

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiff,

01-CIV-0364 (CM)

-against-

THE TOWN OF WALLKILL,

Defendant.

-----X

FOURTH REPORT OF THE MONITOR

March, 2005

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FOURTH REPORT OF THE MONITOR

Introduction

This is the Fourth Report of Dean Esserman (the Monitor) and the Police Assessment Resource Center (PARC) on implementation of the Consent Decree agreed to by the Town of Wallkill and the New York State Attorney General concerning the functioning of the Town of Wallkill Police Department. United States District Judge Colleen McMahon, of the Southern District of New York, approved and entered the Consent Decree on April 5, 2001. The Court subsequently selected Police Chief Dean Esserman¹ to audit compliance with the Consent Decree and appointed PARC² to assist Chief Esserman.

¹ At the time of his selection, the Monitor was the Chief of the Stamford (CT) Police Department. He is currently the Chief of the Providence (RI) Police Department.

² PARC, based in Los Angeles and New York, is a national non-profit organization whose mission is as follows: PARC, in cooperation with monitors, law enforcement executives, civic and government officials, and other interested constituencies, aims to strengthen police oversight so as to advance effective, respectful, and publicly accountable policing.

The Monitor's First Report covered the period from June 2001 through January 2002. The first two sections of the First Report recounted the events that led to the Attorney General's suit, summarized the pertinent provisions of the Consent Decree, and reported on the adoption of the Best Practices Guidelines, which have become the Department's policies and procedures manual.³ The Monitor's Second Report covered the period from February through July 2002. The Monitor's Third Report dealt with the period from August 2002 through February 2004. The present report deals with the period from March 2004 through February 2005.

Our report draws, among other things, on our at-least weekly contact with the Department's Chief; regular contact with Town Supervisor John Ward; monthly or bimonthly visits to Wallkill where we regularly meet with the Supervisor, the Chief, the Deputy Chief (now that he has been appointed), the available sergeants, the union president or vice president or both, and sometimes the Town Board; ride-alongs with Wallkill police officers; meetings and other contacts with Orange County law enforcement officials, members of the former Wallkill Police Commission, and members of the community; the review of hundreds of documents and many hours of videotape; and reading relevant articles from the local media.

Compliance with the Consent Decree over the past year has been problematic until recently. The Town came into substantial compliance with the Consent Decree on January 31, 2005, and continues in that status. For the preceding six months, however, the Town was in formal violation of the Consent Decree. The following issues led to the

³ Portions of the current report assume familiarity with the historical portions of the First Report. Those who have not read it may want to refer to Sections I and II of that report. Prior reports of the Monitor are available under "publications" at www.parc.info.

Monitor citing the Town for non-compliance on July 30, 2004, and notifying the Court of violations of the Consent Decree on August 10, 2004:

- Persistent and lengthy delays in the investigations of personnel complaints and failures to comply with the measures imposed to try to rectify this problem;
- Lengthy delays in the preparation and presentation of required early warning system reports;
- Numerous significant delays in departmental videotape reviews; and
- The Town Board's prolonged failure to fill, or even to try to fill, the Deputy Chief vacancy, which led to many of the other delays for which the Town was cited for non-compliance.

As a result of the Town's being in violation of the Consent Decree and its recognition that it would not be able to cure its noncompliance for a number of months, the Attorney General's office and the Town entered into an agreement to extend the Consent Decree to at least December 31, 2005, from its original termination date of June 30, 2005, and to provide that the Consent Decree would not terminate until the Town was in substantial compliance with the decree for a period of one year. The Monitor recommended that the Court approve the amendment of the decree agreed to by the parties, and Judge McMahon did approve the amendment on September 20, 2004.

Because the Town came into substantial compliance with the Consent Decree on January 31, 2005, the term of the Consent Decree has been extended until at least January 31, 2006. If the Town remains in substantial compliance over the next year, the Consent Decree will terminate on that date. If the Town falls out of substantial compliance before

January 31, 2006, the Consent Decree will be extended until one year from the date the Town returns to substantial compliance.

Although the Town has been challenged by the time requirements of the Consent Decree, the Police Department and its personnel have not engaged in any systemic unconstitutional practices or abuses of authority. Quite the contrary, when individual abuses of authority and other misconduct come to light (and they do), the Department deals with those problems in a consistent and conscientious manner. In contrast to the days before the Consent Decree, the Wallkill Police Department is “under control” and respectful of the civil liberties and rights of the Wallkill community.

In the body of the report, among other things, we discuss staffing and hiring, the new police station that will be opening this summer, personnel complaints, vehicle and pedestrian stops, use of force reports, training, the early warning system, evaluations, and the need for the Department to start handling more felonies.

I. Staffing

Chief. Chief Robert Hertman leads the Wallkill Police Department with the utmost of competence, professionalism, dedication, and integrity. The Wallkill community is lucky to have such a consummate professional leading its Police Department. The Town Supervisor John Ward and his colleagues on the Town Board deserve a great deal of credit for hiring Chief Hertman.

From the time we began monitoring the Consent Decree in 2001, prior to Chief Hertman’s initial appointment in February 2002, we were on record as saying that any Chief would need a number-two person to help run the Department effectively. The

vacancy in the Deputy Chief's position from November 2003 until December 2004 was the most significant factor in the Chief's and the Department's inability to comply with the time requirements of the Consent Decree that led to the Town being held to be in violation. Chief Hertman is hard-working, but no matter how hard he worked he could not run the Department and meet all the Consent Decree requirements without assistance. That the Town came into substantial compliance less than two months after the appointment of a new Deputy Chief is not coincidental.

Chief Hertman's most significant innovation in the past year has been the establishment of a Community Council to facilitate better communication between the Police Department and the community, reversing the isolation that had existed in the past. The Council also serves as a forum for block watch and civic groups to exchange information and ideas with each other. After months of planning and identification of interested members, the Council began meeting last October. The Council meetings consistently attract residents active in various neighborhood and civic groups, as well as other interested members of the public. The Council meetings provide a forum for Chief Hertman to inform community leaders about departmental initiatives and for the Council members to inform the Chief of their and their fellow residents' concerns.

Deputy Chief. John Quinn was sworn in as Deputy Chief on December 13, 2004. Prior to his appointment he had been the lieutenant in the Town of Highlands Police Department and before that had spent 25 years as an officer and detective sergeant in the Stony Point Police Department. In his first two months on the job Deputy Chief Quinn assisted Chief Hertman in getting the Department into compliance with the Consent Decree. In his short tenure he has earned respect inside the Department from the Chief,

sergeants, officers, and dispatchers, and outside the Department from Town officials, law enforcement professionals from other agencies, and the Monitor.

From all preliminary indications John Quinn will make an excellent Deputy Chief. What is unfortunate is that it took so long to fill the position.

The first Deputy Chief of the Wallkill PD held the position from April until November 2003. He resigned when it became clear that he was not appropriate for the position. A prolonged 13-month process to fill the vacancy ensued. In the spring of 2004 Chief Hertman recommended a qualified candidate off the civil service list who was approved by the Monitor. Despite the urging of Judge McMahon at a status conference in June, the Town Board did not interview the recommended candidate during the small window of opportunity before the civil service list expired. Shortly thereafter, the Town was cited for non-compliance with the Consent Decree, in large measure because there was not a Deputy Chief available to help comply with the decree's requirements. A subsequent search process ensued, involving candidates willing to accept a provisional appointment as Deputy Chief.

Deputy Chief Quinn recently took the civil service examination for the position. Notwithstanding his obvious talents and leadership qualities, he must score in the top three of those competing for the job to be appointed to his position permanently.

Sergeants. One of the more important reforms incorporated into the Best Practices Guidelines was the requirement that a sergeant be assigned to every shift. In the three years since Chief Hertman assumed his position, a sergeant (or higher-level supervisor) has covered every shift. Fulfilling that mandate has come, however, at a significant price to the sergeants.

While five sergeants are needed to cover all the shifts without overtime, there have been only four sergeants available for active duty during eight of the last 12 months. One sergeant has been on sick leave (except for the briefest of interludes) since March 2003. Another has been on military leave—a leave which may last two years—since September 2004. In June Antonino Spano, who had ably served as an acting sergeant in the latter part of 2003, was permanently appointed sergeant.

The sergeant's position not filled by a member on active duty is the only full-time departmental position that is vacant. Considering the numerous vacancies that have existed in the past, being close to full personnel strength is a substantial achievement.

Even if the Department were not short one sergeant, the Wallkill PD sergeants would have a difficult time completing all the tasks assigned to them. Both qualitatively and quantitatively, much is expected of them. On the quantitative side, sergeants falling behind in investigating personnel complaints and performing video reviews played a significant role in the Town being held in non-compliance. Qualitatively, however, the overall picture is more positive than it has been since the inception of monitoring. Across the board the sergeants as a group are supervising more diligently and more effectively than has been true in the past. Also, as a group, the sergeants appear to be more supportive of the positive direction of the Department. It has taken significant time to change attitudes but there are promising signs of greater buy-in from all sergeants of Chief Hertman's leadership and the greater professionalism he insists on.

The two sergeants appointed by Chief Hertman who are on active duty have proven to be highly effective leaders. They enforce the Department's policies and practices and hold officers to high standards, sometimes in the face of open

insubordination from several of the officers who seem incapable of working for the good of the organization. These sergeants teach the officers hired over the past two years how to use their authority to benefit the community, rather than using their authority—as some did in the past—to benefit themselves and their cronies. With the added support that the Deputy Chief will be able to provide them, these two sergeants will continue to play a critical role in shaping the Wallkill Police Department as a professional organization. The opportunity exists for the other two sergeants to fully embrace the current more professional Department—a direction which to their credit they are moving in. Unambivalently harnessing those sergeants' talents for the continuing betterment of the Department would make a significant difference.

Officers. As of January 2005 the budgetary authorization for full-time officer positions increased from 23 to 25. The budget also authorizes three part-time officer positions, two of which are filled after resignation of the third part-timer in December 2004. Having vetted candidates off the civil service list in advance, the Department was able to fill the two new positions and one officer vacancy in early January. Twenty-five full-time officers represents the most officers employed by the Department in the past five years and compares favorably to the 14 full-time officers employed when Chief Hertman was appointed.

Even with five of the recently hired officers attending the Rockland County Police Academy, the increase in numbers has diminished the need for mandatory overtime for many months, thereby avoiding a process that is distasteful to supervisors, as well as officers, and bad for morale. Being at full strength has also allowed the Town Board to consider two pilot projects recommended by Chief Hertman. The first is to deploy one or

two officers on a rotational basis to investigative duties. This initiative, which has the strong support of the District Attorney of Orange County and the State Police, will be discussed in greater depth in Part V of this report. The second initiative, which has been under consideration for more than a year, is to assign one or two officers to community policing duties, where they will be charged with solving problems that negatively impact the safety and quality of life of the community. Creation of the community policing positions would increase direct community involvement in the priorities and strategies of the Department and would seek solutions to problems that are not solved by arrests.

Fourteen of the 25 officers in the Department have been hired in the last two years. The other 11 officers have a minimum of six years service. It is hard to know for certain why none of the relatively small number of officers originally hired between 1999 and 2002 remained with the Department. Some left for other departments that paid more or seemed to provide greater opportunities. But some surely left because of the negativity that engulfed the Department—a negativity that continues to be fostered by a small number of members of the Department.

Three of the 11 officers from the pre-Consent Decree era are currently facing charges upon which the Town is seeking their termination. The seriousness of the charges they face, their past disciplinary histories, and the open contempt that two of the officers express and exhibit toward the enlightened leadership of the Department all suggest that the Department would render better service to the community and be a healthier place to work if these officers were to depart. Whether or not an arbitrator⁴

⁴ Under the contract that governs officers and sergeants, the final decision both on whether charges are established and what penalty is appropriate is made by an arbitrator. Assuming opposition by the union member, the Town does not have the power on its own to terminate an officer or sergeant who has completed the probationary period no matter how egregious the offense committed. Indeed, more often

agrees, the positive aspect of having so many new officers is that they and the professional half of the more experienced officers form a critical mass that makes the negative few have much less influence and ability to disrupt than they once did. Under the leadership of Chief Hertman, and Deputy Chief Quinn, and in conjunction with the sergeants and experienced officers who are positive and professional, the 14 new officers are building a competent functioning police department that will serve the Town well for years to come.

II. Facility, Contract, and Budget

Facility. In or about July the Wallkill Police Department will move into its first appropriate police station in its 15 years of existence. The Town has taken possession of and is in the process of renovating the two recently purchased buildings into which the Town offices will move this summer. One building will house the Police Department and the local court, while the other building will house the balance of the Town offices. The buildings are centrally located—less than a mile from the current Town Hall—and have sufficient space to meet the needs of Town officials and residents. While the process of acquiring an adequate facility took considerably longer than expected, the Town Supervisor and Town Board are to be complimented for obtaining space that befits a department that is growing in size and professionalism.

The Department will be able to serve the community considerably better in its new 8,000-square-foot facility. Complainants and witnesses will be able to be

than not, the decision by the Town to terminate an officer is overturned by an arbitrator. This problem is hardly unique to the Wallkill Police Department, but rather is a serious nationwide problem. Officers whose departments have determined that they are risks to public safety, corrupt, or otherwise unfit to wear the badge continue to serve because arbitrators frequently overturn departments' well-considered decisions to protect the community from further wrongdoing by such officers.

interviewed in privacy. Officers will be able to safely separate people who need to be separated. There will be adequate places to do paperwork, have roll calls, and attend trainings. When members of the public walk in to the police station, they will have a place to wait that is dignified. Both to those who work there and those who visit, the new police station will communicate the Department's new professionalism.

The fact that the new police station will be ready for occupancy in the summer of 2005 shows the wisdom of the Town Supervisor's and the Town Board's decision to move the Police Department into its present "interim" space in the fall of 2002. At that time it was hoped that a permanent space would be available in months so some might have doubted the need to move the Department out of its original 600-square-foot space—a space that was wholly inadequate for the Department and embarrassing to those who had to work there or come there to do business.

The new police station is an important positive step in the maturation of the Wallkill PD.

Contract. The sergeants' and officers' union contract expired on December 31, 2003. That five-year contract, agreed to in April 2002, after nearly three and one-half years without a contract, was a watershed event. The Town for the first time agreed to pay salaries that were competitive for Orange County. The officers and sergeants went from the lowest paid in the county to the mid-range for the county.

Possibly because negotiations for the upcoming contract began at a much better place than the prior negotiations, the parties voiced initial optimism that a settlement might be forthcoming relatively promptly. That optimism has long since disappeared. The union has requested mediation from the New York State Public Employment

Relations Board. The second mediation session has recently been scheduled. The union is saying that it plans to seek binding arbitration if the mediation process—which normally involves three sessions—does not bear fruit.

Budget. The 2005 budget for the Department is \$2.37 million, an increase of 11 percent over the 2004 budget. That healthy increase provides, among other things, for two additional officer positions. Since 2002, the Town Board has provided adequate resources to the Police Department, thereby demonstrating its commitment to a professional police force. In 2001, by contrast, when only one of the current members was on the Town Board, the Board starved the Department for resources. The difference in approaches is demonstrated by the fact that the Department’s budget has increased 47 percent since 2001—which is a measure of how inadequate the funding of the Department was prior to the Consent Decree. The Town Supervisor and Town Board are to be complimented for their willingness to fund a Department of which the Town can be proud.

III. Personnel Complaints

A. Introduction

The way that a police department handles personnel complaints—the majority of which normally originate from the public—is an important barometer of the health of a department. Around the country and around the world police departments often appear to have a difficult time investigating wrongdoing by their members. Those difficulties lead to the asking of the question: “Who will police the police?”

Based upon our having carefully scrutinized every completed complaint investigation conducted since the Consent Decree became effective in 2001,⁵ we can state with confidence that since Chief Hertman assumed his position three years ago, the Wallkill Police Department can effectively investigate and police itself. Not only are complaints competently and fairly investigated, but significant steps have recently been taken to make those investigations more timely.

In the Third Report of the Monitor (see pages 17-19) we discussed the pre-Consent Decree practices of the Department that were a significant factor in the Attorney General suing the Town and in the establishment of the current procedures mandated by the Consent Decree. We also reported in depth on the handling of the 2002 and 2003 complaints. In this report we look both at the 2004 complaints—all but three of which have been fully investigated as of February 28, 2005—and at cumulative data from the past three years of personnel complaints.

Analyzing the various aspects of the Department's performance with respect to complaints, we conclude that the Department has been exemplary in the following respects: accepting all complaints made to it; publicizing its willingness to take complaints; labeling information that comes to its attention as complaints even when the communication is not intended as a complaint; and being willing to conclude that members of the Department—at both staff and supervisory levels—have engaged in misconduct when it has been proven. The Department also deserves positive ratings for thoroughly, rigorously, and fairly investigating the relevant facts and circumstances of each case and for classifying the dispositions of complaints accurately. An analysis of

⁵ The only case closed by mid-February 2005 that we have not yet read is one for which the file was not readily available the last time we visited Wallkill.

the complaints and the investigations conducted on them shows that the Department proactively and vigorously deals with issues of misconduct or incompetence.

In the Third Report of the Monitor we identified three principal problems in this area: certain members—who often have a significant history of misconduct and poor performance—received a disproportionate percentage of the complaints; certain officers and sergeants were apparently abusing the complaint process to try to settle personal scores; and the processing of investigations has been almost universally slower than required by the Best Practices Guidelines—more often than not without good cause. The first problem—a disproportionate representation by certain members—has not improved in the past year. The other two problems have improved. There are fewer complaints brought in apparent bad faith, and recently the serious delays in resolving investigations have diminished substantially, though meeting the time deadlines of the Consent Decree remains a problem.

B. Receiving Complaints

The Department has done an excellent job in fulfilling the Consent Decree's and the Best Practices Guidelines' mandates to accept all personnel complaints. We reported in detail in our Second Report (see pages 20-24) on the many steps that the Department had taken, and continues to take, to publicize its willingness to accept complaints. Starting in 2002, the Department has made a presentation in March of each year about how to file a complaint at a locally televised Town Board meeting. Appropriate press releases are issued and the pertinent information is circulated by the local media. The Department maintains a 24-hour hotline telephone and fax numbers for the receipt of complaints. Information about how to file a complaint is prominently displayed by the

information window in the police station and is included in the Reference Guide to the Town of Wallkill.

During 2004 an investigation of a personnel complaint revealed that a superior officer had not brought a prior complaint that came to his attention to the Chief so that it could be processed and investigated. A complaint investigation was immediately launched by Chief Hertman for this violation of the requirement to accept and process all complaints. At the conclusion of the investigation the complaint against the superior officer was substantiated. This failure to accept a complaint was the first such failure since 2001 that has come to our attention. On the other hand, we are aware of at least half a dozen cases over the last three years where the complainant has tried to withdraw a complaint or to convince the Department that what was reasonably interpreted as a complaint was not meant as a complaint. Even when the person seeking to withdraw the complaint was a Town official, Chief Hertman has been firm in following the requirement of the Best Practices Guidelines (Rule 9.6.c.6) that complaints sought to be withdrawn must still be fully investigated.

The following case illustrates the Department's serious commitment to pursuing wrongdoing that is brought to or comes to its attention. In 2004 the Department received a relatively rare anonymous complaint. Because the complaint was made anonymously, there was no way to communicate with the complainant, as is normally required, either that an investigation was being opened or that it was completed. No one outside the Department would have known if the letter containing the complaint had been thrown in the wastebasket. To its credit, that is not how the Wallkill Police Department has functioned for the past three years. Then, in the course of investigating the original

allegations—which involved conduct by a dispatcher—a interview was conducted with the officer who was assigned to respond to the call in question. During that interview considerably more serious wrongdoing by that officer came to light. Allegations based upon this newly revealed misconduct were brought and substantiated and discipline was imposed.

As is shown in Table 1, the number of complaints received annually decreased to 43 in 2004 from the 52 and 53 complaints received in 2002 and 2003, respectively. The decrease in complaints received in 2004 resulted from fewer complaints being filed by officers (one in 2004 versus ten in 2003) and by sergeants (three in 2004 versus five in 2003), while complaints from the public actually increased (36 in 2004 versus 30 in 2003). Since many of the complaints filed by officers and sergeants stemmed from divisiveness and unfriendly relations among members of the Department, the downward trend of officer/sergeant-generated complaints is a positive development.

Table 1
Source of Personnel Complaints 2002-04

	2002	2003	2004	Total
Citizens	41 (79%)	30 (57%)	36 (84%)	107 (72%)
Dispatchers	1 (2%)	0 (0%)	0 (0%)	1 (1%)
Officers	3† (6%)	10 (19%)	1 (2%)	14 (9%)
Sergeants	4 (8%)	5 (9%)	3 (7%)	12 (8%)
Chief	2 (4%)	3 (6%)	1 (2%)	6 (4%)
Town Officials (not PD)	1 (2%)	5 (9%)	2 (5%)	8 (5%)
Totals	52 (100%)	53 (100%)	43(100%)	148(100%)

Percentages may not total 100% because of rounding.

†Includes one complaint by a relative of an officer.

As noted in our Third Report, more than 50 percent of the complaints initiated by officers and 20 percent of the complaints initiated by sergeants in 2002 and 2003 were made in apparent bad faith, generally motivated by longstanding personal antagonisms. In 2004, three of the four complaints made by officers and sergeants were made in apparent bad faith. Although the percentage of apparent bad-faith complaints from sergeants and officers increased, their absolute number decreased. We expressed our disapproval of score-settling personnel complaints in our Third Report (see page 24) and in meetings with members of the Department. While we have no way of knowing whether our disapproval had the slightest effect on the welcome decrease in apparent bad-faith complaints, we are gratified to note the decline, whatever the reason.

As was the case in 2002 and 2003, allegations involving abuse of authority were the most frequently made allegation in 2004. As is shown in Table 2, the other frequently

	2002	2003	2004	Total
Abuse of authority	16	16	20	52
Criminal conduct	5	4	0	9
Failure to take appropriate action	14	11	16	41
Falsifying records	2	1	1	4
No colorable claim of misconduct	3	2	3	8
Rudeness/profanity	10	13	9	32
Sexual harassment	0	4	2	6
Unnecessary force†	4	10	0	14
Unprofessional conduct	7	4	0	11
Violation of departmental rules	1	3	3	7
Totals	62	68	54	184

*This table includes the subject matter of all allegations. The totals exceed the 148 complaints made, as some complaints make allegations of more than one type of misconduct. Also included are ten allegations of misconduct that were developed during the course of the investigations, although not alleged in the original complaints.

†Includes unnecessary pointing of weapons.

made types of allegations were a failure to take appropriate action and rudeness or profanity. Unlike the prior two years, there were no allegations in 2004 of the use of unnecessary force, criminal conduct, or unprofessional conduct. The absence of such allegations for a full year is mildly surprising, but certainly positive. While the use of excessive force is a consistent issue for many police departments, neither in the recent nor in the more distant past has that issue been a significant Wallkill Police Department problem.

C. Investigations

The quality of the complaint investigations and of the documentation supporting them generally has been excellent. This past spring, however, apparently as part of an effort to cut the backlog of overdue complaint investigations despite the vacancy in the position of Deputy Chief, some of the investigations and their write-ups presented problems that have not been seen since Chief Hertman was appointed to head the Department. For instance, a sergeant was left in charge of an investigation even when it should have been clear that he approved the arrest warrant issued without probable cause that he was investigating a subordinate for obtaining; witnesses who should have been interviewed were neither spoken to nor contacted for interviews; and issues that were presented by the allegations were not universally pursued. When we brought these deficiencies to Chief Hertman's attention, he immediately took action to re-open the cases that had substandard investigations. When they were re-closed, all the necessary investigation had been done and the conclusions reached could not be faulted as unfair or biased. For instance, the sergeant who had approved the issuance of the arrest warrant

without probable cause was found to have abused his authority (as the sergeant had found with respect to the assigned officer in his original investigation).

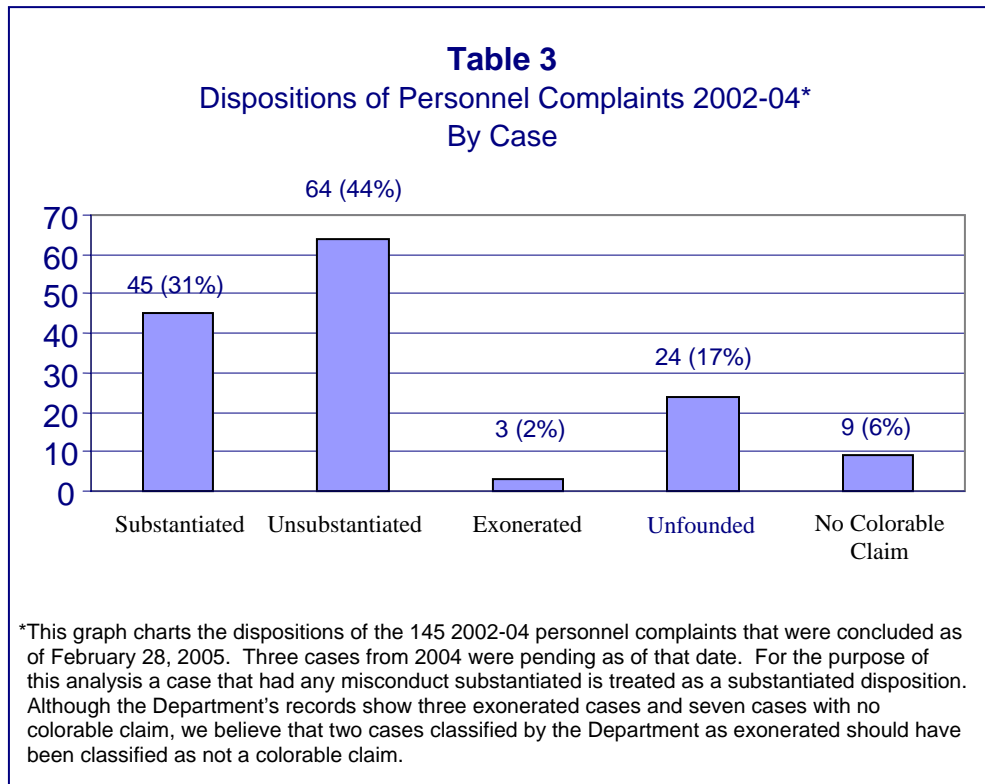
The generally high quality of the investigations results directly from Chief Hertman's commitment to full and fair investigations, his willingness to send cases back to the sergeants for further investigation when warranted, and the excellence of his closing reports that compensate in some instances for weaker summary reports by the sergeants. While the investigations by the sergeants are often excellent, their written reports on the investigations, particularly the summaries, tend not to be as strong. The abilities of the sergeants to conduct thorough and competent investigations clearly have progressed significantly. We suggest to the Chief that he work with the Deputy Chief and the sergeants over the next year to help them improve their abilities to write comprehensive and nuanced summary reports. Among other things, the sergeants' summary reports should (as the Chief's now do) make clear, allegation by allegation, whether sufficient proof exists to substantiate a charge. The sergeants' reports should recommend with respect to each allegation identified the disposition the sergeant finds to be appropriate.

Aside from the relatively infrequent exceptions noted above, cases are thoroughly and fairly investigated. As mentioned above, one of the hallmarks of the thoroughness of the Department's complaint investigations is that when instances of substantiated misconduct beyond the allegations made by the citizen complainant are discovered, the Department investigates them. This willingness to pursue investigations wherever the facts lead demonstrates the serious and professional way the Wallkill Police Department

treats personnel complaints. And when relatively infrequent lapses in quality occur, the Department willingly corrects those errors when brought to its attention.

D. Dispositions

Possibly the most powerful indicator of whether a law enforcement agency can police itself is the degree to which its investigations result in substantiated allegations. As is shown in Table 3, 31 percent of the complaints that have been closed over the last three years have resulted in at least one substantiated allegation. Of the 61 cases closed since the analysis included in our Third Report, 36 percent of the cases were substantiated at least in part. Forty-four percent of the complaints over the last three years were found to be unsubstantiated, 17 percent unfounded, and in two percent of complaints the officer was exonerated. Six percent of the complaints presented no colorable claim of misconduct.



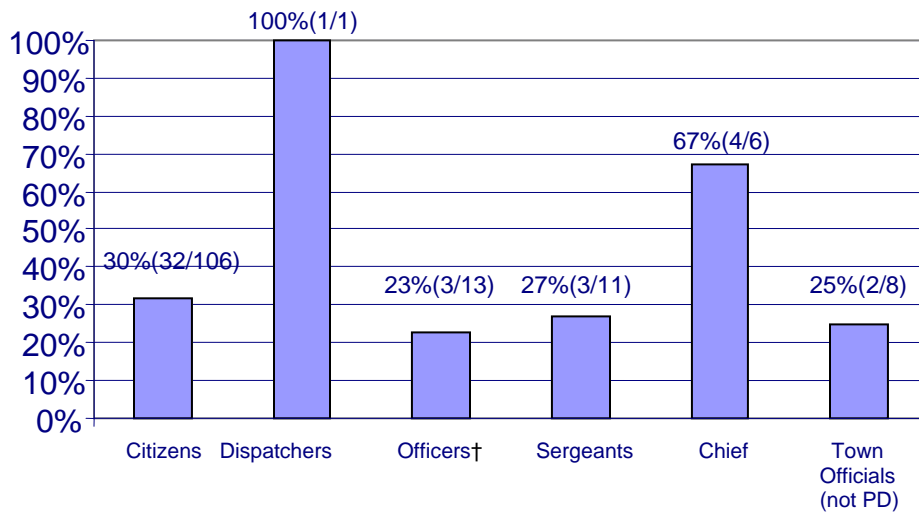
As has been true in the past, several of the complaints that were determined to be unfounded were proven to be false by video or audio tape recordings, again proving, as many Wallkill officers now recognize, that not only do officers and dispatchers who do their jobs appropriately have nothing to fear from taping their interactions with the public, but that tapes can be their strongest defense against accusations of wrongdoing.

Particularly noteworthy is the fact that 31 percent of complaints over the last three years have resulted in substantiated findings—a significantly higher rate than in many, if not most, departments. For instance, the Chicago Police Department reached sustained findings in ten percent of its investigations of misconduct in 2002, and over the five-year period 1998-2002, the New York City Civilian Complaint Review Board substantiated at least one allegation of complaints in 11 percent of fully investigated cases.⁶ One might suspect that that substantiated rate was skewed upward by the fact that 28 percent of the Wallkill complaints came from Police Department or other Town officials. Table 4, however, shows that complaints from members of the public were substantiated at virtually the same rate (30%) as complaints overall (31%). Only complaints by the Chief and the sole complaint by a dispatcher were substantiated at a higher rate.

Looking at the types of allegations that are found to be substantiated, Table 5 shows that failure to take appropriate action and violations of departmental rules are substantiated much more frequently than other types of allegations. One reason such allegations are substantiated at a higher rate is that credibility is less of a factor. If the member should have taken a particular action or followed a particular departmental rule,

⁶ Chicago Police Department, 2002 Annual Report, pages 42-43; New York City Civilian Complaint Review Board, Status Report, January-December 2002, page 95. It should be noted that the New York CCRB figures are based on cases on which the agency conducted full investigations. Taking into account all complaints (which is more comparable to the Wallkill PD statistics), the New York CCRB substantiation rate is five percent.

Table 4
Percentage of Substantiated Personnel Complaints 2002-2004*
By Source of Complaint



*This graph charts the percentages of disposed complaints that were substantiated, classified according to the type of source from which they originated. For the purpose of this analysis a case that had any misconduct substantiated is treated as a substantiated disposition. In all, 145 of the 148 personnel complaints received in 2002-04 were concluded as of February 28, 2005.

†Includes one complaint by a relative of a police officer.

Table 5
Dispositions of Personnel Complaints 2002-04*
By Nature of Allegations

	Substantiated	Unsubstantiated	Exonerated	Unfounded	Pending
Abuse of authority (n=57)	12	30	1	9	5
Criminal conduct (n=10)	1	8	0	1	0
Failure to take appropriate action (n=59)	29	17	2	9	2
Falsifying records (n=4)	0	2	0	2	0
Rudeness/profanity (n=31)	7	17	1	6	0
Sexual harassment (n=7)	2	1	0	2	2
Unnecessary force (n=16)†	3	8	1	4	0
Unprofessional conduct (n=14)	4	7	0	3	0
Violation of departmental rules (n=19)	11	6	1	0	1
Totals (n=217)	69	96	6	36	10

*Dispositions (plus pending allegations) as of February 28, 2005. This table tracks allegations, of which there may be more than one in a particular complaint. This table does not include the ten allegations which did not raise a colorable claim of misconduct, but it does include the 14 instances of substantiated misconduct which were established during the investigation of other allegations.

†Includes unnecessary pointing of weapons.

more often than not some document or other record should show that that action occurred. Once it has been determined that a certain action should have been taken, the absence of a record documenting the occurrence of such an action may well be conclusive.

One unnecessary force allegation was substantiated since the time of our last report. The substantiated allegation involved a member of the Department against whom prior unnecessary force allegations have been made. In this instance the officer was found to have inappropriately pointed his weapon at a group of people upset about the arrest of another person. Since no imminent threat of serious physical injury or death was present, the officer's drawing of his gun was unjustified. The same officer is currently facing unrelated serious charges involving threats of violence for which the Department is seeking his termination.

Two sexual harassment allegations were substantiated since the time of our last report. Both allegations were made against superior officers. One of the substantiated complaints arose out of a complaint by an officer against a superior officer for inappropriate touching. The other substantiated sexual harassment allegation was brought by a Town official against a superior officer for inappropriate comments. In neither circumstance do the superior officer and the complainant against him continue presently to have contact with each other.

Three complaints over the last year involved allegations of serious abuses of authority that had similarities in their seriousness to the abuses that led the Attorney General to investigate and sue the Town. What is different now from the pre-Consent

Decree era is that the complaints in 2004 were immediately processed and investigated. In fact, one of the complaints was initiated within hours of the event by a sergeant who, as part of his normal supervisory activities, astutely recognized the abuse of authority and immediately brought it to the Chief's attention. Also, far different from the pre-Consent Decree days, the investigations of two of the complaints resulted in substantiated findings and disciplinary charges seeking termination of the officers involved.

One of the substantiated allegations involved an officer using his authority against a member of the public with whom he had a personal dispute. That officer, who has been a perennial discipline problem and who figured prominently in the events that led to the Consent Decree, is currently facing charges seeking his termination arising out of this abuse of authority and his long history of serious misconduct. The second substantiated abuse of authority involved the use of police authority to try to benefit an acquaintance of the officer involved. The officer involved in the second incident, also a perennial discipline problem who also figured prominently in the events that led to the Consent Decree, is also facing charges seeking his termination for this abuse of authority and his long history of misconduct. The investigation into the third allegation of abuse of authority reminiscent of the abuses of the past is ongoing. After bringing that allegation directly to the Monitor, the complainant has declined to cooperate with the departmental investigation despite efforts by both the Monitor's staff and the Attorney General's office to persuade him to do so. Unless the complainant in the third case agrees to cooperate, it appears likely that the investigation will result in an unsubstantiated finding.

While the number of complaints a member of a police department is the subject of depends on many external variables—degree of activity by the officer, assignments,

etc.⁷—the number of complaints alleged often does correlate to members whose conduct is problematic. Considering the information in Table 6, there clearly is significant, if not universal, correlation between complaints and history of serious misconduct. Member A, with 22 complaints, four of them substantiated, was one of the most serious offenders identified by the Attorney General’s investigation and has received very serious discipline in the past three years. Member B, with 14 complaints, six of them substantiated, was also one of the most serious offenders identified by the Attorney General’s investigation and has received very serious discipline in the past two years.

Table 6
Numbers of Complaints 2002-04 by Member
(Members with Five or More Complaints)

Member	Complaints	Substantiated
A	22	4
B	14	6
C	14	5
D	13	3
E	12	2
F*	8	4
G*	6	4
H	7	0
I	6	1
J	8	2
K*	5	0
L	6	1
M	6	2
N	6	3
Totals	133	37

*No longer with the Department.

Members have retained their “letter identities” from the Third Report. Thus, the number of complaints is not in exact descending order.

⁷ In Wallkill, another variable is being disliked by members who abuse the complaint system by bringing bad-faith complaints against colleagues.

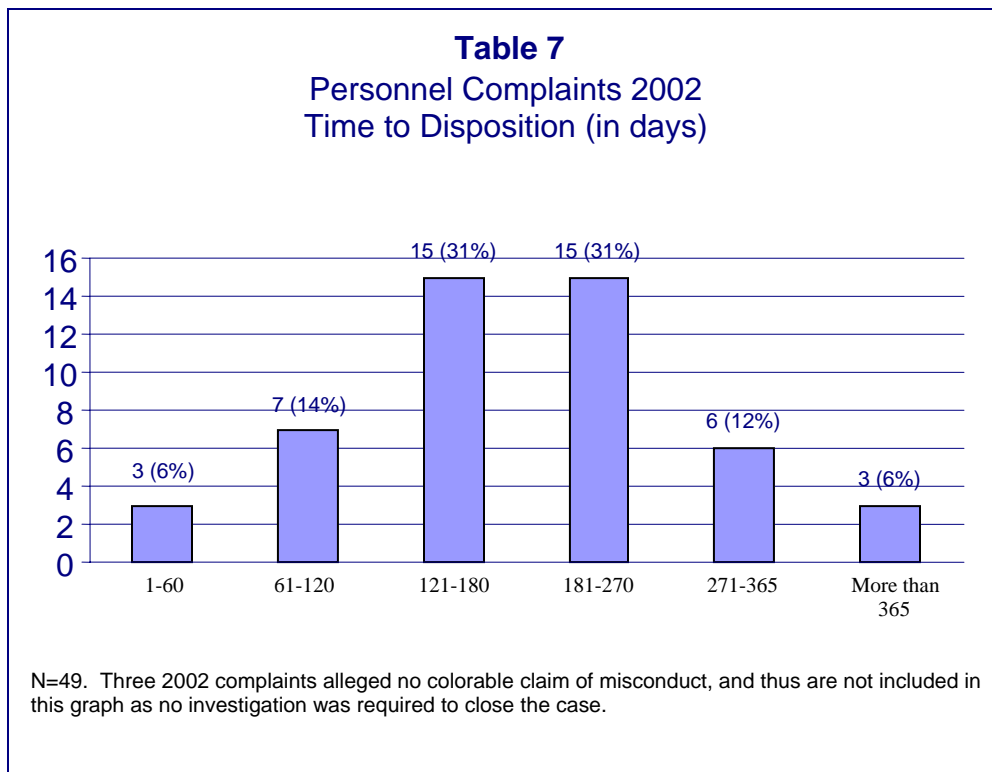
Members A, B, and I are currently facing departmental charges seeking their termination. All three members have a history that suggests that the Town would be better protected with them off the police force. Members F and G, with four substantiated allegations each, are no longer with the Department as a direct result of performance issues.

It is significant that the 11 current members listed in Table 6 were all originally hired by the Department in 1999 or earlier. By contrast, of the current members of the Department hired by Chief Hertman, only two have been the subject of more than one personnel complaint. The members of the Department listed in Table 6—who include four past or present superior officers—have accumulated 70 percent of the personnel complaints from 2002 through 2004, although they represent well less than half of the Department.

E. Timeliness

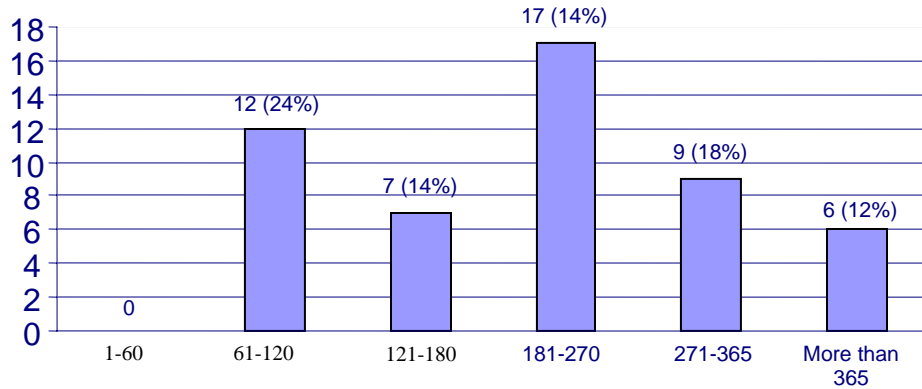
Lack of timeliness in completing complaint investigations has been a persistent problem which has figured in the three citations for non-compliance—in January 2002, April 2003, and July 2004—brought against the Town during the course of the Consent Decree. While the Department is a long way from meeting the standard of the Consent Decree—completion of investigations within 60 days, barring good cause for an extension—dramatic improvement was made in the last few months. As of February 28, 2005, all but three of the 2004 complaint investigations had been completed and only one of the overdue investigations had been pending more than 180 days. By comparison, on July 30, 2004, when the Town was cited for non-compliance, 13 investigations were overdue, eight of which had been pending for more than 180 days.

The recent improvement is graphically shown by comparing Table 9 to Tables 7 and 8. Eighty-three percent (30 of 36) of the 2004 complaint investigations were completed within the 180-day statute of limitations for discipline. By contrast, only 51 percent (25 of 49) of the 2002 complaint investigations and 37 percent (19 of 51) of the 2003 complaint investigations were completed within 180 days. Despite the marked improvement, none of the 2004 complaint investigations was completed within the 60 days required by the Best Practices Guidelines.



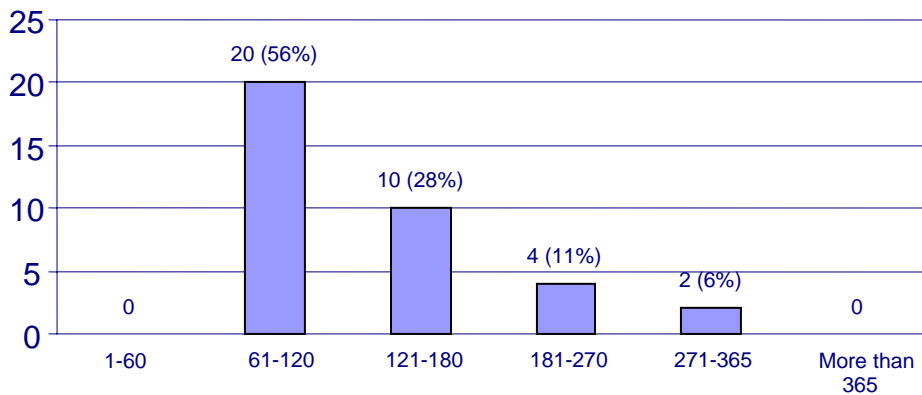
During the course of the past year the attorney assigned by the Town's outside counsel to draw up disciplinary charges when complaints are substantiated allowed a backlog to build up, adding further delays to completing the complaint process. The attorney and his firm were responsive to the concerns expressed by the Monitor on this

Table 8
Personnel Complaints 2003
Time to Disposition (in days)



N=51. Two 2003 complaints alleged no colorable claim of misconduct, and thus are not included in this graph as no investigation was required to close the case. Percentages may not total 100% because of rounding.

Table 9
Personnel Complaints 2004
Time to Disposition (in days)



N=36. Four 2004 complaints alleged no colorable claim of misconduct, and thus are not included in this graph as no investigation was required to close the case. Three 2004 cases were pending as of February 28, 2005. One of those three had been pending for more than 180 days. Percentages may not total 100% because of rounding.

subject, and the Chief has devised a tracking system that makes it less likely that undue delays will recur in the future.

Now that the backlog of overdue investigations has been largely eliminated, the Chief must ensure that, barring good cause, investigations are completed within 60 days. The overwhelming majority of investigations can and should be fully completed within 60 days. Compliance with the Best Practices Guidelines requirements relating to timeliness had become a rare exception. Going forward, such compliance should be the rule.

IV. Oversight Activities

Videotape Reviews. Each month each sergeant is required to review one tape recorded by the cameras in the Department's patrol cars. The tape a particular sergeant will review is chosen by the Chief's secretary in a rotation that ensures that tapes from all the patrol cars are reviewed with approximately the same frequency. Since officers customarily drive an assigned car, the rotation ensures that the work of each officer is reviewed at least every other month. Every self-initiated stop—whether of a vehicle or a pedestrian—is required to be recorded and the officers making such stops must complete stop reports. The stops must also be reflected on the officers' daily activity sheets.

When a sergeant reviews the videotapes, he also reviews the stop reports and daily activity sheets that correspond to the police activity that he is viewing on the tapes. The video reviews thus not only check compliance with taping requirements but also provide a second-level of review by sergeants' of the paperwork filled out in connection

with stops. Cameras in the Department's cars have proven to be an essential tool used to ensure compliance with important aspects of the Consent Decree. And the sergeants' video reviews are the key that unlocks the value of that tool.

Last July, when the Town was cited for non-compliance with the Consent Decree, only one sergeant was up-to-date on his video reviews. Two sergeants were nine and ten months, respectively, behind. These failures were one of the grounds for the finding of non-compliance. Moreover, the tapes being assigned for review were often months old. By December, on the other hand, all the sergeants were up-to-date in the reviews and they were generally being assigned comparatively recently recorded tapes to review. During the first two months of 2005 the sergeants remained caught up; indeed, several sergeants have been completing their reviews a month ahead of time.

Not only have the reviews become timely, but they have markedly—if not universally—improved in quality. Sergeants are documenting deficiencies relating to compliance with the Consent Decree's taping and record-keeping requirements. They note when officers conduct themselves in an unsafe or inappropriate manner. Occasionally, the sergeants observe and report serious misconduct. All the sergeants are now taking their review responsibilities seriously, in a way that only some sergeants did a year ago. The sergeants are to be complimented for the increasingly effective internal oversight provided by the monthly video reviews.

The types of issues generally being identified in the reviews relate principally to compliance with taping requirements and completeness and accuracy of paperwork. Abuses of authority are quite rare. One issue identified by the reviews relates to the possibility that some of the officers hired in 2003 may not have been sufficiently trained

in the taping requirements, particularly the need to ensure that stops are audiotaped. Indeed, in routine stops, the audio portion of the tape is considerably more revealing upon review than the video portion.

Now that the sergeants' reviews have improved, the next step is to improve the Department's use of the findings from the reviews. Deputy Chief Quinn will be receiving the reports from the sergeants and will be responsible for ensuring that all the issues—whether they be safety, training, compliance, or some other category of issue—identified by the sergeants are promptly and effectively followed up on. Deputy Chief Quinn will periodically audit the tapes reviewed by the sergeants to remain current with officers' practices in the field and to ensure that all the issues that should be identified by the sergeants are being identified. Consistent and prompt responses to the issues identified on the tapes has been lacking in the absence, until recently, of a Deputy Chief. His involvement will ensure that the lessons that should be learned are in fact learned.

Notwithstanding all the positives about the video reviews and the enhanced quality of the sergeants' work, the reviews have identified the *most serious* current problem with compliance with the Consent Decree. Equipment malfunctions which we noted in prior reports (First Report, page 28; Second Report, page 27; Third Report, page 37) as a matter of concern based upon their relatively infrequent occurrence have become an epidemic that is seriously undermining the value achieved by the cameras in the cars.

The problems involve the following: cameras switching themselves off during the middle of a stop; out-of-sequence taping, where events that occurred earlier appear on the tape after events that occurred subsequently; earlier events being taped over by later events; events that were observed by the camera (and possibly originally taped)

disappearing from the tapes; voice-activated microphones that do not switch on; audio that cuts in and out, often with lots of static; microphones that stop working when another officer's microphone is in close proximity; and microphones that pick up the conversations of other officers on the scene, but not the officer wearing that microphone. The common denominator of these problems is that video recordings, or the audio portions of those recordings, are being lost and cannot be reviewed.

Some of these problems have been observed, but with much lower frequency, over the past three years. Some have never previously been observed. In either case, the frequency of the problems has increased over the past year by a factor of at least ten, possibly 20. The sergeants' video reviews document that the problems that plague the equipment continue to get worse. The persistence of these problems involving multiple officers, who when the equipment is functioning properly, produce tapes as required, rules out human error as the source of the problems. The failure to remedy the significant percentage of encounters that are unreviewable either in whole or in part will necessarily lead to a determination that the Town is not in compliance with the taping requirements of the Consent Decree (§29) and the Best Practices Guidelines (Rule 20.6).

What apparently has happened is that the taping equipment has reached the end of its useful life. While patrol cars have generally been used enough to have been replaced three times since 2001, the video recording equipment has not been replaced for three and one-half years. Chief Hertman reports that cars frequently are taken out of service for a week or more while awaiting repairs by the vendor of the recording equipment. Repair bills in the hundreds of dollars, even approaching \$1,000, are not infrequent.

We see no reasonable alternative other than purchasing new recording equipment using DVD, rather than the obsolete VHS, technology. Repairs have been tried over the past three years and the problems have steadily, and now alarmingly, increased. Repairs will not solve the present problems. Not later than April 15, the Town must present the Monitor with a timetable for purchase and installation of DVD recorders in each patrol car.

Review of paperwork/performance. Sergeants use two simple forms to record deficiencies in paperwork and to note either exemplary or deficient performance by officers. “Correction Notices” state what is missing or deficient in submitted paperwork and ask the officer involved to rectify the deficiencies and return the appropriately completed paperwork to the sergeant. The “Employee’s Daily Performance Record” documents aspects of performance that either are praiseworthy or that should be corrected but do not rise to the level of requiring discipline—from lateness to poor handling of an incident. These forms provide effective documentation of the day-to-day supervisory activities of the sergeants and their attention to the quality of officers’ work.

We reviewed six months’ worth of correction notices and daily performance record forms generated by the four sergeants currently on active duty. What we found, with one exception, was very encouraging. Both forms were in general used considerably more often than was the case during the six-month period that we reviewed for the Third Report. Three sergeants showed genuine attention to the completeness, accuracy, and quality of paperwork being submitted. The fourth sergeant, whose performance in this area had been excellent a year ago, failed to follow through in this area. On the other hand, the two sergeants whose performance we criticized last year

improved dramatically in this area. And one sergeant whose performance last year was exemplary continues to set the gold standard for conscientiousness and thoroughness. All the sergeants were effective in using the Daily Performance Record forms to document both good and poor performance, though the officers could certainly benefit from more frequent and consistent feedback on their performance.

With the one exception noted, the trends in this supervisory area have been quite positive. Deputy Chief Quinn should seek to have all the sergeants demonstrate the same consistent attention to quality and detail as shown by the sergeant who uses these supervisory tools most frequently and effectively.

Use of Force Reports. The Best Practices Guidelines require the filing of an incident report in a variety of circumstances, including “each use of force.” Rule 33.5.a. Pursuant to a January 2003 directive from Chief Hertman, officers must fill out a use of force report each time force is used. After being reviewed by the shift sergeant, force reports are forwarded to the Chief.

We reviewed all the use of force reports for 2004, which totaled only nine. Two of those reports involved very serious and very unusual incidents: the first two officer-involved shootings in the 15-year history of the Wallkill Police Department.

The first of the officer-involved shooting cases involved a 22-year-old suicidal man who had been drinking heavily and who was wielding a semi-automatic pistol from which he fired several shots into the air. When Wallkill police officers responded to a 911 call in the early morning hours of August 22, they repeatedly, over a several-minute period, ordered the man to drop his weapon. When the man advanced toward the officers brandishing the handgun, the sergeant on the scene fired one shot from his rifle wounding

the man in the leg. The man then shot himself fatally in the head. The case was presented to an Orange County grand jury in January and was found to be justified.

The second shooting involved a 64-year-old self-described militia leader who also had been drinking. The incident began when a store clerk called 911 to say that he had been threatened by a man to whom he refused to sell alcohol, believing the man to be drunk. When several Wallkill Police Department units responded, the man drove off and refused to stop. After a slow-speed chase that ended at the man's residence, the man got out of his car and confronted the four officers on the scene with an M1 rifle. When the man disregarded commands to drop the gun and turned toward the officers, one officer fired five rounds at him and a second officer fired an additional round. The man, who was severely wounded, was subsequently indicted for weapons possession and menacing. The shooting by the officers was found to be justified by a grand jury in January.

Consistent with good police practices, following the determination by the grand jury that no crime had been committed by the officers in either case, the Department proceeded to examine whether the shootings were within departmental policy and whether the tactics employed by the officers were sound. Those administrative investigations are in progress. When they are completed, we will review them.

Three of the nine uses of force involved the use of a Taser. A Taser can be deployed in two ways: either shooting darts attached to wires projected from the Taser which, when they make contact with a person, transmit sufficient electricity to temporarily immobilize the person; or pressing the device into a person to electrically shock or "stun" that person. Two of the three uses of a Taser by the Department in 2004 involved the latter method which is sometimes referred to as "pain compliance." In each

of the cases where the Taser was used for pain compliance, the suspect was being non-compliant—either refusing to be put in a police car or to be handcuffed. In the aftermath of these Taser deployments, Chief Hertman changed the Department policy to prohibit the “pain compliance” method of using Tasers. We support that change of policy. Using a Taser to shock a non-compliant person who is not otherwise posing a threat to officers is an unnecessary use of force, even if justified pursuant to the Penal Law. Such uses of force should be reserved for situations that pose a threat to officer safety.

Four cases involved uses of hands or takedowns following the use of hands. The use of force in three of the four incidents was clearly justified by the fact that the suspect initiated the use of force and the officers responded with force proportional to the circumstances. In the fourth incident we have raised a question as to whether the officers had probable cause to enter a house and were thus justified in forcing their way in when blocked by one of the residents of the house.

In none of the instances where force was used did we see any indications that officers were using force gratuitously or in anger. We do remain concerned, as indicated in our Third Report, that uses of force are being under-reported. Last year we found specific evidence that several incidents involving relatively low levels of force were reported in incident reports but not in use of force reports. We remain concerned that the use of the relatively new use of force report has not been sufficiently institutionalized to capture all low-level uses of force. We recommend that the Deputy Chief and the sergeants pay particular attention to this issue over the next year.

Training. The Consent Decree (¶¶22-23) and Best Practices Guidelines (Rule 13.3) require that all Wallkill officers receive—in addition to any training mandated by

state and local laws—at least 24 hours a year of in-service training, including training in the following areas:

- vehicle stops, specifically arrests for driving while intoxicated, ordering passengers out of a car, search and seizure, and investigative car stops;
- handling evidence;
- safeguarding crime scenes;
- preparation of documents/court appearances;
- sexual harassment; and
- first aid.

In addition, new officers must receive basic training that includes specific topics, such as administrative procedures, ethics and integrity, and community relations. Supervisors are required to meet certain training requirements upon becoming a supervisor and to receive six hours a year of in-service supervisor training. Rules 13.2; 13.4.

Sergeant Robert Scheuring, the Training Sergeant, did an excellent job (as he consistently does in so many areas) in 2004 in ensuring that members of the Department received the appropriate training and in documenting the training that was received.

Virtually all sergeants and officers on active duty for the entire year received more than 40 hours of in-service training, and many received considerably more.

We commend the Department for its comprehensive training program for officers and for its excellent compliance with the Consent Decree in this regard.

Early Warning System. The Consent Decree requires the creation of a computerized information system that tracks Department and member activity concerning arrests, stops, searches, pursuits, complaints, commendations, training, discipline,

counseling, civil suits, findings of misconduct, criminal charges against officers, and evidence handling. Consent Decree at ¶44; see also Rule 33.6. The Chief and the Town Board are required on a quarterly and cumulative basis to use the information from the computerized information system, together with reports filled out by the officers, videotapes, and complaints filed, to try to identify employee problems before they result in discipline. Consent Decree, at ¶44(d), (e); Rule 12.1. Members whose conduct does not conform to the Guidelines, or whose evaluations show the need for improvement, are to be referred to early intervention services, consisting of specified training and counseling. Rules 7.1.i; 12.1-12.2.

The early warning reports cover personnel complaints, discipline, car stops (including a gender breakdown), arrests and summons activity, sick days, emergency excusals, video reviews, and remedial actions taken as a result of prior early warning system reports. Chief Hertman prepares the written report for the Town Board and submits it to the Council members in advance of the meeting where he makes an oral presentation with respect to each member who meets the thresholds for early intervention services. Council members participate actively in the discussion with both comments and questions. As a result of being exposed to this type of information all the members of the Town Board know which Department members habitually generate complaints and are repeatedly disciplined.

The Guidelines provide that members with two or more substantiated or unsubstantiated complaints in the preceding four months, or three or more substantiated or unsubstantiated complaints in the preceding two years, must be referred to early

intervention services. The Chief also has discretion to refer members who do not meet the mandatory thresholds for services. Rule 12.1.f.

During the period of time the Town was out of compliance from July 2004 to January 2005, the Department fell approximately one year behind in producing early warning reports and presenting them to the Town Board. Needless to say, an *early* warning system is defeated by being severely untimely. As of the end of January, however, all the quarterly reports due had been submitted. By early March the Chief had presented all the reports to the Town Board. Although the analysis required by the early warning system has value whenever it is performed, serious delays in completing the reports severely undermine their value as a preventive tool.

Chief Hertman has been receptive to two suggestions we have made to improve the early warning system process: first, some modification of the written form of the report to make it more accessible to Town Board members; and second and more importantly, identification of more types of early intervention services so as to maximize the benefits that such services bring to the community, the Department, and the individual member. Expansion of the early intervention services is particularly important for the members who trigger the system on multiple occasions.

Evaluations. The Best Practices Guidelines require evaluations of the members of the Wallkill PD once every six months: in April, for the preceding October through March half-year period; and in October, for the preceding April through September half-year period. Rule 7.1.a. Sergeants evaluate the officers and dispatchers, and the Chief evaluates the sergeants. Rule 7.1. The Chief is required to review all evaluations “promptly.” Rule 7.1.i.

In our Second Report (page 35), we suggested, and the Chief agreed, that in the future he should review the evaluations prepared by the sergeants before the evaluations were presented to the members of the Department. By doing so, Chief Hertman can make such additions and improvements to the evaluations as he thinks appropriate at a time when those changes will make a difference—*i.e.*, before officers and dispatchers read and sign off on the evaluations. Such review by the Chief is particularly important because only the Chief knows of all personnel complaints and discipline received by employees. If the Chief does not ensure that complaints and discipline are fully reflected in the evaluations, they fail to meet the requirements of the Best Practices Guidelines. See Rule 7.1.f.

The set of evaluations written in April 2004 were excellent. The most important factor in the overall improvement was Chief Hertman's proactive involvement in the process before the evaluations written by the sergeants were given to officers and dispatchers. Not only did the Chief insert information that only he had access to—*e.g.*, concerning discipline and personnel complaints—but he made sure that the evaluations did not overrate officers, particularly those who need to significantly upgrade their performance. Additionally, on average, the sergeants' evaluations last April were of a higher caliber than in the past, even before Chief Hertman's additions and editing. Sergeants were more willing to criticize substandard performance and more willing to encourage continued above-standard performance. Sergeants also better availed themselves of the opportunity to encourage specific improvement in members' future performance. Moreover, the April evaluations were completed on a timely basis.

In significant measure because of Chief Hertman's additions and changes, four officers appealed their April 2004 evaluations. Those appeals were not ruled on for eight months (and an appeal from the October 2003 evaluations was not ruled on for 16 months). Such delays are inconsistent with good practice and cause understandable frustration on the part of those who appeal. While the Best Practices Guidelines do not set a deadline for ruling on appeals (indeed, they do not deal at all with appeals from evaluations), we recommend that appeals from evaluations be resolved within one month.

The October 2004 evaluations did not measure up to the April 2004 evaluations. First, the Chief began the process late so the evaluations were written in November instead of October. Moreover, with one exception, the Chief did not provide the prior review and seek the changes that would have been desirable in some of the evaluations before they were provided to the officers and dispatchers. Many of the sergeants' evaluations were good and some were excellent without the Chief's input. A few, however, glossed over problems. Moreover, the Chief has sole access to disciplinary and complaint information that without his involvement was not reflected in the evaluations.

It should be noted that the November evaluations were done before the Deputy Chief was appointed. During this period Chief Hertman had to make choices of what tasks to complete because the workload was too big for any one person. The set of evaluations this past fall were a casualty of that short-staffing.

The Best Practices Guidelines (Rule 7.1.i) require that the Chief mandate early intervention services for any member who falls below the "meets standard" rating in various specified portions of the evaluations. Pursuant to that rule, the Chief by April 15 should review the two sets of 2004 evaluations and identify which members are required

to receive early intervention services pursuant to this rule. In the future, the early intervention services determinations should be made concurrently with the evaluation process.

V. Relations with Other Law Enforcement Agencies

One of the clear signs of the Wallkill PD's problems that led to the Consent Decree was the complaints from other law enforcement agencies about its lack of cooperation and its unprofessional police practices. The two agencies with the most contact with the Wallkill Department—the New York State Police and the Orange County District Attorney—were prominent among those gravely concerned with the conduct of the Department. Today, both offices have a productive and relatively problem-free working relationship with the Wallkill PD. While each agency has identified issues that needed the Wallkill PD's attention over the past year, we have been informed by the leadership of both the District Attorney's office and the local State Police troop that Chief Hertman and the Wallkill Department are responsive to their concerns and seek constructive resolution of problems that arise. We have also received positive feedback about the Department from the Orange County Sheriff's office and the Middletown Police Department.

The Consent Decree requires the Wallkill PD to contact the State Police concerning all incidents that may involve felonies to determine which of the two agencies should handle them. Homicides must be referred to the State Police, and sex crimes involving victims under the age of 19 must be referred to a specialized task force. Consent Decree at ¶26.

In 2001, Acting Chief John Beairsto and commanders from Troop F of the State Police jointly drew up a broad list of crimes, including virtually all felonies, that would be automatically turned over to the State Police. Because of a variety of complications the agreement between the State Police and Chief Beairsto was never reduced to an executed written agreement. Despite that, the Department adhered to the terms of that informal agreement. In the fall of 2002 Chief Hertman proposed the continuation of Chief Beairsto's agreement, with the modification that the Wallkill PD would be authorized to make arrests on ten agreed-upon felonies, such as low-level grand larcenies and the lowest level of burglary. The District Attorney's office and the State Police captain supervising investigators, however, were concerned about Wallkill's ability to handle felonies. The District Attorney would consent to Wallkill handling only six of the requested ten felonies, striking three of the crimes that are committed most frequently.

In May 2004 Chief Hertman made a proposal to the State Police to increase the types of felonies that the Wallkill Police Department could handle on a regular basis, provided that the perpetrator was apprehended immediately and it was clear that no investigation was needed on the case. Any case needing investigation, or where another perpetrator was unapprehended, would still be turned over to the State Police. Heightened supervisory review was also proposed for the felonies that the Department would handle.

The State Police and the District Attorney's office expressed strong reservations about the proposal unless the Department were to create an investigative capacity. Their point was that, no matter how unlikely it looked at the time of arrest that investigation would be needed, many cases—even where the perpetrator was immediately

apprehended—end up needing investigation. No one involved on any side in these discussions wanted to see prosecutions compromised because the Wallkill PD did not have the capacity to conduct investigatory follow-ups.

The District Attorney encouraged the Town to create an investigative unit. Initially, he suggested, the Town might be more willing to create such a unit if it rotated different members through that unit for periods of less than 18 months. Substantial training would be required—training the District Attorney’s office would be willing to play a leading role in providing. We thought the District Attorney’s suggestion was excellent. It was entirely consistent with our goal to ease the Wallkill Police Department back into handling felonies while the Consent Decree was still in effect, rather than have the Department going from handling virtually no felonies through the end of the Consent Decree to handling any case it wished the day after the Consent Decree terminated. The District Attorney’s suggestion to create an investigative unit—which of necessity would be created after the Consent Decree terminates—would further allow the Department to make effective use of the last year of the Consent Decree as a transition back to a full-service police department.⁸

The Town, which had on its own had been considering creating an investigative unit, reacted positively to the District Attorney’s proposal, subject to the requirements that members of the investigative unit rotate and that the unit be used as an opportunity for training and for identifying officers with the talents to be good detectives. The Town Board has debated whether the unit should consist of one or two temporary members and has also debated how long the rotational assignments should last.

⁸ After termination of the Consent Decree, even though it will no longer be legally required to, Wallkill will continue to turn over to the State Police certain serious crimes, particularly those that will require a great deal of investigation.

We encourage the Town Board to authorize the creation of an investigative unit without delay. A viable unit will require two detectives for several reasons. Some duties—such as arrests in the field—require a second officer for backup and safety purposes. Moreover, both the volume of work and the need for more coverage than one person can provide mandate a second detective position. It is not in the Town's or the Department's interest to create an investigative unit only to have residents, the State Police, and the District Attorney's office frustrated because the single assigned detective will be able to cover such a small portion of a 24-hour, seven-day week even when not on vacation, out sick, in court, and the like.

For reasons of effective service to the community, continuity, and the ability of the assigned detectives to develop a reasonable modicum of skills, the length of the rotation into the investigative unit should be at least one year. Fifteen or 16 months would be better, allowing for the better development of skills and greater continuity.

Once the Town Board authorizes the investigative unit, we hope that the State Police, the District Attorney's office, and the Wallkill PD will swiftly agree on the types of felony cases Wallkill will handle and the procedures to be employed. Unless all these steps happen with dispatch, the opportunity to create a felony case transition period, during which the Wallkill Department will remain subject to the supervision and restrictions of the Consent Decree, will be lost. January 31, 2006, the presumptive end of the Consent Decree, is only a little more than ten months in the future.

Conclusion

The past year has been a bumpy and inconsistent year for compliance with the Consent Decree, but ended on a positive note with the Town's return to substantial compliance. With its full staffing and with the Chief having the assistance of a Deputy, the Department is well-positioned for a successful conclusion of the Consent Decree provided that the Town swiftly makes plans for replacement of the video recorders and creation of a two-person investigative unit. We have the following expectations of the Town and the Department between now and January 31, 2006:

- Not later than April 15, the Town must present the Monitor with a timetable for purchase and installation of DVD recorders in each patrol car and that process must be completed as soon thereafter as possible.
- The Town should authorize the immediate creation of a two-person investigative unit.
- The Department should reach agreement with the State Police and the District Attorney for a sufficient volume of felonies that will be handled by the Department, for procedures that meet the needs of all parties, and for technical assistance and training for the new investigative unit.
- Maintaining substantial compliance with the terms of the Consent Decree.
- Selection of a sergeant so that the number of sergeants on active duty reaches the mandatory minimum number of five.
- Establishing a community policing unit.
- Maintaining a fully staffed Department.
- Successful completion of contract negotiations.

- Developing an effective role for the Deputy Chief, to include principal responsibility for quality control of the Department's operations.
- Training the Deputy Chief and the sergeants in the effective drafting of investigative reports, particularly summary reports.
- Ensuring that all uses of force are documented in use of force reports.
- A broader range of early intervention services for those identified in the early warning system and evaluation processes.
- Objective, complete, and timely evaluations, with the Chief making such revisions and additions as may be required, before the evaluations are presented to the members being evaluated, and concurrent identification of those required to participate in early intervention services.