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December 13, 2017

VIA ECF

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

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

Dear Judge Torres,

I am pleased to attach the monitor's seventh report, which reviews the requirements of the court orders in *Floyd v. City of New York*, *Ligon v. City of New York* and *Davis v. City of New York* and assesses the state of progress towards meeting them. The orders in the three cases require reforms to the New York City Police Department related to stop and frisk, trespass enforcement (i.e., stops and arrests for trespass), and bias-free policing. In these areas, the orders require changes in policy, supervision, training, auditing, performance measurement, handling of complaints and discipline, and a one-year pilot program testing the use of body-worn cameras. The report looks back at the last year, notes important achievements and also what is still to be done and some significant challenges that lie ahead.

ARNOLD & PORTER
| KAYE SCHOLER

December 13, 2017

Page 2

Thank you for the court's time and attention.

Respectfully submitted,

/s/ Peter L. Zimroth

Peter L. Zimroth
Monitor

Enclosure

Seventh Report of the Independent Monitor

Peter L. Zimroth

December 13, 2017

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

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TABLE OF CONTENTS

		<u>Page</u>
I.	Introduction.....	1
II.	Policies.....	5
	A. Stop and Frisk Policies.....	5
	B. Stop Report Form.....	7
	C. Racial Profiling Policies	8
	D. Policies Related to the Trespass Affidavit Program	9
	E. Policies Relating to Patrol of NYCHA Buildings.....	10
	F. Trespass Crimes Fact Sheet	11
III.	Supervision	11
IV.	Training.....	14
	A. Training for Recruits.....	14
	B. In-Service Training.....	15
	1. Command Level/Roll Call Training	16
	2. Investigative Encounters and Racial Profiling.....	17
	3. Procedural Justice and Implicit Bias.....	19
	C. Training for Newly Promoted Supervisors	20
	D. Specialized Training	20
	1. Plainclothes Training	20
	2. Housing.....	21
V.	Body-Worn Cameras	22
VI.	Performance Evaluation.....	27

VII.	Auditing	33
A.	QAD Auditing.....	34
1.	Audit Results for Stop Reports	36
2.	Undocumented Stops	38
a.	RAND Audit Results	39
b.	Police-Initiated Enforcement Audits.....	40
3.	Audits of the Trespass Crimes Fact Sheets.....	43
B.	Self-Inspections of TAP Stops in the Bronx.....	43
C.	Early Identification System.....	44
VIII.	Complaints and Discipline.....	45
A.	Investigations of Profiling Allegations	45
B.	NYPD Handling of Substantiated CCRB Complaints.....	47
1.	Discipline and Penalties	49
2.	Reconsideration.....	54
IX.	Joint Remedial Process	60

I. Introduction

Monitor's Seventh Report

I. Introduction

This is the seventh report of the Independent Monitor overseeing implementation of the court orders in the cases *Floyd v. City of New York*, *Ligon v. City of New York* and *Davis v. City of New York*. The orders in the three cases require New York City Police Department (NYPD or Department) reforms related to stop and frisk, trespass enforcement (i.e., stops and arrests for trespass), and bias-free policing. In these areas, the orders require changes in policy, supervision, training, auditing, performance measurement, and handling of complaints and discipline. The orders also call for a one-year pilot program testing the use of body-worn cameras (BWC).

This report comes as the monitorship enters an important new phase, evolving from a primary emphasis on the development of new policies and procedures to their sound implementation.

The stop and frisk policies needing revision have been rewritten and approved by the court. Many of the training courses that the court found wanting have been revamped. A new performance evaluation system has been created. Although, of course, there is still more work to be done to revise additional training courses and to improve policies and procedures, including, for example, in the NYPD's auditing, complaints and discipline systems, there must now be expanded focus on effectively applying changes in policies.

Alterations to written policy are not meaningful unless the changes are implemented and sustained in the field. That requires that officers be appropriately trained and supervised, that the NYPD's systems of rewards and discipline support the

I. Introduction

requirements, and that the Department has in place appropriate and workable auditing and review mechanisms to detect when officers are not following the policies. There must also be effective processes to correct violations and minimize their reoccurrence. It is the monitor's job to assess continuously where things stand in each of these areas. The question at the end of the day will be whether the various remedial measures, working together, provide a sustainable system of constitutional, respectful policing.

More than a year has passed since James P. O'Neill was named New York City's police commissioner. His leadership commitment to the reforms called for in *Floyd*, *Ligon* and *Davis* is evident in his statements to the public and, very significantly, also to members of the service, exemplified by his video introduction to NYPD's new one-day in-service training shared below.

There's been 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 overused 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 this 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's 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 United States Supreme Court recognized 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.

I. Introduction

Implementing the stop and frisk remedies, Commissioner O’Neill emphasizes, is a critical component of strengthening trust in the NYPD and improving its relationship with the diverse communities it serves.

This report covers a number of significant developments over the past year:

1. The NYPD launched the body-worn camera pilot program in April 2017. As of November 15, officers during the third platoon (3:00 pm to midnight shift) in 20 precincts are wearing body cameras—approximately 1,350 in all.

2. The NYPD developed comprehensive in-service training on stop and frisk policies for officers and for supervisors and began testing this training on a pilot basis in June 2017. Materials for supervisor training were submitted to the court for approval, and the court approved them on December 5, 2017. The Department will now complete training its supervisors (sergeants and lieutenants), after which patrol officers will be trained. It will likely take roughly a year and a half for the patrol force of more than 20,000 officers, sergeants and lieutenants to be sent for this full-day training.

3. The NYPD has put in place a new performance evaluation system. The NYPD no longer counts the number of stops as a metric for officer performance and it has changed the way it measures performance from a system that focused on quantity to one that emphasizes quality.

4. The NYPD has begun using an electronic version of the stop report that officers can complete on their phones, tablets or desktop computers.

I. Introduction

5. In July 2017, the court approved a settlement between the *Ligon* plaintiffs and the City of New York governing the Trespass Affidavit Program (TAP) and trespass enforcement at TAP buildings throughout the city.

6. New policies governing interior patrols in buildings enrolled in the Trespass Affidavit Program and in New York City Housing Authority (NYCHA) buildings have been written (P.G. 212-59 and P.G. 212-60) and are now being implemented. The NYPD has produced roll-call videos that explain these new patrol guide procedures, and the vast majority of officers doing interior patrols have watched the videos. A new Trespass Crimes Fact Sheet is now required to record all trespass arrests in NYCHA and TAP buildings.

7. Although this is not easily documented or measured, the monitor perceives some positive changes in organizational culture driven by the police commissioner and others in leadership roles. In our visits to patrol borough commands and precincts, the monitor team has seen a number of commanders and executives implementing new protocols proactively to address stop and frisk issues. The monitor team no longer hears officers say that they feel pressure to make stops without regard for effectiveness or legality.

Nonetheless, much remains to be done. For example, there continues to be an issue of underreporting. Some officers making stops do not file the required stop forms documenting them, in part because of what appears to be an exaggerated fear of discipline and lawsuits. The monitor team has heard from some officers that completing stop reports “is not worth the trouble,” even though there are more serious consequences for not documenting a stop in a report than for making inadvertent mistakes in a stop

II. Policies

A. Stop and Frisk Policies

report. This is an issue for first-line supervisors (sergeants and lieutenants), who have a major role in identifying and documenting improper stops by their officers and correcting and training them. The monitor team has questions about whether this role is being sufficiently embraced. The monitor will be evaluating supervisory performance, looking at whether supervisors are appropriately using tools available to them to improve their officers' performance and whether, as a result, a higher percentage of stops are being done lawfully and being documented.

These and other developments will be discussed at greater length in the body of the report, which, following the format of earlier reports, reviews the requirements of the court orders and assesses the state of progress towards meeting them.

II. Policies

A. Stop and Frisk Policies

Under the court orders, as agreed to by the City and the Department, the NYPD Patrol Guide must state what constitutes a stop, when a stop may be conducted, when a frisk may be conducted and when a search may be conducted. Officers must document their reasons for the stop and for any frisk or search, if conducted, and supervisors must review stops and assess whether the stops, frisks and searches were constitutional.

In August 2015, the court approved the NYPD's new procedures on stop and frisk, which are included in Patrol Guide (P.G.) 212-11, *Investigative Encounters: Requests for Information, Common Law Right of Inquiry and Level 3 Stops*. The revised Patrol Guide meets the requirements of the court orders. The Patrol Guide also addresses encounters between officers and civilians that are less intrusive than a stop or an arrest. These encounters are governed by the New York State Court of Appeals decision in

II. Policies

A. Stop and Frisk Policies

People v. DeBour,¹ which sets out four levels of encounters: a simple Request for Information (Level 1); a Common Law Right of Inquiry (Level 2); a *Terry* stop, when an officer detains a person to investigate (Level 3); and an arrest (Level 4). The investigative encounters procedures, P.G. 212-11, describe the standards that govern each level.

Patrol Guide 212-11 requires documentation of all stops and establishes the responsibilities of supervising officers up the chain of command. The supervisor is required to discuss the circumstances of the stop with the officer who made the stop, and then review the stop and any frisk or search, if conducted. If a stop report is inaccurate or incomplete, the supervisor must direct the officer to make the necessary corrections. If the supervisor determines that the officer did not have reasonable suspicion for the stop, reasonable suspicion for the frisk or an appropriate basis for the search, the supervisor must specify an appropriate follow-up: instruction, additional training or, when warranted, discipline.

The NYPD has a stop and frisk policy in place that meets the requirements of the remedial order. The Department is beginning an 18-month effort to train the 22,000 officers and supervisors on patrol, as discussed below in Section IV.B. The monitor will be observing this training and also evaluating the officers' compliance with Department policies in the field. One significant way that this will be done is through the monitor team's reviews of NYPD stop reports, discussed below in Section VII, Auditing.

¹ 40 N.Y.2d 210 (1976).

II. Policies
B. Stop Report Form

B. Stop Report Form

The court orders require that the NYPD develop and implement a new stop report form to be used by officers every time a person is stopped. In March 2016, the court approved the NYPD's new stop report form and in June 2016, the Department directed that all members of the service use the new stop report form and cease using the prior report form.

The new stop report has two narrative sections: one in which the officer states the reasons for the stop and a second in which the officer states the reasons for the frisk or search, if conducted. Of particular importance, the stop report has a section in which supervisors document the review required by NYPD policy (P.G. 212-11) and any follow-up action. An officer's supervisor must confirm that he or she reviewed the constitutionality of the stop and discussed the facts of the stop with the officer. The supervisor must check boxes indicating whether or not: (1) the supervisor reviewed the encounter with the officer; (2) the report was accurate and complete; (3) the corresponding activity log entry was reviewed; (4) the supervisor was present on the scene; (5) there was a sufficient basis for the stop; and (6) there was a sufficient basis for the frisk or search, if conducted. The supervisor must also note whether any corrective action was taken.

In January 2017, the Department began using an electronic stop report. Officers can now complete a stop report on their phones, on tablets or at computers in the commands. The electronic stop report was added to the Department's records management system: Finest Online Records Management System (FORMS). FORMS

II. Policies

C. Racial Profiling Policies

will not allow officers to submit an electronic stop report unless they have filled out all mandatory data fields. Officers also will be able to describe the stop and any frisk or search in greater detail in the narrative sections, because there is no space limitation for the narratives in the electronic version of the stop report, as there is in the paper version.

The electronic form has an additional advantage. When the new stop report was first being used, many supervisors signed the reports but did not answer the supervisory review questions—for example, whether there was a sufficient basis for the stop, frisk or search. With the electronic stop report, supervisors cannot complete and submit the stop report without answering the supervisory review questions.

The stop report is now in place and officers are using the electronic version in the FORMS records management system. An issue that the monitor has identified in prior reports needs continued attention by the Department: the underreporting of stops. The Department recognizes that any assessment of compliance with the court's remedial orders will be undermined if the NYPD's data is not accurate and complete. Its efforts to audit underreporting are discussed below in Section VII, Auditing. The new supervisor training deals directly and forcefully with this requirement and the supervisors' responsibility to ensure compliance. The Department believes once the training and auditing take hold, compliance with the requirements for officers to record stops and for supervisors to engage in meaningful review will improve substantially.

C. Racial Profiling Policies

The NYPD's policy barring racial profiling and other bias-based policing, P.G. 203-25, was approved by the court on August 24, 2015. As with the Department's stop and frisk policy, substantial compliance regarding the racial profiling policy also requires

II. Policies

D. Policies Related to the Trespass Affidavit Program

that Department personnel be trained on the policy and that the Patrol Guide section be followed in practice. Training on the Department's racial profiling policies is part of the in-service training on stops and frisks. *See* Section IV.B.2 below. One of the ways the monitor will be assessing the Department's compliance with its racial profiling policies and the Fourteenth Amendment will be through a statistical analysis of NYPD's stop and frisk data. In May 2017, the monitor submitted his first report examining trends in the NYPD's stop, question and frisk data, focusing on the years 2013, 2014 and 2015. This report did not draw any conclusion about the NYPD's constitutional compliance. That determination awaits the availability of statistical data over a more extensive period. The report, however, explored available data and trends and informed the parties and the public about the kinds of statistical approaches the monitor will be considering. In publishing the report, the monitor also invited the parties and their experts, as well as any other experts, to present alternative or additional analyses for consideration by the monitor.

D. Policies Related to the Trespass Affidavit Program

In June 2016, the court approved the new NYPD procedures for interior patrols in buildings enrolled in the Trespass Affidavit Program (P.G. 212-59), a program in which police officers conduct interior patrols in certain private apartment buildings. The NYPD published a new P.G. 212-59 in April 2017 and conducted roll call training on interior patrols in TAP buildings in June and July 2017. Stops inside and outside TAP buildings must comply with the NYPD's stop and frisk policies, P.G. 212-11. The procedures state that "mere presence" in a TAP building, or entry into or exit from a TAP building, does

II. Policies

E. Policies Relating to Patrol of NYCHA Buildings

not constitute an “objective credible reason” for a *DeBour* Level 1 approach and request for information, nor does it constitute reasonable suspicion for a Level 3 *Terry* stop.

The Department also made revisions to Administrative Guide 303-27, setting out the requirements and procedures for entry into the TAP program. In order for a building to be enrolled in the program, the owner must certify concerns regarding criminal activity or community complaints in the building, such as trespass or drug activity within the last year. The enrollment must be renewed every six months.

At roll calls in the precincts starting in June 2017, patrol officers viewed a video explaining the TAP program and new interior patrol policies. In addition, new one-day stop and frisk training beginning for the patrol force will include training on interior patrols of TAP and NYCHA buildings.

E. Policies Relating to Patrol of NYCHA Buildings

The settlement in *Davis v. City of New York* required a new Patrol Guide provision for the interior patrol of NYCHA buildings (P.G. 212-60) that promotes constitutional interactions between NYPD officers and persons encountered during interior patrols. As with the procedures for TAP buildings, the procedures for NYCHA buildings state that “mere presence” in a NYCHA building is not an “objective credible reason” for a Level 1 request for information, nor does it establish reasonable suspicion for a Level 3 *Terry* stop. P.G. 212.60 also states that arrests for trespass in restricted areas, such as roofs or roof landings, must be made after appropriate notice (e.g., through a conspicuously posted sign). The revised policy for interior patrols of NYCHA buildings became effective on April 25, 2017. The NYPD officers viewed videos explaining the revised policies at roll calls in July, August and September 2017. In

II. Policies
F. Trespass Crimes Fact Sheet
III. Supervision

addition to this roll call training, the NYPD is now designing and will be conducting a one-day training for Housing officers.

F. Trespass Crimes Fact Sheet

As part of the *Davis* settlement, the parties agreed that officers making trespass arrests in NYCHA buildings would document the arrests on a new form (the Trespass Crimes Fact Sheet or TCFS) providing information about what led them to approach the person and what led them to believe that the person was a trespasser. The *Davis* and *Ligon* plaintiffs and the Department agreed that there should be a single form used for trespass arrests in both NYCHA buildings and TAP buildings. The parties worked together to create the TCFS, which, since May 2017, has been used for all trespass arrests in both TAP buildings and NYCHA buildings. Both the NYPD and the monitor will be looking at trespass arrests to ensure that officers' actions are lawful and that they appropriately complete the TCFS for trespass arrests.

III. Supervision

As required by the court orders, Patrol Guide section 212-11 provides for a more robust supervision of officers with regard to their stop and frisk activity. Supervisors are required to respond to the scene of a stop when feasible, discuss the circumstances of the stop with the officer making the stop before the end of the officer's tour, and review the officer's stop report form and activity log. The supervisor must determine whether the stop was based on reasonable suspicion of a felony or Penal Law misdemeanor; if a frisk was conducted, whether the frisk was supported by reasonable suspicion that the person was armed and dangerous; if a search was conducted, whether it was reasonable; and if force was used, whether the use of force was reasonable. The supervisor must direct the

III. Supervision

officer to make corrections to the stop report form if it is inaccurate or incomplete, and, if appropriate, instruct the officer or refer the officer for additional training or other remedial action, including, if appropriate, disciplinary action.

The new responsibility of supervisors to ensure that their officers' actions are constitutional is one of the most significant changes in the daily operations of the NYPD relating to this monitorship. For the reforms to take root, supervisors must play an active role in ensuring that the stops, frisks and trespass arrests made by their officers are legal and proper and that these activities are properly documented.

As noted in Section IV.B.2 below, NYPD sergeants and lieutenants will be the first to have the comprehensive one-day stop and frisk training, which will include a section on the responsibilities of supervisors. As part of the monitor's assessment of compliance with the requirements of the court order, the monitor team will be assessing not only the written training materials but also whether these materials are being delivered effectively. In addition, the monitor team will be evaluating whether supervisors are actually evaluating the officers' actions and whether appropriate follow-up action is being taken when warranted. As noted above, when the new stop report was first implemented, there were serious questions about whether supervisors were exercising appropriate supervision. Many supervisors failed to complete the supervisory review section of the form. Even when the form was filled out, it was often apparent that the review was perfunctory and done by rote. For example, there were many instances in which supervisors checked the box that said there were sufficient grounds for a frisk or search when in fact the officer had not conducted a frisk or search. The Department has recognized this issue, and there are steps being taken to improve performance, including

III. Supervision

an emphasis on supervisory responsibility in training. The Department's Risk Management Bureau (RMB) and its auditing arm, the Quality Assurance Division (QAD), have been focusing on supervisory review. In addition, the monitor team has been emphasizing this issue in its visits to borough and precinct commands throughout the city. In these visits, there have been encouraging signs; some high-level commanders appear to have taken ownership of this issue and are communicating their concerns to both officers and supervisors. However, to date, the monitor team has seen very few instances in which supervisors are noting on stop reports an insufficient basis for a stop, frisk or search. The monitor team will continue its review of stop reports to see whether there are improvements.

An additional change, not required by the court orders, may be important. Since the last monitor's report, New York City conducted new exams for officers seeking to become sergeants and lieutenants. Before those exams, the monitor and his team met with the NYPD and the City agency charged with the responsibility of administering the exam (the Department of Citywide Administrative Services). The monitor emphasized the importance of the new stop and frisk policies and the enhanced role of supervisors in the new policies. Months before the examination was administered, applicants were notified by a formal, published "Notice of Examination" of the topics from which the exam questions would be drawn. Those areas included stop and frisk and trespass enforcement policies and the role of supervisors. This was a very effective way to focus the attention of those taking the exams on these topics and, beyond that, to communicate the importance of the topics to everyone who read the notice or heard about it.

IV. Training
A. Training for Recruits

IV. Training

A. Training for Recruits

Training materials for Police Academy recruit classes on stop and frisk, racial profiling and interior patrols for TAP and NYCHA buildings were rewritten and approved by the court in April 2015. The materials for these courses were revised when new NYPD policies were approved (e.g., P.G. 212-11, *Investigative Encounters*), and in response to continued review by the parties and the monitor team. The course on investigative encounters has been updated to reflect the new stop report form, including instruction on what to include in the narrative sections and emphasis on the newly enhanced role of supervisors in reviewing the constitutionality of stops. The course on interior patrols of TAP and NYCHA buildings has been updated to reflect the new procedures governing those topics, P.G. 212-59 and P.G. 212-60.

Scenario-based training for recruits is being taught in mock environments at the Academy; the scenarios are scheduled to coincide with classroom instruction on the topics related to the remedial orders. The parties also developed additional scenarios raising issues of racial profiling and biased policing for use in both recruit and in-service training.

One recruit training segment identified in the *Floyd* liability and remedies decisions as needing revision is a training module conducted by the Firearms and Tactics Section on the characteristics of armed suspects.² This training teaches recruits about factors that should raise their awareness when they attempt to determine whether or not

² *Floyd v. City of New York*, 959 F. Supp. 2d 540, 614 (S.D.N.Y. 2013) (Liability Opinion); see *Floyd v. City of New York*, 959 F. Supp. 2d 668, 680 (S.D.N.Y. 2013) (Remedies Opinion).

IV. Training

B. In-Service Training

an individual they encounter is armed. The Risk Management Bureau worked with the Firearms and Tactics Section of the Police Academy to create a new lesson plan and PowerPoint presentation. After a series of collaborative discussions with plaintiffs' counsel and the monitor's team, a final version of this training was submitted to the court and approved in February 2017.

B. In-Service Training

A bigger challenge for the Department than recruit training is how to train or retrain experienced officers. First, there is the logistical challenge of assigning officers to attend classes without compromising the Department's ability to meet its daily law enforcement responsibilities. Then there is the forensic challenge of teaching officers about their current responsibilities regarding street encounters and trespass enforcement when for years senior management of the Department, instructors and their colleagues in the station houses stressed something different. The fact that these earlier ways were so ingrained makes the in-service training challenging, but all the more important. That is why the Department, plaintiffs' counsel and the monitor team have spent so much time developing materials and seeing how these materials were delivered and received in test runs. Once the court approves the materials and the in-service training begins in earnest, the monitor team intends to continue its practice of attending many training sessions to ensure that the training is being appropriately delivered.

What follows is a more detailed description of the state of progress on in-service training.

IV. Training
B. In-Service Training

1. Command Level/Roll Call Training

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

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

The Department also prepared roll call videos addressing the revised Patrol Guide sections 212-59 and 212-60, dealing with interior patrols of TAP and NYCHA buildings respectively. The court approved the monitor's recommendation and the TAP video (P.G. 212-59) on March 21, 2017, and the NYCHA video (P.G. 212-60) on May 9, 2017. In the interest of keeping officers' attention during roll call, each of these videos was divided into two, the first of which described the new policy and the second showed a

IV. Training
B. In-Service Training

series of scenarios illustrating how the new policies might play out in practice. The videos were shown in June, July and August of 2017 throughout the Department. They remain available online to all members of the service.

2. Investigative Encounters and Racial Profiling

Currently, all NYPD officers are required to attend in-service training at the Police Academy each year. The Department worked with the other parties and the monitor to develop a full-day course on the law and procedures for investigative encounters, a substantial increase from what was previously allocated to these subjects. *See Floyd* Dkt. No. 571. The training covers the fundamental principles of stop, question and frisk, trespass enforcement, and bias-free policing. The materials clearly convey the changes in NYPD procedures and what is expected of officers and supervisors regarding the documentation and supervision of stops.

More than 22,000 members of the service will go through this training. To be effective, the training classes will be limited to 30-35 officers or supervisors per class. The Department has started the training with supervisors. The parties agreed that supervisors should be trained separately so the training can cover additional material on supervisory responsibilities. After several thousand sergeants and lieutenants are trained, the Department will begin training patrol officers. The NYPD estimates that it will take up to 18 months to move the members of the service through the course. The training will be taught every weekday on both the day tour and evening tours.

The first session of the training (before the meal break) begins with a short written quiz about stop and frisk law. In the pilot classes, the quiz served its purpose of showing the class that there are misunderstandings about the law and NYPD procedures. Then, an

IV. Training
B. In-Service Training

attorney and uniformed members of the service will co-teach a class on the law and procedures regarding investigative encounters. The instructors are encouraged to engage the attendees in discussion. Just before the meal break, there is a SurveyMonkey quiz. Again, in the pilot sessions, the results of the post-lecture quiz indicated that the content of the class was absorbed by most of those in attendance.

The content of the post-meal session will depend upon whether the class consists of officers or of sergeants and lieutenants. The post-meal session covers when stop reports are required and how to complete them, particularly the narrative sections. For officers, there will be acted-out scenarios involving investigative encounters in the Tactical Village at Rodman's Neck, after which the officers will have to fill out stop reports based on what they saw. For sergeants and lieutenants, the post-meal segment will include discussions of video footage from NYPD body-worn cameras and focus more on their role as supervisors, particularly with regard to the supervision of stops, how to discuss stop reports with their subordinates, and their responsibilities to refer their officers for instruction, training or discipline when appropriate.

Opportunities for discussion about the role of race in investigative encounters are included in several places. The materials clearly describe the difference between the constitutionally permissible use of race based on a specific, reliable suspect description and the constitutionally impermissible targeting of racially defined groups for stops. Discussions about race are sometimes uncomfortable and difficult for some officers and instructors, as has been and continues to be true for many people in our country. The NYPD, plaintiffs' counsel and the monitor team acknowledge this fact, which is why it is especially important for the parties to work together, as they have been doing, to ensure

IV. Training
B. In-Service Training

that the instructors are leading these discussions in ways that make them meaningful and speak to policing tasks.

The training materials for sergeants and lieutenants were submitted to the court for approval in mid-November and were approved in early December. The training materials for officers will be finalized soon and submitted for court approval.

3. Procedural Justice and Implicit Bias

The NYPD is developing an additional day of in-service training focusing on “procedural justice” and “implicit bias.” “Procedural justice” is a phrase used to describe the necessity of treating civilians with respect, listening to them and explaining the officer’s actions. The training will include discussion of the history of New York City and the NYPD, and how that history relates to legitimacy and procedural justice both within the Department and in the communities being policed. “Implicit bias” is the concept that everyone has biases of which they are not aware (i.e., “implicit”), arising from the particular environment (neighborhood, family, friends, media, etc.) in which he or she lives and works. 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.

To conduct this training, the NYPD has contracted with Fair and Impartial Policing, an entity that has created training materials and provided training to law enforcement agencies around the country. This group will provide its training materials, adapted for use in New York City, and trained instructors to conduct the classes. Five training modules will be delivered: police officer, supervisor, manager, executive staff and train-the-trainer for the recruit school. The Department anticipates beginning the training by February 2018 and having it completed over the course of two years.

IV. Training

C. Training for Newly Promoted Supervisors

D. Specialized Training

C. Training for Newly Promoted Supervisors

Training for newly promoted sergeants, lieutenants and captains has undergone extensive revision. A principal focus of this training is the expanded responsibilities of supervisors, particularly sergeants, under the new Patrol Guide procedure for investigative encounters and specifically with regard to the stop report. The format of the training has been changed to encourage class participation and is similar to what was described above for sergeants and lieutenants already in rank. It is expected that the training materials for new sergeants and lieutenants will soon be put into final form and will then be submitted to the court for approval.

D. Specialized Training

1. Plainclothes Training

The NYPD conducts a three-day training course for officers who will be starting as plainclothes officers, including officers who will be joining a precinct-based anti-crime or conditions unit, or any other unit that works in plainclothes. It is important to ensure that these officers get training on stop and frisk policies, because their work often involves actively seeking to detect and apprehend suspects and because they are making a significant proportion of the NYPD's stops. The basic plainclothes course deals with tactical mindset, knowledge of the law and defensive tactics, among other necessary skills. The monitor team has conveyed to the Department the view that there should be greater emphasis on integrating the teaching of these skills. Officers in plainclothes assignments must have a good knowledge of the law and how to use this knowledge and understanding of interpersonal dynamics to do their jobs more effectively and more safely, while at the same time protecting the rights of those encountered.

IV. Training
D. Specialized Training

The Department has made extensive revisions to the training it provides to new plainclothes officers, to ensure it is consistent with the investigative encounters in-service training. The NYPD expects to finalize these materials shortly after the investigative encounters in-service training has been finalized.

2. Housing

The Department is working on an additional day of in-service training that will be offered to all Housing officers. This training will be in addition to the roll call training on the revised Patrol Guide section 212-60 and the in-service stop and frisk training. The additional one-day training for Housing officers will include instruction on the new P.G. 212-60 (interior patrols) and on NYCHA house rules, and officers will role-play scenarios designed to illustrate how the law of investigative encounters applies when the officers are engaging in interior patrols in NYCHA buildings. The Department understands the importance of this training and is working hard with the plaintiffs and the monitor team to produce draft materials for approval. Once they are approved, the new training of the Housing officers will begin; the Department hopes this will happen early in the new year.

As currently being discussed with the monitor team and the plaintiffs, the morning session will begin with introductory videos featuring the Chief of the Housing Bureau, James Secreto, and the Chair and Chief Executive Officer of NYCHA, Shola Olatoye. Then there will be a segment co-taught by an attorney and uniformed members of the Housing Bureau. The materials for this segment will be based in part on a lesson plan that was an exhibit to the *Davis* settlement agreement. The morning session will conclude with officers filling out a Trespass Crimes Fact Sheet based on a given fact

V. Body-Worn Cameras

pattern and completing a SurveyMonkey quiz to foster discussion and review of key points. The afternoon session will consist entirely of scenarios that the officers and instructors will discuss.

V. Body-Worn Cameras

On April 27, 2017, the NYPD launched its body-worn camera (BWC) pilot program, with officers in the third platoon of the 34 Precinct in Manhattan wearing cameras. As of mid-November 2017, the Department had extended the program to all 20 of the precincts in which officers in the third platoon would be wearing cameras. Approximately 1,350 officers in these 20 pilot precincts will be wearing cameras for a one-year period pursuant to the requirements of the remedial orders. As of December 3, 2017, there were approximately 102,000 videos recorded and 14,000 hours of recordings.

The remedial order in *Floyd* noted the potential benefits of outfitting NYPD officers with body-worn cameras. Those possible benefits included creating objective records of stop and frisk encounters, encouraging lawful and respectful police-citizen interaction, alleviating mistrust between the NYPD and the public, and offering a way to help determine the validity of accusations of police misconduct. The court order directed the NYPD to work with the court-appointed independent monitor to conduct a one-year pilot program to determine whether the benefits of the cameras outweigh their financial, administrative and other costs. The monitor was charged with establishing procedures for the review of stop recordings by supervisors and senior managers, for preserving stop recordings and for measuring the effectiveness of body-worn cameras in reducing unconstitutional stops and frisks.

V. Body-Worn Cameras

On April 3, 2017, the NYPD submitted to the monitor a draft operations order specifying policies and procedures related to the pilot program. Some provisions of those procedures required monitor approval because they dealt with matters within the monitor's assigned responsibilities. These included provisions requiring the recording of arrests and investigative encounters and searches, notice that the encounter is being recorded, supervisory review of the recordings, and documentation and retention of the recordings. On April 11, 2017, the monitor approved those provisions in a memorandum and submitted the memorandum to the court. It was the monitor's view that, upon his approval, the operations order could be promulgated by the NYPD and put into place and no additional proceedings in court would be required. On April 19, the *Floyd* and *Davis* plaintiffs objected to certain provisions of the BWC policies and argued that court approval of the BWC procedures was required and that the BWC pilot program could not go forward without court approval. On April 21, the court denied the plaintiffs' request and the pilot went forward the following week.

The research and evaluation design for the BWC pilot program was developed by Professor Anthony Braga of Northeastern University and other members of the monitor team, in consultation with the NYPD. Professor Braga identified 20 pairs of precincts, matched in terms of demographics, socio-economic characteristics, crime and police activity. Care was taken to ensure that the officers in each precinct pair were also similar in terms of demographics, length of service, rank and citizen complaints. Then, in each pair, one precinct was randomly assigned to have cameras (the treatment precinct), and the other was assigned to be without cameras (the control precinct).

V. Body-Worn Cameras

As for evaluating the cameras' impact, the plan anticipates using four sets of outcome measures: civility of police-citizen interactions, arrest numbers and other policing activities, police lawfulness, and police-community relations. To accomplish this, the monitor team will analyze pre-test and post-test data for officers in the camera and control groups collected from the NYPD and the Civilian Complaint Review Board (CCRB). Data from community surveys will be used to assess police-community relations. In the camera precincts, responses from before and after camera deployment will be compared to look for any significant differences. Data from camera and control precincts will also be compared to ascertain whether any change is the result of some event or circumstance unrelated to the cameras.

Because Public Housing Police Service Areas (PSAs) overlap with the 40 precincts in the randomized control trial, the pilot experiment does not include NYPD Housing officers assigned to PSAs. The monitor team will be devising a separate evaluation plan for the use of cameras by NYPD officers working in PSAs. There are only nine PSAs in New York City—too few for a randomized controlled experiment. For this reason, a quasi-experimental research design is being considered.

As noted in the *Floyd* remedial opinion, supervisory review of BWC footage and auditing of the procedures are important in the monitor's evaluation of the pilot program. These are also important management tools for the Department. The monitor team has been working with the Department, with input from plaintiffs' counsel, to design its review and audit of BWC footage.

V. Body-Worn Cameras

There will be three categories of BWC review:

1. Self-inspections and supervisory reviews of BWC footage at the command level;
2. Auditing of compliance with BWC policies and procedures by RMB; and
3. Using BWC footage in QAD audits to evaluate compliance with other NYPD policies and procedures.

The NYPD developed a self-inspection for sergeants and lieutenants when the BWC pilot program was launched in the 34 Precinct. The self-inspection protocol is now being used in all BWC precincts. Under this protocol, the Risk Management Bureau randomly selects five videos recorded during the self-inspection period for a sergeant to review. The sergeant reviewing the videos completes a self-inspection worksheet that documents his or her findings and indicates any follow-up actions, where necessary, and forwards the report to the reviewing lieutenant. The worksheet instructs supervisors to review videos based on the following criteria:

1. Compliance with BWC procedural directives—was notice given? was the incident recorded in its entirety?
2. Application of law and procedures—did the officer(s) appropriately apply the law and Department procedures to interactions with the public including, but not limited to, the law and procedures regarding stops, frisks, and searches?
3. CPR standard—did the officer(s) treat members of the community with courtesy, professionalism and respect?
4. Tactics—did the officer engage in proper tactics?

Based on this review, the supervisor provides comments and recommendations for follow-up actions for each of the reviewed videos, as appropriate. The self-inspection form emphasizes the quality of the interaction, with the goal of coaching the officers and

V. Body-Worn Cameras

improving performance. This information provides an important tool for precinct supervisors and executives to evaluate and assess the performance of their employees.

The platoon commander or special operations lieutenant must review two of the videos reviewed by the sergeant, using the same criteria, and note whether his or her findings are consistent with the sergeant's. The command's executive officer then has the final review and approval of the self-inspection worksheet.

In addition to this self-inspection regime, RMB will conduct audits of BWC videos. To determine what auditing and reporting capabilities might be available electronically, RMB is working with VieVu, the BWC vendor, and the NYPD's Information Technology Bureau. RMB has worked with the NYPD's Office of Crime Control Strategies to test the reliability of formulas to compare arrests, criminal summonses (C summonses) and stop reports to video recordings. In this way, the Department is able to assess the extent to which officers are recording situations in which the BWC policy requires mandatory activation.

Third, BWC video provides another record that can be incorporated into other audits to assess compliance with laws and the Department policies and procedures. QAD is in the process of evaluating what audits may benefit from BWC viewing. Body-worn camera video can be reviewed during a stop and frisk audit to see if the footage assists the auditor in determining whether the information recorded by the officer on the stop report is accurate and whether the officer had a sufficient basis for a stop, frisk or search. Additionally, the BWC footage can be cross-referenced with stop report data to identify instances of failure to document a stop. QAD has incorporated BWC review into its already existing audits of stop, question and frisk, police-initiated enforcement and

VI. Performance Evaluation

RAND audits (so called because they are based on an audit recommended by the RAND Corporation). (See below at Section VII, Auditing.) The monitor is responsible for approving the self-inspection and auditing procedures for the BWC pilot program. He is reviewing how these procedures are working in practice and considering changes suggested by the NYPD and the plaintiffs.

VI. Performance Evaluation

On October 20, 2017, the monitor submitted his recommendation regarding a new performance evaluation system that the Department began earlier this year for patrol officers. *Floyd* Dkt. No. 562. The new system is a significant improvement from the prior evaluation system. The monitor recommended that the court issue an order that recognizes the important positive changes that have been made in how the NYPD evaluates its officers and also requires the Department to maintain those improvements as they relate to the reforms in stop and frisk practices and policies. The NYPD also recognized the importance of maintaining these improvements and consented to the entry of the proposed order. On November 6, the court approved the recommendation and entered the order. *Floyd* Dkt. No. 564.

In the past, the Department's performance evaluation system was based largely on "numbers" (i.e., the quantity of enforcement activity), without considering the legality of the enforcement activity. Officers felt pressure to produce these numbers in order to receive a positive evaluation. Otherwise, they feared, they would be disadvantaged in many ways—for example, in assignments, promotions, overtime, time off and transfers.

The old performance evaluation system was incorporated in several NYPD orders. In 2011, the Department issued two orders:

VI. Performance Evaluation

1. Operations Order 50 – Quest For Excellence – Command Conditions Reports (OO50);
2. Operations Order 52 – Police Officer Performance Objectives (OO52).

Operations Order 50 required commanding officers to prepare a Command Conditions Report each week identifying two crime and disorder conditions in their commands that needed to be addressed. It required officers daily to complete what was called the Police Officer’s Monthly Conditions Impact Measurement Report. Each day, officers were to list their assignments, two conditions that they were addressing, and any activities noted in 22 different columns (including arrests, summonses and stops). These reports were then submitted weekly to the officers’ supervisors, who were to review and sign them each week and add an assessment of the officer each month.

Operations Order 52 described performance objectives for officers and stated that supervisors “can and must set performance goals” for proactive enforcement. In addition, supervisors used the monthly reports to prepare quarterly evaluations of their officers. These quarterly evaluations were separate from the officers’ annual evaluations, which were governed by a different Patrol Guide section.

At the *Floyd* trial, there was evidence concerning pressure experienced by NYPD officers to increase the number of stops. The court identified two sources of this pressure: (1) CompStat meetings, at which commanding officers were questioned about their officers’ activities and number of stops; and (2) numeric goals imposed by supervisors that prompted negative consequences for officers if they were not met. Liability Opinion, 959 F. Supp. 2d at 592-602. The court discussed Operations Order 52, which, the court said, “made clear that supervisors must evaluate officers based on their activity numbers, with particular emphasis on summonses, stops, and arrests, and that

VI. Performance Evaluation

officers whose numbers are too low should be subjected to increasingly serious discipline if their low numbers persist.” *Id.* at 600. Referring to the Police Officer’s Monthly Conditions Impact Measurement Report, the court stated “the form used to track officer performance reflects the NYPD’s emphasis on enforcement activity numbers and effectiveness without attention to the constitutional justifications for enforcement.” *Id.* at 601.

Based on the trial record, the court fashioned remedies. The court’s Remedies Opinion addressed performance evaluation in the following passage: “It is unclear at this stage whether Operations Order 52 (‘OO52’), which describes the use of performance objectives to motivate officers, requires revision in order to bring the NYPD’s use of stop and frisk into compliance with the Fourth and Fourteenth Amendments. The evidence at trial showed that OO52’s use of ‘performance goals’ created pressure to carry out stops, without any system for monitoring the constitutionality of those stops. However, the use of performance goals in relation to stops may be appropriate, once an effective system for ensuring the constitutionality is in place.” Remedies Opinion, 959 F. Supp. 2d at 680.

After extensive internal work and consultation with and input from outside parties (other police departments, experts on performance evaluation in industry, the monitor team and plaintiffs’ counsel), the Department has begun to roll out a new performance evaluation system for patrol officers. In this new system, the lawfulness of stops and the accuracy of stop reports play a role, but the number of stops does not.

The new evaluation system has four main components. The first is the Officer Profile Report, an electronic form that is automatically generated monthly. This report compiles data from numerous Department databases and compares each officer to other

VI. Performance Evaluation

officers in their precinct, their borough, and citywide. It does not count the number of stops conducted by the officer. The second component is the Supervisor Feedback Form, which allows supervisors to highlight commendable actions by an officer or note areas that may need improvement. A third component is the Officer Self-Report Form, which allows officers to document notable actions they consider to be positive, such as community engagement, problem-solving or achievements in crime prevention.

The final component of the new evaluation system of officers is the Quarterly Evaluation, which took effect on April 1 for the first quarter of 2017. Supervisors are instructed to review the Officer Profile Report as well as any Supervisor Feedback Forms or Officer Self-Report Forms from the relevant period prior to completing the Quarterly Evaluation. Supervisors will now use the Quarterly Evaluation to rate officers in 12 different dimensions on a scale of one to four. The fourth quarter evaluation will provide supervisors with a summary box to recap the officer's performance over the entire year.

The NYPD now uses 12 performance categories or "dimensions" to evaluate its members. These are:

1. Problem Identification/Solving;
2. Adaptability and Responsiveness;
3. Judgment;
4. Integrity;
5. Application of Law and Procedures;
6. Community Interaction;
7. Departmental Interaction;
8. Professional Image and Maintenance of Equipment;

VI. Performance Evaluation

9. Quality and Timeliness of Reports;
10. Initiative;
11. Leadership; and
12. Implementation of Proactive Policing Strategies. (For members who perform administrative functions, a different dimension, Competence in Unit's Mission, replaces this dimension.)

In January 2017, the Department issued a Performance Evaluation System Guide that explains the system to members of the service and, importantly, highlights for them what the Department wants to accomplish by changing to this new performance evaluation system. “The 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.” *See Floyd* Dkt. No. 562 at ECF p. 54. The Guide notes that “[o]nly one of the 12 dimensions captures enforcement activity (‘Implementation of Proactive Policing Strategies’). This dimension is applicable only to members performing patrol functions, and it couples the evaluation of any activity with an assessment of whether the activity was lawful and appropriate.” *Id.*

The Guide speaks to the court’s concerns about the lawfulness of stops in this passage:

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. (*Id.* at ECF p. 58.)

It should be noted that the new evaluation system covers the evaluation of officers only, and does not change the evaluation system for sergeants, lieutenants, captains and

VI. Performance Evaluation

other supervisors. The Department anticipates that the new evaluation system will be expanded and possibly adapted to cover sergeants and lieutenants after it is first implemented for officers.

As stated, the Liability Opinion identified two sources of pressure on officers to make stops irrespective of their lawfulness. As for CompStat, that pressure has been removed. One or more members of the monitor team have watched almost all the CompStat meetings from April 2016 through early November 2017. There is seldom any mention of stops, and never criticism of the number of stops or lack of stops. This modified approach reflects an emphasis on quality over quantity concerning all enforcement activity. In one recent CompStat meeting, one of the executives running the meeting said forcefully that flooding an area with cops and “dropping a net”—the hallmarks of an earlier policing strategy—was not the answer. “The days of saying I gave a bunch of numbers over there and that’s good enough and the shootings continue is not the answer.” With respect to the second source of pressure, Operations Order 52 has been revoked.

With these changes, the specific actions referenced in the Remedies Opinion have been accomplished. In addition, the Liability Opinion referenced the daily tracking of stops and enforcement activities by officers (through the Monthly Police Officer’s Conditions Impact Measurement Reports) as an aspect of the prior system contributing to the pressure to make stops without attention to their constitutionality. That daily tracking by officers was eliminated as of January 2017 when “Quest for Excellence” was abolished.

VII. Auditing

Although the specific remedy discussed in the Remedies Opinion has been accomplished—OO52 was revoked—if what replaces OO52 is just a name change and effectively still rewards officers for the quantity of stops without regard to their lawfulness, then the change would not, in the monitor’s view, meet the requirements of the Remedies Opinion. Therefore, there still must be scrutiny by the monitor and ultimately by the court to ensure that does not happen. For this reason, the monitor submitted to the court the proposed order, mentioned above, which the court has now entered.

VII. Auditing

In order to maintain the remedial reforms, the Department must have in place a system that permits it to discover and then correct deviations from the law and NYPD policy. This section reports on both the efforts being made by NYPD’s Quality Assurance Division (QAD) and the results of its work. It must be recognized that QAD is appropriately rethinking how it goes about its work and the standards it uses to judge compliance and has made changes during the period under review. Therefore, differences in compliance reported by QAD from one quarter to another must be read in this context; changes in QAD’s audit findings may be the result of changes in officer behavior or instead may be the result of changes in QAD’s methodology and standards, as discussed below.

VII. Auditing
A. QAD Auditing

A. QAD Auditing

QAD is responsible for evaluating compliance with the Department's policies and procedures, including those relating to stop and frisk and trespass enforcement. QAD evaluates all precincts, transit districts and housing commands, as well as several specialty units. The audit procedures address both the quality of the documentation (i.e., whether the paperwork was properly prepared) and the quality of the information contained therein (e.g., whether the stop met constitutional standards). The Department also performs audits to assess the extent to which stops and frisks are being conducted but not documented.

QAD and the Risk Management Bureau have made significant changes to address the auditing shortcomings identified by the court. These include changes in QAD's audit methodology and the forms used to record audit findings to reflect the revisions to P.G. 212-11 and the use of the new stop report.

The technology that provides data related to stop reports has been improving. Because the stop report is now electronic and many of the data fields on the stop report form must be completed in order for officers to submit the report, much of the administrative review to determine if the fields were complete and legible is no longer necessary. Also, the data from electronic stop reports can be aggregated and analyzed to allow for more meaningful and actionable information to be provided to commanding officers and Integrity Control Officers (ICOs) in the commands. As a result of these changes, the NYPD is in the process of making additional changes to its audit procedures, some of which (discussed below) are already in place.

VII. Auditing

A. QAD Auditing

QAD is currently conducting four types of audits relevant to the remedial measures: (1) audits of stop reports; (2) RAND audits to identify undocumented stops; (3) audits of police-initiated enforcement (called PIE audits); and (4) audits of trespass arrests. Each is described more fully below, along with the results of QAD audits from the third and fourth quarters of 2016 and the first and second quarters of 2017.

In addition to the audits conducted by QAD, commanding officers oversee self-inspections in their commands. Concerning stop, question and frisk, the Integrity Control Officer (ICO) in each command must identify and evaluate the last 25 stop reports and corresponding activity log entries. If there are fewer than 25 stop reports for the month reviewed, the ICO must evaluate all of them. The results of these “self-inspections” are reported up the chain of command in the precinct and the borough and then QAD reviews a subset of the results.

ICOs in commands are now using a version of the self-inspection worksheet that does not require them to manually document that checkboxes on the stop report were completed; the electronic version of the stop report now in use prevents it from being submitted unless these boxes are checked. The self-inspection worksheet now focuses more on the quality of the officer’s narratives. The worksheet requires an assessment of the supervisor’s actions and any follow-up recommendations. The ICO conducting the self-inspection at the command now must document whether, in the ICO’s view, the supervisor came to the correct conclusion regarding whether there was sufficient basis for the stop, frisk and/or search.

VII. Auditing
A. QAD Auditing

1. Audit Results for Stop Reports

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

Starting with the audits from the fourth quarter of 2016, the monitor team has obtained a sample of the stop reports that were audited by QAD, along with the QAD audits, so that the monitor team can evaluate the auditors' work and also review a sufficient number of stops to be able to make meaningful statements about citywide compliance. When the monitor has a full year of these reviews, the monitor's assessments will be included in the monitor's public reports.

The monitor team has met with both QAD and RMB to discuss the methodology and standards used by QAD in its audits and to review a sample of stop reports where the monitor team's assessment of the stop report differs from QAD's assessment. As a result of these meetings, QAD has stated that its approach to reviewing stop reports has become more stringent. For example, QAD states that if an officer has checked "Matches a Specific Suspect Description" on the stop report and the narrative repeats that the person

VII. Auditing

A. QAD Auditing

stopped matched the description of a radio run, QAD will now consider that the stop report articulates reasonable suspicion for the stop only if the officer's narrative or memo book includes what the description was and how the person stopped fit that description. This change in QAD practice during the period under review likely resulted in a larger number of stop reports not meeting QAD's standards and may continue to do so until more officers and supervisors complete the in-service stop and frisk training.

From a legal perspective, if a stop was improper, with very few exceptions a frisk or search conducted during that stop also would be considered improper, and any contraband found from the frisk or search would be suppressed. However, when QAD auditors assess whether the stop report narrative articulated reasonable suspicion for a frisk, QAD auditors make a separate finding about the frisk narrative, independent of whether the stop itself reflected reasonable suspicion for the stop. In this way, NYPD commanders and supervisors can better use the QAD audits for training and instruction purposes. For this reason, the percentages of proper frisks can be different, and even higher, than the percentage of proper stops, as is the case illustrated in the chart below for 2016 and 2017.

VII. Auditing
A. QAD Auditing

Stop and Frisk Audits

	3Q2016	4Q2016	1Q2017	2Q2017
Commands Audited	132	135	131	130
Stop Reports Audited	1,944	1,666	1,627	2,015
Percentage of Stops for Which QAD Found Reasonable Suspicion for Stop Articulated	95%	74%	71%	71%
Percentage of Stops for Which QAD Found Reasonable Suspicion for Frisk Articulated	96%	83%	80%	88%
Percentage of Stops for Which QAD Found Justification for Search Articulated	91%	89%	87%	89%
Percentage of QAD Conclusions Consistent with Conclusions of Command's Self-Inspections	85%	77%	87%	57%

QAD provides each command it has audited with a report of its quarterly audits so that the command can take appropriate follow-up action. The monitor team is working with NYPD and the plaintiffs to make these audit reports more focused on issues of constitutionality, as well as more “user friendly” for precinct and Patrol Borough executives. Once those improvements have been made, audit and self-inspection procedures will be submitted to the court for approval.

2. Undocumented Stops

The NYPD has acknowledged that undocumented Level 3 *Terry* stops are a serious issue that needs to be addressed. If stop forms are not filled out when appropriate, the stops cannot be reviewed by supervisors and others in the Department. The Department's leadership will find it more difficult to know what is actually happening on the street. A significant percentage of undocumented stops would undermine the Department's and the monitor's ability to assess compliance with the court orders.

VII. Auditing
A. QAD Auditing

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

a. RAND Audit Results

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

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

VII. Auditing
A. QAD Auditing

The data below summarize QAD's audits conducted in the fourth quarter of 2016 and the first and second quarter of 2017, and command responses to those audits.

RAND Audits with Command Responses

	4Q 2016	1Q 2017	2Q 2017
Total RAND Audits Indicating A Stop	28	28	31
Stop Reports On File During QAD Audit	4	2	4
ICAD Events Requiring Investigation	24	26	27
Stop Made By Another Command And Report On File	0	1	0
Deemed Not Necessary After Command Investigation (False Positive)	8	10	9
Stop Report Prepared At The Time Of The Event, But Not In System	4	3	2
Stop Made By Another Command And No Report On File	0	1	0
Terry Stops Without Stop Report	12	11	16

Below are the follow-up actions taken by the commands for members who did not document stops.³

Command Follow-Up Action

	4Q 2016	1Q 2017	2Q 2017
Terry Stops Without Stop Report	12	11	16
Command Discipline	2	0	0
Instructions/Training	3	6	8
Minor Violations Log or Supervisory Report	5	5	5
Stop Identified Without Report, But No Disciplinary Action	2	0	3

b. Police-Initiated Enforcement Audits

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

³ The minor violations log was a logbook kept at each command that recorded minor violations of Department rules by members of the service. The information in these logs was not tracked centrally, it did not become part of a member's personnel record, and there were no penalties or additional consequences for being listed in the log. The NYPD has replaced the minor violations log with a Supervisor's Comment Form.

VII. Auditing

A. QAD Auditing

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

In the most recent quarter for which the monitor has complete data (second quarter of 2017), QAD identified 154 instances in which the police-initiated arrest appeared to involve a stop. In 13 of those instances, a stop report was on file. The commands were directed to investigate the remaining 141 arrests to determine whether the arrest started as a stop and thus required a stop report. The commands determined that 104 of the arrests did not require a stop report, often because the officer personally observed criminality or observed contraband in plain view and thus had probable cause. Removing these 104 cases from the calculus, there were 50 arrests that the commands and QAD agreed required a stop report, and 13 stop reports prepared (26.0 percent).

Separately, for criminal trespass arrests in the second quarter of 2017, QAD identified 62 trespass arrests in NYCHA buildings for which it appeared that a stop report was required. Seventeen of those stops were documented by a stop report. Commands reviewed the trespass arrests that did not have stop reports and determined that in 16 arrests, a stop report was not required. Thus, QAD and the commands agreed that 46

VII. Auditing
A. QAD Auditing

criminal trespass arrests in NYCHA buildings started as stops, and of those, 17 stop reports were prepared (37 percent).

For stops in TAP buildings that preceded trespass arrests, the corresponding numbers for the second quarter of 2017 are 15 stops that QAD determined should have been accompanied by stop reports and four instances in which stop reports were found. Commands determined that three arrests did not require a stop report. Thus, there were 12 trespass arrests at TAP buildings in which the commands and QAD agreed that a stop report was required, with stop reports prepared in four of those arrests (33 percent).

Results from the first and second quarter of 2017 are shown below. These findings indicate that officers still are not completing stop reports when required. For these arrests, it has been suggested that officers believe completing an arrest report is sufficient. If that confusion is the source of the failure to document stops, this is an error and not a deliberate decision to hide the fact of a stop. And the error, if based on officer confusion, should be relatively easy to remedy through the in-service training that is now beginning, as well as instructions at the command level and other measures the Department can take to emphasize the importance of documenting stops.

PIE Audits with Command Responses

	4Q 2016	1Q 2017	2Q 2017
Stop Reports On File When QAD And The Command Determined That A Stop Led To An Arrest (%)	45%	29%	26%
Stop Reports On File When QAD And The Command Determined That A Stop Led To A NYCHA Trespass Arrest (%)	17%	39%	37%
Stop Reports On File When QAD And Command Determined That A Stop Led To A TAP Trespass Arrest (%)	0%	17%	33%

VII. Auditing

B. Self-Inspections of TAP Stops in the Bronx

3. Audits of the Trespass Crimes Fact Sheets

Officers are now required to complete Trespass Crimes Fact Sheets every time they make trespass arrests in and around NYCHA and TAP buildings. QAD now plans to audit these fact sheets and is developing worksheets for the audits. Review of the TCFS will focus on the articulation by the officer of the factors that led him or her to approach and question the defendant, whether there was probable cause for the arrest and whether a stop report was completed when required. The monitor will review the results of these audits.

B. Self-Inspections of TAP Stops in the Bronx

Stemming from a preliminary injunction proceeding in *Ligon*, the NYPD was ordered to develop procedures for ensuring that stop reports are completed for all trespass stops outside TAP buildings in the Bronx, and for reviewing the constitutionality of those stops.

In an effort to meet this requirement, in April 2015 the NYPD began requiring ICOs in each Bronx precinct to conduct monthly self-inspections of the last 25 trespass stops at TAP buildings in their precinct. In early June 2016, the court approved an operations order incorporating this practice and emphasizing that the trespass stop reports had to be reviewed for completeness, accuracy and constitutionality of the underlying stops, and that the ICO must then track the results and confer with officers and their supervisors when deficient stop reports are identified. Monthly reports from the program are submitted to the Risk Management Bureau for further analysis.

Since the monitor's last report, RMB has been providing the Bronx TAP monthly assessment reports to the monitor's team on a quarterly basis. In 2016, there were only

VII. Auditing
C. Early Identification System

19 trespass stops recorded at TAP buildings in the Bronx, and in eight months none were recorded. For the first two months of 2017, there were only four trespass stops recorded at Bronx TAP buildings recorded, and for March through September none were recorded. These results require further inquiry in light of QAD's PIE audits of trespass arrests at TAP buildings. QAD's review of a sample of trespass arrests each quarter showed that there were trespass arrests that started as stops, without stop reports, both citywide and in Bronx precincts. ICOs should be examining these arrests as well as reviewing stop reports that are recorded.

C. Early Identification System

The NYPD currently tracks officer performance using several databases and behavioral indicators to identify members of the service who have displayed behavior indicating they might be at risk of violating Department policies or creating liability for the Department. These indicators include disciplinary actions, substandard evaluations, civil lawsuits, Civilian Complaint Review Board (CCRB) complaints, use of force complaints, racial profiling complaints, supervisor recommendations and information from the NYPD's personnel system. The Performance Analysis Section of the Risk Management Bureau then identifies members of the service to be placed in a performance monitoring program.

The Department has automated the databases used by the Performance Analysis Section. The Department also developed an alert system to identify members of the service who display at-risk behavior. The Risk Assessment Information Litigation System (RAILS) was created to aggregate information from several Department databases and ensure supervisors are put on alert for further action when risky behavior

VIII. Complaints and Discipline

A. Investigations of Profiling Allegations

or key performance indicators are detected. The new system was recently piloted for two months in 12 commands to test the capabilities of the system and determine whether there should be additional risk factors that would trigger alerts. RAILS delivered alerts to the commanding officer when a member of the service exceeded a threshold regarding at-risk behavior and required the command to acknowledge and respond to the alert.

In November, after the completion of the pilot, the NYPD issued an interim order and a new Administrative Guide applying the RAILS system to all commands citywide. *See* Appendix 1. The system now generates 17 different alerts regarding significant performance indicators related to members of the service.

VIII. Complaints and Discipline

A. Investigations of Profiling Allegations

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

VIII. Complaints and Discipline**A. Investigations of Profiling Allegations**

The IAB has circulated to the monitor and the parties draft guidelines for profiling investigations and training for its Command Center, IAB investigators and the borough investigative units. The material covers the new policies for racial profiling and bias-based policing and investigative techniques to be used for profiling complaints. The parties and the monitor will review the drafts together with the Department so that the training materials and investigative guidelines can be finalized.

The Department opened 339 investigations of profiling allegations made in 2015. The dispositions of those cases were as follows: 154 were unfounded, 11 were exonerated, 105 were unsubstantiated, 27 were partially substantiated, and 42 remain open and are still under investigation.⁴

There were 556 investigations of profiling allegations made in 2016, with the following dispositions: 156 were unfounded, 201 were unsubstantiated, 22 were partially substantiated, and 177 remain open and under investigation.

As of September 30, 2017, there were 641 investigations opened of profiling allegations made in 2017. Of those, 25 were unfounded, 31 were unsubstantiated and four were partially substantiated, while 581 remain open and under investigation.

	2015	2016	2017
Total Profiling Allegations	339	556	641
Unfounded	154	156	25
Exonerated	11	201	0
Unsubstantiated	105	0	31
Partially Substantiated	27	22	4
Open Investigation	42	177	581

⁴ “Unfounded” means there is sufficient credible evidence to believe that the officer did not commit the alleged act. “Unsubstantiated” means the available evidence is insufficient to determine whether the officer did or did not commit misconduct. “Exonerated” means the officer was found to have committed the act alleged, but the officer’s actions were determined to be lawful.

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

Race (now combined with color, ethnicity and nationality) is the category with the most profiling allegations. Other categories included age, gender, religion, disability, gender identity, sexual orientation and housing status. To date, no allegation of profiling has been substantiated by the NYPD, although other violations have been identified in the investigations, such as failure to complete an activity log, and have been substantiated as part of the profiling investigations. Proving bias in individual enforcement actions is difficult. That is why it is important to get the investigative training and procedures right, and why the monitor team has reviewed and will continue to review samples of profiling investigations to evaluate their thoroughness. In addition, the monitor will explore how the NYPD analyzes data on its stops and frisks and other enforcement activities, and how it uses data on profiling allegations to analyze trends and patterns of complaints.

B. NYPD Handling of Substantiated CCRB Complaints

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

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

instructions, the least severe form of discipline, in the majority of cases in most years. The NYPD has recently provided the monitor and parties with draft procedures for handling substantiated CCRB complaints.

By agreement with the CCRB, the NYPD has changed the way it handles cases substantiated by the CCRB. The CCRB, not the NYPD, now prosecutes the more serious cases—those in which charges and specifications are served. These cases are tried by the CCRB’s Administrative Prosecutions Unit (APU) in the trial room of the NYPD in front of an administrative law judge. However, by statute the police commissioner has the final word on discipline, and the agreement with the CCRB provides that he can decide that the CCRB should not prosecute the case if he determines that it is in the public interest for the NYPD to retain the case and either prosecute the case itself, reduce the level of discipline so that charges and specifications are no longer served, or take no disciplinary action.

In addition, in 2014, the NYPD and the CCRB established a new “reconsideration process” applicable when the DAO disagrees with the CCRB’s decision to substantiate an allegation or disagrees with the CCRB’s recommended discipline. In such instances, the DAO requests in writing that the CCRB reconsider the case and states why. Then the CCRB can modify its substantiation decision or its recommendation for discipline, or it can decide that its original decision was correct. In either situation, the police commissioner makes the final decision on the disposition and penalty, after reviewing both the DAO’s recommendations and the CCRB’s recommendations.

The CCRB formally approved the reconsideration process in a December 2014 Board resolution. Many of the substantiated CCRB cases sent to the NYPD in 2014 were

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

closed before the reconsideration process was put in place, but a large number of them were still being reviewed by the NYPD in 2015, after the reconsideration process was in place. For a small number of 2014 cases decided before the reconsideration process was officially adopted by the CCRB, the DAO emailed an informal request for reconsideration that the CCRB considered.

The DAO has provided the monitor team with data regarding complaints in which allegations relating to stops, questions, frisks, searches or trespass arrests were substantiated by the CCRB and sent to the NYPD in 2014, 2015, 2016 and 2017. Subsections 1 and 2 below report on several issues raised by the data.

1. Discipline and Penalties

Charges and specifications lead to a proceeding in the trial room, which, depending on the outcome, may lead to serious penalties. If the trial results in a not guilty decision, there will be no discipline. If, however, the officer is found guilty or there is a negotiated plea, the penalty could be serious—most often a loss of vacation days or, in the most serious cases, termination. Another level of discipline is known as command discipline. When command discipline is ordered, the final decision regarding a penalty is made by the commanding officer (CO) in the precinct. For Command Discipline A, a CO can impose up to five days loss of vacation, impose training or instructions, or “warn and admonish” the member. For Command Discipline B, the CO can impose up to 10 days loss of vacation, impose training or instructions, or “warn and admonish” the member. When training is imposed as discipline, the required training will depend on the circumstances of the violation and the history of the officer. It could involve a session with the Department’s Legal Bureau, command level training, such as

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

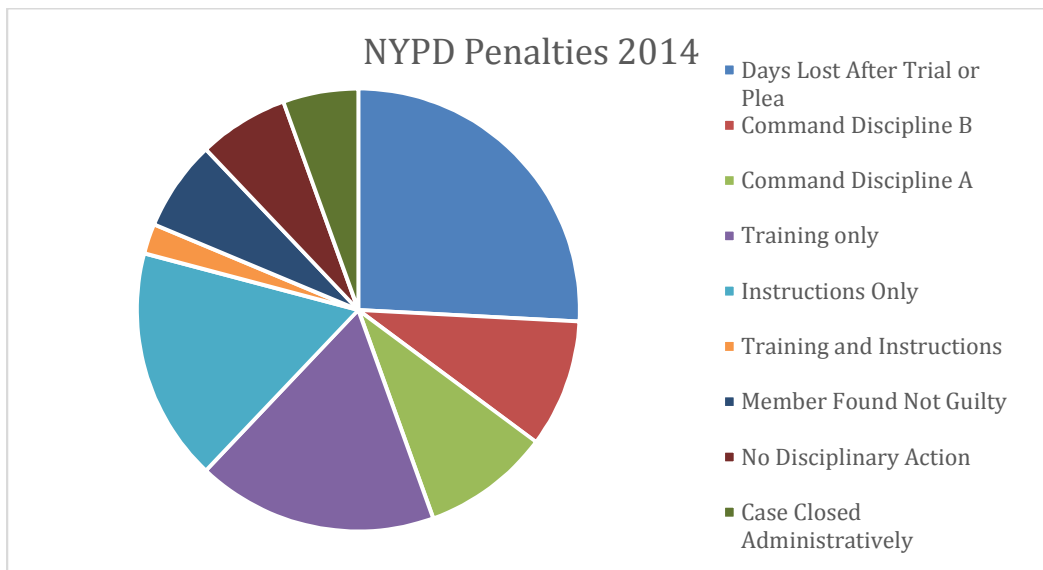
with the precinct training sergeant, or having the officer attend Police Academy training such as the stop and frisk training now being conducted for supervisors, if the officer has not received that training before.

In practice, the CCRB's recommendation on the level of discipline usually is the ceiling of what the police commissioner imposes. The CCRB has noted that it "move[d] away from severe punishment to less severe discipline, and most importantly, to formalized training" in part to acknowledge the pressure officers were under to make stops and frisks, and to acknowledge "the lack of adequate and clear training and the complexities of the law."⁵ In addition, the court-approved stop and frisk policy in P.G. 212-11 notes that "[m]inor or inadvertent mistakes in documentation or isolated cases of erroneous but good-faith stops or frisks by members of the service should ordinarily be addressed through instruction and training."

⁵ CCRB 2014 Annual Report, p. 46, http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2014_annual.pdf. *See also*, CCRB 2015 Annual Report, p. 32, http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2015_annual.pdf and CCRB 2016 Annual Report, p. 32, http://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2016_annual.pdf.

VIII. Complaints and Discipline
B. NYPD Handling of Substantiated CCRB Complaints

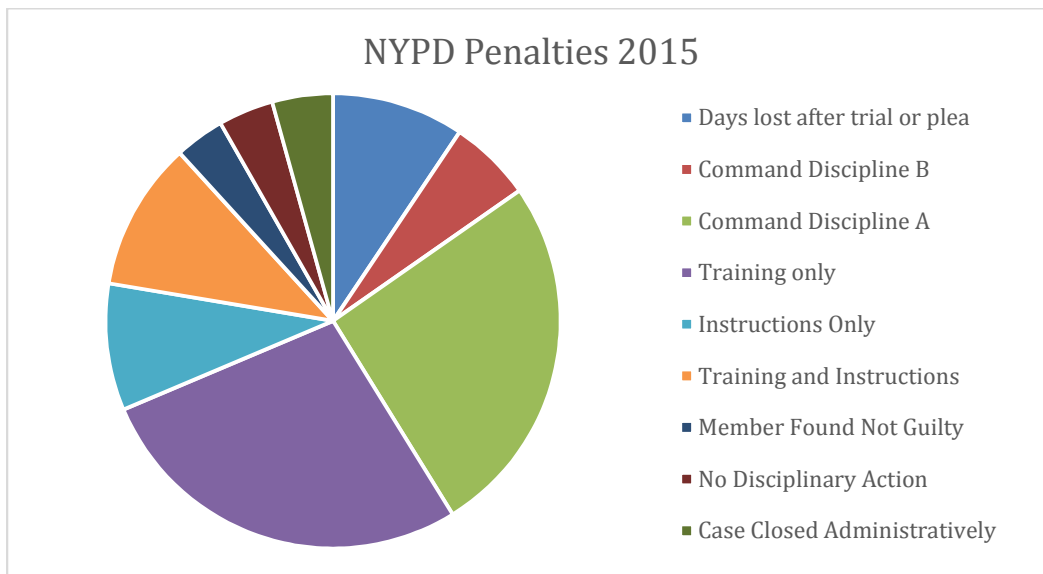
Discipline and Penalties for Substantiated Cases Sent to NYPD in 2014



Discipline	Number of Cases (Days Lost)
Losing Vacation Days After Trial Or Through Negotiated Plea	47 (247 Days Lost)
Command Discipline B	17 (25 Days Lost)
Command Discipline A	17 (1 Day Lost)
Training Only	32
Instructions Only	31
Training and Instructions	4
Member Found Not Guilty	12
No Disciplinary Action	12
Case Closed Administratively	10
Total Closed Cases	172

VIII. Complaints and Discipline
B. NYPD Handling of Substantiated CCRB Complaints

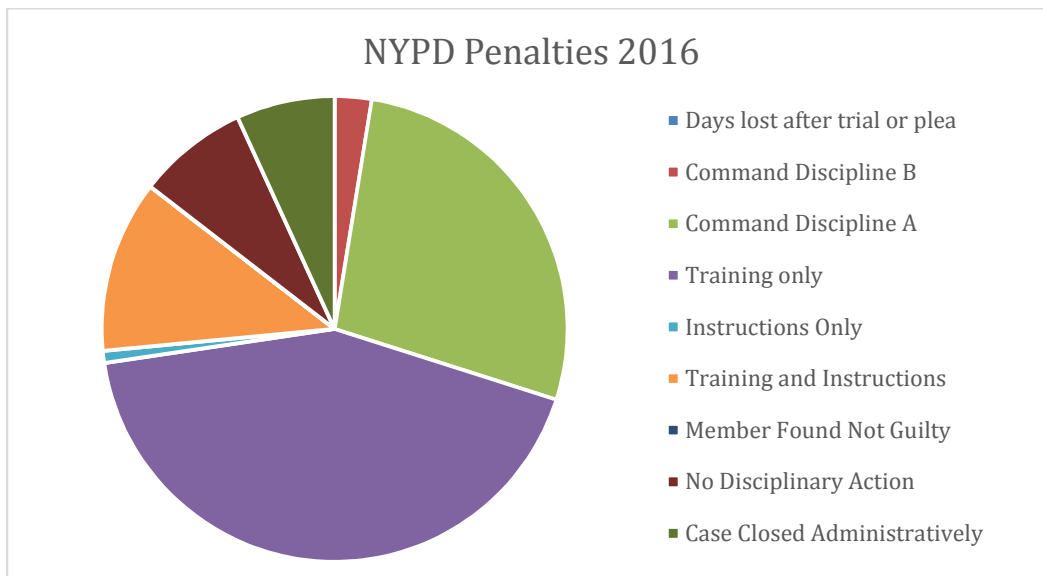
Discipline and Penalties for Substantiated Cases Sent to NYPD in 2015



Discipline	Number of Cases (Days/Hours Lost)
Losing Vacation Days After Trial Or Through Negotiated Plea	24 (172 Days Lost)
Command Discipline B	15 (6 Days Lost)
Command Discipline A	66 (19 Hours Deducted)
Training Only	70
Instructions Only	23
Training and Instructions	27
Member Found Not Guilty	9
No Disciplinary Action	10
Case Closed Administratively	11
Total Closed Cases	255

VIII. Complaints and Discipline
B. NYPD Handling of Substantiated CCRB Complaints

Discipline and Penalties for Substantiated Cases sent to NYPD in 2016



Discipline	Number of Cases (Days/Hours Lost)
Losing Vacation Days After Trial Or Through Negotiated Plea	0
Command Discipline B	3 (3 Days Lost; 4 Hours Lost)
Command Discipline A	32 (3 Days Lost; 5 Hours Deducted)
Training Only	50
Instructions Only	1
Training and Instructions	14
Member Found Not Guilty	0
No Disciplinary Action	9
Case Closed Administratively	8
Total Closed Cases	120

Penalties for Substantiated Cases Sent to NYPD in 2017. Through September 2017, the NYPD received from the CCRB substantiated allegations involving 55 members of the service. Of those, 53 remain active and only two cases have been closed, both because the member of the service resigned.

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

2. Reconsideration

As noted above, the CCRB and the NYPD agreed on a “reconsideration” process for cases in which the DAO disagreed with the CCRB’s substantiation of a complaint or the CCRB’s recommended discipline. Under the court’s order, the DAO must (1) give increased deference to the credibility determinations made by the CCRB, (2) use an evidentiary standard that is neutral between the claims of complainants and officers, and (3) not require that physical evidence corroborate the complaint.

The monitor team undertook a review of 2014, 2015 and 2016 cases within its jurisdiction (street stops and trespass enforcement) to determine whether these requirements were being met. This work involved several inquiries and reviews.

1. The monitor sent a list of cases within his jurisdiction to the CCRB and asked whether it believed the reconsideration requests did not adhere to the court’s mandate. There were 63 such cases involving 99 officers on the list. The CCRB identified five cases (involving eight officers) as being problematic.

2. The monitor independently reviewed the reconsideration memos and the CCRB’s response in all 63 cases. In some, it was clear on the face of the memos that the DAO’s request did not violate the court order, e.g., when the facts as stated by the complainant were taken as true but the DAO differed with the CCRB as to whether those facts amounted to a violation of law or policy, or where the DAO’s reconsideration request asked the CCRB to reduce the recommended penalty based only on a member’s disciplinary history.

3. There were, however, ten cases involving 19 officers in which either the monitor team could not make a judgment or the reconsideration memos themselves

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

suggested that the DAO did not provide sufficient deference to the CCRB's determinations. In those cases, the monitor asked for and reviewed the underlying investigative files. This was a time-consuming task because the files often consisted of hundreds of pages of witness statements or summaries, NYPD documents (such as radio runs, stop reports and memo books), and multiple video and audio recordings that needed to be reviewed. After reviewing all these files, the monitor team's view was that the DAO did not give sufficient deference to the CCRB's credibility determinations in five cases (involving eight officers). The monitor will be meeting with the NYPD to discuss these cases and get the Department's views.

4. Finally, there are three additional cases (involving four officers) identified by CCRB as problematic for which the monitor team will be requesting the full investigative files in order to complete its review.

5. In sum, of the 63 cases (involving 99 officers) reviewed by the monitor team, there were five cases (involving eight officers) in which the monitor's view was that the DAO did not give sufficient deference to CCRB's credibility determinations. Three case reviews are not yet complete. The NYPD has recently provided the monitor with memos for an additional 40 reconsideration requests, involving 56 officers, made in 2017, which the monitor will be reviewing.

Both the CCRB and the DAO have noted that the Department is now concurring with the CCRB's recommendations for disposition and discipline more than in prior years. There appear to be two reasons for this increase in agreement. The first is the reconsideration process; the second is a shift in the CCRB's recommendations towards command discipline, training and instructions, and away from charges and specifications

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

for stop and frisk cases. The NYPD agreed with the CCRB's substantiation recommendation and discipline recommendation, without a request for reconsideration in 65 percent of the CCRB cases received by NYPD in 2014, 72 percent of the cases received in 2015 and 61 percent of the cases received in 2016.

By 2016, there were almost no cases in which the NYPD took action contrary to the CCRB recommendation without first engaging in the reconsideration process. In 2014, there were some cases in which the NYPD changed the disposition or penalty before the reconsideration process had been put in place. In 2015, even after the reconsideration process had been put in place, there were 12 cases in which the NYPD changed the disposition or reduced the discipline imposed without a reconsideration request. By 2016, there was only one CCRB case in which the NYPD changed the disposition or reduced the discipline imposed without a reconsideration request. In that case, the CCRB recommended a command discipline B, but the police commissioner determined that no discipline should be imposed.

The monitor has also reviewed whether the DAO requested reconsideration of the CCRB's substantiated disposition or the CCRB's penalty recommendation, and the outcomes of the cases for the last three years. Two things can be noted in the tables below. First, for the 2015 and 2016 cases, the DAO challenged the CCRB's finding that the complaint was substantiated in as many cases as the DAO requested reconsideration of the CCRB's recommended penalties.

VIII. Complaints and Discipline**B. NYPD Handling of Substantiated CCRB Complaints****Reconsideration of Disposition or Penalty, 2014-2016**

Year	Total Number Of Reconsideration Cases	Number Of Cases Seeking Reconsideration Of Disposition	Number Of Cases Seeking Reconsideration Of Penalty
2014	22	7	15
2015	48	24	24
2016	42	20	22

Second, in 2016, the CCRB maintained its recommendations (and thus disagreed with the DAO's reconsideration request) in a greater proportion of reconsideration requests than in the prior years. However, even when the DAO and the CCRB disagreed after a reconsideration request, the police commissioner sided with the CCRB in some cases and in others imposed discipline at a level that was less than recommended by the CCRB, but more than recommended by the DAO.

Outcome of Reconsideration Requests**2014**

Reconsideration Outcome (Total)	22
CCRB agrees with DAO reconsideration request	5
CCRB reduces penalty recommendation, but not as far as the DAO suggests	11
CCRB disagrees with the DAO reconsideration request, and the Police Commissioner agrees with the CCRB recommendation	0
CCRB disagrees with the DAO reconsideration request and the Police Commissioner agrees with the DAO recommendation	5
CCRB disagrees with the DAO reconsideration request and the Police Commissioner imposes discipline between the DAO and CCRB recommendations	1

VIII. Complaints and Discipline**B. NYPD Handling of Substantiated CCRB Complaints****2015**

Reconsideration Outcome (Total)	48
CCRB agrees with DAO reconsideration request	15
CCRB reduces penalty recommendation, but not as far as the DAO suggests	11
CCRB disagrees with the DAO reconsideration request, and the Police Commissioner agrees with the CCRB recommendation	2
CCRB disagrees with the DAO reconsideration request and the Police Commissioner agrees with the DAO recommendation	16
CCRB disagrees with the DAO reconsideration request and the Police Commissioner imposes discipline between the DAO and CCRB recommendations	4

2016

Reconsideration Outcome (Total)	42
CCRB agrees with DAO reconsideration request	10
CCRB reduces penalty recommendation, but not as far as the DAO suggests	2
CCRB disagrees with the DAO reconsideration request, and the Police Commissioner agrees with the CCRB recommendation	8
CCRB disagrees with the DAO reconsideration request and the Police Commissioner agrees with the DAO recommendation	17
CCRB disagrees with the DAO reconsideration request and the Police Commissioner imposes discipline between the DAO and CCRB recommendations	5

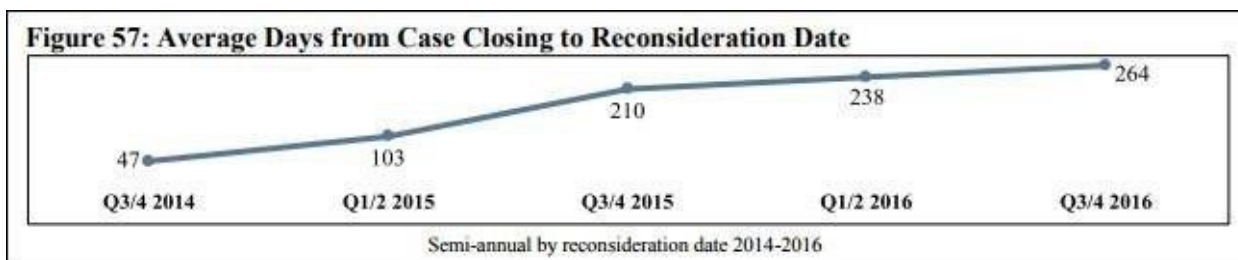
One aspect of the reconsideration process that the CCRB has raised as problematic is the time it now takes for the DAO to decide whether to reconsider a substantiated case. When the CCRB formalized the reconsideration agreement, it did so in a board resolution stating that the DAO would make its reconsideration request within 90 days of receiving the case. In its 2016 Annual Report, the CCRB noted that the time it

VIII. Complaints and Discipline

B. NYPD Handling of Substantiated CCRB Complaints

takes for the DAO to review cases and decide whether to request reconsideration had been increasing:

One of the most significant difficulties facing the CCRB with respect to the reconsideration process is the time it takes for the DAO to review newly substantiated allegations and decide whether or not to request reconsideration by the Board. As illustrated in the following figure, there has been a consistent increase in the amount of time it takes the DAO to request reconsideration following the Board's decision to substantiate an allegation. In the second half of 2016, the DAO took an average of 264 days to request reconsideration following the Board's decision.



CCRB 2016 Annual Report, p. 57.⁶ In the CCRB's 2017 Semi-Annual Report, the CCRB states that the average time between the CCRB's decision and the DAO request for reconsideration has increased to 280 days for the first six months of 2017.⁷

⁶ On October 11, 2017 the CCRB adopted a rule requiring the NYPD, absent good cause, to make its reconsideration requests within 30 days of when it receives the CCRB's initial recommendation. That new rule will become effective 30 days after it is officially published.

⁷ CCRB 2017 Semi-Annual Report, p. 41, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/20171206_semi-annual.pdf.

IX. Joint Remedial Process

IX. Joint Remedial Process

A “Joint Remedial Process” was ordered by the court and agreed to by the parties. This is a process guided by the court-appointed facilitator, Hon. Ariel Belen (Ret.), to solicit input from stakeholders and affected communities on possible additional reforms regarding stop and frisk and trespass enforcement beyond those already required by the court. Judge Belen and his facilitation team completed their community engagement through numerous focus groups, community forums, and meetings with policy and thought leaders in criminal justice, policing and police reform. Judge Belen canvassed a wide array of stakeholders and received their ideas for potential additional reforms. Judge Belen and his team also met with police officers, supervisors, police union officials and minority affinity group representatives, and multiple senior NYPD representatives.

Consistent with the remedial order, Judge Belen will issue a final report, which will include his findings and recommendations. Under the court order, proposed additional remedial measures must be no broader than necessary to bring the NYPD’s use of stop and frisk and trespass arrests into compliance with the Fourth and Fourteenth Amendments.

Appendix 1



INTERIM ORDER

SUBJECT: RISK ASSESSMENT INFORMATION LITIGATION SYSTEM (RAILS)		
DATE ISSUED:	REFERENCE:	NUMBER:
11-06-17	**A.G. 320 SERIES	73

1. The Department has created the Risk Assessment Information Litigation System (RAILS), which is a network tool that allows Department executives to enhance personnel management by more effectively tracking the behavior and performance of uniformed and civilian members of the service over extended periods of time. Information is gathered from a multitude of Department resources and presented in a user-friendly fashion. RAILS also enables the ability to receive real-time alerts for triggering events.

2. Phase I of RAILS generates seventeen different alerts regarding significant performance indicators related to members of the service:

ADMINISTRATIVE

- a. Finalized administrative transfer
- b. Member of the service is suspended
- c. Member of the service is modified

CCRB

- a. Three or more CCRB complaints in twelve months
- b. Six or more CCRB complaints in five years
- c. Four or more CCRB complaints for force in two years
- d. Five or more CCRB complaints for force in four years

DISCIPLINE

- a. Penalty of ten or more days
- b. Guilty charges and specifications for unnecessary use of force
- c. Two or more guilty charges and specifications for unnecessary use of force, abuse of authority, discourtesy or offensive language in four years
- d. Dismissal probation
- e. Substantiated allegation of bias-based policing

FORCE

- a. **THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)** indicating shots fired

PERFORMANCE

- a. Performance Evaluation with overall rating of a 2.5 or below
- b. Performance Evaluation that has below competent in "Police Ethics/Integrity"
- c. Performance Evaluation that has below competent in "Drive and Initiative"
- d. Two or more below competent ratings in a Performance Evaluation.

3. Therefore, effective immediately, when a commanding officer uses the Risk Assessment Information Litigation System (RAILS), the following new Administrative Guide procedure entitled, 320-49, "Risk Assessment Information Litigation System (RAILS)" will be complied with:

PURPOSE To provide commanding officers with an effective means to track the behavior and assess the performance of uniformed and civilian members of the service.

PROCEDURE When a commanding officer uses the Risk Assessment Information Litigation System (RAILS) to track and assess the performance of a uniformed or civilian member of the service:

- COMMANDING OFFICER**
1. Log into RAILS application on a regular basis.
 2. Once signed into RAILS, acknowledge, all unacknowledged alerts.
 - a. Review the member of the service's profile report.
 - b. Verify the accuracy of the information regarding the member of the service, including their assignment.
 - c. Select the appropriate type of acknowledgement.
 - d. Enter details of the acknowledgement in the "Notes" section, if applicable.
 3. Complete plan of action within 30 days of acknowledgement for the member of the service, if appropriate.
 - a. Describe all relevant actions taken, and plan to take, regarding the member of the service.
 - b. Provide further details, where appropriate (e.g., training referred for member of the service to attend, etc.).
 - c. Recommend, whether or not the member of the service should be reassigned.
 - d. Recommend, whether or not the member of the service should be placed on performance monitoring.
 4. Forward plan of action to the Commanding Officer, Performance Analysis Section.
 5. Confer with the Performance Analysis Section for the following alerts:
 - a. Uniformed member of the service is placed on modified assignment
 - b. Finalized administrative transfer
 - c. Performance Evaluation with overall rating of 2.5 or below
 - d. Guilty charges and specifications for unnecessary use of force
 - e. Substantiated allegation of bias-based policing
 - f. Dismissal probation.
- COMMANDING OFFICER, PERFORMANCE ANALYSIS SECTION**
6. Approve submitted plans of action or reply with revised plan within 10 business days of submission.

**ADDITIONAL
DATA**

Commanding officers with questions regarding the submission of a plan of action should contact the Performance Analysis Section at (212) 720-4800. Commanding officers with questions regarding performance monitoring should refer to the Supervisor Monitoring and Assistance Programs Guide available via the Department Intranet.

4. Upon publication, this Interim Order has been incorporated into the On-Line Administrative Guide.

5. Any provisions of the Department Manual or any other Department directives in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

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INTERIM ORDER NO. 73