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Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
DC Council Committee on Judiciary and Public Safety
Performance Oversight Roundtable on the Metropolitan Police Department and Office of Police Complaints
Thursday, March 2, 2017
by
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Good morning, Councilmember Allen and members of the Committee. My name is Nassim Moshiree and I am the Policy Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present the following testimony on behalf of our more than 11,000 members in the District.

The ACLU is committed to working to reverse the tide of over-incarceration, safeguard fundamental liberties, eliminate racial disparities, and advocate for sensible, evidence-based reforms to policing and criminal justice policies. Law enforcement that is effective at solving and preventing crimes relies on community trust. If communities do not believe that the system operates in a just manner, then law enforcement has a harder time doing its job.

The ACLU has identified several ways in which law enforcement in the District may be improved to promote smart and fair police practices that serve the interests of public safety. I will focus my testimony today on concerns about and recommendations for the Metropolitan Police Department (MPD) and the Office of Police Complaints (OPC).

Police Infringement On First Amendment Rights at Inauguration Protests

The ACLU has several concerns about police reaction to the J20 Inauguration Day protest that led to the arrest of over 200 individuals. Specifically, we are concerned that law enforcement may have violated demonstrators' rights to protest peacefully in any of three ways: by indiscriminately "kettling" or corralling and detaining individuals, including journalists and legal observers, who were not involved in any criminal activity into an area near 12th and K Street NW; by using pepper spray and stingers indiscriminately and without justification on people who were not breaking the law or who had already been detained; and by holding individuals outdoors or in vans for excessive periods of time, in some cases many hours, without access to food, water, or bathroom facilities.

People have a constitutional right to assemble and protest peacefully. When using force and detaining citizens, police have a responsibility to use reasonable judgment to separate those who have committed a crime from those who are simply exercising their constitutional rights, and when people are arrested, police have a responsibility to process them without undue delay. We have reason to believe that MPD did not take these appropriate steps on January 20th.

In its report released this past Monday on OPC's monitoring of the Inauguration protests, the Police Complaints Board also "determined that there could be potential violations of the Standard Operating Procedure (SOP) for Handling First Amendment Assemblies and Mass Demonstrations by the MPD." Specifically, they found that MPD failed to give warnings before making arrests and that it arrested demonstrators without probable cause.¹

We recommend that the Council investigate MPD's response to the J20 protests, just as the Council investigated law enforcement actions following the 2002 World Bank protest in Pershing Park, which led to an overhaul of police practices to protect the First Amendment rights of protesters.²

Strengthening the Office of Police Complaints (OPC)

The ACLU continues to call for the strengthening of the Office of Police Complaints. Having a strong and independent civilian complaint review board to oversee the Metropolitan Police Department is critical to transparency and to fostering police-community trust.³ OPC is currently under-resourced and its findings are not binding on the police department. As a result, there is very little real accountability or discipline. Any independent oversight body should have full authority to implement its findings and any discipline that is appropriate.

In recent years, and in response to high-profile reports of police abuse of power, jurisdictions around the country are moving to strengthen their civilian oversight of police departments. In Honolulu, HI and Oakland, CA, civilian commissions even have the power to select, discipline, and fire police chiefs.⁴ Civilian oversight must provide a meaningful check on police to be effective, and community confidence and trust in police authority can wane over time when a civilian complaint body cannot implement its recommendations.

We have previously testified on our recommendations for OPC, and while we're happy to see that some of our recommendations have been implemented, we feel that for the board to be truly effective, it must have all necessary investigative powers, independent disciplinary authority to hold police officers accountable for their actions (while respecting due process), broad jurisdiction to also investigate MPD policies and practices, and

¹ The Office of Police Complaints' monitoring of the Inauguration protests largely corroborates the issues we raise in our testimony: "OPC monitors did observe police activity that raised concerns on how the protests were handled, including MPD officers using force at times on some of the protesters, dispersing OC spray and stingers into the crowd without an order or warning and arresting individuals who were not involved in any rioting or acts of vandalism." Available at: <https://policecomplaints.dc.gov/release/police-complaints-board-releases-protest-monitoring-reports-2017-inauguration-and-women%E2%80%99s>.

² "In response to the concerns about mass arrests, the D.C. Council passed limits on police powers in 2005, and set requirements for police training and retention of dispatch, video and command data and materials collected to prevent destruction of evidence. The Council also prohibited arrests for 'parading' or demonstrating without a permit, set a four-hour standard for releasing protest-related arrestees, and required written disclosure of release rights." Available at: https://www.washingtonpost.com/local/crime/in-settlement-us-park-police-agree-to-change-arrest-policies-in-protests/2015/06/22/20b0080a-15f3-11e5-9ddc-e3353542100c_story.html?utm_term=.80c554609330

³ Having an effective form of civilian oversight over police is also one of the key recommendations in Obama's Task Force on 21st Century Policing, available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁴ See "The New, More Powerful Wave of Civilian Oversight of Police," 2/27/17 found at <http://www.governing.com/topics/public-justice-safety/gov-police-civilian-oversight-oakland-seattle.html>

increased funding for thorough and timely investigations.

NEAR Act and Data Collection Requirement

The ACLU continues to support full funding of the Neighborhood Engagement Achieves Results Act (NEAR Act) as the best approach to promote public safety and reduce crime in our community. Unanimously passed by the DC Council in 2016, The NEAR Act provides a comprehensive framework for crime prevention and law enforcement improvement in the District.

As Interim Chief Newsham recently said in the Washington City Paper, policing in and of itself is not an effective crime reduction strategy.⁵ We are overdue to implement the lessons learned from the past 40 years of wrongly criminalizing issues within our communities that are better addressed through public health interventions. The NEAR Act offers a variety of tools that empower communities to secure themselves and prevent crime.⁶

While many of the provisions of the NEAR Act have yet to be funded, one provision of the law which was funded by the DC Council in its FY17 budget requires MPD to collect more information regarding all “stops and frisks” conducted in the District, including the race, gender, and date of birth of each person stopped, as well as whether and for what reason each stop resulted in a search and/or arrest.

Knowing the details of how our police engage with community members is key to maintaining transparency, accountability, and trust between law enforcement and the communities they serve. On February 10th, 2017, we filed a Freedom of Information Act (FOIA) to request data on all stops and/or frisks conducted by MPD officers since the implementation of this law. We are still awaiting a response to our FOIA but we urge the Council to continue to seek this information as well.

Ensuring Transparency and Accountability of Police Use of Military Equipment and Surveillance Technology

The ACLU-DC receives regular reports of the police utilizing militarized tactics and/or equipment when enforcing laws in the District. We have been unable to obtain information about the type of military equipment or surveillance technology the police have, how they obtained it and where they deploy it. In most jurisdictions, including DC, decisions to acquire and use these technologies are made in secret by police departments without any input from or disclosure to the public or elected officials. In some cases, they’re obtained through grants from the federal government that require non-disclosure agreements,⁷ they’re acquired from private companies

⁵ See <http://www.washingtoncitypaper.com/news/city-desk/article/20851481/vince-grays-crime-bill-is-soundly-defeated>

⁶ One major provision of the NEAR Act, the Office of Neighborhood Safety and Engagement (ONSE), is modeled on the successful Richmond, CA program that led to a 76% reduction in firearm related homicides in Richmond between 2007 and 2014 following its implementation. The goal of this office is to identify DC teenagers and young adults at the highest risk for committing or being victims of violent crimes, for participation in a stipend-based program involving life planning, trauma informed therapy, and mentorship – moving them away from the pitfalls of violent crime.

⁷ “The typical non-disclosure agreement required that for any state or local law enforcement entity looking to purchase the device, that entity would agree to ‘not, in any civil or criminal proceeding, use or provide any information concerning . . . wireless collection equipment/technology, its associated software,...’ page 31 of “Law Enforcement Use of Cell-Site Simulation Technologies: Privacy

that deal in military weapons and technology, and they're often used without any community input or control, presenting significant threats to civil rights and civil liberties. We know that law enforcement are using surveillance technologies in their every-day crime-fighting activities, and absent proper oversight and safeguards, the use of these technologies may well infringe upon the constitutional rights of citizens to be free from unreasonable searches and seizures, as well as the right to free association.⁸

We believe the community members, taxpayers – and elected officials – deserve to know not only what surveillance technology the police have, but also 1) the intended use of the technology, 2) the technology's potential impact on civil rights and civil liberties, 3) and the cost or fiscal impact of acquiring and using the technology on the District's budget.

We encourage the Council to direct such questions to MPD about their use of surveillance technologies, and we look forward to the opportunity to work with the Council to codify community-informed solutions to this problem.

Conclusion

Finally, we must look at strategies and tactics that police use to see that they're being used effectively and efficiently in all parts of DC and not overloading communities where they build mistrust. Police must rely on communities to turn to them when they need help, and increasingly, communities are growing distrustful of police which both hinders the ability of police to do their jobs and puts communities at risk of not accessing help when they need it.

Implementing the recommendations outlined above in our testimony, including: 1) investigating MPD responses to the J20 demonstrations on Inauguration Day, 2) strengthening the oversight authority of the Office of Police Complaints, 3) fully funding and ensuring implementation of all provisions of the Near Act, and 4) ensuring transparency and accountability of police use of surveillance technology will foster greater community trust in our police and lead to increased public safety.

A sentence from the Obama administration's Task Force on 21st Century Policing sums it up best, "As the nation has observed, trust between law enforcement agencies and the people they protect and serve is essential to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services."⁹

Concerns and Recommendations, Committee on Oversight and Government Reform, U.S. House of Representatives, 114th Congress, available at <https://oversight.house.gov/wp-content/uploads/2016/12/THE-FINAL-bipartisan-cell-site-simulator-report.pdf>

⁸ See "Constitutionality of Stingray use by D.C. Police is Challenged" Washington Post, 2/23/26, available at https://www.washingtonpost.com/local/public-safety/constitutionality-of-stingray-use-by-dc-police-is-challenged/2016/02/23/d197cb52-d9b2-11e5-81ae-7491b9b9e7df_story.html?utm_term=.35145a6bc369

⁹ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf