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ACTION OF THE COUNCIL

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Re-referred	To
Reported	Disposition

REPORT OF COMMITTEE

Honorable President:

Your _____ Committee

to which was referred the within _____
would respectfully report that we have considered the same and respectfully recommend that

Chairman

Citizens Review Panel

Final Report



Charles V. Johnson, Chair
Jenny A. Durkan
Michael D. McKay
Burdena G. Pasenelli

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August 19, 1999

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CITIZENS REVIEW PANEL FINAL REPORT

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CITIZENS REVIEW PANEL

FINAL REPORT

I. INTRODUCTION

On May 7, 1999, Mayor Paul Schell appointed a panel of citizens to evaluate the issue of employee accountability and the process by which reports of police misconduct are investigated by the Seattle Police Department. The appointment of the panel followed the filing of first degree theft charges against a police detective, accused of stealing \$10,000 from the home of a Seattle resident who died after engaging in a shoot-out with Seattle police in October, 1996. The charges state that while the money was returned to the home and subsequently placed in evidence, the alleged theft - which was known to a number of Seattle police officers and was reported to a sergeant in the Department's Internal Investigations Section - was not investigated by the Department until March, 1999, when a homicide detective informed a King County Deputy Prosecutor of the incident.

The citizens' panel was charged by the Mayor to:

- Examine the barriers that give rise to the failure of employees to report misconduct, and propose steps to ensure compliance with reporting requirements
- Evaluate the Department's mechanisms to encourage and support citizens and employees who report or witness misconduct, and
- Undertake a systematic review of Department policies, procedures and training programs - including Internal Investigations - that define employee responsibilities in disclosing and investigating allegations of misconduct.

The panel was chaired by The Hon. Charles V. Johnson, retired Judge of the King County Superior Court. Its members include Jenny Durkan, Seattle attorney and former Executive Counsel to the Governor, Mike McKay, Seattle attorney and former United States Attorney for the Western

District of Washington, and Burdena Pasenelli, former Assistant Director and recently retired Special Agent in Charge of the Seattle Office of the Federal Bureau of Investigation. The Hon. Terry Carroll, former deputy prosecutor and King County Superior Court judge who is also Seattle Police Department Internal Investigations Auditor and Hubert G. Locke, Professor and Dean Emeritus of the Evans School of Public Affairs at the University of Washington serve as consultant advisors to the panel.

To facilitate its work and to meet the requested date for submission of its final report, the panel retained Bryce Nelson as Administrative Assistant. It also employed as panel staff, Robert C. Evans, a 31-year veteran of the King County Department of Public Safety, Thomas A. Harney, a Special Agent with the Federal Bureau of Investigation from 1969-1997, and Martha H. Norberg, a Special Agent in the Criminal Investigation Division of the Internal Revenue Service, 1979-1990.

The panel itself devoted over four hundred hours to its inquiry. The work of its consultants consumed an additional one hundred sixty hours. The panel held seventeen half-day sessions, including one public hearing in which it took testimony from Seattle citizens. It received more than 130 telephone and written responses to its request for city residents to provide any information that might be useful to the panel's inquiry. Panel staff conducted over eighty interviews with police officers, citizens and public officials. In addition, the panel reviewed policy and procedure manuals from police departments, sheriffs' offices and state police organizations from across the country and took testimony from current and former police officials [see Appendix A for additional documents reviewed].

Although a single allegation of misconduct led to the formation of this panel, its charge required a wider inquiry. Throughout its inquiry, the challenge facing the panel was one of maintaining a sense of balance and equity - of vigorously pursuing all allegations brought to its

attention, with a determination to avoid any simplistic prejudgments and instead to be led only by the inquiry's outcomes.

II. EXECUTIVE SUMMARY

The gravamen of our charge from the Mayor was to determine what barriers exist to the reporting of misconduct by Seattle Police Department employees. First, however, it is important that the panel convey to the Mayor and the citizens of Seattle its major conclusion: despite broad citizen consultation, aggressive inquiry and considerable media attention, the panel does not find any evidence of widespread corruption in the Seattle Police Department. Everything the panel learned leads it to conclude that the allegation of theft by a Seattle police detective and other allegations of wrongdoing brought to and examined by the panel are exceptions and not the rule in a Department which has striven, for the past thirty years, to develop and maintain standards of professional integrity.

While the panel found that a number of factors can deter or encourage the reporting of misconduct, the single most important factor is whether people have confidence that complaints will be handled thoroughly, fairly and expeditiously. The panel has concluded that the present system has not uniformly engendered such confidence.

The panel has concluded that having civilian involvement in all stages of internal investigations is a critical component for restoring public confidence in the system. Thus, the central recommendation of our report is a change in the structure of oversight for internal investigations. The panel also concluded that responsibility for investigating allegations of misconduct, and when appropriate imposing discipline, should rest with the Department and the Chief of Police. Such responsibility is the key to accountability. In determining what structure of civilian oversight would

best suit the realities and needs of our city, the panel has considered and decided against a variety of models from other jurisdictions, including the model of a Citizen's Review Board.

Instead we recommend that the City of Seattle form an Office of Public Accountability [OPA]. This office would subsume both the present duties of the Internal Investigations Section [IIS] and the IIS Auditor. The Director of the OPA would be a civilian with the requisite experience, and would be appointed by the Chief of Police and confirmed by the City Council. The OPA would have an assistant director. Its investigatory and clerical personnel would continue to be Department personnel. The Director would oversee and be responsible for the investigative, adjudicative and administrative functions of the disciplinary process, and would recommend disciplinary actions to the Chief of Police. The Chief would be solely responsible for the final determinations as to discipline, and may for good cause and in writing, modify the adjudicative findings of the Director. The Director of the OPA will enforce the rights of officers and citizens with equal diligence. Additional policies and procedures governing the OPA are set forth below.

As stated, the panel concluded that a number of factors influence whether misconduct will be reported by employees or civilians. In order for the OPA or any internal investigations system to succeed, the panel has concluded that a number of substantive changes also must be made in the areas of leadership, policies and procedures, and training. The message of integrity and personal responsibility must start with the Chief of Police and be expected at every level below. It must be supported and enforced with appropriate rules, training and discipline. The panel's report makes specific recommendations in each of these areas. A number of these recommendations require immediate attention and implementation because they affect the city's position in contract negotiations currently in process with the police unions. The panel believes that recommended changes in each of the three areas [leadership, policies and procedures, and training] are essential

to the success of any internal investigation system, and should occur whether or not the city adopts the OPA model.

The panel appreciates that its report has significant budget implications for the city. New resources must be allocated to these endeavors and cannot simply be carved from other areas of the police department budget. The panel concludes that there is a much higher public cost in not having full confidence in our police and its ability to investigate itself.

Finally, the panel wishes to thank the many civilians and Department employees who provided information to the panel. The issues examined by the panel generated a deep level of response, and the panel heard from all corners and many voices of our community. Our work would have been brief and meaningless without this participation. The panel appreciates the personal commitment, if not personal courage, that such participation required.

III. INQUIRY RESULTS

A. Barriers to the Reporting of Misconduct in the Seattle Police Department

While the panel found no widespread or systemic corruption, in those instances where misconduct or violation of the law exists, the panel learned that some employees are reluctant to report such misconduct. Several possible reasons for this reluctance can be cited.

The Police Culture: Since the recent disclosure of the alleged theft by a Seattle Homicide detective, the phrase "Blue Code" or "Wall of Silence" has been used to indicate the protection that police officers provide for one another. One of the essential elements of officer safety is protection and "back-up" from fellow officers. Without such, officers may face serious danger in the performance of their duties. Many officers feel that their occupation isolates them from the rest of

the citizenry and that the only real support they receive in doing their jobs comes from their fellow police officers. The nature of the job makes reliance on one another an essential part of survival. Without this trust in one's co-workers, it is perceived that effectively performing the duties of a law enforcement officer would be even more difficult.

In some larger police departments, the protection that this "Blue Code" offers may extend to deeds of misconduct, including criminal violations. The panel has not found, however, this to be a systemic practice in the Seattle Police Department. Both the media and the public must be reminded, in fact, that the case which gave rise to this inquiry came to official and subsequent, public attention because a Seattle police officer did not observe the "Wall of Silence." Where the panel found failures to report misconduct, those failures can be attributed to other factors discussed below that the panel is convinced can be remedied through changes in training and leadership practices.

Perceptions of Administrative Priorities: The panel found that some veteran police personnel indicate a lack of knowledge of the regulations requiring the reporting of misconduct, the failure of communication from executive levels of the Department regarding the importance of ethical behavior, the lack of serious and consistent disciplinary measures against officers who have behaved unethically, the lack of sound ethics training at the academy, and the lack of a specific policy setting forth in clear terms the behavior that is expected of an officer - all as reasons for the failure to report misconduct. While some of these deficiencies may reflect perceptions as much as reality, taken together they reflect a climate in the Department in which an unknown number of officers believe the reporting of misconduct is not a matter of priority.

Location/Access to IIS Office: The physical location of and access to the office of the Internal Investigations Section [IIS] presents another barrier to the reporting of misconduct. The Section is not located in the Public Safety Building for positive reasons - to protect the

confidentiality of complainants and to encourage both employees and citizens to approach the office without fear or intimidation. Unfortunately, several municipal courtrooms have located next to the IIS office, which now keeps its door locked to ward off a stream of persons looking for the courts. Consequently, a visitor to the IIS office must use an intercom to gain access through a locked door and then wait in a small entrance area to be interviewed. The entire atmosphere is not one conducive to encouraging persons who wish to file a complaint.

Similarly, persons wishing to file equal employment opportunity [EEO] complaints find themselves having to enter the same locked facility and pass the offices of several IIS investigators to reach the EEO office. The EEO office was transferred from the Police Personnel Office to the IIS - also for positive reasons. However, its current placement in IIS has become problematic. As the Department has acknowledged, a large number of women employees lack confidence in the Department's handling of EEO issues. Because misconduct must be reported to the same supervisors and the IIS, this lack of confidence is a barrier to the filing of complaints. There is also a widespread perception that EEO and IIS staff discuss their cases and share information. While these may seem minor matters, they heighten the disregard and lack of confidence many employees have for a function which, under the best circumstances, is not highly regarded by police officers.

Central Command Responsibility: The erosion of confidence in the IIS complaint process is also furthered by the fact that, while the Chief of Police is responsible for all disciplinary decisions, in practice no single person in the Department makes the key decisions regarding discipline. Employees describe cases in which seemingly arbitrary decisions have been made regarding whether to initiate an investigation. The panel also found some cases that lack proper investigative attention [e.g., failure to interview key witnesses] or cases in which disciplinary

measures of varying degrees have been applied to similar offenses. All of this contributes to the loss of confidence in the professionalism of the process and is a barrier to the reporting of misconduct.

Employee Transfer/Rotation: Finally, the issue of employee transfers and rotation of assignments has an effect on whether employees feel free to make reports of misconduct to IIS. An officer who has been in the same unit under the same supervisor for a long period may not be as prone to report a fellow officer for wrong-doing as would an officer whose unit changed personnel periodically. In certain units where the opportunity for misconduct is disproportionately high, transfers and periodic rotation of assignments would also lessen the temptation and reduce the opportunity for wrong-doing. The panel fully understands the need to retain expertise, especially in highly specialized areas of criminal investigation, but the failure to transfer employees and to rotate assignments contributed to the incident and the resultant issues that brought about the creation of this panel.

B. Mechanisms to Encourage and Support Citizens and Employees Who Witness Misconduct

Every contact a citizen has with the Department will form the opinion that citizen has regarding the efficacy of the Department's ability to investigate its own personnel. In today's society, it is a reality that police officers are thrust into numerous unpleasant and dangerous situations. By definition, if the police do their jobs well, some people will be unhappy.

In the main, the citizens of Seattle have confidence in their police. However, contacts between police and citizens, on occasion, may be adversarial and give rise to complaints directed against a particular officer. The system should and does provide the means to identify and guard against frivolous or malicious acts against police officers by citizens. Protecting police personnel from such harassment is an important part of the IIS process. It is equally important that the process

is open, accessible and non-intimidating to citizens and Department employees who seek to report allegations of police misconduct.

During its inquiry, the panel found some complaints from citizens that merited, but did not receive, an in-depth investigative effort. Instances were identified in which citizens filed complaints of misconduct but no record of those complaints could be found in IIS files. As an example, in one instance, the nature of the complaint constituted a potential felony but, because of file-maintenance problems, the file was not located until several inquiries had been made to the Department. The file indicated that the complaint had been processed as a Supervisory Referral - a disposition of an "allegation of misconduct that is minor and, even if proven, would not constitute a significant violation of any policy, procedure or rule" [Department Manual Section 1.121].

Despite written policies that require Department personnel to accept complaints from any source at any time, the panel learned of instances in which complaints were not taken when first made and citizens were told to come back at another time or go to another location. Though few in number, such instances become magnified in importance as they are reported through the community.

Further in this report, recommendations made by the panel direct themselves, in part, to what are considered deficiencies in the investigatory process. At a minimum, problems of the nature described above have created the perception among some citizens and employees that IIS and the Department do not take their complaints seriously or that personal criteria or relationships are used to determine how to proceed with particular complaints. These perceptions can influence whether a citizen or employee will come forward to file a complaint. Having a system which creates these perceptions is also unfair to the men and women of the Department who go about their tasks every day with the highest of ethical standards and professional integrity.

Public perception about the Department's commitment to vigorous investigation of citizen complaints is also affected by what the public knows about the complaint procedure itself. The Department has made considerable advances in reaching the citizens of Seattle and in creating a strong and positive relationship with members of the community. As part of that effort, the Department has published several brochures and other outreach items to inform the public of its rights and of the process for filing complaints. This information is made available in several languages and designed to reach certain target audiences such as youths, business owners, professionals and foreign nationals. Unfortunately, the Department's efforts in these areas have not been wholly consistent. For example, the Department manual made available to the public in the downtown branch of the city library fails to include the section detailing its IIS policies and procedures, which were adopted over two years ago.

Although most complaints are properly handled, the panel found occasions in which IIS is burdened with the investigation of complaints regarding the performance of an officer that should be handled at the precinct or section level. The classification of a complaint should be initially determined by IIS and subsequently investigated either by IIS or as a line investigation [Department Manual 1.121.VIII.A.2]. The Department's policy of handling complaints at the precinct level is wholly appropriate if the matter involves a failure in performance on the part of an officer, although even in these cases, a record of the complaint and its disposition should be maintained by the IIS. When the complaint involves an issue of officer misconduct, as distinct from performance, then the jurisdiction of IIS should be automatic and a matter of the highest priority. A failure in the Department to distinguish between complaints involving performance and those involving misconduct frequently results in IIS handling complaints that could be resolved at the precinct level and cases processed at the precinct that clearly warrant IIS investigation.

The lack of information during the process, and the inability to provide ongoing information, also discourages some citizens from pursuing what they perceive to be a meaningless effort. Some citizens feel that the standards used by IIS to determine whether a complaint is sustained or not are unclear and, in instances where a complaint is not sustained, the citizen has no way to discover whether the complaint was handled appropriately. Youths and citizens of color are especially apt to feel that their complaints are ignored or improperly handled. On rare occasions, the fear of retaliation is a barrier that inhibits citizens from filing complaints, especially among persons who have regular contact with officers, such as "street people" and business owners of such establishments as bars, pool halls, entertainment venues, and small retail stores.

The panel learned of a number of cases in which citizens were cited for crimes or infractions under circumstances that the citizen felt to be retaliatory. The officer then failed to appear for court and the charges or infraction was dismissed. Alternatively, sometimes persons are arrested and then released without a charge being filed. A cursory review of municipal court records does demonstrate that a number of cases are dismissed because police officers fail to appear. When citizens fail to appear, a warrant can be issued for their arrest. The Department and the City Attorney's Office should determine the number of cases dismissed annually because of officers' failure to appear. The Department needs to clarify policies that require officers to appear at all hearings and impose discipline, when appropriate, for failure to appear.

When cases of misconduct occur and either go unreported or, as in other cases examined by the panel, are handled in a less than satisfactory manner, the question of leadership of the Department is inevitably and appropriately raised. While the executive staff of the Department must perform the wide range of responsibilities attendant to running any agency of its size, no responsibility is more important than maintaining the highest ethical and professional standards. As

a society, we entrust too much to the police to expect otherwise. The expectations and tone for maintaining these professional standards must start with the Chief and work down to every level in the Department. Because it is at the heart of the police function, it is necessary to offer an assessment of the manner in which the Department generally and the Chief specifically have dealt with this and other situations in which professional standards have not been met.

Chief Stamper, at the time of his appointment, made the establishment of positive relations between the Department and various disaffected segments of the Seattle community one of his major priorities. He has devoted a considerable amount of time and attention to this effort and it has been a productive engagement. The citizens of Seattle can be grateful that issues and incidents which have been the source of intense conflict between the police and the public in other U.S. cities are not causes of tension here. For this, credit must be given to Chief Stamper and to those men and women in the Department who take its statement of mission, vision and core values seriously. A positive relationship with the community is also the cornerstone of any successful internal investigations process. How a community feels about the Department as a whole will influence greatly its confidence in the IIS.

In devoting time and effort to establishing better external relations between the Department and the Seattle community, many matters of internal management have been left to the Department's executive staff. While this delegation of responsibility is in accord with the best principles of management in the private sector, it does not always serve well in police agencies, particularly when matters of misconduct - their investigation and adjudication - are at issue. The panel believes that until recently the Chief has not made the reporting and investigation of allegations of misconduct a sufficient priority. He has delegated too much of his responsibility in these areas away, he has allowed cases to be resolved in a questionable manner and contrary to Department regulations, and

he has not insisted on or participated in adequate training on issues pertaining to ethics. To his credit, the Chief has recognized some of these shortcomings. He recently issued his own twelve-point plan to address some of these concerns.

C. Departmental Policies, Procedures and Training Regarding Employee Responsibility for Disclosing and Investigating Allegations of Misconduct

There is no lack of policies, regulations and procedures in the Seattle Police Department regarding an officer's or civilian employee's responsibility to report incidents of misconduct to proper authorities and detailing the Department's mechanisms for investigating such incidents. As is the case in many agencies and organizations, the problem is not whether there are sufficient rules in place but whether those rules are given sufficient emphasis and priority, whether they are implemented with fairness and consistency, and whether there is a clear, unambiguous understanding throughout the Department that every employee - sworn and civilian - is subject to them.

I. Policies, Procedures and Training which define employee responsibility to disclose alleged misconduct.

The conduct and behavior of police officers, together with Department civilian employees, is referenced in a number of sections of the Department's Manual of Policies and Procedures [see chapters 29: Rules of Conduct; 117; Public and Internal Complaint Process; 121: Investigation of Citizen and Internal Complaints; 125: EEO Complaints and Investigations; 129: Harassment in the Workplace]. Taken together, there is no question that the Seattle Police Department has a policy that requires its employees to report misconduct, that obligates employees to tell the truth in their

statements, and that mandates anyone in a supervisory capacity to report misconduct to the Internal Investigations Unit.

What is lacking is a concise statement that specifies in unequivocal terms the conduct that the core values of the Department dictate [e.g., that dishonesty, deception, failure to report are grounds for termination]. What is known in other police agencies as a "Bright Line Policy" so-called because of its especial importance and significance, needs to be adopted by the Department and distributed to all officers, beginning with the academy training process.

The Department should revamp both its ethics training of officers and its training of IIS personnel. It is the panel's distinct impression that the portion of the training program devoted to issues of ethics and professional responsibility is inadequate and is not provided by an executive officer of sufficient rank to make clear the central importance of ethics and professional integrity in the work and career of a police officer. Currently, there is no post-academy training that deals with ethics and that offered in the academy is limited to four hours. New officers will not come to understand that ethics and professional integrity are the bedrock of their duties unless the Department singles this area out from the welter of rules and regulations to which officers are subject and makes it the centerpiece of their work.

Giving officers a new and heightened appreciation for the importance of professional integrity in their work would be aided by a policy that treats minor violations as matters for training, rather than as occasions for discipline. An early warning system as a supplement to the administrative review process that identifies officers whose work record reflects problems in dealing with the public or with ambiguous field situations and that is implemented as a part of the Department's training program, rather than as a disciplinary process, would likely lessen officer antagonism toward the investigations section, as well as offer increased opportunities for improving

performance. It would also make a clear distinction between inappropriate conduct that training can ameliorate and serious misconduct which must be sanctioned.

It also came to the panel's attention that the Department suspended performance evaluations over a year ago so a better system could be put in place. Performance evaluations are an indispensable management tool for assessing and measuring the individual efforts of Department employees, for identifying areas on which training programs should be focused, and for gauging the Department's progress toward achieving its objectives. In the panel's judgment, it is essential that an annual performance evaluation system be restored as soon as possible.

II. Policies, Procedures and Training Programs which define Internal Investigations

Section responsibilities for investigating allegations of misconduct.

The IIS has had, in some respects, a troubled history in the Seattle Police Department. It was established only three decades ago in response to a major scandal and a subsequent review of the Department by the International Association of Chiefs of Police. Since that time, the IIS at various times has been subject to various influences - collective bargaining agreements, the misuse of IIS investigations to prevent favorable and unfavorable reports from affecting promotional opportunities, the assignment of cases to IIS that clearly involve officer performance issues, rather than misconduct. In addition, there are non-IIS actions by officers in the Department that affect public perceptions of IIS, such as the practice of citing a citizen who files a complaint for some law violation but failing to appear in court for its prosecution. In spite of these past problems and current limitations, the IIS has shown slow but marked improvement in the performance of its responsibilities. Based on the IIS Auditor reports, the overall volume of complaints [including unnecessary force] is down by two-thirds since 1994. In addition, most investigations are completed

within forty days. Also, the rate of sustained cases continues to improve, along with the termination of officers for misconduct. Outside barometers of performance, such as claims or lawsuits and shots fired by officers, are within reasonable limits - particularly when compared with other urban police agencies.

The reasons for these improved statistics are probably varied. The panel has heard from citizens who believe the filing of a complaint is not welcomed or taken seriously. This could be a factor. However, it is also relevant to note that the rates of crime are down in Seattle. The Seattle Police Department is a more diverse force than a few years ago, and better police work in the community could also be a factor.

Lending impetus to this improvement was the creation, in December, 1991, of the Internal Investigations Auditor by the City Council. In reviewing the reports of the Auditor since 1992, the panel has seen the Auditor's positive impact on the complaint investigative process. The Auditor has performed an invaluable service that has been part of an evolutionary process which leads to the oversight and other recommendations made in this report.

In general, the panel is impressed by the thoroughness with which officers in the Internal Investigations Section currently carry out what is admittedly a thankless task in any police agency. As policies, rules and regulations are no stronger or more effective than the efforts of those who implement them, it is vitally important that this unit continue to be staffed by officers who are committed to carry out its responsibilities with professional diligence and integrity.

There are indications that, in the past, the Department has not always implemented rules and regulations already in place regarding its internal investigations procedures. In more than one instance, the panel found that the requirement for conducting administrative reviews of officers who have received a specified number of complaints within a given period has not been adhered to; nor

is the documents-retention schedule for investigations always followed. In brief, a consistent application of Department policies remains a goal rather than an accomplishment of the Department.

In spite of the diligence of the IIS staff, the Internal Investigations Sections suffers from a lack of trust in its operations both from police officers and from a considerable number of citizens. Internally, investigation units are not popular with the police rank-and-file and are perceived by some not to be fair and consistent; externally, large segments of the public are suspicious of any mechanism that essentially allows the police to investigate allegations of misconduct of their own colleagues. Beyond these general dissatisfactions, the panel finds that there have been some instances in which investigations were not always complete or accurate.

Policies, rules and regulations governing internal investigations are themselves governed by collective bargaining agreements between the city and the several guilds and associations that represent Department employees, both sworn and civilian. For sworn staff, these agreed procedures specify the manner in which an officer must be informed of a complaint regarding his or her conduct, the form and time frame of the officer's response, the way in which the Internal Investigations Section can conduct interviews with the officer, and require the Department to destroy internal investigation files three years after the year in which the investigation was initiated. The Seattle Police Department may be one of the only law enforcement agencies in the nation which has agreed not to routinely conduct in-person interviews of employees against whom complaints have been filed, which must submit interview questions to employees in advance and, if additional misconduct comes to the attention of the interviewer, must give formal notice of that fact prior to further inquiry. The current policy affords Seattle Police Department employees more rights and protections than those granted to citizens. In essence, current policy obliges the Department to conduct most investigations of misconduct by correspondence.

The panel finds this set of circumstances to be quite incompatible with the best traditions of police management and with procedures followed in most other police departments in the United States. How the Internal Investigations Section conducts its investigations should be governed by the best investigative practices, not by collective bargaining agreements. In the agreements, discipline is acknowledged as a command function [i.e., a responsibility of Department management] but it is also defined as a grievance procedure. As a consequence, a significant number of management responsibilities and prerogatives have been preempted by the grievance process, restricting the Department's ability to investigate and discipline its personnel. It must be noted that the Seattle Police Guild has made clear to the panel that it has participated - and is willing to continue to do so - in interest-based bargaining on these issues.

The effectiveness of the internal investigations process is further hampered by a Department procedure known as an IIS Supervisory Referral [Department Manual 1.121.VIII.A.1]. According to a Department memorandum, this classification "is used when the allegation of misconduct is minor and, even if proven, would not constitute a significant violation of any policy, procedure or rule...." In a particularly troubling case which the panel has reviewed and which has already received media coverage, a complaint which might have met the legal definition of extortion was classified as a supervisory referral. In violation of the Department's manual, the referral was sent from IIS to the administrative levels of the Department and resulted in only a letter of apology to the complainant, with no formal sanction imposed on the investigated officer.

IV. RECOMMENDATIONS

The panel submits its recommendations under four categories which reflect the major areas of concern that the Department and the city should address. Many of these recommendations affect

matters of policy or resources that are beyond the Department's capacity to implement. It is vital that the issues of city policy be considered as well as those that deal with internal department regulations and procedures.

A. Oversight

A key to public respect for and trust of the police lies in how complaints of police misconduct will be investigated. Both in the extended presentations made to this panel by citizens and in the case that brought about the panel's creation, this fundamental issue is raised and requires a response. What is required is an investigatory system that will ensure allegations of wrongdoing are probed thoroughly by a process that will be seen as fair by both citizens and the police.

The panel examined a number of models for oversight of the investigative process with a view toward recommending whatever might be considered best for Seattle. It specifically reviewed and rejected the concept of a civilian review board in the conviction that removing responsibility for dealing with police misconduct from the executive management of the Department and ultimately from its chief would accomplish the precise opposite of what should be the primary objective of any oversight process, to fix accountability where it properly belongs.

Recommendation One:

The panel therefore recommends the creation of an Office of Professional Accountability [OPA] to replace the present Internal Investigations Section. The OPA would also subsume the duties of the Internal Investigations Auditor. The OPA should be headed by a civilian director who has legal, investigative, or prosecutorial experience, and an assistant director, chosen by the director, who is either a civilian or a sworn officer. The director would be appointed by the Chief of Police and

confirmed by the City Council at a salary consistent with the level of responsibility herein proposed. The Director would be responsible for the investigative, adjudicative, and administrative functions of the police disciplinary process, would manage the overall investigative, adjudicative, training, and administrative functions of the OPA and, in cases where complaints are sustained, would recommend disciplinary actions to the Chief of Police. The Director would report directly to and meet regularly with the Chief; his/her appointment would be for a fixed term and subject to renewal. The OPA would continue the best current policies of the IIS as well as adopt the recommendations of the panel.

It is essential to the effective functioning of this post for the Director to understand that his/her responsibility is to protect the rights of all officers and employees of the Seattle Police Department as well as the rights of all citizens, to enforce those rights of citizens and officers with equal diligence and fairness, and to ensure that those rights are scrupulously observed.¹

The OPA should provide a mechanism for citizens and officers to express their concerns in a confidential, non-threatening manner and environment. The Office should give citizens and police officers a recourse through which to bring problems to light and thereby assist the Department in the performance of its duties. The OPA should establish special procedures for the taking and investigation of complaints by juveniles, and assign investigators with an interest in and talent for working with youths to such cases.

The Office of Professional Accountability would be composed of the Director, the Assistant Director, the personnel of the present Internal Investigations Section. The OPA would have the

¹ The OPA must comply with the Constitutional rights of officers under current law [e.g. self-incrimination rights as guaranteed under *Garrity* and *Gardner*] which stipulate the officer must submit to interviews and cooperate in investigations but statements are considered compelled and cannot be used in criminal prosecutions. Officers also are assured whistleblower protection from management retaliation if they file a complaint with OPA.

power to receive complaints from officers and citizens regarding police misconduct. Its mandate should be sufficiently broad to enable it to treat any legitimate concern as a "complaint." Such complaints need not be in writing and may be from third parties, witnesses, or anonymous sources. There should be no restriction on the form a complaint can take. Telephone, facsimile and e-mail complaints would be permitted in addition to oral or written complaints. An appropriate complaint form should be made available to elicit the necessary information. As the outcome of a complaint can be greatly affected by its categorization or by the witnesses chosen to be interviewed, the Director of the OPA should personally approve the categorization of every complaint filed and satisfy him/herself of the thoroughness of the investigation.

The OPA should also have the power to initiate its own investigations as it deems appropriate or necessary. It should be able to investigate matters revealed as a result of a complaint even if the original complaint involved a different matter. It should be authorized to investigate and make findings whenever civil or criminal litigation reveals a probability of police misconduct, and should be able to pursue an investigation regardless of whether an officer chooses to resign or retire either in anticipation or reaction to a complaint. Its findings should continue, as is currently the case, to be based on a standard of preponderance of the evidence, should take the form of detailed written findings including a description of the alleged facts, the facts revealed by the OPA investigation, the rule or rules being applied to determine whether misconduct occurred, and the reasoning as to whether the rule or rules were violated.

The OPA should establish guidelines for threshold screening of complaints. The guidelines should ensure that frivolous, malicious and irrelevant complaints do not survive the screening process, without unduly screening out complaints that may prove meritorious upon investigation. Complaints should not be screened out where there is sufficient cause to warrant further investigation.

Complaints screened out prior to investigation will remain confidential but may be considered in an administrative review or early warning process.

The OPA will be expected to complete all investigations within sixty days of the complaint, unless circumstances warrant additional time. The Office will be expected to issue a decision as to whether the complaint is sustained, not sustained, unfounded, exonerated within sixty days of the completion of the investigation and to notify the complainant and the officer of the decision within seven days of the decision. The Chief of Police will be expected to make decisions on any discipline within thirty days of all sustained complaint resolutions.

Mediation of complaints, as is provided under the current IIS system, should be retained. Mediation allows parties to resolve a complaint in a confidential manner that is agreeable to all parties. Mediated complaints should be tracked and may be used for administrative review or early warning purposes, or as an occasion for a policy recommendation.

The OPA's findings would be referred directly to the Chief of Police with recommendations for discipline, where warranted. To ensure consistency of discipline, the OPA shall develop a formal range of discipline for misconduct cases. The OPA is urged to take note of the panel's recommendations regarding a "Bright Line" policy in this effort. The Chief shall be responsible for making the final determination as to discipline and may, for good cause and in writing, modify the adjudicative findings of the Director. The OPA would adopt procedures to ensure that the complainant is kept informed of the process from its initiation to conclusion. Complainants would have the right to be interviewed at a time and place convenient and comfortable to them and to have counsel present, if they wish.

Policies for handling complaints that allege criminal conduct by officers would be adopted to ensure that the King County Prosecutor's Office and the Office of the City Attorney are

appropriately involved. The Seattle Police Department should continue its collaborative policy with the Seattle office of the Federal Bureau of Investigation.

The City should adopt the policy that upon the completion of an IIS investigation, complainants shall be entitled to a copy of the IIS investigation file after redactions are made, pursuant to the law set forth in *Cowles Publishing v. State Patrol*, 109 Wn2d 712, 748 P. 2d 597 (1988). This policy will apply to all IIS investigations, regardless of the finding. Complainants should be informed of that right in the letter from IIS reporting on the completion of the investigation and the office's findings. The OPA should retain all internal investigation records permanently.

Finally, the OPA would adopt and publish a detailed manual for its investigators describing its procedures which also would be readily available to the public. The manual should contain a rule specifying that the OPA investigators are prohibited from receiving 'off the record' information of misconduct and that they have a duty to report any misconduct of which they become aware to the Director. Failure to do so should result in termination. The manual and regular updates would be distributed to libraries, organizations and agencies with an interest in police issues, and posted on the city's web site. The Director would issue regular reports to the Mayor and City Council describing the work of the OPA and making recommendations for policy changes as he/she sees fit. The OPA staff would meet regularly with community groups and would recommend to the Chief of Police changes in policy or areas where training bulletins are needed. If the Department implements integrity testing as proposed in the Chief's twelve-point plan, it should be administered by the OPA.

B. Leadership

Recommendation Two:

The Chief should issue a "bright line" rule stating that lying, cheating, or stealing will not be tolerated by the Department and will result in termination. The rule should specifically include lying or withholding material information in the course of an internal investigation.

Recommendation Three:

It is essential, in the panel's view, that the Chief have a more direct and authoritative role in the training and the internal investigations process: meeting on a regular basis with the Director of OPA, personally reviewing the findings in all investigations where serious violations have been alleged or occur, and determining - not merely approving - the appropriate discipline. The Chief, the Director of the OPA and members of the Senior Leadership Team should participate in academy training, thus clearly setting the tone on these vital issues from the start of an officer's career. Individual responsibility, not work group responsibility, must be made the standard of Department professionalism.

Recommendation Four:

The Chief should appoint a high-level person in the Department who will have overall responsibility to oversee compliance with the law, the Department's ethical standards, and the Department's procedures which have been developed to enforce them. This appointee should be designated as the Department's ethics officer. The ethics officer should be appointed minimally at the rank of captain and would be:

- responsible for developing a compliance program which periodically reviews all rules and regulations, and assures that Department personnel understand the rules and follow them,
- available for consultation by Department personnel who have questions about these rules or how to follow them,
- responsible for reporting to the Chief on the implementation of the compliance program.

Recommendation Five:

Sergeants should be provided with additional managerial training regarding their duties and obligations in general and their responsibility concerning complaints of misconduct in particular. Sergeants are the first level of management and bear a responsibility for carrying out Department policies.

Recommendation Six:

The Department should review whether position and budget cuts have reduced the ability of supervisors to perform the critical role of supervising and managing officers. This is particularly important in those areas where the opportunity for corruption is greater [e.g., vice and narcotics]. The city should fund new positions if these are necessary for the efficient management of the Department or the reduction of the chances for potential corruption.

Recommendation Seven:

The Department should institute a more comprehensive "early warning system" to supplement the administrative review process. It should identify officers whose performance or behavior is problematic and assist officers in succeeding in the Department rather than being subjected to a

system that functions as a form of discipline. This can be successful only if supervisors, particularly sergeants, have the time and the resources to do their jobs proactively.

Recommendation Eight:

Supervisors should be held accountable for a pattern of misconduct allegations in their squads. A threshold number of complaints should initiate an administrative review of a supervisor, just as it does of an officer.

Recommendation Nine:

Officers should be transferred and supervisors rotated in their assignments with greater frequency. The need for expertise in specialized units should be balanced with the problems that can arise when officers and supervisors remain in one area for an overly long period.

Recommendation Ten:

All commanders, supervisors, and officers regularly should be reminded of their duty to receive complaints from citizens whenever and wherever they are made.

Recommendation Eleven:

The Department and the City Attorney's office should review annually the number of cases dismissed because of the failure of an officer to appear in court. The Department should clarify its policy requiring officers to appear at all hearings and impose discipline, when appropriate, for failure to appear.

Recommendation Twelve:

A key to consistent performance is consistent expectations and enforcement of those expectations. The Department has gone without performance evaluations for too long and should resume the evaluation process as soon as possible. Every supervisory employee should be evaluated specifically on whether he/she consistently articulates and enforces Department expectations in the areas of ethics and the reporting and handling of complaints of misconduct. The performance evaluations of all Department employees also should include a performance evaluation element which addresses compliance with the law and Department regulations.

C. Training

Recommendation Thirteen:

The hours devoted to training officers on issues related to ethics and misconduct needs to be increased. Presently, the Department provides new recruits with 600 hours of academy and post-basic training. Less than fifteen hours are devoted to the topics of ethics, integrity and IIS policies and procedures. The panel understands that this is part of a larger issue and that the Department budget is only \$39 per officer annually for training (excluding grants). The additional training recommended by the panel shall not come at the expense of other needed training; post-academy training, for example, is especially important on a variety of policing issues.

Recommendation Fourteen:

Ethics and internal investigative policies and procedures should be taught as companion subjects, in conjunction with one another. Currently, the two areas are presented as if they were two separate issues. The Department should review and revamp the materials provided in the academy

in the areas of ethics. The materials currently provided to new officers do not specify the Department's expectations regarding ethics and the reporting of misconduct, and do not include the Department's code of conduct or the rules and regulations governing complaints of misconduct.

Recommendation Fifteen:

The training materials on ethics and internal investigations should be included and distributed in notebooks with all other materials given to new recruits at the beginning of the academy. According to the Department, currently, this is not done; it minimizes their importance for new recruits.

Recommendation Sixteen:

The Department guidelines and procedures related to the taking and investigation of complaints against employees should be included in the Department manual and distributed to every officer. Every officer should be required to affirm in writing, on an annual basis, that the officer has read the Department Manual, understands it, and will abide by it.

Recommendation Seventeen:

The training of OPA investigators is inadequate, as is the \$1200 training budget for this section. The OPA investigators should be detective-level personnel, should be given additional training when they are assigned to the unit, and their assignments should become a route to favorable promotions in the Department. The Department should consider making an assignment in IIS eligible for specialty pay [as in homicide, the motorcycle division, et. al].

Recommendation Eighteen:

More resources need to be devoted to the OPA. The clerical support staff should be upgraded in rank and possibly positions added. The workload and duties justify this. In addition, the computer system and equipment is inadequate. The lack of an automated system allows complaints to become lost and hinders both the efficient review of complaints and, where it is warranted, the imposition of discipline. All records should be fully computerized.

D. Rules/Process

All across the United States, cities have opted for policies that trade management rights for higher pay. Seattle is not an exception. As a consequence, the city, as noted earlier, has agreed to relinquish a significant number of management functions and prerogatives involving the investigation of officer misconduct to the collective bargaining process.

Recommendation Nineteen:

It is the panel's firm conviction that the investigation of police misconduct is one of the chief responsibilities of Department management and should be governed by the best investigative practices, not collective bargaining. Accordingly, the panel recommends that Department policies and union agreements be changed to reflect the following policies:

- In the course of any investigation, be the allegation a violation of Department regulation or a violation of law, the Department may, in the discretion of the investigator, conduct a personal face-to-face interview of the subject employee and any potential witnesses [Manual Section 1.121.X.A and B; SPOGA Sec. 3.5]

- The Department will not be obligated to submit in advance to the employee the questions the investigator intends to ask during an interview [Manual Section 1.121.X.B; SPOGA Sec. 3.7.D.2.].
- During the interview of an employee as part of an IIS investigation, the investigator will be authorized to inquire about any rule or law violation discovered during the course of the interview, regardless of whether it is related to the subject of the investigation [Manual Section 1.121.X.C; SPOGA Sec. 3.7.D.3.].
- There shall be no limitation on the number of investigative complaints which would give rise to the initiation of an administrative review [SPOGA 3.5]. Department management shall be allowed to conduct an administrative review of an officer whenever it has reason to believe circumstances warrant.
- While the confidentiality of IIS files during the course of an investigation must be maintained, it is in the public interest to treat these files as public records and to make them available to interested members of the public after redactions are made, pursuant the law set forth in *Cowles Publishing v. State Patrol*, 109 Wn2d 712, 748 P.2d 597 (1988). [SPOGA Sec. 3.7.J.].
- Since IIS files are beneficial to the Department and the employee, they shall be maintained permanently [SPOGA Sec. 3.7.K.].
- Any voluntary, non-compelled statement made by a Department employee during any Complaint Hearing may be used against that employee in a criminal prosecution [SPOGA 3.6.I.].
- All employees will be expected and obligated to assist in any Department investigation and to answer all questions truthfully. Any false statement made by an employee should be the

subject of discipline and, depending upon the circumstances, may be used against that employee.

- In the case of criminal investigation or prosecution of an employee, any disciplinary hearing should be deferred until the criminal matter is completed.
- Any employee who receives the discipline of suspension will not be allowed to exchange vacation, holiday or compensatory time for the suspension [SPOGA Sec. 3.6.N.].
- For the sake of continuity, the citizen member appointed by the Mayor to Complaint Advisory Boards should be the same person. The employee should not use a peremptory challenge for that citizen member. [SPOGA Sec. 3.6.D.].
- Either the Department or the employee may record the Complaint Advisory Board hearing [SPOGA Sec. 3.6.G.].

Recommendation Twenty:

While the Department has rules regarding the reporting of misconduct, the panel believes the obligation of officers to do so and the sanctions for failing to do so need to be more clearly stated.

Recommendation Twenty-One:

The Department should highlight its rule that prohibits retaliation against any employee or citizen who files a complaint of misconduct.

Recommendation Twenty-Two:

The Equal Employment Opportunity Office should be removed from the Internal Investigations Section and placed in the Human Resources Division. The Department should institute

a rule that precludes an OPA investigation of an employee who has an EEO claim against the Department unless the Chief personally authorizes such an investigation. This will lessen the concern of employees that retaliatory investigations are a practice of the Department.

Recommendation Twenty-Three:

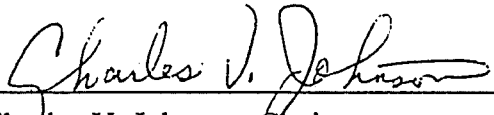
New and separate office locations should be found for OPA and EEO that are easily accessible for both employees and civilians.

IV. CONCLUSION

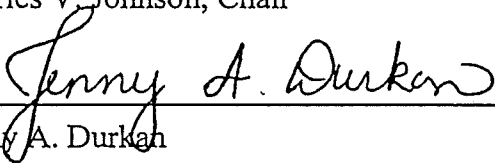
The immense media attention and public concern of the past six months, created by an alleged theft of nearly three years ago, suggests that some effort should be made by the panel to place that incident and the work of this panel in perspective. The incident occurred during a period in which great strides have been made in building a climate of trust and confidence between the Seattle police and the Seattle citizenry, particularly segments of the community that have been alienated from the Department and its efforts.

In the course of its inquiry, the panel found it necessary to examine other allegations of wrongdoing in the Police Department some of which, in the panel's judgment, warranted serious examination or reinvestigation. It is important to note, however, that some allegations presented to the panel dealt with incidents that occurred ten to twenty years ago. While the panel sought to examine every serious concern brought to its attention, a fair and objective appraisal leads to the conclusion that if the number of allegations of misconduct reported to the panel are any indication of the standard of professionalism and integrity in the Seattle Police Department, then the Department is a very good department indeed.

If the panel were convinced, after four months of probing examination, that the Seattle Police Department was systemically flawed or poorly managed, it would not hesitate to say so. It is the conviction that an essentially good Department can be made better that has led to the panel's recommendations. The panel hopes the citizens of Seattle will view the Department in a similar light and give it the critical support it deserves.



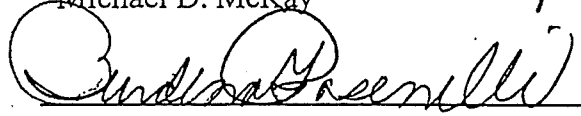
Charles V. Johnson, Chair



Jenny A. Durkan



Michael D. McKay



Burdena G. Pasenelli

Appendix

The following Seattle Police Department materials were reviewed:

- Chief Stamper's recent 12 step proposal
- Numerous Internal Investigation Casefiles
- Reports of IIS Auditor
- A summary of tenure of all positions in SPD bureaus
- A summary of terminations from 1992 - 1999
- Seattle Police Department outline of Ethics and Professionalism used at the academy
- Seattle Police Department Evidence Procedure Manual
- Seattle Police Department Evidence Unit Manual
- Miscellaneous IIS flyers and brochures
- Miscellaneous Seattle Police Department Evidence Unit forms
- Seattle Police Department Investigation Bureau Manual of Policies and Procedures
- The Seattle Police Department Manual
- Seattle Police Department Sand Point Training Curriculum, Vol. 1 & 2, and training schedules
- Seattle Police Department Training Manual
- Seattle Police Department Vice and Narcotics section manual
- Summary of sustained complaints and discipline imposed against officers by the Seattle Police Department for 1996-1999

The following City of Seattle labor contracts were reviewed:

- Agreement with the Seattle Police Management Association
- Agreement with the Seattle Police Officers Guild
- Agreement with the Professional, Technical, Senior Business, Senior Professional Administrative Support Union (International Federation of Professional and Technical Engineers Local #17, AFL-CIO)
- Agreement with Joint Crafts Council
- Agreement with Teamsters Local 117, Evidence Warehouse Unit and Community Service Officer Unit
- Agreement with Seattle Parking Enforcement Officers' Association

The following supplementary materials were reviewed by the panel:

- The Albuquerque Police Oversight Task Force Report
- The Bell Report (Seattle Police Department Internal Complaint Handling: A Review and Evaluation), by M.M. Bell, Peter Moy and Associates, Lukin and Associates (November 15, 1989)
- The Buracker Study (The Seattle Police Department Management Study), by Carroll Buracker & Associates (1989)
- Commission Report, City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (July 7, 1994)
- An ethics outline used by the state at the state academy
- The ethics outline used by the Washington State Patrol for new recruit training
- The International Association of Chiefs of Police Report (A Survey of the Police Department: Seattle, WA), by the Field Operations Division International Association of Chiefs of Police (June, 1968)
- The Municipal Code Section of the Seattle Ethics and Elections Commission
- The Policy and Procedure manual of the Seattle Medical Examiner's Office
- The Portland Police Bureau 1998 Community Assessment Survey
- The San Jose Office of the Independent Police Auditor 1998 Year End Report
- The Seattle Whistleblower ordinance
- Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program, by the Commission on Accreditation for Law Enforcement Agencies, Inc. (August, 1983)
- The Washington State Patrol Regulation Manual
- The Seattle Ordinance Establishing IIS Auditor
- Report and Recommendation relating to Raburn/Baldwin Indictment, November 16, 1984

The following materials submitted by the ACLU were reviewed:

- A Call for Accountability: Steps to Reform Investigations of Police Misconduct (August 1993)
- On the Line: Police Brutality and its Remedies (April 1991)
- Portland, OR, Citizen Advisors Third Quarter 1997 Monitoring Report to the Police Internal Investigations Auditing Committee (October 30, 1997)
- Recommendations for Changes in Seattle Police Operations To Improve Accountability and the Complaint Review Process (July 10, 1992)
- Report of the American Civil Liberties Union of Washington on the Seattle Police Auditor Proposal (November 20, 1991)
- Miscellaneous correspondence to the Seattle Police Department, the Seattle Police Department Internal Investigations Auditor, and other city officials.

Internal Investigations Procedures and/or the manuals of the following police departments or agencies were reviewed:

- Albuquerque
- Commission on Law Enforcement Accreditation (CALEA)
- Charleston
- Chicago
- Denver
- Federal Bureau of Investigation
- International Association of Chiefs of Police
- King County Sheriff
- Los Angeles Police Department
- Los Angeles County Sheriff's Office
- North Carolina Highway Patrol
- New York Police Department
- San Jose
- Washington State Patrol

Internal Affairs Investigation statistics or reports from the following cities were reviewed:

- Indianapolis, IN
- Oakland, CA
- Phoenix, AZ
- Portland, OR
- Sacramento, CA
- Salt Lake City, UT
- San Francisco, CA
- San Jose, CA
- Tucson, AZ