

## **I. INTRODUCTION**

On March 18, 2006, Spokane Police Department (SPD) Officer Karl Thompson responded to a dispatch call of an attempted or actual robbery at an ATM near the Zip Trip convenience store at 1712 North Division Street. Arriving at the scene, Officer Thompson saw Otto Zehm entering the Zip Trip. Officer Thompson exited his car and followed Mr. Zehm into the store. Officer Thompson then rushed at Mr. Zehm and knocked him to the floor. Baton strikes, Taser™ charges and other forms of force were used by Officer Thompson and other SPD officers who responded to the scene to subdue Mr. Zehm. Less than two days later, Mr. Zehm died at Deaconess Medical Center. His death was ruled a homicide by the Spokane County Medical Examiner.

Officer Thompson was indicted by a federal grand jury on one count of violating Mr. Zehm's civil rights and one count of obstructing justice. On November 2, 2011, following a lengthy jury trial, Officer Thompson was convicted in the U.S. District Court for Eastern Washington on both counts. He was sentenced on November 15, 2012, to fifty-one months in federal prison.

On March 13, 2009, members of Mr. Zehm's family commenced a civil suit against the City of Spokane as a result of the actions at the Zip Trip and Mr. Zehm's death. On August 22, 2012, the City of Spokane and the Zehm family mediated and settled this civil action. Terms of the settlement included a \$1.67 million payment to the family and other commitments by the City, to include funds for Crisis Intervention training for Spokane Police officers, funds for implementing new policies regarding the use of force, and the creation of a permanent memorial to Mr. Zehm.

From Mr. Zehm's death to Officer Thompson's conviction and the settlement of the civil suit, the Spokane community has struggled to come to terms with what happened to Mr. Zehm and with the confines in which SPD officers use force in carrying out their duties. It is certainly the case that Mr. Zehm's death and its aftermath have shaken public trust in the police department and in those civilians tasked to oversee that department. It was against this background that the City of Spokane Use of Force Commission was established by Mayor David Condon on January 3, 2012.

While the Use of Force Commission would most likely not have come into existence but for the tragic events surrounding Otto Zehm's death, the Commission's task is broader than the unique circumstances of any specific case. The Commission has been charged to take an expansive view of the issue of the use of force by the Spokane Police Department. In doing so, as recounted in greater detail below, the Commission, with the assistance of legal counsel and expert consultants, has systematically and thoroughly examined SPD use of force policies, procedures, practices and customs, as well as explored the issues of civilian oversight and the role of the City's legal department in use of force cases. The totality of this work has involved numerous public meetings, private interviews, on-site visits, consultations with subject matter experts from around the country, and the review and analysis of a multitude of articles,

records, policies, cases, web pages, and reports. Throughout this work, notwithstanding that the body was not formed as the “Zehm Commission”, each member of the Commission has remained cognizant of the fact that a core purpose of our work is to help avoid future tragedies like what happened to Otto Zehm.

In presenting this report and the Commission’s recommendations, it is important to note at the outset that no one occurrence defines the Spokane Police Department, its members or its service to the citizens of Spokane. The Department is comprised of approximately 275 uniformed officers (with an authorized strength of 295) and nearly 100 civilian employees. Each of the department’s members is responsible to perform his or her role in the most professional and legally correct manner. Each is responsible for their personal contribution to the department’s public service mission and to the safety of the City and its citizens. And, each is responsible for the overall reputation and credibility of the department in the City of Spokane.

The Commission’s members thank the officers and civilian employees of the SPD for their service to this community. Their efforts, which are often not seen or recognized publicly, involve the ability to make difficult and fast decisions in challenging circumstances, the need to pay ever vigilant attention to fairness, and the resilience of spirit to not be bogged down by the conditions they encounter on a daily basis.

The SPD and those who serve the City in other capacities are part of ever changing institutions. At the time of Otto Zehm’s death, Jim Nicks was the Acting Chief of Police and Dennis Hession was the Mayor of Spokane. In July of 2007 Anne Kirkpatrick became the Chief of Police and she served in this role until the end of 2011, with most of that time occurring under the administration of Mayor Mary Verner. David Condon was sworn into the Mayor’s office on January 1, 2012, and, shortly thereafter, he appointed Scott Stephens as Interim Chief of Police. Major Stephens served in that role until Frank Straub was recently sworn as Spokane’s new Chief of Police. Across this same span of time, there have also been changes in the make-up of the Spokane City Council and in the Office of the City Attorney. Likewise, many new members have joined the uniformed services of the SPD and many have retired at the end of their careers.

The SPD’s leaders and its officers, along with the political and administrative leadership of the City of Spokane, are responsible for continuously furthering the interest of public safety through constructive change and improvement. This obligation remains constant notwithstanding who is serving this City as Mayor, as Councilperson, as Chief of Police or as a patrol officer. The recommendations that follow are offered in the spirit of helping those who carry this obligation, as a matter of office or function, to better serve the citizens of Spokane.

## **II. ESTABLISHING THE COMMISSION**

The Use of Force Commission was formed on January 3, 2012, under City Charter provision Section 24(o) which grants the Mayor “the power to make investigation into the affairs of the City.” Mayor Condon charged the Commission to review and make recommendations to his office regarding the SPD’s use of force policies and practices, civilian oversight of the police department, and how city agencies respond to cases when it is claimed that a SPD officer has used excessive force. Mayor Condon explicitly affirmed that the Commission serves on behalf of the entire Spokane community free of influence by City administration, and that the Commission is at liberty to determine the specifics of what it includes in its recommendations. Acknowledging the role of the Otto Zehm case in the creation of the Use of Force Commission, Mayor Condon stated that the past must be considered in order to make meaningful change for the future and that public trust is not given - it must be earned.

Mayor Condon appointed the following individuals as members of the Commission:

- Earl F. Martin (Chair), Executive Vice President of Gonzaga University
- William D. Hyslop (Vice-Chair), principal in the Lukins & Annis, P.S., law firm
- Chief Justice (retired) Gerry L. Alexander, Washington State Supreme Court
- Ivan Bush, Equal Opportunity Officer (retired) for Spokane Public Schools
- Susan Hammond, RN, (former) Director of Outpatient and Psychology Services at Spokane Mental Health, a Division of Frontier Behavioral Health

(Complete bios of Commission members are at Appendix A)

On January 30, 2012, the Spokane City Council passed Resolution 2012-0013 in which it expressed support for the establishment of the Use of Force Commission.

## **III. COMMISSION ADMINISTRATION**

The Commission held nine public meetings between February 29 and June 28 during which it explored various topics related to its charge. It held two public meetings after release of its draft report on December 20, 2012, in order to gather public comment on that report. The Commission also met via phone conference and in person on numerous occasions to: coordinate future meetings; recap past meetings; discuss the current condition of the SPD and its many challenges and opportunities, and how it might be improved; and work on the Commission’s report. The Commission reviewed many publications relevant to its charge (Appendix B) and the four Spokane based Commission members participated in ride-alongs with SPD officers. Additionally, Commission members, both individually and in numbers less than the full membership, interviewed persons who have knowledge of, or an interest in, the use of force by police departments. Examples of the latter include conversations with Spokane County Sheriff Ozzie Knezovich and various members of his staff, former Seattle Chief of Police Norm

Stamper, Director of Microsoft's Office of Legal Compliance-Investigations Sam Pailca, Lexipol Chief Executive Officer Gordon Graham, LEEDA –FBI Executive Director Tom Stone, Washington State Criminal Justice Training Commission Defensive Tactics/Firearms Program Manager Bob Bragg, ACLU Deputy Director for Washington Jennifer Shaw, former U.S. Attorney for the Eastern District of Washington James McDevitt, former SPD Interim Chief Scott Stephens, former SPD Chiefs of Police Anne Kirkpatrick and Roger Bragdon, and current SPD Chief of Police Frank Straub.

The Commission has been assisted in its work by three expert consultants, engaged through contracts with the City of Spokane. Stanley Schwartz, a principal in the law firm of Witherspoon – Kelley, served as the Commission's independent legal counsel. The Commission hired Mildred O'Linn, an expert in police civil liability and police training and tactics, to review the SPD use of force training program and Field Training Officer (FTO) program. Ms. O'Linn, a former police officer, is a partner in the law firm of Manning & Kass, Ellrod, Ramirez LLP in Los Angeles, California. The Commission also engaged Mike Gennaco to review the SPD use of force reporting program, the Internal Affairs protocols for investigating use of force cases, and the SPD Fatal Incident Protocols and Deadly Force Review Policy. Mr. Gennaco is a former U.S. Department of Justice attorney who now heads the Office of Independent Review (OIR) for Los Angeles County. The OIR is a civilian oversight group that was created by the LA County Board of Supervisors in 2001 to monitor the LA County Sheriff's Department and provide legal advice to ensure that allegations of officer misconduct involving the LASD are investigated in a thorough, fair, and effective manner. Mr. Gennaco was engaged through his consulting practice, OIR Group. He was assisted on the project by OIR Staff Attorney Cynthia L. Hernandez.

In the case of Ms. O'Linn and Mr. Gennaco, extensive reports have been filed on their respective areas of inquiry. See Appendixes C and D. In many instances, the material compiled by Ms. O'Linn and Mr. Gennaco is incorporated directly into this report. Prime examples of this include the recommendations regarding SPD training improvements, certifying defensive tactics instructors, reforming the use of force reporting system, and improving investigatory practices. In regards to other matters raised by these two experts, although the Commission has chosen not to repeat their recommendations in its own report, it does not intend to signal in any way that these recommendations are lacking in significance. To the contrary, the entirety of both reports, particularly their recommendations for improvement, are forwarded to the SPD for its serious review and consideration. See, e.g., Appendix D at 20-23 (*Canine Cases*). Finally, the Commission notes that the engagement of the consultants has already resulted in positive operational changes within the SPD. Just a few examples of this include modifications to Pre-FTO training procedures (Appendix C at 6), revisions to the annual in-service firearms training (*Id.* at 25), and efforts to create a more formalized annual training needs assessment consistent with SPD policy 208.5 (*Id.* at 32-33).

All of the Commission's nine fact gathering meetings were held in the Spokane City Council Chambers. Public notices were sent out prior to the meetings and time was reserved for public comment on each occasion. Every meeting was broadcast on

Spokane City Channel 5 and the recordings of each were posted to the City Channel 5 web site. Appendix E – DVD-R (2 disks).

The following are brief summaries of the fact gathering meetings held by the Commission:

February 29, 3:00 to 5:30 p.m. – The meeting opened with remarks from Mayor David Condon. The Commission Chair, Earl Martin, invited all present to observe a moment of silence for Otto Zehm, and spoke to the administration of the Commission (budget, staff support, etc.), the scheduling and management of the public meetings, and the topics that the Commission planned to explore. With the exception of Ivan Bush, who was absent due to a medical issue, each of the Commission members introduced themselves. Commissioner Bush later viewed a recording of the session. The Commission received a briefing from its legal counsel, Stanley Schwartz, on the subjects of the Open Public Meetings Act, Public Records Act, Municipal Code of Ethics, and indemnity for Commission members. The Commission received a presentation from Gonzaga University School of Law Professor Jason Gillmer on the law regarding the use of force by police officers. The Commission received a presentation from SPD Interim Chief Scott Stephens on the SPD Manual and the department's Defensive Tactics Manual (use of force training materials). Four individuals commented during the public comment period.

March 15, 3:00 to 5:30 p.m. - Commissioner Gerry Alexander attended the meeting via phone conference. Commissioner Ivan Bush was absent due to medical issues, but later viewed a recording of the session. The Chair shared that the Commission's independent legal counsel, Stanley Schwartz, had provided a legal opinion stating that the Washington State Public Records Act governs the work of the Commission. The Commission explored how the SPD's canons and ethical standards inform the full scope of its use of force policies and practices. Interim Chief of Police Scott Stephens, Captain Brad Arleth (Uniform Operations Division Commander), Lieutenant Bill Drollinger (SPD Academy Director of Training), and Detective and Spokane Police Guild President Ernie Wuthrich all appeared before the Commission to address the topic. Two individuals commented during the public comment period.

March 29, 3:00 to 5:30 p.m. – All Commission members were present for the meeting. Commissioner Ivan Bush introduced himself at the invitation of the Chair. The Commission received presentations on the SPD's use of force training program from three members from the SPD Academy - Lieutenant Bill Drollinger (Director of Training), Officer Robert Booth (defensive tactics instructor), and Officer Terry Preuninger (patrol tactics instructor). Two individuals commented during the public comment period.

April 10, 3:00 to 5:30 p.m. – All Commission members were present. The Commission received a presentation on the SPD's Field Training Officer program from Captain Judi Carl (Administrative Services Division Commander). The Commission received a

presentation on the SPD's use of force reporting protocols from Major Frank Scalise (Operations Bureau Commander). One individual commented during the public comment period.

April 26, 3:00 to 6:00 p.m. – All Commission members were present. The Commission received a presentation from Lieutenant Keith Cummings (Internal Affairs Commander) on the role of the Internal Affairs office in the administration of the use of force by SPD officers. Sergeant Mark Griffiths (Major Crimes Unit) presented on the SPD's Fatal Incident Protocol and its Deadly Force Review process. Three individuals commented during the public comment period.

May 8, 3:00 to 6:00 p.m. – All Commission members were present. The Chair announced that the Commission had engaged the services of two expert consultants. Mildred O'Linn, an expert in police civil liability and police training and tactics, was hired to review the SPD use of force training program and its Field Training Officer program. Mike Gennaco, a former U.S. Department of Justice attorney who now heads the Office of Independent Review for Los Angeles County, was hired to review the SPD use of force reporting program, the Internal Affairs protocols for investigating use of force cases, and the SPD Fatal Incident Protocols and Deadly Force Review policy. The Commission received multiple presentations on SPD use of force policies and practices with regard to citizens with mental illness or developmental disabilities. Specifically, the Commission heard from Sergeant Sam Yamada and Jan Dobbs (Director of Crisis Response Services at Frontier Behavioral Health) on the SPD Crisis Intervention Training program, and from Community Resource Officers Wayne Downing and Shaney Redmon on the impact of CIT on their work. One individual commented during the public comment period.

May 22, 3:00 to 6:00 p.m. – All Commission members were present. The Commission continued its exploration of the SPD's use of force policies and practices with regard to citizens with mental illness or developmental disabilities. Dr. Matt Layton (Washington State University – WWAMI Spokane), Jan Dobbs (Frontier Behavioral Health), and Lieutenant Keith Cummings presented on the subject of excited delirium. City of Spokane Police Ombudsman Tim Burns provided his perspective on the SPD's engagement with mentally ill and developmental disabled citizens. Tamara Rossi and Dave Barrett from the Spokane House of Charity discussed the challenges associated with rendering services to special populations. Two individuals commented during the public comment period.

June 7, 3:00 to 6:00 p.m. – All Commission members were present, except Susan Hammond. Commissioner Hammond later viewed a recording of the session. The subject of the meeting was citizen/independent oversight of the SPD's use of force. Tim Burns, City of Spokane Police Ombudsman, presented on the history and functions of his office, and shared recommendations for improvement. Pierce Murphy, Community Ombudsman for the City of Boise, presented on how his office carries out its charge to

oversee the work of the Boise Police Department. Five individuals commented during the public comment period.

June 28, 1:00 to 4:00 p.m. – All Commission members were present. The Commission received a presentation from Michael Painter, Director of Professional Services for the Washington Association of Sheriffs and Police Chiefs, on the subject of WASPC accreditation for the SPD. The Commission was addressed by Spokane City Attorney Nancy Isserlis on the recent settlement of the Otto Zehm civil suit against the City. The Commission then received a presentation from Assistant City Attorney Mary Muramatsu on the role of the City Attorney’s Office in officer involved use of force incidents. Three individuals commented during the public comment period.

Following the release of the Commission’s draft report on December 20, 2012, public comments were solicited and received via email and through two public meetings held specifically for the purpose of gathering public comments. The first meeting was held in the Spokane City Council Chambers on January 16, 2013, from 2:00 to 4:00 p.m. The second meeting was held at the Northeast Community Center in Spokane from 2:00 to 4:00 p.m. Numerous comments were received at each meeting. Appendix F – DVD-R.

## **IV. RECOMMENDATIONS**

The Commission’s recommendations are organized under four headings – Culture, SPD Policies and Practices, Civilian Oversight, and City Administration. In each instance, a discussion follows the recommendation. The Commission’s recommendations are the product of its independent research and review. In the case of the majority of the recommendations, the Commission does not comment on the budget implications of the proposed activity due to the fact that the Commission is not staffed to undertake this work.

The recommendations are not presented in ranked order of importance. Rather, the recommendations are presented in the order that follows how the issues presented themselves to the Commission. Each recommendation is expected, if implemented, to have a positive effect on making Spokane a safer community for both citizens and SPD officers.

### **A. Culture**

An organization’s culture is the sum total of its past and present assumptions, experiences, philosophy, and values. It is drawn from the collective attitudes, beliefs, customs, and values of its members. It can affect, among other things, the way the organization carries out its duties, how it treats its internal members and external constituencies, and how it reacts to changing circumstances. The health of this culture

is critical to the performance and efficient operation of the organization. In light of the fact that police officers have the lawful authority to use force, including deadly force, against their fellow citizens, it is incredibly important that a police department's culture foster respect for the law, a commitment to public service, and respect for the rights and dignity of the citizenry.

Throughout the work of the Use of Force Commission many have shared, in public sessions and private conversations, the opinion that the SPD has a dysfunctional organizational culture. In many of these instances, the occasion of SPD officers (reported to be fifty in number) saluting Karl Thompson as he was taken into custody by federal marshals after his pre-sentencing hearing on November 4, 2011, was offered as an example of an unhealthy SPD culture. Additionally, and understandably, the Otto Zehm case, including the circumstances of his death and the response of the SPD leadership, was also frequently mentioned.

The Commission has its own concerns about the health of the SPD's culture. Appreciating that the organization is made up of many individuals of good faith who are doing their best in a noble profession, the Commission nevertheless sees room for improvement in the department's underlying culture. In encounters with SPD members, some members of the Commission were struck by a sense of demoralization or defensiveness by some within the ranks and, at the same time, a lack of appreciation for the extent of the breach of trust that has occurred between the SPD and the community that it serves. The Commission believes that the SPD's culture needs to be improved when it comes to issues of professionalism, transparency, public mindedness, and generosity of service, especially towards community members from marginalized populations. The Commission is confident that public support in the department would move in tandem with improvements in the health of the Spokane Police Department's culture.

### **Recommendation #1 – Conduct a culture audit of the SPD.**

The City should retain qualified professionals to perform an institutional audit of the SPD's culture and its influence on employee behavior. This audit should enable the Mayor and the Chief of Police to determine whether officers and civilian employees think, feel and act the way leadership believes they should, and it can provide a baseline for future improvements.

The goal of the culture audit would be to secure a map of the formal and informal systems that permeate the work and the workplace. It should illuminate the SPD's overall working environment, identify unwritten norms and rules, and highlight possible barriers to effective work practices and communication. Without intending to limit other possible lines of inquiry, it would be helpful if the audit explored: the generally held beliefs among employees regarding the department's mission, values, goals and management practices; the department's informal motivational systems; the informal centers of power and influence within the SPD, to include alliances and coalitions; how



critical information is shared across the department and with City administration; and, who the respected employees are at all levels within the SPD.

**Recommendation #2 – Bring greater transparency to the City’s negotiations with the Spokane Police Guild and the Spokane Police Lieutenants and Captains Association.**

Many of the conversations that Commission members have experienced around the issue of the SPD’s culture have included references to the Spokane Police Guild and the Spokane Police Lieutenants and Captains Association. An overwhelming majority of those references have blamed these collective bargaining units for what the speaker believes is an unhealthy culture within the SPD. Even if that opinion is inaccurate on one or both accounts, the perception still remains that the bargaining units within the SPD are having a negative influence on the department’s operations, its reputation, and its credibility within the community.

The Commission encourages the City to be as open as legally possible regarding its negotiations with the Spokane Police Guild and the Spokane Police Lieutenants and Captains Association. At a minimum, the Commission encourages City representatives to meet with the community to vet important issues that will be part of any negotiations prior to the commencement of collective bargaining and to hold public sessions after the negotiations to directly engage with the community regarding outcomes. It is critically important that City leadership and Spokane police officers fully understand, and feel the impact of, the reality that the SPD exists to serve and protect the citizens of Spokane within an economic framework that makes good fiscal sense for the community.

Related to this recommendation, the Commission believes that neither collective bargaining unit should use the bargaining process to extract additional compensation when confronted with the need to make work place condition changes that do not materially change their members’ job responsibilities. The Commission realizes that many of its recommendations could be defined as a change in work place conditions (e.g., deployment of body cameras, empowering the Ombudsman with investigatory power, etc.). While the Commission would expect that officers from all ranks would have an interest in making sure that such changes are carried out in the best way possible, the Commission discounts any suggestion that either bargaining unit should receive additional compensation and benefits as a condition for the implementation of such changes. The Commission urges that its recommendations be accepted or rejected solely because they either serve or fail to serve the best interests of the public.

The above discussion should not be interpreted as a lack of support on the part of the Commission for SPD officers, their right to be fairly compensated for their work, or their right to collective bargaining. The Commission fully recognizes the challenges faced by police officers and appreciates that the SPD is populated with professional men and women trying to do their best under difficult circumstances.

## **Recommendation #3 – Rewrite the SPD Mission Statement.**

The SPD's current Mission, Vision and Values statements declare:

Mission – Working together to build a safe community.

Vision – To become the safest city of our size in America.

Values of the Spokane Police Department:

Service - SPD strives to provide efficient, effective, and courteous service.

Pride - SPD is proud to serve the community through honorable and professional policing.

Dedication - SPD is dedicated to results through accountability and leadership.

Referring back to the idea that any police department should be supported by a culture that respects the rights and dignity of the citizens it serves, this sentiment should be explicitly reflected in the Mission Statement of the SPD. A Mission Statement is a declaration of the fundamental reason an organization exists, and in this instance it is to protect the citizens of Spokane from the criminal activity of others in a way that preserves constitutional rights and affirms human dignity. The current SPD Mission and Vision Statements both speak only to the issue of security and not to the issues of liberty, and gaining the trust and confidence of the community. Additionally, although the Values Statements call upon SPD officers to professionally render services to the community, there is nothing in those statements that explicitly provides the necessary counterpoints to the overwhelming emphasis on security.

## **Recommendation #4 – The SPD should secure WASPC accreditation.**

One of the best ways to create and maintain healthy organizational culture is to expose the organization to the regular review of external knowledgeable parties. This is what securing and holding accreditation from the Washington Association of Sheriffs and Police Chiefs (WASPC) would do for the SPD (which is not presently accredited). Having to satisfy 140 accreditation standards for both initial accreditation and reaccreditation, and having those efforts documented for public review would call on the SPD to place and keep itself in a space of continuous improvement. Most notably for present purposes, the department would have to embrace continuous improvement in areas that are directly relevant to the issue of the use of force.

WASPC (<http://www.waspc.org/index.php>) was founded in 1963 to lead collaboration among law enforcement executives to enhance public safety. In 1976 the Washington State Legislature directed WASPC to develop standards and goals for law enforcement agencies. The association has maintained an operational accreditation program since that time.

The current accreditation program was created in 2007 and is overseen by the WASPC Accreditation Committee, the Accreditation Commission and the organization's Board of Directors. The Committee is responsible for maintaining accreditation standards. The

Commission is responsible for reviewing accreditation on-site reports and making recommendations to the Board of Directors. The Board is responsible for conferring accreditation.

The purpose of the WASPC accreditation program is to help professionalize the law enforcement community by providing a review process for agencies to be certified as operating under best practices and standards. The program includes standards covering twenty major law enforcement areas. Those areas that have particular relevance to the subject of the use of force include Chapters 3 (Use of Force), 10 (Recruitment and Selection), 11 (Training), 13 (Code of Conduct), 14 (Internal Affairs), 15 (Patrol Function), and 19 (Prisoner Security).

There are two types of fees associated with the WASPC Accreditation program, application and on-site fees. The application fee for agencies is \$100. On-site assessment fees are related to the accreditation inspection process once assessors arrive at an agency, and vary by department and availability of assessors. Agencies seeking accreditation agree to pay the travel costs associated with bringing in assessors from around the state and the WASPC employees staff time needed to facilitate agency accreditation. It should also be anticipated that significant SPD staff time would need to be devoted to securing and maintaining accreditation.

#### **Recommendation #5 – Ensure corporate ownership of the SPD Policy Manual.**

In private conversations and public presentations, numerous SPD officers, including members of the department's command staff, referred to the SPD Policy Manual as the "Lexipol manual." Additionally, prior to the publication of the Commission's draft report the link on the SPD's web page to its manual stated, "Click here for the Lexipol Policy Manual." The continuing reference to Lexipol comes from the fact that the SPD engaged the services of Lexipol, a risk management company, in creating the current SPD Policy Manual and continues to subscribe to that service for updates.

Notwithstanding Lexipol's involvement in providing source material for the department's manual, it is important that the department both take full ownership of the manual and affirm that ownership in the way it refers to the same. The SPD Policy Manual contains the departments Canons and Ethical Standards, and its governing operating policies. These are the SPD's guiding principles, not boilerplate content from Lexipol. Every officer needs to understand and accept this distinction, and be committed to the entirety of the SPD Policy Manual.

In multiple locations in the remainder of this report the Commission notes instances where the department's actions are inconsistent with the dictates of the policies contained in its manual. Additionally, in her report, Ms. O'Linn concludes that the SPD needs to do a better job of expeditiously revising the SPD Policy Manual as updates are released by Lexipol and systematically tracking and complying with policy provisions across the entire force. Appendix C at 30. The Commission is confident that such concerns would diminish if the department took full ownership of its manual.

**Recommendation #6 – Explicitly link SPD Canons and Ethical Standards to hiring decisions and all force management actions.**

The SPD's Canons and Ethical Standards speak to how each officer is expected to conduct him or herself on a daily basis in carrying out the department's mission. Accordingly, it is imperative that these Canons and Ethical Standards be highly visible and concretely affirmed in the on-going life of the department. Of particular relevance to the work of the Commission, the SPD's Canons and Ethical Standards explicitly promote values and practices that are intended to ensure that SPD officers only use force when absolutely necessary and legally permissible.

The SPD should test and screen applicants for their willingness and ability to comply with the department's Canons and Ethical Standards. The Chief of Police should be personally responsible for ensuring that only those applicants are hired onto the force that possess characteristics that will enable them to internalize and practice the values expressed in the department's Canons and Ethical Standards.

The SPD should acknowledge and reward behavior that is consistent with the values expressed in the Canons and Ethical Standards. Progression through the Field Training Officer Program, moving from probationary to regular status, positive performance evaluations, promotions, and commendations should all be explicitly tied to compliance with the Canons and Ethical Standards. The department has policies and procedures governing all of these activities that draw attention to values and practices that can be found in the Canons and Ethical Standards. However, there is not sufficient intentional and comprehensive congruence between those policies and procedures and the content of the Canons and Ethical Standards (e.g., citation to the relevant Canon and Ethical Standard when awarding commendations). No one should be left with any doubt that in order to advance and be recognized within the SPD, one must embrace and live the values expressed in the department's Canons and Ethical Standards.

Correspondingly, the department should also connect instances of unfavorable behavior to the failure to practice the values articulated in the Canons and Ethical Standards. For example, citizen and internal complaints, whether processed through Internal Affairs or the Office of the Police Ombudsman, should associate the complained of behavior with the relevant Canon and Ethical Standard. Likewise, unsatisfactory performance evaluations and department disciplinary actions should be explicitly connected to the failure on the part of the officer receiving the negative outcome to uphold the dictates of the Canons and Ethical Standards.

The constant reinforcement of the critical importance of adherence to the SPD Canons and Ethical Standards will improve officer performance and improve the overall culture of the organization. These outcomes will, in turn, improve public safety and enhance the public's respect and confidence in the department.

## B. SPD Policies and Practices

The Commission appreciates the cooperation extended to it and to its expert consultants by SPD officers throughout the organization. The members of the Commission have been impressed by the professionalism and courteousness of so many of the officers that have aided it in its work. The Commission's task would have been far more difficult without the assistance of these public servants.

### **Recommendation #7 – The Chief of Police and his command staff should actively engage the community in an ongoing dialogue about the department.**

The Chief of Police is the face of the department as its main representative and advocate to the community. The Chief must seek out community leaders and forums where an ongoing dialogue about the department can occur. Members of the department's command staff should participate in this effort as well. The public must know that the department is approachable and accessible, and that its leadership will take seriously and respond to the public's concerns.

### **Recommendation #8 – Ensure complete understanding of the governing legal standards for the use of force.**

The event of a police officer using force against a citizen unfolds against a constitutional backdrop designed to protect both the citizen and the officer. The use of excessive force in the course of an arrest, investigatory stop, or other seizure violates the Fourth Amendment to the United States Constitution. *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). Courts analyze claims of excessive force under the objective reasonableness standard -- balancing the nature and quality of the intrusion of the individual's Fourth Amendment interests against the legitimate governmental interests at stake. *Id.* at 394-96; *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9<sup>th</sup> Cir. 2003). Assessing the reasonableness of an officer's use of force is a fact-dependent inquiry based on the "totality of the circumstances." *Graham*, 490 U.S. at 394-95. *Graham* framed the issue to be whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation. *Id.* at 396. In weighing the government's interest in the use of force, courts will examine, among other relevant factors, whether the subject posed an immediate threat to officer or public safety, the severity of the crime at issue, whether the suspect was actively resisting arrest or attempting to escape, and whether law enforcement could have used other methods to accomplish its purpose. *Id.*; *Davis v. City of Las Vegas*, 478 F.3d 1048, 1054-56 (9<sup>th</sup> Cir. 2007). The Commission is concerned that these legal rules are not as well understood across the SPD as they need to be.

At the beginning of its work in February, the SPD provided the Commission with a copy of what was purported to be the current version of the department's Defensive Tactics Manual (DTM). The DTM serves as a course reference for SPD Academy training, is used by officers for self-improvement, and is an important defensive tactics resource document for the entire department. The version of the DTM provided to the

Commission included the following sentence in its introduction under the heading *Use of Force*: “If that evaluation (i.e., an assessment of threatening behavior by a suspect) leads the officer to believe that the application of deadly force is his only means of protecting himself or others, then he is authorized, pursuant to departmental policy, to employ such (i.e., deadly) force.” (parentheticals and emphasis added) This sentence, in the context of the material that surrounds it, is an incorrect statement of the relevant legal standard. The sentence casts the evaluation of an officer using deadly force as being dependent upon that officer’s subjective interpretation of the situation instead of such being dependent upon an objective interpretation as required by law.

It was discovered in October by one of the Commission’s expert consultants that the DTM provided to the Commission in February was a version that was, in the words of one SPD officer, “decades old”. The current version of the SPD DTM, adopted in 2007, does not include the language cited above. While this somewhat mitigates the concern raised in the previous paragraph, it does not eliminate it altogether. It is the case that the SPD officers most intimately involved with training affirmed to the Commission the validity of the DTM provided to it in February. The fact that this could occur raises concerns regarding the attention the department is giving to this critical training and operational resource.

In multiple locations throughout her report, Ms. O’Linn identifies instances of SPD training materials containing out-of-date or incorrect information regarding the rules governing the use of force by police officers. For example, Ms. O’Linn identified deficiencies in the department’s current DTM regarding the use of force against purely passive resistors (Appendix C at 8), in the current DTM’s force options scale (*Id.*), and in the case law that has been used in the SPD’s use of force training presentations (*Id.* at 9). The culmination of these, and other similar findings, prompted Ms. O’Linn to comment that the department’s use of force training materials require systematic attention to on-going policy and training updates. *Id.*

On more than one occasion, the Commission was addressed in the public comment section on the subject of SPD Officer Terry Preuninger’s testimony at the Karl Thompson trial. Officer Preuninger, the patrol tactics instructor for the SPD Academy, testified for the defense at the Thompson trial on the subject of Officer Thompson’s use of force in the encounter with Otto Zehm. While under cross examination by the prosecuting attorney, Officer Preuninger provided answers that suggest the proper standard of review is to focus on the subjective beliefs of an officer when assessing that officer’s use of force. Again, the proper legal standard is the objective reasonableness standard.

The importance of SPD officers understanding and operating under the correct legal standard when it comes to the use of force is two-fold. First, the objective standard exercises a check on a police officer’s ability to use force against a citizen that is not present under the subjective standard. This check creates a greater likelihood that force will only be used in those circumstances that truly demand its use. Second, as SPD officers will be held to account to the legally valid objective standard, they need to

understand that standard and be prepared to follow it in their work. To not prepare them in such a fashion is a great disservice to their own interests and to the interest of public safety.

**Recommendation #9 – Update and maintain certifications of the department’s defensive tactics instructors.**

The Washington State Criminal Justice Training Center (WSCJTC) is tasked by Washington State law to “[p]rovide programs and standards for the training of criminal justice personnel.” RCW 43.101.020. As the main criminal justice training entity in the state, WSCJTC administers and manages approximately two hundred programs. Some of the more notable programs are the Basic Law Enforcement Academy, the Corrections Officers Academy, the Peace Officer Certification course, and the certification of law enforcement instructors in particular fields. Pursuant to the latter function, the WSCJTC is responsible for certifying defensive tactics instructors within the State of Washington. The SPD presently does not have any defensive tactics instructors whose WSCJTC certification is current. In fact, no officers in the department have received instructor re-certification since 2007. Appendix C at 12.

WSCJTC re-certification programs are in place to insure that instructors have access to up-to-date training materials and techniques, and to the current rules, including case law, governing the use of force by police officers. There is a significant need for the SPD to adopt a plan that enables its instructors to be re-certified in their respective areas and to then be able to consistently maintain that certification. Appendix C at 11-12. Closely related to this need, the Commission endorses Ms. O’Linn’s recommendation that the SPD invest in securing master level status for two of its instructors so as to maintain an appropriate level of internal expertise that can provide instructional updates and conduct re-certifications for the department’s other defensive tactics instructors. *Id.*

**Recommendation #10 – Review current officer staffing levels and practices to ensure that sufficient patrol officers are available to maintain public safety.**

Providing precise recommendations for staffing a complex organization like a police department requires expertise, time, and support not possessed by the Commission. Nevertheless, over the course of its work the Commission has become aware of two facts which raise concerns about the ability of the SPD to deploy adequate numbers of patrol officers to maintain acceptable levels of safety for the public and members of the department. First, the SPD currently has a working force that is less than what it possessed in the mid-1990s despite the department having to work in an environment of greater challenge and complexity. Second, the current patrol shift configuration is constrained by an inability on the part of the SPD leadership to change shift configurations without negotiating with the Spokane Police Guild.

There is a direct correlation between the numbers of patrol officers on the street and the safety of the community and those officers. Inadequate staffing of officers compromises

public safety in at least two ways. First, insufficient numbers of officers means delayed response times when citizens need assistance. Second, insufficient numbers of officers means that in some circumstances a single officer or small numbers of officers have to respond with force that would otherwise be unnecessary if greater numbers of officers were available to contain a volatile situation without resorting to force. SPD and City leadership are strongly encouraged to ensure that the department has the necessary number of officers and that it deploys those officers in a way that maximizes public safety.

### **Recommendation #11 – Improve training plans and practices.**

The reports submitted by Ms. O'Linn and Mr. Gennaco contain numerous recommendations related to improving the SPD training program. As stated above, the Commission has chosen not to repeat all of those recommendations in its report. The Commission does, however, want to highlight themes that have emerged regarding the SPD training program.

Recommendation #5 calls on the SPD to take corporate ownership of the SPD Policy Manual. One way of furthering this goal would be to cross-reference the department's training materials to the applicable policy provisions contained in the department's manual. Such a practice would also consistently reaffirm the justifications and limitations that govern the right of SPD officers to use force in the course of their duties. One example of this would be to revise the department's DTM so that its various parts cite to the applicable use of force policy sections in the SPD Policy Manual. Appendix C at 8. Another example would be to require reality based training (RBT) scenarios to include opportunities to test knowledge and understanding of the departmental policies governing the use of force. *Id.* at 10-11; *See also* Appendix D at 9.

Related to the practice of cross-referencing material, there is a need for the SPD to better reconcile training plans and practices with departmental policies. For example, SPD Policy Manual section 436.2.2 requires that Field Training Officers (FTO) engage in at least two hours of training per month. Ms. O'Linn's reports that this requirement is apparently not being met and she recommends that the discontinued once a month FTO meetings be reinstated as a forum for providing training updates and exchanging information regarding how trainees are progressing through the FTO program. Appendix C at 27.

The Commission is concerned that helpful, even essential, use of force/defensive tactics training modules are not being delivered with appropriate frequency. For example, the department does not require annual re-certification training on electronic control devices (ECD) (Appendix C at 14), and the current ECD training is lacking in regards to the law governing the use of ECDs and the tactical deployment of the device in ways that mitigate the application of force (e.g., cuffing under power, three-point stunning, etc.) (*Id.* at 16). Additionally, the department's policy regarding firearms training was recently amended to reduce the number of firearms training and qualifications per officer from four times annually to two. *Id.* at 21-22. This reduction in



training for such a basic defensive tactics weapon raises concerns regarding maintaining proficiency in marksmanship and decision-making (e.g., shoot, don't shoot), and in fostering understanding of the governing law and policy.

There is a need for the department to enhance its auditing of compliance with training requirements. Ms. O'Linn expresses concern in her report regarding the department keeping track of personnel who are out of compliance with defensive tactics training requirements due to those individuals coming off of leave or light duty status. Appendix C at 24. As a specific remedy for this problem, and as a general good practice, Ms. O'Linn recommends an internal audit at the beginning of the last quarter of each year of officer training records to confirm compliance with all state, city and department training mandates. *Id.* at 7. Ms. O'Linn recommends that a follow-up review of those officers that have yet to meet these requirements be conducted every thirty days thereafter until all officers are up-to-date with training requirements. *Id.*

### **Recommendation #12 – Establish a continuing Crisis Intervention Training program and adopt protocols for the deployment of CIT officers.**

Individuals who suffer from mental illness or who are under the influence of drugs or alcohol are relatively more vulnerable to the use of force by police officers due to the volatility of the encounters between those citizens and the police. In the absence of practices and strategies to de-escalate and control these encounters, they can escalate quickly to the detriment of the safety of both the citizen and the officers involved. In recognition of this reality, the law requires that police practices extend special consideration to individuals in mental health crisis. *See Bryan v. MacPherson*, 630 F.3d 805, 829 (9<sup>th</sup> Cir. 2010) (“The government has an important interest in providing assistance to a person in need of psychiatric care; thus, the use of force that may be justified by that interest necessarily differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.”); *Deorle v. Rutherford*, 272 F.3d 1272, 1282 (9<sup>th</sup> Cir. 2001) (officers must take into account the subject’s mental and emotional state before using force).

The Commission endorses that part of the Otto Zehm civil suit settlement that commits to all SPD officers undergoing Crisis Intervention Training (CIT). Such training for the officers, to include the department’s leadership, will increase public safety by providing SPD members with a better understanding of the conditions that often engender behavior which can be perceived as threatening and by providing officers with tactics to defuse or control such situations without having to resort to dangerous levels of force.

In order for a CIT program to have long-lasting positive effects on public safety, the program must ensure that SPD officers receive refresher CIT at appropriate intervals and that all officers coming into the department, whether as an entry level or lateral hire, receive CIT in close proximity to the start of their employment. Additionally, to promote a department-wide commitment to the CIT program, SPD leadership should market the value of the training within and outside the department (e.g., promote officer

testimonials on how the application of CIT makes them more effective in their work, invite the media to attend training, etc.).

One component of an effective CIT program that deserves particular attention is the subject of Excited Delirium. Excited Delirium is a life-threatening medical emergency, typically in the context of stimulant drug abuse (e.g., cocaine, PCP, methamphetamine, etc.), characterized by an individual evidencing agitation, excitability, confusion, paranoia, and bizarre behavior. Officers are frequently called upon to make instantaneous decisions with regard to both recognizing the condition and in containing the chaos and danger its occurrence creates for the citizen and others. A coordinated response with paramedics and a “contain rather than restrain” approach with sufficient officer assistance is often imperative to prevent sudden death. Excited Delirium training, in the context of a CIT program, should, at a minimum, include instruction on: the signs and symptoms of the condition; the imperative to call for emergency medical assistance as soon as possible; the need to contain, if possible, rather than restrain an individual suffering from Excited Delirium; the need to use communication tactics that calm rather than confront; the need to have sufficient officers available to control the situation; and, how to report and collect accurate data on the incidence of Excited Delirium.

Once a CIT program is in place, it is imperative that the SPD establish protocols that maximize the benefits of the training and which continuously assess the efficacy of the department’s efforts in dealing with these at risk populations. The department should ensure that all shifts have adequate numbers of crisis intervention trained officers, create dispatch guidelines that properly deploy those officers, and establish the on-scene primacy of crisis intervention trained officers in situations that call for their expertise. The SPD should create a reporting system that comprehensively and accurately collects data on all contacts with citizens who are suffering from a mental illness or who are under the influence of drugs or alcohol. In turn, that data should be used to improve its CIT program and how the department uses crisis intervention trained officers.

While the Commission endorses CIT for all SPD officers, it anticipates that, as with the acquisition and deployment of any particular skill set, there will be variation in the competency and commitment levels of SPD officers to this program. This variety will undoubtedly make itself apparent over time. In light of this, the Commission encourages SPD leadership to be diligent about leveraging the talent and commitment of those officers who prove to be most adept at dealing with persons in crisis due to their deteriorating mental health and/or their use of alcohol or drugs. The Commission believes that the greatest possible positive effect on public safety would be achieved by creating a cadre of these officers who receive advanced and continuous CIT, are deployed in a way that provides maximum coverage across all shifts, are given the authority to use their skills on-scene to best effect, and whose work is publicly recognized and appropriately supported by SPD and City leadership.

**Recommendation #13 – Affirm the de-escalation of potentially violent encounters as a primary goal of the department.**

The Commission has been exposed to a variety of statements from members of the SPD to the effect that it is the citizen in an officer/citizen encounter who determines how much force the officer will use. This position was endorsed in private conversations with various SPD officers and in the public testimony presented by Operations Bureau Commander Major Frank Scalise during the April 10, 2012, Commission hearing. Additionally, Officer Terry Preuninger, the patrol tactics instructor for the SPD, expressed similar sentiments in his testimony in the Karl Thompson trial when he said that an officer should “come in at a level above the level of force that [a] person [is] going to direct at you.” Thompson Trans. at 2378. Finally, Mr. Gennaco noted in his report that the department’s analysis of a November 2010 deadly force incident stated that the deceased subject created the situation that led to the use of deadly force against him. Appendix D at 12.

Mr. Gennaco reports that it is not unusual for police officers to express that the citizen is the person who exercises greatest control over the amount of force used by an officer. *Id.* However, Mr. Gennaco goes on to state:

*A progressive policing model equips officers with strategies that do not allow subjects to dictate the response. It is the peace officer that must effectuate an effective plan of detention that avoids the use of deadly force if at all possible and still safely takes a dangerous individual into custody. The police should dictate the situation; not the subject, and should approach any tactical situation with that mindset. Id.*

During the Commission’s May 22, 2012, public hearing Tamara Rossi and Dave Barrett of the Spokane House of Charity discussed the challenges associated with rendering services to special populations. That testimony included a discussion of the Management of Aggressive Behavior (MOAB) training program. MOAB is used by law enforcement, corrections, and mental health providers across the country and locally to reduce the need for restraint and force in dealing with high risk, agitated, and escalating behaviors in individuals. MOAB teaches how to let people burn out their verbal escalation without using force to stop behavior, and is founded on the understanding that individuals respond to personal space, voice tone, and affect even when in an extremely agitated condition.

On June 22, 2012, the Las Vegas Metropolitan Police Department adopted an extensive revision of its use of force policies. Part IX of that revision addressed the issue of de-escalation. As a basic principle, the new policy acknowledged that not every potential violent confrontation can be de-escalated, but it does affirm that “officers have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.” Las Vegas Metropolitan Police Department, General Order 021-21 at 7 (June 21, 2012). The policy directs officers to “use advisements, warnings, verbal persuasion, and other tactics and alternatives to

higher levels of force” while performing their work “in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.” *Id.* at 8.

The practices emphasized in the preceding two paragraphs stand in contrast to the expression that the citizen is the person who exercises greatest control over the amount of force used by a police officer. It is critically important that SPD officers are prepared not just to win the conflict, but also to avoid such in the first place. The Commission strongly encourages the SPD to explore using the MOAB program for public safety officers to bring greater intentionality, rigor, and accountability to the SPD’s de-escalation training outcomes. In the absence of using the MOAB program, the SPD should ensure that it adopts a certified de-escalation training program with measurable outcomes that both impresses upon its officers the obligation to do everything in their power to de-escalate potentially violent situations and prepares them to use de-escalation techniques, when appropriate and feasible, to reduce the need for force.

#### **Recommendation #14 – Improve the use of force reporting system.**

A police department’s use of force reporting system should be designed to track compliance with legal and policy restrictions on the use of force against the citizenry and to provide information and insight that can be used to improve departmental training and communication. There is a strong correlation between the confidence a community has in its police department and that department’s practice of ensuring that all use of force is consistently reported and monitored. A department’s failure to meet reasonable expectations in this regard sends a message of indifferent institutional concern and oversight regarding the use of force. Alternatively, a department that proactively and effectively identifies and responds to inappropriate conduct not only is better situated to enhance officer performance and create a robust culture of reflection and improvement, it is also better situated to build public confidence and protect the agency from frivolous complaints and litigation.

According to SPD policies 300.4 and 300.5 an officer must complete a use of force report when his or her application of force appears to have caused physical injury, a subject has expressed a complaint of injury or been rendered unconscious, a level II lateral neck restraint or control device has been utilized, or there has been an intentional discharge of a firearm. In such instances SPD policy 300.5 requires a supervisor to: respond to the scene (if needed); interview involved officers, witnesses, and other involved persons; collect evidence (when appropriate); and, prepare and submit a use of force report through the chain-of-command, to include completing the recommendation section on the report. In the event a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the policy’s requirements as possible.

A fundamental element in a police department’s use of force reporting system is the definition of what types of incidents trigger reporting requirements. The previous paragraph details those triggering events within the SPD. In his report, Mr. Gennaco

recommends that the criteria for prompting a use of force report be expanded to include: “head strikes, knee strikes, elbow strikes, open and closed hand strikes; baton/flashlight strikes; all applications of less lethal devices (OC spray, foam or wood rounds, beanbag rounds, etc.); carotid neck restraint (Level I) ...; [and] all takedowns and prone handcuffing incidents that result in any head or facial injury.” Appendix D at 28. Mr. Gennaco advances this recommendation as a means of improving the department’s ability to evaluate practices, policies, and individual officer actions, and to improve the tracking of the type and frequency of uses of force. *Id.*

The Commission endorses Mr. Gennaco’s recommendation for expanding the criteria that trigger use of force reports within the SPD. Additionally, the Commission recommends adding the drawing and directing of a firearm at a subject as a triggering event for a use of force report. Such an action is a significant use of force by an officer to gain compliance over a subject and can be expected to generate great fear on the part of the subject. Accordingly, this use of force should be reported as such with a clear articulation as to why the firearm was pointed at a citizen.

As recounted above, SPD policy 300.5 requires a supervisor to respond to the scene of a reportable use of force “if needed”. Recognizing that staffing limitations preclude supervisors from responding to all scenes where reportable use of force occurs, the Commission recommends that, to the maximum extent possible, supervisors do respond to all scenes wherein an officer’s use of force has resulted in an injury to another. Once present at any use of force scene, consistent with SPD policy 300.5 and expanding upon the same, the supervisor should ensure that a full inquiry of the event is conducted, to include: identifying, separating, and interviewing all involved witness officers; interviewing those subjected to force; directing the canvassing for witnesses and the taking of statements from all witnesses; collecting evidence surrounding the use of force (e.g., photos of injuries, EMT and hospital reports, Taser™ downloads, diagrams, status of any charges against the subject, etc.); reviewing officers’ reports for completeness, accuracy, and quality; and, assessing whether further investigation is required. In the event a supervisor is not able to respond to a scene, it is critical that a supervisor conduct a thorough and timely review of the completed use of force report and all available evidence to ensure a full and accurate account of the incident consistent with the requirements just listed. Finally, in an effort to take full advantage of the valuable perspective that supervisors have on use of force incidents, SPD policy should require supervisors to document their observations about the force used and any related training, tactics, policy, or supervision issues. Appendix D at 18 & 23.

Although it is included within the previous paragraph, one enhancement to the current SPD use of force reporting system that deserves highlighting is the need to expand the reporting policy so as to require that officers document all that they observe in reported use of force incidents. Mr. Gennaco details an instance in which two officers used force against a subject that was witnessed by a third officer. The two officers who used force did not report the use of force by one another and the witness officer did not file any report at all. Appendix D at 17. Similarly, Mr. Gennaco documents an instance of a Spokane Police Guild attorney reminding an officer that the officer was instructed to

report only what he did and not what other officers might have done. *Id.* A far better practice would be to require officers who are trained to be effective witnesses to use that skill to provide a more complete record of how a use of force incident unfolded.

### **Recommendation #15 – Improve investigation practices in use of force incidents.**

An open, impartial, and effective process of receiving and investigating citizen and officer complaints regarding the inappropriate use of force serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence and respect in the department. Improving SPD investigative practices in use of force cases is an important element to accomplishing all of these positive outcomes.

Mr. Gennaco's exploration of various departmental policies and practices surrounding the use of force required him to review multiple SPD investigative files associated with the work of Internal Affairs and with the administration of Administrative Review Panels and Deadly Force Review Boards. Out of this review, Mr. Gennaco has advanced a number of recommendations that focus on improving various SPD investigative practices. While the Commission encourages the SPD to give serious consideration to all of the findings and recommendations contained in Mr. Gennaco's report, the Commission wishes to call particular attention to the following matters associated with the investigation of use of force cases:

- a. Recognizing the inherent seriousness and formality of the matters under review, the SPD should ensure that all investigations refer to those involved by their last names. Appendix D at 3, 13 & 15.
- b. Ensure that investigators avoid the use of leading questions in the interest of objective fact gathering. *Id.* at 4-5, 16, 25 & 27.
- c. Ensure that officers involved in use of force incidents are segregated from each other and from any others who might potentially contaminate their testimony until such time as their statements are taken. *Id.* at 4 & 15.
- d. All officers involved in a use of force incident, both those exercising force and those witnessing the same, should be interviewed in detail (i.e., beyond a tactical briefing at the scene) on the date of the incident about their observations and actions. Appendix D at 6 & 16. In the event an officer refuses to participate in that interview, they should be subject to a compelled administrative interview as close in time to the incident as possible. *Id.* at 6 & 16.
- e. Ensure that all reasonable efforts are made to identify and interview potential witnesses to all use of force incidents. *Id.* at 25 & 27.
- f. Ensure that all relevant evidence (e.g., status of charges sought against subjects, evidence of the presence or absence of injuries, etc.) is gathered and documented. *Id.* at 25 & 27.
- g. Whenever possible, avoid collecting witness statements or even follow-up responses from witnesses through methods (e.g., email, voice mail, etc.) other than in-person interviews. *Id.* at 25-27.

**Recommendation #16 – Improve the administrative review of the use of deadly force by officers.**

Policy 302.2 of the SPD Policy Manual requires an Administrative Review Panel (ARP) to review the completed investigative file in all cases of an officer using deadly force. The purpose of that panel's work is to make recommendations to the Chief of Police as to whether the use of force was consistent with departmental policy. In cases where the use of deadly force by an officer has resulted in injury or death to a person, the department will convene a Deadly Force Review Board (DFRB) to conduct an administrative review of the incident and make recommendations regarding tactical and training considerations, the quality of supervisor in the incident, equipment performance, and any other relevant observations or considerations. SPD Policy Manual 302.3 *et seq.*

In his review of a November 2010 deadly force incident that involved the discharge of a firearm by six different law enforcement officers, Mr. Gennaco noted that the ARP's report on the incident contained a single paragraph which concluded that all involved officers' use of force was in compliance with departmental policy. Appendix D at 7. This was done notwithstanding that the officers arrived on the scene at different times during the encounter with the subject, from different directions, witnessed different behavior by the subject, and offered various specific justifications for their individual use of deadly force. *Id.* A far better result would be for the ARP to carry out an exacting force analysis of each officer's actions and compare such to the department's training and policy expectations and requirements. *Id.* at 7 & 16.

A DFRB was also convened to review the November 2010 deadly force incident. Two issues that go directly to public and officer safety that were identified by Mr. Gennaco in connection with that review were the consideration of the twenty-four rounds fired by the officers (out of twenty-six total rounds) that failed to strike the subject and the existence of a cross-fire situation in the encounter. Appendix D at 9-10. In regards to the expended rounds, Mr. Gennaco recommends that the DFRB examine each officer's use of deadly force individually and arrive at an assessment of whether the officer was tactically sound and proficient when he discharged his weapon. *Id.* at 9 & 16. Similarly, Mr. Gennaco considered the DFRB's review of the cross-fire issue to be incomplete due to its failure to sufficiently explore the question based upon the placement and actions of all of the officers involved in the incident. *Id.* at 10 & 16. Recognizing that a single instance does not necessarily represent a consistent pattern, the Commission nevertheless calls for the SPD to reflect upon Mr. Gennaco's findings and to ensure that DFRBs always thoroughly explore deadly force encounters for lessons learned that will enhance public and officer safety.

**Recommendation #17 – Create and deploy a fully developed Early Intervention System.**

Operating under the premise that small issues will lead to big problems if left unattended, an Early Intervention System (EIS) is a valuable administrative tool that can enhance accountability and integrity in a law enforcement agency. An EIS is a data-

based management tool designed to identify officers whose behavior is problematic and to spur intervention to correct that performance before the situation escalates into a formal disciplinary action or worse. A department's EIS must be part of its larger efforts to support and improve officer performance. Frontline supervisors are key actors in the use of an EIS, but the Chief of Police and his command staff must be committed to the full deployment of the system.

The information collected as part of an EIS can be as expansive as a department desires. Of particular relevance to the issue of the use of force, an EIS should track all reported uses of force, searches and seizures, number of arrests, and any civilian or internal complaints, civil suits, or criminal charges regarding the use of force. Additionally, recognizing that aberrant behavior in a multitude of performance areas can be a precursor to a use of force problem, an EIS system should capture other information that could identify outliers in the department. This could include, for example, such things as unusual numbers of pedestrian stops, the failure to meet training obligations, disciplinary actions, negative performance evaluations, and any civilian or internal complaints, civil suits, or criminal charges against an officer for matters other than the use of force.

It is important to make sure that EIS thresholds are set at an appropriate level so as to initiate relevant and effective intervention (i.e., not so high that intervention never occurs or occurs too late). For example, recognizing that the officers who are of particular concern are indeed the outliers on the force, thresholds for triggering intervention can be set to capture approximately 3-5% of the line officer population. Additionally, the criteria for the system should take into account the need to create single-event thresholds for occurrences that are so critical that they require immediate department intervention and should implement rolling thresholds, thereby ensuring that an officer who has received an intervention is not permitted to engage in the initial threshold number of additional events before again triggering the EIS. Finally, the structure of the system must ensure that interventions follow close in time to the actual triggering event.

Once the EIS is triggered for an officer, it is critical that the supervisor conduct a thorough review, take appropriate action, and be diligent in tracking resolution. The supervisor should review any triggering event in its entirety and prescribe appropriate resolutions or training opportunities specifically targeted to the behavior that prompted the intervention. At a minimum, supervisors should be required to review the EIS files on each subordinate every two months and a response by a supervisor should be required within two weeks of detecting a red flag. Thereafter, the supervisor should check the EIS on that officer every month for twelve months to determine if the response has satisfactorily resolved the issue. In each instance of a red flag, the supervisor should document what action was taken and document the event in at least the subject officer's next performance evaluation and the officer's next promotion recommendation. Ideally, a regular audit of the system would be conducted to make sure that it is being optimally deployed.



**Recommendation #18 – Equip officers with body cameras.**

Providing officers with body cameras will preserve important evidence of the circumstances surrounding encounters between the SPD and citizens. Although no recording can be a perfect record of the totality of an event, body cameras will help SPD officers gather evidence, improve the quality of their reports, and protect them from false citizen complaints, and they will provide valuable evidence when the circumstances of an encounter are called into question by any source.

**Recommendation #19 – Explore standardizing the weapons carried by officers in the line of duty.**

The Commission is aware that there is variation in the types of weapons that SPD officers are allowed to carry. For example, officers are allowed, with permission, to carry non-standard firearms or batons. While some have expressed a concern about this practice, the Commission is not in a position to state that it should be continued or disbanded. Rather, the Commission recommends that the Chief of Police review the matter and report to the Mayor on whether weapons standardization should be implemented, and if not, then why not.

**C. Citizen Oversight**

Although this report is organized in a way that this section is set apart from the earlier “Culture” section this should not take away from the fact that citizen oversight can, and should be, an incredibly positive force on the culture of a police department. Internally, in the absence of appropriate citizen oversight it can be difficult for individual officers to speak up in the face of peer pressure promoting a code of silence. Externally, a primary value of citizen oversight is its ability to bring transparency to the work of a police department, and thus, lessen distrust between the department and the citizens it serves. Holistically, a police force that welcomes independent citizen oversight can use that engagement as a feedback channel that leads to better insight into the department, better training, better community relations, increased officer morale, and, ultimately, an improved organizational culture.

**Recommendation #20 – Invest the Office of the Police Ombudsman with the authority and discretion to open and conduct independent investigations concerning the operations, actions, or omissions of the SPD.**

Investing the Office of the Police Ombudsman with the authority and discretion to conduct independent investigations is essential to both establishing objective oversight and building public trust. As a function of human nature, individuals who are part of a group are more likely to favor the interests of the group over “outsiders.” In the context of an investigation into a fellow group member’s alleged misconduct, the peer investigator is apt to be more selective about the investigation’s scope and depth, and may be inclined to avoid a transparent process. All of this behavior can compromise the

quality of the investigation and negatively impact the public's trust in the process and the institution. Conversely, the more independent the investigator, the more likely the investigation will be perceived to be credible to those involved and to the general public.

The ability of the Office of the Police Ombudsman to open and conduct an investigation should not be dependent on the receipt of a complaint from a member of the public. While the expectation is that most of the office's investigations would originate from such a complaint, the Office of the Police Ombudsman should have the authority to open an investigation when the Ombudsman has knowledge of evidence sufficient to form a reasonable basis for the investigation – whatever the source of the knowledge.

**Recommendation #21a – All City employees and those acting on behalf of the City should be required to cooperate fully and truthfully with the Office of the Police Ombudsman.**

**Recommendation #21b – Subject to legal privilege, the Office of the Police Ombudsman should be given full, unrestricted, and complete access to any and all City information, files, evidence, or other material which the Ombudsman deems necessary to the performance of his/her duties.**

The ability to conduct an independent investigation is severely undermined if the Office of the Police Ombudsman does not have the authority to require the cooperation of all City employees and agents, and to secure all necessary records. All City employees and agents, as conditions of employment, should be required to truthfully and completely answer all of the Office of the Police Ombudsman inquiries and fully comply with all requests for records. Appropriate policies and procedures should be adopted so as to extend the protections put forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967) to employees who are required to appear and provide testimony (i.e., compelled statements related to an employee's job and job duties have immunity in any subsequent criminal prosecution of the statement maker).

Prior to conducting any investigative interviews of City employees or agents, the Police Ombudsman should give the employee a memorandum that clearly informs the employee of his or her obligation to truthfully and completely answer all questions asked by the Ombudsman as a condition of employment. If the Ombudsman determines, by a preponderance of the evidence, that a City employee has either knowingly provided false information to, or failed to cooperate fully with, the Office of the Police Ombudsman, the Ombudsman should contact the Chief of Police or appropriate department director and request that the employee be notified of his or her obligation to completely and truthfully cooperate with the Ombudsman. If, after being so notified, the City employee refuses or fails to cooperate completely and truthfully with the Ombudsman, the Ombudsman should file a formal complaint of misconduct against the employee with the Chief of Police or appropriate department director.

**Recommendation #22 – Create a Citizen Advisory Board for the Office of the Police Ombudsman.**

A Citizen Advisory Board should be established to provide oversight to the Office of the Police Ombudsman. The members of this Board (seven in total) should be appointed by the Mayor and confirmed by the City Council. The Board should be empowered, at a minimum, to: advise the Office of the Police Ombudsman on practices and policies; make recommendations regarding SPD complaint investigation practices, procedures, and policies; request review, monitoring, or inquiry into specific incidents or issues; and, assist the Ombudsman in community communication, outreach, and education.

**D. City Administration****Recommendation #23 – The Mayor should maintain an active and visible role in SPD oversight and administration, and in promoting the department to the community.**

As the elected executive of the City the Mayor should play a visible and active role in SPD oversight, administration, and public engagement. The Mayor appoints the Chief of Police. The Mayor should be an advocate for the entire SPD and for the Chief's administration. The success of the Chief is dependent, in significant part, upon the support of the Mayor.

The Mayor should have an active discussion with the community on the establishment of the proper resources for the department and what the community should expect in terms of greater or lesser levels of service associated with the City's budget. The Mayor should create forums where members of the community can ask questions about the department, express their opinions on the SPD's performance, and make recommendations for improvement.

The Mayor has an important role in recognizing and communicating to the citizens the many positive aspects of the SPD and in fostering the community's trust in, and respect for, its officers. The Mayor should seek opportunities to publicly honor officers who are recognized within the department for excellence in service and performance.

The public must know that the Mayor is personally committed to supporting a department that exemplifies professionalism, respect for others, and a high degree of service to the public. This is particularly important for the current Mayor and his leadership team who are being called upon to make changes within the department following Otto Zehm's death, Officer Thompson's conviction, and the aftermath of both.

**Recommendation #24 – The City Attorney’s Office should maintain separation of duties and functions between litigation support, employment law representation, and police legal advising.**

In her June 28, 2012, presentation to the Commission, Assistant City Attorney Mary Muramatsu explained how the City Attorney’s Office (CAO) assigns responsibilities when it comes to providing support to the SPD. That support is now organized around three activities: litigation support, employment law representation, and police legal advising. Litigation support and employment law representation are provided by the appropriate lawyers in the CAO Civil Division. Police legal advice is provided by an Assistant City Attorney who is assigned to the SPD for that function. This separation of duties is the appropriate way for the CAO to render services to the SPD. It ensures that the appropriate subject matter experts are providing direct support to the SPD, that the interests in one area are not unduly put above interests in another area, that conflicts of interest are mitigated, and that a broader understanding of the needs and challenges associated with the SPD is maintained within the CAO.

The organizational structure described above is new. From approximately 2005 until these changes were recently made, the SPD was advised in all matters by a lead attorney out of the CAO. That attorney served as the single point of primary contact for the SPD on all legal matters – litigation, employment, and general advice. It is the Commission’s position that the “lead attorney” model creates both real and perceived conflicts of interest that compromise the quality of service received by the SPD and that increase the City’s risk profile. The Commission strongly recommends that the lead attorney model not be re-established at any time in the future.

**Recommendation #25 – The CAO should adopt strict policies and procedures that ensure the office maintains appropriate distance from all criminal prosecutions of SPD personnel.**

The CAO has the responsibility of providing a defense for SPD officers facing civil law suits arising out of officers acting within the scope of their employment. The CAO does not, however, have the same responsibility when it comes to SPD officers facing criminal prosecution. As explained by Assistant City Attorney Muramatsu to the Commission, in that instance the CAO is supposed to remove itself from all involvement in the criminal case. The City Attorney should adopt policies and procedures that ensure the appropriate separation is observed in criminal prosecutions of SPD officers.

**Recommendation #26 – The CAO should take an active role in the development and updating of the SPD’s use of force policies, and the department’s use of force training materials and program.**

The use of force by a police officer is strictly regulated by legislation and case law implemented through SPD policies, training, and oversight. In light of this and in light of the concerns raised in Ms. O’Linn’s report regarding the weakness of the legal content in the department’s use of force training materials, the CAO should take an active role in

the development and updating of the SPD's use of force policies and in the entirety of the SPD's use of force training program. At a minimum, the CAO should be required to sign off on the department's use of force policies and any revisions to those policies, it should be required to periodically review and approve all use of force training materials, and it should assume primary responsibility for instructing on the law that regulates the use of force by a police officer. See also Recommendation #8.

## **V. CLOSE**

*"The police are the community and the community are the police." (Sir Robert Peel)*

For policing to be effective in a free society it cannot be a solitary activity. To protect public safety the police must have the public's cooperation and that requires that it first have the public's trust. Policing that is grounded in adherence to the U.S. Constitution, Washington State Constitution, other federal and state laws, and the duly adopted policies of the department will create an environment in which the community can build confidence and trust in its police department. All must understand that there is no "them" in the equation – there is only "us". Spokane and its police officers are all part of the same community, and all want the same thing – a safe and prosperous community.

While the focus of this Commission has been on those instances where SPD officers use force against civilians, the vast majority of interactions between the department and the public don't involve any force whatsoever. Opportunities for the SPD to build the necessary public trust that it needs when it comes under scrutiny for using force present themselves every day. It is critical that every member of the department commit himself or herself to adding to that trust in every encounter he or she has with a member of the Spokane community.

The Spokane Police Department, supported by City leadership, must operate as an agency whose members honor their oath to protect and serve the community. Human life must take priority over personal property, inconvenience, individual attitudes, and organizational culture. It is the hope of the Use of Force Commission that its recommendations, if implemented, will foster a better relationship between the SPD and the community, and thus, foster a safer Spokane for all.