

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF SEATTLE

Defendant.

CASE No. C12-1282-JLR

**MEMORANDUM SUBMITTING
UPDATED FORCE-RELATED
POLICIES**

Pursuant to paragraphs 177 through 181 of the Consent Decree and to the requirements of the Third-Year Monitoring Plan, Dkt. 195 at 15–16, the Parties and Monitor have completed the annual review of a number of separate sections and policies of the Seattle Police Department (“SPD” or “the Department”) that relate to force. After constructive discussions with SPD officers of all ranks, the Department of Justice (“DOJ”) and City of Seattle (“the City”) (collectively, “the Parties”), the police officers’ unions, the Community Police Commission (“CPC”), and a number of other community groups, the several policies that address the use, reporting, investigation, and review of force have been updated and revised in a narrow, surgical

1 manner.

2 The relatively limited changes to the policies are all evidence-based – informed by real-
3 world experience, actual SPD trends, and objective data, not hypotheticals or unsubstantiated
4 claims. They originate with the analysis of hard data on use of force and its review; officer
5 listening sessions and focus groups conducted by SPD Patrol; officer comments on the force
6 provided to SPD’s Audit, Policy & Research division; lessons learned by the Force Review
7 Board (“FRB”) and Force Investigations Team (“FIT”); separate officer and community input
8 sessions by the Community Police Commission; and the ongoing observations of the Parties.
9 SPD advanced many valid concerns voiced by officers and the community. The Parties and
10 Monitor have acknowledged these concerns, and the updated policies address them.

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12 The policies that have been part of the review process are (collectively, the “force-related
13 policies”):

- 14 • SPD Manual Section 8.000, which “outlines the Seattle Police
15 Department’s core principles relating to the use of force” and “provide[s]
16 the foundation for the more specific policies governing” a host of other
17 topics,” attached hereto as Exhibit A, Ex. A at 1;
- 18 • SPD Manual Section 8.050, which defines commonly used terms in the
19 various force-related policies, attached hereto as Exhibit B;
- 20 • SPD Manual Section 8.100, which now sets forth the pre-existing concept
21 and policy of de-escalation in a distinct policy section, attached hereto as
22 Exhibit C;
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- 1 • SPD Manual Section 8.200, which governs when officers may and may
2 not use force (the “officer use of force policy”), attached hereto as Exhibit
3 D;
- 4 • SPD Manual Section 8.300, which provides more specific, overriding
5 guidance on the use of less-lethal force tools, such as the Taser, canines,
6 and the like, attached hereto as Exhibit E;
- 7 • SPD Manual Sections 8.300-POL-1–10, which provide more detailed,
8 instrument-specific guidance about less-lethal force in the format of a
9 policy manual, attached hereto as Exhibit F;
- 10 • SPD Manual Section 8.400, which addresses the administrative
11 requirements relating to the reporting and investigation of force, attached
12 hereto as Exhibit G;
- 13 • SPD Manual Section 8.500, which addresses the internal, administrative
14 review of use of force incidents, attached hereto as Exhibit H; and
15
- 16 • The SPD Manual Preface, attached hereto as Exhibit I.
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18 The revisions to the officer use of force policy (Exhibit D) are particularly minimal. The
19 straightforward focus remains: to ensure that officers attempt to avoid force through de-
20 escalation and, if force becomes necessary, that officers use force that is reasonable, necessary,
21 and proportional. *See* Ex. D at 1.

22 Some commentators continue to advance the notion that SPD’s “use of force policy” is
23 seventy, eighty, or ninety pages in length and must therefore be overly complex. That remains
24 false. SPD Manual Section 8.200, aptly captioned “Using Force,” is the policy that sets the
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1 standard for when officers may and may not use force. After some minimal clarifications based
2 on both officer and community feedback, that section now runs barely more than two pages. Ex.
3 D at 1–3. Another basic policy on less-lethal instruments (Exhibit E), which only provides more
4 specific detail to complement the basic officer force policy, is barely more than one page. Ex. E
5 at 1–2. The remainder of the force-related policies that are discussed and set forth here address
6 either what happens *after* an officer has used force or general, though important, principles and
7 concepts applicable throughout a number of policies – not whether the officer can or cannot use
8 force in the first instance. Although the reporting, investigation, and internal review policies are
9 also vital to internal accountability and the Consent Decree, those procedural manuals neither
10 guide nor constrain an officer’s determination as to whether to use force in the field. Any
11 ongoing or future representations that the “use of force policy” is too long or complex are untrue.
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13 Any policy must balance concision with clarity and broad applicability – it must guide
14 officers across innumerable unforeseen circumstances and yet be specific enough to effectually
15 hold officers accountable for poor decision-making. SPD’s force-related policies continue to
16 strike this balance. Regardless of whether a specific tool, technique, or tactic is expressly
17 identified or mentioned, an officer’s application of any force must be reasonable, necessary,
18 proportional and used where de-escalation is not feasible under the circumstances. Ex. D at 1.
19 Similarly, when it comes to reporting and investigating force, force is classified not by specific
20 action, tactic, or force instrument but according to number of factors – including both what the
21 force instrument or technique usually does and what, in fact, happened during the application of
22 force in a given incident. *See* Ex. G at 1. For example, even if a force tool or tactical maneuver
23 is not expressly covered in the SPD Manual, force that did or could be reasonably expected to
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1 cause “physical injury greater than temporary pain” would constitute Type II force subject to
 2 reporting, investigation, review by the Force Review Board (“FRB”), and review by the Office
 3 of Professional Accountability (“OPA”) if the investigation suggested possible misconduct. *Id.*

4 The Monitor has closely reviewed the proposed updates and clarifications to the force-
 5 related policies. For the reasons set forth below, the Monitor agrees with the Parties that the
 6 revised force policies are clear, pragmatic, and consistent with the letter and spirit both of the
 7 implicated requirements of the Consent Decree, Dkt. 3-1 at 16–40 ¶¶ 69–129, and of the laws
 8 and Constitution of the United States. Accordingly, the Monitor respectfully requests that this
 9 Court approve the updates of the various force-related SPD policies attached hereto.
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11 12 **I. PROCEDURAL HISTORY**

13 Under the Consent Decree between the City of Seattle and the U.S. Department of
 14 Justice, “[t]he first order of business . . . was the formulation of new Use of Force policies which
 15 conformed to the Fourth Amendment of the Constitution and the United States Supreme Court
 16 and appellate court decisions interpreting it.” Dkt. 107 at 2–3. After “marathon negotiating
 17 sessions facilitated by the Monitor between the parties to this litigation” between November
 18 2012 and August 2013, as well as substantial input from SPD officers and the community, the
 19 Monitor recommended that the Court approve the policies relating to force. Dkt. 107 at 1.
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21 Noting that “the court believes that comprehensive, clear and specific policies are the
 22 most appropriate remedy for the present circumstances,” the Court approved the policies. Dkt.
 23 115 at 3. They became effective on January 1, with officers receiving training soon thereafter
 24 (including both electronic learning and an eight-hour, in-class training) on the policies as well as
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1 a comprehensive, scenario-based, 24-hour training on the policies through 2014. Officers will
2 also receive significant, additional force “training that seeks to build upon the foundation of
3 training received in 2014” throughout 2015 on force. Dkt. 195 at 4.

4 The Consent Decree provides for a review of the required policies, procedures, and
5 training curricula “180 days after it is implemented, and annually thereafter.” Dkt. 3-1 at 56 ¶
6 180. Accordingly, the first comprehensive appraisal of the force-related policies began in mid-
7 2014 and accelerated as officers completed their force training and SPD and others conducted
8 outreach on the policies, described below.

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10 The Court-approved Third-Year Monitoring Plan provided for filing of any proposed
11 revisions with the Court by April 10, 2015, Dkt. 195 at 15, with an extension of a period no
12 greater than 30 days upon agreement of all of the Monitor, Department of Justice, and City of
13 Seattle that more time was necessary to continue productive work on the policies. Dkt. 195 at
14 16. After a constructive, additional period of analysis, review, and collaboration, SPD submitted
15 its final proposed, updated force-related policies to the DOJ. The task of the Monitor is now to
16 determine if the updated policies are consistent with the Consent Decree. Dkt. 3-1 at 56–57 ¶
17 177.

18 19 20 **II. SUMMARY OF CHANGES TO THE FORCE-RELATED POLICIES**

21 **A. Core Principles (SPD Manual Section 8.000)**

22 SPD Manual Section 8.000 continues to articulate the Department’s primary philosophy
23 on force. A new preface to Section 8.000 expressly states why the principles are important:
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25 This section outlines the Seattle Police Department’s core principles relating to the use of

1 force. These general principles provide the foundation for the more specific policies
2 governing the application, reporting, investigation and review of force.

3 Ex. A at 1. That preface also recognizes that, throughout the force-related policies, SPD
4 “recognizes that officers will face unique and challenging circumstances not specifically
5 addressed in this policy” and that its “[o]fficers are expected to apply these core principles
6 reasonably in unanticipated situations.” *Id.* Thus, this new introductory material underscores
7 that the Section contains general statements that inform, reinforce, and run through all the other
8 force-related policies.

9 The prior version of Section 8.000 included more detail on de-escalation. Given the
10 importance of the requirement that officers de-escalate all situations when time, circumstances,
11 and safety considerations permit, that material has been moved to a distinct policy section,
12 Section 8.100. *See* Ex. A at 1; Ex. B.

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15 **B. Force-Related Definitions (SPD Manual 8.050)**

16 Common definitions to frequently-used terms that apply throughout the force-related
17 policies are located in Section 8.050. The proposed changes and updates are minor. For
18 instance, in the description of “deadly force,” a parenthetical list replaces a former bulleted list of
19 examples of a “fixed object.” Ex. B at 1. In the explanation of the Force Investigation Team
20 (“FIT”), the definition clarifies that FIT conducts both Type III use of force and officer-involved
21 shooting investigations, which has been the case since the Team’s inception but needed to be
22 uniformly reflected across the policy. *Id.* The definition of Type I force clarifies that pointing a
23 firearm or bean bag shotgun “at a person” is reportable force; simply having a firearm at a “low
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1 ready” position but not pointed at an individual, consistent with training, is not reportable force.

2 *Id.* The clarification on Type I force integrates into the main text of a policy directive that Chief
3 O’Toole issued clarifying policies about the reporting of lower-level uses of force. *See* Dkt. 187
4 at 6 (describing the scope of and rationale for the reporting requirement clarifications). The
5 revised policy section also includes a few additional, minor word changes.

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7 **C. De-Escalation (SPD Manual Section 8.100)**

8 The “new” SPD Manual Section 8.100 contains no new language and imposes no new
9 requirements. Instead, it encompasses the language previously contained in explanatory material
10 outlining de-escalation as a core principle of the Department, Dkt. 107-1 at 2, and another sub-
11 policy section, Dkt. 107-1 at 8.

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13 The Monitor noted in the Fourth Semiannual Report in December 2014 that the Force
14 Review Board “does not yet hold officers accountable for an unreasonable failure to de-escalate
15 despite the importance and centrality of de-escalation in SPD’s use of force policy and training.”
16 Dkt. 187 at 5. SPD, which admirably was the first to propose making “de-escalation” a
17 standalone policy section, argued that part of the problem was confusion over whether force was
18 “in policy” when an officer failed to de-escalate – which may have contributed to the need for
19 force to be used – but used force that was objectively reasonable, necessary, and proportional.
20 The Department argues that having a standalone “de-escalation policy” clarifies that even
21 officers whose force is reasonable, necessary, and proportional may be held accountable for
22 failing to attempt to de-escalate during an incident in the sequence of events leading to force
23 being used. The Department of Justice agreed, and the Monitor concurs.
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2 **D. Officer Use of Force (SPD Manual Section 8.200)**

3 Section 8.200 is the policy that addresses when officers can and cannot use force. The
4 minimally revised policy now runs slightly more than two pages. *See* Ex. D at 1–3.
5 Accordingly, the Consent Decree review process has resulted in an even clearer and shorter
6 policy governing the application of force.

7 The policy’s focus on four basic elements – that force be reasonable, necessary,
8 proportional, and that officers use de-escalation when circumstances permit – remains
9 unchanged. *See* Dkt. 107-1 at 6–7; Ex. D at 1; Ex. C at 1. One revision, in paragraph 1 of
10 Section 8.200, eliminates a clause that was imprecise regarding whether officers could continue
11 to apply force to a subject even when it would be “safe to do so and the threat is contained” but
12 the subject had not yet “comple[d] with the officer’s orders.” Dkt. 107-1 at 6. The revision
13 simply indicates that “force must stop” “[o]nce it is safe to do so and the threat is contained.”
14 Ex. D at 1.

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16 The prior policy’s explanation of the requirement that force be “proportional” explained
17 that force “must reflect the totality of circumstances surrounding the immediate situation,
18 including the presence of an imminent danger to officers or others.” Dkt. No. 107-1 at 7. In a
19 few instances, the term “imminent” caused confusion about whether the threat needed to be close
20 in a temporal sense and, if so, how close. That language also implied that the presence of
21 imminent danger was required before *any* force could be used, which is not the correct standard.
22 The revised policy now requires that force “must reflect the totality of circumstances
23 surrounding the situation at hand, including the nature and immediacy of any threats posed to
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1 officers and others.” Ex. D at 1. Thus, in the context of proportionality, force deployed must be
2 consistent with the gravity of any threat or the immediacy of threats posed to officers and others
3 (though low-level force, such as pulling arms behind a suspect’s back, could be used even when
4 no direct threat is present in order to effectuate necessary law enforcement objectives).

5 A few of SPD’s prohibitions on the use of force have been clarified based on additional
6 real-world circumstances. In a few instances, officers and sergeants complained that the options
7 available to them to get a non-compliant, handcuffed subject out of the back of a police car was
8 taking too long because the force policy was read to prohibit all physical force against
9 handcuffed subjects unless the subject needed to “be immediately stopped to prevent injury, or
10 escape, [or] destruction of property.” Dkt. 107-1 at 7. The Department of Justice and Monitor
11 agreed that the policy could pose logistical difficulties – but are also mindful that the use of force
12 during vehicle extractions can be especially risky from an officer and subject safety perspective.
13 Accordingly, the new policy permits the application of force to a handcuffed, non-compliant
14 subject so long as “reasonable attempts to gain voluntary compliance have failed” and that the
15 removal be “subject to supervisor approval.” Ex. D at 2. In the event that a subject is
16 attempting to injure herself in the back of a police car, to escape, or to destroy property, the
17 exception to the general prohibition against using force on handcuffed or restrained subjects
18 from the prior, Court-approved policy remains. Thus, in those exigent circumstances (attempts
19 to self-injure, escape, or destroy property), the updated “reasonable attempts to gain voluntary
20 compliance” and “supervisor approval” requirements would not apply.
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24 Likewise, SPD and CPC heard from officers, as did the Monitoring Team in its ongoing
25 informal and formal discussions with officers of all ranks, that the policy’s prior prohibition

1 against stopping a subject from swallowing a substance was confusing and, in any event, might
2 prevent them in some circumstances from easily preventing a subject from committing serious
3 self-harm – such as, for example, by swatting pills out of a subject’s hand after the subject
4 expresses or exhibits the intent to swallow them. Dkt. 107-1 at 8. The policy change is not
5 supported by abundant data – it is unclear as to whether the policy has in fact prevented any SPD
6 officers from intervening against a subject’s self-harm – but SPD and the Parties appear to agree
7 that, in some circumstances, officers should be allowed to intervene to prevent a subject from
8 swallowing a substance. Thus, the updated policy prohibits the use of force “[t]o stop a subject
9 from swallowing a substance that is *already in their mouth.*” Ex. D. at 2 (emphasis added). In
10 these circumstances, the updated policy emphasizes that officers might use some degree of
11 reasonable force to prevent the swallowing of a substance that is indeed already in the subject’s
12 mouth so long as it does not involve “hands to the neck or insertion of any objects or hands into a
13 subject’s mouth.” *Id.* Because this provision reinforces the Department’s strong disfavor of
14 chokeholds and other similar neck restraints, the Monitor supports the change.
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17 In Paragraph 4, a clarification was made to emphasize that officers must assess and
18 modulate use of force as a subject’s “resistance *changes,*” *id.* at 2 (emphasis added), not merely
19 as “resistance *decreases.*” Dkt. 107-1 at 9 (emphasis added). Likewise, in Paragraph 5, a
20 clarification was made in the provision addressing the use of force against a fleeing suspect.
21 Prior language permitted force when an objectively reasonable officer would “conclude” that
22 force is necessary and there is sufficient probable cause that the suspect committed a felony
23 involving serious physical injury or death, poses an imminent danger of death or serious injury,
24 and the officer has given a verbal warning when circumstances allow. Dkt. 107-1 at 9. The
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1 revised policy attached hereto permits use of force when a reasonable officer would “believe” the
2 same. Ex. D at 2. The change emphasizes that, in all aspects of use of force, the objectively
3 reasonable belief under the totality of the circumstances is a core concern – not what another
4 officer might be led to conclude divorced from those circumstances.

5 Clarifications have also been made with respect to when officers must request medical
6 aid after using force. SPD and the Parties found that, out of an abundance of caution, officers
7 were requesting medical aid even for very low-level use of force incidents like a complaint of
8 pain because handcuffs were too tight. The request of medical aid in such situations was not
9 routinely necessary, greatly lengthened the time officers spent resolving the incident and
10 concluding the call, and diverted important emergency response resources to the scenes without
11 clear foundation or cause. The revised Paragraph 7 of Section 8.200 requires that officers
12 request medical aid for every Type III use of force; Taser and beanbag shotgun applications; any
13 force against pregnant, pre-adolescent, elderly, or physically frail subjects; and any other
14 instances where a subject requests such aid or if the officer believes that aid is necessary. Ex. D
15 at 2.
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19 **E. Force Tools (SPD Manual Section 8.300)**

20 SPD officers remain required to carry at least one less-lethal force tool. Ex. E at 1.
21 General guidance to officers on the use of those less-lethal force instruments, such as the Taser
22 and OC spray, appears in Section 8.300. *Id.*

23 The major substantive change in this section was a clarification as to the narrow band of
24 circumstances in which officers may not deploy their less-lethal tools. The policy clarifies that
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1 officers must consider risks to the subject, and third parties, of less-lethal use. *Id.* at 1. A new
2 paragraph, separating some material from a large list of prohibitions in the previous policy, *see*
3 107-1 at 11, clarifies that less-lethal tools may only be used on subjects “who are visibly
4 pregnant, elderly, apparently pre-adolescent, visibly frail, or known or suspected to have physical
5 disabilities when there is an exigency or an immediate threat to officers or third parties.” *Id.* at
6 1–2. The previous language caused confusion for officers about whether they could use *any*
7 force whatsoever on vulnerable populations. Another paragraph retains the prohibition on less-
8 lethal use under some circumstances or contexts unless “there is a risk of death, great bodily
9 harm, or serious physical injury to the officer or third parties.” *Id.* at 1. Thus, the new policy
10 clarifies, by separating content into two distinct policy provisions, that less-lethal tools may be
11 prohibited for two distinct reasons: (1) the physical condition of the subject, and (2)
12 environmental or situational circumstances (e.g., the subject is in an elevated position, a position
13 where he could drown, is operating a vehicle, or is handcuffed or restrained). The Monitor
14 agrees that the new format clarifies expectations in the less-lethal area.
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18 **F. Force Tool Manual (SPD Manual Section 8.300-POL-1–10)**

19 The accompanying Manual, set forth in the Department’s favored policy formatting style
20 as “sub-policies” or “POL” sections, sets forth a number of tactical, operational, and practical
21 guidelines for the use of a number of less-lethal force instruments. *See* Ex. F. The changes to
22 these individual discussions of force instruments were minimal. The Monitor recommends
23 approval.
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1 **G. Force Reporting and Investigation (SPD Manual Section 8.400)**

2 Section 8.400 continues to provide substantial detail on requirements for the rigorous and
3 timely reporting and investigation of any use of force. *See* Ex. G. The revisions made here are
4 limited. In some instances, the revisions integrate into the general policy itself adjustments that
5 were made by policy directive during the course of 2014 addressing force reporting and
6 investigation. In other instances, provisions have been updated to reflect the current, non-paper-
7 based reporting and review processes now in place at SPD. *See* Dkt. 187 at 66–69 (describing
8 the reporting and investigation of force occurring in SPD’s interim database solution, IAPro). In
9 yet others, the revisions reflect process-related lessons learned that have previously been made in
10 order to ensure timely, objective investigation of force incidents. For instance, the Section
11 reflects clarifications and streamlining in the review of video by command staff during use of
12 force review to ensure that supervisors are not investing unnecessary time watching in-car video
13 during force investigations.
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15 The Monitor has carefully reviewed the changes and approves of the updated policy.
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18 **H. Force Review (SPD Manual Section 8.500)**

19 Section 8.500 sets forth the Department’s policies and expectations regarding its review
20 of use of force incidents. The revised policies make some important changes with respect to the
21 operation of the Force Review Board (“FRB”), reaffirming that “[t]imely and thorough reviews
22 of all uses of force is a critical priority to the Department.” Ex. H at 1.
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24 The Monitoring Team will report to the Court more generally on the status of the Force
25 Review Board in its next semiannual report in June. However, it can report now that the changes

1 addressed here go a significant way toward resolving some issues that appear to have been
2 constraining the FRB from making more significant progress during the past several months.
3 Despite the expenditure of significant overtime, FRB had fallen behind on conducting its high-
4 quality reviews and necessary critical analyses of all cases occurring in the field. Accordingly, a
5 significant backlog of cases awaiting review had amassed.

6 To alleviate this temporary backlog of cases awaiting review, but promote a high quality
7 of review, SPD proposed a pre-screening process within the Department's Force Review Unit
8 ("FRU"), which is in charge of the day-to-day administrative operations and supervisory
9 oversight of force review. Under the process, FRU screens all Type II uses of force, which are
10 generally low- to intermediate-level force incidents. The Force Review Lieutenant, Captain, and
11 Bureau Chief determine whether cases should be referred to the full FRB for consideration.
12 Type II cases are forwarded by FRU to FRB for review where there is the possibility of
13 misconduct; potential policy, training, equipment, or tactical issues; where FIT was contacted for
14 consultation and declined to respond or investigate; when less-lethal instruments were used;
15 when a canine makes physical contact with the subject; and when the subject is transported to an
16 emergency room. Ex. H at 5.

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19 Other Type II cases do not go to the full FRB for review. *Id.* at 4-5. Nonetheless, "an
20 additional ten percent of the cases reviewed each month" will be forwarded for review to the full
21 FRB and "selected through random, blind sampling." *Id.* at 5. This sampling seeks to ensure
22 that the full FRB continues to see and consider some comparatively less-serious or less-
23 problematic force incidents – ensuring that the Board's conception of Department-wide trends is
24 not skewed by only seeing the most serious or problematic incidents. The FRB will continue to
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1 review all Type III force incidents and officer-involved shootings.

2 The updated FRB is a more streamlined group of individuals selected by the Assistant
3 Chief of Compliance and Professional Standards, including representatives from the Education
4 and Training Section, Patrol, Policy, and the Investigations Bureau. *Id.* at 6. All Board members
5 will continue to receive specialized training.

6 The prior policy governing force review was silent concerning how FRB should make its
7 determinations about force with respect to individual officer performance and the importance of
8 those determinations to subsequent action by the Department. It simply noted that the Chair of
9 the Board would “ensure a referral to OPA is made if it appears that misconduct may have been
10 involved in a use-of-force [incident].” Dkt. 107-4 at 10. The revised policy clarifies that the
11 Board’s duty is to make determinations about whether the incident raises issues related to policy,
12 tactics, or training issues. Ex. H at 6 (“All Board Determinations will be Made by Majority
13 Vote.”). After reaching a collective determination, pursuant to its discussion and inquiry as a
14 deliberative body, the FRB Chair forwards “all misconduct, other than minor misconduct to
15 OPA” for a full misconduct investigation. *Id.* at 7 (internal cross-reference omitted). The
16 revised policy also addresses the intersection between FRB and the usual requirement, in SPD
17 Manual Section 5.002, that any SPD employee report to OPA any and all potential misconduct:
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20 When possible misconduct comes to the attention of a FRB member only through their
21 participation on the FRB, the member is not *required* to make an FRB referral that might
22 otherwise be required under 5.002. This provision does not prohibit any individual
23 member of the board making a personal referral to OPA.

24 *Id.* Accordingly, even if the FRB has determined that an officer’s performance does not entail
25 possible misconduct and does not send a case to OPA, any Board member can still make a

1 personal referral. Thus, the FRB serves as a collective, dynamic deliberative body and a “check”
2 on the chain of command to ensure that all incidents that should be referred to OPA are in fact
3 referred. Likewise, individual Board members can themselves be a “check” in instances where
4 they believe strongly that possible misconduct occurred even when a majority of the Board
5 disagrees.

6 Force review boards implemented in other jurisdictions, including those set up in
7 compliance with the terms of a Department of Justice consent decree or that have been the
8 subject of DOJ-sponsored collaborative reform initiatives, make collective determinations about
9 whether force incidents are consistent or inconsistent with policy and forward cases on, where
10 appropriate, to the bodies responsible for addressing officer misconduct. *See, e.g.*, Metropolitan
11 Police Department, General Order RAR – 901.09 at 5–7 (May 15, 2009) (describing process for
12 Force Review Board to make determinations and initiative misconduct process); Las Vegas
13 Metropolitan Police Department, Use of Deadly Force Review Process at 2 (Sept. 3, 2014) (“The
14 Use of Force Review Board is comprised of seven voting members” who make determinations as
15 to whether force was consistent with policy); George Fachner and Steven Carter, Office of
16 Community Oriented Policing Services, *Collaborative Reform Initiative: An Assessment of*
17 *Deadly Force in the Philadelphia Police Department* 149 (2015) (“The decision regarding each
18 incident shall be made by a majority vote of the UFRB . . . Any departmental violations
19 uncovered during the course of the Internal Affairs investigation will be forwarded to the Police
20 Board of Inquiry (PBI) for their review and action.”)

21 The oversight that the civilian-led OPA provides is a critical component of accountability
22 and oversight. The Monitor has consistently highlighted the importance of OPA receiving any
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1 and all instances of possible misconduct. *See* Dkt. 114 at 39; Dkt. 187 at 47–52. The Monitor
2 has confidence, therefore, that allowing but not requiring individual Board members who believe
3 that there was misconduct but may be “outvoted” by the Board to not initiate an OPA complaint
4 will not lead to significant numbers of misconduct cases failing to get to OPA or being swept
5 under the rug. First and foremost:

6 [T]he OPA Director and/or his representatives continue to review the use of force packets
7 and attend the UOFRB meetings on a weekly basis . . . If they determine that any use of
8 force [case] involves or potentially involves officer misconduct, *the OPA representative,*
similar to any other participant, can refer a packet to OPA for further investigation

9 Dkt. 154 at 78–79 (emphasis added). If the FRB were attempting to function as a “gatekeeper,”
10 the policy fully preserves the current ability of OPA to self-initiate a misconduct investigation.

11 Additionally, “the 2011 DOJ investigation concluded that the SPD lacked ‘backstop[s]
12 for the failures of the supervisory review process’ and mechanisms for affirmatively and
13 proactively addressing trends with respect to force and officer performance.” Dkt. 187 at 65
14 (quoting U.S. Dept. of Justice, Civil Rights Div. & U.S. Atty’s Office, W.D. Wash.,
15 Investigation of Seattle Police Department (Dec. 16, 2011) at 2). Accordingly, the Consent
16 Decree requires that SPD conclusively break with the days where OPA was the only mechanism
17 of critical analysis within the Department – and where deficiencies in OPA investigations could
18 eliminate the lone opportunity for accountability. *See* Dkt. 154 at 76 (noting that, prior to the
19 arrival of OPA’s current Director, “OPA was considered by some . . . to be the cat’s paw of SPD
20 executives”).

21 FRB must also consider more about a force incident than whether specific conduct
22 amounts to misconduct under SPD policy. Indeed, FRB’s “review is about much more tha[n]
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1 reaching a verdict or disposition as to whether an officer's use of force was consistent with SPD
2 policies." Dkt. 114 at 29. Instead, Board members "engag[e] in the type of spirited discussions
3 about use of force incidents that support good policing, foster innovation, and detect problematic
4 trends in their infancy." Dkt. 114 at 29. Having overlapping internal and external mechanisms
5 of accountability and correction can give greater assurance that both incident-specific and
6 systemic issues are being identified.

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8 Consequently, assured that the adjustments to the FRB process will ensure quicker
9 review of force incidents, enable consistently high-quality and critical discussions force, and
10 promote critical self-analysis and accountability, the Monitoring Team recommends approval of
11 the revised Section 8.500. The Parties and Monitor share the expectation that the new policy will
12 result in even higher-level analyses of critical cases and maximize the value of the FRB
13 members' expertise and investment.

14 15 **I. SPD Manual Preface**

16 Formerly, SPD's Manual Preface provided, in relevant part:

17
18 Policies, procedures, mission statements, and priority statements exist to maintain high
19 levels of professional conduct. *Deviation from these written standards may be*
20 *acceptable under certain circumstances, but must be reasonable;* and any actions must
ultimately reflect the Department's mission statement and priorities.

21 Seattle Police Manual Preface (last revised Apr. 1, 2015) (emphasis added), *available at*
22 <http://www.seattle.gov/police-manual>. As the Monitor will describe more fully to the Court in
23 the upcoming Semiannual Report in June, some FRB members, citing this previous Preface
24 language, have argued that conduct violating a particular policy provision should nonetheless be
25

1 found “in policy” so long as it was “reasonable” under the circumstances. That argument is
2 flawed. First, the Preface is not situated in terms of *objective* reasonableness. Instead, it allows
3 for a determination that because the individual officer thought at the moment that deviation was
4 acceptable, an officer’s actions are presumptively in policy, regardless of the provisions of the
5 policy. Second, SPD’s force policy embraces objective reasonableness as a critical principle and
6 goes further – to provide more specific guidance and clearer expectations on what
7 reasonableness means for an SPD officer policing within the Seattle community. Thus,
8 reasonableness is an integral part of SPD policy, not an independent override. Finally, extensive
9 research on the content of preambles of other law enforcement manuals convinced the Parties,
10 Department, and Monitor that such vague and capacious language was inconsistent with
11 common, and certainly not best, practice.
12

13 The revised Preface eliminates the language about deviation from the standards, now
14 reading, in relevant part:

15 This Manual sets forth the standards, values, and expectations of the Seattle Police
16 Department. Its policies, procedures, core values, and mission and priority statements
17 exist to maintain high levels of professional conduct and are the embodiment of the
18 Department’s concerns for ensuring effective, safe, and constitutional law enforcement.

19 The Manual is intended to provide specific guidance and to serve as a reference to
20 employees of the Seattle Police Department.

21 *It is the responsibility of each member of the Department to comply with the Manual’s
22 rules and provisions.*

23 Ex. I. (emphasis added). Because it now appropriately sets forth the objective of the Manual, the
24 Monitor approves of the revised Manual Preface.

25 The preface clarifies the important distinction between SPD policy and law by

1 recognizing that the specific provisions of the SPD Manual may, from time to time, exceed or
2 have the effect of exceeding minimum legal and constitutional requirements. It addresses the
3 misconception, in some quarters, that Department policy can reflect only what is legally required
4 and not include provisions, procedures, and other standards identified by the SPD and the Seattle
5 community as mechanisms for preserving, promoting, or otherwise effectuating constitutional
6 and legal imperatives. Meanwhile, the Preface preserves the rights of officers and the
7 Department to be judged in Court for purposes of liability by the applicable legal standards:

8
9 To the extent that Department policy may contain provisions more restrictive than state
10 or federal law, such provisions are not intended, nor may they be construed or applied, to
11 create a basis for liability against the City or any of its employees.

12 *Id.* Because this clarification is likewise important, the Monitor recommends approval of the
13 Manual's Preface.

14 **III. RELATED CONSIDERATIONS AND FUTURE COMMITMENTS**

15 SPD has pledged to work with community organizations to refine a specific crowd
16 management policy, and there has already been progress on this important front. Because those
17 policies necessarily implicate important use of force issues, the Parties and Monitoring Team
18 will be closely involved in ensuring that – like the other force-related policies – any specific
19 crowd management policy effectively balances respect for constitutional imperatives, the ability
20 to conduct effective law enforcement operations, and preservation of public and officer safety.

21 Nevertheless, as a result of the force-related policies approved by this Court last year, all
22 force incidents occurring within the context of a demonstration or crowd situation must be
23 rigorously reported, investigated, and reviewed. As a result, a dedicated crowd management
24 policy can be based upon real-world, critical investigation and review of actual SPD performance
25

1 in the field. Once investigations of the recent demonstration-related incidents have been
2 completed, the Monitor will be closely evaluating whether – even as SPD comes up with a more
3 specific policy on crowd situations – the Department critically analyzes its performance and use
4 of force in the critical and comprehensive manner that the force-related policies addressed in this
5 memorandum require. SPD Chief Kathleen O’Toole’s commitment to allowing the Consent-
6 Decree-required investigative processes to run their course before drawing conclusions, one way
7 or another, about any particular use of force is, accordingly, prudent.

8
9 Finally, SPD must revise and update the Procedural Manual addressing FIT
10 investigations. The Court approved an initial version of the FIT Manual in November 2013.
11 Dkt. 107-5. Although FIT has been developing and operating under many additional working
12 protocols and internal guidelines as it has gotten up and running, these must now be incorporated
13 into a finalized Court-approved Manual. Especially as the Monitoring Team and DOJ complete
14 an assessment of the quality and rigor of FIT investigations, the Parties are confident that the FIT
15 Manual can be updated in the upcoming months to reflect real-world experience and lessons
16 learned. The Parties have therefore recommended that they work with the Monitor separately to
17 update the FIT Manual. The Monitor agrees with the approach and will update the Court on the
18 process of revising the FIT Manual.

19 20 **IV. CONCLUSION**

21 The task of the Monitor was to duly consider if the updated SPD Use of Force policies
22 continue to embody the requirements of the Consent Decree. The Monitor and the Monitoring
23 Team have determined that the policies attached hereto do so. Accordingly, the Monitor
24 respectfully requests that the Court approve the policies and order them effective.
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DATED this 11th day of May, 2015.

A handwritten signature in blue ink, appearing to read "M. BOBB".

Merrick J. Bobb, Monitor

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1 The Court hereby approves the Seattle Police Department's updated force-related policies
2 filed herewith as Exhibits A through I.

3
4 DONE IN OPEN COURT this _____ day of _____, 2015.

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8 THE HONORABLE JAMES L. ROBERT
9 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that on the 11th day of May, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 11th day of May, 2015.

/s/Stefanie Jaswal
Stefanie Jaswal