



# Serious and Deadly Force Investigation Taskforce

Report of recommendations | September 2019



The Serious and Deadly Force Investigation Taskforce was convened and staffed by the Seattle Community Police Commission. Seattle CPC Interim Policy Director Karen Chung authored this report.

# Serious and Deadly Force Investigation Taskforce

On November 6, 2018, Washington state voters approved Initiative 940 (I-940)—the Law Enforcement Training and Community Safety Act. I-940 and House Bill 1064, a subsequent bill enacted to clarify elements of I-940, requires that an independent investigation be completed in cases where a use of force results in death, substantial bodily harm, or great bodily harm. These measures revised the “good faith” standard in the Revised Code of Washington (RCW) 9A.16.040 by removing the “malice” clause and adding an objective standard. The “malice” clause has been called a de facto immunity because it was essentially impossible to charge a police officer under the earlier law. Prior to the enactment of I-940, in June 2017, the City of Seattle enacted historic legislation to strengthen its police accountability system. At the same time, the City adopted a companion resolution that, among other provisions, mandated the Community Police Commission

(CPC) to “convene meetings with and lead stakeholders in assessing the feasibility of establishing mechanisms to use investigation and review processes wholly external to SPD for cases involving serious and deadly uses of force, and provide any recommendations adopted by the stakeholder group to the Council for consideration.” To fulfill this mandate, the Community Police Commission convened the Serious and Deadly Force Investigation Taskforce.

Although the Taskforce was initially charged to assess the feasibility of external, independent investigations of serious and deadly uses of force in Seattle, the Taskforce’s scope of work changed after I-940 was enacted, which required independent investigations by all law enforcement agencies statewide. The Taskforce refocused its efforts from assessing the feasibility of independent investigations to designing an ideal independent investigation model for the City of Seattle.

## Taskforce Members

The CPC selected the Taskforce’s members to be inclusive of a variety of experiences and perspectives from across Seattle. The goal of the CPC was to create a Taskforce which, as a collective, would have a balance of knowledge and expertise on best practices, technical expertise on SPD practices and local laws, a firm understanding of the community’s expectations and desires regarding issues related to serious and deadly uses of force, and demonstrated work relevant to investigations of uses of force. For

the purposes of the Taskforce, the term “community” is defined as communities who are most and disparately impacted by policing, uses of force, and officer-involved deaths. In Seattle, these communities include but are not limited to Black communities, Indigenous communities, and other communities of color.

The Taskforce’s members represented various community groups across Seattle as well as former and current law enforcement officers and system partners of the Seattle Police De-

partment. The Taskforce was co-chaired by Jim Graddon, a former King County deputy sheriff and former Chief of the SeaTac Police Department, and André Taylor, a co-founder of Not This Time, a community organization with a mission to reduce fatal police shootings,

change the laws that govern the use of force, and rebuild trust between communities and the police. Biographies of Taskforce members can be found in Appendix I.

The Serious and Deadly Force Investigation Taskforce members are:



- Jim Graddon, formerly with King County Sheriff's Office and SeaTac Police Department (Co-Chair)
- André Taylor, Not This Time (Co-Chair)
- Emma Catague, Community Police Commission, Filipino Community of Seattle
- Gregg Caylor, Seattle Police Department
- Leslie Cushman, De-Escalate Washington
- Lisa Daugaard, Community Police Commission, Public Defender Association
- Kelly Harris, Seattle City Attorney's Office
- Lisa Judge, Office of the Inspector General
- Mark Larson, King County Prosecutor's Office
- Jim Maher, Council on American-Islamic Relations of Washington State
- Michelle Merriweather, Urban League of Metropolitan Seattle
- Andrew Myerberg, Office of Police Accountability
- Sweetwater Nannauck, Idle No More Washington
- Lorena Sepin, Safe Futures Youth Center

## Taskforce Meetings

Over the course of 2018 and 2019, the Taskforce held a total of nine meetings to learn about Seattle's current investigative processes, research investigation models in other jurisdic-

tions across the country, speak with community members and law enforcement officers, consult with experts, and develop recommendations.

## Meeting Dates

- April 9, 2018
- May 20, 2018
- June 14, 2018
- July 25, 2018
- September 20, 2018
- October 16, 2018
- January 28, 2019
- May 31, 2019
- August 16, 2019

## Values and Expectations

On September 20, 2018, the Taskforce adopted a set of values and expectations to inform its work and eventual recommendations. The Taskforce

unanimously agreed that any investigative model that the City of Seattle adopts should align with the following values and expectations.

## Values

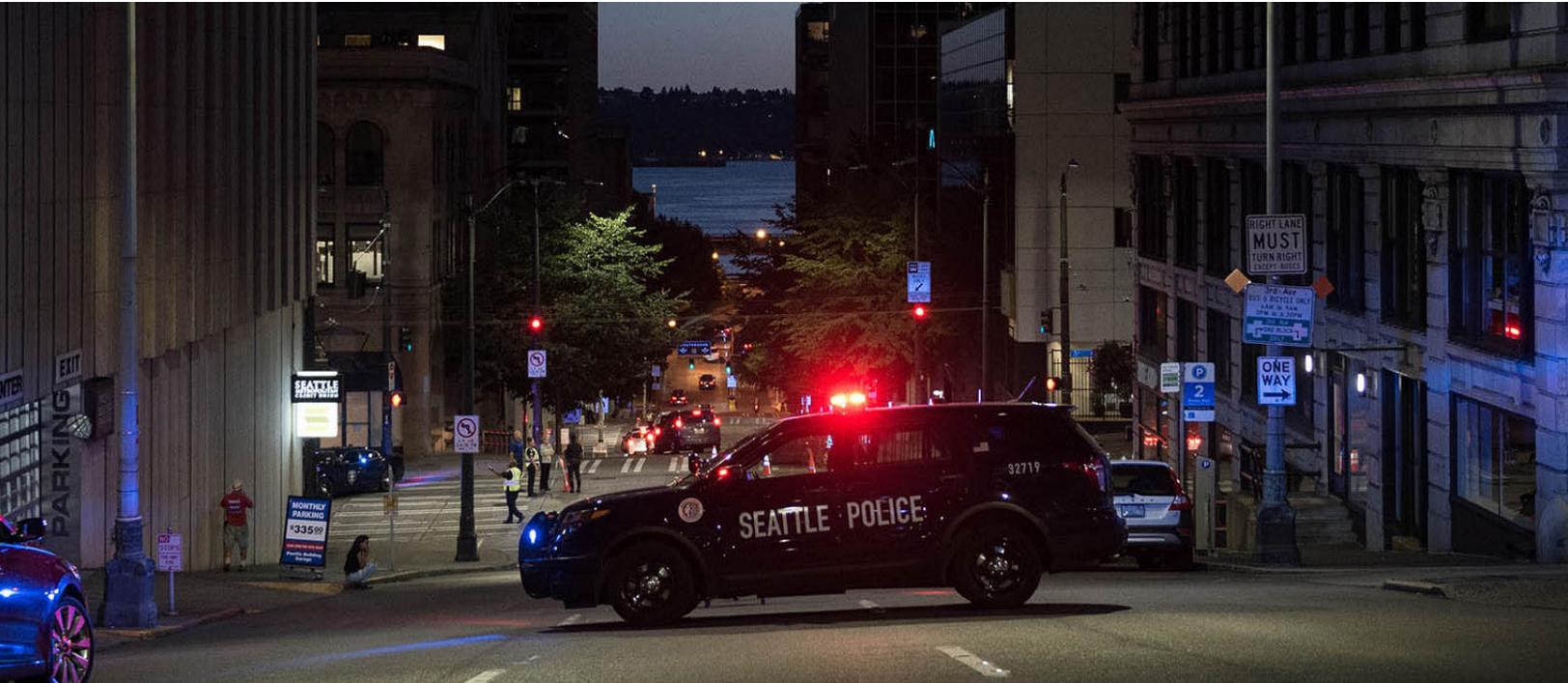
**Trust:** Community and police have confidence in the investigations of police officers' serious and deadly uses of force. (Also: Credible)

**Clear:** The investigation process and reports are clear and consistent so that community and police understand them. (Also: Understandable)

**Fair:** The investigations are conducted in a manner that is impartial and is not biased against the police or the victim. (Also: Objective)

**Informative:** The investigations produce information that is useful for determining a finding or revealing the truth of a matter.

**High-Quality:** The investigations are of high caliber, and investigators utilize generally accepted investigative and evidentiary techniques.



**Respectful:** Investigators treat involved people, such as victims, suspects, witnesses, family members, and officers, with respect and dignity at the scene and throughout the investigation process, including adopting a response protocol that includes an immediate acknowledgement and recognition of the impact of the incident, a neutral stance, a clear commitment to conducting a full and fair investigation, and information concerning the type of investigation to be conducted and its timeline.

**Timely:** Investigations are conducted efficiently and effectively.

**Thorough:** Investigations are exhaustive, in which all relevant details and leads are examined.

**Transparent:** The community and police understand the investigation process and understands how to access information about each investigation such as investigation reports.

## Expectations

1. Investigators have expertise and experience in conducting high-profile, complex criminal investigations.
2. Investigators can and do respond to each incident promptly.
3. Investigators have sufficient capacity and resources to carry out high-quality, timely investigations.
4. Clear definitions and policies govern the investigations.
5. The investigation process protects against conflicts of interest and appearances of conflicts of interest.

# Collaborations with Community and Law Enforcement

## Meeting with Law Enforcement

On June 14, 2018, Captain Gregg Caylor invited four SPD officers to a Taskforce meeting to share their perspectives about the current investigation process. Of the attendees were two officers on the Force Investigation Team and two

officers in the Patrol Division. Officers shared their opinions on the strengths and weaknesses of the current investigation model, which the Taskforce took into consideration in shaping its final recommendations.

## Meeting with Families

On June 22, 2019, the Taskforce held a meeting with families of people who were killed by police to review draft recommendations and receive their input. The Taskforce prioritized meeting with and seeking feedback from people who have been or whose loved ones have been directly affected by a serious or deadly use of

force by police officers as they have first-hand experience with participating in investigations of serious and deadly uses of force. The Taskforce's final recommendations incorporate the family members' input and are supported by the family members who attended the meeting.

## Work with Consultants

The Taskforce identified the need to engage experts outside of the Seattle area, in the effort to control for bias toward or against Seattle's current investigative process, to inform its recommendations. The Taskforce consulted with the Los Angeles Police Department's Deputy Chief Kris Pitcher who developed a set of recommendations on investigative protocols. The Taskforce also consulted Communities United for Police Reform, a grassroots coalition in New

York that played a critical role in the design and implementation of New York state's independent investigative process. The work products of both consultants are attached as appendices to this report. The Taskforce submits these work products in Appendix III and IV of this report for Council's knowledge, with the caveat that the Taskforce has not accepted them as its own recommendations due to time constraints.



# Serious and Deadly Force Investigation Taskforce

## Recommendations

In August 2019, the Taskforce adopted the following set of recommendations to advance to the Seattle City Council. Each Taskforce member is not necessarily in complete agreement with every recommendation below, but the

Taskforce has discussed at length the overarching concepts encompassed in each recommendation and considers each recommendation to be important for Council's consideration.

### Prevention

#### 1 Conduct long-term strategic planning to prevent serious and deadly uses of force.

I-940 mandates that police officers receive training on de-escalation and alternatives to deadly force. It also requires police to be trained to provide mental health intervention and first aid. The Taskforce recommends that the City of Seattle convene a committee to conduct long-term strategic planning to determine additional ways to prevent serious and deadly uses of force. The committee should include family members of those killed by police, consider restorative justice approaches, and scrutinize what SPD requires of officers who are involved in a serious or deadly use of force before they return to work.

The work of the Taskforce to identify an ideal independent investigation model is not intended to replace the work that must be done to prevent and reduce serious and deadly uses of force by law enforcement officers. The Taskforce acknowledges that many of the recommendations in this report address a worst possible outcome—when an individual is grievously injured or killed by a police officer. These recommenda-

tions do not address the critical question of how serious and deadly uses of force could be prevented. Though answering this question was not part of the scope and focus of this Taskforce, answering this question should be a priority for the City.

In 2010, after the shooting death of John T. Williams by an SPD officer, Williams' family arranged a restorative circle to bring the family and SPD together to discuss the shooting and how to bridge the gap between Native Americans in Seattle and police. The result of the conversations between SPD and community members and leaders was an action plan, agreed upon by all participants, to improve training and build relationships between community and law enforcement to prevent unwarranted killings in the future. The City and SPD should revisit this action plan and work with community members to incorporate it into a comprehensive, long-term strategic plan to prevent and reduce the use of serious and deadly for by Seattle police officers.

## Assistance for Families

### 2 Create a fund to support for families and loved ones of the individual involved in the incident.

The City of Seattle should create a fund and engage community organizations to provide financial support to families and loved ones of people who die as a result of a serious or deadly use of force. Regardless of the conduct or perceived culpability of the deceased or involved person, the family of the individual are innocent victims. In February 2018, King County Council unanimously voted to provide publicly funded legal counsel to families of police shooting victims during fact-finding hearings. At the time, Councilmember Jeanne Kohl-Welles stated, “Many of the families of individuals who are killed by a police officer don’t have a lot of money.”

Family members of people who die as a result of a serious or deadly use of force often turn to community members and community organizations to raise funds for costs associated with the death of their loved ones including costs for funerals, support for dependents, and grief counseling. The City of Seattle should create a fund for community organizations to provide financial assistance for family members who

die as a result of a use of force to be used for funeral costs, mental health counseling, crime scene clean-up, temporary relocation (if the use of force occurred at a residence), and associated medical costs. The City should also fund community organizations to conduct healing circles and utilize a restorative justice approach to address critical incidents. Doing so can help demonstrate that the City and its institutions are not biased in favor of law enforcement at the expense of the communities affected by the death, and thereby help foster trust in the investigative process itself.

Family members should not be expected to access these funds via the Seattle Police Department. The City of Seattle could consider providing these funds as grants to local, community organizations to disperse to family members and loved ones as needed. The process to receive funds should be as accessible as possible. For example, the process should avoid requiring multiple forms to be completed or allowing a very limited list of providers with which the funds can be used.

### 3 Make liaisons available to people impacted by a serious or deadly use of force and consult community members to develop accessible materials about the investigation process.

Many community members regard bureaucratic institutions such as police departments and city government to be complicated and difficult to navigate. Members of the Taskforce heard from family members of people killed by police that the current investigation process is complex and confusing, and the difficulty in navigating the investigation process is exacerbated when deal-

ing with grief. Historically, when there has been an officer-involved death, community and family members have been unable to receive prompt answers to questions regarding the investigation process.

Members of the public and those directly impacted by serious and deadly uses of force by police have a right to a clear picture of the in-

vestigation process. The City or the independent investigative body should make available two types of liaisons to people subjected to a serious use of force, or their loved ones and family members, to guide them through the investigation process and advocate on their behalf. The City should make available a liaison who can provide information and guide the family through the department's investigative process. The City should also make available a liaison who is not affiliated with law enforcement. The two liaisons could work in concert to guide families and loved ones through the investigative process. Liaisons should be readily available to the people who ask for them to answer questions and provide information. They should be

culturally competent. The City could also create a pool of counselors with similar lived experiences by creating and funding a peer counseling program to train and make available counselors who have lost loved ones to police use of force. The City, working with the independent investigative body, should consult members of communities most disparately impacted by policing and develop materials that contain clear and accessible information about the both the criminal and administrative investigation processes, inquest process, and court process. The materials should be available in languages other than English and should be available online and on paper.

#### **4 Require timely and regular communication with the family and loved ones of persons killed by police.**

A common criticism of the current process by relatives and loved ones of people killed by police is the length of time it took for police to notify them about the death and for them to be able to see or claim the body. Kerina Ngauamo, the aunt of Iosia Faletogo, a man killed by an SPD officer on December 31, 2018, said it took SPD nearly seven hours after his death to inform the family of his death. Four days after the shooting, Ngauamo said, "They have not let his mother see him, touch his face or his skin." In the event of a serious use of force that kills or incapacitates a person, SPD and the investigative body should treat family members and loved ones of that person as they would treat the loved ones of a victim of a violent crime. SPD should notify family members with the immediacy with which they would notify the family of a crime victim. Family members should be notified by someone who is trained to deliver the information as compassionately as possible. If the person is hospitalized or deceased, SPD

and the investigative body should make every reasonable attempt to allow their family and loved ones to see the person immediately. The City should consider working with previously impacted families to understand how best to support future impacted families. SPD and the independent investigative body should work with family members to determine a schedule of communication based on the needs and desires of the family members. When the Taskforce spoke with officers who had been subjects of a force investigation, it learned that the officers felt supported by the investigation team because they received regular phone calls and were kept well-informed of the investigation timeline and proceedings. Family members should also have the choice to receive regular and informative updates regarding the investigation process, with the understanding that in an active investigation, some information must remain confidential.

## Independent Investigations

### 5 Require that investigators demonstrate a commitment to integrity and civil rights and involve community members in hiring of investigators.

A barrier to community trust in investigations of police shootings and other serious uses of force is the lack of trust in an investigator's ability to exercise unbiased judgment. People in certain communities, particularly communities of color, do not trust that law enforcement officers are able to conduct investigations of other law enforcement officers in an objective, unbiased manner, or with fervor. The Taskforce examined independent investigation models in Connecticut, Utah, Wisconsin, and others, and in each jurisdiction, community members were incredulous that officers could fairly investigate other officers.

The Taskforce acknowledges that candidates with the ideal abilities, skills, and experience to conduct good investigations may be individuals with law enforcement backgrounds and training. To increase the credibility of potential former law enforcement officers in these posi-

tions in the eyes of community members, the Taskforce also recommends that all investigator candidates be required to demonstrate a commitment to integrity and civil rights. In Washington and other states, aspiring lawyers have the burden of establishing their good moral character to the state bar by way of a written statement. Potential candidates should submit a similar statement and be able to demonstrate their commitment to integrity and civil rights in their resumes, records, and references.

To further facilitate trust in the investigators, members from communities disparately impacted by policing should be involved in developing job descriptions and desired qualifications for investigators and sit on hiring panels for investigators. Giving community members a voice in the hiring of investigators could help ensure more community trust and buy-in in the individuals selected to conduct investigations.

**Investigations of law enforcement, by law enforcement, are not meeting the expressed needs of the public to which law enforcement is accountable.**

*American Civil Liberties Union of Utah, after the shooting death of Patrick Harmon was found to be justified.*

**6 Select a leader who has a demonstrated commitment to communities most impacted by serious and deadly uses of force.**

The independent investigative body should be led by an individual who has strong ties with, knowledge of, and proven experience working with and amplifying the voices of communities disproportionately impacted by serious and deadly uses of force, particularly communities of color. The independent investigative body

should conduct performance evaluations of the leader with community input. Credibility in the eyes of these communities will be key in the leader's ability to exercise authority within the agency and engender trust in the investigations being carried out by the body.

**7 Require that investigators have relevant experience and have access to specific trainings.**

The ideal investigative body for Seattle is one that is viewed as credible by community and particularly communities of color, and one that maintains or improves the current quality of criminal investigations of serious and deadly uses of force. For the independent investigative body to conduct high-quality investigations, it is critical that investigators are required, but are not limited, to have experience in or training on: investigating uses of force, assaults, and homicides, identifying and collecting evidence,

and interviewing subjects and witnesses. Given that people of color, particularly Black people, are disproportionately subject to serious uses of force by police officers, the Taskforce also recommends that investigators be trained in antiracism and implicit bias. Those who do not already possess this experience or have not already received these trainings should be required to receive training once hired and prior to conducting investigations.

**Jurisdiction Highlight 1: Snohomish County**

The Snohomish County Multiple Agency Response Team (SMART), a multiagency investigative team made up of investigators from various county law enforcement agencies as well as the Washington State Patrol, investigated an officer-involved shooting that resulted in the death of a man named Jeremy Dowell on January 30, 2017. SMART found that Officer Zachary Yates' use of force was justified, and Snohomish County prosecutors declined to bring criminal charges against Yates.

In 2018, the Seattle Times reported that after SMART's investigation concluded, 12 witnesses came forward and signed sworn declarations that disputed the investigation's findings. Robert and Suzette Dowell, the parents of Dowell, filed a suit alleging that the SMART team carried out a biased investigation. They stated, "When police do not thoroughly and properly investigate other police, public confidence and trust is lost." The city paid \$1.75 million to settle the lawsuit. Snohomish County Prosecuting Attorney Mark



Roe later reaffirmed the decision of his office not to charge Office Yates and defended the investigation by SMART, saying it was thorough and fair.

This incident and the public's response to events that unfolded is one indicator that independent investigation processes are not immune

to community distrust and criticism by virtue of being independent. Beyond establishing an independent investigative process, the City of Seattle must consider how else it can move the needle on community credibility and legitimacy of investigations of serious and deadly uses of force.

## 8 Require investigators to disclose any conflicts of interest.

An expectation of the Taskforce is that the investigation process protects against not only conflicts of interest, but appearances of conflicts of interest. A conflict of interest can be a conflict between the private interests and the official responsibilities of a person in a position of trust. Another can be a conflict where working relationships introduce questions regarding the ability to be impartial or thorough, or a reluctance to follow up on indications of misconduct. It is a situation that has the potential to undermine the impartiality of a person, and in which a person can derive personal benefit from their actions or decisions. For example, an officer investigating a relative would be or at the very least appear to be a conflict of interest. In 2016, in Wisconsin, which requires indepen-

dent investigations of officer-involved deaths, two former Milwaukee police officers investigated the fatal shooting of a man by a Milwaukee officer, sparking community concern. Since then, the Wisconsin Department of Justice, which houses the state's primary investigative body for officer-involved critical incidents, issued suggested guidelines for investigations of officer-involved deaths. One guideline is for investigators to disclose any prior familiarity with an officer being investigated, including whether the officer is a former co-worker, friend, or training partner.

In the interest of preserving community trust in investigations, the independent investigative body should require that investigators disclose any conflicts of interest or appearances of con-

flicts or interest at the outset of every investigation, including any relationships they have had with subjects of the investigation directly and peripherally. The body's leader should make the final determination on whether an investigator's

disclosure would disqualify them from participating in a certain investigation, keeping in mind that even the appearance of a conflict of interest can undermine an entire investigation.

## 9 Require a specific timeframe for completing investigations.

In the Taskforce's examination of investigative models, it saw a wide range of timelines for completing investigations, from one to four months in Wisconsin to two years in Connecticut.

It is imperative to require specific timelines for completing investigations of serious uses of force for reasons related to community credibility and to good investigative practices. Lengthy delays in investigation outcomes can diminish the public's confidence in the investigative process as there is a wider opportunity for there to be a perception of lack of communication and transparency.

Delays can unnecessarily prolong stress for officers and those who were or whose loved ones were subject to a serious or deadly use of force. After the shooting death of Charleena Lyles in Seattle, King County Executive Dow Constantine halted mandatory proceedings called inquests to convene a committee to reform inquest processes. Katrina Johnson, a cousin of Lyles, played a critical role in the reform process, but also remarked that the delay of the inquest hearing for her cousin was difficult to bear, saying, "You don't have that sense of rest, that sense that you can move forward and progress. Everyone's just sitting like you're in quicksand. I just want to be able to finally know

what happened, deal with that and make peace with whatever that is so that I'm able to begin to live again. I feel like I'm just existing."

Long delays can also compromise the investigation if evidence becomes stale and witness memories fade. Delays can impair a department's ability to address potential policy or training gaps that led to an unnecessary use of force, compromising the safety of members of the public and of officers. To ensure timely investigations and to prevent these negative outcomes, a specific time frame for completing investigations should be required in policy, with a mechanism for the investigative body to request an extension in cases where new witnesses and new evidence are identified, or more time is required to conduct a thorough and diligent investigation. The investigative body should be required to articulate why they require an extension and provide a new timeline for completion.

At times, investigative bodies are misperceived to be responsible for delays in charging decisions in prosecuting attorneys' offices. Though the Taskforce cannot make recommendations to prosecuting attorneys on this issue, it recommends that the City consider how delays in the prosecuting attorney's office may impact community distrust and frustration.

## 10 Provide investigative reports in a timely manner.

The independent investigative body should promptly provide every investigative report and the investigation case file first and foremost to family members and loved ones once an investigation is complete. The investigative body should be sufficiently funded to gather and produce a comprehensive and useful reports in a timely manner. Reports should omit sensitive information and pictures that may compromise

victim privacy or re-traumatize loved ones, unless the family or loved ones specifically ask that this material be included.

In Wisconsin, investigators are required by statute to release investigation reports for cases the district attorney declined to prosecute. In the interest of being transparent, the independent investigative body should publish all investigative reports and case files.

### Jurisdiction Highlight 2: New York State

On July 8, 2015, partly as a result of the failure of a Staten Island grand jury to indict the officer who killed Eric Garner, Governor Andrew Cuomo of New York issued an executive order making the Attorney General a special prosecutor in cases where an unarmed civilian is shot and killed by a police officer.

Among the investigative models examined by the Taskforce, the New York model emerged as a distinct model and was selected by the Taskforce for closer examination because of the apparent support for the new process by community members and organizations in New York including families of those killed by police. Loyda Colon, a co-director of the Justice Committee, a coalition of families who have lost loved ones to police violence, said, “Since the establishment of the special prosecutor, we have seen an unprecedented level of transparency regarding the investigations of police killings in New York, in stark contrast to the handling of these cases by local district attorneys.” Nearly two years after the implementation of the Special Prosecutions and Investigations Unit in

the Attorney General’s office, a reporter wrote, “Even when there wasn’t an indictment, advocates say the attorney general issued a detailed report, communicated with the families, and issued recommendations.” Transparency played a significant role in engendering trust in the investigative process.

To identify what other aspects of the investigative process in New York inspired more community confidence in the investigations, the Taskforce conducted outreach to the Communities United for Police Reform, a coalition in New York that was integral to the design and implementation of the new investigative process. The Taskforce learned that families whose loved ones had been killed by police played an instrumental role in crafting the executive order and organizing. After Governor Cuomo issued the order, family members and community members followed and monitored the implementation of the order, playing a key role in providing input on implementation.

In implementing the order, the Attorney General’s office remained open to hearing criticism



*Eric Garner protests in 2014 by Paul Silva is licensed under CC BY 2.0*

from community organizations and family members, agreeing to attend accountability meetings and changing behavior based on what they learned. The Attorney General himself met with families of people killed by police when they requested to meet with him, and family

members remarked that they were kept informed throughout the whole investigative and indictment processes. The office, through their actions, gave community members the impression that there was an institutional commitment to try to seek justice.

## **11** Develop a media policy that protects those subjected to a serious or deadly use of force.

It is common practice for police departments across the country to release information such as a person's criminal history when there is an officer-involved death. Releasing this kind of information breeds mistrust in community and gives the impression that the department is trying the individual in the court of public opinion and justifying the involved officers' actions based on the person's past and character. The Seattle Police Department's policy regarding media release surrounding an officer-involved shooting states that the information released by the department will be factual and will not contain any pre-judgment, and that the department will not release the involved person's criminal history, unless it was relevant to the incident and known to the involved officers prior to the incident. SPD adopted this policy

after receiving significant feedback from community about the harm caused by police departments releasing sensitive information to media. The independent investigative body should adopt a policy to prohibit the release of sensitive information, such as criminal history, about a civilian involved in a serious or deadly use of force, and to reserve pre-judgment in statements made to the public. The investigative body and the Seattle Police Department should adopt a policy to not refer to individuals involved in serious and deadly uses of force as a suspect. The investigative body and SPD should also adopt a policy to retract any statements or information they give in the aftermath of a serious or deadly use of force that turns out to be false.

## Continuous Improvement

### 12 Collect key data related to investigations and publish reports of aggregate data regularly.

Seattle's independent investigative body should collect key data related to investigations and publish data analyses including trends in annual reports in the spirit of transparency and

continuous improvement. Potential data points for collection are length of investigations and investigation outcomes.

### 13 Conduct sentinel event reviews after every serious or deadly use of force to identify system flaws and to address them via policy and training.

Sentinel event reviews are comprehensive reviews of significant incidents, and these reviews have been used in fields such as medicine and aviation to examine a negative outcome, such as a death or a plane crash, to identify deficits in a system or process. Sentinel event reviews recognize that a negative outcome in a complex system is rarely due to a single error but is likely the result of many errors and systemic deficits. The National Institute of Justice has been investigating the feasibility of using a sentinel event review approach in the criminal justice system. According to NIJ, sentinel event reviews are based on three underlying principles: 1) it is non-blaming; 2) all stakeholders – system-wide

– are involved in the review; and 3) it is an ongoing and routine practice. The Taskforce recommends that outside of an independent investigation process, the City of Seattle implements a sentinel event review process for officer-involved deaths. The purpose of the reviews would not be to adjudicate an officer or department, but to identify ways in which to prevent similar adverse outcomes and events in the future and inform a strategic plan. It should be conducted by a multiagency, multi-branch group of people that includes SPD, OPA, OIG, CPC, and community members. The City should refer to NIJ's research in implementing a sentinel event review process.

## Statewide

### 14 Establish an investigative unit in the State Attorney General's Office to conduct criminal investigations of serious and deadly uses of force.

The Taskforce examined numerous independent investigation models across the country including multiagency taskforces, agreements with neighboring jurisdictions, and state-level investigation entities. In reviewing the current system in Seattle, the Taskforce learned that the

Seattle Police Department Force Investigation Team is strongly equipped to conduct investigations of serious or deadly uses of force. The Taskforce examined many independent investigation models in which investigation results were not regarded as credible because they were

## “We know the police can’t investigate police.”

*Jeannia Fu, Justice for Jayson, after an officer was cleared in the killing of an unarmed teen named Jayson Negrón in Connecticut*

carried out by other law enforcement agencies. For these reasons, the Taskforce set a goal to design an independent investigative model that would not sacrifice the abilities and competencies of the Seattle Police Department’s Force Investigation Team, and one that community would consider to be more credible and legitimate than the system and process currently in place in Seattle.

The Taskforce recommends that the state strongly consider establishing an investigative unit in the State Attorney General’s (AG) office to conduct criminal investigations of serious and deadly uses of force and incentivize jurisdictions across the state to opt into this investigative model. If this unit is established, the City of Seattle should opt into the model and utilize the AG’s office to conduct criminal investigations of the Seattle Police Department’s Type III and deadly uses of force as defined by the SPD policy manual. Under this proposal, SPD would be free to continue to utilize its Force Investigation Team to conduct the initial administrative investigation into serious and deadly uses of force.

The City of Seattle already has a robust police oversight and accountability system. When there is a serious or deadly use of force, representatives from both the Office of Police Accountability and Officer of the Inspector General are permitted to be at the scene of the

incident. OPA oversees administrative investigations of serious uses of force, specifically focusing on identifying possible misconduct, whereas the Force Investigation Team’s purpose is to gather facts. Establishing a city agency in Seattle to conduct independent criminal investigations would not only be costly to the city but could obscure the current accountability system by adding yet another city entity to the its structure.

The AG’s Office is a state agency with significant control and authority. The office, with both civil rights enforcement responsibilities and law enforcement authority and responsibilities, is generally credible both with community and with law enforcement. The AG’s office also has locations statewide, allowing for a potentially smooth transition to establishing regional deployment hubs for investigative teams. Furthermore, decisions being made by a centralized agency may provide for more ease in communicating with community, and for community to ask questions and receive consistent responses. As the AG’s office is an office of an elected official, there must be an intentional effort to prevent the work of its investigative unit from being politicized. Ideas to prevent the politicization of its work include classifying the positions within the investigative unit as civil service protected positions; staggering the unit lead’s term relative to the attorney general’s term so

an incoming attorney general cannot easily replace the unit lead; and requiring that its lead can only be removed for cause and with a public hearing.

For the purposes of this report, the Taskforce's following recommendations are meant to apply to any independent investigative body that

conducts criminal investigations of serious and deadly uses of force by Seattle Police Department officers (heretofore referred to as "the independent investigative body") including a potential state-level investigation team within the AG's office.

## **15** Establish a state-level entity to review all closed investigations statewide.

With over 300 law enforcement agencies in Washington, even after the Washington State Criminal Justice Training Commission's adopts rules to establish criteria for what qualifies as an independent investigation, there could be 300 unique independent investigative processes throughout Washington. To advance the credibility and legitimacy of each of these investigative processes in communities across the state, the state should create a state-level agency to 1) review all closed investigations for flaws and 2) be a clearinghouse for all investigative reports and data statewide.

In Washington, it is not possible to easily identify the number of deadly force incidents or the outcomes of deadly force investigations in a given year, or access investigative reports from multiple jurisdictions. In fact, no state in the country has a statewide repository for investigative reports and data related to investigations of serious and deadly uses of force. Washington can become the first state in the country that has a state-level entity that collects, analyzes, and reports on data related to investigations and houses investigation reports from every juris-

isdiction across the state.

With access to such data and reports, this entity and others can identify trends across the state to inform future policymaking and potential improvements to how independent investigations are conducted in Washington beyond I-940. Having a statewide clearinghouse would also promote transparency and accessibility of information for community members, and potentially cultivate trust in the outcomes of investigations.

In conversations with community members and law enforcement officers, Taskforce members heard firsthand the challenges of bridging the gap of trust between community and police, and of instilling confidence in investigations of serious and deadly force. Establishing a state-level entity that has the responsibility to conduct comprehensive reviews of every closed investigation could reassure community members and law enforcement officers that no matter who conducts an investigation, there is an entity charged with ensuring that every investigation is thorough, fair, and of high quality.

# Appendices

- I Member Biographies
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- IV CPR's report
- V Law Enforcement Meeting Notes
- VI Family Meeting Agenda and Notes

## Appendix I. Serious and Deadly Force Investigation Taskforce Member Biographies



**Jim Graddon** (*Co-Chair*) was born and raised in the Burien area of south King County, one of 8 children. His mother was a full time Registered Nurse and father was a career law enforcement officer with the King County Sheriff's Office. Jim began his career in policing in 1973 with Seattle as a police cadet and then dispatcher. He was hired by the King County Sheriff's Office in February of 1978 as a deputy serving the White Center, Burien and Skyway communities among others. During his career he had many assignments including supervising the Major Crimes Unit for 6 years and serving as the last Green River Homicides Investigation commander. For several years prior to retiring from the KCSO in 2013 Jim served as the Sheriff's Southwest Precinct Major and as the Chief of Police for the City of SeaTac. In those roles he had the wonderful opportunity to work with remarkable individuals and organizations in introducing the LEAD (Law Enforcement Assisted Diversion) program in Seattle and King County.

After retiring, Jim served as an inaugural member and first co-chair of King County's Office of Law Enforcement Oversight Citizen Advisory Committee from 2014 to 2016.

Jim and his wife Linda celebrated their 40<sup>th</sup> wedding anniversary last year. He is a volunteer museum educator and monitor at the LeMay America's Car Museum in Tacoma. He is also a multi-year member of the scholarship selection committee for Southwest Youth and Family Services / New Futures in West Seattle.

Contact information: [ligraddon@comcast.net](mailto:ligraddon@comcast.net)



**André Taylor** (*Co-Chair*) is a university lecturer, public speaker, and life coach sharing his story of perseverance and redemption. In 2005, Mr. Taylor published the book "The Road to Paradise" and has since been invited to speak on the Montel Williams Show and on the Trinity Broadcasting Network. Andre' continues to speak at prisons and teach at transitional treatment centers around the country.

André's brother Che Taylor was killed by the Seattle Police Department in February 2016. Following, Andre started the nonprofit "Not This Time," to assure that police killings would end. Not This Time is a coalition of Native Tribes, Black Churches, Latino organizations, API organizations, and people with disabilities groups to push for police accountability through policy change. It has garnered the support of U.S. Senator Patty Murray, U.S. Congressman Adam Smith, King County Sheriff Mitzi Johanknecht as well as Seattle's Community Police Commission and the King County Office of Law Enforcement Oversight, and many others as it works to create a more just use-of-force laws in Washington.

André was instrumental in bringing together De-Escalate Washington, which has now qualified Initiative 940 to update the use of deadly force law in Washington and require more training for law enforcement on first aid, mental health, and de-escalation tactics. This campaign is one of the strongest people of colored coalition Washington has ever seen, turning in over 360,000 signatures to the state and raising over \$1.4 million to qualify.

André was born in Seattle and has split his time between the Northwest and Los Angeles throughout his life. He has been married to Dove Taylor for 18 years and has six children.

Contact information: [andreltaylor@yahoo.com](mailto:andreltaylor@yahoo.com)

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**Emma Catague**, a domestic violence survivor, is a dedicated advocate in ending violence against women and children. She has 30 years of experience in community and labor organizing, advocating for human rights, immigration issues, bilingual education, youth development, employment rights, and working for social change. She is a founding mother of the Asian Pacific Islander Women and Family Safety Center (APIWFSC), and former Community Organizer and Domestic Violence, Sexual Assault and Anti-Human Trafficking Advocate for API Chaya.

Emma is a member of the Community Police Commission.

Contact information: [emma.catague@seattle.gov](mailto:emma.catague@seattle.gov)

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No Photo Provided

**Gregg Caylor** is a Captain in the Seattle Police Department and has been with the Department for 28 years. His current assignment is in the Force Investigations Team. His previous assignments include:

- 2016-2018 Commander Office of Professional Accountability
- 2014-2016 Force Review Board Section Commander
- 2013-2014 Human Resources Commander
- 2009-2013 Commander Major Crimes Task Force
- 2007-2009 Human Resources Commander
- 2005-2007 Watch Commander Patrol
- 2004-2005 Detective Sergeant Internal Investigations
- 2003-2004 Sergeant Community Police Team
- 2001-2003 Anti-Crime Team Sergeant
- 2000-2001 Sergeant Patrol
- 1997-2000 Night Narcotics Pro Act
- 1994-1997 East Precinct Anti-Crime Team
- 1993-1994 East Precinct Community Police Team
- 1990-1993 Patrol

Contact information: [Gregg.Caylor@seattle.gov](mailto:Gregg.Caylor@seattle.gov)



**Leslie Cushman** is an attorney and community organizer. In 2015, in the aftermath of a police shooting, Leslie and six other community leaders founded the Olympia Coalition to Reform Deadly Force Laws. Partnering with the Black Alliance of Thurston County, the Olympia Coalition joined a grassroots network to bring forward state legislation addressing the use of deadly force. This work ultimately evolved into the De-Escalate Washington Campaign and Initiative 940. Leslie is the citizen sponsor of I-940 and serves on the De-Escalate Washington Co-chair Committee. Leslie currently works part time for the Puyallup Tribe of Indians economic enterprise. Before coming to the Puyallup Tribe she spent 14 years in leadership at the State Department of Revenue, worked at the State Legislature for 15 years, as well as worked at Seattle City Light, WSDOT, and Dirty Dave's. Leslie graduated with honors from Washington State

University, earned her law degree from Seattle University, and has a Master in Environmental Studies from The Evergreen State College.

Contact information: [leslie.cushman.olympia@gmail.com](mailto:leslie.cushman.olympia@gmail.com)

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**Lisa Daugaard** is Director at the Public Defender Association (PDA). Since 2001, under Lisa's leadership, the Racial Disparity Project at PDA has focused on racial disparity in Seattle drug arrests, and since 2005, they have worked to develop LEAD, a pre-arrest diversion alternative to traditional arrest and prosecution for low-level drug and prostitution suspects. Prior to becoming a public defender in 1996, Lisa directed the Urban Justice Center Organizing Project and was Legal Director of the Coalition for the Homeless, both in New York City, and was a fellow at the ACLU National Legal Department.

Lisa is a member of the Community Police Commission.

Contact information: [lisa.daugaard@seattle.gov](mailto:lisa.daugaard@seattle.gov)

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**Kelly Harris'** entire legal career has been spent as a public servant. The UCLA Law School graduate has been a criminal prosecutor for twenty-four years. He began his career as a King County Deputy Prosecutor, and during his nine years there, tried hundreds of jury trials, ranging from DUIs to Murder cases. In 2002, he left King County to serve as an Assistant United States Attorney for the Western District of Washington. While an AUSA, Kelly led the Anti-Terrorism Advisory Council for the District, served as Executive Assistant U.S. Attorney under U.S. Attorneys John McKay and Jeff Sullivan, and was also responsible for the District's criminal civil rights cases. In 2009, he moved to Washington D.C., serving for six years as the Counterterrorism Crisis Management Coordinator in the Department of Justice's National Security Division, under Attorneys General Eric Holder and Loretta Lynch. Kelly returned home to Seattle in March 2016, to serve under City Attorney Pete Holmes as his Criminal Division Chief.

Contact information: [kelly.harris@seattle.gov](mailto:kelly.harris@seattle.gov)

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Lisa A. Judge brings over 20 years of experience as a Principal Assistant City Attorney for the City of Tucson and senior in-house counsel to the Tucson Police Department. Lisa provided legal and management advice to the chief of police and senior commanders as well as legal assistance and training in areas such as Constitutional law with a focus on the First, Fourth, Fifth, and Sixth Amendments, use of force investigations, criminal law, and labor-management. Lisa was also an ACLU-approved trainer for court-ordered training on Fourth Amendment law and anti-bias for the Maricopa County Sheriff's Office. She is dedicated to constitutional policing; reducing and eliminating unlawful uses of force, stops, searches, arrests, and bias in policing; and increasing positive police interactions for persons with mental illness. Lisa earned her Juris Doctor from the University of Arizona. She and her partner Kimberly enjoy spending time with their son and furry kids.

Contact information: [lisa.judge@seattle.gov](mailto:lisa.judge@seattle.gov)

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No Photo Provided

**Mark Larson** received his JD in 1985 and has served as a King County Deputy Prosecutor throughout his career. In 1993, he was named Chief Deputy of the Criminal Division, which employs over 160 lawyers. Mark is a frequent lecturer/speaker on a wide variety of criminal justice issues. He has a long-standing interest in eyewitness identification, and helped author the National Institute of Justice's *Eyewitness Evidence: a Guide for Law Enforcement* (1998). More recently, he co-authored *Eyewitness Identification: An Update on What Chiefs Need to Know*, published in *The Police Chief* (2013). Mark also authored *The Exoneration of Brandon Olebar* in the Marshall Project (Feb. 2015). For fun, Mark is an avid motorcycle enthusiast.

Contact information: [Mark.Larson@kingcounty.gov](mailto:Mark.Larson@kingcounty.gov)

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**Jim Maher** is a Civil Rights Team member at CAIR-Washington State, a chapter of America's largest Muslim civil liberties and advocacy organization.

After spending many years in the investment field, Jim realized that his real passion was working with the law. Rather than attempt to complete law school, Jim decided to train as a paralegal and obtained his paralegal certificate from Highline Community College in 2012. After completing that program, Jim has served with a variety of non-profit legal organizations. This included two years at the Eastside Legal Assistance Program in Bellevue and one year as a Dependency CASA at the King County Superior Court in Kent. Jim joined the Civil Rights Staff of CAIR Washington in 2015 and is extremely proud to be able to assist members of the Muslim community get the rights that they are entitled to.

Jim is married to Donna who is an instructor at Renton Technical College and has one daughter Susannah who is finishing her bachelor's degree in Environmental Science at Western Washington University in Bellingham.

Contact information: [jmaher@cair.com](mailto:jmaher@cair.com)

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**Michelle Y. Merriweather** joined the Urban League of Metropolitan Seattle team in August of 2015 as the Vice President. Her passion is combining her extensive sales, fund development, event planning and marketing background to better the communities in which she serves. Prior to changing her career to follow her passion in advocating for African Americans and under-served communities she had a successful career in sales and marketing with major organizations such as Starbucks, Heinz, and Coca Cola. In February 2018, Michelle became the 13<sup>th</sup> President of the Urban League of Metropolitan Seattle. Michelle is an active member of Delta Sigma Theta Sorority, Incorporated and a graduate of Xavier University of Louisiana with a Bachelor of Science in Business Administration with a concentration in Marketing.

Contact information: [mmerriweather@urbanleague.org](mailto:mmerriweather@urbanleague.org)



**Andrew Myerberg**, a civilian lawyer, was sworn in by Mayor Tim Burgess November 21, 2017, to serve as the first OPA Director under the new police accountability legislation adopted in May of 2017. Andrew leads the work of OPA by overseeing the intake, classification, and investigation of complaints, certifying investigative findings, suggesting revisions and clarifications to Seattle Police Department policies, and making recommendations on discipline to the Chief of Police.

Andrew comes to OPA from the Seattle City Attorney's Office, where he was the lead attorney for the City of Seattle in the Consent Decree over the Seattle Police Department and provided legal advice to City departments on criminal justice and law enforcement issues. Andrew also previously served as legal counsel to the Community Police Commission.

Contact information: [Andrew.Myerberg-OPA@Seattle.Gov](mailto:Andrew.Myerberg-OPA@Seattle.Gov)

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**Sweetwater Nannauck** (Tlingit, Haida, Tsimshian), is an Idle No More activist that advocates for the protection of the fragile environment of the Northwest Coast, for tribal sovereignty rights, and the traditional way of life of Native people. She conducts Idle No More 'Decolonizing Our Activism' workshops in a respectful way that is both healing and empowering.

November 10, 2017 is the 5th anniversary of Idle No More. Since then Idle No More Washington has had over 80 events and nonviolent direct actions that address local and global issues. She went to Washington, DC to lobby to protect the Arctic, she was involved in the 'Shell No' actions in Seattle and Anchorage when President Obama was there. Sweetwater was featured in the annual Seattle Weekly 'Best of Seattle' (2015) 'Best Activism Idea'.

Contact information: [idlenomorewa@gmail.com](mailto:idlenomorewa@gmail.com)

**9/13/2010 Restorative Circle**

**Purpose: discuss events involving certain SPD officers and Williams family members following shooting of their brother, John T. Williams, and develop a mutually agreeable, restorative plan of action.**

**I. Attendees:**

**Rick Williams**

**Eric Williams**

**Dan Martin**

**Connie Sue Martin**

**Jenine Grey, Chief Seattle Club, Executive Director**

**Denise Stiffarm, Chief Seattle Club, President**

**John Diaz, Chief of Police**

**Jim Pugel, Assistant Chief for Investigations**

**Mike Sanford, Assistant Chief**

**Steve Brown, Capt. of West Precinct**

**Fred Ibuki, Sgt. Of West Precinct**

**Kathryn Olson, Director, Office of Professional Accountability**

**Andrea Brenneke, Facilitator and attorney for Williams family**

**Susan Partnow, Co-Facilitator**

## II. Action Plan Agreed Upon by All Participants:

### Training Improvements (much of this overlaps)

1. The Department will explore existing training and consider additional needs for anti-oppression, anti-racism training. Share back to the circle.
2. The Department will develop a plan for increasing understanding and cultural sensitivity to First Nations peoples. Share back to the circle.
3. Capt. S. Brown and Sgt. Ibuki will go to roll calls within the next three weeks and teach patrol officers what they learned from this circle. Share back to circle.
4. The Department will use the mentorship concept and partner senior officers who display understanding, respect, and cultural sensitivity with junior officers. Sgt. Ibuki will take a lead and identify a cadre of similar officers to himself who can and will be used to mentor junior officers. Share back to circle.
5. The Department will analyze where its 19 Native American officers are deployed and develop a plan for increasing their involvement in training and in patrols of areas with large Native American population, if possible.<sup>1</sup> Share back to circle.
6. The Department will reinvigorate the Native American Advisory council and support its Chair, Tina Fox, in the same. Share back to circle.
7. The Department will develop a plan to learn directly from Rick Williams, Eric Williams and Dan Martin. Rick Williams, Eric Williams and Dan Martin agree to participate in training in a way that is respectful and to their mutual benefit, which may just be sitting together in the park. Share back to circle.
8. The Department will translate what they learned today in teaching at the Department. Share back to circle.
9. The Department will continue to evaluate mechanisms for sustaining and weaving in training re: diversity, respect, and emotional intelligence to maximize impact in changing the culture of the Department.<sup>11</sup> Susan Partnow agrees to work with the Department on that. Share back to circle.
10. The Chief Seattle Club, Jenine Grey, and Denise Stiffarm, agree to be available for police training/experience opportunities as mutually beneficial. Share back to circle.
11. The Department will develop a training based upon Native American customs and traditions, including carving. Share back to circle.

### Developing Relationship

Rick Williams and Eric Williams invite participants in today's circle, and anyone else, to sit with them at the park, in civilian clothes, to experience their lives and develop greater relationship. Chief Diaz, S. Brown, M. Sanford, Jim Pugel, Kathryn Olson, and Susan Partnow all accept and agree to visit at the park.<sup>11</sup>

**Direct Line of Communication**

Sgt. Ibuki and the Department agree to establish a direct line that can be used by Rick Williams, Eric Williams, Dan Martin, and others to raise concerns about negative interactions with the police. Rick Williams, Eric Williams, Dan Martin and other circle members agree to use Sgt. Ibuki as their direct connection if they feel comfortable. Sgt. Ibuki's direct line cell phone is: [REDACTED]

This direct line may be used *except* in case of emergency, in which case 911 should be called.

**Accountability**

Kathryn Olson, Jenine Grey, and Denise Stiffarm will evaluate, improve (if necessary) and publicize mechanisms to give voice to other incidents of negative police interaction with community members to maximize accountability and avoid retribution/retaliation.

**Expressions of Empathy**

The Department, together with Susan Partnow and Andrea Brenneke and others, will evaluate how the Department expresses empathy and compassion at times of tragedy and recommend improvements to maximize the community will hear it.

**Follow up Circle**

The participants will meet in a follow up circle to evaluate these agreements and make revisions, if necessary. The follow up circle will be in 1-2 months and Andrea Brenneke will develop a mutually agreeable time/day with Kathryn Olson and the Department.

**Use of Agreement**

This agreement will not be used in litigation.

**No Public Use**

No participants will disclose this meeting or its agreements to the media unless mutually agreed upon in the future.

Agreed upon and signed this 13<sup>th</sup> day of September, 2010.

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**The assessment of current Native American Officers' assignments will precede any recommendations regarding changes to staffing, as reassignment will only be made if appropriate.**

**This refers to the need for reiterative training where changes to the culture of the Department are identified as desirable.**

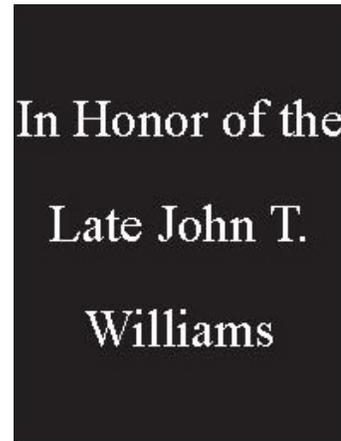
**Since the Circle convened, Rick and Eric moved and are now working in front of the Frontier Gallery, directly across from the entrance to the Space Needle and one building to the west of the Experience Music Project at the Seattle Center. They welcome visitors at their new location. The timing of the visits will be dependent on the Chief and others' schedules, and the visits are intended to occur prior to the follow up circle.**

## J. T. Williams Organizing Committee

Where's the picture? At the request of the Williams family and out of respect for cultural practice, we have removed the late John T. Williams' picture for one year. In support of the family whenever their lost love one's name is used it will be preceded by "the late." This committee uses the initials with approval of the family.

Updated November 20, 2010

Below are items presented as solutions to promote better relationships between the Seattle Police Department and the citizens of Seattle who they serve as suggested by the J. T. Williams Organizing Committee. Responses were presented by Ron Wilson of the SPD at the Native American Advisory Council meeting on November 8, 2010.



In Honor of the  
Late John T.  
Williams

1. Mandatory multiculturalism training with a positive approach, not to be meant as a punishment for officers but educating and developing.

**Outcomes:** To educate officers about the diverse members of our community.

**Response:** *The force is currently using Perspectives in Profiling and Race: The Power of Illusion.*

2. Cultural sensitivity train-the-trainer programs. Is there a way to evaluate the current program and offer suggestions for effective, long-term changes?

**Outcomes:** Studies have found that police are more likely to incorporate changes if trainings are taught from one of their own.

**Response:** *An audit is planned of all trainers currently in use and they will be receiving specialized training. It was requested by community members that this should be an outside review.*

3. Mandatory back-up calling for police initiated stops.

**Outcomes:** For the safety of officers and community members.

**Rationale:** If officer Birk had called for back-up other officers would have known the late John T. Williams and could have avoided a fatal situation.

**Response:** *Currently all officers contact dispatch when leaving their vehicle. This policy will be reviewed but SPD cited the variety and frequency of stops prohibits the use of backup on every single stop.*

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### **Partners:**

AFSC (American Friends Service Committee), APALA (Asian Pacific American Labor Alliance), CLUW (Coalition of Labor Union Women, Cecile Hansen, Chair – Duwamish Tribal Council, El Comité Pro Reforma Migratoria y Justicia Social, Going Coastal Productions, Jobs with Justice King County Organizing Committee, Justice Works, Lutheran Community Services Northwest, May 1st Action Coalition, Mothers For Police Accountability, NAACP (National Association for the Advancement of Colored People) Seattle/King County Chapter, Pride@Work, Spinning Wind Productions, WA State Democratic Disabilities Issues Caucus (WSDIC), WA State Democratic Native American Caucus, WA State Democratic Progressive Caucus.

4. Mandatory rotation of bike officers.

**Outcomes:** This would give police officers a chance to be on the street and know who is in their district and community.

**Rationale:** If officer Birk had called for back-up and a cop on bike showed up, the cop on bike would more than likely have known the late John T. Williams and they would have responded differently.

**Response:** *This item represents potential labor issues. Currently there is in place a "Neighborhood Policing Plan" that includes a "Neighborhood Viewpoint" survey. The plan includes 30 day rotation to different units available as an option to officers. Community members noted that a community survey that is taken to residents' doors by uniformed officers will result in a skewed study since it is unlikely that marginalized community members who are intimidated or afraid of the police may not participate at all or give less than honest responses.*

5. Mandatory time-off for stress reduction for police officers.

**Outcomes:** Being a police officer is very stressful, mandatory time-off would help alleviate stress.

**Response:** *Officers now work 36 hours in 4 day periods with 2 days off between work periods.*

6. Implementation of the Crisis Intervention Training Program.

**Outcomes:** To train officers about de-escalation techniques for the safety of officers and community members.

**Response:** *When hired officers receive 8 hours of Crisis Intervention Training. There is an optional training of 40 hours available after they are on the job.*

7. Community dinners each month or bi-monthly sponsored by different SPD community advisory councils.

**Outcomes:** This could be more informal, fun, sharing of foods, culture, heritage and traditions. Perhaps these dinners could be an educating, unifying of communities, and build relationships with SPD and community. Dinners honoring the diverse people of Seattle in which SPD would learn about our cultural ways, beliefs, and traditions.

a. Native American Advisory Council:

b. African American Advisory Council

c. Latino Advisory Council

d. East African Advisory Council

- e. Filipino Advisory Council
- f. Korean Advisory Council
- g. LGBTQ Advisory Council
- h. Muslim, Sikh, and Arab Advisory Council
- i. Southeast Asian Advisory Council

**Response:** *SPD wants to work on this and will support the effort fully.*

8. Recommendations for revising the Tribal Liaison position of City of Seattle to include:
- a. A Native American/Alaska Native person with demonstrated experience working with Native American communities, experience in areas such as cultural, economic, and social justice; and
  - b. A screening committee from the Native community for hiring the Tribal Liaison.

**Outcomes:** To ensure the person hired to fill this position has experience working with the Native community and recommendation from Native community.

**Response:** *This item needs to be addressed directly with the Mayor's office. This was promised at our meeting with the Mayor and his staff immediately after the March/Rally. We have since received a response from the Mayor's office and the position is supported in the Mayor's budget. After approval by the City Council, this position will be posted and filled.*

9. Trainings for community members about current SPD regulations.

**Outcomes:** To educate community members about what police procedures are when approaching, stopping, or situations that require police intervention.

**Response:** *Currently there are 4-5 hour trainings available for Community members.*

10. Mentoring or education programs for young people.

**Outcomes:** To teach young people about police, procedures, policy, and to reduce fear of police.

**Response:** *There were several programs listed by SPD (Explorers, etc.). These are existing programs that have been ongoing for some time.*

Respectfully submitted by,  
The J. T. Williams Organizing Committee Members

**Jay “Westwind Wolf” Hollingsworth** (Mohegan) Co-Chair  
**Sweetwater Nannauck** (Tlingit/Haida/Tsimshian) Co-Chair  
**Rev. Paul Benz** – Director, Lutheran Public Policy Office Washington State  
**James Bible** – NAACP (National Association for the Advancement of Colored People)  
**Juan Jose Bocanegra** – El Comité  
**Oscar Castaneda** – El Comité  
**Sheri Day** – American Friends Service Committee  
**Diakonda Gurning** – Indonesian Lutheran Fellowship  
**Cecile Hansen** - Duwamish Tribal Chairwoman  
**Jacque Higgins-Rosebrook** – Peacekeepers  
**Pat John** (Ahousaht)  
**Stacy Kitahata** - Trinity Lutheran College  
**Federico Martinez-Ortez** – El Comité, May 1<sup>st</sup> Coalition  
**KL Shannon** – NAACP (National Association for the Advancement of Colored People)  
**Benjamin Stiffarm Jr.** (Gros Ventre) Member of Immanuel Lutheran Church  
**Rev. Harriet Walden** – Mothers for Police Accountability

*The J. T. Williams Organizing Committee is a group of allies that represent organizations and community members including those who have longstanding history working with police accountability issues and alternative public safety responses and new members of communities most recently impacted by police accountability. The committee came together to stand in solidarity with Seattle’s Urban Native Community and work cross culturally on an issue that deeply impacts all communities of color and other marginalized communities and other marginalized communities.*

## KRIS E. PITCHER CONSULTING

USE OF FORCE INVESTIGATIONS, REVIEWS, PROCESSES & POLICE PRACTICES

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### **Background**

In November of 2018, the State of Washington passed/amended Section 7 of the Revised Code of Washington (“RCW”), specifically, 9A. 16. 040 and 1986 c 209 s 2 (5) (d), to include a provision *requiring law enforcement to conduct an independent use of force (“UOF”) investigation to inform the determination of whether the UOF met the objective good faith test established by the RCW section, and whether it satisfied other applicable laws and policies whenever personnel use deadly force resulting in death, substantial bodily harm, or great bodily harm.*

*“(5) The following good faith standard is adopted for law enforcement officer use of deadly force: (a) The good faith standard is met only if both the good faith test in (b) of this subsection and the subjective good faith test in (c) of this subsection are met. (b) The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. (c) The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.”*

In order to move toward legal compliance relative to the new mandate for an independent criminal use of force investigation, I was contacted by the Seattle Community Police Commission (“SCPC”) to develop an independent UOF investigative model and accompanying force process. The criminal investigation model and process was developed specifically for application to the Seattle Police Department (“SPD”), with potential for statewide future application to additional law enforcement agencies to comply with the general state statute.

### **Legal Mandate**

The RCW requires law enforcement agencies to conduct independent UOF investigations to allow subsequent reviewers (prosecutorial agencies) to make determinations as to whether the particular use of deadly force met the established objective good faith test. In maintaining consistency with the legislative intent of the section, the word “independent” is clearly indicative of an investigation and/or process that is not under the direction, control, input, insight or focus of the agency that is involved in the UOF incident.

Investigative independence allows the team to proceed down all investigative avenues to overturn every proverbial stone to uncover the truth, no matter what potentially negative force outcome, legal liability or misconduct issue revealed. While the agency being investigated may be provided periodic updates as to the progress of the investigation for personnel management reasons, it is not provided with the comprehensive investigation until it has been provided to the reviewing prosecutorial agency and with that agency's (prosecutor's) express permission. In short, the agency being investigated has absolutely no say in how the matter is investigated, or to the extent or depth investigators may proceed to provide the most complete, accurate, fair and unbiased account of the force incident.

The focus of this independent investigation is wholly criminal in nature, and will be used specifically by the appropriate prosecutorial agency to determine if any criminal culpability exists on the part of law enforcement personnel who used serious and/or deadly force.

### **Investigative/Review Impacts & Historical Perspective**

It has long been held that departments who investigate themselves generally cannot be viewed as independent, fair or credible, both in the investigation and adjudication of the incident. The community perception is that deference is often given to the employee, and/or the department controls the direction and depth of the investigation to avoid public scrutiny and potential civil liability caused by unjustifiable policy deviations. Moreover, there is an associated belief among many communities across the nation that prosecutorial agencies are very reluctant to criminally charge officers in use of force cases. These issues are typically the genesis for an overall lack of individual and community trust, of both law enforcement and prosecutorial agencies and the entire justice system in general, following a critical force incident, leading to widespread community unrest, protests and violence throughout the last several decades.

The televised beating of Rodney King by the Los Angeles Police Department ("LAPD") in 1991 and the acquittal of the involved officers in 1992 help set the modern public perceptions for injustice and inequity involving the minorities, communities and police. In 2000, several New York Police Department ("NYPD") officers either plead guilty or were convicted of charges related to acts of police brutality committed against Abner Louima.

In 1999, four "NYPD" officers fired a total of 41 rounds striking and killing Amadou Diallo when he reportedly reached for his wallet. The officers were acquitted of state murder charges and the United States Department of Justice ("USDOJ") decided not pursue federal civil rights charges against the officers. In 2005, two men were shot and killed by New Orleans Police Department ("NOPD") officers on the Danziger bridge in New Orleans, following hurricane Katrina. Five officers subsequently plead guilty to various charges related to the shootings, receiving sentences of three to twelve years in prison.

In 2009, an un-armed individual named Oscar Grant was shot in the back by Oakland, California Bay Area Rapid Transit (“BART”) officer Johannes Mehserle. Mehserle was eventually convicted of involuntary manslaughter and sentenced to two years in prison. In 2014, Eric Garner died in police custody after an officer tackled him to the ground and applied a choke hold. A grand jury decided not to indict the involved officer, tremendously inciting the community. In 2014, Michael Brown was fatally shot by a police officer in Ferguson, Missouri during a struggle. A grand jury decided not to indict the involved officer in Brown’s death resulting in demonstrations and violence.

In 2015, Walter Scott was fatally shot in the back as he was running away by a North Charleston, South Carolina police officer. The officer subsequently plead guilty to a federal charge of using excessive force and was sentenced to 20 years in federal prison. In 2015, Freddie Gray was arrested by officers of the Baltimore Police Department (“BPD”) and placed into a prisoner transport van. After arriving at the police station, Gray was eventually transported to the hospital, slipped into a coma and died a week later. A grand jury indicted six “BPD” officers on various charges; however, after one mistrial and three acquittals during four criminal trials, Baltimore prosecutors decided to drop all criminal charges against the remaining officers resulting in community anger and outrage.

In 2014, Laquan McDonald, in possession of a 3” knife, was shot 16 times by a Chicago Police Department (“CPD”) officer who was later found guilty of second-degree murder and sentenced to six years in prison. As a result of the previously described incidents, the enraged communities protested the actions of law enforcement personnel, decried the lack of equity, fairness and prosecutorial inaction, and the involved communities erupted into protest and violence against the local systems of justice.

Because of the growing national concern over potential civil rights violations, the USDOJ, Civil Rights Division, created the Special Litigation Section (“USDOJ-SLS”) to protect individual civil rights in a variety of societal areas, most notably the rights of people who interact with state or local police or sheriff’s departments. The SLS maintains the ability to act on behalf of people who are at risk in their interactions with law enforcement agencies around the country. Staff attorneys and subject matter experts from the SLS, in conjunction with the United States Attorney’s Office (“USAO”), conduct investigations or reviews of potentially problematic police and sheriff’s agencies, in order to ascertain whether a pattern or practice of civil rights violations exist within the agency of focus. In addition to conducting a thorough review of current agency policies, protocols and procedures, as well as completed use of force investigations, adjudications, complaints, arrests and detentions, the USDOJ SLS holds meetings with the public to determine the specific issues of contention regarding community and police interactions.

Often, the result of an SLS/USAO review or investigation is typically a letter of findings, and potentially technical letters of assistance from the USDOJ-SLS/USAO to the law enforcement agency, identifying problematic areas of concern, or current organizational practices (or lack thereof), that contribute to real or perceived civil rights violations committed by law enforcement personnel. These technical letters of assistance can also contain specific recommendations for addressing and preventing organizational concerns.

These technical letters of assistance have given rise to the vast majority of implemented police practice reforms across the country, whether voluntarily, through memorandums of agreement, or by federal consent decree mandates, effectively changing negative police practices in operations and administrative reviews.

Some of the typical identified areas of force-related process/practice concerns include:

- Force investigators asking leading questions during interviews;
- Relying on force investigations that are incomplete;
- Failure to either identify and/or address obvious misconduct and policy violations;
- Technical facts and conclusions misstated in investigations;
- Failure to conduct inclusive witness canvasses;
- The inclusion of investigator's conclusions/opinions in investigations-investigator bias;
- Failure to address conflicts in force investigations;
- Inadequate supervision of Use of Force;
- Insufficient analysis of Use of Force incidents;
- Inadequate Oversight and Review of Use of Force;
- Investigations taking too long to complete and adjudicate;
- Force investigators and units not specifically trained to conduct adequate investigations; and,
- Lack of effective agency force investigation and review policies and protocols.

Back In 2011, the USDOJ and the United States Attorney's Office ("USAO") initiated an investigation of the Seattle Police Department ("SPD"). In its' findings letter to the Mayor of Seattle, the USDOJ-SLS/USAO found that SPD engaged in a pattern or practice of using unnecessary or excessive force (p.1). In addition to identifying several of the above-mentioned force process issues and concerns impacting SPD, the findings letter also included the following excerpt on community engagement, demonstrating that force had negatively impacted the community's relationship with its' police department:

*"Community trust is crucial to effective policing. A series of high-profile incidents-both related to the use of force and discriminatory policing-has eroded the relationship between SPD and the community it serves.*

*Many community members we met with appreciated the steps taken by (then) Chief Diaz and his command staff to address their concerns, but they felt that more sustainable programs were needed. Some residents expressed concern that while the Department's outreach following a highly publicized incident may be strong and targeted, the outreach itself is limited and short-lived. This is particularly noteworthy when SPD does not operate in as transparent a manner as possible. Any notable decrease in SPD's community outreach after the proverbial "storm has passed" does not effectively resolve the community's concerns and may exacerbate the tension. SPD's community outreach initiatives should be proactive and sustained rather than a reaction to a particular crisis. As the Department conducts outreach to inform the community of its efforts and initiatives, it should remember that an equally important purpose of these outreach efforts is to listen carefully to the community's input and establish a constructive two-way dialog."*

Additionally, the USDOJ-SLS/USAO included several recommended reforms to properly address the initial UOF issues present within SPD as follows:

- Revise/clarify SPD UOF policy;
- Develop a UOF policy for all weapons available to SPD officers;
- Develop and implement protocols for interactions with the mentally ill/under the influence;
- Ensure supervisors perform actions in response to UOF incidents inclusive of requesting medical response, conduct a thorough analysis of the incident, resolve incident discrepancies, complete a summary analysis of the reasonableness, proportionality and legality of force used;
- Deploy roll-out teams (including professional standards, prosecutor and training personnel) on all serious UOF incidents;
- Require officers to submit UOF statements prior to going off-duty;
- Supervisors should take appropriate disciplinary or corrective action when becoming aware of misconduct;
- Supervisors should conduct focused reviews of any officers involved in a disproportionate number of force incidents;
- SPD should track the prosecutorial disposition of all arrests to identify possible trends in abuse of law enforcement discretion;
- Supervisors should conduct timely early intervention system ("EIS") reviews and document all intervention steps taken;
- EIS reviews should be expanded to track supervisory and precinct activity; and,
- Make specific Department-wide adjustments to the EIS thresholds.

The result of the review was the filing of a civil lawsuit against the City of Seattle, and the Seattle Police Department by the USDOJ, bringing about an action known as a federal consent decree outlining the identified issues and reformative mandates to correct them. The SPD has made enormous progress over the last several years in correcting force-related issues with the development and implementation of numerous training standards, organizational reforms, personnel enhancements, new training programs, new review systems, and various new policies, procedures and protocols to prevent previous issues and problems from recurring.

With the goal of developing a fully independent and credible investigative product, it is essential that the newly formed Force Investigation Bureau, teams, and investigative process be reflective of protocols that promote honesty, credibility and integrity, from the initiation of the investigation, all the way through presentation to the prosecutor for criminal review. After working closely with numerous law enforcement agencies on force issues all across the nation, and seeing the many failures of inadequate force investigations, adjudications and agency responses, it has become exceedingly clear that the key factor to success is the implementation of an exceptionally strong force process combined with character, character, character.

With the recent advent of body worn video (“BWV”), digital in-car video (“DICV”), and the ever-present cell-phone and surveillance videos, the public has exceptionally quick access to officer-involved shootings (“OIS”) and critical force incidents that further drive their perceptions of the appropriateness/inappropriateness of the incidents they view. These perceptions fuel anger and distrust among community members, and can quickly overshadow the subsequent investigation, necessitating the requirement for law enforcement agencies to proactively establish community networking and effective liaisons long before the critical incident occurs. Additionally, this issue also underscores the responsibility of the investigating agency to fully discuss its’ investigative process at the outset of any investigation, in an attempt to de-mystify the process and provide the public with a thorough understanding of the investigative steps to be taken.

A recommended brief of the investigative process should include:

- A brief overview of the basic facts of the UOF incident;
- Discussion of a fully independent investigation team to commence the investigation;
- The separation and monitoring requirements of involved personnel;
- Immediate lock down and scientific processing of the crime scene and evidence;
- Extensive witness and video canvassing evidence for greater inclusion;
- Involvement of DA and Civilian Oversight roll-out teams to oversee investigation;
- In-depth interviewing of involved personnel & witnesses with all statements recorded and transcribed;
- Thorough review and inclusion of all BWV/DICV and other video evidence;

- Conduct a thorough review of all of the agency’s applicable policies and state laws for compliance purposes;
- The complete investigation will be presented to the District Attorney’s Office for a criminal culpability review; and,
- Provide an opportunity to respond to the community and media’s questions.

Likewise, civilian oversight bodies and prosecutorial agencies also share in this obligation to discuss their respective responsibilities and obligations at the outset of, and conclusion to the criminal investigation. This discussion should be inclusive of their legal mandates, how their personnel will be involved in the process, standards of proof they will be following and how they arrive at their conclusions-which should be posted on the internet, consistent with existing state law and city personnel rules/practices for public perusal. Prosecutorial and civilian oversight entities should select public briefing sessions that make sense to the organizations and the public, but not negatively impact or interfere with ongoing investigations.

When outside agencies are called upon to investigate deadly force incidents of other agencies/jurisdictions (due to existing community trust issues, Federal Consent Decree mandates, or an agency’s lack of investigative training, experience or financial resources), the resulting investigations can be short-sided, incomplete and lack thoroughness for both a proper criminal culpability review, and for use in an agency’s administrative review. Specifically, incoming agencies often conduct basic “bare-bones” investigations, omitting questions relative to the application of force policies (or reasons for deviating from them), thorough articulations as to what their perceptions were, and specific tactical applications and communications which can provide invaluable insight into and officer’s/deputy’s justification for using force in a given situation.

As mandated by the November 2018 amendment codified in subsection (d), an independent investigation must be completed to ascertain whether the use of deadly force met the objective good faith test *and satisfied other applicable laws and policies*. The statute is very clear that all deadly force investigations shall, in addition to focusing on the primary question of whether the application of force met the objective good faith test, also examine whether the deadly force incident also satisfied other applicable laws and policies. This included clause effectively provides clear direction to the independent investigating agency or team to properly expand its’ focus, covering all pertinent areas of an incident for the involved agency. More specifically, this important statutory clause directs the investigative team or agency to investigate whether the actions utilized in the UOF incident complied with an agency’s UOF-related policies such as the deployment of the TASER, bean bag shotgun, Hobble Restraint Device, Oleoresin Capsicum Spray, 40 MM Less Lethal Launcher, Tactical De-escalation techniques and supervisory command & control policies.

Each of these policies essentially controls how and when these weapons and control techniques are to be used, and can weigh heavily in the final adjudication of a force application.

As drafted, the amendment should be construed to trigger or require a full independent criminal UOF investigation for all law enforcement related actions resulting in death, substantial bodily harm or great bodily harm regardless of the type of force used (non-lethal, less-lethal or lethal). That recommended investigation model will be discussed further on in this paper.

### **Key Stakeholders**

Critical UOF investigations will impact many stakeholders and it is essential they are taken into consideration not only during the development of the protocols and process, but also throughout the investigation as follows:

- Involved agency managers;
- Internal affairs;
- Department policy makers;
- Criminal case investigators;
- Actual involved officers;
- Involved officer's family;
- Peripherally involved officers;
- Percipient witness officers;
- Police Criminologists;
- Hospital staff;
- Fire Department personnel;
- Police trainers;
- Civilian Review Boards;
- All department personnel (through expectations);
- Municipal mayor;
- City Council members/County Board of Supervisors;
- City and District Attorneys;
- DA Roll out team;
- Civilian Oversight personnel;
- Federal representatives/Department of Justice;
- State officials-Governor/Attorney General/Senate/Assembly;
- Media/Media outlets;
- Police Commission;
- ACLU/NAACP/Community special interest groups;
- Faith-based organizations;
- Involved suspect(s)/subject(s);

- Involved subject's/subject's family; and,
- Community members as a whole.

Experience has shown that each of these individual stakeholders generally plays a role, some rather significantly, during the many phases of a critical UOF investigation. However, an important point to always keep in mind is that a critical UOF investigation should always be an exceptionally thorough independent fact-finding process, that maintains its integrity and credibility, while providing reviewers with the most truthful and accurate account of the incident being investigated.

Further, the completed investigation should be able to withstand scrutiny from both internal and external reviewers by virtue of the mandated protocols inherent in the investigative process itself. These same investigative protocols are also what allow the process to maintain its' independence, credibility and integrity on a variety of levels for the organization being investigated, the community impacted by the UOF incident, the appointed reviewers of the incident, and the many individuals and groups who await the outcome.

Community activists, groups and members from all around the country have vehemently voiced their displeasure with various law enforcement agency's force investigations and adjudications, and the perceived lack of appropriate action on the part of prosecutorial agencies in response. The incidents in Ferguson, Missouri and Sacramento, California are current examples of a community's distrust and outright anger toward what they perceive is a stacked and unfair investigation, and justice system that does not serve their interests.

### **Maintaining Investigational Continuity-Recommended Initial Supervisory Response**

Experience also tells us that whether a critical UOF incident occurs during normal business hours, or during the early morning hours, the response of force investigators can be delayed from one to two hours depending upon the time of occurrence, combined with other geographic factors such as traffic, the location of the investigators, and the response area covered. Any delay in the response of investigators can create serious issues for the successful investigation of the UOF incident. Valuable evidence can be lost or contaminated, critical witnesses can be lost forever, and crime scene issues can plague a case indefinitely.

In order to prevent these issues from occurring in the first place, it is strongly recommended that first responding supervisors be provided with training and the **Supervisory Response UOF Checklist** to successfully guide their actions during a potentially tumultuous situation. The checklist was designed to ensure that a critical UOF scene and investigation was maintained in a credible manner until the arrival of force investigators. In essence, the Supervisory Response UOF Checklist guides the supervisor in the accomplishment of the following tasks:

- Control the immediate tactical Hot Scene
- Assume Incident Commander Responsibilities-Set Command Post/Resources
- Ensure Personnel & Community Safety
- Obtain Public Safety Statements-Commence safety sweeps in line with shots fired
- Commence Suspect apprehension efforts & broadcasts (if applicable)
- Separate & Monitor all involved/percipient personnel-order not to talk about incident
- Secure Inner & Outer Crime Scenes-Take immediate crime scene overall photos
- Initiate Crime Scene & Evidence Logs
- Conduct immediate canvass for witnesses and videos
- Interview “fleeting” witnesses not wishing to stay on BWV or on Digital Recorder
- Ensure the crime scene is appropriately sketched capturing all pertinent information
- Gather all notes, logs, field interview cards, flash drives, and diagrams for investigator
- Make preliminary incident notifications to Chief/Sheriff/DA/Force Unit
- Contact the responding lead investigator for further direction

Additionally, the **Supervisory Response UOF Checklist** has built-in measures to proactively support a credible investigative effort that will be taken over by responding independent investigators. In addition to effective scene management and safety obligations, the checklist causes the supervisor to assist in maintaining the credibility of the investigation from the outset by separating and monitoring the involved personnel and ordering them not to discuss the incident in order to avoid interview contamination. Moreover, the supervisor is also charged with the responsibility to gather extremely valuable evidence and witnesses to ensure the “best evidence” is an instrumental part of the investigation.

An effectively drafted memorandum of agreement (“MOA”) between the agency housing the independent investigative team and the law enforcement agency being investigated will be essential to ensuring the cooperation necessary for the completion of a thorough and credible force investigation. In addition to the requirement that law enforcement agencies provide training to their first responding supervisors and direct them to accomplish tasks included on the **Supervisory Response UOF Checklist**, the MOA should clearly define investigative imperatives that shall be followed by each of the agencies pursuant to their involvement in a critical UOF incident. These investigative imperatives are as follows:

- Leave all vehicles in the positions they were in at the time of the UOF;
- Leave engines running, doors open and emergency equipment activated;
- Do not take anything out of the vehicle or trunk area;
- Never re-load any firearm following an OIS incident;
- Never pick up or move any evidence from the scene unless absolutely necessary;
- Do not manipulate firearms in any manner post-incident;

- Do not pick up or move shell casings, taser wires or bean bag projectiles;
- In cases where suspect(s) attempted to grab weapons from Sam Brown belt; maintain uncontaminated evidence for DNA/print evidence;
- Do not change or alter uniforms or equipment worn post-OIS/incident;
- In cases of blood or fluid contamination, attempt to photograph uniform or equipment before removal;
- Ensure proper directive consistent with department policy on pre-interview viewing is provided on the viewing/non-viewing of BWV/DICV/other videos; and,
- Ensure clear directive is provided to personnel on not discussing a UOF incident with others pending attorney or investigator contact.

### **Recommended Investigative Credibility Measures/Protocols**

As previously discussed, many of the key stakeholders have developed an absolute lack of trust in a law enforcement agency's ability to investigate itself for a variety of reasons. In keeping with the legislative intent of requiring a fully independent criminal UOF investigation, not under the control, direction or within reach of the agency being investigated, the individual protocols of the investigative process need also be supportive of a truly credible and honest fact-finding effort. The following is a list of recommended implementable credibility/integrity measures to help ensure a proper investigation:

- ❖ Specifically, those directly involved in the force incident should be prevented from discussing the incident with one another (immediately post-incident) to preclude contamination of their independent recollection and to ensure the absence of undue influence. This is accomplished through the process known as separation and monitoring, where the involved employee is separated from all other employees and monitored by a supervisor who admonishes the employee to not discuss the incident with anyone other than his/her attorney or the assigned investigator. The assigned supervisor documents the process, movements and occurrences on a supervisor's log for inclusion into the force investigation.
- ❖ Another measure to help instill credibility and integrity into an investigation is the requirement to record all interviews with involved officers/deputies, as well as all witnesses to the event. This process precludes the outside claim of the investigating entity changing the statement of an interviewee, as the interview content is fully reviewable to assure the veracity of all facts and statements. Further, an agency can avoid further statement-related issues by transcribing all interviews, and have the involved interviewee read, agree and initial the pages, or provide revisions and changes to better reflect the responses.

- ❖ An additional problem with investigations, specifically interviews, is the manner in which questions are posed by investigators. The issue of leading questions during interviews has long been a problem associated with UOF investigations, and has been well documented by the United States Department of Justice (“USDOJ”). Leading questions immediately create credibility issues for an investigation and should be avoided at all costs. One such measure to effectively address the issue of leading questions is the use of the cognitive interviewing (“CI”) technique allowing interviewees the opportunity to provide a virtually uninterrupted extensive opening narrative. The open narrative format allows the person being interviewed the opportunity to introduce facts and occurrences as they experienced them, rather than being “led” by the question or suggestion of the investigator.
- ❖ An officer’s/deputy’s own BWV/DICV footage also serves to provide an accurate recordation of events as they occurred during a force incident, thereby increasing the accuracy of the account-though not necessarily the perception of the involved officer/deputy. The existing BWV/DICV footage serves as a check on the reasonableness of the officer’s/deputy’s perception of what occurred during a force incident, and should be compared with the statements of the officers, deputies and witnesses for potential conflicts. If conflicts exist, the investigator(s) shall make every attempt to resolve them.
- ❖ Another critical investigative practice is one of documenting the exhaustive details of an investigation’s witness canvassing efforts. A thorough witness canvass effort, when documented correctly, will serve to demonstrate the inclusiveness of the investigator’s attempts to find witnesses, and the extent they have gone to investigate every available avenue and/or lead as documented by each address, date and time checked, and individuals contacted with the results of each check. An extensive witness canvass will support the fact that an investigation was all-inclusive in its’ attempt to locate any and all witnesses to an incident-not just those witnesses that were supportive to law enforcement.
- ❖ It has long been argued that because investigators know the case they are working on the best, they are in the most advantageous position to provide opinions and conclusions as to whether the force was in-policy, or if the actions of involved personnel complied with existing department policy, procedure or protocol. That position is very problematic in that it can lead to investigator bias, and even investigators avoiding certain evidence or following up on additional leads because they did not support the conclusions of the investigator. Investigators are fact-finders and should never be allowed to render opinions or conclusions that will negatively impact the overall credibility of the completed investigation in the minds of those outside the organization.

- ❖ One of the more effective tools of maintaining the overall integrity and credibility of a critical force investigation is to implement the concept of The ABC & D's of Investigation. When methodically followed, The ABC & D's of Investigation will help prevent investigator biases, and force the investigator to more closely examine and prove the existence of facts and evidence, rather than simply accepting things as offered. The applicable concepts of The ABC & D's of Investigation are as follows:
  - **A**ssume Nothing-Never make assumptions as to the cause or result of any occurrence. Conduct a thorough investigation to ensure that the cause or result could have actually occurred as stated or offered.
  - **B**elieve Nothing-Check the veracity of all statements by verifying presence or positioning of persons making claims or the existence of evidence.
  - **C**hallenge Everything-Never accept anything as fact without testing the assertions, beliefs, statements, occurrences or conclusions.
  - **D**ocument Everything-Follow the old adage of- "If it's not documented, it never occurred." Prevent credibility and integrity challenges to an investigation by documenting all actions taken, statements made, opinions rendered and interpretations given in case notes or the case chronology.
  
- ❖ The question of whether officers should be allowed to watch video footage of the UOF incident they were involved in before they are formally interviewed has been hotly debated over the last decade or so. It has been argued that it is an unfair or unethical advantage to allow the officer to view the incident before they are interviewed, and that they will simply repeat what they see on the video, rather than their independent recollection.

While that is certainly a possibility, many departments have attempted to minimize outside contamination by allowing the involved officer(s) to first view only their own BWV/DICV footage because that would have been their own vantage point impacting their perception of the incident. They are not allowed to view any other BWV/DICV footage, nor are they allowed to view any media or surveillance footage at any point to avoid further risk of recollection contamination prior to the interview process.

This method has earned the acceptance of civilian review boards, investigators, police management, police union attorneys and prosecutors alike, and has become an acceptable practice.

## **Recommended Investigative Process Structure**

Truly independent investigations require that teams conducting critical force investigations be separate and independent from the agencies they are investigating; therefore, it makes great sense to make them a part of an existing justice system entity having the existing legal authority to investigate other police and prosecutorial agencies on a statewide basis. The State Department of Justice, and/or the State Attorney General's ("AG") Office is typically charged with the oversight of other state-wide law enforcement and justice agencies, and generally employs a staff of investigators to assist staff attorneys in conducting such investigations or reviews.

Since the State AG's Office generally acts as the clearinghouse for political corruptions investigations, and serves as a check and balance on the perceived inappropriate actions/in-actions of law enforcement agencies and its' personnel, it's position and existing legal authority make it the perfect entity to house the Critical Force Investigation Bureau.

Operating from the assumption that the State AG typically has offices located at strategic points throughout the State of Washington, regional criminal investigative teams can be developed, trained and assigned to respond to critical UOF incidents throughout the state, with a 2 to 2 ½ hour window with investigative service beginning in the greater Seattle area.

Although the 2 ½ hour response time seems long, it is important to remember that jurisdictions experiencing critical force incidents will already be trained (via "MOA") in the principles of first responding Supervisor UOF Checklist requirements to effectively establish the crime scene, protect vital evidence, and maintain credible investigations for the responding force investigators.

The recommended minimum criminal force investigation team should consist of a senior lieutenant team leader that sets the investigative strategies, coordinates the on-scene personnel assignments, ensures that incident protocols are closely followed, monitors the progress of the investigation from the field to the office, acts as the liaison, and reviews the final investigative product for the Force Investigation Bureau manager.

To be effective, each investigative team should additionally have six investigators of a supervisory rank (either sergeant or detective) working in teams of two that will assume the duties of crime scene manager from the first responding sergeant, direct the crime scene investigators with scene photographs and processing evidence, conduct the witness and video canvass, interview police personnel and civilian witnesses, follow-up on investigative leads, review BWV and DICV, gather scientific evidence conclusions, and complete the investigation document for the lieutenant's review.

It is imperative that investigators be of a supervisory rank to be able to order or compel law enforcement personnel (via interagency MOA mandates) to provide public safety and interview statements, or to produce notes, documents or evidence related to the critical force incident. There are several effective options of obtaining very qualified force investigators to comprise the proposed State AG's Force Investigation Bureau and meet state mandates as follows:

**Option A:** Establish a regional AG's Force Investigation Bureau and reach out to the various city and county law enforcement agencies to loan qualified and selected personnel for a period of two to five years with the possibility of mutual extensions. The salaries/benefits can be assumed by the AG's Office or maintained by the respective law enforcement agency. The AG would be responsible for providing vehicles, equipment, office space and continuous force-related training for Bureau employees. This would be a cost-effective method for developing a quick and effective investigative unit to fulfil the legal mandate, and would be a highly sought after and prestigious assignment for law enforcement personnel. This option will greatly assist in establishing an independent and credible process/team that is more likely to instill force-investigation trust, credibility and confidence in the community and community groups.

**Option B:** Establish an AG's Force Investigation Bureau by permanently hiring experienced and qualified investigators and retired law enforcement personnel to fill the team leader, investigator and investigative support unit personnel positions within the Bureau. They would become agents/investigators in the AG's office and fall under their current personnel classifications and salary schedules as applicable. The AG would be responsible for salaries/benefits, vehicles, equipment, office space and continuous force-related training. It is anticipated that this would be a very sought after and prestigious assignment for new law enforcement and retired personnel alike. This option will also greatly assist in establishing an independent and credible process/team that is more likely to instill force-investigation trust, credibility and confidence in the community and community groups.

**Option C:** Identify and establish quasi-AG Force Investigation teams from all applicable law enforcement agencies that will be called upon to conduct force investigations for the AG and be under the direct control of the appointed AG manager for the limited duration of the force investigation. Once completed, the quasi-force investigation team will present the completed investigation to the AG manager for review and approval, then for presentation to the appropriate prosecutor for criminal review. At the conclusion, the investigative team will return to their respective agency to their current assignments.

All team members will be held to a confidentiality agreement to protect the integrity of the investigation and ensure they do not conflict with any bifurcated administrative investigations being conducted by their agency. This is the most cost-consciously effective option available; however, it can become problematic in terms of its lack of total independence from the agency and be perceived as not credible by the community and community groups because of its close association with the agencies of their employment.

Note: All options can include the deployment of properly trained and vetted reserve police personnel, and attorneys admitted to the State Bar to assist in the investigative process at any appropriate point.

Assisting the investigators with each incident is the Investigative Support Unit typically consisting of a supervising sergeant or detective, and three crime scene analysts (sworn or civilian or a combination thereof) that process the crime scene using the Total Station II Laser Survey device for diagrams and measurements, photography of the entire scene and personnel, bullet path trajectory, location of serology, ballistic, fiber and video evidence, and ensuring all evidence is appropriately collected and processed at the approved scientific labs.

Since initial force investigations are extremely complex and can take 10 or more hours to complete in the field, it is an effective practice to employ two complete teams with Team A being “first-up” to respond to any critical force incident requiring an investigation, while Team B remains on-call and in reserve working on previous force cases until they are required to respond to an incident. Each team is placed on “Up” status for a seven-day period and becomes the secondary team at the end of the period.

During normal working hours, both teams work out of the office on previous cases/investigations with Team A maintaining its’ availability for an investigative response when necessary. After hours, Team A remains on-call for response through the evening until the next morning. Should Team A receive a call out and respond to an incident, Team B automatically readies itself for a call out should one occur. If Team A picks up a call out and completes that call out without another incident in the meantime, it remains the primary team available for another incident until the conclusion of the seven-day deployment period.

Each investigative team is responsible for the initial scene response, conducting the field investigation, processing all evidence, interviewing all witnesses, following up on all leads, resolving all conflicts and completing the final investigative document that is presented to the Force Investigation Bureau Manager for final approval before being presented to the appropriate County District Attorney’s Office for a criminal culpability review when required by established protocol.

Should the District Attorney's ("DA") Office require additional investigation or clarification for criminal review purposes, the DA's representative will make an official request through the State AG's office.

### **Personnel Selection/Training**

It is highly recommended that the lieutenant team leader and each of the investigators possess a solid detective background inclusive of homicide, major assault crimes, internal affairs, and/or prior force investigations experience. It has been my experience that investigating force related matters is unlike any other investigative discipline. It is not simply about what happened, but rather how it happened amid a confluence of events, typically involving police/sheriff's personnel as the victim and/or de facto suspect in some cases. Investigating force transcends the typical investigation in that there are physiological, psychological and biomechanical impacts and factors to consider throughout the investigation.

In addition to requiring an intimate knowledge of Miranda requirements, interviewing versus interrogation, firearms and ballistics analysis, case cartridge ejection analysis, blood-spatter analysis, wound ballistics analysis and many others, force investigators are required to know how an adrenaline dump can impact the body's performance, how fear and physical activity impact the body's memory, recall, and auditory and visual perceptions and abilities.

In addition to attending the basic and supervisory detective core blocks of instruction, force investigators are required to attend all department force standards training courses, know every department force-related policy and procedure, all firearms and munitions launcher courses, TASER instruction and download school, physical evidence processing school, Special Weapons And Tactics ("SWAT") tactical deployment courses, BWV/DICV/Surveillance video retrieval course, and study the physiological and psychological impacts to the human body before they begin developing questions for force incidents/interviews.

One of the most successful keys to effectively training force investigators is to continuously monitor the issues identified in their own unit's investigations, as well as those nationally, and discuss protocol enhancements to produce better investigative products. One such method is to periodically bring in personnel from the District Attorney's ("DA") Office, and from the Office of the Inspector General ("OIG") to discuss the specifically identified investigative issues and how they can negatively impact an investigation.

Further, all force investigators should be of a supervisory rank and possess the authority to order or compel other personnel to answer questions, or produce documents and/or evidence during sometimes highly charged and emotional investigations.

The Investigative Support Unit personnel are generally not required to have investigative backgrounds and are trained on the specifics of evidence identification, preservation, collection and testing, as well as on Computer Aided Drafting (“CAD”) programs, and the Total Station II Laser Survey Device for capturing and documenting crime scenes/evidence. Most law enforcement agencies have investigative support units, to some extent, and rely upon the scientific investigation details/personnel of larger or outside agencies to process and test their physical evidence and provide them with analysis reports.

### **Critical Force Incident-Criminal Team Investigative Response**

A Force Investigation Bureau Criminal team will be deployed whenever a law enforcement agency’s personnel is involved in a use of force that results in, or could reasonably be expected to result in death, great bodily harm or substantial bodily harm to include broken bones and an admission to the hospital for treatment, the use of deadly force, or the use of force that results in the subject’s loss of consciousness as a result of the force, or use of force that potentially involves criminal conduct or misconduct, the application of a carotid restraint control hold, and a hard strike to the head or neck with an impact weapon.

#### **Criminal Team Leader Responsibilities** (Field Response)

Upon being advised of the occurrence of a critical force incident, the lieutenant team leader will perform the following actions:

- Promptly make notification to each member of the on-call investigative team and provide them with the preliminary information for an immediate scene response;
- Make notification to the involved jurisdiction’s District Attorney’s Office within one-hour of occurrence to initiate the District Attorney Response Team (DART) scene response protocol;
- Make notification to appropriate civilian oversight personnel for scene response;
- Make notification to the Investigative Support Unit supervisor for scene response;
- Contact the at-scene first responding supervisor to ensure that the **Supervisory UOF Response checklist** protocols are being followed (integrity protocols) and provide additional guidance as necessary;
- Upon arrival to the UOF scene, obtain public safety statement brief from the supervisor, assume the incident commander duties, obtain all gathered evidence, and transition responsibilities;
- Provide initial brief to the investigative team, develop investigative strategies and assign roles and responsibilities to the force investigators;
- Provide initial incident brief and scene walkthrough to the DA and civilian oversight personnel upon their arrival;
- Ensure all crime scene evidence is properly identified and processed;

- Participate on walkthrough with involved law enforcement personnel;
- Ensure all witnesses are interviewed in the presence of District Attorney personnel- provide them with an opportunity to ask questions;
- Ensure DA/civilian oversight personnel have an opportunity to participate in the investigation;
- Meet with investigators at appropriate intervals to check investigative progress, adjust strategies and direction if necessary and de-conflict information;
- Ensure that team investigators are appropriately covering all force-related department policies in their questioning of involved personnel/witnesses;
- Ensure that the criminal investigation does not become contaminated by any part of the administrative investigation if concurrent investigations are being conducted;
- Meet with DA personnel to ensure all pertinent questions are covered; and,
- **Conduct initial community brief of the incident in-conjunction with the prosecutor and civilian oversight with as many appropriate facts as possible.**

(Office)

- Meet periodically with investigators to review progress on the draft report;
- Request outside expert analysis as necessary;
- Utilize the **Use of Force Investigation Checklist** to ensure a comprehensive investigative report and protocol compliance;
- Immediately address areas where investigation is lacking thorough or required action per Content Checklist;
- Ensure all scientific analyses and addenda items are reviewed and referenced in the investigation;
- Closely review all transcribed statements for accuracy and consistency with the completed investigation;
- Request supplemental follow-up investigations as necessary to resolve conflicts and/or inconsistencies;
- Provide periodic updates to the appropriate reviewing District Attorney's Office to ensure all questions were answered and no investigational issues exist;
- Confirm that explanations and issues are documented in the Investigator's Notes section of the report;
- Ensure the completed investigation is authored in a neutral, fair and unbiased manner without any conclusions relative to the force used or compliance with existing policies; and,
- Review, approve and submit the completed investigative report to the State Attorney General manager for presentation to the DA's office for a criminal review.

## Criminal Team Investigator Responsibilities

(Field)

- Respond to the field incident and meet with Team leader to obtain incident brief;
- Receive investigative assignment and begin case chronology;
- Commence witness and video evidence canvassing effort;
- Thoroughly document all canvassing efforts in case chronology;
- Immediately interview witnesses if possible; schedule others as possible;
- Respond to the evidence/conduct follow-ups for evidence provided by the first responding supervisor;
- Obtain all BWV, DICV or Holding Cell Video (“HCV”) evidence and view the content in preparation for the interviews;
- Direct video evidence technician to appropriately obtain private video sources;
- Inspect all evidence at scene and department vehicles and equipment for condition;
- If suspect injured, obtain medical release for medical records;
- Interview suspect if situation permits;
- Cause photographs of suspect’s injuries/lack thereof;
- If deceased, meet with coroner’s investigator to obtain information/opinion;
- If deceased, attend autopsy to document findings;
- Obtain autopsy/toxicology reports;
- Participate in scene walkthroughs with involved personnel;
- Review department UOF-related policies to ensure appropriate interview questions are covered;
- Schedule witness and involved officers for formal interviews, participate in the interviews;
- Photograph all involved officers with equipment and uniforms worn during the incident;
- Cause positional photographs to be taken of involved and witnessing officer’s vantage points;
- Conduct a magazine count of all firearms used during the UOF incident inclusive of primary and back up duty weapons, police rifles, and duty shotguns;
- Download all TASER data;
- Inspect all weapons used during the incident; obtain DNA and prints when necessary;
- Note all equipment in the possession of, and personally carried by each involved officer

(Office)

- Conduct investigation progress meeting with team leader/other investigators;
- Discuss/resolve involved, witness and evidentiary conflicts;

- Schedule/conduct supplemental interviews with involved and witness personnel and civilian witnesses;
- Commence draft investigation report;
- Review Use of Force Investigation Checklist to ensure comprehensive report and protocol compliance;
- Introduce scientific investigation conclusions into the draft report as available;
- Develop case PowerPoint presentation;
- Meet with DA and civilian oversight personnel to discuss case content and progress;
- Complete draft investigation report/present to team leader for final approval; and,
- Conduct case PowerPoint presentation for DA if requested.
- Conduct case debrief with team leader/investigators/investigative support unit/DA/civilian oversight personnel.

#### Investigative Support Unit Responsibilities

- Set up incident command post at scene;
- Set up scene lighting;
- Conduct Total Station II laser survey measurements/scene CAD;
- Cause overall scene/evidence photographs to be taken;
- Process all evidence at scene focusing on:
  - Firearm evidence documentation/processing.
  - Trajectory analysis-bullet path determination (string, rods, laser, angle finder).
  - Bullet impacts/holes.
  - Chemical testing-confirmatory tests for lead, copper.
  - Distance determination-muzzle to target distance.
  - Gunshot residue.
  - Shot pattern/Taser spread.
  - Ejection pattern analysis.
  - Bloodstain pattern analysis.
  - Void pattern analysis.
  - Trace materials-hair, fiber, biological materials.
  - DNA/Prints.
- Collect and book all evidence/complete evidence reports; and,
- Complete scientific analyses reports/forward to crime lab.

#### Use of Force Investigation Checklist

The **Use of Force Investigation Checklist** is used by the team leader and case investigators to review a completed UOF case to ensure that it is thorough, complete, and that all required elements are contained therein and protocols were followed.

Additionally, because of its' overall comprehensiveness, the **Use of Force Investigative Checklist** is currently being used by other law enforcement agencies to audit their completed investigations to improve future performance. The checklist focuses on two critical areas as follows: A.) The On-scene Investigation and B.) The Investigative File. A thorough and complete investigation unquestionably contributes to the overall credibility and integrity of an investigation because it has explored all conceivable investigative avenues, reports the most accurate accounts and results from all angles, and is all inclusive in terms of protocols utilized to ensure credibility.

#### **A. On-Scene Investigation**

1. On-scene investigation/response appropriate & timely;
2. Crime scene properly secured/logs initiated;
3. Witness and video canvass sufficient/documented;
4. Public safety statements properly taken;
5. Integrity protocols implemented (separation/monitoring);
6. All interviews conducted independently (no group interviews);
7. All Miranda guidelines followed where appropriate;
8. All interviews audio-recorded/transcribed;
9. Evidence of involved personnel walkthroughs;
10. Any evidence of unauthorized, excessive or unlawful force;
11. Photographs taken of:
  - a) Visible injuries/lack thereof (officers/suspects).
  - b) Incident scene and all evidence positions/collected.
  - c) Officers in attire/equipment.
  - d) Positional photos of involved officers/witnesses.
  - e) Incident overalls (if necessary).
12. Signed authorization to release medical records/copies of medical records;
13. Involved firearms obtained/officers provided replacements;
14. Magazine counts conducted;
15. All notes, logs, receipts, field interview cards documented; and,
16. All communications files of the incident obtained & reviewed.

#### **B. Investigative File**

1. Review officer interview statements to ensure they contain:
  - a) Articulation for the legal basis of the stop leading to the UOF incident.
  - b) Thorough articulation of the officer's tactical plan/communications.
  - c) Description of how each officer was attired and equipped.
  - d) Articulation for the justification of each individual UOF application.

- Extent to which the subject posed an immediate threat to the officer/others.
  - Seriousness of the crime or suspected offense.
  - Level of resistance presented by the subject.
  - Proximity or access of weapons to the subject.
  - Potential for injury to officers/others.
  - Conduct of the subject being confronted.
  - Risk or apparent attempt to escape by subject.
  - Availability of additional resources.
  - Training and experience of the officer.
  - Time available for an officer to decide.
  - Environmental factors/other exigent circumstances.
- e) Detailed descriptions of the subject's actions immediately preceding and during the UOF incident.
  - f) Clear descriptions of all force used/witnessed, and justifications related to all applicable UOF policies or reasons for deviations.
  - g) Descriptions of all required verbal warnings given or justification for deviations.
  - h) No leading investigator questions.
  - i) Schedule supplemental interview to address insufficient questioning.
2. Identify any inconsistencies between the following:
    - a) Witness and/or subject interview and involved officer statements.
    - b) Involved officer statements and available video footage.
    - c) Involved officer statements and any injury or other evidence.
  3. Identify and attempt to resolve conflicts regarding:
    - a) The basis for the stop and any associated searches/seizures.
    - b) The type and amount of force used by officers.
    - c) The subject's actions leading to and during the UOF.
    - d) Statements made by officers and subjects.
  4. Provide an analysis in the investigators notes section or in an indented note section within the investigative summary as to all inconsistencies and whether a substantial unresolved conflict exists;
  5. Document the locations/vantage points of all witnesses, as well as the portion of the incident witnessed;
  6. Review all scientific tests and evidence reports to ensure conclusions are accurately reflected in the investigation;
  7. Review all video footage to ensure all tabs/incident timing is accurately reflected in the report and all communications broadcasts;
  8. Review all medical records to ensure injuries and information is accurately reflected in the investigative summary; and,

9. Ensure that the entire criminal UOF investigation is “One-Way,” and does not become contaminated by any part of the administrative UOF investigation, its’ investigators, communications or any derivative evidence.

**Additional Force Control Policies** (Recommended)

Several law enforcement agencies are beginning to realize the criticality and benefits of the concept known as **Command & Control**. As stated in the LAPD Training Bulletin, Volume XLVII Issue 4, July 2018, “Command & Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continually assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident” (p.1).

Although the responsibility of Command & Control is normally reserved for a supervisor, any senior officer at scene, with appropriate situational awareness, will be held responsible for exercising the concept. Essentially, supervisors at the scene of all UOF incidents are trained and held accountable for their actions/inactions in relation to the following components:

**Active Leadership**-Using clear, concise and unambiguous communication to develop and implement a plan, direct personnel and manage resources.

**Using Available Resources**-Identifying and managing those resources that are needed to plan and implement a desired course of action.

**Accomplishing Tasks**-Breaking down a plan of action into smaller objectives and using personnel and resources to meet those objectives.

**Minimize Risks**-Taking appropriate actions to mitigate risk exposure to those impacted by the incident, including the community and first responders.

At the conclusion of a critical incident, the Command & Control supervisor’s actions are evaluated for congruency and compliance with the concepts trained on and outlined in the Training Bulletin.

The concept was originally developed to ensure that all critical incidents encountered in the field were effectively handled or managed consistent with expectations that would produce the best and safest outcome possible, rather than flying by the seat of one's pants and taking uncalculated risks.

It is strongly anticipated that the implementation of these concepts (Department expectations and policy) in critical field incidents will serve to dramatically slow incidents down, cause the formation of a viable tactical response plan, require the deployment of both less-lethal and lethal force options, minimize the total number of officers deploying lethal force, allow additional resources to arrive at scene to potentially resolve an incident without force, and cause the involved supervisor to strongly consider-Time + Talk + Tactics, rather than immediate deployment that sometimes inappropriately forces an outcome.

The policy of Command & Control is but one of many department protocols developed specifically with the goal of reducing or preventing the occurrence of serious police use of force incidents. However, it has been my experience that typical criminal UOF investigations often omit a review of department policy as unimportant to the overall criminal culpability review and therefore, make no mention of critical areas that may be (and generally are) important to the overall adjudication.

It is imperative that law enforcement agencies be provided with an exhaustive analysis of whether its' supervisory personnel (and all personnel) are complying with their important mandates (policies) to eliminate or minimize risk and injury to officers, subjects and community members during force-related incidents. To achieve that end, the recently amended RCW Section specifically addresses the shortcoming by requiring the independent UOF investigation to also examine all associated laws and policies for compliance with department expectations.

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# CRIMINAL UOF INVESTIGATIVE PROCESS

**Critical UOF Incident occurrence**

**AG Force Investigation Bureau Notification**

## UOF Incident on-scene response

- Incident brief (all)
- Secure crime scene
- Investigative strategies
- Witness/video canvass
- Evidence processing-ISU
- Incident walkthrough (DA)
- Community incident brief
- Check investigation progress
- Conduct necessary interviews
- Follow-up on leads
- All photographs

**Prosecutor Roll-out**

**Civilian-oversight Roll-out**

## Office/Follow-ups

- Conduct interviews
- Compile scientific tests
- Resolve conflicts
- Case progress discussion
- Meet with DA/Oversight
- Complete draft report
- Develop case PowerPoint
- Present case to team leader for review/approval

**Prosecutor Case review/feedback**

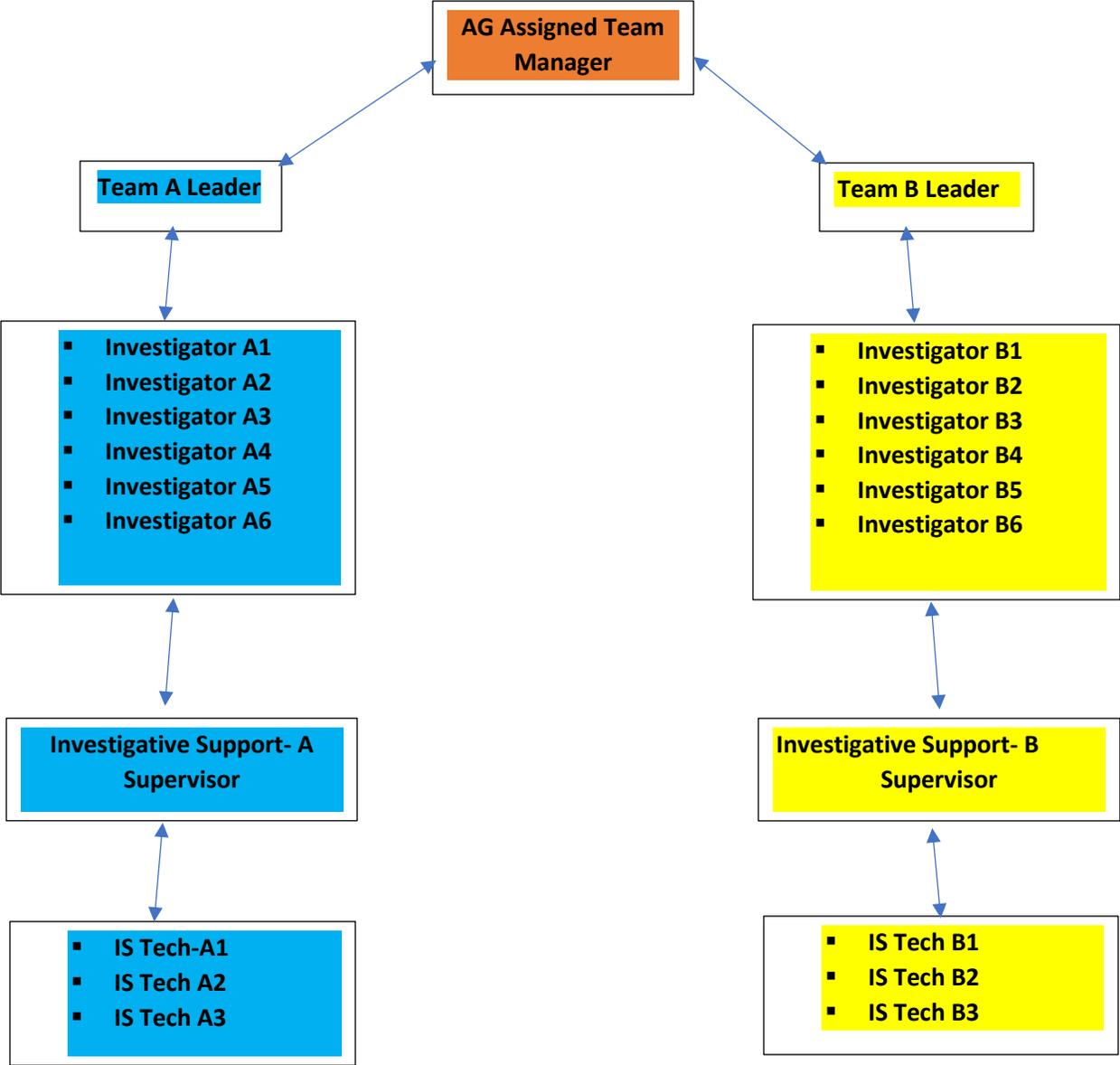
**Civilian Case review/feedback**

## District Attorney's Office

- Present case for review
- Conduct follow-ups (if required)

**DA correspondence to the involved agency of filing/no-filing decision**

**AG FORCE INVESTIGATION BUREAU  
TEAM CONFIGURATION**



**MEMORANDUM**

DATE: August 7, 2019

TO: Karen Chung, Seattle Community Police Commission Senior Policy Advisor

FROM: Communities United for Police Reform (CPR)

RE: Draft recommendations of the Serious & Deadly Force Investigation Task Force

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We thank the Seattle Community Police Commission for the opportunity to provide feedback to the Serious & Deadly Force Investigation Task Force’s draft report.

**About this memo**

This memo summarizes feedback from Communities United for Police Reform (CPR) to the Seattle “Serious & Deadly Force Investigation Task Force’s” draft report provided to us for review. The feedback is based on CPR’s cumulative experience with cases of NYPD brutality and killings, and consolidates specific feedback from CPR member groups including Malcolm X Grassroots Movement, Brooklyn Movement Center and Make the Road New York.

As requested, our comments focus primarily on the draft recommendations. Although not requested, we are also including feedback to section highlighting the New York state example.

This memo includes the following sections:

1. About CPR and relevant experience
2. Feedback on recommendations from TF draft report

If helpful, we would welcome the opportunity to convene a call to elaborate on any comments in this memo that the Task Force or Commission may have questions about.

**1. About CPR and relevant experience**

Communities United for Police Reform (CPR) is a multi-sector campaign working to end discriminatory and abusive policing practices in New York – and to reduce reliance on policing for public safety. Through community organizing, policy advocacy, public education, direct action, litigation and other strategies, CPR seeks to build a broad-based movement to promote community safety and respect for the rights and dignity of all New Yorkers. Our members and partners include over 200 local and national organizations, many of whom are based in and led by those most directly impacted by discriminatory and abusive policing.

CPR has won significant policy changes since our public launch in 2012 – including coordinating the 2015 campaign that forced New York State Governor Cuomo to issue an executive order for a special prosecutor for police killings. That campaign was led in partnership with families of New Yorkers killed by police over the past two decades, and CPR members including: Justice Committee, Malcolm X Grassroots Movement, Make the Road New York, ColorOfChange, NAACP LDF and VOCAL-NY.

Since that time, CPR has played an active role in monitoring the implementation of the executive order and also leads the campaign to secure passage of statewide legislation that would strengthen and expand the executive order, and codify it as law.

## 2. Feedback on recommendations from TF draft report

Following is feedback on the recommendations in the Task Force draft report.

**1. Prevention** - Task Force Recommendation to “conduct long-term strategic planning to prevent serious and deadly uses of force”.

### **CPR comments:**

We agree that answering the question and developing a plan for how to *prevent* the use of serious and deadly force by law enforcement is a critical – and we would argue primary – objective that goes hand in hand with any recommendations related to an independent investigatory body.

The core TF recommendation in this area is for Seattle to create a committee to conduct long-term strategic planning to prevent serious and deadly force. We applaud the TF for explicitly including that this committee should include family members of those killed by police and that this TF should scrutinize the SPD’s practices related to officers who are involved in serious or deadly use of force. If not already under consideration, we would suggest that the committee also include grassroots organizations (that are based in and led by communities most impacted by police violence in Seattle), with significant history organizing their communities on police brutality cases. Additional recommendations for the proposed committee:

- Ensure that the committee has access to: 1) Seattle data related to use of force, including disciplinary outcomes in use of force incidents, disaggregated by geography, race, age, and gender, 2) SPD enforcement data disaggregated by geography, race, age, and gender, related to police encounters with members of the public, including those that may not indicate use of force (e.g. stops, searches, summonses, arrests) and 3) SPD misconduct and discipline data related to incidents of use of force and abuse of authority, to provide full context for policing in which serious and deadly use of force arises.

- Consider reframing the mandate of including consideration of approaches called “restorative justice” and reframe this as processes that facilitate increased power of- and accountability to – communities most impacted by abusive policing. We support restorative justice approaches – but for situations when state actors are the ones who have caused harm, what is often called “restorative justice” is too often a process that does not acknowledge the role of institutional power or the dynamics of systemic power, so that resulting interventions fail to address core power dynamics and root causes of harm caused. In fact many restorative justice practitioners would argue that “restorative justice” is not a process that is possible between an individual and a state actor and that state actors have unproductively co-opted restorative justice language.
- Consider expanding the committee’s mandate to make additional recommendations related to expanded oversight and/or increased community power to participate in decisions related to police discipline.

Additionally, we believe that the Task Force should consider recommendations to the Seattle City Council that address or include the following in developing a long-term strategic plan to prevent serious and deadly uses of force:

- Decrease the size, scope of power, responsibility and authority of the Seattle Police Department. Killings by police and the use of deadly and serious force are the tip of the iceberg when it comes to the overall issue of police violence. These egregious incidents are enabled by policy, practice and culture that includes daily abuse of authority and humiliation of community members by police (e.g. in unlawful pedestrian and vehicle stops, abusive home/vehicle/person searches, etc), sexual harassment and gender-based violence by police that is too often invisible and unaddressed, and the expanding role and size of police across the country. While all professions, including police, should undergo training to minimize and prevent harm they may cause, a fundamental conflict is that the power, scope and authority of police departments has expanded over time to encompass areas that police should not be responsible for. Reducing incidents of serious and deadly force by police requires efforts that reduce routine interactions between police and the public, and closely examining where SPD has been granted authority that can and should be transferred to a non-policing agency.
  - One example of this relates to mental health interventions discussed in the TF recommendation. CPR believes that police should not be first responders when individuals are experiencing emotional distress and/or crisis. The mere presence of armed officers, often yelling orders, is often experienced as an escalation – regardless of de-escalation training. In addition, police mental health trainings often stigmatize individuals with psychiatric disabilities, creating fear and spreading misinformation amongst officers who are often trained only from a “worst case scenario” perspective - and normalizing protocols that require the use of force. We recommend removing SPD from providing mental health interventions, regardless of training level.

Addressing prevention of police use of serious and deadly force requires limiting instances where police are engaging in unnecessary interactions with the public.

- Prioritize creation and implementation of speedy, thorough and transparent disciplinary policies that terminates employment of officers from the Seattle Police Department when they have been found to engage in misconduct and harm towards civilians – including, but not limited to serious and deadly force (including sexual assault and gender-based violence), lying in official capacity, abuse of authority in incidents involving civilians, filing inflated and false charges against police brutality survivors and those killed, and leaking sealed medical and law enforcement records of survivors and victims. A systemic problem in police departments across the country is the prevalence of cover-up activities surrounding incidents of serious and deadly force. Officers who engage in cover-up activities rarely face disciplinary consequences – and the culture of cover-up in departments across the nation enable the continued prevalence of police violence.

**2 . Assistance For Families:** TF recommendation to “create a fund to support families and loved ones of individuals involved in the incident”.

CPR applauds this recommendation’s intent to ease the financial burden on families in the aftermath of police killings, particularly since the issues outlined are issues that families that we/our member groups work with have had to consistently deal with. In fact, we wish the City of New York would consider this.

In addition to what is outlined in the draft report, we would suggest considering expansion of funds to cover the costs of missed work days of family members to attend meeting with attorneys, court dates, etc. to support families as they go through processes to fight for justice for their loved ones. In too many cases, family members are forced to lose work pay and sometimes jeopardize their employment to attend to meetings and court/trial dates for criminal justice and disciplinary proceedings, while officers who are under investigation do not face similar financial consequences during the investigative or criminal justice process. We fully support minimizing bureaucracy and multiple forms and recommend that a clear and public timeframe be established for disbursing funds.

We would also recommend that the cost of an independent autopsy (with the family being able to determine who to retain to conduct the autopsy) be a cost that the City’s fund will cover for families who would like to make use of this.

One issue raised by some of our members relates to the TF’s recommended mechanism of funds going to organizations instead of being disbursed directly from the City of Seattle to families. Based on our experience in NYC, while it is true that community organizations often fundraise for and provide financial support to families whose loved ones have been killed by police, the process of any municipality selecting individual community organizations to provide funds is complicated and can sometimes have unintended consequences, as you know. We

defer to your analysis of local Seattle history, politics and community infrastructure, however, we are sharing that some of our members raised that financial support should be given directly to families instead of using organizations as intermediaries. And we fully support the recommendation that families should not be expected to access funds through Seattle PD.

**3. Assistance for families** – TF recommendation to “make liaisons available to people impacted by a serious or deadly use of force and consult with community members to develop accessible materials about the investigation process”.

We believe this is an important recommendation. If the liaison is thought to be a city government employee, the main concern we raise is one you have undoubtedly already considered. City employees are ultimately restricted by City policy and politics – especially in cases of police killings. If the liaison will be a City employee, we would recommend that there be safeguards to enable their independent access to information without regulations or placement in chain of command that would prohibit or undermine their ability to be of full service to families – and to play a full advocacy role. In addition, the liaison should be a funded position with financial resources to carry out their work.

We would also recommend that materials to be created should include a listing of community organizations with respected track records of organizing to support family justice campaigns and/or provide services to families of those killed by police (including cultural and linguistic competency), and that this listing be regularly updated.

**3. Assistance for families** – TF recommendation to “require swift and regular communication with the family and loved ones of persons killed by police.”

The problem described in this recommendation is a problem faced in almost all cases we/our members have worked on in New York. One exception relates to the former NYS Attorney General’s handling of the killing of Delrawn Small and their investigation/prosecution of NYPD Officer Wayne Isaacs. In many ways, the staff of the former Attorney General’s office handled their communication with Delrawn’s siblings in a manner that provided transparency and timely communications with the family. However, some of this was also in the context of consistent advocacy by CPR and our member organization the Justice Committee, on behalf of Delrawn’s siblings in relation to the office – including ensuring that they had access not only to the attorneys prosecuting the case but also high-level decisionmakers in the AG’s office.

The recommendation that the City work with previously impacted families to develop policy and protocol should be a requirement, along with working with respected community organizations with significant track record *organizing* with families for justice.

In addition, it should be required that:

- Families be provided the opportunity to meet with the head of the agency where an independent investigatory agency is located, and the head of the investigative unit/agency – and have a direct line of access to lodge concerns and complaints with the process of an investigation. Families should not be restricted to communicating only with “community liaisons” or others who may not have the structural authority and power to make final decisions related to investigations.
- Developments and news related to a case should never be disclosed to media or elected officials until after family members have received the news directly – and there should be prompt and swift disciplinary consequences for any personnel who divulge or leak news to media or elected officials prior to official communication with families (whether on record, on background or off record).
  - In addition, video footage and photos should not be presented to elected officials and media unless the family and/or public has access to this first.
- If the family designates an advocate (e.g. leadership of a community organizing group that is working with them) to be the primary contact for the family, that should be respected.
- Require that the City and investigative agencies allow for the immediate release of the medical examiner’s report to the family.

**5. Independent investigations** – TF recommendation to “establish an investigative unit in the State Attorney General’s office to conduct criminal investigations of serious and deadly uses of force”.

CPR does not have feedback and takes no position on whether the AG’s office is the best location for an independent investigative unit. We defer to local organizations in Seattle and the state of Washington regarding location of the independent investigative body.

Recommendations related to this area include:

- TF recommendations of guidelines for communicating with families by local Seattle authorities should also apply to the State AG’s office (or any office that will house the independent investigative entity).
- Funding for the independent investigative office should be baselined and have structural protection from funding cuts for political and other reasons.
- Any independent investigative body should incorporate best practices including:
  - Immediate substance and alcohol testing of all officers on the scene
  - Commission of independent autopsy

- Conduct investigation interviews directly, including of witnesses and officers on the scene and involved, rather than relying exclusively on SPD interviews.
  - Ensure that the family is able to access the medical examiner report as soon as it is available
  - Release of names and misconduct histories of involved officers within 24 hours
- Require reporting on investigations to the public.
  - Ensure that family is able to meet with top officials in the independent investigative body, along with their support team, which may include community organizations they are organizing with.

**6. Independent Investigations** – TF recommendation to “require that investigators demonstrate a commitment to integrity and civil rights and involve community members in hiring of investigators”.

CPR supports the recommendation that community members have a role in hiring investigators. There should also be mechanisms for families and community members to provide critical feedback regarding individual investigators and staff of the investigative body without fear of negative consequences and retribution. Evaluations of individual investigators should incorporate feedback opportunities from families and groups that were involved in cases they investigated.

**7. Independent investigations** – TF recommendation to “select a leader who has a demonstrated commitment to communities most impacted by serious and deadly uses of force”.

CPR has no additional feedback on this recommendation.

**8. Independent investigations** – TF recommendation to “require that investigators have specific experience and have or receive specific training.”

One of our members recommends that the anti-racism and implicit bias training be ongoing, and not just one-time.

**9. Independent investigations** – TF recommendation to “require investigators to disclose any conflicts of interest”.

We recommend that the potential conflict of interests to be divulged be as broad as possible – beyond specific relationships to subjects of inquiries – but also including whether investigators

or other staff of the investigative body have past knowledge, known familial relationship or other potential connections and history with the subject.

**10. Independent investigations** – TF recommendation to “require a specific timeframe for completing investigations”.

CPR agrees that a timeframe should be set, and given our past experience, that timeframe should be on the shorter spectrum of timeframes. Investigations should not extend beyond 3-6 months.

**11. Independent investigations** – TF recommendation to “provide investigative reports in a timely manner”.

CPR supports the TF recommendation that the independent investigative body should publish all investigative reports and case files in all cases – and that these files should first be provided to the family. A timeframe should be specified for “timely”.

Great care should be taken to ensure that reports are not written in a way that differentiates when the office feels an officer should be exonerated versus whether the office made a determination that they did not have sufficient evidence available to prosecute or convict.

In addition, any recommendations in a report should be discussed with family and advocates in advance – in draft form, to allow for substantive input.

**12. Independent investigations** – TF recommendation to “develop a media policy that protects those subjected to a serious or deadly use of force.

A person’s medical history and/or past history of contact with law enforcement should not be released under any circumstances by the independent investigative body unless explicitly requested by the family of the deceased. In addition, other personal information often used to criminalize and discredit those killed or brutalized by police should not be released or leaked -- including history of prior school suspensions, child support payments, immigration status, etc.

CPR supports changing the Seattle Police Department’s policy to prohibit referring to an individual involved in serious and deadly use of force incidents as a “suspect” and requiring retraction of any statements or information given in aftermath of an incident that turns out to be false.

**13. Continuous improvement** – TF recommendation to “collect key data related to investigations and publish reports of aggregate data regularly.”

This recommendation should be expanded to include demographic and geographic data to be included, and quarterly public reporting, in addition to annual reports.

**14. Continuous improvement** – TF recommendation to “conduct sentinel event reviews after every serious or deadly use of force to identify system flaws and to address them via policy and training.”

There should be public reporting related to these reviews.

**15. Statewide standards** – TF recommendation to “advise the WA State Criminal Justice Training Commission to Issue Statewide Guidelines and Minimum Standards for Investigations”.

Statewide standards should include investigation guidelines and requirements, including: independent autopsies, automatic substance and alcohol testing of officers on the scene, etc.

## Appendix V. Law Enforcement Meeting Notes

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### Serious and Deadly Force Investigation Taskforce

Third Meeting  
June 14, 2018

Keller Rohrback L.L.P.  
1201 3<sup>rd</sup> Avenue Suite 3200  
Seattle, Washington 98101

#### **Perspective of Law Enforcement Officers (1 – 1:50pm)**

*Hear from law enforcement officers about their thoughts and expectations in the investigation process and their experiences as officers in Seattle.*

Guests:

- Captain Gregg Caylor (Force Investigation Team, Seattle Police Department)
- Sergeant George Davisson (Force Investigation Team, Seattle Police Department)
- Detective Steve Corbin (Force Investigation Team, Seattle Police Department)
- Officer Michael Virgilio (Patrol, Seattle Police Department)
- Sergeant Heidi Tuttle (Patrol, Seattle Police Department)

The SPD officers identified the following characteristics of the current investigation process in conversation with the Taskforce:

- The Force Investigation Team (FIT) and Force Review Board (FRB) process are not overbearing or unnecessarily stressful.
- Upon a shooting, the following individuals are present at the scene: a city-appointed attorney, the FIT team, and a guild representative. The presence of these people is comforting for officers.
- One officer remarked that he had a positive experience in the aftermath of a Type III use of force. FIT detectives contacted them every day that they were on administrative leave to ensure they were OK and to keep them up to speed on the process.
- It is key that the interview take place in the least stressful environment.
- FIT detectives clarified that FIT deals with the physical aspects of the investigation. There is a peer support team that attends the scene and is present at the office to support officers throughout the process.
- Upon a Type III use of force, the involved officer will be brought to the FIT office to provide a statement. As long as the officer is physically able to provide a statement, they must provide a statement on the day of the use of force.
- One officer remarked that FIT's involvement in supporting officers and keeping them updated on the process was a lot like "wraparound services" by FIT, and that these services were very valuable.
- Officers stated that officers used to not seek psychiatric services in the past following a use of force. By making attending psychiatric services at least once mandatory, officers can feel better about going.

- Good people have lost careers because of bad choices and lack of empathy in history of policing.

The Taskforce asked what it was like to police communities of color, and whether it was different from policing white communities.

- An officer stated that while they do not understand the backgrounds of everyone, they would never go to a community and treat them differently because they don't understand it. They would try their best to understand what's going on. Officers can use discretion.

What's different about this moment?

- Training in Seattle is eons ahead of most other jurisdictions. It's very common that people come to this force from somewhere else who are surprised.

Are we doing a better job of placing people than we did historically?

- Now it's who we can get to hire on. Officer identified the difficulty in recruiting officers to the force.

What are strengths and weaknesses of investigation model? Are there improvements we can make?

- Prior to FIT, the homicide did the investigations of major uses of force. Those detectives may have investigated one shooting every couple of years. They rotated around. Now, a unit of 6 people is solely dedicated to high-level uses of force and officer-involved shootings.
- Goal in FIT is to tell the entire story rather than one side of the story.
- Previously if there was a serious use of force, a sergeant would come speak with the officer, the officer would write their statement, and it would done. The investigation really focused on the moment force was applied and that was it. Now it's a expansive system.
- There were initial reservations of having civilians at the scene, but it has been a great partnership. There are times Dir. Myerberg and Tonia Winchester from OPA would ask questions and it would obvious to FIT. However, law enforcement officers are not the only audience, and having civilians involved helps law enforcement explain things better to community. It is critical to have that kind of feedback and conversation.
- FIT has been in operation since 2014. In the year, there were 42 investigations. Deadly force: 8 shootings in first year, average around 5 per year.
- The FIT team does not currently have an officer who is a person of color.
- FIT is precluded from making any conclusions about analysis. Any kind of statement or conclusion that shows any bias must be removed. There are no conclusions or analysis.

## Appendix VI. Family Meeting Agenda and Notes

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Serious and Deadly Force Investigation Taskforce  
**Meeting with Families**

June 22, 2019

10am to 2pm

Southside Commons - 3518 S Edmunds St, Seattle, WA 98118

### **Agenda**

**1. Acknowledgements and Community Agreements**

*Led by Roxana Pardo-Garcia*

**2. Co-Chair Address**

*Led by Andre Taylor*

**3. Taskforce History and Review of Recommendations**

*Led by Karen Chung*

**4. Lunch/Break**

**5. Dialogue**

*Participation by All*

**6. Closing**

*Led by Karen Chung and Roxana Pardo-Garcia*

### **Community Agreements**

1. Take care of yourself.
2. Participate in a way that makes you feel comfortable.
3. Make space for everyone who wants to speak to speak.

## Meeting Notes

**Attendees:** Devitta Briscoe, Marilyn C., Ana Freund, Jay Hollingsworth, Katrina Johnson, Sonia Joseph, Sister Angela Muhammad, Dove Taylor, Annalesa Thomas, Fred Thomas, Darius Vann, Rick Williams, Amy (?)

**Taskforce Members and Staff:** Andre Taylor (Co-Chair), Emma Catague, Kelly Harris, Sweetwater Nannauck, Karen Chung, Roxana Pardo-Garcia, Bessie Scott

### Recommendation 1

*Conduct long-term strategic planning to prevent serious and deadly uses of force.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- A committee should be formed to look at long-term strategic planning and the committee should include family members of those killed by police.
- Plan should include restorative aspect and giving police officers people skills.
- Plan should include looking into what is required of officers after they use serious or deadly force and before they are back on the street. What are retraining and testing requirements? Should they be changed?

### Recommendation 2

*Create a fund to support families and loved ones of the individuals involved in the incident.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Families and victims should be expected to access these funds via the police or the City, which employs the police. This would be a traumatizing experience.
- Instead, the funds should be given to local, community organizations to disperse.
- The process should be as accessible as possible, without requiring too many forms to be completed or hurdles to jump over, such as allowing funds to be used with only one counselor in the city.
- Recipients should be allowed to use funds for crime scene clean-up, relocation, or temporary relocation if the incident happened in their place of residence.
- Consider the domino effect of trauma and people who harm themselves or commit suicide as a result of the trauma of enduring a loss to police.
- The City should fund an organization to put together a resource guide for families who lose a loved one to police.

### **Recommendation 3**

*Assign family liaisons to loved ones and consult community members to develop accessible materials about the investigation process.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Change “assign” to “make available.”
- Family liaisons cannot be law enforcement. They must be completely separate from police and must be culturally competent, otherwise the experience would retraumatize.
- The materials developed should not only include information about the investigation process, but the court process as well.
- Attendees talked about being interrogated at the time of being notified of their loved one’s death.
- “It’s hard to fight and to grieve at the same time.”
- Attendees discussed the merits and possibility of having a restorative process/peace circles between the involved officers and victims, but others stated that officers are advised not to talk during an ongoing investigation.
- Consider including a restorative justice component at the beginning of training of investigators, introducing them to families who have lost loved ones to police.
- Include information about the administrative investigation process in informational materials and clarify the two tracks.

### **Recommendation 4**

*Require immediate and regular communication with the family and loved ones of persons killed by police.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Include previously impacted families to support.

### **Recommendation 5**

*Establish an investigative unit in the State Attorney General’s Office to conduct criminal investigations of serious and deadly uses of force.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.

- An attendee suggested that this should be mandatory for all jurisdictions. However, I 940 only states that investigations must be independent. However, if the state sufficiently funds this model, local jurisdictions will have an incentive to opt in from a financial perspective.
- Should ensure that sufficient budget for this is always there.
- Investigators must be certified to be on the scene with complete access, so will need to be commissioned.
- I 940 did not change who charges and prosecutes these cases, but it did make it more difficult for county prosecutors to decline to charge/prosecute.

### **Recommendation 6**

*Involve community members in hiring of investigators, and require that investigators have demonstrated commitment to integrity.*

Feedback from attendees:

- o Attendees were supportive of this recommendation.

### **Recommendation 7**

*Select a leader for the investigative body who has a demonstrated commitment to community.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Leader should come from communities of color, or should be someone who understands communities of color/communities impacted most be police shootings.
- Community members should be on hiring and interview panels.
- There should be a performance review/evaluation of the leader with community input.
- The leader should be expected to be connected and involved with community before a shooting happens.

### **Recommendation 8**

*Require that investigators be trained or have experience in use of force investigations, collection of evidence, evidence law, homicide investigations, assault investigations, and antiracism training.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Change language from “be trained” to “receive training” to make clear that investigators can receive training once hired, and aren’t entirely expected to have each of the skills/experience outlined in the recommendation at the time of hiring.

### **Recommendation 9**

*Require investigators to disclose any conflicts of interest.*

Feedback from attendees:

- Attendees were supportive of this recommendation.

### **Recommendation 10**

*Require a specific time frame for completing investigations.*

Feedback from attendees:

- Attendees were supportive of this recommendation.

### **Recommendation 11**

*Publish investigative reports in a timely manner.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- Change “publish” to “provide,” and specifically to victim’s families.
- Families should be notified before media.
- Sensitive information and pictures of the victim should be excluded unless the family asks for them.
- The media and public can obtain these reports via public disclosure requests even if not published.

### **Recommendation 12**

*Develop a media policy that protects those subjected to a serious or deadly use of force.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.

- Don't refer to the victim of the use of force as a suspect.
- SPD should retract any statements or information that turn out to be false.

### **Recommendation 13**

*Collect key data related to investigations and publish reports of aggregate data regularly.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- These are like "report cards" for the investigative agency.

### **Recommendation 14**

*Conduct sentinel event reviews after every serious or deadly use of force to identify system flaws and to address them via policy and training.*

Feedback from attendees:

- Attendees were supportive of this recommendation with the following input.
- These reviews should be conducted by a multiagency, multibranch group of people with different areas of expertise.

### **Recommendation 156**

*Advise the Washington State Criminal Justice Training Commission to issue statewide guidelines and minimum standards for investigations.*

Feedback from attendees:

- Attendees were supportive of this recommendation.

