SMI ADVISORY COMMITTEE

Charlotte-Mecklenburg Police Department
December 9, 2014 – 1:00 P.M.

MEETING MINUTES

(Proposals contained in these minutes are subject to approval by the North Carolina Criminal Justice Education and Training Standards Commission)

WELCOME

Chairman Dan Worley called the meeting to order at 1:01 PM. He welcomed the members to the Providence Precinct of the Charlotte Mecklenburg Police Department, and thanked Member Wes Eubank for hosting the meeting.

ROLL CALL D. WORLEY

Members Present

Tim Pressley	Bob Stevens
Wes Eubank	Dan Worley
Billy Bradshaw	Ryan Weeks
Steve Warren	Fred McQueen
Dub Bridges	Anthony Locklear
Jeff Worley	

Members Absent

Scott Johnson

Guests Present

Mr. Charlie Brown, CMPD

APPROVAL OF MINUTES COMMITTEE

Dan was provided some revisions to the draft copy of the minutes, including a correction on the attendance for the Committee as listed in the minutes, and two grammatical errors in the "other business" section. A motion was made by the Committee to approve the **September 25, 2014** meeting minutes with the aforementioned revisions. The motion was made by Member Ryan Weeks and seconded by Member Jeff Worley. The motion carried unanimously.

NC JUSTICE ACADEMY ITEMS – CURRICULUM/TRAINING

Curriculum Revision Recommendations COMMITTEE

Dan inquired from the Committee is there are any recommendations for revision to the current SMI manuals for the Committee to consider. Member Jeff Worley recommended that Appendix C be updated to remove language requiring that both a distance and time input be required in "Beginning Tour of Duty" calibration/testing for time distance instruments before the calibration/testing procedure can be restarted in the event an error occurred. Dan agreed with Member Worley, and advised the Committee that the initial language was written in that manner because of the older VASCAR units from Traffic Safety Systems. The VASCAR models would not show you the distance during the calibration/accuracy test session until after the first time of 15 seconds was entered. To standardize the procedure, the same language was transferred to the Tracker by Kustom Signals Inc. although that instrument does have the capability to show distance immediately after the calibration routine. Dan acknowledged that this does not in any way change the

method by which a time distance instrument is calibrated or tested for accuracy. It simply saves the operator time should an error occur by allowing the operator to immediately stop the calibration routine and start over again, should an error occur during the calibration routine. Under the current language, they are required to continue throughout the entire process only to have to restart it later at the end of the procedure. There was no dissent noted from any other member. Dan advised the Committee he would prepare new language for Appendix C and present that to the Committee in March for their approval of recommendation to the Commission.

Dan thanked Member Worley for the recommendation, and asked if there were any other recommendations at this time. There was none, so this session was tabled until the March meeting.

CJ STANDARDS DIVISION ITEMS – STANDARDS

C.J. Standards Presentation T. PRESSLEY

Member Tim Pressley notified the Committee that a recent event occurred at a law enforcement agency in North Carolina where it was determined that RADAR devices at that agency were being utilized for enforcement purposes without meeting the annual test for accuracy requirement stated in the RADAR Reliability Act. The discovery of this fact has created an increase of discussion concerning how this can be avoided in the future. Member Pressley stated an additional concern that has been raised throughout the discussions is that a speed measuring instrument (SMI) is not required to be within an annual test for accuracy if it is only used during a training session. Member Pressley stated that during a recent conversation, it was found to be surprising, by some, that SMI devices used during training wasn't already required to be within an annual test for accuracy. Additionally, Member Pressley stated that during the investigation of the agency concerning this lapse in the annual test for accuracy, it was also discovered that an outside agency, nor the Court, could establish specifically which SMI was used for each enforcement action. This is especially an issue at agencies where patrol cars are pooled, such as a motor fleet with rotating vehicle shifts, where an officer may drive a different car per shift. Member Pressley expressed interest in potentially establishing a rule or procedure where the serial number of the specific SMI must be recorded on each citation written by the officer, and if the Committee agreed with establishing a protocol that a SMI used in training must also be within an annual test for accuracy, that serial number be recorded on the motor skills document as well.

Member Pressley inquired the opinion of the SMI Committee, and stated that C.J. Standards would present the opinion and findings of the SMI Committee to the Commission on these topics. Dan requested the Committee to, for recording purposes in the minutes, break down the discussion provided by Member Pressley into two segments. The first segment of discussion will pertain to the requirement or protocol that SMI's must currently be within an annual test for accuracy for both enforcement and training purposes. The second segment of discussion will pertain to the requirement or protocol that the serial number be required on both the citations issued by the officer, and on the motor skills test forms when training is conducted on any SMI.

*First Segment.

Dan distributed a copy of the current RADAR Reliability Act (N.C. General Statue 8-50.2) with highlighted sections pertaining to the discussion of segment one; particularly, subsection (a) and (c). [*A copy of N.C.G.S. 8-50.2 is attached to these minutes as attachment 1*]. In subsection (a), it is identified that the results of any SMI is admissible in a criminal or civil proceeding for the purposes of corroborating the opinion of a person as to the speed of an object. Dan advised the Committee that subsection (a) has historically been interpreted that all the requirements listed in subsection (b) and (c) apply only where the results are sought to be admitted into a civil or criminal proceeding: to wit; criminal or civil court. In any other use, the historical interpretation was that the requirements would not apply because no criminal or civil enforcement action was being sought against an individual. Some examples of non-enforcement use of SMI include training purposes, traffic surveys or studies of speed, and the informational speed sign/trailers that agencies often use to slow traffic down without having to issue citations.

Member Dub Bridges stated he was concerned that we were about to create a "gray area" if this were to come to fruition, adding that it could quite possibly create a tracking issue for the State Highway Patrol as well, because they often assist the smaller local agencies with annual tests for accuracy. Member Bob Stevens stated that while he readily agreed that the discovery of an assortment of officers who are in violation of the law is troubling, it should be treated just as that. Member Stevens expressed his support that those found to be in violation of the law should be dealt with by the Commission in a swift manner, without further penalizing the rest of the operators and agencies that abide by the rules on a daily basis. Member Jeff Worley agreed with Member Stevens. Member Worley stated that the failure of this agency in question, or any other agency for that matter, is clearly not a training or non-enforcement issue. He elaborated that the manual, the rules, and the law all clearly require an annual test for accuracy within 12 months prior

to the alleged violation, and that to require non-enforcement instruments – such as training instruments or speed trailers – to be within that same rule will not only act to penalize the agencies already following the law, it will bring into question instruments that were never meant to be utilized in an enforcement capacity to begin with. Member Wes Eubank agreed with both Members Stevens and Worley. Member Eubank stated that to act on this accord would create further financial hardships for agencies to meet the influx of new annual certifications on those instruments where enforcement is never the objective. Member Eubank stated that the example discovered in this particular agency is simply a violation of existing law that has been in effect for many years, and it is a violation of our accepted standards in SMI for North Carolina as stated in the training manual. Furthermore, Member Eubank identified a deficiency in the thought that by requiring training instruments to also be within an annual test for accuracy, it will somehow prevent instruments from appearing in the field for the purpose of enforcement without an annual test for accuracy. He acknowledged that there is no real way to establish that the unit brought to a training session will be the same unit utilized in the field for enforcement. Member Eubank stated that on regular occasion, and especially in agencies where there is a rotating fleet of cars, an officer changes cars, and thus instruments, on a regular occasion. He went on to establish that just because a particular officer attends his RADAR Operator Certification or Recertification class today with this specific serial numbered RADAR that has a current annual test for accuracy, doesn't mean he or she will be locked to using that specific RADAR tomorrow for enforcement purposes. Therefore, he suggested, establishing this rule would not help that objective in any matter. [This statement by Member Eubank is referring to the standard procedure that an operator is tested in training and certified by the Commission to utilize a "like make and model" instrument, but not necessarily a specific make and model of an instrument by individual serial number. For example, the State Highway Patrol owns hundreds of Kustom Signals Inc. Golden Eagle RADAR units. A Trooper is trained and then tested in his operation of the "Golden Eagle" RADAR as a whole, which permits him/her to operate any of the Golden Eagle RADARs within the fleet of the State Highway Patrol.]

Member Jeff Worley stated that the status of an instruments annual test for accuracy while utilized in a training session is completely irrelevant to the training on that instrument anyway. Member Worley asked generally for agreement from the other Members that the objective in training a student on the use of the SMI is narrow. In that, the training is on how to setup, test, read, and properly operate the instrument. As long as that instrument meets Appendix C, in other words the instrument turns on, conducts a manual test of internal working, and tuning fork tests are all within tolerance, an annual test for accuracy has no bearings on that finding? No member disagreed with that interpretation. Member Tim Pressley asked Member Dub Bridges exactly what additional step(s) does a radio technician make when conducting the annual test for accuracy that an average everyday operator doesn't do when he or she is required to at the beginning of shift and after each enforcement action? [Member Bridges is a Radio Engineer Supervisor for the State Highway Patrol and serves as the technical expert member on the Committee.] Member Bridges stated that under the current annual test for accuracy form (SMI-9 form), the only test conducted by a radio technician that is not conducted by an operator is a frequency check of the antenna and tuning forks. Member Bridges stated that both the "transmit" and "receive" frequencies must be within a specified tolerance of the electromagnetic spectrum to meet requirements established by the Federal Communications Commission. Member Bridges further stated that beyond that frequency check, it is all standard operator daily tests. Member Eubank asked Member Bridges would an instrument continue to show numbers if those frequencies were out of tolerance? Member Bridges stated that yes, some of the instruments could continue to process the frequencies and display simulated speeds in the speed windows, but that the displayed simulated speeds indicated in the windows during the tuning fork tests would be different than the expected values specified in Appendix C. Member Bridges elaborated that that some instruments would not display a speed in the windows at all if, for example, the bands [X-band, K-band, and Ka band] were inadvertently mixed up. Dan confirmed with Member Bridges that in essence, the only test conducted by the technician for the annual test for accuracy in RADAR that is not also done by an average operator on a daily basis is the frequency counting of the antenna and tuning forks to ensure they meet standards established by the Federal Communication Commission for radio safety standards, and that a deviation from the accepted tolerance in those tests would be readily noticed by an average operator anyway as long as they followed Appendix C? Member Bridges agreed that the understanding by Dan was correct. Dan reminded the Committee that this supports Member Worley's earlier thoughts that an annual test for accuracy is irrelevant to an instrument used in training, because identifying abnormalities or failures of instruments to meet all operational guidelines established in Appendix C is exactly what is being trained in the motor skills training and testing of SMI training.

Member Bob Stevens reiterated that establishing a rule or protocol that requires the annual certification of non-enforcement instruments is not the answer. He also reiterated that this was an example of officers or agencies violating state law, not a problem with the law or the training program as it has been established for years. Member Billy Bradshaw agreed, stating that the answer to this problem is only through an effective Commission response through punishment against the operators or agencies violating the law, not revisions to our training program or the instruments used in that training. Several members agreed, including Members Ryan Weeks and Anthony Locklear, stating that a revision to current protocol is not prudent under these circumstances.

Dan agreed with all the members who had spoken, and stated that North Carolina is well known for having the most stringent training program in the nation when discussing SMI training. The potential complications by requiring non-enforcement instruments to also be certified annually according to subsection (c) in N.C. General Statue 8-50.2 would be both tangible and negative on agencies. Dan asked if there was any other discussion on the matter, and there was none. Dan asked for a motion to provide Member Pressley with a response on this topic from the Committee. A motion was made by Member Bob Stevens and seconded by Member Wes Eubank to NOT revise the current interpretation of the protocol and law, and therefore, NOT require the annual certification of non-enforcement instruments (to include, but not limited to, training instruments, speed survey instruments, and speed trailer/informational instruments). This motion furthermore establishes that the SMI Committee supports the existing interpretation of North Carolina General Statue 8-50.2, where any instrument used in criminal and/or civil proceedings for the purposes of corroborating the opinion of a person as to the speed of an object must meet subsections (b) and (c) when enforcement purposes are sought. The motion carried unanimously.

Member Dub Bridges happily stated that the Committee just removed the "gray area" by unanimously voting that recommendation.

*Second Segment.

The second segment of discussion pertained to the requirement or protocol that the serial number be required on both the citations issued by the officer, and on the motor skills test forms when training is conducted on any SMI.

Several of the Members immediately expressed concern over the jurisdiction of the Committee to discuss any matters related to the completion of citations, stating that such discussions are meant for administrators within the Administrative Office of the Courts and the Conference of the District Attorneys. Dan advised the Committee that he agreed completely with their concerns, and that the issue of requiring serial numbers on citations will therefore be referred to the Commission for further discussion.

Regarding the requirement of instrument serial numbers on motor skills testing forms, Member Bob Stevens stated that he felt this discussion was irrelevant at this point because the Committee just unanimously recommended that non-enforcement instruments be excluded from annual tests for accuracy requirements. Member Tim Pressley cautioned the Committee that if some action is not taken, it will only prolong the occurrence of instruments being out of tolerance. Members Bob Stevens and Jeff Worley stated that, as the Committee just established, the need to establish a specific instrument was used for a training course and that the specific instrument was within a current annual test for accuracy, is irrelevant to the training that occurs, and it is does not ensure that only that instrument will be used in the field for enforcement. Therefore, they inferred, the need to document the serial numbers and annual testing certifications for each unit presented in a training course is yet another validation step that Community Colleges, School Directors, and Instructors will have to ensure is followed when the root of the problem is the inability of a few to follow the protocol and the law as it applies. Member Ryan Weeks stated that something that has not been brought up yet is the fact that we are not talking about one simple serial number. Essentially, Member Weeks stated, every unit could have as many as five different serial numbers because the front antenna, rear antenna, counting unit, and each tuning fork will all have serial numbers. Now imagine if every motor skills test form required all five of those serial numbers; imagine if every citation required all five of those serial numbers. Member Weeks said you then run into the possibility of an officer who is doing everything correct, following the protocol of annual test for accuracy, does his daily tests for accuracy correctly as required, who inadvertently copies *one* digit wrong out of his *five* serial numbers and then citations are dismissed – or motor skills forms are returned from Criminal Justice Standards – Member Weeks finished by stating that this is certainly opening the door for much bigger problems if it is passed for either motor skills testing forms, or citations for that matter. Member Wes Eubank clarified once again with Member Dub Bridges that the only additional test conducted in an annual test for accuracy is the frequency count/check. Member Bridges confirmed that it is the only additional test. Member Billy Bradshaw reiterated that all of this discussion, concern, and attention have been placed at the feet of a select few who did not follow procedure. Member Bradshaw reiterated that the problem lies with those operators, and any out there in the field we do not know about at this point, and that it is not the training program, or our current protocol or law. Dan asked the Committee if there was any further discussion on segment 2. There was none.

Member Ryan Weeks made a motion to NOT require serial numbers be recorded on motor skills test forms for any SMI training courses which was seconded by Member Fred McQueen. The motion carried unanimously.

INFORMATIONAL ITEMS

Evaluation Instrument Redistribution D. WORLEY

Dan reminded the Committee that we are currently inside the evaluation cycle for 2014-2015 approval of new instruments. Dan asked the members to return their evaluation instruments to him today, or to exchange out with another member and take new instruments back for evaluation.

OTHER BUSINESS

Dan advised the Committee that two members' terms are up for renewals. Those members are 1) Walter "Dub" Bridges, and 2) Anthony Locklear. Dan also advised the members that he spoke with Member Scott Johnson who advised that his busy schedule at the Greenville Police Department was simply too much at this point to maintain an effective position on the Committee and would be stepping down. Dan advised the Committee that he was very appreciative for Member Johnsons service, but understood that schedules and missions change and respects Member Johnson's decision. Dan advised the Committee that Member Johnson hopes to attend the March meeting to see everyone and express his appreciation for service on the Committee. Dan requested the Committee provide at least five names for consideration for the three open slots on the Committee. Dan reminded the Committee that for the expiring terms, the existing Committee members can be recommended for renewal. He also advised the Committee that the term remaining for Member Johnson would need to be filled by a member from a mid-sized police agency. It also should not be from a large or small police department, in order to maintain the make-up of the Committee. The names provided were; 1) Walter "Dub" Bridges, 2) Anthony Locklear, 3) Chris Gaddis, 4) Steve Brewington, and 5) Phil Worthington. Dan advised the Committee a decision will be made, and the members will be immediately advised of that decision.

Dan advised the Committee that the next scheduled meeting date for the SMI Committee will be **Thursday, March 5, 2014 at 1:00 PM** unless a meeting was declared necessary prior. The location for the meeting will be at the **North Carolina Justice Academy in Salemburg**. The host for the meeting is **Dan Worley**. No member expressed concern over the date and time.

Other Business to Address? D. WORLEY

Dan advised the Committee Member Jeff Worley would be leaving the Committee due to a promotion to First Sergeant with the State Highway Patrol. Dan advised the members that Member Worley has been assigned as the First Sergeant for Hendersonville, which is located in Henderson County. Dan congratulated First Sergeant Worley on his accomplishment. Member Worley stated that SMI Instructor Stevie McMillian was promoted to Sergeant with the Patrol, and will assume the position formerly held by him at the State Highway Patrol Training Center in Raleigh. Member Worley stated that Sergeant McMillian will be present at the March meeting serving in the capacity as SMI Program Administrator for the State Highway Patrol, and will also assume the position on the Committee as well.

Dan also acknowledged that the March meeting will be the last meeting for Member Wes Eubank, a founding member of the SMI Committee. Member Eubank will be retiring from the Charlotte Mecklenburg Police Department between March and June. Member Eubank is expected to provide a personal recommendation for his replacement to assume the remainder of his current term at that time.

ADJOURNMENT COMMITTEE

With no further business to address, a motion was made to adjourn the meeting by Member Jeff Worley. The motion was seconded by Member Bob Stevens. The meeting was adjourned at 2:35 PM.