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JAMES P. ABBOTT
Chief of Police

Memorandum

TO: Deputy Chief Michael Keigher

FROM: Captain William Varanelli

SUBJECT: Annual Administrative Review Directive 1:9 (Bias Based Profiling Analysis)

DATE: January 17, 2020

Sir,

As per Written Directive 1:9, section 1:9-7c, an administrative review shall be conducted on an annual basis to identify this agency's practices, citizen concerns and community concerns regarding profiling and other discriminatory practices. This process begins with a review of our internal affairs filing index for Differential Treatment/Racial Profiling complaints received by the agency in 2019. The examination revealed the Internal Affairs Unit had been in receipt of two differential treatment complaints for calendar year 2019. The complaints were proximately logged into the index system then thoroughly as well as objectively investigated thereafter. Additionally, these protests were tracked and monitored post receipt to ensure the complaints were not part of a bigger picture associated with prior allegations or future accusations. The actions of both subject officers in each case were found to be justified, legal, and proper. The strongest corroborating evidence in both investigations was found in the digital or electronic systems implemented by this agency, specifically our body worn cameras.

The first matter is dated June 03, 2019 and filed as IA19-012. The complainant alleged the motor vehicle stop constituted Racial Harassment as the complaining party identifies as an African American and claimed to have observed a Caucasian driver on their phone who wasn't pulled over. The motor vehicle stop lasted 1 minute 50 seconds and was an advisement and warning regarding a minor violation (Worn/unreadable plate). A personal

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examination of the plate by Internal Affairs staff revealed the plate was in fact worn and unreadable. A check of the officer's performance during the stop provided no evidence that the driver was treated differentially or unfairly. Based on all the objective facts uncovered during the IA investigation, it appeared there was no subjective bias in the officer's actions.

The second matter is dated September 24, 2019 and filed as IA19-038. The complainant claims to have been subjected to five separate motor vehicle stops by the West Orange Police in the last six months for an inoperable tail light. The complainant stated the officer's motivations in stopping her were racist in nature.

IA investigators determined that the complainant's assertion of being stopped five times was correct. A review of the CAD system, officer interviews and three of the five officer's body worn cameras *(Two BWC recordings were beyond the retention period)* showed the complainant had been stopped for the same inoperable tail light each time and had not made the necessary repairs to prevent repetitive enforcement actions by law enforcement. The observed violation by the officer was consistent with prior observations by other officers which too had resulted in multiple warnings for the same offense and yet remained uncorrected. The initial stop is indicative of that which is expected of an on-duty officer who observes such an infraction. This is further exemplified by the fact that five other officers independently initiated motor vehicle stops of the complainant's vehicle for the same offense.

In addition to a review of the two complaints above, forty-six (46) complaints/investigations were undertaken in 2019. The results of these investigations were compared and contrasted in conjunction with the included data analysis. The results failed to disclose a perceivable pattern, practice or trend that one or more of our agency personnel had engaged in any discernable form of Bias Based Policing.

The following statistical data was analyzed for the calendar year January 1, 2019 through December 31, 2019.

MV STOP DATA FOR 2019 TOTAL ENTRIES   10, 209

While calculating the race/ethnicity of MV stops which occurred for the calendar year 2019 there were found to be discrepancies in the total number of MV stops recorded. This anomaly is likely resultant of our Computer Aided Dispatch/Records Management System CAD/RMS unfittingly categorizing MV stops in addition to manually entered modifications by communications staff of the type incident entered within the CAD/RMS. To best depict the actual MV stops by race the data utilized was compiled solely from officers' Daily MV Stop Reports as opposed to the CAD/RMS entries.

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MV STOPS BY RACE	NUMBER STOPPED	PERCENTAGE OF TOTAL STOPS
Asian	297	3%
Black	4,365	43 %
Indian	98	10%
White	5,417	53%
Unknown	32	3 %

MV STOPS BY ETHNICITY	NUMBER STOPPED	PERCENTAGE OF TOTAL STOPS
Non-Hispanic	7,723	76%
Hispanic	2,139	21%
Unknown	347	3%

FIELD INTERVIEWS BY RACE	36 stops / 50 individuals	PERCENTAGE OF TOTAL STOPS
White	14	28%
Black	34	68%
Unknown	2	4%
Indian/native American	0	
Asian/Pacific Islander	0	

FIELD INTERVIEWS 36 stops / 50 individuals BY ETHNICITY		PERCENTAGE OF TOTAL STOPS
Non-Hispanic	36	72%
Hispanic	09	18%
Unknown	05	10%

Kindly note that the field interview data reported here is but a small portion of all field interviews conducted by our officers. An inherent problem to efficiently collecting this data lies in the classification at the point of dispatch and the type of field interview conducted.

Field interviews come in two forms, a *consensual stop* and an *investigative stop,* the genesis of these stops is either self-initiated or conversely resultant of direct assignment by headquarters. In a consensual stop setting, judicially referred to as a *mere inquiry,* a citizen is free to leave at any time and under no obligation to speak nor cooperate in any manner with law enforcement. The second type is an *investigative stop* which is a detention and requires a constitutional justification. A consensual stop is an interaction in which a police officer identifies an individual and finds out that person's *"business for being in a particular area".* An investigative stop is a brief detainment of an individual, based upon a reasonable and articulable suspicion that a crime has been or is about to be committed. Investigative stops are brief detainments conducted for the purpose of determining an individual's identity and resolving an officer's suspicions of criminal conduct. Investigative

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stops, unlike consensual stops, may also occur when a suspect is operating a motor vehicle and the officer executes a motor vehicle stop, commonly referred to as *"being pulled over"*. Officers initiating investigative stops must always be able to clearly articulate the justification of the intrusion, as freedom of one's movement is a basic constitutional safeguard.

When an officer is assigned to a given location relative to a caller's concerns of one or more suspicious persons, the responding officer is tasked with determining if the individual(s) are at such location for nefarious reasons. Quite often a consensual field interview is conducted. Should it be consequently determined by the investigating officer that the alleged suspicious person(s) was simply present, however not involved in criminal activity, oftentimes no field interview report will be completed and the call will be closed at the point of dispatch. On the other hand, at those times when an officer is assigned to determine if an alleged suspicious person is in fact in the process of or about to engage in criminal activity, the subsequent consensual field interview may produce different results than the previous example. Based upon the suspect's observed behaviors, demeanor or criminal activity observed by the officer during the initial interview, the initial encounter may escalate into an investigative detention. If that person is later arrested, an arrest report will be completed in lieu of a field interview report. It's important to understand these two incidents may generate two field interviews with no field interview report due entirely to the CAD/RMS reclassifications. This paradox is an inherent flaw within all CAD/RMS as these IT systems are not engineered or envisioned for the purposes at hand.

The use of field interviews is an important tactical method employed by officers to effectively prevent, interrupt, detect, or intercept individuals who may be contemplating or engaged in criminal activity. Often, any interaction between the police and a citizen may be viewed or perceived by some as a means of police harassment or intimidation conducted in a discriminatory manner against groups or individuals, especially when dealing with marginalized groups such as undocumented immigrants, those lacking socioeconomic means and people of color. As has been said, *"perception is reality"* and as such it is of the utmost importance that those of us sworn to protect remain acutely aware of these sensitivities and continually make every effort to build bridges with all segments of the community, especially those most likely to be disenfranchised.

It is also important when reviewing the data in this report to understand the correct benchmark for measuring such data in each jurisdiction and how populations of neighboring communities may contribute or give rise to the appearance of enforcement partiality. The importance of data review and research lies not solely in the conclusions reached, it lies in the methodology employed to deduce such findings. It is of particular importance that research undertaken factors in the transient and commuter populations which navigate the community on a daily basis. According to an August 07, 2019 study by *Forensic Science.org*, titled "Researchers Find No Racial Disparity in Police Deadly Force...And that's just the beginning"[i]. "Using the metric of census information almost guarantees a finding of racial disparity *(and allegations of racial bias)* in every aspect of the criminal justice system." The author, Dr. Cesario outright rejects census representation as the yardstick by which to determine racial disparity. According to Dr. Cesario's conclusions, the correct standard to calculate racial disparity is not population proportions, but instead rates of police exposure by racial groups. Further support of this theory can be found in *"The War on Cops" (2016),* by author Heather MacDonald. Ms.

MacDonald too rejects population-based disparity studies by compellingly arguing it is crime as opposed to race which is responsible for consequent police actions[ii].

Based on our research the New Jersey State Police Uniform Crime Reporting Unit does not break down the race of arrestee per jurisdiction[iii]. However, the Uniform Crime Report UCR does reflect relevant crime information per jurisdiction. The following information is data pulled from the 2018 UCR (*as the 2019 UCR is not yet published*):

Township of West Orange:
- Population:48071
- # of reported offenses: 706
- Crime rate per 100,000 people: 1,468.7

City of Orange:
- Population: 30449
- # of reported offenses: 998
- Crime rate per 100,000 people: 3277.6

City of East Orange:
- Population: 64625
- # of reported offenses: 1237
- Crime rate per 100,000 people: 1941.1

Township of Montclair:
- Population 38893
- # of reported offenses: 539
- Crime rate per 100,000 people: 1385

Township of South Orange:
- Population 16880
- # of reported offenses: 315
- Crime rate per 100,000 people: 1866

City of Newark:
- Population 282258
- # of reported offenses:7743
- Crime rate per 100,000 people: 1058

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This information clearly illustrates most of our neighboring communities have a fairly high crime rate per 100,000 people. It is of significance to note that the Township of West Orange is located in a county which consistently has one of the highest crime rates in the State of New Jersey. This county also includes the City of Newark, noted to be one of the most violent cities in the United States. In addition, the Township of West Orange is transected by Interstate 280 with eleven on and off ramps to this highway, more than any other community it serves. The accessibility to this jurisdiction by Interstate 280 has undoubtedly played a role in the opportunity for crime and accordingly the diversity of those we encounter. Based on our historical data and investigative experience, more citizens travel from the eastern part of the county into West Orange, than from the western part of the county. This fact increases the chance of police encounters with communities that have more diverse demographics. For this reason, we not only included communities that are contiguous to West Orange, but also communities that effect our transient population because of the accessibility of Interstate 280.

During 2019, the West Orange Police Department responded to 42815 calls for service CFS to the community. The CFS break down is: 62% of MV Stops and 72% of Field Interviews occur in Patrol Zones 1 and 2 on the east side of the township. Zone 1 and Zone 2, although geographically smaller than the western portion of the township (zones 3 and 4) have a far more diverse populace. Patrol zones 1 and 2 account for 58% of all CFS in the township as well as the following:

- 90% of all Strong-Arm Robberies
- 90% of all Sexual Assaults
- 60% of all Burglary to MVs
- 57% of all CDS possession arrests
- 70% of all Thefts of MVs
- 71% of all Burglary to Residence

Due to the greater proportion of reported crimes, criminal activity, known drug areas, known drug offenders and identified gang activity the Special Investigations Unit and Street Crimes Unit operations are principally focused in the Zone 1 and Zone 2 area. This unit works closely with community members to address crime and disorder activities using the concept of intelligent led policing to prevent, stop and displace criminal elements.

During 2019, the West Orange Police Department arrested 447 people for numerous offenses reported by our community. The racial/ethnic breakdown and percentage of the whole is listed below:

- **White**   95   21 %
- **White/Hispanic**   91   20 %
- **Black**   255   57%
- **Asian/Pacific Islander**   6   1%
- **Indian/native American**   0   0%

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A comparison of total arrests to field interviews was conducted and revealed the following information:

White: 21% of arrests compared to 28% of field interviews= 7% difference
Black: 57% of arrests compared to 68% of field interviews=11% difference
Asian/Pacific Islander: 1% of arrests and 0% of field interviews= 1% difference
Indian/native American: 0% of arrests and 0% of field interviews= 0% change
Unknown: 0% of arrests and 4% of field interviews= 4% difference

It becomes evident in this comparison that the differences between the arrests and field interviews based on race and ethnicity are well within an acceptable range that does not indicate any discernable pattern, practice or trend in the actions of our officers. To further support this analysis, we included the fact that approximately two-thirds of our calls for service are generated within the most diverse zones in the township. The slight deviation in the percentages between persons stopped and arrested is minute and acceptable for this analysis.

Zones 1 and 2 also have a large commuter population coming to and from Interstate 280 as well as local pass through traffic from neighboring cities. In 2019, we began to expand our efforts to collect commuter and transient motorist crash data in an attempt to better define the demographics of these populations. For this reason, an analysis was conducted for driver race/ethnicity on motor vehicle crashes within this township, which should provide a more accurate account for our commuter and transient populations.

DRIVER CRASH DATA BY RACE		PERCENTAGE OF TOTAL MV CRASHES
White	1,176	59%
Black	714	36%
Asian/Pacific Islander	79	4%
Indian/native American	27	1%

DRIVER CRASH DATA BY ETHNICITY		PERCENTAGE OF TOTAL MV CRASHES
Hispanic	405	20%
Non-Hispanic	1517	76%
Unknown	74	4%

A comparison between motor vehicle stop data and motor vehicle crash data revealed the following data:

- **White:** 53% of MV stops and 59% of MV crashes= 6% difference
- **Black:** 42% of MV stops and 36% of MV crashes=6% difference
- **Asian/Pacific Islander:** 10% of MV stops and 4% of MV crashes=6% difference
- **Indian/Native American:** 0% of MV stops and 1 % of MV crashes= 1% difference
- **Unknown:** 3% of MV stops and 0% of MV crashes= 3% difference.

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It becomes unmistakable based on this comparison that the difference between the MV stops and the MV crashes based on race and ethnicity are well within an acceptable range and fails to disclose any discernable pattern, practice or trend in the actions of our officers.

A check of the most current census numbers (2010) found the following regarding the racial composition of the Township of West Orange, as well as towns bordering the aforementioned Eastern, Northeast and Southeast areas of this township[iv].

Township of West Orange - The racial makeup of the township was 57.15% (26,406) White, 26.58% (12,284) Black or African American, 0.38% (174) Native American, 7.96% (3,680) Asian, 0.02% (10) Pacific Islander, 4.82% (2,227) from other races, and 3.09% (1,426) from two or more races. Hispanic or Latino of any race were 16.20% (7,487) of the population.

Municipalities which are contiguous to Zones 1 and 2 in our township;

City of Orange- The racial makeup of the township was 12.80% (3,857) White, 71.83% (21,645) Black or African American, 0.57% (173) Native American, 1.51% (455) Asian, 0.02% (6) Pacific Islander, 9.95% (2,999) from other races, and 3.32% (999) from two or more races. Hispanic or Latino of any race were 21.67% (6,531) of the population.

Township of Montclair- The racial makeup of the township was 62.16% (23,416) White, 27.16% (10,230) Black or African American, 0.16% (59) Native American, 3.81% (1,434) Asian, 0.02% (9) Pacific Islander, 2.19% (826) from other races, and 4.50% (1,695) from two or more races. Hispanic or Latino of any race were 7.46% (2,810) of the population.

Township of South Orange- The racial makeup of the township was 60.19% (9,750) White, 28.66% (4,642) Black or African American, 0.14% (23) Native American, 5.16% (836) Asian, 0.01% (1) Pacific Islander, 1.77% (287) from other races, and 4.07% (659) from two or more races. Hispanic or Latino of any race were 6.13% (993) of the population.

Communities that are not contiguous to West Orange, yet increase our transient population because of the accessibility of Interstate 280.

City of East Orange- The racial makeup of the city was 4.13% (2,657) White, 88.51% (56,887) Black or African American, 0.39% (248) Native American, 0.72% (465) Asian, 0.06% (38) Pacific Islander, 3.69% (2,370) from other races, and 2.50% (1,605) from two or more races. Hispanic or Latino of any race were 7.93% (5,095) of the population.

City of Newark: The racial makeup of the city was 26.31% (72,914) White, 52.35% (145,085) Black or African American, 0.61% (1,697) Native American, 1.62% (4,485) Asian, 0.04% (118) Pacific Islander,

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15.22% (42,181) from other races, and 3.85% (10,660) from two or more races. Hispanic or Latino of any race were 33.83% (93,746) of the population.

Although we do not believe census information is a qualified benchmark for this analysis the information was included to provide a more complete look at the relationship between our population's demographics and the chance of police interactions or encounters. The West Orange Police Department recognizes the limitations of the data we analyze on an annual basis, so we are currently looking to expand the collection of race and ethnic data as it relates to police citizen encounters. In 2020, we are looking to expand our collection process to include analyzing race and ethnic data at the point of dispatch. We believe this will add much value to our future analytical capabilities to monitor and track patterns, practices and trends.

Finally, it is well settled and all staff are thoroughly indoctrinated as to the necessity in ensuring we are vigilant in protecting the constitutional rights of all those we encounter. To ensure the highest level of accountability, WOPD Directive 1:9, imposes strict responsibilities on all our employees to supervise each other and mandates the reporting of all constitutional violations committed by other officers.

It should be noted that all sworn members of the West Orange Police Department are trained annually in racial profiling and ethical based policing. During 2019, the bias-based profiling block was instructed during the in-service training day in October. I have also used this opportunity to review our policies and found that Directive 1:9 was last updated on January 14, 2019. This newest revision includes identifying gender identity as a protected class.

Moreover, we strive daily to continually foster a climate embedded deep within our culture to preserve the sanctity of life, act constitutionally, compassionately and always respect those we encounter regardless of the circumstances.

Respectfully,

Captain William Varanelli
Office of Professional Responsibilities

CC: Chief James P Abbott
    Deputy Chief Matthew Feula
    Captain Richard McDonald

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[i] *https://www.forcescience.org/2019/08/researchers-find-no-racial-disparity-in-police-deadly-forceand-thats-just-the-beginning/.p 3*

[ii] *MacDonald, H. (2016) The War on Cops"*
[iii] *https://www.njsp.org/ucr/index.shtml.*
[iv] *https://www.census.gov/topics/population.html.*

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