

THE POLICE COMMISSIONER
CITY OF NEW YORK

May 4, 2018

Honorable Bill de Blasio
Mayor of the City of New York
City Hall
New York, NY 10007

Honorable Corey Johnson
Speaker
The New York City Council
250 Broadway, 18th Floor
New York, NY 10007

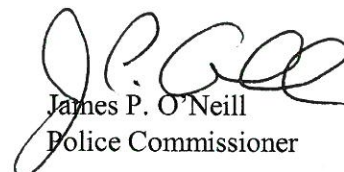
Honorable Mark G. Peters
Commissioner
Department of Investigation
80 Maiden Lane
New York, NY 10038

Honorable Philip K. Eure
Inspector General
Office of the Inspector General
For the NYPD
80 Maiden Lane
New York, NY 10038

Dear Mayor de Blasio, Speaker Johnson, Commissioner Peters, and Inspector General Eure:

Pursuant to Local Law 70 and the New York City Charter, the New York City Police Department ("NYPD" or the "Department") hereby submits its response to the February 6, 2018 report from the Office of the Inspector General for the NYPD ("OIG") entitled "An Investigation of NYPD's New Force Reporting System" (the "Report").

Sincerely,


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

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I. INTRODUCTION: THE NYPD'S REVISED USE-OF-FORCE POLICY

NYPD officers are among the most restrained law enforcement officers in the United States when it comes to using force in the course of performing their duties. Statistics conclusively demonstrate that over the last 46 years, the NYPD has made extraordinary progress in substantially reducing firearms discharges by NYPD officers. This accomplishment was the product of a multi-faceted strategy – the adoption of a clear firearms use policy, regular training, exacting reporting, careful tracking, thorough investigation of incidents, and sustained internal evaluation and oversight. As a result, the incidence of firearms discharges and individuals shot by NYPD officers have decreased by 93.6% since 1971 and, within the last two years, the NYPD has documented the fewest police firearms discharges since official recording began.¹ This remarkable restraint is also evident in NYPD officers' other permissible uses of force. As reflected in the NYPD's first annual Use of Force Report, in 2016, NYPD officers arrested over 300,000 individuals yet reported the use of force in only 1.3% of those arrests. This represents an historic low for the Department and is a true testament to the professionalism of its officers.²

In June of 2016, the NYPD instituted a new, comprehensive Use of Force policy using the same multi-faceted strategy that had delivered striking reductions in firearms discharges. Contrary to OIG's claim that their 2015 report prompted the new policy, the genesis of the 2016 Use of Force policy occurred well before their 2015 report. In 2014, former Police Commissioner William Bratton formed an internal task force, led by the First Deputy Commissioner, to comprehensively review all NYPD policies and procedures with respect to use of force.³ After considering community concerns, studying other police departments, soliciting feedback from the United States Department of Justice and oversight entities such as the Civilian Complaint Review Board and OIG, who declined to provide feedback after being briefed, the task force

¹ See NYPD Annual Use-of-Force Report.
<http://www1.nyc.gov/site/nypd/news/article.page?id=p1228b&permalinkName=nypd-releases-2016-use-of-force-report>

² See NYPD Annual Use of Force Report 2016 at 40.

³ See NYPD response to OIG's Report entitled "Police Use of Force in New York City: Findings and Recommendations on NYPD's Policies and Practices" at 4.

<http://www1.nyc.gov/assets/doi/oignypd/response/NYPD-response-to-use-of-force-report-dec-2015.pdf>

developed recommendations which formed the basis for new policy.⁴ These recommendations, which were issued in October 2015 at about the same time as OIG's 2015 report, covered much of the same ground as OIG's suggested changes, including recommendations for reporting and documenting uses of force, training and discipline.⁵

The task force's recommendations were adopted by the NYPD. As a result, the NYPD clarified its use of force policy – including clearly defining the permissible uses of force and attendant reporting requirements -- and consolidated various use of force procedures into a single Patrol Guide (“PG”) series, PG Series 221. Comprehensive training on the newly consolidated PG Series was conducted. The Department refined and improved tracking of use of force incidents, primarily through a newly designed form, the Threat, Resistance or Injury (“T.R.I.”) worksheet. OIG focused on this aspect of the new policy in their present report and notably found that “the NYPD was largely in compliance in 2017 with respect to certain T.R.I. metrics.”⁶ Finally, the NYPD developed a new system to ensure the thorough investigation and evaluation of every reportable use of force. The result was the June 2016 comprehensive Use of Force policy that, among other things, emphasizes de-escalation techniques and vigilant tracking of use of force incidents to increase officer accountability and the public's trust.

II. RECORDING AND INVESTIGATING USE-OF-FORCE INCIDENTS: NYPD'S COMPLIANCE WITH THE THREAT, INJURY OR RESISTANCE WORKSHEET

No police department records and tracks every instance of physical contact between its officers and members of the public, even in the context of arrests, as casting such a wide net results in the gathering of excessive amounts of information that is neither informative nor practical.⁷ Thus, effective use of force recording, tracking and analysis must be confined to more relevant and edifying events. In this sense, the

⁴ *Id.*

⁵ *Id.*

⁶ See OIG Report at 2.

⁷ For example, ordering a person to lie on the ground, guiding them to the ground in a controlled manner, or the use of Velcro straps or polycarbonate shields to restrain a subject are not reportable uses of force under the NYPD's policy.

NYPD's revised Use of Force policy therefore confines an officer's reporting obligation to three carefully defined levels of force:

Level 1 (Physical Force/Less-Lethal Device)

Level 1 includes the use of hand strikes, foot strikes, forcible take-downs, the discharge of oleoresin capsicum (O.C.) pepper spray, the discharge of conducted electrical weapons (CEW) in "cartridge mode," or the use of mesh restraining blankets to secure subjects.

Level 2 (Use of Impact Weapon/Canine/Less-Lethal Device)

Level 2 includes the intentional striking of a person with any object, (including a baton, other equipment, etc.), a police canine bite, or the use of a CEW in "drive stun" mode.

Level 3 (Use of Deadly Physical Force)

Level 3 is defined as the use of physical force that is readily capable of causing death or serious physical injury, including the discharge of a firearm

The degree of injury to the subject can alter the categorization of an incident and whether it is treated as a Level 1, 2 or 3 use of force. A substantial injury to a subject would result in Level 2 classification, and a serious physical injury in a Level 3 classification, regardless of the type of force used. Substantial physical injuries are generally those that require treatment at a hospital. Serious physical injuries are generally those that require admission to a hospital.⁸

An integral part of the Department's new Use-of-Force policy is the T.R.I. worksheet. The T.R.I. worksheet serves as a robust tool to record uses of force that fall into the above categories. Put another way, the T.R.I. worksheet is designed to capture reportable uses of force. One worksheet is prepared for each individual against whom an officer uses reportable force, or who suffers injury in connection with police action. Every officer who uses reportable force in an encounter with an individual, or against whom a person uses force, must complete a worksheet. The Department has designated the T.R.I. worksheet as the primary document for tracking uses of force by and against its police officers and uniformed civilian members of the service such as Traffic Enforcement and School Safety agents.

⁸ Suspicion that excessive force was used, or attempted suicide would also elevate an incident to a Level 2 classification. Alleged or suspected excessive force accompanied by serious physical injury, or attempted suicide that cause serious injury, will elevate the incident to a Level 3 classification.

In certain defined circumstances, a second tracking document, known as the Investigating Supervisor's Assessment Report, ("I.S.A.R.") is completed. An I.S.A.R. is completed when a Level II or Level III use of force occurs.⁹ In addition to other fields, the I.S.A.R. includes a narrative section for supervisors to document the results of their investigation in the aftermath of such an incident.

When the June 2016 Use of Force policy was implemented, the NYPD recognized that accurate tracking and analysis of force incidents was dependent upon an officer's completion of a T.R.I. worksheet in the event that reportable force was used. In the six months leading up to the policy's implementation, compliance with this requirement was addressed through comprehensive training that stressed when and by whom the T.R.I. worksheet was to be completed. By January of 2017, the Department went a significant step further when it began its own comprehensive review procedure, known as the Force Review process, to monitor and ensure compliance with the policy and reporting. The cornerstone of the Force Review process is an exacting internal audit conducted and overseen by the Risk Management Bureau and the Commanding Officer of the First Deputy Commissioner's Office. The scope of the audit is extensive and includes Patrol Services, the Housing Bureau, the Transit Bureau, the Traffic Enforcement District, and the School Safety Division. It is a data-driven performance analysis with a much broader set of metrics than the three metrics used by OIG in its report. Arrest reports, Aided reports, Stop reports, Assault on Police Officer reports, Medical Treatment of Prisoner forms, arrests involving a charge of resisting arrest and body-worn camera footage are all examined to determine whether reportable force was used and whether T.R.I. worksheets were completed. This wide array of metrics directly refutes OIG's repeated assertions that "NYPD does not have sufficient controls in place"¹⁰ to identify uses of force that require the completion of a T.R.I. worksheet.

⁹ Level I use of force incidents are investigated by the supervisor of the Uniformed Member of Service ("UMOS") and documented by approval of a T.R.I. worksheet, except in cases where a CEW is deployed, which requires the investigation be completed by a lieutenant or higher ranking UMOS. Level II incidents are investigated by the commanding officer or executive officer of the UMOS' unit or by a duty captain. Level III uses of force are investigated by the Internal Affairs Bureau ("IAB"), or in the event of a firearms discharge, the Force Investigation Division ("FID"). When IAB or FID investigates a use of force incident, an I.S.A.R. is completed by the appropriate supervisor who notes that the investigation is ongoing.

¹⁰ See OIG Report at 3 and 9.

In addition to the audit, the Force Review process conducts a qualitative examination of completed T.R.I. worksheets. The quality of investigations of the borough investigative units (“IUs”), who from time to time follow-up on the preliminary force investigations, are also evaluated. Recently, another metric, velocity, was added to Force Review process to measure how much time has transpired from the time and date of occurrence of the force incident to preparation of the T.R.I. worksheet, and then from preparation to final approval of the report after supervisory review.¹¹ Finally, the Force Review process identifies specific officers within a precinct, housing police service area or transit district who may benefit from early intervention by his or her supervisors. In terms of compliance with force reporting, the NYPD’s Force Review process is notable for its breadth, frequency and persistent analysis and yet was never fully described in OIG’s Report nor was its extensive approach to ensuring compliance wholly acknowledged.¹²

Each month, the Force Review Process culminates in a Force Review Evaluation, modeled on Compstat, for the selected commands for that session. Each audited command reports to a Force Review Evaluation four times a year. Presently, the Commanding Officer of the First Deputy Commissioner’s Office chairs each Force Review Evaluation. Also present are high-ranking officials from the Chief of Department, the Chief of Patrol, the Chief of Detectives, the Internal Affairs Bureau, the Information and Technology Bureau, the Firearms Investigation Division and the Office of Management Analysis and Planning. When his schedule permits, the First Deputy Commissioner also attends Force Review Evaluations. Borough and Commanding Officers of the selected commands are summoned to Police Headquarters to provide a status report of compliance within their respective commands and to discuss the results of their audit. In addition, the specific application of the policy and reporting requirements to actual scenarios are reviewed and explained, and suggestions are made for improvement in T.R.I. compliance and

¹¹ The Force Review process is dynamic and metrics are continually being added as new issues are discovered.

¹² Inexplicably, OIG referred to the Force Review process sparingly in its Report. A reference to it appears in one out of the 21 recommendations and brief references also appear on pages 6, 8, 15, and 27. Indeed, that single recommendation suggests that NYPD’s Force Review process include quality-control procedures that seek to improve the accuracy of force reporting not only on T.R.I. forms, but also on arrest reports and other arrest-related documentation. It was not necessary to include this directive in the Report as the NYPD had already implemented this prior to the Report’s issuance through the Force Review process.

force investigations. The main goal of these evaluations is to ensure compliance and address deficiencies when they are spotted, through changes to the policy, underlying technology,¹³ training, and, if necessary, the imposition of discipline.

Recent data collected in the Force Review process conclusively demonstrates that the Department's T.R.I. compliance rates have increased over time as officers became more familiar with the policy. Presently, the compliance rates, depending on which metric is utilized, are between 95% to 100%. For example, an NYPD analysis of a sample of arrest reports from the fourth quarter of 2017, collected from three patrol boroughs¹⁴ and the Housing Bureau, show that in over 97% of cases in which an officer indicated on an arrest report that force was used, a T.R.I. worksheet was prepared. This is a considerable improvement from the 73.8% compliance rate cited in OIG's Report for late 2016, and the 90% compliance rate cited by OIG for mid-2017. For the same time period, a related NYPD analysis similar to OIG's analysis, compared a sample of Medical Treatment of Prisoner forms with T.R.I. worksheets and found that T.R.I. worksheets were prepared 100% of the time when the Medical Treatment of Prisoner form indicated that reportable force was used. Fourth quarter of 2017 comparisons of body worn camera footage and Assault on a Police Officer reports with T.R.I. worksheets also yielded high rates of compliance. (See Figure 1 below.)

¹³ For example, civilian supervisors were previously unable, due to a technological limitation, to review and approve T.R.I. reports of their subordinates. After this issue was raised at a Force Review Evaluation, the problem was corrected and civilian supervisors now have this ability.

¹⁴ The sampled commands included Patrol Boroughs Queens North, Queens South and Staten Island.

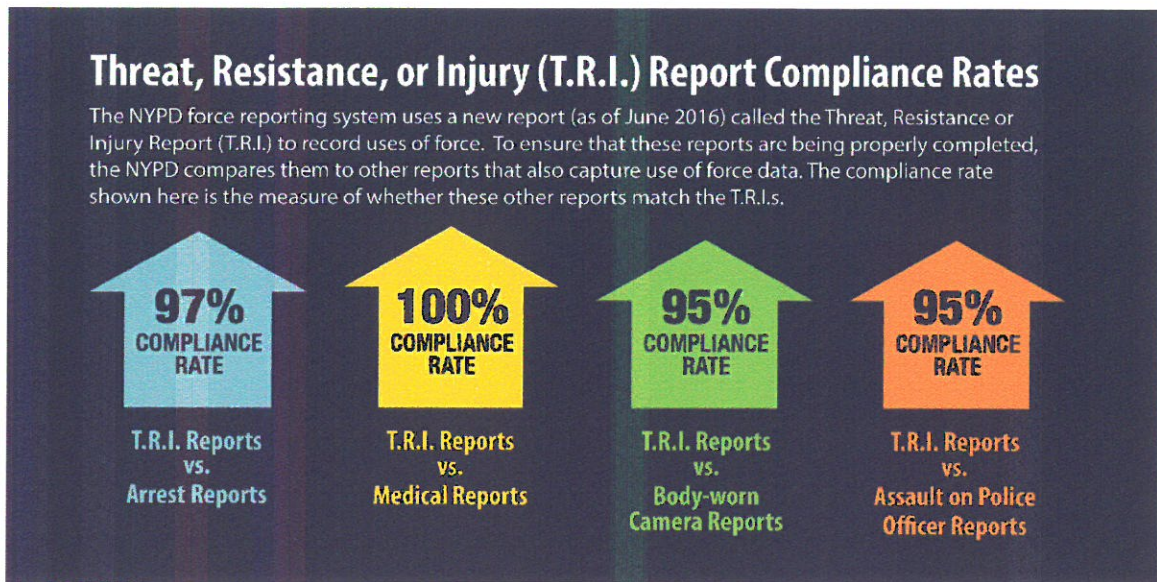


Figure 1.

Given these impressive results, the NYPD is confident that with the sustained oversight of the Force Review process and its corresponding Force Review Evaluations, compliance rates will near 100% for all metrics in the near future.

III. OIG’s FLAWED AUDIT OF T.R.I. COMPLIANCE

To evaluate officers’ compliance with completing T.R.I. worksheets, OIG conducted an audit using only three metrics. They reviewed (1) Arrest Reports in which the officer indicated force was used, (2) Arrest Reports indicating that the individual arrested was charged with resisting arrest, and (3) Medical Treatment of Prisoner forms where, in OIG’s subjective judgment, the narrative section of the report “suggests” that an officer used force. For each of these metrics, OIG searched for a corresponding T. R. I. worksheet and faulted NYPD if none was found. In a number of respects, OIG’s method was critically flawed.

To begin, the vast majority of Arrest Reports and Medical Treatment of Prisoner forms that OIG reviewed in reaching their conclusions were completed from September to November of 2016, a time period that began a mere three months after the new Use-of-Force policy was implemented. Selecting this time frame for a compliance audit was questionable given the brief passage of time since the policy’s inception.

Under any reasonable view, when a new comprehensive policy governing officers' conduct and reporting obligations is introduced in a Department with more than 50,000 members of the service, an adjustment period is to be expected. Officers obviously require a reasonable time period beyond 90 days to adjust to the application of written policy to real-world scenarios. While the Department conducted exhaustive training on the policy prior to its taking effect, training alone cannot preemptively address every possible scenario that an officer or supervisor may face. Despite this logical observation, OIG nevertheless focused on very early time period to draw broad, outdated and inaccurate conclusions about the Department's compliance, including that there are systemic flaws in the reporting of use of force.¹⁵

To their credit, in part of their study, OIG conducted a second, slightly different audit¹⁶ of another sampling of documents that were completed by officers in the three month period from May to July of 2017. This time frame was eminently more sensible in that it provided a snapshot of where the NYPD stood on compliance a year after the policy was adopted. OIG's secondary study revealed that NYPD officers are, in-fact, properly completing T.R.I. worksheets in 90% of the cases reviewed. Obviously, this finding undercuts that portion of OIG's report that focused on the 2016 time period, and thus their related conclusions and recommendations that were based on the results from that time.¹⁷ As previously noted, NYPD's Force Review process and audit, using a broader array of metrics, found an even higher 2017 fourth quarter compliance rate of 95% to 100% depending on which metric is examined. Notably, two of the three metrics used by OIG were utilized in determining these 2017 fourth quarter results.

With regard to OIG's examination of Arrest Reports in which an officer included a charge of resisting arrest, yet did not indicate that force was used, OIG's findings are overstated. OIG cites nine such Arrest Reports, claiming that the narrative section of the report contains a description of the use of force without a corresponding T.R.I worksheet. Notably, these nine reports represent a mere 1.6% of the 580

¹⁵ See OIG Report at 13.

¹⁶ Although OIG stated this 2017 study is the "same" as its review of the 2016 time frame, it clearly was not. For the 2017 time period, OIG examined a significantly smaller sample of arrest reports and Medical Treatment of Prisoner forms from only nine precincts, while for their 2016 analysis reviewed reports city-wide.

¹⁷ "A sample of nine precincts between May – July 2017, however, showed notable improvement; officers failed to complete T.R.I s in only 10% of such cases." See OIG Report at 2.

arrest reports that OIG analyzed. Moreover, as NYPD explained to OIG during the course of their investigation, one cannot equate a charge of resisting arrest with the use of reportable force. In some circumstances, a subject may resort to passive resistance to attempt to avoid arrest, such as lying on the ground and refusing to get up. In other instances, this resistance may be overcome by an officer's verbal commands or a threat of force. In yet other circumstances, there may be physical contact with the individual who is being arrested, such as an officer pushing or placing his or her hands on the subject, but the physical force used does not rise to the level of reportable force. In these instances, a charge of resisting arrest may be appropriate, yet there is no requirement that a T.R.I. worksheet be completed.

OIG's other conclusions regarding Arrest Reports that include a resisting arrest charge are equally problematic. As OIG admits, at best, the narrative in some of these reports "suggests," that an officer "may have used force." Similarly, in an awkward phrase, OIG concedes that "proof of officer force in these cases was not unequivocal."¹⁸ Such language hardly connotes a firm, factual basis, yet OIG draws conclusions based on such equivocal information nonetheless. OIG points to 110 of the 580 arrest reports it examined from 2016 and claims that from an omission in the arrest report narrative ("the narrative ...did not explain how resistance was overcome"¹⁹) one may conclude that an officer used reportable force. In another leap of logic, OIG asserts that the use of "vague terms" such as "combative" leads to a reliable conclusion that reportable force was used but not indicated on the report. Finally, OIG believes that reportable force may have been used simply because a narrative indicated that an officer sustained injury in the course of arrest. Yet under any number of ordinary scenarios – an officer trips and falls while chasing a fleeing suspect, or someone physically interferes with an officer as she places a suspect under arrest – may result in an injury to the officer without the officer having used force against anyone. Moreover, as indicated above, an officer may have used non-reportable force against an individual, such as pushing that person to effect an arrest, and in the process injure herself.

¹⁸ See OIG Report at 11.

¹⁹ *Id.* at 10.

With respect to their evaluation of arrest reports from September through November of 2016, OIG draws a particularly puzzling conclusion that there is a “systemic” failure of force reporting by officers because, in some instances, they failed to document force on Arrest Reports. OIG claims that during this time period, 30% of the Arrests Reports that they reviewed failed to indicate that force was used, *yet at the same time the officer completed a the detailed T.R.I. worksheet indicating the use of reportable force*. Thus, during this time period, there was neither a failure by officers to appropriately document reportable force nor was the Department’s capabilities in tracking or analyzing their use of force in any way hampered or undermined. In sum, in a Report that purports to examine compliance with NYPD’s 2016 use of force policy, OIG inexplicably faults the NYPD even when officers fully comply with that policy.

Moreover, the conclusion in NYPD’s 2016 Annual Use of Force Report – that in 2016, in 98.7% of arrests no force was used – is sound despite concerns voiced by the OIG Report. OIG’s Report questions the validity of this finding and asserts that because that statistic was derived from Arrest Reports which, in their view, reflect under-reporting of force, it is questionable. What OIG fails to recognize is that there is clear evidence of *over-reporting* of force by officers in 2016. In its 2016 Annual Use-of-Force Report, the NYPD described how officers, in the early stages of the policy’s implementation, sometimes completed T.R.I. worksheets for incidents that did not rise to the level of reportable force. Yet even if these erroneously completed reports are included, the percentage of arrests that involve reportable force remains low. For example, an analysis of T.R.I. worksheets related to arrests from the fourth quarter of 2017 indicates that only 2.1%, or 266 of 12,620, of arrests involved reportable force. Though this number is slightly higher than the earlier 1.3% derived from 2016 arrest reports, the conclusion is the same: only a remarkably small percentage of arrests involved reportable force.

OIG’s Report also incorrectly concludes that flaws in force reporting exist based on a relatively small and statistically insignificant number of Medical Treatment of Prisoner forms that they claim suggest the use of reportable force. More specifically, out of the 8,000 Medical Treatment of Prisoner forms reviewed by OIG, only 33, or approximately 0.4%, were identified as containing language in the narrative section that caused OIG to conclude that an officer used force without preparing a corresponding T.R.I.

worksheet. Again, much like their earlier review of arrest reports containing a charge of resisting arrest, this conclusion is based upon OIG's subjective views as to when a narrative indicates reportable force. Furthermore, OIG's conclusion fails to recognize that the purpose of these forms is to document when an arrestee requires medical attention, and not to document the circumstances pertaining to the use of force. After OIG began its audit of Medical Treatment of Prisoner forms, the NYPD tested the reliability of such forms as an audit metric during the Force Review process. Because Medical Treatment of Prisoner forms are not designed to capture information about an officer's or civilian's use of force, the NYPD determined that the narrative section of the Medical Treatment of Prisoner forms generally do not assist in reliably measuring compliance with the completion of T.R.I. worksheets. Rather, that section is designed to describe injury, symptoms of illness, or to record a complaint of illness or injury. For this reason, the NYPD is presently considering whether to continue their use as a metric in its own audit.

OIG also overstates the importance of command log entries in measuring compliance. The requirement that desk officers record the details of a reportable force incident in the command log, including the T.R.I. number, has become obsolete. The NYPD is therefore currently considering eliminating this provision from its policy. As NYPD advised OIG, the Risk Management Bureau presently utilizes a computerized analytical program known as COGNOS²⁰ to quickly and efficiently collect the same information that the desk officer is required to enter into the Command Log. Given this, the time-consuming chore of going page by page through a command log is now unnecessary and an obvious waste of resources. OIG's increased emphasis on this antiquated method of tracking T.R.I. worksheets is, therefore, puzzling. While OIG argues that command log entries are useful for command level auditing purposes, they also overlook that supervisors at the command level also have the ability to generate COGNOS reports that are more accurate and efficient than a manual command log review.

²⁰ COGNOS is a business intelligence tool that the Department utilizes to extract data from a database known as the Crime Data Warehouse. The tool allows authorized members of the Department to search for incidents by a wide variety of criteria including the date and/or location of the incident, the reporting officer, and the alleged offense, among others.

With respect to the Report's criticisms concerning the I.S.A.R., OIG applied too strict a standard to measure the completeness of these reports pursuant to Patrol Guide section 221-03. This Patrol Guide section serves as a guideline and outlines suggested investigative avenues to pursue when investigating supervisors respond to use of force incidents. They are not mandatory measures that must be completed in every case because every investigation is unique. Indeed, language in the I.S.A.R. makes this clear: each of these suggested investigative measures is explicitly qualified by "if available" or "if applicable." Incongruously, as the supervising investigator completes the form, he or she is left only with a checkbox after each investigative measure that indicates "yes" or "no." In other words, if an investigative step is not applicable to a given situation, or cannot be undertaken at the time that the supervisor responds, the supervisor has no option on the I.S.A.R. to check a box labeled "N/A" or "not applicable." The NYPD is currently reviewing the I.S.A.R. and intends to address this incongruity in the form.

Yet in these instances, when "yes" or "no" was not indicated because neither answer was accurate, OIG found the I.S.A.R. to be deficient unless the supervising investigator used the narrative section to explain those types of circumstances. The narrative section, however, is not designed for this purpose. Its purpose is to provide a factual summary of what transpired in the use of force incident and not to document a step-by-step breakdown of the supervisor's investigation. OIG thereby used their arbitrary addition of a requirement that is not found in the Patrol Guide to artificially inflate the number of I.S.A.R.s that OIG found to be inadequate.

Moreover, utilizing such an analysis completely disregards the dynamic reality of a use of force investigation. Immediately after a use of force incident, an investigating supervisor may be unable to retrieve certain evidence, to interview certain witnesses and subjects, and to complete other investigative steps that might be applicable. If, for example, an incident occurs at 2:00 am, certain witnesses may not be available in the early morning hours or surveillance video from a surveillance camera affixed to the exterior of a closed business establishment may not be retrievable until morning. The supervisor will conduct the best preliminary investigation that he or she can at that time given such obvious limitations.

With respect to Level 2 force investigations, the investigating supervisor who completes the I.S.A.R. is a Commanding Officer or a Duty Captain. For all Level 2 force incidents, a copy of the I.S.A.R. is forwarded to IAB. At this point, IAB promptly reviews the case, including the current status of the investigation, and if the incident requires additional investigation, the case is referred to the relevant Bureau or Patrol Borough Investigation Unit for follow-up. This process serves as an important quality control measure for policy compliance and assures the completion of a thorough investigation. In addition, for the most serious Level 3 force incidents, either FID or IAB assumes control of the investigation from the start and follows it through completion. Given these procedures, the failure by a Duty Captain or Commanding Officer to mark a checkbox on an I.S.A.R. is not dispositive of compliance with force policy, nor, as OIG claims, does it amount to a fatal flaw that “shapes” any future investigation. Indeed, during its investigation, OIG was briefed on these quality control measures. In sum, the policy has a built in failsafe that ensures thorough investigations of serious use of force incidents.

IV. USE OF FORCE POLICY TRAINING: A COMPREHENSIVE INITIATIVE

In connection with the 2016 revision of the Use-of-Force policy, the Department devoted considerable resources to ensure that members of the service received sufficient training on the policy and were fully prepared to implement it. The in-service training program that was undertaken was one of the most robust training initiatives in recent NYPD history. The program targeted uniformed members of the service across the entire Department with an added emphasis on training patrol officers and supervisors from the Patrol Services, Housing, and Transit Bureaus.²¹

The first cycle of in-service training began in January of 2016 and continued for the next eighteen months. During this time, members of the service attended a course known as *Physical Tactics* that included

²¹ The in-service training on the new Use of Force policy complemented the significant firearms, tactics, and skills training that was, and continues to be provided, giving officers a strong foundation in the general principles and tactics in the use of force. For a more detailed explanation of NYPD’S training in these areas. See NYPD Annual Use-of-Force Report. <http://www1.nyc.gov/site/nypd/news/article.page?id=p1228b&permalinkName=nypd-releases-2016-use-of-force-report> at P. 13.

a module specifically designed to address the newly revised policy. Through this module, members of the service were familiarized with the Department's newly defined levels of force, the circumstances under which officers may use force, and the standards by which officers' use of force would be measured. In addition, an overview of the obligations of supervisors and officers with respect to the reporting and investigation of use of force incidents, including instruction about the proper completion of T.R.I. worksheets and I.S.A.R.s, was covered. To assist officers in fully grasping the policy, a question-and-answer session was incorporated into the module. Altogether, 22,755 members of the service were trained in this first cycle.

More currently, the Department is one-third of the way through a second training cycle that began in October of 2017 and will conclude in May 2019. Building upon the *Physical Tactics* course, the current cycle features a new course known as *Integrated Tactics* that again includes a module addressing the use of force policy. In this cycle, the module is slightly different and reflects the experience and knowledge gained from more than a year of practical application of the policy to actual force incidents. Training on the policy now focuses on recurring issues that have arisen in its application. Over 8,000 members of the service have attended this training to date, with a total of approximately 24,000 officers expected to complete the course by May 2019.

The NYPD undertook a number of other measures that were designed to complement and reinforce this extensive in-service training program. Early on, the Department prepared a Use of Force training booklet, which was first released in December of 2015. The training booklet highlighted key features and concepts of the new policy in an easy reference format. The booklet was subsequently revised in June of 2016 to clarify certain areas of the policy that were the subject of officers' inquiries during the in-service training program. In addition, a Supervisors Reporting Guide was released to serve as a reference for supervisors, outlining their investigative responsibilities and reporting obligations. The updated June 2016 booklet and the Supervisors Reporting Guide were distributed in May of 2016 to all uniformed members of the service via an email from then Police Commissioner William Bratton. It was also delivered during

the Command Level Training sessions outlined below. The Supervisors Reporting Guide also became a part of the materials provided during promotional training and continues to be distributed in this manner to all new supervisors. The guide is also available on the Department's intranet site.

A full six months before the policy was implemented, the NYPD released a video depicting then Police Commissioner Bratton and then Chief of Department James P. O'Neill reminding members of the service that the release of the new policy was imminent and recapping its key concepts. This was followed by the release of a more in-depth video narrated by the Specialized Training Section's²² Commanding Officer which was released contemporaneously with the official implementation of the new policy. This video featured a detailed reminder of the principles and concepts that were covered in the in-service training curriculum described above and was released in May of 2016 on the NYPDU platform, allowing officers to view it on-line at the NYPD's intranet site and on NYPD smart-phones.

As of April 2018, 91.6% of all active uniformed members of the service have viewed the video. The remaining 8.5% are mostly recruits or newly hired officers who were hired and trained after the policy was implemented. These officers have received the necessary training on the Use-of-Force policy during their entry-level recruit training. When accounting for the training of these recruit officers, the Department-wide compliance rate exceeds 95%. The remaining 5% includes officers who are currently on military, extended or pre-separation leave and are, therefore, not available for training or active duty.

At the Policy Academy, recruits have always received training about the appropriate uses of force. These principles are summarized in the "Use of Force" chapter in the Police Student's Guide. When the Department implemented the revised policy, this chapter was updated to reflect the new P.G. 221 series and to highlight the critical features of the new policy. More specifically, recruits were introduced to the T.R.I. worksheet and the concurrent requirements regarding its proper completion. Recruit training on the newly revised policy began with the recruit class of April 2016 and has continued to the present.

²² The Specialized Training Section is the unit within the Training Bureau that provides in-service training for NYPD officers.

From January 2016 through the fall of 2016, the Commanding Officer of the Specialized Training Section, utilizing a train-the-trainer format, personally instructed all NYPD Training Sergeants²³ to ensure that these sergeants would provide effective and clear Command Level Training to their respective commands. These training sessions were typically conducted in a question and answer format that allowed the Training Sergeants to explore areas of the policy they felt may warrant more in-depth explanation. To the extent that changes are made to the policy, Command Level Training provides additional instruction on an ongoing basis.

Since 2016, newly promoted NYPD sergeants, lieutenants and captains have received training on the new Use of Force policy through their promotional classes.²⁴ The training provides supervisors with specific instruction regarding their duties and responsibilities under the policy. In particular, this promotional training familiarizes these new supervisors with their responsibility to investigate force incidents and ensure accurate and complete reporting. Additionally, the Commanding Officer of the Specialized Training Section personally provided training to those members of the service assigned to IAB who are responsible for fielding questions regarding and providing guidance on policy. These IAB members advise other officers and supervisors about the proper utilization and completion of Department's forms for recording use of force incidents and investigations, including T.R.I. worksheets.

Notwithstanding the robust, multi-tiered and ongoing training described above, OIG recommends that the NYPD now launch yet more training on this topic.²⁵ Specifically, OIG claims that at this stage of the policy's implementation, NYPD should conduct additional training on when and how to complete a T.R.I. worksheet, a subject that was fully covered in the training described above and which is clearly

²³ Training Sergeants are uniformed members of the service that attend training at the Police Academy in order to educate their respective commands about new or changed policies, procedures, and training that the Department makes available.

²⁴ Sergeants began receiving training in January 2016, lieutenants in September 2016 and captains in July 2016.

²⁵ Specifically, OIG now recommends "more training and formal reminders on (a) when and how to complete a T.R.I. form and the importance of submitting the T.R.I. form ... [and] provide more training for desk officers, integrity control officers, precinct training sergeants and other supervisors to (a) ensure T.R.I. compliance and proper supervisory review of completed T.R.I. worksheets, and (b) closely examine the arrest report narratives and the "Force Used" section on the arrest reports to ensure that officers are selecting "Yes" for "Force Used" when force was used." OIG Report at 27.

outlined in the Patrol Guide and other materials provided to officers and on the Department intranet. Additionally, Command Level Training is available on an as-needed basis and OIG's proposed training is well within the scope of the local training sergeant's duties and responsibilities.²⁶

Moreover, OIG believes that somehow desk officers, integrity control officers, precinct training sergeants and other supervisors did not absorb the training and are not capable of following the patrol guide provisions pertaining to the completion of T.R.I. worksheets. Finally, OIG suggests that these supervisors lack the present ability to scrutinize arrest reports that indicate that force was used and ensure that a T.R.I. worksheet was completed. OIG bases their training recommendations, in considerable part, on statements that they claim to have obtained from an unspecified number of supervisors in five of the NYPD's 77 precincts²⁷ and on OIG's examination of T.R.I. worksheets sampled during the fourth, fifth, and sixth month after the new policy was implemented. From this extremely limited and outdated information, OIG recommends a Department-wide undertaking that would involve considerable training resources.

With respect to the recommendation that NYPD provide "more training and formal reminders" on how and when to complete a T.R.I. worksheet, NYPD's Force Review Process data, described in detail above, objectively refutes that such a measure is necessary. As described above and depicted in Figure 1, the data from the process reveals a 97% compliance rate for the completion of a T.R.I. worksheet when an officer indicates on an Arrest Report that force was used. A mere 3% failure rate hardly indicates a systemic shortcoming requiring Department-wide training. Nor does a 100% compliance rate for the completion of a T.R.I. worksheet when a narrative in a Medical Treatment of Prisoner form indicates force. Clearly, officers and their supervisors have mastered the policy with respect to the completion of T.R.I. worksheets, and any stragglers can easily be addressed by appropriate supervision. Moreover, once extensive training on a policy has been concluded, often the best method for enhancing performance and compliance is the

²⁶ Commands do not need to wait or rely solely on the Training Bureau to provide training content or direction. Training sergeants are tasked with identifying and correcting issues at their commands as they arise. In this sense, training is always ongoing.

²⁷ See OIG Report at 19. NYPD requested that OIG provide the number and names of supervisors with whom they spoke so that the NYPD could explore with them their perceived training needs. OIG refused to provide the information.

repeated, practical application of the policy under careful supervision. Put simply, OIG's concepts such as a Department-wide "low level of officer buy-in"²⁸ and "limited training"²⁹ are unsupported by empirical evidence.

Moreover, NYPD supervisors have a variety of resources to assist with questions concerning T.R.I. worksheets and I.S.A.R.s. Precinct supervisors may consult with their immediate supervisors in the precinct to address questions regarding compliance. Precinct commanding officers and executives also have Borough Command supervisors at their disposal to assist with inquiries. In addition, members of the Risk Management Bureau and the Specialized Training Section also serve as a resource, as do the detailed training materials and the relevant Patrol Guide provisions. At any level, supervisors may also turn to the IAB hotline which, contrary to OIG's unsupported conclusion, regularly serves as a valuable resource in this regard. Given the considerable training that has been provided, the almost two years of experience that I.A.B. now has in providing guidance to others about the policy, and the high compliance rates for T.R.I. worksheet completion, there is nothing to indicate that IAB should forfeit their significant role in ensuring compliance with the policy. In the face of this objective evidence, OIG offers no data or empirical proof to support their recommendation that the function be removed from the purview of IAB or that all supervisors need to be re-trained. In sum, OIG's training recommendations are a solution in search of a problem.

V. PUBLIC REPORTING: NYPD'S FORCE REPORTING PURSUANT TO LOCAL LAWS 85, 86, AND 88

As the OIG's report notes, "the public reporting of comprehensive, accurate, reliable use of force statistics greatly affects a community's trust in law enforcement." The Department takes this statement seriously. Indeed, over the last several years the Department has made significant strides in becoming a more transparent agency. This is evidenced by the nearly 20 laws that have been enacted by the City Council since 2014 which require the NYPD to post data, including use-of-force statistics, on its website. The

²⁸ See OIG Report at 19.

²⁹ *Id.*

overwhelming majority of these reporting laws were passed in negotiation and collaboration between the NYPD and the New York City Council.

With respect to NYPD's public reporting of use of force incidents, OIG's characterization suggests wholesale non-compliance with Local Law 85 and other laws regarding the public reporting of use of force statistics. Notably, OIG states that the Annual Use of Force Report issued by the Department for 2016 does not comply with Local Law 85. Yet the Annual Use of Force Report, standing alone, was never meant to serve as the Department's compliance with Local Law 85. The 2016 Annual Use of Force Report is a hybrid document. It is a combination of the Department's annual firearm discharge report, which has been produced annually since 2007, and the T.R.I. worksheet data that was available to the Department for part of 2016. At the time of its publication, the NYPD never represented that this annual report would, by itself, fully satisfy all of the reporting requirements under Local Law 85.

Local Law 85 of 2016 requires the NYPD to provide a quarterly and annual report on use of force incidents broken down by type of force used, precinct of the officer that used force, officer duty status, the number of injuries to officers and civilians resulting from a use of force incident, and the severity of those injuries. In addition, the law requires that incidents of excessive use of force be reported annually and disaggregated by type of force used, precinct, duty status of the officer and, if available, disposition of departmental charges brought against the officer for the excessive use of force. The first quarterly Use of Force report that was issued pursuant to this law covered the last quarter of 2016. The 2016 Annual Use-of-Force report, coupled with all the subsequent reports that have been released since,³⁰ together fully comply with the requirements of Local Law 85 to the extent permitted by superseding state law.³¹ All of

³⁰ The Department's 2016 Excessive Use of Force Report, which was in the process of being prepared and finalized when OIG issued their report on February 6, 2018, was officially published on the NYPD's website on March 6, 2018.

³¹ There is a contradiction between the requirements imposed by Local Law 85 and New York State Civil Rights Law Section 50(a). Civil Rights Law Section 50(a) prohibits the Department from publishing officer personnel records. Local Law 85 requires the reporting of the number of incidents involving the use of excessive force for the previous calendar year and mandates that such excessive force data be disaggregated by precinct and that the dispositions of departmental charges brought against officers for the use of excessive force be provided. These requirements call for the publication of material that is prohibited by Civil Rights Law Section 50(a). In order to at least partially fulfill this requirement while also balancing the protections afforded in Section 50(a), the Department has disaggregated this data by borough instead of by precinct to protect against disclosing an individual officer's

these reports have been posted to the NYPD's public website, including the 2016 "Excessive Use of Force Report" and the "Deployment Law."³²

It is important to note that in negotiating Local Laws 85 and 86 – which requires use of force reporting disaggregated by basis of encounter – the City Council crafted the language of these laws to mirror the data that would be captured in the Department's forthcoming T.R.I. worksheets at the time. The Council was provided notice in these negotiations that because T.R.I. worksheet data would not be available until after June 2016, the Department would have only partial use of force statistics for 2016 to fulfill its reporting obligation. Therefore, it was understood that any annual Use of Force Report for 2016 that could be produced by the Department would only cover that period where sufficient preliminary T.R.I. data was available to compile a report. Similarly, it was understood that as more time elapsed, and officers became more accustomed to the policy and its application, by 2017 and beyond, more comprehensive and reliable data would be available for reporting. Given these practical limitations, the first quarterly use of force report – covering the last quarter of 2016 and which provides the requisite data breakdowns on officer duty status and injuries – satisfies the first annual report requirement under Local Law 85. It appears that OIG's criticism is based solely on a cursory review of what is available on the Department's website and does not take into account these negotiations and the practical consequences of only having a fraction of the year's data to report for 2016.

In its analysis of the NYPD's compliance with Local Law 85, OIG references an annual report produced by the Department pursuant to Local Law 88 which captures the total number of and percentage of officers in each precinct that (1) have two or more substantiated CCRB complaints in the last 3 calendar years; (2) have been the subject of an IAB investigation that resulted in a suspension in the last 5 years; (3)

finding of excessive force and violating state law. It should be noted that the Department supports reasonable amendment to Civil Rights Law Section 50(a) but is presently legally bound by its provisions.

³² In totality, OIG's criticism as to whether the Annual Use of Force Report issued by the Department complies with Local Law 85 is essentially a nullity. Both the annual report and quarterly reports are to be posted on the Department's website. In producing next year's annual use of force report, if the Department were to attach copies of the four quarterly Use-of-Force reports for the year, this would also comply with Local Law 85. Moreover, the Department has also posted an annual excessive use of force report on its website.

used excessive force in the last 3 years; or (4) have been arrested in the last 10 years for police-related behavior. OIG observes that this report does not isolate excessive force cases and does not disaggregate such cases by type of force and officer duty status as directed by Local Law 85. OIG's reference to this statute is puzzling as the reporting requirements in Local Law 85 have no bearing on how the Department reports the data captured in Local Law 88.

VI. NYPD'S RESPONSES TO OIG-NYPD'S RECOMMENDATIONS

Recommendation #1: NYPD should add a field to the "Force Used" section of the arrest report for officers to note the associated T.R.I. incident number(s).

Implemented by NYPD prior to OIG Report and Recommendation.

On December 18, 2017, NYPD informed OIG that the Department had made certain changes to the Arrest Report that would prompt officers to include a T.R.I. incident number before finalizing an arrest. As of December 2017, when completing an Arrest Report, officers who select "Force Used: Yes" are prompted to input a T.R.I. incident number before the Arrest Report can be finalized. This step ensures that officers adhere to their obligation to document the use of force on a T.R.I. worksheet when reportable force is used during an arrest. Thus, this recommendation was implemented prior to OIG's release of its Report and recommendations.

The NYPD is currently consolidating many of its existing forms into the FORMS database. Once complete, the database will allow the Department to interconnect various forms, allowing officers to, for example, automatically generate and reserve a T.R.I. incident number when completing an Arrest Report.

Recommendation #2: NYPD should continue to develop its software capabilities, which now initiate the creation of a T.R.I. number when an officer indicates on an arrest report that force was used, to also prompt officers that they may have to complete a T.R.I. when certain arrest charges are entered (such as Resisting Arrest or Assault on a Police Officer), when the arrest report indicates an arrestee or officer injury has occurred, and in other similar scenarios.

Implemented by NYPD prior to OIG Report and Recommendation in part and Rejected in part.

OIG's recommendation misunderstands the changes made to the NYPD's Arrest Report form and the practical realities of policing that would militate against automatic prompts to prepare a T.R.I. worksheet based upon specific charges entered into an Arrest Report.

As described in the response to Recommendation #1 above, when an officer selects the "Force Used: Yes" dropdown option on an Arrest Report, a new field populates on the form, requiring officers to input a T.R.I. incident number. Selecting "Force Used: Yes" does not automatically reserve or create a T.R.I. number. Officers must still manually create and input the T.R.I. incident number into the Arrest Report, but they are

prevented from finalizing the arrest until a number is obtained and input into the Report. Thus, NYPD considers this part of the recommendation implemented prior to the release of OIG's report and recommendations.

With respect to requiring that an officer be automatically prompted to complete a T.R.I. worksheet based upon the entering of a specific charge into an Arrest Report, NYPD rejects this part of the recommendation. OIG's recommendation would necessarily require programming based upon a presumption that may, in good number instances, not be true. As described in more detail on Pages 9-10 above, implementing OIG's recommendation would require that the NYPD program its databases to assume a subject actively resisted arrest, and that reportable force was required to effect the arrest. This disregards the plain reality that a subject may passively resist arrest or incorrectly assumes that reportable force is always required to bring a subject into compliance.

Even without a prompt, NYPD's audits as part of the Force Review Process indicate that most officers are completing T.R.I. worksheets in these situations. A recent analysis of a sample of arrest reports from the fourth quarter of 2017 collected from three patrol boroughs and the Housing Bureau shows that officers completed a TRI 95% of the time when an arrest report contained a charge of assault of a police officer and 85% of the time when an arrest report contained a charge of resisting arrest. As noted earlier, there are passive ways to resist arrest as well as ways to subdue someone short of reportable force when an individual is resisting arrest. This likely explains the other 15% of cases where resisting was charged but no T.R.I. worksheet was necessary.

Recommendation #3: NYPD should add a narrative section to the T.R.I. and require officers to provide a full account of the force incident, including specific details on the force used by the officer and/or members of the public, the chronology of the force encounter, as well as any injuries sustained by either.

Rejected.

The NYPD believes that the current T.R.I. worksheet contains a sufficient level of detail to document incidents involving the use of force.

However, the NYPD is currently in the process of revising the T.R.I. worksheet. The revised worksheet will likely include a narrative section for supervisors to summarize the circumstances of the incident as determined by their investigation. The NYPD expects the revised worksheet to be completed later this year.

Recommendation #4: NYPD should add additional checkboxes to the T.R.I. worksheet to allow for more specificity in describing the force used by an officer, including a closed fist strike, an open hand strike, and a knee strike.

Rejected.

The NYPD believes that the current T.R.I. worksheet contains a sufficient number of checkboxes regarding the type of force used by an officer. There are already 10 checkboxes specifying different types of force that an officer may have used³³ as well as a catch-all for “Other Force.” This last provision allows an officer to specify force that was used that does not specifically fall into one of those 10 categories.

Recommendation #5: NYPD should add a section to the T.R.I. worksheet that prompts officers to indicate where exactly on the person’s body force was used.

Rejected.

Such a requirement is superfluous. Patrol Guide 221-03 already requires officers to take digital photographs as necessary, including any visible injuries. Training Memo #40-16 expands on this requirement by specifying that digital pictures should be taken of any location on a subject where an injury is claimed but not visible. These photographs will generally capture where on the person’s body force was used.

Recommendation #6: NYPD should impose (a) an “end of tour” deadline by which officers must complete a required T.R.I. form, with appropriate exceptions, and (b) appropriate discipline against officers who fail to meet the deadline, except when certain exceptions apply.

Rejected.

The NYPD opposes both prongs of this recommendation.

Patrol Guide 221-03 already contains a requirement that an officer’s immediate supervisor sign off on any pending T.R.I. worksheets by the end of their tour. However, there are many circumstances under which an officer directly involved in a use of force incident will not be able to complete the form prior the end of his or her tour, particularly with regard to incidents where force is used against that officer. Patrol Guide 203-05 already provides a general rule that official reports should be made “without delay.” Imposing an arbitrary “end of tour” deadline for this particular worksheet is unnecessary and contrary to the general practice of the Department.

Even if the NYPD were to impose such a deadline, discipline would be left to the determination of commanding officer, who is in the best position to decide the appropriate punishment based on the totality of the circumstances, including the history of the particular officer in question.

Recommendation #7: NYPD should require desk officers to question the involved officers about any force used during arrest processing so that the command log accurately reflects the force incident.

Implemented by NYPD prior to OIG Report and Recommendation.

³³Hand strike, foot strike, forcible take downs, OC spray, restraining mesh blanket, conducted electrical weapon, impact weapon, police canine bite, discharged firearm, and intentionally struck subject with a vehicle.

Patrol Guide Section 208-03 requires desk officers to question arresting officers during arrest processing about any use of force and Patrol Guide section 221-03 requires desk officers to record the details of any such incident in the command log, including the T.R.I. incident number. As noted earlier, the latter requirement is outdated and currently under review.

Recommendation #8: NYPD should reinstate the “Force Used” checkbox on the arrest-processing stamp used in precinct command logs and add an entry on the stamp for force details and the T.R.I. incident number.

Rejected.

Use of the arrest-processing stamp is not mandatory and varies from command to command. Adopting this recommendation would not assist in the development of uniform reporting regarding incidents involving the use of force. This goal is accomplished by the completion of the T.R.I. worksheet.

Recommendation #9: NYPD should prompt desk officers to record the details of a force incident and the T.R.I. incident number in the command log, including details from the “Force Used” checkbox on the arrest-processing stamp, as required by Patrol Guide Series 221.

Rejected.

The NYPD already requires desk officers to record these details under Patrol Guide section 221-03. Use of the stamp is not mandatory. As noted earlier, this requirement regarding recording the TRI incident number is outdated and currently under review.

Recommendation #10: NYPD must enhance supervisory review of all arrest-related documentation at the local command level. In high-volume commands, NYPD should assign specially-trained supervisors at the rank of sergeant or above to carefully review such documents during arrest processing to ensure that all uses of reportable force are properly documented.

Implemented by NYPD prior to OIG Report and Recommendation.

All arrest-related documentation is already carefully reviewed by NYPD supervisors. Under Patrol Guide section 208-03, NYPD desk officers are already required to review all arrest-related documentation prior to approval of any forms. With respect to volume, the NYPD considers volume when assessing staffing needs and assigning supervisors to a particular command. During periods of higher volume, additional desk officers are assigned, ensuring all supervisory functions are appropriately carried out throughout the tour.

Recommendation #11: NYPD should dedicate well-trained and knowledgeable personnel to be available by phone during all shifts to answer questions from command supervisors regarding T.R.I. worksheets and approval. NYPD should consider removing this function from the Internal Affairs Bureau.

Rejected in part and Implemented by NYPD prior to OIG Report and Recommendation.

The Internal Affairs Bureau's well trained and knowledgeable personnel are available to answer these questions 24 hours a day. Despite the cited concerns of an unspecified number of unnamed precinct supervisors, the NYPD sees no issues with IAB's retaining this function. Additionally, command supervisors may call the Risk Management Bureau's Compliance Division or the Office of Management Analysis and Planning for questions about completing T.R.I. worksheets.

Recommendation #12: NYPD should include in Patrol Guide series 221 a clear and unambiguous definition of "reportable force" by officers. The current policy provides a definition of force when used *against* officers and defines three levels of force by officers, but a lack of clarity still exists for many officers regarding whether certain actions constitute reportable force.

Implemented prior to OIG Report and Recommendation.

Patrol Guide section 221-03 already defines "reportable force" by defining the three levels of force in unambiguous detail. These three levels encompass all "reportable force."

Recommendation #13: NYPD should establish a clear policy that requires arresting officers to select "Yes" on the arrest report in response to the "Force Used" section if any officer used reportable force during the encounter.

Rejected.

The Arrest Report is a self-explanatory form that does not require a specific policy about how to complete it. The Arrest Report already contains three options in the "Force Used" section, one if force were used by the arresting officer, one if force were used by the assigned officer, and one if force were used by the assisting officer. This ensures that if force is used by any officer during an encounter, it is reported. To the extent errors are identified during the NYPD's internal auditing, conducted as part of the Force Review process and Force Review Evaluations, commanding officers and supervisors will be reminded of their supervisory duties to ensure Department forms are properly completed.

Recommendation #14: NYPD should impose appropriate discipline against arresting officers who fail to select "Force Used: Yes" on the arrest report when reportable force is found to have been used.

Rejected.

The NYPD believes that discipline for this type of incident should be imposed at the command level. Commanding officers are best equipped to make determinations regarding the proper discipline to impose given their familiarity with the officer in question and the officer's specific history regarding the use of force.

Recommendation #15: NYPD should revise policies to ensure that the narrative or “Remarks” section of Medical Treatment of Prisoner forms include fact-specific details sufficient to explain the individual’s condition and, where known, what caused the condition. If an individual sustained an injury in the course of the police encounter, the form should specify the type of injury and its cause.

Rejected.

The purpose of “Medical Treatment of Prisoner” forms is to document when an arrestee requires medical attention, not to document the use of force. The use of force is already documented in great detail in the T.R.I. worksheets.

Recommendation #16: NYPD should provide officers with more formal reminders on (a) when and how to complete a T.R.I form and the importance of submitting the T.R.I. form and (b) how to write a detailed account of a force encounter (should a narrative section is added to the T.R.I form).

Rejected.

As described above, the NYPD’s internal auditing of T.R.I. worksheets clearly demonstrates that officers are properly completing and timely submitting T.R.I. worksheets. In addition, as indicated above at Pages 14-19 there is an abundance of training and other material available to officers, as well as supervisory guidance, regarding when and how to complete a T.R.I. worksheet and its importance. Currently, as indicated above in the response to Recommendation #3, the NYPD is in the process of revising the T.R.I. worksheet and the revised worksheet may include a narrative section for supervisors to summarize the circumstances of the incident.

Recommendation #17: NYPD should provide more training for desk officers, integrity control officers, precinct training sergeants, and other supervisors to (a) ensure T.R.I. compliance and proper supervisory review of completed T.R.I worksheets, and (b) closely examine the arrest report narratives and the “Force Used” section on the arrest reports to ensure that officers are selecting “yes” for “Force Used” when force was used.

Rejected.

See the reasons articulated on Pages 8-12 above.

Recommendation #18: NYPD should conduct an annual audit of T.R.I. compliance and include the results in its annual and public Use-of-Force report.

Implemented prior to OIG Report and Recommendation.

As OIG’s is aware due to their attendance at the November 2017 Force Review Evaluation and interviews with Department personnel, auditing is already conducted monthly via the Force Review process. See Pages 6-8 above.

Regarding the annual Use-of-Force report, the NYPD is in compliance with the requirements of New York City Administrative Code §14-158. See Pages 19-22 above.

Recommendation #19: NYPD's Force Review process should include quality-control procedures that seek to improve the accuracy of force reporting not only on T.R.I. forms, but also on arrest reports and other arrest-related documentation.

Implemented prior to OIG Report and Recommendation.

The NYPD's Force Review process already includes such procedures. See Page 5-8 above.

Recommendation #20: NYPD should standardize the quarterly reporting mechanism for bureau and patrol borough commanders to ensure that their quarterly T.R.I. reports are submitted to the First Deputy Commissioner in a timely fashion

Rejected.

As explained above on Pages 5-8 and 12 above, this recommendation has been rendered moot by the Force Review process and the utilization of the COGNOS system in the context of that process and at the command level. By utilizing COGNOS, the Risk Management Bureau can easily collect current use-of-force data with a greater level of detail than quarterly reports are provided in quarterly reports. Commanding officers can access this same data and use it to improve their command's compliance with the Department's use of force policies, also rendering the preparation of quarterly reports unnecessary. As mentioned above, this Patrol Guide requirement is currently being reviewed.

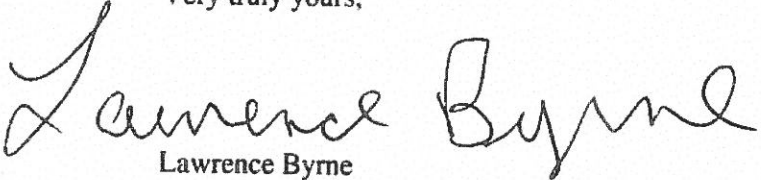
Recommendation #21: NYPD should use data from T.R.I. forms to publish annual Use-of-Force reports that identify and analyze trends in all force categories. The report should contain all information currently mandated by law and include the following trend analyses:

- A) All force encounters disaggregated by the reason force was used;
- B) All types of interactions leading to injuries;
- C) Officers use of force based on job tenure and experience;
- D) Commands with the highest rates of force;
 - Is the frequency of force consistent with crime and arrest rates in these commands?
 - Are certain units more or less likely to employ force?
- E) Demographic characteristics of members of the public and officers involved in force incidents;
 - Are there disparities in the types or amount of force used based on age, gender, race, national origin, precinct, or other factors?
 - What are the reasons for such disparities?

Rejected in part and Implemented in part.

To the extent that OIG's recommendation seeks to go beyond the reporting requirements negotiated by the NYPD and the City Council, and articulated in Local Laws 85, 86, and 88, this recommendation is rejected. To the extent OIG's recommendation suggests that the Department's Annual Use of Force Report is non-compliant with Local Laws 85, 86, and 88 and seeks to have NYPD "correct" the same, the recommendation is fully implemented as required by law. As described on pages 19-22 above, the NYPD is fully compliant with the reporting requirements under Local Laws 85, 86, and 88 to the extent permitted by superseding state law.

Very truly yours,

A handwritten signature in cursive script that reads "Lawrence Byrne". The signature is written in black ink and is positioned above the printed name and title.

Lawrence Byrne
Deputy Commissioner Legal Matters