and the Community.
- Programs for Community Members Only.

The education program for officers focused on the need for officers to have a thorough and accurate understanding of the culture and history of the respective communities that they patrol. Officer and community education campaign suggestions focused on collaborative education programs between the NYPD and community based organizations. Participants expressed a desire for the NYPD to partner with community based organizations in an effort to build an educational campaign. Additionally, community members expressed a strong desire for

community based educational programs focused on providing “know your rights” information. Participants felt that this would empower communities in such a way that aggressive and escalating types of encounters would be minimized. There was a shared sentiment that this would help adults and young people better understand how to engage officers.

Community Evaluation and Input into Training

Training was also a recurrent theme during the focus groups. Participants suggested that many of the constitutional abuses suffered by them were a result of inadequate training of officers by the NYPD. In this regard, “Customer Service” was an overarching training theme.

Participants also felt that abuse of power and consistent disrespect were at the core of police interactions with community members. Additionally, participants expressed the need for officers to receive training to assist them with engaging with special populations such as the mentally ill, homeless individuals, youth, and the LGBTQ community.

Participants also articulated a great level of compassion for officers in terms of job related stress, fear, and trauma. There were several suggestions for therapeutic trainings that could prepare officers to manage stress, fear, and trauma associated with the job. Participants additionally expressed a desire for input into these trainings.

Community Input into Officer Performance Evaluations

Focus group participants expressed an interest in community participation in the evaluation process. Suggestions were centered around community involvement in the evaluation of individual officers and precincts, as well as the inclusion of a “community engagement” metric on annual evaluations. There were also suggestions for community members to complete some level of assessment for officers’ work, including but not limited to an oversight committee.

Within the LGBTQ specified groups, participants suggested an oversight committee created and populated with members of the transgender community to rate officers' overall performance.

Community Feedback

Focus group participants suggested the use of web resources and applications as data gathering mechanisms. Participants thought these were good ways to not only report and file complaints but also to provide commendations for deserving officers. Additionally, participants felt that web resources and applications were good mechanisms to allow people to make anonymous reports.

Consent

Participants mentioned that officers regularly did not ask for consent and instead would proceed with a bodily frisk and search while questioning. One participant mentioned in a focus group that they have been frisked and searched by officers while the officers sat in their vehicle. In response to these concerns, participants suggested a simple fix — that officers seek consent. Participants suggested that officers advise a person of his right to not consent to a stop, or to answer questions.

Evaluation

There were several areas of discussion regarding evaluation. Participants suggested both a precinct and individual approach to evaluations. Also suggested was a precinct report card/progress report. Participants thought precinct report boxes would be useful in determining precinct effectiveness and engagement with community members. For individual evaluations, participants suggested the use of an application or an independent review board that included

community members. Their responses were balanced in that they also thought officers should be commended for work well done as well as criticized for unconstitutional policing.

Policing Tactics

Participants shared details of stop encounters where police officers used specific tactics. There were accounts of participants being stopped and held as a form of “inconvenience” or taken to the neighborhood precinct and later being released out of the back door. Participants also shared that they felt officers intentionally used excessive force, especially when an officer felt challenged by the person that was stopped. One example of this is when a participant said that, “Sometimes it feels like if you challenge them, they don’t like that; I’ve been brutalized when they felt I challenged them.”

Participants frequently expressed the notion that “cops go looking for trouble,” either in the manner of targeting certain individuals, stopping people just to see if they have warrants, or throwing gang signs from their car in an attempt to garner a response. One participant stated, “They’ve got targets, I’m a target, they have targeted areas where they just go fishing.”

In some focus groups, participants stated that officers use certain tactics intentionally to make certain people look like “snitches.” Participants felt that this was particularly problematic because as one participant noted, “they’re putting my life in jeopardy.”

Policy/Procedure

Focus group participants often felt disrespected by officers, a consistent theme throughout all 64 groups. Participants did not limit this feeling of disrespect to stops by officers but also shared that they felt disrespected by officers in encounters separate from stops. Some basic solutions recommended by participants to address the issue of respect was community

policing, officer assignments based on the needs of the community, customer service and implicit bias trainings, and providing civilians business cards or something similar with the officer's name, badge number, and precinct at the end of an encounter.

Participants suggested policy/procedural changes for officers to address the way they engage LGBTQ persons. They also suggested changes to how the NYPD audits stops, police hiring standards, engagement of pedestrians during stops to avoid escalation, and protection against retaliation for those filing a complaint.

Supervision

Focus group participants consistently expressed a desire for transparency in the way that officers are supervised, often referencing the need for body-worn cameras. As additional methods of supervision, participants suggested the following:

- Supervisory Training.
- Ensuring Supervisory Accountability.
- Coaching by experienced officers and supervisors and a “trigger system” that will help identify officers who are at risk for mental health stressors.

In addition to the mental health trigger system, participants suggested that supervisors be well trained to identify mental health stressors of their officers. Lastly, participants suggested the creation of a promotion metric that would include professionalism and respect for supervisors to consider.

Trauma Informed Trainings for Police Officers

In some instances, focus group participants were understanding of the stress, fear, and trauma associated with being a police officer. Participants suggested trauma-informed trainings

and other therapeutic trainings and support as a way to manage the stress, fear, and trauma associated with the role of police officer.

LGBTQ Specific Trainings

LGBTQ focus group participants suggested officer trainings focused on engaging transgender people that are led by transgender people. Assistance from advocacy groups focused on issues relevant to transgender people should be consulted.

Cultural Awareness/Cultural Competency Trainings

Focus group participants expressed concerns that officers are not culturally competent to serve many of the communities they work within. According to them, this lack of cultural competence leads officers to misunderstand people who live within these communities, often resulting in targeting of community members. Participants suggested cultural competency trainings that would help officers better understand the communities they work in.

Specialized Trauma Training for Vulnerable Populations

The trauma experienced by participants heavily affected by unconstitutional policing is deep and profound. Many participants expressed experiencing it directly, while others' experiences were vicarious in nature. We also learned during the focus groups that participants would run, even when not engaged in illegal activity, to avoid contact with police. This almost automatic response is often perceived as guilt. Participants articulated that they either feared for their lives, were avoiding the indignity or potential escalation that could result as consequences of the stop, or were fatigued from what they termed "harassment."

Transparency

Focus group participants expressed the need for transparency with respect to NYPD policies and discipline guidelines. Some participants suggested that the Commissioner become more transparent in statements, policies, and training materials; while others expressed the need for transparency in terms of the imposition of discipline. Additionally, participants suggested progressive discipline as a means of holding officers accountable.

General Procedural Suggestions

Many focus group participants expressed that they did not know the names and badge numbers of officers that they have encountered and in some instances officers would not provide this information when requested. As a solution to this problem, participants suggested that all officers provide a business card as a closing gesture at the end of an encounter. According to focus group participants, these cards should provide, at minimum, the officer's name and badge number.

Issues Directly Affecting Homeless Individuals

There were eight focus groups populated with participants who identified as being homeless, six were youth groups and two were adult groups. Participants within these groups expressed that they felt targeted, resulting in frequent encounters with police. Many participants expressed that these encounters were often unavoidable by virtue of their homeless status. As an example, one participant shared how the police would often become frustrated, exclaiming "I just saw you, just picked you up yesterday, why are you back here?" With the participant responding, "Well, I'm homeless, this is the only place I can stay." As stated by a staff person who participated in a focus group and who provides care to homeless people, "[t]here's a

[systemic] issue around homelessness in our city — that it's [disproportionately] impacting people who have no resources to do anything different.”

Davis Focus Group Themes

Accountability

Similar to participants in the *Floyd* focus groups, participants from NYCHA developments expressed a concern about a lack of accountability within the NYPD. When asked about accountability, one participant stated, “Police are never going to change unless you change the repercussions.” Generally speaking, participants suggested an NYPD cultural change with regard to accountability and an officer accountability sliding scale with progressively more harsh penalties.

Community Engagement

Although many NYCHA participants expressed concern with being heavily policed, they also expressed the desire to partner with the NYPD. Some participants suggested NYPD partnerships with community organizations and more activities involving community members and precinct officers. Some participants were actively engaged in Police Athletic League (“PAL”) programming and suggested increased programming similar to PAL. A predominant theme was that community members should know who their officers are, and it was believed that increased community and NYPD collaborations would help in that regard.

Issues Related to Confidential Informants

In many of the focus groups, younger and older participants alike expressed concern with the way the NYPD identifies and cultivates their confidential informants. Younger male participants shared that they were often targeted and harassed by officers in an effort to make them confidential informants. Older participants shared that officers would strong-arm youth into

becoming confidential informants. One participant said that he was often harassed by officers and on one occasion he was taken to the precinct when an officer could have given him a ticket instead. This participant stated the following:

Yeah. That's what they were going to give me [a ticket]. They brung me to two different investigation rooms: the first investigation room, where I said I know my rights, and then they brung me to the detective's room. The detective's room's got pictures of everybody and everything. He said, "You see who you've got beef with this on this wall? They're already telling us what y'all doing. Just give me information, and you'll be home tonight, man. I'll give you the ticket." I said, "Can I get a lawyer?" They said, "Oh, so you know how to play this game?" They brung me downstairs and put me through the system.

It was in this same group that participants shared a concern that the officers in their area take pictures of them with their cellular phones — this is how many of them find themselves on the wall mentioned above.

Participants suggested policy changes that would prohibit officers from harassing and targeting young people for the purpose of making them confidential informants. Additionally, it was suggested that officers should be prohibited from using their electronic devices as a form of intimidation by, for example, taking pictures of young people.

Evaluation and Supervision Reforms

For the NYCHA focus groups the evaluation and supervision questions were combined. Participants suggested some level of community input into the evaluation of individual officers — this input could be in the form of an application or website or an evaluative panel with the following metrics to be included on individual evaluations:

- Procedural metric.
- Respect metric.
- Number of complaints metric.

- Performance metric.
- Community involvement/community engagement accolades metric.

Participants also suggested a precinct report card/progress report and precinct boxes. Some participants suggested social media to commend officers and an annual awards ceremony for good officers.

General Procedural Suggestions – Interior and Vertical Patrols

Focus group participants expressed concerns with interior and vertical patrols within NYCHA. Some participants, understanding the need for such patrols, suggested that officers be accompanied by a community member or resident of the development during patrols. Additionally, participants suggested that officers should seek confirmation that the person is a visitor by knocking on the person's door when they are visiting.

Public Safety

NYPD light towers made most participants feel like they were under constant surveillance within their homes. Many of them expressed difficulty sleeping because the lights would shine brightly into their bedrooms. Participants also expressed concern about officers driving on sidewalks within NYCHA developments. Apart from the NYPD, participants felt that the scaffolding present on many properties covered security cameras making it difficult to solve crimes.

Participants suggested the following ideas for policy changes:

- NYPD will use light towers to a limited extent within NYCHA developments.
- Officers will not drive on sidewalks of NYCHA developments.
- Changes in the manner in which vertical patrols are conducted.

And additional areas for consideration:

- NYCHA should immediately remove scaffolding on properties where there is no construction.
- NYCHA will ensure that properties are well lit.
- New York City Department of Transportation will ensure that NYCHA developments have working street lights and install new lights where necessary.
- NYCHA will ensure that installed cameras are working.

Training

Focus group participants expressed a desire for officers to participate in “customer service” type trainings that included a community engagement component. Participants felt that this would equip officers with at least the basic skills to engage community members respectfully. There was a consistent theme of respect, or the lack of it, throughout the housing focus group sessions. Many participants stated that officers did not speak while patrolling their communities. This same lack of engagement was present if the interaction was initiated by the individual instead of the police officer. As a result of this participants provided the following suggestions for community engagement trainings:

- Officers should engage and have conversations with community members before patrolling communities.
- New hires should train within the communities prior to being assigned for patrol. These trainings should be conducted by advocates and community leadership.
- NYPD Leadership/Supervisory trainings. Supervisory and command officers should understand how their management style affects the way officers interact with community members.

Participants also expressed concern that officers interacted with them based on stereotypes. They reasoned that these stereotypes were a result of officers’ limited exposure and

engagement with people from diverse backgrounds. As a result, it was suggested that officers be required to participate in cultural awareness and competency trainings.

Trauma-Related Reforms

Participants expressed varied levels of trauma within the focus groups. Some participants discussed past physical encounters with police officers, while others expressed concerns around harassment and being taunted by officers. As a result of these encounters, participants shared some of the ways they attempt to mitigate these traumatic experiences. Many participants shared that they would run when stopped by the police, while others avoided contact by taking alternative routes home.

Participants suggested the following as reform ideas to address issues around trauma:

- NYPD should implement ongoing training to assist NYPD officers and recruits with understanding the depth of trauma associated with historical overuse of SQF and trespass enforcement. Additionally, officers should understand the physical reactions that result from these interactions.
- NYPD should implement trainings for supervisors and command officers and should understand how management styles affect the way officers interact with community members.
- NYPD should implement policy changes around harassment and targeting, including accountability measures for officers found to harass and target people from communities of color.

Police Focus Groups

The following are several themes from the three separate police focus groups with NYPD patrol and special units, sergeants and lieutenants, and commanding officers. Below we categorize themes into several areas based on the responses of these officers.

Accountability and Discipline

Officers, sergeants and lieutenants, and commanding officers called for improvements to fair and timely discipline and the development of protections for officers exonerated under the CCRB. Police officers pointed to issues with supervision, citing CompStat, Vision Zero, and “activity” expectations as putting pressure on officers to act in an overly aggressive manner. Patrol officers and special unit officers pointed to these pressures as creating and perpetuating the need for the “harassment” of confidential informants and individuals with a criminal record, deemed as “quality touches,” and suggested such performance pressures should be eliminated or de-emphasized. Additionally, many patrol officers cited limited and ineffective follow-up by supervisors on SQF policy, documentation, and training and an over-reliance on training as major accountability concerns.

Officers also stressed that policies such as CompStat, Vision Zero, and SQF effectively force them into over policing as a way of both inflating statistics and creating revenue for the City by overzealous summons enforcement. They also said that when these policies lead to wide public discontent, the Department has not owned these policies and as a consequence officers are left to bear the brunt of public resentment and animosity.

NYPD personnel also spoke to a need for greater accountability for civilians who file complaints, suggesting they should be required to submit an affidavit to support their complaint, as any other civil litigant. Officers also raised concerns about the lack of knowledge, inexperience, and background of CCRB investigators who review complaints, and recommended that CCRB hire better trained and more seasoned investigators.

Auditing

During the focus group meetings, NYPD sergeants and lieutenants pointed to a concern that stops were being conducted, but not documented. Many patrol officers pointed to a fear of personal liability as a reason not to document stops. Others were concerned that there was a lack of clarity about the status of SQF as a legal policing tactic following the *Floyd* litigation. Many patrol officers indicated that detectives (“DTs”) or plain clothes units accounted for the majority of stops.

Sergeants and lieutenants called for increased narration on UF-250s, command-run audits, improvements to the Integrity Control Officer (“ICO”) protocol, and a standardized format for conducting audits of stop reports at the precinct level. All of the groups supported the Body-Worn Camera program, suggesting that it would be helpful for officers in understanding the validity of complaints.

Community Education

Officers also suggested it would be a good idea to implement a community education program. Patrol officers suggested going to schools and making presentations to highlight for civilians the importance of compliance and proper police procedure. Officers also suggested going to schools to share more about the NCO program.

Community Engagement and Policing

Officers, supervisors, and commanding officers highlighted a desire for increased community engagement, citing a need for greater attendance at Community Council meetings, and a desire to go to public spaces like churches, synagogues, and community centers.

Officers also suggested the need for more community centers, after-school programs such as PAL, and the need for greater community investment on the part of the NYPD and other city agencies.

Officers were largely in favor of a community policing model, often citing the need for more NCOs and steady sector officers, and increasing the emphasis on community affairs and problem-solving. The officers also indicated that the NCO program is often hampered because NCOs are more frequently pulled for special assignments such as parades and protests.

Changes to Officer Evaluation

Officers and supervisors suggested several changes to the performance evaluation system, including the following:

- Evaluation of supervisors by subordinates.
- Including attendance on evaluations.
- Including a commendation section for career points.
- Including a metric for communication, empathy, and overall good relations on the performance evaluation.

Additionally, a supervisor suggested the inclusion of activity on evaluation for accountability purposes.

NYPD Structure and Staffing

Officers, sergeants, lieutenants, and command officers all spoke to concerns with the current workforce and division of labor, as well as the breaks in communication between the precinct commands, Borough commands, and 1 Police Plaza. In all of the focus groups, members stated a belief that precinct commands have little power to make the changes necessary in their communities, citing a lack of adequate staffing on patrol and the over-specialization of units.

An overall theme was the suggestion that the Department significantly increase the number of civilian staff to cover administrative functions throughout the Department and at the precincts. There was a sense that instead of being on patrol there were too many well-trained police officers doing tasks that could be handled by civilians. Overall, officers called for a more streamlined Department staff structure and the need to centralize key positions to improve communications in and outside of the precinct.

Additional suggestions around staffing included:

- Eliminating or merging the specialized units.
- Utilizing “precision enforcement” and only conducting TAP patrols in response to a complaint.

Training

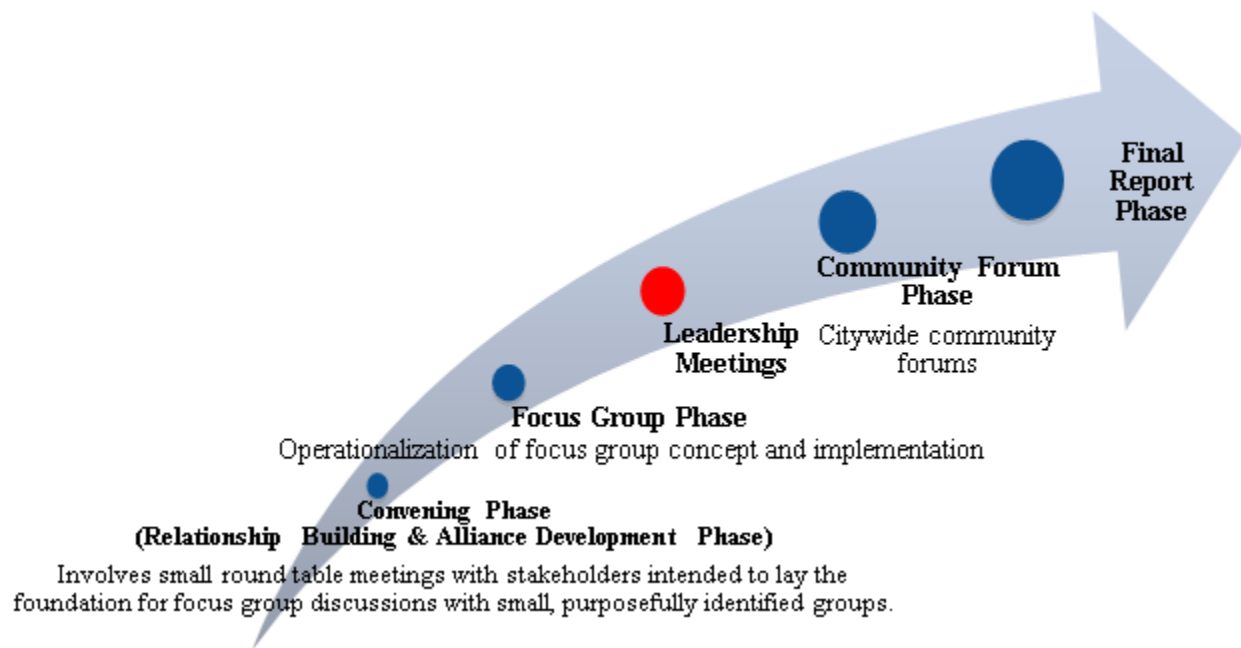
Officers highlighted a need for more training around the following issues:

- Increased in-service/on-the-job training for improved officer understanding and retention of SQF and trespass enforcement policies.
- More hands-on and scenario-based training.
- Improved field training officer program.
- Re-instruction training for improper UF-250s.
- Training on data integrity.²¹⁷

It should be noted that the Department has implemented many of these suggestions since these focus groups were held in February of 2017.

²¹⁷ According to a report regarding CompStat Auditing, “Data Integrity” is part of the Data Integrity Unit (DIU) that is responsible for reviewing complaint-reporting data inconsistencies and identifying errors in all mis-classifications. https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/crime_reporting_review_committee_final_report_2013.pdf

SECTION V: JOINT REMEDIAL PROCESS DESIGN AND IMPLEMENTATION



3. Leadership Meeting Phase

During the Leadership Meeting Phase, the Facilitator received reform ideas from thought leaders at community, advocacy, clergy, and policy organizations (*see* Figure 1). The views shared at these meetings represented the judgement of professionals often based on their direct work with individuals and communities impacted by unconstitutional stop, question, and frisk and trespass enforcement practices.

The Facilitation Team convened a number of discussions with law enforcement related organizations and agencies around the country. The Facilitator hosted conference calls with the Police Executive Research Forum to discuss the Joint Remedial Process design and our initial findings. The Team also met with Laurie Robinson, Co-Chair of the President's Task Force on 21st Century Policing, as well as with Darrel Stephens, Executive Director of the Major Cities Chiefs' Association. We also met with civil rights organizations from around the country.

Figure 1: List of Participant Organizations

ORGANIZATIONS
Brooklyn Defenders
Citizens Union
Community United for Police Reform (“CPR”)
Covenant House
Fortune Society
Legal Aid Society
Major Cities Chiefs’ Association
Micah Group
Morris Justice Project
National Association for Civilian Oversight of Law Enforcement (“NACOLE”)
National Police Accountability Project (“NPAP”)
Open Society Foundations
Osborne Association
Police Executive Research Forum (“PERF”)
Police Reform Organizing Project (“PROP”)
Safe Horizon
The Door
The President’s Task Force on 21st Century Policing
Trinity Wall Street

Process Development

At the onset of the Leadership Meeting Phase, the Facilitation Team generated a list of previously engaged and newly referred community organizations. Previously engaged organizations were groups that we had interacted with during the Convening and Focus Group Phases of the Joint Remedial Process. Plaintiffs' counsel in the *Floyd*, *Davis*, and *Ligon* cases as well as the NYPD, provided additional referrals and guidance for outreach to organizations. Next, the Facilitation Team developed a strategic outreach plan by sending emails to each organization's executive staff requesting their participation in this Phase. If and when staff confirmed their interest in doing so, an introductory conference call would then be scheduled. During this call the JRP Team would provide the organization's staff members with additional background and context on the JRP and the goals of the Leadership Meeting Phase. If the organization agreed to attend a leadership meeting, they would then be provided with potential scheduling dates. After the meeting date, location, and attendees were confirmed by the organization, an introductory packet was sent to all of the attendees. This packet included a brief overview of the JRP, an abridged list of focus group themes, and an open agenda to assist in guiding the group discussion. Leadership meetings usually lasted two hours. During these meetings, notes were taken and synopses were then developed. This Phase of the process took place between July 2016 and January 2017. A total of 19 leadership meetings took place.

Summary of Leadership Themes

The repeated themes raised during these meetings included overaggressive policing, targeted policing, a perceived lack of accountability for misconduct at the NYPD, mistrust between communities and the Department, lack of respect by the police, the need to build police-community trust and address residual trauma, and the need for enhanced community

engagement, training, accountability, and transparency. Consistent with the findings of the Liability Opinion, leadership meeting participants reinforced the view that African Americans and Latinos bore the brunt of unconstitutional SQF and trespass enforcement.

Leadership meetings with service provider organizations underscored specific issues confronting vulnerable populations such as homeless youth, victims of domestic violence, parolees, probationers, youth involved in court diversion programs, people receiving drug treatment, and members of the LGBTQ community. What follows are participant thoughts, experiences, and recommendations with regard to community engagement, police-community interactions, training, accountability, oversight, and the monitoring and evaluation of officers.

Community Engagement

Addressing Harms and Mistrust

Attendees voiced concerns about the harms caused to individuals and communities by overaggressive policing and the NYPD's SQF and trespass enforcement policies. These harms included fear, trauma, and over-criminalization; they also included the trauma caused to police officers by both the pressure to perform under CompStat and the difficulty of policing neighborhoods that resent and feel besieged by the police.

Referring to individual and community harms, one group noted from their research that participants were generally fearful of police and felt a level of harassment and victimization by the police in their communities. This fear was caused by the aggressive nature in which police were interacting with people. A member of this group further stated that people in certain neighborhoods felt that, in general, encounters tended to immediately escalate from an initial approach.

Referring to police reform strategies, an attendee asserted that reforms viewed as an attack on officers were unlikely to be successful. Recognizing that part of the problem was an “us vs. them” mentality, the thought expressed was that until officers understood that they are part of the communities they police, and we reach a point where communities accept them as such, they will be viewed as just an occupying force. Indeed, at each of the meetings held, participants thought that one result of the NYPD’s SQF and trespass enforcement policies was that it had caused a lack of trust between community members and police officers. Either expressly or implicitly, it was also recognized that one of the main goals of the reform process is to shape policing in a way that allows these wounds to heal and trust to be restored.

Participants felt that officers often approached members of the community without either courtesy, professionalism, or respect — one attendee went so far as to suggest that the abbreviation “CPR” on police cars stood for “curse, punch, and restrain.” There was also a sense of lack of basic courtesies that indicated that the police did not view themselves as part of the community or as public servants. In this regard, attendees mentioned that phones are not answered regularly at the precincts and that upon entering a precinct, police were often unprofessional, dismissive, and demeaning to members of the community.

Several organizations shared their views on the existing harm and mistrust in impacted communities. Issues raised by participants included:

- There exists a systemic cultural barrier between police officers and the community. The community considers the police untrustworthy and the police consider the community to be rivals. Further, the militarization of police officers and their equipment is very intimidating and fosters a sense of mistrust.
- Communities are afraid of the officers in their neighborhoods.

- Civilians are carrying emotional scars from past police conduct that are hard to heal.
- Citizens who are abused would prefer to go elsewhere than to the police for help.
- Communities feel afraid to call the police when needed.
- The community does not feel a significant investment coming from the NYPD.
- Community members are scared to speak up because they want to avoid retaliation by the police.
- Surveys commissioned on public perceptions of the NYPD reflected that participants did not feel as if they were protected by the police.
- Concerns that officers are engaging in racist or otherwise prejudicial practices, and that this is harming communities.
- The dynamic between community and police is deeply adversarial.

Enhancing Community-Police Interactions

Officer Trauma

It was recognized that police officers are exposed to various forms of vicarious trauma, in addition to any trauma they may experience in the course of their duties. Participants believed that the NYPD needed to have mechanisms in place to assist officers in coping with such trauma and receive training in understanding all aspects of trauma. There was a sense that officers were reluctant to seek counseling because of cultural reasons at the Department that made officers wary of admitting vulnerability. It was further explained that just as implicit biases affect how officers interact with the public, trauma can play an important role.²¹⁸

Youth

²¹⁸ It was posited that trauma causes hypervigilance and feelings of being threatened during an investigative encounter, which could therefore result in escalation of conflicts.

Further concerns were raised with regard to officer interaction with vulnerable groups. Community leaders felt that officers often use fear and intimidation to get information from vulnerable individuals. With regard to youth, organizations suggested that it was particularly important for the police to approach young people respectfully and receive training on how to do so. Significantly, attendees raised concerns that young people are being stopped on their way to and from school; and that police officers in and near the schools disperse students with commands more appropriate “to cattle,” not people.

As reflected in the comments, there was a sense that policing of youth conduct was often unnecessary and unfair and further resulted in unnecessary and unfair entries into “the system.” One such example, raised by community groups, is over-policing in subway stations.

Attendees believed that there needed to be youth programs to divert kids from the criminal justice system, and that police should be invested in seeing a community flourish, not in criminalizing youth. It was further discussed, that by engaging in unnecessary SQFs, the Department had created criminal records where not necessary and that one consequence could be deportation based on an individual’s immigration status. Recognizing the importance of youth programs as a means to keep young people off the streets and engaged in positive activities, participants advocated for increasing the funding for and the number of available community programs.

In addition to these concerns, community groups raised several specific issues for consideration relating to young minority, LGBTQ, and homeless populations including issues with respect to:

- Over-policing in subways in predominantly poor, underprivileged, minority neighborhoods.²¹⁹
- Arresting people for being homeless and charging them with disorderly conduct or trespassing.²²⁰
- Targeting people and stopping them before and after going to needle exchange programs.²²¹
- Conducting warrant sweeps, predominantly by special units, on the street, in shelters, programs, and clinics.²²²
- Utilizing questionable policing tactics at NYCHA and, in particular, addressed the need for locks on NYCHA doors.

LGBTQ Individuals

Several groups thought that the LGBTQ community was particularly vulnerable. As examples, members of the community are allegedly approached or arrested “just for standing on corners,” and transgender individuals are subject to frequent and intentional misgendering.²²³ As a result, community groups emphasized that members of the LGBTQ community had a strong sense that they were consistently treated differently and inappropriately by the police.

Community and advocacy groups at several junctures raised concerns that individuals on the street were, and are currently, being arrested for being transgender and officers are claiming

²¹⁹ Participants raised concerns that transit and precinct officers team up after school and take kids to precincts or issue desk appearance tickets instead of calling the school and confirming identification.

²²⁰ Participants cited, in addition, that there is a lack of services available to those charged in such a manner because the majority of stops occur at night or on weekends. Clients are being screened before being arraigned, put in sealed envelope and only being given to plaintiff’s counsel.

²²¹ Participants felt officers were using the heroin epidemic as an excuse for stop, question, and frisk.

²²² Participants felt these sweeps are not, but should be, subject to scrutiny. Generally, it was presented that warrant searches were being used to justify illegal stops.

²²³ “Misgendering” was an often repeated issue. One example was that stop or arrest forms are intentionally recorded with the sex at birth, which is not only disrespectful and hurtful but means that the data on stops are not being accurately recorded.

they were loitering and or soliciting prostitution. Attendees claimed that transgender people typically get arrested just for standing on corners, and suggested that loitering laws be carefully scrutinized.²²⁴ Participants suggested that stops depend on factors like how you are dressed, and that for transgender people interactions with officers often escalate from a bad stop to an arrest. Participants brought up several additional issues related to transgender individuals:

- Transgender individuals suffer the worst level of verbal abuse and body language from inmates, civilians, and officers.²²⁵ Participants suggested that police ask individuals what gender pronoun they prefer and whether they prefer a male or female to pat them down.
- Members of the transgender community are often stopped by police officers and prosecuted for loitering with the intent of prostitution. This leads to a phobia in the nature of the stop, wherein individuals feel like they are being targeted because they do not fit the “gender norm.”
- Officers use derogatory and condescending language toward LGBTQ individuals and do not respect their personal space.

It was recommended that a program be established where advocates are based inside of the precincts. Those advocates could inform individuals from vulnerable populations about what is going to happen with a case and assess safety concerns. Further, because the advocates would be at the precincts, this would give officers a firsthand look at how to work with these groups, engendering a different perspective that would improve police officer interactions with vulnerable groups.

Building Trust

²²⁴ One issue raised was that waiting lists in shelters for transgender individuals leaves them with few options.

²²⁵ It was stated that if someone’s identification, such as a driver’s license, did not match the individual due to him/her/they being transgender, officers would commonly use the pronoun adequate for the person in the identification picture. For example, “Where are you going Bob?” to a person who now identifies as a female. This, of course, is another example of misgendering.

Engagement clearly means more than education. In this regard, many groups viewed community engagement as a means to build trust between officers and the community. Several groups made specific suggestions for officer engagement with impacted communities. Among these ideas were suggestions for officers to visit churches and community organizations. Participants felt such involvement would help officers become stakeholders in the community. Groups suggested that officers go to the community that they will patrol for the purpose of cultural adaptation; helping them to understand the difference between normal and adversarial interactions in the area. Likewise, many groups believed that police officers should work to become better known by community members. In fact, participants discussed an initiative in which five community officers each choose a youth from the community to build a relationship with him/her. They believed such a process humanizes youth from the community, and officers develop pride in the youth and their development.

Most critically, participants stressed the need for continued and proactive community engagement directed at restoring trust between the citizens and the police. Many emphasized that the public was not fully aware of the mandated reforms or the status thereof.²²⁶ One issue of particular importance was that there was confusion over whether stop and frisk was still legal after settlement in *Floyd*. With this confusion, attendees noted, the approach of an officer is viewed with even greater suspicion and fear. As a result, there was a call for greater community outreach and education; including school based outreach and education on citizen rights. Some thought that information should be disseminated on a precinct level, including at community meetings. Others recommended community surveys to be reviewed, analyzed, and evaluated at

²²⁶ Participants stated that precinct-level information is not being disseminated and that there is insufficient information being provided at the community meetings

the community level. It was additionally recommended that feedback mechanisms be developed where citizens can report back to the people policing them.

Additional community education and engagement recommendations included the need to:

- Collaborate with community organizations in the development of public education efforts.
- Educate the community about their rights when engaged or stopped by a police officer.²²⁷
- Include the Department of Education and the private sector as part of the education process.
- Establish a precinct-level liaison so that there can be shared learning between officers and communities.
- Establish a community-police commission. Such commissions are less threatening to police officers because they do not have the ability to look into allegations of misconduct.
- Increase funding for community programs and efforts toward community engagement.
- Make community outreach/engagement mandatory for every police officer.
- Require the Commissioner to go into communities and listen to stories in a controlled, neutral environment.
- Require commanding officers to meet on a regular basis with people who are critical of them.
- Send police officers to schools and after school programs to engage with youth so that first interactions with police officers are more positive.
- Improve participation by young people by (1) making sure that they are informed about community meetings and (2) holding independent community meetings that cater to youth.²²⁸
- Improve advertisement of Community Council meetings.²²⁹

²²⁷ A youth participant of a drop in center believed that fear in these interactions can be lowered by providing community members information about their rights. It was stressed that if youth understood their rights better there would be greater calm during police-youth interactions.

²²⁸ Participants explained that even when young people are aware of meetings they are scared to attend and speak about their experiences. Accordingly, CPR recommended independent community meetings scheduled for times when young people could attend; at places young people feel comfortable; that provide multiple ways to have a voice; and that include a youth delegate as the voice of the community.

- Improve the relationship between 1 Police Plaza and the local Community Boards; a representative of each organization should attend the Community Council meetings.
- Establish a clergy advisory council in each precinct that would be able to meet with the commander and discuss issues occurring in the community and any policing practices.

Inclusive Community Training Concepts

Participants believed that lasting change would only be possible with cultural change within the NYPD. Consistent with academic scholarship, many participants stressed that cultural changes require buy-in throughout the organization, including leadership, managers, and supervisors. Many thought that training was a means to accomplish that goal. However, as a participant put it, without organizational buy-in, “culture eats training for lunch.”

De-escalation

The need for de-escalation training was raised by participants from a number of community groups. Participants felt that officers need to receive training on how to reduce stress in encounters by using less intimidating tactics and interacting more positively. Participants also recognized the need for specialized training to deal with youth, members of the homeless population, people with substance abuse issues, members of the LGBTQ community, and people with mental illnesses. Such training, they asserted, would provide officers with various strategies to employ greater compassion and restraint, which likely would have the effect of making interactions with community members more positive.

Cultural Competence

As noted in the context of community engagement, there was a recognized need for officers to learn more about the communities they serve by becoming more engaged in those

²²⁹ It was also suggested that the precincts ensure exact information about the meetings and that the precinct website include updated information.

communities. For instance, it was suggested that officers should receive training specific to the communities they serve.²³⁰ Dovetailing with these ideas, community service organizations that cater to particularly vulnerable groups believed officers should receive field training at these types of organizations — whether through internships, meetings, or otherwise — to learn more about the constituents and the positive ways in which professionals interact with them.²³¹ Participants from several organizations suggested that the NYPD train officers on how to interact with diverse groups, including vulnerable people and people who have experienced different types of trauma, people with disabilities, and people with mental illnesses.

Insight into Youth Behaviors

Several groups shared specific suggestions for officer training with respect to youth and their behavior. Participants believed that officers were not sufficiently trained to recognize the body language of young people. In addition, there was an overall concern that officers lacked sensitivity when they approached traumatized teens. Participants suggested that officers should be more aware of how they are perceived by teens, they should be more aware of the impact their uniforms has on community members, and, generally speaking, something should be done to change the perception youth have about officers.²³²

²³⁰ Participants highlighted the need for the Department and officers to communicate more with the staff of community organizations with the intention of building a relationship that could assist officers with techniques/strategies for how to approach individuals with, for example, mental health issues.

²³¹ This will allow officers to meet community members experiencing particular difficulties and see how experts interact with them. Officers will then get a sense of what it is like to interact with victims and communities in less threatening and intimidating ways. Based on past experiences with such programs on a small-scale, participants reported that officers and recruits were more likely to be empathetic with community members.

²³² One recommendation was to require empowerment workshops in which youth talk to police officers: Members of the community organizations would first need to make sure that the youths are ready or able to share their stories, and thus it was advised that a small group be tested first and, only if ready, taken to the academy or a neutral space for the empowerment workshop. It was suggested that in this context, police officers could work with youth and play theatrical games.

Participants felt it was imperative that officers learn how to “read” youth, and asserted that trainings should assist officers in cultivating effective trauma response techniques and strategies.²³³

Additional recommendations for training included the need to:

- Increase training on inclusion, diversity, and cultural competence.
- Provide training on implicit bias.
- Link bias training to accountability measures.
- Require recruits to attend a Community Council meeting while in the academy.
- Mandate continued education while in the field after the academy.
- Test for competency.²³⁴
- Require retraining for current officers.
- Train officers in the law.
- Require prospective officers to have taken a set curriculum of courses.
- Create a task force of community groups to provide input on police training.

Accountability and Oversight

Clear Rules and Consequences

Thought leaders discussed the need for clear standards and/or a code of conduct, as well as a system to ensure that officers are held to those standards. They raised the need for meaningful consequences for misconduct. This included increased disciplinary severity for repeated unlawful stops and frisks, and supervisor accountability for individual officers engaging

²³³ At this point, one participant stated, youth are in survival mode — “police officers are not our friends, they are our enemies.”

²³⁴ Citizens Union recommended evaluations after six months.

in pretextual stops. In addition, participants thought that there should be police accountability at the precinct level.

Participants also thought that outside of litigation there was a lack of effective mechanisms for the public to hold the police accountable. Community groups suggested that people need a better way to make complaints about police misconduct because the Civilian Complaint Review Board (“CCRB”) and the Office of the NYPD Inspector General are not trusted by community members. Groups suggested that rather than going through the CCRB, community members should be permitted to lodge complaints directly at the precinct. Likewise for public housing residents, there should be a complaint process through NYCHA to ensure that appropriate changes or discipline is imposed on officers who work in public housing.

As reflected in the above comments, while the CCRB is meant to provide an avenue for the public to hold the police accountable, attendees reported community reservations about the CCRB based on several cited issues. For example, participants stated the following concerns: the CCRB has a bad reputation in certain communities; information from the courts and the CCRB is not shared with complainants; there is a lack of independence and transparency at the CCRB; the CCRB does not adequately pursue complaints and that when pressed the CCRB states they are understaffed and the NYPD says the same; and constituents fear that officers would retaliate when a complaint has been filed.

Citizen Union has proposed various reforms to the CCRB in its white papers.²³⁵ In addition, participants said that the community should have input into how the CCRB functions and that the entire process should be public, from the smallest to the most severe violation.

Recommendations included:

- Develop a code of conduct and hold everyone to those standards.
- Ensure meaningful, timely consequences for violations of the patrol guide, policies, and rules.
- Impose discipline on officers who fail to take required trainings.
- Ensure consistent and fair discipline.²³⁶
- Require accountability to the public at the precinct level.²³⁷
- Hold officers personally accountable for pretextual stops.
- Ensure officers complete paperwork in each instance in which it is required and address when it is not completed.
- Support officers who intervene when needed and discipline those who do not.
- Appoint a special prosecutor for police misconduct cases.

Performance Tracking and Evaluation

Several organizations recognized the need for more robust performance evaluation and early intervention systems. Participants thought it was important that any feedback loop include, among other things, information from the courts regarding suppression and credibility rulings. It

²³⁵ See Appendix A.

²³⁶ Participants stated that concrete consequences should include loss of pay, loss of vacation days, and demotion, and that command discipline should go on an officer's record.

²³⁷ If officer misconduct is ignored in the precinct, supervisors, managers, and the commanding officer should be penalized.

was also recommended that any tracking system be robust enough to track patterns, from officers working together, to squads and precincts.

In addition to traditional internal mechanisms for supervision, an external monitor and/or independent oversight structures were also recommended. Participants suggested a permanent structure in which civilians from directly impacted communities, support and advocacy organizations, and police reform organizations, develop metrics to review whether the NYPD is in compliance with mandated reforms based on those metrics. Likewise, a member of a police reform organization suggested that there be an early intervention system which is independent of the NYPD and is tasked with monitoring alerts and outcomes. Participants further suggested random audits of the Department to ensure compliance.

Recommendations for NYPD monitoring and evaluation included:

- Develop early intervention systems to detect officers engaging in problematic conduct.
- Create a feedback loop between the courts and the Department. When the court makes a decision in a case, it should get back to the involved officer's supervisor.²³⁸
- Track patterns, such as officers that are working together and engaging in misconduct and/or being sued, as well as within squads and platoons.
- Develop new performance metrics and measures of evaluating police officers that include a system of dynamic accountability for ranking officers and methods to evaluate them

²³⁸ A member of a police reform organization pointed out that the District Attorney had a considerable amount of records about poor policing that do not end up at the Department or in the officer's file. In this regard, it was suggested that a number of declinations of prosecutions should trigger an investigation.

based on deference to the law, procedural justice, de-escalation, and community engagement.²³⁹

- Develop metrics that address an officer's problem-solving abilities.
- Include community feedback in the evaluation and promotion process.
- Include efforts to engage the community in evaluations of precincts.
- Use neighborhood surveys to assess levels of community safety and satisfaction, and hold local commanders accountable for being responsive to community concerns.

Open Data and Documentation

Open data and documentation were seen as vital to educating the public and ensuring that the NYPD was accountable to the community. Several groups emphasized the vital role that data plays for studying trends in police behavior. Furthermore, participants stressed the importance of documenting stops. Participants from these groups thought that the NYPD should be required to record Level 1 requests for information and Level 2 encounters and consensual searches. One reason for this was the sense that members of the public did not feel free to leave at Level 1 or Level 2 and/or because intimidation and harassment can occur at Level 1 and Level 2 even if a person has not been officially stopped. Furthermore, such records would permit future study on how and with whom police officers are interacting. And because homeless individuals, youth of color, LGBTQ individuals, and people with substance abuse problems are very frequently the subject of stop, question, and frisk, police should record on the stop form that the individual stopped falls within one of these groups.²⁴⁰

²³⁹ Participants suggested that officers do not receive credit for doing good things and that performance assessments should not be based only on punitive interactions (such as number of stops). Likewise, participants thought that if an officer's positive conduct was rewarded, other officers would follow suit.

²⁴⁰ Participants suggested recording this type of demographic information on /in whatever form(s) of documentation the NYPD employs.

Leadership executives highlighted that for oversight functions to be productive, it is critical that all police-citizen encounters be documented. Participants suggested that, in reality, neither police officers nor community members can fully distinguish between Level 1 and Level 2 encounters and Level 3 stops. Further, participants suggested that many Level 1 and Level 2 encounters quickly escalate to Level 3 stops and searches, and to the extent an encounter rises to a Level 3 but is categorized as Level 1 or Level 2, these encounters would be unaccounted for (because only Level 3 stops currently require documentation). Participants also suggested that documenting all encounters would bring to light targeted harassment, which show patterns of officers engaging with people who do not have a criminal record and who are not doing anything illegal.

In addition, some participants posited that under the current criminal procedure law in New York,²⁴¹ as applied, there is no discovery process for ascertaining the issues connected with a stop until the beginning of a trial. The absence of such discovery creates challenges to determining a police officer's credibility, and in cases of an unconstitutional stop there is no way for this information to be shared with the court. Because of this lack of information there are no opportunities for defense attorneys to present issues to the court in advance of a trial; and while these issues could be presented at trial, trial only occurs in a small percentage of cases as most cases result in a plea agreement.

Thought leaders provided several additional considerations for documentation and access to data. Community groups recommended that the NYPD:

²⁴¹ See CPL Article 240.

- Record accurate data for encounters and stops for gender and race. With respect to LGBTQ status, permit individuals to self-identify in order to have more accurate statistics.
- Provide “stop” receipts. Receipts can be helpful for ensuring geographical accountability at the precinct level and increasing transparency about Level 1 and 2 encounters.
- Require officers to provide identifying information in the form of a business card with respect to all citizen-police encounters.
- Develop a smartphone application that allows individuals to anonymously report police interactions. It was thought that an application could serve as a platform to track trends, as well as to provide a voice for individuals who have been stopped. Further, it was believed that the app could serve as a basis for partnerships between communities and precincts.

With regard to open data, thought leaders recommended that the NYPD:

- Make the patrol guide, training manuals, and rules governing officer conduct free and accessible to the public.
- Improve the NYPD’s website to consolidate and clearly organize information for the public. Make quantitative data dynamic and enable it to be compared and searched with consistent categories and not only in pdf form. Also, ensure that narrative data is well organized.
- Publish stop and frisk data online.
- Make officer disciplinary records public, at least in cases where complaints are substantiated or where there are multiple instances of misconduct by the same officer.²⁴² Create a searchable record on accountability.

²⁴² The Legal Aid Society has submitted a white paper contending that the City should change the way it interprets Civil Rights Law 50-a to permit disclosure of summaries of misconduct that have been substantiated through investigations by the Internal Affairs Bureau or the CCRB. This white paper can be found in Appendix A.

- Require the CCRB to provide the public with aggregate information about both the police officers and complainants involved in complaints, which include race, ethnicity, age, gender, and for officers, years on the force.
- Require the CCRB to issue a report listing precincts or specialized units with the highest numbers of CCRB complaints, substantiated complaints, and incidents of being named defendants in civil lawsuits alleging police brutality.
- Publish a public report regarding lawsuits and rulings regarding suppression of evidence and findings that officer testimony is not credible.
- Enhance data sharing by requiring the New York City Law Department to issue quarterly reports to the City Council, Comptroller, and CCRB detailing the number and disposition of civil actions filed against the NYPD, and requiring the comptroller to submit information regarding civil legal settlements in all cases to relevant agencies.
- Support the passage of the Right to Know Act: inform individuals subject to a stop or a Level 2 encounter of their right to refuse a consent search.
- Create a permanent structure in which directly impacted communities are able to see that the NYPD has complied with independent oversight. This structure should be comprised of people living in impacted communities, organizations representing impacted communities, and representatives of police reform organizations.
- Require police to turn over stop reports to defense counsel.

Body-Worn Cameras

While many groups were in favor of body-worn cameras (“BWCs”), some were skeptical that BWCs would necessarily be effective tools to ensure transparency and accountability. There was also concern that without transparency and accountability, BWCs could be used as a surveillance tool.

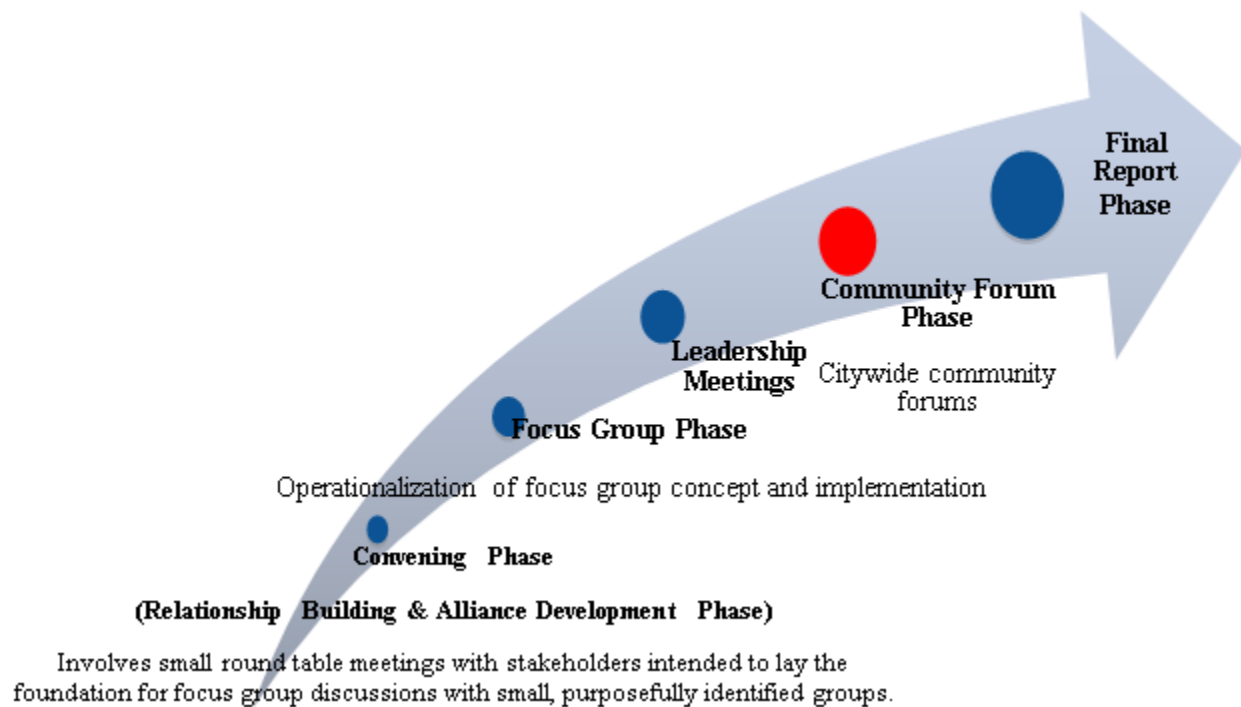
Some participants believed that access to BWC footage should be maintained by a third party government oversight agency (perhaps the CCRB or the Office of the Inspector General).

There was also a call for greater community involvement in developing the policies governing the BWC pilot as well as any program that is implemented as a result. This included involving community members, advocates, and policing experts in the evaluation of the program.

Specific recommendations were also made regarding the BWC program, including a clear process for filing complaints, a clear written policy that states the consequences for officers who fail to comply with the BWC policy, establishing a retention policy for video footage, and prohibiting officers from reviewing footage before a written complaint or arrest report has been submitted. Additional suggestions by thought leaders included that the NYPD:

- Require BWCs to be activated at all times.
- Make BWC footage accessible to lawyers and civilians.
- Limit preservation of footage to that which is associated with some degree of misconduct.
- Ensure footage be used for accountability, supervision, and training — *i.e.*, officers can look at the footage of an encounter and see how they did and how they could do better — and not for accusations or as a “gotcha” tool.
- Notify civilians whether cameras are on or off.
- Require District Attorneys to review videos to determine if arrests are done correctly.
- Ensure that, in cases of alleged misconduct, officers are required to give a written and signed statement before being granted access to video footage.
- Maintain videos for a lengthy, but specified time period before purging.

SECTION V: JOINT REMEDIAL PROCESS DESIGN AND IMPLEMENTATION



4. Community Forum Phase

The Community Forum Phase of the Joint Remedial Process was established to solicit additional feedback from impacted community members regarding changes to the NYPD's practices of stop, question, and frisk and trespass enforcement. Guided by the Remedies Opinion, the Facilitation Team was charged with conducting a series of "town-hall type meetings" with the mission of providing a broad-based platform for community members to participate and provide suggestions for reform. The aim of the forums was two-pronged — to bring greater awareness to the public about the litigation and the Immediate Reform effort, as well as to solicit additional suggestions concerning the types of remedial measures that the public deemed necessary for meaningful change.

In order to build out the forums, the JRP convened a number of meetings with community-based organizations from the Relationship Building Phase to assemble the

Community Forum Planning Committee (“CFPC”). The mission of the CFPC was to ensure that communities most directly impacted by the NYPD’s unconstitutional SQF and trespass enforcement practices were provided an opportunity to share their perspectives on potential reform measures which may be mandated by the Court to bring the NYPD into compliance with the Fourth and Fourteenth Amendments of the U.S. Constitution and New York law. These reforms, however, must be no broader than necessary to bring the NYPD into constitutional compliance.

Forum outreach was direct and intentional, targeting those community members most affected and at-risk of being stopped by police without reasonable suspicion, both in the street and in public housing. Conversations with several stakeholders, including the JRP Advisory Committee, plaintiffs’ counsel, community organizations, clergy, and the New York City Law Department, informed the JRP Team’s creation of the introductory packet to provide host organizations with a basic structure for program development.

In collaboration with the community anchor organizations, the Facilitation Team successfully conducted a total of 28 forums during the Community Forum Phase, reaching almost 1,800 impacted community members throughout New York City (*see* Figure 1). Of the 28 forums, nine took place in Brooklyn, eight in Manhattan, six in the Bronx, four in Queens, and one in Staten Island. Several overarching themes were extracted around transparency, accountability, evaluation, and police-community relations through a qualitative analysis of forum data and observations.

Figure 1. List of Joint Remedial Process Forums

Date and Time	Anchor Organization	Attendees
Thursday, October 13, 2016 6:00 PM to 9:00 PM	West Harlem Perfect Peace Ministry	62
Saturday, October 15, 2016 1:00 PM to 4:00 PM	West New Brighton True 2 Life - Cure Violence	39
Monday, October 17, 2016 6:00 PM - 9:00 PM	East Harlem Perfect Peace Ministry	69
Thursday, October 20, 2016 6:30 PM - 8:30 PM	Red Hook Red Hook Initiative	50
Wednesday, November 2, 2016 4:30 PM - 7:00 PM	Sunset Park Atlas DIY	44
Thursday, November 3, 2016 6:00 PM - 8:00 PM	Richmond Hill DRUM	55
Wednesday, November 9, 2016 6:30 PM - 9:30 PM	Bedford-Stuyvesant MXGM	40
Saturday, November 12, 2016 2:00 PM - 4:30 PM	West African Yankasa Mosque	70
Monday, November 14, 2016 5:00 PM - 7:00 PM	Black, Latino, & At-Risk VOCAL-NY	35
Tuesday, November 15, 2016 7:00 PM - 9:00 PM	South Bronx Morris Justice Project	65
Wednesday, November 16, 2016 6:00 PM - 9:00 PM	Southeast Bronx BCCJR	80
Thursday, November 17, 2016 6:00 PM - 9:00 PM	Public Housing Residents FUREE	25
Friday, November 18, 2016 7:30 PM - 9:30 PM	South Jamaica Life Camp	75

Saturday, November 19, 2016 11:30 AM - 2:00 PM	North Bronx BCCJR	26
Monday, November 21, 2016 6:00 PM - 9:00 PM	LGBTQ The Anti-Violence Project	130
Tuesday, November 22, 2016 5:30 PM - 8:30 PM	Latino/a NMCIR, LatinoJustice	35
Wednesday, November 23, 2016 6:00 PM - 8:00 PM	South Bronx Lead By Example & Reverse the Trend	68
Saturday, November 26, 2016 2:00 PM - 4:30 PM	Jackson Heights Yankasa Mosque	40
Monday, November 28, 2016 6:00 PM - 8:00 PM	East New York Man Up, Inc.	99
Tuesday, November 29, 2016 6:00 PM - 9:00 PM	Bedford-Stuyvesant Center for NuLeadership	60
Wednesday, November 30, 2016 6:30 PM - 9:30 PM	East Flatbush Flatbush Village	115
Thursday, December 1, 2016 4:00 PM - 7:00 PM	Washington Heights Police Athletic League	177
Friday, December 2, 2016 6:00 PM - 8:00 PM	Far Rockaway Rock Safe Streets	50
Saturday, December 3, 2016 1:00 PM - 4:00 PM	Bushwick El Puente	67
Monday, December 5, 2016 5:00 PM - 7:00 PM	Coney Island Brooklyn Community Services	16
Tuesday, December 6, 2016 5:00 PM - 7:00 PM	Youth MRNY , Urban Youth Collective, etc.	85
Thursday, December 8, 2016 6:00 PM - 8:30 PM	Lower East Side Joint Remedial Process	14
Friday, December 16, 2016 5:00 PM - 7:30 PM	Southeast Bronx Lead by Example & Reverse the Trend	77

Community Forum Process Development

In June 2016, the Facilitation Team began preparations for the Community Forum Phase of the Joint Remedial Process. As part of the multi-phase design of the JRP, our intention was to gather community input for potential reforms at a broader scale than had been conducted in the focus groups. Our purpose was to develop large public events, providing direct access to impacted community members in order to glean additional reforms and expand upon ideas suggested to us in other phases of the project. As such, the community forums were undertaken not merely as listening exercises, but as opportunities for community members to directly engage with the City and justice system in a candid and constructive way.

In advance of the planning and implementation of the forums, the Facilitation Team undertook several critical steps to ensure that the design and development of forums would be relevant for the target audience. In doing so, we decided that consultation with many of the city officials and grassroots organizations that had assisted us with populating focus groups would be crucial to the perceived legitimacy of the process. In advance of the coordination of such meetings, several preliminary discussions about the forums were held with the Advisory Committee. We collaborated with the Committee, which was comprised of both police and community representatives, to discuss key process considerations and ensure the success of the forums.

In January and February of 2016, two steering meetings were held with the Advisory Committee to discuss the process and design of the Community Forum Phase. In said meetings, we worked to flesh out critical components of a forum for gathering feedback from the community perspective, as well as thoughtful considerations and suggestions from NYPD

representatives. These baseline ideas assisted us in brainstorming the development of forums, including outreach to organizations, neighborhoods, and specialized communities.

These discussions were followed by a series of internal meetings to discuss the goals and objectives necessary to reach a desired end result. Therefore we began by exploring the following five questions:

1. How do we ensure that it is a community process?
2. How can we ensure that we are tailoring forums to the issues of distinct communities?
3. How do we ensure that we get the input we need?
4. How can we foster meaningful dialogue between and among attendees?
5. Should police officers be invited or otherwise involved?

First among these considerations was the formal style of the meetings. It was critical, for the enhancement of public interest and involvement, that the meetings be both engaging and productive, and thus the Facilitation Team placed considerable thought into how the events should take place. Given the historical distrust in many of the communities we were seeking to engage, we understood that the forums could be met with skepticism and apprehension.²⁴³ So then the question became, how do we ensure that communities would feel safe, heard, and that they were contributing to meaningful change?

The proposed answer to these questions was to allow natural leaders in affected communities drive the focus and direction of the forums. Our plan was to consult organizations and advocates about best practices for recruiting and engaging traumatized communities, while also collaborating with the Department to ensure that organizations who would engage and challenge the Department were represented in that sample. Through a purposive design along

²⁴³ The apprehension mentioned above had been evidenced by the legacy effects our team encountered with individuals and activists in the focus groups and advisory meetings.

with feedback from the organizations and advocates, we decided to create a model to guide the development of forums that would be led by the community with guidance from the Facilitation Team. Our next process question became, how do we ensure that forums are tailored to the issues of distinct communities? We discussed among stakeholders the option to customize forums through the steering and coordination of anchor organizations.²⁴⁴ As we wanted to acknowledge the unique concerns of different communities, we decided to conduct diverse forums, which would grant anchor organizations flexibility to develop the engagement strategies most suitable for their respective community. We believed these strategies would be reflective of the varied circumstances of the hosting community, and as such were paramount to the task of ensuring everyone an opportunity to participate.²⁴⁵

A primary issue with developing a universal format for community forums is that communities are diverse, with unique issues and concerns. In fact, even how the term community is defined is distinct among different groups.²⁴⁶ In order to create forums that would resonate with participants and speak directly to their concerns, it was decided that forums should be customized to the unique issues of each group and community. We decided that in order to make these discussions more open and cooperative, it would be best to forgo pre-set questions as used in the Focus Group Phase, and instead develop an open discussion format to broaden the possibilities for suggestions. We created basic parameters to guide organizations in developing forums most befitting the goals of the JRP.

²⁴⁴ “Anchor” was the label used to address and refer to organizations that partnered with the Facilitation Team in the development and hosting of community forums.

²⁴⁵ See Remedies Opinion, 959 F. Supp. 2d at 686.

²⁴⁶ See Section VIII: Process Observations for additional thoughts under *Finding a Common Language for Discourse*.

The next question to address was how to best foster dialogue between and among attendees of the forums. In the Remedies Opinion, the Court appointed a Facilitator to conduct a series of “town hall type meetings.” While town halls are a traditional format for community feedback, the Facilitation Team decided that such a format would not be most effective for engaging community members in providing suggestions for change. Instead, we opted for a dialogue based model, leaning toward the use of small group breakout sessions to gather more robust ideas for the Facilitation Team’s consideration. These discussions were designed to be confidential, inclusive, and to provide expanded opportunities for feedback.

The most challenging concept to contend with was the question of police involvement. It was at this point that the Team reached a significant fork in the road. Would it be appropriate to attempt to foster dialogue between civilians and police? At the time, it was believed to be in the best interest of the JRP to field such a question with stakeholders from both the community and the Department. The decision to field questions with community groups ultimately lead to the decision to develop a forum planning group.

In March of 2016, the Facilitation Team began the process of collaborating with several community-based organizations to promote and design forums citywide.

Cultivation and Design of Community Forums

Beginning in April 2016, the first of a series of planning meetings was convened to formulate strategies for the development of public forums. In collaboration with the Advisory Committee, as well as referrals from the Mayor’s Office of Criminal Justice, the Mayor’s Office of Community Affairs, the Black, Latino/a, and Asian Caucus of the New York City Council, and Communities United for Police Reform (“CPR”), the planning committee was developed in

an effort to gain stakeholder consensus on the design and implementation of the forums. The key questions for the Community Forum Planning Committee (“CFPC”) were; what should the forums look like, who should be there, and what other purposes could or should these events serve? The questions were of great significance for building out what would become a number of events occurring in each of the five boroughs.

Employing Community Expertise

During the CFPC, it was decided that the JRP would collaborate with several organizations to “anchor” community forums. We sought to work with groups that were both critical of and cooperative with the NYPD to ensure a fair and balanced representation of ideas from community members. These organizations would ultimately take the lead in the overall coordination and implementation of forums for each specific community, with the JRP Team providing resources and support. In order to cultivate anchors for the forums, we began coordinated outreach efforts to organizations who had participated in the Convening and Focus Group Phases, as well as through the networks of CPR, the Mayor’s Office of Criminal Justice, the Mayor’s Office of Community Affairs, and Center for Court Innovation.

As part of the Facilitation Team project management efforts, extensive outreach to grassroots and community-based organizations was conducted. These are organizations that had for many years worked at garnering the trust and confidence of directly impacted community members. Recognizing the essential influence and advocacy of these representative organizations provided the Team a tacit level of confidence that the forums would be planned thoughtfully. It would also ensure that those directly affected by unconstitutional SQF practices and trespass enforcement would be present to participate in the forums.

Setting Basic Standards

In consultation with the CFPC, it was decided that a set of guidelines for the forums would ensure that the public discussions netted constructive input. First among these parameters, was a commitment to neutrality. We believed it was important to maintain a reasonable level of impartiality in the promotion of the forums. As well, each forum was to include facilitated breakout sessions. These sessions were facilitated through the organization or with the assistance of trained facilitators working with the JRP Team. Facilitators were required to develop a written report of small group findings. Ultimately, the organizers of each community forum were asked to provide a record of the event which included the location, date and time, number of attendees, and a copy of the program.

It was very important to the community groups, plaintiffs, and the Facilitation Team alike that these events were culturally responsive, relevant, and community based. Having agreed with the idea of small group breakout sessions, community groups felt it was important that anchors prime the conversation by acknowledging the local history and context of SQF and trespass enforcement for the distinct communities we were to engage.

The agreement was that the forums should provide a brief history and context of historical grassroots organizing efforts to address police reform in New York City that took place before the *Floyd* litigation. As such, the CFPC agreed on the development of an educational segment at forums that would precede small group dialogue. In order to foster a level of consistent discourse, it was decided that the educational segment should include a short video presentation and accompanying infographic. The video and infographic provided a historical overview of the litigation including a framing of the problem, current efforts, and a call to action. After suggestions from participants, it was decided that the video and infographic would be

produced in collaboration with community organizations and the Black, Latino/a, and Asian Caucus of the New York City Council and provided to attendees at each forum.

Areas of Non-Agreement

The CFPC was divided on two key issues: police participation in the forums and uniformity across the forums. During early discussions with community stakeholders, the question of police presence was fraught with controversy. While some community groups were open to the idea or saw the necessity for police involvement, other groups strongly opposed it. Those organizations interested in collaboration would become critical in opening up discussions about how to engage community members with police present.

Rather than challenge any group's positioning on how best to engage its community, it was decided that the best course of action would be to extend police participation as an option. Though we knew police involvement would not be a viable solution for all communities, there was a healthy minority of organizations and activists who not only thought it would be constructive to engage police, but thought it was necessary. The ultimate decision on inclusion would be left to the discretion of the anchor organization.

The Remedies Opinion states that part of the Facilitator's mandate is to gather

input from those who are most affected by the NYPD's use of stop and frisk The Facilitator will convene "town hall" type meetings in each of the five boroughs in order to provide a forum in which all stakeholders may be heard. It may be necessary to hold multiple meetings in the larger boroughs in order to ensure that everyone will have an opportunity to participate. The Facilitator will endeavor to prepare an agenda for such meetings, through consultation with the various interested groups prior to the meeting.²⁴⁷

²⁴⁷ 959 F. Supp. 2d at 687.

As such, the JRP Team developed an agenda for each community forum in consultation with CPR and other groups interested in hosting such forums. It is true that at the first community forum some youth left because of the overwhelming number of police officers who were present. Following that forum, a request for fewer officers at future forums was made. This request only applied to host organizations that were interested in having police present at their community forums.

In order to facilitate forums involving organizations who did not want police to be present, the Facilitator supported a proposal by plaintiffs' counsel to allow CPR to have the City fund the hiring of a consultant to coordinate what would be termed "Plaintiff Assisted Forums." The Facilitation Team coordinated with the consultant in the implementation of these Plaintiff Assisted Forums sponsored by CPR affiliated organizations, without a police presence.

There were, however, several organizations under the CPR umbrella, whose forums were uniform in nature. The purpose of uniformity, as discussed, was to ensure that a consistent message was captured. Seemingly as a direct retort to the question of police involvement, many of these groups rejected the notion of diverse forums and called for a halt to the forum development process. Considering the time constraints placed upon the JRP by the Court, halting the forum development process was not feasible. As the feedback process was designed to be broad and rich, we were unable to reach consensus on such issues.

As discussed, the Facilitation Team felt it was important that individual anchor organizations have the right to decide whether including the NYPD in their community forums would be right for their community. As also discussed, after a series of negotiations with plaintiffs' counsel in the *Floyd*, *Davis*, and *Ligon* cases, a mutual agreement was reached that the

forums would be developed along two tracks — one set spearheaded by groups identified by plaintiffs’ counsel, known as “Plaintiff Assisted Forums,” and the other set coordinated by the Facilitation Team.

Criteria and Methodology

One of the objectives of the community forums was to create safe spaces for dialogue, where different community stakeholders could engage in problem-solving and sharing ideas. The intention was to gather concrete suggestions for reforms, build partnerships, increase local participation, and support the community in contributing to the content of the Final Report. The intended audience for the forums included directly and indirectly-impacted community members, advocates, clergy, the NYPD, and local leaders. In order to ensure that we received input from impacted community members, we emphasized the development of forums within priority geographic areas. Though we were not beholden to our target areas, it was important that forums were held in neighborhoods representative of the individuals most affected by unconstitutional SQF and trespass enforcement policies.

Neighborhoods were purposively sampled based on multi-modal criteria which included focus group data, areas designated as priorities during earlier Phases of the JRP, and communities that lacked sufficient participation/responses during our Focus Group Phase. In order to select target areas, the Facilitation Team developed a logic model which compared priority precincts from the NYPD’s SQF and trespass enforcement data for the *Floyd* and *Davis* cases, which were then prioritized for forums (*see* Figure 2).

In addition to priorities based on NYPD sampling data, the JRP Team fielded additional suggestions for targets in consultation with plaintiffs’ counsel. Utilizing their understanding of

areas in which their clients had experienced a number of stops, we garnered three additional priority areas. In total, the priority matrix highlighted 14 geographic areas for forums — *East Harlem, South Bronx, Southeast Bronx, East Flatbush, East New York, Brownsville, Bedford Stuyvesant, Rockaway Beach, Far Rockaway, South Jamaica, West New Brighton, Lower East Side, Jackson Heights, and Washington Heights*. Of the 14 neighborhoods, nine were labeled as top priority target areas — *i.e.*, the Team would make the greatest push at developing public events in these top priority areas.²⁴⁸

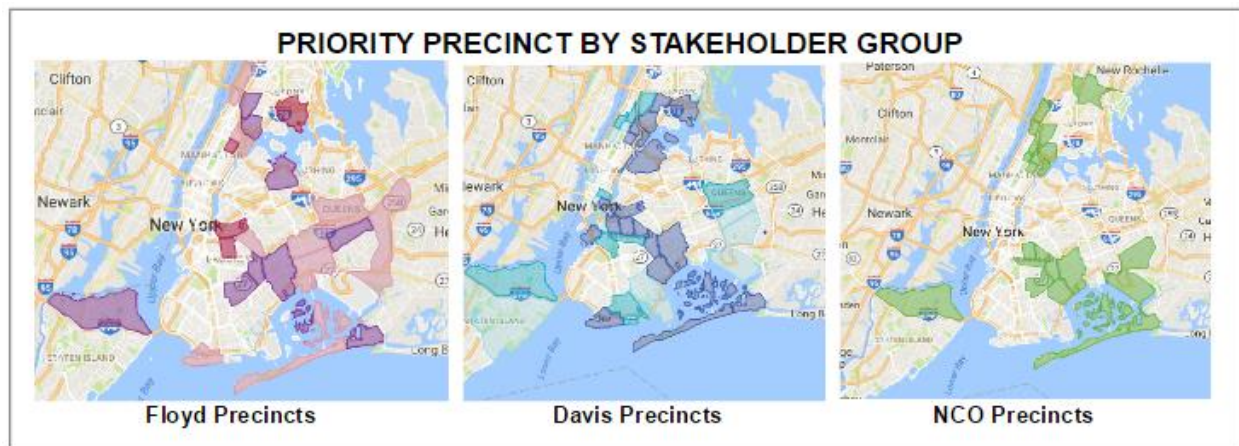
Figure 2. Community Forum Logic Model

Precincts {Floyd}	Davis Plan		Community Forum Locations			
	PSAs	Precincts within	Neighborhood	Borough	Cluster	
23	2	73, 75, 77	East Harlem	Manhattan	23	PSA 5 NYCHA
40	3	79, 81, 84, 88, 99	South Bronx	South Bronx	40	PSA 7 NYCHA
43			South East Bronx	Bronx	43, 44	
44	5	23, 25, 28	South East Bronx	Bronx		
67	7	40, 42	East Flatbush	Brooklyn	67	PSA 2 NYCHA
73			East New York	Brooklyn	73, 75	
75	8	43, 45	Brownsville	Brooklyn		
79			Bedford Stuyvesant	Brooklyn	79	
100			Rockaway Beach	Queens	100,101	
101			Far Rockaway	Queens		
113			South Jamaica	Queens	113	
120			West New Brighton	Staten Island	120	
			Lower East Side*	Manhattan	7, 5	PSA 4 NYCHA
			Jackson Heights*	Queens	114	
			Washington Heights*	Manhattan	33,34	

²⁴⁸ In the early part of the Community Forum Phase it was presumed that there would be a maximum of 10 forums to take place throughout the City. With the massive amount of interest we received from organizations, we expanded the number of forums to fit as many affected neighborhoods as would be needed to get a broad representation of communities.

A multi-layered geographic model of priority precincts was developed in conjunction with the logic model to guide the Team in tracking forums and saturation levels of distinct communities around the City.²⁴⁹ The graph included layers for the *Davis* and *Floyd* priority precincts as identified during the Focus Group Phase, as well as NYPD Neighborhood Policing precincts where recent Neighborhood Coordination Officer (“NCO”) programs had been rolled out (*see* Figure 3). We were interested in determining whether affected communities in NCO precincts were both aware of the NCO program and had a vested interest in collaborating for the forums.

Figure 3. Priority Precincts by Stakeholder Group



In order to expand access to affected communities, the Facilitation Team made a concerted effort to prioritize geographical target areas which we had not been able to access, or achieve saturation in, during the Focus Group Phase. These areas were prioritized for the forums, though organizations were not required to conduct forums only in these areas. Over time it became clear that geographic areas could not be the only basis for community forum sampling.

²⁴⁹ See Figure 4 for completed composite map.

So in consultation with plaintiffs' counsel, it was agreed that forums should also be developed for specialized populations, based on demographics not necessarily concentrated in a geographic location. These specialized populations included youth, at-risk adults, Indo-Caribbean communities, LGBTQ communities, public housing residents, and the West African Islamic immigrant community.

Community Engagement Strategy

Involving community stakeholders in the development of community forums was a resource intensive process, which required a great deal of planning on the part of the JRP Team. As we knew the cultivation of anchor organizations and participants for the forums was critically significant to the design and outcomes of the forums, we then developed a clear strategy for engaging such affected groups. Utilizing the social capital of community-based organizations, methods were developed to foster participatory decision-making to mobilize communities.

To effectively gather input from community members, several considerations were incorporated for organizations interested in hosting JRP forums. To facilitate community organizations in the process of developing forums, we created an introductory packet containing pertinent materials to provide guidance in planning and budgeting, along with promotional materials.²⁵⁰

Critical to the strategy for engaging community members was the cultivation of support staff that were experienced with translating residents' priorities, managing group dynamics and conflict, while also developing authentic relationships. For this reason, we recruited facilitators from the community mediation field who would lead these small group discussions. These

²⁵⁰ See Introductory Packet Materials in Appendix F.

facilitators were required to attend an orientation session where they were provided concise guidelines and expectations for engaging community members in a solution-oriented discussion about potential reforms.²⁵¹

Along the Plaintiff Assisted Forum track, a planning consultant assisted the organizations and individuals tapped for involvement within the CPR network. The CPR organizations developed and promoted a digital campaign titled “Our Communities, Our Solutions.” This campaign targeted special interest groups and highlighted the history of organizing behind several significant police-related litigations. Forums under this track engaged participants who were primarily from CPR’s constituent groups, using predetermined talking points, and a universal engagement design.

Planning and Program Development

We next embarked on the cultivation and design of the plenary sessions and working groups for forums. As the intention of the forums was to define main problems, and suggest actionable steps for the Department, a clear understanding of how each organization was planning to execute forums was necessary. As such, a planning worksheet was developed providing details to the JRP Team as to the steps that organizations were taking to develop forums, as well as any coordinating efforts that would be needed on behalf of the Facilitation Team. Those coordinating efforts included, but were not be limited to, basic logistical support, ordering food and materials, and ensuring participant recruitment.

A general discussion of ideas for each forum was reviewed in collaboration with the Facilitation Team to ensure that organizations maintained freedom of design and expression,

²⁵¹ See Facilitation Guide in Appendix F.

while also maintaining the integrity of the process. The simplified document was developed to give the Facilitation Team an idea of what outreach efforts would be needed, as well as to address tools, spokespersons, and other access issues necessary to ensure effective implementation.

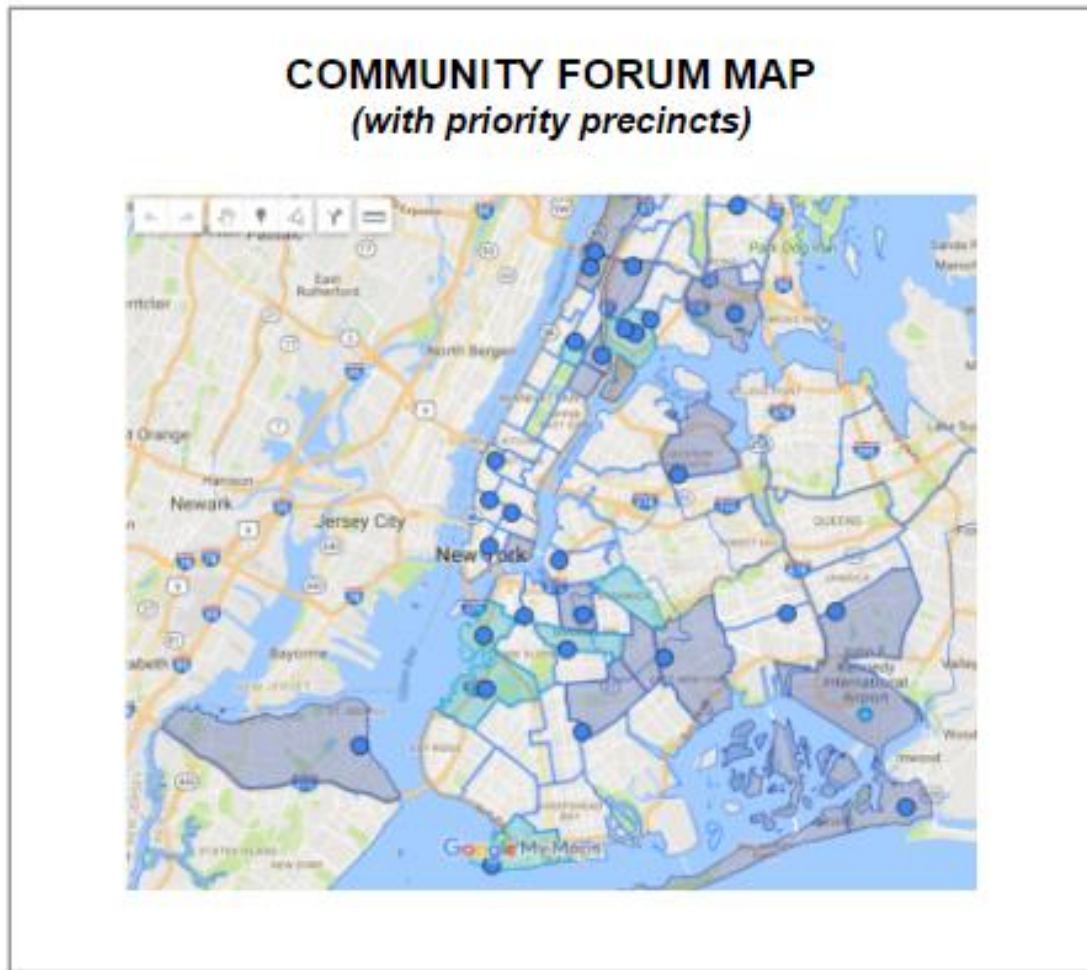
All anchor organizations were asked to develop a program template, which included several basic elements for the forums. This template was reviewed by the Facilitator. At each event, the Facilitator provided a brief welcome, which was followed by an educational segment, breakout sessions, a large group share out, and closing remarks by the Facilitator.

Implementation

When forums commenced in October 2016, the JRP Team was present for every event. Over the course of three months, the Team attended meetings providing logistical support, taking observational notes, and completing a debrief of every event. Designed as a reflexive process, the forums were individually refined as overarching limitations and considerations became apparent.

By December 16, 2016, the Facilitation Team, in collaboration with over 20 different anchor organizations, completed the last of 28 forums executed throughout New York City. In collaboration with anchor organizations, the Facilitation Team successfully conducted forums in seven out of the nine top priority geographic neighborhoods, and four out of five mid-priority geographic neighborhoods. At the precinct-level, the forums were implemented in 10 out of 11 top priority precincts and four out of six mid-priority precincts.

Figure 4. Community Forum Map



Throughout the five boroughs, nine forums were held in Brooklyn, four in Queens, one in Staten Island, eight in Manhattan, and six in the Bronx. The Facilitation Team conducted a total of eight specialized community forums targeting specific demographic groups which included: youth, at-risk adults in drug treatment, African-American community, Latino community, Indo-Caribbean community, LGBTQ community, public housing residents, and the West African Islamic immigrant community. Of the total number of forums, nine were held in collaboration with CPR, under their “Our Communities, Our Solutions” banner. Additionally, nine forums

were conducted that included the participation of NYPD officers and executives (*see* Figures 5 and 6 for more detail).

Figure 5. Plaintiff Assisted Forums

Date	Organization(s)	Special Interest
11/03/16	Desis Rising Up and Moving	Indo-Caribbean Community
11/09/16	Malcolm X Grassroots Movement	African American Community
11/14/16	VOCAL-NY	At-Risk Community
11/15/16	Morris Justice Project	South Bronx Community
11/17/16	FUREE, NAACP LDF	Public Housing Community
11/29/16	Center for NuLeadership	Bedford-Stuyvesant Community
12/06/16	Make the Road NY, Rockaway Youth Task Force, Urban Youth Alliance, Brotherhood-Sister Sol	Youth Community
11/21/16	The Anti-Violence Project	LGBTQ Community
11/22/16	NMCIR, LatinoJustice	Latinx Community

Figure 6. Police Participation

Date	No. of Officers
10/13/16	15
10/15/16	7
10/17/16	7
11/18/16	7
11/23/16	7
11/26/16	9
11/28/16	10
11/30/16	10
12/2/16	7

Summary of Relevant Themes

After extensive review, our analysis of the community forum data sheets and the facilitators' reports highlighted several overarching themes. Community members shared ideas around appropriate encounters, accountability and oversight, transparency, training, community education, and so on.²⁵² These inputs have been distilled into five thematic areas. As a matter of policy, the themes below include suggestions from the narratives which should be helpful in guiding the Department toward constitutional practices and improved relations with the communities it serves.

²⁵² A compendium of these recommendations is included in the report appendices. *See* Appendix G – Suggested Areas for Reforms by Participants.

Community-Police Relations

While the NYPD has acknowledged that it had embarked upon a failed strategy in the application of its SQF and trespass enforcement policies, it has yet to put forth a solution that addresses the residual trauma that exists in impacted communities across the City. On numerous occasions, the Facilitation Team met with many individuals who had both been directly and indirectly impacted by these controversial enforcement policies. Whether the individuals themselves had personally experienced a stop encounter or not, what was evident was a general sense that community members felt victimized by an institution designed to protect them.²⁵³

Community forum participants overwhelmingly agreed that there is crisis in the relationship between NYPD and impacted communities. Citing examples of the trauma and distrust at the forefront of their discussions, impacted community members nonetheless supported the notion of an improved relationship between communities and police. That being said, participants felt that having too many officers who were unfamiliar with their neighborhoods and the people who live there, perpetuates the strained relations between those policed and those who do the policing. Participants suggested that a good way to bridge the gap between community and police, would be to require that officers are embedded within community life in positive ways. While some community members acknowledged their precincts' efforts at engagement, many groups felt the Department and its officers should make greater efforts not only to repair their damaged reputation with impacted communities, but to also practice more responsive policing through fostering partnerships in maintaining public safety.

²⁵³ See also generally Bellin, *The Inverse Relationship Between the Constitutionality and Effectiveness of New York City "Stop and Frisk,"* 94 B.U. L. Rev. 1495.

Participants agreed that there was a need for both healing and education between the Department and civilians. While community members were open to the idea of a more positive relationship with police, they agreed that there needed to be an earnest gesture from the Department to acknowledge the trauma inflicted upon communities of color, and the provision of resources to begin to repair said trauma. Community members suggested mediation with officers, community meetings and know your rights events, investment in community programs and spaces, and opportunities for police-community problem solving and collaboration as potential ways to begin to repair the trust between both parties.

Community members agreed that outreach efforts, including via social media, newspapers, radio, and television are important for them to find meaningful ways to engage. Doing so would give the civilians a greater sense of awareness of not only the changes to the Department, but opportunities for involvement at the local level. Particularly in regard to public housing, residents felt that it was important for officers to have greater communication and rapport with tenants, and to provide opportunities for them to partner in the development of public safety in their neighborhoods.²⁵⁴

Protocols for Encounters

Community members also highlighted areas for reform that stem from the most critical element of the *Floyd* Litigation — the *Terry* stop, as well as other police-citizen encounters. An overarching theme of the forums was respect — a word cited very frequently throughout the JRP. For many community members in the forums, negative and/or abusive encounters with officers were paramount to the conversation on police reform. “Officers should stop being so

²⁵⁴ Many public housing residents called for more hiring opportunities and decision making rights for tenants.

aggressive,” “Officers should be respectful,” and “It’s all about the approach,” were oft-repeated phrases over the course of the three months in which forums took place.

The expectation of a negative encounter has broad implications for the types of interactions that officers have with community members. Coupled with media coverage of police misconduct, civilians and officers alike are being subjected to both direct and vicarious trauma which has yet to be sufficiently addressed in the field of law enforcement. Negative transactions have parallel outcomes for officers who have become the subject of widespread media and public scrutiny. Such negative portrayals may contribute to a deep resentment and disillusionment with community members, creating an even greater rift between the two groups.²⁵⁵

Beyond training and documentation, community members stated that officers should, as a matter of practice, ensure a greater amount of respect and civility in their initial approach, and for the duration of the encounter. Officers should always clearly identify themselves and should ensure that community members understand the reason for the stop and implications for compliance.

Efforts at addressing police reform often highlight the significance of public perception that a police department’s practices are fair and unbiased.²⁵⁶ Research demonstrates that these principles lead to relationships in which the community trusts that officers are honest, unbiased, benevolent, and lawful.²⁵⁷ Community members also made reference to the assembly of a community commission comprised of a core group of volunteers from diverse disciplines —law,

²⁵⁵ This idea was inferred from officer statements in the JRP Police Focus Groups.

²⁵⁶ See, e.g., Tyler, Tom R. “Enhancing Police Legitimacy.” *The Annals of the American Academy of Political and Social Science* 593, no. 1 (2004): 84-99.

²⁵⁷ See President’s Task Force on 21st Century Policing. 2015. *Final Report of the President’s Task Force on 21st Century Policing*. Washington, D.C.: Office of Community Oriented Policing Services.

faith leaders, mental health, and so on — that are able to discuss and shape the patterns and practices within the NYPD.

Training and Evaluation

Training emerged as a prominent theme in the community forums. Both community members and officers who participated in the forums stressed the need for improvements to officer training. Many of the training ideas centered on a recurring theme of cultural competence.²⁵⁸ Sub-themes included cultural sensitivity, customer service, communication, de-escalation, and implicit bias. In the scope of training, community members called for efforts centered on restorative justice and trauma-informed trainings.

Furthermore, many of the community-based organizations involved in the community forums emphasized a desire to be involved in the development and evaluation of training, particularly for special populations.²⁵⁹ Community organizations stated that members should be engaged in NYPD’s assessment of the needs and best practices of impacted communities, as well as the coordination of reports and statistical analyses on policing disparities in affected neighborhoods. Several other suggestions for evaluation included the development of early warning systems, effective feedback loops between New York City agencies, and needs assessments for officer placement within communities of color.

²⁵⁸ “Cultural competence” is loosely defined as the ability to understand and interact with cultures and belief systems that are different from our own. Extensive information on cultural competence exists in the social psychology literature.

²⁵⁹ The specialized populations in this example included members of LGBTQ, Immigrant, and at-risk communities.

Oversight and Accountability

Throughout the forums, accountability was a frequently cited area for reform. Community members called for meaningful and timely consequences for abusive policing practices, often highlighting the public perception of an obscure, flawed, and arbitrary disciplinary system. Attendees at the forums suggested that the implementation of stricter discipline for officers with repeated violations and greater accountability for the Department overall in addressing rights violations were critical elements of meaningful police reform. Community members also promoted the use of oversight procedures such as body-worn cameras, community oversight boards, and more stringent oversight of anti-crime detective units, as supplements to implementation of departmental change.

Transparency

Last, but certainly one of the most significant suggestions for reform in the forums, was the assurance of NYPD transparency. Throughout New York City, there was a general consensus among participants that the Department should take measures to provide the public with access to NYPD data on stop reports, as well as officer complaints for community oversight and information.

SECTION VI: JOINT PROCESS REFORM RECOMMENDATIONS

The Monitorship and Joint Remedial Process came about as the result of decades-long policing policies that resulted in wide scale violations of constitutional rights. Some of the repeated themes raised during the JRP included overaggressive policing, a perceived lack of accountability for misconduct at the NYPD, mistrust between communities and the Department, lack of respect by police officers, the need to build police-community trust, and the need for enhanced community engagement, training, accountability, and transparency.

The Facilitator sees the overarching mission of the Joint Remedial Process as both reporting the many reform proposals that the Facilitation Team heard during our engagement as well as making findings and recommendations for Court-ordered reforms. The Facilitator was charged with working with the parties and other stakeholders to develop, through the Joint Remedial Process, a more thorough set of reforms — the Joint Process Reforms — to supplement, as necessary, the Immediate Reforms. The Joint Process Reforms must be no broader than necessary to bring the NYPD's use of stop and frisk into compliance.

The Facilitator had previously reported the following set of reform recommendations as potential Joint Process Reforms to be agreed upon by the parties. The parties were unable to agree on any Joint Process Reforms, and, as such, the Facilitator now submits the following findings and reform recommendations so that the Court may consider them for additional reform orders. This is a summary of our recommendations for further Court-ordered reforms. We take no position with respect to the process by which the Court decides which of these proposed reforms it will order.

It is the understanding of the Facilitation Team that without meaningful accountability and transparency reforms, any attempts at restoring good police-community relations in the most affected communities will be ineffectual. While we credit the efforts of the NYPD, Commissioner O'Neill, and the new Neighborhood Policing program to rebuild relationship and foster community-oriented policing, we must emphasize the critical importance of accountability and transparency reforms which will simultaneously support the Department's mission toward improved police legitimacy, while at the same time being responsive to the concerns of affected civilians. To stress the importance of reforms relating to transparency and accountability we list them first.

Transparency and Accountability

1. Creation of Permanent Structures for Feedback Regarding Officer Conduct – Feedback Loops

Although the NYPD clearly has begun to change its policies, it is important that the Court order that the Department develop a program for systematically receiving, assessing, and acting on information regarding adverse findings on the conduct of police officers involving illegal stops or illegal trespass enforcements. This information includes: (a) declinations of prosecutions by the District Attorneys in New York City; (b) suppression decisions by courts precluding evidence as a result of unlawful stops and searches; (c) court findings of incredible testimony by police officers; (d) denials of indemnification and/or representation of police officers by the New York City Law Department; and (e) judgments and settlements against police officers in civil cases where, in the opinion of the New York City Law Department, there exists evidence of police malfeasance. The NYPD should develop a formal process to systematically collect such information, and to consider this information, along with substantiated CCRB civilian

complaints, in evaluations of officers, transfer requests, disciplinary processes, and in discretionary promotional decisions.

We note that the NYPD Office of the Inspector General ("OIG") conducted a comprehensive review of data from litigation proceedings, and published its findings in its Annual Report of 2015. In support of the notion of accessing and utilizing information from litigations for the monitoring and improvement of police conduct, the OIG's office stated, as follows:

The proper collection and analysis of police litigation data has the potential to reduce police misconduct, improve public safety, control costs, identify training opportunities, strengthen public confidence, and advance law enforcement oversight.²⁶⁰

The NYPD responded to the Facilitator's Ideas for Discussion regarding the feedback loop. In its response, it asserted with respect to declinations of prosecutions by the District Attorneys' offices in New York City the following:

There is a system in place for tracking and reviewing declinations of prosecution (DPs) from prosecutors. The Criminal Justice Bureau of the NYPD has five court sections (one in each Borough) which are responsible for collecting the DPs and entering them into the Online Prisoner Arraignment Database ("ZOLPA"). The DP's are classified by category related to the reason why the case was declined. That data is compiled into a report in order to make the data available for future analysis. This data can be sorted by category of DP, or police officer, in order to observe trends and determine whether additional training is needed. In addition, the DP's themselves are ultimately sent to the arresting officer's commanding officer for review and determination whether further action including training is required.

²⁶⁰ See New York City Department of Investigation, The Office of the Inspector General for the NYPD (OIG-NYPD), *Using Data from Lawsuits and Legal Claims Involving the NYPD to Improve Policing* (April 2015).

It is recommended that this process for the review of declinations be more robustly structured in a more integrated, systematic manner. The current process as outlined in the quotation above ostensibly creates a “report in order to make the data available for future analysis.” There is no specification within this current protocol with regard to whether and how data will be analyzed and what if any corrective actions will be taken. In addition, the NYPD’s stated process references a transmittal of declinations to commanding officers for review. It is recommended that a more structured and well-articulated policy be developed for this internal review by commanding officers and immediate supervisors. It is further recommended that the policy be expanded to allow for wider analyses of the data to ascertain any patterns of misconduct within units, squads, platoons, commands, and Patrol Boroughs. A higher level of accountability is equally as important, therefore the policy should include accountability measures for commanding officers and immediate supervisors based on the level of misconduct occurring under their supervision.

In order to ensure that declinations of prosecutions are more fully captured and analyzed, it is also recommended that they be formally integrated into the Risk Analytics and Information Liability System (“RAILS”) network. This will allow declinations to be reviewed systematically and analyzed by supervisors and officers as a matter of course, fostering greater accountability.

Similarly, the NYPD should create a more discernible and concrete system, in conjunction with the various New York City District Attorneys and the New York City Law Department, to address adverse credibility findings by courts with respect to officer testimony. The NYPD should collaborate with these agencies to create a working group that will develop protocols by which adverse credibility findings are reported to the NYPD. The NYPD should

then set forth a written policy for the evaluation of these reports and any necessary remedial measures including reassignment, retraining, or referral for discipline and investigation.

A written policy with specific protocols also should be developed for the entry into the RAILS network of adverse civil litigation results in section 1983 and tort actions arising from unconstitutional stops and trespass enforcements. A denial of indemnification by the New York City Law Department after consultation with the NYPD is an event that should be entered into RAILS absent extraordinary circumstances. Similarly, a careful analysis should be done with respect to any adverse verdicts or settlements to ensure that a police officer who is engaging in malfeasance or serial misconduct during stops and trespass enforcements is being adequately monitored and supervised. After such an analysis, adverse verdicts or settlements should be considered for entry into the RAILS network.

Finally, we note that the value of this approach may be, as recommended by the Monitor, to identify patterns and practices within commands, precincts, squads, and individual units.

2. Monthly NYPD Discipline Report

It is recommended that the Court order the NYPD to prepare and publish a monthly report — without disclosing personal identifying information — chronicling findings of misconduct and the resultant disciplinary outcomes as they relate to unlawful stops and trespass arrests. This monthly report should include all unlawful stop and trespass arrest incidents that are reported as substantiated by the Civilian Complaint Review Board and referred to the NYPD Department Advocate's Office for disciplinary action. These monthly reports should be disaggregated by geographic and precinct locations, and collated into an Annual Report.

This report should be modeled after the Standard Operating Procedure Annual Report that is created by the NYPD and documents all officer-involved shooting incidents. While these monthly reports should not disclose an officer's identity, they should accurately chronicle the particulars of the incident and the actual discipline that was imposed upon an officer.

This recommendation is consistent with the NYPD's recent decision to publish anonymized summaries of allegations against officers and the disciplinary actions taken in response by the Department. The NYPD's decision to publish this information is consistent with the need for greater transparency and accountability stressed in this Report. The NYPD's effort has received stiff opposition from the Patrolmen's Benevolent Association, which, citing Public Law 50-a, has sued to enjoin the publication of this data and has obtained a temporary restraining order.²⁶¹

3. Disciplinary Recommendations

During the course of the Joint Remedial Process, members of affected communities expressed distrust of both police officers and the NYPD itself. Distrust of the NYPD as an institution is in large part due to the perception that the Department fails to hold officers accountable for misconduct.

These problems must be addressed. Academics, policing experts, and police departments generally agree that a mutual, trusting relationship between the police and community members is critical to effective policing. Likewise, it is recognized that institutional legitimacy encourages compliance with the law and furthers positive community-police interaction, whereas lack of

²⁶¹ See Stephen Rex Brown, "PBA Wins Court Order to Block NYPD from Releasing Police Disciplinary Records," Daily News, Apr. 18, 2018, *available at* <http://www.nydailynews.com/new-york/pba-temporarily-block-nypdreleasing-disciplinary-records-article-1.3928178>

trust can lead to police-citizen encounters steeped with tension, resulting in ill-advised conduct by both police and citizens during these encounters.

The NYPD should increase transparency around police disciplinary processes while ensuring that those processes are fair. We therefore recommend that the NYPD be ordered to develop and publish progressive disciplinary standards to be used in cases arising from unconstitutional stops and trespass enforcement regarding excessive force, abuse of authority, discourtesy or offensive language, and racial profiling allegations. The development of such standards is consistent with national trends in policing, such as the adoption of the Chicago Police Department Disciplinary Guidelines.²⁶² A fair disciplinary process is a process “that help[s] address police misconduct while supporting officers who have exercised their discretion appropriately and within the framework of law and policy.”²⁶³ While we recognize the Department’s tremendous effort to make reforms, provide greater due process for officers, and to rebuild its fractured relationship with impacted communities, we believe it important that the Department develop greater structure and formalization around its discipline process.

Although such a large Department should not be run by exceedingly strict protocols which cast aside the particular facts of a case and the history of an officer’s public service, it has become increasingly evident that the Department should consider making revisions to its current discipline paradigm that ensure that disciplinary processes are fair and timely. While the Facilitation Team does not feel it appropriate to dictate the structure or format of such a disciplinary system, we feel it is of critical importance that “a good disciplinary system make

²⁶² Given the administrative law judge’s ruling on behalf of the Fraternal Order of Police opposing the disciplinary guidelines in Chicago, we recognize that there are potential issues with collective bargaining. See <http://www.chicagotribune.com/news/local/breaking/ct-met-chicago-police-discipline-fop-20171114-story.html>

²⁶³ Stephens, *Police Discipline: A Case for Change*, at 2.

decisions and impose discipline, where appropriate, in a timely manner,” as noted in the Monitor’s Seventh Report. These standard disciplinary recommendations should be developed and published to increase public understanding of how officers are disciplined and to ensure external accountability.

4. Body-Worn Cameras

The NYPD has, to its great credit, gone well beyond the requirement of the Body-Worn Camera (“BWC”) pilot program mandated by the Remedies Opinion by committing to the issuance of BWCs to all patrol officers by the end of 2019. This is a highly commendable initiative by the NYPD and places it at the forefront of national efforts to improve police-community relations.

By implementing this policy, the Department has shown that it takes seriously the need to document and record police-citizen encounters in order to ensure public safety, officer safety, transparency, and accountability, quite apart from the apparent utility of these cameras for law enforcement.

Under the Remedies Opinion, the future of body-worn cameras is a matter to be determined after the one-year pilot has concluded. However, as the NYPD has already committed to the issuance of BWCs to all patrol officers, the question is not whether BWCs will be used in the future but what policies the NYPD will adopt with respect to their use. Because the pilot has not yet concluded, we recommend that there be significant community input into that final design, particularly from organizations and individuals with significant insight and knowledge into such programs, as well as input from police officers who have had significant street-level experience with the use of such cameras.

While it may be premature to comment on the final design of the BWC program before the pilot is concluded, several areas of concern have been raised by stakeholders, including with respect to video access and internal video review. For purposes of this Report, however, we highlight one area for consideration. Under the Draft Operations Order governing the pilot (Draft 16 issued March 22, 2017), officers must activate their BWCs in certain situations, including prior to service calls and “interactions with persons suspected of criminal activity,” a reference to *De Bour* Level 2 encounters based on a founded suspicion of criminal activity. But officers are not required to activate BWCs prior to *De Bour* Level 1 encounters — that is, where an officer requests information based on an “objective credible reason . . . which is not necessarily indicative of criminality.”²⁶⁴

We recommend that the Court order that the NYPD require its officers to activate BWCs at the inception of Level 1 encounters with civilians. There are several reasons for this.

First, and foremost, our community engagement has shown that civilians overwhelmingly feel that they are not free to leave even during a Level 1 encounter; and we heard repeatedly that many investigative encounters quickly escalate into full blown *Terry* stops. Consequently, it would likely be beneficial for both the NYPD and civilians to have Level 1 encounters recorded by BWCs in order to understand when and how these encounters are actually occurring and in order to maximize compliance with the Immediate Reforms. Furthermore, recording Level 1 encounters will likely serve as a comfort to citizens fearful of interactions with the police, even

²⁶⁴ While the Draft Operations Order does not mandate that officers record Level 1 encounters, the Monitor noted in his April 11, 2017 Memorandum on the Approval of Body-Worn Camera Policies, that some Level 1 encounters will nevertheless be recorded because activation is required during interior patrols of NYCHA and TAP buildings and when responding to radio calls.

at what is deemed to be Level 1, while at the same time increasing the overall transparency of police-citizen encounters, and, potentially, providing a basis for training and accountability.

Second, activating at the initiation of Level 1 encounters would better align the NYPD's practices with the model policies of the International Association of Chiefs of Police ("IACP"), the Police Executive Research Forum ("PERF"), and the American Civil Liberties Union ("ACLU"). While none of these policies reference *De Bour's* taxonomy, it is clear that many, if not all, Level 1 encounters would be recorded under each: The IACP policy mandates that officers "activate the BWC to record all contacts with citizens in the performance of official duties;" and PERF recommends that officers activate BWCs during "all law enforcement-related encounters." The ACLU states that "an officer [should be required] to activate his or her camera when responding to a call for service *or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public.*"

While the NYPD considered each of the above policies when developing the pilot,²⁶⁵ it ultimately declined to mandate activation of BWCs during Level 1 encounters, leaving it to officer discretion as to when to record at Level 1.²⁶⁶ Specifically, the NYPD reasoned that because some Level 1 encounters — such as rendering aid to sick a person — may not have an investigative or law enforcement purpose, officers should not be required to record at Level 1. To support this conclusion the NYPD cited, among other things, the NYCLU's concern that the policy should "limit recording to interactions with the public that have an investigative or law

²⁶⁵ See New York City Department of Investigation, The Office of the Inspector General for the NYPD (OIG-NYPD), *Body-Worn Cameras in NYC: An Assessment of NYPD's Pilot Program and Recommendations to Promote Accountability* (July 2015).

²⁶⁶ See NYPD Response to Public and officer Input on the Department's Proposed Body-Worn Camera Policy (April 2017).

enforcement purpose” because “community members need to be able to trust that they can speak with officers privately and not have every casual interaction or mere observation by officers be recorded.”

We agree that witnesses and crime victims must be protected and feel comfortable in their interaction with the police. Unfortunately, based on the concerns expressed during our community engagement, in the current atmosphere many victims and witnesses already distrust the police to the extent that they are unwilling or reluctant to come forward with information even in the absence of any cameras. Given this legacy, the decision to make the recording of Level 1 encounters discretionary just because some Level 1 encounters will involve a public service function rather than a law enforcement or investigatory purpose cannot be justified. Indeed, if the goal is to restore trust, the NYPD is better served by requiring activation at Level 1, while empowering officers to exercise discretion to turn off the camera when they are recording witnesses, victims, or have other concerns.

Finally, a review of the policies of police departments across the country suggests that many require activation at the equivalent of Level 1 and/or have policies that are more in line with the model policies of IACP, PERF, or the ACLU than is the NYPD policy. One researcher, examining the available policies of the 100 largest cities in the U.S. as of December 2015, found that:

Recording consensual encounters²⁶⁷ is an important step toward illuminating a controversial and opaque domain. Given the unregulated and controversial nature of consensual encounters, perhaps what is more remarkable is that nearly half of the

²⁶⁷ Law enforcement or investigative encounters that do not qualify as a stop are sometimes referred to as consensual encounters; consensual because the civilian, having not been detained, is free to leave.

departments with policies coded mandate the recording of consensual encounters. Well over half either provide for discretionary or mandatory recording of such encounters. While a good step forward, wider-spread mandating that consensual encounters be recorded would better serve the goals of increasing trust and transparency that are oft-stated in body camera policies.²⁶⁸

Our review of more recent policies indicates that this trend has continued.²⁶⁹ In Philadelphia, where stop and frisk practices, including racial disparities in the application of those policies, has been litigated, the BWC policy states that “Authorized Body-Worn Cameras will be activated prior to responding to all calls for service and during all law enforcement related encounters and activities involving the general public.”²⁷⁰ In Washington, D.C., activation is required at the initiation of a service call, and in connection with certain listed activities, including “all contacts initiated pursuant to a law enforcement investigation, whether criminal or civil.”²⁷¹ In Chicago, another city where stop and frisk practices, including racial

²⁶⁸ Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. Davis L. Rev. 897, 933-34 (2017); see also Mary D. Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 Ala. L. Rev. 395, 444, n.220 (2016) (citing Charlotte-Mecklenburg Police Dep’t, Directive 400-006 (Apr. 29, 2015) (“While on duty, BWCs shall be turned on and activated to record responses to calls for service and interactions with citizens.”); Phila. Police Dep’t, Directive 4.21 § 4 (Apr. 20, 2015) (“Body-Worn Cameras shall be activated when responding to all calls for service and during all law enforcement related encounters and activities involving the general public.”); Phx. Police Dep’t, Operations Order 4.49, at 2 (Apr. 2013) (“The VIEVU PVR-LE2 camera must be activated during all investigative or enforcement contacts.”)).

²⁶⁹ See, e.g., *Spokane Police Dep’t, Policy Manual* § 703.4(D)(1)(a) (“Officers shall activate the body camera upon encountering any situation that could be construed as a law enforcement activity. Law enforcement activity may include traffic stops, arrests, searches, interrogations, pursuits and community caretaking functions. For self-initiated law enforcement activity, the officer should activate the camera upon making the decision to contact a citizen for any purpose related to law enforcement activity.”), available at <https://static.spokanecity.org/documents/police/accountability/bodycamera/spd-body-camera-policy.pdf>

²⁷⁰ Phila. Police Dep’t, Directive 4.21 § 4.A (1/27/17), available at <https://www.phillypolice.com/assets/directives/D4.21-BodyWornCameras.pdf>

²⁷¹ D.C. Metro. Police Dep’t, Gen. Order SPT-302.13 § V.A.4.b (3/11/16) (stating that “Members are not required to record non-investigatory contacts (e.g., business checks)”), available at <https://www.bwccscorecard.org/static/policies/2016-03-11%20Washington%20DC%20-%20BWC%20Policy.pdf>

disparities in the application of those policies, has been litigated; activation is required for all law-enforcement-related encounters.²⁷²

We recognize that one could quibble with whether each of the policies studied by Fan and described above are broad enough to include *all* Level 1 encounters. At a minimum, however, most would include Level 1 encounters that serve a law enforcement purpose, and thus the NYPD's decision to exclude even those Level 1 encounters is inconsistent with these policies. That decision is also inconsistent with the findings in the Liability Opinion, the heightened need for transparency and accountability, and the acute importance of repairing the relationship between the police and the communities that bore the brunt of the NYPD's past unconstitutional practices.²⁷³

5. Recording Level 1 and Level 2 Encounters

A constant message from the focus groups and community forums was that people in affected communities generally did not feel free to leave a police encounter, even if it was their right to leave. To a civilian in these communities and probably to any average resident of New York City, it does not matter whether an officer believes he is conducting a Level 1 or Level 2 encounter or a Level 3 stop under the *De Bour* paradigm. They feel apprehensive at all levels.

²⁷² See Chi. Police Dep't, Special Order S03-14 § II.A (6/9/17), *available at* <https://www.bwccorecard.org/static/policies/2017-06-09%20Chicago%20BWC%20Policy.pdf>

²⁷³ See, e.g., D.C. Mun. Regs. tit. 24, § 3900.2 (2016) ("The intent of the BWC is to promote accountability and transparency, foster improved police-community relations, and ensure the safety of both MPD members ... and the public."); Phila. Police Dep't, Directive 4.21, § 1.A.2 (4/20/15) ("Cameras provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust."); S.F. Police Dep't, Department General Order 10.11, at 1 (June 1, 2016) ("The use of Body Worn Cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct.").

These impacted community members consistently expressed a need to quantify these encounters so that appropriate monitoring and supervision of them can occur.

The Facilitation Team does not want to prevent police officers from legitimately engaging civilians in the course of law enforcement by placing upon them the overwhelmingly burdensome task of documenting Level 1 or 2 encounters in the same manner as they are required to document Level 3 stops. Similarly, we do not want to recommend a policy that would interfere with a police officer's ability to assess and respond to an emergency.

Over the course of the Monitorship and the Joint Remedial Process, however, we recognized that technology has evolved to the point where the recording of Level 1 or Level 2 encounters may not be very difficult or time consuming. All patrol officers now have iPhones and all patrol cars are equipped with iPads; and officers are now required to enter their Level 3 stop reports on these devices.

It is recommended, therefore, that the Court order that an application be developed for installation into these communication devices that would allow a police officer to click and enter the approximate age, gender, race, and ethnicity of any person they approach at either Level 1 or Level 2 and then click if the encounter escalates to a Level 3. The location services in these devices can record the time and location of the encounter and there would be no additional paperwork or electronic entries required unless there is a full blown stop in which case a stop report is already mandated.

We believe that the simple expedient of recording basic data about all encounters by a few clicks on a device would be highly beneficial. To the extent that there is a perception that this requirement would be overly-burdensome for officers trying to canvas for witnesses at a

crime scene, we disagree. The entry of these data points on a pre-programmed application could be accomplished in a matter of seconds, either at the time or closely following an investigation of a crime scene. This type of record would help the public, the NYPD, and the Monitor gain a better grasp of the extent and nature of actual police encounters. This information, as with the stop data the NYPD already publishes, should be made publicly available. This data should be published quarterly and annually, disaggregated by demographic and geographic and precinct/command information. It would allow both the NYPD and the public to observe and study trends in policing and enhance transparency and accountability around the current state of SQF policy. There would be actual numbers to consider and analyze.

Under the U.S. Constitution, only *Terry* stops receive scrutiny, and what are known as “consensual encounters” — that is, “the initiation of an encounter by an officer, typically in situations where there is either no articulable basis yet for reasonable suspicion or it is unclear if there is a sufficient basis” — are “unregulated.”²⁷⁴ But in New York, under *De Bour*, Level 1 and Level 2 encounters are supposed to be “regulated.” We do not see a basis, at a time where data collection and analysis is the norm in public institutions and private companies alike, for not tracking regulated police-citizen encounters. After all, these are encounters which, if done improperly, are unlawful and have the potential to stymie the restoration of police-community trust and/or create deeper distrust.

Even without a description of why a citizen has been approached, or the nature of the encounter, the number of police-citizen encounters and documentation of who is being engaged by the police is directly relevant to the issues in these lawsuits. In the Liability Opinion, the

²⁷⁴ Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. Davis L. Rev. at 933.

Court found that the plaintiffs had shown both that “the City, through the NYPD, ha[d] a *policy* of indirect racial profiling based on local criminal suspect data” and that “senior officials in the City and at the NYPD have been *deliberately indifferent* to the intentionally discriminatory application of stop and frisk at the managerial and officer levels.” 959 F. Supp. 2d at 600. Collecting data on the subjects of Level 1 and Level 2 encounters is essential to understanding, after controlling for crime and other social factors, the extent to which police are initiating encounters on the basis of race. Outside of New York, “[b]ecause the selection of persons for consensual encounters is unregulated[,] the risk of targeting due to hunches based on a person’s race, gender, age and socioeconomic background is heightened.”²⁷⁵ In New York, while Level 1 and Level 2 encounters are supposed to be regulated, it is unclear how responsible regulation can occur in practice if data on these police-citizen encounters is not collected. The JRP indicates that despite a reported decrease in the number of Level 3 stops there continues to be a perception of targeting based on race; it is therefore vital to take all necessary steps to determine why this is so.

In its white paper, the Legal Aid Society explains that “Requiring documentation and supervisory review (as in Level 3 stops) will create a record of stops that can be analyzed for patterns and discrepancies.” Unlike with Level 3 stops, there is no record of how many Level 1 and Level 2 encounters occur and who the police are choosing to engage. This must be changed

²⁷⁵ Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. Davis L. Rev. at 933 (citing Margaret Raymond, *The Right to Refuse and the Obligation to Comply: Challenging the Gamesmanship Model of Criminal Procedure*, 54 Buff. L. Rev. 1483, 1486 (2007) (“Police are free to initiate a consensual encounter with an individual for any reason or no reason, perhaps based on a whim or a “hunch” that cannot be supported by specific and articulable facts.”); Daniel J. Steinbock, *The Wrong Line Between Freedom and Restraint: The Unreality, Obscurity, and Incivility of the Fourth Amendment Consensual Encounter Doctrine*, 38 San Diego L. Rev. 507, 509 (2001) (“Requiring no objective indication of criminality, a consensual encounter can be initiated for no reason or for any reason at all, including the kind of inchoate hunches and suspicions disallowed even for stops, the least intrusive form of seizure.”)).

given that the practice likely occurs regularly and unquestionably affects the same communities with which the NYPD has committed to rebuild trust.

As recognized by the Court, even where the police are required to record stops, that does not mean “that officers . . . prepare a UF-250 for every stop they make.” Liability Opinion, 959 F. Supp. 2d at 559. Indeed, as stated by the Monitor in his Seventh Report dated December 13, 2017, “there continues to be an issue of underreporting [Level 3 stops]. Some officers making stops do not file the required stop forms documenting them” While officers may also underreport Level 1 and Level 2 encounters, requiring reporting on each will provide a more complete picture of police conduct in impacted communities. Significantly, recording Level 1 and Level 2 encounters may act as a bulwark against underreporting of Level 3 stops and will likely help the NYPD and outside groups understand whether there is underreporting. The information also is relevant to officer training, as well as supervision. In sum, as argued by the Legal Aid Society in its white paper: “Although total stops are down, officers may be incentivized to improperly categorize their reasons for the stop in order to justify unconstitutional interactions. Officers may also be genuinely confused about the lawfulness of their interactions. Greater documentation will help clarify this confusion while also increasing accountability.”

We recognize that insofar as the justification for the Level 1 or Level 2 interaction will not be recorded by narrative description, this proposal may have less than optimal utility for conducting a Fourth Amendment analysis of these encounters. But, for the reasons already stated, we believe that requiring a narrative description would be overly burdensome and that recording these encounters in the way here recommended is highly beneficial. Furthermore, under the proposed paradigm, officers will indicate electronically that they have initiated a Level

1 or Level 2 encounter, and, if that encounter escalates into a Level 3 stop, there will then also be a record of how many Level 1 or Level 2 encounters so escalate. Because a stop form will be completed at Level 3, there also will be a record of why the officer initially believed there was, for example, a “founded suspicion” of criminality sufficient to approach, but not to detain, and the circumstances under which this founded suspicion became reasonable suspicion.

This information is crucial for a number of purposes. As noted in the context of BWCs, the Monitor has recognized that there is a need to better understand whether officers are confusing Level 1 and Level 2 encounters with Level 3 stops. The Monitor recommended activation of BWCs prior to Level 3 stops in part because it would “allow the NYPD and the monitor to evaluate whether officers are confusing Level 2 encounters with Level 3 stops. Officers may believe that an encounter did not rise to the level of a *Terry* stop when it actually did (that is, when a reasonable person would conclude that he or she had been detained and was not free to go). In that situation, an officer would not have submitted a stop report, under the mistaken belief that the interaction was a Level 2 encounter and not a *Terry* stop.”²⁷⁶ Just as activating BWCs at Level 2 is useful for this purpose, so too is creating a database of Level 1 and Level 2 encounters and reviewing narrative descriptions of Level 3 stops that began at Level 1 or Level 2 in determining whether officers are confusing the *De Bour* levels and/or improperly escalating Level 1 and Level 2 encounters into *Terry* stops. Finally, quantifying the number of Level 1 and Level 2 encounters is necessary to determine whether changes in policy might be necessary to repair distrust between citizens and the police. As recounted elsewhere in this Final Report, there is little dispute that rebuilding trust is necessary. In the context of this

²⁷⁶ Monitor’s Memorandum on Approval of Body-Worn Camera Policies (April 11, 2017), at 6-7.

recommendation, we highlight that lack of trust can lead to officer or citizen conduct that results in unnecessary escalation of investigatory encounters into *Terry* stops.

6. Accessing Stop Reports

It is recommended that the Court order the NYPD to create a protocol to expedite the provision of stop reports upon request. Under the current system, as understood by the Facilitation Team, an individual seeking access to their stop report would have to file a FOIL request. While it is completely understandable that the NYPD should carefully review requests for stop reports in the interest of protecting crime victims and its policing strategies, a common complaint that was heard during the JRP is that requesting a stop report through FOIL takes an inordinately long amount of time. It is our understanding that the NYPD is currently engaged within the Immediate Reform Process in developing a protocol for citizens to more easily access their stop reports and body-worn camera footage.

7. Community Engagement

To ensure continued input from affected communities on the impact of Court-ordered reforms and current NYPD policies and practices, it is recommended that (1) the Court order that the NYPD establish a mechanism for regular meetings with those organizations and individuals with whom there has not been such formal and frequent engagement in the past, including youth, special populations such as the LGBTQ community, and critical reform voices; and (2) the Court order the establishment of a “Community Collaborative Board” to provide feedback from affected communities on the Court-ordered reforms as they are being implemented and to make recommendations to the Court and the Monitor during the course of the Monitorship. After summarizing the Department’s history of community outreach, as well as the alternative models

for community outreach and oversight used outside of New York, we address both of these recommendations below.

Historically, the Department has attempted to engage community members through its Office of Community Affairs. Its efforts have not succeeded, however, in engaging the community members most severely impacted by SQF policies or those who are critical of the Department. It is commendable that the Department has shifted toward more effective community engagement through its Neighborhood Policing Program. In addition, during the Joint Remedial Process, the Department has fostered *ad hoc* contacts between police executives, up to and including the Commissioner, and community groups and leaders from mainly affected communities. These contacts, however positive, have not resulted in the sort of sustained community engagement and input necessary to develop greater trust and confidence in the NYPD on the part of affected communities.

One longstanding effort by the NYPD toward community trust building is the Community Council program managed through the Office of Community Affairs. For instance, there were 86 Community Councils in 2014 according to the NYPD Community Council Guidelines published that year. The Facilitator attended several Community Council meetings in Brooklyn and Staten Island. Although the Facilitator's experience in attending these meetings may not be representative of all Council meetings throughout the City, the NYPD has not contradicted the assessment by the Facilitation Team that Community Council meetings are mainly attended by community residents who, as a general matter, support the Department's policies and tend not to question or criticize those policies.

The Commanding Officers at these meetings were experienced and highly professional police executives who were well liked by the community members in attendance. They had established a rapport with community members and offered ready answers to their questions and concerns. Nonetheless, the issues raised and discussed during these meetings chiefly concerned local policing and safety issues, such as traffic problems, nuisance complaints, and upcoming community events. There was no discussion of the SQF practices of the Department or any other controversial police issues at the Community Council meetings attended by the Facilitator.

A more recent community engagement initiative by NYPD is Build the Block, an extension of the Neighborhood Policing Program. The new Neighborhood Policing Program is a targeted engagement of Neighborhood Coordination Officers (NCOs) within communities participating in the program. The NCOs work daily in specific neighborhoods instead of being deployed to different locations throughout the city. NCOs are responsible for hosting Build the Block safety meetings within their identified neighborhoods. Although commendable, it is too early to assess the efficacy of this initiative.

Community Council meetings, as well as other Office of Community Affairs programs such as forums and street fairs, while well intentioned, planned, and executed, did not address matters such as unconstitutional policing. Absent specific outreach effort by the Department or to community leaders and groups that were critical of NYPD, these programs and meetings are not likely to create the environment for meaningful, structured, and prolonged dialogue between the communities most adversely affected by unconstitutional policing and the NYPD.

During the Joint Remedial Process, community participants recommended different mechanisms for the solicitation of community input into needed reforms and community-based

oversight of the NYPD. As previously discussed in this Report and reflected in the community outreach efforts of other cities like Cincinnati, New Orleans, and Seattle, there is no standard approach. The community engagement models of these cities are summarized below.

In Cincinnati, the Community-Police Partnering Center at the Urban League of Greater Southwestern Ohio partnered with the police department to discuss problematic policing practices and to review uses of force. The group did not meet regularly, and it did not review department policies or make formal recommendations. Afterwards, the City Manager's Advisory Group (MAG) assumed responsibility for advising the city and police department informally on general police issues of concern to the community. The city manager appoints its members and chairs the advisory group, which meets about three times each year, but does not prepare reports or recommendations.²⁷⁷

In New Orleans, the Police-Community Advisory Board ("PCAB") in each of the NOPD's eight districts hold quarterly community meetings, but, do not have decision-making authority over NOPD finances, policies, or practices. Rather, they vet community suggestions, works with NOPD to understand its operations, processes, and challenges, and build consensus on priority items important to the community before submitting recommendations to NOPD for consideration.²⁷⁸

Recently, cities under consent decrees have favored greater civil oversight. In Newark, the Newark Police Department was ordered to "[f]und and maintain a civilian oversight entity for NPD." The goal of the Newark oversight board was to address the "needs and concerns

²⁷⁷ See Betsy Graef, *The Seattle Community Police Commission: Lessons Learned and Considerations for Effective Community Involvement*, 14 Seattle J. for Soc. Just. at 43-44.

²⁷⁸ See New Orleans Police Department Police Community Advisory Board (PCAB) (8/9/2016), at 3.

of Newark’s residents and increase confidence in the NPD.”²⁷⁹ After, Newark established a Civil Complaint Review Board with responsibilities including “reviewing internal investigations, monitoring trends in complaints, and reviewing and recommending changes to NPD’s policies or procedures.”²⁸⁰

In Baltimore, a consent decree mandated the creation of a Community Oversight Task Force with adequate funding and with members appointed by the mayor. Its task is considering whether to restructure Baltimore’s current Civilian Review Board (CRB), including whether the CRB should be independent of the police department, whether it should have the authority to recommend discipline, and ensuring that there is sufficient access to relevant information by community members.²⁸¹

One option considered by the Facilitation Team is a commission consisting of appointed community members and police representatives in the mold of Seattle’s CPC. Established by consent decree with the Department of Justice, the CPC has, as of 2017, become permanent. The CPC is “mandated to . . . provide ongoing, community-based oversight of SPD and the police accountability system.” It is responsible for tracking the adoption of police reform recommendations and reviewing reports issued by the Seattle’s monitor. CPC also holds public meetings, makes biannual progress reports and annual reports to Seattle city officials and community members regarding the “implementation status of these recommendations and the

²⁷⁹ *United States v. City of Newark*, No. 16-1731 (Consent Decree ¶ 13).

²⁸⁰ Independent Monitor – Fourth Quarterly Report, May 4, 2018, *available at* <https://www.newarkpdmonitor.com/wp-content/uploads/2018/05/4QR-FINAL-with-appendices.pdf>

²⁸¹ *See United States v. Police Department of Baltimore City*, No. 17 Civ. 00099 (Consent Decree ¶ 10). Additional examples of community entity models are provided in Graef’s *The Seattle Community Police Commission: Lessons Learned and Considerations for Effective Community Involvement*, 14 Seattle J. for Soc. Just. 1.

overall performance of SPD and the police accountability system.”²⁸² Unlike New York’s CCRB, the CPC does not investigate police misconduct complaints.

While the CPC has been recognized as an important component of Seattle’s police reforms, the Facilitator believes that it is premature to recommend the creation of a permanent community police commission in New York City. A number of auditing, oversight, and accountability systems are already in place, including the Office of the NYPD Inspector General/New York City Department of Investigation, the Monitor, the City Council (itself a representative body), the CCRB (itself an all-citizen entity), the Court, as well as the Office of the Mayor and the Office of the Corporation Counsel. Adding another permanent structure would be counterproductive to the extent that it creates confusion as to the roles and responsibilities of the existing structures. The Joint Remedial Process was itself a massive undertaking in soliciting community input on reforms. Furthermore, certain of the Immediate Reforms and many of these Joint Process Reforms are designed to enhance the ability of the public to monitor the NYPD and provide input. While these measures may prove ineffective, we believe that they should be given a chance to succeed before undertaking the complex project of creating a community police commission. Should the need for greater transparency and citizen participation arise, then the institution of a community police commission model should be revisited.²⁸³

²⁸² FAQs, Seattle Community Police Commission, *available at* <https://www.seattle.gov/community-police-commission/faqs#whatdoesthecommunitypolicecommissiondo>

²⁸³ Another example is the Chicago Police Board, which dates back to 2004. It is an independent civilian body of nine members who are annually appointed by the mayor with advice and consent of the City Council. The Police Board’s primary powers and responsibilities are set forth in the Municipal Code of Chicago, and include deciding disciplinary cases of misconduct, holding monthly public meetings, nominating candidates for the position of Superintendent of Police to the Mayor, and adopting rules and regulations for governance of the Department. *See* https://www.cityofchicago.org/content/dam/city/depts/cpb/supp_info/MCC.pdf and <https://www.cityofchicago.org/city/en/depts/cpb.html> for more details on the Chicago Police Board

Although it is premature to institute a permanent oversight structure, community input remains critical, as recognized both by police²⁸⁴ and policymakers.²⁸⁵ Accordingly, in light of the need for better engagement with communities most adversely affected by unconstitutional policing in New York, and having considered the community engagement models summarized above, the Facilitator recommends two reforms for the Court’s consideration.

First, the Court should order the NYPD to meet on a regular basis at the Borough Command level with those individuals and organizations in their communities with whom there has not been such formal and frequent engagement in the past, including youth, special populations such as the LGBTQ community, and critical reform voices. The goal of such meetings would be to provide community members the opportunity to speak directly to the NYPD and receive formal responses to their questions, comments, and proposals. During the course of the Joint Remedial Process, the Facilitation Team spoke with various organizations who could help facilitate outreach to community members. Recommended organizations are listed below:

- Center for NuLeadership
- Make the Road New York
- The Door

²⁸⁴ See John G. Reece and Judy Macy, “Citizen Advisory Boards in Contemporary Practice: A Practical Approach in Policing,” *The Police Chief* 82, October 2015, available at <http://www.policchiefmagazine.org/citizen-advisory-boards-in-contemporary-practice-a-practical-approach-in-policing/>

²⁸⁵ See President’s Task Force on 21st Century Policing. 2015. Final Report of the President’s Task Force on 21st Century Policing. Washington, D.C.: Office of Community Oriented Policing Services (“Law enforcement agencies should establish formal community/citizen advisory committees to assist in developing crime prevention strategies and agency policies as well as provide input on policing issues. Larger agencies should establish multiple committees to ensure they inform all levels of the organization. The makeup of these committees should reflect the demographics of the community or neighborhood being served”).

- Brotherhood-Sister Sol
- Police Athletic League
- The Fortune Society
- BronxConnect

We also had the opportunity to work with organizations that assist especially vulnerable populations such as the homeless, the mentally ill, and the LGBTQ community. In this regard, we recommend the following organizations:

- Picture the Homeless
- The Anti-Violence Project
- The Ali Forney Center
- Exponents

In terms of critical reform voices, we recommend that the NYPD contact Communities United for Police Reform, as well as organizations from the Crisis Management System of the Department of Health and Mental Hygiene. We reference some of them below:

- LIFE Camp, Inc.
- Man Up!, Inc.
- Central Family Life Center
- Save Our Streets

The NYPD should reach out to these individual groups to schedule meetings that would be open to the public. The Borough Commands should be required to create agendas for these meetings in collaboration with the involved community organizations. Additionally, the NYPD should be required to post on its website and social media accounts details of each public

meeting. These details should include the location, time, and proper procedure for having concerns addressed and questions answered.²⁸⁶ NYPD should provide a proposed timeline for these meetings for the Court's approval.

At these meetings, input about why certain police practices are working or not working for the community and suggestions for new policies and practices or modifications of old ones should be solicited and received. The NYPD would then publish the minutes of the meetings, a summary of the recommendations made at the meetings, and its response to those recommendations to their website.²⁸⁷ A copy should be provided to the Corporation Counsel, the NYPD Commissioner, the Director of the Mayor's Office for Criminal Justice, the relevant City Council members and committees, and the Community Collaborative Board. While the NYPD would not have to adopt any suggestions, it would have to articulate why it does not believe it appropriate to do so.

The second proposed reform is a Community Collaborative Board (CCB). The CCB would be an advisor to the City, the Court, and the Monitor, but without an express oversight function. We recommend that the CCB be comprised of 10 members appointed by the Court including a part-time Executive Director. These representatives should come from community groups and organizations active in police reform. The membership should reflect the diversity of New York City, not just race and ethnicity but geography as well. It should also address the concerns of NYCHA and TAP residents. The Facilitator recommends representatives of the following organizations:

²⁸⁶ Please see the following link for a posting example:
https://www.cityofchicago.org/city/en/depts/cpb/provdrs/public_meetings.html

²⁸⁷ *See id.*

- 1 representative each from LIFE Camp, Inc., Save Our Streets, and the Central Family Life Center, who are member organizations of the Crisis Management System of the New York City Department of Health and Mental Hygiene,²⁸⁸
- 2 representatives from the leadership of Communities United for Police Reform (CPR)²⁸⁹
- 2 housing representatives: 1 from Community Voices Heard as a representative for NYCHA, and 1 for TAP buildings as recommended by *Ligon* plaintiffs' counsel
- 1 representative from the Micah Faith Table of the Interfaith Center of New York²⁹⁰

²⁸⁸ The Facilitation Team found the violence interrupters of the Crisis Management System of the New York City Department of Health and Mental Hygiene were well connected to their communities while also maintaining meaningful relationships with the NYPD, both at the precinct and executive levels. These groups work on the ground mediating crises, especially those involving gun violence, in concert with the NYPD. They follow the Cure Violence Model. The Cure Violence Model is an approach to violence prevention from a public health perspective. The prevention model understands violence as a learned behavior that can be prevented using disease control methods. In the United States alone there has been a 73% reduction in shootings and killings as a result of cure violence programs in 20+ cities. In New York specifically, an independent evaluation of the program in Crown Heights, Brooklyn showed a 20% lower rate of shootings, and a year without a shooting or killing in East New York Brooklyn. Additionally, LIFE Camp, Inc.'s Violence Intervention and Prevention System (VIP) has resulted in an 80% reduction in the amount of shootings, with over 550 days of no shootings in their focus area. Over the course of the JRP proceedings, many of these groups hosted focus groups and community forums and were among the leading voices for collaboration with the Department. Crisis Management System members also provided the team with keen insight on the efficacy of NYPD policies and practices based on the input they receive from citizens who are affected by these policies and practices. To learn more about the Crisis Management System visit <http://www1.nyc.gov/site/peacenyc/interventions/crisis-management.page>.

²⁸⁹ Communities United for Police Reform ("CPR"), a coalition of over 60 member organizations, is actively engaged in reform efforts of the NYPD. CPR participated in the implementation of the various phases of the JRP. CPR was able to use its expansive network to populate 9 of the 28 forums that took place throughout the City, several of the focus groups, as well participating in the JRP Advisory Committee. To learn more about the Communities United for Police Reform campaign and a list of voting member organizations please visit <http://changethenypd.org/campaign/intro-members>.

²⁹⁰ During the Convening Phase of the JRP the Facilitation Team met with representatives of the Micah Faith Table of the Interfaith Table of New York. The Micah Table is a coalition of faith leaders from a multitude of religious

- 1 representative from an academic institution who is familiar with the issues outlined in the Remedies Opinion, with experience engaging communities in reform efforts

The Community Collaborative Board will meet quarterly to receive updates from the NYPD with respect to the status of any Court-ordered reforms, and discuss the impact that they are having on affected communities. This Board is not intended to serve as a substitute for or as an overseer of the Monitor. Rather, its goal is to allow representatives who work with the affected communities to offer their input to the Monitor and the Court. The CCB will develop the agenda for these meetings in consultation with the NYPD. The CCB will also publish an annual report with its recommendations for the improved implementation of Court-ordered reforms. Funding resources in the form of stipends for members and a salary for a part-time Executive Director should be provided. After the CCB publishes its annual report, the NYPD should publicly disclose a response to any of the CCB's findings and recommendations. Both the CCB's report and the NYPD's response should be published on the NYPD's website and a copy should be provided to the Corporation Counsel, the NYPD Commissioner, the Director of the Mayor's Office for Criminal Justice, the relevant City Council members and committees, and the Court. The CCB would exist until such time as the Court determines that the NYPD is in "substantial compliance" within the meaning of the Court's July 30, 2014 Order Modifying Remedial Order.

affiliations that work collaboratively to end poverty and injustice in New York City. The Facilitation Team met with several member organizations over the course of the Joint Remedial Process, gathering meaningful community insights into the issues of SQF and trespass enforcement. For more information on the Micah Faith Table, please visit <http://interfaithcenter.org/welcome-micah-institute/>.

During the JRP, community members have asked for a formal mechanism to offer feedback on the Court-ordered reforms during the course of the Monitorship. The Facilitator agrees that such a mechanism, here the CCB, is important. In the absence of the CCB, the facilitation and outreach efforts of the Joint Reform Process will come to an abrupt stop, depriving individuals most affected by these reforms from having their voices heard. As the Court highlighted in the Remedial Opinion, “No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety.”²⁹¹

Trust, Legitimacy and Police-Community Relations

8. Public Education Campaign

Throughout the Joint Remedial Process, the Facilitation Team has been confronted by a widespread and troubling public misconception that stop, question, and frisk (“SQF”) was declared illegal by the Court as opposed to the Court finding that an otherwise legal practice had been unconstitutionally implemented. Concurrently, the Facilitation Team found that police officers may not be properly documenting stops for fear of personal civil liability or administrative discipline. While both findings were true we also heard community members express the desire for public education campaigns.

We identify these two findings as critically detrimental to the NYPD’s mission to build community trust, as well as to improve its community policing and precision policing practices. Though it is difficult to discern with complete confidence the source of such misinformation, it is important to address the seemingly systemic lack of information or misinformation which

²⁹¹ Remedies Opinion, 959 F. Supp. 2d at 686.

continues to drive the divide between officers and the communities they serve. Equally important is the desire for public education campaigns by community members for community members.²⁹²

Consistent with research on cognition and bias discussing the ways in which “consensus” can transform a rumor into the status of “common knowledge” — including that perceived familiarity of information influences the likelihood that the information is accepted as true²⁹³ — several years of misleading headlines and word of mouth seem to have further entrenched the idea that officers who conduct lawful SQF procedures are illegally harassing civilians. This only reinforces the rift between community and police. Similarly, tabloid news and rumor has fed into the belief by many officers that they will be punished unfairly by the NYPD through unjust discipline and/or be left exposed to frivolous lawsuits if they conduct and document *Terry* stops.

Social science theory purports that a statement is more likely to be deemed true the more often it is repeated. Indeed, studies have shown that attempts to inform people that a given claim is false may inadvertently drive acceptance of said claim.²⁹⁴ Care must therefore be given to how the NYPD addresses public misinformation about SQF. A reactionary model which neglects to address the issue of SQF directly or endeavors only to dispel the myth of SQF’s illegality, serves to further entrench a misguided interpretation of the law, and opens officers up to continued scrutiny and complaint.

²⁹² A recommendation for community members to develop and implement a public education campaign would be ill placed as a recommendation for the NYPD, therefore such a suggestion can be found under areas for policy consideration.

²⁹³ See Schwarz, N., Sanna, L. J., Skurnik, I., & Yoon, C. (2007). “Metacognitive Experiences and the Intricacies of Setting People Straight: Implications for Debiasing and Public Information Campaigns.” *Advances in Experimental Social Psychology*, Volume 39, 127-161, *available at* <https://pdfs.semanticscholar.org/41cc/3eed553e733f7378446ee6205fcea420cac.pdf>

²⁹⁴ See Allport, F. H., & Lepkin, M. (1945). “Wartime Rumors of Waste and Special Privilege: Why Some People Believe Them.” *Journal of Abnormal and Social Psychology*, 40, 3-36; McQuail, D. (2000). “McQuail’s Mass Communication Theory.” Newbury Park, CA: Sage; Rice, R. & Atkin, C. (Eds.) (2001). *Public communication campaigns* (3rd ed.). Newbury Park, CA: Sage.

It is recommended that the Court order that the NYPD develop a broad-based public education campaign, in consultation with community partners, to correct for these misunderstandings, inform citizens about the rights and obligations of both citizens and police officers during all levels of encounters, and, most importantly, to inform community members about changes to NYPD policing policies. In an effort to ensure that the messages are impactful and long lasting, it is suggested that the Department seek out social psychology experts to assist in developing an effective public education campaign. Social psychology has been at the center of public education and awareness campaigns since the 1950s. These experts study conditions that affect certain behaviors and actions, and are primarily concerned with thoughts, beliefs, and intentions and how they influence interactions between individuals. An example of a policing public education campaign created with the support of a social psychologist is the *Crime Prevention Publicity Campaign* developed by COPS with renowned psychologist Ronald V. Clarke.²⁹⁵

It is recommended that the NYPD conduct this campaign through social media, traditional radio and television public service announcement advertising, and through community meetings. It should collaborate with community organizations to help develop this campaign. While the public education campaign would be a citywide undertaking, it is also recommended that community meetings take place in settings where community members have the opportunity to interact with officers. These community meetings can take place in places such as New York City Public Housing (“NYCHA”) developments, schools, and drop-in centers in impacted communities.

²⁹⁵ See Barthe, E. (2006). *Crime Prevention Campaigns: Problem-Oriented Guides for Police – Response Guides Series No. 5*. Department of Justice, available at <https://ric-zai-inc.com/Publications/cops-p099-pub.pdf>

This campaign would serve at least three purposes. It would serve to correct the misconception that was often encountered during our community engagement that SQF is illegal and no longer allowed. It would help to foster greater trust in those communities that were most affected by the unconstitutional abuse of police authority. It would also reduce the incidence of complaints and lawsuits based on the misconception that SQF is illegal, which would help to alleviate the fear of personal civil liability or administrative discipline on the part of police officers.

9. Community Surveys

It is recommended that the Court order that the NYPD implement annual community surveys to be conducted at precinct/PSA levels that track police-community relations broadly, including public perception of police-community relations and of police-civilian street encounters, and to assess the public's experience with Court-ordered reforms. During the length of the Monitorship, the survey should be designed and conducted by an outside entity in collaboration with the NYPD and in consultation with community stakeholders with significant insight on policing issues. The survey process should also be institutionalized beyond the Monitorship, allowing for the ongoing assessment of police practices.

These survey results should factor into the performance evaluations of the senior leadership of the precinct. This recommendation is vital to the effective implementation of the Immediate Reforms and to improving community-police relations. The surveys will ensure that local precinct commanders will be directly responsive to the communities they patrol. It is further recommended that as a complement to the surveys, that a qualitative assessment (*i.e.*, focus groups, in-depth interviews) occurs within those precincts where survey results are

unfavorable. This complementary assessment allows for a comprehensive understanding of the issues present within those communities.

The NYPD's use of the ELUCD group to conduct surveys may be beneficial in this regard. However, we do not know the findings of the survey and, more importantly, it appears to be based upon aggregate citywide data. While such aggregation of data, from across New York City, does serve some purposes, it has little utility when it comes to assessing the quality of community-police relations at a local geographic level.

10. Use of Stop, Question, and Frisk to Develop Youth Informants

The Facilitation Team heard at several community forums and at some focus groups that young people were often stopped and subsequently released in order to coerce them into becoming confidential informants. It was reported that police officers, and, in particular, plainclothes officers, would detain youth on minor violations and bring them to the precinct where they would be photographed and then released if they agreed to become informants. If they refused, they would be processed for minor violations or ridden around in police vehicles in their neighborhood so that an inference could be drawn that they were cooperating with the NYPD as informants. Examples of these experiences were expressed by older focus group participants (examples 1 & 2) and youth participants (examples 3 & 4) during separate focus groups:

Example 1: "They don't even think they did anything, but just the fact that they be outside, they might know something about another crime. So they scare them, they bring them to the precinct, like, 'You were trespassing. Yo, do you know who was shooting last night? You was out there.' And then, if you're scared enough you'll say, 'Oh, I heard it was [Tashawn] that was shooting,' or something, any name out there. So what they do – they scaring the young guys. You know what I mean? They did something wrong

and they don't want to get in trouble for nothing else, so that way you just make them tell on somebody else, and then that's a whole another thing. They do it all the time."

Example 2: "They muscle the younger guys, tell on somebody else about shooting, drug dealing or whatever, or... and, say, if they found, like, a bag of marijuana on one of the young guys or something like that, and then just use that. It's a cat and mouse game, and [they] put other people in jeopardy by just... And then, pick these guys up, take them in the car and drive them around, so they could be seen in their car, you know. And that will be, 'Are you snitching? But for the cops it's tell us what we want to know. Who was shooting last night? We know you was out there, we've seen you by the store.' And it's like a strong-arm game."

Example 3: "He said, 'You see who you've got beef with this on this wall? They're already telling us what y'all doing. Just give me information, and you'll be home tonight, man. I'll give you the ticket.' I said, 'Can I get a lawyer?' They said, 'Oh, so you know how to play this game?' They brung me downstairs and put me through the system."

Example 4: "'Yo, come on, you all really just doing this for what? I have nothing on me. You all just doing this because you all know me and my hood. I'm out, I'm leaving my hood. Why are you all bothering me?'" They was like, 'Oh, because we know you got this on you. Come on, where is that? Where is that? Can you just give it to us? If you don't got it on you, just give us a name.' I'm like, 'What? Just leave me alone. I don't want nothing to do with you all.' They searched me, they went all through my pockets, they felt on my private parts and all of that. . . ."

Although there is currently a policy in place that is intended to prevent abusive soliciting of young people as informants, the policy is either not being strictly adhered to or there are no enforced accountability measures for such interactions. According to Patrol Guide 212-68, individuals under the age of 18 are to be registered with a parent or guardian present to give written permission; however, this is not what is happening according to many focus group participants. Although this issue, on the surface can be viewed as unrelated to stop, question, and frisk, and trespass enforcement, it is important to note that community members participating in focus groups and forums expressed the "stop" as being the initial contact in the development of

some youth as informants. Essentially, it was reported that stops were used as excuses to engage youth. Therefore, it is recommended that the Court order that the NYPD include a disclaimer in its SQF trainings, at the Academy and in-service, about the Department's policies with respect to the cultivation of confidential informants. It is also recommended that the NYPD create an auditing protocol for the review of youth-involved interactions and measures to address issues related to a violation of the Department's confidential informant policies.

11. Mental Health and Disability Training

It is recommended that the Court order that the NYPD develop SQF training that includes specific units on engaging with people with mental, physical, or developmental disabilities, including different types of scenarios that officers may encounter in serving such individuals. Individuals with mental illness, who have physical disabilities, or who are developmentally disabled are at risk of being subjected to heightened police scrutiny and force based on completely mistaken assumptions.

There are a number of community-based organizations as well as experts in New York City working on issues concerning police treatment of people with disabilities that could serve to help develop these trainings. This training is critical since the behaviors of mentally ill or disabled individual who are being questioned by police officers may be misinterpreted as furtive movements or noncompliance which can then escalate these encounters.

We are not recommending a wholesale revision or a delay of the SQF training, which we acknowledge has been developed with much deliberation and care. We do, however, recommend that the Court order the inclusion of this disability training as a discrete unit within the SQF curriculum.

12. LGBTQ-Specific Training and Community Engagement

The Facilitation Team convened three community forums specific to the LGBTQ community. In addition, there was significant representation of LGBTQ community members at two other community forums. Moreover, the Facilitation Team held focus groups geared toward the LGBTQ community.

A consistent theme that was raised during these sessions was the sense that this community was being targeted by the NYPD for unconstitutional stops often ostensibly for the offense of loitering with the intent to commit prostitution. Furthermore, it was widely reported to us that the police would frequently demean LGBTQ persons during encounters and stops by questioning their preferred gender identification, taunting them, making inappropriate use of gender pronouns, and speaking derisively about their preferred gender identification. During these encounters, officers would use aggressive/derogatory terms and body language as well as condescending tones. Not surprisingly, LGBTQ community members also reported that they are reluctant to report crimes committed against them because they fear further victimization by the police.

These concerns were also documented by the Office of the Inspector General for the NYPD in a report that it issued in November 2017 entitled “Review of NYPD’s Implementation of Patrol Guide Procedures Concerning Transgender and Gender Nonconforming People.” The report concluded that there were gaps in the Department’s implementation and training on Patrol Guide revisions that were issued in 2012. These revisions were intended to address substantially the same issues and concerns encountered during the JRP.

The Office of the Inspector General for the NYPD released its Fourth Annual Report noting the NYPD's responses to the November 2017 report. Of the nine recommendations from the DOI, five were accepted in principle, one was partially accepted, and three were rejected. Below we note the DOI recommendations that were rejected and the NYPD's response:²⁹⁶

DOI's RECOMMENDATION		NYPD RESPONSE
1	NYPD should create a memo book insert for officers with a summary of the revised LGBTQ protocols. Officers can use this for reference as needed.	NYPD asserts DOI's recommendation is unnecessary, pointing out that NYPD personnel are required to review all Patrol Guide revisions, which are accessible through Department-issued smartphones and tablets. NYPD also states that, as a matter of routine, the Department does not create a memo book insert for all Patrol Guide revisions, as they would become unwieldy. In the future, the Department is planning to transition to electronic memo books.
2	On a periodic basis, NYPD should make sure that police stations are using updated forms, particularly those documents that are intended to comply with the 2012 revisions.	NYPD states that ongoing compliance checks are not needed because the precincts discussed in DOI's Report now use the updated forms. NYPD further notes that officers were already instructed to use the updated forms, all of which NYPD is endeavoring to make electronically.

²⁹⁶Taken directly from the NYPD IG Fourth Annual Report retrieved from http://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/15_NYPD_IG_Fourth_Annual_Report_w_report%203.29.18.pdf

3	NYPD Internal Affairs Bureau’s complaint system should be configured to categorize and track all LGBTQ-related allegations that implicate biased conduct, and not just “profiling.” LGBTQ-related allegations involving bias would include violations of the 2012 Patrol Guide revisions and “offensive language.”	NYPD asserts IAB is presently capable of tracking profiling complaints, including allegations based on sexual orientation, gender, and gender identity. NYPD has not committed to tracking LGBTQ-related allegations implicating biased conduct that fall outside of “profiling,” noting that a category of "LGBTQ-related allegations," beyond profiling, cannot be effectively implemented.
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It is recommended that the Court order there be more training around LGBTQ communities and de-escalation. There should also be further and continued community engagement specific to this community. It is also recommended that the Court order that the Department monitor adherence to the 2012 Patrol Guide Revisions and take steps to ensure implementation. We note below those DOI recommendations that were partially and fully accepted in principle. These recommendations are fully aligned with the JRP recommendation.

DOI’s RECOMMENDATION		NYPD RESPONSE
1	NYPD should provide mandatory in-service training and accompanying resource materials on the 2012 Patrol Guide revisions to all uniformed members through the NYPD-U webinar	NYPD agreed to conduct a refresher course on the 2012 Patrol Guide revisions for members of service via its online platform, NYPD-U. NYPD, however, has not committed to the six-month timeframe recommended by DOI, reporting that

	platform. Training attendance and completion should be tracked to ensure that all member of the police force have received this training. NYPD should conduct this training within the next six months.	the Department will conduct this training by the end of 2018.
2	Community input should be carefully considered and incorporated as appropriate into the curriculum of officer training on LGBTQ issues.	NYPD reports that historically the Department's LGBTQ- related training has been developed with input from representatives of organizations from the LGBTQ community. These discussions are ongoing.

13. Implementing the Use of Civil Summonses for Trespass Enforcement by Extending the Criminal Justice Reform Act of 2016.

One of the police practices that the Monitorship and JRP are tasked with addressing is trespass enforcement in and around public housing and buildings enrolled in the Trespass Affidavit Program (“TAP”). During the course of the JRP, some residents of and visitors to public housing and TAP buildings expressed frustration at the volume of arrests for the crime of trespass. At the same time, some visitors and residents were concerned with the presence of intruders in the public spaces inside and outside of their buildings, which residents considered to be an extension of their homes.

The Facilitator recommends that the Court order the NYPD to adopt a new policy which encourages officers to issue a civil summons for trespass, rather than issuing a criminal summons or making an arrest for trespass. In effect, this recommendation calls on the City to extend the Criminal Justice Reform Act of 2016 (the “CJRA”) and its accompanying rules and establish a

civil violation for trespass in the administrative code, thus allowing a civil summons to be the primary enforcement tool for trespass in and around NYCHA and TAP buildings.

Separate and apart from the Monitorship and the JRP — and to its great credit — the City enacted the CJRA, which enabled the NYPD to issue summonses with civil penalties for low-level quality-of-life crimes, such as carrying an open container of alcohol, littering, unreasonable noise, or public urination. Prior to the CJRA, the NYPD frequently issued criminal summonses for such offenses, approximately 300,000 in 2015.²⁹⁷ The Criminal Court dismissed the majority of these low-level violations. For example, from 2003 to 2013, almost two-thirds of these cases were dismissed. *Id.* Nevertheless, because of the criminal character of the summonses, a disposition of guilty resulted in a permanent record. Additionally, if a person missed his or her summons' court date, a judge would issue a warrant for their arrest.

Now, by contrast, these low-level offenses may be treated as civil violations to be adjudicated in the City's Office of Administrative Trials and Hearings ("OATH"). The CJRA did not eliminate criminal penalties for these infractions, but rather, instituted the civil summons as the primary enforcement tool for them. One year after it came into effect, the CJRA has resulted in a 90 percent drop in criminal summonses, while crime continues to decline citywide. *See* CJRA One Year Later, New York City Council, <https://council.nyc.gov/the-criminal-justice-reform-act-one-year-later>.

As the law stands now, persons arrested or issued a criminal summons for trespass in or around TAP or NYCHA buildings can be charged with a violation of N.Y. Penal Law § 140.05 or § 140.10. Even the least punitive form of trespass, N.Y. Penal Law § 140.05, is categorized as

²⁹⁷ CJRA Fact Sheet, New York City Council, <https://council.nyc.gov/legislation/criminal-justice-reform>.

a “violation,” meaning that it is punishable by a term of imprisonment of up to 15 days, N.Y. Penal Law § 10, and it can result in a permanent record.

Accordingly, it is the Facilitator’s recommendation that the Court order the City to extend the CJRA to create a civil trespass violation in the City’s administrative code, and to adjudicate these cases in OATH. Such an approach would help address the concerns of some residents and minimize the issuance of arrest warrants and permanent records.

14. Trauma Informed Training – Community Impact

Consistent with the growing number of institutions adopting trauma-informed care and resiliency models nationally, we recommend that the Court order that the NYPD implement a program for training officers on trauma and the implications of trauma for public safety. The NYPD should seek to work with social service practitioners to teach officers more about the debilitating effects of trauma, and its manifestations for both officers and community members. One such model that could be used as an example is the Cambridge Police Department’s trauma-informed care training program.²⁹⁸

Several different organizations also have resources on trauma-informed care ranging from directly addressing police trauma to techniques for interactions with traumatized individuals.²⁹⁹ Having an awareness of trauma and its behavioral consequences can provide officers with context on issues of agitation, furtive movement, and even flight, which can be useful cues for officers to dispatch de-escalation techniques during interactions with the public.

²⁹⁸ Accessible at the City of Cambridge website: <https://www.cambridgema.gov/news/2016/09/cpdtraumatraining>

²⁹⁹ See, e.g., SAMHSA, Philadelphia Police Department, Vera Institute of Justice, and NACOLE.

This recommendation for trauma-informed training will lead to better and more constitutional policing.

SECTION VII: AREAS FOR POLICY CONSIDERATION

Beyond the 14 Joint Remedial Process recommendations, some suggestions were offered for policy changes that fell beyond the scope of the Joint Remedial Process. These suggestions will be discussed here and labeled “Areas for Policy Consideration.”

1. Need for Greater Resources to Accommodate Homeless Youth

After having met with numerous homeless advocacy groups and organizations during the Convening Phase of the JRP, it became clear that there was a lack of resources available to homeless youth in New York City. Officials at Covenant House, an organization that participated in two convening meetings, six focus groups, one leadership meeting, and one community forum, expressed that homeless youth were often turned away as a result of the limited number of short term shelter beds available. Many of the youth who were turned away tended to have more frequent contact with the NYPD simply because they are homeless.

It is commonsensical that youth who are unaccompanied, transient, and sleeping on the street are more likely to come into contact with law enforcement. And for some, if they were without shelter, they are more likely to resort to prostitution and drug dealing as a means to

survive. Beyond the typical risks facing homeless youth, contact with police greatly increases when a young person is homeless and living on the streets.³⁰⁰

According to the Coalition for the Homeless, “in recent years, homelessness in New York City has reached the highest levels since the Great Depression,” with a continued increase in the number of homeless youth.³⁰¹ Runaway and homeless youth in New York City are generally defined as unaccompanied youth. These youth are young people who have run away or were forced to leave their homes and are currently residing in temporary living situations.³⁰² The 2017 Youth Count Report noted that there were a total of 2,003 unaccompanied youth, up from 1,805 in 2016, and 1,706 in 2015.³⁰³ However, many homeless service providers and advocates would argue that the numbers are much larger, reaching higher than 3,500. It is well noted that the New York City Point in Time (“PIT”) count tends to miss large portions of runaway and homeless youth as the count does not include youth who couch-surf or may be engaged in survival sex work.³⁰⁴

³⁰⁰ See Youth Justice Board Center for Court Innovation, *Homeless Not Hopeless: A Report on Homeless Youth and the Justice System in New York City*, June, 2017, available at http://www.coalitionforthehomeless.org/wp-content/uploads/2018/02/RHY_Testimony_02132018.pdf

³⁰¹ New York City Homelessness: The Basic Facts, available at <http://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>

³⁰² See Hofmeister, B., & Routhier, G. (2018, February 13). Testimony of The Legal Aid Society and Coalition for the Homeless. New York City, New York.

³⁰³ These numbers include both sheltered and unsheltered unaccompanied youth for the years 2015-2017, per the youth count report for these years. The youth count report is a report written by the Center for Innovation through Data Intelligence, a research/policy center located in the Office of the Mayor of the City of New York. Each year in an effort to identify areas of service need homeless youth are counted as part of the point-in-time (PIT) count of sheltered and unsheltered homeless adults, families, and youth is conducted. Please visit <http://www1.nyc.gov/site/cidi/projects/homeless-youth-count.page> for more information about the NYC Youth Count.

³⁰⁴ See *id.* at 2.

The number of available beds in New York City is well documented. According to the Runaway and Homeless Youth testimony presented to the New York City Council Committee on Youth Services, the Department of Youth and Community Development (“DYCD”) has contracted 751 beds to be open through 2019, with another 309 beds for transitional independent living, and 236 beds for crisis.³⁰⁵ Although the number of funded beds have increased, the beds available for short term crisis placement only increased by 20, speaking to an immediate need for more short term crisis beds.³⁰⁶

An increase in the number of short term crisis beds available to homeless youth will not only provide short term housing, but more importantly provide access to services that can help stabilize these young people, decreasing the likelihood that they will engage in risk taking behavior. This suggestion is not intended to be a cure all, but it could definitely be a step in the right direction, creating an opportunity for reducing the rate at which homeless youth are involved in investigative encounters with the NYPD.

2. NYCHA/TAP Responsibility

The following recommendations arise from community input that was received during the *Davis* and *Ligon* portions of the JRP.

A major concern raised by residents of Trespass Affidavit Program (“TAP”) buildings and NYCHA developments who participated in our process is the lack of basic security at those facilities. The NYPD’s Trespass Affidavit Program, also known as the “Operation Clean Halls” program in the Bronx, allows private property owners to register their buildings with the NYPD

³⁰⁵ See http://www.coalitionforthehomeless.org/wpcontent/uploads/2018/02/RHY_Testimony_02132018.pdf

³⁰⁶ See *id.*

providing the NYPD access to the property to stop, question, search, and, if necessary, arrest individuals who are suspected of trespassing. Landlords are required to sign a document renewing their participation in the program every six months. A similar agreement exist between the NYPD and NYCHA, allowing police officers to conduct vertical patrols throughout public housing developments in search of trespassers and other criminal actors.

In addition to the training and policy recommendations by the Monitor, it is suggested that the NYPD impose a minimal investment in security by building owners as a condition of enrollment in the TAP program. A landlord should be required to install working locks at every entrance within six months of a building's enrollment into TAP. The TAP program is a voluntary program offered by the NYPD in an effort to provide greater safety for TAP residents. Therefore, landlords who are receiving the benefits of this program should be required at a minimum to maintain working locks on their buildings.

This recommendation extends to NYCHA housing developments. Broken locks, intercoms, and doors were reported to be commonplace in NYCHA developments. NYCHA residents repeatedly expressed the view that better building security could significantly reduce the need for the NYPD to heavily patrol the developments.

NYCHA itself attempted to address these security problems by engaging with the Citywide Council of Presidents, the public housing resident leadership, and the NYPD to discuss how to improve security. Ultimately, this collaboration resulted in a Safety and Security Task Force Report that was jointly issued by NYCHA and the Citywide Council of Presidents in 2011.

The Task Force Report listed some basic improvements to building security in a section of the Task Force Report called Access Control Recommendations. It is recommended that NYCHA adhere to its own recommendations which were listed as follows:

NYCHA has identified the need to secure building entrances as a priority that is essential to improving the security of the developments. To correct the above conditions, NYCHA plans to install “multi-layered” access control, consisting of mechanical door locking hardware, electronic access control and direct call intercoms. This design will provide a higher level of security by eliminating the need for keys (residents will be issued electronic key tags), adding intercoms that do not rely on telephone company infrastructure and providing more durable components to withstand the traffic and reduce the effects of vandalism that building entrances encounter.

3. Interactions Between NYCHA Tenants and the NYPD

Focus group participants from NYCHA housing developments often felt overly surveilled and heavily policed. Participants expressed that the presence of NYPD floodlights and towers often felt like an “occupation by militaristic forces.” NYCHA residents in both the focus groups and community forums complained that the floodlights installed throughout many of the developments were unnecessary and highly intrusive. Along with the recommendation that the Task Force improvements to the security of the buildings be ordered, community residents asked that the NYPD be required to remove floodlighting that is harshly illuminating or that NYCHA install and/or maintain conventional street lamps on the sidewalks and inner courtyards of the developments to provide enhanced security in a less intrusive manner.

Additionally, there remains concerns around scaffolding within housing developments. What is being dubbed as “zombie scaffolding” continues to create numerous concerns and

complaints by NYCHA residents.³⁰⁷ Focus group and community forum participants cited fear of victimization in these scaffolded areas. In addition, many expressed a concern that officers would be limited in their case solving attempts because scaffolding tended to cover cameras.

Lastly, participants from both focus groups and community forums expressed concerns related to police vehicles being driven on sidewalks and recreational areas (*e.g.*, basketball courts, playgrounds, etc.) within housing developments. They urged that the NYPD consider developing a policy that prohibits officers from driving on sidewalks in housing developments, particularly near common spaces, absent exigent circumstances.

4. NYPD Practices at Subway Stations

In the wake of the recent decision by the Manhattan's District Attorney's office to become more discriminant in its prosecution of turnstile jumping, there continues to be a call for a more proactive and less reactive law enforcement approach to this problem. According to a recent report written by the Community Service Society, entitled "*The Crime of Being Short \$2.75: Policing Communities of Color at the Turnstile*," communities of color are disproportionately affected by fare evasion arrests.³⁰⁸ The Facilitation Team heard at some community forums, leadership meetings, and focus groups that the NYPD positions officers hidden behind turnstiles and gates to apprehend fare beaters. Community members voiced deep frustration at this policy, questioning the intent behind it. People repeatedly urged for a more

³⁰⁷ Zombie scaffolding is a term used to describe the presence of scaffolding (sometimes for years) without any work being done. NYCHA has received numerous complaints regarding tenants' safety concerns. Some of these concerns were addressed in a notice from NYCHA General Manager, Michael Kelly dated August, 5, 2017, available at <https://medium.com/@NYCMayorsOffice/addressing-scaffolding-concerns-at-nycha-developments-92b4089bcd31>

³⁰⁸ See <http://www.cssny.org/news/entry/css-report-details-targeting-of-high-poverty-black-communities-for-fare-eva>

commonsense policy of positioning officers in front of turnstiles and gates to act as a deterrent. As in the finding contained within the Community Service Society report, community members voiced deep frustration about how these practices were seemingly focused on subway stations in minority neighborhoods.

The collateral consequences of these practices are far reaching, leading to criminalization of youth and the poor. It is recommended that the NYPD give serious consideration to revisiting these policing practices in the interest of, among other things, mitigating the sense of distrust that members of affected communities have of the Department and improving police-community relations.

5. Community Investment

As of 2017, there were 176,066 public housing apartments in 2,462 buildings, in 326 developments throughout the five boroughs; however, there were only 145 community centers and youth programs funded by NYCHA or otherwise.³⁰⁹ During recent years, community programming for young people living in and around NYCHA developments has taken a sharp decline, with 61 community centers closing. During the *Davis* focus groups, participants were asked “*What role would you like community groups or government agencies to play in supporting a safe neighborhood?*” Most, if not all, participants expressed a desire for more community centers, after school programs, and Police Athletic League programs. Research has long addressed the effect of decreased programming in community centers and after school programs and its correlation to delinquency and/or increased contact with police.

³⁰⁹ See <https://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf> and <https://data.cityofnewyork.us/browse?tags=nycha>

Policymakers should also seriously consider a large investment in programs that promote crime prevention as part of public safety. The Cure Violence programs associated with the Crisis Management System of the New York City Department of Health and Mental Hygiene have collaborated extensively with the JRP. They have vast experience in successfully mediating gun violence incidents in cooperation with the NYPD. As we indicated earlier, in footnote 288 of the Community Engagement recommendation, “the Facilitation Team found the violence interrupters were well connected to their communities while also maintaining meaningful relationships with the NYPD” The violence interruption programs should be more fully funded and supported by the City of New York. They are reducing shootings by as high as 80% in some of their target areas through intensive, on the ground, mediation efforts. The NYPD should foster even closer relationships with these programs, as they are effective collaborators in reducing gun violence and all of its tragic consequences. The City of New York should seek to expand and provide greater support and resources to these programs.

6. Repeal of Civil Rights Law § 50-A

The Mayor and the State of New York should reevaluate their interpretation of Civil Rights Law § 50-a, which prohibits the Department from sharing information which has historically been open to the public. Many groups agree that the current interpretation of Civil Rights Law § 50-a is overbroad.

Access to public records is presumed under New York’s Freedom of Information Law (“FOIL”). However, under New York City’s current interpretation of Civil Rights Law § 50-a, access to police disciplinary records is not generally available. This interpretation undervalues public access to information relating to officer accountability for misconduct in the name of officer privacy and safety concerns.

Under section 87 of FOIL, “[a]ll records of a public agency are presumptively open to public inspection, without regard to need or purpose of the applicant.”³¹⁰ As explained in the Legislative declaration to FOIL:

a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

The people’s right to know the process of governmental decision making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. The legislature therefore declares that government is the public’s business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.³¹¹

Notably, under FOIL the presumptive right to public inspection extends to a government employee’s disciplinary records.³¹² For decades “personnel orders,” which among other things, included information regarding disciplinary actions taken with respect to police officers, were publicly posted in the offices of the Deputy Commissioner for Public Information. On May 27, 2016, after the Legal Aid Society filed a FOIL request seeking disciplinary summaries published in the personnel orders dating back to 2011, the City denied Legal Aid’s FOIL request and stopped the practice of posting personnel orders. The stated reason was Civil Rights Law § 50-a, which provides that “personnel records [of a police officer] used to evaluate performance toward continued employment or promotion . . . [are] considered confidential” In this way, Section

³¹⁰ *Buffalo News, Inc. v. Buffalo Enter. Dev. Corp.*, 84 N.Y.2d 488, 492 (1994).

³¹¹ N.Y. Pub. Off. Law § 84. Under FOIL, an agency “may deny access to records” that “are specifically exempted from disclosure by state . . . statute.” *Id.* § 87(a)(2) (emphasis added).

³¹² See *Mulgrew v. Board of Educ. of City Sch. Dist. of City of N.Y.*, 31 Misc. 3d 296, 302 (Sup. Ct. N.Y. Co.), *aff’d*, 87 A.D.3d 506 (1st Dep’t 2011) (explaining that courts have “repeatedly” ordered the “release of job-performance related information, even negative information such as that involving misconduct”).

50-a is invoked by the City to prevent public access to discipline information — even summaries of substantiated misconduct — including information that had been publicly available to journalists for decades.

But nothing in the law compels this result. The City chose to interpret “personnel records” broadly, so that they include summaries of misconduct determinations, and has chosen not to produce the records despite the authority to do so under FOIL. In 2018, however, the NYPD decided to publish anonymized summaries of allegations against officers and the disciplinary actions taken in response by the Department. The NYPD’s decision to publish this information is consistent with the need for greater transparency and accountability stressed in this Report and with historical interpretation of Public Law 50-a. The NYPD’s effort has received stiff opposition from the Patrolmen’s Benevolent Association, which, citing Public Law 50-a, has sued to enjoin the publication of this data and has obtained a temporary restraining order.³¹³

Traditionally, section 50-a has been invoked in two contexts — when information is sought by the public or public interest groups under FOIL or in response to subpoenas in civil and criminal proceedings. Not surprisingly, section 50-a has been widely criticized.

New York is one of only three states that grant police officers special confidentiality protections.³¹⁴ As explained by New York State’s Committee on Open Government, which is charged with overseeing FOIL:

³¹³ See *Patrolmen’s Benevolent Society v. De Blasio*, No. 0153231/2018. Earlier in 2018, the PBA sued the City to prevent publication of BWC footage. See *Patrolmen’s Benevolent Society v. De Blasio*, No. 0150181/2018.

³¹⁴ See Robert Lewis, Noah Veltman & Xander Landen, “Is Police Misconduct a Secret in Your State?”, WNYC News, Oct. 15, 2015 (hereafter “Lewis, Veltman & Landen 2015”). To be more precise, under New York,

New York is virtually unique among the states in its refusal to apply the same transparency to police and other uniformed services as applies to all other public employees. Our study of the laws of all fifty states reveals that the great majority treat records pertaining to police officers in exactly the same manner as the treatment of records pertaining to other public employees. No other state provides the unique protection afforded in Civil Rights Law § 50-a.³¹⁵

As a general matter, police disciplinary records are available to the public in Alabama, Arizona, Connecticut, Georgia, Florida, Ohio, Maine, Minnesota, North Dakota, Utah, and Washington, although records of active or unsubstantiated complaints are often not made public. Minnesota law permits public access to “the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action.”³¹⁶ Information is also available on a more limited basis in Arkansas, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Vermont, and West Virginia. For instance, the Hawaii statute makes public employee misconduct that results in suspension or discharge.³¹⁷

Even before the City’s decision to stop posting personnel orders, the Committee on Open Government had called for the amendment or repeal of Civil Rights Law § 50-a, arguing that “the public needs and deserves transparency surrounding these government officials [*i.e.*, police officers] who exercise vast power over peoples’ lives.” Following the City’s recent refusal to

California, and Delaware law, police officer personnel records are deemed confidential. Likewise, in Alaska, Colorado, Washington, D.C., Idaho, Iowa, Kansas, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Virginia, and Wyoming, a public records request for a police officer’s disciplinary history is unlikely to be successful. The WNYC report is *available at* <https://www.wnyc.org/story/police-misconduct-records/>

³¹⁵ 2014 Annual Report; *see also* Lewis, Veltman & Landen 2015.

³¹⁶ 22 Minn. Stat. Ann. § 13.43 (2016).

³¹⁷ *See* 24 Haw. Rev. Stat. Ann. § 92F-14 (2016).

release discipline information, community groups and politicians, including Governor Cuomo, had criticized the law and called for its repeal or reform.

New York’s appellate courts have thus far upheld the NYPD’s restrictive application of Civil Rights Law § 50-a. In the view of these courts, the answer for proponents of greater transparency can only be found by legislative action or a ruling by the Court of Appeals.³¹⁸ While legislation has been introduced, as of the date of this writing, none has passed.

The City has taken the position that Civil Rights Law § 50-a itself bars access to disciplinary records.³¹⁹ However, neither legislation nor court victories are needed for the Department to produce the basic information it has always produced, including summaries of misconduct substantiated by investigations conducted by the IAB or the CCRB. No court has required the City to interpret personnel records broadly; indeed, no court has ever held that the City is required to withhold information by Civil Rights Law § 50-a. Furthermore, “[n]othing in the Freedom of Information Law [] restricts the right of the agency if it so chooses to grant access to records within any of the statutory exceptions, with or without deletion of identifying

³¹⁸ See *New York Civil Liberties Union v. N.Y. City Police Dep’t*, 148 A.D.3d 642, 642 (1st Dep’t 2017) (“We appreciate the various policy arguments made by petitioner and *amici curiae*, and agree that the public has a compelling interest in ensuring that respondents take effective steps to monitor and discipline police officers. Likewise, we recognize that the principles of confidentiality that underlie section 50-a may very well be protected by the redaction of identifying details from the disciplinary decisions sought here. However, as an intermediate appellate court, we cannot overrule the Court of Appeals The remedy requested by petitioner must come not from this Court, but from the legislature or the Court of Appeals.”); *Luongo v. Records Access Officer, Civilian Complaint Review Bd.*, 150 A.D.3d 13, 13 (1st Dep’t 2017) (“Petitioner’s remedies, under our tripartite system of government, rest with the Legislature as the policy making branch of government, not the courts, which are tasked with interpretation of the laws.”).

³¹⁹ See, e.g., Greg B. Smith, Kenneth Lovett, Graham Rayman, “De Blasio calls on Albany to nix law that hides NYPD officers’ disciplinary records; cop unions protest,” *New York Daily News*, Sept. 1, 2016 (quoting de Blasio as stating, “I believe we should change the state law and make these records public The current state law that we have to honor — that does not allow for transparency”).

details.”³²⁰ Finally, “FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government.”³²¹

In short, the City’s position that it is compelled to deny access to records may not be supported by the law.³²² While legislation is favored to remove the shield provided by Civil Rights Law §50-a, none is required for the City to restore transparency. The City’s restrictive application of section 50-a undercuts transparency and accountability, which in turns threatens the long-term impact of the reforms implemented to remedy the Department’s unconstitutional stop-and-frisk practices, not to mention the public’s trust of the Department. Civil Rights Law § 50-a and the City’s interpretation of it effectively prevents the public from performing its traditional watchdog function and the critical oversight needed once the Monitor’s term ends. The New York state legislature should pass legislation remedying this gap in transparency and accountability by repealing Civil Rights Law § 50-a.

7. Cultural Competency Training

Community members in attendance at community forums and those who participated in focus group discussions often expressed concerns around police officers’ lack of cultural competence. Cultural competency is loosely defined as the ability to understand and interact with cultures and belief systems that are different from one’s own. Community members felt that the

³²⁰ *Short v. Bd. of Managers of Nassau Cty. Med. Ctr.*, 57 N.Y.2d 399, 404 (1982).

³²¹ *Buffalo News, Inc.*, 84 N.Y.2d at 492 (internal quotation marks omitted).

³²² In point of fact, “The NYPD provided the monitor team with the CCRB complaint counts per officer for the length of their careers” in connection with the BWC pilot program. The Monitor has published in part the result of analysis of some of this data, including that “Treatment officers had a total mean of 1.31 CCRB complaints with a range of 0-17 complaints. Control officers had a total mean of 1.54 CCRB complaints with a range of 0-25 complaints. Since career lengths vary . . . , the number of complaints was divided by time of service to estimate each individual officer’s CCRB complaint rate per year of service.” Sixth Report of the Independent Monitor, The NYPD’s Body-Worn Camera Pilot: Research and Evaluation Plan (June 29, 2017).

absence of cultural competency training for police officers combined with any previously held stereotypical notions about these communities often resulted in misinterpretation of behaviors and or otherwise targeting community members. The collateral damage of this void often resulted in severely damaged police-community relations.

As a result of these concerns, participants suggested cultural competency trainings that would help officers better understand the communities that they work within. This training should be an extension of, but not be mistaken for, Fair and Impartial Policing training workshops. As written by Dr. Mitchell Rice in his 2008 primer, “cultural competency is not affirmative action, multiculturalism, diversity training, equal employment opportunity, or political correctness, but instead, it is an integration and transformation of knowledge about groups into specific policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes.”³²³ Such trainings will enable officers to develop a level of cultural awareness that helps them better understand the communities that they work in, thereby exhibiting actions that take into account the cultural context of the encounters. An earlier suggestion by the 1998 Mayor’s Taskforce on Police Community Relations suggested such a curriculum. The Taskforce stated that “the Department should create a proactive curriculum which exposes student officers to the diverse and changing nature of the City’s communities, that challenges them to become cognizant of and question the feelings, assumptions and perceptions which influence their behavior, and equips them with the

³²³ Rice, M.F. (2008). *A Primer for Developing a Public Agency Service Ethos of Cultural Competency in Public Services Programming and Public Services Delivery*. Journal of Public Affairs Education and Administration.

necessary tools to effectively serve all communities with courtesy, professionalism and respect.”³²⁴

8. Neighborhood Coordination Officers

During the course of the JRP and specifically in the community forums, we had the pleasure of encountering several Neighborhood Coordinating Officers (“NCO”) who were genuinely interested in improving community relations and developing problem solving strategies in their precincts. This model, along with the use of sector officers to engage community members, is long overdue and the NYPD deserves great credit for its implementation.

We recommend that this program be improved. Improved simply means that the quality of such policing extends beyond the few NCO officers assigned and that these officers are not the first to be pulled away for other assignments. There are a limited number of officers currently assigned to this role, and when those assigned officers are regularly pulled away this affects the NCO program as whole. A consistent message from community members was that NCOs were often the first officers pulled away for special events and assignments and that there are simply not enough of them. Many members of impacted communities want expanded opportunities for meaningful interactions with their NCO officers.³²⁵ To be clear, this is not a recommendation for increased funding to improve or expand the NCO program, but instead to improve it within the budgetary bounds already allotted.

³²⁴ Task Force on New York City Police/Community Relations: Report to the Mayor, March 1998.

³²⁵ The NYPD has since expanded their NCO program into a leadership philosophy central to their internal reform process. Program expansion is underway, and by the publishing of this report, should be implemented in over 60 commands throughout the City.

9. Community Engagement – Reconciliation

The NYPD should begin to infuse restorative justice efforts into its neighborhood policing strategy. The National Initiative for Building Trust and Justice houses a great number of toolkits and resources on reconciliation for police departments which may prove helpful to the NYPD. Greater emphasis should be put toward this effort through command officer training, Community Council meetings, public education campaigns, and Office of Community Affairs forums and fairs. The NYPD should develop effective techniques and strategies to foster community partnerships, support restorative justice initiatives, and ensure precinct-level accountability for improving public legitimacy. It is important that such efforts come from the top down, and more importantly that such a message is reinforced at every level of operations. While reconciliation is an undertaking which is as broadly defined as it can be far reaching, a strategy of incorporating reconciliation into the NYPD's current programs and trainings has the potential to inculcate systemic change, including with respect to the issue of mistrust.

10. Police Trauma – NYPD Employee Assistance Program

During the Leadership Meeting Phase, community service organizations recommended that the NYPD further develop, augment and support its existing programs that assist officers in coping with trauma. Policing is a high stress, trauma-oriented job, so seeking support should be normalized for police officers.

It was recognized that police officers are exposed to various forms of vicarious trauma by constantly responding to traumatic situations in addition to any trauma they may personally experience in the course of their duties. It was further explained that just as implicit biases affect how officers interact with the public, trauma can play an important role because it causes hypervigilance and feelings of being threatened, which it turn may result in escalation of conflicts.

A critical aspect of addressing the mistrust between civilians and police is addressing the stress, trauma, and at times, disillusionment that officers carry, and take with them into the field. NYPD should ensure that support programs for officers are easily accessible, solution-oriented, and provide officers with strategies to manage trauma in a way that does not diminish their experiences or their competence in the field. It is recommended that the Court order that the NYPD enhance its current officer support functions, and incorporate workshops in collaboration with outside agencies, to assist officers in developing tools to identify and manage their own trauma, and better recognize how it affects their work in the community. The NYPD should also find ways to further encourage officer participation in these programs, as officers may be reluctant to seek counseling because of cultural reasons at the Department that make officers wary of admitting vulnerability.

11. Training for Plainclothes Police Officers

Community participants of focus groups and community forums often cited plainclothes units as the worst offenders of unconstitutional SQF and trespass enforcement. Focus group participants shared experiences of plain clothes officers “rolling up” on them for no apparent reason. These officers were also labeled by community members as “D’s”. Participants expressed that these officers engaged in regular and frequent stops without justification. They further expressed that plain clothes police often targeted certain individuals for repeated stops. This issue was frequently raised throughout the JRP, with the experience of contact with plainclothes officers described as being fraught with tension, fear, and conflict.

It is our understanding that the SQF and trespass enforcement training for plainclothes units is being developed. We urge that in the interest of promoting safe, respectful, and constitutional interactions with the public, that the SQF and trespass enforcement training for plainclothes units be consistent with the comprehensive curriculum used to train uniformed officers, including the implicit bias and procedural justice elements.

12. Criminal Court Search and Seizure Inquiry at Arraignment

In a city that at one point had over 685,000 stops-and-frisks in a year,³²⁶ it is surprising that there was not a commensurate increase in the number of suppression hearings with police officers called to testify about the bases for these stops. Under the exclusionary rule for Fourth Amendment violations,³²⁷ the Supreme Court determined that suppression of tainted evidence

³²⁶ There were 685,724 reported stops-and-frisks in 2011. See NEW YORK CIVIL LIBERTIES UNION, *Stop and Frisk Data*, available at <http://www.nyclu.org/content/stop-and-frisk-data>. As noted elsewhere in this Report, officers were not preparing UF-250 for every stop they made, meaning the actual number of stops made in 2011 exceeds 685,724.

³²⁷ See *Weeks v. United States*, 232 U.S. 383 (1914); *Mapp v. Ohio*, 367 U.S. 643, 656 (1961).

was necessary to deter police officers from violating constitutional rights.³²⁸ But suppression hearings in the Criminal Court are few and far between.³²⁹

While the Supreme Court recognized the limitations of suppression as a means to control police behavior,³³⁰ it nevertheless stated that “[u]nder our decision, courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires.”³³¹ As Federal Court Judge Jack Weinstein wrote regarding *Terry*, “Active policing of the police by trial courts was noted as serving a ‘vital function.’”³³² The idea that courts can promote constitutional policing by conducting suppression hearings is not limited to *Terry*. As then-Chief Justice Burger stated almost fifty years ago, “suppression of evidence in these cases [is] imperative to deter law enforcement authorities from using improper methods to obtain evidence,”³³³ and that law enforcement would indeed be deterred if evidence was “suppressed often enough.”³³⁴

³²⁸ See *Mapp*, 367 U.S. at 656.

³²⁹ In fact, there is no readily available data kept by any state agency regarding the number of suppression hearings held or the outcomes of those hearings. See Steven Zeidman, *Policing the Police: The Role of the Courts and Prosecution*, 32 Fordham Urb. L.J. 315, 321 (2005). The Criminal Court of the City of New York Annual Report lists the number of “pre-trial hearings commenced,” but does not delineate the type of pre-trial hearing, whether the hearing was actually completed, and, most important, the outcome. See OFFICE OF THE CHIEF CLERK OF THE N.Y. CITY CRIM. CT., CRIMINAL COURT OF THE CITY OF NEW YORK ANNUAL REPORT 2011 6 (Justin Barry ed. 2012), available at <http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2011.pdf>

³³⁰ See *Terry*, 392 U.S. at 14-15.

³³¹ *Id.* at 15. Similarly, prosecutors have a special duty to do justice; a requirement that emphasis procedural validity over obtaining convictions.

³³² Jack B. Weinstein & Mae C. Quinn, *Terry, Race and Judicial Integrity*, 72 St. John’s L. Rev. 1323, 1328 (1998) (quoting *Terry*, 392 U.S. at 12).

³³³ *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 413 (1971) (Burger, C.J., dissenting).

³³⁴ *Id.* at 415.

In addition, during the Leadership Meeting Phase, we received feedback that under the current criminal procedure law in New York,³³⁵ as applied, there is no discovery process for ascertaining the issues connected with a stop until the beginning of a trial. The practical result is that because most cases result in a plea deal, there is no opportunity to obtain discovery about stops in most cases.

For these reasons, we believe that judges should be encouraged to ask the prosecutor, early in the proceedings, for the factual predicate of the search and seizure in each case they hear. Instead of asking “What’s the offer?” or “Is there a disposition?” at the start of each arraignment, judges should ask “What is the basis for the stop and arrest?” This inquiry need not be particularly time-consuming, but would at least allow the Criminal Court to on some level monitor police/citizen interactions on a regular basis. In addition, Criminal Court judges should consider, where appropriate, holding more suppression hearings that would test the validity of stops in light of the unconstitutional policing that resulted in the *Floyd*, *Davis*, and *Ligon* litigations.

³³⁵ See CPL Article 240; *People v. Rosario*, 9 N.Y.2d 286 (1961).

SECTION VIII: PROCESS OBSERVATIONS AND LESSONS LEARNED



Introduction

The Joint Remedial Process (“JRP”) was an opportunity to better understand the issues and experiences of impacted individuals, based on qualitative feedback from communities affected by the New York City Police Department’s (“NYPD”) stop, question, and frisk and trespass enforcement policies (“SQF”), and to cultivate meaningful engagement between these communities and the NYPD. Relying on national trends supporting community input in reform efforts, the Facilitation Team sought to design a process which could be used as a model for continued collaboration between police departments and the communities they serve. As such, it became increasingly important that as the process was developed and executed, careful attention was paid to assessing the effectiveness of our methods for possible reproduction.

This section provides a review of the Facilitation Team’s observations at each Phase of the JRP, and provides some additional suggestions on how some of these methods could be implemented or revised to accommodate other jurisdictions and cities of varying sizes. We also

share this information in the hope that it might assist organizations and law enforcement agencies seeking to replicate this process. Each section provides a brief summary of the topline issues and ideas that presented themselves during the planning and implementation of the process. These ideas can be used as a guidepost for future discussion and planning.

Convening Phase

As the initial step in the development of the remedies process it was critical that the Facilitation Team developed a strong base that included individuals and organizations that would be willing to assist in the development and implementation of the JRP. In order to do that, it was important to take a step back and review the goals of the JRP — namely to get meaningful feedback on reforms from impacted community members and to provide a framework for addressing police-community relations in New York City. The convening stage was developed as a means to develop relationships with community organizations and other New York City actors. This in turn created opportunities for these organizations and individuals to actively engage in this community engagement process by, among other things, populating focus groups, co-hosting community forums, participating in leadership meetings, and/or providing white papers. In review, we raise several themes in the development of this Phase and the JRP overall, including:

- Identifying Issues and Outreach
- Figuring Out the Goal
- Issues of Process Design
- Roles and Responsibilities of the Facilitation Team
- Effects of Changes in Political Climate

Identifying Issues and Outreach in the Convening of the JRP

In order to develop a robust process the Facilitation Team needed to better understand the scope of the issues at hand beyond the SQF statistics that have been publicly available. In addition to developing a greater understanding of the scope of the problem, it was important to understand how this process aligns with prior community engagement processes in other jurisdictions. Using the community engagement efforts in Cincinnati, Seattle, and elsewhere as a guide, the Facilitation Team placed seeking several inputs into the structure of the process a priority. Stakeholder groups would be the impetus for this input. It was therefore important that the Facilitation Team identify entities and representatives who were familiar with the SQF and trespass enforcement, either by their mission or their connection to communities impacted by these policies. In consultation with plaintiffs' counsel and the NYPD, a list was generated that included several elected officials and community groups for initial outreach, with the option of expanding outreach as necessary. In order to cultivate these working relationships, the Facilitation Team set up a series of internal meetings to discuss the development of the JRP.

These early meetings helped the Facilitation Team sift through ambiguities and challenges. The following questions, generated during early planning meetings, helped develop a focused process:

- What does a Joint Remedial Process look like?
- Who are the communities most affected?
- How do we define community?
- How do we penetrate these communities?
- How do you conduct outreach?
- How broad or narrow should the outreach be?

Given the mandate of the Joint Remedial Process, it was critical to identify the communities most affected by SQF practices. We determined that the best way to identify these communities was through the use of publicly available SQF and trespass enforcement data.

We further determined the best way to gather robust data from these communities was through multiple phases and varied means of soliciting community input. This would allow the Facilitation Team to gather varied input from a diverse set of perspectives that included both individual and collective voices.

Having had early conversations on the issues from different community groups, the Facilitator thought it important that communities most impacted feel as if their concerns were heard and carefully considered rather than just quantified. With this in mind, the JRP Team developed a streamlined process with a simplified series of phases aimed at gathering a wealth of information, giving community members a space for catharsis, and collective brainstorming, while also providing opportunities for interactions between police officers and community members. This allowed the Facilitation Team to receive direct input from police officers while at the same time fostering better police-community relations.

Figuring Out the Goal of the Process

Contending with the potential for wide and varied input meant that the Facilitation Team would need to navigate a relatively neutral path toward the final recommendations and reforms. This presented two issues, whether inputs should be regarded based solely upon consensus, or whether the goal of the process was to recommend mandated reforms and suggested ideas for

change.³³⁶ Moving forward, it was decided that information from a wider audience would be ideal, rather than to restrict input based upon the development of an arbitrary structure. The Team decided to cast a wide net for information gathering.

Issues of Process Design

There were several options available for the initial information gathering phase — these included a traditional survey, a participatory action research survey or a focus group process. There are distinct differences between these research methodologies. Due to the magnitude of information gathering the JRP would require, the Team had to contend with how best to move forward with developing the process structure. Initially, the Team considered a survey for gathering such extensive input. The Facilitator initially sought out entities to assist in the development of this survey. After learning more about participatory action surveys, the Team considered a proposal from the City University of New York (“CUNY”) for gathering community feedback. The NYPD, however, was not amenable to the use of a participatory action survey approach.³³⁷

Facilitation Roles & Responsibilities

As a result of our consideration of various methodologies for community engagement and information gathering, the Team developed a better understanding of the role of the Facilitator and Facilitation Team in relation to community groups. Given the unique nature of this process, the Team had to make determinations about the responsibilities of the Facilitator after several

³³⁶ These issues were recurring throughout the varying phases of the JRP before resolving in the Final Report all feasible recommendations, and reporting upon those outside of the scope of the JRP.

³³⁷ One of the other issues we found with the survey model was that it lacked a component for the discussion of issues between community members, limited the information we could receive based on response options, and the complexity of information we received which might be helpful for generating additional recommendations.

conflicting discussions with the New York City Law Department, NYPD, plaintiffs' counsel and other stakeholder groups. For example, plaintiffs' counsel and CPR argued that the JRP should function as a community-driven process, instead of as a process supervised by an independent and impartial Court-appointed Facilitator. Clearly, this might affect the outcomes of the information gathering process. This issue was recurring throughout the course of the JRP.

For the purposes of providing community centered guidance, the Facilitator decided to convene an Advisory Committee. Given the Facilitator's position that the JRP serve in some capacity as a healing exercise, the Advisory Committee was convened to create opportunities for community members including the class action plaintiffs, clergy, academic leaders, police union representatives, as well as NYPD and NYCHA, to play a significant role in steering the Joint Remedial Process toward a cooperative end for all parties involved. While the mission of the Advisory Committee was noble, it was problematic in its execution. Representation among the constituent groups was inconsistent. Due to this inconsistency, discussions were often repetitive. Member fatigue soon set in consequently affecting the discussions and attendance. As an alternative, the Team decided to collapse meetings into smaller working groups, invite community-based members to attend All-Parties meetings,³³⁸ and agree to convene fewer, more topic-specific, meetings moving forward (these changes are discussed in further detail in the 'Overarching Observations' section below).

³³⁸ All-Parties meetings were usually attended by only plaintiffs' counsel and NYPD executive leadership, but over time and under advisement of plaintiffs' counsel, CPR members of the Advisory Committee were invited to attend which allowed us to collapse the Advisory Committee schedule to an "as-needed" basis.

Changes in Political Climate

One additional process observation in this section was navigating the changes in the political climate since 2014. At the time the JRP was unfolding, several high profile incidents in which allegedly excessive force was used or there was an unjustified shooting by a police officer occurred locally and nationally. The JRP Team was faced with the challenge of navigating the existing tensions in communities not just based upon SQF and trespass enforcement in New York City, but based upon events and news media surrounding similar tensions across the nation. The Facilitation Team sought to develop a local community engagement process which was in many ways related and yet separate and apart from the events that were taking place at that time. The Facilitation Team recognized the importance of addressing allegations of excessive force or unjustified shootings. While it was also understood that investigative encounters are often the antecedent to these types of incidents, the JRP was limited in its jurisdiction to unconstitutional SQF, and trespass enforcement.

Because it was important to the Facilitation Team that community members provide direct and meaningful input into the JRP, it became increasingly important that care be given not to stifle input or displace SQF from the context in which it arose. Instead greater care and attention was placed on meaningful engagement, skillful facilitation of focus groups and community discussions, and conscientious redirection during all of these input sessions to the central jurisdictional issues of SQF and trespass enforcement in New York City.

Focus Group Phase

The Focus Group Phase presented the Facilitation Team with its own unique set of opportunities and challenges. Below, we highlight some of the topline concepts which could be useful as a catalyst for continued inquiry and discussion.

Focus Group Questions

As covered in the Focus Group Phase section of the Final Report, a list of questions was generated in consultation with plaintiffs' counsel, NYPD executives, and CPR for community feedback. Questions were carefully drafted and negotiated to be as neutral and open ended as possible. This was not without its challenges, however. There were challenges negotiating the types of questions that were asked, and in striking a balance between the stakeholders for input into the development of questions.³³⁹ After using the agreed upon questions during the initial set of focus groups, the focus group facilitator and co-facilitator determined that questions should be revised as need to meeting the nuanced requirements of an individual focus group. While great care was taken to standardize as much as possible, in some groups questions had to be reframed to ensure context and understanding by the participants. The Facilitation Team was able to garner information through the use of questions, ideas, and formats which were as similar as possible, while creating space for the type of group variance which could yield different outcomes in responses. For example, the question "Do you feel safe in your neighborhood?" often yielded disparate responses depending upon the group. Many community members responded in context to their feelings of safety with regard to their neighbors and their community, while the majority responded in regard to police officers. These responses laid the groundwork, at times, for varying sets of probing questions which helped the focus group facilitators to develop more meaningful inferences about the nature of police-community relations in these groups.

³³⁹ The Facilitation Team initially developed a series of open-ended questions which were agreed upon by plaintiffs' counsel, but the NYPD hadn't provided input until the focus groups were about to commence. Additionally, questions had to be re-drafted, and the focus group facilitator had to take great care to inform all of the stakeholders about the nature of focus group questions which should not be leading or result in simple yes/no responses.

Focus Group Facilitator and Co-facilitator

Another important observation was in regard to the assigned focus group facilitator and co-facilitator. In line with research and tool kits on hosting focus groups, the Facilitation Team took great care to create a safe and neutral environment for participants. In addition to utilizing community spaces, the focus group facilitator and co-facilitator also took several measures to ensure that community members would feel safe to speak freely. For each forum, the facilitator and co-facilitator dressed in casual attire, the meeting space was organized into a circle, and the co-facilitator observed and took notes outside of the circle so as not to distract participants.

The focus group facilitators also took time to foster relationships with hosting organizations and participants to cultivate a culture of trust among participants. During meetings, the facilitator and focus group facilitator would start with an ice breaking activity which we called “Personal Prose”. This activity allowed participants to write details about themselves into a poem which could optionally be shared with the group. As part of making participants feel comfortable, the facilitator and focus group facilitator would participate in sharing their own personal prose with the group. After meetings participants could choose to participate in a small debriefing activity, and were free to ask questions of the Facilitation Team within the context of the focus groups. Some suggestions for focus group facilitators included:

- Cultivating a culture of trust between the organization and Facilitation Team.
- Utilizing ice breaker activities and initiating discussion.
- Engaging in casual conversation before and after group meetings.
- Providing closing debriefs or activities to re-center participants.
- When possible, utilizing facilitators from the same or similar background as participants.

Group Size and Dynamics

Since focus group participants were intentionally selected from a sample of individuals with direct and indirect SQF and trespass enforcement experiences, many participants would become consumed with recounting their own experiences which made it challenging to discuss solutions. During the early phases of the focus group process, the Facilitation Team realized that we would have to limit group size and dynamics in order to preserve the integrity of the discussion. Having smaller, more manageable groups of individuals with similar ages and circumstances made for much more streamlined conversation and greater opportunities for the facilitator to probe, where needed, within the allotted meeting time.

Cutting Through Direct and Vicarious Trauma

One of the clearest and most visceral issues the Facilitation Team was confronted with during the process was the severe apprehension most participants would bring into the focus groups. Many community members did not/could not distinguish the JRP from the NYPD, feared being recorded, or feared retaliation by the NYPD for their participation in such meetings. For this reason and beyond, great care was taken to assure the confidentiality and anonymity of focus group participants so as to relieve their fears of exposure, and create a safe space for continued open and honest discussion among participants. Developing a clear “what happens here, stays here” primer is just one method of relieving the concerns of apprehensive civilians. Other methods utilized included the use of relatable facilitators, building in space for catharsis and group-sharing, and the employment of trust-building and debriefing exercises.

Experience of Trauma and the Inconceivability of Change

Aside from issues of fear and mistrust, the Facilitation Team was often met with a degree of community cynicism toward the possibility of reforms. In what the Team has labeled the “Inconceivability of Change” paradox, community members would often highlight the perceived inevitability that “nothing is going to change,” while at the same time highlighting the desire for change. Through continued internal dialogue, the Team came to understand these statements not as a symptom of sheer pessimism but as a result of the traumatic experiences of SQF and trespass enforcement. We found that while community members earnestly wanted change, they also struggled to envision what change would look like. Community members, we perceived, had begun to lose hope that anything could change, let alone that they could have any part in such change.

Part of unpacking this helplessness required that the focus group facilitator utilize the tools of empowerment and imagination to get community members to push past barriers and articulate conceivable solutions. By asking community members to “pretend for a moment,” “act as if” or “picture in your ideal world,” the focus group facilitator was able to coax community members toward a solution orientation rather than a problem orientation.

Emerging Areas for Reform

Part of conducting an exploratory review or analysis of any kind is the understanding that one may end up discovering concepts that are entirely novel. During the Focus Group Phase participants provided great richness and depth to current paradigms about police reform. More surprising, however, was the community members conceptions of larger social issues, such as teenage homelessness and lack of after-school programming, that were relevant but beyond the scope of the Joint Remedial Process. These ideas were often powerful truths or suggestions

which we believed deserved a platform, but which did not fit squarely within the confines of the Remedies Opinion. It was important to the Facilitation Team however not to lose the richness of this information despite our inability to make recommendations concerning these non-jurisdictional issues. That being said, the Facilitation Team felt it important that such information not be neglected on such a basis, but made available to the public for further consideration. The way we chose to navigate the use of this information was by incorporating a code in the analysis for “Extraneous Reform Ideas.” This allowed us to capture useful suggestions that could be addressed in the report as “Areas for Further Policy Consideration.”

Evaluating Outliers

In every group there is an outlier — an entity that strays far enough from the larger group to be noticeable. The focus groups were no exception. Though relatively few in number, there were instances in which participants had suggestions or made remarks that were far removed, or in direct contrast to the ideas of the larger group. In many cases, the focus group facilitator would give context to outlying statements by asking probing questions. We found that while some participants had similar experiences to other members of the focus group, they held vastly different attitudes and opinions. Understanding how other mitigating factors such as age, race, gender, and sexual orientation might factor in, gave the focus group facilitator context to infer the reasoning behind the participants assertions. Even outlying information was recorded and analyzed. Data was not quantified based on the frequency of assertions. These outlying assertions often provided additional context for the Facilitation Team to consider.

Cultural Competence

It is important to be able to interpret meaning through the use of various accents, slang or cultural euphemisms common in represented communities. At all stages of the focus group

process, cultural competency was an underlying concern for the Facilitation Team. During the Focus Group Phase, the Facilitation Team had to switch transcription companies after reviewing transcripts that inadvertently pulled participants' language out of context, misattributed remarks or misstated participant responses based on the apparent inability on the part of transcriptionists to understand common street vernacular. In groups with LGBTQ individuals, it was similarly of great importance that the focus group facilitators have some basic knowledge of within-group labels and vocabulary. In the Community Forum Phase, it was critical for us to provide language and physical access, as well as access for the deaf and hard of hearing, in order to best fit the needs of the communities in which we conducted our outreach processes. All of these minor shifts allowed us, in some respects, to bridge the gap between the JRP and the community, and gather more meaningful feedback from the individuals who participated in the overall process.

Leadership Meeting Phase

Continued Calls for Collaboration

Since leadership meetings were largely held with community organizations and advocates nationally and across the City, the Facilitation Team determined that there are distinctive elements to engagement with this groups that differ from engagement with community stakeholders. As subject matter experts and advocates, many groups were wary of goals and intentions of the Joint Remedial Process. The Facilitation Team tried to assuage this skepticism by providing organizations with an introductory packet which included an abridged list of some of the topics presented to us in the Focus Group Phase and an open agenda for the general format of the meeting. Providing these resources allowed organizational leadership the opportunity to directly address ideas that their organizations worked with most closely. These resources also assisted them in providing detailed feedback to the Team on the subject of reform. As these

organizations are working in these areas on a daily basis, we found that most leadership expressed a strong interest in continued engagement with the outcomes and recommendations of this process. Many times, organization leadership asked for expanded opportunities for information gathering and feedback for the purpose of promoting the organization's continued work in the field.

For our purposes, the Joint Remedial Process Team provided expanded opportunities for input by requesting that organizations provide white papers addressing the concerns of their group.³⁴⁰ Additionally, we compiled a list of organizations interested in continued collaboration with the NYPD, which we have made open to the public in Appendix G to this report.

Community Forum Phase

By conducting a review of and reflecting on the forums in debriefing sessions, we were able to identify, in real time, potential threats to the legitimacy of the forums conducted in the JRP. These include:

- “Leveling” & Empowering Marginalized Voices.
- Collaborative Planning and Understanding Process Style.
- Finding a Common Language for Discourse.
- Unpacking and Managing Group Dynamics.

Empowering Marginalized Voices

Throughout the Joint Remedial Process, the Team focused its efforts on seeking out the voices of directly-impacted communities and individuals, and less on institutions. Therefore, the community forums were intentionally developed as a platform to elevate the voices of

³⁴⁰ See Appendix A.

community members as subject matter experts. While much of the feedback from these conversations was reflective of a reality of which the average New Yorker may not be aware, for the people that live in these neighborhoods, and are part of these demographic groups, the stories they shared reflect the experiences of certain marginalized communities.

Collaborative Planning and Process Style

One of the key questions in our evaluation of the Community Forum Phase was how could forum development have been made more efficient? Throughout the planning, design, organization, and implementation of the forums it became evident that there exists an inherent tension between community-based and governmental structures. While many grassroots organizations utilize a democratic approach to planning, this was at times difficult to reconcile with the work processes of the JRP. The JRP was conducted pursuant to timelines as directed by the Remedies Opinion. While the Team acknowledges the greater fairness in a democratic process, constraints on the time and resources made it often difficult to achieve consensus around the programming of the forums.

It is however critical to address the ongoing interplay between grassroots organizations and institutional structures. Efficient collaborations require that expectations are clear, representation is apparent, facilitation is effective, and representatives have authority to speak for and make commitments on behalf of their member base.

Finding a Common Language for Discourse

At several junctions of the JRP, semantic fragmentation became an issue between groups. Often the subtle differences in interpretation led to protracted debates about intentions and fueled distrust among groups over similar ideas. One clear example was the varying definitions of

“Community” among the stakeholders. Whether geographic, demographic, broad or more focused, it became clear that it is imperative to develop a common language for discourse between a wide range of interest groups.

There is a need for more collaborative conversations and consensus building on ideas and their meanings. Effective collaboration within a working group requires communication so individual players are prepared to function as a cohesive team. It is critical at every juncture of a project to develop a shared vocabulary with all parties involved.

Unpacking the Dynamics of Small Group Discourse

Yet another set of observations made during the Community Forum Phase was around the adherence to certain social standards in group dynamics. For example, in some groups of women and men, male participants tended to dominate the conversation while female participants provided more passive feedback. In other examples, like with the West African forum, the groups self-selected themselves into all male and all female groups. We found that with these different arrangements there was improved participation, and a noticeable increase in the amount of feedback we received from women.

Similarly, in some groups of youth and adults, youth tended to self-censor and, generally, showed greater deference to the elder members of the group. In groups that were comprised predominantly of peers, discussions were often more open as contrasted with groups that included perceived authority figures. We found this to be especially true in groups with youth and police officers. While many youth present at select forums were willing to engage in earnest dialogue with officers, we did observe a tendency of officers to engage youth more didactically.

In general, we found that while forums that involved police officers worked well to bring community and police together to discuss the fractured relationship between the two, they were somewhat less effective as problem solving activities. In many of the groups, Neighborhood Coordination Officers participated to engage community members in conversations about changes to the Department. We found that in most of these instances the officers present were inclined to answer questions, provide feedback or rationalization for civilian anecdotes, and share information on new programs and policies the Department has undertaken to address previous abuses. As helpful and as well received as these discussions were, the type of pedagogical discourse undertaken by officers in the group had the effect of shifting the dynamics of the conversation from collaborative problem solving to public education.

Managing group dynamics is challenging, particularly when hosting public events. While one cannot predict the quality of the interactions between members in a group setting, a great deal can be learned through observation. Group interactions can be managed in many different ways. For example, the use of small group facilitators helped to manage the conversations in the JRP forums and keep the focus on a collective goal. Other tools that could have been utilized include icebreakers and team building exercises, providing alternative options for feedback or anonymous sharing, setting clear expectations for group members, and creating space for minority (*i.e.*, outranked or outnumbered) voices by leveling the field and giving greater deference to such members.

Unpacking Fear and Mistrust

One of the most significant observations made during the Joint Remedial Process as a whole, has been the patent level of fear and mistrust of police in directly-impacted communities. During the community forums, it was evident that while many community members wanted

better relations with police, and better policing in general, most of the individuals involved in the forum still held a level of apprehension around police involvement. With the assistance of strong community leaders, we were able to convene a series of forums both exclusive and inclusive of officers, but in each set of forums the residual trauma, and relative disillusionment of community members was pronounced. Many community members utilized community forums as cathartic exercises, sharing feelings and experiences they have around policing. At many junctures, facilitators would have to steer the conversation back toward sharing potential solutions, while giving space to community members to unpack their trauma, and highlight issues they observed or experienced in their communities. Other groups self-censored, either providing disproportionate deference to officers, or shying away from discussion all together. In these instances, facilitators attempted to coax community members to share or stay present for discussion.

In instances where police were not included in the forums, based on community objections, fear was a heavily cited argument for the lack of police presence. Many individuals highlighted worries about retaliation as a consequence of police-involvement. The decision to develop two tracks seemed to be the most compelling direction for the JRP process, but other suggestions for addressing this issue in dialogue with community are raised below:

- Priming community members for discourse through a solution-oriented framework
- Preparing officers for engagement through trauma-informed and communication-skills workshops
- Making space for community catharsis
- Utilizing truth and reconciliation methods for dialogue and the full acknowledgement of offenses
- Providing closing decompression exercises for both officers and civilians

While the above suggestions are not comprehensive, we believe they lay a good foundation for successful engagement between groups in future endeavors.

Overarching Observations in the Joint Remedial Process

Community Distrust of Institutional Players

Likely due to the years of direct and vicarious trauma pervasive in many of the impacted communities, there were often challenges for the Facilitation Team in garnering the trust and respect of community members, as well as leadership. Overall distrust in the police, and the potential for reform, were obstacles to navigating an information gathering process that communities felt was legitimate. Many times the Facilitation Team would have to publicly differentiate itself from the NYPD to maintain its independent and impartial role in developing reform ideas. This distrust is not without warrant.

While there have been significant strides in New York City toward greater transparency, accountability and impact in marginalized communities, it is also fair to say that there is still a long way to go. Part of ushering in a new wave of reform is acknowledging past abuses and their lingering effects, and building in methods to garner trust. Methods used by the Facilitation Team to establish trust included the use of safe and neutral spaces for focus groups, meetings and forums, providing open communication and greater transparency (as much as possible), and fostering an overall culture of respect. Many of these methods were effective, though they could have been applied more liberally. Institutional players should make efforts, as much as possible, to provide more receptive environments for communities to meaningfully engage with projects. Other ideas that could be helpful for entities looking to work with traumatized communities could include the use of team building primers, fair and timely responses to requests for

information, full acknowledgement of missteps, and greater collaboration with stakeholders, including critics, whenever possible.

Community Empowerment and Responsibility

Part and parcel of engaging and collaborating with communities is the basic need for community empowerment. Giving voice to marginalized and directly-impacted communities requires that community members feel as if what they have to say matters. As much as possible, the Facilitation Team sought to give deference to community leaders in driving the JRP toward a successful end. That being said, the Facilitation Team also recognized a need for a more balanced sense of responsibility for community partners. We do not fault community members for not taking a more dynamic role in the promotion of reform, but we raise this point as a call to action. At Focus Groups, Leadership Meetings, and Community Forums alike, community members emphasized the need for both the NYPD and the community itself to make stronger efforts toward change and collaboration. We believe that ensuring that the NYPD uphold its mandate and commitment to change also requires that most impacted communities take on greater responsibility for public safety in their communities, and hold themselves accountable for the preservation and oversight of change.

In making these assertions, the Facilitation Team would like to acknowledge the community organizations and individuals which have been committed to continuing the mission of change from the Cure Violence movement, to the Citizens United for Police Reform, to Citizens Crime Commission and Citizen's Union. For institutions and municipalities committed to reform in New York City we have provided a list of organizations that have enlisted to provide their knowledge, expertise and services for the purposes of perpetuating change in the policing community. This list can be found in Appendix G.

Stakeholder Fatigue

Over the course of the Joint Remedial Process the Facilitation Team observed many of the symptoms of what we have labeled “Stakeholder Fatigue.” Individuals and entities that were once enthusiastic and inquisitive, over time became less active and generally less responsive. We understand this to be a natural consequence of the substantial duration of the Joint Remedial Process, while also acknowledging that greater efforts could have been made to maintain strong stakeholder engagement. For example, while very active and engaged in the beginning of the process, over time NYPD become less responsive to requests for timely meetings and information. Similarly, community leaders became less engaged over time. Upon review of the process overall, the Facilitation Team has come up with several suggestions for managing stakeholder engagement over a considerable duration of time.

One tenet we believe is integral to the promotion of ongoing engagement is the generation of value. Social science literature asserts that generally the value or worth that we ascribe to a thing drives our motivation to pursue it.³⁴¹ We found that superfluous or didactic meetings will affect fatigue, and instead we suggest that strategic meetings with opportunities for tangible outputs as a result of such meetings will likely be much more effective. Additionally, we found the use of collective agenda setting, the provision of consistent updates, and an emphasis on relevant next steps can likely be useful to prolong engagement.

Understanding Repeated Calls for Change

History and context are fundamental. During the early phases of the JRP it was challenging for the Facilitation Team to navigate some of the effects of the residual trauma and

³⁴¹ A literature review of principles in psychology, and namely Expectancy-Value theory can speak to this phenomenon more broadly.

mistrust that existed in communities. We found over time that emphasis on police-community relations, for example, would not be sufficient to address the demands of communities which have been attempting police reform for decades. The Facilitation Team was only able to come to a clearer understanding of these points with extensive review of past reform efforts.

Unfortunately, we acknowledge that institutional memory is short, but this point underscores the need for broader attention, review and analysis of repeated calls for change. While the idea may seem obvious, it's important to note that current institutional effort may not be enough. Police departments should take into careful consideration the review past litigation, corrective initiatives and analyze their impact on communities, particularly when those initiatives are relevant to calls for action in the present.

Retooling the Advisory Committee

Advisory committees are collectives of subject matter experts who assist managers in steering the course of projects. Generally speaking, advisory committees provide a wealth of information and resources, and are a beneficial addition to any process. However, in the case of the JRP, the Advisory Committee presented a number of challenges. Committee and participant attendance was imbalanced, meetings were long and at times combative, ideas being discussed were often repetitive and messaging was at times unclear. While Advisory Committees can be a useful tool, we believe it faltered under the JRP for the following reasons:

- Representation of stakeholder groups was inconsistent
- Meetings were often simple updates rather than collective strategy sessions
- Strategic meetings were at times antagonistic due to distinctions in ideological focus
- Topics from external meetings often distracted the focus of the Advisory Committee

Eventually, members of the Advisory Committee were invited to attend All Parties meetings, which helped to ensure that discussions were more clear and productive. Advisory Committee meetings were then pared down to an as-needed basis.

While the Facilitation Team favors the All Parties meeting model for more collaborative reform processes, we provide some plausible ideas for managing a more fruitful and engaged Advisory Committee. We list these ideas below:

- Collective determination of the Advisory Committee's goals and objectives
- Developing protocols, conduct guidelines and a confidentiality regimen that is agreed upon by all members
- Ensuring balanced stakeholder involvement
- Limiting the number of members to better manage group dynamics³⁴²
- Facilitating discussions based on strategy and deference to expertise
- Developing working groups and tasks for members

³⁴² Literature on group dynamics suggests no more than eight participants. The JRP Advisory Committee was comprised of twice as many members.

SECTION IX: CONCLUSION

The New York City Joint Remedial Process was a landmark collaborative civic engagement process that was not previously ordered or undertaken in a city as large and diverse as New York City.

The Facilitation Team hopes that its recommendations for additional reforms to the NYPD as well as the areas for policy consideration that are documented in this Final Report will be given serious consideration. It was our intention to give voice to those hundreds of thousands of persons living in communities that were widely affected by sustained and wide scale policies and unconstitutional policing.

We note that the NYPD has made great strides in ending these policies and has demonstrated great willingness to continue to do so by engaging in profound revisions to its future policies and training protocols. We also note that it is committed to executing community policing in the form of its Neighborhood Coordinating Officer Program.

These are important and necessary first steps which we applaud. While we are cognizant that the Department has come far, we urge that there are still significant reforms to be made particularly in the areas of transparency and accountability.

We also note and thank the hard work and dedication of the Monitor and his team who have implemented the Immediate Reforms through a carefully designed and executed process. The Monitor attended many of our meetings and we are grateful to him for his valuable input.

I would be greatly remiss if I did not thank the outstanding work of the Facilitation Team. My Deputy Facilitator, Michael Young, Senior Advisor Reinaldo Rivera, Project Manager

Jeanene Barrett, Deputy Project Manager Valerie Paul, Project Attorney Cliff Bloomfield, and Project Assistant Jennifer Dionicio have been indispensable in executing the Joint Remedial Process.

APPENDIX A

WHITE PAPERS



The Interfaith Center of New York

March 13, 2017

Hon. Ariel E. Belen (Ret.)
Facilitator, The Joint Remedial Process, JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018

Dear Judge Belen,

As New York religious leaders who have participated in the Joint Remedial Process we are writing both to commend changes that have been made at the NYPD since *Floyd v. City of New York* was filed and recommend additional reforms necessary to further repair the breach of trust between marginalized communities in this city and the NYPD officers who serve them.

We commend the NYPD for its new training curriculum addressing implicit bias as well as its efforts to increase collaborative policing by assigning more of the same police officers to a particular precinct division. In addition, we support the increased time allotted for foot patrols. The Ceasefire Program, buy-back programs and the Clergy Liaison programs, in certain precincts, have all engaged clergy and youth in a constructive way. Likewise, NYPD training programs in partnership with community and faith organizations on religious diversity and religious freedom will both improve training and build constructive community partnerships

As clergy and other religious leaders who serve in diverse communities of faith around New York City, however, we continue to witness first-hand that needless suffering is created by law enforcement based on racial and religious prejudice and occurs too often in certain neighborhoods inhabited by people whose racial, religious, or health profile make them vulnerable.

To that end, we endorse the following recommendations from the New York Civil Liberties Union and Communities United for Police Reform as they pertain to current policy:

--The need for greater transparency that allows police with discipline records to be searchable online.

--The need for better feedback loops so that a supervising officer whose police recruit makes a stop that is later ruled unconstitutional by a judge, can actually know that his or her report has made an unconstitutional stop and apply discipline accordingly.

--The need for greater community involvement in training and improved protocols for responding to people in need with mental health issues. In addition, collaborative input by diverse religious

leaders should be part of the curriculum in training cycles of the new NYPD recruits, Citizens Police Academy Programs and Civilian Police Training Programs at the Police Academy in College Point.

Better training and improved community relations are linked to improved police accountability. We believe that there has been an historical and systemic failure in this city to hold police officers who kill accountable for their crimes. Eric Garner, Mohammed Bah, Deborah Danner are just a few of the individuals who have died at the hands of the NYPD officers in recent years and to this day their families have not received justice.

Thus, the success of reforms recommended by this Joint Remedial Process in remedying the breakdown in trust between the NYPD and marginalized communities in New York, will also hinge on the NYPD's willingness to enforce the law fairly, without exempting itself from the same justice that the civilians it protects are subject to.

We are taught by the words of the Prophet Micah that God requires of us "to do justice, and to love kindness, and to walk humbly with your God" (Micah 6:8) We know that this work to create a more just, well-informed and accountable NYPD is for the safety and protection of ALL New Yorkers.

Sincerely,



The Rev. Chloe Breyer
Executive Director, The Interfaith Center of New York
Community Advisory Board Member to the Joint Remedial Process

Micah Faith Table NYC Leadership Team:

Rev. Dr. Raymond Rivera (Co-Chair Micah Faith Table)
President and Founder
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Rev. Michael A. Walrond, Jr. (Co-Chair Micah Faith Table)
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Rabbi Michael E. Feinberg
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Greater New York Labor-Religion Coalition

Rev. Joel Gibson
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Rev. Clyde Kuemmerle
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Diane Steinman
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**The Legal Aid Society's Reform Proposals for the Joint
Remedial Process: Documentation of All Police-Initiated
Civilian Encounters and Discipline for Abuse**

A White Paper Submitted by The Legal Aid Society of New York

To: Hon. Ariel E. Belen

Dated: January 9, 2017

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In this white paper, The Legal Aid Society (“Legal Aid”) offers its proposals for “further reforms necessary to ending the constitutional violations described in the Liability Opinion.”¹ The Joint Remedial Process has focused on documenting and appraising community sentiment about NYPD policing through dozens of small focus groups, leadership meetings, and community forums. This paper is based on information and data culled from that process, combined with the collective experience of Legal Aid’s specialists in Public Housing, Criminal Defense, Juvenile Rights, and Civil Rights.

EXECUTIVE SUMMARY

The experiences elicited by the Joint Remedial Process reflect a stark contrast between the anticipated effects of the immediate reforms and the experience of the affected communities. While the volume of stops, frisks, and trespass arrests has been steadily declining for four years, and reduced to a small fraction of pre-litigation levels, the majority of process participants still express frustration towards police because of unjustified encounters with verbally and physically abusive officers.

The centerpiece of the immediate reforms ordered in *Floyd* is enhanced documentation: a revised Stop Form and a companion Patrol Guide Regulation, P.G. 212-11. These documents aim to produce a record of every “Level 3 Stop” and require regular supervisory review of those records. The purpose of the Stop Form is to curb temporary detentions or “stops” that are not based on suspicion of crime, and to curb limited weapons searches or “frisks” that are not based on suspicion of weapons possession.² However, limiting documentation of encounters to “Level 3” stops results in vast underreporting of stops happening on the street and therefore impairs oversight, auditing, and attempts to improve the quality of police-initiated encounters through disciplinary measures.

This problem also extends to the body-worn camera pilot project mandated by the immediate reform process. The Court required the NYPD to institute a one-year body-worn camera pilot to measure “the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks” and to evaluate “whether the benefits of the cameras outweigh their financial, administrative, and other costs.”³ In March 2017, the NYPD will implement a 1,000-camera pilot project, which includes a requirement that the cameras be activated at the outset of all police-initiated investigatory encounters and all “interior patrols” of apartment buildings. Again, initiation of recording is only required after an encounter escalates to either a Level 2 or Level 3 stop. For the purposes of the

¹ See *Floyd v. City of New York*, 959 F.Supp.2d 668, 687-88 (S.D.N.Y. 2013) (“Remedy Opinion”).

² The corresponding documents for the *Davis* and *Ligon* litigation are the Trespass Crimes Fact Sheet and companion regulations PG 212-59 and 212-60, which aim to curb suspicion-less detention and arrest without probable cause for trespassing in NYC Public Housing and other multiple-residence buildings.

³ Remedy Opinion at 685.

pilot, we strongly recommend that body-camera recordings be initiated at all police-initiated encounters, including Level 1.

Audits of the initial record-keeping indicate a high proportion of police-initiated encounters that should have been recorded but were not. The root of the problem seems to be that police are not required to document investigations or searches that they consider consensual, or “Level 2” encounters, under New York law. Level 2 encounters and searches are those that are non-coercive during which the subject felt free, and indeed was free, to decline participation and walk away. Under NYPD Regulations, no Stop Form needs to be prepared if an encounter is categorized by the investigating officer as Level 2 or consensual — even if the consensual encounter entailed a search.

Documentation and data collection of *all* police-initiated interactions with members of the community is the critical first step toward improving police compliance with their duties and obligations, enhancing the effectiveness of police training, verifying the proper execution of police duties and obligations, and advancing the community's understanding of members' rights and obligations. Without this crucial step, the NYPD and the courts cannot identify necessary areas for improvement in training and supervision or determine whether adequate disciplinary measures are in place. Without sufficient documentation of all police-initiated encounters, the promise of the Joint Remedial Process is unattainable.

We urge the Facilitator to recommend a more effective disciplinary structure for officers who have repeatedly violated people's rights with intrusive, abusive, and unjustified stops. The NYPD should adopt a guideline that requires increasing disciplinary severity for repeated unlawful stops and frisks.

We also urge the Facilitator to condemn the profiling and targeted abuse of vulnerable communities by the NYPD. Because many of these encounters are not categorized as “Level 3” encounters and therefore not documented, the recommendation for broad documentation should help the NYPD identify when abusive profiling is taking place. The NYPD's auditing unit should look for patterns in timing, geographic location and officer participation which suggest that sweeps of vulnerable communities are being employed as substitutes for focused policing of criminal activity. Regular and routine training programs led by members of vulnerable communities should also be implemented to increase awareness and sensitivity.

To be sure, there are larger issues in police-community relations that lay beyond the scope of the *Floyd* remedial order. Constant police patrols of public housing and other buildings where poor people live, of their schools and at their subway stations, combine to produce an oppressive scrutiny that demoralizes and wears down law-abiding people. NYPD surveillance of social media in search of gang conspiracies has produced mass arrests based on tenuous online relationships with those suspected of unlawful activity. The NYPD, the NYC Housing Authority and the Department of Education must improve on-site building security to reduce the need for constant patrols. *See* Legal Aid's Preliminary Report, submitted to Judge Belen on October 31, 2016.

I. Background

A. Legal History

The opportunity to produce this White Paper stems from court-ordered remedial measures to the NYPD's Stop, Question, and Frisk ("SQF") practices. Three seminal cases led to the court's intervention in this police practice:

- *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013): *Floyd* is a class action lawsuit challenging the constitutionality of NYPD's stop-and-frisk practices, particularly as applied to communities of color.
- *Ligon v. City of New York*, 925 F. Supp. 2d 478 (S.D.N.Y. 2013): *Ligon* is another class action lawsuit challenging NYPD's stop-and-frisk practices focused on NYPD's criminal trespass enforcement in and around certain private multiple dwelling buildings enrolled in the Trespass Affidavit Program ("TAP"). TAP (also known as Operation Clean Halls) is a program in which building owners authorize the NYPD to conduct patrol activities inside and around their buildings, including, in some buildings, floor-to-floor inspections (known as interior or vertical patrols) to curb drug dealing and other criminal activity.
- *Davis v. City of New York*, 10 Civ. 0699, 2015 U.S. Dist. LEXIS 55536 (S.D.N.Y. Apr. 28, 2015): *Davis* challenged NYPD's enforcement of criminal trespass under TAP, specifically as applied in housing owned by the New York City Public Housing Authority ("NYCHA"). Plaintiffs and Defendants settled and on April 28, 2015, enforcement of the settlement was joined as related to *Floyd* and *Ligon* under S.D.N.Y. Local Rule 13 (a) ("related case rule") in order to consolidate its implementation into "one remedial process." *Id.* at *3.

B. The Joint Remedial Process

In the *Floyd* Liability Opinion⁴ ("Liability Opinion"), Judge Shira A. Scheindlin found that the NYPD's use of SQF violated the Fourth and Fourteenth Amendments to the U.S. Constitution and New York state law. On the same day, in the *Floyd* Remedy Opinion⁵ ("Remedy Opinion"), Judge Scheindlin ordered the following:

- The appointment of an independent monitor ("Monitor") "specifically and narrowly focused on the City's compliance with reforming the NYPD's use of stop and frisk."⁶ The Monitor is tasked with developing, in

⁴ *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

⁵ *Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013).

⁶ Remedy Opinion, p. 14.

consultation with other stakeholders, an initial set of reforms to the NYPD's policies, training, supervision, monitoring, and discipline regarding stop and frisk.

- The appointment of an independent facilitator ("Facilitator") tasked with developing, in consultation with other stakeholders, a more thorough set of reforms (the "Joint Process Reforms") to supplement, as necessary, the Immediate Reforms.⁷ The court selected retired State Appellate Division Justice Ariel E. Belen to serve as Facilitator.
- A Joint Remedial Process ("JRP") guided by the Facilitator. The JRP is meant to incorporate the "distinct perspective" of the communities "most affected by the NYPD's use of stop and frisk."⁸ In this vein, the Facilitator is tasked with meeting with stakeholders throughout the city, including elected officials, community organizations, and residents. At the conclusion of the process, the Facilitator will prepare a report with recommendations for the consideration of the Monitor and Judge Analisa Torres of the Southern District of New York, who is overseeing the implementation of the *Floyd* remedies.

C. The Immediate Reforms

The centerpiece of the Immediate Reforms is a new Stop Form and companion Patrol Guide Regulation, P.G. 212-11. Under this regulation, police are obligated to complete a Stop Form for Level 3 stops, or *Terry* stops⁹, in which the officer has a reasonable suspicion that the individual has committed, is committing, or is about to commit a felony or misdemeanor. However, there is no requirement for police officers to complete Stop Forms for what are known as Level 1 and Level 2 stops, which cover requests for information and consensual stops and searches. While the current framework under the monitorship allows Level 1 and 2 stops to remain undocumented, Legal Aid, based on its extensive experience in this area of law and engagement with members of the community, disagrees with this practice. Legal Aid maintains that the new Stop Form and companion Patrol Guide Regulation should mandate that all encounters be documented, regardless of whether a NYPD officer believes the stop was consensual or voluntary.

Indeed, the rate of compliance for preparing forms for persons stopped on suspicion of trespassing remains low. We believe that this poor rate of performance is attributable to underestimation of the number of encounters that constitute "stops" requiring documentation. In light of this problem, we propose, for the reasons set forth

⁷ Remedy Opinion, p. 30.

⁸ Remedy Opinion, pp. 14, 29.

⁹ *Terry v. Ohio*, 392 U.S. 1 (1968) (hereinafter "*Terry*").

below, that all Level 1 and Level 2 encounters be documented, as documentation is the only way the Monitor and supervisors of the remedial process can determine whether these stops are indeed consensual and reasonable and are appropriately categorized as Level 1 or 2. Consensual searches should uniformly be documented on the Stop Form.

II. Documentation

A. Background

In *Terry*, the Supreme Court held that a police officer may stop and question an individual for purposes of investigating possible criminal behavior even when there is no probable cause to make an arrest.¹⁰ The Court further explained that an officer can search an individual, even if the officer lacks probable cause, when the officer suspects that the individual is armed and dangerous.¹¹ The Court stated that the officer's suspicion must be based on "specific reasonable inferences" drawn from the facts and experience and that a mere "hunch" does not justify a stop or search of an individual.¹²

In *People v. De Bour*, the New York State Court of Appeals established a framework defining permissible police conduct during a stop.¹³ In *De Bour*, the Court of Appeals specified four levels of justifiable police actions during stops conducted to investigate a possible crime.¹⁴ In the first level ("Level 1"), an officer is allowed to approach a civilian and request information where an "objective credible reason" to do so exists.¹⁵ The next level, a "common-law right to inquire" ("Level 2"), allows an officer to stop an individual when there is a "founded suspicion" that criminal activity is afoot.¹⁶ At this level, an officer cannot detain the individual, but can "interfere" with the citizen to the "extent necessary to gain explanatory information."¹⁷ "Level 3" stops, also referred to as "*Terry* stops," permit officers to forcibly stop and detain a person if the officer has a reasonable suspicion that the individual has committed, is committing, or is about to commit a felony or misdemeanor.¹⁸ Under a Level 3 stop, an officer may frisk a civilian if she reasonably suspects that she is in danger of physical harm because of the

¹⁰ See *Terry* at 22.

¹¹ See *id.* at 27.

¹² See *id.*

¹³ See *People v. De Bour*, 40 N.Y.2d 210 (1976) (hereinafter "*De Bour*").

¹⁴ See *id.* at 223.

¹⁵ See *id.* The objective credible reason need not be indicative of criminality.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

civilian detainee's possession of a weapon.¹⁹ The final level, "Level 4," allows a police officer to arrest and take into custody a person the police officer has probable cause to believe has committed a crime or offense in her presence.²⁰

Terry and *De Bour* set forth the parameters for conducting SQFs in accordance with an individual's Fourth Amendment right to protection from unreasonable searches and seizures. In *Floyd*, *Ligon* and *Davis* (collectively "the *Floyd* litigation"), the Court, after examining evidence regarding how the NYPD actually conducted SQFs, found that the NYPD was *not* carrying out SQFs in accordance with the constitutional requirements specified in *Terry* and *DeBour*.²¹ The *Floyd* court reasoned that *any* police stop could represent a significant intrusion on an individual's liberty.²² To remedy the NYPD's unlawful use of SQF, the Court ordered various reforms, including new documentation requirements.²³ This section of the white paper focuses on the NYPD's documentation policies, which the *Floyd* court stated are vital to reforming SQF practices.²⁴

As is apparent from the discussion below, documentation forms the underlying basis for all of the reforms demanded by the *Floyd* litigation. Documentation is essential to understand how the NYPD interprets and implements the requirements for constitutional SQFs; whether the NYPD provides effective training and, if not, how and where that training can be improved to increase compliance with constitutional norms and improve the quality of relations between officers and the communities they protect; whether supervisors are properly trained and are providing adequate supervision to officers; whether disciplinary measures are adequate and effective and are being used appropriately to ensure compliance with the *Floyd* reforms; and whether communities are being educated to understand their rights and obligations with respect to SQFs, so as to help improve the quality of their interactions with police.

B. Documentation Requirements Prior to *Floyd*

Prior to *Floyd*, NYPD officers were only required to record *Terry* stops, or stops based on a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or a Penal Law misdemeanor.²⁵ NYPD officers filled out a form called a "UF-250," that contained checkboxes and fields where officers were required to

¹⁹ *See id.*

²⁰ *See id.*

²¹ Remedy Opinion.

²² *Id.* at 672.

²³ *Id.*

²⁴ Liability Opinion at 10-11.

²⁵ NYPD Patrol Guide 212-11 (2013).

indicate the nature of the stop and the circumstances leading to the stop.²⁶ The checkboxes on the UF-250 included broad categories of circumstances for a stop such as “furtive movement” and “high crime area.”

The patrol guide used by NYPD officers prior to *Floyd* offered no guidance as to what constituted reasonable suspicion and did not distinguish between a Level 3 (*Terry*) stop, which required documentation, and lower Level 1 and 2 stops, which did not. Additional NYPD policies governing stops in and around public housing (Patrol Guide 212-60) and private buildings enrolled in the Trespass Affidavit Program (“TAP”) (Patrol Guide 212-59) also lacked instruction on legal standards and distinctions. The court in *Floyd* issued a set of “Immediate Reforms” to address these deficiencies.²⁷

Under the relevant Immediate Reforms, the NYPD was ordered to revise the Patrol Guide to reflect (1) a clear definition on what constituted a stop, under any level, and when it should be conducted; (2) a revised Stop Form that incorporates a narrative section and eliminates overly broad categories like “furtive movement”; (3) clarification on who may be stopped, and for what reason (articulating the “objective credible reason” standard), in and around NYCHA and TAP buildings; and (4) implementation of a one-year pilot body-worn camera (“BWC”) program in the precincts with the highest number of SQFs in the year preceding the litigation (2012).²⁸

C. Documentation Requirements Following *Floyd*

A court-appointed Monitor, Peter L. Zimroth, has overseen the implementation and progress of these reforms. According to the most recent Monitor’s report, the NYPD has complied with many of the immediate reforms.²⁹ The current NYPD Patrol Guide reflects, for instance, a detailed description in Section 212-11 of the four *De Bour* stop levels and their corresponding legal standards.³⁰ In addition to using the new Stop Form, the NYPD has also promulgated an interim order revising Section 212-59 which now

²⁶ Liability Opinion at 34.

²⁷ Remedy Opinion.

²⁸ *See id.* The Court has since revised the BWC order at the request of the Monitor and parties to the *Floyd* litigation. Peter L. Zimroth, *Submission of Second Report of the Independent Monitor*, 42 (Feb. 16, 2016). The NYPD is now required to use a randomized experimental design for the one-year pilot program. *Id.* The NYPD has just completed the procurement process for the pilot program cameras and intends to conduct outreach to internal and external stakeholders for input on BWC policy going forward. Laura Nahmias, *Winning bid for NYPD body camera contract comes under lobbying attack*, POLITICO (Oct. 6, 2016), <http://www.politico.com/states/new-york/city-hall/story/2016/10/the-lobbying-war-behind-the-nypds-body-camera-contract-106117>; *Second Report of the Independent Monitor*, 43.

²⁹ *Submission of Second Report of the Independent Monitor*, 8.

³⁰ NYPD Patrol Guide 212-11 (effective 6/27/2016).

aligns the policy for “interior patrols” of TAP buildings with those outlined in the revised 212-11 section of the patrol guide.³¹

Despite these efforts, however, many members of the communities most affected by SQF continue to feel unfairly targeted by police officers. In addition, both the *Floyd* court and Monitor reports reveal low levels of compliance with new documentation requirements. The NYPD has opposed reform legislation by the New York City Council,³² and the administration continues to focus on the reduction in the number of stops rather than focusing on whether those stops that do take place are justified and consistent with constitutional requirements.³³ Additionally, a recent survey of police officers regarding BWCs revealed that many officers believe BWCs will have no effect on—or will worsen—police-community relations.³⁴

D. Inadequacy of Current Documentation Requirements

The communities most affected by SQF continue to feel targeted by the NYPD. One member of the focus groups convened through the Joint Remedial Process (“JRP”) stated that he was stopped too many times to even give a rough estimate.³⁵ Community members’ experiences lead them to continue to believe police are still making stops to fulfill quotas:

“Right behind my building. They stop the young kids from my block. I went over there because they’re younger kids. I’m not going to let them be

³¹ Revision to Patrol Guide 212-59, “Interior Patrol” and Patrol Guide 208-03, Arrests – “General Processing” 11(a) (effective 5/20/16). The interim order also contains the following language aimed at addressing concerns expressed in the *Davis* litigation: “[m]ere presence in or near a building enrolled in the Trespass Affidavit Program does not provide a basis to approach and conduct an investigative encounter, nor does it establish reasonable suspicion for a stop. When approaching a person based only on an objective credible reason (Level 1 Request for Information), members are prohibited from requesting consent to search the person.”

³² “Right to Know Act” Hearing Testimony, Commissioner Bratton at 2.

³³ Azi Paybarah, *De Blasio touts reductions in stop-and-frisk that occurred under Bloomberg*, POLITICO, Dec. 7, 2016, <http://www.politico.com/states/new-york/city-hall/story/2016/12/de-blasio-touts-reductions-in-stop-and-frisk-that-occurred-during-bloomberg-era-107875>. We will further discuss the quality of current stops in section E(1).

³⁴ Jonathan Stewart, NYU Marron Institute of Urban Management, *Report on the NYPD Officer Body-Worn Camera Questionnaire*, 5 (Sept. 6, 2016). In addition, when asked about their willingness to voluntarily wear BWCs, 56% of officers said that they were either somewhat likely, or definitely not willing to volunteer. *Id.* at 4. This response stands in stark contrast to the overwhelming community support for BWCs evidenced in a recent survey. Policing Project at New York University Law School, *Report to the NYPD Summarizing Public Feedback on its Proposed Body-Worn Camera Policy*, 12 (Fall, 2016). In this survey, 92% of respondents either agreed or strongly agreed that officers should wear BWCs, and 82% believed that BWCs would improve police-community relations, increase public trust, and improve public safety. *Id.*

³⁵ See 11.18.15 CVSOS Focus Group at 2:53:79–80.

violated like that. I went over there like, ‘Yo. What’s the situation? What they doing wrong?’ They like, ‘Nah Nah. We’re just trying to get a little dollar. You want to get searched too?’ They just being funny. That’s the type of stuff they do.”³⁶

This feeling of constant harassment affects the way in which community members and communities as a whole view police officers, even when they are not being stopped:

“When I see a cop walking towards me, I get a cringe. Sometimes they just keep walking, but sometimes they stop you or say something smart to you that, if you say something back, it makes the situation worse. They act like street bullies most of the time.”³⁷

Additionally, focus group participants described being disrespected,³⁸ harassed,³⁹ and physically assaulted⁴⁰ by police officers.

Community members have spoken about similar experiences with stop, question, and frisk in public, on-the-record legislative hearings. Djibril Toure, who spoke at a hearing on police reform legislation, stated that SQFs remained commonplace in his Brooklyn neighborhood.⁴¹ Mike Austin, a homeless individual who testified at the same hearing, described a 2014 police encounter in which he was stopped, frisked, and given a summons for offenses he insists he did not commit.⁴²

These types of experiences—post *Floyd*—collectively show that the damage done by SQF is corrosive and suggest that the NYPD must do more than the bare, court-ordered minimum to repair its relationship with the community. But rather than view this as an opportunity to correct a bad situation by going beyond court-ordered immediate reforms, the police department has resisted any further changes. The court in *Floyd*

³⁶ *Id.* at 9:289–94; *see also* 11.17.15_BHSS Focus Group (“But I feel like that’s unnecessary because you’re stopping and harassing people for no reason just because your boss told you to.”).

³⁷ *See* 03.29.16_MLBK--40m33s Focus Group at 11.

³⁸ *See* 11.18.15_CVSOS Focus Group at 1:10 (“Cops are disrespectful.”), 8:236 (“And how are we supposed to respect authority if they don’t respect us?”).

³⁹ *See* 04.19.16_EXDS--30m31s Focus Group at 4 (“They’ve just got to be respectful. They can’t harass people. They need to stop assuming. They don’t got the evidence they need — then they shouldn’t harass anybody else — none of that. They’re trying to harass me for a crime I didn’t commit — or even if I did commit, they don’t got enough evidence.”).

⁴⁰ *See* 11.18.15_CVSOS Focus Group at 2:46–50.

⁴¹ *Right to Know Act Hearing Testimony* at 55.

⁴² *See id.* at 64 (“I still don’t know why I received the summons or the officers involved in violating my rights as a citizen of New York other than to fulfill a quota and to give me a record unjustly. To them, this was and is a business as usual and to me I’m considered drunk in public and a trouble maker of which I’m neither.”).

recognized this resistance, noting that, unlike many municipalities confronted with evidence of police misconduct, the NYPD has refused to engage in a joint, non-court-ordered solution to the misconduct.⁴³ By contrast, in November of 2016, the Yonkers Police Department—located directly north of New York City—signed an agreement with the Civil Division of the Department of Justice and the U.S. Attorney’s Office for the Southern District of New York, outlining sweeping changes to its policing practices—including the documentation of *all* investigatory stops.⁴⁴ There, the Department of Justice noted that voluntary agreements, particularly between governmental agencies, “are to be encouraged.”⁴⁵

This resistance to change may be reflected in the NYPD’s low compliance numbers with new documentation requirements. In *Floyd*, the court flagged the department’s systemic failure to document stop, question, and frisk data.⁴⁶ The Court noted that in the decade preceding the litigation, *every patrol borough failed every annual audit* of the activity log where stops were recorded.⁴⁷ Similarly, a 2013 survey conducted by the VERA Institute of Justice revealed a high proportion of undocumented stops—in the range of 70%—that involved a search for drugs.⁴⁸ This lack of documentation persists. In the precincts where the department has piloted the new, court-ordered Stop Forms, the Monitor reported a 20% reduction in reported stops.⁴⁹ The Monitor report also documented an analysis of 1,400 arrests made between November and December in 2015 in which 50 arrests were identified as *Terry* stops, yet only *six* Stop Forms were prepared.⁵⁰

E. Documenting Level 1 and Level 2 Stops

New York City Council Member Vanessa Gibson, Chair of the Council’s Public Safety Committee, asked former Police Commissioner Bill Bratton the following question during a hearing on police reform legislation:

⁴³ Remedy Opinion at 675 n.22.

⁴⁴ *U.S. v. Yonkers Police Department Final Agreement*, Section V.D(58) (“Officers shall submit documentation of investigatory stops and any searches, including a complete and accurate inventory of all property or evidence seized....”).

⁴⁵ *See id.* at 1.

⁴⁶ *See* Liability Opinion at 94.

⁴⁷ *Id.*

⁴⁸ Jennifer Fratello *et al.*, *Coming of Age with Stop and Frisk: Experiences, Self-Perceptions, and Public Safety Implications* (Vera Institute 2013), 12, <https://www.vera.org/publications/coming-of-age-with-stop-and-frisk-experiences-self-perceptions-and-public-safety-implications>.

⁴⁹ *Submission of Second Report of the Independent Monitor*, 18 (Feb. 16, 2016).

⁵⁰ *See id.* 50-51.

“Commissioner, a quick question. We’ve talked about the decree since Stop-and-frisk cases. Are there factors that officers use in determining how we actually stop an individual and frisk them. *So for instance, those individuals that may be stopped and just simply asked for identification, and it doesn’t result in anything, is that also recorded in the Stop-and-frisk numbers?* So what factors are we using to determine the Stop-and-frisk data that we get?”⁵¹ (emphasis added).

Council Member Gibson is, of course, describing a Level 1, “request for information” stop. The described inquiry might even occur during a Level 2 stop. Phrased differently, her question asks: “Commissioner, does the department document Level 1/2 stops?”

In response to the Chair’s question, Commissioner Bratton stated, “So, the—all that information is documented.”⁵² However, that is not correct. Only Level 3 and 4 stops are required to be documented and as noted above, the rate of compliance, even for Level 3, stops is abysmal. Based on its experience in this area and reports from community members, Legal Aid believes that *every* stop conducted by NYPD officers should be documented because:

- (1) documentation of stops—even when consensual and conducted under less than reasonable suspicion—will allow for greater accountability;
- (2) documentation will allow patterns of police behavior to be tracked; and
- (3) the tracking of such patterns will inform the training and supervision of officers which, in turn, will allow for more efficient policing and greater community education regarding SQF policy and implementation.

1. Documentation of Stops Will Provide for Greater Accountability

As an initial matter, the NYPD does not and cannot dispute that expanding documentation will result in greater accountability. Currently, there is no way to determine whether an officer misclassified a Level 1 or 2 stop because these stops are not documented. There is also no way to discern the point at which a Level 1 or 2 stop escalates to a Level 3 stop.⁵³ Requiring documentation and supervisory review (as in Level 3 stops) will create a record of stops that can be analyzed for patterns and

⁵¹ See *Right to Know Hearing Transcript* at 92:25 – 93:2–6.

⁵² See *id.*

⁵³ This is why the implementation of BWCs is critical. Not only would cameras provide a record of *every* encounter, regardless of level, it would give clarity to encounters that are often difficult to clarify after-the-fact. This clarity would help educate officers on the legal distinctions during these stops and help protect them from unfair accusations when the stop was conducted constitutionally. Community members will likewise feel secure knowing that potentially unconstitutional encounters are put on record.

discrepancies. Additionally, documenting all stops will incentivize NYPD officers to learn the distinctions between the various levels of stops. Indeed, officer confusion around what constitutes a proper stop has led to both the lack of proper documentation and the carrying out of illegitimate SQFs.⁵⁴

An analysis of SQF data from 2015 speaks to the continued unconstitutionality of many stops and frisks—their reduction in sheer occurrence notwithstanding. In 2015, just 17.6% of all stops resulted in an arrest.⁵⁵ Taken alone, this might suggest that many stops are being conducted for non-criminal activity, but officers are permitted to make Level 1 and Level 2 stops *before* they believe a crime has been committed. If we examine the “top” suspected crimes (that is, the crimes most commonly cited as a basis for stops⁵⁶), however, the rate at which individuals are *frisked* after the stop—an action that should only take place if the officer (1) suspects that a felony or misdemeanor is imminent or in progress and (2) that officer feels physically threatened—remains high at roughly 62%.⁵⁷ For some of these categories like Criminal Possession of a Weapon, frisks may be justified under certain circumstances. But in other categories, namely, “Criminal Possession of Marijuana” and “Misdemeanor,” a high frisk or arrest rate would suggest that rather than focusing police resources on the most serious crimes that threaten community safety, officers continue to use the suspicion of low-level crimes to improperly frisk and arrest individuals.

In 2015, those suspected of a “Misdemeanor” were frisked 65% of the time and were arrested at a 37% rate.⁵⁸ For “Criminal Possession of Marijuana,” 63% were frisked and 33% arrested.⁵⁹ It is difficult to imagine that in nearly two-thirds of the instances where an officer suspects that a civilian either possesses marijuana or is committing a misdemeanor, the officer fears for his physical safety due to a belief that the individual is armed. Indeed, even when an officer’s reason for a stop was Criminal Possession of a

⁵⁴ *Submission of Second Report of the Independent Monitor*, 69–70 (Feb. 16, 2016).

⁵⁵ Officers made 22,563 stops and 3,968 resulted in arrests. *See NYPD Stop, Question and Frisk Report Database*, 2015, available at http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml.

⁵⁶ *Id.* These include, as categorized by the NYPD: Assault, Criminal Possession of Marijuana, Criminal Possession of a Weapon, Felony, Misdemeanor, Grand Larceny, Grand Larceny Auto, Petit Larceny, and Robbery. In categorizing the data, Legal Aid included the numbers for all identifiable spelling variations of these crimes. For uniformity, Legal Aid did not include stops where more than one crime was cited as the basis for the stop, so these figures reflect only stops where the NYPD identified only one crime as the basis of suspicion.

⁵⁷ *Id.* The percentage of those stops resulting in arrest is approximately 17%. *See Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

Weapon, either alone or in combination with another crime, those individuals were frisked 86% of the time, but only 10% were arrested.⁶⁰

These potential discrepancies are precisely why greater documentation is necessary. Although total stops are down, officers may be incentivized to improperly categorize their reasons for the stop in order to justify unconstitutional interactions. Officers may also be genuinely confused about the lawfulness of their interactions. Greater documentation will help clarify this confusion while also increasing accountability.

2. *Individuals Subject to SQF Do Not Feel Free to Refuse Consent*

Many members of the communities most affected by SQFs rarely feel free to end a police encounter. In fact, many individuals remain confused about their rights to consent or refuse a search, further discouraging the termination of the encounter. This sentiment was repeatedly expressed in the JRP focus groups.

“For me, I don’t actually feel comfortable walking away from a police officer because even though they’re saying, ‘You’re not being arrested or detained,’ I don’t know. Police have a certain authority against you. Like they have a higher authority. So I feel like nowadays they can just do what they want and change the story later—say you did something, say you resisted arrest. So I wouldn’t just interfere. I would just cooperate to the most.”⁶¹

Numerous participants also felt that all stops, not just Level 3, were interrogative:

“Essentially what they do, upon approaching anybody now, is that they just straight up and down interrogate you. Before they can find out what you’re in the wrong for, and then give you an involuntary search.”⁶²

Indeed, many participants remain reticent to ask any questions during the stop: “Cops don’t ask any questions, and you can’t even ask them for their badge number.”⁶³

These experiences comport with the experiences of Legal Aid’s clients. Individuals who are stopped, even under Level 1 where no search is conducted, rarely feel free to walk away. Accordingly, police officers should document these encounters,

⁶⁰ *Id.*

⁶¹ See 11.17.15 CHHS Focus Group at 6: 193-199; see also 11.17.15_BHSS at 7:306–311, 8:399.

⁶² See 03.08.16 SHLES Focus Group.

⁶³ See 04.19.16_EXDS—30m31s Focus Group at 1.

regardless of whether the officer believed the stop to be a “request for information” or “common-law right to inquire.”

F. Police Officers Should Inform Individuals Subject to SQF of their Right to Deny Consent to a Search

Many individuals who are stopped by NYPD officers feel compelled to consent to searches. To that end, we also believe that NYPD officers should be required affirmatively to inform individuals subject to SQFs of their right to deny consent to *any* search if the officer does not have probable cause for that search. This informational requirement should apply to all stops where an officer is legally allowed to search an individual because the lines between Level 1, 2, and 3 stops can become blurry; human interactions are fluid and dynamic, and these interactions, in the context of investigatory behavior by an authority figure, can quickly escalate to a different level without much warning or notice.

Currently, an officer can conduct a search during a Level 1 or 2 stop without informing the individual who is stopped of his right to refuse consent to a search. Requiring notice of the right to deny consent and expanding the documentation requirement to *all* investigatory encounters would expand the reach of a pending legislative package⁶⁴ and protect the personal security of citizens during every level of stop.

An informational requirement such as this is not novel; the court in *Floyd* suggested a similar reform.⁶⁵ Community members most affected by stop, question, and frisk have also expressed a desire for greater information during police encounters:

“Having the officer let you know that you have an option or a choice. Most of the times when an officer searches, they use language to trick you. They’ll go like . . . they’ll sound like they’re accusing you of something. Like, ‘Do you have something in your vehicle that could be dangerous or illegal?’ And then the person will say no. And then they will be like, ‘So you don’t mind if I check it[?]’ And that’s kind of like tricking you into having the consent for a search because the person’s going to be like, ‘No, go ahead. Check it,’ trying to defend their case. And instead of trying to

⁶⁴ The New York City Council’s pending “Right to Know Act” limits the affirmative requirement to Level 3 stops.

⁶⁵ *Remedy Opinion* at 679 n.38, “There could be a simple way to ensure that officers do not unintentionally violate the Fourth Amendment rights of pedestrians by approaching them without reasonable suspicion and then inadvertently treating them in such a way that a reasonable person would not feel free to leave. Officers could, for example, begin *De Bour* Level 1 and 2 encounters by informing the person that he or she is free to leave.”

trick to get consent, I feel like they should just give them an option. Like, ‘I would like to search your vehicle, but you have the right to say no.’”⁶⁶

The receipt of this information during an inherently invasive process not only helps protect an individual’s rights, it shows respect, professionalism, and courtesy — ideals the police department should strive to achieve.⁶⁷

III. Enforcing Disciplinary Measures Would Result in Better Compliance

As the Remedy Opinion explains, documentation must be accompanied by changes in discipline methodology.⁶⁸ The NYPD’s disciplinary system should formalize a structure of progressively strict disciplinary measures for officers who repeatedly violate citizens’ rights with unjustified and abusive stops. The NYPD should also formally record incidents of misconduct that are recognized outside of the department, such as by the criminal courts.

A. Formalizing Discipline For Progressive Violations

The NYPD historically has resisted the creation of any sort of sentencing matrix or efforts to impose some rigor and predictability on supervising officers’ discretion when disciplining officers for improper actions. As a result, an officer who, without force,⁶⁹ has unlawfully detained, questioned, and searched a civilian may receive a mere “minor violation” mark⁷⁰—a non-adversarial disciplinary measure—or a low-level command discipline action, which may be removed from the officer’s record after one year.⁷¹ To combat this, internal policy should formally state that repeated instances of unlawful stops will result in the imposition of progressively severe penalties.⁷²

⁶⁶ See 11.17.15 CHHS Focus Group at 9:322–332.

⁶⁷ See 11.02.15 JAMS Focus Group at 26:16-22 (“I mean if I’m being searched for—I guess giving me the option in the first place. Like hello I’m Officer Bradley. I’m going to do a quick frisk and if you’re good then you’re free to go, letting me know that beforehand because there are those who don’t and letting me know that ahead of time. Giving that speech just like they read you your Miranda Rights. It makes you feel a little more comfortable.”).

⁶⁸ *Remedy Opinion* at 668, 683.

⁶⁹ Use of force cases are subject to different review and thus are not discussed here. NYPD Patrol Guide 221-01, Notes. The Legal Aid Society offers no opinion on this review process in this paper, and focuses only on the intrusive, unjustified, and abusive stops that are conducted without the NYPD’s definition of force.

⁷⁰ Peter L. Zimroth, *Submission of Fourth Report of the Independent Monitor*, 27 (Nov. 18, 2016).

⁷¹ The Patrol Guide requires that records of Schedule “A” violations and Command Discipline Logs be removed and destroyed on the anniversary date of the entry. NYPD Patrol Guide 206-02: Command Discipline, Additional Data.

⁷² Such recommendations are consistent with the NYPD’s own style of recommendations to promote accountability in the wake of *Floyd*. See, e.g., Peters, Mark & Philip Eure, *Body-Worn Cameras* (. . . .continued)

The most recent Monitor Report has noted that in a random audit⁷³ of officer encounters, the NYPD Quality Assurance Division found that several Level 3 *Terry* stops had occurred without the officer recognizing that the situation had escalated beyond a Level 2 encounter.⁷⁴ Two-thirds of these cases were handled with either no action or instructions to the officer—a non-punitive resolution for officers who misunderstand policy.⁷⁵ The rest resulted in either command discipline or a “minor violation” log entry.⁷⁶

As background, police officer violations are handled with either instructions, command discipline, or charges and specifications.⁷⁷ Command discipline actions are “recommended for misconduct that is more problematic than training, but does not rise to the level of charges.”⁷⁸ They consist of “informal,” “non-adversarial,” and unrecorded interviews with the officer who has been charged of certain substantiated violations.⁷⁹ Actions are divided into Schedule “A” violations, which may be removed from the officer’s records and destroyed on the anniversary date of the violation’s entry into the Command Discipline Log, and Schedule “B” violations, which may not.⁸⁰ Schedule “A” offenses include minor violations such as “failure to make reports in a timely fashion,”⁸¹

(continued. . .)

in NYC: *An Assessment of NYPD’s Pilot Program and Recommendations to Promote Accountability*, NEW YORK CITY DEP’T OF INVESTIGATION AND OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD, v-vi (2015) (recommending that the NYPD “make it a clear violation of policy” for a supervisor to use body-camera footage for minor offenses, such as uniform violations).

⁷³ This is referred to as a RAND audit. For these audits, “[t]he NYPD used radio transmissions to identify instances in which stops appear to have been made but a stop was not recorded.” Peter L. Zimroth, *Submission of Fourth Report of the Independent Monitor*, 25 (Nov. 18, 2016).

⁷⁴ Zimroth, n.63, *supra*. In each these situations, the patrolling officer determined that it was unnecessary to fill out the required stop report necessary for Level 3 encounters.

⁷⁵ *Police Discipline*, NYC CIVIL COMPLAINT REVIEW BOARD, (last reviewed, Dec. 27, 2016) <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page>. See also Zimroth, footnote 65, *supra*.

⁷⁶ *Id.* The specific violation designation was not provided in the report.

⁷⁷ NYPD Patrol Guide 206-02: Command Discipline; *id* at 206-05: Preparation of Charges and Specifications. See also *Police Discipline*, NYC CIVIL COMPLAINT REVIEW BOARD, (last reviewed, Dec. 27, 2016) <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page>. See also *Police Discipline*, NYC CIVIL COMPLAINT REVIEW BOARD, (last reviewed, Dec. 27, 2016) <https://www1.nyc.gov/site/ccrb/prosecution/police-discipline.page>.

⁷⁸ *Id.* See also NYPD Patrol Guide 206-02, Purpose, Definition.

⁷⁹ NYPD Patrol Guide 206-02: Command Discipline, ¶¶ 3, 7. The Commanding Officer or Executive Officer has the discretion to determine whether command discipline is appropriate. *Id.* at ¶ 3.

⁸⁰ *Id.* at 206-02: Command Discipline, Additional Data.

⁸¹ *Id.* at 206-03: Violations Subject to Command Discipline, Schedule “A” Violations, ¶ 7.

“unnecessary conversation [with civilians]”⁸² and “any other minor violation that, in the opinion of the commanding/executive officer, is appropriate for a Schedule A command discipline procedure,”⁸³ and the violations mentioned in the most recent Monitor Report most likely fell into one of these categories.⁸⁴

Level 3 encounters premised upon Level 2 observations should not be treated as minor violations, but rather as more serious, Schedule B violations that are not annually erased. Schedule A penalties are inadequate methods to alter officer behavior or end the recurrence of unjustified and abusive stops, largely because Schedule A violation penalties are limited to the following:

- forfeiture of up to five days’ vacation or accrued time;
- restricted out-of-command assignments, which pay “portal-to-portal” and overtime for a fixed period, not to exceed five such assignments;
- verbal and written warnings and admonishments; or
- assignment change.⁸⁵

Moreover, there is no way to measure an officer’s cumulative misconduct regarding *Terry* stops if they are treated as minor violations because they are annually expunged from an officer’s record.⁸⁶ Further action is required to enable police departments to adequately monitor and discipline repeated violations.

The Facilitator should recommend a formalized, consistent system of foreseeable consequences that progressively increases in severity for officers who repeatedly conduct unlawful stops. For example, a minor violation mark may be an appropriate reaction for the first time an officer mistakenly mishandles a Level 3 interaction as a Level 2 encounter. However, the NYPD should adopt clear, formal guidelines to ensure that officers who repeatedly engage in coercive, Level 3 measures—such as frisking,

⁸² *Id.* at 206-03: Violations Subject to Command Discipline, Schedule “A” Violations, ¶ 10.

⁸³ *Id.* at 206-03: Violations Subject to Command Discipline, Schedule “A” Violations, ¶ 34 (emphasis in original). Importantly, Schedule B violations are not considered “minor” violations, like the ones mentioned in the most recent Monitor Report. *Cf. id.* at Schedule “B” violations, ¶ 9 (omitting the term “minor” to describe the catchall violation provision that is included under Schedule “A” violations).

⁸⁴ Compare *id.* at Schedule “A” Violations, ¶ 34, with *id.* at Schedule “B” violations, ¶ 9. The actions observed during the random audit did not fit the description of any Schedule B violation, but did broadly fit the three descriptions listed. More information is not publicly available. See Shallwani, Pervaiz, *NYPD’s Bratton: Disclosing Officer Discipline Was Against the Law*, WSJ.com, (Aug. 30, 2016) available at <http://www.wsj.com/articles/nypds-bratton-disclosing-officer-discipline-was-against-the-law-1472589506> (reporting on the NYPD’s new policy to keep private officer disciplinary reports).

⁸⁵ *Id.* at 206-04: Authorized Penalties Under Command Discipline.

⁸⁶ See NYPD Patrol Guide 206-02: Command Discipline.

manhandling, or blocking the path of subjects—based on Level 2 observations are subject to discipline of increasing severity.

B. Incorporating Misconduct that is Recognized Outside of the Department

Discipline should not be limited to instances where either a supervisor or a citizen reports an officer's misconduct. The NYPD should also create a formal feedback mechanism to recognize when evidence is suppressed or a case is dismissed due to an officer's unlawful stop. Currently, an officer may perform ten unlawful stops or searches, have all ten cases or arrests thrown out of court, yet face no material professional consequence because neither an officer's periodic evaluation nor the disciplinary actions taken against him consider how that officer's unconstitutional behavior has affected the judicial administration of justice. Rather, periodic evaluations primarily rely on review of an officer's self-reported interactions,⁸⁷ and neither command discipline adjudications or charges and specifications consider the officer's overall history of unconstitutional evidence-gathering.⁸⁸

The current NYPD evaluation system does not acknowledge how officer misconduct affects judicial proceedings. Police officers are evaluated on a monthly, quarterly, and yearly basis.⁸⁹ A patrol officer's Monthly Reports are based on the officer's self-reported documentation of daily activity and cross-referenced with self-reported stop, question, and frisk reports.⁹⁰ Quarterly reports are based on these monthly activity logs, officer interviews, and additional comments by supervisors.⁹¹ The annual evaluations, in turn, are primarily based on the "Police Officer's Monthly Performance Reports" and the "Monthly/Quarterly Performance Review" and "Rating System."⁹²

While supervisors have the discretion to include ad hoc comments in an officer's evaluation, there is no formal mechanism that acknowledges when a judge or district attorney finds an officer's behavior to have been subpar. Similarly, Performance Evaluation Raters examine the Central Personnel Index and the Civilian Complaint Review Board records for entries pertaining to the rating period, as well as any other

⁸⁷ See *id.*; nn. 82-83, *infra*.

⁸⁸ See nn. 82-86, *infra*.

⁸⁹ NYPD Patrol Guide 205-57: Police Officer's Monthly/Quarterly Performance Review and Rating System, Purpose, Scope.

⁹⁰ *Id.* at 205-57: Police Officer's Monthly/Quarterly Performance Review and Rating System, Note. See also *id.* at 212-11, Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops, Required Documentation – Uniformed Member of Service, ¶ 24 (2016).

⁹¹ *Id.* at 205-57 at ¶¶ 21-23.

⁹² *Id.* at 205-56: Police Officer's Annual Evaluation Utilizing the Monthly/Quarterly Performance Review and Rating System, Note.

record of performance documentation (e.g., Command Discipline Log, Minor Violations Log, etc.),⁹³ but the Patrol Guide does not require review of court decisions where the officer was not a party to the case.

Officer disciplinary policies also fail to incorporate a feedback mechanism from the courts. Command Discipline adjudications consider only the Supervisor's Complaint Report, Command Discipline Election Report and the officer's prior twelve-month disciplinary history.⁹⁴ Similarly, while charges and specifications may be premised on "written documentation, files, investigative reports, and/or additional information supporting the bases" for the charge,⁹⁵ there is no formal method for referencing repeated judicial censures during the process. Thus, the Department is left unaware of the officer's performance in a key function of the job.⁹⁶

To remedy this, the NYPD should create a formal system that records how often a judge or district attorney has either suppressed or refused to offer evidence in a criminal proceeding due to an officer's unconstitutional behavior.⁹⁷ Many jurisdictions already have similar systems in place to facilitate inter-agency feedback and monitor officer misconduct. For example, California Attorney General Kamala D. Harris issued an opinion that under California state law, the California Highway Patrol could lawfully release to district attorneys' offices information regarding officers found to have

⁹³ *Id.* at 205-48: Evaluations – General –Members of Service, ¶ 3.

⁹⁴ *Id.* at 206-02: Command Discipline, ¶ 1.

⁹⁵ *Id.* at 206-05: Preparation of Charges and Specifications, ¶ 1(a).

⁹⁶ While the police department may not take notice of unconstitutional stops that lead to suppressions in evaluations or discipline, the problem exists throughout the five boroughs. *See, e.g., People v. Brock*, 2016 NY Slip Op 51213 (N.Y. Sup. Ct. Richmond Cty, July 25, 2016) (unconstitutional search); *People v. O'Neill*, 2016 NY Slip Op 05510 (N.Y. Sup. Ct. Queens Cty, July 13, 2016) (lack of officer credibility regarding evidence that led to a search); *People v. Coronado*, 2016 WL 2353598 (1st Dep't, May 5, 2016) (unconstitutional stop regarding a higher level encounter premised on a lower-level observation in New York County); *People v. Redacted 25*, under file with petition as *Redacted 23*, (2d Dep't, Apr. 14, 2015) (same in Kings County); *People v. Redacted 23*, under file with petition as *Redacted 25* (N.Y. Sup. Ct. Bronx Cty, March 31, 2016) (same).

⁹⁷ Discretionary comments by supervisors would be inadequate. The Police Union has recently sued the NYPD for its current evaluation process requiring police officers to document all enforcement activities for review because they claimed the additional information illegally changed the terms and conditions of employment without negotiating with the union. *See* Dan Prochilo, *Police Union Sues NYPD Over New Performance Evaluations*, LAW360, <http://www.law360.com/articles/505830/police-union-sues-nypd-over-new-performance-evaluations>. *See also Stopped, Seized, and Under Siege: U.S. Government Violations of the International Covenant on Civil and Political Rights Through Abusive Stop and Frisk Practices*, 5 (September 2013) (noting that "the NYPD and the City of New York have . . . made it clear that they are not open to outside oversight" by fighting the allegations throughout the *Floyd* trial and signaling its disagreement with the court's legal conclusions when it filed an appeal).

Allowing discretion to include or exclude this information by a supervisor would likely result in its uniform exclusion when the officer has no or few negative adjudications. This, in turn, will stymie the overall effectiveness of documenting these occurrences.

committed *Brady* violations that can be used by defendants as exculpatory evidence.⁹⁸ The city of Philadelphia also has a searchable SQF database that facilitates communication between the police department and the courts about officers' problematic stop practices.⁹⁹

Police unions historically have opposed police department access to “*Brady* Lists,” even though officers are most often included on such lists for “sustained findings of misconduct, criminal convictions, and in-court testimony and findings,”¹⁰⁰ and claim that district attorneys have too much discretion to determine what constitutes “exculpatory evidence.”¹⁰¹ However, in 2013, the Sacramento County Sheriff’s office attested to the utility of both police departments and the public accessing and using *Brady* Lists when an officer has “violated [the public’s] trust” in the police.¹⁰² Moreover, the scope of feedback loops that monitor evidence suppression is limited to two specific types of evidence at issue: legal opinions that suppress unconstitutionally obtained evidence, and evidence that cannot be presented because it was unconstitutionally obtained.

The utility of such a feedback loop outweighs any hypothetical concern about its use. Like testifying against accused criminals, police agencies should not be “saddled” with officers who cannot do “a basic function of their job”—i.e., constitutionally patrol their assigned communities.¹⁰³ By tracking an officer’s unlawful stops and searches, and by articulating foreseeable, material disciplinary measures in response to a pattern of unlawful conduct, the NYPD would demonstrate its commitment to correcting improper behavior, incentivizing greater compliance with current reforms, and earning the respect of the communities it polices.

⁹⁸ Published Opinion 12-401, OFFICE OF THE ATTORNEY GENERAL – STATE OF CALIFORNIA, 2 (Oct. 13, 2015).

⁹⁹ The Defender Association of Philadelphia received a searchable database which allows attorneys to confront officers at hearings and trials with an individualized history of their stop patterns, allowing for more opportunities for accountability. However, due to a confidentiality agreement, the Defender Association cannot disclose any data or specifics related to the information.

¹⁰⁰ Reimund, Mary E., *Are Brady Lists (aka Liar’s Lists) the Scarlet Letter for Law Enforcement Officer’s? A Need for Expansion and Uniformity*, 3 INT’L J. OF HUM. & S. SCIENCES 1, 2 (2013).

¹⁰¹ *Id.* at 4.

¹⁰² Gutierrez, Melody & Kim Minugh, *California police unions fight discipline of officers under prosecutors’ lists*, MERCED SUN-STAR, available at <http://www.mercedsunstar.com/news/state/article/3278731.html>.

¹⁰³ *Id.* (quoting the president of the California Police Chiefs association, who endorsed police *Brady* Lists as a way of keeping departments free of officers who are no longer allowed to testify against accused criminals).

IV. Profiling and Targeted Abuse of Members of Vulnerable Communities

In this section, we provide a brief description of characteristics of certain communities that have historically been subjected to a large percentage of SQFs: the homeless, youth of color, LGBTQ individuals, and persons coping with drug addictions and substance abuse problems. We do so to show how members of these communities, many of whom are already vulnerable, are further victimized by undocumented SQFs.¹⁰⁴

It should be noted that there is significant overlap among these vulnerable populations. For example, many homeless individuals may also be young and of color.¹⁰⁵ They may also be members of the LGBTQ community.¹⁰⁶ Consequently, because such individuals are members of different types of vulnerable populations, they are likely to be at a higher risk of being stopped and frisked or having other antagonistic encounters with police officers than individuals who are not members of these historically vulnerable groups.

First, requiring documentation of all police-initiated encounters would provide additional data concerning interactions between the NYPD and members of these populations.¹⁰⁷ Second, during the focus groups organized for the purpose of the Joint

¹⁰⁴ “People who are members of multiple groups that are each targeted by NYPD for profiling and illegal stops and frisks can experience compounded prejudice and layers of harm. This reality is exacerbated by an environment permeated with police violence and a criminal legal system weighted against many of these same communities.” Center for Constitutional Rights, *Stop and Frisk: The Human Impact*, 14 (2012); see e.g., New York Civilian Complaint Review Board, *Pride, Prejudice and Policing: An Evaluation of LGBTQ-Related Complaints from January 2010 through December 2015*, 37 (2016) (hereinafter “*Pride, Prejudice and Policing*”) (noting that LGBTQ people of color are more likely to complain about police mistreatment than nonminority members of that community).

¹⁰⁵ See Coalition for the Homeless, *Basic Facts About Homelessness: New York City*, available at <http://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/> (2016) (noting that “approximately 58% of NYC homeless shelter residents are African-American” and “31% are Latino” with white individuals comprising only 7% of this population); see also Nikita Stewart, *Homeless Young People of New York, Overlooked and Underserved*, NEW YORK TIMES (Feb. 5, 2016), available at http://www.nytimes.com/2016/02/06/nyregion/young-and-homeless-in-new-york-overlooked-and-underserved.html?_r=0 (noting that there are higher than documented numbers of young homeless people in New York City).

¹⁰⁶ One fifth or 19% of the transgender people surveyed in a 2011 study conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force reported “experiencing homelessness at some point in their lives.” Those who experienced homelessness also reported experiencing mistreatment in public, including from police. Furthermore, while 22% of survey respondents reported instances of harassment in their encounters with the police, 29-38% of respondents of color reported police harassment. See Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 4 (2011) (emphasis added) (This study involved 6,450 transgender participants from all 50 states in the United States) (hereinafter *Injustice at Every Turn*); see also Black and Pink, *Coming Out of Concrete Closets: A Report on Black & Pink’s National LGBTQ Prisoner Survey*, 8 (2015) (mentioning bias of police against LGBTQ people of color).

¹⁰⁷ To be sure, Legal Aid’s recommendation is not to require NYPD officers to ask individuals whether they belong to particular vulnerable populations when they encounter them. Rather, Legal Aid (. . . .continued)

Remedial Process, many members of vulnerable communities, particularly people of color, called for better training for police officers.¹⁰⁸ In particular, they asked for sensitivity training and community based training.¹⁰⁹ To that end, while the Gay Officers Action League (“GOAL”)¹¹⁰ trains officers on LGBTQ issues¹¹¹, and the current police patrol guide also provides guidance to officers on the subject of LGBTQ interactions,¹¹² we further recommend fostering ongoing discussion between the NYPD and non-police officer members of the LGBTQ community to improve and formalize training processes for officers. For the reasons noted below, similar discussions between the NYPD and other vulnerable communities are also encouraged for the purpose of creating regular and routine training programs for police officers, led by non-police officer members of vulnerable communities that address the unique problems faced by those communities.

Our discussions below highlight a disturbing pattern of NYPD activity in relation to vulnerable communities: police conduct sweeps of homeless shelters, thus targeting homeless people for what appears to be “being homeless while in a City shelter”; police conduct sweeps of subway stations where students of color are likely to be found, thus apparently targeting them for “using the subway while young and Black”; police conduct sweeps of areas where transgender persons are congregating thus apparently targeting them for “Walking while Trans”; police conduct sweeps of areas around needle

(continued. . . .)

recommends that the NYPD, working with community members, explore various methods by which third parties or arrestees themselves can provide information about their identities.

¹⁰⁸ See 03.14.16 OSBA_Redacted Focus Group at 18 (noting that the police do not seem like they are trained correctly); 05.20.16 BSLY_Redacted Focus Group at 6 (noting that officers police communities without [proper] training).

¹⁰⁹ See 11.02.15 CH_Redacted Focus Group at 16 (“[T]hey should have sensitivity training . . . so they . . . are more compassionate”); 05.12.16 Focus Group STPN_Redacted at 26 (“I think that the police could use sensitivity training, or better sensitivity training. And I think to hone in around communication skills”); 06.24.16 RHJC_Redacted Focus Group at 22 (“Community people need to be doing the training, not NYPD doing the training for NYPD. That’s like kids teaching kids”); 05.20.16 BSLY_Redacted Focus Group at 5 (“[T]he training [of the police] should be done by [the] community and activists.”).

¹¹⁰ “The Gay Officers Action League (GOAL) was formed in 1982 to address the needs, issues and concerns of gay and lesbian law enforcement personnel. Originally a fraternal organization, GOAL has advocated for the rights of its members and assisted them on matters of discrimination, harassment and disparate treatment in the workplace. GOAL members include both active and retired uniformed and civilian personnel employed in criminal justice professions,” Gay Officers Action League, *About Us*, Gay Officers Action League Website (2016) <http://www.goalny.org/about-us>.

¹¹¹ GOAL conducts training on LGBTQ issues during the general training of officer recruits and as part of officers’ promotional classes. See *Pride, Prejudice and Policing* at 14.

¹¹² Police officers are prohibited from using “discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, *gender identity/expression, sexual orientation* or disability.” Members are also encouraged to use titles of respect (including “preferred name and gender pronouns” for the individuals they encounter) See NYPD Patrol Guide, P.G. 203-10: Prohibited Public Conduct of Officers (2016) (emphasis added).

exchanges, thus targeting people struggling with drug abuse issues for taking advantage of a city service. A common tactic is that the NYPD systematically targets vulnerable individuals who are engaging in otherwise ordinary activities, often in places where they are encouraged to go. NYPD officers rarely stop members of non-minority communities found in these same or similar places who are engaged in the same or similar activities. This practice of targeting vulnerable persons in sweeps for stops is destructive and suggests a far greater interest by officers in fulfilling quotas than in focused community policing. These are exactly the types of patterns that could be more clearly identified by NYPD's auditing department and addressed with full documentation requirements.

A. The Homeless

According to a 2016 report by the National Alliance to End Homelessness, New York has one of the nation's largest homeless populations.¹¹³ Those who are homeless have consistently maintained that they are frequently and unjustifiably stopped and frisked by the NYPD.¹¹⁴ For example, interviewees in a 2012 study conducted by the Center for Constitutional Rights described how police officers "wait[ed] outside of shelters and stopp[ed] [the] people . . . coming out."¹¹⁵ In 2014, police officers conducted raids on homeless shelters in Manhattan that resulted in arrests.¹¹⁶ As recently as May 2016, advocates for the homeless filed a complaint with the NYC Civil Rights Commission, accusing the NYPD of targeting people living on the street in violation of the Community Safety Act, which prohibits "bias-based profiling."¹¹⁷

NYPD officers also regularly conduct sweeps of encampments¹¹⁸ of homeless people, throwing away belongings of homeless persons in violation of proper policy.¹¹⁹

¹¹³ See National Alliance to End Homelessness, *The State of Homelessness in America: An Examination of Trends in Homeless, Homeless Assistance, And At-Risk Populations at the National and State Levels*, 14 (2016).

¹¹⁴ "I have been stopped, questioned and frisked four times," said Joseph Midgley, "*Now that I am homeless, the police harassment has only gotten worse. This form of discriminatory policing is an outrage and should be stopped now.*" New York Civil Liberties Union (NYCLU), *NYCLU Analysis Reveals NYPD Street Stops Soar 600% Over Course of Bloomberg Administration* (Feb. 14, 2012) (emphasis added), available at <http://www.nyclu.org/news/nyclu-analysis-reveals-nypd-street-stops-soar-600-over-course-of-bloomberg-administration>.

¹¹⁵ Center for Constitutional Rights, *Stop and Frisk: The Human Impact*, 14 (2012).

¹¹⁶ See Christopher Matthias and Inae Oh, *NYPD Raid on Homeless Shelter Draws Ire of Advocates*, HUFFINGTON POST (June 02, 2014) http://www.huffingtonpost.com/2014/05/30/nypd-homeless-shelters_n_5413486.html.

¹¹⁷ Nikita Stewart, *New York Police Illegally Profiling Homeless People, Complaint Says*, NEW YORK TIMES (May 26, 2016) http://www.nytimes.com/2016/05/27/nyregion/new-york-police-illegally-profiling-homeless-people-complaint-says.html?_r=0.

¹¹⁸ An encampment, colloquially referred to as a "tent city" is a space where several homeless people congregate, sleep and store their belongings. See National Coalition for the Homeless, *Swept Away: Reporting on the Encampment Closure Crisis*, 2 (2016).

NYPD officers in “warrant squads” often conduct sweeps of homeless shelters to arrest individuals with open warrants. In one incident alone, NYPD officers arrested at least 125 people in nighttime raids across several shelters in the City.¹²⁰ As a result of these NYPD practices, many homeless people forego joining encampments or sleeping in homeless shelters, instead choosing to sleep in isolation in subway cars, bus stations, or fast food restaurants where they are put at great risk to their health and personal safety and are also likely to be stopped and frisked by police officers.

B. Youth of Color

Youth of color face the highest risk of being stopped and frisked today; these individuals are more likely to be stopped by police officers even when they are engaging in ordinary, otherwise encouraged activities, such as attending school. Even since the implementation of the *Floyd* immediate reforms, young people have discerned no difference in the way that police interact with them.

Students of color in New York report being stopped by police on their way to and from school¹²¹ and being searched during these encounters without consent.¹²² Additionally, students have reported being frisked and asked for their IDs on their way to and back from school.¹²³ Students of color have also been stopped at subway stations for using their MetroCards, purportedly on suspicion that the MetroCards were stolen. During such stops, students are asked to produce their IDs, ostensibly because of the officers’ disbelief that they are students. One student in a focus group recounted:

“Coming from school last year, I was walking past a deli on my block. Usually over there nothing really happens. But the police were around there, so I had on my school uniform summertime, so they stopped me and asked me to see my ID.

(continued. . . .)

¹¹⁹ See Emma Whitford, *NYPD Destroyed Birth Certificates, Medication, IDs In East Harlem Homeless Raid*, GOTHAMIST (Oct 13, 2015) http://gothamist.com/2015/10/13/harlem_homeless_raids.php. (When vacating public property, police are required to record and provide vouchers for any property left behind by the homeless).

¹²⁰ See *NYPD Raid on Homeless Shelter Draws Ire of Advocates*; see also Nina Bernstein, *Police Arrest in 125 Nighttime Raids on Homeless Shelters*, NEW YORK TIMES, (Jan. 20, 2000) <http://www.nytimes.com/2000/01/20/nyregion/police-arrest-125-in-nighttime-raids-on-homeless-shelters.html>.

¹²¹ See 11.17.15 BHSS Focus Group at 3–4; see also 11.18. 2015 CVSOS-Redacted Focus Group at 14–15.

¹²² 11.18. 2015 CVSOS-Redacted Focus Group at 14 (“I had said, ‘I don’t consent to this search.’ And he was just like, ‘Nah.’ And they just kept searching. We had just c[o]me out of school.”).

¹²³ See 11.17. 2015 CHHS_2_Redacted Focus Group at 2; see also 11.17.15 BHSS Focus Group at 3–4; October 22, 2015 JAMS Focus Group Transcript at 4 (“And then on my way to school they would stop, frisk and search me. And it was like that for a little bit, so they got bored and moved on to someone else.”).

And I was, like, compliant with it because I was like, I guess they're looking for somebody. So I showed them my ID. And I only had my book bag, my dress shirt. And he decides to pat me down, and he was asking me do I have anything on me. And I was trying to explain to him that I just came from school I didn't have anything on me. My book bag was empty. And they ended up looking through my book bag. I emptied it out, but nothing was there except paper."¹²⁴

This account, as well as many others, shows that students are stopped even while wearing their school uniforms.¹²⁵ The NYPD has also targeted certain train stops after school hours, primarily in areas where young people of color are using subway stations. There, police officers stop children whom the police believe look older than their actual ages, challenging their use of student MetroCards. To combat this practice, school principals have had to provide students with official letters verifying their age and enrollment in school. Some schools have resorted to sending staff members to train stations to vouch for students to police officers. As one young respondent in a focus group observed:

"I noticed there were so many more cops like out and around just like searching, hiding in little corners to kind of just wait . . . I seen a lot of profiling . . . [police would stop people with] hoodies . . . if they had dreads or if they had like, braids"¹²⁶

Moreover, because police officers can stop any suspected "truant," a designation that includes anyone who appears to be under 17 during school hours (until 1 pm), they have extraordinary discretion to stop and frisk youths who, due to their age and immaturity, are less likely to understand their rights and are even less equipped to make a decision regarding their right to refuse consent to a search.

These frequent, invasive stops and searches conducted by the NYPD create a significant psychological toll on the young people who regularly experience them. In a 2012-2013 study conducted on 1,261 young men in New York City aged 18 to 26, researchers found that individuals who reported more police contact also reported more "trauma and anxiety . . . tied to how many stops they reported [and] the intrusiveness of the encounters."¹²⁷

This psychological evidence is buttressed by the descriptions of young people's feelings about the experience of SQF in the community. Notably, young people of color report feeling isolated from the larger society that does not experience this level of police

¹²⁴ 11.17. 2015 CHHS_2_Redacted Focus Group at 2.

¹²⁵ 11.17. 2015 Focus Group CHHS_1_Redacted at 8-9.

¹²⁶ 11.02.15 CH_Redacted Focus Group at 5.

¹²⁷ Gellar et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 12 AMERICAN JOURNAL OF PUBLIC HEALTH 2321 (2014).

interaction. Many also have come to accept stop-and-frisk as part of their everyday lives; they see the police as an ‘occupying force’ or believe that they are constantly under siege by the NYPD.

This feeling of being “occupied” by the NYPD is reinforced by the presence of police in the *homes* and *schools* of young people of color. The NYPD’s Juvenile Robbery Intervention Program (“JRIP”) involves individual Housing Bureau detectives keeping a close watch on public housing residents, ages 14 - 21, who are charged with or suspected of participation in a robbery. JRIP detectives regularly visit program participants at home and at school, confer with their parents and teachers, and connect them to services.

While this program appears innocuous and even helpful, there are indications that the NYPD relies on it for more insidious purposes. In particular, it has become apparent that the program is used as a means to obtain intelligence on gang activity and more worrisome, as a means for NYPD officers to pressure children to become police informants or witnesses in active criminal investigations. This level of police interference and surveillance in the lives of young people of color raises significant constitutional concerns and further compounds the psychological damage and harassment experienced by these vulnerable individuals.

Again, the expansion of the current documentation requirements to cover all of the encounters between the youth and the NYPD, particularly those between school children and police officers, would ensure that there is proper oversight over officers’ actions and would mean that the unlawful, disruptive and psychologically harmful stops, surveillance and interference with young people can be identified and stopped.

C. LGBTQ Communities

Recent evidence shows that LGBTQ individuals are more likely to be stopped by the police than their non-LGBTQ peers.¹²⁸ According to a 2012 study of Jackson Heights, Queens residents¹²⁹ conducted by Make the Road New York (“MRNY”), a New York based community advocacy organization, 28% of the non-LGBTQ respondents reported being stopped by the police as compared to 54% of the LGBTQ respondents and 59% of transgender respondents.¹³⁰ In addition, transgender individuals are often stopped by the NYPD and accused of engaging in sex work, not based upon any action taken by the transgendered person, but simply based on the person’s physical appearance and/or

¹²⁸ See Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* at 5 (hereinafter “*Transgressive Policing*”)(2012).

¹²⁹ To be sure, this type of asymmetric treatment by the police is not experienced by LGBTQ persons exclusively in Jackson Heights, but also in other parts of the city including Brooklyn, Chelsea and the West Village. See *Pride, Prejudice and Policing* at 5, 42.

¹³⁰ *Transgressive Policing* at 4.

congregation with other transgendered persons.¹³¹ The commonly used descriptor “Walking while Trans” indicates the high level of risk of being accosted by police that transgender persons face.¹³²

In its large-scale study of LGBTQ bias and the NYPD from 2010 to 2015, the NYC Civilian Complaint Review Board (“CCRB”) received 466 distinct complaints which contained several allegations that some police officers used LGBTQ-related slurs when interacting with the public.¹³³ According to MRNY’s 2012 report, some members of the LGBTQ community who have been stopped by police officers have also reported being subject to verbal and even physical abuse, including groping and being subjected to inappropriate touches during SQFs.¹³⁴ Until 2012, stop-question-and-frisk policies authorized police officers to stop transgender individuals for prostitution-related offenses and subsequently charge them if the officers found any condoms in the individual’s possession.¹³⁵ According to the MRNY report, 61% of transgender respondents reported being stopped and harassed by the police for prostitution-related offenses or for their IDs not matching their gender presentation.¹³⁶

D. Persons Addicted to Drugs or Coping with Substance Abuse Issues

Substance abusers, especially those addicted to opioids, are also likely to face high levels of police stops. Targeting areas such as needle exchanges, police officers have begun approaching individuals who are leaving needle exchange centers and, after conducting a SQF, arresting them for drug possession based on trace amounts of drugs left in their needles. This type of activity suggests a far greater interest in achieving arrest quotas than in productive community policing designed to protect the safety and well-being of citizens. We maintain that condoning undocumented SQFs with respect to substance abusers further victimizes individuals who would be better served by access to social services.

¹³¹ *Id.* at 12.

¹³² *Id.*

¹³³ *Id.* at 23.

¹³⁴ *Transgressive Policing* at 4–5, 12, 19, 23–24.

¹³⁵ *Id.* at 12.

¹³⁶ *Id.* at 18.

V. Conclusion

For the reasons set forth above, we respectfully submit this paper in support of our position that documentation of all stops should be required, some system of disciplinary consequences for unlawful stops should be developed and the profiling and abusive targeting of vulnerable communities must end.

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February 10, 2017

Judge Ariel Belen
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Re: Joint Remedial Process Reform Recommendation Concerning the
City of New York's Interpretation of 50-a

Dear Judge Belen,

I write to summarize why we believe the City of New York's interpretation of Civil Rights Law 50-a ("50-a"), and not the state statutory language, needs immediate reform. While it is true that 50-a grants police records more protection than almost every other public access exemption in the country, prior to May 2016, no administration before has interpreted it so broadly as to completely shield the New York Police Department from disclosing summaries of misconduct that had been substantiated through investigations either by the Internal Affairs Bureau or the Civilian Complaint Review Board. This interpretation allows no transparency of the NYPD accountability system and thwarts all efforts at advancing public trust of the NYPD. Many of the reforms sought by the community during the JRP process will not be feasible without first addressing the current administration's interpretation of 50-a.

(1) This administration's interpretation of 50-a is legally overly broad.

FOIL provides the people of New York a "means to access governmental records, to assure accountability and to thwart secrecy," by ensuring that "[a]ll records of a public agency are presumptively open to public inspection, without regard to need or purpose of the applicant." *Matter of Buffalo News, Inc. v. Buffalo Enter. Dev. Corp.*, 84 N.Y.2d 488, 492 (1994) (internal citation and quotations omitted). Therefore, "consistent with these laudable goals," the Court of Appeals "has firmly held that FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government." *Id.*

Because FOIL serves vital public interests, the burden is upon the government to demonstrate that the requested information falls “squarely within” the exemption. *Matter of Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145, 158-59 (1999). “[T]he standard of review on a CPLR article 78 proceeding challenging an agency's denial of a FOIL request is much more stringent than the lenient standard generally applicable to CPLR article 78 review of agency actions. A court is to presume that all records are open, and it must construe the statutory exemptions narrowly.” *Matter of Berger v. N.Y.C. Dep't of Health & Mental Hygiene*, 137 A.D.3d 904, 906 (2d Dep't 2016), *leave to appeal denied*, 27 N.Y.3d 910 (2016). And to invoke Section 50-a, under this standard, an agency cannot “with[old] all of the requested records on the basis of a blanket invocation of Civil Rights Law § 50-a” but must “offer[] a specific basis for the claimed exemption.” *Matter of Hearst Corp. v. N.Y. State Police*, 966 N.Y.S.2d 557, 560 (3d Dep't 2013). Further, “[c]onclusory assertions that certain records fall within a statutory exemption are not sufficient; evidentiary support is needed.” *Matter of Dilworth v. Westchester Cty. Dept. of Corr.*, 93 A.D.3d 722, 724 (2d Dep't 2012).

Section 50-a, as relevant here, protects “personnel records” of police officers from compelled disclosure. Civil Rights Law § 50-a. The statute provides no definition for personnel records, except to say that to qualify, the records must be “used to evaluate performance toward continued employment or promotion.” *Id.* In this regard, it is firmly established that the focus is not merely on the nature of the information in the document, but also upon the actual use of that document in evaluating officers. The summaries of substantiated misconduct that are the subject of all four of Legal Aid’s Article 78 petitions are not covered by 50-a.

(2) The Legal Aid Society’s Litigation Series Regarding Summaries of Substantiated Misconduct

The current administration’s position in its four cases against The Legal Aid Society on behalf of both the Civilian Complaint Review Board and the New York Police Department is contrary to the legislative intent and prior administration’s interpretations of 50-a. In all our cases, we have requested summaries of substantiated misconduct, whether from the CCRB or NYPD. Summaries have never before been considered “personnel records” under 50-a, as former Commissioner Ray Kelly even admitted recently while saying he also wanted to remove media access to these summaries but his lawyers advised him that would be unlawful. *See* Rocco Parascandola and Graham Rayman, *Fmr. Police Commissioner Raymond Kelly likes Bill Bratton’s decision to keep NYPD disciplinary records secret*, New York Daily News, Aug. 27, 2016, <http://www.nydailynews.com/news/politics/raymond-kelly-agrees-bill-bratton-decision-nypd-secrecy-article-1.2768433>.

Neither the summaries of substantiated misconduct from the CCRB nor the NYPD fall within the “narrowly specific” set of documents that the legislature intended to protect with Section 50-a. *Matter of Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562 (1986). The purpose of the statute is “to prevent time-consuming and perhaps vexatious investigation into irrelevant collateral matters in the context of a civil or criminal action.” *Id.* (internal citation and quotation marks omitted). Statements in the legislative history confirm that the bill was targeted at preventing “the indiscriminate perusal of police

officers' personnel records by defense counsel in cases wherein the police officer is a witness," because "such records often contain raw, unverified information derogatory of the subject police officer, such as letters of complaint from members of the public." *See* Mem. Of Roger Hayes, State of New York Division of Criminal Justice Services, Bill Jacket L. 1976, Chapter 413. Complaints that have been substantiated either by the Civilian Complaint Review Board or the Internal Affairs Bureau are not "unverified information" the 1976 legislature was concerned with and summaries of them are certainly not "raw".

Many of the proceedings that are ultimately reflected in the summaries are already public. For example, the CCRB routinely prosecutes members of the NYPD in front of an administrative law judge, known as a Deputy Commissioner of Trials, at a trial room at NYPD headquarters. *See* CCRB, *APU Trials*, <https://www1.nyc.gov/site/ccrb/prosecution/apu-trials.page> (last visited Nov. 29, 2016). These trials are open to the public. *Id.* After the Police Commissioner makes the ultimate determination of discipline, the summary of the charge and the penalty are published along with any dispositions the NYPD has made for other officers in a list summary entitled "Personnel Orders." For at least 40 years, the NYPD routinely made these Orders publicly available to reporters by posting them on a clipboard at the Deputy Commissioner of Public Information's ("DCPI") office at NYPD headquarters. *See* Rocco Parascandola and Graham Rayman, *Exclusive: NYPD Suddenly Stops Sharing Records On Cop Discipline In Move Watchdogs Slam As Anti-Transparency*, New York Daily News, Aug. 24, 2016, <http://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145>. This was not the only place where the records were made available, however. They have also been available at the New York City Hall Library, including orders dated as recently as April 2016.¹

Despite the NYPD's longtime disclosure of these records, on May 27, 2016, the NYPD denied my request for the records on behalf of The Legal Aid Society. The NYPD stated that it would no longer make these orders available to the press going forward, regardless of its past policy of public disclosure. The timing of the NYPD's abrupt reversal is more than a little suspicious. It comes at a time of increased public demand for police accountability, especially for the officers who caused the deaths of Ramarley Graham in 2012 and Eric Garner in 2014. And the public's increasing interest in the requested information is stronger and more justified than ever. In the past year, there have been public demonstrations calling for the NYPD to fire Officer Richard Haste, who shot Ramarley Graham, as well as Officer Daniel Pantaleo, who choked Eric Garner. *See, e.g.,* Chauncey Alcorn and Larry McShane, *Eric Garner's Mother Leads Brooklyn March Against Police Brutality With Al Sharpton On Eve Of His Death Anniversary*, New York Daily News, July 16, 2016, <http://www.nydailynews.com/new-york/al-sharpton-eric-garner-widow-esaw-lead-brooklyn-march-article-1.2714068>; Sameer Rao, *Ramarley Graham's Family, Activists Demand Accountability With #23Days4Ramarley Campaign*, Color Lines, Apr. 26, 2016, <http://www.colorlines.com/articles/ramarley-grahams-family-activists-demand-accountability-23days4ramarley-campaign>.

¹ Because the Orders posted outside the DCPI office have since been taken down, *see* Parascandola and Rayman, *supra*, Petitioner could not confirm that the contents of the Orders posted by the DCPI were identical to those of the Orders still available at the City Hall Library.

Contrary to the City's previous legal arguments that Section 50-a prevents the disclosure of officer disciplinary dispositions in all cases, in late January 2017, the City newly asserted that it can choose to release such information on a case-by-case basis to mollify demands by the family and supporters of Ramarley Graham following the well-attended administrative trial of Richard Haste, the officer who shot and killed the unarmed teen. NYPD Deputy Commissioner Kevin Richardson announced on January 25, 2017 the NYPD would work "collectively with the Law Department ... [to] figure out the parameters of how we can regularly disclose the information as regularly as possible, while 50-a exists." Ashley Southall, "City Moves to Reveal Some Punishment of Police Officers," *New York Times*, Jan. 25, 2017, <https://www.nytimes.com/2017/01/25/nyregion/ramarley-graham.html>. While this development goes in the right direction, the information should be made public regardless of whether the NYPD decides are particular case is within "the public interest".

(3) Communities Demand Transparency

Public support for transparency with respect to the police has gained momentum over the past two years, particularly in recent months. Community organizations, The New York Times Editorial Board and elected officials have called for the NYPD to resume its former practice of releasing summaries of officer misconduct. *See, e.g.*, The Editorial Board, *Let the Public See Police Officers' Records*, *N.Y. Times*, Nov. 3, 2016, <http://www.nytimes.com/2016/11/03/opinion/let-the-public-see-police-officers-records.html?smprod=nytcore-ipad&smid=nytcore-ipad-share>. New York City Mayor Bill de Blasio and Governor Andrew Cuomo also have felt called upon to address the issue. *See* Office of the Mayor Press Release, *Mayor de Blasio Outlines Core Principles of Legislation to Make the Disciplinary Records of Law Enforcement and Other Uniformed Personnel Subject to Disclosure* (Oct. 14, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/820-16/mayor-de-blasio-outlines-core-principles-legislation-make-disciplinary-records-law>; Jillian Jorgensen, *Cuomo Says Releasing NYPD Records is a 'Decision for New York City'*, *Observer*, Sept. 8, 2016, <http://observer.com/2016/09/cuomo-says-releasing-nypd-records-is-a-decision-for-new-york-city/>.

Citizens have a right to know how the NYPD's police disciplinary system is functioning. If officers with a history of excessive force are not being adequately disciplined, it would necessarily inform ongoing public conversation regarding pertinent and systematic problems within the City's internal and civilian police oversight, accountability, and disciplinary systems—issues that the legislature has emphatically declared are "the public's business." *Id.* Indeed, the information is particularly critical at this time in light of the recent series of widely publicized deaths caused by police officers across the country, including the deaths of Ramarley Graham and Eric Garner in New York City. It cannot be the legislature's intent that such basic routine information be protected from public disclosure.

(4) The City Chooses to Withhold Summaries of Substantiated Misconduct

Finally, even if the City may choose not to disclose summaries under 50-a, its interpretation that 50-a leaves them no choice is certainly wrong. Mayor de Blasio has publicly stated that he believes the NYPD should release this information, but is prohibited from doing so under Section 50-a. *See* Greg B. Smith and Kenneth Lovett, *De Blasio Calls on Albany to Nix Law that Hides NYPD Officers' Disciplinary Records; Cop Unions Protest*, New York Daily News, Sept. 1, 2016, <http://www.nydailynews.com/new-york/de-blasio-albany-nix-law-hiding-nypd-disciplinary-records-article-1.2774161>. As he explained: "I believe we should change the state law and make these records public. . . . The current state law that we have to honor—that does not allow for transparency." *Id.* Thus, our FOIL Request Denial as well as the Mayor's own public assessment of the situation is based on the legal conclusion that Section 50-a prohibits the NYPD from releasing the Orders.

This is clearly an incorrect application of Section 50-a. New York courts have established that "the use of [personnel records] by a governmental entity, in furtherance of its official functions, is unrelated to the purpose of Civil Rights Law § 50-a." *Poughkeepsie Police Benevolent Ass'n, Inc. v. City of Poughkeepsie*, 184 A.D.2d 501, 501 (2d Dep't 1992); *see also Reale v. Kiepper*, 204 A.D.2d 72, 73 (1st Dep't 1994). No court has held that Section 50-a imposes any affirmative obligation on a state agency to keep records secret despite that agency's desire to publish such records. Indeed, multiple decisions have concluded just the opposite, permitting agencies to publish personnel records over the objections of police officers, and affirmed that officers have no private right of action to enforce Section 50-a. *Poughkeepsie*, 184 A.D.2d at 501 (holding that a police department was entitled to share documents concerning police discipline with the public, even if they were personnel records); *Schenectady*, 84 A.D.3d at 1457 (rejecting a challenge to public disciplinary hearings under Section 50-a and noting individual police officers possess no private right of action under Section 50-a); *Reale*, 204 A.D.2d at 72 (holding that the NYC Transit department could publish disciplinary information about NYC transit officers in departmental bulletins).

The City of New York has, therefore, greatly erred in its determination that it is *prohibited* from disclosing these records in response to the FOIL Request or otherwise sharing them with the public. The JRP recommendations should highlight the importance of interpreting 50-a narrowly, and should show how a narrow interpretation would allow for disclosure of summaries of substantiated misconduct, as they have for more than 40 years. This one recommendation will make many of the recommendations more likely to succeed in achieving trust, accountability and transparency between the police and the community.

Very sincerely,

Cynthia Conti-Cook
Staff Attorney

CITIZENS UNION | ISSUE BRIEF AND POSITION STATEMENT

Public Oversight of Police Misconduct

INTRODUCTION

Citizens Union of the City of New York is an independent, non-partisan civic organization of members dedicated to promoting good government and political reform in the city and state of New York. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. Founded in 1897 to fight the corruption of Tammany Hall, Citizens Union currently works to ensure fair elections, clean campaigns, and open, effective government that is accountable to the citizens of New York. We do so by informing the policy debate and influencing the policy outcomes that affect the lives of all New Yorkers.

Believing that an informed citizenry is the cornerstone of a thriving local democracy, Citizens Union Foundation—the non-profit research, education, and advocacy organization affiliated with CU—publishes GothamGazette.com, a front row seat to New York City policies and issues.

In the early 1990s, the city government took steps to address the issue of public oversight of police misconduct by establishing a more accountable process with the reconstitution of the Civilian Complaint Review Board (CCRB). Since then, there have been subsequent calls for further change that draw upon the thirty-five years of civic groups and fact-finding commissions that have called for reform in how the New York Police Department's (NYPD) disciplinary system responds to claims of police misconduct, and ensures that an effective and meaningful civilian oversight system exists.

Citizens Union historically has not taken a position on issues of police conduct, although it reviewed the issue on two occasions: first in the mid-1980s and again when the CCRB was being reestablished in the early 1990's. In consideration of the importance of this issue to the public, Citizens Union has reviewed the City's policies and procedures governing the handling of alleged misconduct of officers of the NYPD and the subsequent internal disciplinary action. Though some important changes have been made, many previous recommendations of the Knapp and Mollen commissions, and by Mayor Giuliani's Commission to Combat Police Corruption (the CCPC, sometimes referred to as the Davis Commission) have not been implemented. It is because of this lack of action and flaws in the current system of oversight that CU is stepping forward.

Citizens Union believes it can lend an important voice to discussions about the need for greater transparency, stronger procedures, and even-handed fairness in the accountability and oversight of the city's system of police discipline. How the NYPD handles these matters is critical to the effectiveness of the operations of the Department and the public's confidence in it. Both the officers and the public are entitled to have a clear, definitive and open system of rules and disciplinary consequences that is fair, measured and consistent with the violation. The Department is entitled to an oversight system that can, when appropriate, validate the policies and programs it has implemented. Moreover, the public is also entitled to a transparent and effective civilian oversight system that reports on important issues in a meaningful and timely manner.

ISSUE OVERVIEW

Citizens Union believes that a healthy democratic society must have a citizenry that has confidence in, and actively supports, its police department if it is to be fully effective in providing public safety.

Citizens Union believes that the vast majority of police officers are honest, hard-working individuals who perform the vital and dangerous function of protecting our city. The city is safer from crime and terrorism because of how the force has been led as well as how the tens of thousands of New York City police officers have carried out their work courageously. And while the value and importance of its work and contributions are generally recognized, the Department has not yet achieved in

the many diverse communities throughout the city, the full confidence and cooperation it needs to maximize its effectiveness. Citizens Union believes this is due in significant measure to the NYPD and City's handling of police misconduct allegations.

CITIZENS UNION BELIEVES
the best way to ensure greater support of the police is through providing a more transparent and independent system of oversight, prosecution, and adjudication when allegations of misconduct arise.

Citizens Union believes that the NYPD would garner additional public confidence and support if more transparent and different procedures were in place to swiftly and fairly investigate complaints of misconduct.

Citizens Union believes that even though the NYPD maintains it has improved its internal handling of allegations of police misconduct under its current leadership, a more independent system of oversight, prosecution and adjudication is required to maximize public trust and ensure integrity in the process.

Most organizations prefer to be self-regulating. The NYPD is no different. There is a culture within the Department of wanting to deal with alleged misconduct “in-house” rather than in view of the public. We believe that this approach has hindered the Department's ability to effectively perform its broader mission of providing a sense of safety and well-being for all citizens. It has also engendered, in some communities, an unnecessary atmosphere of mistrust and added to the perception that there is “a blue wall of secrecy.” As a result, when incidents involving alleged misconduct by the police occur, they are not channeled through a system of justice in which the public has confidence, and instead disappear into a process where the disciplinary handling and outcome take place out of the public realm. This process, hidden from public view and scrutiny, results in little, if any, long-term structural reform to reduce future acts of misconduct and further alienates the NYPD from the public.

The recommendations that follow are not meant to be panaceas. Meaningful efforts to investigate, prosecute and punish those who engage in misconduct are key factors in deterring improper behavior, but prevention has the greatest ability to have a lasting impact. Increased oversight of the police disciplinary process is one step in a comprehensive effort to reduce incidents of police misconduct and improve community relations. Citizens Union is aware of, and applauds, the positive measures that are being implemented to ensure that cadets gain more community familiarization and are trained on innovative and proven ways to diffuse conflicts and build trust. To forge better trust and reduce incidents of misconduct, a paradigm shift in how the police officers interact with the public is imperative. Such a shift must focus not only on the training of cadets in the academy, but also reshaping the attitudes and skills of veterans on the force.

CU recognizes that the police are in a unique position in our society. Not only are they accorded the most power of any set of city employees, they are also often placed in circumstances where they are expected and required to enforce the law by using force, including stops, frisks, searches, arrests, and the potential use of deadly force. Citizens Union believes that precisely because of these circumstances, the best way to ensure greater support of the police is through providing a more transparent and independent system of oversight, prosecution, and adjudication when allegations of misconduct arise.

We believe that the measures set forth below, many of which have been previously proposed by non-partisan expert panels, are essential to maximizing public support and confidence in the police and strengthening the social fabric of our City.

RECOMMENDATIONS TO ENSURE GREATER ACCOUNTABILITY AND PUBLIC CONFIDENCE IN THE NEW YORK POLICE DEPARTMENT

Citizens Union recommends the following measures to improve public confidence and support for the NYPD. These measures together seek to: a) improve public oversight of police conduct, b) strengthen the system of accountability, and c) ensure a more fair and independent procedure for handling complaints of misconduct.

1. Create a More Effective and Independent Civilian Complaint Review Board

The Civilian Complaint Review Board (CCRB) is an autonomous civilian-oversight body of thirteen members appointed by the Mayor (five upon the recommendation of the City Council and three upon the recommendation of the Police Commissioner). It is empowered to investigate, issue findings, and recommend actions on complaints and allegations of the use of excessive or unnecessary force, abuse of authority, discourteous actions, or the use of offensive language against civilians by NYPD police officers. As such, it plays a key role in ensuring the public has confidence that civilian allegations of police misconduct will be handled fairly, judiciously, and most importantly, independently.

The CCRB currently needs more financial resources, greater independence, and stronger authority to live up to its mission. The Mayor and the City Council need to work together to create a more effective and independent CCRB. To accomplish the goals set forth for the CCRB, Citizens Union recommends the following legislative and administrative changes:

a) Enable the CCRB to Try Cases It Substantiates

CCRB lawyers, instead of NYPD lawyers from the Department Advocate's office, should file and handle the prosecution of complaints substantiated by the CCRB with the recommendations of charges and specifications. The CCRB should be given the authority and responsibility for developing its own team of qualified and experienced lawyers to litigate the substantiated cases.

This recommendation mirrors previous recommendations of Mayor Giuliani's Commission to Combat Police Corruption, and a Memorandum of Understanding (MOU) signed in April of 2001 between the NYPD and the CCRB during the Giuliani Administration which followed an investigation by the U.S. Attorney's office in Brooklyn and the Justice Department's Civil Rights Division in Washington, D.C. To date, these recommendations and agreements have not been implemented.

When several police unions challenged the 2001 MOU, the court ruled that these types of cases cannot be brought before the Office of Administrative Trials and Hearings (OATH), which is arguably the most preferable venue. But the court did affirm that the CCRB had the authority under the MOU to prosecute its cases if they were heard in front of an NYPD administrative judge. CCRB prosecutors should be granted customary powers of prosecutorial discretion, including the power to conduct plea negotiations and reach agreements with officers and their attorneys. As is the current practice and required by the City Charter, the Commissioner retains the authority and discretion to make final disciplinary determinations, including agreements reached through plea negotiation.

In order to ensure a greater level of independence and combat the perception that the NYPD may exercise a bias in the execution of substantiated cases by the CCRB, the City should without delay transfer prosecutorial function to the CCRB and provide the CCRB with sufficient funds to hire the necessary staff of prosecutors.

Citizens Union recognizes that in response to past criticism with regard to the internal handling of charges and specifications, the NYPD has recently made efforts toward professionalizing its staff by acquiring talent that comes from outside its ranks and creating a greater level of prosecutorial independence. These attorneys and prosecutors (as well as the Police Department Trial Room Administrative Law Judges), however, still ultimately serve within the institution of the NYPD and under the authority of the Police Commissioner, which is the basis for Citizens Union's concern.

In order to ensure a greater level of independence and combat the perception that the NYPD may exercise a bias in the execution of substantiated cases by the CCRB, the City should without delay transfer prosecutorial function to the CCRB and provide the CCRB with sufficient funds to hire the necessary staff of prosecutors.

Citizens Union believes that the transfer of prosecutorial power to the CCRB could be accomplished in one of three possible ways:

1. The current Mayor could order the implementation of the same MOU Mayor Giuliani authorized in 2001 affecting this change, or alternatively issue an Executive Order pursuant to City Charter § 11 a., or
2. The City Council could transfer the prosecutorial function to the CCRB as a legislatively-enacted Charter amendment¹, or
3. A Charter Revision Commission, such as the one slated to be convened by Mayor Bloomberg to broadly examine the structure of City government, could submit this proposal as a referendum in 2009 to allow voters to determine whether to add it to the City Charter (though this would delay action until 2009).

Concurrently, the City and the State should explore ways through legislation or other means that would allow CCRB complaint hearings to go through OATH, or an alternative independent body, to create a needed level of independence and impartiality. One possible approach would be to enact legislation specifying that hearing officers be appointed for fixed terms, removable only for cause. At present, the hearing officers are a deputy commissioner and assistant commissioners who serve at the pleasure of the Commissioner.

Citizens Union also supports the argument put forward in July 2000 by the Commission to Combat Police Corruption that there should be a system in which the CCRB is given the responsibility and the power to prosecute cases because it would put greater onus on the CCRB to strengthen its cases. As the CCPC then wrote, "Such a system would provide an incentive to CCRB to substantiate only cases that can be successfully prosecuted and prevent the Department and CCRB from being able to blame each other for the failure of CCRB prosecutions. Increasing accountability and eliminating the reciprocal finger pointing which often takes place currently should also enhance public confidence in how these complaints are being addressed."² The finger pointing mentioned in that July 2000 report has unfortunately been played out time and again, most recently at a public hearing held in March 2007 held by the City Council Committee on Public Safety.

Citizens Union believes that in administering justice in cases of alleged police misconduct, too much authority currently resides in the Police Department to prosecute, hear, adjudicate, and decide penalties. Investing so much authority in a single entity to handle essentially four different, major parts of the police disciplinary process – the same entrusted with the right to use force to provide public safety and enforce the law – does not provide for an appropriate level of public oversight or separation of powers in a democratic society.

b) Provide the CCRB with the Authority to Prosecute Officers Found Guilty of Lying During CCRB Investigations

The City Council should pass and the Mayor should sign legislation clearly granting the CCRB the authority to file

¹ In upholding the legality of the Giuliani Administration's transfer of the prosecutorial function by MOU, *Lynch v. Giuliani*, 301 A.D.2d 351 (1st Dept. 2003), the Appellate Division said nothing that would preclude the transfer by a Council-enacted Charter amendment. As the Court observed, the transfer of the prosecutorial function simply "reallocate[s] the division of duties" between two Mayoral agencies (the NYPD and the CCRB), does not accord any new "substantive" powers to the CCRB, and preserves the Police Commissioner's authority "to make the final determinations as to the appropriate disciplinary sanctions." 351 A.D.2d at 358. Accordingly, Citizens Union believes that a Council-enacted Charter amendment on this subject does not have to be submitted to the voters as a referendum, because it is not a change that "abolishes, transfers or curtails" the powers of the Mayor in any respect (Charter Sec. 38 (5)).

² Commission to Combat Police Corruption July 2000 report, *The New York City Police Department's Prosecution of Disciplinary Cases*, http://www.nyc.gov/html/ccpc/downloads/pdf/prosecution_study_july2000.pdf

charges and specifications against police officers who are believed to have made false statements to CCRB investigators during the course of their investigations. As noted in 1 (a) above, Citizens Union also believes that the CCRB should be the agency that prosecutes such cases before the hearing officers in NYPD disciplinary proceedings. At present, if a CCRB investigation finds that an officer intentionally provided a false statement to the CCRB, the incident is labeled as “other misconduct” that the NYPD deems not within the CCRB’s jurisdiction and board panels must merely “refer their determinations of other misconduct not only to the police commissioner but also to various other law enforcement entities.”³ However, according to its 2003 annual status report, “the police commissioner has not notified the CCRB of the action it takes” with respect to willful false statements unless that complaint has been substantiated based on other allegations.⁴

In other words, independent of other findings, there is no publicly known action against officers who lie under oath to the CCRB. The failure to prosecute those officers who lie under oath, (CCRB interviews of police officers and witnesses are conducted under oath) has ramifications that extend beyond the isolated incident of a false statement. It sends a signal to members of the Department and the public that making false statements is tolerated and permissible. In 1999, 70 officers were determined to have made a false statement to the CCRB; this number has decreased since that time, with only 18 found to have lied each year from 2000 to 2003, 10 officers in 2003, 8 officers in 2005, and only 2 officers in 2006.⁵ In many of these determinations, findings of false statements were absent other allegations, meaning that the Police Department would not take up the complaint and no known action was taken. While findings of false official statements have dropped, this could be illustrative of decreasing attention paid to false official statements. Furthermore, the lack of action by the CCRB and NYPD against this form of misconduct without the presence of other allegations of misconduct provides no deterrent to lying under oath. This serves to undermine the public’s confidence in the integrity of the system of police discipline and the NYPD.

c) Maximize the Use of Mediation for Disputes between the Public and the NYPD

To reduce the CCRB’s workload, and increase communication and understanding between the public and the NYPD, both bodies should increase their outreach and education efforts to make complainants aware that they can choose to go through mediation in lieu of going to trial to adjudicate their case. The total percentage of complaints referred to mediation averaged only 5.1% over the period of 1994 through 2005, with only about 3 to 4% referred each year from 2002 to 2005. ⁶ However, the CCRB reports that during 2006, its Mediation Unit closed more cases than ever before, with 130 cases closed due to successful mediation, representing an increase of 44% over the 90 successful mediations conducted in 2005 and a 78% increase over the 73 cases mediated in 2002.⁷ We commend the CCRB and the NYPD for taking positive steps in this direction and encourage them to dedicate even more necessary resources to increase these efforts.

d) Increase CCRB’s Resources and Expand Teams of Investigators and Support Staff

With more than 8,000 cases to process per year, an increase of more than 65% between 2000 and 2005, and an additional 13% increase in 2006 over 2005, the CCRB cannot handle quickly or effectively its growing caseload, causing interminable delays and frustration for all parties involved.⁸ More specifically, the lack of speedy attention (although improved in recent years), undermines public confidence in the proceedings and presents occurrences where the Board is not able to thoroughly conduct investigations. The City should provide the necessary resources for the CCRB to hire additional investigators and other staff as is necessary for the agency to carry out its currently mandated functions as effectively and efficiently as possible, and thereby improve public confidence in the system of police discipline.

³ CCRB 2006 Annual Status Report, Pages 11 and 212. <http://www.nyc.gov/html/ccrb/pdf/ccrbann2006.pdf>

⁴ CCRB 2003 Annual Status Report, Page 34. <http://www.nyc.gov/html/ccrb/pdf/ccrbann2003.pdf>

Also Cited in New York Civil Liberties Union report, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*.

⁵ CCRB 2003 and 2006 Annual Status Reports, Tables 33 and 34, respectively.

⁶ New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*, Appendix A.

⁷ CCRB Website, <http://www.nyc.gov/html/ccrb/html/about.html>

⁸ New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City, 1994- 2006*, Page 1.

e) The CCRB Should More Aggressively Exercise its Subpoena Power for Documents and Witnesses to Ensure Timely Investigations

The City Charter explicitly requires the NYPD to provide the CCRB with records necessary for the CCRB's investigations and complaints, and to ensure that officers and employees of the NYPD appear before the CCRB and respond to inquiries by the CCRB.⁹ Yet CCRB investigators report that "on any given day approximately half of all police officers scheduled for an interview at the CCRB—including witnesses and those named in a complaint—fail to appear, further compromising investigators' ability to conduct timely investigations" and "it can take weeks—and often months—for the Police Department to produce records"¹⁰ (if the complainant does not have a name or shield number, the paperwork is crucial in determining the identity of the officer or officers involved). The Department also has not been as cooperative as it should be in responding to information requests related to investigations conducted by the CCRB. Consequently, the NYPD has been criticized by the leadership of the CCRB for not cooperating fully and attempting to subvert the investigatory process. For the process to be effective, the NYPD must be more cooperative and forthcoming with informational and appearance requests from the CCRB.

To encourage the NYPD's cooperation, it is important that the CCRB be more persistent in its efforts to compel the appearance and testimony of police officers and the production of documents requested as part of its investigation by use of subpoena powers. The City Charter explicitly provides that "The Board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and materials as are necessary for the investigation of complaints submitted pursuant to this section."¹¹ Without being subpoenaed, the NYPD historically has been slow or outright opposed to providing requested documents and compelling officers to show up in cases involving allegations of police misconduct.

2. Expand the Range of Penalty Options for, and the Responsibilities of, the Police Commissioner in Handling Cases of Misconduct

Pursuant to the City Charter, the Police Commissioner retains the final authority over discipline within the NYPD ranks. This is appropriate and necessary to manage effectively the department, and to promote accountability for dealing with misconduct and corruption within the Department. To exercise effectively this control, while fostering greater public confidence in the disciplinary system of the NYPD, Citizens Union recommends the following:

a) The City Should Enact Legislation Providing the Police Commissioner with a Greater Range of Disciplinary Options for Dealing with Cases of Misconduct

The current penalty structure if an officer is found guilty in department disciplinary proceedings provides for nothing between (i) a maximum of thirty days suspension without pay and one year termination probation, and (ii) discharge from the service (however, in practice, the Commissioner reports that he has sometimes reached other agreements as a result of plea negotiations for penalties that are between these two extremes). The Mollen Commission¹² in 1994 and the Knapp Commission¹³ in 1972 called for a greater range of discipline options to promote a more effective disciplinary system and a stronger message that the Police Department is not permissive of misconduct. Indeed, the Knapp Commission observed thirty-six years ago (report, p. 229) that this was "the most troublesome issue in the disciplining of policemen." Mayor Giuliani introduced an administration program bill before the City Council that would have implemented this recommendation¹⁴, and his Commission to Combat Police Corruption subsequently endorsed the proposal. Even though these recommendations have been endorsed by various police commissioners, including the present Commissioner, they have

⁹ New York City Charter, Chapter 18-A, Sec. 440 (d) (1) and (2).

¹⁰ Ibid, Page 6.

¹¹ New York City Charter, Chapter 18-A, Sec. 440 (c) (3)

¹² The Mollen Commission was formed in July 1992 and formally known as *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*.

¹³ The Knapp Commission was formed in April 1970 and formally known as *The Commission to Investigate Alleged Police Corruption*.

¹⁴ Introduction No. 250. Introduced in the City Council on March 16, 1994.

never been actively treated as priorities. Whatever the reason, the time has come to enact them without further delay. The CCRB reports that in 2005 fewer than 5% of CCRB substantiations resulted in suspensions without pay of 11-30 days - down from nearly 20% in 2000.¹⁵ In accordance with these numerous past recommendations, the City should amend the New York Administrative Code¹⁶ to allow the Police Commissioner to impose the following penalties in addition to suspensions for up to thirty days or dismissal from the Department:

- i. suspension without pay for up to one year for officers who have been found guilty of or pleading guilty to charges and specifications;
- ii. a monetary fine of up to \$25,000 with no option to substitute vacation or compensatory days of equivalent work;
- iii. a demotion in grade, title or rank with a commensurate reduction in salary.

b) Reinstate “Zero Tolerance” Penalty for False Official Statements

Following the recommendation of the Commission to Combat Police Corruption (CCPC), former Police Commissioner Howard Safir enacted in 1996 a policy of zero tolerance towards officers found to have made false statements, requiring dismissal of any officer who makes a false official statement absent “exceptional circumstances.”¹⁷ The Safir policy of zero tolerance covered all false statements without exception, and explicitly included “lying under oath during a civil, administrative or criminal proceeding,” which would include CCRB investigative interviews. Although it was a step in the right direction, the CCPC determined in an August 1999 review that it was not being enforced sufficiently in some cases.

Instead, the Safir policy was revised and weakened effective January 13, 2005. The revised § 2-308 of the Patrol Guide now specifies that the policy does not apply where the officer “merely ... denies a civil claim or an administrative charge of misconduct.” This exception is subject to misinterpretation, potentially allowing officers to deny with impunity misconduct in CCRB interviews. It should be narrowed to apply solely to pleas of not guilty in administrative proceedings or Answers in civil cases denying paragraphs of Complaints.

The revised policy also specifies that dismissal absent exceptional circumstances applies solely to false statements that are “intentional” and “material.” The change adding the words “intentional” and “material” arose from an agreement in *Latino Officers Association v. City of New York*, 99 CV 9568, ¶ 19 (SDNY Sept. 15, 2004), an employment discrimination lawsuit alleging that Latino officers had been discriminated against in the disciplinary process. On its face, this change was unexceptional.

However, application of the change is subject to varying interpretations and can easily be misused to avoid punishment. False statements about such matters as the physical layout of the site of the incident and the civilians and officers present could seriously thwart an investigation. The investigator questioning the officer is often in the best position to determine whether a false statement was made intentionally. It is for this reason that Citizens Union believes the CCRB must have jurisdiction to charge and prosecute where it believes that officers’ false statements were intentional and material in the context of its investigations (Recommendation (1) (b)).

Noting the link between tolerance of false statements and more egregious acts of impropriety, reenactment of the zero tolerance policy for officers who lie, and strict adherence to it, is essential to instill community confidence in the integrity of the police force and prevent future transgressions.

Noting the link between tolerance of false statements and more egregious acts of impropriety, such as the use of excessive force, abuse of authority and outright corruption as the Mollen Commission and others described, reenactment of the zero tolerance policy for officers who lie, and strict adherence to it, is essential to instill community confidence in the integrity of the police force and prevent future transgressions.

¹⁵ CCRB Status Reports reproduced as figure 8 in NYCLU Report, n. 2 *supra*, at p. 21.

¹⁶ Section 14-115

¹⁷ Patrol Guide § 2-308.

c) Require Full Explanation of Commissioner's Deviations from Trial Judge Recommendations

While the number of complaints and allegations filed per year has been on the rise recently, due to factors such as increased ease of reporting and filing made possible by the availability of 311, many citizens are left with the impression that even if they file complaints, little will be done to discipline officers or improve police conduct. Only a tiny percentage of complaints are substantiated by the CCRB — an average of 5.2% from 1994-2005.¹⁸ Most of those are handled by the NYPD with little, if any, discipline or corrective action or explanation of the reason why no action was taken. In fact, historically the NYPD has taken no disciplinary action at all against approximately 20-30 % of all police officers named in “substantiated” CCRB complaints.

“Instructions” are the most minor of the available sanctions in which the officer is merely cautioned not to repeat the misconduct. Yet the NYPD has been using the sanction extensively in cases where the CCRB has substantiated complaints and recommended charges and specifications. The use of “instructions” has increased over the past several years and in many ways undermines the effectiveness of the disciplinary system. According to the CCRB’s 2006 annual report “instructions” were used in 73.8% of the cases substantiated by the CCRB in 2006, a substantial increase from 58.3% in 2005. And “command discipline,” the second most minor penalty, which also bypasses formal discipline and results in the loss of very few vacation days, accounted for approximately another 20% of CCRB substantiated cases in 2006. Fewer than 10% of all CCRB substantiated cases received more substantial discipline in 2006.¹⁹

As the ultimate supervisor and disciplinarian of all members of the Department, the Commissioner is understandably not required to abide strictly by the report and recommendations of the CCRB or NYPD trial judges. Given the critical nature of the judgments of the Commissioner as to the Department operations and public confidence, it is appropriate and necessary that when deviating from the findings or recommendations of either the CCRB or Police Department trial judges, the Commissioner should by formal written decision state plainly and in a timely manner the reasons for such deviations. Likewise, the authority the Commissioner exercises in this regard should also be subject to review and monitoring by an independent commission like the Commission on Police Corruption, which can then evaluate the systemic use of penalties by the Department and the Commissioner and report its findings and evaluations to the public.

3. Create a Stronger and More Effective Commission to Combat Police Corruption (CCPC)

The City should enact legislation recreating the Commission to Combat Police Corruption (it is currently conceived only through Executive Order) and expanding its mandate to serve as a permanent monitoring commission. The “reconstituted” CCPC should be granted the clear authority to monitor all aspects of the Police Department’s disciplinary system, including not only oversight of the NYPD Internal Affairs Bureau, but also all the policies and procedures which influence the culture of the Department as it affects misconduct. This should include reporting on all aspects of the disciplinary system. While it is important that the Commissioner maintain the final say on matters pertaining to internal discipline, how that authority is exercised should be subject to review and monitoring by an independent entity, such as the recreated CCPC, to instill greater public confidence.

The NYPD has not been as cooperative historically as it should be in responding to requests for information from the CCPC, primarily because the CCPC has no power to back up its requests by subpoena. To best accomplish the goals of an expanded mandate, the CCPC should be afforded greater resources and the power to issue subpoenas when appropriate.

¹⁸ CCRB Status Reports reproduced as Table 2 in NYCLU Report at 52.

¹⁹ CCRB Status Reports reproduced as Figure 8 in NYCLU 2006 Supplement, p. 4.

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Issue Brief and Position on Reforming Stop, Question and Frisk

I. INTRODUCTION

New York City in recent years has been deemed one of the safest big cities in America.¹ Twenty years ago this designation would have been inconceivable. New York City in 1990 recorded 2,251 murders, 100,280 robberies, and 68,891 aggravated assaults with a population of 7.3 million.² By 2012, a steep drop in crime occurred with 419 murders, 20,144 robberies, and 19,381 assaults occurring in the city even while the population grew to 8.3 million.³

During the past two decades, public support, mayoral leadership, and the New York Police Department (NYPD) and its policing strategies and tactics have substantially contributed to the city's record crime reduction. Other demographic and socioeconomic factors unrelated to police practices have also contributed to lower crime rates.

Notwithstanding the sharp reduction in the crime rate, the city's use of the legally permissible tactic of "stop, question, and frisk," better known as "stop and frisk" has been called into question, legally challenged and now declared unconstitutional. This criticism resulted in the City Council overwhelmingly passing two pieces of legislation and overriding a mayoral veto: prohibiting bias-based profiling by law enforcement officers and establishing an inspector general for the NYPD. A federal class-action lawsuit, *Floyd, et al. v. City of New York, et al.* also resulted in the determination that the city's overuse of the practice is unconstitutional, prompting the appointment of federal monitor.

Under study for a year, Citizens Union has come independently to the conclusion that stop, question and frisk should be used less frequently, employed more judiciously, and performed with the utmost professionalism given the intrusive nature of the tactic. As a matter of policy, we oppose the overuse of stop, question and frisk in its current and aggressive form, which has now also been ruled unconstitutional. We do so because, while it is uncertain how many stop and frisks need to occur in order to reduce crime, we believe there comes a point when its overuse brings diminished results and can be counterproductive. We also wish to see it used more appropriately by focusing on the quality

¹ Lysiak, Matt and Kemp, Joe. "Murder Rates in New York City hit a record low with 414 homicides in 2012," The New York Daily News, December 28, 2012. Available at: <http://www.nydailynews.com/new-york/murders-fall-record-city-article-1.1229273>

² Citizens Crime Commission of New York City. Total Crime in New York City, by category 1980-2010. Available at: <http://www.nycrimecommission.org/initiative4.php>

³ NYPD. Historical New York City Crime Data. Available at: http://www.nyc.gov/html/nypd/html/analysis_and_planning/historical_nyc_crime_data.shtml

of the stops and not quantity because it imposes a significant burden and personal infringement on the rights and lives of individuals who are mostly people of color.

The number of stop and frisks conducted by the NYPD has increased dramatically over the past decade – by 600 percent – from 97,296 in 2002⁴ to a peak of 685,724 in 2011 before dropping by 22 percent to 533,042 in 2012.⁵ Some of the increase could be attributed to better documenting of stop and frisks arising out of the Daniels, et al. v. the City of New York case. The legal settlement required the city to ensure that it does not engage in racial profiling and more specifically report “whether and to what extent the stop-and-frisks are based on reasonable suspicion and whether and to what extent the stop-and-frisks are being documented.”⁶ The murder rate has steadily declined with some minor variation during that period but, on average, there were 531 murders a year, an average that is far lower than preceding periods of similar length. While stop and frisks declined 22 percent in 2012 and the number of murders decreased 20 percent, from 515 in 2011 to 414 in 2012⁷, the number of robberies rose from 19,717 in 2011 to 20,144 in 2012 and assaults rose from 18,482 in 2011 to 19,381 in 2012.

New York has prospered as a city over the past three decades in part because it has become a much safer city. To remain a city that is attractive to business, provides a solid education to its young people, and keeps our neighborhoods as places where people want to live and raise their families, it must remain a safe city. It must also be one that is free of the fear of both crime and the police.

The question has become where to draw the line and with the federal court decision, it is even clearer now that the line needs to be redrawn since its current use has been ruled unconstitutional and resulted in the appointment of a federal monitor.

As is the current legal standard, stop, question and frisk should only be used when an officer has reasonable suspicion that a person has been, is, or is about to be involved in criminal activity.⁸ To ensure that the tactic is used most effectively to reduce crime, Citizens Union believes the emphasis should be based on the quality of the stops and not simply on the quantity alone. Enhancing training and instituting practices that incentivize greater professionalism in conducting stop, question and frisk can achieve the goal of fewer stops more directly contribute to reducing crime. With this issue brief and position statement, Citizens Union presents its analysis of the issue, its position on stop and frisk, and its policy recommendations.

⁴ NYCLU 2011 Stop and Frisk Report. Available at: http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf

⁵ Schram, Jamie and Saul, Josh. “Major decline in NYPD stop-frisks,” The New York Post, February 9, 2012. Available at: http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM

⁶ Daniels, et al. v. the City of New York case. Available at: http://ccrjustice.org/files/Daniels_StipulationOfSettlement_12_03_0.pdf

⁷ Chung, Jen. “NYC Hits Record Low Murder Rate In 2012, Bloomberg And Kelly Start Bragging,” The Gothamist, December 28, 2012. Available at: http://gothamist.com/2012/12/28/nyc_hits_record_low_murder_rate_in.php

⁸ *Terry v Ohio*, 392 U.S. 1 (1968).

II. CITIZENS UNION'S PAST ENGAGEMENT ON POLICE ISSUES

Citizens Union serves as a watchdog for the public interest and an advocate for the common good in the City of New York by seeking to make democracy work for all New Yorkers. We advocate for fair and open elections, honest and efficient government, and a civically engaged public. We are New Yorkers from diverse backgrounds and political beliefs, connected to our communities and united in our commitment to put the city's long-term interest ahead of all special interests.

Principled and pragmatic, Citizens Union is an independent force for constructive reform, driving policy and educating the public to achieve effective government in the City and State of New York. We work to make government accountable to all the people it serves by advocating for effective and practical solutions.

In our 2008 Issue Brief and Position statement entitled, *Public Oversight of Police Misconduct*, Citizens Union made nine specific policy recommendations that would strengthen the system of police discipline and improve public confidence in and support for the New York Police Department. Chief among them was creating a more effective and independent Civilian Complaint Review Board (CCRB) by enabling the CCRB to prosecute the cases it substantiates and requiring explanations of the Commissioner's deviations from CCRB recommended discipline. Citizens Union also reviewed the issue of police conduct in the mid-1980s and again when the CCRB was being established in the early 1990s.

Over the past several years, Citizens Union advocated for this change before the City Council and the Mayor's Office, including releasing a report entitled *Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD* detailing that in more than 9 of 10 instances, the NYPD downgraded recommendations of the CCRB for administering the most severe penalty to police officers for whom misconduct had been substantiated.⁹ Our advocacy resulted in a Memorandum of Understanding in April 2012 that granted prosecutorial power to the CCRB and required the NYPD to explain its reason when it differs from CCRB recommended discipline.

It is with this historical experience and perspective that Citizens Union examines the controversial police tactic of Stop, Question and Frisk. Our intent in doing so is to inform New Yorkers on an important public policy issue that has attracted a strong range of views and challenge the next mayor and police commissioner to present specific steps on how the tactic might be used to greater effect with the least amount of offense to law-abiding New Yorkers.

⁹ Citizens Union. "[Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf)." March 2012. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf

III. CITIZENS UNION'S VIEW ON POLICING

Citizens Union's involvement with the issue of stop and frisk is a natural extension of our earlier work on police conduct. Indeed, many complaints filed with the CCRB are allegations of inappropriate or unauthorized stop and frisks (under the category of "abuse of authority")¹⁰, and the independence and transparency as a result of recent reforms will undoubtedly help to address the reported misuse of the stop and frisk tactic.¹¹ Citizens Union also believes that our nonpartisan and pragmatic approach to addressing issues can positively contribute to the discussion around stop and frisk, a politically-charged weighty issue that invokes passion and emotion from many stakeholders.

There are several overarching beliefs informing Citizens Union's evaluation of police issues that act as a lens through which we examine the effectiveness of stop and frisk and make policy recommendations:

- Our democratic society is built on a foundation of personal liberty as enshrined in the Bill of Rights. Within the Bill of Rights, the Fourth Amendment protects our privacy and our persons from unreasonable governmental searches and seizures, and except in limited circumstances probable cause remains the constitutional standard for determining reasonableness.
- The relationship between the NYPD and the city's communities of color, and in particular the Black and Latino communities, has historically been strained. Recent efforts to mitigate that checkered history include a police force in which a majority of its officers are now people of color.
- A healthy democratic society must have a citizenry that has confidence in and actively supports its police department if it is to be fully effective in providing public safety.
- CU recognizes the police are in a unique position in our society. Not only are they accorded with the most significant power of any public servants, they are expected to be model representatives of the law and enforce it courteously, professionally and responsibly regardless of circumstances. They are empowered to use reasonable physical force against all who live in or visit New York and use intrusive tactics including stops, frisks, searches, arrests, and even deadly force when justified.
- Police officers perform a vital and dangerous function protecting our city. Most New York City residents, especially residents of high crime areas, are law-abiding residents who want and support the presence of good policing in their communities. Yet today, the NYPD does not receive the full public support it deserves or the full cooperation it needs to maximize effectiveness and optimize public safety due in part to hostility arising from some quarters over both the frequency and manner in which stop and frisk is utilized.

¹⁰ According to Citizens Union's report, "[Diminished Accountability: How Discipline for Police Misconduct is Downgraded by the NYPD](http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf)," between January and August 2011, the CCRB substantiated allegations of wrongdoing with recommendations for the most severe penalty (known as "charges and specifications") for 143 officers. Ninety-three of those officers were found by the CCRB to have abused their authority in relation to conducting stops, searches and frisks. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CUReport_AccountabilityPoliceMisconduct.pdf

¹¹ Ibid.

IV. BACKGROUND ON STOP, QUESTION and FRISK

Stop, Question and Frisk Explained

While often discussed as a single act, the activity of stop, question and frisk is actually composed of separate actions by police officers which are permissible in accordance with different legal standards as outlined by the New York State Court of Appeals in the *People vs. De Bour*.

1. A police officer may *question* a person even while not stopping him or her, asking questions as to his or her identity or reason for being in a particular place provided that the “request is supported by an objective, credible reason, not necessarily indicative of criminality.”¹²
2. A *stop* is a higher level of personal intrusion in which a police officer temporarily detains a person because the officer has “reasonable suspicion” the person being stopped is committing a crime or is about to commit a crime.¹³
3. A *frisk* is considered most intrusive as the officer conducts a pat down of the stopped person. This can only legally be done when the officer “reasonably suspects that he or she is in danger of physical injury by virtue of the detainee being armed.”¹⁴

Stop and frisk as a police tactic was validated with the United States Supreme Court’s establishment of a legal basis for officers to stop, question, and frisk citizens through its 1968 decision in the case of *Terry v. Ohio*. It ruled that guns found on a suspect’s person after a pat down were admissible evidence in court, even though the police officer had neither a warrant nor probable cause for arrest. The decision laid out some guidelines describing when and how a police officer may search a suspect without a warrant or probable cause, relying instead on a standard of reasonable suspicion. Stop and frisk procedures were first codified in New York in September 1971, through the New York State Criminal Procedure Law (CPL) § 140.5015.

If a police officer detains someone under the conditions of the Terry decision and its progeny, also known as a Terry or “reasonable suspicion stop, they must fill out an NYPD UF-250 form known as a “Stop, Question and Frisk Report Worksheet.” The officer must specify on this worksheet what compelled the officer to detain the suspect. The worksheet lists the following choices as reasons for the stop:

¹² NYS Attorney General’s Report: The New York City Police Department’s Stop and Frisk Practices: A Report to the People of the State of New York from the Office of the Attorney General, New York: Civil Rights Bureau, December 1, 1999, p. 26. Available at: http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil_rights/stp_frsk.pdf

¹³ Ibid, p. 28.

¹⁴ Ibid.

¹⁵ “Stop, Question & Frisk Policing Practices in New York City: A Primer.” Center on Race, Crime and Justice, John Jay School of Criminal Justice. March 2010. Available at: http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf

- Carrying Suspicious Object in Plain View
- Fits Description
- Action Indicative of “Casing” Victim or Location
- Actions Indicative of Acting as a Lookout
- Suspicious Bulge or Object
- Actions Indicative of Engaging in Drug Transaction
- Furtive Movements
- Actions Indicative of Engaging in Violent Crimes
- Wearing Clothes or Disguise Commonly Used in Commission of Crime
- Other Basis for Reasonable Suspicion (in which case the officer needs to detail the reason)

Data on Stop, Question and Frisk

The data from all Stop, Question and Frisk Report worksheets from January 2010 to June 2012 was analyzed by the Center for Constitutional Rights¹⁶, and yielded the following information:

- The most common reason cited for Terry Stops was “Furtive Movements” and the least common was “Carrying Suspicious Object in Plain View.”¹⁷ Suspects can be stopped for more than one reason and most of the UF250 forms list more than one reason.
- Roughly half of all stops result in frisks or pat downs.
- 8% of all stops resulted in searches which are more invasive than a frisk.
- 6.74% of stops resulted in the police officer using physical force (including putting the suspect on the ground or against a wall or car, pointing a firearm at the suspect, handcuffing the suspect, drawing a firearm, use of baton, or use of pepper spray but excluding putting hands on the suspect).¹⁸
- 6.25% of stops resulted in the suspect being issued a summons.¹⁹
- 6.26% of stops resulted in the suspect being arrested.²⁰
- 1.18% of stops resulted in the confiscation of any kind of weapon.²¹
- 0.12% of stops resulted in the confiscation of a firearm (while the proportion of stops resulting in the confiscation of a firearm is miniscule, the numerical value is not insignificant. For example, 780 guns were recovered in 2012).²²

¹⁶ Second supplemental report of Jeffrey Fagan, Ph.D. David Floyd et al vs. City of New York. United States District Court Southern District of New York. Available at: <http://www.ccrjustice.org/files/FaganSecondSupplementalReport.pdf>

¹⁷ Ibid, p. 22.

¹⁸ Ibid, p. 35.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid. See http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM

Though the police must have a reasonable suspicion of a crime in order to make a stop, 87.51 percent of all stops did not result in an arrest or the issuance of a summons. The police use the tactic not just as a way to uncover a crime, but to address and prevent crime from occurring. Regardless, this is a disturbingly high figure given the number of stops made by the NYPD on far too many law-abiding New Yorkers.

As noted earlier, the number of stops conducted by the NYPD has increased dramatically over the past decade – from 97,296 in 2002²³ to a peak of 685,724 in 2011 before dropping by 22 percent in 2012.²⁴ Some of this increase may be the result of better reporting since this rise occurred at the same time the NYPD was required to report more accurately its number of stop and frisks, but there is little question that the police are using this tactic much more often than before and as a federal judge now has ruled - in an unconstitutional manner. It is also clear that a substantial majority of the stops – 87 percent in 2011 – involve African-Americans and Latinos, especially young men.²⁵

Stop and Frisk and People of Color

The dramatic increase in the use of stop and frisk and the heavy burden it places on persons of color has created resentment and alienation in communities of color since such stops for questioning and potential frisks are often conducted in public and in a manner that is perceived to be disrespectful. While proponents of stop and frisk have cast the practice as merely a personal annoyance worthy of the greater benefit of reducing crime, law-abiding New Yorkers who are stopped can feel offended and even humiliated. Indeed, The Supreme Court of the United States itself acknowledged in the *Terry v. Ohio* decision the personal intrusion of a stop even while establishing the policy as legal. In the opinion of the Court delivered by Chief Justice Earl Warren the Court acknowledged, “it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.”

There is similar resentment about two other police practices that are also common. The first is “vertical patrols” of public housing projects, and so-called “clean halls” buildings where landlords have consented to such patrols that may result in arrests for criminal trespass if the persons stopped cannot prove to the satisfaction of the police that they are tenants or guests of tenants in the buildings or upon being asked to leave give evasive answers that cause suspicion. The second is frequent arrests of persons who, when stopped and asked to empty their pockets, produce amounts of marijuana which

²³ NYCLU 2011 Stop and Frisk Report. Available at: http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf

²⁴ Schram, Jamie and Saul, Josh. “Major decline in NYPD stop-frisks,” The New York Post, February 9, 2012. Available at: http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM

²⁵ Eligon, John. “Fighting stop and frisk tactic but hitting racial divide,” New York Post, March 22, 2012. Available at: <http://www.nytimes.com/2012/03/23/nyregion/fighting-stop-and-frisk-tactic-but-hitting-racial-divide.html>

would otherwise result in a summons and a fine if kept out of public view, but when brought into public view constitute a misdemeanor and could lead to an arrest. A record number 50,000 people were arrested for marijuana possession in New York City in 2011 which fell to 39,000 in 2012.²⁶ In a move widely applauded, Mayor Bloomberg in his 2012 State of the City Address announced further reforms that those arrested for marijuana possession in small amounts would not be held overnight in jails if they had proper identification and did not have any open warrants for their arrest.²⁷

Current Litigation

Recent litigation on this matter in federal court resulted in Judge Judge Shira Scheindlin ruling in *Floyd, et al. v. City of New York, et al* that New York's use of stop was unconstitutional. The plaintiffs alleged that the police were engaged in racial profiling.²⁸ This was based on the claim that police stops disproportionately affect African-Americans and Latinos in comparison to their percentage of the population. The police responded that the tactic is used most often in high crime neighborhoods, which have a high percentage of people of color, and that the percentages of African-Americans and Latinos stopped is lower than the percentages of crime committed by them and is therefore not disproportionate.²⁹ With her ruling, the judge essentially disagreed.

For a police officer to detain a person requires that he or she have reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. For the police officer to conduct a frisk requires reasonable suspicion of imminent danger. The police are trained on these matters and have to fill out a form for each stop with boxes to check as to the reason. The boxes all refer to reasons that at least in some circumstances have been held by the courts to constitute sufficient justification. There is no way to know to what extent the forms are being filled out accurately or honestly. Moreover, the constitutionality of a stop will depend on all of the circumstances in each individual case about which there is really no complete information. In the federal litigation, dueling expert witnesses who have analyzed tens of thousands of forms and reached opposite conclusions. Judge Scheindlin determined the heavy use of stop and frisk presented a pattern of violations of the constitutional limits within which stop and frisk is permissible.

Somewhat different and additional legal issues arise in the context of stops and arrests for criminal trespass in Housing Authority and private buildings. As noted above, these are the subject of separate lawsuits. The District Attorney for Bronx County, Robert Johnson, has announced a policy of refusing

²⁶ Toor, Mark. "Cuomo Wants Pot Weeded Out of Stop-and-Frisks," *The Chief*, June 15, 2012.

²⁷ Grynbaum, Michael M. and Barbaro, Michael. "From Bloomberg, a Warning of Life after Bloomberg," *The New York Times*, February 14, 2013. Available at: <http://www.nytimes.com/2013/02/15/nyregion/bloomberg-in-last-annual-address-cites-gains-and-goals.html?pagewanted=all&r=0>

²⁸ The primary case, which challenges the NYPD's stop and frisk practices for pedestrians, is *Floyd v. City of New York*, 08 Civ. 1034 (SDNY)(SAS). In addition, there are challenges to the stop and frisk practices in public housing projects and to trespass stops and arrests in an around private owned building enrolled in the "Trespass Affidavit Program". See *Davis v. City of New York*, 10 Civ. 0699 (SDNY)(SAS) and *Ligon v. City of New York*, 12 Civ. 2274 (SDNY)(SAS).

²⁹ MacDonald, Heather. "Fighting Crime Where the Criminals Are," *The New York Times*, June 25, 2010. Available at: <http://www.nytimes.com/2010/06/26/opinion/26macdonald.html>

to prosecute *Clean Halls* program cases unless the arresting officer is interviewed in order to determine that there was probable cause to believe that the person arrested had committed criminal trespass and was not a resident or invitee.

Distinct issues also arise in the context of arrests for marijuana possession made when the police stop persons on the street and ask them to empty their pockets. The Police Department announced *Operations Order 49: Charging Standards for Possession of Marijuana in a Public Place Open to Public View*³⁰ in September 2011 that marijuana possession in plain view as a result of a stop and frisk should be treated as a violation rather than a misdemeanor, resulting in part in a 14 percent decline in subsequent months.³¹ Governor Cuomo has proposed changing the penal law to this effect.

NYPD's Own Effort to Bring About Change

Beyond changes to treatment of marijuana possession, the NYPD has put in motion additional reforms. In a May 2012 response to a February letter from Council Speaker Christine Quinn, Police Commissioner Ray Kelly detailed a number of reforms taken by the NYPD. Commissioner Kelly indicated the NYPD includes in its unit level training sessions an existing Department order specifically prohibiting racial profiling. The new training additionally provides clarity via video instruction as to when a stop and frisk should be conducted, and encourages the distribution of cards to those stopped citing the legal authority for stops in general and common reasons why stops occur. A new procedure provides for greater scrutiny of report worksheets at the local command level, with captains now responsible for auditing stop, question and frisk worksheets within their command to ensure compliance with guidelines established by the NYPD Quality Assurance Division. Precinct commanders will also be questioned by their superior officers before weekly Compstat meetings. The NYPD is also in the process of establishing a mechanism to compare the stop and frisks by police officers with similar assignments.

V. CITIZENS UNION POSITION ON STOP AND FRISK

Beginning in the early 1990s, New York City steadily increased its funding for the NYPD and embarked on a wide range of law enforcement and criminal justice system reforms which have resulted in a dramatic drop in crime. These reforms have been expanded upon by each mayoral administration since then, with results that are unmatched elsewhere in the United States. These practice reforms are wide ranging, with strategies that include: the expansion of the patrol force under the "Safe Streets, Safe City" program in 1991; the development and refinement of data-driven crime fighting strategies (ranging from COMPSTAT, to the intensive use of DNA technology, to the development of robust data sharing and the Real Time Crime Center); strict consequences for violations of gun laws; an extensive investment in problem solving courts; and focusing police presence in neighborhoods where crime rates are highest. These innovations, in many cases leading criminal justice practice nationally and internationally, have driven the dramatic drop in crime in New York City over the past twenty years.

³⁰ Available at: <http://www.wnyc.org/articles/wnyc-news/2011/sep/23/police-commissioner-calls-nypd-stop-improper-marijuana-arrests/>

³¹ Toor, Mark. "Cuomo Wants Pot Weeded Out of Stop-and-Frisks," *The Chief*, June 15, 2012.

The practice of stop, question and frisk – when used legally and appropriately in specific and limited ways – is pro-active policing and arguably can be an effective police tactic to reduce crime. It is part of the NYPD's aggressive effort to reduce violence and crime by removing illegal guns from the streets, a laudable and desired goal. However, there is no clear evidence establishing the degree to which the reduction of crime is directly attributable to the tactic of stop, question and frisk. As shown on the chart below, in most individual years and overall there has been a correlation between an increased number of stop and frisks and lower crime rates. However, the data demonstrate an imbalance between the very large increase in the use of stop, question and frisk versus a more modest reduction in the crime rate. Moreover, one cannot conclude from this or any other evidence as to the extent to which aggressive use of stop and frisk has played a role apart from other police tactics in reducing crime rates.

Year	Major Felony Offenses ³²	Increase/Decrease from Previous Year	Number of Stop, Question and Frisks ³³	Increase/Decrease from Previous Year
2001	162,908		Unknown	
2002	154,809	-5%	97,296 ³⁴	N/A
2003	147,069	-5%	160,851	65%
2004	142,093	-3%	313,523	95%
2005	135,475	-5%	398,191	27%
2006	128,682	-5%	506,491	27%
2007	121,009	-6%	472,096	-7%
2008	117,956	-3%	540,320	14%
2009	106,730	-10%	575,996	7%
2010	105,115	-2%	600,601 ³⁵	4%
2011	106,669	1%	685,724 ³⁶	14%
2012	108,432 ³⁷	2%	533,042 ³⁸	-22%

³² The seven major felony offenses include: 1) murder and non-negligent manslaughter; 2) rape; 3) robbery; 4) felony assault; 5) burglary; 6) grand larceny; and 7) grand larceny of a motor vehicle. See NYPD Historical Crime Data. Available at: http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/seven_major_felony_offenses_2000_2011.pdf

³³ Stop and frisks data for 2003-2009 is from the following source: Trone, Jennifer, "The New York Police Department's Stop and Frisk Policies. Are they Effective? Fair? Appropriate? Summary of a New York City Bar Association Forum, Center on Race, Crime and Justice. John Jay College of Criminal Justice. March 9, 2010. Available at: http://www.jjay.cuny.edu/forum/SQF_forum_summaryFINALJUNE28.pdf

³⁴ Weiss, Murray, "Stop-and-Frisks Have Done Little to Reduce Shootings, NYPD Data Show," DNAInfo, June 5, 2012. Available at: <http://www.dnainfo.com/new-york/20120605/new-york-city/stop-and-frisks-have-done-little-reduce-shootings-nypd-data-shows>

³⁵ Grynbaum, Michael M. "Crime is Up and Bloomberg Blames iPhone Thieves," December 28, 2012. Available at: <http://cityroom.blogs.nytimes.com/2012/12/28/crime-is-up-and-bloomberg-blames-iphone-thieves/>

³⁶ Iabone, Rande, "NYPD Report: Most of those 'stopped and frisked' are minorities," CNN, February 13, 2013. Available at: <http://www.cnn.com/2013/02/05/us/new-york-stop-and-frisk>

³⁷ "NYC mayor blames increase in crime on demand for Apple products," Apple Insider, December 28, 2012. Available at: <http://forums.appleinsider.com/t/155233/nyc-mayor-blames-increase-in-crime-on-demand-for-apple-products>.

In 2007, for example, the number of stop and frisks declined by 7 percent from 2006 yet major felony offenses still decreased by 6 percent. The 6 percent decrease in 2007 was slightly more than the 5 percent decrease in 2006 and 2005, even though stop and frisks surged by 27 percent in each of those years. Similarly, stop and frisks increased by 14 percent in 2008 while major felonies dropped 3 percent. Yet in 2011, stop and frisks also increased by 14 percent and major crimes increased by 1 percent. Overall, major crimes have dropped 30 percent since 2002 while stop and frisks have increased by 448 percent.

Stop and frisk has occasionally resulted in the discovery of concealed weapons. It may also have discouraged persons from carrying them, as suggested by a U.S. Centers for Disease Control study that showed a 36 percent reduction in NYC teens carrying guns, from 3.6 to 2.3 percent since 2001.³⁹ However, in only 1.8 percent of stops was a weapon discovered.⁴⁰ However, in an overwhelming majority of stop and frisks – 87.51 percent – no arrests are made or summons are issued and in only 1.18 percent of stops was a weapon discovered.⁴¹

In sum, the evidence does not definitively establish the extent to which stop, question and frisk is a significant factor in reducing crime or that a more judicious application of the tactic would cause a reversal of the current crime reduction trend.

In addition, it is clear that the burden of stop, question and frisk falls most heavily on young men of color and that its increased and aggressive use has had the corrosive consequence of weakening public support and cooperation with the police in communities of color. Communities most in need of a strong police presence to prevent crime are also the same communities where resentment is greatest about stop and frisk because of its disproportionate application.⁴²

³⁸ Ruderman, Wendy. "Number of Frisks Fell in '12," The New York Times, February 8, 2013. Available at: <http://www.nytimes.com/2013/02/09/nyregion/number-of-frisks-fell-in-12-police-data-show.html>

³⁹ Seifman, David, "Worth the frisk as gun teens plummet: mayor," The New York Post, April 5, 2013. Available at: http://www.nypost.com/p/news/local/worth_the_frisk_as_gun_teens_plummet_d9qTbUWQfaGnR5rSsLfJaL

⁴⁰ Second supplemental report of Jeffrey Fagan, Ph.D. David Floyd et al vs. City of New York. United States District Court Southern District of New York. Available at: http://www.ccrjustice.org/files/FaganSecondSupplementalReport.pdf#bid_p_35.

While the proportion of all stops that result in the confiscation of a weapon is miniscule, the numerical value is not insignificant. For example, 7,137 weapons were recovered in 2012. See http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM.

⁴¹ Ibid, p. 35. While the proportion of all stops that result in the confiscation of a weapon is miniscule, the numerical value is not insignificant. For example, 7,137 weapons were recovered in 2012. See http://www.nypost.com/p/news/local/major_decline_in_nypd_stop_frisks_UH6jmAZBUhv8Hk1wZ2TycM. Seifman, David, "Worth the frisk as gun teens plummet: mayor," The New York Post, April 5, 2013. Available at: http://www.nypost.com/p/news/local/worth_the_frisk_as_gun_teens_plummet_d9qTbUWQfaGnR5rSsLfJaL

⁴² A Quinnipiac University poll conducted February 20-25th of New York City voters found that only 39 percent of those polled supported the police practice of stop and frisk, and 76 percent of black respondents and 60 percent of Hispanic respondents opposed it. This was down from an August 2012 Quinnipiac poll, when 45 percent overall support the practice and a slim majority of Hispanics supported it.

Citizens Union opposes the overuse of stop, question and frisk. We believe that stop, question, and frisk should be employed less frequently, employed more judiciously and exercised with the utmost professionalism. It should be used only when an officer has reasonable suspicion that a person has been, is, or is about to be involved in criminal activity, which is the constitutional standard. In short, the emphasis should be on the quality of the stops rather than quantity alone.

If the police are to be given needed discretion in ensuring public safety, clearer guidelines must be developed and made publicly available in order for the public to trust that the police are using stop, question and frisk as judiciously as possible. A mechanism for reporting annually to the public on its adherence to these guidelines must then be established.

Citizens Union recognizes that judicious use of stop, question and frisk and other police tactics are only part of the fuller response that is needed to address the problem of criminal activity. Additional factors play an effective and significant role in creating safe and secure communities, such as making investments in youth development and education programs, violence prevention and conflict resolution programs as well as alternatives to incarceration focused on rehabilitation rather than punishment. Development of new strategic police-community partnerships especially concerning the city's young people of color may also result in a further reduction of crime as well as stabilization of police-community relations.

VI. CITIZENS UNION'S POLICY RECOMMENDATIONS

In addition to our view that stop, question and frisk should be used less frequently and more judiciously, Citizens Union puts forward the following specific recommendations, which were developed prior to the federal judge's ruling and council legislation but which still hold applicability.

1. Enhance the Quality of the Stops and Reduce their Quantity

a. Improve Training and Accountability Systems

The NYPD should provide to the public what steps it has taken to enhance its training and accountability systems as discussed in letters exchanged between Commissioner Kelly and Council Speaker Christine Quinn. As previously announced by Commissioner Kelly, enhanced training and accountability systems should include:

- i. continued rigorous data collection from stops;
- ii. reaffirming officers need to specifically designate the reason for the stop to ensure high-quality stops;
- iii. better local supervision as well as precinct commander accountability;
- iv. the creation of a streamlined system for lodging complaints of inappropriate stops by officers; and
- v. the appropriate and consistent disciplining of police officers against whom complaints of improper stops are substantiated.

b. Conduct More Professional and Productive Stops

- i. The NYPD should place a premium on conducting stop and frisks with the professionalism that acknowledges even a well-executed stop is an indignity upon the person temporarily detained, particularly if they have not engaged in wrongdoing.
- ii. The NYPD should take even stronger steps to make clear to its officers that stop and frisks should be conducted in adherence with the legal standards for conducting a stop and question, and for conducting a frisk. We support the Department's efforts to make absolutely clear that racial or ethnic profiling is not acceptable as a rationale for conducting stop and frisks and urge that it takes all steps necessary to ensure that its efforts succeed.
- iii. The requirement that police officers offer a business card and inform the person who is the subject of a stop and frisk of the reasons for the activity, as outlined in City Council Intro No. 801, should be seriously considered for implementation to ensure that professionalism is given great emphasis.
- iv. The Police Commissioner should make it absolutely clear to its officers, as well as the general public, that there are no quotas in effect. While the NYPD contends there are no quotas to conduct stop, question and frisks public perception is such that it can only benefit the NYPD to unequivocally reiterate a "no quotas" policy, now also required by the federal court ruling. The Police Commissioner should also make it unequivocal that there should be no reason for officers to believe there are unofficial policies or expectations to conduct stops and frisks except when there is reasonable suspicion that a person has been, is, or is about to be involved in criminal activity. Nor should officers' performance be evaluated on the basis of the quantity rather than the quality of their stops.
- v. The NYPD should create a systematic method for obtaining, memorializing and utilizing for analytical, training, disciplinary and other related matters the results of civil court judgments and settlements involving allegations of police misconduct or civil rights violations.

c. Furtive movements as a reason for conducting a stop should be clarified and scrutinized carefully.

The current standard for conducting a stop is "reasonable suspicion" as per the rulings of the U.S. Supreme Court and subsequent federal and state case precedents. The category of furtive movements is the most commonly cited reason on the UF-250 form for conducting a stop and frisk. Yet there is little clarity as to what furtive movements are, with no standards indicating what qualifies as a furtive movement. It is therefore very subjective and susceptible to misuse as a rationale for conducting a stop. The NYPD issued a directive on March 5th requiring log

entries for UF250 forms standardized information about stops including an explanation of the suspicion and whether a frisk had occurred. The memo reads, “the circumstances or factors of suspicion must be elaborated on...i.e.; if the “Furtive Movements” caption is checked off, then a description of that movement must be specified.” **Accordingly, Citizens Union recommends that the NYPD, in its training for and supervision of, the implementation of this directive, take steps to ensure that the category of “furtive movements” is not used to circumvent the requirement of reasonable suspicion.**

2. **Change the Law Related to Marijuana Possession.** Marijuana possession that is revealed as a result of a person taking marijuana out of his/her pocket at the request or direction of a police officer should be considered the same level of offense for possession had the person not been required to place the marijuana in plain view. This is currently NYPD practice as a result of *Operations Order 49: Charging Standards for Possession of Marijuana in a Public Place Open to Public View* but should be codified in the state penal law.
3. **Provide Additional Public Oversight of Stop, Question and Frisk.**
 - a. **Citizens Union reiterates its existing positions related to the Civilian Complaint Review Board (CCRB) that pertain to stop, question and frisk.**
 - i. **The CCRB should make available data that clearly indicates for every complaint related to a stop, question and/or frisk, how the complaint was adjudicated so that it can be determined whether police officers improperly using the tactic are being instructed on the appropriate use or disciplined when necessary.** (Presumably this will now be addressed by the federal monitor.)
 - ii. **The CCRB should be able to use its recently granted prosecutorial authority to prosecute officers found guilty of lying during CCRB investigations.** CCRB investigations, which often involve complaints related to stop, question and frisk are conducted under oath and should result in ramifications for officers who are not truthful while making official statements.
 - b. **Citizens Union took no positions on City Council Int. No. 881 establishing an Inspector General in the New York City Department of Investigation and Int. No. 1080 that reaffirms the ban on racial profiling and allows citizens to file a private right of action in state supreme court alleging racial profiling,** because there was no consensus within the organization.
4. Candidates for mayor should make clear what specific steps they will take to reduce the use of stop, question and frisk so that it is used in adherence to the constitution while reducing crime and not imposing a burden on the very communities it is intended to protect.

These reforms are designed to ensure that stops are conducted judiciously, effectively and lawfully in a manner that keeps New Yorkers safe yet diminishes needless tension when it is overused on law-abiding New Yorkers. It also will promote good police-community relations and ensure the police department receives the recognition and support it deserves as it continues to keep New York City safe.



CITIZENS UNION

Issue Brief and Policy Position Statement on Police Accountability August 2016

Introduction

In the past two years, public scrutiny of police practices has led to a national discussion about the relationship between police and the communities they serve, including policing methods, dynamics of power, and how police should be held accountable to the public they serve. New York City has been one center of this focus, with tension between police and certain communities due to policies like Stop, Question and Frisk, and incidents of police using physical force resulting in the deaths of civilian New Yorkers like Eric Garner. Recent events here and across the nation have shaken the public's confidence in police departments' ability to hold officers accountable for their actions and ensure that instances of officer misconduct are answered by appropriate prosecutorial and disciplinary action.

As a watchdog group for the public interest and an historic advocate of open and honest government in New York City, Citizens Union (CU) urges the enactment of laws and adoption of new rules and regulations that will strengthen the accountability of the New York Police Department to the public and consequently improve the relationship between the New York Police Department (NYPD) and the public. It is in this context that we also reexamine our past policy positions on police issues in the context of the current climate.

The primary responsibility of the police is to promote public safety. Police officers occupy a unique position in our society because they are given more power than any set of city employees, with the singular discretion to enforce the law using physical force. For this reason, Citizens Union believes that the best way to ensure the safe and democratic application of policing is to strengthen and streamline systems of oversight and accountability, both within the NYPD and among the independent entities that monitor police misconduct.

Greater trust, we believe, is necessary for the police to perform their duties safely and effectively. Citizens Union therefore urges city government to adopt policy reforms to create a more cohesive system of police oversight with enhanced accountability to the public, by standardizing and expanding the disciplinary powers within the NYPD, and strengthening independent oversight mechanisms. Moreover, CU's position aims to foster transparency regarding police misconduct and the use of force, and to engender public support of the police by facilitating the open exchange of information between the NYPD, other monitoring entities, and the public.

In 2008, Citizens Union released its policy position related to police oversight, with a focus on empowering the Civilian Complaint Review Board (CCRB) to ensure independent oversight of the NYPD. In 2012, the CCRB gained the right to prosecute the cases it substantiates, increasing its independence

and authority. Since that time, New York City has seen changes to its police oversight structures and bodies, including the establishment of the Office of Inspector General to the New York Police Department and the court appointment of a federal monitor and facilitator to review police procedures, training, and community relations. It also saw a major realignment on the use of the practice, Stop, Question, and Frisk that resulted in a significant drop in the number of such unnecessary interactions with New Yorkers, particularly in communities of color where the policy and strategy were used far more judiciously and far less frequently.

In our most recent deliberations updating our position, Citizens Union's Municipal Affairs Committee and its Public Safety Subcommittee led the review of the organization's policy positions by:

- examining the institutions, policies, and processes that address police misconduct;
- evaluating which of our prior recommendations were implemented and which require further advocacy; and
- speaking with the leadership at many of the governmental entities and community groups that have a particular stake in the police accountability system, such as the NYPD, CCRB, Offices of the Comptroller and Inspector General (IG), Brooklyn Movement Center, Communities United for Police Reform, and the New Jersey Civil Liberties Union.

We appreciated the opportunity to speak with these government and community groups. Each demonstrated dedication to the same objectives we held in developing this position: to issue policy recommendations committed to public safety, dignity, and respect for all New Yorkers; to ensure that police oversight mechanisms and processes are part of a balanced, coordinated, and effective system; and to effect government action which is transparent and accountable to the public, with consistent and understandable standards.

Citizens Union also recognizes that several governmental entities are individually and collectively in the process of reviewing and retooling the police oversight system and its components. We respect the ongoing work being conducted by the NYPD, CCRB, IG, and federal monitor and facilitator and the incremental changes emanating from this work. We also acknowledge that the New York City Council and Mayor have recently enacted certain reporting measures that Citizens Union supports and were part of our positions that we wanted to see enacted. As the process continues to unfold, we will continue to consider additional reforms to see which ones are still needed after progress is made in the new oversight system.

Please note, previously adopted positions of Citizens Union are demarcated by asterisks (*).

This document contains the following sections:

2016 Policy Position on Police Accountability

- I. Establish Uniformity, Clarity, and Deliberative Planning Across the Police Oversight System.
- II. Enhance Police Department's Internal Oversight of Officer Misconduct.
- III. Bolster the Civilian Complaint Review Board's Investigative and Oversight Roles.
- IV. Engage Additional Governmental Entities to Enhance Transparency, Independence, and Public Education in the Police Oversight System.

Citizens Union's Past Positions on Police Issues

- I. 2008 Position on Public Oversight and Police Misconduct
- II. 2013 Position on Reforming Stop, Question and Frisk

2016 Citizens Union Policy Position on Police Accountability

I. ESTABLISH CLARITY AND CONSISTENCY ACROSS THE POLICE OVERSIGHT SYSTEM

New York City's current standards and definitions regarding officer conduct and misconduct are not always clear or uniformly applied throughout city government and the various components that deal with public oversight and accountability. This leads to confusion and inconsistency regarding practices, findings, and interpretations of the various overlapping network of police oversight entities, most notably the NYPD, CCRB, Commission to Combat Police Corruption (CCPC), Department of Investigation (DOI), IG, the federal monitor, and trial judges.

The recommendations in this section aim to: reduce disparities of findings of fact and disciplinary sanctions in complaints of police misconduct, and resulting inefficiencies; address the disparate misconduct standards and possible bureaucratic cohesion which may lead to the NYPD dismissing cases recommended by the CCRB; provide more heft to CCRB determinations, thus encouraging civilians to make formal complaints of officer wrongdoing; increase transparency as to how the NYPD makes determinations about claims of police misconduct; and promote rule of law, ensuring that practices are not changed without due consideration, and without public input and appropriate process. Citizens Union specifically recommends the following:

1. Require the NYPD to make its patrol guide and any other training manuals and rules governing officer conduct, public, free and accessible.
2. Require the Police Commissioner to explain divergence from NYPD trial judge and CCRB disciplinary recommendations via reporting to the issuing body and to the public.* As part of the 2012 Agreement between the City Council, Mayor, and the NYPD granting the CCRB the new power to prosecute cases of police misconduct, originally held by the NYPD itself under the Advocate's office, the Police Commissioner is obligated to provide to the CCRB and the respondent the rationale when diverging from the disciplinary recommendations. Many interpret that the written agreement has not been followed specifically with regard to making such information publicly available, necessitating the need for additional legislation to require codification of this important component of effective public oversight of police misconduct (CU offers modified support for [Intro 138](#)).
3. Establish the CCRB as the primary finder of fact in cases which it investigates, except in cases of clear error. This is the logical outcome of an increased collaborative relationship between the CCRB and the NYPD.
 - a. If the CCRB finds wrongdoing as first finder of fact, the Police Commissioner would be required to issue a penalty, but would still retain discretion as to what the penalty would be.
4. Establish uniform guidelines for the Police Commissioner's disciplinary determinations and the CCRB's disciplinary recommendations. The Police Commissioner would still have independent discretion, but instances of discipline could then be measured against these shared guidelines for increased accountability.
 - a. Guidelines would enumerate ranges of penalties and ranges of misconduct, possibly taking into account type of force, degrees of justification, and mitigating and aggravating factors – but should not be overly complicated.

II. ENHANCE THE NYPD'S POLICE DEPARTMENT'S INTERNAL OVERSIGHT

OF OFFICER MISCONDUCT.

Under the current police oversight system, the NYPD and its commissioner have extensive latitude and discretion in addressing alleged instances of officer misconduct, including: creating internal policies, conducting internal investigations, determining findings of fact and law, and disciplining officers. While the commissioner needs significant discretion in order to appropriately manage the police force, there must be both additional checks and supports to ensure that the NYPD is better positioned to perform internal oversight of officer misconduct, with public support and transparency.

The recommendations in this section aim to: provide for public and City Council input regarding the NYPD's operations, management, and policy development and implementation; give New Yorkers the tools to understand and assess the civilian-police relationship; ensure transparency regarding officers' use of force and sanctions; ensure that the commissioner is lawfully empowered to determine appropriate sanctions for misconduct with a greater range of possible penalties for misconduct; and encourage positive relationships between the police and communities they serve. Citizens Union recommends the following:

1. Expand the Police Commissioner's range of disciplinary options for cases of misconduct to include more intermediary levels of punishment, in line with disciplinary guidelines, if adopted.*
2. Institute continuing education for more senior officers, with reformulated training for probationary officers and police officers, created pursuant to the *Floyd* federal monitor's participation.
3. Improve NYPD's website to consolidate and clearly organize information for the public:
 - a. Make quantitative data dynamic and enable it to be compared and searched, with consistent categories and not only in pdf form.
 - b. Make narrative data well-organized to ensure that New Yorkers can learn about police operations, oversight mechanisms, and rights and obligations of civilians and officers.
4. Develop well conceived body-worn cameras in a deliberative manner in advance of full-scale NYPD roll out.
 - a. Develop and publish internal NYPD body camera policy before expanding pilot program. (CU supports for [IG Eure's report recommendation](#).)
 - b. Establish an advisory task force to examine, report, and issue recommendations on NYPD use of body-worn cameras, addressing feasibility, cost, privacy implications, best practices regarding officer recordings and video storage, and evidentiary issues. This task force would be comprised of the following appointments: 3 from mayor, 3 from speaker of the Council, and 4 jointly from mayor and speaker. (CU supports [Intro 607](#).)
5. Continue to diversify the Police Department's recruitment and hiring practices, building off of internal NYPD efforts since 2013 to monitor demographic data of the police force and improve the pipeline for hiring officers reflecting the diverse city population.
6. Continue the practice of conducting regular systems evaluations in line with modern, pragmatic research, as is currently underway as a collaborative effort between the NYPD and the court-

appointed federal monitor and facilitator; and publish the reports, findings, data, and any changes resulting from such evaluation.

7. Two local laws were recently enacted that reflect CU's recommendation to expand reporting on incidents of police use of force against civilians, without publishing officers' names.
 - a. [Intro 606-A](#), supported by Citizens Union, now requires the NYPD to publish use of force reports quarterly on the NYPD website and to detail the number of use of force incidents by: (1) type of force used regarding arrests related to quality of life offenses; and (2) by geographic information of where the incident occurred, including precinct. This data should then be audited for accurate reporting by the Inspector General.
 - b. [Intro 539](#), supported by Citizens Union, now requires the NYPD to also publish use of force summary reporting within 30 days of an incident of force resulting in hospitalization or death, including: (1) type of force used; (2) officer's precinct; (3) whether officer was on duty; (4) officer's years of employment; (5) incident summary; (6) whether CCRB reviewed the incident, if so its findings, as well as NYPD findings and final decision regarding discipline; and (7) geographic information of where the incident occurred. Each data point should be updated as the information becomes available, though the provision should take into account that some of the data required may not be available within 30 days. The data should also be audited for accurate reporting by the Inspector General.

The legislation lacked language requiring the NYPD to provide important aggregate information about race, age, and gender. During the day the Council considered and passed the legislation, the Council explained that it was an unintentional error not to require reporting data on race. During the same day, the NYPD committed to including race data in their reporting, though because the law does not require it, it is strictly voluntarily. It is hard to believe that this was a simple error given the importance of race data specifically. It is very much hoped that such important data will accurately and consistently be provided to the public.

III. Bolster Independent Oversight of the Police by Strengthening the Civilian Complaint Review Board

In recent years, the CCRB has further professionalized its work, including seeking to substantially reduce the time it takes to close open cases. Yet the potential for CCRB growth and effectiveness is hamstrung by structural and legal provisions. In order for the CCRB to fulfill its mandate to investigate and substantiate complaints of officer misconduct against civilians, and to prosecute substantiated complaints, it must be properly empowered.

The recommendations in this section aim to: furnish the CCRB with needed resources and powers; create protections to ensure the integrity of CCRB investigations; and increase reporting of complaints to the CCRB regarding officer misconduct.

1. Increase the CCRB budget to maintain and grow staff capacity, offering competitive compensation and comprehensive training for investigators so as to attract and keep experienced staff.*

2. Safeguard the independence and integrity of CCRB investigations and standardize the effects of participation in an investigation for complainants, witnesses, and officers.
 - a. Require the CCRB to inform complainants, witnesses, and officers that their statements to the CCRB may be used against them in corresponding court cases, and of the associated risks.
 - b. Reinstate “zero tolerance” policy for false official statements.*
 - i. Possibly include or clarify penalties for false statements, including being subjected to charges of perjury.
 - c. Grant the CCRB authority to prosecute officers who lie under oath during the course of their investigations.*
 - i. Possibly include that civilian complainants and witnesses would also be subject to prosecution for perjury.
3. Expand CCRB’s data reporting, to:
 - a. Require the CCRB to provide the public with aggregate information about both the police officer and complainant involved in complaints, which could include: race, ethnicity, age, gender, and for officers, years on the force.
 - b. Build off of CCRB’s new transparency initiatives, such as increased online reporting and development of an early warning system, to require the CCRB to issue a report listing precincts or divisions of officers with the highest numbers of: (1) CCRB complaints; (2) CCRB substantiated complaints; and (3) incidents of being named defendants in civil lawsuits alleging police brutality. (CU offers modified support for [Intro 824](#), with one significant amendment, to require the CCRB to perform this reporting rather than the NYPD, as the CCRB is better positioned to report upon its own data.)

IV. Make Police Accountable to the Public Through Elevated Transparency, Independence, and Public Education in the Police Oversight System

The police oversight system has many components and parties, which are necessary to promote accountability: internal oversight within the NYPD, as well as the CCRB, CCPC, DOI, IG, and more. Yet, other entities also need to be included to ensure that there is proper coordination, information sharing, political independence and accountability, and civic awareness of the rights and obligations of police officers and civilians.

1. Enhance data-sharing regarding civil actions against police officers and related civil legal settlements.
 - a. Require the Law Department to issue quarterly reports to the Council, comptroller, and CCRB detailing the number and disposition of civil actions filed against the NYPD. (CU offers modified support for [Intro 119](#) with one significant amendment, to require the Law Department to issue this report rather than the Inspector General, as the information is held by the Law Department which litigates and settles civil cases against the police, and therefore is in the best position to accurately report on such cases.) [During the finalization of this position Citizens Union was informed that its recommendation for the required reports to be issued by the Law Department has in fact been included in the bill.]
 - b. Require the comptroller to submit information regarding civil legal settlements in all cases to relevant agencies, as the comptroller approves the payments and has the most up-to-date data on such settlements.

2. Establish public education programs and initiatives to ensure that New Yorkers are informed about the rights and obligations of civilians and police officers during civilian-officer interactions.
 - a. Develop a program through the Department of Education, potentially in conjunction with other modes of civics education, and potentially partnering with other agencies that conduct youth programming and social services, as well as civil society partnerships.
 - b. Support initiatives to educate New Yorkers of all ages and in all communities about the rights and obligations of civilians and police officers during their interactions.

Citizens Union's Past Positions on Police Issues

I. 2008 Position on Public Oversight and Police Misconduct

In 2008, Citizens Union sought to address public mistrust in the NYPD, which was largely influenced by its handling of police misconduct. To that end, we made recommendations for a more independent and transparent system of oversight, prosecution and adjudication of misconduct. Specifically, CU recommended that:

1. The CCRB be enabled to prosecute cases it substantiates.
2. The CCRB be given the authority to prosecute officers who make false statements to CCRB investigators during the course of investigations.
3. The CCRB's resources for investigation and staffing be expanded in order to handle its growing caseload and prevent delays in carrying out its important oversight function.
4. To ensure appropriate disciplinary responses to misconduct, Citizens Union also recommended expanding the responsibilities and disciplinary options of the Police Commissioner, to allow for more narrowly tailored punishment and better compliance with CCRB recommendations.
5. Finally, Citizens Union recommended that the City enact legislation that would recreate the Commission to Combat Police Corruption, which is currently established through Executive Order, thereby expanding its mandate to serve as a permanent monitoring commission.

In 2012, pursuant to a Memorandum of Understanding between the CCRB and NYPD, the CCRB was given the authority to prosecute cases it substantiates when the most serious discipline is recommended. While Citizens Union applauds this step as a measure that increases the level of independence across police oversight mechanisms, ensuring that police who engage in misconduct are more accountable to the public, it is concerned that the Police Commissioner is still not publicly releasing his rationale when he diverges from the disciplinary recommendations of the CCRB and

II. 2013 Position on Reforming Stop, Question and Frisk

In 2013, Citizens Union conducted in-depth analysis of the NYPD's Stop, Question and Frisk policy and issued a [policy position on it](#), as well as policy recommendations. This built on the earlier work CU has undertaken on police conduct and accountability by addressing a policy that facilitates police misconduct and which federal courts have found to be employed unconstitutionally in New York City.

Citizens Union came independently to the conclusion that Stop, Question, and Frisk should be used less frequently, employed more judiciously, and performed with the utmost professionalism given the intrusive nature of the tactic with a disparate impact on communities of color. As a matter of policy, we opposed the overuse of Stop, Question and Frisk in its then aggressive form, which has now been ruled unconstitutional. We do so because, while it is uncertain how many stop and

frisks need to occur in order to reduce crime, we believe there comes a point when its overuse brings diminished results and can be counterproductive.

We also wish to see it used more appropriately by focusing on the quality of the stops and not quantity, because it imposes a significant burden and personal infringement on the rights and lives of individuals who are mostly people of color.

The then-recent rulings and the appointment of a federal monitor to oversee the use of Stop, Question and Frisk indicate that the policy should be applied in specific and limited ways if it is going to be effective in reducing crime. Citizens Union's analysis agreed that evidence relating to crime rates and the number of instances where Stop, Question and Frisk was used does not definitively establish the extent to which the policy is a significant factor in reducing crime.

Based on these findings, Citizens Union recommended shifting the emphasis of Stop, Question and Frisk from the quantity of police interactions to their quality. To this end, it advocated for:

1. Improved training and accountability systems within the NYPD.
2. The use of more productive and professional stops, with the understanding that any stop, whether justified or not, "is an indignity upon the person temporarily detained."
3. That City and governmental bodies clarify what appropriate instances of using Stop, Question and Frisk are.

CU's 2013 policy position also reiterated its existing positions related to the CCRB and independent monitoring of police misconduct.

Since the time of our recommendation, the court-appointed federal monitor has continued to work with the NYPD, CCRB, and other entities of the police oversight system to ensure that Stop, Question and Frisk is utilized judiciously. The number of instances where the practice was exercised has been decreasing annually since it reached a high point in 2011, with a dramatic drop between 2013 and 2014. Last year, the number of instances was the lowest it has been in over a decade, indicating that at least more consideration of whether a stop is warranted or necessary is being employed at a city-wide level.

At the same time, the federal monitor continues to make recommendations regarding the use of Stop, Question and Frisk, which aim to improve implementation. Citizens Union sees that reforms surrounding the Stop, Question and Frisk policy are taking place and appreciate the work that is being done by the various agencies involved in police oversight, both independently, and in collaboration with the federal monitor. We look forward to seeing continued reform in the area of this policy's overuse.

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12/10/2016

To: Reinaldo Rivera, Senior Advisor, Joint Remedial Process NYPD “Stop and Frisk” Settlement Case, 2nd District Court

I have reviewed the five confidential transcripts (from focus groups) forwarded to me by email as per your request. You asked for my observations on the impact of “stop and frisk” policing policies from a mental health point of view as suggested by the content of the transcripts. My area of expertise as a psychologist lies in working clinically with traumatized adults with a variety of mental disorders and exploration of the role of humiliation in behavioral problems. I have reviewed the transcripts from these perspectives. The transcripts raise a number of concerns which I have outlined below. I have included observations on the transcripts, concerns on which I would suggest attention be focused, and some suggestions.

By way of framing my observations, I have taken a systems perspective on the community and its police. Both groups matter, their interactions impact both, and both groups have been impacted by the stop and frisk policies. Improvement in life for both needs to be the objective. The transcripts make clear a number of the reactions community members have had to this approach to policing. They describe as well their perceptions of how officers acted and reacted in various situations; I have inferred, with caution, something of what it may have been like for the officers from their own point of view as well.

Both community members and officers appear to be at heightened risk of being caught up in particular kinds of dynamics by stop and frisk policies that make life more problematic for everyone involved, causing all the parties at the street level to have harder lives than any of them might want for themselves. Having worked with people steeped in experiences of threat to their dignity and to their lives, with people who have come to live with the neurobiology of alarm in the face of chronic danger, and having assisted them in the journeys they have made to discovering life can be much safer and easier than what they were used to, I would encourage reform efforts to keep a particular system-wide goal front and center for everyone involved, namely the goal of becoming communities who are making a safer life together, a life of mutual respect and dignity for all, a happier life, with the police seen not as outsiders but as members of the community along with everyone else.

What follows are considerations that I would like to foreground, knowing that extensive research has been done on such issues by experts in a variety of fields. I defer to their expertise and encourage a reaching out to them. I nonetheless stand by the concerns I have raised here.

1. Let me first comment on mental illness and the challenges it presents to policing, before turning to the main subject matter of this paper. Mental illness on the part of a community member has the potential for escalating the response of a police officer untrained in recognizing and understanding reactions on the part of a mentally ill person. For example, bipolar disorder causes a person's ability to think in ordinary ways to be swamped by the intensity of their moods, which can range from severe depression (non-responsiveness, sluggishness) to manic energy (which can also take the form of intense anger/rage). Bipolar patients typically feel better at some point, or feel manically "the best they've ever been," and go off their medications, which escalates the control their moods have over them. The inability of the person to control the rage or energy that has them in its grip can easily be misinterpreted as disrespect and a willful refusal to cooperate.

For the untrained officer who does not know what he or she is looking at, this apparent disrespect and non-cooperation can lead the officer to escalate – which will send the patient's emotions still further out of control. The mutual escalation of emotionality of the situation in place of calm, reasonable interaction can escalate to physical action and violence. A range of responses from the officer to de-escalate the situation and help all parties get back into the safe-and-stable zone is more likely to prove safe and to work better for both the officers and the mentally ill person alike.

Likewise, in schizophrenia ordinary logic gives way to bizarre thinking, delusions (including of being hunted by authorities, for example), inappropriate affect (emotion that makes no sense in the situation), etc. While the officer coming on the scene knows why he or she is there (to act in their role as an officer of the law), the schizophrenic who is decompensated may imagine the officer coming into the situation is any number of kinds of figures or forces conjured by their delusional and/or hallucinatory systems. For an untrained officer, the strangeness and inappropriateness of the subject's language, facial expressions or behavior can again be misinterpreted as a failure to cooperate and a manifestation of disrespect, when in fact the subject may not be able to understand what is taking place in terms at all like what is actually happening, or to respond in normally appropriate manner.

Training in the recognition and handling of various forms of mental illness should be an aid to officers enabling them to manage such situations more effectively and safely, minimizing danger for all involved, adding to officers' sense of their own skillfulness in addressing the range of things that can come up in policing a given community. Support for training programs should be a win-win situation.

The job of the police in addressing mentally ill subjects in a community will likely be easier if they are provided with information that a given person does have a mental illness and which illness that is. Getting to know the members of the community one is policing, including who has mental problems, should be an advantage when a situation develops involving such persons, as the officer(s) are

more likely to recognize those particular individuals as having those problems thanks to prior knowledge. Outreach to communities that alert its members to inform police coming into a situation that given individuals are mentally ill may serve a similar purpose, but this is less likely to be helpful to officers not trained in then assessing the situation for themselves and managing the interactions with mentally ill people. Cooperation between mental health programs and the Department in this regard might be helpful.

While these concerns by way of policing and mental illness are flagged in the transcripts, these concerns apply to this and any other community officers are called on to police. They are not unique to “stop and frisk” policing. What stop and frisk policing will do, however, is increase the frequency of interactions by the police with community members, raising the frequency with which they are interacting with mentally ill subjects as a result.

2. A review of the five confidential transcripts provided suggests that policing behavior can set in motion a number of side effects impacting the mental/emotional states of the immediate subjects of their interactions, as well as of those who witness the interactions, and of others in the community who are in turn impacted by hearing about what happened.

Based on the transcripts, stop and frisk policing has created a number of emotional attitudes on the part of community members, attitudes which officers might in fact regard as advantageous to their control over potentially volatile situations but which prove harmful for the members of the community and create problems for the police in the long run.

The transcripts further suggest a shared cultural view that sounds rather like the police playing the role of an occupying force in an unfriendly territory. Given that a relatively few officers must patrol a much larger community, if officers have an expectation that almost anyone in that community could become dangerous at any time, and that others might then join in, officers could come to the view that establishing an intimidating presence could help keep a threatening population under control. The more forceful and frightening their presence, the more hesitant the community’s members might be to “try to get away with anything.” To be viewed as dangerous by the community may subdue any inclinations in the community to disrespect or threaten officers. In such interactions, the conscious or unconscious intent is to reinforce subjects’ submission to authority, which can easily slip over into deliberately humiliating subjects or into subjects’ perceiving that they have been humiliated whether or not that was the officers’ intention. I will refer to this as a “commanding presence” style of policing. Whether “stop and frisk” policing was intended to foster that style, by its nature it appears to embody that style in its impact on community members. It is a style whose most likely impacts include undermining the mental health of the community’s members on whom it is exercised, undermining the

community's willingness to turn to officers for help or to provide useful information, and increasing the chances that sooner or later a difficult situation will turn dangerous.

Commanding-presence psychology may have developed in response to two factors: stop and frisk policing policy and broken-window policing policy. Both mandate frequent, random and intense intrusion into the ordinary life of community members, for whom the intrusions are sudden, unpredictable and hence often unexpected. Each intervention holds the potential of dire consequences for the subjects stopped. The transcripts show this has heightened the state of alarm in the community. That alarm can reasonably be expected to increase the unpredictability and potential volatility that police officers in turn are confronted with. They too likely have less sense of assurance as to what to expect next.

Use of quotas for stop-and-frisk to evaluate officers' performance and determine promotions and pay has likely been a major driver of the development of this psychology. However, the engagement of the country in a militarization of its psychology generally in the wake of 9/11, and the employment of police as part of the array of forces securing the country against terrorists, coupled with the militarization of equipment and tactics, including surveillance and monitoring equipment and tactics, has likely further driven the development of commanding-presence psychology: A good officer projects a commanding presence, a show of force is a good thing, etc. All of this has consequences for communities being policed and for the police officers themselves. This is a case of all parties suffering a decrease in their sense of the predictability of life and an increase in the sense of unpredictable danger in the wake of developments that have shifted life into what is now understood by researchers to be the neurobiology threat and alarm.

In the face of threat to safety, dignity and/or life, a lower center in the brain, the amygdala, causes an increase in the production of adrenalin and stress hormones while dramatically escalating the activation of the sympathetic nervous system, all in the service of creating a sudden surge of physical energy in case either fight or flight will prove necessary. Both the chemicals and the sympathetic nervous system cause a dramatic deepening and quickening of breathing (which increases the supply of oxygen to cells) and a release of glucose from the liver into the blood stream, thus releasing the supplies (oxygen and glucose) into the blood stream that will be needed by the long muscles of the legs and arms for fight or flight. The heart pounds harder and faster to move the blood with these supplies to those muscles as quickly as possible, reinforced by an increasing of the tension in the blood vessels (i.e., a heightening of blood pressure). This systemic response creates a surge of energy in the body that can be manifest in either a tensing up or shaking in the limbs. At the same time, the amygdala shuts down the lines of

contact in the brain to its thinking-centers, as thought may get in the way of survival: if the threat to life is immediate, the body and brain focus totally on emotionalizing the person into the actions that may save their life. Needless to say, in a situation in which police are trying to find out what's going on, a sudden burst of flight or aggression on the part of a subject is a less than ideal development, and yet if the subject's brain has sensed danger, it may well set in motion this override of the subject's ability to talk quietly, provide information, etc., and overwhelm them with an impetus in their bodies to run, to shake with anger, etc.

A second kind of neurobiology can also be triggered, one that equally shuts down the ability to think, to find words, and therefore to make sense at the very time an officer is most concerned to find out what's going on and how to make sense of it. Instead of sending the sympathetic nervous system into overdrive, the amygdala can send the contrasting system, the parasympathetic nervous system, into an extreme state. The two systems (sympathetic and parasympathetic) complement each other, with the sympathetic system upshifting the body into producing bursts of energy and the parasympathetic system downshifting the body into relaxing. The first increases heart rate, blood pressure, etc., while the parasympathetic dramatically lowers heart rate, blood pressure, breathing and the release of sugar into the blood stream. When the parasympathetic system is over-activated in the presence of perceived threat, the result is a collapse of energy. This state of demobilization renders a subject extremely passive, inert, with "brain freeze" (an inability to think or to think in a coherent fashion when being questioned).

In short, in the face of perceived threat, the amygdala takes over while the parts of the brain that think, reason and find language to express what's going on tend to be shut out of the loop, resulting either in a flooding of the individual with emotional energy (anger for fighting, fear for fleeing) or a collapse into passivity, coupled with a difficulty being articulate or relevant in comments.

It is worth noting that when individuals or a community have had a great deal of experience with such states, they can develop an ability to keep thinking and talking despite the intense activation of these emotional states within themselves. It may be a matter of survival or of honor to be able to contain the flooding from within (by anger or fear), to fend off any tendency to collapse, and to keep being able to talk and explain one's self and one's rights, etc., to deal with the situation. The development of that ability to be "cool" in the face of danger from without and emotion from within, the ability to shut out the emotionality within and stay cool and logical may be considered a mark of honor, not to mention a key to survival.

All of this can develop in response to actual danger from officers in a given situation, but they can also be responses to perceived or expected danger even though a given officer in a given situation may have no such intent. The fact of a history of interactions marked by danger, intimidation and/or humiliation by officers appears, from the transcripts, to have led to a generalized sense that all police officers are potential threats at all times. The very presence of police may have a triggering effect in activating these reactions. None of this is helpful to officers in any given situation, where they have to navigate against a backdrop of these many intense neurobiological reactions.

The policies that drive commanding-presence policing thus likely come with a price tag for the community's members and for the officers attempting to play their role in the community. Commanding-presence psychology, which stop and frisk seems to accentuate, appears to undermine community perceptions that police are part of the community, that police recognize that this is a community that values mutual respect and lawful behavior, and that the police are there to support the community in being what it actually wants to be. Instead the police are likely to be seen as raising the level of emotional alarm and reactivity in the community, which makes it harder for people in the community to maintain reasoned behavior. Alarmed people are more reactive than they otherwise would be.

The bottom line take-away is that no party emerges happier and more content in life as a result of these interacting dynamics. No one is getting to have the better life they'd wish for themselves (or others) thanks to these dynamics. The question that reform efforts are raising ultimately is whether all the parties have it within themselves to approach things differently and can thereby collectively come to be living a happier existence together.

From a neurobiological point of view, this is possible. The same brain that can send people into fight and flight has circuitry and chemistry that make it possible for people to establish attachment to each other and be cooperative in their endeavors, even to care for one another's well being in life. That shift is experienced emotionally as a shift out of feeling endangered (and pursuing a sense of control) to feeling a sense that "we're all safer because all of us are here," "we all do better thanks to everyone being part of our community's life." Our biology makes this an achievable goal. The question is whether the institution of policing at its various levels, plus the communities being aided by policing in their various constituencies, can want to make that change. It will involve a shift in tactics, psychology, neurobiology, interactions and relationships over time.

The second question is whether all involved can tolerate the time it will take to make those shifts and secure them in the face of stressful events. Those shifts involve not only changes in thinking and changes in procedures, they

also involve a rewiring of the brain and its neurochemistries, which takes time. Put another way, the building of trust (in both directions) takes many repeated experiences of trustworthiness, which can only happen over time. The brain changes through repeated experiences of thinking differently, acting differently, interpreting things differently -- and experiencing a growing consistency of different (better) outcomes.

2. A number of the members of the focus group expressed enormous fear of the police, a sense they could not, and would not, start to walk away from an officer after the completion of an interaction. Some would not leave without being told they could go, others would not walk away at all but would wait for the officers to leave, and still others would not walk away except by backing away, never turning their backs to the officers.

The intrusive commanding-presence style of policing embodied in stop and frisk interventions at unexpected and unprovoked times, combined with a history of use of excessive or deadly force by the police, has generated considerable fear. While this may be considered an asset by officers at times, it takes a toll on the community. Fear for one's safety, indeed for one's life, triggers autonomic nervous system responses that, if they happen frequently, generate a chronic overloading of the body with stress hormones, with an increased risk of hypertension and other metabolic syndrome disorders (diabetes, heart attack) over a course of years or decades. However, to the extent that officers also experience a chronically elevated state of being on guard against potential threat, they too may be subject to a heightened risk of developing those same disorders (hypertension, diabetes, coronary heart disease). If that has not already been investigated, it should be. No one should be paying that kind of price for having served the City.

In addition to the biology of alarm reactions, random, unexpected and unprovoked stopping, interrogating and frisking of individuals, apart from actual incidents of sexual groping of opposite sex and transgendered individuals, is humiliating. The sense that one is being humiliated but has no choice but to submit and be subservient can generate angry "talking back" to re-establish some sense of dignity (including the sense of manhood among males) or smoldering resentment that may surface at officers at some future time – but more likely will be discharged on other members of the community within hours or days. A chain of destructive emotions can ripple out from an incident through a web of relationships in the community, as the anger of being humiliated is vented on others, who then vent it on still others. Humiliation is a powerful disruptor of community relations, compromising the community's ability to be the best self it strives to be.

The stability of community relationships is further ruptured, as noted by some in the transcripts, when a subject is stopped, interrogated, frisked *and sees that other members of the community are witnessing this*. The subject

then worries what the others are thinking about him or her: Will the witnesses now think that maybe the police are stopping the subject for a good reason, that perhaps the subject has committed a criminal act and/or is dangerous, and that maybe the subject will be regarded with suspicion in the wake of the incident. Relationships that had been pretty good to that moment may now be tainted by suspicion directed at the subject. The witnesses may in fact have no such thoughts (though they may have); in either case the subject may now have suspicion of them as potentially mistrusting him or her, leading to an alteration of his/her behavior toward them to try and uncover or defuse any possible suspiciousness or bad reputation that may be circulating among neighbors, family and the community as a result of the “stop.” Interactions accordingly become distorted by mistrust in several ways. No one feels better because of this.

In reality, witnesses may instead feel sympathetic toward the subject, judging that the police are humiliating the subject for no good reason, perhaps remembering incidents they themselves have experienced or that friends or family members have experienced where that was the case. They may see the subject as a relatively innocent victim of humiliating tactics. They may in that case feel humiliated that they themselves cannot safely do anything to intervene, to assert the subject’s innocence (without drawing attention and suspicion to themselves, as they’d risk being seen as disrespectful or causing trouble to the officers who would then need to assert their control by exercising humiliating power over them as well).

In addition, both the subject and the witnesses are likely to tell the story of what was experienced or witnessed to their friends and family members, so that the story of “what police are like” spreads, creating expectations of how interactions with the police will go regardless of how they might actually go with a given officer on a given day. Expectations of humiliation, degradation, being hauled off, imprisoned, or even killed, degrade the readiness of community members to see officers as a welcome presence in their midst, an addition to the community they’re glad to have among them, resources they are glad to cooperate with or help out or back up should untoward situations arise that might overwhelm an officer and his/her partner before back up can arrive.

In short, the transcripts convey a sense of a style of policing that has degraded the community’s emotional well being *and* the potential for cooperative responses by community members toward the police. A sense of the police as a friend did not surface in the transcripts. Instead the seeds appear to have been sown for resenting the police and exploding into violence sooner or later, thus reinforcing any fears officers might have that motivates establishing themselves as a dangerous force to be respected in order to keep potential threats to their own safety at bay. If so, this likely involves little awareness of the role their own behavior over years has played

in building the level of humiliation, resentment and fear that could erupt in violence. Participants in systems-dynamics rarely are aware of the impact of their own behavior on keeping dynamics going that they do not like.

As with any system-dynamic, the beliefs of the commanding-presence style of policing can act as self-fulfilling prophecies, stimulating the community's emotional attitudes to be such that they become the kind of community police might rightly fear. A shift in policing style toward respectful treatment of the community's members (and respectful procedures, a number of which are suggested in the transcripts), cannot be expected to erase the effects of years of the prior style of policing in a matter of months. Trust does not spring into place except through experience, over time, that the old kinds of interactions are now mostly a thing of the past and that trust on the part of community members that they will be respected has been warranted for a matter of at least a year or more.

A very public rolling out of a change in policing policy and approach, with substantive implementation and follow-through, can help foster a sense that "maybe things really are changing" which can make life easier both for community members and officers. However, research on the effects of a stimulus on behavior indicates that even occasional incidents of the old kind of experience can operate on the brain to cause a resurgence of belief that the old way is still the reality in the present. "Nothing has really changed; they're still who they always were." The same dynamic can operate in the opposite direction, convincing police officers that nothing has really changed on the part of the communities they are policing. In reality, no institution or community should expect that no such occasions will happen; perfect change is hard to come by in this life. Reform efforts will be better served by making this explicit from the start. It's something everyone can understand, and it is better acknowledged all around at the beginning.

Change from commanding-presence policing will be easier to come by if the Department is perceived as working out the transition in ways that show respect for the officers as the people actually "on the ground" while also systematically rewarding new behavior with pay increases, promotions, etc. Refusal to change from old behaviors will have to be consistently confronted, along with consequences should the new approach prove unworkable from a given officer's point of view. Consideration will have to be given to shifts in duties plus training and evaluation of readiness to return to the beat with a renewed ability to approach the job differently. (To be taken seriously, this has to be backed up by lack of promotions, change in duties, suspensions and dismissals if the transition cannot be made.) At the same time, all of this can be experienced as humiliating to officers who confront very challenging situations daily in their work, and risks fostering a sense that the magnitude of the task before rank and file officers and the knowledge they have about life in the street is not being respected. Reward-and-punishment policies

risk fostering resistance to change unless they are the other side of the coin of listening to officers with respect for what they are encountering, how they see it, what they believe would be helpful, etc. Systems level change needs to be a path walked by all parties together, with clear vision of where all of this needs to go and with a clear sense of respect for life's immense complexity and difficulty.

A practical question is how the Department will encourage a shift toward a psychology of mutual respect on the one hand while the mission of preventing terrorism calls forth a high-threat psychology on the other hand. Consideration should be given to on-going discussion programs that support officers figuring out their way through the transition in what is being asked of them (rather than treating them as non-human automatons who can be re-programmed on command). Officers are human beings who have to process the dramatic shift in what's being asked of them, who it is they admire within their ranks and how those role models are handling the changed expectations, what they themselves are experiencing and have experienced and expect to experience, what is being put forward as the sense of what a respected or ideal officer actually does, how departmental mandates and changes in policy are perceived, how community members are responding to changes, etc. Treating officers like their thinking of their way through change, their feeling their way into it, their suggesting how to make this workable, must be the backbone of making this work and is part of extending to them the very dignity as human beings they are being called on to extend to the community. Reform should be understood as a collective journey toward relationships based on extending respect to everyone's dignity and wanting everyone involved to have a better experience of life together.

The goal of the Department and officers, and of community institutions and community members, collectively, should be to establish a shared culture of respect, where all sides act in respectful and trustworthy fashion, and in predictable fashion, so that all come to a sense that they can count on what to expect from each other. The goal of all "sides" should be to achieve a humiliation-free life together and a humiliation-free life as a community.

That undertaking would be strengthened the more institutions and natural groups within the community (including the police) undertake "humiliation-free-community" or something like it as their motto and their common goal, with programs and mentoring on the ground plus sharing of the experience of moving in that direction among all the people involved, including the officers and watch commanders, etc. who play their own vital roles in the life of the community. Everyone, police and community members, needs to be on the journey together, as best as that can be achieved.

In this respect, it appears paramount that police-community relations should cease being viewed as in any way like an occupying army in an unfriendly

territory, and should become instead a sense of all parties, police included, as members of one and the same community, all working together to make community life safe and happy for everyone, including the police. Everyone, from suspects to witnesses to police, needs to be supported in making a good life, supported by everyone else. This is a dramatic shift in the psychology on the ground, a shift that our biology makes possible and puts within reach of sustained and focused efforts and belief in the future. It's a choice for how things will unfold for the long run. Quality of life is changed and secured only in the long run. People have to invest in what life will be like in the future, and that investment involves what they do today.

Everyone needs to be aware that where community members experience humiliation at the hands of agencies (other than the police), institutions, organizations (including schools and the business community) and cultural attitudes (exhibited for instance in the media), the community may be suffering the impact of chronic disrespect and chronic undercutting of the needs to learn and exercise the skills of making a decent living that are foundational to self-respect. Police may then feel the ripple effect of the disrespect and tension running through a community (from other sources) trying to right itself and establish its own integrity, the value of its own culture, and the pride of handling life well. Police can feel part of the brunt of that unsettled state of life even though they, the police, cannot resolve those problems. Wanting life to be better, together, i.e. empathy for this larger reality, may prove helpful to police-community relationships. It's okay for the police to want life to be better for the community vis a vis the city and the country's other institutions. Improvements on other fronts can make life easier for both the community and its officers.

It appears that officers have been required to engage in problematic behaviors (stop and frisk, broken-window policing) over a period of years, with the exacerbation of stresses confronting them that this behavior has set in motion. This will tend to have undercut police officers' trust in the good will that should characterize life, their sense of what their own good will can create by way of cooperation and appreciation among community members, their sense of community members caring about police officers' safety and well being, and their sense of effectiveness. There may well have been an increase in the chronic level of stress hormones in their own bodies (and resultant metabolic disorders), damage sustained to any expectations early in their careers that they would be perceived as helpful agents in the communities they would serve, and a shift toward a greater level of aggressiveness-readiness. All of this could well be seen as part of their role, given all they have experienced over the years, what they have observed in other officers, what they have been told by their superiors, etc. The community itself has been severely stressed by these policies, but likely so also have officers. Everyone needs to arrive at a happier life, to feel the power of their own goodness, and to experience what it's like to know that

others appreciate and care about your welfare. Reform should want this for everyone involved.

3. Among community members *and* police, a heightened sense of danger appears to have developed, with a heightened sense of being at risk. In general, a heightened baseline of adrenalin and cortisol tends to create a decreased ability to unwind and relax which in turn impacts the experience of attachment in intimate, familial relationships. Attachment depends in part on a certain amount of liveliness shared together; but it more fundamentally rests on a capacity to “relax into one another,” to feel safe in each others’ embrace, in being close together, and in the conversations that take place. Attachment grows out of a sense of being safe and “at home” together, feelings that are hard to achieve when one’s body is in a state of chronic tension/alarm from the stressful life one encounters every day. An alarmed neurobiology has a harder time sustaining intimacy and attachment. The question is whether this is the case in these communities and among the officers that police them, given the levels of threat they all live with on a daily basis.

From a mental health point of view, the picture that emerges in the transcripts raises the question of how attachment is faring in both the lives of community members and in the lives of the officers policing the community. Research into the impact of stop and frisk and what I refer to as commanding-presence policing on both officers and community members is warranted, especially in terms of long-term impact on the ability to sustain close, loving relationships. Police serving in this kind of professional life, and their spouses and families, may suffer more stress, with intimate relationships harder to sustain, closeness harder to hold onto, as the years go by, with community members experiencing the very same thing, both suffering from the impact of a culture imposed on the officers and in turn by the officers on the community. This is what research suggests is *in general* a common reaction to living with chronically elevated states of threat/alarm. It may or may not be the case for the police or the community. To the extent that either the community or its police are suffering such effects, the change from stop and frisk to a less provocative policing style is likely to lessen the stress on attachment and love in the lives of all involved.

4. The picture I have been painting arises from a reading of the transcripts provided to me. In reality, many community members and many officers and Department members likely have achieved sustained closeness within their homes and a form of conduct on the streets that belies all of this. There are likely examples all around of doing better by way of each other, and just as importantly of wanting to do better, wishing for the possibility of doing better, than a focus on only the negative would suggest. Those who have done better and those who wish for the chance to do better, on both “sides,” are tremendously important resources, potential natural leaders, and models

to be looked to and learned from. Change as a real process grows naturally when those who do better are the models that officers and community members orient themselves to, the bearers of wisdom and good advice, the examples to be copied.

There are two cautionaries to be kept in mind. Everyone slips up at times. Heroes are human beings too. It's what people do overall that counts, and it's the direction in which people are changing that counts in the long run.

Secondly, there have been leaders in doing it the old ways, heroes looked up to for how well they established themselves in commanding-presence modes. This, as they understood it, was the best way to be officers, the best ways to do "what needed to be done," and they were respected as such. To now experience the tides of what is respected turning to something else can be taken as a bitter irony, a failure of the current state of affairs to recognize one's contribution, knowledge and skill. Yet such leaders can also take change as an opportunity to explore, something they want to embrace. They should recognize there is likely a widely felt need for exactly those leaders to say "We did what we knew all these years, what we understood would do the best job, and now we know more. You should learn the new ways, try them out, let them make things better, give them a chance." Who better can be a permission-giver, an encourager of transition, than the very people who most represented skill and belief in everyone's eyes in the old ways? Such officers can choose between two paths: lose the status of being a leader and be seen as one left behind, or maintain that invaluable state as a leader by becoming one of the permission-givers most likely to be believed.

5. In terms of recovering from this stressful state of affairs, in which neither the police nor the community are likely living out the kind of life they'd like to be living out together, carefully developed programs for community members to process their end of the experience and what it is they hope for in life for themselves should be matched as well by programs for officers to discuss what this has been like for them, what they'd hoped for in their lives, and how things could be made better from their point of view as well.

Professional consultants who share a common sense of their own humanness with all the parties, in addition to being experienced and skilled, are most likely to be able to develop programs that the police and the community will find meaningful and actually helpful over time, rather than bogus.

Professionals who regard themselves as superior to those they are helping, or who are advancing their careers by being skilled, etc., may at times be helpful as well. But professionals who experience themselves as on the same journey to becoming better at humanness are less likely to treat those they are being helpful to in disrespectful or disconnected ways. It is more valuable to be helped through change by people who are actually walking the

walk themselves. When it comes to becoming better as people together, we're all in on this journey together.

As their separate journeys (community members and police) toward realizing the kind of life each wants to have, as their shared journey into being a better community, a happier community, together develops, meetings of police and community to share their experiences of that journey and to find common ground, common hopes, and ways to make life better together may become something that can usefully take place. Any such programs have to ensure that sharing is safe on all levels and for all parties.

Change is not about short training programs alone. Change is about the building of long term trust and cooperation through small, practical steps, which in the long run convert mistrust into something more akin to mutual concern on the part of the police toward the community and the community toward its officers. The objective should be for all sides to realize that the police are part of the community along with the residents. The community consists of residents, shops, businesses, various organizations, and also police. Police are not not-part-of the community; they walk the same streets, and make a life among the others, playing their particular role. Determining what they themselves want that role to be, getting to air what their jobs are actually like without fear of reprisal or shaming, being taken seriously for what they hate about their jobs, what they like, and so on are all important matters. Developing programs in which officers are taken seriously as they think this together can become useful only if there is a multi-year building-of-trust among officers that this is not bogus; if the community needs experience to build trust, so too do its officers.

6. These then are observations, concerns and suggestions arising from reading the transcripts. These are the kinds of things I suspect may have been happening, the kinds of concerns I suspect are warranted, and the kinds of suggestions I suspect might be helpful. The subjects within the transcripts make a number of concrete suggestions of their own, and I am not intending to minimize the importance of those suggestions and the concerns that the subjects have raised. Their specific suggestions may or may not be of a form most likely to work well for the community and the police (though they may be), but even when they are not they should be regarded as on the trail of something that is extremely important to establishing a spirit of greater respect and mutual trust between the police and the community and therefore deserve a hearing that will turn them into viable steps forward in trust-building steps that will actually be implemented. Neighborhoods and communities need to know that, when asked what they think will make things better, their taking the time to offer suggestions will in fact produce real outcomes. This is part of how they can come into a feeling that they have some measure of control over their own lives and destinies as a neighborhood and as a community, both of which increase self-respect, the

sense of their standing being respected in the city, and therefore their readiness to work together with the Department and others to make life better together.

7. From a research point of view, this may be an opportune moment for going beyond the observations offered here to a thorough-going investigation of the impact of stop and frisk on the mental health and relationship-milieu of the community, as well as what effects it may have had on the well-being of the police. In what follows, I am assuming two conditions. First, those command-presence policies have been in effect until the very recent present: Therefore their effects likely linger on. Second, those policies are to a large degree ending: Whatever effects they have generated will likely dwindle away over the coming years. These two conditions, if true, suggest a possible research strategy.

There are teams of mental health research professionals who specialize in assessing mental health status in communities and are experienced with doing so in a wide-range of cultural backgrounds around the globe. Should such a team investigate the mental health/attachment conditions operating in the community today, and among those officers who have followed those mandates over the past years, their initial findings would register a composite of (a) mental health difficulties that originate independently of any policing, plus (b) an element of difficulties that originated from years of stop and frisk, still in evidence as the cessation of those practices is so new.

Should the study then be repeated in two years and five years, it would be reasonable to expect that effects of stop and frisk (no longer being practiced) will be dwindling away, leaving only those difficulties to manifest themselves that are independent of the policing. The mental health impacts that disappeared could reasonably be inferred to be the results of the stop and frisk policing that no longer is being practiced.

Any changes in mental health conditions for both the community and the police that are in a positive direction may be the results of removing stop and frisk policing *plus* the positive impact of any new policing approaches. Are improvements due to the disappearance of problematic practices? Are improvements due to the implementation of more positive practices? Professional teams skilled and experienced in *interviewing* communities and their officers in-depth provide exactly the expertise needed to sort out which variables are responsible for changes in mental health and attachment-relationship patterns that occur over time.

In my opinion as a psychologist, exploring these possibilities in timely fashion could provide to criminal justice knowledge a well-documented, empirically established, set of conclusions about the relationship between mental health and attachment conditions within both communities being

policed and the officers policing them in relation to policing policies that embody what I have called commanding-presence policing psychology (maximizing use of humiliation and intimidation with the intent of reinforcing control) as contrasted with mutual-respect policing psychology/policies.

If there is interest in exploring further what such a study might involve, I recommend contacting Dr. Helen Verdeli, Director of the Global Mental Health Lab, at Teachers' College, Columbia University: gmh.lab@tc.columbia.edu She has experience directing, utilizing and partnering with teams from a number of universities, in on-site research in regard to mental health and the mental health impacts of a variety of interventions, in a variety of communities around the globe. It is my understanding that theirs is a range of expertise developed "on the ground" and that their assessments are reflections of what is actually happening, what it means to people, and what the people involved find helpful.

COMMUNITIES UNITED FOR POLICE REFORM

SUBMISSION OF COMMENTS To NYPD & NYU Policing Project

**Re NYPD Body Worn Camera (BWC) Pilot Program II & Policies
August 7, 2016**

About Communities United for Police Reform (CPR)

Communities United for Police Reform (CPR) is a multi-strategy and multi-sector campaign to end discriminatory and abusive policing in New York. We aim to build a lasting movement that promotes public safety and policing practices based on respect and accountability to communities – not discriminatory targeting and harassment. The members, supporters and partners in this campaign come from all 5 boroughs, from all walks of life and include many of those most unfairly targeted by the NYPD.

CPR publicly launched in February 2012, bringing together grassroots community organizing groups, policy organizations, legal organizations, research projects and others – all united to develop and implement a unified campaign to end discriminatory and abusive NYPD practices. CPR is rooted in an historical understanding and experience that truly addressing abusive NYPD policies and practices requires the prioritization of the perspectives and leadership of those most impacted by abusive policing, as well as long-term coordination of major efforts, across and within sectors throughout NYC.

Context for comments

The systemic lack of accountability for police abuse of authority, excessive force and unjustified killings of civilians is now widely recognized as a crisis in New York City and across the nation. While some have pointed to the possibility that body worn cameras might increase police accountability, we understand this to be conditional on key aspects of a body worn camera program – specifically, whether the structure, policies and practices related to the program expressly serve the primary goal of police accountability and transparency. In fact, there has been increased scrutiny and attention to the fact that body worn camera programs of most departments across the country (including that of the NYPD's draft policies) fail to centralize concerns related to accountability and transparency¹.

There are also serious concerns that should be discussed publicly regarding the cost of body worn cameras and related technology, and whether such costs are justified when compared to budgets for social goods, public infrastructure and social services.

¹ See Scientific American, "Police Body Camera Use: Not a Pretty Picture", August 4, 2016

These comments are submitted regarding the NYPD's upcoming body worn camera pilot program that was mandated as part of the Floyd federal stop-and-frisk litigation² and should not be read to suggest that we support the current or any future potential expansion or extension of an NYPD body worn camera program – particularly without meaningful and structured oversight by community and police accountability organizations representing communities most impacted by discriminatory and abusive policing.

Communities most impacted by NYPD discriminatory and abusive policing such as stop-and-frisk abuses and other “broken windows” policing abuses include low-income communities of color, particularly those who are: youth; immigrants; people who are homeless; public housing residents; women; LGBT and gender non-conforming people; perceived to be Muslim; and people with cognitive or psychiatric disabilities. The perspectives of these communities must be considered in any meaningful evaluation of the pilot program, and should be centered in the development/finalization of any policies.

Comments on the NYPD Draft Policy for Body Worn Cameras (BWC)

It is impossible to meaningfully discuss policies for the upcoming court-ordered BWC policy without contextualizing and commenting on the prospect of an overall NYPD BWC program. The NYPD's Pilot Police Body-Worn Camera (BWC) program should be used to reduce discriminatory and abusive NYPD practices and the constitutional violations found by the Court in *Floyd, Davis and Ligon* – particularly since the BWC pilot program was initiated as a result of the Floyd court order.

The following relate to the overall program and draft policy, and our strong recommendations (& objections) to what is currently planned:

1. Principles that should guide the NYPD's BWC Pilot

NYPD's policies and practice related to the use of BWCs should promote implementation that will:

- Maximize NYPD transparency and accountability to the public – particularly

² Communities United for Police Reform (CPR) was named as a key stakeholder in the Floyd court ruling and maintain a significant interest in the outcome of remedies in the Floyd, Davis and Ligon cases. CPR's members and partners submitted an amicus brief as part of the Floyd litigation, and CPR members were also amongst the named plaintiffs and witnesses in Floyd. In fact, *Floyd v. NYC*, litigated by the Center for Constitutional Rights, was possible because of the work of activists/organizations who had worked with CCR to bring the *Daniels v NYC* lawsuit (the pre-cursor to Floyd). CPR members such as the Justice Committee (formerly known as the National Congress for Puerto Rican Rights' Justice Committee) and Malcolm X Grassroots Movement served as the initial plaintiffs for Daniels after the 1999 killing of Amadou Diallo in a hail of 41 bullets. MXGM members and other CPR members were amongst the named plaintiffs and witnesses in the Floyd litigation and trial.

accountability to communities and individuals who are most likely to be subject to abusive policing and therefore be potential subjects of footage.

- Eliminate potential for footage to be used to further criminalize communities or to be used for unwarranted surveillance of communities or individuals. As a result, the retention, use and release of BWC footage from the pilot program should be limited to instances that advance NYPD accountability and transparency.

Consistent with the Court’s remedial opinion and order in Floyd, the primary focus of the NYPD BWC pilot program should be to increase transparency and accountability during “stop and frisk” and other police interactions.

In order to ensure that the program achieves the goal of ensuring that police interactions comply with the mandates of the Constitution, BWC should not serve as or be perceived to be an additional tool of surveillance or evidence gathering for criminal prosecutions. While the experience of Eric Garner and countless other New Yorkers whose abuse at the hands of police was caught on videotape makes it clear that the presence of video footage or BWCs will not guarantee improved outcomes during law enforcement interactions, that should be their primary purpose.

2. Ownership, management and control of footage from police body-worn cameras

A third party government agency should be responsible for ownership, management and control of footage – not the NYPD or a corporate entity.

3. Structured and meaningful community input prior to finalizing the policies – There should be an opportunity for structured and meaningful community input after the NYU Policing Project has submitted its report to the NYPD and released it publicly, and before the NYPD finalizes policies for the pilot program. There should be public consultation, as well as consultation with law enforcement and policy advocates, on the purpose, nature, scope and policies governing BWC programs *before* BWC are deployed in the NYPD BWC Pilot II.

4. Full transparency related to the budget for the pilot BWC program – including equipment/software cost, storage, personnel to manage the footage, training, etc. These costs must be made transparent and public to enable the public to determine whether the financial costs of the BWC program are justified, when compared to critical public infrastructure, goods and services that are under-resourced.

The BWC pilot program should not divert resources away from programs meeting the needs of communities directly impacted by stop-and-frisk and other policing abuses.

5. There should be a reliable, evidence-based **evaluation** – that is independent of the

NYPD and overseen by an agency other than the NYPD - of the effectiveness of the BWC pilot program in capturing and addressing police misconduct **by members of the communities subject to surveillance, advocates**, incorporating feedback from communities directly impacted by discriminatory policing practices.³ If the evaluation does not prove the program to be effective in reducing civil rights violations it should be discontinued.

6. Full transparency re deployment, prior to deployment - The Commissioner should make a public announcement regarding which officers, precincts, or squads will be assigned BWCs and under what circumstances.⁴

Officers at precincts and central booking facilities should be amongst those who are outfitted with body worn cameras in the pilot program, in order to document and prevent abuses.

7. BWC utilized by the NYPD should have **no** infrared/x-ray capabilities, biometric capabilities or automated analytics capacities.
8. There should be a clear and public process to file complaints around mis-use of BWC. This complaint process should include whistleblower protections, and enable anonymous complaints.
9. NYPD written BWC policy should clearly state the consequences for officers who fail to comply with any part of the BWC policy, and there should be disciplinary consequences.
10. Retention of footage – Footage should not be retained indefinitely. Footage with no evidentiary value should be deleted within less than 3 months – however this should be overseen and managed by an agency that is independent of the NYPD. Footage with evidentiary value should be kept no longer than required for complaints and claims to be filed and for video to be turned over to those filing complaints and claims(including litigation, CCRB complaints, Commission on Human Rights complaints, etc.).
11. Access to footage
 - NYPD policy should prohibit officers from reviewing BWC footage on any device or recording, before a written complaint and/or arrest report has been submitted to

³ PERF. PERF suggests that statistics be maintained on the use and outcomes of BWC use in criminal prosecutions and internal affairs and periodically released to the public.

⁴ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, D.C.: Office of Community Oriented Policing Services (hereinafter “PERF”).

the district attorney's office or relevant outside office independent of the NYPD. Pre-statement review by officers of BWC footage/recordings should be prohibited in all cases – including when an officer is the subject or witness related to internal or external investigations regarding officer misconduct -- until after an official statement has been provided by the officer(s). Following an official statement, officers should be prohibited from review of footage unless the subject of the footage (or their family or counsel) are granted access to the footage.

12. Officer discretion regarding when cameras are turned on. There should not be officer discretion or ability of individual officers to turn BWC on/off while they are on duty – with the exception of if a civilian who is part of being recorded requests that it be turned off. In such cases, the civilian's request should be recorded and if the civilian changes their mind, the camera should be immediately turned on.
13. Civilians should always be informed that they are being recorded. This should happen immediately.
14. Officers should not be permitted to use privately-owned BWC.⁵

Questions related to this public comment submission can be sent to justice@changethenypd.org. Thank you in advance for consideration of this submission.

⁵ PERF.

APPENDIX B

PLAINTIFFS' COUNSEL RECOMMENDATIONS

FLOYD COUNSEL JRP REFORM RECOMMENDATIONS

1. **Stop Receipt:** Officers should transmit the stop report serial number and their name and badge number to the person stopped at the time of the stop encounter, and the person stopped should then have the ability to retrieve the Electronic Stop Report from their stop in the NYPD's SQF database using the stop report serial number. This was Floyd Plaintiffs' original proposal to the Monitor and NYPD in Spring 2015 for implementing the "tear-off receipt" immediate reform provision set forth in the *Floyd* Remedial Order, and is also now specifically provided for in the DOJ's recent consent decree with the Baltimore Police Department.
2. **Documentation of Level 1 and 2 Encounters:** Officers should be required to electronically register that they conducted a level 1 or 2 encounter, noting the time, date, and location of the encounter, and race/ethnicity and gender of the civilian, and, in the case of Level 2 encounters in which a consent search was conducted, such search should also be noted.
3. **BWC Video Review:** Plaintiffs' counsel should be able to review a sampling of videos of recorded Level 1, 2, and 3 encounters from the pilot. Officers should record and tag ALL level 1 and 2 encounters. Supervisors should regularly review a sample of videos of officers Level 1, 2, and 3 encounters, to assess lawfulness and to determine whether appropriate reports were completed and, if completed, were accurate. QAD should review every video of a level 1, 2, and 3 encounters as part of both its "RAND" audit and SQF audit, for the same purposes.
4. **Discipline transparency:** DAO should issue disposition letters to complainants whose misconduct complaints were substantiated by CCRB and then referred to the NYPD for disciplinary action .
5. **Transitional Justice:** The focus group transcripts and Floyd's digests should be publicly filed; the JRP recommendations and reforms be publicized.
6. **Integrity Testers:** Integrity testers should be used to vet whether officers' stops are lawful and whether officers are properly distributing receipts.
7. **Community Surveys:** Surveys of the community that are administered and analyzed by an institution independent of the Monitor and the NYPD should measure compliance with the Floyd orders and should, going forward, measure the lawfulness of encounters, including but not limited to assessing: whether/when people feel free to leave, procedural justice, whether people are given stop receipts, how people experience alleged consent searches – e.g., whether officers ask for consent and whether people feel free to withhold consent
8. **Freedom to leave instructions:** Instructions to officers on freedom to leave, and conduct that leads to a reasonably belief that a person is not free to leave, should reflect data from focus groups and forums. This instruction should include, at a minimum, (1) that taking a person's identification (driver's license, etc) during the encounter constitutes a stop unless the officer affirmatively states at the time she asks for identification that the person does not have to provide the identification; and (2) that if a person asks, during a level 1 or 2 encounter, whether she is free to leave, the officer must respond with an affirmative and unequivocal yes. Again, such requirements are provided for in the recent DOJ-Baltimore PD Consent Decree.
9. **EIS Triggers:** EIS triggers should include: (i) Suppression decisions and adverse credibility determinations against the officer in criminal court, (ii) dismissed or declined prosecutions of DISCON, RA, OGA charges as well as large numbers of DISCON, RA and OGA arrests for 2 or more quarters in a given year; (iii) when supervisory review, Command Level self-

inspections and/or QAD audits flag a certain number of bad stops and/or bad stop reports by an officer – like 3 consecutive quarters of at least one unlawful stop and/or bad stop report; (iv) a certain number bad arrests and/or bad summonses in a given quarter; (v) frequent use of force during level 3 Terry stops; (vi) Re-implement the RAND Report recommendation for analyzing stop-and-frisk data to identify officers who are stopping too many minority pedestrians. Also per the RAND Report recommendations, there should be aggregate trigger information at unit levels – like precinct; platoon; etc. – and that should be within the evaluation of that unit’s leader

10. **Public Record of Investigative Encounters:** There should be a database, with appropriate privacy protections, for the public to report street encounters, including time, date and location.
11. **Performance Evaluations:** The current performance evaluation should be augmented to include a line in the officer profile that captures instructions and to include a business rule/direction to supervisors to review whether officers failed to document stops.
12. **Training Certifications:** Officers should be required to take pre- and post-training tests, and if they fail the post-test, then they should be required to repeat the training. There should also be some re-certification requirement.
13. **Community Monitoring and Policy Board:** Precinct level community boards that are distinct from existing community councils and that would review NYPD policies and trainings, weigh in on high profile discipline issues and complaints, and report to the NYPD on precinct interactions with that community. Precinct CO should report to CMPB.
14. **Directions and instruction on the context of flight:** Within the in-service training, or the trainings on policing impartially or implicit bias, the NYPD should provide context, drawn from the focus group testimony, about why people might run from officers.
15. **Historical training:** Trainings should include a history of the origins of American policing and American law enforcement mistreatment of communities of color.
16. **Commitment to accountability:** NYPD should communicate to officers that they will be held accountable and should not undermine accountability by suggesting they will not.

Davis JRP Reforms

Residents with Special Needs: Officers should be required to attend trainings that focus on the proper way to deal with residents with special needs.

Accountability: There should be mechanisms put in place that will ensure greater accountability for officers who conduct unlawful trespass stops. Additionally, there should be greater accountability for supervisors and commanding officers in monitoring and evaluating the quality of trespass stops.

NCOs- Many residents during the focus groups expressed a desire to have consistency and familiarity with the officers who patrol their buildings. Last year, NYPD began to roll out the NCO program, which can be used to address the residents' concerns. However, the residents need more information about the program and the program should be utilized consistently throughout all NYCHA developments. Residents need an information session about how they can find out who their NCOs will be, the difference between an NCO and other officers, and the function of NCOs. There should also be a mechanism in place that allows residents to provide feedback about the NCOs.

Stop Receipts: Officers should provide receipts after *every* stop. The receipts should include the officer's name, badge number, and information about how the individual can view his/her stop report. This has recently been required in the DOJ's recent consent decree with the Baltimore Police Department.

Documentation of Level 1 and 2 Encounters: Officers should be required to document when they conduct a level 1 or 2 encounter. There should be some type of documentation (e.g. business card) given to the individual involved in the encounter.

Independent Resident Oversight Board: There should be an independent oversight board comprised of NYCHA residents. This oversight board can be tailored to Resident Advisory Board or CCOP.

Complaints Process/Transparency: Residents do not feel like their complaints are being taken seriously. They would like to see a better follow up process, such as a letter describing the process or being able to go online to track their complaints. This pertains to all complaints, whether lodged at the police station or with the CCRB.

BWC Video: During the BWC pilot, vertical patrols will be recorded from start to finish of vertical patrols, so it vital that Plaintiffs' counsel have an opportunity to review a sample of the videos. Supervisors should also regularly review a sample of the videos of officers during vertical patrols to assess the performance of the officers. QAD should review every video of vertical patrols.

Resident Training: There should be a series of trainings for residents with the goal of preparing them to be an accountability tool for NYPD.

Memorandum

TO: Judge Ariel Belen

FROM: Plaintiffs' Counsel for *Ligon v. City of New York*

DATE: February 7, 2017

RE: *Ligon* recommendations for JRP reforms

1. Responsibility of TAP building owners

- The city provides security to TAP building owners at taxpayer expense. Many of our clients have complained, however, that the reason they face security problems in their buildings is that their landlords refuse to replace broken locks or light bulbs, or install other reasonable security measures such as a self-closing door. *Ligon* plaintiffs request that the JRP recommend that the NYPD impose some minimal investment in security by TAP building owners as a condition of enrolling in the program.

2. Documentation of Level 1 and 2 encounters.

- We join the recommendations of the other plaintiffs' counsel as well as our colleagues at CPR and the Legal Aid Society in recommending that the JRP endorse some method of recording Level 1 and Level 2 encounters. Our clients were unconstitutionally stopped multiple times by police who did not record the interactions; we believe that those police likely believed, wrongly, that they had only conducted level 1 or 2 encounters. Without capturing these interactions it will be difficult to properly monitor the constitutionality of the police department's investigative encounters.

3. Freedom to leave instructions.

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* regarding the request that officers be required to affirmatively assure people that they are free to leave an encounter that does not rise to a Level 3 stop. This instruction must particularly apply in encounters where the officer takes a person's identification, which happens many times during the trespass investigations that are the subject of our lawsuit.

4. Community surveys and/or a public documentation of encounters.

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* in supporting a more robust role for the community in monitoring investigatory encounters. *Floyd* plaintiffs have suggested that this be accomplished through creative use of community surveys during the monitorship. We join in this request but add that it is crystal clear from a myriad of sources that the CCRB is simply not an adequate forum for capturing the community's problems with police officers. In addition to the community surveys, the JRP should also endorse the creation of a system for community documentation of particular problematic investigatory encounters.

5. EIS triggers

- *Ligon* plaintiffs also join the counsel for plaintiffs in *Floyd* in calling for the JRP's expansion of the incidents that trigger EIS review for officers. The triggers have to look not only at employees but also by line of supervision (so if subordinates of a particular supervisor have elevated rates of misconduct, that would also be flagged).

6. Plaintiffs' review of BWC video

- The BWC pilot will not achieve its goals unless there is a system for plaintiffs' counsel to randomly monitor BWC video of police activity inside of TAP buildings. We join the *Floyd* plaintiffs in this request.

7. Feedback Loop from Courts:

- Criminal and civil courts are often the only places that the underlying facts of stops, frisks, and arrests, can be fully aired. An officer in a trial or hearing must account for why they made a stop or arrest, and is subject to cross examination by an advocate for the person stopped/arrested. Judges across the city make tens or dozens of rulings every year that find that the underlying stop for an arrest was unconstitutional. These findings are never reported to the supervisor for the officer who made the stop/arrest. We would like the City to explore policies that allow for routine and meaningful feedback to be provided to a precinct from judges, District Attorneys, and defense attorneys. For example, when a case is dismissed because evidence procured through an illegal frisk is suppressed, the judge would be required to transmit this fact in some way to the arresting officer's supervisor. A similar feedback loop should be put into place where a judge in a civil rights case rules that the plaintiffs have shown that a police officer made a bad stop (this is being considered by the department already; the criminal court feedback loop is a more distant possibility at this time).

MEMORANDUM

To: The Honorable Ariel Belen (Ret.) and the Facilitation Team

From: Floyd Plaintiffs' Counsel

Re: Proposal for Disability Training Recommendation

Date: July 28, 2017

Overview

Counsel for the Plaintiffs in *Floyd v. City of New York* submit this memorandum in support of our proposal for a reform recommendation to include training with respect to disability, and issues related to it, in the New York City Police Department (NYPD)'s stop, question, and frisk (SQF) training. We strongly believe that such training should, at a minimum, include scenarios involving people with disabilities. Disability training is essential to the *Floyd* reform process because disability, like other situational and demographic characteristics, may factor into police officers' development of reasonable suspicion. Behavior and movements that may be symptoms or manifestations of disabilities are sometimes interpreted by officers as being suspicious. Therefore, to ensure that officers are aware of how disabilities, which may or may not be obvious or visible, factor into their interactions with civilians and their development of reasonable suspicion of criminality, they should be provided with adequate training related to the different types of disabilities and examples of how those disabilities may manifest themselves, especially during police encounters.

Currently, the Monitor's team is in the process of requesting information to provide to Plaintiffs' counsel, regarding what, if any, disability-related training the NYPD conducts for its officers. However, from what Plaintiffs' counsel has observed thus far of SQF training, there is a lack of clear engagement with the issue of disability. Thus, the inclusion of these concepts within the *Floyd* court-ordered SQF training remedies is "necessary to bring the NYPD's use of stop and frisk into compliance with the Fourth and Fourteenth Amendments." *Floyd* Rem. Ord, Dkt # 372 at 30.

I. Criminalization and Suspicion of Disability-Related Behavior

Much has been written about the criminalization of the behavior of people with disabilities.¹ A great deal of that coverage has focused on the school-to-prison pipeline and

¹ See, e.g., Strauss, Valerie, *The Washington Post*, Apr. 25, 2017, "Why are we criminalizing behavior of children with disabilities?" https://www.washingtonpost.com/news/answer-sheet/wp/2017/04/25/why-are-we-criminalizing-behavior-of-children-with-disabilities/?utm_term=.f01da5a1499a (discussing incidents like the arrest of an autistic student) (last visited June 26, 2017); see also Baptiste, Nathalie, *The American Prospect*, Aug. 4, 2016, "Korryn

police interactions with people with mental disabilities. However, there is a general need for police understanding of disability-related behaviors in other contexts, including those at the heart of the *Floyd* case, such as investigative encounters and car stops. While the NYPD has implemented Crisis Intervention Training, designed to teach officers how to interact with people in mental crisis or with mental disabilities², it is also important for officers to be aware of disabilities beyond those related to mental health, including physical, intellectual, and developmental disabilities.³

Movements and physical appearance related to disability may also be mistakenly characterized as suspicious behavior. During Plaintiffs' counsel's observation of the NYPD's armed suspect characteristics training on November 18, 2016⁴, the trainer told new officers an anecdote about mistakenly interpreting an individual's limp for a weapon and forcefully detaining the individual before discovering that he had a metal rod in his leg. The same trainer told a similar story about accidentally bursting a suspect's colostomy bag. More generally, police have also mistaken individuals with Cerebral Palsy for being drunk, and diabetics in distress have been deemed "threatening."⁵

In written testimony that he submitted at a hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights on law enforcement responses to people with disabilities, former San Francisco Police Sergeant Michael Sullivan, a nationally-recognized expert on disability issues in the law enforcement context, discussed the split-second judgments that officers often have to make about an individual's behavior and what it means for a particular situation.⁶ If officers are not aware that certain behaviors may be related

Gaines and the Criminalization of Disabilities," <http://prospect.org/article/korryn-gaines-and-criminalization-disabilities> (last visited June 26, 2017).

² New York City Police Department, *NYPD News*, Jan. 30, 2017, "NYPD Crisis Intervention Team Training," <http://nypdnews.com/2017/01/nypd-crisis-intervention-team-training/> (last visited July 27, 2017).

³ See National Association of the Deaf, Police and Law Enforcement, <https://www.nad.org/resources/justice/police-and-law-enforcement/> (last visited June 26, 2017); Walmsley, Ebony, *New Haven Register*, Jan. 26, 2014, "Epileptic Man Files Suit Against Hamden Police Over Use of Taser," <http://www.nhregister.com/general-news/20140126/epileptic-man-files-suit-against-hamden-police-over-use-of-taser> (last visited June 26, 2017).

⁴ Plaintiffs' counsel also recounted these anecdotes in an e-mail to the NYPD, the parties, and the Monitor's and Facilitator's teams dated November 22, 2016, detailing our comments on the November 18, 2016 armed suspects training.

⁵ Perry, David M. and Carter-Long, Lawrence, *The Atlantic*, "How Misunderstanding Disability Leads to Police Violence," May 6, 2014, <https://www.theatlantic.com/health/archive/2014/05/misunderstanding-disability-leads-to-police-violence/361786/> (last visited June 26, 2017).

⁶ Sullivan, Michael, Apr. 29, 2014 Statement for the Record, Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights at 2.

to a disability, and they mistakenly classify those actions or responses as criminal or suspicious, disabled individuals and officers alike are at a disadvantage. Sullivan, for example, discussed how a lack of understanding of sign language could hinder an officer's communication with a deaf person.⁷ He also discussed the importance of understanding that a person with autism may not respond to an officer's questions or commands, may be repetitive in his responses, and may not like to be touched, all responses that might normally arouse an officer's suspicion.⁸

II. Training Recommendation

Mr. Sullivan recommends that officers be provided with training on several disabilities and disability-related topics, including "the Americans with Disabilities Act... intellectual disabilities, autism spectrum disorder, traumatic brain injury, mobility impairments, seizure disorder, deaf, hard of hearing, psychiatric disabilities, vision impairments, learning disabilities, how to provide accommodation, cerebral palsy and multiple chemical sensitivity." He explains that "training regarding disability is more practical if it is designed within a framework based on how people with disabilities often come into contact with law enforcement officers."⁹ Thus, just as the SQF training includes different types of scenarios that officers may encounter, several of those scenarios should involve people with disabilities. Mr. Sullivan also recommends including the input of people with disabilities in the training process, both to make officers aware of and more familiar with issues affecting people with disabilities and to provide insight into the wide range of disabilities. There are a number of community-based organizations in New York City working on issues concerning police treatment of people with disabilities that could serve to help buttress trainings and help create relevant scenarios/role plays for training purposes.

Conclusion

Therefore, to avoid the misinterpretation of and learn how to respond to disability-related behavior in everyday encounters, including how to better communicate with people with disabilities who may be witnesses to, victims of, or even suspects in crimes, officers need to be trained on the different types of disabilities and how they might manifest themselves as part of their training around the legal requirements to stop individuals during investigative encounters.

⁷ See *supra* note 4 at 3, 6.

⁸ See *supra* note 4 at 6, 4.

⁹ See *supra* note 4 at 3.

APPENDIX C

NYPD CHANGE AGENDA

The Way Forward at the NYPD (2014-Present)

Introduction

The NYPD values innovation and historically has set the standards for policing nationwide. The past four years have been a transformative time at the NYPD. The Department has embarked on a journey rejecting what were once conventional norms and facilitating a paradigm shift towards neighborhood policing. To accomplish this, the Department has reimaged what it means to engage the community, provide oversight, train personnel and incentivize the workforce. The NYPD has moved forward with this series of initiatives that have touched virtually every aspect of its operations in a deliberate and coordinated way. In so doing, the Department has set the baseline for policing in the 21st century. The Department is committed to continuing to advance this agenda.

We are grateful for the work of the Court-appointed Monitor and the Court-appointed Facilitator, Judge Ariel Belen. They have fostered frequent and open communications among the parties, and as a result, valuable information that was gathered during the Facilitator's outreach was shared with the Department as the Joint Remedial Process progressed, enabling the Department to consider and include JRP feedback as it developed and implemented the new initiatives outlined in this report.

While many of the suggestions offered by the Court-appointed Facilitator, Judge Belen, are extremely thoughtful and meritorious, the Department declines to consent to these reforms formally as "court-ordered Joint Remedial reforms" because the majority of them – in some form – are already underway in the Department. We hope this summary makes that clear.

The overall thrust of these initiatives has been to increase and enhance the police Department's engagement in local communities while pushing crime down to 50-year lows, and in some cases 60-year lows, even as the gross number of enforcement actions – arrests, summonses, and stops – has declined sharply. These initiatives were conceived as parts of an overarching plan with each component supporting the others, and they were implemented in concert. What follows below are descriptions of each initiative. They should be read with the understanding that, while the separate initiatives appear to stand on their own, they are a collection of parts in a comprehensive approach to operational, organizational and cultural change

Remedial Process

In addition to the transformative changes that have been engineered in the Department since 2014, the Court-appointed Monitor has overseen the implementation of many other important reforms. Several policies and trainings have been created or improved under his supervision, including the following: the Stop Report was revised to provide for greater supervisory oversight of stops, body

cameras have been launched, and a robust Investigative Encounters in-service training program is underway, among other things. A timeline including these activities is attached as appendix “B”.

Neighborhood Policing

Neighborhood Policing is the centerpiece of the changes in the NYPD. It is designed to provide sector¹ or neighborhood-centric policing in New York City. Each precinct has been realigned internally to establish four to five sectors within the precinct, and the borders of each sector have been selected to conform as much as possible to the boundaries of actual neighborhoods as they have developed organically. Groups of police officers have been identified and assigned to provide police service within each sector. New York City precincts contain, on average, 110,000 people, the population of mid-size American city. Sector policing breaks down the precinct into more manageable increments of 20,000 people or so grouped into their actual neighborhood.

As the gap between police and some communities widened and became a national issue, the need for deeper relationships has never been more urgent. With this in mind, the NYPD has been systematically restructuring how it patrols. The first principle of Neighborhood Policing is sector integrity: officers are regularly assigned to a sector and do not leave the sector except in cases of serious emergencies. Historically, police officers on patrol have spent most of their tours “chasing the radio” – in other words, answering 911 calls for assistance. Police officers ran from job to job outside their assigned sector, making it difficult, if not impossible, to develop deeper relationships with citizens—the kind of relationships sought by cops and community alike. Neighborhood policing is helping New York City residents get to know their cops in a brand new way. As a result, officers’ capacity to establish ongoing meaningful working relationships with the community and to engage community members to work at problem solving has been strengthened.

Neighborhood Policing provides an around-the-clock team of officers who patrol the same sector each day and gain a working knowledge of the sector, its people, its problems, and its perpetrators of criminal acts. If the call volume in the sector becomes too heavy for the sector team, or if they are engaged in another call for service, precinct-wide response cars pick up the extra calls. The sector teams are afforded approximately one-third of their shifts “off-radio” time enabling them to work more intensively within the neighborhoods where they are assigned. This more intensive work includes various kinds of community contact, targeted problem solving activities, and preliminary investigations of past crimes. Grounded in a particular sector, sector officers on the three daily shifts (day, evening and midnight shifts) communicate across shifts about current problems and conditions. This is in contrast to past practice when the three daily shifts were often isolated

¹ A sector is a geographically defined subdivision within a precinct boundary. Sectors are delineated in order to organize precinct resources and manage workflow more efficiently.

from each other because they did not share a sense of responsibility for a particular sector.

Supporting the sector officers and filling out each sector team are two officers designated as the neighborhood coordination officers (NCOs). The NCOs are liaisons between the police and the community, and also key crime fighters and problem solvers in the sector. The NCOs immerse themselves in the community by attending meetings with community leaders and clergy, visiting schools and businesses, following up on previous incidents, and using creative techniques and adaptive skills to fight crime and address quality-of-life conditions unique to their particular sectors. The NYPD, the NCOs, and the sector officers are implementing the community-policing ideal in a large and densely populated city.

This past summer, in addition to the NCOs regular contact with local stores, schools, community organizations, and people on the street, the NYPD organized community meetings with NCOs at the sector level all across the city, the first in a series of like meetings to be held quarterly. The meetings are run by the NCOs themselves, usually without the presence of higher-ranking officers, and are conceived as working sessions in which neighbors raise concerns and challenges in the neighborhood and discuss possible solutions with the officers who are actually responsible for the sector in which they live. The NYPD promotes these community engagement initiatives through the Department's social media platforms. The Department also established the "Build the Block" website (<https://buildtheblock.nyc/>) where people can learn more about the program, find their next local meeting and sign up for informational emails.

The NYPD has achieved remarkable public safety successes in recent decades, and as Commissioner James P. O'Neill has said, the police have a moral obligation to maintain and improve on those successes. Keeping people safe is what police officers do, but they don't, and can't, do it alone. Public safety is a shared responsibility. Neighborhood policing acknowledges that fact and builds upon it.

Previous community policing-style programs, including the NYPD's C-POP program in the early 1990s, limited the community outreach to a team of specialists, who were too few in number to sustain ongoing initiatives or respond consistently to neighborhood problems. With a team of 10 sector officers in each sector complemented by two NCOs, Neighborhood Policing provides a layered support system that can sustain problem-solving efforts from shift to shift, week to week, and month to month.

As the Neighborhood Policing initiative was put in place, the NYPD eliminated "impact zones", the higher crime areas that had been designated for intensive street enforcement and where many of the police stops took place at the height of an era that placed too much emphasis on enforcement activity.

Recruit and In-Service Training

NYPD training has been recast to support Neighborhood Policing and to provide more compelling training for recruits as well as tenured officers. Working out of the new Police Academy in College Point, Queens, with its array mock environments, the Training Bureau has built a curriculum that includes more hands-on, experiential learning for recruits. The recruits also go into the field during the course of their six-month recruit training to gain exposure to policing on the streets. The Impact program, which formerly assigned Academy graduates to high-crime zones upon graduation, has been eliminated. The Impact program focused the efforts of new officers too heavily on stops and other enforcement actions rather than exposing them to the full range of police work, and consequently did not serve either the officers or the city's communities well. Since July 2014, Police Academy graduates participate in a six-month field training program with experienced officers who mentor them and expose them to every facet of police service in their assigned neighborhoods.

Veteran officers are now given recurring training, not only in firearms proficiency, but in the tactical and communications skills necessary to manage street encounters effectively, as well as deescalate conflicts and gain voluntary compliance from suspects. This kind of recurring training had not been provided in prior years. In November 2014, the NYPD Training Bureau designed and implemented a "20K" training curriculum with the objective of training 20,000 NYPD service members within approximately six months. The training initiative was divided into three component parts, each taught on a separate day: Day 1, Foundations of Policing; Day 2, Smart Policing; and Day 3, Physical Tactics.

The overarching goal of this training curriculum was to reorient members in the proper use of force during contentious police-citizen interactions. Participating members received refresher training in physical tactics, crisis and conflict communication, controlling adrenaline and excessive force, abuse of authority, and levels of resistance. Other instruction included recognition and identification of potential adversarial conflicts, de-escalation techniques, and empathizing with individuals in crisis situations. The 20K program concluded in June 2015 with more than 22,000 officers trained. Recognizing the need to build upon this training and constantly refresh police officers' skills, the Department has expanded the current annual in-service training curriculum to five days for a net increase of three days. This includes two days of firearms proficiency and tactics training as well as three days dedicated to improving a wide array of community engagement and policing skills.

Since 2013, allegations of unnecessary force reported to the Civilian Complaint Review Board have declined both in overall number and as a percentage of the total number of civilian complaints filed. From 2013 through 2016, complaints about force declined by 1,477 complaints for a 29% reduction. For 2017, force complaints are on track to show another significant decline. Overall, civilian complaints are down again for the first half of 2017 as compared to the first half of 2016.

Beginning in February 2018, the NYPD will commence a training program addressing fairness and due process in policing as well as the potential effects of unconscious bias for all members of the Department. Social psychologists have shown that “implicit” or “unconscious” bias can impact what people perceive and do, even in people who consciously hold non-prejudiced attitudes. Well-intentioned humans may manifest biases at the subconscious level that can impact on their perceptions and behavior. Training will raise officer awareness and provide some tools for individuals to deal with this phenomenon. Specific training sessions are tailored to senior executives, mid-level managers, supervisors and police officers. Each one-day training session will be delivered at the Police Academy and the Department estimates that it will take two years to complete the training.

The NYPD has expanded the range of first aid skills it is imparting to our officers. In a full day of both recruit and in-service training, officers are now receiving AED training in the use of defibrillators, CPR training, training in administering naloxone, which can suspend the impact of a heroin overdose, and training in applying tourniquets. The Police Academy class that graduated in January 2016 was the first class so trained and the first equipped with belt trauma kits that enable them to render aid to bleeding people until medical personnel arrive.

New neighborhood coordination officers receive training in a wide range of skills in support of their role. Subjects include the Detective Bureau’s course for newly assigned investigators and such topics as accident prone locations, CCTV cameras, crime prevention, domestic violence, subway policing, mediation, working with community residents, organizational skills, public speaking, crime analysis, and managing social service resources through social service agencies and contractors.

The NYPD also created the Community Partners Program. The Community Partners Program helps rookie officers get to know the neighborhoods they will be serving by connecting newly graduated police officers with volunteer community members and leaders. Since its inception as a field-training component, the program has grown to be an integral part of neighborhood policing, and the veteran neighborhood officers now routinely leverage the community partners for their insight on local issues. Connectivity is key to forging trust and maintaining healthy police/community relationships.

Crisis Intervention

The NYPD responds to over 150,000 calls regarding emotionally disturbed individuals each year, so it is critical that its officers are better equipped to contend with these situations and increase the likelihood of bringing them to successful and safe conclusions.

All members of the NYPD receive a basic course of instruction regarding the Department’s policy for dealing with emotionally disturbed individuals. The Department has provided officers with an array of less-lethal options for those situations in which it becomes necessary to restrain an individual. Such options

include more effective oleo capsicum spray (pepper spray), protective shields and conducted electrical weapons (Tasers). Additionally, the members of the NYPD Emergency Services Unit receive more advanced training and have specialized equipment for addressing such situations.

Crisis Intervention Training (CIT) is now being provided in a four-day class that teaches active listening skills among other techniques. Officers learn how to demonstrate empathy and build rapport with subjects, slowing down situations and de-escalating the subject's negative emotions. The training is supported by interactive scenarios and role-play situations to impart a better understanding of mental illnesses that will help officers assist a person in crisis and gain voluntary compliance. The Department launched its first wave of CIT in June 2015. Since its inception, more than 6,400 police officers have received this training. The training has been expanded to include Sergeants and Lieutenants.

Enhanced Community Outreach

The Department engages with community in a variety of forums. Community connection is fostered by the NYPD's use of social media. The Department uses Facebook, Twitter, Instagram, Snapchat, and [www.NYPDnews.com](http://www1.nyc.gov/site/nypd/index.page) to facilitate transparent two-way communication and tell stories about what police really do and what impact they have on New York City neighborhoods. The NYPD has begun to establish Facebook pages for individual commands to engage the surrounding community and provide swift police response to problems identified by local residents. Information about many of these initiatives and local community meeting is available at the NYPD's website (<http://www1.nyc.gov/site/nypd/index.page>).

Use-of-Force Policy

The NYPD has long had effective policies governing the police use of firearms, including clear rules on when firearms can be used, full reporting about firearms use, and recurring semi-annual training with the firearm itself. These policies had a highly positive impact, reducing the number of firearm discharges, the number of people shot, and the number of people killed all by about 90 percent since 1971. It is the goal of the new NYPD Use-of-Force Policy to bring the same degree of oversight, reporting, and training that has been characteristic in NYPD firearms discharges to all uses of force. In the past three years, the NYPD has made significant progress toward achieving this goal, improving both training and oversight and establishing a clear operational framework for reporting and investigating uses for force including firearms discharges.

The NYPD introduced a new use-of-force policy in June 2016 that clarifies definitions, establishes levels of appropriate force, and mandates reporting and review procedures for each level of force used while emphasizing the sanctity of life and the grave responsibilities vested in police officers. This policy established the Threat, Resistance or Injury (T.R.I.) Report for documenting uses of force by and against police officers. The policy does not change what officers are legally empowered to do in force situations, but it does ensure that officers, and the NYPD

as a whole, take responsibility for and justify police actions in every case. The new policy requires the application of de-escalation techniques when feasible, rendering aid to persons subjected to force if necessary and intervention in the event of unnecessary or excessive force.

T.R.I. Reports are prepared by the police officers involved in any reportable use of force incident, anytime unnecessary force is suspected or alleged, incidents in which any person sustains an injury relating to police action or in police custody, and when prisoners commit or attempt suicide. The T.R.I. Worksheet is also prepared when force is used against officers. The responsible supervisor makes a determination whether the use of force in question was in compliance with Department procedures and makes recommendations as to whether further investigation is necessary. To ensure compliance with the policy and overall quality of the reporting and investigation of force incidents, there are various levels of organizational review and oversight. The Department convenes monthly oversight meetings during which T.R.I. Reports are reviewed, the quality of the supervisors' investigations are evaluated, and commanders are held accountable for the process.

In July 2015, the NYPD established a new Force Investigation Division (FID) to investigate all officer-involved shootings, all deaths in custody, and all deaths related to police activity. In past practice, these reviews were decentralized and performed at the borough level in each of eight patrol boroughs. Borough personnel would handle policy issues, the Detective Bureau handled the criminal aspects of the cases, and the Internal Affairs Bureau evaluated police misconduct.

The new FID, with citywide jurisdiction, reports to the office of the First Deputy Commissioner and handles all aspects of each firearms discharge incident, including building cases against armed criminals who have fired on police officers as well as investigating possible police misconduct. The divisions' 64 experienced detectives and supervisors conduct high-quality investigations with an eye toward extracting tactical lessons from each incident that can be used to strengthen training and prevent future tactical errors.

Body-worn Cameras

The court order in the *Floyd v. City of New York* case, directed the NYPD to conduct a one year, 1000 camera, body-worn camera (BWC) pilot under the supervision of the Court-appointed Monitor. The scope of the pilot was limited to stops and the stated purpose was to assess whether BWCs are effective in reducing unconstitutional stops. This pilot is currently underway but even before the pilot began, the NYPD announced that BWCs would be issued to all officers on patrol by 2019. The rollout of BWCs will continue over the coming months resulting in the deployment of over 20,000 BWCs. While the focus of the court order was on stops, the NYPD voluntarily exceeded the minimum requirements of the court order and instituted a BWC policy that goes well beyond stops to cover all police investigative, custodial and enforcement actions. In developing the policy, the NYPD engaged in extensive research of other police department policies and solicited input from stakeholders

as well as the public and officers by means of online questionnaires. The NYPD BWC policy and report describing the development of that policy has been made publicly available. The report and FAQ videos about BWCs in several languages as well as sign language are available on the NYPD's website (<http://www1.nyc.gov/site/nypd/index.page>).

Police Officer Evaluation System

As the NYPD reduced its emphasis on the sheer number of enforcement activities, the Department has developed a new police officer performance evaluation system that evaluates officers on a range of skills, placing less emphasis on quantitative measures and more on abilities and accomplishments.

One procedural component of the former system included the use of performance objectives for police officers based upon quantifiable enforcement activity and stated that supervisors "can and must set performance goals for proactive enforcement." The court in *Floyd v. City of New York* noted that this provision "made clear that supervisors must evaluate officers based on their activity numbers, with particular emphasis on summonses, stops, and arrests, and that officers whose numbers are too low should be subjected to increasingly serious discipline if their low numbers persist." The NYPD has revoked the policies that placed this emphasis on enforcement activity.

The new evaluation system considers 12 dimensions that are essential to quality policing including problem identification, adaptability, judgment, integrity, responsiveness, application of law and procedures, community interaction, departmental interaction, quality and timeliness of written reports, initiative, and leadership. Only one dimension – implementation of proactive policing strategies – considers enforcement. The NYPD supervisor's guidebook for preparing the evaluations unequivocally states, "[t]he overall message from the 12 performance dimensions is clear: it is about the quality and effectiveness of our work. It's not purely about quantitative metrics."

In the past, important aspects of police service, like problem solving and community engagement, were not captured in an organized way and generally not considered during the evaluation process. The new system provides officers with the opportunity to self-report their problem-solving work, their community interaction and engagement, and their notable accomplishments. A notable accomplishment might be an exceptional enforcement action, a medical intervention, a missing person found, a conflict de-escalation, or innovative use of technology.

The system also provides supervisors with the opportunity to prepare positive or corrective Feedback Forms for tasks performed by their subordinates in the 12 different dimensions or categories of skills and activities upon which officers are evaluated. The supervisor's Feedback Form replaces the Minor Violations Log, where supervisors could only record misconduct by officers but could not enter commendations. The Self Report and Feedback Forms appear in an officer's

monthly Profile Report along with other data points about the officer's work providing a more complete picture of the officer. Supervisors then evaluate their subordinates in the same 12 categories or dimensions on a quarterly basis.

As the NYPD establishes Neighborhood Policing across the Department, it is essential that the Department evaluate its officers on the kinds of skills necessary to make this approach work effectively. The Department has prioritized its set of expectations for patrol officers in line with neighborhood policing, and the new performance evaluation system is designed to measure the success of officers in meeting those expectations.

Investigative Strategies

As it implemented Neighborhood Policing, the NYPD also retooled its investigative structures and strategies. The NYPD has pioneered "precision policing." The fight against crime is unending, but tactics shift to adapt to emerging challenges. The NYPD is preventing crime and disorder with greater interagency and community collaboration, employing less intrusive tactics, and fostering a renewed sense that public safety means pursuing security and public approval in tandem.

The Detective Bureau, responsible for investigating crime, has significantly expanded, absorbing all the investigatory components formerly under the Organized Crime Control Bureau (OCCB), including the gang, vice, and narcotics divisions. This major restructuring created the unified investigation strategy and has improved coordination among all the investigative assets in each geographic borough, in order to develop cases faster and bring them to successful conclusions.

One component of the reorganized Detective Bureau is the Gun Violence Suppression Division which oversees a relentless effort against gun crime. Its violence reduction task forces bring together teams of local precinct detectives and patrol officers with gang detectives, narcotics officers, Juvenile Justice Division investigators, and others. The approach melds local knowledge and expertise with specialty investigative skills to target violent groups and organize comprehensive investigations. The division also initiates major interstate gun trafficking cases and works with local detective squads in enhancing all gun arrests. Because successful policing requires precision prosecutions, detectives are now assigned to assist prosecutors with gathering the evidence needed to bring the strongest possible firearms cases to court. At the same time, field intelligence officers assigned to each precinct have coordinated investigations at the precinct level resulting in the seizure of over 1,000 guns in 2016 and are on track to seize more than 1,000 again this year.

Beginning in March 2016, when the OCCB was merged with the Detective Bureau, the NYPD has mounted 241 long-term investigations and arrested 2,115 of the most prolific offenders including many involved in violent crimes and narcotics trafficking. We believe that these arrests have been a major contributing factor in the dramatic decline in shootings, which are down 46 percent year-to-date from five

years ago, and down 23 percent just this year. This year we expect shootings to fall below 900 for the first time since shooting records have been kept. Murders may fall below 300 for the first time since 1951.

Improved Coordination at the Local Level

At the precinct level, there is greatly enhanced cooperation and coordination between precinct detective squads, field intelligence officers, and sector officers, as the neighborhood coordination officers feed more intelligence and leads to the detective squads. As officers learn more about their sectors under Neighborhood Policing, they are developing a substantial quantity of good information about local crime and local criminals. The Neighborhood Policing structure facilitates this information flow and teamwork.

Neighborhood policing and unified investigations are driving down murders and shootings, even as enforcement encounters—arrests, summonses and stops—have declined sharply. Compared to the ten year average for 2003 to 2012, the average number of shootings for the past four years is 26 percent lower and the average number of homicides for the past four years is 36 percent lower. At the same time, enforcement encounters have declined by more than one million actions from their ten-year highs.

Oversight through Compstat

The NYPD provides strategic oversight of its decentralized patrol commands and investigative units through the process we call Compstat. The Compstat process brings together precinct and investigative unit commanders each week from one of the eight patrol borough commands for intensive strategy sessions that review current and emerging crime conditions and work to develop plans and tactics to address them.

The Compstat process prior to 2014 placed too great an emphasis on general enforcement activity -- arrests, summonses and stops -- and not enough on the targeted enforcement strategies that the NYPD has come to call “precision policing.”

Done right, Compstat is a precision instrument that helps precincts and the various support commands coordinate and focus their efforts on important cases, patterns, and conditions while simultaneously promoting best practices and a high level of professional policing skill. Today, the emphasis on general enforcement activity has been entirely removed² from Compstat, replaced by a focus on addressing specific problems in effective ways. When arrests and summonses are discussed at Compstat, the focus is whether such enforcement was necessary and effective in

² In his recent recommendation to the court regarding the Department’s new evaluation system, the Court-appointed Monitor reported that the pressure on officers to make stops irrespective of their lawfulness has been removed from Compstat. The Monitor’s recommendation noted that, “[o]ne or more members of the monitor team have watched almost all the Compstat meetings from April 2016 through mid-July 2017. There is seldom any mention of stops, and never criticism of the number of stops or lack of stops.”

addressing a particular crime problem. Partly as a consequence, year-to date, arrests are down 30 percent compared with five years ago, and summonses are down 63 percent. Significantly, stops are down in excess of 90 percent.

Counterterrorism Readiness

The NYPD has built the most effective counter-terrorism capabilities of any city in the country, including participation in the Joint Terrorist Task Force (JTTF) with the FBI, the Intelligence Bureau with officers stationed in 20 foreign locations, and the Domain Awareness System, one of the world's premier technology systems for monitoring and protecting a dense urban environment. In the past four years, the Counterterrorism Bureau and the Intelligence Bureau have renewed and strengthened the NYPD's relationships with all of its federal and local partners, including the FBI, Secret Service, regional state police, and others.

Attacks in Mumbai, Paris, and Brussels underscored the need for a swifter and more potent response to terror incidents in which the perpetrators attack on multiple fronts, seeking to kill as many people as possible and engaging responding police officers with sophisticated weapons and military tactics. The NYPD decided to supplement the Emergency Service Unit, which had been the Department's primary terrorism response unit. The Critical Response Command, a team of over 500 dedicated counterterrorism officers, was established within the Counterterrorism Bureau and is ready for immediate dispatch to any breaking terror or active shooter incident. Counterterrorism response was further bolstered by the Strategic Response Group, a citywide command of more than 700 officers trained in disorder control and active shooter situations, whose primary functions are crowd control and crime suppression, but who would also be deployable in the event of a large-scale terror attack. The NYPD now has nearly 1,700 officers with counterterrorism and active shooter training and can swiftly bring a strong presence to any developing incident or series of incidents.

Collaborative Policing

The NYPD is engaged in broader collaborative policing efforts, building partnerships with city agencies, non-profits, community-based organizations, the faith community, and other community stakeholders on a wide variety of public safety initiatives.

The NYPD Office of Collaborative Policing, which was established in 2014, has been actively pursuing opportunities for cross-agency collaboration in city government and collaboration with public interest and service organizations on a wide variety of public safety initiatives. This is a major departure from the past practice of the Department working largely on its own. One example of these initiatives includes working with the Department of Health and Mental Hygiene (DOHMH) in developing the concept of co-response cars in which DOHMH clinicians accompany police officers to calls involving mentally ill persons who have shown a propensity for violence. Another example is the NYC Ceasefire program in Brooklyn and the

Bronx, in which a group of agencies and service providers collaborate to intervene in the cycle of retaliatory violence among young gang members.

The Office of Collaborative Policing has worked on number victim assistance initiatives, like the effort to provide reliable transportation for disabled crime victims who are asked to attend interviews and court proceedings as complaining witnesses.

The Crime Victim Assistance Program (CVAP) is the most far reaching of the NYPD's crime victim assistance initiatives, financed by the Department and staffed by the non-profit Safe Horizon organization, New York City's largest and most comprehensive victim services provider. By next summer, the program will have assigned two victim advocates in every precinct, a domestic violence victim advocate and a general crime victim advocate, as well as two advocates in every Housing Bureau police service area. The program builds on a domestic violence program that has operated in a handful of precincts and in all nine public housing police service areas since the mid-1980s, but for the first time under the new program, the NYPD will be providing advocates to victims of any kind of crime, in every precinct and every police service area citywide.

Crime can leave its victims confused, angry, and feeling isolated. These victims frequently are unaware of the services and resources available. CVAP works to ease the stress of victims, providing crisis intervention, referrals to community-based service programs, and advocacy to support victims' interactions with the police and other parts of the criminal justice system. It helps victims feel safe again, recover from trauma, regain a sense of control, and ultimately, participate in the criminal justice process.

The CVAP is currently up and running in two thirds of the NYPD precincts in all five of the geographic boroughs. Advocates sort through crime complaints each morning and reach out to victims by mail and telephone calls. They address police roll calls to better inform officers about the services available and how to connect with them. Advocates adapt services to each victim's unique needs, whether counseling for trauma, advice about navigating the legal processes of the criminal justice system, or help in applying for financial compensation. This effort will be the largest and the most comprehensive victim services program in the country.

Technological Support

Technology has been harnessed in a variety of ways in the NYPD, including the construction of a new data center, the installation of fiber optic cable connecting NYPD facilities, the replacement of the radio and telephone systems, and the development of a series of new applications supporting police service. From the operational perspective, perhaps the most important technological initiative was the NYPD mobility platform and the distribution of smartphones to 35,000 police officers and tablets to 2,500 patrol vehicles. These phones and tablets provide officers with immediate field access to a variety of NYPD databases and direct lines

of contact -- by phone or email -- to community members. This capability contrasts sharply with the situation four years ago when police officers didn't even have email addresses or any ability to receive phone calls in the field.

With their Department phones, officers can now access real-time 911 data, including the history of previous emergency calls made from a location they are responding to and any wanted individuals associated with the address. They often receive the 911 call information faster on their phones than they do from the radio dispatcher. Officers also have full access to the NYPD Crime Information Center, where they can check warrants, search for information about wanted or missing persons, and view all Crime Stoppers information. Using a smartphone application called Translator, officers can translate 50 of New York City's most prevalent foreign languages, whether spoken or written to facilitate communication with a diverse population.

The phones support neighborhood policing, not only by making officers more accessible to the public, but also by enabling more effective communication and collaboration among the officers themselves. Under the Neighborhood Policing model, at least 12 officers share responsibility for a sector within a precinct: five two-officer teams working each of the three daily shifts with coverage for days off, and two neighborhood coordination officers. In the past, officers tended to focus only on their own shifts and could not readily communicate with officers on other shifts, especially since most officers did not have email addresses or phones. Now these officers, who all have a vested interest in their shared sectors, can be in continual contact. Their work as a crime-fighting and problem-solving team is greatly facilitated by regular email and phone communication among all 12 team members.

Conclusion

The last four years in particular have been a transformative time at the NYPD during which the Department has reimagined holistically the way police services are provided to the city. Beginning in 2014, the NYPD has moved forward with a series of complementary initiatives that have touched virtually every aspect of its operations, including its patrol model; its operational oversight; its accountability through Compstat and Risk Management; its investigative strategies; its counterterrorism and intelligence readiness; its recruit, in-service training, and executive development; its technological support; its use-of-force policy; its evaluation system for police officers; and its community outreach and assistance to victims of crime. The result is a model of police service for the 21st century that has been institutionalized throughout the Department.

We are grateful for the work of the Court-appointed Monitor and the Court-appointed Facilitator, Judge Ariel Belen. While many of the suggestions offered by the Court-appointed Facilitator are extremely thoughtful and meritorious, the Department declines to consent to these reforms formally as "court-ordered Joint Remedial reforms" because the majority of them – in some form – are already

underway in the Department. Additional details and responses to a series of proposals put forth during the Joint Remedial Process follow in the attached appendix “A”.

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The Joint Remedial Process

During the Joint Remedial Process, several issues have been presented to the NYPD for consideration. To the extent they are not already addressed above, the following is a brief analysis of the issues presented.

Immediate Reforms and Joint Process Reforms

As originally conceived by the court, the Court-appointed Monitor would preside over a process under which the “immediate reforms” enumerated in the Court’s “Remedies Opinion” would be developed and implemented. That process began in earnest in early 2015 with the drafting of a “milestones” document that identified the specific tasks required to be accomplished as part of the “immediate reforms.” The process contemplated final recommendations by the Court-appointed Monitor to the court (e.g. submission of revised patrol guide procedures or a new stop report), with the NYPD proposing initial drafts, the plaintiffs’ counsel responding with comments, and the Monitor determining what his final recommendation to the court would be. That process rapidly evolved to become a collaborative consensus building process among the parties that was facilitated by the Court-appointed Monitor. The result is that policy, auditing, evaluation and training materials, among other remedial topics, were created in a cooperative atmosphere with input from all. Consequently, the reforms have become more robust than the requirements initially set out as “immediate reforms” in the court order. For example, rather than correct the deficiencies identified in training materials (e.g. training video # 5, misleading content regarding unusual firearms and the absence of a self-initiated stop scenario in the in-service training), the parties undertook to draft entirely new curricula for recruit, field training, plain clothes, command level, promotional and in-service training. This entailed the incorporation of material that heretofore had not been specifically addressed by the court. In essence, the parties have incorporated the spirit if not the structure of the JRP into the remedial process itself yielding many positive results.

Additionally, the court was explicit that the “Joint Process Reforms must be no broader than necessary to bring the NYPD’s use of stop and frisk into compliance with the Fourth and Fourteenth Amendments.” The ideas for discussion as well as other proposals raised by counsel do not meet this threshold and are not necessary within this context given the transformation described in this report, other measures already in place and the expanded remediation role undertaken in collaboration with the Court-appointed Monitor and the parties. These topics exceed the subject matter of the court order and the scope of the JRP.

The court contemplated input from the “communities most affected by the NYPD’s use of stop and frisk” and referenced a “wide array” of stakeholders representing diverse points of view (e.g. NYPD personnel, district attorneys’ offices, advocacy groups, groups concerned with public housing, etc.) and not just a single advocacy group or ideological perspective. Engagement with the communities most affected by stops is occurring through many of the initiatives described in the report above.

Although the Facilitator solicited input from a broad array of stakeholders, the proposals do not necessarily reflect these diverse perspectives.

Targeted Education Campaign

The NYPD currently distributes public education cards addressing many topics, such as: an awareness campaign about the appropriate usage of the IDNYC card; an awareness campaign regarding the Department's marijuana enforcement policy; and, specifically in the context of Stop, Question, and Frisk, the "What is a Stop" information card that is required to be offered to every individual stopped except in exigent circumstances. The NYPD is in the process of developing additional public education cards and pamphlets regarding the following issues: an awareness campaign about the ability to obtain a language interpreter whenever needed; an awareness campaign regarding the regulations of Street Vendors in New York City; and a communication card for people who are deaf or hard of hearing to enhance communication during a traffic stop. Several of these cards were developed in collaboration with outside agencies, including, for example, the Mayor's Office, the Legal Aid Society, and the street vendors' union.

Moreover, the NYPD currently has several programs available to civilians that provide information regarding the NYPD generally, and stop and frisk specifically, such as the following:

- a. The Citizen's Police Academy is a training program open to any interested community member that meets once a week for ten weeks. The Academy takes civilians through an experiential training curriculum similar to the NYPD recruit training experience. Attendees participate in hands-on and classroom instruction in various law enforcement and policing topics, such as Investigative Encounters, Crisis Intervention, driver training, officer safety, and use of firearms. Civilians can register through their local precinct and through the Police Academy. Each class consists of approximately 200 people. This training is held twice a year in the Fall and the Spring.
- b. The Citizen's Police Academy International is a variation of the Citizen's Police Academy that is both language and neighborhood specific. The Academy International addresses basic interactions between law enforcement and the community, including issues such as Investigative Encounters and immigration issues. These are done in collaboration with the local precinct and other providers, such as the local District Attorney's Office.
- c. The People's Academy is a program for police officers in which they receive a community orientation from community leaders and members of a specific neighborhood. Officers learn about

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the history of the neighborhood, historical neighborhood issues, current neighborhood issues, and have an opportunity for authentic dialogue and community engagement.

The NYPD publishes its operations manual, the Patrol Guide, on the Department's website where it is available for public inspection. The Patrol Guide includes policies related to investigative encounters, interior patrols and other topics related to the monitorship. The Department also publishes important data on its website including crime data, stop data, and quality of life enforcement data. Additionally, all of the policy reforms and training materials completed with the Court-appointed Monitor and parties, are posted on the Monitor's website (<http://nypdmonitor.org/>).

The Civilian Complaint Review Board engages in broad public outreach and distributes the following information brochures, "What to Do if a Police Officer Stops You" and "What can you do if you think you've experienced or witnessed police misconduct". This material is also available on their website: (<http://www1.nyc.gov/site/ccrb/about/outreach/publications.page>). CCRB publishes extensive information and data about complaints and their outcomes on their website as part of their data transparency initiative. This information is updated weekly. The CCRB also publishes comprehensive aggregate complaint information, including outcomes in their semi-annual and annual reports.

Community Input into Training

The Department agrees that community input regarding interacting with special populations can be a valuable component in the development of policies, procedures, and trainings. The Department already engages in outreach to community members, experts, and organizations in order to obtain such input. The Deputy Commissioner of Collaborative Policing is responsible for working with members of the community to develop and implement policies and programs for any interested population.

Additionally, the Community Partners program is one such method of collaborating and engaging with community members to bridge the gap between the police and the community. The NYPD understands that the members of these communities are uniquely situated to provide input into how officers can engage effectively with their community members. As a result, the Department has developed new policies, procedures, and trainings in order to communicate these needs to our officers. Specifically, with respect to the mentally disabled, the LGBTQ, and homeless populations, the Department has the following special training and policies regarding interaction with members of those communities:

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a. Mentally Disabled:

The Department has had extensive collaboration with mental health professionals, mentally disabled individuals, and others to develop policies and training to increase officer awareness and understanding of mental health issues and to implement de-escalation techniques for interacting with such individuals.

As described previously in this report, the NYPD has several initiatives for dealing with individuals with mental disabilities including a basic course of instruction for all officers, less lethal equipment options, the expertise of the Emergency Services Unit and the comprehensive four-day Crisis Intervention Training (CIT) program. The CIT training incorporates lessons regarding symptomology, mental health diagnoses and reactions, scenario-based trainings, and a live panel of civilians that represent the mental health spectrum, including people with mental health issues. The curriculum was developed in collaboration with the Department of Health and Mental Hygiene and Center for Urban Community Services. The curriculum is based on a national mental health model and customized for the NYPD based on community partner meetings. There are currently more than 6,000 members of the service who have already been trained.

b. LGBTQ Communities:

The Department currently has an LGBTQ liaison assigned to the Police Commissioner's Office who is responsible for addressing issues specifically related to the LGBTQ community. The Liaison is familiar with Department policy regarding LGBTQ issues, as well as with recent federal, State and local laws affecting the LGBTQ community when dealing with the Department. The liaison maintains regular contact with local leaders, community groups, advocacy groups and service providers that represent and serve the LGBTQ community in New York City.

In 2012, the Police Commissioner assembled an LGBTQ Advisory Board which developed new patrol guide procedures regarding engaging with the LGBTQ public. Community advocates were brought into train police officers at the police academy on the new procedures. This Advisory Board still exists.

The Department has promulgated policies and conducted training on such issues as respecting gender identity and recognizing preferred gender when it comes to certain

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enforcement decisions (e.g. recording identity, searching and lodging of prisoners). The Department conducts outreach to encourage LGBTQ crime victims to report abuse and hate crimes, and promotes LGBTQ services at specified Department of Homeless Services shelters.

Additionally, since 1982, the NYPD has had an official fraternal organization for LGBTQ law enforcement members, the Gay Officers Action League, that assists on addressing LGBTQ matters for employees in the workplace and serves as a bridge between the law enforcement community and the LGBTQ community at large.

c. Homeless Population:

The NYPD designed a four-day advanced training curriculum for Department of Homeless Services' peace officers for protecting homeless shelter residents. This program is currently being run and developed by a team from the NYPD under the direction of an NYPD Chief.

In addition, the NYPD has worked with other city agencies and community organizations to put in place policies for addressing important issues related to the homeless population such as encampments, extreme weather situations, and available services. Working with these city agencies, community organizations and other non-governmental organizations (NGOs), the NYPD supports intervention in order to facilitate the appropriate services at the precinct level. The Department established the Crisis Outreach and Support Unit to enhance its outreach and ability to provide essential services to homeless populations.

d. Other Special Populations:

There are other special populations about whom the NYPD has sought and obtained advice from various community groups and NGOs including, but not limited to, domestic violence victims, hearing impaired individuals, and sex workers.

For example, the Department works with Safe Horizons and the Family Justice Centers in each County to address domestic violence issues and ensure that victims are receiving appropriate services. Additionally, the Department conducts "DV Stat" meetings to examine patterns of domestic violence, troubleshoot concerns and hold police commanders accountable for the domestic violence service and intervention programs under their stewardship.

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To enhance the Department's services to the hearing impaired, the Police Academy has partnered with the National Action Network Deaf Club to develop scenario-based training and to review the curriculum for recruits in dealing with the deaf community.

The NYPD partners with several Non-Governmental Organizations (NGOs) to rescue victims of sex trafficking. The NYPD Vice Enforcement Division focuses enforcement on the criminality of pimps and "Johns" rather than routinely arresting sex workers. Through a coordinated response after an enforcement action, the partner NGO provides education and services to potential sex trafficking victims. The Department also promulgated a policy whereby condoms possessed by prostitutes are no longer invoiced as arrest evidence.

e. Illuminate NYPD:

Illuminate NYPD is a Police Academy initiative that was created to assist the community in gaining a better understanding of the NYPD training process, and to ensure that community concerns can be better addressed and served. Illuminate NYPD facilitates this goal by keeping the community informed on the training programs and curricula currently taught and utilized by the Academy during recruit and in-service training. It also seeks to gather input from the community to help shape NYPD training by hosting small community-feedback discussions about the training objectives of select NYPD curricula. Additionally, the Academy is incorporating "team teaching" opportunities that allow instructors to work hand-in-hand with the community in a classroom setting. The goals of Illuminate NYPD are to produce community-informed curricula; build community trust through training; make police officer training as transparent as possible; and to educate police officers on how to better serve the community.

Judicial Determinations and Civilian Complaints

There is a system in place for tracking and reviewing declinations of prosecution (DPs) from prosecutors. The Criminal Justice Bureau of the NYPD has five court sections (one in each borough) that are responsible for collecting the DPs and entering them into the Online Prisoner Arraignment Database ("ZOLPA"). The DP's are classified by category related to the reason why the case was declined. That data is compiled into a report in order to make the data available for future analysis. This data can be sorted by category of DP or police officer, in order to observe

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trends and determine whether additional training is needed. In addition, the DP's themselves are ultimately sent to the arresting officer's commanding officer for review and determination whether further action is required.

The Department is working with the District Attorneys, US Attorneys, Special Narcotics Prosecutor and NYC Law Department to identify and address adverse credibility findings with respect to police officer testimony. These offices forward information formally about an officer's testimony in a particular case to the NYPD Legal Bureau where the findings are evaluated to determine, on a case by case basis, if the officer in question warrants re-training, consideration for re-assignment, or, a referral for investigation and discipline. The NYPD's Performance Analysis Section is also made aware of the information so that they may appropriately consider it, in conjunction with other factors, to determine whether an officer may require special monitoring.

Litigation

The Department is in continuous communication with the NYC Law Department about all manner of civil litigation, whether or not the initial incident was the result of a stop encounter. Much of that communication is subject to attorney-client privilege, however, the Law Department generally alerts the NYPD to any potential malfeasance by members of service. The NYC Law Department may elect to defend or settle a lawsuit based upon a variety of factors. The NYPD confers with the Law Department regarding case strategy and outcomes. With respect to settlements, the Department typically weighs in on the propriety of the proposed settlement. The NYPD is made aware of any denial of indemnification, judgment, or verdict that occurs involving a member of the Department. Litigation is a factor considered by the NYPD regarding the placement of a member of the Department in a special monitoring program or other appropriate remedial action such as a change of assignment.

Finally, an officer's complete CCRB history (including allegations and outcomes) is included in his/her personnel record for the duration of the officer's employment. The personnel record is consulted and considered anytime an officer is evaluated or seeks a transfer, is eligible for promotion or a scholarship, or other Department personnel action. The Department is rolling out a new online dashboard for executives this month called the Risk Analytics Information and Liability System (RAILS). RAILS will aggregate in one place personnel data as well as other negative performance indicators such as civilian complaints, discipline, stop reports rejected by a supervisor, and transfers for cause. Commanders can actively query an individual's record as well as receive automatic alerts anytime one of these triggering events occurs. This will facilitate timely intervention by the commander.

Community Engagement

Significant community engagement initiatives are described previously in this report. The Department also convenes monthly "Precinct Community Council Meetings" at a designated location and time. The commanding officer of the precinct,

as well as key staff, attends the meeting which is chaired by an elected community member and is open to all residents of the community. This meeting is designed to provide an opportunity to discuss the concerns of the community as it relates to crime conditions, community-police engagement, quality of life, crime prevention, and other issues. These meetings are publicized through various forms of social media including the NYPD website, precinct Twitter and Instagram pages, and on the Facebook pages for those precincts that have one.

The Department routinely participates in various community-based meetings at the local, borough and citywide levels, including Block Association Meetings, Tenant Meetings, NYCHA Tenant Meetings, Community Board Meetings, and meetings convened by religious institutions and elected officials, to name a few.

Community Engagement Metrics

The Department began to research and develop a new officer evaluation system more than two years ago. Plaintiffs' counsel and the Court-appointed Monitor's team provided input and recommendations. That input was helpful in shaping the new evaluation system. The new system stresses quality over quantity and measures an officer for performance that is much more aligned with the goals of our Neighborhood Policing Program.

Specifically, the new system has mechanisms to evaluate officers' community engagement. As discussed previously, the system is based on 12 rating dimensions. One of the 12 dimensions, Community Interaction, is designed to measure the nature of an officer's community engagement, such as whether the officer engages the community in a proactive and positive manner, treats others with courtesy and professionalism, is an active listener, and refers community members to appropriate services when needed. Other dimensions support the goal of community engagement as well. One example is the "Problem Identification/Solving" dimension which evaluates an officer's initiative and innovative thinking with respect to appropriately identifying and addressing the needs of the command and community effectively and efficiently. The system includes officer self-report entries, enabling officers to report acts of meaningful community interaction. It also includes the ability for supervisors to submit comment forms regarding a subordinate's positive or negative community interaction. These self-report and supervisory feedback forms feed into an officer's monthly profile report and are considered during the officer's quarterly evaluation.

Community Surveys

The Department has been working with ELUCD, a data analytics group, to conduct surveys and analyze responses in order to measure community sentiment at the micro-neighborhood level (sector level). The ELUCD founders have extensive experience in public opinion research and data analytics.

In 2014, ELUCD began working with the Department by developing and conducting an in-depth survey of roughly 17,500 residents in each of the 77 precincts about

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attitudes toward the NYPD and policing in general. They continued to collaborate with the Department and in 2015, conducted a survey of 4,500 residents in the sectors where the Neighborhood Policing program was being deployed in order to take baseline measurements of attitudes toward the NYPD prior to the program being rolled out in those sectors. At the same time, they were working on technologies to collect public opinion data on an ongoing basis in real time. The Department was looking for a regular, ongoing measurement of sentiment to be used as another management metric to augment the current Compstat process. In 2016, this process developed into the Sentiment Meter.

The Sentiment Meter collects “sentiment data” around three key dimensions from residents of each of the 303 sectors. The three dimensions are trust, satisfaction, and perception of safety. The trust dimension measures “do you trust the police and officers in your neighborhood?” The satisfaction dimension measures “how you would rate the job that the NYPD officers are doing.” The perception of safety dimension measures “how safe do you feel in your neighborhood?” and is not necessarily based on objective measures. ELUCD has developed a multi-modal data collection model that allows them to reach all segments of the population and collect data based on a representative sample for a specific neighborhood’s demographics. These survey responses are used to develop indexes around those three key dimensions which are similar to FICO credit scores for each neighborhood and are currently being produced monthly. This information is not intended to predict an outcome (such as a specific percentage of people who are satisfied with NYPD); rather, it is intended to be utilized as a means to observe trends over time and what drives those dimensions of sentiment up or down. This data will be analyzed in relation to other data such as the crime data that the Department already collects to see what factors may affect sentiment. This analysis is meant to be used as a tool for police executives and commanding officers to understand what is going on in their sectors, commands, and the city overall. It is also meant to elucidate the areas where commanding officers can impact sentiment through their actions. At some point there will be added input regarding understanding media influence, on both a national and local level, and how it impacts sentiment at the sector level.

Anonymous Complaints Regarding Police Misconduct

There are various mechanisms in place that permit the anonymous reporting of officer misconduct. Complaints pertaining to unnecessary force, abuse of authority, discourtesy and offensive language (commonly referred to as FADO complaints) are within the purview of the Civilian Complaint Review Board (CCRB). Allegations of corruption and other non-FADO misconduct are investigated by the NYPD Internal Affairs Bureau (IAB). Depending upon the subject matter, allegations can also be reported to the NYC Commission to Combat Police Corruption, NYC Civil Rights Commission and, for potential criminal matters, the District Attorney Offices. Additionally, civilians can make anonymous complaints about police misconduct or the NYPD’s operations, policies, programs and practices to the Office of the Inspector General – NYPD (“OIG-NYPD”).

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Civilians can call CCRB and IAB direct or they can call 911 or 311 to make a complaint and the matter will be referred to IAB or CCRB depending upon the nature of the allegation. Complaints may also be submitted by letter. The CCRB also accepts complaints online. CCRB conducts extensive public outreach. The CCRB currently investigates alleged misconduct with respect to stops and investigative encounters as a potential abuse of authority, and analyzes trends to determine if there are any patterns or consistent problems.

If an individual calls in a complaint anonymously to the NYPD IAB, a confidential number is provided to the individual making the allegation. The Department tracks and investigates all anonymous allegations that are made, but if they are truly anonymous, there is limited ability to assess the credibility of the claim, due to an inability to contact or interview the complainant. In addition to tracking and analyzing data collected by IAB, the Department receives and analyzes data from the CCRB on a regular basis as well. The CCRB does not currently investigate anonymous allegations.

The telephone numbers and websites of both the CCRB and IAB are available on numerous websites, posters and flyers and are included on the back of the “What is a Stop?” Information Card, provided during Level 3/*Terry* Stops.

Stop Receipts and Reports

The NYPD’s Quality Assurance Division (QAD) has developed a means of evaluating compliance with the requirement to offer the “What is a Stop?” information card during a Level 3 investigative encounter. QAD reports compliance based upon an analysis of Stop Reports. Utilizing Stop Report data, the report evaluates whether an information card was given, and if not, whether there was a documented explanation for failure to provide the card. This report is generated on a quarterly basis with the goal of addressing any issues or trends with compliance. With the advent of body-worn cameras, the Department has begun to review samples of video to assess the officer’s performance to include offering the receipt.

Each Stop Report is assigned a unique identifying report number once it is entered into the Department’s online records management system. If an individual who is stopped would like the Stop Report number, they will have to wait until the officer has input the information so that a number is generated. If it is not feasible to generate the Stop Report at the time of the encounter, or the individual does not want to wait, then the individual can come to the precinct at a later date to obtain the Stop Report number. This will facilitate identification of the incident and fulfillment of any future FOIL request. Acquisition of a Stop report is governed by state laws regarding freedom of information requests as well as criminal and civil procedure. These laws must be complied with as they contemplate due process, fairness and privacy concerns.

Police Radio – Suspect Description

The Department already instructs officers to replay the radio run from the dispatcher, whenever feasible, to allow the civilian to hear the description relayed to the officer so that they can understand the reason for the stop. This is addressed in our training materials and is encouraged as a method to explain the reason for the stop.

Disciplinary Process

The NYPD Department Advocate prosecutes NYPD internal disciplinary cases. The Department Advocate applies the “preponderance of the evidence” standard of proof for internal Department disciplinary cases. This is established law in New York but the Department will be publishing a policy statement that articulates this standard in the near future. Beyond applying the standard of proof for each element of an offense, each case is evaluated on its own merits with the individual officer’s past history and other factors taken into consideration when recommending and imposing discipline. The Department Advocate also evaluates the proposed penalty with respect to established precedent for consistency with similar cases. Having guidelines for a review of disciplinary cases, including, but not limited to, “sentencing guidelines” or a disciplinary table would run contrary to the due process rights afforded all employees in an administrative hearing and potentially run afoul of established law and collective bargaining agreements. Furthermore, it divests the Police Commissioner of his statutory authority under the NYC Charter to make decisions in each case based on the totality of the circumstances and eliminates his ability to exercise discretion.

Documenting Certain Public Encounters in Addition to Stops

This recommendation is neither practical nor feasible. Documenting encounters that do not rise to the level of reasonable suspicion would be overly burdensome, unnecessary, and potentially have a chilling effect on community engagement. Furthermore, such a practice could effectively turn every consensual encounter into a *de facto* Level 3 *Terry* stop because, by asking for an individual’s name and pedigree information, the officer necessarily interferes with the individual and unnecessarily prolongs the encounter. The NYPD participates in over 4 million service calls and public engagements annually. Many of these involve some type of investigative encounter. Typical examples include asking a person encountered if they called the police, if they know who called the police, if they are okay, if they need an ambulance, if they know the crime victim lying on the ground, or if they saw what happened. A police officer may respond to the scene of a shooting and walk among the large crowd that has gathered to ask if anyone saw anything or knew what happened. Each of those brief encounters or conversations, amount to a Level 1 Request for Information. It’s not practical to document each of these encounters especially when time is of the essence such as when dealing with a victim or crime in progress. State law, including CPL § 160.50, may prohibit documenting certain public encounters. Additionally, documenting these encounters does not serve any operational, public safety or quality control purpose.

Additional Recommendations

During the course of the JRP, counsel to plaintiffs in *Floyd* and *Davis* have submitted additional proposals and ideas for consideration. While some of these concepts have been addressed elsewhere in this report, the following are brief responses to the proposals raised:

a. Discipline Standards:

The breadth of this recommendation goes far beyond “stop and frisk” to discipline in general and is not necessary³ to bring the use of *Terry* stops into compliance with the Fourth and Fourteenth Amendments. As described above, disciplinary recommendations are complex analyses that require consideration of many variables including aggravating and mitigating factors as well as recent precedent and judicial and administrative determinations. The imposition of standards would be impracticable, raise due process concerns and likely run afoul of civil service law as well as collective bargaining agreements. Similar concerns prompted the U.S. Supreme Court in 2005 to find the mandatory application of the federal sentencing guidelines unconstitutional.

b. Community Board:

The breadth of this recommendation also goes beyond stop and frisk and is not necessary to bring the use of *Terry* stops into compliance with the Fourth and Fourteenth Amendments. The recommendation usurps the authority of the Police Commissioner to manage and administer the Department and as such violates the NYC Charter. There is already a Court-appointed Monitor in place in addition to the ultimate oversight imposed by the Court. This proposal, as described by the Plaintiffs’ counsel and some of the stakeholders, is tantamount to creating a second monitor. Such a proposal is unnecessary, would consume valuable resources, undermine the monitor and actually impede progress. Moreover, this proposal also contravenes the language of the court order. The Court contemplated input from the communities most affected by stop and frisk and referenced a list of stakeholders that represented diverse points of view (e.g. NYPD personnel, district attorneys’ offices advocates, etc.) and not just a single advocacy group or ideological point of view. Finally, there are other oversight entities available to review matters not subject to the monitorship.

³ CCRB investigates allegations related to stops and frisks. Since 2011, the number of allegations related to stops has declined by 40%. The CCRB already publishes extensive data about allegations and disciplinary outcomes on its website and in its annual and semi-annual reports.

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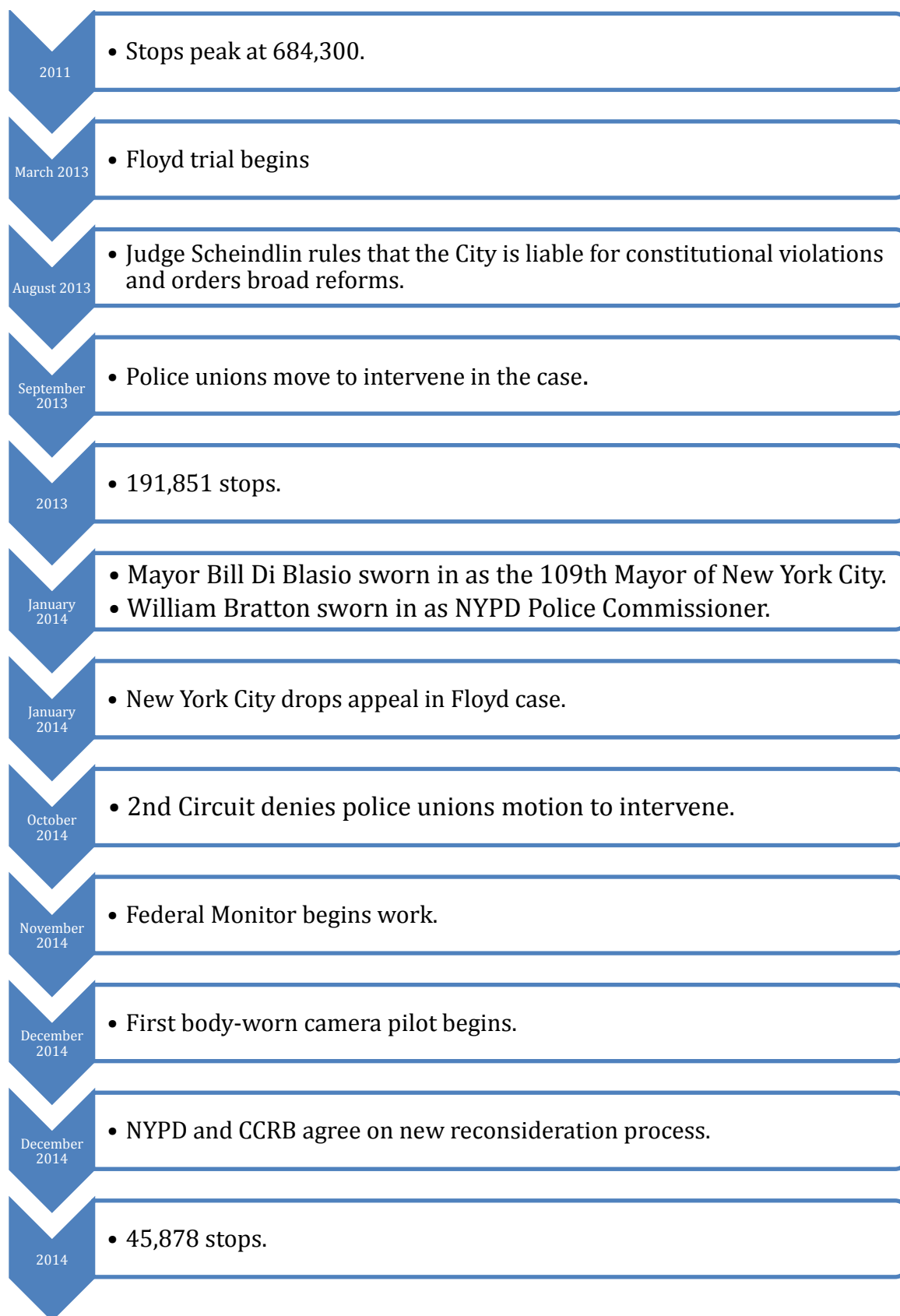
c. Documentation of Level 1 and Level 2 Encounters:

As described above, this is unrealistic and evinces a lack of understanding of most Level 1 encounters in which a police officer approaches a person seeking information. Stopping to prepare a report for each such contact could have a chilling effect on public cooperation, turn simple conversations into prolonged *de facto* stops and impede police service.

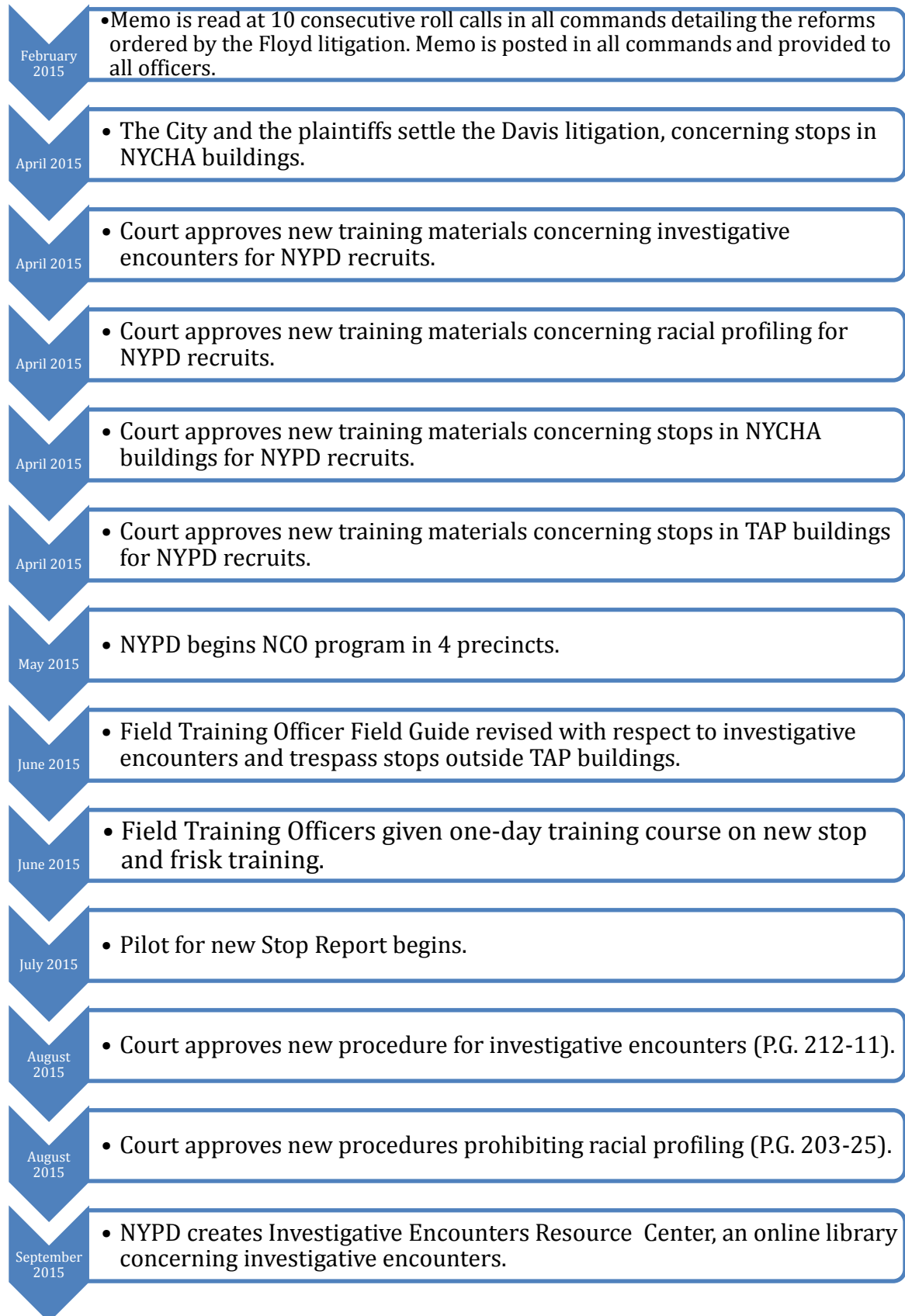
d. Advising Civilians of Their Rights During Level 1 and Level 2 Encounters:

Advising a person of their “rights” during a Level 1 Request for Information encounter is unnecessary and impractical. Consider the examples of police officers approaching people in a park looking for a missing child or responding to a crime in progress. It would be unnatural and counterintuitive to begin the conversation with a warning that the person does not have to speak to the officer. Also, courts have recognized this need for the police to communicate with the public and seek information, and have constrained such warnings and limitations to custodial interrogations. Other proposals in this section have already been adopted by the Department. For example, the NYPD promulgated a policy requiring an explicit affirmation anytime an officer seeks consent to search an individual. Informing a person that they are free to leave at Level 1 and Level 2, if they ask, goes to what constitutes a stop and is addressed in the current investigative encounters training. The law recognizes that police officers may request identification from a person at any level of encounter and that a person may decline to provide identification in most situations. This is also addressed in Department policy and training.

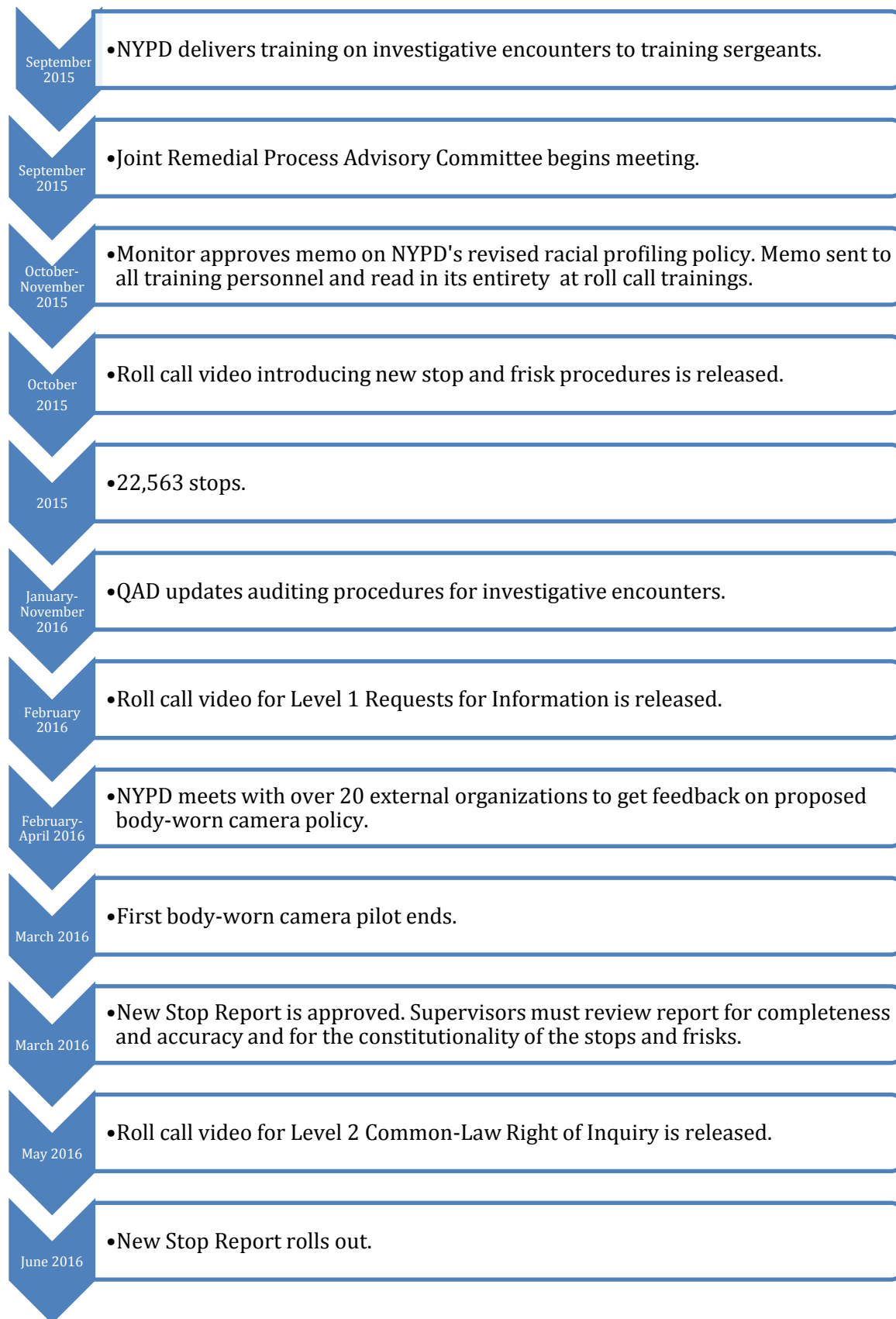
Appendix B



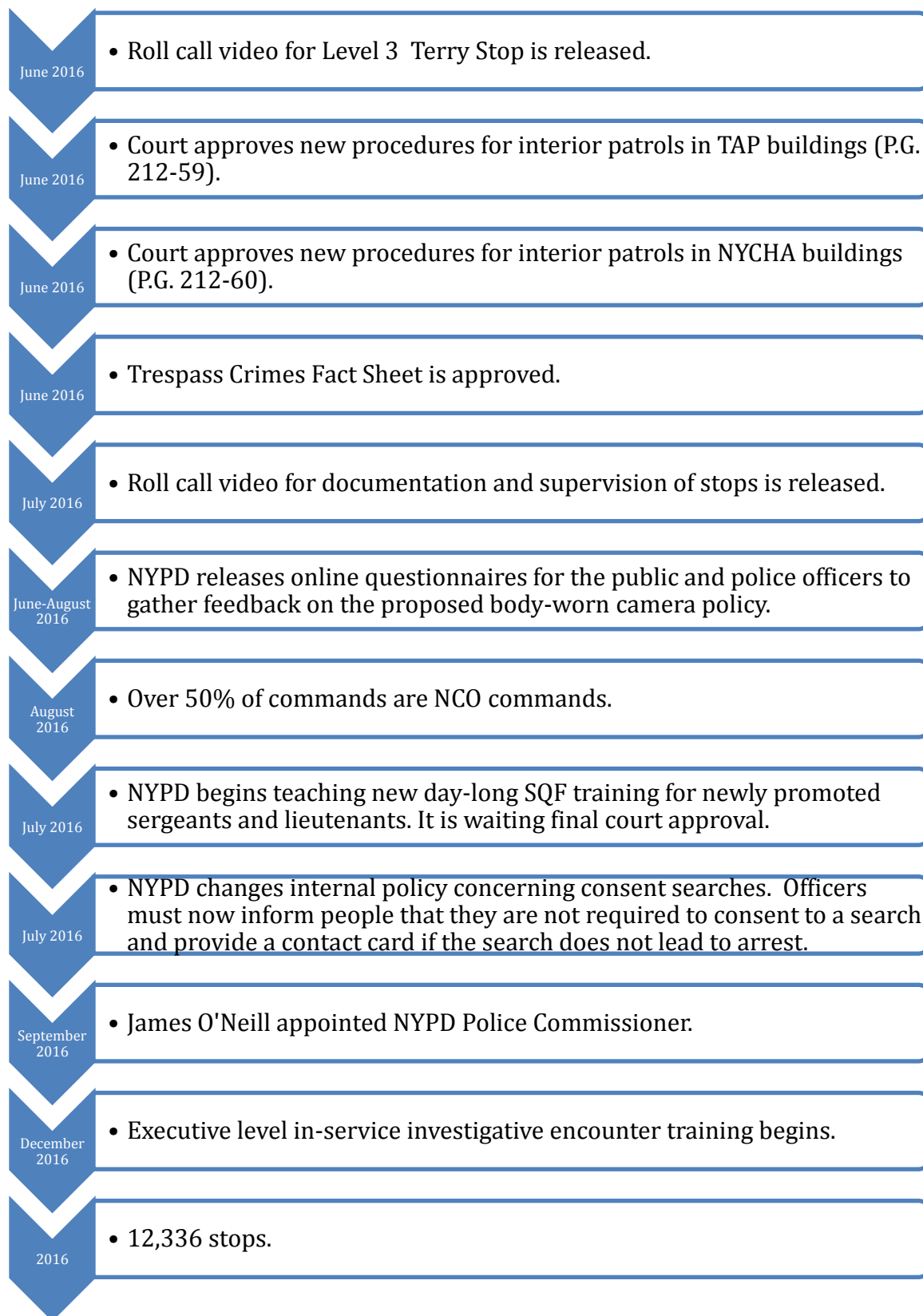
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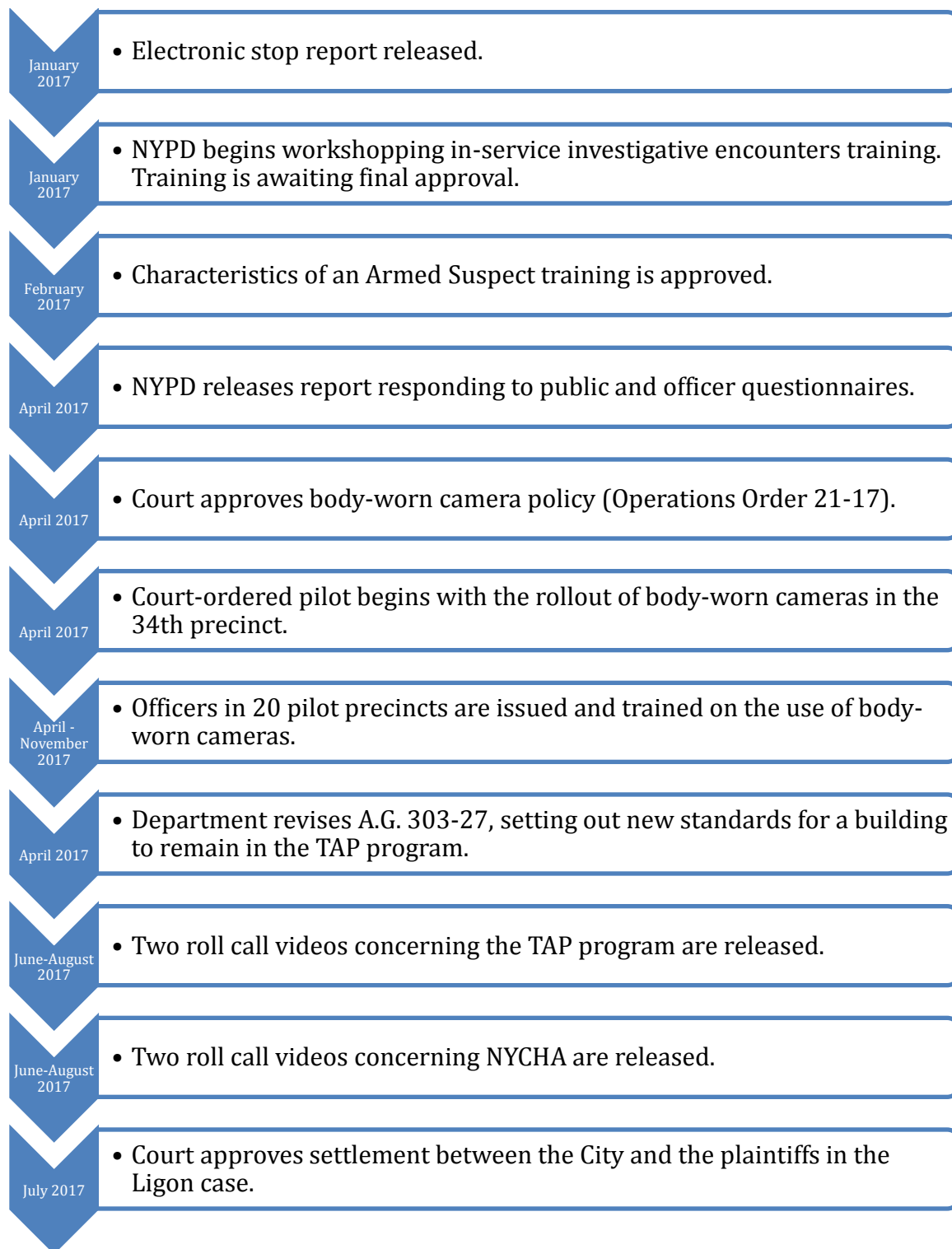
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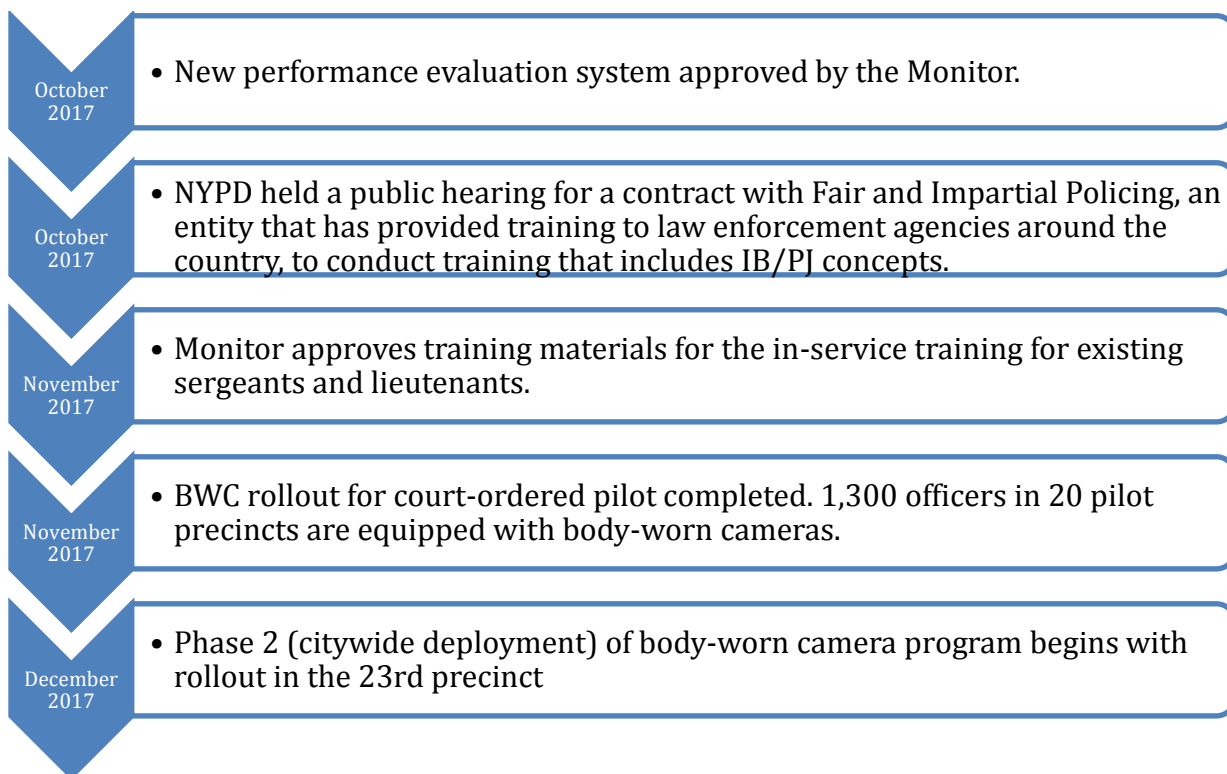
Appendix B



Appendix B



Appendix B



APPENDIX D

CONVENING AND LEADERSHIP MEETING PHASE RESOURCES

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LIST OF HOSTS, PARTNERS, AND ANCHOR ORGANIZATIONS

49 Strong, First Central Baptist Church
500 Men Making a Difference
Ali Forney Center
Arab American Association of New York
Atlas DIY
Bethel A.M.E. Church, Far Rockaway
Bronx Clergy Criminal Justice Roundtable
Bronx Fathers Taking Action
BronxConnect
Brooklyn Community Services
Brooklyn Defenders
Broome Street Academy
Brotherhood-Sister Sol
Brownsville Community Justice Center
Cardinal Hayes High School
Cardinal Spellman High School
Center for Court Innovation
Center for NuLeadership
Central Family Life Center
Chhaya CDC
Citizen's Union
Communities United for Police Reforms
Community Education Council 6
Community Voices Heard
Covenant House
Desis Rising Up and Moving (D.R.U.M.)
Dominican Officers' Society
East Flatbush Village, Inc.
East Side House Settlement
El Puente
Esperanza NY, Inc.
Exodus Transitional Community
Exponents
Families United for Racial and Economic Equality (FUREE)
FIERCE NYC
First Corinthian Baptist Church
Fortune Society
Gangsta's Making Astronomical Community Changes, Inc. (GMACC)

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George Walker Coalition
Getting Out, Staying Out (GOSO)
Good Old Lower East Side (GOLES)
Hammel Houses Tenant Association
High School for Law Enforcement and Public Safety
InterVarsity Christian Fellowship, John Jay College
Justice Committee
LatinoJustice
Law Enforcement High School
Lead By Example & Reverse the Trend
Legal Aid Society
Life Camp, Inc.
Make the Road NY
Malcolm X Grassroots Movement
Man Up, Inc.
Mayor's Clergy Advisory Council
Mayor's Office of Community Affairs
Mayor's Office of Criminal Justice
Micah Group, Interfaith Center of NY
Morris Justice Project
NAACP-LDF
NACOLE
National Police Accountability Project
New York Center for Interpersonal Development (NYCID)
Northern Manhattan Coalition for Immigrant Rights (NMCIR)
NYCHA Citywide Council of Presidents
NYCHA Resident Engagement
NYCHA Richmond Terrace Houses
NYCHA Seth Low Houses
NYCHA Tilden Houses
NYCHA West Brighton Houses
Open Society Foundations
Osborne Association
Perfect Peace Ministry Outreach, Inc.
Picture the Homeless
Police Athletic League of East New York
Police Athletic League of Jamaica
Police Athletic League of Washington Heights
Police Reform Organizing Project
President's 21st Century Task Force on Policing

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Queens Neighborhood United
Red Hook Community Justice Center
Red Hook Initiative
Rockaway Youth Task Force
Safe Horizon
Save Our Streets South Bronx (S.O.S)
Sheltering Arms - Rock Safe Streets
Sheltering Arms - Safe Space
Sikh Coalition
St. Paul Community Baptist Church
Streetwise and Safe
The Anti-Violence Project
Theatre for the Oppressed
Theatre of the Oppressed NYC
Trinity Wall Street
True 2 Life - Cure Violence
University Settlement
Urban Youth Collective
Vera Institute of Justice
VOCAL-NY
Wilson and East River Tenant Association
Yankasa Mosque
Youth Represent

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CHRONOLOGY OF MEETINGS

The Joint Remedial Process team has conducted in excess of 400 meetings with key stakeholders in the *Floyd v. City of New York Remedies Opinion* between the inception of the project in November 2014 and its completion at the end of April 2018. Major meetings in the convening and steering of the JRP are listed below:

RELATIONSHIP BUILDING CONVENINGS

April 20, 2015:	Meeting with Black, Latino and Asian Caucus, New York, NY
April 20, 2015:	Meeting with Lafayette Gardens Resident Association, New York, NY
April 21, 2015:	Meeting with Legal Aid Society, New York, NY
April 23, 2015:	Meeting with Youth Represent, New York, NY
April 24, 2015:	Meeting with Good Old Lower East Side, New York, NY
May 4, 2015:	Meeting with Queens Borough President, New York, NY
May 7, 2015:	Meeting with 500 Men Making a Difference, New York, NY
May 7, 2015:	Meeting with Citizens Crime Commission, New York, NY
May 11, 2015:	Meeting with Legal Aid Society Law Reform Unit, New York, NY
May 11, 2015:	Meeting with City University of New York, NY
May 12, 2015:	Conference call with Fathers Taking Action Group, New York, NY
May 14, 2015:	Meeting with Communities United for Police Reform, New York, NY
May 19, 2015:	Meeting with New York City Housing Authority, New York, NY
May 20, 2015:	Meeting with Man Up! Inc, New York, NY
May 21, 2015:	Meeting with Osborne Association, New York, NY
May 21, 2015:	Meeting with St. Paul's Community Baptist Church, New York, NY
May 26, 2015:	Meeting with Fortune Society, New York, NY
May 27, 2015:	Meeting with Allen AME Church, New York, NY
May 29, 2015:	Meeting with Bronx Defenders, New York, NY
May 29, 2015:	Meeting with Save Our Streets, New York, NY
June 1, 2015:	Meeting with Community Voices Heard, New York NY
June 10, 2015:	Meeting with Bronx Clergy Criminal Justice Task Force, New York, NY
June 24, 2015:	Meeting with NYPD Office of the Inspector General, New York, NY
June 26, 2015:	Meeting with Getting Out, Staying Out, New York, NY
July 6, 2015:	Meeting with Interfaith Center of New York, New York, NY
July 7, 2015:	Meeting with the NYPD Hispanic Society, New York, NY
July 9, 2015:	Meeting with Office of Congressman ???
July 10, 2015:	Meeting with Queens Defenders, New York, NY
July 14, 2015:	Meeting with Esperanza NY, New York, NY
July 17, 2015:	Meeting with BronxConnect, New York, NY

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July 17, 2015:	Meeting with NYCHA Counsel, New York, NY
July 20, 2015:	Meeting with Safe Horizon, New York, NY
July 21, 2015:	Meeting with Brooklyn Defender Services, New York, NY
July 21, 2015:	Meeting with Exponents, New York, NY
July 23, 2015:	Meeting with Micah Institute, New York, NY
July 24, 2015:	Meeting with George Walker Park Coalition
July 27, 2015:	Meeting with Intervarsity Fellowship, New York, NY
July 31, 2015:	Meeting with Brownsville Community Justice Center, New York, NY
August 13, 2015:	Meeting with DRUM, New York, NY
August 19, 2015:	Meeting with NYCHA Citywide Council of Presidents
August 19, 2015:	Meeting with The Door, New York, NY
August 20, 2015:	Meeting with Arab American Association, New York, NY
September 14, 2015:	Meeting with Mayor's Office of Community Affairs, New York, NY
September 14, 2015:	Meeting with Police Athletic League, New York, NY
September 15, 2015:	Meeting with Theatre of the Oppressed, New York, NY
September 16, 2015:	Meeting with Committee on Public Safety, New York, NY
September 16, 2015:	Meeting with City Council Committee on Community Affairs, NY, NY
September 22, 2015:	Meeting with Brotherhood-Sister Sol, New York, NY
September 22, 2015:	Meeting with Covenant House, New York, NY
September 23, 2015:	Meeting with NYCHA Community Affairs, New York, NY
September 29, 2015:	Meeting with Inner City Scholarship Fund, New York, NY
October 15, 2015:	Meeting with the Anti-Violence Project, New York, NY
November 4, 2015:	Meeting with Legal Aid Society, New York, NY
November 19, 2015:	Meeting with Office of City Councilman Ruben Wills
December 2, 2015:	Meeting with Clergy Council ????
January 15, 2016:	Meeting with First Corinthian Baptist Church, New York, NY
February 11, 2016:	Meeting with Crown Heights Youth Collective, New York, NY
February 24, 2016:	Meeting with Life Camp, Inc., New York, NY
February 25, 2016:	Meeting with Misunderstood Youth Development Center, New York, NY
March 7, 2016:	Meeting with All Stars Project, Inc., New York, NY
March 7, 2016:	Meeting with Mayor's Office of Criminal Justice, New York, NY
April 5, 2016:	Meeting with Clergy United for Community Empowerment, NY, NY
April 8, 2016:	Meeting with the Divided Communities Project, New York, NY
April 14, 2016:	Meeting with NY Center for Interpersonal Development, New York, NY
May 9, 2016:	Meeting with NYCHA CEO, New York, NY
May 10, 2016:	Meeting with Manhattan Borough President, New York, NY
May 10, 2016:	Meeting with Brooklyn President, New York, NY
June 2, 2016:	Meeting with the Office of City Councilman Rory Lancman, NY, NY
July 1, 2016:	Meeting with the Office of Congressman Gregory Meeks, New York, NY
July 6, 2016:	Meeting with 21st Century Task Force on Policing, Washington, DC

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August 17, 2016: Meeting with Civilian Complaint Review Board, New York, NY
August 29, 2016: Conference call with NYPD Guardians Association, New York, NY
August 29, 2016: Conference call with the People's Law Office, Chicago, IL
September 9, 2016: Conference call with Police Executive Research Forum, Washington, DC
September 9, 2016: Conference call with Red Hook Initiative, New York, NY
September 12, 2016: Conference call with East Flatbush Village, Inc., New York, NY
September 16, 2016: Conference call with NYC Department of Health and Mental Hygiene, NY
October 4, 2016: Meeting with Lead By Example and Reverse the Trend, New York, NY
October 4, 2016: Meeting with Perfect Peace Ministry, New York, NY
October 20, 2016: Meeting with Community Education Council 6, New York, NY
October 27, 2016: Conference call with Vera Institute of Justice, New York, NY
October 28, 2016: Meeting with PAL Washington Heights, New York, NY
June 2, 2017: Conference call with Sullivan ADA Consulting, New York, NY
August 22, 2017: Meeting with Congressman Hakeem Jeffries, New York, NY

ADVISORY COMMITTEE MEETINGS

September 28, 2015: Meeting at JAMS, New York, NY
October 29, 2015: Meeting at JAMS, New York, NY
February 23, 2016: Meeting at JAMS, New York, NY
April 11, 2016: Meeting at JAMS, New York, NY
September 26, 2016: Meeting at JAMS, New York, NY
January 30, 2017: Meeting at JAMS, New York, NY
May 15, 2017: Meeting at Communities United for Police Reform, New York, NY

COMMUNITY FORUM DEVELOPMENT MEETINGS

February 10, 2016: Community Forum Planning Meeting, JAMS, New York, NY
April 25, 2016: Community Forum Planning Committee, New York, NY
June 7, 2016: Community Forum Planning Committee, New York, NY
June 27, 2016: Community Forum Planning Committee, New York, NY
September 26, 2016: Community Forum Planning Committee, New York, NY
July 19, 2016: Community Forum Video Development Meeting, New York, NY
July 25, 2016: Community Forum Video Development Meeting, New York, NY
August 1, 2016: Community Forum Video Development Meeting, New York, NY
October 14, 2016: Community Forum Facilitator Information Session, New York, NY
October 21, 2016: Community Forum Facilitator Information Session, New York, NY
December 21, 2016: Community Forum Facilitator Debriefing Session, New York, NY

PLAINTIFF'S COUNSEL MEETINGS

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June 22, 2015:	Meeting at JAMS, New York, NY
June 22, 2015:	Meeting at JAMS, New York, NY
July 17, 2015:	Meeting at JAMS, New York, NY
July 22, 2015:	Meeting at JAMS, New York, NY
July 27, 2015:	Meeting at JAMS, New York, NY
August 27, 2015:	Meeting at JAMS, New York, NY
September 21, 2015:	Meeting at JAMS, New York, NY
September 22, 2015:	Meeting at JAMS, New York, NY
October 6, 2015:	Meeting at JAMS, New York, NY
October 20, 2015:	Meeting at JAMS, New York, NY
November 9, 2015:	Meeting at JAMS, New York, NY
November 10, 2015:	Meeting at JAMS, New York, NY
November 20, 2015:	Meeting at JAMS, New York, NY
January 7, 2016:	Meeting at JAMS, New York, NY
January 13, 2016:	Meeting at JAMS, New York, NY
February 11, 2016:	Meeting at JAMS, New York, NY
February 11, 2016:	Meeting at JAMS, New York, NY
March 24, 2016:	Meeting at JAMS, New York, NY
June 8, 2016:	Meeting at JAMS, New York, NY
September 15, 2016:	Meeting at JAMS, New York, NY
April 24, 2015:	Meeting at JAMS, New York, NY
January 30, 2017:	Meeting at JAMS, New York, NY
January 30, 2017:	Meeting at JAMS, New York, NY
February 8, 2017:	Meeting at JAMS, New York, NY
November 13, 2017:	Meeting at JAMS, New York, NY

JRP ALL-PARTIES MEETINGS

March, 24, 2016:	Meeting at JAMS, New York, NY
April 19, 2016:	Meeting at JAMS, New York, NY
June 8, 2016:	Meeting at JAMS, New York, NY
July 12, 2016:	Meeting at JAMS, New York, NY
August 18, 2016:	Meeting at JAMS, New York, NY
September 15, 2016:	Meeting at JAMS, New York, NY
January 6, 2017:	Meeting at JAMS, New York, NY
May 15, 2017:	Meeting at JAMS, New York, NY
June 27, 2017:	Meeting at JAMS, New York, NY___

CITY DEPARTMENT MEETINGS

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_____ May 27, 2015: Meeting at 1 Police Plaza, New York, NY
June 5, 2015: Meeting at 1 Police Plaza, New York, NY
June 24, 2015: Meeting at 1 Police Plaza, New York, NY
June 25, 2015: Meeting at 1 Police Plaza, New York, NY
August 7, 2015: Meeting at 1 Police Plaza, New York, NY
September 16, 2015: Meeting at 1 Police Plaza, New York, NY
September 28, 2015: Meeting at 1 Police Plaza, New York, NY
November 9, 2015: Meeting at 1 Police Plaza, New York, NY
November 19, 2015: Meeting at 1 Police Plaza, New York, NY
December 11, 2015: Meeting at 1 Police Plaza, New York, NY
January 22, 2016: Meeting at 1 Police Plaza, New York, NY
February 11, 2016: Meeting at NYC Law Department, New York, NY
April 6, 2016: Meeting at 1 Police Plaza, New York, NY
April 11, 2016: Meeting at 1 Police Plaza, New York, NY
May 10, 2016: Meeting at 1 Police Plaza, New York, NY
July 14, 2016: Meeting at NYC Law Department, New York, NY
July 19, 2016: Meeting at NYC Law Department, New York, NY
August 17, 2016: Meeting at NYC Law Department, New York, NY
September 12, 2016: Meeting at 1 Police Plaza, New York, NY
September 30, 2016: Meeting at 1 Police Plaza, New York, NY
October 25, 2016: Meeting at 1 Police Plaza, New York, NY
February 27, 2017: Meeting at NYC Law Department, New York, NY
March 10, 2017: Meeting at JAMS, New York, NY
March 15, 2017: Meeting at 1 Police Plaza, New York, NY
March 15, 2017: Meeting at JAMS, New York, NY
March 20, 2017: Meeting at JAMS, New York, NY
March 27, 2017: Meeting at 1 Police Plaza, New York, NY
July 24, 2017: Meeting at 1 Police Plaza, New York, NY
November 6, 2017: Meeting at NYC Law Department, New York, NY
November 15, 2017: Meeting at 1 Police Plaza, New York, NY
February 27, 2017: Meeting at 1 Police Plaza, New York, NY

FEDERAL MONITOR'S MEETINGS

April 29, 2015: Meeting at Arnold Porter, New York, NY
June 2, 2015: Meeting at Arnold Porter, New York, NY
July 8, 2015: Meeting at Arnold Porter, New York, NY
July 27, 2015: Meeting at JAMS, New York, NY
August 5, 2015: Meeting at Arnold Porter, New York, NY
October 7, 2015: Meeting at Arnold Porter, New York, NY

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November 23, 2015: Meeting at JAMS, New York, NY
May 9, 2016: Meeting at Arnold Porter, New York, NY
June 9, 2016: Meeting at Arnold Porter, New York, NY
July 11, 2016: Meeting at JAMS, New York, NY
July 12, 2016: Meeting at JAMS, New York, NY
September 14, 2016: Meeting at Arnold Porter, New York, NY
October 19, 2016: Meeting at Arnold Porter, New York, NY
November 16, 2016: Meeting at Arnold Porter, New York, NY
December 14, 2016: Meeting at Arnold Porter, New York, NY
January 19, 2017: Meeting at Arnold Porter, New York, NY
February 15, 2017: Meeting at Arnold Porter, New York, NY
March 22, 2017: Meeting at APKS, New York, NY
March 29, 2017: Meeting at APKS, New York, NY
April 20, 2017: Meeting at APKS, New York, NY
May 25, 2017: Meeting at APKS, New York, NY
June 22, 2017: Meeting at APKS, New York, NY
September 6, 2017: Meeting at APKS, New York, NY

JRP OBSERVATIONS

May 7, 2015: Presentation at John Jay College of Criminal Justice, New York, NY
April 28, 2015: NYPD Precinct Community Council Meeting, New York, NY
April 30, 2015: All In Executive Conference at Police Academy, New York, NY
June 5, 2015: NYPD CompStat Meeting, New York, NY
June 8, 2015: NYPD Community Forum, New York, NY
June 11, 2015: Focus Group at the Citizens Crime Commission, New York, NY
June 13, 2015: 500 Men Making a Difference and Cure the Violence Forum, NY, NY
June 24, 2015: NYPD Precinct Community Council Meeting, New York, NY
June 29, 2015: NYPD Queens Community Crime Forum, New York, NY
August 13, 2015: NYPD CompStat Meeting, New York, NY
October 1, 2015: Citizens Crime Commission Meeting, New York, NY
October 6, 2015: Tour of Covenant House, New York, NY
November 5, 2015: Presentation at John Jay College of Criminal Justice, New York, NY
December 6, 2016: NYPD Commissioner's Luncheon, New York, NY
February 22, 2017: Monitor's Police Focus Groups at APKS, New York, NY
February 23, 2017: Monitor's Police Focus Groups at APKS, New York, NY

NEW YORK CITY STOP & FRISK JOINT REMEDIAL PROCESS

IMMEDIATE REFORM MEASURES UNDER THE FEDERAL MONITOR

The following document includes a comprehensive summary of the current reform measures under the Immediate Reform Process.

POLICIES

New Policies

1. Revision of written policy on stop and frisk. (Patrol Guide Section 212-11).
 - a. The policy now clearly states:
 - What constitutes a stop
 - When a stop may be conducted
 - When a frisk may be conducted
 - When a search may be conducted.
 - b. The Patrol Guide also provides officers with guidance on encounters with civilians that are less intrusive than a stop.
 - c. Officers must document stops, frisks and searches.
 - d. Supervisors must review the constitutionality of the stop not just whether paperwork was filled out.
2. Revision of NYPD **policy prohibiting racial profiling** and other profiling. (Patrol Guide Section 203-25).
 - a. The policy states that police stops, frisks, arrests or other law enforcement actions may not be motivated by race, ethnicity or national origin of an individual, except in cases where race or ethnicity is part of a reliable and specific suspect description.
3. New **policy on interior patrol (sometimes called “vertical patrols”) of NYCHA buildings.** (Patrol Guide Section 212-60.)
 - a. An officer cannot stop and detain a person just because he or she is in a NYCHA building, or went into or came out of a NYCHA building.
 - b. Except for ordinary pleasantries, an officer cannot approach a person in public housing to ask him or her questions without an objective, credible reason to do so.
4. New **policy for interior patrol of buildings enrolled in the Trespass Affidavit Program (TAP).** These are private apartment buildings where the owners have authorized the Department to patrol in and around their buildings. (Patrol Guide Section 212-59.)
 - a. The Patrol Guide makes clear that just because a building is enrolled in the Trespass Affidavit Program, officers still need reasonable suspicion before they can make a stop.
 - b. Except for ordinary pleasantries, an officer may not approach a person to ask questions just because that person is in a TAP building. The officer must have a reason to approach that person.
5. After making a stop, an NYPD officer has to complete a **new stop report form**
 - New narrative sections require officer to give reasons for the stop in his or her own words
 - Requires separate explanation of frisk and, if conducted, search

- If the person is stopped but not arrested, the officer must offer the person an explanation and other information.
6. If an officer is making an arrest for trespass in either a NYCHA or TAP building, the officer must document that the person arrested was not a resident, a visitor or had business in the building.

TRAINING

Training is conducted for both NYPD new recruits and in-service officers. The new training material, described below, was developed by the NYPD in conjunction with the Monitor, the plaintiffs, and with input from other stakeholders. These materials are continuously undergoing revisions as new policies are approved, and in response to review by the Monitor's team. Most of what is described below has been officially approved by the court and/or the Monitor and are published on the Monitor's website.*

New Training of Recruits

7. There is a new training course for recruits at the Police Academy on stop and frisk.
8. There is new training for recruits at the Police Academy on racial profiling.
9. There is new training for recruits at the Police Academy on interior patrols of NYCHA and TAP building.

Training Conducted at the Commands (Precincts)

10. After the NYPD published its **new stop and frisk policy (P.G. 212-11)**, the Department **developed five short videos that it played at roll call in every precinct.**
 - Introduction to new stop and frisk policy
 - Level 1 – Requests for Information
 - Level 2 – Common Law Right of Inquiry
 - Level 3 – *Terry* Stop
 - Documentation and Supervision

These have been approved by the Monitor and are available on the Monitor's website.

11. The NYPD is **developing short training videos** to play at roll call in the precincts on the new policy on interior patrols in TAP buildings
12. The NYPD is **developing short training videos** to play at roll call in the precincts on the new policy on interior patrols in NYCHA buildings

Training for Current Officers Conducted at the Academy

13. Substantial **new training on stop and frisk and trespass enforcement is being developed for almost all members of the service.** The training will include, among other things:
- The use of realistic scenarios, videos of encounters and other methods that go beyond lectures;
 - Training for supervisors on their responsibilities to review and evaluate the conduct of their officers;
 - Training on “Procedural Justice.” This is a phrase used to describe the necessity of treating civilians with respect, listening to them, and explaining the officer’s actions.
 - Training on “Implicit Bias.” This is the concept that, because everyone lives in a particular environment (neighborhood, family, friends, etc.), everyone has biases that he or she might not even be aware of. The point of the training is to make officers more aware of what those biases are so that they do not interfere with the officers’ law enforcement functions.
14. Training is being developed for officers who are about to be promoted to sergeant, lieutenant and captain. This new training will include, among other things, training on new supervisory responsibilities.

Specialized Training

15. The NYPD developed **new training for Field Training Officers.** These are veteran officers who mentor and coach new officers who just graduated from the Police Academy.
16. New training is being developed for new plainclothes officers.

SUPERVISION

Supervision has been described above in the paragraphs on the stop and frisk policy and the new stop report form. But, to repeat:

17. The NYPD made changes in its policies and procedures for supervision and review of stops, including stops in TAP buildings and stops in/around NYCHA residences, and review of trespass arrests in NYCHA buildings.
- Supervisors must review the legality of stops, frisks and trespass arrests after conferring with the officer who took the action and reviewing the paperwork.
 - Supervisor must take corrective action when appropriate. This action could range from an informal conversation to a recommendation for formal discipline.

PERFORMANCE GOALS, OBJECTIVES AND EVALUATIONS

18. Work is under way to change how the Department evaluates the performance of officers, so that it is not just counting the number of enforcement actions, such as stops, arrests and summons.

BODY WORN CAMERAS

19. The Monitor is responsible for overseeing a one-year pilot program in which body-worn cameras will be used by about 1000 police officers. There will be an assessment of the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks. At the end of the one-year pilot, it will be determined whether (in the words of the court) “the benefits of the cameras outweigh their financial, administrative, and other costs.”

AUDITING

20. Working with the Monitor and the parties, the NYPD has already changed the way it audits stops, frisks and searches. It is working on ways to change the way it audits trespass enforcement. When those changes are finalized, they will be submitted to the Monitor and the court for approval.
21. The Department is considering what in the police field is called an Early Identification System (EIS) to support supervision and management of NYPD officers and supervisors. This is a way to analyze information relating to behavior that might put the Department or its officers at risk. Police Departments use EIS to identify at-risk employees and patterns of at-risk behaviors so that they can be addressed and corrected before more serious misconduct occurs; they are not used for discipline.

COMPLAINT INVESTIGATIONS/DISCIPLINE

22. The Department is tracking and investigating complaints related to racial profiling. The guidelines for these investigations and training for the investigators will be finalized and submitted to the Monitor and the court for approval.
23. The NYPD must change its procedures for handling citizen complaints involving stops, frisks, searches and trespass arrests when the CCRB has found the allegations to be more likely true than not. The NYPD must not automatically count the word of the officer as more significant than the word of the person complaining. The Department must give greater deference to the investigative findings of the CCRB than had been given in the past.

***Additional information on the Monitorship and the Immediate Remedial Measures, as well as the Joint Remedial Process, may be found online at the Monitor’s website at <http://nypdmonitor.org/>**

New York City Stop & Frisk Joint Remedial Process Leadership Discussion Themes

Topics	✓
Community Centered Reforms	
Community Input in Performance Evaluations	
Community Boards and Precinct Performance	
Documentation of and Community Experiences with Level 1 and 2 Street Encounters	
Submission of Community Comments Post Stop	
Community Input in Performance Evaluations, Supervision and Monitoring of Officers	
Community Meetings and NYPD	
Community Input for Precincts, Regular Surveys	
Consent for Searches	
Freedom to Leave, Freedom to Walk Away	
Reforms Centered Around Training	
Trainings in the Status of the Law, De-escalation, Empathy and Mediation	
Training on Searches	
Specialized Trainings on Sexual Orientation and Gender Identity, and Searches	
Specialized Trainings on Individuals with Mental Illness	
Training on Cultural Sensitivity	
Trainings on Crisis Intervention, Anger Management, and Verbal Encounters	
Reforms Centered Around Discipline/Accountability	
Discipline and Accountability	
Discipline Matrix	

Officer History and Discipline Penalty	
Early Intervention System and Triggers, and Repeat Complaints	
Body Camera Footage and Supervision	
Accountability for Supervisors when Officers Misbehave	
NYPD Coordination of Disciplinary Penalties	
Discipline, Lack of Accountability for Officers	
Officer Accountability/Discipline/Supervision	
CCRB and NYPD	
Civilian Oversight Agencies and Police Departments	
Ending NYPD Commissioner's Exclusive Disciplinary Authority	
Updates, Communications and Disclosure of Disciplinary Penalty from NYPD Post Complaint, and Personalized Letter from Officer's Supervisor	
Presence of Complainants during Disciplinary Hearings	
Communications with New Yorkers when NYPD disciplines its officers	
Inter-Department Coordination Regarding Discipline	
Reforms Centered Around Supervision	
Supervision and Consideration of Repeat Complaints	
Officer Supervision and Personnel History	
Supervision and Performance Evaluation, Review of Stop Legality, Feedback Regarding Stops	
Independent Analysis and Supervision of Officers	
Officer Supervision, Monitoring and Evaluation	
Supervision and Ensuring Constitutional Policing	
Random and Independent Evaluation of Officers	
Active Interventions by Supervisors	
Performance Evaluations and Inclusion of Qualitative Interactions	

General Police Reform Ideas/Themes	
Collateral Consequences of Stops	
Collateral Consequences of Unlawful Summonses and Arrests	
Receipts	
Provision of Information During Stops	
Self-Identification of Officers	
National Best Practices for Cultural Change for Departments	
Coordination and Execution of “Instructions” for Officers	
Tracking and Addressing Racial Profiling Complaints / Anti-Bias	
Impact of and Assessment of IRP Reforms Ordered	
Undercounting of stops	
Precincts and Complaint Intake Mechanisms	
NYPD and Social Services	
De-escalation	
Stops and Sexual Harassment, Assaults, and Reporting of incidents	
Stops and Warrant Checks	
Substantial Compliance in Court-Ordered Reform Processes	
Communication to DAO post giving instructions	
Referrals to Social Services	
Reforms Centered Around Information Access and Gathering	
Access to Information About Officers who Stopped Civilians	
Information Regarding Reason for Stops	
Information Regarding Previous Complaints	
Correcting Unlawful Stops, Documentation of Stops and Appropriate Interventions	
Information Needed to Determine Whether Constitutional Violations Occurred	

Provision of Information around Rights in Stop Encounters	
Feedback on Experiences / Ability to Submit Comments about Experiences w/NYPD	
Post-Stop Surveys	
Transparent and increased reporting on officers and their actions	
Reforms Centered Around Cameras	
Body Camera Footage and Audio	
Body Cameras	
Best Practices	
Stops and Sexual Harassment, Assaults, and Reporting of incidents	
Best Practices for Investigations on Racial Profiling	
Best Practices for Cultural Change	
National Best Practices for Police Reform	
National Best Practices for Cultural Change for Departments	
Best Practices for Investigations on Racial Profiling	

PROPOSED
JOINT REMEDIAL PROCESS
LEADERSHIP MEETING AGENDA

I. INTRODUCTION

II. DISCUSSION OF IMMEDIATE REFORM PROCESS & JOINT REMEDIAL PROCESS

- a. Immediate Reforms to date
- b. Excerpted discussion themes from Joint Remedial Process focus groups

III. SHARING IDEAS

- a. Concrete reform ideas based on experience, practice, or research
- b. Refinement of general themes from Joint Remedial Process focus groups

IV. ADDITIONAL/SUPPLEMENTAL AREAS FOR EXPLORATION

- a. Neighborhood and community contexts for police reform
- b. Other complexities affecting urban police reform

V. QUESTIONS, COMMENTS AND NEXT STEPS

⁺*Please note: Partnered organizations are encouraged to submit a white paper, if time and resources permit.*

APPENDIX E

FOCUS GROUP PHASE RESOURCES

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FLOYD FOCUS GROUP QUESTIONS AND PROBES

1. Who within this group has personally been stopped? Who has witnessed someone else being stopped? **[Ligon: the following establishes whether there are participants who have had encounters in TAP buildings or NYCHA developments]** Has anyone in this group had this kind of encounter while in a private apartment building or public housing over the last few years?
 - A. Is there anyone who would like to share their experiences with being stopped? **[Ligon: in the event there are participants that identify as having encounters within TAP buildings this question will be asked]**
 - i. Please describe encounters you have had or observed between other people and the police in private apartment buildings or public housing.

Probes:

- Was the stop in a car, on the street, in an apartment building or NYCHA housing development?
- When was the most recent stop?
- After the stop, what happened?
 - Were you frisked/searched?
 - Were you arrested?
 - Were you given a summons?
- What did the officer say or do?

- ii. What do you think the officer could have done differently in this situation?

IMPORTANT FACILITATOR NOTE

{Facilitator discretion as to how much of the above to ask and how far to probe, consistent with the goal of keeping the above no longer than 21% of the focus group discussion}

- B. FACILITATOR NOTE:** *[In the instance when participants do not mention a stop because of what they look like, the way they were dressed, where they live or who they were with the following “prompt” question will be asked]*
Why do you think you were stopped?

2. **FACILITATOR NOTE:** *[If participants indicate that they were stopped because of what they look like, the way they were dressed, where they live or who they were with, then the question below will be asked without the “prompt” above]*

What should the NYPD do to make sure that you are not being stopped

APPENDIX E

because of how you look, the way you were dressed, where you live or who you were with?

3. Sometimes when a police officer approaches you can walk away without answering questions, in those instances what do you need the officer to say or do so that you know you can walk away.

Probe:

For example,

- What do you need to know?
- How should the officer act or treat you?

4. Sometimes an officer has the right to search a person without their consent and other times the officer must ask a person if he or she consents to a search. In the times when an officer needs to ask for consent to search, what should happen (what do you need the officer to say or do) for you to feel that you can say “No, I do not give you the consent to search?”

Probe:

For example,

- What do you need to know?
- What should the officer do/say?
- How should the officer act or treat you?

5. For those of you who have been stopped (or have known someone that has been stopped), have you (or the person stopped) ever made a complaint regarding why you (they) were stopped or your (their) treatment during the stop?

Probe:

- Who did you complain to (CCRB, Precinct, and Supervisor on duty)?
- What happened with the complaint?
- What do you think should have happened?
- What would make you feel that the officer was held accountable?

What type of things could NYPD (or anyone) do to make you feel like they listened to your complaint and took it seriously?

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FACILITATOR NOTE: [If participants indicate that they would like to receive the officer's badge number, name, and directions for making a complaint the following question will be asked]

What about a stop receipt (facilitator explain what a stop receipt looks like) or a business card?

6. How should officers be supervised and evaluated?
 - A. Provide suggestions of ways that supervisors can be informed of things that they need to know in order to tell if their officers are doing a good job?
 - B. What types of things should be considered when officers are being evaluated?

Probe:

- Provide examples of ways that supervisors can evaluate how an officer interacts with community members.

FACILITATOR NOTE: [This is an additional opportunity to inquire about the use of officer business cards if participants mention knowing the officer's name and badge number]

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DAVIS FOCUS GROUP QUESTIONS AND PROBES

1. Who within this group has had an encounter with NYPD where they were suspected of trespassing while in a public housing development or private apartment building? Who within this group has been arrested for trespassing while in a public housing development or private apartment building? Who has had a guest who has been suspected of trespassing or arrested for trespassing while visiting you in a public housing development or private apartment building?
2. Who within this group has personally been stopped while in a public housing development or private apartment building? Who has witnessed someone else being stopped {while in a public housing development or a private apartment building}? Who has had a guest who has been stopped while in a public housing development or private apartment building?
 - A. Is there anyone who would like to share their experiences with being stopped? [**Ligon: in the event there are participants that identify as having encounters within TAP buildings this question will be asked**]
 - i. Please describe encounters you have had or observed between other people and the police in private apartment buildings.

Probes:

- When was the most recent stop?
- After the stop, what happened?
 - Were you frisked/searched?
 - Were you arrested?
 - If arrested, what happened after your arrest?
- What did the officer say or do?

- ii. What do you think the officer could have done differently in this situation?

IMPORTANT FACILITATOR NOTE

{Facilitator discretion as to how much of the above to ask and how far to probe, consistent with the goal of keeping the above no longer than 21% of the focus group discussion}

3. For those of you who have been stopped or have experiences with being arrested or suspected of trespassing (or have known someone), have you (or the person) ever made a complaint regarding why you (they) were stopped and/or arrested or your (their) treatment during this encounter?

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Probe:

- If you (or someone you know who has been stopped) did not make a complaint after being stopped, please explain why you decided not to do so.
- Who did you complain to (CCRB, Precinct, and Supervisor on duty)?
- What happened with the complaint?
- What do you think should have happened?
- What would make you feel that the officer was held accountable?

What types of things could NYPD (or anyone) do to make you feel like they listened to your complaint and took it seriously?

FACILITATOR NOTE: [If participants indicate that they would like to receive the officer's badge number, name, and directions for making a complaint the following question will be asked]

What about a stop receipt (facilitator explain what a stop receipt looks like) or a business card?

4. What changes should the police make to most support a safe housing development/neighborhood, including the building, parking lot and other areas?
5. What role would you like community groups or government agencies to play in supporting a safe neighborhood?
6. How should officers be supervised and evaluated?
 - A. Provide suggestions of ways that supervisors can be informed of things that they need to know in order to tell if their officers are doing a good job?
 - B. What types of things should be considered when officers are being evaluated?

Probe:

- Provide examples of ways that supervisors can evaluate how an officer interacts with community members.

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SAMPLING PRECINCT SELECTION MATRIX: *FLOYD* CASE

Precinct	SQF 2111	SQF 2112	SQF 2113	SQF 2114	SAL 2114	SAL 2115	ARR 2111	ARR 2112	ARR 2113	ARR 2114
23	X	X								
25****										
33**										
34**							X			
40	X	X	X							
43*	X				X	X				
44	X	X		X		X				
60			X							
67			X	X	X	X	X	X		
70		X					X	X	X	
73	X	X	X		X	X	X	X	X	
75	X	X	X		X	X	X	X		
79****		X	X				X	X		
83		X								
90	X					X	X			
100**										X
101**			X	X			X	X	X	X
102				X						
103****	X	X	X							
105				X						
106				X			X			
107				X						
115****	X						X			
121	X	X	X			X				X
121										X

*A top 10 precinct for at least one year and participating in SAL 2114, 2115

**Participating in the New Neighborhood Policing Model Pilot Program 2115

***Specialized population (large percentage of South Asians and other impacted people)

****Special circumstances

High Priority	
Mid Priority	
Priority	

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PRECINCT – POLICE SERVICE AREA SELECTION MATRIX: DAVIS CASE

PSA	hou11	hou12	hou13	hou14	DeBlasio 15	sal14	sal15	arr11	arr12	arr13	arr14	sqfl1	Sqfl2	sqfl3	sqfl4
1						X									
60 th	X	X	X	X										X	
61 st				X				X	X	X					
63 rd				X				X	X						
69 th	X	X		X		X		X	X	X					
76 th	X	X	X	X	X			X		X					
78 th	X		X					X	X	X	X				
2						X	X								
73 rd	X	X	X	X	X	X	X	X	X	X		X	X	X	
75 th	X	X	X	X	X	X	X	X	X	X		X	X	X	
77 th	X			X		X		X	X	X					
3						X	X								
79 th	X	X	X	X	X			X	X				X	X	X
81 st	X	X	X	X				X	X						
84 th		X							X						
88 th	X	X	X	X	X					X					
90 th	X	X	X	X				X	X			X			
4															
5 th				X											
7 th	X	X	X	X											
9 th	X	X	X	X											
10 th	X	X	X	X											
5															
23 rd	X	X	X	X				X	X			X	X		
25 th	X	X	X	X	X										
28 th	X	X	X	X	X				X						
6															
24 th	X	X	X	X											X
26 th	X	X	X	X										X	X
32 nd	X	X	X	X	X									X	X
7						X	X								
40 th	X	X	X	X	X							X	X	X	
42 nd	X	X	X	X		X									
8						X	X								
43 rd	X	X	X	X	X	X	X					X			
45 th	X														
9															
103				X								X	X	X	
107	X	X	X												X
113						X	X	X		X	X				
114	X	X	X	X	X										
44 th				X			X					X	X		X
100 th	X	X	X								X				

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100 th	X	X	X								X				
101 st	X	X	X	X				X	X	X	X			X	X
120 th	X			X	X		X				X	X	X	X	
122 nd															

High Priority – Phase I	
Mid Priority – Phase II	

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PRECINCT SELECTION MATRIX BY ZIP CODE: *FLOYD* CASE

Precinct	
	NEIGHBORHOODS
23	EAST HARLEM (10029, 10035)
25	EAST HARLEM (10029, 10035)
33**	WASHINGTON HEIGHTS (10031, 10032)
34**	HUDSON (WASHINGTON) HEIGHTS & INWOOD (10033, 10034, 10040)
40	MELROSE, MOTT HAVEN, PORT MORRIS (10451, 10454, 10455, 10456)
43*	PARKCHESTER (10462)
44	HIGHBRIDGE & CONCOURSE (10451, 10452, 10456)
60	CONEY ISLAND, BRIGHTON BEACH, WEST BRIGHTON BEACH, BENSONHURST, GRAVESEND (11214, 11223, 11224, 11229, 11235)
67	EAST FLATBUSH (11213, 11210, 11212, 11213, 11226, 11234, 11236)
70	PROSPECT PARK SOUTH & FLATBUSH/DITMAS PARK (11218, 11226, 11230)
73	OCEAN HILL - BROWNSVILLE (11212)
75	EAST NEW YORK (11217, 11218, 11239)
79	BEDFORD STUYVESANT (11215, 11216, 11216, 11221, 11233)
83	BUSHWICK (11237)
90	WILLIAMSBURG (11216, 11211, 11249)
100**	ARVERNE, BELLE HARBOUR, BREEZY POINT, BROAD CHANNEL, NEPONSIT, ROCKAWAY PARK, ROCKAWAY BEACH (11692, 11693, 11694, 11695, 11697)
101**	FAR ROCKAWAY (11690, 11691)
102	KEW GARDENS, RICHMOND HILL EAST, RICHMOND HILL, WOODHAVEN, NORTHERN PART OF OZONE PARK (11415, 11418, 11421)
103***	JAMAICA, HOLLIS PARK GARDENS, HOLLIS, LAKEWOOD (11411, 11423, 11428, 11432, 11433, 11434, 11435, 11436)
105	QUEENS VILLAGE, ROSEDALE, SPRINGFIELD GARDENS, CAMBRIA HEIGHTS, LAURELTON, BELLEROSE, GLEN OAKS, NEW HYDE PARK, FLORAL PARK (11001, 11002, 11004, 11005, 11040, 11411, 11413, 11422, 11426, 11429)
106	HOWARD BEACH & SOUTH OZONE PARK (11414, 11421)
107	BRIARWOOD, JAMAICA HILLS, FRESH MEADOWS, POMONOK, JAMAICA ESTATES

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	(11432, 11435, 11365)
115***	JACKSON HEIGHTS, NORTH CORONA, EAST ELMHURST (11372, 11368, 11369)
121	WEST NEW BRIGHTON & ST. GEORGE (10301, 10310)
121	MARINER'S HARBOR, WILLOWBROOK, WESTERLEIGH, PORT RICHMOND, ELM PARK, PORT IVORY, CHELSEA, BLOOMFIELD (10302, 10303, 10310, 10314)

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PSA/PRECINCT SELECTION MATRIX BY ZIP CODE: DAVIS CASE

PSA/ Precinct	Neighborhoods
1	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
60 th	CONEY ISLAND, BRIGHTON BEACH, WEST BRIGHTON BEACH, BENSONHURST, GRAVESEND (11214, 11223, 11224, 11229, 11235)
61 st	SHEEPSHEAD BAY, GRAVESEND, KINGS HIGHWAY, HOMECREST, MADISON, MANHATTAN BEACH, GERRITSEN BEACH (11235, 11223, 11229, 11218, 11223, 11229)
63 rd	MARINE PARK (11211, 11222, 11234)
69 th	EAST FLATBUSH, CANARSIE (11234, 11236)
76 th	RED HOOK (12504, 12507, 12571)
78 th	PARK SLOPE, PROSPECT PARK (11215, 11217)
2	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
73 rd	OCEAN HILL - BROWNSVILLE (11212)
75 th	EAST NEW YORK (11217, 11218, 11239)
77 th	CROWN HEIGHTS, PROSPECT HEIGHTS (11226, 11238)
3	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
79 th	BEDFORD STUYVESANT (11216, 11216, 11221, 11233)
81 st	BEDFORD STUYVESTANT (11216, 11216, 11221, 11233)
84 th	BROOKLYN HEIGHTS, BOERUM HILL, VINEGAR HILL, FARRAGUT RESIDENCES (11211, 11217)
88 th	CLINTON HILL & FORT GREENE (11215, 11238, 11217)
90 th	WILLIAMSBURG (11216, 11211, 11249)
4	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
5 th	LOWER EAST SIDE - CHINA TOWN (10002)
7 th	LOWER EAST SIDE (10002, 10003, 10009, 10038)
9 th	EAST VILLAGE (10012, 10013, 10014)
10 th	CHELSEA & CLINTON SOUTH (10001, 10011, 10018, 10019, 10021, 10036)
5	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
23 rd	EAST HARLEM (10029, 10035)
25 th	EAST HARLEM (10029, 10035)
28 th	HARLEM

APPENDIX E

	(10026, 10027, 10030, 10037, 10039)
6	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
24th	UPPER WEST SIDE (10023, 10024, 10025)
26th	HARLEM (10026, 10027, 10030, 10037, 10039)
32nd	HARLEM (10026, 10027, 10030, 10037, 10039)
7	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
40th	MELROSE, MOTT HAVEN, PORT MORRIS (10451, 10454, 10455, 10456)
42nd	MORRISANIA (10456, 10457, 10459)
8	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
43rd	PARKCHESTER (10462)
45th	WESTCHESTER SQUARE, THROGGS NECK, MIDDLETOWN –PELHAM BAY (10461, 10462, 10465, 10469, 10473, 10475)
9	PATROLS DEVELOPMENTS WITHIN THESE PRECINCTS
103rd	JAMAICA, HOLLIS PARK GARDENS, HOLLIS, LAKEWOOD (11411, 11423, 11428, 11432, 11433, 11434, 11435, 11436)
107th	BRIARWOOD, JAMAICA HILLS, FRESH MEADOWS, POMONOK, JAMAICA ESTATES (11432, 11435, 11365)
113th	ST. ALBANS, HOLLIS, SPRINGFIELD GARDENS, SOUTH OZONE PARK, SOUTH JAMAICA, ADDISLEIGH PARK, LOCUST MANOR (11412, 11423, 11413, 11421, 11405, 11425, 11424, 11431, 11430, 11432, 11434, 11433, 11436, 11439, 11499, 11435, 11451)
114th	ASTORIA, LONG ISLAND CITY, WOODSIDE, JACKSON HEIGHTS (11102, 11103, 11105, 11106, 11101, 11109, 11121, 11377, 11372)
ADDITIONAL SUGGESTED PRECINCTS	
44th	HIGHBRIDGE & CONCOURSE (10451, 10452, 10456)
100th	ARVERNE, BELLE HARBOUR, BREEZY POINT, BROAD CHANNEL, NEPONSIT, ROCKAWAY PARK, ROCKAWAY BEACH
101st	FAR ROCKAWAY
121th	WEST NEW BRIGHTON & ST. GEORGE (10301, 10310)
122nd	STATEN ISLAND (South Shore) (10305, 10306, 10308, 10312, 10314, 10301, 10304)

APPENDIX E

FLOYD SCREENING CRITERIA SHEET

PHASE 1 - Please use the following criteria to develop a sample list of focus group participants from your organization.

I: AGE: 14 -25 years of age.

II: ZIP CODES:

High Priority

Precinct	NEIGHBORHOODS (ZIPCODES)
40	MELROSE, MOTT HAVEN, PORT MORRIS (10451, 10454, 10455, 10456)
44	HIGHBRIDE & CONCOURSE (10451, 10452, 10456)
67	EAST FLATBUSH (11213, 11210, 11212, 11213, 11226, 11234, 11236)
73	OCEAN HILL - BROWNSVILLE (11212)
75	EAST NEW YORK (11217, 11218, 11239)
101	FAR ROCKAWAY (11690, 11691)
103	JAMAICA, HOLLIS PARK GARDENS, HOLLIS, LAKEWOOD (11411, 11423, 11428, 11432, 11433, 11434, 11435, 11436)
115	JACKSON HEIGHTS, NORTH CORONA, EAST ELMHURST (11372, 11368, 11369)
121	WEST NEW BRIGHTON & ST. GEORGE (10301, 10310)

Mid Priority

Precinct	NEIGHBORHOODS ZIPCODES
23	EAST HARLEM (10029, 10035)
43	PARKCHESTER (10462)
79	BEDFORD STUYVESANT (11215, 11216, 11216, 11221, 11233)
90	WILLIAMSBURG (11216, 11211, 11249)

Priority

Precinct	NEIGHBORHOODS ZIPCODES
25	EAST HARLEM (10029, 10035)
33	WASHINGTON HEIGHTS

APPENDIX E

	(10031, 10032)
34	HUDSON HEIGHTS, WASHINGTON HEIGHTS & INWOOD (10033, 10034, 10040)
60	CONEY ISLAND, BRIGHTON BEACH, WEST BRIGHTON BEACH, BENSONHURST, GRAVESEND (11214, 11223, 11224, 11229, 11235)
70	PROSPECT PARK SOUTH & FLATBUSH/DITMAS PARK (11218, 11226, 11230)
83	BUSHWICK (11237)
100	ARVERNE, BELLE HARBOUR, BREEZY POINT, BROAD CHANNEL, NEPONSIT, ROCKAWAY PARK, ROCKAWAY BEACH (11692, 11693, 11694, 11695, 11697)
102	KEW GARDENS, RICHMOND HILL EAST, RICHMOND HILL, WOODHAVEN, NORTHERN PART OF OZONE PARK (11415, 11418, 11421)
105	QUEENS VILLAGE, ROSEDALE, SPRINGFIELD GARDENS, CAMBRIA HEIGHTS, LAURELTON, BELLEROSE, GLEN OAKS, NEW HYDE PARK, FLORAL PARK (11001, 11002, 11004, 11005, 11040, 11411, 11413, 11422, 11426, 11429)
106	HOWARD BEACH & SOUTH OZONE PARK (11414, 11421)
107	BRIARWOOD, JAMAICA HILLS, FRESH MEADOWS, POMONOK, JAMAICA ESTATES (11432, 11435, 11365)
121	MARINER'S HARBOR, WILLOWBROOK, WESTERLEIGH, PORT RICHMOND, ELM PARK, PORT IVORY, CHELSEA, BLOOMFIELD (10302, 10303, 10310, 10314)

III: STOP, QUESTION, AND FRISK: Have these individuals or members of their family had direct or indirect experiences with being stopped, questioned, and frisked?

APPENDIX E

DAVIS SCREENING CRITERIA SHEET

Please use the following criteria to develop a sample list of focus group participants from your organization.

I: AGE: 14 and older

II: CRITERIA: Participants should either live in the noted developments, have visited, or know someone who lives there

III: DEVELOPMENTS:

DEVELOPMENT	NEIGHBORHOOD	PSA	PRECINCT
Baruch	Lower East Side (MANHATTAN)	4	7
Carey Gardens Houses	Coney Island (BROOKLYN)	1	60
Castle Hill	Sound view (BRONX)	8	43
Hammel Houses	Broad Channel (QUEENS)		100
Ingersoll House	Fort Greene (BROOKLYN)	3	88
Linden Houses	East New York (BROOKLYN)	2	75
Mitchel Houses	Mott Haven (BRONX)	7	40
Mott Haven Houses	Mott Haven (BRONX)	7	40
Ocean Bay Houses	Rockaway Beach (QUEENS)		100
Patterson Houses	Mott Haven (BRONX)	7	40
Pink Houses	East New York (BROOKLYN)	2	75
Queensbridge Houses	Long Island City (QUEENS)	9	114
Redfern Houses	Far Rockaway (QUEENS)		101
Red Hook Houses	Red Hook (BROOKLYN)	1	76
Smith Houses	Lower East Side (MANHATTAN)	4	5
Stapleton Houses	Staten Island (SI)		121
Tilden Houses	Brownsville (BROOKLYN)	2	73
Tompkins House	Bedford Stuyvesant (BROOKLYN)	3	79
Van Dyke Houses	Brownsville (BROOKLYN)	2	73
Wagner Houses	East Harlem (MANHATTAN)	5	25
Washington Houses	East Harlem (MANHATTAN)	5	23
Baisley Park Houses	South Jamaica (Queens)	9	103

IV: STOP, QUESTION, AND FRISK: Have these individuals or members of their family or guests had direct or indirect experiences with being

- stopped,
- or questioned,
- or frisked,
- or searched,
- or had an encounter where they were suspected of trespassing,
- or arrested for trespassing?

APPENDIX E

CONSENT TO PARTICIPATE

CONSENT TO PARTICIPATE IN NYC STOP & FRISK JOINT REMEDIAL PROCESS FOCUS GROUP DISCUSSION

You have been asked to participate in a focus group that is being conducted as part of the NYC Stop & Frisk Joint Remedial Process (JRP). The JRP is a civic engagement process aimed, ultimately, at developing recommendations for sustainable reforms to the stop and frisk and housing arrest practices of the New York City Police Department. The purpose of the focus group discussion is to gather input and recommendations for sustainable reforms.

You can choose whether or not to participate in the focus group discussion and stop at any time. Although the focus group will be tape recorded, your responses will remain anonymous and no names will be mentioned in the report.

There are no right or wrong answers to the focus group questions. We want to hear many different viewpoints and would like to hear from everyone. We hope you can be honest even when your responses may not be in agreement with the rest of the group. In respect for each other, we ask that only one individual speak at a time in the group and that responses made by all participants be kept confidential.

I understand this information and agree to participate fully under the conditions stated above:

Signed: _____ **Date:** _____

For Parents and/or Guardians of Minors

I hereby certify that I am the parent and/or guardian of _____ who is a minor, and hereby consent that any content provided by him/her through interviews or otherwise, may be used by JRP for any purposes set forth in the release above, signed by the minor, with the same force and effect as if signed by me.

Signed: _____

Print Parent/Guardian Name: _____

Date: _____

APPENDIX E

FLOYD DEMOGRAPHICS QUESTIONNAIRE

Date:		Time:		Organization/Agency:	
<p>What is your race?</p> <ul style="list-style-type: none"><input type="radio"/> White<input type="radio"/> Black<input type="radio"/> Hispanic (Black/Non-White)<input type="radio"/> Hispanic (White)<input type="radio"/> Asian (Specify) _____ { South Asian, Southeast Asian, East Asian }<input type="radio"/> Multiracial <p>_____</p> <ul style="list-style-type: none"><input type="radio"/> Other <p>_____</p>			<p>Your age: _____</p>		
<p>Your gender:</p> <ul style="list-style-type: none"><input type="radio"/> Male<input type="radio"/> Female<input type="radio"/> Transgender<input type="radio"/> Gender non-conforming<input type="radio"/> Other _____			<p>Place of residence:</p> <ul style="list-style-type: none"><input type="radio"/> NYCHA Development Name _____<input type="radio"/> Renter<input type="radio"/> Owner<input type="radio"/> Other including homeless <p>Zip Code: _____</p>		
<p>Identify as LGBTQ Person:</p> <ul style="list-style-type: none"><input type="radio"/> Yes<input type="radio"/> No					

APPENDIX E

DAVIS DEMOGRAPHICS QUESTIONNAIRE

Date:		Time:		Organization/Agency:	
<p>What is your race?</p> <ul style="list-style-type: none"><input type="radio"/> White<input type="radio"/> Black<input type="radio"/> Hispanic (Black/Non-White)<input type="radio"/> Hispanic (White)<input type="radio"/> Asian (Specify) _____ { South Asian, Southeast Asian, East Asian }<input type="radio"/> Multiracial <p>_____</p> <ul style="list-style-type: none"><input type="radio"/> Other <p>_____</p>			<p>Your age:</p> <p>_____</p>		
<p>Your gender:</p> <ul style="list-style-type: none"><input type="radio"/> Male<input type="radio"/> Female<input type="radio"/> Transgender<input type="radio"/> Gender non-conforming<input type="radio"/> Other <p>_____</p>			<p>Place of residence:</p> <ul style="list-style-type: none"><input type="radio"/> NYCHA Development Name <p>_____</p>		
<p>Identify as LGBTQ Person:</p> <ul style="list-style-type: none"><input type="radio"/> Yes<input type="radio"/> No			<p>Zip Code: _____</p>		

APPENDIX E

FOCUS GROUP INTRODUCTION SCRIPT

Welcome

Thanks for agreeing to be a part of the focus group. We truly appreciate your willingness to participate.

Introductions

Purpose of focus groups

In 2013, it was determined that the NYPD had violated the constitutional rights of many New Yorkers with their Stop and Frisk practices. As a result, the Judge required that the NYPD implement 5 immediate reforms. These reforms included

- Changes to policies and training related to stop and frisk and racial profiling
- Changes to supervision, monitoring and discipline
- Changes to stop and frisk documentation
- And, Implementation of a pilot body worn camera program

The Judge ordered that there is a Joint Remedial Process that will gather information about supplemental reforms. This information is required to come from those communities that were most impacted by these unconstitutional practices. However, the Judge did not order an end to Stop and Frisk practices, but instead an end unconstitutional Stop & Frisk practices.

The reasons we are having this focus group is two-fold 1) to learn more about your experiences with Stop and Frisk and MOST IMPORTANT 2) to gather ideas for supplemental reforms. So, we need your input and we want you to share your honest and open thoughts with us.

GROUND RULES

2. WE WANT YOU TO DO THE TALKING.
 - a. WE WOULD LIKE EVERYONE TO PARTICIPATE.
 - b. I MAY CALL ON YOU IF I HAVEN'T HEARD FROM YOU IN A WHILE.
3. THERE ARE NO RIGHT OR WRONG ANSWERS
 - a. EVERY PERSON'S EXPERIENCES AND OPINIONS ARE IMPORTANT.
 - b. SPEAK UP WHETHER YOU AGREE OR DISAGREE.
 - c. WE WANT TO HEAR A WIDE RANGE OF OPINIONS.
4. WHAT IS SAID IN THIS ROOM STAYS HERE
 - a. WE WANT FOLKS TO FEEL COMFORTABLE SHARING WHEN SENSITIVE ISSUES COME UP.
5. THE DISCUSSION WILL BE RECORDED
 - a. WE WANT TO CAPTURE EVERY THING YOU HAVE TO SAY.
 - b. WE WILL NOT IDENTIFY ANYONE BY NAME IN OUR REPORT. YOU WILL REMAIN ANONYMOUS.

APPENDIX E

ICE BREAKER PERSONAL PROSE

"I Am Human"

Assigned Color:

(Four things that describe you):

Friend of (Nickname or assigned color)

who feels (up to 3 items)

who fears (up to 3 items)

who dreams of (up to 3 items)

Resident of (Borough)

Nickname:

APPENDIX F

COMMUNITY FORUM PHASE RESOURCES

**New York Stop and Frisk
Joint Remedial Process
Community Forum Parameters**

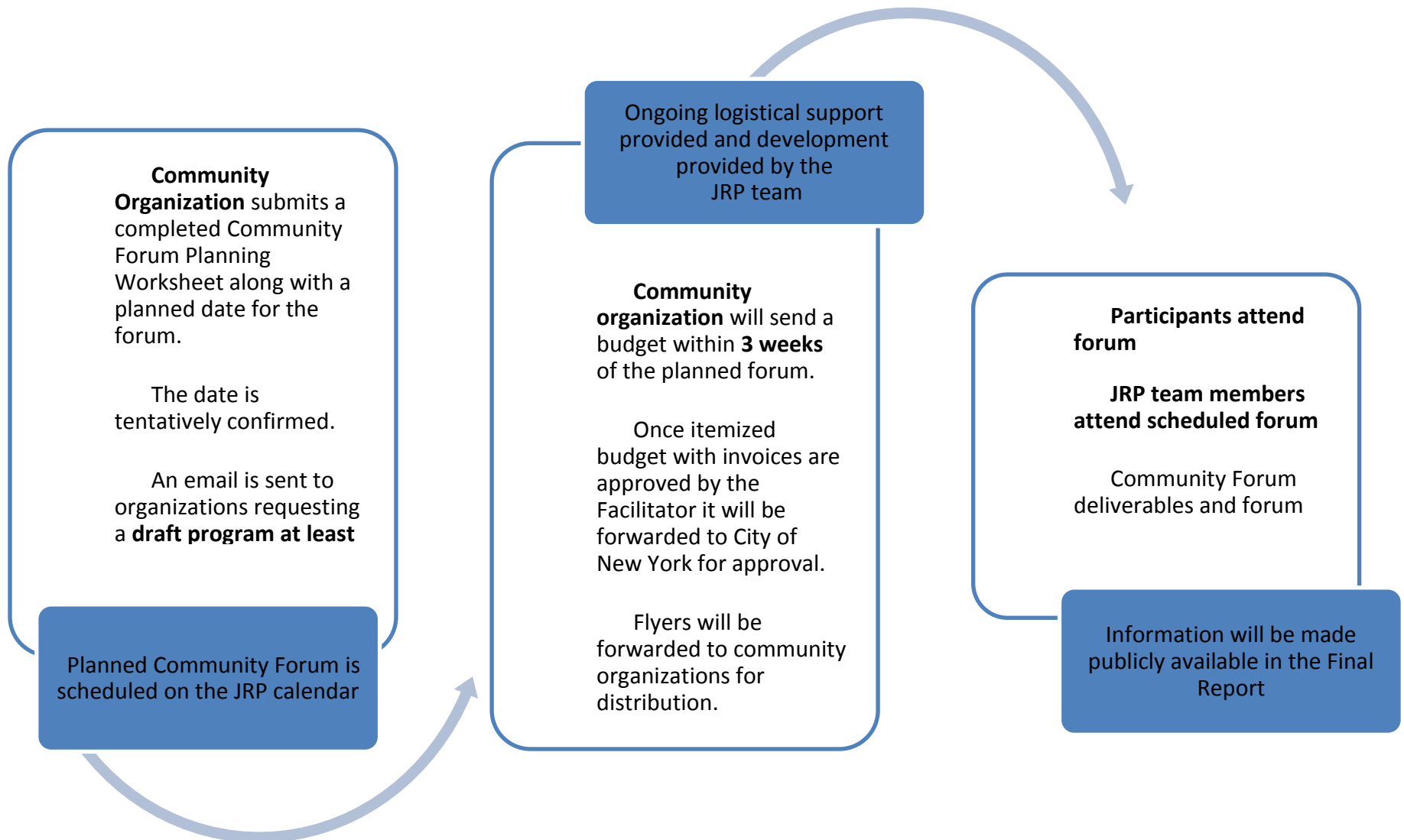
Thank you for your interest in organizing a Community Forum in collaboration with the Joint Remedial Process (JRP) team. We have outlined some general parameters for the development of these forums. It is important to note that these parameters were drawn from discussions held during the Community Forum Planning Committee meetings of June 7, 2016 and June 27, 2016.

1. As a federally mandated facilitation process, it is the intention of the JRP team to maintain an express level of political neutrality in these forums. The community forums are apolitical events aimed at soliciting community input on additional remedial measures to the NYPD beyond those currently being implemented.
2. As we address the concerns of the communities most directly impacted by unconstitutional stop and frisks and trespass enforcement, we ask that consideration be taken to the development of forums in priority geographic areas. It is important to note that these areas were purposively selected - based on data, areas designated as priorities during earlier phases of the JRP, and communities that lacked sufficient participation/responses during our focus group phase. Please note that the Facilitator is open to consideration of other areas upon further discussion and final review with the JRP team.
3. The forums will contain an educational segment that should include a short video presentation and accompanying infographic. This video and infographic will provide a historical overview of the litigation that will include:
 - A framing of the problem and current efforts towards reform
 - A call to action orienting attendees toward imagining creative solutions
4. Each event will include break-out segments. To support the development of a written record of the break-out sessions, the JRP team will provide a template. Any recommendations gathered from the break-out sessions should be concrete reforms or areas of consideration for improving police community relations.
5. Organizers of each Community Forum will also provide a record of each event that should include the following:
 - Location
 - Time & Date
 - Number of attendees
 - Agenda/Program
 - Any additional documents provided during the forum

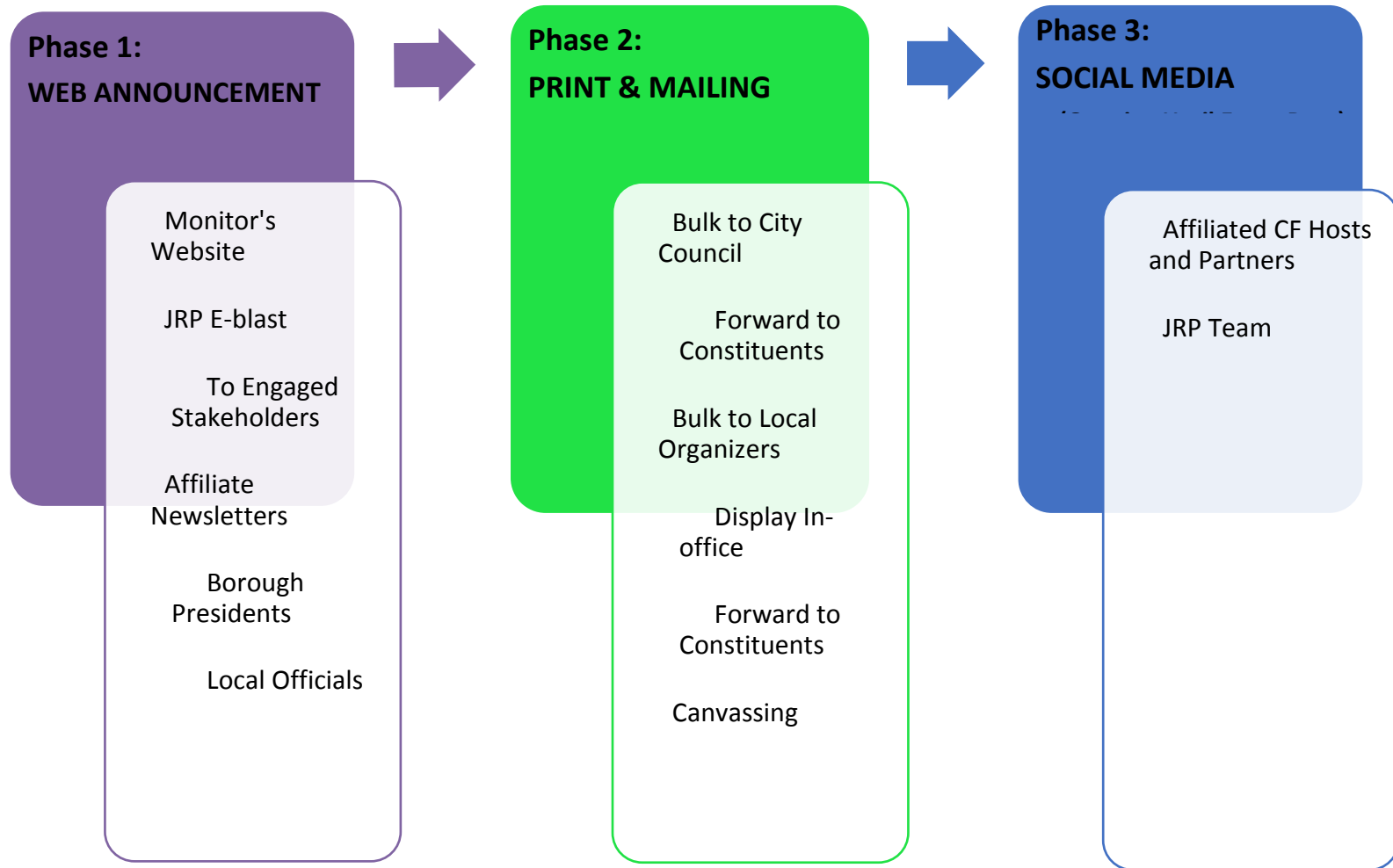
Community Forum Locations

<i>Neighborhood</i>	<i>Borough</i>		<i>Cluster</i>
South East Bronx	Bronx	43,44	
East New York	Brooklyn	73,75	
Brownsville	Brooklyn		NYCHA – PSA 2
Bedford Stuyvesant	Brooklyn	79	
Far Rockaway	Queens	101	
South Jamaica	Queens	113	NYCHA – PSA 9
Jackson Heights	Queens	115	
Washington Heights	Manhattan	33,34	
West New Brighton	Staten Island	120	

Joint Remedial Process Community Forum Phase Flow Chart



NYC STOP & FRISK
JOINT REMEDIAL PROCESS
COMMUNITY FORUM OUTREACH PLAN

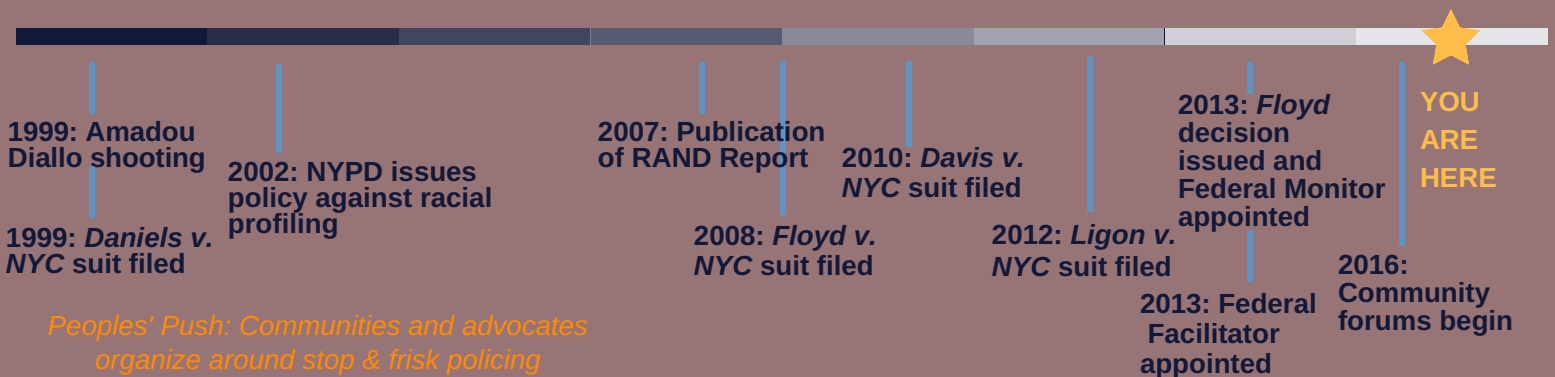


NEW YORK CITY JOINT REMEDIAL PROCESS

on STOP AND FRISK and TRESPASS ENFORCEMENT

The Joint Remedial Process (JRP) is a multi-phase community engagement process that places at the center of its efforts the goal of realizing and identifying additional reforms to the New York City Police Department's policies on stop & frisk and trespass enforcement. This infographic provides a historical overview of the major events leading up to the community forums.

T I M E L I N E



C A S E S

FLOYD | 2008

challenged NYPD's use of racial profiling and unconstitutional stop & frisks

DAVIS | 2010

challenged NYPD's "stop, question & frisk" policies & trespass arrest policies and practices in public housing

LIGON | 2012

challenged NYPD's criminal trespass enforcement ("Operation Clean Halls")

NEW YORK CITY JOINT REMEDIAL PROCESS on STOP AND FRISK and TRESPASS ENFORCEMENT

R E F O R M S

REVISED POLICY

Revisions to policies on stop & frisk, racial profiling, and interior patrols in NYCHA & TAP enforcement

CAMERAS

1-year monitored pilot program for rollout of 1,000 body-worn cameras

SUPERVISION

Supervisors must review the constitutionality of stops

DOCUMENTATION

Documentation of stops is required and now reviewed for legality

EVALUATIONS

New evaluation system with less emphasis on numbers and more on performance

TRAINING

More training on revised policies, implicit bias, and procedural justice

G O O D T O K N O W

85%

FEDERAL COURT FOUND RACIAL PROFILING

Data show that 85% of people stopped were Black and/or Latino



YOU HAVE A CONSTITUTIONAL RIGHT TO [SAFELY] FILM POLICE STOPS

But you may not interfere with police activity or pose a safety risk to yourself or others



STOP-AND-FRISK IS STILL CONSTITUTIONAL

Officers can stop and frisk, but cannot racially profile and must have reasonable suspicion

For more information and status updates on the JRP, visit the Monitor's website at www.NYPDMonitor.org and the Center For Constitutional Rights at CCRJustice.org.

Created by the New York City Council's **Black Latino Asian Caucus** in conjunction with the JRP Community Forum Planning Committee, Communities United for Police Reform, and LIFE Camp, Inc.

Joint Remedial Process
Community Forum Planning Worksheet

*Please be as specific as possible

Organization Name: _____

Proposed Date/Time/Location: _____

Question 1: How will you design the opening activity/artistic presentation?

Question 2: What is your vision for the small and large group dialogues?

Question 3: What staffing or facilitation can you provide, and in what capacity?

Question 4: What materials will you need?

*Please submit a separate budget

Question 5: How can we support your organization in getting it done?

JRP Community Forums Project Budget

The JRP Community Forums are intended to be public engagement events organized in conjunction with local

Organization Name: _____

Venue Address: _____

Event Date: _____

Expected # of Attendees: _____

Expenses

Supplies & Equipment

Total	\$0.00
-------	--------

Food Vendors

Total	\$0.00
-------	--------

Rental Expenses

Total	\$0.00
-------	--------

Volunteer Expenses & Stipends

Total	\$0.00
-------	--------

Miscellaneous (Subject to Approval)

Total	\$0.00
-------	--------

Total Expenses

Notes

(please provide additional information on the use and purpose of the aforementioned expenses):

[illegible]

JOINT REMEDIAL PROCESS DRAFT COMMUNITY FORUM PROGRAM

COMMUNITY FORUM KEY OBJECTIVES

- Brainstorming solutions
- Relationship building and community empowerment
- SQF is constitutional, when done correctly

- I. INTRODUCTION OF FACILITATOR BY COMMUNITY IMPACT PERSON – 5 minutes
- II. FACILITATOR’S WELCOME – 5 minutes
 - a. Introduction of “Artistic Presentation” - 15 minutes
 - i. Artistic Presentation
- III. EDUCATIONAL VIDEO – 5 minutes
 - a. Immediate Reforms to Date
 - b. Focus group themes
- IV. GUIDED IMAGERY ACTIVITY – 30 minutes in total
 - a. Warm up activity similar presented by community impact person – 5 minutes
- V. SMALL GROUP DISCUSSION – 25 minutes
- VI. LARGE GROUP DIALOGUE – 60 minutes
- VII. NEXT STEPS AND CLOSING

WHEN IT COMES TO STOP & FRISK
AND TRESPASS ENFORCEMENT

YOUR VOICE MATTERS!

COME SHARE YOUR IDEAS:

- IMPROVE ...
- REFORM ...
- BRAINSTORM CREATIVE SOLUTIONS TO POLICING PRACTICES

WE WANT TO HEAR FROM YOU!

WE CAN
ACCOMPLISH
MORE IF WE
WORK
TOGETHER

FOR MORE INFORMATION VISIT

WWW.NYPDMONITOR.ORG

THE JOINT REMEDIAL PROCESS TEAM
WILL BE HOSTING
COMMUNITY FORUMS IN
NEW YORK CITY

STOP & FRISK

TRESPASS STOPS

FOCUS ON REFORM

DATE

TIME

LOCATION

DATE	<input type="text"/>
TIME	<input type="text"/>
LOCATION	<input type="text"/>

NEW YORK CITY JOINT REMEDIAL JOINT REMEDIAL PROCESS

Community Forum Facilitation Fact Sheet

JRP SUMMARY ON COMMUNITY FORUM PHASE

The Facilitation Team has begun planning and developing a series of community forums around New York City. The aim of the community forums is to solicit community input on additional remedial measures to the NYPD beyond those currently being implemented. In accordance with the Remedial Opinion that came out of the Floyd, Davis and Ligon litigations in 2013, the Federal Facilitator is reaching out to directly impacted communities for a series of meetings where community members are welcomed to bring their thoughts and ideas on Stop and Frisk and Trespass enforcement, and to suggest additional reforms to the practices. At the end of this process, the Federal Facilitator will publish a Final Report with additional reforms which may be ordered by the Federal Court.

STOP AND FRISK IS A LEGAL PRACTICE

There is presently a widely-held, but errant, belief that Stop and Frisk is illegal. This is of course dangerous for both community members and cops, and some clarification may be needed during the meeting. That being said, stops must be done constitutionally. A police officer may stop and question a person if he has a *reasonable suspicion* that the person has committed, is committing or is about to commit a crime. If the officer reasonably suspects that the person he has stopped is armed and dangerous, he may conduct a frisk of the person.

TALKING POINTS

For the purposes of the forum discussion we've provided a pool of potential topics which can be shared with participants to start the discussion (*See Figure 1*). These topics can be expounded upon using solution-oriented questions (*see Solution Tools*), and exploratory probes. As best as possible, these topics should;

- **flow naturally from community members conversation**
- **be open-ended**
- **be neutral and not leading**

<u>Topic Pool</u>	
LGBTQ Issues Youth Issues Reasons for Stops Officer Conduct Fears Associated with Stops Detective Conduct Escalation and De-Escalation Assertion of Rights Policing Tactics Community Trust/Mistrust Warrant Stops/Mining Harassment Trauma Accountability Community Engagement Recruitment Testing Consent Evaluation Complaints Community Responsibility Supervision	<p>Example Questions and Probes (Ex. General)</p> <p>What do you believe is the biggest issue for your community when it comes to Stop and Frisk [Trespass Enforcement]?</p> <ul style="list-style-type: none"> - What can be done differently? - How could it be done? - If you could, what would you do? - Can you provide an example? <p>(Ex. Community Mistrust – as it may arise)</p> <p>How can the NYPD address mistrust in impacted communities around Stop and Frisk [Trespass Enforcement]?</p> <ul style="list-style-type: none"> - What would the department need to do? - What can community do? (optional) - What steps should be taken moving forward? -

Solution Tools:

- Start doing ... *because*
- Stop doing ... *because*
- Continue doing ... *because*

RECORDING RESPONSES

For the purposes of recording group responses, please keep a bullet point list for each question or idea (derived from group discussion – See Example 1). These bullet points can be made into ‘Big Ideas’ to designate additional space for building out a concept. See example below:

Example 1. (1 flip chart sheet)

Example 2.

QUESTION: WHAT SHOULD NYPD START DOING? <ul style="list-style-type: none">• MORE TRAINING• ETC.• ETC.• ETC.• ETC.	BIG IDEA: TRAINING <ul style="list-style-type: none">• OFFICERS SHOULD BE TRAINED BY COMMUNITY MEMBERS.• ETC.• ETC.• ETC.• ETC.
---	---

A sample opener for the conversation might be:

“Based on the information you received in the large group presentation, and with your current understanding of the Joint Remedial Process, what are (or here are) some of the issues most relevant to Stop and Frisk [Trespass Enforcement]? ...” It may be helpful to have some topic areas written out and displayed around the room or to collaborate with Community members in doing so.

**New York City Stop & Frisk
Joint Remedial Process
Community Forum Solution Tools**

What should the New York City Police Department **START** doing...? Why?

What should the New York City Police Department **STOP** doing...? Why?

What should the Police Department **CONTINUE** doing...? Why?

APPENDIX G

POLICE AND COMMUNITY FEEDBACK

APPENDIX G

ORGANIZATIONS INTERESTED IN FURTHER COLLABORATION WITH THE NEW YORK CITY POLICE DEPARTMENT

The following organizations have expressed an interest in collaborating with the New York City Police Department to further reform efforts through development and participation in community council meetings, public safety partnerships, community programming, officer training and evaluation, and crisis intervention efforts.

1. Advocates for Children of New York (AFC)
2. CB12M's Youth and Education Committee
3. Center for NuLeadership on Urban Solutions
4. D6 Community Education Council
5. East Flatbush Village, Inc.
6. El Puente
7. FUREE (Families United for Racial and Economic Equality)
8. Lead by Example/Reverse the Trend, Inc.
9. New York City Anti-Violence Project
10. Rock Safe Streets
11. SCO Family of Services
12. The Central Family Life Center
13. Theatre of the Oppressed NYC
14. True 2 Life
15. Life Camp, Inc.
16. Man Up, Inc.!
17. Osborne Association
18. Fortune Society
19. Make the Road NY

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JOINT REMEDIAL PROCESS RECOMMENDATIONS

Collated Reforms from JRP Phases - Draft

Trauma and Restorative Justice

Throughout the Joint Remedial Process, we met with many individuals who had been impacted both directly, and indirectly, by NYPD'S controversial enforcement policies. Whether the individuals themselves had personally experienced a stop encounter, what was evident was a general sense of trauma and mistrust of the department. While the efforts at reform on the part of the department are noteworthy, it is necessary to acknowledge the pervasive mistrust of law enforcement which contributes to a diminished sense of police legitimacy and public safety. During both the police and community focus groups, the community forums, and the leadership meetings the mistrust and trauma were frequent topics of discussion. As such, community members, in some cases officers, proposed the following reforms to the police department.

Recommendations for Reform

1. NYPD should seek to implement Restorative Justice initiatives around healing, reconciliation, and mediation of complaints and disputes between community members and officers.
 - a. Utilized in lieu of command disciplines for substantiated CCRB complaints regarding minor conduct infractions
 - b. Command officers present at Community Board Meetings where larger community complaints may be addressed with the assistance of a civilian facilitator
2. NYPD should implement trauma-informed law enforcement training to be conducted every 3 years at a minimum.
 - a. Training should minimally cover how to recognize the signs and symptoms of trauma, the context of flight, factors and legacy effects of trauma, and psychological first aid.
 - b. Training programs should include social service representatives, public health researchers, and practitioners.
 - c. Development of a trauma-informed program should require not only knowledge acquisition and behavioral modification, but also cultural and organizational paradigm shifts, and ultimately policy and procedural change at every level of the department.

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3. NYPD should implement new or greater policies on harassment and targeting, particularly in the context of vulnerable populations, like LGBTQ, Immigrant, youth and formerly incarcerated individuals.
 - a. NYPD should place greater emphasis on vulnerable populations to be incorporated into existing training curricula.
4. NYPD should implement mandatory decompression for officers after traumatic events to circumvent implications for police hypervigilance and overly aggressive responses to situations.
5. To address issues of officer trauma and disillusionment, NYPD should implement annual PTSD screenings for early identification and intervention.
 - a. NYPD should implement a trigger system for mental health stressor, aligned with the collateral consequences of officer trauma, as an addendum to the EIS.
 - b. Supervisors should be trained to identify mental health stressors in officers, and to direct them to appropriate services.
 - c. NYPD should offer support groups for officers who exhibit signs or symptoms of post-traumatic stress and/or disassociation.

Procedural Justice

Procedural justice has become an increasingly popular model for designing interventions to the department that are civically minded. In 21st Century Policing Task Force, under the administration of former President Obama, procedural justice was outlined on four central principles: dignity and respect, giving voice to civilians, neutrality and transparency and conveyance of trustworthy motives. Over the course of the Joint Remedial Process, community members cited their encounter with officers as the most critical element of a legitimate stop. During the focus groups and forums alike, community members made several suggestions for ways in which the department can improve their procedures and protocols for stop encounters and trespass enforcement. Many of the communities represented at the forums and other phases highlighted a need for community-specific protocols to policing. Generally, they felt the department should have a greater understanding of these populations and design policies and practices that do a better job of addressing the unique concerns of each community.

Recommendations for Reform

1. Recognizing the need for fundamental human dignity, NYPD should create specific training and/or reinforce current training on respectful conduct. Officers should be trained to approach civilians in a consistently polite and respectful manner.

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- a. Including how to articulate demands in a firm and respectful tone without coercion, and emphasizing the officer's civic duty to engage civilians with courtesy, professionalism, and respect.
2. Officers should clearly identify themselves at all levels of encounters.
 - a. Greet civilian with name and badge number
 - b. Offer civilian a business card
 - c. Name, badge number, and precinct information should be provided at all levels
3. Officers should provide a stop receipt, or equivalent record after every stop¹.
4. NYPD should implement policy measures and protocols ensuring that frisk procedures for women and transgender persons be done appropriately and with discretion².
5. In stops conducted on the grounds that a subject “fit the description,” officers should allow civilians to hear the radio-run to legitimize the reason for the stop.
6. NYPD should implement regulatory policies on the cultivation of confidential informants.
 - a. Officers should be prohibited from targeting or harassment of young people for the purposes of cultivating informants
 - b. Officers should be prohibited from use of electronic devices for profiling of informants without their express permission
7. With respect to level 2 consent searches, NYPD should implement requirements for some form of record or report.
8. Regarding consent searches, officers should be trained to answer as completely as possible, questions from individuals they engage at any level
9. NYPD should create and a precinct drop box for civilian complaints, suggestions, and reports. Community members have suggested these boxes be placed across the city near libraries, and other public buildings, to increase access.
10. NYPD should develop an app or website for gathering police encounter data, to get a stronger sense of the number and type of stops taking place.
 - a. This could look like a web-based system for anonymous reporting of stop/encounters, provide location and name/badge number of the officer
 - b. This app should be managed in partnership with community organizations to track trends to which the Commanding Officer is held accountable

¹ Community members overwhelmingly suggested that the officers provide community members with some form of a record of their encounter. NYPD has launched a new stop receipt, however many community members had not, and still have not, seen it. It is unclear whether it is because of the perceived reduction in the number of stops, or if officers are just not handing them out. There is a need for more consistent implementation of the stop receipt.

² Young women expressed a general concern about being frisked by male officers. Transgender women expressed a concern that frisking is conducted in a way that does not challenge their gender identity or trigger a sense of being sexually harassed or assaulted.

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11. NYPD should implement procedural justice protocols in housing patrols, including the following ideas for implementation:
 - a. Officers should be escorted by a resident during vertical patrols.
 - b. Officers should be required to substantiate suspicion of trespass by confirming with the visited resident.
 - c. NYPD should strictly prohibit officers from driving on sidewalks in housing developments, particularly near common spaces (i.e., basketball courts, playgrounds, etc.)
 - d. NYPD should implement consistent patrol officers and greater partnership efforts with tenant associations and residences.
 - e. The development tenant association should, in partnership with the commanding officer, have the discretion to bar offending officers³ from working on the development's premises.
12. NYPD should implement procedural justice protocols specific to vulnerable populations like LGBTQ, immigrant, youth, at-risk and those with special needs.
 - a. There should be a strict policy on misgendering, condescension and coercive language used toward transgender individuals.
 - b. NYPD should strive for language access, when possible, for interactions with non-English speakers.
 - c. Protocols for engaging youth should include a clear articulation of events and parent notification.

Police-Community Relations

Our research in the form of focus groups, qualitative data analysis, community forums and leadership meetings has shown that, although the amount of stops has decreased significantly from the height of 684,000 recorded stops in 2011, the residual effects of SQF policy in directly-affected communities are still palpable some six years later. These effects include great mistrust and fear of the NYPD by many law-abiding citizens; a reluctance by many community members to seek the assistance of the NYPD even in instances where insufficient police intervention could be life-threatening. While it is the case that the widespread use and abuse of the legitimate policing tool of stop, question, and frisk and trespass enforcement has contributed to the deep ambivalence towards the NYPD that exists in some communities throughout the City, it is also the case that the overwhelming majority of the citizens resident in these communities who in one form or another participated in the JRP wanted better communication with the Department and its officers and more importantly wanted better policing, greater understanding, and engagement

³ Offending officers being those who are charged with repeatedly harassing and/or abusing residents.

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by the NYPD with their communities. While acknowledging the department's efforts at reforming the policy and culture of the department, many groups highlighted a need for the department to conduct broader outreach efforts, including via social media, newspapers, television and other media outlets. Doing so, they've suggested, would give the community a greater sense of awareness of not only the changes to the department but opportunities for civilians to get involved at the local level. Several special interest groups provided suggestions for the department to partner with organizations who have the relevant expertise in working with these groups to develop protocols and procedures to assist the department in addressing these areas with best practices. Below is a list of the collected suggestions:

Recommendations for Reform

1. NYPD should implement specific protocols for community engagement, broadly, and more specifically the following:
 - a. NYPD should implement a pilot program for COs to meet with affected community members to inform, review and problem-solve in collaboration with community stakeholders.
 - i. NYPD should reinvigorate its current community council meetings to be more inclusive of a broader audience of community members.
 - ii. Meetings should be co-facilitated with social service organizations.
 - iii. NYPD meetings should engage youth in “safe spaces” or utilize a youth delegate.
 - b. NYPD precincts should implement partnership and collaboration campaigns with CBOs and other Community Stakeholders.
 - i. These groups should be utilized as a resource in the development and evaluation of training materials.
 - ii. These groups should also be utilized as a public safety task force
 - c. Cadet and New Officer should be required to participate in service-learning activities, volunteering with community organizations that serve those in need.
 - i. Presentations with local leaders
 - d. NYPD should develop an initiative to foster precinct-level relationships with the local community.
 - e. NYPD should engage in responsive policing practices that put the needs of their local communities at the forefront of impact strategy.
 - f. NYPD should implement consistent patrols, sector cops, and NCOs, particularly in public housing
2. NYPD should take steps to expand the department’s community investment

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- a. NYPD should reinvigorate Police Athletic League programs, and additional mentoring programs, particularly in those communities most directly impacted by street encounters, as well as in public housing.
3. NYPD should implement a campaign for community education, highlighting the rights and responsibilities of New York City civilians
 - a. Programs should be run in schools, community centers, etc., in collaboration with and lead by credible community stakeholders
 - b. Programs should include resident training in public housing
 - c. NYPD should implement a workshop pilot program as soon as possible.
4. NYPD should implement a public relations campaign to inform civilians of the changes to the department. This campaign should include:
 - a. Presentation of current reforms
 - b. Humanization of officers
 - c. Acknowledgment of department missteps
 - d. Expanded outreach to marginalized communities
5. NYPD should implement a Community Policing Policy Model, and or expand the current NCO program.
6. NYPD should implement strategies to assess officer engagement in performance evaluation
 - a. Engagement should be linked to promotional opportunities
 - b. Engagement metrics should include superiors and commanding officers
 - c. Community leaders should have input into the development of engagement metrics.

Training and Evaluation

Throughout the varying phases of the JRP, training, and evaluation were often cited areas for recommended reform. Community members pointed to the need for greater balance between traditional training components and community-centered focus on public safety. Both community members and officers who participated in the Joint Remedial Process stressed a greater need for repetition in training, as well as training on how to better engage community members. Groups generally highlighted the importance of repetition and retraining officers on current policies and practices for constitutional policing. In focus groups with police, line officers and executives, alike, emphasized the need for broader and more frequent quality training for officers and supervisors to ensure they are implementing best practices for

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encounters with community members and other areas of law enforcement. Activists called more time and consistency in implementation of training programs.

While the police academy has made tremendous strides with the inclusion of training on implicit bias and procedural justice, community members still felt the department could benefit from several additional competency areas:

Recommendations for Reform

1. Expand In-Service training, regularly increase frequency, significant time given to firearms training, but need more for community engagement and conduct, enhancements, conducted in collaboration with and run by community-based organizations.
 - a. NYPD should implement minimum in-service training requirements, which a police officer must satisfactorily complete every 3 years. Those requirements should include topics like constitutional policing and proper use of law enforcement authority, cultural competency, procedural justice, history and civil rights, and trauma-informed training.
 - b. NYPD should implement minimum in-service training requirements, which a police officer must satisfactorily complete at least annually. Those requirements should include law updates, implicit bias, de-escalation and use of force training which should include scenario-based training
2. NYPD should implement academy and in-service training on diversity and cultural competency developed in collaboration with and run by community-based organizations.
 - a. As an addendum, and concerning these trainings, NYPD should make a commitment to organizational cultural competency audits, policy development, and improved leadership understanding of cultural competence, to foster an organizational culture responsive to the needs of diverse communities
3. NYPD should implement human rights training programs on specialized populations [including emotionally-disturbed individuals, those with special needs, LGBTQ populations, non-native English speakers, et. al.] run in collaboration with community-based organizations
 - a. NYPD should take measures to ensure it is providing adequate resources and supports for officers to work with specialized groups.
4. NYPD should implement training on customer service and de-escalation developed in collaboration with and run by community-based organizations. Training should place a strong emphasis on tactics, and instructions on how to properly intervene in situations.
 - a. Should be incorporated into in-service training and utilize both lecture-style and scenario-based instruction methods.

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- b. As a supplement, and to assist with training development and identification of officers, NYPD should review use of force trends and literature to identify officers most in need of training for intervention.
5. NYPD should implement historical training, developed in collaboration with community-based organizations and city agencies, on the history and context of policing, major law enforcement litigation, people's movement, as well as current and former policy of the department.
 - a. These training would ideally be developed by a practicing clinician and co-facilitated at the academy.
6. NYPD should implement training on youth development and effective engagement strategies for working with minors
 - a. Providing opportunities to interact with youth positively, and deemphasizing the use of intimidation during encounters.
7. NYPD should reassess and redesign its present field training structure
 - a. Field training should be run by experienced officers, in collaboration with community stakeholders and/or organizations, prior to formal policing assignment.
 - b. Field training should include a service-learning component wherein probationary officers volunteer in communities before they begin patrolling.
 - c. At a minimum, field training should be conducted annually for an officer's first 3 years of service.
8. NYPD should implement training programs for precinct leadership which discuss management best practices for management and implications for officers on the street.
9. NYPD should implement evaluations of training outcomes and effectiveness
10. Community Engagement Metrics for Performance Evaluations
 - a. NYPD should include a performance dimension on officers' communication skills
 - b. NYPD should include a performance dimension on the level of empathy in officers' interactions
 - c. NYPD should utilize social media commendations in officer evaluations. This could include 'Likes' on officer profiles which may factor into evaluation and/or be credited toward an officer's career points.
 - d. NYPD should otherwise acknowledge or reward good officers annually.
11. NYPD should implement precinct-level evaluations by community
 - a. Evaluations should take the form of a precinct survey or "temperature check" of community satisfaction/concerns with their precinct.
 - b. Community leaders should have input into the development of precinct evaluations

Accountability and Oversight

One of the most notable suggestions from the community throughout the JRP was the stressed need for greater responsibility and accountability for precincts and commanders in the NYPD. During the different phases many people cited the desire for a relationship with their local departments, but a lack of trust in a department that "doesn't hold its officers accountable." Many groups highlighted the vague and seemingly arbitrary measures taken in the department presently. In the focus groups and community forums alike, there was a call for a "three-strike" rule of accountability, escalating the level of discipline for officers with repeated violations. Groups also highlighted greater accountability for supervisors in properly assessing disciplinary needs. Advocates and organization leaders highlighted the need for a more strategic organization on the part of the department to assess and design interventions around some prevalent issues in policing, particularly for the sake of accountability, and in resolving its fractured relationship with the public. Groups made several suggestions for changes to the department:

Recommendations for Reform

1. Suggested specifications for Body-Worn Camera Program caveat that NYPD should publish the report findings, as well as a basis for adoption or non-adoption of suggestions
 - a. Video recording at all level of encounters
 - b. Footage should be preserved based on the level of encounter, and/or allegations of misconduct.
 - c. Footage should be used for accountability and not accusations
 - d. Officers involved in a complaint must provide a written affidavit of the encounter in question before they can review footage.
 - e. Civilians should be made aware of, and have the discretion to decide when the camera is on or off.
 - f. For the purposes of litigation, attorneys should have access to footage upon request.
2. NYPD should incorporate tools for accountability by geographic unit. These tools could take several forms and increase awareness for officers and civilians on public safety and community needs in local areas. Such tools could be:
 - a. Annual Survey
 - b. Precinct Grading System
 - c. Accountability for Commanding Officers based on Public Survey

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3. NYPD should implement a Feedback Loop System and Early Warning System for the identification, and intervention, of officer misconduct. The feedback look should include, but not be limited to:
 - a. Reports from criminal courts
 - b. Reporting and assessment of declinations of prosecution
 - c. CCRB substantiated
 - d. Command Discipline
 - e. Civilian Complaints
 - f. Evaluation Process
 - g. Accountability Matrix
 - h. Further, develop EIS
 - i. Development or expansion of data trend analysis by risk assessment or QAD
4. NYPD should implement a civilian Report impact analysis, storing and reviewing trends for strategic development.
 - a. Connect web/app to NYPD database to track and account for unreported stops
 - b. Incorporate precinct boxes throughout the city.
 - c. As it pertains to unreported/underreported stops, there needs to be an accurate picture of police encounters. NYPD should focus on 3 objectives: development of responsive analysis and procedures to evaluate effectiveness of SQF and trespass enforcement policy, training needs, public transparency and accountability with community and officials
 - i. Identify the support needs of officers
 1. Supervisory scaffolding
 2. Follow-up and re-instruction
 - ii. NYPD should tailor reporting to meet the needs of officers (e.g., time to fill out and submit reports)
 - iii. NYPD should incorporate more extensive methods of engaging PBA to gain buy-in from officer groups.
 - iv. NYPD should work more closely nonprofits and oversight entities to conduct analyses of department policy and trends.
 1. NYCLU stop app
 2. CCRB training
 - v. App and audit
 - vi. Department Analytics
5. Randomized Integrity Tests
 - a. NYPD should implement randomized integrity tests to identify issues with stop reporting, focusing on less punitive, and more behavior modification

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6. Progressive Discipline
 - a. NYPD should implement a progressive discipline model with a sliding scale of disciplinary interventions for violations of department policy
 - b. At minimum, individual precincts should implement disciplinary structures that implement progressively harsher penalties for repeated infractions, beginning first with instructional interventions and escalating toward stricter command disciplines.
 - c. The department should also develop a strict matrix for imposing discipline for egregious violations like excessive use of force and un
 - d. Guidelines used in review of substantiated findings
7. NYPD emphasize greater accountabilities for supervisors in monitoring officers conduct and areas for improvement.
 - a. Patrol
 - b. Special units
8. NYPD should collaborate with an independent oversight committee comprised representatives from directly impacted communities and police reform organizations to review and create metrics on NYPD's compliance with constitutional law.
 - a. Resident Oversight Board with NYCHA Tenant Associations should have the power to make recommendations to local precincts on officer fitness
 - b. LGBTQ Oversight Committee should have the power to review and make recommendations to local precincts regarding issues of LGBT complaints of abuse, misgendering, allegations of survival sex work, etc.
 - c. CCRB should conduct training on civilian oversight

Transparency and Transitional Justice

In the focus groups, leadership meetings, and community forums, respectively, community members called for greater transparency in the department with regard to discipline, policy, and limitations of the department. NYPD is an insular institution whose reform efforts often elude even the most proactive officer and the most vigilant civilians. While officers called for greater transparency and clearer messaging from headquarters, civilians called for greater transparency more globally; this includes for accountability, policy, research and legitimacy. Community members highlighted a need for public acknowledgment on the part of the department with regard to its mistakes, and officers highlighted a need to reinforce the transformations taking place within the department.

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Recommendations for Reform

1. Design and publish a publicly accessible database of officers, including their badge number and precinct.
2. Access to Stop Reports, accessible database
3. Complaint Follow-up within the department
 - a. Complaint database
4. Promote the Encounter App, keep a public record of encounters
5. Body-Worn Camera footage accessible upon request
6. Truth and Reconciliation, NYPD should adopt a nuanced view of accountability and responsibility, focused on a balanced approach to restoring police legitimacy
 - a. NYPD Commissioner should issue a public acknowledgment to the community about mistakes and efforts toward reconciliation.

Areas for Policy Consideration

During the Joint Remedial Process, the team received several suggestions that, while outside of the scope of the Remedial reform process, we felt warranted additional consideration from the department, policy makers, legislators, and researchers alike. It is our sincerest belief that with a focused analysis of community needs, these ideas can be pushed forward through fierce advocacy both at the local and state level. We've highlighted many of those suggestions below.

Recommendations for Reform

1. Mayor's Office of the City of New York
 - a. The Mayor's office and the State of New York should re-evaluate their interpretation of state law 50A, which prohibits the department from sharing information which has historically been open to the public.
 - i. Many groups agree the current interpretation of 50A is overbroad, and therefore, poorly governed by the City.
 - b. Alternative Policing Strategy
 - i. The City should reallocate funding to provide additional grant-funding to local organizations for providing programs in restorative justice, crisis intervention, mental health, local democracy, community patrols/task forces, decriminalization, housing, and homelessness prevention
 - ii. In collaboration with city agencies, [HRA, DOB, DOE, DHS, Admin Svs, DOP, ACS, DYCD, DJJ, MOCJ, ADA, Law Dept.] NYPD should implement divergence protocols to social services agencies better equipped to address underlying community issues.

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1. E.g. diversion for domestic incidents to social service agencies that work with battered women or anger management
 - iii. The process should consist of identifying and prioritizing community issues, analyzing and designing intervention procedures, and implementing evaluation of effectiveness.
 - iv. Meetings with law enforcement, social service agencies and community boards on a monthly basis to develop training, and procedures to ensuring more efficient use of city services.
 - v. Collaboratively, all parties are part of the identification, implementation, and resolution process. City agencies, particularly grant-funding, should defer services to community-based organizations with the skills and discipline to provide the necessary resources.
 - vi. Develop a civilian department at the NYPD to process diversions, reviewing social history and identifying needs, utilizing officers to gather additional intelligence and improve regulation.
2. CCRB
 - a. CCRB should collaborate with NYPD to develop a mutually [acceptable] disciplinary system for substantiated complaints.
 - b. CCRB should develop, in collaboration with the NYPD Department Advocate's Office, formal procedures for timely follow-up on civilian complaints filed with the agency.
 - i. At minimum, follow-ups should include the status of the complaint, the outcome, and an explanation of the basis for decisions, if necessary. These updates can be disseminated via email, text or standard mail.
 - c. CCRB should develop a publicly accessible database of complaints about tracking and development of
 - d. CCRB should implement an officer disposition metric in the investigation of complaints of force, abuse of authority, discourtesy or offensive language.
 - e. CCRB staff should be trained in complaint mediation and integrate efforts into interventions for substantiated complaints.
3. NYCHA
 - a. NYCHA should implement police partnership efforts, charging the department to collaborate with the local tenant associations to develop clear and consistent guidelines for the enforcement of house rules, problem-solving and intervention.
 - b. NYCHA should extend community center hours in public housing development to mitigate the need for police encounters with youth.

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- c. NYCHA should review and revise its current practices and policies for increasing public safety
 - i. NYCHA should limit the use of NYPD light towers, work with the Department of Transportation to ensure developments have working streetlights.
 - ii. NYCHA should remove scaffolding on properties where there is no construction
 - iii. NYCHA should ensure that all installed cameras are in working order, and utilize tenant patrols to assist in the review of footage.
 - d. NYCHA should recruit from the community members from developments to conduct building security
 - i. NYCHA should incentivize tenant patrols for youth, offering stipends for monitoring and securing facilities.
 - ii. Community doing vertical patrols, empowerment, responsibility
4. NYPD
- a. There is a great need for organizational cultural change within the Department
 - b. NYPD should review and enlist in the National Initiative for Building Community Trust and Justice
 - i. Resources available for departments committed to bridging gaps and rebuilding legitimacy
 - ii. NYPD should sign up as a pilot site
 - c. NYPD should be decentralized, and individual precinct structures streamlined to assist in the development of responsive models of policing.
 - d. Responsibility for private building owners entering into the affidavit program
 - i. NYPD, in collaboration with the Department of Buildings, should implement screening protocols for the trespass affidavit program. Building registrants should be provided a probationary affidavit to be reviewed after the initial enrollment period.
 - ii. Re-enrollment contingent upon the building owner filing and completing application for inspection and repairs with the Department of Buildings.
 - 1. DOB expedite compliance inspections for TAP
 - iii. Department could utilize Sector or Neighborhood Coordination officers to conduct an initial assessment and report to DOB, to determine security issues which need to address in advance of TAP renewal.
 - e. NYPD should develop a diversity initiative which reflects the demographics of the community.

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- i. Recruitment efforts should include for middle management positions like deputy inspectors, inspectors, assistant chiefs and so on.

APPENDIX H

LINKS TO JRP DATA

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Links to JRP Data

The data used in the JRP is published to Dropbox at the following links. These data include the Focus Group Transcripts for Davis and Floyd, the Personal Prose write-ups, and the Community Forum Data Sheets – both raw and transcribed.

Floyd Focus Groups

https://www.dropbox.com/sh/pc526qv7ni0foy9/AADG_t-ozI3pSYTnTobKsicca?dl=0

Davis Focus Groups

<https://www.dropbox.com/sh/zt6q42f2a1rc80x/AACKtxvA83D5WxI3KAHFJOWea?dl=0>

Focus Group Personal Prose

<https://www.dropbox.com/sh/rqbnm42vhsyty5a/AAATjs04QhMegQpZw9NC7kBIa?dl=0>

Raw Community Forum Data Sheets

https://www.dropbox.com/sh/pzxzgrwz560wxy6/AAD9VQH6pGkS_Qjo3D7_kFsna?dl=0

Transcribed Community Forum Data Sheets

<https://www.dropbox.com/sh/2582n228zbr9njt/AAC9ftakyR-BT1AUWzp4lfY1a?dl=0>