Key Changes Needed to the Inquest Process

While we appreciate that the King County inquest process, uniquely in Washington, is an avenue for public access to understand the facts and circumstances of any death that occurs due to the actions of law enforcement officers, it is widely understood that the present inquest process creates confusion and frustration for many in the community, and can be traumatic and marginalizing for the families of those killed.

The following 15 organizations and seven individuals join together to recommend nine changes that, taken together, would create a robust and transparent inquest process that addresses the issues of core concern to our communities:

- Asian Counseling and Referral Service
- Asian Pacific Islander Coalition of Washington State
- Casa Latina
- Chief Seattle Club
- Columbia Legal Services
- Disability Rights Washington
- El Centro de la Raza
- Not This Time
- OneAmerica
- Public Defender Association
- Real Change
- Seattle Community Police Commission
- Seattle Japanese American Citizens League
- Vietnamese Community Leadership Institute
- Washington Defender Association

&

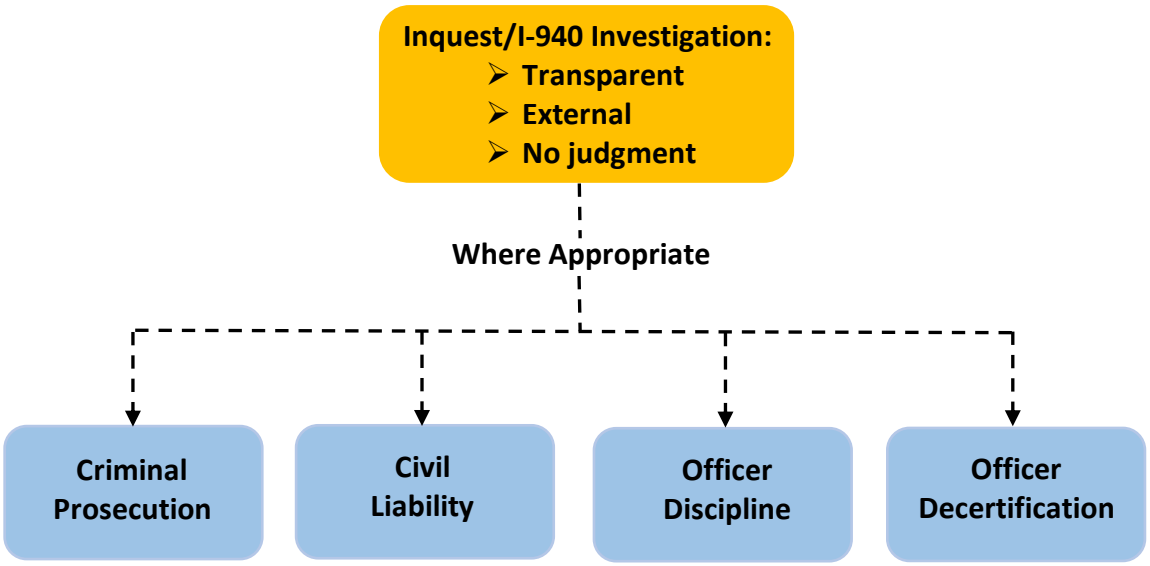
- Dianne and Michael Murphy, *Parents of Miles Murphy*
- Jay Hollingsworth, *Chair, John T. Williams Organizing Coalition*
- Jenna Mitchell, *Former inquest juror*
- Jim Street, *Retired Seattle City Councilmember and King County Superior Court Judge*
- Lee Covell, *Attorney*
- Nikkita Oliver

These nine recommendations are interrelated and should be implemented together in order to avoid unintended negative consequences. Only if these recommendations are implemented as whole will we have an inquest process capable of addressing the concerns of our communities and restoring trust in the independent investigation that the inquest process makes possible.

1. **Inquest scope should be expanded so that it can satisfy the independent investigation requirement of I-940**

Should Initiative I-940 ("De-Escalate Washington") become law (it qualified for the November ballot and polls strongly positive statewide), it will require an independent investigation (external to the law enforcement agency involved in the deadly force case) to inform the determination of whether deadly force was used in good faith.[1] Presently, King County has no independent investigation to inform such a determination. The inquest process can and should be modified to meet I-940's independent investigation requirement by expanding the scope of the inquest to address how a deadly force incident comported with policy and training.

The inquest process, on its own, cannot provide direct accountability in cases of wrongful or unlawful use of deadly force. Accountability will need to come through other processes, with their own standards and decision-makers, with the authority to take various actions that many think of when we say "accountability." However, as the only independent, comprehensive investigation of the use of deadly force by law enforcement, the inquest should serve as the central body of information upon which the various accountability processes base their decisions.



[1] Under Initiative I-940, "good faith" is satisfied if the use of deadly force meets both an objective and subjective standard. The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual. The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.

Arguably, whether an in-custody death followed from application of existing policies or training is within the scope of current inquest rules ("what happened and why" in many cases requires understanding that officers were applying their training or their understanding of policy). However, neither judges nor the King County Prosecutor have allowed such issues to be explored. Even without I-940's requirement of an external investigation capable of allowing a determination of good faith, to advance understanding of what circumstances led to a death, the role played by training and policy must be within the scope of the inquest.

The likely adoption of I-940 only underscores the need to expand the scope of the inquest to include consideration of how training and policy affected officers' choices and decisions. It would be needlessly costly and confusing to position the inquest process as distinct from the independent investigation likely to be required by I-940. Given that the inquest process largely involves the same witnesses, evidence, and topics as an I-940 investigation, it makes little financial sense to duplicate the inquest investigation. Additionally, having two parallel processes that could result in different outcomes would confuse any public understanding of a particular use of deadly force.

2. An inquest should be a robust, comprehensive examination of all relevant information

A reformed inquest process should be comprehensive, providing the ability for all parties to directly introduce relevant witnesses and evidence, expert analysis of relevant policy and training, and summation of the evidence by the parties through opening and closing statements.[2] Under current rules, the parties cannot present their own witnesses or evidence, but instead may only question whichever witnesses the prosecutor decides to call to testify and rely on whatever evidence the prosecutor decides to introduce. Preventing the parties from introducing their own evidence and calling the witnesses necessary to give a full accounting of the use of deadly force by law enforcement does not aid the goal of shedding light and fulling exploring what occurred. In order to make sure the inquest addresses all relevant information, parties should be permitted to call their own witnesses to testify and introduce their own evidence, subject to the rules of evidence regarding relevance.

Additionally, under the current interpretation of the inquest process by judges and the King County prosecutor, no expert witnesses identified by the parties are called to testify. As a result, the only individuals able to testify about whether the use of deadly force was appropriate under policy and training (to the extent such questioning is even allowed) are the officers who used deadly force. Consequently, the inquest jury only receives a one-sided description of policy and training. In order to ensure that the jury receives a full and balanced picture, the parties should be permitted to call expert witnesses relevant to any evidence or testimony introduced in the inquest proceeding.

[2] The inquest process now provides for legal representation for the following parties: the involved officers, the government entity employing the involved officers, the King County Prosecuting Attorney's Office, and the family of the deceased.

Finally, the current process does not allow attorneys to sum up what they believe the information presented means, which makes it harder for lay audiences to understand how the pieces are related or what the significance is of some of the information that emerges through testimony. The inquest rules should be modified to permit the parties to provide a summation of what the evidence is likely to show at the beginning of the inquest proceeding and a summation of the elicited evidence at the conclusion of the proceeding.

3. Inquests should be conducted by a neutral hearing examiner

Inquests must be conducted by a party who is willing and able to make impartial rulings on the scope of evidence and questioning. Judges fit this bill. Yet, when judges preside over inquests, it is difficult to avoid the assumption that a judgment is being rendered. There appears to be growing interest both in the community and among some policymakers in exploring the feasibility of the King County Hearing Examiner, a special magistrate or Executive inquest master as the officer to oversee inquests—effectively designated as the coroner for this purpose. Regardless of who is chosen to preside over an inquest, he or she should have a familiarity with the Washington Rules of Evidence, knowledge of policing and trial procedures, and experience managing a courtroom.

If inquests are not conducted by a judge, there will no longer be a right to use a King County Courtroom. In order to permit continued access to a courtroom, the King County Executive and King County Superior Court should sign a memorandum of understanding agreeing to have inquests held in the ceremonial courtroom on the ninth floor of the King County Courthouse.

4. The inquest jury should be permitted to reach more meaningful conclusions

The role of the inquest jury should be modified so that the jury can reach more meaningful conclusions. Presently, the inquest jury answers a series of Yes/No questions, called interrogatories. This system causes two problems, which should be remedied. First, the current interrogatory structure, which only permits each individual juror to answer Yes/No/Unknown, prevents jurors from adequately contextualizing some of their answers.[3] For example, in every inquest, the jury is asked something similar to the following question: "At the time he fired his service weapon, did the officer think the deceased posed a threat of death or serious bodily injury to the officer or others." The answer to this question, which is nearly always "Yes," is commonly reported as justifying the use of force. However, the force used may not be legally justified when the officer's fear is unreasonable under the circumstances, or when the officer created the circumstance which then caused his fear. In order to avoid misleading conclusions, the inquest jury should be permitted to offer additional explanation to any inquest question in the form of a written or recorded statement.[4] Furthermore, each juror should be given an

[3] Answers need not be unanimous among the jury. For example, for a given interrogatory, two jurors can answer "yes," three jurors can answer "no," and one juror can answer "unknown."

[4] This explanation should be anonymous and provided either in writing or in a transcribed statement. A juror should be permitted to edit any written or transcribed statement to ensure it is accurate and consistent with what the juror intended to express. Additionally, jurors whose primary language is not English should be permitted to

opportunity to express any opinion, question, or concern he or she has that is not necessarily related to any specific interrogatory, either through a recorded or written statement. The ability to provide additional information, unrelated to a specific interrogatory, allows each juror to share information which may not have been addressed through any specific interrogatory, helping to ensure that the inquest process does not inadvertently overlook an important issue.

Second, many of the interrogatories, which can approach 50 in number, address questions to which the answer is already known. For example, interrogatories commonly confirm the date of the use of force and the location of the use of force. These interrogatories only serve to distract from the important questions which are unresolved. Additionally, forcing the jury to address these unnecessary interrogatories needlessly wastes their time and may prevent them from spending time needed to adequately answer other interrogatories that focus on contested issues. In order to avoid this problem, the parties should be explicitly permitted to stipulate to an agreed set of factual findings which can be entered into the inquest record without needing to be submitted to the jury as interrogatories.

5. The inquest jury should include 12 jurors to improve jury decision-making and reduce racial bias

The inquest jury should be expanded from six jurors (the current jury size) to 12 jurors in order to increase the probability of empaneling a diverse jury. Research has shown that more diverse juries are less prone to racial bias, less likely to make errors and more likely to base decisions on facts. A 2006 study found that when compared to an all-white jury, a diverse jury cited more case facts, made fewer errors, and was more likely to discuss racism.[5] Another study found that the presence of even one black juror eliminated racial disparities in conviction rates of white and black defendants.[6]

6. Modify the role of the King County Prosecuting Attorney's Office in inquest proceedings

The King County Prosecuting Attorney's Office (KCPAO) should not actively participate in inquest proceedings, as KCPAO participation creates the appearance of a conflict of interest. Presently the KCPAO's role is to "assist the court in presenting the evidence." The prosecutor does this by conducting the initial examination of all witnesses. However, since prosecutors routinely work closely with police officers in criminal prosecutions, community members and

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author or record their statement in their chosen language and have it translated into English for the inquest record.

[5] Sommers, Samuel R. "On racial diversity and group decision making: identifying multiple effects of racial composition on jury deliberations." *Journal of personality and social psychology* 90.4 (2006): 597.

[6] Shamena Anwar, Patrick Bayer, Randi Hjalmarsson; The Impact of Jury Race in Criminal Trials, *The Quarterly Journal of Economics*, Volume 127, Issue 2, 1 May 2012, Pages 1017–1055,

families often have the impression that prosecutors are not neutral in inquest proceedings. Compounding these concerns, when a death involves a member of the King County Sheriff's Office or a King County Jail employee, the KCPAO is also the entity responsible for defending the County in a wrongful death lawsuit. In these situations, when the KCPAO simultaneously defends the actions of law enforcement in a civil suit and serves as a neutral party in the inquest proceeding, their involvement in the inquest heightens the appearance of a conflict of interest, without necessarily adding a necessary function. It is not clear why the Court or hearing examiner cannot conduct the proceedings directly, with the lawyers representing family, officers and municipality proposing questions and asking other questions not posed by the hearing officer.

If the King County Prosecuting Attorney's Office no longer participates actively in the inquest, some practical considerations will need to be addressed. The KCPAO currently handles the logistics of conducting the inquest, such as arranging for evidence to be present during the proceeding and distributing the police investigation files and other discovery to the parties. This responsibility could likely be absorbed by the King County Hearing Examiner or an Executive inquest office. Additionally, two considerations support maintaining a limited role for the KCPAO—making a recommendation to the County Executive as to whether an inquest should be held. First, after consultation with the family about their wishes in light of any possible immunity issues, the KCPAO should be able to recommend against an inquest if, upon reviewing the initial investigative materials, it determines that probable cause exists for prosecution. In such an event, proceeding with the inquest could needlessly complicate a prosecution by creating immunity concerns.[7] Second, one of the virtues of the current inquest process is that it enables the internal police investigation materials to become public record, since they are in the possession of the KCPAO. In order to ensure that these materials remain public record, they should still enter into the custody of the KCPAO.

7. The inquest proceeding should be publicly-accessible via live internet video feed

If inquests are to provide the public with an accounting of the use of deadly force by law enforcement, they must actually be publicly accessible. Although inquest rules were originally well-intended to provide maximum public access via in-person attendance and video re-broadcast by television stations, the rules should be updated to keep pace with changes in technology and the way the public accesses information. Permitting live internet streaming of inquest proceedings would be a very small departure from the current practice, which permits live streaming via television. However, this small change would increase transparency by allowing the public to access the proceedings on-demand, either live or via a recorded video published each day. Live streaming would also allow the public to access the proceeding in its raw form, rather than just through the selected clips broadcast on the local news. In doing so, it

[7] It can be argued that certain lines of questioning in an inquest—especially those based upon compelled officer statements shortly after the use of force—immunize officers from possible criminal prosecution. As a result, when the KCPAO believes probable cause exists before an inquest is initiated, prosecution is likely best advanced by foregoing the inquest process. In such cases, the I-940 investigation could be provided under the direction of the Prosecutor's Office that is exploring or pursuing criminal charges.

would permit members of the public to draw their own conclusions, free from any potential claims of inaccurate or selective reporting.

8. **The inquest process should treat families more compassionately**

Many families who have participated in an inquest have reported that the process made them feel excluded or marginalized. Families have expressed concerns that officers (both those involved in the inquest and those attending as members of the public) are often given a comfort room they can spend time in during breaks in the inquest. However, families often receive no such courtesy. Additionally, in some cases, the courtrooms chosen for inquests have been too small to comfortably hold all family members and friends who might wish to attend the inquest. Efforts should be made to ensure that families are comfortable in the inquest proceeding, offering the same considerations to families in inquests as are offered to victims and their families in a criminal trial.

Judges presiding over inquests have also often pre-emptively admonished families and others who felt close to the person killed not to disrupt the proceedings – despite the absence of any evidence that disruption was planned. Almost without exception, families have approached these proceedings in a dignified and respectful fashion, and the warning from the Court about proper behavior has been insulting and infused with implicit bias. Guidelines for the judicial role or hearing officer role in inquests should clearly direct judges not to prejudge the parties or to communicate an expectation of inappropriate behavior until and unless that concern is clearly warranted.

Finally, inquests are routinely subject to extra security precautions, absent any reasonable justification, leaving families with the impression that they are believed to be safety threats. In order to access the inquest courtroom, all individuals routinely have to go through two security checkpoints—the normal security checkpoint to enter the courthouse and a special security checkpoint outside the inquest courtroom. There is no reason a second checkpoint is necessary, absent some specific intelligence about a particular threat pertaining to the inquest case. Other courtrooms, such as criminal and civil courtrooms, do not have their own second checkpoint, even when their subject matter involves violent harm or death.

9. **Inquests should be accessible to all members of the public, applying principles of cultural competency**

All members of the public should be able to access the inquest proceeding. Upon request, members of the public should be provided translation services. King County should advertise to the public that these services are available upon request because members of the public will likely be unaware of this option. Additionally, immediately after the County Executive calls for an inquest, the family of the deceased should be contacted to determine whether culturally competent services should be provided and whether translation services are needed.

If you have any questions or comments, please contact:

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