



Written Testimony of

The Hon. Kathy Patterson

D.C. Auditor

prepared for the

Council of the District of Columbia
Committee on the Judiciary and Public Safety
and the
Committee of the Whole

Public Hearing on
The Recommendations of the Police Reform Commission

May 20, 2021

9:30 a.m.

Virtual Platform
The John A. Wilson Building
1350 Pennsylvania Avenue N.W.
Washington, DC 20004

I am pleased to offer testimony for the joint hearing of the Committee on the Judiciary and Public Safety and the Committee of the Whole on the recommendations contained in the report of the D.C. Police Reform Commission, *Decentering Police to Improve Public Safety*, published April 1, 2021.

On March 23, 2021, the Office of the D.C. Auditor released a report prepared for us by The Bromwich Group LLC and Steptoe & Johnson LLP, [The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019](#). The report details the officer-involved fatalities of four young Black men: Jeffrey Price, Jr., D’Quan Young, Marquese Alston, and Eric Carter. The review was designed to evaluate the conduct of the Metropolitan Police Department (MPD) officers involved in the incidents and the MPD internal affairs investigations that followed to determine if they followed existing law, MPD policy, and best policing practices, and to assess the oversight by the Use of Force Review Board (UFRB) that reviews serious uses of force.

The report built on a review of the Department’s policies and practices on use of force prepared by The Bromwich Group for ODCA in 2016. That review found that MPD and its overall policies on use of force “continues to be consistent with best practices in policing” and with the provisions of the earlier Memorandum of Agreement with the U.S. Department of Justice. We also identified deficiencies in use of force investigations that needed correction.

The four case studies published in March documented serious lapses in MPD’s investigation of the 2018 and 2019 uses of deadly force. We note that “weaknesses identified in our 2016 report have not been remedied and, indeed, have grown substantially worse” while MPD has appeared “to resist or be unconcerned with remedying them.” We found that MPD failed to comprehensively review the events leading up to the four fatalities and to fully explore the policy, tactical, and training issues they raised.

We recommended:

- Comprehensive investigation and analysis of use of force incidents including actions by all officers leading up to the use of force and any and all opportunities for de-escalation.
- Enhanced training for investigators who handle serious use of force cases.
- Requiring the UFRB to provide specific recommendations on training, policy, and best practices.
- Public release of both the Internal Affairs Division final report and the UFRB’s resulting conclusions on use of force investigations.

Two of these major recommendations are similar to recommendations of the Police Reform Commission and the remainder of this testimony will provide additional details on those issues: the importance of de-escalation and the need for transparency generally in police investigations. Underlying each of these is the overarching finding of our 2018-19 case study report and an upcoming 2020 report: the excessively narrow focus of MPD use of force investigations.

De-escalation

The Commission's Recommendation 21 is as follows: "To fulfill its obligation under DC Code 5-107.02(b)(3) and (4), which require training on use of force, MPD should reinforce the importance of critical decision-making, avoiding escalation, and using force only if necessary, reasonable and proportional." The commission specifically recommended that MPD use the Integrating Communications, Assessment and Tactics (ITAC) training developed by the Police Executive Research Forum.

In our case study report issued in March, Recommendation 10 focused on the importance of de-escalation noting that "IAD investigators should explore the possibilities for de-escalation in every investigation and in every interview of an officer engaged in a serious use of force." The team of experts investigating the officer-involved fatalities on behalf of ODCA found that MPD officers were justified in their use of force in the three instances in which individuals were fatally shot because in each case there was an imminent threat to life and safety. The experts also included in each case that additional actions could have been taken that might have led to a different outcome. In the May 9, 2018, death of D'Quan Young the Bromwich/Steptoe team found that the off-duty officer, James Lorenzo Wilson III, failed to make any attempt to de-escalate the situation that unfolded.

The ODCA report notes that MPD officers "are also governed by the duty to de-escalate situations: to take all reasonable steps to avoid the use of any type of force, including deadly force." MPD's de-escalation policy, incorporated in 2016 as a central element in the overall use of force policy, states:

All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present, shall, if possible, first attempt to defuse the situation through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques.

Further, the ODCA report notes, "the de-escalation requirement is the first principle listed under MPD's use of force regulations" reflecting "the primacy of de-escalation and its overarching applicability to situations in which the use of force may be necessary."

D'Quan Young encountered Officer Wilson when the officer was off duty and walking from his car to a get-together at a home on 15th Street NE. Young initiated a conversation, Wilson did not respond, and a confrontation ensued, captured not by body-worn cameras since the officer was off duty but by stationery cameras at an adjacent recreation center. Though Young initiated a conversation, the officer maintained contact by following Young from the street to the sidewalk. "Though Mr. Young initiated the encounter, Officer Wilson escalated it." And "at no point is there any evidence that Officer Wilson tried to walk away or otherwise show an intention to withdraw from engaging with Mr. Young," the report notes. "Further, in none of his subsequent statements to investigators did Officer Wilson state that he identified himself as a police officer in an effort to encourage Mr. Young to stand down."

As the two young men faced each other on the sidewalk Mr. Young pulled a gun from his waistband. As they backed away Mr. Young fired once, and, as he retreated Officer Wilson fired “numerous rounds” at Mr. Young as he continued to back away, and subsequently fired two additional shots from behind a car while Mr. Young was on the ground. While finding that Officer Wilson’s use of deadly force was justified, the expert reviewers found that the officer should have been held accountable for failing to attempt to de-escalate the situation. And they found that the Internal Affairs investigation “should have fully explored the possibilities for de-escalation, addressed the issue in its report” and provided background on the situation for consideration by the UFRB.

The Bromwich/Stephoe report for ODCA: “We agree that the use of deadly force by Officer Wilson—in response to Mr. Young drawing, pointing, and shooting his pistol—was justified, but we disagree with the conclusion that Officer Wilson’s actions taken as a whole were consistent with MPD policy. We believe his failure to make any effort to de-escalate the situation violated MPD’s policy, which required de-escalation when feasible (as it is here.) The investigation should have explored the de-escalation issue and the UFRB should have addressed it. Neither of those things happened.”

Returning to the Police Reform Commission’s recommendation on de-escalation and Police Executive Research Forum (PERF) training that incorporates de-escalation tactics, the issue that presents itself is what actions MPD should take to ensure that what is currently embodied in written policy is actually practiced in the field? We have recommended that the Internal Affairs and UFRB review of use of deadly force encompass a thorough review of the full context when force is used, in order to identify whether and what discipline and additional training is warranted. Those investigations, though, are after the fact and before the fact adherence to policy is the better goal.

Transparency

In its Recommendation 9, the Police Reform Commission asked the Mayor and Council to “explicitly provide the public with access to officers’ personnel records pertaining to misconduct allegations and complaints.” The report quotes a WNYC News survey of the states on public access to police disciplinary records and found such records “public” in 12 states, “public in some situations” in 15, and “confidential” or “mostly confidential” in 23. The Commission notes, “It categorized police disciplinary records in DC as ‘confidential’ and ‘mostly unavailable.’ Since then more states including California and New York have made some or all disciplinary records available to the public. The District should become one of the growing number of jurisdictions where police disciplinary records are public.”

As the basis for the recommendation, the Commission quotes President Obama’s Task Force on 21st Century Policing, that “Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.”

In their recent report for ODCA, as noted, the Bromwich/Steptoe team reviewed the use of force investigations by MPD's Internal Affairs Division and the oversight provided by the Use of Force Review Board, focusing on the four officer-involved fatalities that took place in 2018 and 2019. We are concluding work, now, on the investigation of the first of two 2020 officer-involved fatalities and will produce reports on each of those cases. The report on 2018-19 cases recommended that the Department make public both the Internal Affairs Division's final investigative report on uses of force, and the Use of Force Review Board's conclusions after reviewing the IAD reports.

The ODCA report notes that the lack of public disclosure of the findings of use of force investigations constitutes an information gap and that "leads to a lack of public confidence in MPD's investigations, and can lead to public speculation and erroneous allegations of misconduct." The report published in March and the one forthcoming on the death of Deon Kay in 2020 are critical of the department's very limited review of the incidents. We call for far more comprehensive investigations and more and better specialized training for those conducting the use-of-force investigations. Our recommendation on public disclosure is also aimed at improved investigations:

Disclosure in some form of the Final Investigative report will create powerful internal incentives for those investigations to be competently and thoroughly conducted and rigorously reviewed because there would be some public accountability for the MPD entities and personnel responsible for those matters. The release of MPD's findings would enhance the credibility of its work, thus raising the level of the public's trust.

When asked to review and comment in writing on the recommendation in the March ODCA report on the four case studies, Police Chief Robert J. Contee III wrote in a March 15, 2021, letter: "MPD agrees with all of the report's recommendations and will begin working on implementation immediately. We are targeting implementation of all recommendations by the end of 2021."

Subsequently, however, during his confirmation hearing on March 25, 2021, Contee was asked again about releasing use of force reports to the public. He responded: "I think that that's something I'm open to ... I'm certainly open to it. I am. Because I think that again, this situation came out as a result of the auditor's report. I just need to talk to my team about the best way to do that. I think my goal is to work toward yes."

Given the specific recommendation on use of force investigative reports in the ODCA report and the overall emphasis on transparency with regard to MPD officers and discipline issues in the Police Reform Commission report, the issue of department transparency going forward is ripe for further discussion.

Following are suggested questions the Council Committees may wish to ask Chief Contee during the May 20, 2021 joint hearing based on the two policy areas reviewed here.

Suggested questions for Chief Contee

- The recently published case studies of MPD's use of deadly force in 2018 and 2019 by the D.C. Auditor found failures on the part of MPD officers to follow current policy that requires that members to "defuse use of force situations with de-escalation techniques." What steps will you take to ensure that all officers in all situations seek to defuse situations with use of de-escalation techniques? Will you, per the Police Reform Commission recommendation, engage with PERF and use the organization's ICAT training?
- In your March 15, 2021, letter to the D.C. Auditor on the report on 2018 and 2019 officer-involved fatalities, you said you agreed with all of the recommendations made in the report, including the recommendation to make Internal Affairs and Use of Force Review Board findings public. You appeared to walk back from that commitment in your confirmation hearing. Please clarify: will MPD make future use of force reports by Internal Affairs and the UFRB public?
- Also on the issue of transparency, the Police Reform Commission recommends providing the public with access to officers' personnel records pertaining to misconduct allegations and complaints, something that is occurring with greater frequency across the country, including in California and New York. Will you make discipline records public?

I hope this information on the recent work by ODCA is useful to the Committees. Please feel free to let me know if you have questions or if there is other related information we might be able to provide.