



**INDEPENDENT REVIEW  
OF THE WESTMINSTER POLICE DEPARTMENT**

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## **INTRODUCTION**

In February 2014, after a federal trial, the jury awarded \$3.5 million dollars to three Westminster Police officers who had alleged that they had been subjected to discriminatory practices and retaliation. As part of a comprehensive remedial plan, city officials solicited and eventually contracted with Michael Gennaco of OIR Group to conduct an independent review and assessment of the Westminster Police Department. The review requested that the review include practices potentially implicated by the result of the trial including selection processes and documentation of decisions with respect to special assignments and promotions, performance evaluations, internal investigations protocols, disciplinary processes, mentoring programs, training regimens, hiring practices, and other policies and procedures with recommendations for improvement of current practices. The specifications requested that the findings be incorporated into a public report to ensure that the process was transparent and to provide information to Westminster's residents about the results of the review. This report is intended to respond to the City's request and encapsulates the findings and recommendations of the independent review.

This review is not intended to again litigate issues raised by the three police officer plaintiffs that culminated in a federal trial verdict in their favor. Instead, this review examined the trial proceedings, testimony, and exhibits in order to learn whether there were processes and procedures worthy of examination, assessment, and improvement. The approach and scale of review authorized by City leaders is a bold and forward thinking approach to risk management. While a small fraction of jurisdictions may have some type of corrective action mechanisms built into their procedures after an adverse verdict, most cities undertake little or no self-examination and try to either undo the verdict in court and/or pay the judgment and move on. Instead, Westminster's leadership went beyond the inevitable post trial proceedings by proactively seeking and authorizing a set of independent eyes to examine the civil proceedings through a different lens. What Westminster determined to learn was what the evidence at trial could teach in order to improve current processes.

This orientation to use the trial proceedings and adverse result as a learning experience and potentially insulate itself from future liability places the City at the cutting edge of progressive risk management practices. The fact that City leadership initiated and the Chief of Police embraced such a review and empowered the reviewer to follow any trail that might lead to structural improvement is indicative of a City that is oriented toward improvement and reform.

While the report found a number of areas in the way in which the Police Department and the City does business that could be improved and makes a number of recommendations designed to

improve those processes systematically, our experience in reviewing similarly situated law enforcement organizations found nothing to suggest that Westminster was an outlier with regard to many of the policies and procedures currently in place. Many of Westminster's internal policies and practices, like other similarly situated police agencies, were informal, failed to require documentation, allowed too much discretion to command staff, provided insufficient and principled guidance to supervisors on decision making, did not ensure consistency, and did not have sufficient mechanisms in place to insulate the Department from allegations of arbitrariness or unfairness in dealing with employees. The recommendations here are intended to address these identified issues to increase the confidence among its employees that all will have the same opportunities for career advancement and will have their performance assessed similarly.

While mindful that the lawsuit focused on allegations of mistreatment of the Department's employees, a number of the Report's findings and recommendations either directly or indirectly address the way in which the Department interacts with its citizens since these issues also presented themselves in the trial proceedings and exhibits. Those recommendations are intended to improve the way in which Westminster provides police services to its residences consistent with progressive practices and principles of community policing.

Because of the notoriously slow pace of civil litigation, by the time a matter reaches trial the allegations that form the crux of the complaint are usually several years old. Moreover, matters that well pre-date the alleged harm to named plaintiffs can be brought to the jury's attention, dependent on their relevancy and the court's rulings. For example, in the instant matter, the placing of a "whites only" sign in a satellite office occurred almost two decades before the issues directly impacting the named plaintiffs in the litigation. More significantly, some of the matters that were the centerpiece of the trial had occurred years and several police chiefs and City Managers prior and City leadership had, in the intervening years, attempted to address some of those processes. Suffice to say that the trial portrayed to some degree an historical account of how the City dealt with issues, some of which had been subject to revision. That being said, in the same way that historical processes help define the culture of an organization, those same processes become relevant to this outside review. What this review determined was to be mindful of those historical issues but evaluated and made recommendations based on current Westminster procedures and protocols.

To the City and Police Department's credit, the independent review and its findings as set out here is not the sole remedial response to the adverse verdict. In addition, the City brought on two respected police leaders from other police agencies as interim deputy chiefs and provided them authority to both identify issues and develop recommendations for reform. This report will comment on some of those recommendations that most directly impact issues that were the centerpiece of the federal trial but the spectrum of reform spawned by the deputy chiefs and embraced by the Chief extend beyond those matters and have been remarkable. Moreover,

instead of waiting for this review process to be completed, the Chief and City leaders have appropriately moved forward on systemic change designed to improve the special assignment and promotion process as well as other improvements on how the Department interacts with its employees and the public.

To the degree that this Report provides insight into policies and procedures of the Westminster Police Department, the findings and recommendations would not have been possible without the complete and enthusiastic cooperation of the Westminster Chief of Police, City Council, the City Manager and the Department's command staff. All documents that were requested were timely provided and, more importantly, there was unfettered access to Department and City officials who provided candid insight into the issues in question. The degree of cooperation displayed by the City during the review process is a testament to an entity supportive of the process and cognizant of the need for the reviewer to have total access in order to conduct an impactful, candid, and meaningful review.

**I. The Special Assignment Selection Process Was Informal, Providing a High Degree of Unfettered Discretion to Department Decision Makers and Subject to Successful Argument that It Was Influenced by Inappropriate Factors.**

The Westminster Police Department created special assignments for officers that provided the ability to work in specialized units, provided additional pay for officers selected, and became stepping stones for career advancement within the organization. Categories included detectives, motorcycle, administrative, and mall assignments. At trial, plaintiffs argued that with the possible exception of the mall assignments, they were not awarded with special assignments in other areas of the Department because they were Hispanic.

In the past, when a special assignment opening became available, the Department sent out a communique to its officers indicating the opening and soliciting applications for any officer who might be interested in being considered for the assignment. Upon receipt of the application memorandum, the Department would then ask sergeants to comment on the suitability of the applicant officers to be considered for a special assignment. These comments would be collected and the supervisor of the special assignment unit's views would also be solicited. WPD command staff would then make recommendations to the Chief who could accept the recommendation or choose someone else for the special assignment position. Over the years, the process became somewhat more formal, with the Professional Standards Unit collecting evaluations, checking on disciplinary histories of the applicants, and providing somewhat more guidance to sergeants on how any input should be formatted. However, the decision on selection still rested within the discretion of the Chief who usually relied heavily on any recommendation made by the supervisor in charge of the special unit with the vacancy. With that reliance came the perception, if not the reality, that the special unit supervisors were selecting their "friends" or

those officers part of a “good old boy” network than choosing based on merit.

The special assignment selection process provided little information to officers about the selection criteria or the type of experience the Department was looking for among applicants. Because of its informality, the process could be easily changed to accommodate a particular officer who might otherwise not be eligible. For example, on one occasion an officer on probation<sup>1</sup> was selected despite prior announcements indicating that officers who were on probation were not encouraged to apply. Moreover, there was scant documentation that supported or explained the Chief’s ultimate selection decision.

While the informality of the special assignment process is not unique to Westminster and still likely exists in many similar sized agencies, the lack of guidance in the process allowed command staff unfettered discretion to choose who they wanted for the special assignments without a need to consider any objective criteria in comparing the attributes of the candidates. While there is merit to providing executives discretion on who to select for special assignments, the complete lack of written guidance for officers, supervisors, and command staff alike in learning ahead of the process the desirable traits of a candidate and how the selection was to be achieved left the Department vulnerable to concerns that the process was not performance-based and that decisions were being made based on inappropriate criteria. This phenomenon was confirmed at the federal trial where pages of testimony and attorney argument devolved around whether applicant “X” was better qualified for the assignment than applicant “Y” and how, in the plaintiffs view, the process ended up working to their disadvantage. The lack of criteria and documentation of the special assignment decisions ended up making the Department particularly vulnerable to these arguments at the federal trial.

Before this review commenced, the Chief already recognized the need for reform in the special assignment process. As a result, a six page indexed briefing was promulgated this summer that sets out minimal requirements for special assignment and collateral assignment<sup>2</sup> eligibility. For example, in order to be considered for a special assignment, written guidelines set out that an officer must have completed his probationary period and have three years of experience as a police officer. In order to be considered for special assignment, the officer must also have achieved at least an “acceptable” overall rating regarding performance evaluations over the previous eighteen months. To provide a higher level of objectivity, the new criteria transfer responsibility of processing and scoring the applicants to the Human Resources Division of the City. The Division of Human Resources is to provide the Chief of Police a band of the top five

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<sup>1</sup> Officers newly hired to the Westminster Police Department serve a probationary period during which they do not accrue the full employment protections of a tenured officer.

<sup>2</sup> Collateral assignments are extra duty positions such as SWAT that while not the centerpiece of critique by plaintiffs in the federal trial, suffered from the same infirmities as the special assignment process. The Department should be credited for the increased processes and guidance provided regarding that selection process as well.

scoring applicants who will then choose from among them to fill the vacant position. The document also sets out a more specific and defined process for rotation, lateral transfers, and extensions of assignments.

The detailed criteria set out in the briefing provide significantly more information and guidance to the police officer applicant and Department decision-makers regarding the special assignment selection process. The process does eliminate the ability of the Chief to pick the “best” officer from whoever has applied for the position because Human Resources is only to provide the Chief with the top five applicants as determined by that Division. That being said, the reformed process still provides the Chief the ability to pick among the top five qualified officers, sets out automatic disqualifiers, and brings more objectivity to the process.

While the new criteria is a significant step forward in educating officers about the special assignment process and providing more objectivity to the process, there is even additional room for further guidance and objectivity. As this reviewer indicated in an internal communique to the Chief, consideration should also be given to making ineligible for special assignment consideration officers who have recently received discipline. For officers who have received discipline for integrity lapse issues, that ineligible time frame should be a longer period. Further consideration should also be given to whether higher levels of educational attainment by officers should be preferred in the process and whether there were other objective criteria that should also be built into the scoring process. The document could also set out with particularity the information that will be part of the special assignment consideration package and who is responsible for collecting and retaining that information. For example, the document should set out in writing that the applicant officer’s disciplinary history, commendations, uses of force, and training history is to be included in the review package. Finally, the process should indicate whether there is an opportunity for officers who are not selected among the top five to appeal, and if so, what that process involves.

***Recommendation One: The special assignment selection process should consider whether recent disciplinary history and/or whether disciplinary history involving integrity issues should be automatic disqualifiers for special assignment consideration.***

***Recommendation Two: The special assignment selection process should consider whether objective criteria such as level of educational attainment should be built into the scoring and selection process.***

***Recommendation Three: The special assignment selection process should set out in writing what specific materials will be collected for purposes of evaluating and scoring the applicants and who is responsible for collecting and collating that information.***

***Recommendation Four: The special assignment selection process should set out in writing by whom and how long the special assignment application and review materials will be retained.***

***Recommendation Five: The special assignment selection process should set out in writing whether the scoring of applicants has an appeal process and if so, set out the details of that process.***

## **II. The Need to Develop Additional Protocols to Ensure Consistency of Treatment of Employees.**

Evidence was produced at the federal trial that while some officers were given considerable leeway regarding when they were required to turn in their daily activity logs, other officers were held strictly to the requirement that they be completed daily. Evidence was also produced that when officers did not meet the expectation of supervisors, similar violations were handled differently with regard to documentation and discipline. The source of this inconsistent treatment largely stemmed from first level supervisors and their approach toward supervision. Some sergeants found it crucial for officers to comply with Departmental expectations in completing paperwork while others either did not enforce or laxly enforced such requirements. Moreover, the way in which sergeants held their officers to account for such performance varied from verbal admonishments or written performance logs to formal discipline.

As a result of inconsistent approaches to these performance matters among sergeants, plaintiffs were able to argue at trial that officers similarly situated had not suffered the same level of review or accountability. Accordingly, plaintiffs could and did explain such differential treatment as retaliation against them for filing a complaint and lawsuit against the City. Because similarly situated officers were subjected to differential treatment by supervisors, it was difficult for the Department to disprove the plaintiffs' allegations.

### **Supervisor's Logs: A Need for Further Guidance.**

Another source of contention raised at the federal trial was the alleged discriminatory use of supervisory logs against the plaintiff officers. At WPD, a supervisor's log is intended to document an officer performance issue but, unlike a written reprimand, is not intended to constitute formal discipline. Currently, supervisory logs can be but are not required to be incorporated into an employee's annual performance evaluation. The wide discretion afforded first level supervisors on the use of supervisors logs creates the reality of inconsistent use and impact on line officers.

If supervisory logs are not considered discipline, written policy should indicate such. Second, more guidance needs to be afforded supervisors on when they should create supervisor logs and second level supervisors should audit the type, frequency, and nature of the issuance of logs

among sergeants to promote consistency of use. Finally, WPD should consider whether every performance log should be referenced in the employee's performance evaluation in order to promote the principle stated in Department policy that employee assessments are an ongoing process and help ensure consistency of treatment. There is some logic supporting the idea that in cases in which the log caused the desired effect of improved employee performance there was no need to discuss the issue in the performance evaluation. However, inclusion of the log and the employee's self-remediation should be considered as a positive attribute of the employee's ability and inclination to self-correct and presents a fuller picture of the employee's progress over the year.

***Recommendation Six: WPD should expressly articulate that Supervisory Logs are not considered discipline and indicate their intent.***

***Recommendation Seven: WPD should develop protocols requiring second level supervisors to audit the use of Supervisory Logs by sergeants to ensure consistency of use and treatment.***

***Recommendation Eight: WPD should consider whether written protocols should be developed requiring that all performance log entries are to be referenced in the employee's annual performance evaluation.***

### **Accountability Guidelines Designed to Promote Consistency of Treatment.**

A central issue at the federal trial was that WPD treated employees differently when they were involved in similar transgressions. Plaintiffs argued that this differential treatment demonstrated discrimination and/or retaliation. At trial, plaintiffs were able to make significant headway with regard to the allegation of differential treatment. For example, one plaintiff officer was disciplined for talking with two other officers at the workplace about sexual matters, but the other two officers received no discipline for also participating in the conversation. This differential treatment also extended to allegations that some officers were treated harshly for failing to timely complete reports while other officers received no adverse action for similar delinquent behavior.

In determining the appropriate remedial response to performance below Departmental expectations, command staff should strive for consistency so that similarly situated employees are treated similarly while recognizing that there is room for differential treatment depending on factors unique to the employee. One helpful device that law enforcement agencies have used successfully is the institution of accountability guidelines. Accountability guidelines set out a remedial range for sub-par performance or potential policy violations. More refined guidelines then note factors specific to the employee's situation that may be a basis for mitigating or aggravating the remedial action. For example, a complete acceptance of responsibility by the

employee is cause for mitigating the discipline and the obverse denial of responsibility may be a basis for aggravating the discipline. A past history of discipline could serve as a basis for aggravating the corrective action while an officer with no disciplinary history over a lengthy career may deserve discipline on the lower end of the scale. More refined accountability guidelines allow for decision-makers to depart upward and downward from the defined disciplinary range in unusual circumstances provided there is articulated justification for the departure. Another significant advantage to using an accountability guideline system is that it places employees on fair notice about what kind of discipline they may expect should they violate a particular policy provision and reduces the perception among officers that the imposition of accountability is completely arbitrary, based on inappropriate factors such as skin color or retaliatory. Finally, the use of a matrix or guideline system reduces the ability to have unprincipled factors such as favoritism enter into the decision making. An accountability guideline system works particularly well for certain transgressions such as failure to timely submit reports, book evidence, activate recorders, and off duty DUI's.

***Recommendation Nine: WPD should consider adopting an accountability guidelines system to build more consistency into its decision making on accountability and discipline.***

### **III. WPD's Performance Evaluation Program.**

A review of numerous performance evaluations shows that, to its credit and unlike many similarly situated law enforcement organizations, the Westminster Police Department has a culture of supervisors candidly setting out the performance strengths and weaknesses of its officers. For many law enforcement agencies, performance evaluations have devolved to a mostly meaningless exercise where almost every officer gets an "outstanding" rating and only positive accomplishments are documented. While WPD endeavors to provide through its evaluative process a meaningful gauge of officer performance, there is room for improvement in a number of areas.

#### **Acceptable Performance Ratings Should Have the Same Amount of Supporting Documentation as Any Other Category and Written Guidance to the Contrary Should Be Removed.**

WPD's policy that provides guidance to its supervisors on how to prepare performance evaluations is detailed and helpful. Of particular commendable note is recognition in the policy that the evaluative process should be considered "ongoing". However, in discussing the various ratings that officers may receive, the policy indicates that the "acceptable" rating is what most officers should get and that the supervisor needs only minimal documentation to justify this rating.

Any guidance that discourages supervisors from setting out documentation to support a rating runs counter to best practices. Simply because an officer's performance lies in the "acceptable" range should not suggest that it is not as important for a supervisor to provide an illustrative narrative to that officer to give her or him greater insight into the bases for the rating. As with any evaluation, the narrative description of officer performance that supports the rating provides more helpful feedback to the officer than any conclusory "acceptable" rating could do.

***Recommendation Ten: Westminster PD should revise its policy on performance evaluations that discourages setting out detailed supporting documentation for "acceptable" performance ratings.***

### **The "Shift Average" Metric Should Be Eliminated From Performance Evaluations.**

In an apparent attempt to introduce an objective metric into officer evaluations, performance evaluations of Westminster Police Officers generally contained information about whether the particular officer was above "shift average" with regard to police activity, usually regarding arrests or issuance of citations. While this easily calculable information provides some indicia of officer performance, to highlight this one aspect of officer activity overemphasizes activity that could produce unintended consequences. If officers recognize that their performance evaluations will be skewed toward how many arrests or citations they make, they may be motivated to effectuate arrests or issue citations where officer discretion suggests the better approach is not to do so or even worse, where elements supporting an arrest are questionable. Moreover, officers who emphasize principles of community policing such as positive citizen officer contacts, dialogue with youth, and visibility in the community may find themselves on the bottom of arrest/citation shift average because of their shift work in this area. During this review, this issue was discussed with the Chief and there has already been work done to discourage featuring this metric in performance evaluations.

***Recommendation Eleven: WPD should discourage the use and articulation of arrest/citation shift averages in evaluating officer performance.***

### **The Importance of Addressing "Needs Improvement" Evaluations, Developing Performance Improvement Plans, and Ensuring that Goals Are Meaningfully Fostered.**

The review of performance evaluations often indicated that officers were rated as "Needs Improvement" in certain subcategories of performance. However, there was no systemic action designed to address officer performance that was so below Departmental expectations to warrant such an assessment. Related to this observation, a Performance Improvement Plan (PIP) is a managerial tool whereby the Department places a problematic employee on notice that his or her

performance is so substandard that a formal plan needs to be devised to attempt to improve officer performance. For employees under a PIP, if performance fails to improve, the officer could be subject to separation from the Department. While there were several instances where the evaluator indicated that the officer should be a candidate for a Performance Improvement Plan, no officer has been placed on a PIP since 2008.

Westminster's performance evaluations have a subcategory where the supervisor is to identify goals for the officer for the upcoming year in order to enhance career advancement. However, there is no mechanism to create and monitor an action plan designed to ensure implementation of officer goals; too many times the subsequent year's evaluation simply indicated in the "goals" section that the officer should work on achieving the goals that had been set out the previous year to no apparent good effect.

More attention needs to be placed when officer performance warrants a "Needs Improvement" assessment; namely, it is incumbent on the agency to develop strategies designed to improve performance to an acceptable range or sufficiently document Departmental efforts to do so. Any such rating should trigger a meeting with the rating sergeant and a WPD commander who should work together with the employee to devise a specific "action plan" designed to address and remediate the performance issue through intervention strategies. The action plan should require, at a minimum, that the sergeant and commander reevaluate the effectiveness of the plan and the officer's performance on a quarterly basis.

With regard to the establishment of goals, the sergeant should assume responsibility to ensure that a plan is devised with the officer to work toward achievement of those goals. Finally, a critical element of WPD sergeants' performance should be their performance evaluations of officers, the degree to which they identify performance issues and devise remedial strategies for those in need of improved performance, and the degree to which the officers under their command work meaningfully toward career enhancement goals set out during the evaluative process.

***Recommendation Twelve: When an officer is rated as needing improvement in performance with regard to certain subcategories, the supervising sergeant and Department commander should work with the employee to devise a plan designed to address and remediate the performance issue.***

***Recommendation Thirteen: The Department should check in at least quarterly with regard to officers who are rated as needing improvement to gauge the effectiveness of the corrective action plan.***

***Recommendation Fourteen: Sergeants should be required to work with officers to devise plans intended to accomplish goals set out in the performance evaluation.***

***Recommendation Fifteen: A critical element of a sergeant's performance evaluation should be the skill with which he or she evaluates officers, the degree to which he or she effectively works with command staff to remediate performance issues or document attempts at doing so, and the success with which officers under her or his command achieve career enhancement and advancement goals.***

### **Performance Evaluations Should Be Reviewed as Important Feedback to More Fundamental Issues That Might Be Impacting the Department.**

In 2008, one of the plaintiff police officer's performance evaluations indicated that the officer should not be involved in "nonchalant negative banter", should "be cautious with his criticisms", should stop with the "trivial negativity" and "pick his battles". The evaluation proceeded to indicate that when the officer made such remarks in the workplace it would "taint" others perspectives of the officer and overshadow his otherwise good work. If, instead of merely being critical in a performance evaluation, the supervisor or other command staff had taken more time to tease out the source of the officer's criticism and address it with the officer to see whether strategies could be deployed to reduce the officer's discontent, the future civil proceedings that eventually resulted may have been potentially avoided.

Whenever an officer expresses unhappiness with his work environment, it is crucial that supervisors not automatically dismiss the comments as "trivial" and attempt to diagnose, evaluate, and address the source of the problem. This is not to say that all employees have legitimate complaints all the time and that all such complaints will be resolved to the satisfaction of the employee; however, in this case, other than including this passage in the employee's evaluation, there is no further documentable evidence that this supervisor or any other individual in the employee's supervisory chain attempted to address the officer's articulated concerns in a concerted or constructive way. It is recommended that supervisors be further trained on the need for heightened sensitivity regarding work place complaints by officers about perceived poor treatment and provide them tools designed to evaluate and address such complaints. At a minimum, first-line supervisors should be instructed to bring such officer complaints to the attention of WPD's chain of command.

***Recommendation Sixteen: WPD should train its supervisors to be more attuned to complaints of poor treatment articulated by police officers and other staff and of the need to forward such complaints to command staff for careful consideration and handling.***

#### **IV. WPD Should Instill Mechanisms to Ensure Compliance with the Letter and the Spirit of Federal Law Protecting Rights of Persons on Active Military Duty.**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that establishes rights and responsibilities for uniformed service members and their civilian employers. The Defense Department explains that USERRA is:

intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other uniformed services: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The law is intended to encourage uniformed service so that the United States can enjoy the protection of those services, staffed by qualified people, while maintaining a balance with the needs of private and public employers who also depend on these same individuals.

Evidence was adduced at the federal trial that when an officer who had been deployed requested that WPD keep him informed of special assignment or promotional opportunities and requested that such information be sent to his military and/or private email addresses, he received an email indicating that WPD did not have to accommodate him any more than any other police officer on the Department. While evidence did indicate that this email response notwithstanding, WPD did eventually accommodate the officer's situation by sending him information over his military email address and allowing him to "interview" for a special assignment position via email, the one email communicate that suggested an initial inflexibility to accommodate the officer undercut the subsequent acts of accommodation. Whether the initial email response that WPD did not have to treat the deployed officer specially was consistent with the letter of USERRA, it does not appear to be consistent with the spirit of the law. On a going forward basis, it is recommended that WPD recognize the spirit as well as the letter of the law and take whatever reasonable measures exist to ensure that actively deployed members of the military remain informed about opportunities and developments within the police department and that any reasonable accommodations are made to ensure that deployed officers can advantage themselves of those opportunities to the extent feasible.

***Recommendation Seventeen: WPD should interpret USERRA broadly and make any reasonable accommodations to ensure that officers who are militarily deployed are aware of and can compete for promotional opportunities or other career advancements to the degree feasible.***

## V. WPD's Accountability/Disciplinary Process

### **Employees Who Are the Subjects of Internal Investigations Resulting in Possible Termination Should Continue to Be Relieved of Duty During the Pendency of the Investigation.**

WPD generally has a clear and astute policy that provides for assigning officers to inactive duty if they are the subject of investigations where the offense is so serious that, if founded, the disciplinary action may be termination. To his credit, the Chief is currently appropriately using this provision when officers have been alleged to have committed serious transgressions.

The wording of the policy indicates, however, that the decision to assign an employee to inactive duty rests with a "supervisor". Because of the significance of such a decision, unless there is real exigency where the Chief cannot be timely informed, the decision to relieve an employee of duty should lie with the Chief of Police and the policy should be revised to indicate such.

In addition, internal policies should ensure that investigations in which an employee has been relieved of duty should receive expedited treatment. While such investigations need be thorough in light of the potential consequences, they also should be expedited so that the time during which an officer has been relieved of duty is not unnecessarily attenuated.

***Recommendation Eighteen: WPD policy should be revised to make clear that the decision whether to place an employee on inactive duty should rest with the Chief.***

***Recommendation Nineteen: WPD protocols should be adopted to ensure that investigations involving employees who have been placed on inactive duty should be expedited.***

### **WPD should adopt investigative protocols with more timely completion expectations.**

WPD's written internal investigative guidelines call for every administrative investigation to be completed within one year. The Department's one year time frame set out for administrative investigations is the maximum length of an internal investigation set out by state law. WPD should set out an investigation completion time frame that is more aspirational than one year such as 90 or 120 days. While such a written internal guideline would not confer additional rights to subject officers, it would signify the Department's interest in timely completed investigations and message supervisors regarding the Department's expectations.

***Recommendation Twenty: WPD should set out investigative guidelines for completion of internal investigations that signify its interest in timely administrative investigations.***

### **Performance Expectations Regarding Completion of Reports Are Not Always Clearly Set Out.**

A topic of much discussion at the federal trial involved debate about what the performance expectations were for officers with regard to completion of necessary reports. Some officers testified that “daily” logs could be turned in before the end of the month, that officers had two weeks to complete citations, that evidence could be held rather than immediately booked. A review of WPD policies and protocols shows that with respect to daily activity logs, current policy does require that they be completed at the end of shift. The same is true with regard to the handling of evidence; current policy requires that evidence must be booked before an officer goes off duty unless a supervisor approves a variance. However, there is no similar written expectation regarding when citations and reports must be completed. The Department could set out different expectations for reports dependent on whether there is a suspect in custody or the nature of the report, but officers should be provided written guidance on when the Department expects reports to be submitted.

***Recommendation Twenty-One: WPD should set out in writing its expectations for when reports should be completed.***

### **WPD Has Made Positive Steps in the Implementation of an Early Identification System.**

One effective risk management tool is the creation of an early identification or early intervention system. Such a system uses data searches to identify officer actions that might be indicative of concerning behavior worthy of remedial action. WPD has had little tradition of using such data to identify officer conduct. However, recently, WPD created a draft policy that set out the rubric of an early identification system. As the draft document indicated, the policy was intended to assist police supervisors and managers in identifying officers and other employees whose performance warrants review and, where appropriate, intervention in circumstances that may have negative consequences for the employee, fellow employees, the agency or the public. The draft policy then sets out a detailed procedure for what information the system will capture, who is responsible for processing the data, threshold activity warranting further review, and intervention strategies such as close monitoring of identified employees. Commendably, the policy sets out a basic structure for an early identification system for WPD.

During this review, the policy draft was shared for comment with this reviewer. As suggestions to further refine the policy, this reviewer indicated the following issues might be addressed in the final policy:

1. Some Early Identification Systems track employee absences or tardiness as potential indicators of officers having issues. Should absences or tardiness be included as a performance indicator?
2. Should internal affairs investigations be included as a performance indicator?
3. Should use of deadly force be included as a performance indicator?
4. Should the following identifiers also be included as thresholds?
  - X number of uses of force during the past 12 months?
  - X number of uses of deadly force during the past three years?
  - X number of employee absences or tardiness during the past 12 months?
5. Should there be a mechanism whereby first level supervisors are solicited to refer officers for intervention consideration?
6. At the end of the monitoring, is employee feedback solicited with regard to the effectiveness of the program?
7. Are first level supervisors subject to the EIS program? If so, what criteria should be used to identify supervisory candidates for intervention?
8. How will the EIS program interrelate to the Performance Evaluation process?
9. Will there be reporting on the progress of the EIS program to the City Manager? City Council?

***Recommendation Twenty-Two: In finalizing its Early Identification System policy, WPD should consider questions of additional indicators, additional thresholds, solicitation of first level supervisors for candidates to the program, soliciting employee feedback on the success of the program, consideration of whether first level supervisors should be candidates for the program, how the system interrelates to employee evaluations, and how the progress of the program will be reported out to the City Manager and City Council.***

### **Professional Standards Unit and Internal Affairs Investigations – Steps Forward and Recommendations for Improvement**

Several years ago, WPD created the Professional Standards Unit (PSU) which was a positive step with regard to how the Department handled administrative issues. Prior to PSU, most internal investigations were conducted by the supervisors of the subject employee. After PSU was created, the more serious investigations were handled by a specialized unit, resulting in improved investigations. In addition, PSU created a template that regularized the way in which internal investigations were formatted and the information that was available for review by the decision maker. Moreover, the creation of PSU caused more systemic tracking and monitoring of internal investigations. PSU has also provided training for supervisors on how to conduct internal investigations.

While the creation of PSU has provided an entity that has taken over the more serious internal investigations, there is no written guidance regarding which cases are to be handled by PSU and which investigations will be assigned to PSU. Moreover, as perhaps a relic of the past, what written policy exists indicates that the primary responsibility for internal investigations remains with the employee's immediate supervisor.

***Recommendation Twenty-Three: WPD should set out written guidelines regarding which internal investigations are to be handled by the Professional Standards Unit.***

***Recommendation Twenty-Four: WPD should examine current policy to determine whether it is consistent with current expectations regarding who should have primary responsibility for internal investigations.***

### **WPD's Complaint Form: Removal of Language that Could Chill Complainants.**

The Department has a form that is available for persons wanting to make a complaint against an officer. The complaint form asks the complainant to declare that the allegations are true and correct. The form then contains a reference to Civil Code 47.5 which provides that police officers can bring an action for defamation for filing a complaint alleging misconduct, criminal conduct, or incompetence if the complaint is false, made with knowledge that it was false and that it was made with spite, hatred, or ill will. The form then asks the complainant to sign the document immediately after the advisory. While the advisory is technically correct, there is no requirement that complaint forms inform complainants of defamation law. Moreover, having such language in a complaint form could serve to chill an individual's interest in complaining against an officer for fear of being subject to litigation if the complaint is deemed false. Persons who have had historical or language challenges in exercising their rights and filing complaints are particularly susceptible to such warnings. In order to ensure that the form does not impede Westminster's public from making complaints, the advisory language should be removed.

***Recommendation Twenty-Five: The language on the Department's personnel complaint form advising persons who make false complaints that they could be subject to a defamation lawsuit by police officers should be removed from the form.***

### **WPD's Laudable Practices for Internal Investigations.**

At the federal trial, the Department was taken to task because of its insistence on proceeding with an investigation even when the complainant had indicated that she wanted to withdraw the complaint. However, best practices teach that internal investigations should not be automatically closed simply because the complainant indicates a desire not to pursue the matter. Rather, the Department should, as it did in the case discussed at trial, complete the investigation and determine whether the officer's conduct violated policy.

In addition, the Department was criticized at trial for conducting an investigation into a complainant's allegations and then discovering another violation that ended up being the basis for discipline. Again, criticism to the contrary, the Department performance was consistent with best practices. If, during an investigation, evidence is discovered that points to a different violation of policy, the Department should, as it did in the cited case, pursue the additional lead and make a finding on the additional information.

### **WPD's Concerning Practices re Internal Investigations.**

One case that became a focal point at the federal trial involved an allegation of excessive force involving a Westminster Police officer. At the conclusion of the internal investigation, the Department concluded that the officer had violated its use of force policy and imposed a lengthy suspension on him. Other witness officers were also disciplined for performance issues in the way in which they reported the force. Key to the Department's determination was the account of a witness officer who asserted that the force she observed her fellow officer used was unnecessary. The officer who used force accepted responsibility for the force and entered into a settlement agreement with the Department rather than contest the discipline.

The individual upon whom force was used filed suit for injuries suffered as a result of the force. At trial, the jury found in favor of the City, finding no excessive force. According to the then Chief of Police's testimony at the discrimination trial, after the verdict came back on the excessive force trial, he requested the Professional Standards Unit to examine the evidence produced at that trial to determine whether any new evidence had been introduced warranting a second look at the Department's internal affairs investigation. However, instead of obtaining the excessive force trial transcripts and exhibits, the investigator simply re-reviewed information collected during the internal affairs investigation and came to a different conclusion based on the same information, namely, that the officer's force was consistent with Departmental policy. As a result and based on the investigator's recommendations, the discipline against the officer who used force was undone. The other witness officers who had been disciplined also had their discipline overturned.

The result of this case is troubling for a number of reasons. In addition to the apparent disconnect between what the Chief had requested be done and what was eventually undertaken, the mere fact that the jury had reached a decision based on evidence and testimony presented to them should not have been a sole basis to undo the discipline emanating from the internal affairs investigation. It would have been appropriate to have followed the Chief's stated instruction and examine the trial testimony and evidence to learn if new information had been presented that warranted a revisiting of the case internally. However, a reassessment based on no new evidence on a case in which the central officer eventually admitted culpability undermined the original

investigation and analysis for no legitimate reason. Moreover, the decision to undo the discipline failed to take into account the impact such a reversal might have on the officer who had come forward against a peer officer to say the officer's actions were unnecessary. The exoneration of the officer who used force of necessity suggested that the Department now undervalued the statement of a fellow officer who saw something she thought was wrong and had the courage to say so.

***Recommendation Twenty-Six: WPD should set out in writing internal protocols noting that the mere fact that a different result is reached about a disciplinary matter in another forum is in and of itself no reason to revisit the Department's decision.***

***Recommendation Twenty-Seven: WPD should institute protocols that would allow revisiting of an original disciplinary decision only when there is new evidence presented warranting such additional review.***

### **Officers Should Not Be Removed from Collateral Assignments Based on Unproven Internal Investigations.**

In one case featured at the federal trial, a WPD police officer was initially terminated for what was believed to be not credible statements made during an internal affairs investigation regarding the officer's witnessing of a force incident. During the internal grievance process, the then Chief determined that there was insufficient evidence to sustain the discharge and changed the finding that the officer had violated policy. The Chief, however, because of his belief that the officer could not be trusted removed the officer from collateral assignments.

The Chief's decision to remove the officer from his collateral assignments after the discipline determination had been reversed was problematic. Once the disciplinary determination was reversed, the Chief should not have undertaken any additional adverse action against the officer based on the case.

***Recommendation Twenty-Eight: WPD should create an internal protocol indicating that officers will not be removed from collateral assignments based on unproven internal investigations.***

### **The DEFH investigation lacked sufficient breadth and scope.**

After one of the plaintiff WPD officers filed a claim of discrimination against the City, the Police Department initiated an investigation into the allegations. The investigation resulted in a number of police witnesses being interviewed and identified a number of subject officers. The investigations also commendably reached back to historical incidents that were several years old

but unknown to command staff. The investigation was able to prove that officers and sergeants had made inappropriate comments that resulted in disciplinary actions against them.

While the investigation worked well in evaluating discrete incidents, the investigation lacked the breadth and scope necessary to address the essence of the officers' complaints presented at trial, namely that they had been unfairly treated with regard to decisions made about special assignments. While the two officers who cooperated in the internal investigation were asked about who they thought was being unfair to them, they candidly indicated that they did not really know who was responsible for the decisions on special assignments. And the Department's investigation did not attempt to catalogue how the process worked and who was responsible for such decisions. In order to do so, the highest level of the Department's current and former command staff would have needed to be interviewed, an extremely uncomfortable assignment for an investigator of lower rank. For this reason, it would have been prudent for the Department to have requested an outside investigator handle this inquiry.

***Recommendation Twenty-Nine: When allegations of mistreatment extend to command staff decision makers, the Department should assign any subsequent investigation to individuals outside of the Police Department.***

### **Performance to Standards Policy.**

While current WPD policy has principles that touch on the topic, there is currently no succinct general performance policy in its manual. In our experience, there are frequently occasions in which a police officer will perform duties in such a way that there may be no specific policy which is violated by the actions but the acts or series of acts are markedly below the expectations of the Department. In force incidents, this arises most frequently when tactical blunders inconsistent with training end up causing the officer to use force. In these cases, the force may be in policy, but the officer, by his tactical deficiencies and disregard for officer safety may have placed him in a situation where he was then required to use force.

In these situations, the existence of a performance to standards policy affords police managers the ability to hold employees accountable for behaving incompetently. We recommend that WPD enact policy that informs its employees that they are expected to maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions and that they will be expected to perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the Department.

***Recommendation Thirty: WPD should adopt a "performance to standards" policy which can be used to hold officers accountable when an officer's performance is so below the***

*expectations of the Department's training that discipline is warranted.*

**WPD Should Make Additional Use of its Mission/Values/Vision Statement.**

In its Mission/Values/Vision Statement (Mission Statement), the Westminster PD sets out appropriately lofty expectations for its officers particularly with regard to gaining and retaining the public's trust and the need to treat all with respect. One way progressive law enforcement agencies have made real use of similar statements is when a police officer has violated policy and betrayed the tenets of the Mission Statement, to include a violation of the statement as a separate policy violation in addition to the specific policy violation(s) at issue. WPD could ensure more recognition that its Mission Statement is a vibrant and meaningful code of aspirational conduct were it charged as a violation of Department policy when officers are found to have failed to live up to its expectations.

***Recommendation Thirty-One: WPD should consider charging officers with violating the tenets of its Mission Statement in appropriate disciplinary matters.***

**The Appeal of Disciplinary Determinations to the City Manager Is of Little Utility.**

Westminster has a novel practice whereby an employee may appeal an adverse disciplinary decision to the City Manager who has the authority to modify the determination of the Chief. If the City Manager does not modify the determination, the employee may then proceed to further levels of appeal including arbitration, the City Council and Superior Court. Because the City has had occasion to appoint former Police Chiefs as City Managers, there was one case discussed at trial whereby the City Manager was making a determination of a matter he had previously considered when he was Chief of Police and, not surprisingly, affirmed the decision he had made as Chief. The City should at least modify current protocols in cases where the City Manager had made the initial decision as Agency head. More fundamentally, considering the questionable utility of the City Manager review and the layers of post-disciplinary review that currently exists, the City should also consider eliminating the City Manager appeal process.

***Recommendation Thirty-Two:***

- (a) The City should further examine the utility of the City Manager disciplinary review process and consider eliminating it.***
- (b) Should the City determine to retain the City Manager appeal process, it should provide an alternative mechanism for review when the City Manager had been involved in the decision as an agency head.***

## **VI. The Need for Further Clarity and Guidance Regarding the Use of Digital Activated Recorders.**

WPD policy requires officers to carry and activate a Department issued audio recorder when they engage in most police citizen contacts. The policy appropriately sets out an expectation that the recorder will be activated for all enforcement stops or field interviews. The policy also expressly sets out that any recording made is the property of the Police Department.

The policy has provisions in need of refinement. For example, there is a reference in current policy that discusses the use of personally owned recorders that is apparently a relic of past policies. In addition, the policy does not have but should include a discussion regarding the maintenance of digital recorders and the need to ensure that they are in working order at the beginning of the officer's shift. Moreover, the policy should indicate that in cases in which a contact or interview was not tape-recorded, the report should indicate the reasons why a recording was not successfully effectuated. Finally, WPD policy should indicate that all audio recordings will be reviewed and attached to any personnel investigation or force review.

### ***Recommendation Thirty-Three:***

- (a) WPD should delete the reference in current policy to personally owned recorders.***
- (b) WPD policy should include a reference toward the officer's responsibility to maintain their recorders in working order and check the batteries prior to going on shift.***
- (c) WPD policy should direct officers to include in their police report an explanation whenever a police contact or interview is not captured on tape.***
- (d) WPD policy should include a requirement that all audio recordings of an incident will be reviewed and attached to any personnel investigation or force review.***

## **VII. Progressive Mechanisms for Internal Evaluation of Departmental Functions.**

### **WPD Should Increase Use of Performance Audits for Internal Assessments.**

WPD has little tradition of systemically auditing the performance of its employees. The creation of an early identification system referenced in this report will be an important step toward a more systematic review of individual officer performance. However, WPD should also deploy systemic audits as yet another way to identify trends, performance issues, systemic strengths and weaknesses, and areas in need of individualized and Department-wide correction and remediation. More importantly, audits can also be effective barometers of the effectiveness of first level supervision. If an audit shows a particular shift is underperforming, examination should be directed at the supervisor rather than the individual officers. As examples of areas where the Department could and should perform regular audits:

- Qualitative assessments of police reports
- Timeliness of daily activity logs
- Email audits
- Audits of the use of digital audio recording devices
- Uniform and equipment audits
- Use of seatbelts
- Evidence booking and handling audits
- Informant audits
- Training compliance audits
- Audits comparing enforcement of rules/expectations among sergeants

Audits should be performed by individuals not within any particular chain of command such as the Professional Standards Unit. Considering the amount of responsibility already assumed by PSU, it may require greater devotion of resources for a robust auditing program to be successfully initiated and maintained.

***Recommendation Thirty-Four: WPD should consider use of audits to detect individual and systemic performance issues.***

### **Quality Assessment Outreach**

Police Departments have long had mechanisms for receiving complaints and commendations from the public. However, it is the rare law enforcement organization that proactively and systemically seeks feedback from its community regarding how it is performing. As a result, unless a community member takes the trouble to affirmatively register a complaint or articulate a commendation, the agency's leadership has little knowledge about how its officers are engaging with their community.

Police agencies could increase their knowledge set by affirmatively reaching out to segments of the community to obtain feedback on how their work is being perceived by the community. Focused outreach could be on community segments that may not have the wherewithal, confidence, or trust to visit the watch commander at the station to voice a formal complaint; such as the recent immigrant community, the homeless, and the poor. Vulnerable businesses where officer misconduct has recently occurred could also be featured as part of this outreach such as the bars of Westminster. By not waiting on citizens to file formal complaints or send in commendations, the Police Department will have yet another way to gauge Departmental performance in the field and potentially identify problematic officer performance earlier rather than later.

***Recommendation Thirty-Five: WPD should consider developing an outreach program whereby it systemically seeks out feedback from the community on the performance of its officers.***

**WPD Must Ensure that Corrective Measures Are Implemented.**

The federal trial revealed at least one instance in which an officer had agreed as part of a disciplinary settlement to attend sexual harassment training. However, the Department did not ensure that the training was provided. Clearly, the Department felt it important enough for this officer to obtain such training as part of a remedial plan. WPD must ensure that mechanisms exist so that corrective actions are fulfilled. Instead of diffused responsibility which often ends up as no one having responsibility, it is recommended that one entity in the Department be assigned the responsibility of initiating and maintaining a system that ensures that remedial measures ordered for officers are in fact implemented.

***Recommendation Thirty-Six: WPD should ensure that it has an effective system to ensure that remedial actions ordered for officers are, in fact, achieved.***

**VIII. Alternative Methods of Resolving Performance Issues**

**Mediation**

One incident featured at the federal trial involved an officer who was held accountable for sarcastic comments he made to a juvenile. That decision became a point of contention for the officer who asserted that he had done nothing untoward during the contact. It is this type of dispute that might be best handled through mediation rather than the formal disciplinary process.

A growing number of law enforcement agencies successfully employ mediation as a way to resolve citizen complaints about officer conduct. While each organization operates the mediation process somewhat differently, the basic premise is that low level complaints about officer conduct can be better resolved short of a ponderous administrative investigation by simply bringing the complaining individuals and the officer together with a mediator. The citizen complainants and the officer both must agree to attempt to have the complaint resolved in this way; some Departments incentivize its officers by indicating that a successful mediation will obviate the need for there to be an internal affairs investigation involving the officer.

The most effective mediation programs have been those in which the mediator is a non-department member, neutral third party who has been trained in mediation techniques. Orange County has a number of volunteer mediators who have served as mediators to community/police

disputes and could serve to mediate similar disputes between WPD and community complainants.

In our experience, mediation is often effective because sometimes the complainant is mostly interested in having his concerns taken seriously. A neutral setting also provides an opportunity to educate the complainant about police procedures and provide better insight on why the officer took certain actions. Officers can benefit from going through the process as a result of the self-reflection prompted by the mediator and subsequent discussion to better learn how and why certain behaviors may be off-putting to citizens with whom the officer comes into contact.

WPD has no tradition of using mediation as a way to resolve concerns by the community regarding officer behavior. This tool should be added to the Department's arsenal as another way to potentially resolve disputes between its officers and its community.

***Recommendation Thirty-Seven: WPD should develop a mediation system as an alternative way to resolve disputes among the community and its officers.***

### **Pre-Investigative Resolutions**

There are situations in which an officer's policy violation is evident, the employee recognizes his or her errors, but the matter still proceeds to a lengthy formal investigation. It seems as if the "bureaucracy" of administration takes hold and a rigid adherence to the system causes an unnecessary deployment of investigative resources when the facts and violation are not at issue. Some police agencies are beginning to develop alternative resolution mechanisms for these cases which hold employees accountable without the delay and expense of formal investigations.

Resolving a misconduct case by way of mutual agreement early in the case's lifecycle can be beneficial to both the Department and the employee. Early settlements can save the Department the time and resources necessary to conduct a complete investigation. Settlements also resolve the matter permanently, avoiding the cost and uncertainty of an appeal. The employee's benefits are also two-fold. The employee receives a speedy outcome of their case, thereby avoiding a long period of insecurity. The employee is also offered a discounted penalty for accepting responsibility and agreeing to an early settlement.

Settlements are, by their nature, voluntary. An employee should understand that he or she may opt instead for the traditional route, waiting for the outcome of a complete investigation and maintaining his or her right to appeal. WPD also should only offer these settlements to a clear category of well-suited cases. The facts should not be complicated, and there should be low potential that new information or violations would be revealed by conducting a full investigation. The violation should also be clear-cut. The types of violations should be those that would result in lower level discipline and should not be applicable to potential termination cases, excessive

force cases, or those involving potential integrity issues. The employee should readily admit to and take responsibility for the facts at issue and the policy violation.

Because these are agreed upon settlements and do not involve serious misconduct, they also provide an opportunity to create tailored remediation plans. In the end, through the use of pre-investigative settlements, the Department can document the truth in a fair process, resolve the matter promptly, expend fewer resources, protect employee's rights, and develop a tailored remedial plan to address the violation.

***Recommendation Thirty-Eight: WPD should consider developing protocols and policy permitting the Department and the employee to address potential policy violations without the need to resort to a full, formal, and time consuming administrative investigation.***

### **Alternatives to Standard Discipline**

For situations in which the policy violation is not so severe that termination is the only acceptable remedy, the root purpose of any resulting discipline should be to remediate the employee and reduce the likelihood of future similar misconduct. Adopting this premise as a guiding principle, WPD can develop an alternative disciplinary system to better advance these concepts than the traditional disciplinary system. The tailored remedial system is predicated on the belief that the traditional disciplinary system anchored by reductions in pay is too simplistic in that it does not require management to engage with the employee in a meaningful way or consider remedial programs designed to reduce the likelihood that the misconduct will reoccur. Moreover, the imposition of reduced pay is essentially punitive, with deterrence as a result of financial loss the only possible benefit. Because of its strictly punitive nature, reductions in pay often leave the employee disgruntled with no remedial component. Moreover, a collateral consequence of any financial penalty is that the hardship suffered by the employee extends to his or her family.

Under the alternative disciplinary model, the employee would be able to choose either the traditional penalty or the alternative program which is more closely tailored to remediate the violation of policy. Specifically, employees in suitable cases can agree to take courses, receive training or counseling, make presentations to their peers, write apologies, or engage in other projects that can provide professional growth for themselves and their peers. In addition to the greater likelihood that such a tailored program will reduce the likelihood that the employee will reoffend, if there is a subsequent violation, the Department is better positioned to defend the award of progressive discipline, since the tailored remedial program has proven ineffectual. Finally, another beneficial consequence of the tailored remedial disciplinary system is that if an employee elects that disposition, he or she also relinquishes any right of grievance or appeal, thus eliminating challenges to the discipline imposed.

***Recommendation Thirty-Nine: WPD should consider developing an alternative disciplinary system tailored to more artfully remediate the policy violation at issue.***

## **IX. Use of Force**

WPD's use of force policy provides important guidance to its officers on when force is authorized. During our review, we examined the Department's basic use of force policies and related policies and found them to be consistent with case law and current police practices and similar to most other law enforcement agencies in the State. This is due in part to the fact that WPD subscribes to Lexipol, a private service that provides sample policies for many law enforcement agencies in the State of California and around the country. Lexipol is staffed with former police practitioners and attorneys who work to ensure that the policies they promote stay consistent with current case law. When new case law warrants a change in policy, Lexipol advises its subscribers that a change in policy is required.

However, the managers of Lexipol recognize that there may be times in which a law enforcement agency may want to customize certain policies dependent on the mission or interests of the organization and designs its policies allowing for such customization. While the policies promoted by Lexipol provide a base line for law enforcement agencies to consider, each policy should continue to be considered individually by law enforcement managers to determine whether the policy should be modified to fit particular needs or interests of the agency and the community it serves.

Consistent with this philosophy, we recommend that WPD consider the following refinements to its current policies relating to use of force:

### **Language promoting "improvisation" should be removed.**

The policy notes that only tools authorized by WPD should be used as force devices. However, there is language in the policy about how sometimes officers might need to have an "improvised response" to certain situations. Without further guidance, this language is, at best, unhelpful and could be seen as creating an exception for creative uses of force that could undermine the whole use of force regime. The verbiage should be removed from the policy.

***Recommendation Forty: WPD should remove language in its force policy promoting improvisation in the way that officers use force.***

### **Distraction Blows/Compliance Strikes**

As noted above, featured in the federal trial was a use of force where the officer used what some might refer to as a "distraction blow" or "compliance strike" while bringing an individual into custody. The theory behind this technique is that distraction blows are strikes

inflicted on a part of the body of a suspect and is intended to “distract” him so that hands could be secured or handcuffs could be applied. In our reviews of other police agencies, we have found confusion about what was allowable as a distraction blow. The use of distraction blows has proved controversial and is in need of further review by WPD about what is meant by the use of force and what is permitted. As detailed above, the findings in the Westminster PD use of force case that the use of force was at first excessive and then after further review considered to be appropriate, suggests a diversity of opinion among supervisors about whether distraction blows are consistent with the Department’s use of force policy. If the Department is going to continue to authorize distraction blows, clear policy and training should be devised on their use regarding what is permissible and what is prohibited. Any written policy should prohibit the use of blows to the head as distraction blows.

***Recommendation Forty-One: WPD should reconsider its training protocols and policy regarding the use of “distraction blows.” If distraction blows are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction blows policy should prohibit strikes to the head.***

#### **WPD Policy Should Incorporate Force Prevention Concepts.**

The preamble to current WPD policy regarding use of force describing the Department’s philosophy contains some commendable phrases about the value of life:

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

Certainly, officers must have authority to use force to perform their duties to effectuate an arrest or to protect themselves or others from threats of harm. However, the goal of any progressive police agency should be to ensure that force is used only when necessary. While there will be occasions in which force is required, the objective should be to eliminate incidents in which officers may be “authorized” or “justified” in using force, but it is not “necessary” to use that force to complete their responsibilities. In accord with principles of progressive policing, WPD’s interest should be to eliminate these uses of discretionary force to handle a situation when other skills and tactics can be used in their stead. This objective requires a reorientation and culture change of police attitudes regarding the use of force. The goal is to eliminate force which is “lawful but awful”; force which is defensible but likely did not need to occur.

While WPD’s current language in its philosophy regarding use of force speaks somewhat to this concept, to help reinforce the idea that the Department’s interest is to reduce incidents of

force to a minimum, we also recommend that the Department consider reorienting its use of force policy to further promote the prevention of force. For example, the preamble might contain language such as below to assist in further articulating WPD's interest in reducing uses of force:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such alternatives as advisements, warning, verbal persuasion, and other tactics.

***Recommendation Forty-Two: WPD should reorient officers' philosophy with regard to use of force by promoting alternatives to force to resolve situations in the field.***

#### **Ways to Promote Behavior that Resolves Situation Without Resorting to Force.**

WPD policy and protocols should reinforce officers who handle situations in which force would have been justifiable but who found other ways to resolve the incident without resorting to force. One way in which this behavior can be encouraged is through the issuance of "commendable restraint" citations. Another way to positively recognize officers who find ways short of force to perform their duties is to include that assessment in WPD's performance evaluation as a metric of desirable behavior.

***Recommendation Forty-Three: WPD should reinforce officers' conduct that resolve confrontations without resorting to force through formal means such as commendable restraint citations and by considering the amount of force an officer uses in assessing the officer's annual performance.***

#### **WPD's Force Reporting Policy Should Be Extended to any Employee Who Witnesses Force.**

Current WPD policy appropriately requires any officer who uses force to immediately report the incident to a supervisor. We recommend that the reporting requirement extend to any WPD employee who witnesses another officer using force, including force by other police agencies. This requirement will help ensure that all force is reported and will help orient officers to make them better witnesses to the use of force by other officers.

***Recommendation Forty-Four: WPD should enact policy that would require WPD personnel who witness force being used by a fellow officer or by another law enforcement agency to report the force to a supervisor.***

**WPD Policy Should Be Modified So That all Uses of Force Are Reported to Supervisors.**

Current WPD policy appropriately defines force as the “application of physical techniques or tactics, chemical agents or weapons to another person.” However, it only requires that force be contemporaneously reported to a supervisor under certain specified conditions, allowing some uses of force to remain unreported to sergeants. It is advisable that supervisors be immediately alerted to all uses of force so that they can make inquiry of the circumstances surrounding the use of force. WPD’s policy should be modified to ensure such notification occurs.

***Recommendation Forty-Five: WPD’s Force Policy should indicate that when officers use or witness force, they are required to immediately report such to a supervisor.***

**WPD Policy Should Be Modified So That Supervisors Are, Unless Exigent Circumstances Exist, Mandated to Respond to Use of Force Incidents.**

Current WPD policy indicates that “when a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to”: followed by a list of tasks intended to ensure comprehensive scene management and collection of the initial facts. However, the policy provides no additional guidance on how a supervisor is to decide when he or she is “able” to respond. Any use of force by an officer in the field is a significant event with potential ramifications for community/police relations, officer conduct, and risk management and having a supervisor respond increases the likelihood of appropriate handling of the matter. For that reason, the policy should require that a supervisor respond to a reported force incident except when the most exigent of circumstances in the City prevent such a response.

***Recommendation Forty-Six: WPD should require that supervisors respond to incidents in which force is used unless the most exigent of circumstances prevent such a response.***

**Further Policy Guidance on the Use of the Taser.**

Current WPD policy is comprehensive and provides significant guidance regarding the application of the Taser. However, the Taser policy allows too much discretion for its use in certain situations. For example, current policy permits Taser use of persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and obvious juveniles provided that the need to control the person outweighs the attendant risks. We believe that the inherent risk associated with Tasers for these limited categories of individuals will virtually always be too great to deploy a Taser on them and would recommend that WPD’s policy prohibit Taser use in

those situations.<sup>3</sup>

Studies of Taser use, including a study by the Department of Justice's National Institute of Justice, cautions against multiple and prolonged use of the Taser as presenting particular risks of dire injury. For that reason, we believe that the current WPD policy affords officers too much discretion to allow "multiple reasonable applications" of the Taser. We believe that after three unsuccessful applications, unless there are exceptional articulable circumstances, officers should be instructed to cease using the Taser and move to other control methods. We also believe that the Department's Taser policy should speak to the dangers of prolonged use of the Taser by prohibiting such use.

***Recommendation Forty-Seven: WPD should modify its Taser use policy to prohibit use on persons on rooftops, pregnant persons, handcuffed persons, elderly persons, and obvious juveniles.***

***Recommendation Forty-Eight: WPD should modify its Taser use policy to rule out more than three applications of the Taser and to prohibit prolonged Taser applications.***

### **Carotid Control Hold**

As a particular result of recent controversy regarding the application of force to the neck area of individuals, police agencies should consider the potential risks and benefits toward continuing to authorize the application of carotid holds. Because the application of a carotid hold must be effectuated competently to avoid risk of severe injury, if it is going to continue to be authorized, annual certification and training should be required similar to the requirements for use of the Taser.

***Recommendation Forty-Nine: If WPD determines to continue to authorize use of the carotid control hold, it should require certification and annual training of its officers.***

### **Force Investigations and Review**

To the degree that this review examined investigations of use of force, it found those investigations detailed and thorough. However, there was scant documentation or analysis regarding how the force was found to be in policy. The only decision the reviewer was required to make was whether the force was within the Department's force policy. The review involves a paper "check off" process up WPD's chain of command.

If WPD were to adopt a more holistic review that examines tactical decision making, force

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<sup>3</sup> One Taser use featured at the federal trial involved the application of a Taser on a 16 year old boy. It was unclear whether, during the use of force analysis, the fact that the use was on a juvenile should have been found to have ran afoul of WPD's policy regarding use on "obvious" juveniles.

options, equipment, and supervision, such a review could provide more insight into the force incident and help the Department devise strategies to better prepare its officers for similar incidents and reduce uses of force. While a holistic review can be accomplished through a paper review, we have found that a multi-faceted examination of force is more effectively accomplished through a panel approach. With regard to at least more significant force and a sampling of less significant force, a committee comprised of members with various types of expertise and responsibility could perform a more exacting and full ranging review.

Ideally, the “force review committee” would obtain a copy of the investigative reports for review before the meeting. At the meeting, the investigator would present a briefing of the facts gathered. Then, the committee would move into its review phase where issues such as the propriety of the force, tactical decision making, supervision, training, and policy would be discussed.

Robust force committees then devise written action plans intended to inform the officer about whether the force was in policy and make recommendations about briefing the incident to the involved officers or the Department as a whole or creation of a training bulletin. If concerns are raised about supervision or current policy, a member of the committee is assigned to conduct further research on the issue and bring findings and recommendations back to the committee at a later date. In sum, the force committee is designed to achieve the critical goal of ensuring the involved offices and the department as a whole benefit from a review of the incident with the dual objectives of better preparing officers on how to handle similar incidents and by increasing the confidence and competence of its officers reducing their need to use force in future incidents.

***Recommendation Fifty:***

***(a) WPD should improve its force review process to ensure that not only is the incident centrally reviewed to determine whether the force used was in policy but also to examine whether there was tactical decision making that was consistent with Department policy and expectations.***

***(b) At the end of the force review, officers involved in every force incident should be debriefed regarding how the Department considered the handling of the incident including the tactical decision making.***

***(c) In addition to deciding whether the force was in policy, WPD should examine force incidents to determine whether there were issues of supervision, policy, or training that it should address.***

***(d) WPD should consider designing protocols whereby significant force incidents and a sampling of less significant force incidents are reviewed by a force review committee. The***

*force review committee should develop a written action plan for each force incident reviewed and ensure an effective feedback loop to present the results of any action plan back to the committee at a later time.*

*(e) WPD should use learning domains, such as training bulletins or briefings to ensure that information learned is exported back to the line officers and first level supervisors in a meaningful way.*

## **X. Supervisor/Subordinate Relationships**

WPD has a thoughtful policy with regard to supervisor/subordinate relationships. One central requirement is that employees are prohibited from directly supervising or being directly supervised by any other employee with whom they are involved in a personal relationship. However, as demonstrated in the federal trial, while there may have been compliance with this feature of the policy, with particular regard to training officers/trainees, once the supervisor/subordinate relationship ended, oftentimes a personal relationship would almost immediately ensue. For similar reasons that the Department finds it problematic for there to be supervisors and subordinates in personal relationships, the power, control, and influence that a training officer has over a trainee often extend beyond the training period. For that reason, it is recommended that the Department consider extending the prohibition on supervisor/subordinate relationships for a two year period beyond the existence of the actual relationship.

*Recommendation Fifty-One: WPD should consider extending the prohibition on supervisor/subordinate personal relationships for two years after the termination of the actual supervisor/subordinate relationship.*

## **XI. Purging of Documents**

At trial, testimony was adduced that WPD irregularly “purged” its citizen complaints, force reports and internal affairs investigations. While state law only requires retention of most documents for a relatively brief period of time, there is no requirement that documents be purged after those minimal time periods. Repeatedly, WPD was disadvantaged at trial when unable to produce reports that had been purged. Plaintiffs could and did argue that the purged reports were indicative of the Department’s interest in shredding documents that would have been harmful to the City’s position. Without the documents available, the City was in a position of disadvantage to successfully argue otherwise.

The minimal retention law for law enforcement records should be seen as a floor rather than a ceiling for how long a law enforcement agency should keep such documents. Having such documents may prove helpful in unanticipated future litigation and fends off any allegations by litigants that the documents were destroyed because they were detrimental to the Department’s

interest.

More importantly, maintaining such documents can prove helpful in long-term assessment of the Department's employees. The career of many law enforcement officers span twenty or more years and it seems incongruous to destroy materials which might demonstrate a pattern of undesirable conduct that extend beyond a few years. The routine destruction of materials over a short period of time provides an information deficit, particularly for newer supervisors and decision makers who may not be aware of the older cases. It also limits a longer span review of WPD culture and conduct.

Allegations of misconduct, citizen complaints, force reviews, internal affairs investigations, and disciplinary records should be retained until at least five years after the employee is no longer employed by the Department. This longer retention time allows for the Department to continue to have available the complete history of an employee's prior investigations of misconduct. Finally, the retention time extending past the employment of the officer affords the City to fully respond to Brady requests and inquiries from other agencies should a separated officer seek employment with them.

As a result of the recent federal litigation, all purging of WPD documents has been placed on hold. Once however, the hold is lifted, WPD should create a longer period of document retention, particularly with regard to documents setting out officer conduct.

***Recommendation Fifty-Two: WPD should develop protocols that would extend the purging of internal affairs investigations, citizen complaints, force reviews, and disciplinary records to at least five years beyond the employment end date of the employee.***

## **XII. Confidential Information Remaining on Computers**

During the discovery phase of the federal proceedings, reports that were requested and found to be officially "purged" were discovered on computer libraries of supervisors who had been involved in their preparation. Unfortunately, materials that should have been deleted from electronic libraries still existed on hard drives.

WPD should provide written guidance and training to its supervisors about the need to delete documents relating to confidential investigations once a report is completed. The Department should ensure that only "official" documents relating to the investigation survive and be centrally maintained. WPD should audit supervisor computer libraries to ensure that supervisors are regularly maintaining their document libraries consistent with Departmental expectations.

***Recommendation Fifty-Three: WPD should develop written guidelines and training for its supervisors to ensure that “unofficial” electronic documents of confidential investigations and related matters are not retained on electronic databases.***

### **XIII. Career Advancement Programs/The Establishment of a Viable Mentorship Program**

There were two competing narratives that permeated the federal trial. One was the plaintiff officers’ view that their work and talents had gone unappreciated by Department leaders, and, as a result, did not receive coveted special assignments. The narrative offered by WPD present and past leaders is that these officers did not always apply for the positions, did not come forward to Department leaders with their feelings of being undervalued, and did not display initiative or sufficient interest in the special assignment positions. Under the auspice that both narratives may have been a little bit correct, WPD should strive to create mechanisms to ensure that the potential for career advancement for all of its officers are fostered and promoted. No longer should the entire onus on whether an officer is considered for collateral and special assignments and promotional opportunities be placed on the individual officers; the Department should be proactively working with each officer to ensure that the potential for career advancement is maximized.

One mechanism that could be used to assist in this goal is the development of an officer mentorship program. By assigning an experienced officer as a mentor to newer officers, the mentor would be expected to be responsible for providing encouragement, opportunities, advice, and guidance to the junior officer with a focus on career advancement. Mentors who perform well in this task should be acknowledged in their performance evaluations and their own career advancement. At one point in the recent past, WPD personnel spent a significant amount of time and effort into the development of a Detective mentorship initiative, however the program suffered from follow through and was never effectively implemented. It is incumbent upon the Department to develop a mentorship program, find incentives and resources to sustain it, thereby providing a device whereby officers can work with mentors to fulfill their potential.

***Recommendation Fifty-Four: WPD should devise and sustain a mentorship program designed to promote career advancement opportunities for its officers.***

#### **XIV. Additional Training Initiatives**

##### **WPD Should Provide Additional Training and Guidance for Supervisors on How to Coexist During Pending Legal Actions.**

Because the allegations by the officers in the federal trial included allegations that they were subjected to retaliation after filing their discrimination lawsuit, the Department has enlisted the support of outside experts to provide training designed to educate command staff on how to avoid actions that might be construed as retaliatory, ethics training, and presentations involving the rights of police officers. While the work being done in this arena is important and likely overdue, another area worthy of attention is the development of improved protocols designed to ensure that each of its officers are treated consistently.

One area deserving of special additional attention is to provide additional training and instruction to supervisors who are named in a lawsuit, grievance, or other formal action by subordinates. As brought out in the federal trial, one of the Westminster sergeants that had been named in the initial discrimination complaint by one of the three officers attempted to have an informal conversation with the officer. According to the supervisor, the intent of the conversation was to find a way in which the two could continue to work together despite the filing of the formal complaint. According to information adduced during the federal proceedings, the parking lot conversation was interrupted when another officer arrived on scene.

While the intentions of the supervisor as articulated by him were laudable, his idea to devise a course of action with the complaining subordinate officer in a private parking lot conversation was not ideal. Experts in how best for officers involved on both sides of a legal dispute to interact with each other during the pendency of the lawsuit can provide more effective strategies designed to ensure that an uncomfortable environment for both the police officer grievant and police officer defendant does not worsen. Westminster PD should consider providing training tailored to this eventuality to its supervisors.

***Recommendation Fifty-Five: Westminster PD should provide additional training to its supervisors regarding effective strategies on how to coexist in the workplace in the event they are sued by a subordinate officer.***

##### **In Cases Which an Officer Makes a Complaint Against Another Employee, the Determination of Appropriate Action Should Not Be Entirely Dependent on the Desires of the Complaining Officer.**

In one instance adduced at the federal trial, a police officer complained to another supervisor about a comment made to the officer by another sergeant. The supervisor discussed with the

officer potential actions and asked the officer what he would like the supervisor to do about the situation. As a result of this discussion, no formal investigation was initiated against the supervisor at that time.

A review of the incident indicates that, in all likelihood, the officer did not press for a formal investigation against the sergeant because of the influence by the supervisor he approached that there could be less formal ways to handle the situation. Eventually, the way in which this matter was initially handled became an issue supporting the officer's allegations at trial. In cases in which an allegation is made by an officer against a fellow employee (especially a supervisor), the supervisor who receives the allegation should not attempt to influence the officer regarding how the matter should be handled. Instead, the supervisor should consider whether the allegation calls for an administrative investigation and if so, begin the process of initiating such an investigation. The supervisor should also consult with the head of the Department's Professional Standards Unit and/or ranking command staff regarding the appropriate course of action.

***Recommendation Fifty-Six: The Department should develop training protocols to instruct its supervisory staff that when they receive a complaint from an employee about a fellow employee, they should independently assess whether an investigation is warranted and consult with Professional Standards Unit and/or ranking command staff about the appropriate course of action.***

### **Training for Supervisors Regarding the Grievance Process**

A related issue presented itself in the federal trial when one of the plaintiff officers filed a grievance against a supervisor regarding her refusal to authorize him to take vacation time. While the issue eventually was resolved to no detriment of the officer, the supervisor initially rejected the grievance because the employee had neglected to include in the paperwork how he wanted the matter to be resolved. This formulaic response to the grievance did not prove helpful to a more effective and timely resolution of the matter, caused unnecessary delay and likely ill-feeling between the officer and the sergeant, and is indicative that more training for supervisors on how to better handle employee grievances may be warranted.

***Recommendation Fifty-Seven: WPD should provide additional training to its supervisors on how to address employee grievances with an eye toward resolving them timely and efficiently.***

### **WPD Needs to Further Promulgate to its Employees Expectations Regarding the Use of E-mail.**

All employees of the Police Department have a work email account through which they are notified about important work-related information on a regular basis. The email account also

provides an efficient way for employees to communicate with each other about matters germane to their work responsibilities. For today's law enforcement organization, email has become an important tool by which the agency's work can be advanced.

That being said, email has certain features that must be considered in its use. First, emails can be facily captured, forwarded, printed, and saved without the sender's knowledge. Secondly, while an email may be part of a "confidential" communication, there is no guarantee that the email will remain confidential for all time. Finally, emails are so easily written and sent that they often create a sense of informality and "heat of the moment" thoughts are easily reduced to email and transmitted, sometimes with no sufficient aforethought.

Email communications better not sent have roiled both public and private organizations, including law enforcement, when they surface. For that reason, employees and particularly supervisors in police departments need be counseled and repeatedly reminded how an untoward and believed to be private email has potential devastating consequences on the individual and the organization. This review found supervisory email communications introduced at trial that had an emotionally laced word or two that had intended to be private venting and meant to display frustration but would have been better left uncommunicated through email. WPD should continually counsel its employees and supervisors on the need to consider the impact of email communications and provide guidance on how best to take advantage of the email system without deleteriously impacting the organization and individuals by reckless communique. In essence, if you would be concerned if the work email you are considering sending was to find its way onto social media, it is likely an email better left unsent.

***Recommendation Fifty-Eight: WPD should set out expectations for how the Department's email system should be used and provide guidance to its employees on how to avoid sending "emotionally laced" or other potentially detrimental communications.***

### **Misidentification of Race or National Origin of WPD Employees**

At trial, plaintiffs repeatedly referred to City records that had been produced during the discovery process that purportedly set out the race and national origin of WPD employees. Officers and supervisors repeatedly testified that the "records" did not accurately reflect their race or national origin. It is unclear how the determinations were made by City officials of the employee's race or national origin but the trial proved that those determinations often did not correspond to the employee's beliefs.

***Recommendation Fifty-Nine: Any records prepared by the City that reflect the race or national origin of its employees should accurately do so and the City must develop better***

*mechanisms to ensure that the official records do correspond to the actual ethnicity and racial makeup of its employees.*

#### **XV. Background Investigations: The Need for Additional Inquiry**

Perhaps the most important investigation that a police agency can conduct is the investigation into the background of an applicant interested in joining the organization. If the investigation fails to detect or thoroughly explore indicia of troublesome conduct, an individual unsuited to be a police officer might be hired with significant deleterious consequences for the agency and the public. Police officers are necessarily provided unique and awesome authority, including the authority to arrest and if necessary use force, including deadly force. Persons ill-equipped to handle such authority and who might have a proclivity to abuse that authority must be identified and kept from such employ. It is imperative that police agencies take advantage of carefully devised investigative strategies and other screening mechanisms to ensure the background investigation and review process works to its desired effect.

One of the processes used by police agencies, including WPD, involves the requirement that an applicant answer a detailed biographical questionnaire. In one questionnaire, the applicant admitted to the following:

- making a pipe bomb
- being convicted of a crime
- committing petty theft and vandalism
- attacking a person
- carrying a concealed weapon
- being involved in a fight
- killing an animal
- financial problems
- having problems with neighbors
- shoplifting
- being involved in hazing

In addition, during the polygraph investigation, the applicant admitted to stealing from his employer. Despite this negative history, the background investigator wrote that “all findings were positive” and the applicant was hired by WPD.

One process glaringly missing from the WPD background investigation process is an interview with the applicant and the background investigator in which the investigator confronts the applicant with any negative history the applicant admitted to or discovered as a result of the investigation. During this interview, circumstances surrounding the negative history are further

fleshed out by the investigator and then a careful evaluation is made regarding whether the admissions and subsequent explanations continue to make the applicant eligible for hire. Without this process, there are left too many unanswered questions about the applicant for a law enforcement organization to confidently determine that the applicant is suited for a career in policing.

***Recommendation Sixty: WPD should include in its background investigation process an interview in which the investigator confronts the applicant with any negative history, documents any explanation or additional circumstances, performs additional investigation if necessary, and carefully evaluates whether the negative history should or should not disqualify the candidate and why or why not.***

### **Independent Oversight**

As noted above, this review is intended to initiate systemic reform based on issues that were presented at the federal trial with an eye toward improving current policies and practices. To the extent WPD agrees to adopt the specific recommendations, better systems will be in place to achieve these stated goals. However, police departments are round-the-clock operations and always subject to renewed public concern about the Department's actions. Moreover, without an independent entity to check on the progress of recommendations made, there can be no assurance that the recommendations are, in fact, implemented.

As a result of this concern, progressive police agencies have adopted various forms of oversight ranging from professional auditing to a more traditional civilian review board. Because a police agency is a busy organization, internal investigations have a complex set of rules set out by state law, and most importantly, access issues and recent interpretations of state law have hampered the ability of the civilian review boards to be transparent and effective. Different challenges have impacted oversight models which have endeavored to actually take over the internal investigations of police departments. While attractive in theory, a police board consisting of members of the community, without more, does not have the access to information, the time, or the expertise to impact police agencies in a meaningful way.

Provided it obtains a commitment to access of internal documents, as we have been provided during this study, a professional auditing/monitoring model can provide a meaningful outside voice in the way in which the Department continues to perform its functions. Auditors that check in on Departmental functions on a recurrent basis will readily be able to identify additional systemic issues and work with the Department to develop fixes through refinement in policy, training, or protocols.

***Recommendation Sixty-One: The City should consider creating a mechanism for recurrent***

*independent review to help ensure that its Police Department is serving its community consistent with progressive Constitutional principles and best practices.*