



SEATTLE
POLICE
MONITOR

**Seventh Systemic
Assessment:
Type II Force Investigation &
Review Re-Assessment**

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Introduction & Executive Summary

For the past 18 months, the Monitoring Team has been systematically assessing the state of implementation of the 2012 Consent Decree between the city of Seattle (“Seattle” or the “City”) and the United States Department of Justice (“DOJ”). The Monitor has examined use of force reporting, use of force investigation, use of force review and analysis by both Seattle Police Department (“SPD”) supervisors and the Force Review Board, community confidence and trust, the quality of misconduct investigations by the Office of Professional Accountability, the SPD’s crisis intervention program and systems, and issues related to the supervision of SPD officers. The present report is a follow-up assessment to the First Systemic Assessment, which found SPD in initial compliance with a number of the Consent Decree’s provisions regarding force investigation and review but noted the need for further progress with respect to intermediate-level, Type II force.

The present program of targeted and comprehensive assessments has, under the terms of the Court-approved Monitoring Plan, taken the focus away from the generalized semiannual reports that the Monitor provided the Court earlier in the process. Nevertheless, the Monitor takes the opportunity here to update the Court and public on SPD’s status of progress toward full and effective compliance with the Consent Decree. The report then summarizes the results of the Monitoring Team’s assessment of SPD’s investigation and review of intermediate, Type II force incidents, which finds that SPD has reached initial compliance with the Decree’s relevant provisions related to such force investigation and review.

* * *

SPD continues making progress toward compliance with many important provisions of the Consent Decree. It has taken great effort to come this far – sometimes with one step back for two steps forward. The Monitoring Team acknowledges and commends those who have been resolutely keeping their eyes on the goals of effectuating constitutional policing, ensuring officer and public safety, building better community relationships, encouraging greater clarity and transparency from the SPD, and seeking meaningful and depoliticized input by persons from the communities and groups most aggrieved by past incidents of unconstitutional police practices.

As United States District Judge James Robart expressed recently in Court, Chief Kathleen O’Toole deserves great credit for SPD’s significant progress to date. Along with the Judge, she has been the principal indispensable party, clearly focused on bringing the SPD into compliance with the Consent Decree and inaugurating best practice in contemporary law enforcement. She has proven herself seasoned, balanced, and amazingly able – for someone with such great abilities – not to become tangled in ego. We continue to have faith that Kathleen O’Toole is exactly the right person to achieve that compliance and will continue to work to achieve it with vigor.

The Monitoring Team also commends the excellence of the legal representation of the public entities by lawyers working for government, currently including Steve Rosenbaum, Tim Mygatt, Jeff Murray, Puneet Cheema, Annette Hayes, Kerry Keefe, Michael Diaz, Christina Fogg, Pete Holmes, Greg Narver, Andrew Myerberg, Brian Maxey, Rebecca Boatright, and Ian Warner. The Monitor is particularly indebted to the assistance and collaboration of Seattle’s supportive public servants, such as retiring City Councilmember Tim Burgess.

Although the assessment that follows this introduction contains praise and some criticism of the quality of certain use of force investigations, the Monitor and his Team routinely, via other ongoing monitoring activities, are made

aware of instances in which members of the SPD have gone out of their way to provide the highest level of kindness and compassion – as exemplified in the following, lightly-edited excerpts from reports from Seattle residents:

- Emergency operators received a call that a suspect with an outstanding felony weapons warrant was on his way to his ex’s apartment. Upon hearing police arrive, the suspect hid in a bathroom and then climbed onto the roof of the apartment. He threatened to kill himself as well as officers who tried to rescue him. An SPD officer began establishing dialogue with the suspect and attempted to talk him down. The suspect moved to a utility wire, then began to walk cross the street holding onto the electrical wires and stopped in a tree near another utility pole. City Light responded and de-activated the wire and transformer to the utility pole. The SPD officer continued talking to the suspect until another negotiator arrived. Negotiations continued for approximately 9 hours. The suspect eventually agreed to climb into a City Light bucket with the officer and was taken into custody without force or further incident. An involved Seattle resident observed that the situation “was . . . very dangerous [and] could have had a perilous outcome,” but SPD officers “worked with a high degree of professionalism teamwork, dedication, and patience” to use tactics that “kept everyone safe.”

- An SPD officer responded to a person in crisis call/suspicious circumstances call. A bystander reported:

I was impressed with his calm and friendly demeanor towards the individual. I could tell that his demeanor made it easy for the individual to open up and talk about the circumstances at hand. He showed compassion and concern for the individual that he contacted and offered to help. I could tell that [the officer] had concern for the individual and offered the necessary services. I have dealt with [the officer] in the past and he is a terrific officer, always willing to listen and offer solutions to neighborhood problems and issues. He makes the community feel safe and is an advocate for everyone in the community. Furthermore, he is very easy to relate to and is always willing to go out of his way to help people in need.

- A Seattle resident called 9-1-1 after witnessing a mentally impaired man climbing desperately on top of a roof thinking he was being chased by a bear. There was no bear, but he was clearly in great distress by the perceived threat. When an SPD officer arrived, the resident reported that the officer “treated the man respectfully and with empathy knowing he likely had a serious mental illness. He took time to listen and assess the situation. This was especially comforting because the man was in crisis. I’d like to congratulate this officer for his handling of the matter.”
- A community member called to make sure to thank the officers who had responded when she was in crisis and wanted to kill herself. She stated that the officers had come to her location twice. She represented that she would not be alive today if it had not been for those officers. She went on to say that she was very impressed with how the

officers interacted with her and ensured that she would be taken care of. In her words, “they didn’t have to care about me the way they did but they treated me like a very deserving person and with respect. I remember one of the officers telling me that I deserved to live and to have a good life, and I could tell he wasn’t faking it but that he meant what he said. The officers were like old friends who knew what to say to me and they did a job from the heart.”

- A confused patient at a medical center used an oxygen tank to break through the window of a high-floor window and out onto the window ledge. The patient requested the presence of the Seattle Police. Five officers quickly responded. Officers were able to reassure the patient and convince him to step safely back into the building where much-needed treatment could occur. Members of the medical center indicated that they “wish[ed] to thank the officers . . . who provided appropriate, professional, and timely assistance . . . Thank you both for your leadership and for everything you do to ensure the safety of our community.”

These illustrations of officers de-escalating potentially problematic situations, managing individuals experiencing behavioral crises, and solving problems without the use of force would appear, taken alone, to be consistent with full and effective and compliance with the Consent Decree. However, for all of the progress that is evident in some areas, activity or inactivity in other areas threatens to slow down or derail the ability for Seattle and SPD to reach full and effective compliance.

Body Cameras

For one thing, and despite 92 percent of the Seattle population wanting to see body cameras used by SPD officers, only a very small number of officers currently use the camera in what is either the third or fourth “pilot” of the technology. Indeed, it is impossible to find a statistically-significant population in the City of Seattle that supports body cameras by any less than 87 percent – which is similar to the 87 percent of people who think it is a good idea nationally, according to Pew Research’s 2014 poll.

It is unsettling, then, that Seattle came close to losing federal funding it had secured to purchase body cameras. Federal funding was conditioned upon cameras being introduced by December 31, 2016. At the last minute, the SPD scrambled to put a handful of body cameras onto bicycle officers in the West precinct – so that SPD could report that body cameras had been deployed.

Although the Monitoring Team will have more to say on the subject in the near future, it is strongly of the view that body cameras in Seattle are required by the Consent Decree as a necessary component of accountability and an unavoidable prerequisite to full and effective compliance. Through our monitoring of investigations by OPA, FIT, and the chain of command, we have come across too many incidents where the reasonableness of force or consistency of officer performance with SPD policy could not be determined – but could have been if there had been reasonable video footage of what the officer saw, encountered, and did.

The Monitoring Team is also of the view that any body camera program must not sacrifice some constitutional protections to ensure that others are upheld. It is, however, confident that thoughtful, reasonable policies can ensure a forward-looking balance of personal and governmental interests.

Indeed, more than 6,000 law enforcement agencies in the United States already were already using or piloting body cameras as of June 2015.¹ Those departments and cities have adopted policies to protect privacy and manage the storage and disclosure of video footage. The federal government, national police organizations, and civil liberties organizations have all issued guidance on implementing body-camera programs and policies.² Seattle has no unique problems that have not been considered and resolved elsewhere – or that have not been thoroughly discussed in the more than five and a half years of “discussion, public engagement, and collaboration on body cameras in Seattle.”³

There are, to be sure, refinements to policy or technique that may become necessary as real-world experience with the cameras grows. However, if hypotheticals, conjectures, and “what-ifs” – unbounded by data and evidence – drive policy in the area, the stage of refinement can never occur. In fact, there is in place already a series of policies drafted in the prior series of pilot projects – with the full, active participation of various community members and organizations – which were geared toward protecting privacy and other interests and that have been refined subsequent to the actual experience of some SPD officers in two prior pilot projects.

Seattle has long, and in many ways justifiably, prided itself on consultation and civic engagement and debate until a consensus seems to be reached. In theory, this way of making policy has the virtue of being highly democratic and inclusive because it gives equal force to all constituents. In practice, however, these virtues can become distorted when the process is geared not toward implementing the overwhelming policy preferences of the majority in a manner that preserve and defend the rights of all but toward thwarting meaningful consideration of a workable policy whatsoever.

Institutional Barriers

A year ago, a keen observer would have predicted that there would be collective bargaining agreements negotiated by the two police unions with the City of Seattle with rapid approval thereafter by the rank-and-file. Chief O’Toole and the union leadership created and sustained a positive working relationship while rigorously representing the interests of management and labor. A change of leadership at the Seattle Police Officers’ Guild (“SPOG”) brought about a rejection of the collective bargaining agreement (“CBA”) and the return to the negotiating table. The new union leadership suggested that if there were more money for the rank-and-file, they might take a more flexible bargaining position. The Court has made clear that constitutional reforms would not be held hostage to monetary demands.

The Seattle Police Management Association (“SPMA”), the other union, representing lieutenants and captains, took a different tack. It filed an unfair labor practice addressing a litany of issues with the Consent Decree – which

¹ Jon Schuppe & Andrew Blankstein, “LAPD Skid Row Shooting Brings Focus to Body Camera Technology,” NBCNews.com (Mar. 2, 2015), [http://www.wsj.com/articles/police-use-of-body-cameras-raises-questions-over-access-to-footage-1430253877](http://www.nbcnews.com/news/us-news/lapd-skid-row-shooting-brings-focus-body-camera-technology-n315731; accord Zusha Elinson, “Police Use of Body Cameras Raises Questions Over Access to Footage,” Wall St. Journal (Apr. 28, 2015), <a href=).

² Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body Worn Camera Program: Recommendations and Lessons Learned* 11 (2014); 4 Michael D. White, Office of Justice Programs Diagnostic Center, U.S. Dept. of Justice, *Police Officer Body-Worn Cameras: Assessing the Evidence* 8–9 (2014) (summarizing Mesa Police Department, On-Officer Body Camera System: Program Evaluation and Recommendations (2013)), available at: (continued on next page)

<https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>; American Civil Liberties Union, “A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement” (Jan. 25, 2017) available at <https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement>.

³ Fifth Semiannual Report at 21.

threatens to tie up the reform process in endless negotiations and proceedings ricocheting between the state labor board and the federal court.

The Monitoring Team suggested almost a year ago that the SPD could reach full and effective compliance with the Consent Decree in late summer or early fall 2017. At a status conference in early January 2017, the Court estimated that it might be 2018 or beyond before that point is reached – in no small part due to a lack of definitive action in the areas briefly described here. Indeed, describing the progress on issues related to body cameras, union agreements, and the prospective system of “accountability” in Seattle as glacial gives glaciers a bad name.

The praiseworthy performance of the SPD, as described in the examples cited earlier in this report, convince the Monitoring Team that the SPD today is decidedly better at dealing with some of the most vulnerable people in the community, better managing the use of force, providing better teaching and training, better at de-escalation, better at providing high-quality supervision, and better at critically self-analyzing officer and departmental performance. The assessments that the Monitoring Team is working on currently – which will focus on the areas of officer use of force, search and seizure, bias-free policing, and the early intervention system, respectively – will round out the picture.

This is no time for gridlock, interminable discussion, or failure to reach and maintain finality – let alone attempts to renegotiate the Consent Decree from scratch. Instead, it is time to move without impediment to full and effective compliance and to the two-year period thereafter which it must be maintained under the active monitoring of the Parties and the Monitoring Team.

* * *

The Monitor’s First Systemic Assessment, filed with the Court in September 2015, found that the Seattle Police Department (“SPD”) had reached initial compliance with paragraphs of the Consent Decree relating to the routine reporting of use of force incidents, the investigation of more serious force incidents by the Force Investigation Team (“FIT”), and the more minimal review of less serious force incidents by the chain of command.⁴

“For intermediate-level, Type II force, the investigation of the force incident is conducted by a sergeant and reviewed by the chain of command.”⁵ The First Systemic Assessment found that – for cases that occurred between July 1, 2014 through December 31, 2014 – The “[s]ergeant investigations of Type II force are not where they need to be” and that “[I]eutenants and captains are likewise not yet identifying and addressing deficiencies in sergeant investigations of Type II force.”⁶ Thus, although SPD was in initial compliance with respect to the reporting of all force incidents and the investigation and initial review of officer-involved shootings, Type III, and Type I force, it had not yet complied with the Consent Decree’s requirements regarding the investigation and review of Type II force.

The purpose of this Assessment was to re-evaluate more recent Type II force cases to determine whether the Department is in compliance with the Consent Decree’s provisions, and the Department’s policies, regarding the investigation and chain of command review of Type II force. For purposes of this review, the Monitor chose to focus on all 27 Type II cases occurring between January 1, 2016 and March 31, 2016, reviewing specifically the

⁴ First Systemic Assessment at 2–4.

⁵ *Id.* at 3.

⁶ *Id.*

chain of command's investigation and review of cases. It is important to note, however, that SPD implemented a significant and positive change following the time period selected for this review, adding to the process a newly-created position of Administrative Lieutenant. While sergeants remain responsible for the initial investigation of Type I and II uses of force, the responsibility to verify the thoroughness and timeliness of the sergeant's investigation, and the review of the use of force, has since been shifted to the newly-created position of Administrative Lieutenant for each precinct. Accordingly, while this re-assessment does not encompass cases that include this level of review, the Monitor does take into consideration the fact that the Department has taken a substantial step to increasing its capacity for ensuring that force at all levels is thoroughly investigated and reviewed. Indeed, there is early, emerging evidence, based on the Monitor's review of use of force cases for the forthcoming use of force assessment, that investigations for which the Administrative Lieutenants are accountable are more complete and thorough as they progress through the chain of command. The Monitoring Team will have more to say on the subject soon.

With that acknowledgement, the Monitoring Team continues to find that sergeants are appropriately responding to the scene of Type II incidents. They are similarly complying with additional responsibilities, including examining the subject for injury and summoning medical aid where necessary, when they respond. In addition, with respect to sergeants' subsequent investigation of Type II force, the Monitor finds that there has been a noticeable improvement since our initial assessment, and sergeants' investigations are generally closer to where they need to be to conform to the requirements of the Decree and SPD policy. Of note, reviewers encountered no cases – as it did in its initial review – that did not include at least some type of investigation or review. The Monitor commends the Department for this.

Similarly, the sergeant's force investigation reports have improved since the First Systemic Assessment. Nonetheless, the Monitor must see continued progress towards ensuring that the investigation summary rigorously and objectively reflects all material evidence.

The Monitoring Team continues to find that the Force Review Unit– and, where relevant, the Force Review Board – continue to do a commendable job of identifying policy issues and inconsistencies, as well as issues with the actual force and tactics, that were not caught earlier in the process. Although their review was not complete in every case we reviewed, and there were investigative issues – such as a lack of a recorded interview or photographs – that simply could not be cured after the fact, perfection is not the applicable standard. Nonetheless, we noted that in 15 of the total 27 cases we reviewed that either FRU or FRB identified and addressed concerns, whether material or not, about the conduct of the investigation, the factual analysis, or the ultimate determination. We find that this performance of the FRU and/or FRB provides assurance that the SPD, overall, has increased their ability to conduct thorough, rigorous analyses of force-related evidence and to make well supported judgments about officers' tactics and use of force.

One must keep in mind, however, that no well-functioning accountability system can rely on a single professional within a single entity, the FRU, to identify all deficiencies with multiple layers of the chain of command investigation and review below.

Stated otherwise, the Consent Decree is especially specific about what supervisors must do in the wake of Type II force. Those particular requirements were memorialized in the Court-approved policies related to the investigation and review of force. There must be sufficient assurance that the letter of those unambiguous provisions are being appropriately and affirmatively followed in a sufficient number of instances. To use the engineering term, “redundant” systems are important both in principle and to comply with the Consent Decree.

In general, the Monitoring Team does not find the SPD has reached initial compliance until there is a solid record of uniform and consistent compliance to support an inference that if that level of compliance continues to be met, it is more likely that the court will ultimately find full and effective compliance at a later time. Under that definition, SPD falls a bit short. What distinguishes the case at hand nonetheless are the proactive steps to bring in administrative lieutenants to improve and hopefully cure deficiencies in the precinct level investigations. It was not a Consent Decree requirement but rather a voluntary step evidencing SPD's commitment to full, fair, and complete investigations. It is that kind of proactivity that will ultimately moot the Consent Decree in whole or in part. In recognition of that, we accordingly find that the SPD is in initial compliance with Paragraphs 103 – 111 of the Consent Decree.

This finding is important because, under SPD's reform-driven policy and operations, not all Type II use of force cases are reviewed by FRB. No well-functioning accountability system can rely on a single professional within a single entity, the FRU, to identify all deficiencies with multiple layers of the chain of command investigation and review below.

I. Methodology

The methodology used by the Monitoring Team, summarized here, is the same as that used during its initial assessment and is consistent with accepted best practices for evaluating use of force reports and investigations in other jurisdictions.⁷ Dr. Joseph Doherty, the Monitoring Team’s lead social science expert, worked closely and transparently with the Parties on the study’s design. As before, the methodology was reviewed and agreed to by both the Department of Justice and the City of Seattle.

A. What Force Reports & Investigations Were Reviewed

The population of cases selected for review included all completed Type II incidents, also referred to within the Department as “cases,” that occurred between January 1, 2016, and March 31, 2016, (the “study period”) and for which any required force investigation had been completed as of July 11, 2016. Reflecting the relative infrequency with which force overall is used, the total number of incidents reviewed was 27.

For this report, the terms “case” and “incident” refer to a given investigation of all uses of force applied during a given encounter with a subject, rather than individual applications of force within those instances. This means that one force “case” or “incident” may involve multiple types or applications of force by multiple officers. For example, a single traffic stop that involved 3 discrete applications of force by Officer A and 2 separate applications of force by Officer B would be, for purposes of this review, a single “case” or “incident.”

Per SPD policy, any case that involves more than one level of use of force is categorized and investigated at the highest level of force used by any officer. For example, a case involving a control hold (Type I) and a baton strike (Type II) would be categorized as a Type II case for investigation.

For the purposes of this re-assessment, the term “completed” means that the chain of command has certified the investigation as complete, and that the case has been accepted for review by the Force Review Unit (“FRU”). It does not mean that the FRU has completed its analysis or that, where applicable, the FRB has completed its review, although this did occur in some cases. Because the re-assessment focused on the chain of command’s investigation and review of an incident, this definition means only that the chain of command has forwarded it to the FRB, or otherwise signaled that all intended investigatory activities have been completed. As such, there may be instances where the Department’s final analysis and investigation of the incident differ from the material reviewed here.

The study period was selected because it is the most recent period for which a substantial proportion of investigations – approximately 82 percent (or 31) – had been completed and forwarded by the chain of command. Of the 38 cases initiated during this period, 13 cases were marked in IAPro as completed, and 18 were marked as forwarded but not completed.⁸ An additional seven cases were still active at the time the study population was selected. Because of the relatively small size of this population, no sampling was necessary, meaning that the cases

⁷ First Systemic Assessment; see George Fachner & Steven Carter, *Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department*, Community Oriented Policing Services (COPS) Office, U.S. Department of Justice (2015) at 16 (describing “investigative quality evaluation” of officer-involved shootings of “randomly selected . . . case files” using a survey instrument “of ‘yes/no’ and Likert scale (1–5 items)” evaluated by “expert, experienced investigators”).

⁸ Five cases were marked “suspended” and were excluded from this group.

reviewed for this re-assessment are necessarily representative of all investigations that were initiated during the study period and forwarded to FRU by July 11, 2016.

Monitoring Team reviewers evaluated all 31 Type II cases that occurred between January 1, 2016, and March 31, 2016, and for which the force investigations had closed and been forwarded to the Force Review Unit as of July 11, 2016.

About two-thirds (20) of the cases reviewed involved a strike, kick, or “hard” takedown as the primary use of force. Another 16 percent (5) involved the application of a Taser, and 13 percent (4) involved the use of a Noise/Flash Diversion Device (NFDD).

In reviewing NFDD cases, the Monitoring Team found that these incidents underwent a less rigorous investigation than did the majority of other Type II cases. They generally did not meet the standard for Type II investigations, as defined by policy, but were otherwise adequate to assess the use of the device. The Team also noted that the SPD is moving to categorize the use of an NFDD as a Type I incident when deployed away from people, Type II when deployed near people, and Type III when it meets existing Type III injury criteria. Because the use of the device differs in character from other Type II cases, in that it generally does not involve force being used on an actual subject, the Monitoring Team ultimately decided to exclude these from its overall re-assessment of Type II force. The following assessment thus encompasses only those 27 cases that did not involve the use of an NFDD.

B. How the Force Reports & Investigations Were Evaluated

As in the initial assessment, four members of the Monitoring Team completed this assessment, with two members of the Team independently reviewing each incident. This structure sought to ensure that any unduly outlying determinations would be identified or “checked” by another equally comprehensive review.⁹

To complete their assessment of each case, each reviewer considered the whole of the force investigation materials, or “packet,” supplied to the Monitoring Team by the SPD. These packets generally included written material, such as officer reports, investigator logs, and supervisor evaluations; video material, including any available in-car or private video footage; other images, including incident photographs or pictures of subject or officer injuries; and audio material, such as audiotapes of recorded interviews with non-SPD witnesses and subjects.

The assessment instrument for Type II force was designed to contain both audit-like and evaluative elements. Audit questions included whether subject and civilian witness interviews were video or audio-recorded in accordance with SPD policy – an important but relatively mechanical determination. For these questions, reviewers logged whether officers or supervisors complied with various express requirements of SPD policy – marking “yes,” “no,” or “unable to determine.”¹⁰

⁹ There was a high level of agreement across the independent reviews conducted by the Monitoring Team members. To the extent there were substantive differences between the reviewers, they were asked to attempt to reconcile their final judgments. The remaining conflicts were negligible following this process.

¹⁰ See Floyd J. Fowler, *Survey Research Methods* 121 (2009, 4th Ed.) (noting that, for self-administered questionnaires, “[c]hecking a box, clicking a response, or circling a number should be” emphasized because self-generated responses “are usually incomplete, vague, and difficult to code” or aggregate).

Reviewers were also asked to provide a qualitative analysis of each file across several dimensions. For example, in reviewing recorded interviews, reviewers were asked whether they identified “[l]eading questions or potential contamination of officer accounts.” In evaluating this question, reviewers sought to determine whether or not questions to the officer’s account were compromised because of the role, questioning, or procedures of the investigators. Each instrument additionally contained “notes” sections below most areas of inquiry that permitted reviewers to identify and discuss in greater detail the pertinent portions of the files or important issues identified.

For each case, Monitoring Team reviewers further considered whether, under the totality of the circumstances, the investigation, report, or evaluation provided sufficiently objective, fair, thorough, and complete information about the force incident to allow a subsequent SPD reviewer to fairly and systematically apply SPD policy with respect to the officer’s performance. Thus, we operationalized the concept of “quality” – or “convert[ed] . . . the abstract idea or notion into a measurable item” – in terms of whether it would ultimately permit a neutral fact-finder to fairly and fully apply SPD’s officer use of force policy.¹¹

¹¹ Mark L. Dantzker & Ronald Hunter, *Research Methods for Criminology & Criminal Justice* 47 (2012, 3d Ed.)

II. Findings

A. Type II Reporting

In the vast majority of instances, officers are continuing to report Type II force to sergeants immediately. Those supervisors are responding to the scene. Likewise, the force categorized as Type II was properly classified by responding supervisors in most instances. Sergeants are similarly complying with additional responsibilities, including examining the subject for injury and summoning medical aid where necessary, when they respond to the scene.

The Monitoring Team found high compliance with requirements relating to the supervisory response to the incidents. Our review found that officers reported Type II force to a supervisor immediately in all but one instance and, in every case where force was reported, a supervisor responded to the scene. Similarly, in all but two cases, the responding supervisor was found to have screened the subject for injury at the scene.

For those cases where a screening was conducted and an injury was reported or otherwise apparent, medical treatment was requested in nearly every case. We noted two cases where this did not occur. In one, injuries to the subject's head were visible in photos, and the subject referenced his head being banged on the pavement, but medical treatment was not summoned until the subject was transported to the precinct. In the second, the subject said his head hurt but no injury was reportedly visible, and no treatment was requested. This issue was properly identified by the FRB and resulted in the investigation being administratively disapproved.

In reviewing these cases, the Monitoring Team noted that the decision to briefly delay the screening or request for medical treatment until the subject was transported to the station may have been justified by the subject's combative demeanor or other exigent circumstances. Clear articulation of such circumstances by the investigating supervisor would better allow reviewers to determine whether the decision to deviate from standard procedure was warranted. To the extent that these issues were addressed during the investigation, the Monitoring Team did not consider them to materially impact the overall quality of the investigation.

In general, supervisors (usually sergeants) are making the appropriate determination when they classify force at the Type II level. Approximately 93 percent of non-NFDD Type II force was properly classified at the time of the incident. There were two additional incidents that were not initially classified as Level II cases but were later properly upgraded, either due to the identification of injuries that were not initially identified or at the guidance of the supervising lieutenant.

Per SPD policy, and to effectuate Consent Decree requirements, the responding supervisor in Type II force cases must direct involved and witness officers to complete a statement and review such statements for accuracy and completeness.¹² Although this review was not always specifically documented, we were able to infer that this occurred from other notes, such as mention of the statement being returned for corrections, in the majority of cases.

B. Type II Review

¹² Dkt. 3-1 ¶ 104(6); 2014 SPD Manual Section 8.300-TSK-5(13).

Some Type II investigations and reviews are where they need to be and conform to the requirements of the Consent Decree and SPD policy. Nevertheless, SPD must continue to work toward ensuring that all Type II investigations conducted by sergeants and reviewed by the chain of command are procedurally complete, thorough, fair, and objective and that compliance with all requirements is documented in a manner that can be reviewed by the chain of command.

1. Sergeant's Investigation

Although there has been noticeable improvement since our initial assessment, basic investigative deficiencies leave sergeant investigations of Type II force less thorough, fair, and objective than they need to be under the Consent Decree. Sergeant investigations still do not cover all the bases as regularly as they must – failing to canvass for all witnesses, impartially and thoroughly interview such witnesses when they are identified, pursue all relevant lines of inquiry, take adequate photos of the subject and location, and ensure that an uninvolved sergeant indeed conducts an impartial investigation.

The Monitoring Team found that about 11 percent of Type II investigations by sergeants were thorough, well-documented, and complete – in that investigators determined that they complied with all SPD protocols and made reasonable attempts to follow all leads and answer all material questions. Another 56 percent were adequate or better. This means that, although some aspects of the investigations could be improved, the identified flaws did not appear to materially impact the quality of the overall investigation, and the resulting force packet provided sufficient information to evaluate the incident.

About one-third of investigations (33 percent), however, were determined to be inadequate due to the fact that the investigation did not develop sufficient information to support an evidence-based evaluation of the incident. This may have resulted from significant procedural or investigative deficiencies, material omissions, potential investigator bias, or other material issues.

Unlike in its initial assessment of Type II force, which found that seven of 31 cases – approximately 23 percent – had minimal or no investigation conducted, the Monitoring Team reviewers found that all of the cases in this group was investigated by a sergeant.¹³ This is a significant improvement in quality that should be commended.

Nevertheless, there were still several cases in which the Monitoring Team identified a range of investigative issues that impacted the quality of the investigation. One point worth mentioning, however, is that in many files, the FRU or FRB ultimately identified and, where possible, corrected at least some of the issues noted by Monitoring Team reviewers. These include, for example, the following cases:

- An investigation included inadequate questioning of the subject of a Type II use of force, including an excessive force allegation that an officer gratuitously punched him in the face. The inconsistency between this allegation and the officers' statements was not addressed, and there was no apparent attempt to locate and interview witnesses. As a consequence, there was an insufficient basis for evaluating whether the investigating supervisor complied with his obligation to refer the matter to OPA "if it appears that serious misconduct may have been involved with the use of force."¹⁴ The investigating supervisor did not address the officers' insufficient description of the use of a takedown. The FRU noted the subject's claim of excessive force and referred this issue to OPA itself.

¹³ As noted in that report, the majority of the cases that were not investigated involved demonstrations or crowd-management incidents, and were investigated under an interim use of force policy that has since been modified.

¹⁴ See 8.400-TSK-6 (13)

- Despite at least two officers at the scene noting a subject's visible injury, the initiation of a related Type II investigation was delayed until the subject was refused for booking at the county jail (due to the injury). Due to the delay, many witnesses who could be seen on ICV were not located and interviewed about the use of force, and canvassing appeared minimal. The primary supervisor delegated the interviews to a "supervisor-trained" officer who was also a witness to the use of force, a violation of SPD policy.¹⁵ The resulting interviews were brief and inadequately explored the use of force.

Finally, the investigating supervisor and chain of command did not identify the on-scene supervisor as an involved officer in the Level II use of force, treating him instead as a witness. A review of this supervisor's written statement found that it contained little information about the subject's resistance or the officers' specific actions to overcome it. As a result of these deficiencies and procedural issues, the investigation ultimately established limited detail regarding the use of force. The issues with the on-scene supervisor not reporting or being identified as a Type II involved officer were identified by the FRB along with other issues and ultimately corrected.

- In a Type II case, the investigating supervisor did not conduct a canvass for witness or private video and did not take photos of the scene. These deficiencies resulted in the investigation being administratively disapproved by the FRB. He also failed to follow up on the subject's statement that his head hurt and did not request medical treatment for him. Monitoring Team reviewers noted that the sergeant's ICV-recorded interview with the involved officers did not resemble a neutral inquiry, but rather appeared biased toward the officers' accounts.

Attempts to identify and interview witnesses, commonly referred to as "canvassing" for witnesses, were referenced or implied in about 80 percent of all Type II cases. In some of these cases, however, such an effort had to be inferred based only on a statement that no witnesses were located.¹⁶ Written SPD policy requires that supervisors document "all efforts to locate and interview civilian witnesses" and that they record the contact information of those who do not want to be interviewed.¹⁷

Reviewers also noted a few cases in which there was no explanation about why the file did not include interviews of potential witnesses who could be seen in video footage or were otherwise referenced. Although there may have been justification for such a refusal, the reason for not including an interview could not be evaluated in these cases. Although this issue did not count against overall compliance rates, the reviewers found that, in a quarter of cases implying canvassing, a lack of articulation of the steps taken – or locations canvassed – made it difficult to

¹⁵ See 8.400-TSK-6(7).

¹⁶ Dkt. 3-1 ¶ 104(e)(3) (requiring sergeants to "[m]ake reasonable attempts to locate relevant civilian witnesses, including the subject and third parties, and arrange for witnesses to be interviewed"); ¶ 106(b) (requiring use of force report to include "names, phone numbers, addresses, and summaries of statements by all civilian witnesses to the incident" or, if "there are no known witnesses, the report will specifically state this fact").

¹⁷ See 8.400-TSK-6(7); Dkt. 3-1 ¶ 106(a).

determine if a supervisor's attempts to locate witnesses were reasonable. Other investigative reports did not address canvassing at all, and thus it was difficult to determine if there was no need for canvassing (*e.g.*, force occurred in an obviously isolated location, such as inside an empty building) or canvassing efforts proved unsuccessful.

At least one civilian witness was identified and agreed to provide an interview in 16 of the 27 Type II cases.¹⁸ In each of these cases, the interview was recorded by either a portable recorder or a patrol vehicle's ICV.¹⁹ In reviewing the associated interviews, as well as interviews of subjects, however, the reviewers noted that those recorded on ICV were often of a much poorer quality than those documented using a portable recorder. They were also sometimes hard to locate, as supervisors did not always provide the ICV timestamp, leaving reviewers to scroll through substantial amounts of footage to locate the relevant interviews. The Monitoring Team notes that, since the period under review, the SPD has taken steps to better document the location of pertinent evidence in the attached video log.

This was considered to be an equipment issue, rather than a policy or compliance issue, as supervisors are permitted to use ICV for this purpose and cannot control the ultimate quality of the recording. Nonetheless, it did affect the Team's ability to review important evidence collected in the investigation, particularly where the interviews were not summarized in the written report. Background noise in ICV audio may also compromise the value of the recording both for purposes of force review and also for use in any ensuing prosecution of any subjects arrested at the scene. Discrete, separated audio files created by a portable recorder would likely provide higher-quality, more accessible interviews. The Monitor understands that the FRB has flagged this as an equipment issue as well.

- In a case where three witnesses were reportedly interviewed, no audio files were attached, with the sergeant reporting that they were recorded on ICV. The reviewers were unable to definitively locate and/or discern the full content of these interviews due to the poor quality of the audio – while conversations could be identified, their substance could not. Based on this, it was also difficult to know whether the witnesses were interviewed separately. This issue was mitigated somewhat by the fact that the sergeant did summarize the interviews in the written report.
- The subject of a use of force reportedly refused to be interviewed, but the audio of the refusal – required by policy – was not captured due to an ICV malfunction. The associated FRB report noted that all sergeants have been issued recorders and should not rely upon the ICV for this purpose.
- A FRU video log noted which ICV recording contained interviews, but did not identify the witnesses interviewed or the time at which they were interviewed. When the interviews were eventually located, road noise made portions of the conversation difficult to hear.

¹⁸ Reviewers noted one case in which potential witnesses to a use of force appear to have been detained at the scene in an effort to make them available to the investigating sergeant, even after they had been "cleared" by a wants and warrants check. Although they were treated respectfully and allowed to move around freely, officers at the scene should be careful to ensure that witnesses understand that they are free to leave and any interviews are provided voluntarily.

¹⁹ Dkt. 3-1 ¶ 104(e)(4).

One area that needs improvement is the documentation of attempts to interview the subject of the use of force. (This interview, which should primarily focus on the use of force, was often different from the initial screening at scene, which did not include as much detail about the incident or the use of force itself, and occurred in nearly every case. To the extent that the initial screening also included an interview about the use of force, it was counted in both categories.) The subject of the use of force was interviewed in about 37 percent of investigations, and all of these interviews were audio-recorded. The subject reportedly refused to be interviewed in another 48 percent of cases, but only about one third of refusals were audio-recorded as required by the Consent Decree and SPD policy. In most cases, there was no justification provided for the lack of recording, but there was one case in which the subject asked for a lawyer prior to the recorder being turned on and a second where the recorder malfunctioned.

In four cases – about 15 percent -- of cases, there was apparently no interview attempted. In one of those cases, the subject was likely too impaired to provide an interview at that time, and it was not clear why there was no follow-up effort. In the other three files, there was no justification provided for the failure to interview. Given the importance of the obtaining the subject's account, even in cases where there is video or other evidence, the lack of a documented attempt to interview the subject was considered by Monitoring Team reviewers to be a significant deficiency.

When interviews were recorded, Monitoring Team reviewers found that about 50 percent of cases involved subject interviews that were thorough and unbiased, while 60 percent included civilian witness interviews that were judged to be of a similarly high quality. One particular improvement from our last assessment was that inappropriately leading questions were rarely identified in these interviews.

The reviewers did, however, note other instances that included inadequate questioning or evidence of bias. Here, again, the lack of one or more thorough interviews did not necessarily result in an entire investigation being judged out of policy unless the interview deficiencies left significant material questions or conflicts unaddressed.²⁰ Nonetheless, because an investigator often does not know the overall relevance of a given piece of evidence prior to the completion of the investigation, it is important that each interview be completed as thoroughly and neutrally as possible.

- An interview was delegated to a non-supervisor officer, who asked very few questions. The interview primarily consisted of the officer asking “what happened?” with almost no follow-up, resulting in a statement that included only a vague description of the force used as well as the subject's resistance. In this case, the investigation was nonetheless found to be adequate due to the fact the shortcomings were not egregious, and that that other interviews and evidence provided sufficient evidence to evaluate the case.
- An interview with a seemingly impaired subject included suggestive lines of questioning by the sergeant, who asked a series of closed questions based on information of which she was already aware. The majority of the interview focused on obtaining evidence against the subject, with very little questioning about officers' use of force. Witness interviews similarly focused primarily on the alleged underlying crime rather than the use of force. These and other issues with the investigation caused reviewers to judge the overall investigation inadequate.

²⁰ See Dkt. 3-1 ¶ 104(e)(3) (“Supervisors should use interview techniques taught in use of force investigation courses, including avoiding leading questions.”).

In general, the Monitoring Team found that some clarification of expectations regarding the interviews of civilian subjects and witnesses may be warranted, which the SPD has said it can provide through e-learning. Reviewers observed several cases where investigators appeared to conflate the initial screening of a subject, which is focused on any potential injury and need for medical care, with the use of force interview itself. The interview, however, should focus not only on the injury and any alleged crime by the subject, but the subject's account of his or her actions and those of the officers who used force. Similarly, interviews of civilian witnesses should center on what they saw the subject and officers do or say during the actual use of force, and their vantage point. To the extent that any potential concerns about the incident are brought up, follow-up questions must be asked to ensure that the person's account is fully understood and can be compared with other evidence. For example:

- In a case where officers took the subject into custody after he was detained by civilian witnesses, a subject was observed to have multiple injuries to his face. As such, part of the investigator's task was to determine whether the subject sustained all or some of the injury as the result of the officers' use of force, or whether it was sustained prior to their involvement. During a brief back seat interview of the subject, which is captured on ICV, the subject can be heard saying that his injuries were caused by "you guys slamming me in the face" as well as by his earlier struggle with security. The sergeant responds, "That's what happens when you do what you're not supposed to do and you don't listen to police." This remark was unprofessional and potentially escalating — conduct that is expressly prohibited by SPD Policy.²¹ The sergeant's role at that point was to obtain additional information from the subject. However, the sergeant asked no additional questions about the use of force, despite the subject's visible facial injuries and the fact that officers did not report slamming him in the face.

Interviews of two witnesses were similarly perfunctory and do not ask in detail about the subject's actions or the use of force. One witness can be heard saying that the subject hit his face on the ground and that at least some injury was caused "by the officers." However, there was no additional questioning beyond the sergeant stating that the subject's injuries were "the price of doing business." Again, such gratuitous commentary was unprofessional and potentially escalating. In addition, it raised questions about the sergeant's neutrality.²²

- When a subject alleged excessive force, the supervisor made limited efforts during the interview to follow up on key issues, such as who tackled the subject, whether he hit the ground hard, and who might have punched him, as he alleged. This was part of an overall

²¹ See 5.001-POL (9). "Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force."

²² Reviewers noted a second case for which ICV footage includes audio of an animated argument, after the subject had been taken into custody, between the subject and an officer about the incident and arrest. This type of conversation could not only potentially re-escalate the situation, but is inappropriate in view of the fact that the incident was under review. An officer who argues with a subject or gives his side of the story prior to the subject's interview risks potentially contaminating the investigation.

failure to address an allegation of excessive force and led to the investigation being considered inadequate.

Due to a lack of documentation, reviewers were generally unable to evaluate interviews of officers. SPD policy states that the investigating sergeant “[c]onducts separate interviews of officers involved in a use of force incident, unless unreasonable under the circumstances and the sergeant documents the circumstances.”²³ Although they are not nearly as exhaustive as FIT’s Type III investigation interviews, these initial interviews are important for the purpose of establishing preliminary information about what occurred prior to the officers writing their statements. Overall, although officers generally indicated that they “screened” the incident with the responding supervisor, it was not always clear from the record when or how these interviews took place and whether they were conducted separately from other officers, unless unreasonable. The Monitoring Team found that these were generally not documented in the investigative summary.

Although reviewers did attempt to locate officer interviews on ICV – and identified, in some cases, at least some debriefing or other interview of involved officers – there were others where no such interview could be found. Even where a discussion with an apparently involved officer could be heard, it was not always visible on camera, making it difficult to identify the officer or to assess whether the interview was conducted separately from other officers. The Monitoring Team did not, for the purposes of this review, generally consider this to be a compliance issue. Better documentation in the investigative report of the fact and circumstances of these interviews (such as whether the officers were individually interviewed) would allow the chain of command to ensure that this required task was properly completed, however.

By contrast, supervisors did a good job of ensuring that involved officers and witnesses completed statements regarding the incident and that these were submitted for investigation. Involved and witness officers must always be directed to provide a statement, and the supervisor must ensure that those witness statements comply with SPD guidelines.²⁴ In all of the cases reviewed, reviewers documented that the relevant statements were included in the file. In the very few cases where this was not initially completed, the chain of command or FRU ensured that they were completed and submitted.

Relevant officer ICV footage was appropriately identified and reviewed in all instances where it was available. However, few of force packets fully documented a canvass of the area for any available private video (security camera footage, cell phone footage). Such documentation is necessary to ensure a full and thorough investigatory record. As with the reviewed files that implied witness canvass efforts, other reviewed files implied at least a partial video canvass by stating whether video was located. It was not possible, however, to assess in most cases whether this was an adequate video canvass due to a lack of detail in the report. In three cases, there was no apparent attempt to canvass for private video, and in another, the canvass was delayed by late reporting. Again, some documentation of the attempts to canvass, including general locations checked and their result, would help to ensure that adequate efforts were made.²⁵

²³ See 8.300-TSK-6(8); Dkt. 3-1 ¶ 104(e)(5).

²⁴ See 8.300-TSK-6(9); Dkt. 3-1 ¶ 104(e)(6).

²⁵ See 8.300-TSK-6(10); Dkt. 3-1 ¶ 104(e)(7).

All of the force investigations reviewed included at least some photographs of the subject. In 18 percent of cases, however, these photographs were of a poor quality or did not include all of the required photographs. According to policy, investigators must take at least one overall photo, one photo of the general area of injury (or lack of injury where a complaint is made), and one close-up photo of the injury. If the subject refuses, such refusal should be documented.²⁶

Likewise, exigent circumstances that prevent supervisors from taking the required photos should also be documented. The reviewers noted some cases where the photos were taken while the subject was handcuffed, sitting or lying down, and/or dressed in heavy clothing, which made it difficult to assess any potential injuries. In one case, the subject of a Taser use was photographed fully clothed with a spit sock on his face; in one picture, he appears to be walking away from the photographer. The resulting photographs do not show the location where the device was used or give an indication of any injuries that may have been sustained. [2016-057136]

Photographs of the location were taken, as required, in 89 percent of investigations, and all relevant evidence, where applicable, was photographed in all but two of the cases.

During its evaluation of Type II investigations, the Monitoring Team found that the vast majority of investigations were fully conducted by an uninvolved supervisor. SPD policy requires that no supervisor who used, participated in, or ordered the force will conduct the resulting investigation, unless to do otherwise would be impractical.²⁷

Reviewers found that a fully uninvolved supervisor conducted the investigation in 78 percent of the cases, and a supervisor who supervised or was otherwise involved in the overall incident (without using force) conducted it in seven percent of cases. In another 15 percent (4 cases), however, an uninvolved supervisor officially conducted the investigation but delegated at least some tasks, including interviews, to a non-supervising officer. While this was not considered a compliance issue due to the policy that supervisors must only “arrange” for civilian witnesses to be interviewed, the Monitoring Team noted that these delegated interviews were generally overly brief and insufficiently rigorous. The SPD should consider whether these important tasks should be delegated to officers who may be untrained in conducting such interviews. Moreover, in two of those cases, the interviewing officer was actually a witness to the use of force and therefore should not, per policy, have been permitted to conduct the interview.²⁸

2. Sergeant’s Report

Sergeant force investigation reports have improved since our first assessment but are not yet where they need to be. They do not yet provide the chain of command with “a complete understanding of the incident from beginning to end.”²⁹ Progress must continue to be made toward ensuring that the summary rigorously and objectively reflects all material evidence, identifies and attempts to resolve material inconsistencies in that evidence, and adequately analyzes incidents in light of policy and tactical concerns raised by officer actions throughout the incident. The summaries must also be forwarded to the chain of command in a substantially timelier manner.

²⁶ See 8.300-TSK-6(11); Dkt. 3-1 ¶ 104(e)(10).

²⁷ See 8.400-POL-1(7); Dkt. 3-1 ¶ 98. “Whenever a supervisor uses, directs, or is otherwise personally involved in any type of force, the investigation will be conducted by a supervisor uninvolved in the use of force unless impractical.”

²⁸ See 8.300-TSK-6(7)

²⁹ Dkt. 3-1 ¶ 106(a).

The sergeant's investigative summary or report is a primary document that usually forms the foundation of subsequent review by the chain of command. Overall, the investigative file compiled by the sergeant was found to be either thorough or adequate in nearly two-thirds (63 percent) of cases. As noted, this is an improvement over the initial assessment, which found that approximately 47 percent of cases were thorough or adequate.

Nonetheless, the reports were less than adequate – because of material deficiencies or omissions, inaccuracies, evidence of bias, or other significant issues – in some 37 percent of cases. The quality and rigor of sergeant's reports will need to continue to improve going forward.

A number of features resulted in the reports being insufficient under the Consent Decree and SPD policy. For one, when an underlying investigation has not been thoroughly conducted, it is difficult to then produce a thorough report that provides all the information required. Indeed, all but one of the inadequate reports were preceded by an investigation that was found to contain significant deficiencies.

Another major issue, however, was many reports that stated only that a particular piece of evidence – such as an interview or video – had been obtained, without describing its content or significance. For example, a report might state that three civilian witnesses were interviewed without describing what they said. In such instances, the sergeant has failed to comply with existing policy, which states, “The [sergeant's] Use-of-Force Report will include documentation of all evidence that was gathered, including physical evidence; photographs; and names, phone numbers, addresses and *summaries of statements by all civilian witnesses to the incident.*”³⁰ The SPD has indicated it will address this issue in training.

As noted previously, supervisors also did not always describe the steps they took to obtain the evidence, such as details of the canvassing completed. These issues make it more challenging and time-consuming for reviewers to examine the case, and is in conflict with Consent Decree and Department requirements that supervisors document their actions in reviewing the incident, and that their report include contact information and summaries of statements by all civilian witnesses to the incident.³¹

One factor that seems to explain the increasing lack of documentation or oversight is SPD's move away from the use of a designated template that contained the required elements of an investigative report to a BlueTeam-based reporting and review process that merely provides space for a narrative. It appears that, to some degree, this move was prompted by concerns from the Monitoring Team and DOJ that the templates in use might prompt officers to use boilerplate language. Under the current process, investigators use the BlueTeam interface to “respond” to an officer's use of force report with a summary of the investigation. Reviewers have noted that, while this may be an efficient way to forward information up the chain of command, and is the protocol designated by current policy, the resulting reports were more difficult to parse.

They also appeared to be less complete than, generally, reports garnered through the previous template. The BlueTeam interface does not allow line breaks, producing long blocks of texts without headings or other organization. Many sergeants improvised a workaround to this limitation by attaching an accompanying Microsoft Word document that was more clearly organized, but these documents were still often free-form. Without prompts to describe what information was required, reviewers observed that many reports appeared to

³⁰ 8,400-TSK-6(19) (emphasis added).

³¹ Dkt. 3-1 ¶ 106(a-b). The Consent Decree defines “civilian witnesses” as including the subject as well as third parties. (Dkt. 3-1 ¶ 104(e)(3)). This may need to be clarified within SPD's policy materials, which do not clearly include the interview of the subject as a required element of the report.

skip important steps, leaving a less-than-clear picture of what the investigation entailed or the substance of the evidence that was obtained. As with other technical assistance issues previously mentioned in this report, the format of the reports is not considered to be a compliance issue. To the extent that resulting investigative reports are less complete, however, it can affect the overall compliance assessment. In any case, the SPD has indicated that, following the period reviewed for this assessment, it began to use a new template that provides headings for much of the required information. It is expected that this will significantly improve the overall quality of the reports, as it will also assist chain of command reviewers in identifying which sections have not been thoroughly completed.

The Monitoring Team found a little over half (54 percent) of the completed summaries of the supervisory investigation to be thoroughly and accurately written. The reports included sufficient summaries of any force or resistance offered by the subject during the incident (93 percent), accounts of officer statements (74 percent), and the incident itself (67 percent). Most cases summarized officer attempts at de-escalation and any effects with respect to the subject. Sergeants adequately and thoroughly summarized civilian witness statements about 60 percent of the time that they were available, and subject statements about 36 percent of the time.

Sergeants conducted a preliminary evaluation of the evidence for inconsistencies and other issues in all of the cases reviewed.³² However, this analysis was too often insufficiently comprehensive and probing – leaving important issues unaddressed. When the investigation produced factual inconsistencies material to a full and complete understanding of what happened – which occurred in about 41 percent of cases – sergeants failed to identify or resolve such inconsistencies about three-quarters of the time.³³ According to the SPD, responsibility for this analysis has now been moved to the designated Administrative Lieutenant position, which is expected to address this issue.

A primary issue noted by the Monitoring Team is that supervisors often did not summarize the actual interviews or video in the report, making it more difficult to identify inconsistencies. In an additional two cases, they identified an inconsistency but resolved it inappropriately. The most common inconsistencies that Monitoring Team reviewers noted were inconsistencies among statements (30 percent of cases) and video that was inconsistent with statements (20 percent of cases). For example:

- In a case involving a witness who alleged that the officers' use of force was a "dog pile" and "real wrestling match," there was nothing similar described in the officers' reports. This case also involved an injury, but the report does not fully describe its extent. The sergeant appeared to gloss over the witness testimony in a manner that the reviewers felt was without basis, stating that the "witness description of events seems to contradict itself and evolve." The sergeant ultimately determined that one version of events was more consistent with the officer and "other witness" statements, but there was no other non-SPD witness information, and very limited video of the event.

³² See Dkt. 3-1 ¶ 106(d).

³³ See Dkt. 3-1 ¶ 106(d) (requiring sergeant's summary to include "[t]he supervisor's evaluation of the evidence, including any material inconsistencies in the evidence or statements").

- The sergeant failed to note ICV-recorded audio of an officer’s inappropriate statement – “I will slam you to the ground” – which conflicted with the officer’s account that he took the subject down to the ground in an effort to de-escalate the incident. This should have been noted as an inconsistency between the ICV recording and the officer’s statement.

Notwithstanding the investigative deficiencies noted in other sections, the majority of use of force packets included all material evidence gathered, even if they were not summarized in the accompanying report.³⁴ The reviewers noted four cases where materials, such as a Taser printout or video, was not obtained and included in the packet. The reviewers also observed several cases where medical treatment was provided by the Fire Department but there was no accompanying documentation in the file, which may have been at least partially due to medical privacy laws. It is not clear whether the investigators attempted to obtain this paperwork. Any such attempts should be documented in the record, including waivers obtained from subjects and any legal issues that prevented their inclusion.

It should be noted that the sergeant’s obligations are not to express judgments or make findings as to the reasonableness of a use of force, nor whether it complied with SPD policy. The Consent Decree indicates that “[i]f a FIT response is not appropriate, the supervisor will conduct the investigation, as an impartial fact-finder and will not be responsible for determining the ultimate disposition of the incident.”³⁵ In most instances, about 59 percent, sergeants were appropriately analyzing the facts without making findings. In 41 percent of cases, however, the sergeant made statements about the force being reasonable and/or within policy. The Monitoring Team did not include this in its overall assessment of the quality of the report, but a template or other document might assist sergeants in ensuring that they include only the analysis required by policy.

SPD policy requires completion of a Type II investigation within 72 hours (three days) unless an extension is approved, as does the Consent Decree.³⁶ Very few Type II use of force packets (20 percent) were completed within three days. In 78 percent of late cases, however, an extension was obtained, although this sometimes appeared to come after the deadline had passed. The Monitoring Team also noted that all sergeants provided a listing of their activities and justification for the lateness of the document. The Department has indicated that it is working on extending the overall deadline to 30 days in order to align the timeline with how long it has actually been taking. In the meantime, it will need to continue its efforts to ensure consistently on-time investigative reviews or to ensure that a documented extension is provide in a timely fashion.

3. Lieutenant’s Review

Lieutenants are not yet regularly identifying and resolving procedural or substantive deficiencies in Type II investigations and reports. Thus, it does not appear that they are adequately “review[ing] the report packet to ensure it is complete and the investigation was thorough.”³⁷ Likewise, they must more regularly provide a probing analysis of the incident and clearly “reach findings as to whether the use of force was lawful and consistent with policy.”³⁸ Since the period reviewed for this report, the SPD has implemented a new Administrative Lieutenant position, to be established in each of the precincts, who will be responsible for ensuring the quality of this review. The Monitoring Team expects that this will bring significant improvement to this level of review.

³⁴ See Dkt. 3-1 ¶ 104(e)(11).

³⁵ Dkt. 3-1 ¶ 104.

³⁶ Dkt. 3-1 ¶ 106.

³⁷ Dkt. 3-1 ¶ 108.

³⁸ Dkt. 3-1 ¶ 108.

In all of the cases reviewed, lieutenants clearly reviewed, to at least some extent, the sergeant's investigation to ensure that the investigations were thorough and complete. In 30 percent of cases, however, they failed to address investigatory issues that the sergeant's investigation left outstanding – thereby not complying with the requirements of paragraph 109 of the Consent Decree, which requires supervisors to “initiate corrective action” where “deficiencies exist” or where “additional relevant and material evidence . . . may assist in resolving inconsistencies or improve the reliability or credibility of the findings.”³⁹ In an additional 18 percent of cases, they identified and addressed some of the issues presented by the report, but not all. For instance:

- In a case noted earlier, a subject was captured on ICV stating that his head hurt, but the sergeant did not request medical aid. This issue was caught by the captain, but not the lieutenant. In the investigation, the sergeant also did not take photographs of the scene or canvass for private video, and this issue was not identified in the lieutenant's review. The investigation was ultimately administratively disapproved by the FRB.
- In the case where a supervisor reported that it “took several minutes for the three officers and I [sic] to overcome [the subject's] resistance,” he was not identified as an involved officer in the Type II use of force. This issue was not corrected until it reached the FRB, who determined that the supervisor violated SPD policy. Neither the lieutenant nor the captain identified this issue.

Lieutenants reached express findings as to whether force was reasonable and necessary, and whether it comported with SPD policy, in all of the cases reviewed. However, about one-third (30 percent) of analyses were unduly limited, while another 18 percent failed to identify – or inappropriately resolved – significant policy or other issues related to the use of force or post-incident conduct. Monitoring Team reviewers judged the lieutenant's analysis sufficiently thorough and complete in a little over half the cases (55 percent). Thus, SPD still has progress to be made to ensure that “[t]he reviewing lieutenant will . . . reach findings as to whether the use of force was lawful and consistent with policy.”⁴⁰

- A lieutenant wrote that a subject's facial abrasions preceded the SPD's arrival. He also stated that “the suspect, as well as the [witnesses] who were detaining him, clearly corroborate that the injury was from [the earlier struggle] and not from any interaction with police officers.” In fact, as referenced earlier, one of the two witnesses and the subject could be heard stating that at least some injury was caused by the interaction with police. The issue of when the injury occurred was more accurately addressed in the next layer of review by the captain.
- In its findings, the FRB identified a lieutenant's review as deficient, noting that ICV did not support the conclusion that the use of a Taser was necessary or the lieutenant's factual conclusions regarding the officer's tactics. The Board found that the chain-of-

³⁹ Dkt. 3-1 ¶ 109.

⁴⁰ Dkt. 3-1 ¶ 108.

command review “appears to be outcome based and did not take into account the tactical decision making and policy violations.”

- In-car video shows that the subject was not seat-belted during transport, a violation of SPD policy.⁴¹ This is a violation is not mentioned in the chain of command reviews, although it does identify other issues for clarification and correction.

4. Captain’s Review

Captains are likewise not yet adequately “ensur[ing] that [the force packet] is complete, the investigation was thorough, and that the findings are supported by a preponderance of the evidence.”⁴²

The reviews of officers’ use of force by captains were generally sound. More than three-quarters (81 percent) of the written reviews themselves were thorough, with all reaching clear findings as to whether the use of force was reasonable and necessary and whether force was consistent with policy. There were four cases, however, that reviewers judged inadequate based on the fact that they did not identify clear substantive issues or conflicts that were not properly addressed.

Nonetheless, captains still need to better identify and address issues with the underlying investigation, and resolve inconsistencies left unaddressed by sergeants and lieutenants. Despite the number of investigative and policy issues referenced earlier in this report, reviewers noted only three cases where these issues were identified and addressed by the captain. While a significant proportion of these were ultimately caught and resolved by the FRU or FRB, the chain of command’s written reviews evidenced little careful scrutiny of the investigation quality, potential conflicts, or other issues.

“Every supervisor in the chain of command is responsible to assure the accuracy and completeness of the Investigation Reports completed by supervisors.”⁴³ Consequently, captains must more regularly identify investigatory deficiencies and hold sergeants accountable for those deficiencies – and lieutenants who did not identify such deficiencies accountable for not addressing the issues.

Overall, the approximately 74 percent of chain-of-command reviews cases were judged by the reviewers to be adequate or thorough, with 26 percent being inadequate. These findings were cumulative, and inadequacies in the evaluation often stemmed from of issues with the investigation and the investigative report that were not resolved or identified by the chain of command.

However, one very good piece of news is that the FRU – and, where relevant, the FRB – did a commendable job of identifying policy issues and inconsistencies, as well as issues with the actual force and tactics, that were not caught earlier in the process. Their review was not complete in every case we reviewed, and there were there were investigative issues – such as a lack of a recorded interview or photographs – that simply could be cured after the fact. Nonetheless, we noted 15 of the total 27 cases where either FRU or FRB identified and addressed concerns about the conduct of the investigation, the factual analysis, or the ultimate determination. We interpret this as evidence that the SPD, overall, has the ability to conduct thorough, rigorous analyses of force-related evidence and to make well supported judgments about officers’ tactics and use of force. Better adherence to

⁴¹ 11.020(10)

⁴² Dkt. 3-1 ¶ 108.

⁴³ Dkt. 3-1 ¶ 109.

investigative protocols and more careful documentation of investigative tasks and results will assist the Department in continuing to improve overall accountability for the use of force by its officers.

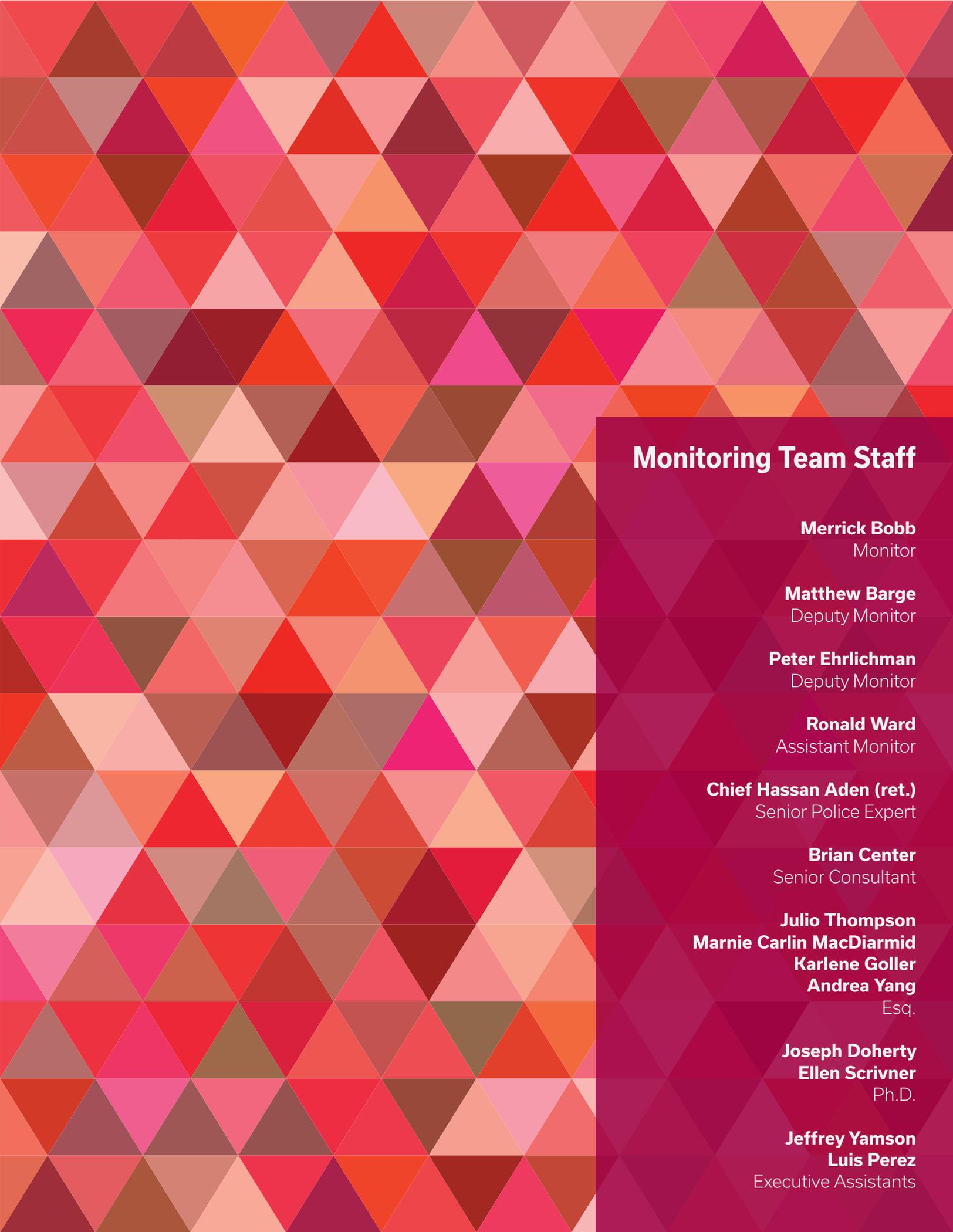
Nevertheless, under SPD's existing policy, not all Type II use of force cases are reviewed by FRB. Currently, a random sample of 10 percent of cases each month will be referred to the FRB by the FRU, along with all cases that meet certain criteria such as those involving less-lethal weapons or physical conduct by a canine, or those involve the possibility of misconduct. The FRU may also refer additional cases based on the circumstances.

For those cases that will not be referred to the FRB, the responsibility for catching all deficiencies cannot rest on a single professional within a single entity, the FRU. Consequently, the sense that problems with Type II investigations and reviews are being "caught" and appropriately handled only goes so far in mitigating the significance of the finding that too many Type II force investigations remain inadequate.

Further, the Consent Decree is especially specific about what supervisors must do in the wake of Type II force.⁴⁴ Those particular requirements were memorialized in the Court-approved policies related to the investigation and review of force.⁴⁵ The Decree does not indicate that the failure for the chain of command to adhere to its express requirements is obviated by FRU or FRB's identification of a problem in some instances. Instead, there must be sufficient assurance that the letter of those unambiguous provisions is being appropriately and affirmatively followed in a sufficient number of instances.

⁴⁴ Dkt. 3-1 ¶¶ 104-11.

⁴⁵ Seattle Police Manual Section 8.400 et seq, available at <https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/55b699e6e4b0ce13f700d60f/1438030310409/Reporting+and+Investigation+of+Force.pdf>.



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