



March 19, 2008

Chief Gil Kerlikowske
Seattle Police Department
P. O. Box 34986
610 Fifth Avenue
Seattle, WA 98124-4986

Re: Department policies and practices regarding obstruction arrests

Dear Chief Kerlikowske,

I am writing to encourage you to take some specific actions that will send a clear message to your officers and the public that unjustified arrests on obstruction charges are not acceptable on your force.

The ACLU's concern about an excessive number of arrests of people on obstruction charges has been underscored by news that the SPD made 1090 arrests solely for obstruction between 2002 and 2007, and in nearly half of those cases, criminal charges were never filed, were dismissed before trial or resulted in a jury finding of not guilty.

We note that the disparately high use of obstruction charges against people of color bear striking similarities to racial disparities we noted in our December 22, 2004, letter to you regarding racial disparity in use of Tasers, and our February 1, 2007, letter to the Mayor regarding racial disparity in use of force complaints to OPA.

Officer safety is an important consideration in every interaction police officers have with the public. Police work is inherently dangerous, but obstruction arrests must be based on evidence that the bystander intended to interfere with the officer's duties. Exercising one's constitutional right to observe, photograph, or record police activity in public is not, on its own, "obstruction." Nor is it obstruction to ask unwelcome questions or to use strong language when speaking with officers.

Therefore we request that you consider the following recommendations for actions that will make clear that unjustified arrests will not be tolerated.

1. Train all officers and command staff on how to decrease obstruction arrests. Within the next 12 months require every officer to attend training on how to decrease arrests for obstruction. All supervisors (sergeants and above) should receive training on how to detect unjustified arrests and how to remedy the behavior.
2. Train all officers in de-escalation tactics. In her reports from 2004 through 2007, the OPA Auditor described her on-going concerns that many SPD officers lacked the skills to de-escalate a situation once the member of the public became

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upset. In 2006, you announced that SPD would add de-escalation training to the Streets Skills training requirement. Nevertheless, the Auditor continued to voice concerns that some officers were escalating tensions in certain confrontations. We urge you to require additional training of officers who continue to engage in unnecessarily confrontational behavior.

3. Adopt a department policy supporting the rights of onlookers. In 1995, the Chief of the San Francisco Police Department adopted a policy directing his officers to respect the rights of onlookers. This policy clearly describes the limited circumstances when an onlooker may be arrested and the circumstances when an onlooker should not be arrested. This policy reflects the current state of the law in Washington, and should be adopted as SPD policy. A copy of the policy is attached.

4. Track obstruction arrests as a part of the non-disciplinary Early Intervention System. The SPD's Early Intervention System is designed to aide supervisors in identifying officers who may need additional training or supervision. Tracking obstruction arrests where no charges are filed or the charges are dismissed, will alert supervisors to the potential misuse of obstruction arrests.

5. Implement as quickly as feasible all of the recommendations of the Mayor's Police Accountability Review Panel (PARP) that are within the control of the Chief of Police. These recommendations include steps that are needed to restore the confidence of Seattle's minority communities in SPD, and reinforce the importance of the Department adopting a zero tolerance policy for dishonesty.

We regularly receive complaints from citizens who have been arrested for "contempt of cop." The people of Seattle expect their police to uphold the constitution for all. Arresting bystanders on unfounded obstruction charges erodes the public's confidence in the police. The police have a difficult but important job but they must not be afraid to do it in full view of the public they serve.

We look forward to your leadership on this issue.

Sincerely,



Kathleen Taylor
Executive Director

Cc: Mayor Nickels
Councilmember Tim Burgess, Chair, Public Safety Committee
Councilmember Nick Licata, Chair, Civil Rights Committee
City Attorney Tom Carr
OPA Director, Kathryn Olson
OPA Auditor, Kate Pflaumer

Encl: San Francisco Police Department Policy on Rights of Onlookers

San Francisco Police Department

5.07

General Order

Rev. 02/22/95

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RIGHTS OF ONLOOKERS

This order establishes policies regarding when persons are permitted to remain as onlookers, their right to overhear conversations between the officer and suspect, and their right to act as a witness.

I. POLICY

A. WITNESSING STOPS, DETENTIONS, ARRESTS. It is the policy of this Department that persons not involved in an incident be allowed to remain in the immediate vicinity to witness stops, detentions and arrests of suspects occurring in public areas, except under the the following circumstances:

1. When the safety of the officer or the suspect is jeopardized.
2. When persons interfere or violate law.
3. When persons threaten by words or action, or attempt to incite others to violate the law.

B. OVERHEARING CONVERSATION. If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

1. The suspect objects to persons overhearing the conversation.
2. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

C. INQUIRIES

1. Persons shall be permitted to make a short, direct inquiry as to the suspect's name and whether the officer or the suspect wishes a witness. The suspect shall be allowed to respond to the inquiry.
2. If a citizen is a witness to the activity for which the suspect was detained or arrested, the officer may request his/her name; however, the citizen is not compelled to disclose such information

D. BYSTANDER FILMING OF OFFICER-SUSPECT CONTACTS. It is increasingly common for bystanders, who are not involved in any criminal activity, to record contacts between officers and citizens, during which officers are detaining, citing or arresting a suspect or engaging in crowd control at a demonstration. Bystanders have the right to record police officer enforcement activities by camera, video recorder, or other means (except under certain narrow circumstances as set forth in Sections A and B above).

1. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime. If a bystander refuses to voluntarily provide the recording, an officer may request the person's identity as provided in Section C., 2., above.

2. If a bystander voluntarily provides his or her recording and/or equipment, the officer shall provide the bystander with a receipt (SFPD 315). The receipt shall contain a written statement verifying that the recording and/or equipment has been voluntarily provided to the Department and shall be signed by the bystander.

E. VIOLATIONS/COMPLIANCE. As an alternative to arresting an onlooker who is in violation of Penal Code Section 148 or other related offenses (e.g., 647 c P.C., 22 Municipal Police Code) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation (see DGO 5.03, Investigative Detentions and DGO 6.11, Obstruction of Streets and Sidewalks). Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor or to the Office of Citizen Complaints.