

# Seattle Community Police Commission

Our City. Our Safety. Our Police. **Better Together.**

July 24, 2015

VIA EMAIL

Merrick J. Bobb, Seattle Police Monitor  
Edward B. Murray, Mayor of Seattle  
Chief Kathleen O'Toole, Seattle Police Department  
Peter S. Holmes, Seattle City Attorney  
J. Michael Diaz, Assistant U.S. Attorney, Western District of Washington

## **RE: Response to Fifth Semiannual Report**

Dear Monitor and Parties,

This letter is in response to the Fifth Semiannual Report (Report) issued by the Seattle Police Monitor in June 2015, pursuant to the Settlement Agreement and Memorandum of Understanding between the U.S. Department of Justice and the City of Seattle.<sup>1 2</sup>

The Community Police Commission (CPC) appreciates and largely shares the Monitoring Team's views about many areas covered in the Report, and offers additional recommendations and observations concerning the following:

1. SPD's Use of Force Policy and the Force Review Board
2. Implementation of Body Cameras
3. Training
4. Citation to Professor Samuel Walker's NACOLE Symposium Presentation
5. CPC Inclusion in Assessments

In addition, Appendix A provides an inventory of key CPC work during the six months preceding the issuance of this Report.

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<sup>1</sup> Settlement Agreement and Stipulated Order of Resolution, Section I(B)(7)(b), United States v. City of Seattle, 12-CV-1282: The Commission will review the reports and recommendations of the Monitor, described below, and may issue its own reports or recommendations to the City on the implementation of the Settlement Agreement.

<sup>2</sup> Memorandum of Understanding between The United States and The City of Seattle, Section III(B)(5)(b) July 27, 2012: The Commission will review the reports and recommendations of the Monitor, described below, and may issue its own reports or recommendations to the City on the implementation of the Settlement Agreement.

## **I. SPD's Use of Force Policy and the Force Review Board**

The Monitor's Report details the tendency of the Force Review Board (FRB) to excuse out-of-policy conduct if it was otherwise "reasonable."<sup>3</sup> In light of this issue, the CPC reiterates our recommendation to remove the exemption of FRB members, under the Use of Force policy, from the universal requirement that all employees report potential misconduct and policy violations under SPD Policy 5.002.

The CPC supports the Monitor's recommendation that the FRB "... [not] hesitate to find that cases are inconsistent with SPD policy."<sup>4</sup> In furthering this goal, the proposed policy pending approval by the court—requiring a majority of FRB members to find conduct to be potentially out-of-policy before referral to OPA—should be amended so that when even one member finds conduct potentially out-of-policy, the FRB chair is required to refer the case to OPA, as we have recommended. This approach would make the Use of Force policy consistent with the existing SPD Policy 5.002, which has long required all SPD employees to report possible misconduct to OPA.

Some maintain that removing this mandatory FRB reporting requirement is unnecessary because even if the FRB as a body does not refer the case, an individual member of the FRB may still do so of their own volition. However, this overlooks the strong deterrent, associated with an individual FRB member's fear of stigma, to reporting. Requiring the FRB as a body to report when even one member believes it appropriate eliminates the potential of individualized stigma and preserves anonymity, which is essential to the FRB's purpose "... to enhance accountability ..."<sup>5</sup> Thus, requiring the FRB chair to report when even one member believes conduct to be potentially out-of-policy should be effective in helping to address the Monitor's concerns.

## **II. Implementation of Body Cameras**

The Report states that "... the Monitor strongly believes that body cameras need to be rolled out to all SPD officers ... on a permanent basis as immediately and rapidly as possible ..."<sup>6</sup> The Monitor notes by reference<sup>7</sup> in the Report that his advice is "technical assistance." We note, as well, that "SPD has the discretion to decide whether or not to utilize the Monitor's advice."<sup>8</sup>

The CPC appreciates the Report's recognition that transparency and police accountability are not the only important community interests affected by a body camera program, but that other interests, such as privacy of community members and officers, must also be considered. The Report also correctly acknowledges that transparency and privacy are often competing interests, and thus

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<sup>3</sup> Seattle Police Monitor, Fifth Semiannual Report (June 2015), at 25.

<sup>4</sup> *Id.* at 27.

<sup>5</sup> *Id.* at 24.

<sup>6</sup> *Id.* at 21.

<sup>7</sup> *Id.* at 4, footnote 13.

<sup>8</sup> Settlement Agreement and Stipulated Order of Resolution, Section IV(B)(173)(c).

require the striking of a delicate balance. However, the Report also notes that a perfect balance between them has not yet been achieved. Nonetheless, the Monitor concludes that a body camera program should be implemented directly and department-wide.

On February 12, 2015, the CPC wrote that—despite the accountability benefits of body camera footage—it would be premature to adopt a department-wide body camera program, because equally important community interests, in victim and witness safety and privacy, and concerns about deterring access to police services in certain communities, are unresolved. These issues have not been addressed to-date through conversations with concerned members of the community. We strenuously oppose any requirement that SPD implement body cameras prior to a full accounting of community perspectives on both their value and pitfalls.

We do not believe that ". . . adjustments to policy [that] may be required down the road,"<sup>9</sup> the approach recommended in the Report, can address the important issues involved. As soon as the program launches, a large volume of video footage will be immediately and continually subject to public disclosure, the release of which has potential for ongoing irreparable harm. Moreover, broad use of body cameras by SPD will be expensive, requiring significant expenditure of precious city resources. Until we are confident a broad body camera program has merit and fundamental issues have been substantially addressed, such funds could be better applied to other clearly effective approaches to reduce police-community tensions, including services for the mentally ill and housing those who are unsheltered.

It is also important to note that the pilot was developed to test new technology, not to analyze the program's impact on the community. The CPC and SPD have entered into a partnership to work with a researcher to interview officers involved in the pilot and up to 400 community members who interacted with these officers during the pilot to learn about the effectiveness and impact of these cameras from their point of view. These survey results will provide valuable perspectives and may flag important policy and state law issues, all of which should be weighed prior to the implementation of a permanent SPD body camera program. Equally important, community members with expertise working with vulnerable and discouraged victims and witness populations, as well as the criminal defense bar, must be engaged up front so that we all more fully understand both the value and the full potential downside of body cameras.

For these reasons, the CPC has urged SPD to not decide to implement a body camera program until it has collaborated with the CPC to fully understand the program's potential impact on community members and planned ways to mitigate negative consequences.

### **III. Training**

SPD has accomplished a great deal to-date in its work on training. The CPC has enjoyed a very productive partnership with the SPD training unit over the last two years, and especially commends the unit for conceiving of, and partnering with us and the Office of Civil Rights on, institutional bias

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<sup>9</sup> Seattle Police Monitor, Fifth Semiannual Report (June 2015), at 21.

training for command staff.<sup>10</sup> SPD has been a sincere and committed partner in this area of reform, but lasting change will require ongoing review; refinement of trainings to take into account officer and outside observer feedback; and the development and implementation of more training programs.

It is important to recognize that SPD's training curriculum, particularly pertaining to Use of Force and Bias-Free Policing, is very much a work in progress. It would be premature for other departments to use the existing SPD curriculum in these core areas of the Settlement Agreement as essentially "off the shelf" products. Significant work is needed to assess how well officers have responded to the training, the extent to which training has been received skeptically, how the department has responded to such reactions, and the department's effectiveness in doing so. In particular, with respect to bias-free policing, it is critical to move beyond the important "procedural justice" concept, and engage officers on issues involving deployment patterns and disparate impact, which is called for in SPD's Bias-Free Policing policy.

To characterize SPD training on use of force and bias-free policing as a significant success<sup>11</sup> does not convey the important message that more work remains to be done. Describing SPD as "leading the way" on bias-free policing training<sup>12</sup> and saying "SPD is already doing [what the President's Taskforce on 21st Century Policing recommends for use of force training]"<sup>13</sup> obscures the training issues that remain to be addressed. National attention recently focused on SPD reinforces the fact that continued attention on training is needed. As noted in a video in a June 2015 New York Times article, some SPD officers are "skeptical of the techniques they [are] being taught."<sup>14</sup>

#### **IV. Citation to Professor Samuel Walker's NACOLE Symposium Presentation**

The CPC asks that footnote five (page 2), citing Professor Samuel Walker's February 4, 2015 presentation at a NACOLE symposium held in Seattle, be removed from or updated in the Report. Professor Walker's presentation did not accurately reflect CPC's involvement in drafting SPD's Use of Force policy. The reference implies the CPC co-authored the adopted policy, when, in fact, we filed an alternative policy with the court, asking that it be adopted in lieu of the version filed by the Monitor. We understand that Professor Walker has made revisions to his related forthcoming paper which takes into account factual background he did not have at the time of the NACOLE symposium.

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<sup>10</sup> The CPC has also partnered with the Office for Civil Rights to provide input to SPD on its Bias-Free Policing training. The Commission appreciates the insight and expertise provided by staff of the Office for Civil Rights in this project.

<sup>11</sup> Seattle Police Monitor, Fifth Semiannual Report (June 2015), at 16.

<sup>12</sup> *Id.* at 15.


<sup>13</sup> *Id.* at 15.

<sup>14</sup> Ruth Fremson and Prashanth Kamalakanthan, "A Heated Debate Over De-escalation" (New York Times), June 27, 2015 at <http://www.nytimes.com/video/us/100000003738518/a-heated-debate-over-de-escalation.html?action=click&contentCollection=us&module=lede&region=caption&pgtype=article>.

## V. CPC Inclusion in Assessments

The CPC's final comment concerns the 15 assessments referenced in the Report<sup>15</sup> and detailed in the 2015 Monitoring Plan. Because of the CPC's specific role with and connection to the community, it requests that it be included in the assessments and, in particular, in discussions on methodology and results of the following assessments: the stops assessment, the supervision assessment, the OPA investigations assessment, and the community perceptions and public confidence assessment. The Report notes the CPC's diligent work and valuable feedback.<sup>16</sup> Since the CPC is an important stakeholder in these issues, it asks to continue to contribute meaningfully through involvement in the assessments.

Sincerely,



Rev. Harriett Walden, Co-Chair  
Community Police Commission



Lisa Dugaard, Co-Chair  
Community Police Commission

Cc:

Matthew Barge  
Scott Lindsay  
Brian Maxey  
Rebecca Boatright  
Seattle City Council  
Community Police Commission

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<sup>15</sup> Seattle Police Monitor, Fifth Semiannual Report (June 2015), at 8.

<sup>16</sup> *Id.* at 43.

## **Appendix A**

### **Police Accountability**

The CPC has been working with the Mayor's Office and SPD to finalize draft legislation codifying reforms to the City's police accountability system. This legislation is expected to incorporate many CPC recommendations issued in April 2014 which have been endorsed by the Mayor. In addition to strengthening the independence and effectiveness of the OPA, its Director and the OPA Auditor, the legislation would make the CPC the permanent civilian oversight body of the system.

Recently, the CPC began work intended to support access to and transparency of the police accountability system. It is presently reviewing and will soon make recommendations for improvements to OPA's website information. As part of this review, it is assessing OPA's website analytics and the City's internal search functions to determine ways to better support public online access; and it will collaborate with OPA to ensure useful online availability of OPA case data. A review of OPA's printed materials and associated distribution channels will follow. The CPC is also exploring with the OPA Director new options for using community-based organizations to facilitate public access to the complaint process. This project began in April and will continue through the fourth quarter of 2015.

### **Disparate Impact Analysis**

The CPC is currently in the process of a disparate impact analysis in furtherance of the innovative provision of the SPD Bias-Free Policing policy to reduce disparate impact. With the support of a contracted researcher, Katherine Beckett, the CPC is collaborating with SPD in analyzing data on stopped, cited, and arrested individuals to determine if SPD's practices have disparate impact on racial/ethnic groups and to understand the extent to which such outcomes are unnecessary. The CPC will then develop recommendations for alternative approaches that support public safety while reducing unnecessary disparities in law enforcement.

The areas of focus for the analysis are public consumption of alcohol and marijuana and obstruction. Katherine Beckett has analyzed the associated data provided by SPD. An additional part of the public consumption analysis includes interviewing key service providers, organizations, and Seattle police officers who serve the areas with high, medium and low citation rates. The goal is to identify the factors that drive both enforcement and non-enforcement patterns, and to identify alternatives to citations as a response to public consumption.

The goal of the initial findings related to people arrested by SPD for obstruction of justice is to identify the demographic characteristics of the people arrested and to illuminate the circumstances surrounding those arrests. Those findings will be used to craft a strategy to identify the drivers of the practice in question in the specific locales in which enforcement is concentrated. Toward this end, interviews with police officers working in the relevant units, their supervisors and, if appropriate, neighborhood stakeholders, will also be conducted. The final step in the analysis will be the identification of alternative practices to reduce racial disparity in obstruction arrests while also addressing the underlying public safety issues.

The tentative timeline for completion of the final reports is late August or early September 2015.

### **Policy Recommendations**

The CPC provided feedback and recommendations to the Use of Force policy, the Voluntary Contacts, Terry Stops and Detentions policy, and the Bias-Free Policing policy which were filed with the court in May 2015.

### **Training**

The Community Police Commission works with the SPD Education and Training Section frequently to provide input to upcoming training curricula and facilitation.

SPD training on Bias-Free Policing is the primary focus of the CPC's work in this area in 2015. This fall, there will be a two-part training series for supervisors. The first part will cover police legitimacy and procedural justice, and introduce the Race and Social Justice Initiative toolkit. The CPC has proposed that its members serve as a focus group to test the curriculum; in addition the CPC will provide feedback as the curriculum is developed. The second part will be an interactive discussion facilitated by SPD. The discussion will use recent situations to brainstorm how to problem solve and what alternative outcomes might look like. It will include conversations about decision making within SPD, how SPD leaders are leading, patterns of enforcement, and external pressures. Facilitators will explain how bias is pervasive throughout the system and will give participants a process by which they can assess situations and potentially see different outcomes in the future. Up to two CPC representatives will participate in each part two training session. The CPC will also participate in the development of bias-free policing curriculum which all sworn officers will be trained on in the fall.

### **CPC Assessment of SPD's Community Engagement**

The CPC continued its assessment of SPD's community engagement in 2015 by conducting research, data collection, and analysis related to three previously identified areas of focus: 1) SPD's recruitment, hiring, basic training, promotion, and retention of officers from racial, ethnic, and immigrant and refugee communities; 2) SPD's relationships with racial, ethnic, and immigrant and refugee communities; and 3) SPD's external communications with racial, ethnic, and immigrant and refugee communities.

To gather information for the assessment, the CPC partnered with community-based organizations in hosting eight public listening sessions in April and May. These sessions were conducted in 15 languages other than English (Amharic, Somali, Oromo, Tigrinya, Ilocano, Lao, Hmong, Thai, Khmer, Tagalog, Dzongkha, Spanish, Mandarin, Cantonese, and Vietnamese). The CPC also visited five SPD Demographic Advisory Councils to gather information for the assessment.

The CPC will release an assessment findings report and executive summary this October and return to the community shortly thereafter to share the findings and seek further input on how to strengthen SPD's community engagement.

A final report, likely to be released in the winter of 2015/2016, will contain recommendations, action steps, and deadline-specific implementation plans for strengthening SPD's community engagement.

**Additional Community Engagement**

The Commission hosted two community forums on body cameras and SPD's response to the post-Ferguson and Black Lives Matter protests. As a result of the forums, the CPC released a statement regarding issues involved with body cameras to City and State leaders and lawmakers; the CPC also provided SPD with information about community concerns with how the protests were handled and expects to partner with SPD in its upcoming review of the department's handling of these demonstrations.