

**STATEMENT OF**

**SAMUEL WALKER**

**Professor Emeritus of Criminal Justice**

**University of Nebraska at Omaha**

**To the**

**United States Commission of Civil Rights**

**New York City, April 20, 2015**

---

**Introduction**

I am Samuel Walker, Professor Emeritus of Criminal Justice at the University of Nebraska at Omaha. I am the author of 14 books on policing, crime policy, and civil liberties.

My books include *The New World of Police Accountability*, with Carol Archbold (2<sup>nd</sup> ed., 2014); *The Police in America: An Introduction*, with Charles Katz (8<sup>th</sup> edition, 2013); and *The Color of Justice: Race, Crime, and Ethnicity in America*, with Cassia Spohn and Miriam DeLone (5<sup>th</sup> edition, 2012).<sup>1</sup>

Over the past 40 years I have consulted widely with community groups, citizen oversight agencies, police departments and the U.S. Department of Justice.

In January of this year I testified before the President's Task Force on 21<sup>st</sup> Century Policing. The *Interim Report* of the Task Force, issued in early March, adopted a major part of my recommendation regarding preventing offensive and disrespectful language by police offices.<sup>2</sup>

**The Current Crisis**

We are at a special moment in history with regard to policing and police-community relations. The events of last year in Ferguson, Missouri, Staten Island, New York, and Cleveland, Ohio, exposed a deep racial divide in America on issues of race and policing. This is a national problem. The President's Task Force was the first such commission since the Kerner Commission, which issued its report in 1968.<sup>3</sup>

We have a special opportunity at this time to examine the problems we face, make meaningful recommendations, and take prompt and effective action.

I offer you a three-part recommendation that consists of (1) a respectful policing initiative; (2) a policy of de-escalating police and community resident encounters, and (3) early intervention systems to track officer performance and identify performance problems that need to be corrected.

My focus is on routine, day-to-day policing, and I would like to explain my rationale for this approach. In the events of late 2014, the public focus was primarily on fatal shootings by police officers, criminal prosecution of the officers involved, and grand jury investigations of officer-involved shootings. All of these are indeed important elements of policing in America. Nothing is more important than the awesome power of the police to take human life. But they are only part of the entire picture.

If we want to establish effective, respectful, bias-free, and constitutional policing in America, we need to focus on the untold number of day-to-day encounters between police officers and community residents. They are so numerous that no one has ever attempted to estimate the annual number. With the possible exception of the public schools, no other public agency has as much routine contact with the public. It is in these encounters that people experience policing and form their opinions about the quality of the services they receive. And in far too many instances, this is where people receive the message that they are not valued as full and equal members of American society. And so it is crucial that we direct our attention to these encounters.

### **A Respectful Policing Initiative**

I recommend to the U.S. Civil Rights Commission a respectful policing initiative (RPI) for all law enforcement agencies in this country, from the largest to the very smallest agencies. The RPI involves mandatory annual in-service training for all sworn police officers in the country.<sup>4</sup>

Offensive and disrespectful language by police officers is a pervasive national problem. This includes racial and ethnic slurs, common vulgarities, and other forms of disrespect

The Kerner Commission report identified this problem as a serious issue in 1968.<sup>5</sup> Unfortunately, we have not addressed that problem over the intervening 47 years. To cite only one indicator, offensive language involves 26 percent of all citizen complaints in Washington, DC, 17 percent in San Jose, California, and over 40 percent in New York City.<sup>6</sup>

Offensive and disrespectful language involves several harms.

First, it inflicts an injury to the person who is the target of such language. It conveys the degrading message that the person is not a full and equal resident of this country.

Second, over time, it builds a reservoir of anger and distrust about the police, particularly in communities in color. This accumulated anger and distrust was one of the sources for the explosion of demonstrations across the country following the shooting in Ferguson, Missouri, last year.

Third, some incidents escalate into confrontations that involve police officer use of force, and in some cases the use of deadly force – all of which are unnecessary and preventable.

Fourth, because so much offensive and disrespectful language goes unpunished by police departments, it undermines standards of professionalism and proper conduct in those departments.

It is important to emphasize that respectful policing is not “soft” policing, and does not mean that unlawful behavior will be tolerated.

To cite only one example, consider the case of a person jay-walking in the middle of the street. Instead of yelling at that person, calling him a name, and ordering him off the street, the officer should say “Excuse me, sir. I want to ask you to walk on the sidewalk. You are jay-walking and are a hazard to yourself and to drivers.”

The officer’s language is firm but respectful. If the person does not comply, some additional persuasion can be used. If all that fails, the officer can then make an arrest.

Over time, respectful policing can begin to build a cycle of mutual respect among the police and community residents. Respect for the police, in turn, can lead to greater community cooperation with the police in terms of reporting criminal conduct, providing information about neighborhood problems, and being willing to provide information about criminal suspects. In short, respectful policing is a predicate to effective crime control.

There is now a growing body of social science research on legitimacy, indicating that people notice how they are treated by officials in all social settings and that it makes a difference in how they act when dealing with both public and private agencies. Respectful policing can help to build legitimacy and trust in the police.<sup>7</sup>

The training component of the respectful policing initiative would involve mandatory annual in-service training for all sworn police officers in the country. The training would consist of clear instruction about which words and manners of speaking are prohibited, along with role-playing training on how officers can effectively respond to perceived disrespect on the part of a community resident. (This is the subject of the next section, on de-escalation.)

There are several ways the respectful policing training can be achieved. The U.S. Department of Justice could make all Justice Department funds contingent upon a certification that a law enforcement agency conducts the required annual in-service training.<sup>8</sup> State police standards commissions could require it as part of their in-service training requirements. Finally, individual police departments can incorporate it into their existing in-service training programs. And they can begin to implement that training immediately.

## **De-Escalation**

The second part of my recommendation involves requiring all law enforcement agencies in the country adopt a formal policy on de-escalation, together with the appropriate training for officers.

De-escalation involves the practice of police officers responding to those encounters with community residents which have the potential for escalating into serious conflict with tactics that resolve the situation peacefully. De-escalation involves both verbal and non-verbal techniques.<sup>9</sup>

One of the unfortunate traditions in American policing has been the practice of officers responding to perceived disrespect or non-cooperation by escalating the encounter with either verbal disrespect and/or the use of force. Inappropriate police responses in this regard have acquired the label, “contempt of cop.”<sup>10</sup>

In recent years, there has been increased recognition of the importance and value of de-escalation in policing. The President's Task Force, for example, recommended de-escalation in its recent *Interim Report*.<sup>11</sup>

A number of police departments have added de-escalation as a formal policy. The new Seattle, Washington, Police Department Use of Force Policy, adopted in December 2013, states that except where the use of force is clear required, an officer's first response should be to de-escalate an encounter.<sup>12</sup>

It is important to note that in the new Seattle policy, de-escalation is not an afterthought and is not a separate policy. Instead, it is an integral part of the Use of Force Policy.

The Seattle policy instructs officers that "When safe under the totality of circumstances and time and circumstances permit, officers shall use advisements, warnings, and verbal persuasion." It is important to note that the policy states that officers "*shall use*," and does not say "may use."

The respected Police Executive Research Forum (PERF) issued a valuable report on de-escalation in 2012, pointing out that de-escalation can help to reduce the use of force by police and also reduce the adverse consequences of uses of force, such as citizen complaints, law suits, and unfavorable publicity regarding the department.<sup>13</sup>

De-escalation is the natural partner of a policy of respectful policing. As I mentioned earlier, in many instances of offensive language by police officers the community resident escalates into more serious confrontations, often involving police officer use of force.

Working together, respectful policing and de-escalation can, over time, help to build a cycle of mutual respect and trust among police and community residents.

### **Early Intervention Systems**

My third recommendation is that all law enforcement agencies in the country implement an Early Intervention System (EIS).

An EIS is a computerized data base of officer performance. The system may include as few as five or as many as 25 performance indicators. These indicators should include, at a minimum, all uses of force, citizen complaints (and the outcomes of the investigations of both of these incidents), an officer's disciplinary record, traffic stops and pedestrian stops (with the demographic information about the person stopped), the officer being named in a civil suit against the department, and other items.<sup>14</sup> (In the case of the many very small law enforcement agencies in the U.S., a full-scale EIS system is not necessary, but there must be some system for tracking officer performance.)

Analysis of the data can then identify officers with high rates of problematic performance. The best method is to use a peer group analysis, with officers being compared with other officers working the same assignment (e.g., patrol, evening shift, high crime area).

Research has found that in every department, there is a small group of officers whose performance stand out in terms of patterns of problematic behavior. There is an old cliché among police chiefs that “5 percent of my officers cause 80 percent of my problems.” An EIS can identify those officers.

Officers who are identified by the EIS are then subject to an Intervention. This is NOT discipline. The EIS operates outside of the established discipline system, and its purpose is to correct officer performance problems. (An officer may, of course, be separately subject to discipline by the internal affairs unit for any one of the items contained in the EIS data base.)

The intervention may consist of counseling by a command officer, professional counseling on substance abuse or family problems (if those are identified as the underlying source of an officer’s performance problems), or retraining on particular police tactics.

Following the Intervention, officers are subject to Monitoring for a period of time to determine whether their performance has improved or whether additional intervention is needed.

The power and special role of an EIS is that it can identify and correct officer performance problems BEFORE they result in a serious form of misconduct such as a use of excessive force, unjustified use of deadly force, or a pattern of racial profiling. That is why they are called “early” intervention systems.

EIS can be a powerful tool for achieving police officer accountability. An EIS, however, does pose a number of administrative challenges. They require close administration by a command officer dedicated to the task, they are very labor intensive, and they involve a number of difficult discretionary decisions.

## **Conclusion**

In conclusion, I want to state that, despite the serious problems that have become evident in that last year, I am somewhat of an optimist on the question of improving policing.

I believe that we know what the problems are, and that that we have remedies at hand that will address those problems.

We simply need the will to undertake the needed reforms. I trust that the U.S. Civil Rights Commission will lend its authoritative voice to that end.

---

<sup>1</sup> My vita and some of my work is available at <http://samuelwalker.net>

<sup>2</sup> President's Task Force on 21<sup>st</sup> Century Policing, *Interim Report* (Washington, DC, March 2015). The Task Force accepted my recommendation in part in Action Item 4.4.1.

<sup>3</sup> National Advisory Commission on Civil Disorders, *Report* (New York: Bantam Books, 1968).

<sup>4</sup> My testimony to the President's Task Force on 21<sup>st</sup> Century Policing also involved a recommendation for a respectful policing initiative (Action Item 4.4.1).

<sup>5</sup> National Advisory Commission on Civil Disorders, *Report*, pp. 302-303.

<sup>6</sup> New York City, Civilian Complaint Review Board, *2013 Report: Statistical Appendices* (New York: CCRB, March 2014), Table 1B. It should be noted that there is considerable ambiguity in the way the CCRB data is presented.

<sup>7</sup> See the *Interim Report* of the President's Task Force on 21<sup>st</sup> Century Policing, for the relevant testimony and academic sources.

<sup>8</sup> I made this recommendation to the President's Task Force, but the Task Force did not adopt this part of my testimony.

<sup>9</sup> Police Executive Research Forum, *An Integrated Approach to De-Escalation and Minimizing Use of Force* (Washington, DC: PERF, August 2012).

<sup>10</sup> Christy Lopez, "Disorderly (mis)Conduct: The Problem with "Contempt of Cop" Arrests," *Issue Brief* (Washington, DC: American Constitution Society, June 2010).

<sup>11</sup> President's Commission on 21<sup>st</sup> Century Policing, *Interim Report*, Action Item 2.2.1.

<sup>12</sup> Seattle Police Department, *Police Manual*, Policy 8.000, Use of Force Policy.

<sup>13</sup> Police Executive Research Forum, *An Integrated Approach to De-Escalation and Minimizing Use of Force*.

<sup>14</sup> Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies: A Management and Planning Guide* (Washington, DC: Department of Justice, 2003).