

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

CITY OF SEATTLE,  
  
Defendants.

No. 2:12-cv-01282-JLR

**UNITED STATES' BRIEF REGARDING  
SPD ACCOUNTABILITY SYSTEMS  
REVIEW**

**I. INTRODUCTION**

The agreement entered into between the Plaintiff United States of America and the Defendant City of Seattle (the "Parties"), and approved by this Court in September 2012, calls for reforms to a number of areas of the Seattle Police Department's ("SPD") oversight structures and policing practices. *See* Dkt. No. 3-1 ("Consent Decree"). Some of these areas for reform relate to aspects of "police accountability," for instance, how officer conduct is systemically monitored for potential misconduct, and aspects of how misconduct is subsequently addressed. Accordingly, changes to SPD's systems for police accountability have the potential to conflict

1 with matters covered by the Consent Decree (although they may not – the Consent Decree has  
2 also left many aspects of police accountability to the discretion of the City and SPD). For that  
3 reason, the Department of Justice (“DOJ”) and this Court have made clear that they plan to  
4 review proposed changes to those accountability systems to ensure that any such changes do not  
5 undermine the important overall goal of the Consent Decree – to address the unconstitutional  
6 policing issues identified by DOJ in its investigation and subsequent findings letter. *See* Dkt.  
7 No. 1-1.

8         With that in mind, in August 2015, the Court directed the Parties to file “an approach for  
9 SPD accountability and review systems.” *See* Dkt. No. 228. Further, in February 2016, the  
10 Court outlined a number of questions to the Parties and other stakeholders to frame its  
11 consideration of these issues. *See* Dkt. No. 274-1 at 43 (City filing outlining Court’s areas of  
12 inquiry). In March and early April, 2016, the Parties, along with other stakeholders (namely, the  
13 Office of Professional Accountability (“OPA”), the Office of Professional Accountability  
14 Auditor (“OPA Auditor”), the Office for Professional Accountability Review Board (“OPARB”),  
15 and the Community Police Commission (“CPC”)) all met in a series of workgroups to discuss  
16 the Court’s questions and evaluate if there are areas of consensus among those groups on how  
17 Seattle could best structure its accountability systems (the “Accountability Workgroups”).

18         The City of Seattle filed its account of the outcome of the Accountability Workgroups on  
19 May 10, 2016. *See* Dkt. No. 289. In general, DOJ agrees that the brief provides a good  
20 overview of the areas of agreement and the City’s proposed path forward. However, because of  
21 its unique role within this process, DOJ takes this opportunity to provide some additional context  
22 and clarifications.

## II. THE ROLE OF DOJ IN THE SPD ACCOUNTABILITY SYSTEMS REVIEW

As the Court is aware, DOJ is involved in the above-reference discussions by virtue of the fact that it was the investigating body and plaintiff in this 42 U.S.C. § 14141 action against the City of Seattle. At the culmination of the investigation, DOJ found that the City had engaged in a pattern and practice of unconstitutional policing. In 2012, that action was resolved through a negotiated Consent Decree that set forth binding requirements designed to remedy DOJ's findings – some of which relate to aspects of police accountability. However, the Consent Decree does not, and was never intended to, exhaustively address all aspects of SPD and the City's police accountability systems. For example, although the Consent Decree sets forth expectations on how uses of force will be reported and reviewed, it does not dictate how or by whom decisions regarding officer discipline or termination are made. Rather, those decisions have been left to the City and the SPD. Likewise, although the Consent Decree requires that civilians (in the form of the OPA Director) participate in misconduct investigations, the composition of OPA is left to the City's discretion. Accordingly, in reviewing proposed changes to SPD's police accountability structures and processes, DOJ's input is limited to their intersection with the negotiated terms of the Consent Decree. This review is an important step in fulfilling DOJ's firm interest in seeing that any changes in police accountability systems do not undermine progress in the areas directly addressed by the Consent Decree.

With that in mind, DOJ's attendance at the Accountability Workgroups and our positions set forth herein reflect, not a prescriptive dictate of what DOJ thinks is the "best way" to structure accountability systems, but rather, deference to the people of Seattle, through their

1 legislators, to craft systems that work best for this community. This deference is tempered only  
2 by DOJ's interest in ensuring that the progress made in addressing the matters set forth in the  
3 Consent Decree is not undermined. We believe that the City's proposed approach provides the  
4 best means to protect both of these interests while furthering the development of police  
5 accountability systems in Seattle.

6 As we understand it, the City's plan would function as follows: First, the City Council  
7 (given its legislative role in the City) would develop proposed legislation that addresses how  
8 police accountability should be structured and implemented in Seattle. Second, the proposed  
9 legislation would then be subject to review by DOJ and this Court. That review will focus on  
10 determining whether anything in the legislation conflicts in any way with the City meeting the  
11 requirements of the Consent Decree. If they do not conflict, DOJ would have no objection and  
12 the changes can proceed without issue. If they do conflict, DOJ would need to decide whether it,  
13 therefore, objects to them or whether it believes the Consent Decree should be amended because  
14 such an approach would better meet the overall goal of the Consent Decree – *i.e.*, addresses the  
15 unconstitutional policing DOJ found in its investigation. Because the City's plan accounts for  
16 the need for this review, DOJ supports it as an appropriate next step.

## 17 II. SPD'S CURRENT ACCOUNTABILITY STRUCTURE

18 The City's filing accurately addresses each of the Court's questions regarding some of  
19 the accountability structures currently in place in Seattle – namely, the roles of the Force  
20 Investigation Team (“FIT”), the Force Review Board (“FRB”), OPA, and the OPA Auditor.<sup>1</sup> For

21 \_\_\_\_\_  
22 <sup>1</sup> It is worth noting that community involvement in police accountability (which is currently being  
23 discussed in the context of future plans and changes to police accountability in Seattle) is and has been a  
part of these existing structures as well. For instance, the civilian-led OPA is able to “roll to the scene”

1 additional information about these entities or the structures of accountability as they currently  
2 exist within SPD, DOJ additionally refers the Court to the following briefs that provide  
3 additional detail on each: Dkt. No. 187 (Monitor’s Fourth Semi-Annual Report) at 31-36  
4 (describing the role of FIT), at 37-39 (describing the role of the FRB), at 47-48 (describing the  
5 role of OPA), at 69-70 (describing the Early Intervention System (“EIS”); Dkt. No. 233 (City’s  
6 submission regarding accountability systems) at 4-7 (describing OPA, OPA Auditor, and  
7 OPARB roles); Dkt. No. 234 (DOJ submission regarding accountability systems) at 4-9  
8 (describing the roles of FIT, FRB, EIS, and the community in accountability); Dkt. No. 247  
9 (FRB Assessment) at 2-4 (describing the role of the FRB), Dkt. No. 259 (OPA Assessment) at 6-  
10 7 (discussing the role of OPA).

### 11 **III. PLAN FOR SPD’S FUTURE ACCOUNTABILITY STRUCTURE**

12 The City’s filing also generally captures the areas of consensus stemming from the  
13 Accountability Workgroups. In summary, the areas of general consensus were:

- 14 1. OPA should have jurisdiction over all officer misconduct, but that jurisdiction can  
15 and should be delegated when appropriate (for instance to the chain of command for  
16 handling of minor misconduct);
- 17 2. OPA should have more civilians serving as investigators than it currently has;
- 18 3. Efforts should be taken to increase the independence of the OPA and the OPA  
19 Auditor (or like-function); and
- 20 4. The OPA Auditor function – whether operating under that name or converted into  
another entity like an Inspector General – should encompass “big picture” evaluations  
of SPD practices, including policy review, systemic issues, and best practices.

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21 with FIT for review of significant force events. OPA also participates in the FRB. The Parties also  
22 fruitfully and transparently have sought out and incorporated civilian, community input into these entities’  
development. For example, the CPC and civilian OPA Auditor participated in the creation, and  
subsequent refinement of, the Training and Operations Manual for the OPA.

1 We also note that the Accountability Workgroups yielded a number of “near-consensus”  
2 concepts for the future of SPD’s police accountability, including: possible modifications to the  
3 collective bargaining process to enhance the transparency of union negotiations; the selection  
4 and membership criteria for the members of the civilian organization tasked with police  
5 accountability responsibilities; and the streamlining of systems designed to collect and organize  
6 feedback to SPD from the various entities and community groups reviewing SPD actions. It is  
7 our understanding that each of these positions – both consensus and near-consensus – will be  
8 communicated to City legislators and will serve to inform and assist in their legislative process.

9 For the reasons discussed above, however, DOJ does not specifically take a view as to  
10 how these points of consensus and near-consensus should be addressed or incorporated into City  
11 legislation, nor how the City should answer the additional “forward-looking” questions identified  
12 in the City’s briefing. Rather, DOJ simply adds its agreement to the City’s overarching position  
13 that compliance with the Consent Decree *may* be affected by legislative changes if they are made  
14 in these five areas (though stated differently herein than in the City’s listing), namely:

- 15 1. Modifications to the OPA Manual or to the related SPD Policies 5.002 and 5.003  
16 (which address when complaints regarding officers or misconduct must be referred to  
OPA for review and when they may be handled by the chain of command);
- 17 2. Modification of the OPA Auditor role;
- 18 3. Modification of OPARB’s role or termination of that entity;
- 19 4. Modification of any other internal SPD accountability component discussed in the  
20 Consent Decree, including FIT, FRB, or EIS; and
- 21 5. The establishment of a permanent civilian oversight body.<sup>2</sup>

22 <sup>2</sup> The City briefing suggests that the CPC may already be acting beyond the scope of the role assigned to  
23 it by the Consent Decree. However, the Consent Decree states that the CPC “may issue its own reports or  
recommendations to the City on the implementation of the Settlement Agreement” and that the CPC “may

1 Accordingly, DOJ agrees that proposed changes to any of these five areas must be  
2 submitted to, and approved by, DOJ and the Court prior to being implemented.

3 **IV. CONCLUSION**

4 For the foregoing reasons, DOJ concurs in the City’s plan that: (1) the Parties will file a  
5 stipulation setting forth next steps for the Court’s approval no later than June 1, 2016; and  
6 (2) such stipulation will include a provision that any City legislation relating to police  
7 accountability not be implemented until DOJ and Court have the opportunity to review the  
8 legislation as set forth above.

9 Respectfully submitted this 24th day of May, 2016.

10 For the UNITED STATES OF AMERICA:

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consider other issues as referred by the Parties in Section III.C. of the MOU” which in turn calls upon the  
CPC to assess the SPD’s community engagement efforts. See Dkt. No. 3-1 at 3. These terms give some  
authority to the CPC to make inquiries to SPD regarding its practices related to the settlement agreement  
topics and/or SPD’s community engagement. That said, it seems inarguable that the CPC and the City  
would benefit from having the role of civilian oversight clarified for the future.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

It is further certified that on May 24, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

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5  
6 I further certify that on May 24, 2016, I mailed by United States Postal Service the  
7 foregoing document to the following non-CM/ECF participant(s)/CM/ECF participant(s),  
8 addressed as follows:

9 -0-

10 Dated this 24th day of May, 2016.

11 *s/ Ruby Galen*

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