



**U.S. Department of Justice**

**Civil Rights Division**

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

March 19, 2003

VIA FACSIMILE AND REGULAR MAIL

Mr. Michael T. Brockbank  
Schenectady Corporation Counsel  
Room 201  
City Hall  
Jay Street  
Schenectady, NY 12305

Re: Investigation of the Schenectady Police Department

Dear Mr. Brockbank:

As you know, the Civil Rights Division is conducting an investigation of the Schenectady Police Department ("SPD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c)(3). We would like to take this opportunity to express our appreciation for the cooperation we have received thus far from the City of Schenectady ("City") and the SPD.

Since the investigation began, we have met with City officials, reviewed current SPD policies and interviewed numerous SPD officers, including command-level and line officers, attended police academy training, and ridden along with SPD patrol officers. Additionally, we are in the process of reviewing SPD documents. Based on our preliminary review, we have identified several areas of concern along with recommendations for addressing these concerns.

Important aspects of our fact-gathering process have yet to be completed, most notably reviewing incident reports included in the documents we received from the City and obtaining the remaining materials requested on August 15, 2002 but not yet received from the City. Therefore, this letter is not meant to be exhaustive, but rather focuses on significant concerns we have

identified and recommendations we can provide based on the first phase of our investigation. We may identify additional issues as our investigation progresses.

The issues identified below focus on the following areas: SPD policies, use of force, investigations, external complaints, discipline, supervisory oversight, and training.

Some of the concerns discussed below also have been identified by the new Public Safety Commissioner and Chief of Police whom we met in October 2002. We were encouraged that they had identified areas for reform in the SPD and look forward to their achievements. We are further encouraged by the working relationship that appears to be developing between the PBA and the new SPD leadership. We hope that this relationship will foster an increase in communication and consensus.

## **I. SPD policies**

### **A. Distribution**

Officers receive a copy of the SPD Manual when they join the department. The manual contains General Orders, Interim Orders and several Memoranda.<sup>1</sup> SPD policy requires the manual to be updated with new General Orders as they are issued. The unit commander<sup>2</sup> is responsible for distributing new General Orders and for obtaining an officer's signature indicating the order was received. According to officers we spoke with, they received a manual upon joining the force but have not received additional General Orders as they are issued. Command level staff acknowledge that the SPD did not distribute the SPD Manual for a

---

<sup>1</sup> General Orders are permanent procedures and programs. Interim Orders are temporary or self-canceling in nature. Memoranda are used for instructions that do not affect the entire department or as a means to notify SPD personnel of newly created and vacant positions. The SPD also issues Personnel Orders but those are not contained in the Manual.

<sup>2</sup> The unit commander is a lieutenant. Currently, the SPD consists of three Bureaus each headed by an Assistant Chief: the Field Services Bureau, the Investigative Services Bureau and the Administrative Services/Support Services Bureau. Each Bureau consists of several units, or platoons, which are led by a lieutenant.

one and a half year period beginning in 2000 and that the only time the SPD complied with the signed General Order distribution policy was between 1992 and 1994.

Although the unit commander is not required to distribute Interim Orders, Personnel Orders or Memoranda, SPD policy requires these documents, as well as General Orders, to be posted on designated clip boards in the station house. We found that policies have not been posted as required. For example, during our May 2002 tour, we alerted the SPD when we discovered that the designated clipboards did not contain any policies issued after 1998. When we returned in October 2002, the clipboards were updated. If Interim Orders, Personnel Orders and Memoranda are not distributed or posted regularly, SPD officers may not be aware of important SPD policies and policy changes. In addition, officers cannot be held accountable for non-compliance with SPD policies that they did not receive.

We recommend that the SPD ensure that every officer is issued an SPD Manual and that officers maintain manuals that contain all current policies regardless of their classification as General or Interim Orders. We recommend that the SPD enforce its requirement that officers acknowledge receipt in writing of new General Orders and expand that mandate to include Interim Orders. Also, the SPD should comply consistently with its policy requiring the posting of all policies in the designated locations.

#### B. Substance

Policies should be clear, comprehensive and accessible. Existing SPD policies are often ambiguous and contain undefined terms. For example, the SPD Respect for Human Rights policy contains a specific prohibition on ethnic slurs and racially derogatory comments, but only a very general prohibition on "harassment/discrimination." The policy does not define "harassment" or "discrimination," or provide officers with concrete prohibitions on the inappropriate and unconstitutional use of race or ethnicity as a basis for police actions, such as uses of force, searches and seizures.

The SPD has no policy regarding certain basic police functions, such as arrest and foot pursuit, and safety concerns such as exposure to tuberculosis or blood born pathogens. The failure to develop relevant policies may contribute to the use of

"official unwritten policies" by the SPD. In the course of two 2001 federal court proceedings, the SPD acknowledged an official, unwritten strip search policy, and SPD officers testified to an official unwritten "relocation" policy. Both policies were found unconstitutional.

Included in the SPD Manual is a policy stating that SPD officers are to follow the New York State Police, Manual For Police ("NYSP Manual") when the SPD lacks a relevant policy. This "catch-all" policy provision does not adequately identify for SPD officers relevant and applicable policies. Officers should be able to reference readily all information related to a specific policy; therefore, policies should not be dispersed over a number of manuals. Furthermore, the SPD does not train officers on NYSP policies and has no protocol for informing and training SPD officers when modifications are made to relevant policies in the NYSP Manual.

We recommend that the SPD review all policies to ensure critical terms are defined and actions at issue are clearly authorized or prohibited by the SPD. We further recommend that the SPD develop a policy providing specific guidance to officers on when consideration of race may be appropriate and inappropriate.

We recommend that the SPD develop comprehensive policies and procedures that provide officers with specific guidance in performing the full range of police duties. If the SPD adopts specific NYSP policies, those policies should be contained in the SPD Manual and incorporated into the SPD training program. We also recommend that the SPD arrange its policies in a manner that allows immediate access to a complete policy, such as by organizing the policies according to subject matter (administrative, operations, investigations, personnel, technical services, etc.)

### C. Review

SPD policy requires General Orders to be reviewed on their anniversary date. According to SPD command staff, General Orders are not reviewed. Policies should be reevaluated on a regular basis to ensure they incorporate accepted, modern police practices. For example, in 1991, the SPD issued a General Order related to vehicular pursuits. It appears that this policy has not been reevaluated in several years, if ever.

Similarly, SPD policy requires periodic review of Interim Orders to evaluate whether they should be adopted as General Orders. As with General Orders, the SPD does not reassess the Interim Orders as required. For example, the SPD use of force policy is an Interim Order. The policy was issued in 1998 and the section on the order that identifies the reevaluation date is blank.

We recommend that the SPD regularly review all policies to ensure that they are clear, appropriate and current. The SPD should enforce its policy requiring the reexamination of all General Orders over one year old and the regular evaluation of Interim Orders.

## **II. Use of force**

The SPD use of force policy is an Interim Order. This single policy includes the SPD general use of force policy, use of force options, progression of force, and reporting requirements.

We recommend that the SPD develop a permanent and comprehensive use of force policy. The SPD should consider developing a series of separate but related General Orders providing comprehensive guidelines for the use of force, each force option, the progression of force and the use of force reporting policy.

### **A. Use of force policy**

The SPD general use of force policy contains vague language and undefined terms. According to the policy, an officer is permitted to use force "to effectively bring an incident under control," and "to restrain or subdue an uncooperative or resistive individual." These statements do not limit the use of force to effecting a lawful arrest or to protecting an officer or another, and therefore, implicitly may allow for unconstitutional uses of force. As written, the policy may lead officers to believe they are justified in using force in situations in which force would be unreasonable.

Although SPD policy states that physical force "should be reasonable," it fails to define "reasonable" force. Furthermore, by stating that force "should" be reasonable, the policy may suggest implicitly that reasonable force is a preferred option,

instead of a mandate. One officer we spoke with informed us that some uses of force were based on the personal style of an officer and that in a situation where he would question an individual at a distance, another officer would "yoke" the individual, and yet another officer would force the individual against a wall with his hand twisted behind his back. Although it is true that an officer may choose not to use force in a situation where force would be justified, this anecdote suggests that some SPD officers apply a subjective standard in using force. All uses of force must be reasonable with the reasonableness of the force evaluated by an objective standard, not an officer's personal style. Graham v. Connor, 490 U.S. 386, 397 (1989). The policy further fails to identify specific uses of physical force that may be prohibited or restricted to limited circumstances by the SPD. For example, the force policy does not indicate whether carotid holds, hog-tying or other uses of physical force are authorized by the SPD.

Similarly, the policy inadequately addresses "deadly force." According to SPD policy, deadly physical force is justified "when an officer reasonably believes that another person is using or about to use deadly physical force;" however, the policy does not limit the use of deadly force to situations involving an imminent threat to the life of the officer or another person. In fact, the policy appears to state that the use of deadly force may be justified even when there is no imminent threat to the life of the officer or another person.<sup>3</sup> Furthermore, the SPD policy does not adequately identify types of force that constitute deadly force. The policy identifies firearms as a deadly force option and indicates that the police baton "may" constitute deadly force. However, the policy fails to identify what uses of the baton constitute deadly force and fails to indicate that a strike to the head with an impact weapon, including a police radio or flashlight, is an application of deadly force. Similarly, the policy fails to identify uses of physical force which may constitute deadly force, such as the application of a choke hold.

We recommend that the SPD develop a use of force policy that limits the use of force to affecting a lawful arrest or to

---

<sup>3</sup> "Even though an officer may be justified in using deadly physical force, the officer should make a reasonable attempt to assess the following elements that must be present for an offender to constitute an immediate deadly threat..." Use of Physical Force, SPD Interim Order No: 98-12, at V.A.2.

protecting an officer or another from an imminent threat of harm. The policy should clearly and accurately define all terms including reasonable force (i.e., the minimum amount of force necessary to effect the arrest or protect the officer or other person). The use of force policy also should specify the types of physical force that are approved, limited and prohibited, as well as the circumstances in which the force is approved. We recommend that the SPD clarify its use of deadly force policy and explicitly limit the use of deadly force to situations involving an imminent threat of death or serious physical injury to an officer or other person. The policy should identify all uses of force that constitute deadly force, such as a strike to the head with an impact weapon or a choke hold.

#### B. Use of force options

The SPD use of force policy lists four use of force options: police baton, chemical spray, police canine and firearm. The baton may not be available as a force option to all officers, as SPD policy only recommends, and does not require, that the baton be carried on all calls. In addition, the use of force policy identifies a police canine option; however, the SPD did not have a canine unit between 1998, the year the use of force policy was issued, and October 2002 when it began to develop a canine team. Overall, this policy does not provide adequate information on when and how the listed force options may be used or on the availability of other force options, such as physical force.

We recommend that the SPD identify physical force as an option and develop a comprehensive policy governing the use of each force option. We recommend that the SPD establish specific guidelines regarding when officers are required to carry batons. As the SPD continues to develop a canine team, we recommend that the SPD clearly define the limitations on use of canines and adopt a detailed "find and bark" policy as opposed to a "find and bite" policy. A find and bark policy prevents canines from biting subjects in situations in which force is not necessary to effect an arrest or protect the safety of officers or others.

#### C. Progression of force

The SPD progression of force identifies six levels of force: 1) verbal direction, 2) physical direction, 3) chemical agent, 4) police baton, 5) police canine and 6) firearm. The progression adds verbal and physical direction to the four force options

previously discussed. SPD policy presents the levels as a static and inflexible model. The policy does not describe how the various force options may be used, how the various applications of the options affect their placement in the progression or what level of force is appropriate in response to what type of resistance.

SPD policy identifies several prohibitions on the use of a firearm but fails to provide any guidance as to the proper uses of the police baton. Similarly, the SPD canine policy fails to provide sufficient guidance to officers on the circumstances in which it is appropriate to deploy a canine. The policy approves the use of a canine "to apprehend a person whom the officer reasonably believes is committing or has committed a violent misdemeanor or a felony." However, the policy does not define "violent misdemeanor" or identify the types of felony apprehensions in which canine deployment would be appropriate.

The chemical spray option is the only force option with which related documents were provided, specifically a training handout and Field Services Bureau Memorandum. The training handout provides some guidance on the appropriate application of chemical spray; however, as with each force option, the information regarding its use is neither included nor referenced in the use of force policy. The Field Services Bureau Memorandum provided contains guidelines for decontamination following the use of pepper spray yet indicates that flushing the suspects face and eyes is optional and that the effects of pepper spray should dissipate within 45 minutes without decontamination. Medical attention is mandated only if symptoms persist beyond 45 minutes. The decontamination guidelines similarly are not contained or referenced in the use of force policy. Furthermore, the guidelines only apply to SPD officers assigned to the Field Service Bureau.

We recommend that the SPD adopt a progression of force model that describes the available force options on a continuum. For example, the model should specify the various applications of the baton in the force continuum and that it's position in the continuum is based on the manner in which it is used rather than the instrument itself: the baton is a lower level of force when used as a defensive weapon, e.g., to block a punch or other object; striking an individual's lower legs is an offensive use of the baton, which is a higher application of force in the continuum; finally, a head-strike with the baton is a deadly use



of force at the highest level of the force continuum. We also recommend that the SPD adopt a progression of force model that relates the appropriate officer response to the specific actions of a suspect. For example, if a suspect is striking or kicking an officer, the model would identify appropriate officer responses such as the use of a baton as a defensive weapon, to block a punch or kick. The policy should clearly incorporate or reference all relevant policies and guidelines. The SPD should train all officers in these options and policies. We further recommend that the SPD develop a detailed, department-wide policy that requires prompt decontamination each time pepper spray is used.

D. Use of force reporting

SPD policy requires the documentation of all uses of force other than "verbal direction." Therefore, SPD officers are required to document all uses of force in the progression, including all "physical direction" which is defined to include physical contact "as slight as a touch." The policy thus theoretically requires the documentation of every arrest, as even unresisted handcuffing involves "a touch." Despite this very broad reporting requirement, command level and line officers acknowledge that officers rarely document uses of force and that supervisors do not enforce the reporting policy. We also understand that no one in the SPD monitors the use of pepper spray and that officers are permitted to replace a can of pepper spray whenever their can is empty. As a matter of practice in the SPD, many uses of force are not reported and, therefore, officers who use force in an inappropriate or unconstitutional manner are not identified and corrected.

According to SPD policy, uses of force are to be documented on the Standard Incident Report ("SIR"). The SIR is an incident-based report which by policy is used to document all police-citizen interactions, including those which do not result in an arrest. The SPD does not use SIRs to count or track uses of force, and it would be extremely difficult to do so because the SIRs are used to report other police actions, are not entered into a computerized database and often lack specificity. For example, an SIR may allude to multiple uses of force by multiple officers occurring in a single incident but provide only conclusory language such as, the subject "struggled with officers" or "resisted arrest." The SIRs that indicate force was used often fail to identify the individual officers who used

force, the actual force used, and the subject's actions which served as the predicate for the force.

In addition, the SPD introduced Resisting Arrest Packets in 2001, which require the reporting of all resisting arrest allegations. The Resisting Arrest Packets were introduced without a formal policy. The instructions on the pre-printed packets indicate that a packet must be completed if an individual resisted arrest, even if the individual is not charged with resisting arrest. The resisting arrest packets improve on the current policy regarding use of force reporting by identifying: a time frame in which the use of force information must be recorded; the responsibility of the first line supervisor to ensure force is documented; and a procedure for the information to be provided to the chain of command. However, Resisting Arrest Packets are not required for every incident involving a use of force and, therefore, are not a substitute for a comprehensive use of force reporting policy.

We are informed that the SPD is considering a new use of force reporting procedure and the development of a use of force form. We have received one draft reporting procedure and two draft use of force forms. The draft reporting procedure indicates that it will replace the documentation requirements of the SPD use of force policy and the Resisting Arrest Packets. The draft procedure improves on the current reporting policy by including the time frame, supervisory responsibility, and chain of command aspects of the resisting arrest packets. The draft reporting procedure further improves on the current reporting policy by requiring reporting of off-duty uses of force. The draft procedure retains the potentially over-broad requirement that all uses of force in excess of verbal direction, including unresisted handcuffing, be reported. In addition, although the draft reporting procedure appropriately identifies several purposes for collecting use of force data, such as identification of training needs and investigation of civilian complaints, the SPD has not developed a protocol to ensure these goals are met.

The two draft use of force forms are incident based forms which rely heavily on check boxes and yes/no answers in addition to a narrative section. Check boxes are an appropriate means to gather particular information; however, to be effective the check boxes used should be comprehensive and provide for sufficient detail. For example, there is a yes/no option to the question of whether the officer or subject was injured but no requirement

that the officer completing the form also specify the exact injury and how that injury occurred. Another example is the yes/no option to the question of whether the officer or subject was hospitalized but no requirement that the officer completing the form also specify whether the individual was treated at the scene or by a personal physician. Similarly, the forms do not allow for adequate witness statements or supervisory review. There is a single line to identify witnesses but no space or instruction for indicating whether, how or by whom a witnesses' statement was documented. There is a single line for supervisors to sign the form but no space or instruction for the supervisors' written evaluations. Finally, the forms contain check boxes where the officer can indicate whether, in the officer's opinion, the arrestee was "impaired" by alcohol, drugs or mental illness but no requirement that the officer record the specific factual basis for that opinion.

We recommend that the SPD adopt a policy that requires reporting for all uses of physical or instrumental force beyond unresisted handcuffing on a form dedicated solely to recording use of force information. The form should be able to record discrete information about multiple uses of force by multiple officers in a single incident. The form should require an officer to provide a detailed description of the incident, beginning with the basis for the initial contact, continuing through the specific circumstances and actions that prompted each use of force and the specific injuries and medical treatment. Check boxes should be supported by a narrative, where appropriate. The form should include a section to indicate whether the named witnesses provided statements and for supervisors to evaluate each use of force. The reporting procedures should include the improvements noted above in the Resisting Arrest Packets and the draft reporting procedure specifically, a time frame in which the use of force information must be recorded, the responsibility of the first line supervisor to ensure force is documented, and a procedure for the information to be provided to the chain of command. Further, a mechanism should be established to ensure compliance with the reporting procedures.

The information regarding each use of force should be tracked in an early warning system (EWS), as discussed below. The SPD should train all officers in use of force reporting and in the use of the new use of force form.

E. Use of force review and investigation

Although the current SPD policy requires use of force reporting, it does not require supervisors to review or investigate uses of force. In addition, neither the Resisting Arrest Packets nor the draft use of force reporting procedure would require supervisory review or investigation of a use of force. Use of force investigations and review are important because they would allow the SPD to identify and correct the actions of officers who use force in an inappropriate or unconstitutional manner and to identify training needs.

We recommend that the SPD establish a policy requiring the investigation and review of all uses of force (defined as any force beyond un-resisted handcuffing). We recommend that the SPD establish guidelines regarding the initiation of the review and investigation process and the circumstances in which an officer's supervisor is required to make command notifications and to respond to the scene to gather and preserve evidence and ensure injured person(s) receive prompt medical attention.

We also recommend that the Professional Standards Office (discussed below), or other specialized unit, be responsible for responding to the scene and investigating serious uses of force such as, uses of force in which the subject is visibly injured or complains of pain, uses of force that require hospitalization or result in death, and all head strikes and firearm discharges, except discharges in the course of training or certification. The SPD policy should include guidelines which determine whether an incident is investigated by the officer's Bureau or by the specialized unit.

The policy should require the officer assigned to investigate an incident to evaluate each use of force as well as any instance of potential officer misconduct discovered in the course of the investigation. The investigating officer should be required to refer any incident of potential misconduct to the Professional Standards Office.

**III. Investigations**

A. Professional Standard's Office

In 1991, the SPD created the Professional Standards Office ("PSO") which serves as the department's internal affairs

division. Until recently, the PSO was accountable to the Investigative Services Bureau Commander. During our October 2002 tour, we were informed that the PSO is now directly accountable to the Chief. This re-organization appears to be a positive step.

The PSO, however, has only three sworn officers, a lieutenant and two sergeants (both sergeant positions were added to the unit recently). In addition to conducting various investigations, the PSO is responsible for employee background checks and for video and audio reproduction and storage. Recently, the PSO was assigned a vehicle for the first time. While this is an improvement, PSO staff indicate that the lack of staff and transportation continues to impair timely and quality investigations.

The PSO has no staff eligibility criteria. Because all positions in the SPD have historically been assigned by seniority, the PSO Lieutenant position has served as a right of passage for a sergeant moving to the rank of lieutenant, as it is generally the first and only available lieutenant position for an officer newly promoted from the rank of sergeant. The PSO Lieutenant typically transfers out of the position as soon as another lieutenant position is available. In addition, the new PSO Lieutenant generally comes from a position of sergeant in the patrol division and, therefore, may have no investigatory experience or training. The SPD does not provide pre-service or in-service investigative training for PSO officers.

We recommend that SPD policy be revised to reflect the recent reorganization with the PSO now reporting directly to the Chief. We also recommend that the PSO be adequately staffed and equipped to function effectively. During our October 2002 tour, we were informed that the command staff and PBA are negotiating the removal of the PSO position from the strict seniority requirement of the current Collective Bargaining Agreement. In this context, we recommend that the SPD develop eligibility criteria for the PSO position, which includes an evaluation of the applicant's performance, including complaint and disciplinary histories, if any. Such criteria should ensure that only officers with the highest ethical standards serve as investigators. The SPD should take measures to recruit and train PSO officers, including providing additional incentives to encourage officers to apply to and remain with the PSO. Possible incentives include greater monetary compensation or priority for

receiving training. All PSO officers should receive pre-service and in-service investigatory training.

B. SPD Investigations

The SPD classifies investigations of officer conduct as external and special. External investigations are initiated by citizen complaints. Special investigations, also referred to as internal investigations, are administratively generated either by a supervisor within the SPD or in response to the filing of a civil suit or notice of a claim.

The PSO currently conducts all investigations of SPD officer conduct except the external investigations that are assigned to the Bureau of the subject officer. (External investigations are discussed further in the following section, IV. External Complaints.) If the PSO is assigned a special investigation after having initiated an external complaint investigation of the incident, PSO will re-classify the external complaint investigation as a special investigation. Although the SPD regularly initiates a special investigation each time a civil suit or notice of claim is filed, we were informed that between 1990 and 2000, the SPD initiated fewer than five special investigations involving use of force allegations that were not predicated on a notice of claim or civil suit. Both external and special investigations may include incidents that involve allegations of criminality. The SPD has no written policies or procedures for investigations of possible criminality by SPD employees, notification of the District Attorney's Office ("DA's Office"), or compelling statements from officers pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967).

We recommend that the SPD establish specific protocols for all investigations, including identification of the SPD or City entity responsible for conducting each type of investigation. The SPD should also develop guidelines identifying the circumstances in which the DA's Office should receive immediate notification of an incident in order to conduct an independent investigation. The SPD should create written guidelines regarding when it is appropriate: to defer an external investigation for a special investigation; to compel statements in a manner that ensures the integrity of the complaint investigation and that any potential criminal investigation complies with Garrity; and to notify or refer an open investigation to the DA's Office. The SPD also should develop

protocols for investigations and investigation reports, which provide more guidance than the limited requirements applicable to external investigations discussed in section IV.B. below.

#### **IV. External Complaints**

A fair and impartial process for receiving and investigating external complaints is a crucial oversight mechanism and an important deterrent for misconduct. As set forth below, however, aspects of the SPD's external complaint process have the potential to discourage the filing of complaints and to impair their effective tracking and resolution.

##### A. Intake and tracking of external complaints

SPD policy permits an individual to file a complaint against an SPD employee<sup>4</sup> at the SPD, City Hall, Human Rights Commission or with the National Association for the Advancement of Colored People. SPD policy indicates that complaints will be taken over the telephone; however, the policy does not address how the telephone procedure affects the requirement that the complainant sign the complaint forms. Although SPD policy does not provide for anonymous complaints, it states that a complainant's name will be held in confidence, if requested. We suggest this policy be better publicized. Indeed, in the numerous interviews we conducted, we did not find one community organization or community member who was aware that SPD policy allowed for confidential citizen complaints. We also suggest that the SPD develop guidelines for accepting anonymous and confidential complaints. The guidelines should resolve the apparent conflict between accepting such complaints and the SPD policy requiring the complainant to sign the complaint. Our review of SPD Internal Affairs files indicates that the signature requirement

---

<sup>4</sup> Complainants report that they often are unable to identify the officer by name because SPD officers do not wear name tags. Pursuant to SPD policy, name tags are considered an adornment and are optional. Successful police work requires cooperation from the community and the SPD has acknowledged a poor relationship with the community. Name tags allow community members to refer to an officer by name. Name tags also convey a willingness to be held accountable. We are encouraged by the fact that the command staff and PBA have agreed in principle to the wearing of name tags by all uniform officers and recommend that this agreement be incorporated into a formal policy.

is strictly enforced as more than one complaint was returned because the complaint submitted was a photocopy that did not contain an original signature.

The SPD does not explicitly prohibit SPD officers from refusing to accept citizen complaints or from discouraging members of the public from filing complaints. We were informed that the PSO receives approximately 5 to 10 complaints each year from citizens reporting that a SPD supervisor refused to accept their complaints. A departmental order requiring supervisors to record all complaints was drafted in 2001; however, the SPD command did not issue the order.

SPD policy requires that all complaints be documented. However, SPD supervisors told us that they will not document a complaint if it is resolved informally or if the complainant does not insist that the complaint be reduced to writing. SPD policy encourages supervisors to resolve informally "minor complaints," yet there are no guidelines to determine whether a complaint is "minor." The absence of clear guidance or appropriate procedures for these practices may result in under-reporting and possible mishandling of complaints. For example, one sergeant both explained that citizen complaints were a means by which he monitored officer misconduct and stated that he would not record a complaint unless the citizen insisted. This sergeant apparently did not recognize that his failure to record a complaint diminishes the ability of every other supervisor to track potential officer misconduct and to recognize training needs.

Members of the public who file a complaint at the SPD are required to speak to a supervisor and are not permitted to complete the personnel complaint packet themselves. All complaints must be recorded on the pre-printed forms in the SPD personnel complaint packet. The packet consists of four forms: a personnel complaint form, an advisement form, a medical authorization form and an affidavit. The personnel complaint, medical complaint and each page of the affidavit require the complainant to affirm the truth of the statements under the penalty of perjury, a Class A misdemeanor in the State of New York. In contrast, officers who are required to respond to complaints in writing are not required to swear to the truth of their statements. We suggest that officers responding to complaints be required as well to affirm the truth of their statements. Furthermore, the SPD complaint packet should require



no more than one affirmation by the complainant.

The complaint advisement form warns the complainant that the information provided may be released to the public. It does not state that anonymous complaints will be accepted and investigated to the extent feasible and that in such circumstances confidentiality will be afforded. The advisement form also requires, that by signing the form, the complainant to "agree" to appear and testify at any future proceeding. A complainant who is in fear of an officer(s) may not be willing to make such a commitment at the time the complaint is filed, and therefore, the advisement form may serve to discourage a complainant from filing a meritorious complaint.

Similarly, the medical authorization form asks the complainant to authorize release to the SPD "any and all information which may be requested regarding (the complainant's) past or present physical condition and treatment rendered." Any medical authorization form should limit the authorized release of information to the injury that is the subject of the complaint, in order to avoid discouraging potential complainants who also want to protect their privacy.

We recommend that SPD accept all phoned, faxed, and anonymous or confidential complaints. We recommend that every officer in the department be required to accept a written complaint presented by a citizen and that, upon receipt, the officer be required to submit the written complaint to a supervisor. We further recommend that SPD policy require that every officer provide complete and accurate information regarding the complaint process, including written materials, to members of the public who request information about filing a complaint. Officers should be explicitly prohibited from refusing to accept citizen complaints and from discouraging members of the public from filing the complaints. The SPD should provide training on handling citizen complaints and interpersonal skills to SPD personnel with primary responsibility for receiving complaints.

We recommend that the SPD redesign its complaint package to ensure that it does not discourage the filing of complaints. The SPD should not require the complainant to commit to testifying against the officer or to releasing personal medical information at the time the complaint is filed. Any medical release should be narrowly tailored to information regarding the injury alleged in the complaint.

We further recommend that the SPD require officers receiving complaints to document them in writing and to document any informal resolution. The SPD should clarify which complaints are permitted to be resolved informally and narrowly define "minor complaints" (e.g., complaints asserting only that the seizure of an individual was improper solely because the complainant is not guilty of a traffic or parking violation). We recommend that the SPD ensure all complaints, resolved and unresolved, are recorded on complaint forms and require their prompt referral for investigation and entry into the Early Warning System ("EWS") tracking system.

B. Investigation of external complaints

1. Assignment

As previously noted, during our October 2002 tour, we were informed that the PSO now is reporting directly to the Chief. This re-organization can be used to facilitate the assignment of investigations. Under the current SPD policy, the Investigative Services Bureau Commander ("ISB") assigns investigations to the Bureau of the subject officer unless the Chief requests that the investigation be conducted by the PSO. However, current policy fails to include a procedure for the Chief to review the complaints prior to their assignment by ISB Commander. Even were the Chief to review all complaints prior to their assignment by ISB, SPD policy authorizes the Chief to assign investigations that involve a matter "of a serious nature where misconduct has been alleged" but fails to define "serious nature" or "misconduct."

Once an investigation is assigned to the PSO or a Bureau, the only criteria for assigning an investigator is that he/she is a "ranking officer." SPD policy does not prohibit from conducting investigations a supervisor who was present at the scene or who allegedly authorized the officer's actions. Similarly, the SPD does not require that the investigator be trained in investigatory techniques. Officers in the Field Services Bureau ("FSB") which reportedly receives 99% of the external complaints, reported that they do not receive routine in-service training in investigatory techniques which includes

instruction on the questioning of witnesses.<sup>5</sup>

We recommend that the SPD develop a written policy, specifically identifying the kinds of complaints to be investigated by the Bureau (such as traffic infraction and rudeness) and the kinds of complaints to be investigated by the PSO (such as use of force and racial discrimination) as well as the procedure for making the determination. If the Chief is to determine when the PSO investigates a complaint, then the SPD should develop a formal process for the Chief to review complaints before they are assigned. Furthermore, if the decision to assign the complaint is based on whether it alleges "misconduct" and is a complaint of a "serious nature," then these terms also should be defined.

The SPD should establish criteria for selecting investigators that require consideration of their complaint and discipline history and ensure those selected have proper training. An officer should not be selected if he/she was involved in or present during the incident, or has a relationship with the officer which might undermine the integrity of the investigation or creates an appearance of bias.

## 2. Investigative Protocols

SPD policy states that investigations are to be conducted pursuant to current department directives. The directives contained in the policy are limited to general requirements such as documenting contacts, completing the investigation within 30 days, and abiding by union contracts when questioning SPD employees. The directives do not require the investigator to perform specific tasks such as recording interviews, photographing injuries or interviewing all subject and witnessing officer(s).

The PSO does not document each interview that it does conduct either manually or mechanically. The occurrence of some interviews are evident only by their reference in other documents. This practice may lead to lost information and

---

<sup>5</sup> The SPD training sergeant confirmed that training in investigative techniques was not offered by the SPD. Although a class is offered at the regional academy two or three times a year, space is limited, and therefore, generally reserved for officers in the Investigative Services Bureau ("ISB").

disputes over the content of interviews. We were informed that statements were not recorded mechanically because they would be discoverable and it would be too difficult to redact names when the tapes were turned over to the Police Objective Review Committee ("PORC"), the community organization responsible for reviewing external investigations. We were also informed that PSO investigators routinely provide all officers with the allegations and conduct an informal undocumented interview early in an investigation. At a later date, the PSO requires that the officers submit a written statement. Such a written submission is often an inadequate investigative practice because it does not permit for immediate follow-up questioning and may produce "canned" responses. In addition, there is no written policy governing when investigators should compel statements from officers pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967).

SPD policy states that the completed investigation will include "original" and "related" documents (including the investigator's notes). The policy does not specify which documents must be included, such as the Standard Incident Report ("SIR"), the statements of the involved officer (including the initial oral interview and the patrol officer's written statement to an investigator completed in the course of a felony arrest), statements of the witnesses, or photographs of injuries.

SPD does not require that subject officer(s) comply with specific investigative protocols. For example, there is no requirement that an officer who discharges his/her firearm turn that firearm into the SPD for testing or that an officer submit to a chemical test if there is a reason to believe that the officer acted while impaired.

SPD allows complaints to be withdrawn "for reasons that are acceptable to the investigating officer." An officer's personal threshold for acceptable and not acceptable reasons should not be the basis upon which an investigation is closed. The SPD has no policy mandating the continued investigation of complaints filed by complainants who later wish to withdraw their complaints, who are subsequently unwilling to cooperate, whom the investigator is unable to locate, or who wish to remain anonymous, even if the investigation to that point has produced information that merits further inquiry.

The SPD should develop protocols for conducting SPD

investigations. The protocols should include, but not be limited to, the following investigative policies and practices: require investigators to conduct in-person, mechanically recorded interviews with all complainants, officers who are the subject of a complaint, and witnesses and establish guidelines regarding when these recorded interviews are transcribed; establish guidelines regarding when to compel statements pursuant to Garrity that ensure consistency and the integrity of potential criminal investigations; and require photographs of all injured parties. We also recommend that the SPD specify the documents that investigators must collect and preserve in the investigative file, including all relevant police reports.

The SPD should develop a protocol specifying the responsibilities of the officer(s) who are the subject(s) of an investigation. The protocol should require the subject officer(s) to provide non-testimonial evidence, if warranted, such as submitting to a chemical test, releasing relevant medical information or turning in a firearm for a ballistics analysis. A subject officer should also be required to produce all statements, reports and notes completed in his/her course of duties that are related to the allegations.

Any complaint submitted should be investigated to the extent reasonably possible to determine whether or not the allegations can be resolved, including anonymous complaints, withdrawn complainants, and complaints filed by complainants who are unwilling to cooperate with the SPD or the SPD is unable to locate.

### 3. Investigative Findings

The SPD requires investigators to complete an investigatory report. In addition to a few general requirements, the SPD policy addressing investigative reports requires that for each allegation the investigator recommend one of six findings: sustained, acquitted, unfounded, withdrawn, exonerated and policy failure. Sustained is the finding when "conduct alleged apparently occurred and amounts to misconduct." "Misconduct" is not defined and there is no category of finding for behavior that occurred and is inappropriate but possibly something less than "misconduct." Acquitted is the finding when "insufficient evidence exists to clearly prove or disprove the allegation." The policy fails to identify the appropriate standard of proof for the investigation. Unfounded is the finding when "there is

no basis for a complaint" and exonerated is when a "personnel's conduct was lawful, justified and proper."

Thorough, impartial and balanced investigations of citizen complaints are an essential component of constructive police-citizen relations. Even the appearance that the investigations are biased will affect those relations negatively. For example, the definition of sustained is modified with the adverb "apparently" and there is no similar modification in the definition of exonerated.

The SPD should develop protocols identifying the requirements for investigation reports. Such protocol should require: a summary of the investigation and an assessment of the police action that is the subject of the complaint as well as any ancillary issues discovered in the course of the investigation including whether: 1) the police action was in compliance with policy, training and legal standards; 2) the incident involved additional misconduct; 3) the use of different tactics, should have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that SPD should revise its policies, training, tactics, or equipment. Furthermore, the SPD policy should state that the preponderance of the evidence is the appropriate standard of proof for an administrative investigation.

#### C. Disposition of external complaints

After an external complaint is investigated, the matter is referred to the Chief, who reviews the recommendation of the investigator, makes the final determination, and forwards the investigation to the PSO for presentation to the Police Objective Review Committee ("PORC").<sup>6</sup> PORC was established pursuant to the City Charter and is composed of representatives from various

---

<sup>6</sup> In January 2003, the Mayor and the City Council enacted new legislation creating the Civilian Police Review Board ("CPRB"). Once the members are selected, the CPRB will replace PORC as the entity responsible for reviewing PSO investigations of external complaints. The CPRB has an additional mandate to improve the relationship between the community and the police. Like PORC, the CPRB will be presented with redacted investigations by the PSO and will not be empowered to investigate incidents independently.

community organizations and designated city positions. Prior to presenting the investigation to PORC, the PSO redacts identifying information including all names and locations. PORC determines whether the PSO investigation was reasonable and adequate. On occasion PORC has requested that the PSO provide additional information. PORC does not have the authority to investigate a complaint or to recommend or review the imposition of corrective or disciplinary action. Once PORC approves the investigation, the complainant is notified that PORC accepted the SPD investigation. Complainants are not informed of the recommendation, the reasons for the recommendation, or whether any disciplinary or other corrective action was taken.

We recommend that the SPD notify a complainant of the disposition of his/her complaint including the finding and an explanation of the finding. The SPD should provide an opportunity for complainants to register their opinion if they are dissatisfied with the resolution of their complaint.

#### **IV. Discipline**

The formal SPD disciplinary process is governed by the collective bargaining agreement ("CBA") between the PBA and the City, in conjunction with §75 of New York Civil Service Law. The formal process begins with the service of charges on an officer, after an allegation is sustained and the charges have been approved by the Mayor. The SPD officer is then entitled to a hearing by the Chief and/or Mayor. SPD Duties and Rules of Conduct allow for a Chief's hearing in cases that would not result in termination or demotion and provide a de novo hearing before the Mayor if an officer is dissatisfied with the result of the Chief's hearing.<sup>7</sup> NY Civil Service Law does not require a de novo hearing and allows for the Chief to conduct all disciplinary hearings if so designated for that purpose in writing by the Mayor.<sup>8</sup>

The SPD, however, has adopted an informal disciplinary

---

<sup>7</sup> SPD Duties and Rules of Conduct IO 97-03 §12.5.

<sup>8</sup> "The hearing upon such charge will be held by the officer or body having the power to remove the person against whom all such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose." NY Civil Service Law §75.2.

process that involves negotiations between the officer, the PBA and SPD command staff to determine both the charge and the discipline. These negotiations often take place while an investigation is on-going. Negotiations may be appropriate after an investigation is complete, but are generally inappropriate before then. In addition, several officers expressed concern that the process invited arbitrary and inconsistent punishment based upon an officer's relationship with the Chief or the Mayor. A failure to enforce uniform and fair discipline appears to undermine respect for the disciplinary system and may be perceived as signaling a lack of commitment by SPD command staff to uphold standards of conduct and professionalism.<sup>9</sup>

Pursuant to the CBA, all SPD disciplinary decisions are subject to arbitration.<sup>10</sup> The arbitrator is empowered to modify any finding or discipline determined to be "erroneous" or "unduly harsh or severe under all the circumstances." We were informed that when the parties do not agree on discipline during informal negotiations, they proceed to the contract mandated grievance and arbitration proceedings solely on the question of discipline. The parties effectively by-pass the Chief and/or Mayor's hearing by stipulating to the underlying facts. We were informed that the SPD has conducted a single disciplinary hearing in the past 10 years. Pursuant to that SPD proceeding, the officer was dismissed. Subsequently, he was reinstated by an arbitrator.

---

<sup>9</sup> Until recently, the informal disciplinary process also included negotiations to identify a date or event for the removal of the disciplinary record from the officer's personnel file. During our October 2002 tour, we were informed that officers are no longer permitted to negotiate the removal of disciplinary records. We are encouraged by this change in policy, as purging these records hinders the ability of the SPD to access an officer's disciplinary history.

<sup>10</sup> The CBA appears to have conflicting provisions regarding the arbitrator's review. When reviewing a disciplinary hearing, the CBA limits the arbitrator to a review of the hearing record. However, when reviewing a grievance, the CBA allows the arbitrator's to hear additional evidence presented by either party and to seek evidence or material from any City Official or Agency. If a SPD employee requests arbitration on the issue of termination of employment, seemingly a matter of discipline, the matter proceeds as if it were a grievance and the arbitrator is permitted to hear and seek evidence.



We recommend that the SPD work with the PBA to develop a consistent and fair system to determine and track disciplinary action. Such a system could identify ranges of appropriate disciplinary action depending on a variety of factors, such as the nature of the infraction and prior disciplinary history. The system should track all discipline received by an officer as well as the dates the disciplinary action was enforced. A uniform and fair system to determine and track discipline should increase officer confidence in the SPD disciplinary process and allow the SPD to assess disciplinary records. All SPD personnel should be trained regarding the disciplinary ranges associated with the various infractions.

## **V. Supervisory oversight**

### **A. Risk assessment and management**

We understand that the SPD does not have a comprehensive risk management plan. Although the SPD recently began weekly management meetings between the Public Safety Commissioner, Police Chief and Assistant Chiefs, the SPD does not identify, collect and share risk management information on a regular basis.

The SPD does not require supervisors to perform managerial duties that would enable the identification of at-risk officers or track other risk management information. As previously indicated, SPD policy does not require supervisors regularly to evaluate uses of force. The SPD does not require supervisors to inspect their units. Supervisors are not required to review SIRS or to evaluate the legality of an officer's arrest or citizen interaction. Officers informed us that there is no substantive review of SIRS, but rather they are presented to a Desk Officer and reviewed solely for legibility and completeness. Officers also informed us that there is no supervisory review of search warrant applications, which are presented directly to a court without any intermediate review. As previously stated, we understand that no one in the SPD monitors the use of pepper spray or the number of cans used by individual officers or units.

Existing risk management information is not centralized. SIRS are presented to the Desk Officer. Resisting Arrest Packets are turned over to the Field Services Bureau Commander. Citizen complaints that are recorded are logged by the PSO. The Schenectady County Sheriff's Department identifies prisoners allegedly injured by SPD officers and sends that information to

the Chief. There is no process for communicating with the District Attorney's Office regarding concerns it has identified and officers the court has found not to be credible or to have committed an unconstitutional act requiring the suppression of evidence. In interviews we learned that the SPD apparently was unaware that the DA's Office had refused to bring felony charges based on any drug arrest conducted by one of the officers convicted in the federal criminal trial, for at least one year prior to the officer's 2002 conviction. As noted above, there have been fewer than five use of force investigations between 1990 and 2000 that were not predicated on a civil suit, notice of claim or citizen complaint. Yet in February 2002 alone, 10 civil suits were pending that alleged excessive use of force by the SPD between 1995 and 2000.

In addition, the SPD does not conduct regular audits. One command level officer informed us that the SPD has never conducted an audit of use of force, search and seizure, probable cause or PSO Investigations.

We recommend that the SPD create, implement, and regularly update a comprehensive risk management plan. This plan should provide for explicit supervisory responsibilities including: the review and evaluation of officer's arrests, citizen interactions and uses of force; and regular, periodic inspections of all SPD units. The SPD should develop protocols to aid in ensuring that all uses of force are reported and investigated, such as requiring the Desk Officers to notify a supervisor if a SIR narrative, an arrestee's complaint, or the condition of the arrestee indicate force may have been used. The SPD should track uses of force by officer, platoon and bureau. The plan also should include measures to correct the underlying reasons that at-risk behavior and potential misconduct is not identified or investigated within the department before it is identified by the community.

We further recommend that the risk management plan include an early warning system; regular, periodic audits of use of force reporting, use of pepper spray, training, external complaint intakes and investigations, criminal and other internal investigations, and the disciplinary process; command-level risk-assessment reviews of all high-risk incidents and civil suits; and improved information sharing among supervisors regarding training, risk assessment and management, officers or officer actions identified as a concern by either the court or the DA's

Office, planning, and policy review. The SPD should provide risk assessment and management training, including training regarding the EWS, to all supervisory staff.

B. Early warning system<sup>11</sup>

The SPD does not have an adequate EWS, or other method by which to identify patterns of potentially problematic behavior by an officer, platoon, or bureau. The SPD does have a system designated as an EWS, but it is under-inclusive as a tool for detecting problematic trends in officer behavior because each of the two components collect information from only a single source, the two components are not interconnected and the system does not ensure effective officer management or review.

The Schenectady EWS is divided into external and internal components. The external EWS component triggers a review when an officer receives three citizen complaints resolved as "acquittals"<sup>12</sup> within a 12-month period. This threshold is quite high, considering that the SPD completed only 27 citizen complaint investigations in 1999, 20 in 2000 and 21 in 2001. In addition, the EWS system does not consider any other indicators of officer behavior, including such important records as complaints resolved in other ways (e.g., "sustained" or "withdrawn"), uses of force, civil lawsuits or arrests. Moreover, the only stated consequences of meeting the trigger of the external EWS is that the Chief of Police "may" meet with the officer to discuss the acquittals, and "may" counsel or direct further training.

---

<sup>11</sup> An EWS is a relational data system, usually computerized, for maintaining, integrating, and retrieving information necessary for effective supervision and management of a police department and its personnel. A police department can use EWS data regularly and affirmatively to promote best professional police practices, accountability and proactive management; to manage the risk of police misconduct and potential liability; to evaluate and audit the performance of officers and units; and to identify, manage, and control at-risk officers, conduct, and situations.

<sup>12</sup> As noted above, SPD policy defines "acquittal" as insufficient evidence exists to clearly prove or disprove the allegation.

The internal EWS component triggers a review when an officer receives five EWS cards within a twelve month period. According to SPD policy, EWS cards are issued for "minor discrepancies, non-conformance, or non-compliance with Departmental rules, regulations, policies and procedures...prior to entering a formal disciplinary process." The policy fails to define "minor discrepancies" or limit the types of "non-conformance" or "non-compliance" that are appropriate for redress by the EWS policy, thereby potentially allowing any violation of SPD policy, including allegations of officer misconduct, to be resolved with an EWS card. Furthermore, the policy prohibits the submission or review of Internal EWS records when considering an employee for promotion. Although it may be appropriate to exclude some EWS records from promotional considerations, the exclusion should not occur until the SPD appropriately defines "minor discrepancies" and adequately investigates all allegations of officer misconduct.

When a violation is recorded, an EWS card is issued to the employee and copies are provided to the Unit and Bureau Commander. The cards are expunged on a rolling 12-month basis. The stated consequence for receiving a fifth card is a meeting with the Chief, or his designee, to discuss whether corrective action is warranted.

The internal EWS policy allows employees to orally grieve the issuance of an EWS card through the chain of command up to the Chief and states that "[a]ny cards deemed unjustified shall be purged immediately." The policy fails to provide any standard for determining when an allegation is unjustified. Furthermore, since the grievance procedure is informal and unwritten, there is no method to identify supervisors who issue or purge EWS cards inappropriately.

We recommend that the SPD develop an EWS system that encompasses a range of clearly defined information and ensures that corrective action is based on appropriate evaluation and not reserved for a mere accumulation of violations. We recommend that the EWS contain information on all investigations, all complaints, including non-sustained complaints and complaints prior to final disposition, uses of force, criminal arrests and charges, civil lawsuits, SIRs, training history, supervisory reviews, discipline, and other corrective actions.

We recommend that the SPD develop additional flags for the

EWS based on an accumulation of various types of conduct, not just an accumulation of internal or external complaints, and that all offices that use the EWS generate regular reports based on these flags. We recommend that the SPD require supervisors to review the EWS data of every officer they supervise on a regular basis and establish guidelines regarding the specific events that require an additional supervisory review. The SPD should formalize any grievance procedure for information to be compiled in the EWS and require the process be documented. The SPD should develop and enforce a policy which indicates when corrective action is warranted.

## **VI. Training**

### **A. Field Training**

Field training for new officers is an integral component of a training program, which helps to minimize the risk of officers engaging in problematic behaviors, including the use of excessive force. SPD recruits are trained at a regional police academy along with recruits from 73 neighboring police departments. Because of the diversity of the departments and their policies, the academy teaches basic courses and requires the individual police departments to teach their unique policies and procedures. For example, the use of force course taught at the academy is based on the New York State justification statute. As a result, the field training program is the first opportunity new recruits have to learn SPD policies and procedures.

In order to increase the number of officers available for patrol, the SPD reduced the Field Training Program from 14 weeks to 11 weeks in March 1999. Several Field Training Officers ("FTOs") indicated they were unable to complete the FTO course curriculum in the eleven week period and therefore, turned in incomplete evaluations of their recruits. Despite this fact, FTOs informed us that recruits who did not complete the FTO course curriculum were graduated from the training program and placed on patrol.

With regard to the selection of FTOs, the SPD has no eligibility criteria for FTOs pertaining to the applicants' complaint and disciplinary histories, performance levels or

special skills.<sup>13</sup> Such eligibility requirements help to ensure that qualified officers, who have not engaged in misconduct, train new officers. There also is no formal evaluation process for FTOs.

We recommend that the SPD take measures to ensure that all new recruits are trained in SPD policies and procedures before they are placed on patrol. At a minimum, the SPD should ensure that each recruit has completed the requirements of the FTO program before placing that recruit on patrol. For many recruits the eleven week program will be sufficient; however, those recruits who are unable to complete the program in eleven weeks should be held over until they have completed the program.

The SPD should develop specific criteria for the selection of FTOs from the ranks of qualified personnel. The FTO criteria should reflect a candidate's experience, disciplinary record, and interpersonal skills consistent with the coach/mentor function of an FTO.

We recommend that the SPD take measures to recruit and train qualified FTOs, including providing additional incentives to encourage officers to apply to become FTOs. We also recommend that the SPD develop a mechanism for removing FTOs who fail to perform adequately and whose actions while serving as FTOs would have disqualified them from selection. The SPD should standardize the procedure for evaluating FTOs and solicit anonymous evaluations of FTOs by probationary officers.

#### B. In-service training

We were told that SPD officers repeatedly have requested more in-service training than is currently provided. In 2000 and 2001, the SPD offered three days of department-wide, in-service training. In-service training would benefit officers by enhancing their knowledge and strengthening their technical and analytical skills.

We recommend that the SPD provide additional blocks of mandatory, annual, in-service training, including training on the

---

<sup>13</sup> During our October tour, we were encouraged to learn that the command staff and the PBA are negotiating the removal of the FTO positions from the strict seniority requirement of the current Collective Bargaining Agreement.

use of force, search and seizure, legal developments, and police integrity. Use of force training should train officers to use only reasonable force and instruct them in de-escalation techniques that can help them avoid using force or minimize the amount of force used, rather than focusing solely on when an officer is legally justified in using force. Moreover, we recommend that this training focus on discussions and role-play with officers about particular scenarios (preferably taken from actual incidents involving SPD officers) with the goal of educating the officers regarding the legal and tactical issues raised by the scenarios. The SPD should document and ensure that all sworn officers have successfully completed the training. We also recommend that all investigators receive training which includes investigatory techniques, interview skills and the SPD investigatory policies.

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

We look forward to working with you and the SPD in the coming months as our investigation proceeds.

Sincerely,

/s/ Shanetta Y. Brown Cutlar

Shanetta Y. Brown Cutlar  
Acting Chief  
Special Litigation Section

cc: The Honorable Albert P. Jurczynski  
Public Safety Commissioner Daniel Boyle  
Chief Michael Geraci