



U.S. Department of Justice

Civil Rights Division

JMS:LC:SJD:TJM:tr:jk:dj
207-52-4

*Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530*

September 13, 2011

Via Electronic Mail and First Class Mail

Mr. Steve Levy
Suffolk County Executive
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099

Re: Suffolk County Police Department Technical Assistance Letter

Dear Mr. Levy:

On September 1, 2009, the U.S. Department of Justice Civil Rights Division and the U.S. Attorney's Office for the Eastern District of New York initiated a joint investigation of the Suffolk County Police Department ("SCPD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). In accordance with our pledge to conduct a transparent investigation and to provide technical assistance to SCPD as appropriate, this letter provides preliminary observations, advice and recommendations to address concerns regarding SCPD's policies and procedures as well as certain policing methods. We addressed these concerns and gave you oral recommendations during our meetings with Commissioner Dormer and SCPD command staff in February and March 2010 and on May 20, 2011. We have not yet made formal findings, which will be contained in a separate letter.

The technical assistance provided below is intended to assist SCPD in its efforts to provide constitutional police services, and are not mandates. Constitutional policing is a critical element to ensuring public confidence in the police force and in promoting public safety. These recommendations were developed in close consultation with our police practices consultants and closely follow the productive dialogues we have had with SCPD command staff and officers. Because important aspects of our review process have yet to be completed, this technical assistance letter is not meant to be exhaustive. Rather, it focuses on recommendations we can provide at this stage of our investigation. We recognize that SCPD has already taken some steps to address our concerns, as set forth in the May 11, 2011 letter from County Attorney Malafi. We look forward to continued collaboration to address concerns about SCPD's policing services.

I. PATROLLING AND POLICING

Among the issues that we are investigating is the claim that SCPD engages in discriminatory policing, that its approach to the Latino community discourages Latino victims from filing complaints and cooperating with the police, and that the Department fails to investigate crimes and hate-crime incidents involving Latinos. While we have not yet made findings, we believe that several SCPD policies may contribute to these concerns: (1) Chapter 16, Section 4, “Arrest and Prisoners: Arrest or Detention of Non-U.S. Citizens or Persons with Dual Citizenship;” (2) Chapter 24, Section 6, “Investigations: Hate Crimes;” and (3) Chapter 13, Section 8, “Reporting Police Activities.” Our recommendations for revisions are provided below.

SCPD Should Modify Certain Policies and Procedures that Affect Latinos

We have a few global recommendations about revising policies and procedures. First, we noted that SCPD policy and procedure updates are circulated through “packets,” which may not be the most effective manner to update officers about changes to officers. For example, as part of our June 2011 document request we sought a list of all SCPD policies that have been updated since 2008. We received five packets (numbered 52-56) of the updated policies and procedures. Each packet had a cover sheet which provided a very brief summary of changes, but no explanation of the rationale or the consequences of the changes. We suggest that the summary cover sheet provide a more substantive explanation of changes and the reasoning for them.

Second, the revised versions of the policies that followed in the packet did not indicate where the changes made were found. For this reason, we again recommend that when providing revised policies and procedures, SCPD publish the revisions in a manner that highlights the changes in the document itself. Otherwise, officers are required to compare the prior version and the new version side-by-side in hopes of gleaning the changes.

Lastly, SCPD does not have a system that ensures that policies are reviewed on a regular basis. To ensure that policies are up-to-date and reflect the practices of the Department, they should be reviewed every 6 to 12 months. It is difficult to determine whether a policy is due for review because the date of the last revision is not noted. The form of each policy has a place to indicate its effective date, but it is frequently marked “N/A.” Below, we provide comments and technical assistance for three current SCPD policies that should be revised. These three policies either are too vague or provide insufficient guidance to officers to render them effective. Consequently, these policies are a disservice to SCPD officers and the Suffolk County community as a whole.

(1) Chapter 16, Section 4: Arrest and Prisoners: Arrest or Detention of Non-U.S. Citizens or Persons with Dual Citizenship

SCPD policy that governs the collection and use of information regarding the immigration status of witnesses, victims and suspects is too vague to provide officers with necessary guidance and is subject to abuse.

SCPD policy and procedure prohibits officers from questioning witnesses and victims about their immigration status but requires SCPD officers to question a person arrested for a crime regarding his or her immigration status, regardless of the charge, “when there is reason to believe” that the arrestee is an “undocumented person.” Chapter 16, section 4. Specifically, the policy section of Chapter 16, Section 4 states the following:

When there is reason to believe that an individual arrested for a criminal offense may be an undocumented person, the Police Department is responsible for alerting federal immigration officials, the prosecuting attorney, and the judiciary. While enforcement of immigration laws is primarily a federal responsibility, State, County and local law enforcement agencies necessarily and appropriately should inquire about a person’s immigration status under certain circumstances (emphasis added).

This policy is too vague and offers little or no guidance on how to determine whether there is reason to believe that an individual is an “undocumented person.” Without more clarification, this policy is vulnerable to abuse and exposes SCPD to allegations of racial profiling and potential legal action for discrimination on the basis of national origin.

The weakness of SCPD policy is further highlighted by Paragraph VI.(A), “Procedure,” of Chapter 16, Section 4 which provides for SCPD officers to determine if an arrestee “was born outside the country.” It states:

Arrests of Non-U.S. Citizens -- When processing an arrest for a felony or misdemeanor and the processing officer knows or reasonably suspects the defendant *was born outside the country*, the following procedure will be followed.... (emphasis added).

The standard for determining whether a person was “born outside the country” also is ambiguous. For example, an officer may inappropriately rely on a person’s apparent ethnicity, race, or even language or manner of speech as the basis for making this determination. There is no standard for determining whether an individual has been born outside the United States. Moreover, implementing this procedure would compel officers to question all individuals, including those who may have been born in a foreign country but who are presently U.S. Citizens, Permanent Residents, or those authorized to work, study or reside in the United States (for example, individuals who are naturalized U.S. citizens.) SCPD should revise the policy and procedure language of Chapter 16 and the training provided to officers related to these provisions.

As we noted during our conversation with you on May 20, 2011, it is our understanding that as of February 2011, Suffolk County has become an activated jurisdiction as part of “Secure Communities,” a state and federal partnership administered by the Department of Homeland Security.¹ Due to the possibility that this may raise fears in the Latino community, we recommend that SCPD, through outreach to the community, explain what joining “Secure

¹ United States Immigration and Customs Enforcement, “activated jurisdictions,” *available at* www.ice.gov/secure_communities/ (last accessed 07/25/2011).

Communities” means and what SCPD would be doing, if anything, differently. We made this recommendation during our May 20, 2011, meeting and you stated that you believed that there was no concern within the Latino community about SCPD’s joining “Secure Communities.” However, there appears to be a lack of communication between the Latino community and SCPD and that concerns do exist regarding SCPD’s participation in this program.

Lastly, we encourage SCPD to expand its list of embassies attached to Chapter 16, Section 4. SCPD uses this list to meet its obligation to notify the appropriate embassy if a foreign citizen is arrested. The list at present includes only one Spanish speaking country, Costa Rica. As Suffolk County has a large population of individuals from South and Central America, we recommend reaching out to consular offices for Spanish speaking countries, including Mexico, El Salvador, Ecuador, Peru, Nicaragua, Guatemala, Honduras, and Colombia.

(2) Chapter 24, Section 6: “Investigative Operations of Hate Crimes”

SCPD policy that governs the investigative procedure of the Hate Crimes Unit is inconsistent with SCPD’s duty to provide Limited English Proficiency (“LEP”) individuals with adequate services.

As currently written, this departmental order requires that “[i]n every case where a hate crimes unit investigator is consulted and determines that an incident is not a hate crime, an investigator from the hate crimes unit will conduct an *in person follow-up interview* with the complainant.” (emphasis added). During our investigation it appeared that, despite the order, hate crimes detectives rarely conduct an *in-person follow-up interview* with complainants. Indeed, during the course of our interviews, we spoke with victims and individuals who complained that they did not receive any form of follow-up interview by SCPD for incidents that they perceived to be bias-related and potential hate crimes.

To address this issue, we recommend SCPD revise or modify this policy to require its Hate Crimes Unit (“HCU”) to contact all hate crimes victims and possible victims, but to allow these contacts to be either in person or via telephone. SCPD should also mandate that these contacts be made within a specific time frame and be documented to demonstrate that procedure was followed. Further, we strongly recommend that SCPD develop a quality assurance mechanism to prompt detectives to contact victims or possible victims with status updates at periodic, reasonable intervals. This will ensure that victims are kept abreast of the status of investigations and build trust with residents. To ensure effective communication with victims who are LEP, detectives must use language assistance services, such as competent bilingual staff or telephonic interpreter services. We commend SCPD for implementing measures to this end, such as the installation of interpreter cell phones in some police patrol units and the installation of interpreter telephones in public police facilities, as mentioned in County Attorney Malafi’s May 11, 2011 letter. However, we have received reports that these services are not always available, or that individuals with LEP needs have not been given access to such services. This will be discussed further in our formal findings letter.

We also recommend that the supervisor(s) of the HCU routinely conduct random audits of hate crime investigations each month. The routine audit should, focus on among other things, the quality of the investigation and whether officers make contact with victims or alleged victims

or at least attempt to make contact and are accurately documenting their efforts. This additional level of scrutiny also will help ensure that victims are kept informed.

(3) Chapter 13, Section 8: Reporting Police Activities

SCPD policy that governs when an officer is required to make a report of an incident is too vague with regard to the term “Youth Disturbances,” and it likely will result in underreporting and inadequate tracking of hate or bias incidents by youths against immigrant individuals.

Departmental policies permit officers to fail to report incidents even though the information gathered may be useful for investigative purposes. This raises a particular concern with respect to hate crimes. Currently, officers may “dispose of a call” and not prepare a field report with respect to:

- (3) Calls which are non-criminal (no offense committed), and
 - (a) Have either an anonymous complainant or a complainant that declines/refuses an interview or is not physically present, or
 - (b) Have a complainant, and the information provided by the complainant does not necessitate the preparation of a Field Report, such as:
 - (1) Youth Disturbances. . . .

See Paragraph VI(7)(a)(1)-(3) of Chapter 13, Section 8.

We strongly recommend that SCPD modify Chapter 13, Section 8 to eliminate the use of the term “non-criminal.” The current “non-criminal” label may diminish the level of investigation given to a matter. Merely because a complainant is reticent, anonymous or no longer available does not properly obviate the need for accurate reporting. Indeed, there are many victims in the immigrant community who may be reluctant to cooperate, terming a matter “non-criminal” may also be unintentionally affecting the County’s ability to assess how many hate crimes or incidents may be occurring at any given time.

Further, we also recommend that SCPD delete (a)(3)(b)(1) which lists “Youth Disturbances” as one of the instances in which officers are not required to prepare a field report even though they receive a complaint. The term “Youth Disturbances” is vague and undefined and could result in SCPD missing critical patterns of crime. For example, if an officer were called to a scene of a man being shot at by youths carrying BB guns and the youths then ran away, that officer might describe the incident as a “Youth Disturbance.” In fact, the offense itself could be a precursor to a more severe string of violence by those youths. Our example is not hypothetical, but rather taken from the facts prior to the death of Marcelo Lucero in November 2008. As you will recall, after the death of Mr. Lucero, other Latino men came forward and claimed that they had been attacked (glass bottles thrown at them, being harassed, or having BB guns shot at them) by the same teenagers. One Latino man in particular claimed that he had been shot at by youths with a BB gun on the same evening and alleged that SCPD had called the incident a “disturbance.”

In making this recommendation, we highlight that individuals have informed us that the response time of SCPD can be long and, because of prior experience waiting for police services, victims often leave the scenes even if injured. One victim told us that he called the police after being attacked by a group of youths, but he left the scene after waiting thirty minutes for the police to arrive. He was bleeding and needed to return home to care for the injury to his face.

In such an instance, even if the individual left the scene, SCPD should capture as much information and/or documentation as possible and prepare a field report or an abbreviated police report. The abbreviated police report would include the reason for the service call (i.e. robbery) with the notation of “victim declined to be interviewed,” or “victim gone,” and could then be tracked electronically to determine any pattern of crimes, types of crimes, or if certain areas are being sought out by criminals despite not having testimonials from victims. Additionally, we recommend SCPD seek ways to minimize response time for victim calls.²

II. HATE CRIMES UNIT

Hate crimes can have a debilitating effect on a community. When these types of crimes go unaddressed, community members quickly develop a perception of police apathy that undermines the ability of the force to protect the community. During our interviews with members of the immigrant community, we found that many felt that “immigrant bashing” was abetted by SCPD through inaction. Our review of SCPD policies has revealed at least three factors that contribute to inadequate hate crime response: (1) Erroneous reporting of hate crimes from SCPD to New York State, (2) Vague and conflicting instruction and policies to officers regarding hate crimes, and (3) Insufficient mechanisms and processes for tracking hate crimes/incidents and following up on hate crime/incident complaints. Although we commend SCPD for establishing a dedicated county-wide Hate Crimes Unit, we recommend that SCPD continue to develop a more effective response to hate crimes and bias incidents.

A) SCPD’s Hate Crimes Unit Has Long Misunderstood How to Report Hate Crimes, and there is No Indication that the Problems Have Been Fully Rectified

A June 2004 letter from Mr. James Seymour, New York State Hate Crimes Reporting Coordinator, to SCPD illustrates that SCPD, in the fairly recent past, has not been correctly reporting hate crimes to the NYS Department of Criminal Justice Systems (“DCJS”). Mr. Seymour’s memorandum stated that:

“[s]ome of your reported Making Graffiti incidents comments noted Anti-Jewish or Anti-Black symbols were drawn. If the officer had charged PL 145.00 Criminal Mischief 4th instead of or in addition to Making Graffiti, the incident would be considered a hate crime. Charge PL 145.60 [(Making Graffiti)] only and it is not recognized as a hate crime.”³

² Although we cannot confirm how long the victims we interviewed waited for police assistance, we believe, based on victims’ statements and SCPD officers’ representations, that there are not enough officers patrolling the streets and that extended delays in service do occur.

³ The New York State Hate Crimes Statute, New York Penal Law § 485, provides, generally, for the enhancement of the penalties for certain “specified offenses” when the

Therefore, because the officers who initially responded to these incidents did not charge the incidents correctly as specified offenses defined by the statute, the incidents were “not counted” as hate crimes. New York State Division of Criminal Justice Services, Memorandum to Detective/Sargent [sic] Robert Reecks, Suffolk County PD, June 14, 2004.

It appears from this letter that SCPD was sensitive to hate crimes in 2003, but lacked a procedural or legal understanding of what type of charged offense could be recognized as a hate crime. Because this is a matter which could possibly be addressed by training, DOJ requests that SCPD submit documentation illustrating the concrete steps it has taken to improve training regarding charging hate crimes. DOJ recognizes that SCPD may have improved its ability to correctly report hate crimes to NYS DCJS in the seven years since this letter was written.

B) Definitions and Examples of Hate Crimes Provided in Various Policy and Instructional Documents are Vague and Inconsistent

In addition to the mistakes that have been discovered in SCPD’s external reporting mechanisms, SCPD’s internal guidance with respect to hate crimes is vague and inconsistent. SCPD presents its descriptions of hate crimes law in ways that may be confusing to officers because the definitions are frequently inconsistent and inadequately explained. For example, in the sheet titled “Hate Crimes Q&A,” the following question and answer dialogue appears:

Q: “Is painting/drawing of a swastika on a public place an example of a hate crime?”

A: “Only if it’s specifically directed at an individual or individuals.”

But the packet “No More Hate: Hate Crimes 2010,” described below, explicitly states that aggravated harassment in the first degree includes a provision that

“A person is guilty of aggravated harassment in the first degree when...he... etches, paints draws upon or otherwise places a swastika commonly exhibited as the emblem of Nazi Germany on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator, or whoever paints, draws upon or otherwise places or displays a “noose,” commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private owned by any person, firm or corporation or any public agency...without express permission....”

perpetrator of the offense selects his or her victim or commits the act or acts constituting the offense because of what the perpetrator believes is the victim’s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person. See N.Y. Penal Law § 485.05 (McKinney 2003) for a list of cognizable offenses that can be considered hate crimes. The statute refers to these as “specified offenses.” As the letter from Mr. Seymour notes, “Making graffiti” does not appear on the list of specified offenses; “Criminal Mischief in the 4th degree” does.

The above description of the law does not require that there be evidence that the subject “specifically directed [the symbol] at an individual or individuals;” rather, according to this description of the law, the law presumes that one who paints a noose or swastika is, by that very act, directing the symbol to an individual or individuals. SCPD should clarify these two descriptions of the law so that they are presented in a way that is consistent—and correct—to officers. If officers are given conflicting or inaccurate statements of what the law requires regarding the painting of nooses and swastikas, the county and the state lose the ability to accurately track these forms of hate crimes.

Another example of how the SPCD’s materials provide inadequate instructions to officers regarding the charging of hate crimes is that, although the packet “No More Hate” describes several charges, including “aggravated harassment in the second degree” (prohibiting various forms of assault and battery against another that is motivated by race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation), “aggravated harassment in the first degree” (prohibiting damaging religious premises and painting swastikas and nooses,” and “aggravated disorderly conduct” (prohibiting disrupting a religious service), it does not list the full panoply of charges that officers can use when a crime is motivated by animus towards one of the protected groups. For example, in its 2004 letter, DCJS notes that charging the perpetrator of a graffiti drawing that contains, for example, anti-Jewish slogans with “criminal mischief” would allow the charge to come under the definition of a hate crime. (See New York State Division of Criminal Justice Services, Memorandum to Detective/Sargent [sic] Robert Reecks, Suffolk County PD, June 14, 2004). The packet “No More Hate” describes the law in general that prohibits graffiti, but inexplicably lacks a description of the charge that would allow the crime to be upgraded to a hate crime.

Additionally, there is no mention in this packet or in any of the other documents provided by Suffolk County that attempts or conspiracies to commit hate crimes are also chargeable offenses. Further, there is no instruction for officers on how to determine whether a suspect has a hate-based motive. These details are critical because pursuant to NY Penal Law § 485.05 (McKinney 2003) in order to charge a hate crime, there must be a specific motive—one that is directed toward an individual based on one of the prohibited categories. Accordingly, if officers are to correctly identify and charge hate crimes as hate crimes, they have to be able to accurately detect such motives.

Finally, there is no mention in any of these materials that youths can be charged with hate crimes. Officers need to be informed clearly that youths are capable of committing hate crimes. The tendency to brush off attacks as “just kids being kids” fails to recognize the severity of criminal conduct in which minors may engage, as seen from the murder of Marcelo Lucero, whose attackers were high school-aged youths. Greater detail and consistency are required throughout these documents in order for officers to have the direction they need to correctly charge hate crimes and prevent hate crimes from occurring.

While we understand the HCU is charged with investigating hate crimes, as well as “hateful incidents,” there does not seem to be a clear definition of what constitutes a hateful incident. Bias driven behavior, even if it does not rise to the level of a hate crime, can be significant, and it should be addressed. Unchecked, it can develop into serious hate crimes, as evidenced by the events preceding the death of Marcelo Lucero.

To better anticipate and address bias incidents, SCPD should develop clearer definitions of what constitutes a “bias incident” or “hate incident.” During our on-site visits, we saw multiple references in documents, including arrest reports and incident reports, to bias incidents and hate incidents. However, while examples of “hateful incidents” have been offered, such as painting a swastika on a stop sign, none of the SCPD officials we met with were able to provide a clear definition of a hateful incident. This lack of clarity may be the result of guidance materials that officers receive regarding hate incidents. For instance, the packet “No More Hate: Hate Crimes 2010” attempts to lay out the definition of a “hate incident” by contrasting it with the definition of a hate crime. The discussion begins with the following definition of a hate crime:

1. “‘Criminal Offense’ means offenses that are criminal in nature, including juvenile offenses, disorderly persons offenses, misdemeanors, motor vehicle, offenses, felonies and crimes + ‘Bias motive’ means that the perpetrator and [sic] a motive to commit the criminal offense because of the victim’s (actual or perceived) race, color, religion [sic] Ethnicity, sexual orientation, gender [sic] N[sic]ational origin, or disability = If either element—criminal offense or bias motive—is absent, then there is no hate crime. A bias motive coupled with some action that does not constitute a criminal offense is often referred to as a ‘Bias incident.’”

There is no further elaboration on what “some action” could be—but such elaboration is critical. As we mention above, incidents that might not rise to the level of a crime could nevertheless be predictors for future hate crimes; officers therefore need to have a clear understanding of the sort of hate incidents that they should take note of but this packet does not provide such guidance. Where applicable, specific examples of hate incidents should be provided; while DOJ understands that SCPD cannot anticipate every possible scenario an officer will encounter, several illustrative hypothetical or actual examples could at least provide some guidance to a topic that otherwise might be vague. Taking these steps would help ensure that officers take note of those incidents that might not rise to the level of a chargeable offense, but that could serve as predictors for future crimes, and ensures that officers have the confidence of knowing that the county has defined these terms consistently.

C) SCPD Should Develop Better Methods to Track Hate Crimes/Incidents and Follow Up on Hate Crime/Incident Complaints

In addition to providing clear definitions of “hate incidents” and “hate crimes,” SCPD should develop a better system for tracking these types of incidents and crimes. For example, in “SCPD Internal Correspondence” between February 5, 2008, and May 4, 2011, there are monthly reports regarding the hate crimes cases reported from the same month the previous year, broken down by race, religion, ethnicity, sexual orientation, disability, and “non bias.” However, it does not appear from these reports that SCPD accurately tracks or trends this data. Such tracking and trending will assist in observing patterns of behavior and areas which require further attention.

We also suggest that SCPD also conduct a crime victim survey, which would enhance its ability to identify and understand trends. Such a survey could provide SCPD with a basis to compare its internally generated data and assess the accuracy of its reporting mechanisms. For example, if the number of hate crimes reported has decreased from one year to the next, but a crime survey illustrates an increase or stagnation in hate crimes, that could serve as evidence that the HCU is unsuccessful in decreasing hate crimes and does not have sufficient reporting mechanisms in place. If, however, the number of hate crimes reported has increased, and has kept pace with any increase in hate crimes that were reported in the victimization survey, that would illustrate to the HCU that its reporting mechanism is working, even though it has not been successful in decreasing hate crimes. Finally, if the victimization survey showed a decrease in hate crimes that could illustrate that the HCU is succeeding in reducing hate crimes. The National Crime Victimization Survey distributed by the Bureau of Justice Statistics could serve as a model. SCPD may be able to partner with local universities and non-profit organizations to develop a plan to distribute such surveys.⁴

We also understand that SCPD police officers and investigators now receive a full day of Hate Crimes training. We recommend that SCPD ensure that all members of the department receive this training and regular refresher training. Training in hate crimes and bias incidents will enhance SCPD patrol officers' abilities to take citizen complaints in the normal course of business and collect relevant information about hate crimes. Reporting officers should be trained to elicit information about racial epithets or other hate crime indicia or other conduct which may be offensive to an identifiable group. This practice will demonstrate to the community a continued awareness and sensitivity to hate crime violations and improve the ability of SCPD to identify and track them.

According to County Attorney Malafi's May 11, 2011 letter, SCPD policy was changed to require reception and investigation of third party complaints. SCPD should always allow community members who may be reluctant to contact the police to make reports about harassment or crime through third party community organizations. Community organizations may be less intimidating than the police precincts. By working with these organizations the Department will restore confidence in the Latino community in the investigative process and minimize community reticence to report crimes. Community members should be advised of the option to report through a community group or the Department's web page. Greater involvement of patrol officers in the initial handling of hate crimes will also enhance SCPD's ability to address hate crimes and incidents. We understand that, at present, it is the practice of patrol officers and their supervisors to defer entirely to the HCU when a hate crime or bias incident occurs. While clearly the HCU, should take the lead in these investigations, training patrol personnel in this area will result in greater and more accurate identification of hate crimes and bias incidents.

SCPD also needs to improve its follow-up after receiving a complaint of a hate crime or incident. We recommend that SCPD provide a status update, within a reasonably prompt timeframe, to a person who has reported an incident of hate-related conduct to an officer (such a person might be a witness, victim, or potential victim of the incident). If SCPD contacts LEP

⁴ See Bureau of Justice Statistics Crime Victimization Survey, *available at* <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=245> (last visited July 12, 2011).

individuals, it must use appropriate language assistance services including competent bilingual staff who speak the non-English language or telephonic interpreter services. We recognize that police officers are already obligated to provide updates to civilians who file complaints against officers, but we believe that the follow-up should be extended to situations in which a person has reported a bias incident or any incident that does not rise to the level of a crime. We also recommend that SCPD memorialize these incidents and send them to an electronic database to help map and track possible crime hotspots. Such affirmative actions convey the notion to the community that police officers are actively seeking to address bias incidents and are keeping individuals aware of what happened even when the incident may not rise to the level of a hate crime.

Public confidence in the police department will increase and the public will assist the Department to ensure public safety once the public witnesses that hate crimes are being properly documented and investigated. In the wake of past violent attacks against immigrants in Suffolk County, the SCPD should take proactive and deliberate steps to ensure that the HCU remains committed to investigating all hate crimes in an effective and independent manner.

III. MISCONDUCT INVESTIGATIONS

We recommend that SCPD revise its procedures for receiving and investigating reports of police misconduct, including modifying its report form to preserve the integrity of each investigation and to enhance complainant confidentiality. SCPD should modify its current process for investigations of allegations of misconduct by officers to ensure that: (1) all allegations are consistently investigated; (2) complainants remain engaged in the complaint process until resolution; (3) formal or official tracking numbers are established for each allegation, and (4) supervisors receive proper training in how to review and address the findings of internal misconduct investigations. By addressing these issues SCPD will improve its reputation in the Latino community.

A) Citizen Complaint Forms and Processes

An open, fair, and impartial process for receiving and investigating citizen complaints serves several important purposes. An appropriate citizen complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations, increasing public confidence in and respect for law enforcement. Improving SCPD's current procedures for handling citizen complaints would maximize these goals.

Under the SCPD's current practices, complaints may be made at SCPD Headquarters or any of the precincts located throughout Suffolk County. When a complaint is made, a copy of the printed online Civilian Complaint Report or the manually completed Form PDCS-1300 is given to the complainant. This form includes the complainant's name, address, and phone number, as well as details of the complaint. If this form is lost by the complainant, or is viewed by the subject of the complaint, it may compromise investigation of a complaint. We recommend that SCPD develop a privacy-oriented tracking system that does not include personal identifiers to protect the identity of the complainant, any witnesses and the officer. This will further serve to preserve the integrity of the investigation.

According to SCPD policy (Order Number 10-25), Compliment/Complaint Information Reports (PDCS-1300-1) are to be “conspicuously displayed in each precinct lobby, Headquarters lobby, and at other appropriate public facilities, in such a manner that members of the public can obtain one without asking.” See Paragraph V(A)(1)(a) of Chapter 5, Section 2. We recommend that blank complaint forms be available in publicly accessible locations such as libraries, post offices, and community recreation centers and that forms continue to be available without the need for a specific request. Accessibility to complaint forms makes it easier for a resident who may be reluctant to go to a local precinct or other SCPD facility, because, for example, he or she has already had a negative interaction with SCPD officers. Civilian complaint forms and informational materials should be also carried by all SCPD patrol officers and be available on the SCPD website.

According to County Attorney Malafi’s May 11, 2011 letter, SCPD has developed a self-submit complaint form available in both English and Spanish. The letter states that this form is available, without asking, in all precincts as well as at police headquarters, the Suffolk County Human Rights Commission, and at public libraries. We recommend that the form be available in additional locations and that it be made available in English, Spanish and any other commonly used language in Suffolk County. We also recommend that complaint forms be available online, both for completion and for electronic submission. As discussed above, as recipients of federal financial assistance, and given the growing Spanish-speaking population in Suffolk County, SCPD must ensure that it has language assistance services in place and that it provides them at no cost to LEP individuals.⁵ This means that complaint forms and other vital information must be translated into Spanish and other non-English languages and competent bilingual officers and other interpreter services must be provided to assist LEP complainants in filling out the necessary form. Our formal discussion regarding Suffolk County’s provision of LEP assistance will be in our Findings Letter.

SCPD Order Number 10-25 states that the civilian complaint procedure is intended to ensure that all department members will refer complaints regarding official misconduct to their respective officers in charge. The policy should define “official misconduct” to include criminal and serious administrative misconduct that could result in dismissal. SCPD should also consider using the word “allegation” throughout the text of Order 10-25 instead of “complaint” and should define “allegation” in Section III. SCPD should consider incorporating a definition similar to the following:

⁵ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, VI requires recipients of federal financial assistance to provide meaningful access to LEP individuals by providing translated vital documents like complaint forms. We have three memoranda of agreement between the Department of Justice and law enforcement agencies as a result of Title VI investigations to provide examples of policies and procedures that should be in place to ensure SCPD is complying with the requirements of Title VI and its implementing regulations. We also attached a copy of the U.S. Department of Justice *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*, which is available at http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf. (last visited July 12, 2011).

An allegation is the reporting of any employee misconduct classified as: (1) Criminal – an act or omission of a duty that, if substantiated, would result in a criminal conviction; or (2) Administrative – an act that, if substantiated, could result in disciplinary action up to and including dismissal. Allegations do not include routine supervisory matters or other performance issues (e.g., losing credentials, failure to engage video camera).

The definition of allegation should include actions or performance and non-performance that violate policy, rules and regulations, procedures, criminal or civil law, written directives, operational instructions, interoffice communications, personnel orders, and training regulations. It should also include the requirement of all officers to report such conduct. Using the term “allegation” is preferable to “complaint” because “complaint” implies more formality, an element of proof, and usually suggests the complainant identifies himself. Conversely, allegations imply less of a requirement for substantial knowledge; they are merely a transfer of information to an authority to investigate.

Although we commend you for signing an executive order in 2010 which provides for the Human Rights Commission to accept and process complaints against SCPD that allege undue force or discriminatory conduct,⁶ the HRC’s efficacy seems limited. According to interviews we conducted, when the HRC receives complaints against the police, it does not independently investigate them. Instead, it refers them to IAB or other internal police investigatory units. This is not an effective method of ensuring independent monitoring of police conduct, and it gives the public a false impression.

B) Intake and Tracking of Complaints Against Law Enforcement

1) Intake of Complaint

SCPD should accept all complaints or allegations of police misconduct, including anonymous or third party complaints that, if true, would constitute a violation of applicable laws or SCPD’s rules and regulations. The form of the complaint or allegation should not be an impediment to its receipt, tracking, and processing; allegations should be accepted by individuals making them in person or by telephone, complaint form, personal letter, website, email, fax, or TDD. SCPD policy should make clear that all allegations, regardless of the source, will be reviewed and a determination made as to the nature and extent of the investigation required. SCPD policy should make clear that complaints and allegations do not have to be submitted in writing. Thus, SCPD Order Number 10-25 Paragraph VI.B(1-3), regarding third-party complaints, could be eliminated and replaced with language indicating that all complaints will be accepted and subjected to review by IAB, which will determine if an investigation is warranted and the nature and extent of the investigation to be conducted. If an incident is determined to be a performance issue, it can be returned to the precinct through the chain-of-command for disposition, with a copy of the final resolution to IAB. SCPD policy may also choose to incorporate language indicating that it will seek a criminal prosecution against any person who intentionally files a false complaint. IAB should be responsible for classifying, processing, and

⁶ The Suffolk County Human Rights Commission 2010 Annual Report.

disseminating all complaints against SCPD members. In addition, even if the complainant wishes to withdraw the complaint, the investigation should continue to resolution.

SCPD Order Number 10-25, titled “Civilian Complaint Procedure,” effective August 2, 2010, requires that when a member of the public prepares a complaint via the Compliment/Complaint Information Report, that report “can” be forwarded directly to the Internal Affairs Bureau (“IAB”) by the command accepting the report. We recommend that SCPD send all potential complaints and allegation, not just Compliment/Complaint Reports, to IAB. Further, we recommend the policy be rewritten to read that such complaints “must” be forwarded to IAB within the next 48 hours.

All IAB complaints should be maintained on a strictly need-to-know basis and access to such complaints should be restricted to IAB personnel whenever possible. Order Number 10-25 states that supervisors must, when possible, record complaints where a person is physically located. See Paragraph V(C) of Chapter 5, Section 2. We recommend instead that all potential complaints against SCPD officials be transferred or referred directly to IAB, via telephone or in person. For example, when an individual calls a local precinct, rather than the central SCPD switchboard, the Precinct Duty Officer should connect the caller directly to IAB and then drop the line, to preserve the integrity of the allegation and protect the caller from inadvertent or improper disclosure. Complaints against other agencies could be taken by the Duty Officer and also referred to IAB. .

In addition, all SCPD members have the responsibility to report allegations as soon as they become aware of them, including self-reporting. SCPD policy should provide a penalty for the failure to report allegations as well as a penalty against those who retaliate against members who initiate such reports. IAB also should have protocols in place to ensure that it receives a direct report if any member of the department suspects that an officer any may have engaged in certain types of conduct such as bribery, drug use, excessive force resulting in egregious bodily injury, and other allegations of a serious or sensitive nature. Further, IAB should ensure that protocols exist so that it is notified of the disposition of all prosecutions of SCPD officers in cases involving charges of obstruction of official business, resisting arrest, officer assault, or disorderly conduct. Similarly, IAB should be notified by the Suffolk County District Attorney’s office or local courts when SCPD officers are accused or have been found guilty of having intentionally violated individuals’ constitutional rights.

2) Tracking Complaints

SCPD Order Number 10-25⁷ states that a copy of the online complaint report or PDCS-1300 should be given to the complainant. However, this document could be misplaced or shown to someone without a need to know, thus exposing to third parties the identities of potential witnesses, police officers, etc. Instead, to ensure the proper and timely resolution of civilian complaints, we recommend that SCPD assign complaints a complaint number to be used to track the investigation. Copies of the complaint should be made available upon request and every

⁷ In addition to the recommendations regarding SCPD Order Number 10-25 we make in the main text of this letter, we also attach a red lined version of the Order with additional recommendations.

complainant should be made aware of this opportunity. Complainants may use the complaint number to follow up on the status of the investigation. All complainants should also receive a letter acknowledging receipt of the complaint and thanking them for providing the information. When the complaint is written in a non-English language, SCPD should promptly translate the contents of the complaint and send an acknowledgement written in that non-English language. A copy of this letter should be maintained in the investigative folder. At the conclusion of an investigation, SCPD should notify all relevant parties, including complainants, of the final disposition. If one or several of the relevant parties are LEP, this notification should be provided in the appropriate non-English language(s). Through our early document review, we have found variance in the quality of notification letters to complainants. We suggest a standardized letter that allows for providing important information to the complainant such as the IAB reference number. In this way, citizens can, if they choose, contact IAB and easily reference their complaints.

C) Citizen Complaints of Criminal or Illegal Conduct

We encourage SCPD to adopt a policy that explicitly prohibits officers from engaging in conduct that tends to discourage a citizen from making a complaint regarding criminal or illegal conduct. During our tour, we heard complaints that some officers have declined to take formal complaints if the alleged perpetrator is a juvenile or where the officer perceives the alleged offense as not serious. Some individuals also claimed that officers declined to assist them where language was a barrier to communication. The intake process should facilitate the public's ability to make complaints and reduce the perception that SCPD discourages complaints. Further, any new policy or procedure should provide that if an officer violates the policy he or she may be subject to discipline.

D) Early Warning System

We recommend that SCPD use its current computer database early warning system, IAPRO, to track data on use of force, citizen complaints, internal investigations, service calls, discipline, and other items relevant to each officer's conduct. SCPD should use this data regularly and proactively to: (1) promote best professional police practices; (2) improve accountability and management; (3) manage the risk of police misconduct and potential liability; (4) evaluate and audit the performance of officers and units; (5) evaluate and assess the effectiveness of training and policy; and (6) recognize and commend positive officer performance.

In keeping with best practices, we recommend that, to the extent that it does not already, SCPD use IAPRO as follows:

1. The early warning system should capture information on all investigations and complaints, including non-sustained complaints and complaints prior to final disposition, discipline and other supervisory corrective measures, uses of force, arrests and charges, searches and seizures, service calls, training, awards and commendations, sick leave, civil lawsuits, and other items relevant to an officer's conduct.

2. SCPD should use IAPRO to gather and track data for each officer's arrests by race or ethnicity of the subject.
3. We also recommend that SCPD require supervisors, including command staff, to review these data for every officer they supervise on a quarterly basis.
4. We recommend that SCPD compare their subordinates' IAPRO data to that of the subordinates' peers, focusing upon complaints against officers and use-of-force reports.
5. Command staff should review the unit-wide IAPRO data and compare these data with peer units. In addition, a policy should be established providing explicit guidance to supervisory officers reviewing reports to ensure that patterns of possible misconduct are identified, analyzed, and addressed properly by command staff. The aim of this process is to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct occurs.
6. To use IAPRO effectively as a predictive model tool, SCPD must ensure that the system has defined triggers for management intervention. SCPD should revise as appropriate its IAPRO policy to establish guidelines regarding what specific events will trigger an additional supervisory review, what type of a review will be conducted, and what type of remedial services or action is needed, if any.

E) Timeline and Protocols for Misconduct Investigations

SCPD General Order 10-01 states that IAB's standard for completing investigations is 90 days. We recommend that SCPD adopt a policy that, absent exigent circumstances, all investigations of officer misconduct be completed within 45 calendar days. The investigation should include a review by the Commissioner or his command staff designee. Internal adjudication, if any, of the results of the investigation should be timely completed within deadlines specified under SCPD's labor agreements. Imposition of any discipline should occur within 30 days of the end of the Commissioner's review or the end of internal adjudication. Extensions beyond these time periods should require the Commissioner's written approval (rather than the deputy chief's approval), based upon criteria set out in SCPD policy, and be communicated in writing to the complainant. Misconduct investigations should be completed within 45 days from receipt of the allegation to disposition, unless extenuating circumstances warrant keeping the investigation open beyond that period. Exigent circumstances include those involving witnesses who are unavailable and criminal cases that are pending.

1) General Order Number 11, Section 3

General Order Number 11, Section 3 requires that all pre-civil suit administrative notices of claim seeking monetary damages for police conduct routinely be forwarded to IAB for appropriate investigation. We agree that this is an appropriate notification. This order should emphasize that it is every officer's responsibility to immediately notify his or her supervisor if he or she is named as a party in a civil suit for on-duty conduct and for off-duty conduct alleging racial bias or physical violence.

F) Complaint Quality Assurance

We recommend that SCPD's IAB conduct periodic random follow-up surveys to assess completed misconduct investigations. IAB should contact complainants to ensure that the investigation was handled professionally and thoroughly. Specific questions about the conduct of the investigation should be asked: whether the complainant understood the investigative process; whether the complainant felt that the investigator was thorough in his or her questioning; and whether the complainant received both written acknowledgement of the complaint and notification of the results of the investigation. A dedicated auditing component of SCPD should examine the receipt, investigation, and adjudication of all misconduct investigations.

Further, when possible, interviews of victims, complainants, witnesses and subjects conducted during misconduct investigations should be tape recorded. There should be randomized periodic audits by supervisors of the taped interviews to ensure that IAB investigators asked probative questions.

We also recommend that IAB perform an annual check of officers' New York State driving records for violations or suspended licenses and check local court dockets for civil suits that may have bearing on an officer's behavior on duty. IAB should act proactively and use both integrity tests and record reviews to identify potential internal affairs issues. Lastly, if, during the course of an IAB investigation, collateral misconduct is discovered, IAB should institute an investigation of the misconduct. IAB policy should be clear that if a policy violation is uncovered during such an investigation, IAB will identify the violation and investigate or refer it as appropriate. Likewise, the policy should state that any criminal conduct uncovered will also lead to a referral for a criminal investigation.

IV. SUPERVISION AND ACCOUNTABILITY

A) The Internal Affairs Bureau: Structure and Organization

The internal affairs component of a law enforcement agency should seek to maintain the integrity of the department through a system of internal discipline or corrective action after it conducts objective and impartial investigations. SCPD should continue to support the core mission of IAB: to monitor the behavior of police officers for misconduct while maintaining its objectivity and autonomy.

SCPD should consider altering the chain-of-command for the IAB. Similar entities in other departments and most other departments within SCPD report directly to Chiefs or Commissioners. IAB currently reports to a Deputy Commissioner.

B) Incentivizing positions at IAB

SCPD should consider creating incentives for officers to take positions in IAB. This will allow the Department to select the best officer(s) for the position and make the position a more attractive career path. SCPD should promote the work done by IAB investigators and reach out to ensure diversity and excellence. We recommend that IAB positions start at the rank of

detective. The head commander of IAB should have first choice of applicants for detective positions. Special consideration should be given to individuals who can demonstrate competency in Spanish and other frequently encountered non-English languages and/or officers who can commit to taking language instruction and interpreter training courses to attain competency. Service in IAB should be a minimum of three years during which time applicants could avail themselves of advanced training in investigative techniques. Upon completion of the assignment, IAB members should be given extra preference in their next assignment. Officers would be permitted to remain in IAB longer if they desired.

C) Toll free Bilingual Civilian Complaint Hotline

According to County Attorney Malafi's May 11, 2011 letter, SCPD has established a toll-free hotline. SCPD should ensure that a toll-free 24-hour Civilian Complaint Hotline is available in English, Spanish, and other languages prevalent in Suffolk County to accept complaints of misconduct and positive comments about officer conduct. The toll free Hotline should be recorded and should be periodically audited to ensure that: the calls are being taped; the intake officer provided his or her name, rank, and affiliation; the intake officer arranged for an interpreter, if needed; the intake officer did not attempt to discourage the caller from making the complaint; and the intake officer made it clear that the complaint did not have to be in writing. The toll free hotline number should be listed on informational material, complaint forms, and consent to search forms. All forms should be printed in English, Spanish, and other non-English languages depending on the linguistic composition of the services area. There should be sufficient advertising to inform the community of the Hotline number and encouraging community members to report all incidents.

D) Random Integrity Tests

We recommend that SCPD consider randomized integrity tests of the complaint reporting system. Testers should call precincts or approach officers in the street indicating they wish to file a complaint of misconduct. IAB can then ensure that the receiving officer provided the complainant with the proper reporting procedure and that the officer reported the information as required by standard operating procedures (SOPs). The SOPs must specifically note that if, during the course of an IAB investigation, a complainant wishes not to proceed further, or wishes to withdraw the complaint, that the complainant understands the investigation will go to conclusion regardless of whether the complainant cooperates.

SCPD should be proactive in offering assistance to officers who have reported misconduct or other acts of prohibited discrimination to ensure that their careers do not suffer adverse consequences for their cooperative actions.

V. TRAINING

During our site visit, we found that SCPD needs to provide its officers additional training beyond the basic training they receive when they first join the department. We recognize that SCPD has upgraded its ongoing training programs and will continue to develop new programs

for officers and supervisors.⁸ Adequate training is a critical element in the creation and sustainment of effective and appropriate policing. For training to be successful, the department should set priorities and evaluate the success of training. The recommendations below outline a strategy for SCPD to adopt best policing practices.

Policies and procedures are the primary means by which police departments communicate their standards and expectations to their officers. Accordingly, it is essential that SCPD's policies be comprehensive, up-to-date, comprehensible, and consistent with relevant legal standards and contemporary police practices.⁹ Several of SCPD's policies and procedures are inconsistent with generally accepted police practices and are insufficiently detailed to provide the appropriate guidance for officer conduct.

SCPD should improve the means by which police personnel are informed of new policies. Currently, SCPD primarily uses roll-calls to inform officers of policy changes. From our review of this practice, by itself, it is not the most effective way to ensure that personnel are fully informed of the new policies. Accordingly, we recommend that SCPD distribute written copies of all new policies to each officer. For policies discussing major changes, including the procedure to inquire about immigration status, the handling of citizen complaints, or the process for complaint reporting, all incoming and current SCPD officers should receive a substantive training session. Upon completing this training, each officer should provide a written acknowledgment of their receipt, review, and understanding of the policy. This written acknowledgment should be maintained as part of SCPD officer's personnel file.

In addition, we suggest that SCPD designate an individual who will be responsible for reviewing any revisions to new policies and, where necessary, promptly notifying command staff regarding changes in substantive law and ensuring that SCPD policies are consistent (e.g., the citizen complaint process should treat immigration status in a manner consistent with other policies of the department).¹⁰ This official would also be responsible for ensuring that all officers receive complete copies of policy manuals and policy revisions, and for maintaining copies of officers' signed acknowledgments. We also recommend that when SCPD revises policies or procedures it provides officers copies that highlight in some fashion¹¹ the changes that have been made. This will assist officers, who already have busy schedules, to quickly and

⁸ We recommend that SCPD make its training materials available to all officers and supervisors through the Internet.

⁹ We understand that SCPD has been revising its policies and practices based on the technical assistance we provided during our tours. This letter reflects our recommendations based on the policies and practices we received prior to, during and following our tour. We have endeavored to review the most recent version of the policies and procedures discussed in this letter. Please note that Suffolk County should not interpret our discussion of certain policies and procedures as an approval of all or any other SCPD policies or procedures not reviewed.

¹⁰ Any substantive legal updates or changes should be made in consultation with the County Attorney or her designee.

¹¹ For example, a "redline" copy of a document created in Microsoft Word displays new language with an underscore and language that was deleted with a strikethrough. The Department does not endorse any one particular word processing program over another and only uses Microsoft Word as an example.

accurately see what provisions have been changed, added, or deleted. First-line supervisors should conduct periodic assessments of officers' policy manuals to ensure that those manuals are up-to-date and complete.

We recommend that SCPD post policies, procedures and general orders of public importance (e.g. those regarding citizen complaints, hate crimes, use of force) on the official SCPD website, rather than distributing them to members of the department only in paper form. An electronic version should be searchable (manual-wide, not just within each policy) and include both a comprehensive index and a table of contents. This will make them more accessible to SCPD personnel. Additionally, having the SCPD policy and procedure manual online will make this vital information available to the community.

SCPD can identify training needs by seeking recommendations from internal SCPD committees, IAB, focus groups, or from command staff. Externally, the need to train or re-train officers can be generated by changes in the law, court interpretations of police procedures, world events, and best practices as defined by similarly situated police agencies or police organizations.

General Order 18, Section 2.C.2 (Training) discusses the procedures of the training committee. That subsection requires members to conduct research, review reports and field observations, and make recommendations or modifications in training, with the understanding that the Police Training Academy Bureau can adopt final modifications. SCPD should revise this policy to include clear requirements. At a minimum, it should mandate: (a) assessment of training needs; (b) development, delivery, and evaluation of training; (c) evaluating the field implementation of the training; (d) creating a document archival system for all training provided and (e) a training record for each officer to track in-service training.

By creating these specific outcome measures, SCPD will be better able to measure whether training has been successful. SCPD must ensure an evaluative component both in the training and its implementation. The content of the instruction, the instructors, and the delivery should be evaluated by students. Similarly, training without successful field implementation may be inadequate. Feedback from officers, IAB, and commanders can determine if SCPD's ever-changing needs are met.

VI. COMMUNITY OUTREACH

Effective policies and practices regarding community relations enhance and reinforce police/community relationships and play a significant role in ensuring that a police department maintains the trust of its residents. Trust begins, but does not end, with responding to residents' needs. Effective policing requires that police departments provide other services, such as community policing. The benefits of outreach programs include greater willingness by residents to cooperate with police investigations, increased reporting of issues within the community, increased community trust in the police department, and enhanced public safety. We encourage SCPD to enhance its community relations and outreach programs, particularly to cultivate relationships with Latino communities in Suffolk County. SCPD has increased its initiatives, but they are nevertheless still limited.

A) SCPD Should Enhance the COPE Program

One of the most important techniques to cultivate better community relations is community policing.¹² SCPD's community oriented policing program is called Community Oriented Police Enforcement ("COPE"). SCPD officials have stated that COPE officers proactively address problems and issues before they become the subject of traditional policing (e.g. criminal apprehension), and that COPE officers are assigned to specific beats to develop relationships with residents and business owners in the area and for community members to interact with SCPD outside of emergent circumstances such as arrests.

Although there are a substantial number of COPE officers in SCPD, our investigation revealed that COPE officers do not, with only a few exceptions, engage in genuine community policing. COPE officers function in traditional patrol units, interacting with community members largely only in response to calls, complaints, and arrests. In discussing the day-to-day operations of COPE officers with SCPD staff, we were routinely informed that COPE is viewed by officers primarily as a promotional stepping stone to becoming a detective, and that community outreach is not the primary thrust of the program.

There were notable exceptions to this general rule. A small group of COPE officers we encountered had worked to become familiar with the community they patrolled. They regularly interacted with shop owners, and one of these officers made regular visits to schools in the area to speak to students and develop relationships with school officials. This conduct is laudable and should be the norm for COPE officers, rather than the exception.

The COPE program can be enhanced by collecting data from field reports and memo books maintained by officers. We understand that field reports and notes made in officers' memo books are not entered into a database or recorded in any organized fashion. These records can help track trends in conduct which, while not rising to the level of an arrestable offense, could identify patterns of behavior which if unaddressed could escalate to criminal activity. Therefore, we recommend that officers memorialize all such incidents (i.e. those incidents that do not rise to the level of an arrestable offense), and then require that the reports of these incidents be sent to a centralized database that is capable of processing and possibly mapping trends. In this way, SCPD can pursue additional surveillance and other preemptive crime-control measures in areas that may be likely to experience a hate crime. We are pleased that the SCPD has established a position of Community Liaison Officer within each precinct's COPE unit. Accordingly, we suggest that Section 1 of Chapter 28 of the policy manual be expanded to include reference to this new position in the COPE unit and the unit's re-invigorated mission. With effective deployment, community liaison officers will link the community with the various precincts. Over time, Latino residents may consider SCPD officers as more approachable, thereby bridging the distrust that currently exists.

¹² Community policing is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. See www.cops.usdoj.gov/Default.asp?Item=36 (Last visited May 9, 2011).

B) SCPD Should Expand Its Community Outreach and Liaison Programs

In addition to an effective COPE program, a well-developed community outreach program is essential to better community relations. Though there are few efforts made to reach out to the Latino community, a notable exception is the laudable work of the Special Advisor to the Commissioner for Minority Affairs. She is assigned as a full-time community relations officer to the Latino community. The officer is well-regarded and trusted in the Latino community. Her presence at community meetings and the direct assistance that she has offered to individuals has had an invaluable impact on the perception of the department within the Latino communities. She is but one individual, however. Community residents told us that SCPD's assignment of only one person to be a liaison with the Latino community highlighted the lack of effort by SCPD rather than remedied the perception that SCPD is uninvolved in the Latino community. We recommend that the outreach program be expanded and that additional Spanish speaking outreach officers be assigned to work as special advisors with the Latino communities. Although County Attorney Malafi's May 11, 2011 letter states that SCPD has appointed police officials of Latino descent to key positions within the police department, such appointments, while symbolic, do not necessarily improve the department's relationship with the Latino community because these officials may not interact with individuals within the Latino community on a regular basis.

Since December 2008, SCPD appears to have worked towards creating a better relationship with the Latino community. County Attorney Malafi's May 11, 2011 letter mentioned outreach efforts such as the PoliceSmart Educational Program and ESL classes. We encourage SCPD to continue to consider other cultural and language programs or activities. Outreach methods include providing information to the public and to LEP communities regarding the language assistance services available free of charge, or including this information on signage, websites, translated documents, telephone tree options, kiosks, and non-English or ethnic media.¹³ Additionally, we encourage SCPD to increase the number of "outreach" activities that occur outside of the precinct. Requiring community members to visit the precincts may deter some individuals from participating in such activities. SCPD also has pointed to its Police Athletic League (PAL) as a significant example of its community outreach. However, that program has not made an effort to recruit officers from the Latino community, and the level of participation by Latino youth is unclear. While Police Athletic League programs have value, they are not a substitute for community relations and outreach programs. The department should ensure that Latinos have full access to the PAL program, including providing forms in both English and Spanish, and should ensure that bilingual officers who speak Spanish are involved in the program.

SCPD should also continue working with community advocates to develop Spanish language training and training on cultural norms in various Latino communities. These programs should be designed so that they are useful to officers when they interact with residents. Additionally, as mentioned in County Attorney Malafi's May 22, 2011 letter, SCPD is providing

¹³ See U.S. Department of Justice, *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*, at 6.
http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.

some Spanish language learning opportunities for officers as well as sensitivity and diversity training, including seminars administered by organizations such as the Anti-Defamation League. SCPD should expand such opportunities. When working with community based organizations, SCPD should provide information, translated into appropriate non-English languages, describing how it provides language assistance services at no cost for LEP individuals. SCPD will derive two mutually-reinforcing benefits from establishing such programs: First, SCPD engages and cooperates with community advocates who will then convey the message to the community that SCPD is actively seeking to employ the most effective ways to communicate with and protect Latino residents. Second, SCPD benefits through receiving language and cultural assistance, which in turn will help SCPD fight crime and protect residents more effectively.

During our interviews, community members and advocacy groups told us that they did not know of or understand many SCPD policies and expressed a desire to be able to obtain access through means other than filing a freedom of information request. Though the SCPD website currently provides access to some policies, the department should include updates of all policies and procedures and post some form of notice on the website that a change, revision or addition has been made. Because SCPD receives federal financial assistance, Title VI of the Civil Rights Act of 1964 (Title VI) also requires SCPD to translate any vital¹⁴ written documents and ensure that limited English proficient (LEP) individuals in the community have meaningful access to important written information.¹⁵ While SCPD's website is available in Spanish, it seems that some online documents are translated using Google Translate, which is of limited value and accuracy. An expert speaker of that language should review all translations for accuracy. Further, when DOJ visited the SCPD website in late May 2011, the policy and procedure translations in Spanish had formatting issues. To be clear, "meaningful access" should be interpreted to mean that LEP individuals should be provided versions of the same documents that are as legible and easy to decipher as those provided for English speaking individuals.

We believe greater access to the community and appropriate translations of SCPD policies and procedures will assist in removing the appearance that SCPD's actions are unclear or being concealed. We understand that SCPD is in the process of publishing more information on its website, and we commend that effort.

SCPD's dissemination of General Order 09-54 is a good, concrete example of how accessible policies assist SCPD in its community relations and outreach efforts. General Order

¹⁴ Whether or not a document is considered "vital" depends upon: "the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner." 67 Fed. Reg. 41,455, 41,463 (June 18, 2002). Examples of such written materials could include: "Consent and complaint forms; intake forms with the potential for important consequences; written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings; notices advising LEP persons of free language assistance; prison rule books; written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; and applications to participate in a recipient's program or activity or to receive recipient benefits or services." *Id.* at 41463

¹⁵ See 28 C.F.R. § 42.405(d).

09-54 provides that SCPD officers shall not ask victims of crime about their immigration status. SCPD maintains that this has been its policy since 2005. However, it was not until October 15, 2009, almost one year following the death of Marcelo Lucero,¹⁶ that this policy was disseminated to the public. It also appears that even in 2005, the policy was not formally placed into SCPD's policies and procedures manual. Thus, the Latino community in Suffolk County understandably perceived that this policy was issued only after, and in response to, the Lucero killing and that SCPD had been authorized to request victims' immigration status previously. It is possible that had General Order 09-54 been available to the public when first issued, this perception could have been substantially mitigated and would have encouraged greater reporting of hate crimes.

C) SCPD Should Enhance Its Community Contacts to Address Gang Activity

Data suggests that gang activity is a serious problem in Suffolk County and that it particularly adversely affects the Latino community. SCPD is engaged in vigorous efforts to reduce and eliminate this serious concern. However, to be most effective, gang prevention units should have substantial community contacts to develop sources of information and, where possible, learn of potential gang activity before it occurs. It is our understanding that SCPD has eliminated local precinct gang units and replaced them with a department-wide Gang Team Section. Having a centralized gang unit can severely limit SCPD's ability to develop relationships with the community or to create preventative interventions. The lack of a regular anti-gang presence in the community alienates adults when gang prevention activity is conducted and exposes children, who are the primary targets of gang recruitment efforts, to gang influences. We recommend that SCPD focus its anti-gang activities on the local level, using re-established local precinct anti-gang units and street crime sections. These units will be perceived by the Latino community as more interested in serving the community and addressing real community concerns. In addition, the community policing discussed above may assist in the anti-gang initiatives of the SCPD.

D) SCPD Should Revise the Use of Roadblocks in Latino Communities

We understand that SCPD has used a vigorous program of roadblocks and police sobriety checkpoints. As law enforcement tools, these are established methods of addressing drunk driving and other potential criminal activity. We have received reports, however, that SCPD's checkpoints have been used primarily to request documentation of citizenship. While we

¹⁶ In November 2008, Mr. Lucero, an Ecuadorean man living in Patchogue, was fatally stabbed by a group of teenagers. The same teenagers later admitted that, in the weeks before the Lucero killing, they had regularly sought out and attacked Latino men in the community. Following Mr. Lucero's death numerous Latino men came forward and described incidents of harassment and/or attacks and their belief that they were attacked because of their heritage. The attacks described were reported to have occurred over a period of years. SCPD and the County government stated that they were unaware that Latino men were targeted due to their ethnicity or national origin. Some Latinos who came forward in the aftermath of the Lucero killing explained they had not reported hate crime incidents to SCPD because they had been previously discouraged by SCPD from reporting crimes, were afraid that they would be asked about their immigration status, or because prior complaints of harassment went unheard.

continue to investigate these claims, if true, this is not an acceptable practice. We recommend that SCPD ensure that officers at checkpoints inspect only for sobriety or other specific illegal conduct and do not conduct identity checks or otherwise ask for documentation without a basis for believing that a crime or violation has been committed.

E) SCPD Should Develop Additional Mechanisms to Promote Cultural Competence In Its Police Training, Policies and Procedures

Vital for good community relations are policies and procedures that are culturally aware and take into consideration the cultural differences between different ethnic groups. Officers who are trained and guided by policies and procedures that recognize the cultural differences in the various communities will be more effective in serving all communities.

One of the policies that SCPD should revise is Chapter 10, Section 1 of the Department Manual, which states that a police officer should:

Give particular attention to peddlers and solicitors to determine that they are properly licensed and are not using that occupation as a cloak for some illegal purpose.

Street vendors are common in many immigrant communities, including immigrant communities with high Latino populations. Training, policies and practices that question the validity of legitimate activity, such as peddling or soliciting, could be viewed as culturally insensitive and thus exacerbate police-community tensions. This kind of language can also create a bias in the mind of officers against Latinos in general. We recommend that this policy be reconsidered and/or revised, and we further suggest re-wording or revising the language in this section from “peddlers and solicitors” to language that simply states that individuals who appear to be engaged in illegitimate activity on the street may warrant particular attention. Such a focus would serve to spotlight attention on suspicious conduct, rather than individuals engaged in legitimate activity.

Police officer training programs should explicitly teach officers about cultural differences. For example, in some communities a married woman’s religious practice dictates that she not speak directly or make eye contact with a police officer. That conduct could be interpreted by an officer to be evasive and reflective of a refusal to cooperate. With proper training, an officer would be aware of the cultural basis and respond appropriately. Overall, given the diversity in Suffolk County, and the growing population of recent immigrants, training in cultural diversity will improve community relations. We understand that SCPD has begun cultural awareness and language training as part of its Hate Crimes curriculum; and according to County Attorney Malafi’s May 11, 2011 letter, recruits now receive 45 hours of cultural awareness, sensitivity, diversity, and foreign language training. Your letter also stated that SCPD members receive supplemental cultural awareness and similar training that includes seminars administered by the Anti Defamation League and other organizations. We commend SCPD for these efforts and encourage SCPD to continue to expand sensitivity training. This training should be mandatory for all officers. This will improve communication and reduce tensions that can arise from cultural misunderstandings.

One way to identify the need for greater cultural sensitivity is to obtain assistance in the development of policies, procedures and training programs from members of the various communities in Suffolk County. Section 18.2 of the Department Manual establishes a Training Committee made up of representatives from various sections of the department. We recommend establishing a community advisory committee, reflecting the diversity of cultures in the County, to work with that committee, to advise the Police Commissioner regarding cultural sensitivity training, and to ensure that policies and procedures reflect an understanding of the differences that exist in different communities.

Similarly, regular interaction between community members and precinct commanders would increase officer sensitivity and positive interactions. In certain precincts, SCPD holds “First Tuesday” meetings, which all residents of the precinct can attend and voice their concerns. These meetings are commendable, and SCPD should consider expanding this program or appropriate offshoots to all precincts.

We also recommend that SCPD consider creating Community Precinct Councils, a program which has achieved great success in other jurisdictions, including the City of New York. Typically, councils consist of members of various constituencies and communities in each precinct. The councils meet regularly, help inform the precinct command structure of issues affecting each community, and act as a forum for discussion between various groups, identifying common interests and breaking down cultural barriers.

F) SCPD Should Engage the Latino Community On An Informal Basis

SCPD should endeavor to “take the pulse of the community” on a routine and informal basis. Interviewing community members in a nontraditional police environment, in a capacity that does not involve law enforcement action or procedure, may lessen trepidation in the community and increase the likelihood of open dialogue. The topic of hate crimes and community sentiment toward the police on the issue may therefore become an ongoing dialogue, not merely one that arises due to unfortunate circumstances.

As we recommended during our tours, SCPD should consider conducting its own research to determine citizen satisfaction with the police. We understand that the SCPD has begun surveying residents by Internet, U.S. mail, and telephone and compiling the results. Surveys have been made available in both English and Spanish. We encourage SCPD to continue to make surveys available, in both English and non-English languages relevant to the community, in places of worship, supermarkets, schools, and other areas where people congregate.

According to SCPD’s online citizen satisfaction survey, which tallied responses from 2007 through 2011, residents’ views of SCPD seemed to improve overall, with the percentage of respondents rating SCPD as “excellent” increasing in five categories measured (“helpfulness,” “knew how to handle my problem,” “treated me fairly,” “professional conduct,” and “response time”). The percentage of respondents rating SCPD as “improvement needed” also fell in the five categories. However, the numbers were not divided by ethnicity, so it is unclear whether Latinos, for instance, collectively experienced an improvement in SCPD services.

And in a series of IAB quality service audits that involves surveys of citizens who telephoned SCPD for assistance, IAB only managed to survey one LEP individual between April and May in 2011. The previous year, IAB surveyed 15 LEP individuals during the same time period. Another survey compiled on May 18, 2011, which asked respondents a variety of questions about SCPD service and broke the results down by precinct, seems to indicate positive results – at least according to the limited survey results with which we were provided. Between 74 and 92 percent of respondents said they were “overall ... satisfied with my entire interaction” with SCPD. However, the survey results SCPD provided to DOJ only included responses to question numbers 4, 13, 18, and 19. Answers to other questions, such as number 5 (“The 911 Operator/Desk Officer who received my initial call communicated with me in the language I spoke, or connected me with someone who did”) were not provided. SCPD did not provide us with the survey results to 16 of the 20 questions. In addition, it is again unclear how many respondents are Latino and non-Latino, so it is unclear how much progress, if any, is being made building a relationship with the Latino community.

SCPD should take steps to ensure that surveys correctly reflect its relationship with the Latino community in particular and not just its relationship with the county as a whole. In addition to knowing the race or ethnicity of respondents, it would also be helpful to know the total number of surveys provided (i.e., how many surveys were not returned).

In addition, SCPD may wish to review research conducted by the Rand Corporation as part of a collaborative agreement with the City of Cincinnati, Ohio.¹⁷ Such research can assist the department in learning the cause, nature, and extent of community disengagement. Another consideration would be to transform the new “research section” of SCPD as part of a dedicated audit function and inspection section. Specifically, all data that are currently entered into all databases (all enforcement actions and procedures, investigation, complaints, incident reports, etc.) should have dedicated software to articulate trend analysis by each individual variable. This form of predictive policing enables departments to anticipate trends and better serve the community.¹⁸

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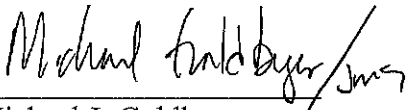
¹⁷ See Ridgeway, et al., “Police-Community Relations in Cincinnati,” prepared by the Rand Corporation, *available at* <http://www.rand.org/pubs/monographs/MG853> (last visited July 12, 2011).

¹⁸ SCPD may wish to work with local universities to examine police empirical data and outside independent analysis.

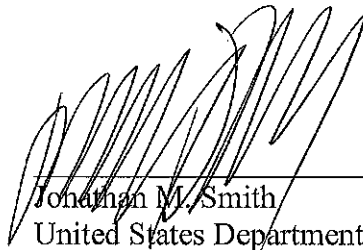
CONCLUSION

Although the SCPD has made some advances in revising its practices to enhance its policing techniques and relationship with the Latino community, we strongly urge the SCPD to adopt these technical assistance recommendations. We look forward to working with you and the department as our investigation proceeds. If you have any questions, please do not hesitate to contact Special Counsel Laura L. Coon at (202) 514-1089, Silvia J. Dominguez at (202) 616-8547, Jack Morse at (202) 305-4039, or Michael J. Goldberger of the U.S. Attorney's Office for the Eastern District of New York at (718) 254-6052.

Sincerely,



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