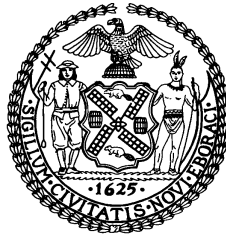


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THE COUNCIL OF THE CITY OF NEW YORK

BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON PUBLIC SAFETY

Hon. Vanessa L. Gibson, Chair

September 8, 2014

***Oversight* - The Police Department's Plan to Enhance Officer Trainings**

I. INTRODUCTION

On September 8, 2014, the Committee on Public Safety, chaired by Council Member Vanessa L. Gibson, will hold an oversight hearing to examine the New York City Police Department's ("NYPD") plan to enhance police officer trainings. On July 17, 2014, a Staten Island man named Eric Garner died after NYPD officers in the 120th Precinct attempted to arrest him. As a result of the incident one officer was placed on desk duty and another was stripped of his service gun and badge and placed on modified assignment, meaning he is now working in a non-enforcement capacity.¹ In response to the death of Eric Garner, Police Commissioner William J. Bratton and Mayor Bill de Blasio announced that the NYPD would conduct a "top-to-bottom" review of instruction on the use of force.² Commissioner Bratton also stated that he anticipated "a retraining of every member of the New York Police Department" and that he planned to send a team to Los Angeles to look at the "state-of-the-art" trainings the Los Angeles Police Department implemented during his tenure as Chief of that department.³

Today, the Committee expects to hear testimony from Commissioner Bratton regarding current NYPD training, the status of the Commissioner's review of that training, and the Department's plans to enhance future trainings and to re-train all 35,000 NYPD officers on use of force procedures.

II. BACKGROUND ON NYPD TRAINING

The NYPD is the largest and most diverse police department in the United States with a patrol force of over 35,000 police officers. The NYPD's mission is to enhance the quality of life in New York City by "working in partnership with the community and in accordance with constitutional rights to enforce the laws, preserve the peace, reduce fear, and provide for a safe

¹ *Cop in fatal NYC arrest stripped of gun, badge*, CBSNews, Jul. 20, 2014, available at: <http://www.cbsnews.com/news/eric-garner-probe-new-york-cop-daniel-pantaleo-stripped-of-gun-badge/>.

² Rocco Parascandola et. al. *NYPD Commissioner Bill Bratton orders all 35,000 cops to be retrained in using force after chokehold was used on Eric Garner*, N.Y. Daily News, Jul. 22, 2014, available at: <http://www.nydailynews.com/new-york/nyc-crime/eric-garner-autopsy-inconclusive-authorities-article-1.1876096>.

³ *Id.*

environment.”⁴ To help carry out its mission the NYPD is strategically divided into bureaus and units, all of which carry out specific enforcement or administrative functions. The Training Bureau interacts with police officers, also known as members of the service (“MOS”), at various levels and throughout their careers. The Training Bureau is responsible for training all new police officers at the Police Academy as well as for ongoing training, known as “in-service training.” On January 15, 2014, Commissioner Bratton appointed Bernard Tucker to serve as the Deputy Commissioner of Training.⁵

Police Academy Training

Upon being hired, every police officer starts their career as a Recruit Officer in the Police Academy. The mission of the Police Academy is “to educate, prepare and inspire uniformed members of the Police Department into becoming law enforcement professionals, equipped with the necessary academic and tactical knowledge to protect the life, rights, property, and dignity of all the residents of the City of New York.”⁶ To graduate from the Police Academy, Recruit Officers must successfully complete six months of vigorous training. The recruit training curriculum is vast and is covered in a Police Student’s Guide that consists of 40 chapters of materials.⁷ The curriculum in the student’s guide includes, but is not limited to: Policing a Multicultural Society, Policing with Integrity, Policing Professionally, Policing Impartially, Authority to Arrest, Use of Force, Policing the Emotionally Disturbed, and Maintaining Public Order.⁸

⁴ NYPD Mission Statement, <http://www.nyc.gov/html/nypd/html/administration/mission.shtml> (last visited Sept. 4, 2014).

⁵ Rocco Parascandola, *Bratton names three new NYPD deputy commissioner posts*, N.Y. Daily News, Jan. 15, 2014, available at: <http://www.nydailynews.com/blogs/theshack/bratton-names-new-nypd-deputy-commissioner-posts-blog-entry-1.1625692>.

⁶ NYPD Police Academy Overview, <http://www.nypdrecruit.com/academy-prep/overview> (last visited Sept. 4, 2014).

⁷ NYPD Police Student’s Guide, on file with Committee on Public Safety.

⁸ *Id.*

To be eligible for graduation, Recruit Officers must pass mandatory academic, practical, and physical fitness exams.⁹ In addition to being evaluated on academic, practical, and physical fitness skills, recruits are also evaluated in the following 11 behavioral dimensions: (1) Appearance & Professional Image; (2) Communication Skills; (3) Comprehension Skills; (4) Self-Discipline; (5) Problem Recognition; (6) Attitude; (7) Judgment & Decision Making; (8) Police Ethics; (9) Interpersonal Skills; (10) Drive & Initiative; and (11) Reasoning Ability.¹⁰ All of this information is combined into a Recruit Officer Performance Evaluation, which is used to identify the strengths and weaknesses of each recruit. Once a recruit becomes a MOS, his or her evaluation materials are passed along to their respective commands.¹¹

Subsequent Trainings for Members of the Service

Throughout his or her career, a MOS will receive additional training from the Training Bureau. One such training is known as In-Service Tactical Training, or “Intac Training.” Intac Training is an annual requirement for all officers assigned to the Patrol Services, Housing, and Transit Bureaus and it is conducted at Rodman’s Neck Tactical Village in the Bronx.¹² Intac Training reinforces proper tactics through a combination of classroom lecture and hands on role playing scenarios.¹³ Instruction is also given in legal matters and terrorism identification. Intac Training is said to contribute to the success of the Department’s efforts to reduce crime, defeat terrorism, and improve community relations.¹⁴ The proposed outline for the 2013 Intac Training cycle included a review of firearms and tactics, firearm malfunctions, and a video on preventing friendly fire.¹⁵ The training scenarios for the 2013 cycle included room clearing drills, interacting with an emotionally disturbed person, a scenario on the use of force continuum, and

⁹ NYPD Recruit Officer Standards, <http://www.nypdrecruit.com/recruit-officer-standards> (last visited Sept. 4, 2014).

¹⁰ *Id.*

¹¹ *Id.*

¹² NYPD Training Bureau, In-Service Tactical Training Unit, http://www.nyc.gov/html/nypd/html/training_nypd/Intac%20Training.shtml (last visited Sept. 4, 2014).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ NYPD Course Outline, 2013 Intac Training, on file with Committee on Public Safety.

how to handle confrontations while off-duty.¹⁶ In addition, officers received a stop, question, and frisk review, which included a course on properly preparing a UF-250 form after stopping, questioning, and frisking an individual, and the legality of such encounters.¹⁷

Other in-service training includes, but is not limited to, the following:

- **Firearms and Tactics Training** - provides firearms requalification and tactical training to all 35,000 members of the Department. Recruits are trained to use firearms in the Academy and this training continues while in-service. Officers are required to attend semi-annual qualification trainings where they further develop skills required for the safe and proficient use of firearms, including strategies and tactical training to minimize firearms use. Special Weapons Training is also conducted for NYPD's Special Operations Division and Highway Patrol while an advanced Tactical Firearms course is available for plainclothes officers. Firearms and Tactics training could also include training on "less than lethal devices" such as conducted energy devices (Tasers), pepper spray, and velcro and plastic restraining straps.¹⁸
 - MOS who have discharged their firearm in the line of duty will also receive Tactical Review Sessions.¹⁹
- **Chemical Ordinance, Biological and Radiological Awareness Training (COBRA)** – keeps officers in the field up to date with emergency issues through the use of realistic, goal-oriented training. COBRA courses provides MOS information on how to properly respond to a possible incident involving chemical, biological, radiological, or nuclear materials through a curriculum that is produced by the United States Department of Homeland Security.²⁰
- **Other Tactical Trainings** – Other available tactical trainings include:
 - **Basic Plainclothes Course** - a three day course provided in conjunction with the Firearms and Tactics that includes "street simulation" protocols and tactical calisthenics, grappling and ground defense, and weapon retention/disarming. This course is prerequisite for uniformed MOS assuming plainclothes assignments.²¹
 - **Handcuffing Course** - instruction on searching and handcuffing techniques.²²
 - **Expandable Baton Course** – a one day course that describes the basic structure of the baton, proper striking technique and legal issues related to the use of the baton.²³

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ NYPD Training Bureau, Firearms and Tactics Training, http://www.nyc.gov/html/nypd/html/training_nypd/firearm_tatics.shtml (last visited Sept. 4, 2014).

¹⁹ *Id.*

²⁰ NYPD Training Bureau, COBRA Training Unit, http://www.nyc.gov/html/nypd/html/training_nypd/cobra.shtml (last visited Sept. 4, 2014).

²¹ NYPD Training Bureau, Tactical Training Unit, http://www.nyc.gov/html/nypd/html/training_nypd/Tactical%20Training%20_.shtml (last visited Sept. 4, 2014).

²² *Id.*

²³ *Id.*

- ***Dignitary Protection Course*** - administered jointly with the Intelligence Division. Instruction consists of weapon disarming, knife awareness, rope-line techniques and takedowns.²⁴
- ***Special Narcotics Enforcement Unit (SNEU) Courses*** - approximately a week long course that teaches officers how to recognize various drugs and how to recognize a hand-to-hand drug transaction. Course includes relevant search and seizure laws.²⁵

III. EXAMPLES OF CURRENT NYPD TRAININGS AND LESSONS

The NYPD's Training Bureau creates extensive lesson plans for its various trainings. Through these lesson plans recruits in the Police Academy and MOS receiving in-service training (collectively, "trainees") are expected to learn, or keep abreast of, a wide variety of topics. In addition, each lesson plan has a method of evaluation to be used to determine the trainees' understanding of the information being taught. Since trainings and their accompanying lessons are wide-ranging, below are a few relevant examples of what trainees are expected to learn during their trainings:

1. Authority to Arrest and Resisting Arrest

- Trainees learn the intricacies of the New York State Criminal Procedure Law, such as when and where an NYPD Officer is authorized to arrest a person without a warrant. In addition, trainees learn about the constitutional standard necessary to be met before an arrest can be effected.²⁶
- Trainees are expected to understand probable cause and the sources of probable cause. For example, trainees learn when probable cause is based solely on an officer's observation courts will take into account the totality of the circumstances to determine whether probable cause was properly developed. Trainees also learn when probable cause is based on information obtained by an informant, officers must be

²⁴ *Id.*

²⁵ *Id.*

²⁶ See generally NYPD Police Student's Guide, Authority to Arrest Chapter, on file with Committee on Public Safety.

able to corroborate those statements using the *Aguilar-Spinelli*²⁷ two-pronged approach used by New York State Courts.²⁸

- Trainees are taught how to announce their authority to a person being arrested. For instance, trainees are instructed that they must inform the subject of their authority, the purpose, and the reason for the arrest, unless: (i) they encounter physical resistance; (ii) encounter flight on the part of the suspect; or (iii) other factors make it impractical. To prepare trainees, authority to arrest lessons include hands-on scenarios officers may encounter while attempting to effect an arrest.²⁹
- Trainees learn how to properly define resisting arrest, which enables MOS to know the extents and limits of their authority. Trainees are taught that resisting arrest involves an attempt by a person to prevent his or her own arrest or the arrest of another, regardless of whether or not the arrestee uses force or violence.
- Trainees are also reminded that a person may not resist an arrest, even if the arrest is later determined to be unlawful.³⁰
- Finally, trainees are taught the difference between passive and active resistance and that only active resistance, such as flailing arms or pulling away from an officer, amounts to the misdemeanor of resisting arrest.³¹

²⁷ New York Courts apply the two-prong “Aguilar-Spinelli” test in evaluating the hearsay information provided by an undisclosed informant. The two prong test was created by the United States Supreme Court in *Aguilar v. Texas*, 378 US 108 [1964], and *Spinelli v United States*, 393 US 410 [1969]. Under this two-prong test the application for a search warrant must demonstrate: (1) the veracity or reliability of the informant, and (2) the basis of the informant's knowledge.

²⁸ See generally NYPD Police Student’s Guide, Authority to Arrest Chapter, on file with Committee on Public Safety.

²⁹ *Id.*

³⁰ See generally NYPD Resisting Arrest Lesson Plan, Feb. 1, 2011, on file with Committee on Public Safety.

³¹ *Id.*

2. Use of Force

- Trainees are taught that during the course of their law enforcement career there will be many situations where they will be required to use some degree of force, so it is imperative for all trainees to have a solid understanding of when, how, and to what extent force can be employed. In order to help trainees make such informed on the spot decisions, they must understand the extent force has been applied in past circumstances and contexts, which helps to define a so-called “sphere of action” or a “use of force continuum.”³²
- Trainees are taught guidelines they should follow to determine if a situation merits the use of force and are evaluated by whether or not they can enumerate these guidelines, known as the “Graham Factors.”³³ Some of the “Graham Factors” that an officer should consider at the time of an incident include: the severity of the crime, whether the subject is an immediate threat to the officer, whether the subject is actively resisting arrest or evading the arrest, and the perceived or known size, age, and physical condition of both the officer and suspect.³⁴
- Trainees are expected to be fully aware of the “use of force continuum” that essentially mandates that officers only use the minimum amount of force necessary to accomplish a lawful mission and that such force be reasonable and necessary. The use of force continuum is taught as follows, with increasing levels of severity:³⁵

³² NYPD Police Student’s Guide, Chapter on Use of Force; NYPD Use of Force: Case Law Lesson Plan, Mar. 10, 2014, on file with Committee on Public Safety.

³³ See *Graham v. Connor*, 490 U.S. 386 (1989). Graham states in part, “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.”

³⁴ NYPD Police Student’s Guide, Chapter on Use of Force; NYPD Use of Force: Case Law Lesson Plan, Mar. 10, 2014, on file with Committee on Public Safety.

³⁵ *Id.*

<u>Provocation or Condition</u>	<u>Appropriate Force</u>
Orderly public places	Professional Presence – a professional looking and acting officer will receive more respect or compliance.
Minor Violations or disorderly Conditions	Verbal Persuasion – when professional presence is not enough officers should appeal to an individual's sense of reason and should speak in a non-condescending voice.
Refusal to comply with requests or attempts at persuasion	Command Voice – when simple persuasion or rational urging is not enough an officer may give a Command without profanity in a firm and authoritative voice.
Verbal Resistance	Firm Grips – involves actual contact in the form of a grip on the shoulder or arm, or other body part without intent to cause pain or to physically disable. These grips are used to gain a subject's attention or move a person from one place to another.
Minor Physical Resistance – grappling, going limp, pulling or pushing away	Compliance Techniques – active resistance to firm grips require increased force. Trainees learn a variety of compliance holds, mostly arm locks and wrist holds that gain compliance by employing temporary pain. Speed cuffing is a compliance technique as is overpowering a subject by forcing him or her against a wall or to the ground, in a manner that does not inflict pain.
Threatened or potential assault likely to cause injury	Pepper Spray or Conducted Energy Device (TASER) – pepper spray allows an officer to keep their distance and avoid hand-to-hand struggles. Only certain MOS carry TASERS.
Physical assault likely to cause injury	Impact Techniques – includes use of batons and the use of fists and feet. Flashlights, radios, and firearms are not considered impact weapons.
Threatened or potential lethal assault	Drawn and/or displayed firearm
Imminent threat of death or serious physical injury	Deadly force – usually by firearm

- Trainees are reminded that certain techniques are prohibited, such as using a chokehold as either a compliance or impact technique, or using pepper spray when a subject is merely passively resisting, or when a person appears to be in frail health. Overall, trainees are to remember that the application of force must always be consistent with existing law and with NYPD values, by which the

Department “pledges to value human life and respect the dignity of each individual.”³⁶

3. Basic First Aid & Automated External Defibrillators (AED)

- In this type of course trainees learn and understand the purpose of the New York State Good Samaritan Law, which explains the liability associated with voluntarily providing first aid treatment to another person.³⁷
- This course also teaches trainees proper techniques for common emergencies such as choking. To start, this lesson plan explains the symptoms associated with choking such as being unable to speak, faces turning blue, and unconsciousness. After learning how to assess the situation, trainees learn how to administer cardiopulmonary resuscitation (CPR).³⁸
- Trainees are also taught how to prevent deaths resulting from sudden cardiac arrest. Training for cardiac cases includes learning how to recognize cardiac arrest, when an MOS should utilize an automated external defibrillator (AED), and exactly how to use an AED. A trainee learns basic AED use steps such as “remove pads from packing, make sure individual’s chest is bare and dry, make sure no other person is in contact with the individual experiencing cardiac arrest.”³⁹
- A trainee’s understanding of this type of lesson is evaluated through the question and answer method.⁴⁰

³⁶ *Id.*

³⁷ *See e.g.* NYPD Basic First Aid Lesson Plan, Feb. 15, 2014, on file with Committee on Public Safety.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

IV. QUESTIONS AND CONCERNS

At today's hearing, the Committee hopes to obtain further information regarding the scope of NYPD Officer training and training procedures, particularly with regard to how arrests are made and when and how force can be used to effect such arrests. Specifically, the Committee would like to learn which trainings are mandatory for all MOS, the extent of that training and frequency of retraining, how the NYPD ensures that all MOS attend these mandatory trainings and have satisfactorily learned the lessons being taught, as well as whether or not the NYPD encourages MOS to attend other non-mandatory trainings. The Committee would also like to learn what MOS trainings take place while an MOS is on-duty and/or occur during overtime hours. In addition, the Committee hopes to gain insight into the findings yielded by the NYPD's top-down review and what was learned from reviewing LAPD's new trainings. The Committee wants to know what re-training is going to be mandated as a result of these reviews and the timetable expected for completion of such re-training.