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July 10, 2024

Gentlemen,

**Re: Legal Observers**

I trust you had an enjoyable Fourth of July Holiday in spite of the very troubling Block Party incident in which 21 people were injured and/or killed. Those victims and the Police Dept. are in my prayers.

As you know, Legal Observers have a long history and tradition in Detroit and, in our country. I served as a Legal Observer, as did numerous others, when President Obama was on the ballot in 2008 and 2012. The oath that you take as a Legal Observer (be it as a lawyer or non-lawyer) is, sacrosanct to me and others.

As the oversight agency of the Detroit Police Department, the BOPC is deeply committed to ***“Constitutional Policing”***, together with the members of DPD and the Office of the Corporation Counsel. As a result, we are deeply concerned about the actions taken by DPD members and the Law Department, with regard to recent protests where people were exercising their First Amendment Right to Protest, and Legal Observers were harassed and ticketed!

Legal Observers, are trained, credentialed and play a vital role in protecting the exercise of free speech and First Amendment Rights in our Country and our city. Unfortunately, several Legal Observers were ticketed by DPD. The BOPC Policy Committee<sup>1</sup> respectfully requests that you reconsider all charges in the five cases listed below and dismiss the tickets with prejudice.

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<sup>1</sup> The BOPC Policy Committee consists of voting Commissioners, non-voting DPD Command Staff, distinguished community leaders, public interest lawyers, and law students. See Appendix A

Case No.	Defendant	Date	Allegation
SP15595931	Taylor Cole	March 2, 2024	Impeding Traffic
SP15595941	Wendy Richardson	March 2, 2024	Impeding Traffic
SP15595951	Lisa Carlson	March 2, 2024	Impeding Traffic
SP15251741	Emily Nakisher	April 12, 2024	Being a Pedestrian in the Street where a Sidewalk is Provided
SP15249021	Anna Stabnick	April 12, 2024	Being a Pedestrian in the Street where a Sidewalk is Provided

We are making this request based on concerns raised by public officials and concerned citizens. Further, we have reviewed the body worn camera footage from the demonstrations that took place on March 2nd and April 12th. From our observations, these National Lawyers Guild Legal Observers (LOs) were clearly wearing their green "LO" hats and doing nothing more than performing their jobs as trained Legal Observers, pursuant to what we understood was an "understanding" from the top levels of DPD, as expressed by then Deputy Chief Bettison (now Deputy Mayor) since 2020!

**What we observed from the footage showed behaviors that are protected under the First Amendment.** It is improper and frankly illegal to target LO's in retaliation for their work intended to protect First Amendment activities. To be clear, the Detroit Board of Police Commissioner firmly stands against any form of intimidation or retaliation that would prevent or discourage members of the community from exercising their First Amendment rights!

We are in receipt of a letter from the **Honorable Congresswoman Rashida Tlaib** dated June 10, 2024, expressing her concerns about DPD's behavior against these Legal Observers. She also shared that, "I have been told that **Deputy Mayor Bettison** has reviewed the police footage of the above ticketed individuals, and does not believe that the issuance of these tickets was appropriate."

We recognize that the **Detroit Police Department Directives Manual** lacks sufficient direction, emphasizing the Department's responsibility to protect First Amendment Rights, including:

- The right to free speech and expression.
- The right to freely organize and participate in lawful assemblies and protests in parks, on sidewalks, in streets, and in other public forums.
- And the right for anyone (including Legal Observers) to observe and record the actions of law enforcement officers in the public discharge of their duties without being subject to retaliation.

As such, we are in the process of developing and approving a policy that makes clear the First Amendment principles that are to be upheld by the department; and the applicable procedures to which members must adhere.

In order to ensure the protection of First Amendment activity when our community members participate in protests, it is imperative that the important role of Legal Observers be respected and unimpaired.

When protest activities flow into the street and/or when there are interactions between the police and protestors, Legal Observers must sometimes walk into the street in order to observe the interactions in question. Since walking in the street and interrupting traffic are protected actions when conducted as part of First Amendment activities, the premise DPD claims for the charges do not establish probable cause or even reflect "reasonable suspicion", a lesser standard.

As the prosecuting authority on these matters, Corporation Counsel has a duty to regard evidence as inadmissible in cases where DPD has not adhered to their policies, which require them to establish probable cause or reasonable suspicion. Moreover, in the absence of sufficient evidence, the Corporation Counsel is obligated to drop the charges against these individuals.

**In conclusion, the BOPC Policy Committee respectfully requests the Corporation Counsel to drop the charges against the Legal Observers referenced above.** One final note, tickets, which are constitutionally suspect, could also become the subject of civil litigation initiated by the Legal Observers because "police contacts" are permanently recorded and subject to discovery in employment investigation. As a result, their future employment opportunities could be adversely affected.

Thank you for your immediate attention to this matter. I look forward to a prompt resolution. Please advise as soon as possible of your decision.

**Respectfully yours for Constitutional Policing,  
I Remain,**



**Linda D. Bernard, J.D., LL.M.  
DPD Police Commissioner- District 2 and BOPC Policy Chair**

**APPENDIX A – Voting and Non-Voting Committee Members.**

- Darryl Woods – BOPC Chairman
- Tamara Smith – BOPC Vice Chair
- Assistant Chief Franklin Hayes
- Professor Rebecca Robichaud – Wayne State Law School
- Victoria Camille – District 7 Grandriver Community Block Club President, Coalition for Police Transparency and Accountability
- Shea Howell - Coalition for Police Transparency and Accountability
- Attorney Julie Hurwitz – President, Goodman Hurwitz & James, P.C.
- Robert Brown – Acting BOPC Secretary
- Jasmin Taylor – Executive Assistant to BOPC