Clerk File No. 309450

Clerk File No. 309450
Final Report of the 2008 Seattle City Council Police Accountability Panel.

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2008 Seattle City Council Police Accountability Panel

FINAL REPORT

June 11, 2008

Veronica Alicea-Galvan

Leo Hamaji

Steve Herbert

Eric Schnapper

Lynne Wilson

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OVERVIEW OF POLICE ACCOUNTABILITY IN SEATTLE

The uniformed police perform multiple important roles. They intervene in instances of alleged criminal behavior, some of which involve violence. They routinely settle conflicts and otherwise help keep the peace. They work to enforce an expansive body of formal laws, and to reinforce less formalized societal norms. Their visible presence and constant availability represent a key component of the wider governmental pursuit of lawful order.

The police possess ample powers to enable them to perform their various tasks. Chief among these powers are the capacities to exercise coercive force and to intrude into the personal lives and spaces of members of the citizenry. Although these powers are necessary, they must be regularly monitored to ensure they do not exceed legal and constitutional bounds.

Any system of police accountability must work to provide a check on the possibility for the abuse of police power. Such a system should also help ensure that the police regularly abide by the highest standards of professional conduct.

In Seattle, a unique three-part accountability structure operates to respond to allegations of officer misconduct, and to help the Seattle Police Department ensure consistent professionalism. This system is complex. Each of the three components – the Office of Professional Accountability, the Office of Professional Accountability Auditor, and the Office of Professional Accountability Review Board – is meant to play particular roles, but each also possesses some overlap with the others. The Seattle system relies heavily upon both sworn personnel, who possess extensive information about Department policies and practices, and well-informed civilians, who possess greater independence and a closer connection to the wider Seattle community. This creative hybrid can help ensure a thorough investigatory process that is fair to all parties involved, including police officers. It can also help guarantee professional conduct, especially when independent external oversight is well-informed and widely-respected.

Any complex system such as this can benefit from periodic reassessment. The recommendations that follow are designed to improve Seattle's accountability system. These changes will: improve the transparency of the OPA process; increase public accessibility to that process; clarify the responsibilities of each of its component parts; and promote ongoing independent review of police policy and practice.

It is important to stress that *everyone* benefits from a system that promotes professional police conduct, most especially police officers themselves. Increased public confidence in the police makes an officer's job much easier. Such public confidence is heightened when possible instances of officer misconduct are investigated fully and fairly, and when the Department's policies and practices are monitored to ensure a high level of professionalism. A robust and effective accountability structure can help Seattle achieve these very important goals.

BACKGROUND OF THE CITY COUNCIL'S POLICE ACCOUNTABILTY PANEL

On October 22, 2007, the Seattle City Council passed Resolution No. 31021 appointing a seven member Advisory Panel on Police Accountability ["Council's Panel"]. The Council's Panel offers this report and the 23 recommendations that follow in the spirit of improving the overall system of police accountability in Seattle.

The City Council's formation of an Advisory Panel followed Mayor Greg Nickels' June 2007 appointment of an eleven-member panel charged with conducting a comprehensive review of Seattle's Police Accountability System [Mayor's Panel"]. The Council's Panel was asked to examine the broad range of issues that have a "significant impact on police accountability," including the legal rules that shape the structure of police accountability in Seattle, and the cultural dynamics that influence accountability processes.

To address these issues, the Council's Panel began holding a series of public meetings on November 12, 2007. The Panel also reviewed substantial background materials, including those presented to the Mayor's Panel. The Council's Panel met with the following officials and community leaders:

- Office of Professional Accountability Director Kathryn Olson
- Office of Professional Accountability Auditor Kate Pflaumer
- Members of the Office of Professional Accountability Review Board Peter Holmes, Brad Moericke and Sheley Secrest
- Former Office of Professional Accountability Director Sam Pailca
- A representative of the City's Law Department
- Three members of the City's Police Union Labor Negotiations Team
- Attorney Fred Diamondstone; attorney James Bible of the NAACP and Michael Fitch of the Seattle Human Rights Commission
- Judge Terry Carroll and Robert Boruchowitz, co-chairs of the Mayor's Panel
- Captain Neil Low, Ethics Officer for the Seattle Police Department

The Seattle Police Officers Guild and the Police Chief were asked to meet with us. They declined.

On January 29, 2008, the Mayor's Panel issued its Final Report and 29 recommendations for improving police accountability in Seattle. The Council's Panel fully supports all 29 recommendations. Letter to Seattle City Council, Appendix 3. We met with the Mayor's Panel co-chairs at their request to coordinate our efforts.

Our recommendations are intended to complement and to extend those of the Mayor's Panel. In many instances, we offer recommendations for changes in the existing legal code that would improve the accountability process, primarily through clarifying the responsibilities of its key actors, increasing transparency, and reinforcing the role of independent oversight. Implementation of these proposals, we believe, will improve the fairness and effectiveness of police accountability in Seattle, and thereby help to ensure healthy police-community relations.

RECOMMENDATIONS

THE OFFICE OF PROFESSIONAL ACCOUNTABILITY

The Office of Professional Accountability is responsible for the classification and investigation of citizen complaints. It operates within the Seattle Police Department. Its recommendations are advisory to the Chief of Police, who bears ultimate responsibility for officer discipline. Our recommendations for the Office seek to clarify its authority, improve its communication with citizens, and increase both its effectiveness and its independence.

1. Recommendation One: *OPA should be expressly authorized to investigate possible misconduct that is not the subject of a formal complaint.*

The ordinance establishing the OPA provides that the OPA will "receive and investigate complaints of misconduct by Seattle Police Department Personnel." SMC 3.28.800. OPA understands that its ability to investigate police misconduct is not limited to matters specifically contained in a complaint from an alleged victim. OPA should also pursue leads and make findings with regard to misconduct that was not alleged in a civilian complaint. Other reportable misconduct might emerge from a civil lawsuit, a complaint to Risk Management, or a criminal case. It should be clarified that OPA has the authority and responsibility to investigate such other indications of possible misconduct.

2. Recommendation Two: *OPA should re-interview complaining parties where necessary to assess the accuracy or implications of new information.*

An OPA investigation will often raise issues of which OPA was initially unaware because they were not raised at the first interview. The Seattle Police Officers Guild, and/or individual officers, after reviewing the OPA investigative file will sometimes direct OPA to additional relevant information, or point out possible misunderstandings. The reliability of OPA proposed findings could be strengthened by similarly re-interviewing the complaining party. This would give the complainant an opportunity to correct mistakes or omissions before recommendations are made and the matter is closed, thus enhancing public confidence in the quality of OPA's investigation.

3. Recommendation Three: *The "explanation of the finding reached" sent to the complaining party after an OPA investigation should be specific enough to permit the party to (a) make an informed decision about whether to ask for reconsideration, and (b) identify possible errors or omissions in the explanation.*

The OPA public policy states that if a complaint is "assigned for investigation, you will be advised of the steps that were taken to investigate, the outcome of the investigation, and an explanation of the finding reached." A complaining party is entitled to request "reconsideration" by the OPA Director if he or she does not agree with the results of the investigation, and the Director will then make "review findings." The current notification letter does not give enough information to permit a complaining party to fully understand the investigation process or the findings. The explanations

should be more thorough so that citizens can more fully understand the decision made and correct any errors.

4. Recommendation Four: *At least one third of the officers assigned to work at OPA should be detectives.*

OPA utilizes a range of methods to train its staff. The Department's detectives, however, already possess particularly valuable skills and experience in conducting investigations. Their presence in the staff assigned to OPA would therefore be extremely beneficial.

5. Recommendation Five: *There should be written guidelines setting out what types of misconduct complaints can be referred to mediation. The summary of the mediation process on the OPA website should make clear that complaining parties who opt for mediation may not thereafter renew their complaint.*

In appropriate cases, mediation can provide an effective method of fairly and expeditiously resolving disputes about police conduct. However, clear guidelines should be established for deciding when mediation is appropriate. Those guidelines should be made known to police officers. Those guidelines should preclude use of mediation where the alleged misconduct is serious, where the officer has a history of repeated complaints, or where the officer has in the past failed to participate in good faith when mediation was used.

The description of mediation on the OPA website does not disclose that a complaining party who agrees to mediation cannot renew the complaint for investigation and disposition if the mediation is not successful.[1] The website should be modified to make full disclosure of this aspect of mediation.

6. Recommendation Six: *The OPA should not consult with police officials outside that office, other than the Auditor, regarding the classification of a complaint. OPA should not consult with police officials outside that office, other than witnesses, regarding its recommended findings of fact.*

This recommendation seeks to assure OPA's independence in classifying cases and making findings of fact, while preserving the Police Chief's authority to decide discipline. It would be appropriate for OPA to consult with officials outside that office regarding the meaning and interpretation of departmental standards of conduct.

The OPA may consult with the Auditor when it classifies cases and pursues investigations.

7. Recommendation Seven: *At the conclusion of the independent OPA investigation, and before the matter is referred to the Chief, the OPA recommendation should be made by the OPA civilian director, and the OPA evaluation and summary of the investigation should be finalized by the OPA civilian director. That recommendation, evaluation and summary should be embodied in a written document signed by the OPA Director*

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[1]The website currently states: **"What if I am unhappy with how the mediation is progressing?** Either party can leave the mediation at any time. No one is compelled to reach conclusions or agreements."

The OPA ordinance requires that "the OPA Director shall . . . make recommendations regarding disposition to the Chief of Police." SMC 3.28.810(F). It is unclear whether the current OPA practice is in compliance with the Code. As the head of the OPA, the civilian director should play the central role in making and articulating its recommendations. These recommendations should be issued in writing at the conclusion of the OPA process, and then passed to the Chief for a final decision.

THE REVIEW BOARD

The Office of Professional Accountability Review Board is composed of Seattle citizens who review police practice and make suggestions for improvements. Our recommendations for the Board are designed to enable it to play three roles effectively: (1) To communicate regularly with citizens, both to provide information about the OPA process and to solicit community concerns about police practice; (2) To work to ensure that the core OPA processes – classification, investigation, fact finding, and recommendation for case disposition – are fair, thorough and effective, and to make recommendations to improve these processes; and (3) To assist in the review of policies and practices that can best assure professional conduct.

8. Recommendation Eight: *The Board should be authorized to issue reports (including statistical reports) and/or make recommendations regarding any one or more of the following:*

(i) the processes utilized by the Police Department (including but not limited to the OPA, the Auditor and the Board) to classify, investigate, make factual determinations, impose discipline and otherwise deal with police misconduct in one or more cases of the Board's selection,

(ii) any concern about police conduct that has arisen in an OPA case, or would be within the responsibility of the OPA if it were the subject of a complaint, and

(iii) any concern about police conduct called to the attention of the Board at a public meeting or through other contact with members of the community.

Although the Board has reviewed specific OPA cases, its authority to do so has been disputed. An ordinance should put that dispute to rest. The Board's authority should not include inquiring into the handling of any pending case. The Board should continue its practice of examining closed cases for evidence of underlying patterns that deserve consideration and possible amelioration, particularly with respect to issues of important public concern.

The Mayor's Panel recommended that the Board hold community meetings to learn about public concerns regarding police misconduct. The Board should be able to address issues that emerge from contacts with the community.

The authority of the Board to address these issues does not limit the authority of the Auditor to do so.

9. Recommendation Nine: *The Board shall conduct regular public meetings to obtain information regarding public concerns as to police conduct, and to provide the public with information about the OPA complaint process.*

The Mayor's Panel recommended that the Board be required to conduct public meetings. This recommendation spells out two matters to be addressed at those meetings.

10. Recommendation Ten: *In order to prepare a report or recommendation the Board may, among other things:*

(a) review the file in any closed OPA case or cases of its selection,

(b) obtain any document in the possession of the Police Department insofar as that document would be subject to disclosure under the Public Disclosure Act,

(c) request any other document in the possession of the Police Department,

(d) request and reach agreement with the Auditor for the Auditor to collect information or prepare reports, including statistical reports, and

(e) review national trends regarding best practices that might improve either the OPA process or other Police Department practices.

This recommendation codifies current practice under which the work of the Board is based primarily on a review of Police Department documents. It seeks to resolve disputes about what documents the Board is entitled to see. This recommendation seeks to combine the distinct strengths of the Board and the Auditor. The Board is structured to be quite independent. The Auditor, on the other hand, should possess authority for gathering statistical and other pertinent information related to police conduct. This recommendation encourages joint action by the Board and the Auditor, without limiting the ability of either to proceed independently.

11. Recommendation Eleven: *Police Department documents requested by the Board should in general be provided within 30 days. The Department should not withhold documents from the Board except where (a) disclosure is forbidden by law, or (b) disclosure would materially interfere with an ongoing investigation. Where redaction occurs, it should exclude only information that could be withheld under the Public Disclosure Act and should not be done in a manner that obscures the meaning of the document. If the Department declines to provide a document requested by the Board, or to do so in the manner or at the time requested by the Board, the Police Chief shall promptly provide to the Mayor and the Public Safety Committee a specific written explanation for that refusal. To the extent that a refusal was based on a lack of resources for copying or redaction, the Chief shall explain what additional resources are required.*

To conduct its work, the Board needs ready access to documents, and should not experience unnecessary delays in acquiring them. This proposal establishes clear procedures and safeguards, and requires the Chief to take responsibility for delays or objections.

20. Recommendation Twenty: *The Auditor shall prepare and issue at least annually a report analyzing OPA's response to claims of possible police misconduct as reported by Risk Management.*

Individuals who believe that they have been the victims of police misconduct do not always file complaints with OPA. Those who file damage claims with the City, and/or lawsuits, often opt not to go to OPA. OPA, however, can and does obtain information about those claims from other agencies, including Risk Management. The Auditor should review how OPA responds to information from Risk Management about claims of police misconduct.

ADDITIONAL RECOMMENDATIONS

21. Recommendation Twenty-One: *The city should repeal those parts of SMC §§ 3.28.830 and 3.28.870, which impose on the OPA Director and OPA Auditor a duty to treat all materials to which they have access as if they were attorney-client privileged material.*

The "attorney-client" privilege standard that applies to the confidentiality of OPA files under current Seattle Municipal Code should be abolished. The ordinances appear to create an attorney-client relationship where none exists. Neither the OPA Director nor the OPA Auditor gives legal advice to anyone in the Police Department. Applying the "attorney-client" privilege standard in this context is contrary to the Washington Public Records Act. To enhance accountability, we recommend that the standard to be applied in the Code should be the Public Records Act.

22. Recommendation Twenty-Two: *The OPA Director, the Auditor and the Board should not be held to a higher level of confidentiality than is consistent with the Public Records Act.*

In the past these officials were unable to disclose information that, if it were contained in a document, would be disclosable under the PRA. This does not seem to be justifiable. We recommend that any information that would be disclosable under the PRA should not be withheld as confidential for any other reason.

23. Recommendation Twenty-Three: *If a request made under the Public Records Act for information from the OPA is rejected in whole or part, the Police Department shall promptly report that action to the Public Safety Committee and shall explain the basis for that rejection.*

The Public Records Act applies to the OPA. The collective bargaining agreement in effect as of the date of this report expressly permits disclosure of OPA documents "to the extent allowable by law at the time of the request." The Public Safety Committee should be informed whenever the OPA refuses in whole or part to comply with a request under the PRA.

APPENDIX 1

Seattle City Council Police Accountability Panel
Biographies

Veronica Alicea-Galvan

Veronica Alicea-Galvan is the Des Moines, Washington Municipal Court Judge. Judge Alicea-Galvan has extensive experience as an Administrative Law Judge with the Office of Administrative Hearings in Seattle, Washington, where she presided over employment matters as well as issues involving child support, and other benefits. Before becoming an ALJ, Judge Alicea-Galvan worked as a prosecuting attorney with the City of Seattle and the City of Federal Way. Judge Alicea-Galvan also worked as a staff attorney for the National Labor Relations Board. Judge Alicea-Galvan is a graduate of Western Washington University where she earned a Bachelors Degree in Sociology with a Criminology concentration. Judge Alicea-Galvan is also a graduate of the University of Washington School of Law and a dedicated member of the Latina/o Bar Association of Washington LBAW, and a board member of the District and Municipal Court Judges Association.

Leo Hamaji

Leo Hamaji is the Felony Division Supervisor at the Defender Association, a non-profit public defender agency in King County, Washington. He has been with the Defender Association for 19 years and has represented indigent people in the Seattle Municipal Court, King County District Court, and King County Superior Court in both Seattle and the Regional Justice Center in Kent, Washington.

Prior to his current position, Mr. Hamaji was the training coordinator at the Defender Association and was an adjunct professor in 2000-01 at the University of Washington School of Law where he taught the Criminal Law Clinic.

Mr. Hamaji has a long-standing interest in racial justice and police accountability issues and has been active in addressing these concerns in the Asian Community.

Steve Herbert

Steve Herbert is Professor of Geography and Law, Societies, and Justice at the University of Washington. Prior to joining the UW faculty in 2000, he taught at the University of Michigan and Indiana University. His teaching and research focuses on criminal law and law enforcement, with a particular emphasis on police culture and organization. He has conducted ethnographic research in both the Los Angeles and Seattle Police Departments. This work resulted in two books: *Policing Space* (University of Minnesota Press, 1997), and *Citizens, Cops, and Power* (University of Chicago Press, 2006).

Eric Schnapper

Professor Schnapper, who joined the UW law school faculty in 1995, teaches Civil Rights, Civil Procedure and Employment Discrimination. He served for twenty-five years as an assistant counsel to the NAACP Legal Defense and Educational Fund, Inc., specializing in appellate litigation and legislative activities.

Most recently, Professor Schnapper won three U.S. Supreme Court cases, including two high-profile employment discrimination cases, *Burlington Northern Santa Fe Railway v. White* (June 22, 2006) and *Ash v. Tyson Foods, Inc.* (Feb. 21, 2006). In addition, he has handled more than seventy Supreme Court cases, including *Kolstad v. ADA* (1999), *Bogan v. Scott-Harris* (1998), *Oncale v. Sundowner Offshore Oil* (1998), *Faragher v. Boca Raton* (1998), and *Burlington Industries v. Ellerth* (1998).

Professor Schnapper taught at Columbia Law School from 1979-94, and at Yale Law School in 1990. His articles on constitutional law and civil rights have appeared in law reviews published by Harvard, Columbia, Virginia, Stanford and other law schools. He served in 1981-82 as administrative assistant to Representative Tom Lantos (Calif.). He was the recipient of a Marshall Scholarship for study at Oxford University in 1963-65, served as articles editor of the Yale Law Journal, and clerked for the California Supreme Court.

Lynne Wilson

Lynne Wilson is a Seattle lawyer whose practice focuses on civil rights and personal injury litigation. She has written and published extensively about the legal aspects of police accountability and police misconduct litigation. Since 1993, she has been a board member of Mothers for Police Accountability, a grassroots advocacy organization that educates people regarding their rights and responsibilities around police issues. Between 1994 and 2004, Ms. Wilson was a member of the ACLU-WA Legal Committee and a board member of the National Coalition on Police Accountability. Her published articles include: *The Use and Abuse of Pepper Spray, Less Lethal Weapons and the Fourth Amendment, Democracy versus Collective Bargaining (The Police Union Attack on Citizen Review), The Public Right of Access to Police Misconduct Files, Police Prone Restraint Methods and Taser-Related Deaths* and *The Limits of Local Police Involvement in the Enforcement of Immigration Laws*. Ms. Wilson earned her J.D. cum laude from Seattle University Law School in 1987.

APPENDIX 2

Materials Provided to the Seattle City Council Police Accountability Panel

(Provided prior to the first meeting)

Recent History/Events

- Citizens Review Panel Final Report (37 pages, dated 8/19/99)
- Seattle Police Department Accountability Action Plan (42 pages, dated 9/21/9)
- Listing of links to various OPA/Oversight News Videos
- OPARB Press Release Dates May 24, 2007: Council's Review Board Investigates Patterson Case
- Office of Professional Accountability Review Board Specific Case Requests and Review Rationale and Criteria
- Copies of local news stories regarding oversight, dated June 19, 2007 – September 19, 2007

Office of Professional Accountability

- National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics
- OPA's Role in Policy Review and Risk Management at SPD, submitted by Sam Pailca (17 pages, undated)
- Council Bill Number 112993, Ordinance Number 119805, establishing an Office of Professional Accountability Director's position effective January 1, 2000 (4 pages)
- Council Bill 113040, Ordinance Number 119816, creating an Office of Professional Accountability and adding a new Subchapter VIII to Section 3.28 of the Seattle Municipal Code (7 pages)
- Council Bill 113041, Ordinance 119825, abolishing the position of the Internal Investigations Auditor and replacing it with an Office of Professional Accountability Review Board and amending the SMC (8 pages)
- Council Bill 113126, Ordinance Number 119893, temporarily continuing the position of the Internal Investigations Auditor pending confirmation of the Office of Professional Accountability Review Board Auditor (4 pages)
- SPD OPA Statistical Review of the SPD Mediation Program, submitted by John Fowler (14 pages, dated 2006)
- SPD OPOA Report on Use of Force Complaints Received in 2003, 2004, and 2005 (25 pages, dated January 2007)OPA Complaint Statistics 2004/2005, submitted by Sam Pailca (31 pages, dated Spring 2006)
- Report of the OPA Director in Response to Mayor Nickels' Request for Review of Investigation of the OPA Complaint Filed by George T. Patterson (24 pages, dated July 9, 2007)

OPA Auditor

- SPD OPA Report of the Civilian Auditor for October 2006 – March 2007, submitted by Kate Pflaumer (8 pages)

- SPD OPA Report of the Civilian Auditor for April – September, 2006, submitted by Kate Pflaumer (11 pages)

Office of Professional Accountability Review Board

- OPARB General Policies and Procedures (undated)
- OPARB Code of Ethics for Appointed Office of Professional Accountability Review Board Members (undated)
- OPARB Strategic Plan 2007 – 2009
- OPARB Roles and Responsibilities
- OPARB Public Access and Case Monitoring and Review Process Protocols
- Council Bill 114088, Ordinance Number 120728, relating to the Office of Professional Accountability and adding a new Subchapter VIII to Section 3.28 of the Seattle Municipal Code (7 pages)
- Council Bill 114521, Ordinance 121146, changing the frequency of OPARB's reports from quarterly to semiannually (3 pages)
- Resolution 30621, defining goals for citizen oversight of law enforcement and clarifying the role of the OPA Review Board in relation to those goals (2 pages)
- Council Bill 115542, Ordinance 122126, modifying SMC to allow OPA Review Board access to unredacted OPA files (4 pages, dated June 12, 2006)
- Council Bill 115573, Ordinance 122127, amending SMC to establish the number of terms OPA Review Board members may serve (2 pages, dated June 12, 2006)
- Council Bill 116021, Ordinance 122513, requiring the Chief of Police and OPA Director to provide written explanations when they disagree on the final disposition of a complaint investigation, and the OPA Director to provide a written explanation when an investigation results in no discipline because the time period has expired (3 pages, dated October 3, 2007)
- OPARB 2007 Mid-Year Report (21 pages + appendices, dated July 2, 2007)
- Letter from OPARB to OPA Director Pailca (dated August 5, 2004)
- Letter from OPARB to Councilmember Nick Licata (dated October 10, 2005)
- Case Selection and Management System Review Report by Michael Pendleton, Ph.D., (3 pages, dated April 2, 2007)
- OPARB Annual Retreat Summary Report (5 pages, dated March 3 and 4, 2007)
- OPARB 2003 Year End Report (20 pages, dated April 30, 2004)

Labor Contracts

- Seattle Police Officers Guild Collective Bargaining Agreement (76 pages, effective through December 31, 2006)
- Seattle Police Management Association Collective Bargaining Agreement (58 pages, effective through December 31, 2008)

Mayor's Police Accountability Review Panel

- News Release from Mayor Nickels – Nickels Appoints panel to Review Seattle's Police Accountabilty System (dated June 29, 2007)
- Review Panel Bios

Materials Provided to the Seattle City Council Police Accountability Panel

November 26	The Open Public Meetings Act – A primer by Ted Inkley, Law Department (20 pages, undated)
	Public Disclosure Act Primer for City Volunteers (3 pages, undated)
December 10	Report of the OPA Director in Response to Mayor Nickels' Request for Review of Investigation of the OPA Complaint Filed by George T. Patterson (24 pages, dated July 9, 2007)
	SPD OPA Report of the Civilian Auditor for April – September 2007 (11 pages)
January 28	2007 Police Accountability Review Panel – News Release on Final Report (dated January 29, 2008)
	Public Employment Collective Bargaining Decision 9957 re SPOG vs. City of Seattle, Case 20402-U-06-5196
	Seattle Human Rights Commission Letter to Mayor's Panel on Police Accountability (undated)
	Biennial Survey – Community Assessment of Policing and Public Safety in the City of Seattle, City of Seattle Office of Policy & Management (Executive summary)
	Memo from Peter Harris, Council Central Staff, to the Public Safety Committee dated April 12, 2007
	Memo from Peter Harris, Council Central Staff, to the Public Safety Committee dated May 21, 2007
	OPA Report on Use of Force Complaints Received in 2003, 2004, and 2005 (executive summary, introduction & recommendation only), dated January 2007
	Memo from Peter Harris, Council Central Staff, to the Police Accountability Review Panel dated September 27, 2007
	Report to the Seattle City Council – Results of a Survey of Commissioned Officers in the Seattle Police Department Regarding the Operations of the Office of Police Accountability (2006), (5 pages, dated March 2007)
February 18	2007 Police Accountability Review Panel Final Report (22 pages, dated January 29, 2008)
March 10	Memo from Kathryn Olson, OPA Director, to Seattle City Council Police Accountability Panel dated March 3, 2008
	Letter from Mayor Nickels to Kathryn Olson dated June 20, 2007
	Letter from Chief Kerlikowske to Mayor Nickels dated July 2, 2007
	News Release from Mayor Nickels – Nickels Gets Review of Patterson Case (dated July 9, 2007)

Miscellaneous

- "The New World of Police Accountability" by Sam Walker, 2005, 260 pages
- Videotapes of the Mayor's Police Accountability Review Panel meetings

APPENDIX 3

Seattle City Council
Police Accountability Panel

Dear City Seattle City Councilmembers,

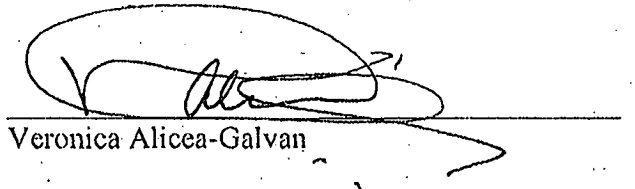
On January 29th, 2008 the Mayor's panel on Police Accountability issued its final unanimous report that contains twenty-nine recommendations for improving police accountability and oversight in Seattle.

We, the members of the City Council Panel On Police Accountability, after fully reviewing this report, wish to formally endorse the 2007 Police Accountability Review Panel Final Report. Specifically we urge the Seattle City Council, the Mayor, the Seattle Police Officers Guild, and the Seattle Police Management Association to join together to accept and implement immediately all twenty-nine of the recommendations presented in this report.

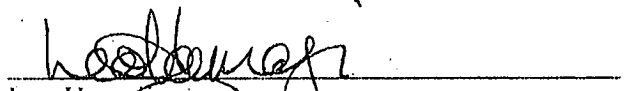
All of these recommendations are significant and we believe they will improve oversight, transparency, and accountability in the Seattle Police Department.

In addition we will be issuing a report toward the end of April 2008. Our report will focus on areas not addressed by the Mayor's panel in their final report.

Signatures: All Members of the City Council Panel of Police Accountability



Veronica Alicea-Galvan



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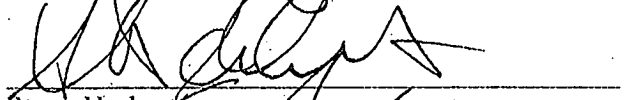
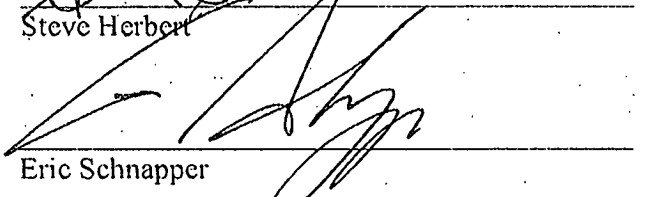
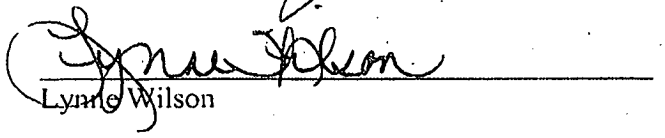


Steve Herbert



Eric Schnapper



Lynne Wilson

ADDITIONAL VIEWS OF ERIC SCHNAPPER

I fully support the recommendations that have been agreed to by the Panel. I write separately to explain more fully my reasons for doing so.

The matters addressed by the Panel recommendations, and by the recommendations of the Police Accountability Review Panel established by the mayor, are not a series of unrelated or unintended defects in the system for dealing with police misconduct. To the contrary, many of those problems have the common consequence of limiting what the public--and the City Council--know about the problem of and management response to police misconduct in the city of Seattle. Nothing I have seen in the course of the Panel's work suggests that there is in Seattle a problem of systemic police misconduct; to the contrary, such abuses seem happily infrequent. But the systematic effort to limit public scrutiny of this issue is both highly creative and too often effective.

Even if all the recommendations of this Panel and the Mayor's Panel are adopted, it is likely that sooner or later efforts will be made to devise other practices or rules to achieve a similar result in some new manner. The City Council should carefully monitor future practices within and related to the Police Department to safeguard the transparency and reliability of procedures for dealing with police misconduct.

The Obstacles to Transparency

The Auditor and the Director of the Office of Police Accountability have important responsibilities regarding review of police misconduct. Both the Auditor and the Director are required to issue public reports, and should function as independent sources of information for the public.

But the ability of these officials to contribute to the transparency of the Department is significantly impaired by sections 3.28.830 and 3.28.870 of the Municipal Code, which provide that each must protect "the confidentiality of Department files and records to which s/he has been provided access . . . in the same manner and to the same degree as s/he would be obligated to protect attorney-client privileged materials under legal and ethical requirements." The OPA Director, however, is not required to be an attorney, and neither the OPA Director nor the Auditor is appointed to give legal advice. The effect of these sections is to impose on these two key civilian officials the most restrictive obligation known to the law to refrain from telling the public, or the City Council, anything about what is contained in those files and records. The attorney-client privilege has no relevant exceptions. Without the permission of the client, an attorney cannot disclose anything that was learned from a client. The Auditor recently indicated to the City Council that she would not comment on any particular case without the approval of the Chief. That reflects a reasonable response to these unfortunate provisions.

Even in the absence of this ordinance, the ability of the OPA Director and the Auditor to contribute to the transparency of the Department would be curtailed by the fact that they have other major responsibilities within the Department. The primary role of the OPA Director is to oversee the handling and investigations of alleged misconduct and to make recommendations to the Chief. Because the Director has no final decisionmaking authority, her effectiveness in the disciplinary process depends heavily on whether the Chief accepts or rejects her confidential advice about particular complaints. The Auditor, although playing no similar administrative role regarding the processing of complaints, advises the Director and the Chief. The inclusion within the Department of these two confidential civilian advisors serves important purposes. But no sensible official whose effectiveness depends on influencing the decisions of the Chief of Police is likely to offend the Chief by publicly criticizing his conduct, or by releasing information which the Chief would prefer be kept secret.

The very purpose of the OPA Review Board is to write reports to be made available to the public. The Board has no particular stake in cultivating the goodwill of the Chief. But a series of obstacles have been created calculated to impair the effectiveness of the Board as a window of transparency. The City and the Seattle Police Officers Guild have agreed to require that all Board members sign a "hold harmless" agreement which in pertinent part reads as follows:

> As a member of the City of Seattle's Office of Accountability Review Board ("OPARB"), I understand that I will have access to confidential and/or investigative information and/or records that I am prohibited from disclosing. . . .
>
> I . . . agree to indemnify, defend, and hold the City of Seattle harmless for and from any legal action(s) arising from proven, intentional, release or disclosure of such confidential and/or investigative information by me.

The city agrees to indemnify and defend the Board members only "in the event [that they] do not intentionally release or disclose any confidential . . . information."

The agreement contains no definition of "confidential." The Board ordinarily has access only to closed OPA files, and most of the contents of those files would have to be disclosed upon request under the Public Records Act. On the other hand, virtually all of the documents which the Board receives from the Department are confidential in the sense that the Department has not yet made them public and treats them, insofar as it can, as confidential. The very purpose of the Board is to provide the public with reports based on the information contained in those reports. Thus merely for having met its statutory responsibilities the Board could be accused of "intentional[ly] . . . disclos[ing] . . . such confidential . . . information." Under the terms of this agreement, if the Board members issue any report based on non-public Police Department files, they run the risk that in the event of any lawsuit the City Attorney will not merely refuse to defend and indemnify the Board members, but will turn against them and seek damages on behalf of the city itself. Because the agreement contains no definition of "confidential" information or records, the city or anyone

who sued the Board members could conceivably claim that any non-public document is within that term. Because of the harsh consequences for Board members who violate the confidentiality agreement, the vagueness of that provision has precisely the chilling effect which is anathema to First Amendment jurisprudence.

This extraordinary agreement prevented the issuance of Board reports for a period of several years. When, in 2004, the Board drafted its first report, the office of the City Attorney repeatedly insisted that the information in the report did not comply with this agreement, forcing the Board to twice censor its own report and omit material information. Even after the Board had done so, the City Attorney still declined to agree that the issuance of the report would not violate the agreement. With the City Attorney retaining the option, in case of litigation, to refuse to defend or indemnify the Board members and instead sue them himself, the Board asked the Mayor to issue a written statement that Report represented a good faith effort to comply with the agreement. Absent such a statement, the Board asked the Mayor to at least specify what part of the report he believed might violate the agreement. The Mayor refused both requests. The Board, at considerable risk, issued that 2004 report, but announced it would not issue any further public reports until this problem was solved. As a result, for several years the Board continued to write reports but was for good reason unable to make them public.

Finally, in 2007 the City Council enacted an ordinance limiting the scope of what constitutes confidential information under the agreement. The Board promptly issued a series of reports, including one critical of the Chief's handling of the Patterson case. The Seattle Police Officers Guild responded to this legislation by insisting that it constituted an unfair labor practice; that claim is now pending before the Public Employee Relations Commission. If that claim is successful, the Board might again be unable to issue reports, as it was from 2004 to 2007.

So long as this provision exists in any form, it is an invitation to abuse. First, the ability of the Board to release any report will continue to depend, to a substantial degree, on the willingness of the City Attorney (or Mayor) to agree that the report in question does not improperly release confidential information. Any colorable argument that a violation might occur would permit the City Attorney, as a practical matter, to suppress a report which he finds politically inexpedient. Second, because the Chief of Police is not required to sign a similar agreement, he is under no similar constraints. If the Chief releases confidential information, he remains entitled to indemnification and defense by the city, and would not (at least normally) face any risk of suit for indemnification by the city itself. Thus if the Chief of Police were to make an inaccurate public statement about an OPA file, and the Board were to then publicly point out that error, the Board members could face financial liability for having told the truth, while the Chief would be immune from liability for having done otherwise.

In the wake of the 2004 report, the city received a request under the Public Records Act for copies of the earlier drafts of that report, drafts which the City Attorney had earlier insisted could not be released without violating the confidentiality agreement. The City Attorney advised the Board members that under the Public Records Act they were required to disclose those drafts,

advice which presumably rested on the view that nothing in the earlier drafts was protected from disclosure under that Act. The City Attorney also advised the Board, however, that in complying with the Public Records Act it would be violating the confidentiality agreement, advice that presumably rested on the view that a document is "confidential" under that agreement even though it must be disclosed under the Public Records Act. If that is correct, then the confidentiality agreement operates to penalize Board members (by denying indemnification and by exposing them to indemnification claims by the city) and exposes them to civil suit (for violating the duty of confidentiality) for *complying* with the very Washington state law that mandates transparency in government.

The Board has encountered significant problems obtaining documents from the Police Department. The Department has at times insisted that it lacks sufficient personnel to photocopy without undue delay the documents requested by the Board. Documents which the Board does receive are too often redacted in a manner which makes them of little use. Rather than replacing the names of individuals with meaningful substitutes (e.g. "witness A" or "officer B"), the Department simply blacks out the names, at times rendering the documents unintelligible. When the City Council, in an effort to permit the Board to do its job, adopted an ordinance requiring that the Board be given unredacted documents, the Seattle Police Officers Guild attacked that law as an unfair labor practice.

One of the most significant methods of creating transparency would be disclosure of the files in closed police misconduct cases, including an account of the basis for the OPA's recommendation. The 1999 Citizens Review Panel pointed out that, once an investigation has been completed, it would be "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." The current collective bargaining agreement, however, seeks to restrict public access to these documents.

When the Panel requested the OPA file in the Patterson case, we were advised that disclosure of this material was forbidden by the collective bargaining agreement. Although that agreement does forbid disclosure of such files, that prohibition is expressly inapplicable where disclosure is required "by operation of law." (Appendix B part J). In at least some circumstances the state Public Records Act (formerly the Public Disclosure Act) does require disclosure of investigative files regarding police misconduct. *Cowles Publishing Co. v. The State Patrol*, 109 Wash. 2d 712, 748 P. 2d 597 (1988). It is unclear whether in declining our request the Department believed that the Act was for some reason inapplicable to this particular file, or thought it could or should decline because we had failed to expressly invoke the Act, or simply overlooked the actual terms of the collective bargaining agreement.

Even as written, the agreement seems at odds with the principles of the Public Records Act. To the extent that the Act contains exemptions, it is not for the purpose of requiring that the exempted material be kept secret. Rather, exemptions exist to accord agency officials final authority to determine with regard to each document whether the public interest would be best served by disclosure. The mandatory terms of the collective bargaining agreement, however, preclude any such document-specific assessments. The agreement recites that

> [i]t is agreed by the City and the Association that it is in the public interest and to their mutual benefit to maintain the confidentiality of internal disciplinary proceedings and OPA-IS files from outside, third parties to the maximum extent provided by law.

It is difficult to understand how the City could really have been able to foresee when it signed this agreement that the public interest would always best be served by keeping secret every part of every document in every case to be considered by OPA during the period of years to be covered by the agreement. The City's current insistence that secrecy is "in the public interest" is precisely the opposite of the position taken by the 1999 Citizens Review Panel regarding those very documents.

The 1999 Citizens Review Panel recommended that all OPA investigative files be "maintained permanently." The information in those files may prove helpful to the Department in evaluating later complaints, and might be relevant and subject to discovery in subsequent litigation. The current collective bargaining agreement, however, requires that these records be destroyed within four years after a file is closed. (Appendix B part M).

Often the member of the public with the greatest interest in being fully informed about how the Department has dealt with a complaint of police misconduct will be the individual who filed that complaint. The 1999 Citizens Review Panel recommended that the city "adopt the policy that upon the completion of an [OPA] investigation, complainants shall be entitled to a copy of the . . . investigation file after redactions have been made." That policy has not been adopted.

The OPA website suggests that complainants will be accorded a meaningful explanation if their complaints are rejected, and an opportunity to seek reconsideration of that decision if they feel it is mistaken.

> If your complaint is assigned for investigation, you will be advised of the steps that were taken to investigate, the outcome of the investigation, and an explanation of the finding reached. . . . If you do not agree with the . . . results of the investigation of your complaint, you may submit a letter to the OPA Director requesting reconsideration. The OPA Director will review the investigation, determining if it was handled properly, and notify you of the review findings in writing.

The ordinance establishing the OPA requires, regarding any unsustained complaint, that the OPA director provide the complainant with an explanation "of why the complaint was not sustained." The letter which complainants receive, however, (at least ordinarily) recites only the one or two word decision (e.g., "not sustained") and lists the individuals interviewed. The complainant is given no explanation of what the officer may have said about the events in question, of whether the complainant's account was corroborated or disputed by others, or of why the Department reached the result in question. A complainant in receipt of such a letter would not know if the Department had concluded that the complainant's version of the facts was inaccurate (and if so, in what respects

and why), or believed that other circumstances not mentioned by or known to the complainant justified the officer's action, or reasoned that the officer had erred but only in some respect too minor to sustain the charge. Absent such information about why a complaint was rejected, there would usually be no way in which the complainant could frame a meaningful request for reconsideration.

When an individual who claims to have been the victim of excessive force files suit, the plaintiff is usually able to use the process of discovery to obtain Police Department documents and question police officials under oath. The information thus revealed has in other cities shed important light on the problem of police misconduct. But in Seattle the practice of the attorneys representing the Department or the police officer is to insist that any document from the OPA file, unless obtained under the Public Records Act, be subject to a protective order, which forbids the plaintiff and his or her attorney from disclosing to anyone the documents or information that were obtained. Such a protective order was agreed to, for example, in the Alley-Barnes case. As a result, the attorney for the plaintiff in that controversial case, although he now understands what transpired perhaps better than anyone outside the Police Department, is permanently barred from discussing much of what he knows. Under the terms of the protective order that attorney was even prohibited from telling the Panel itself much of what had been learned in that litigation, even though the Panel is an arm of the same city that had provided the information in the first place. Because the protective order applies to the *use* of information from the OPA file, significant portions of the subsequent discovery are also covered. On the other hand, the protective order does not apply to city officials, who are free to disclose, comment on or use the very information which the plaintiff's attorney is forbidden to discuss.

These orders are not requested from or litigated before a judge; rather, the plaintiff is persuaded to agree to them. For the plaintiffs in a given case these orders can be advantageous. Once embarrassing information has been turned over in discovery, the only way a defendant can prevent it from becoming public at trial may be to settle the case; the terms of the order typically do not apply to trial proceedings, which cannot be conducted in secret. The more inconvenient the as yet secret information, the more generous a settlement a plaintiff may be able to obtain by in effect selling the public's right to know the underlying facts.

In 2007 the City Council adopted an ordinance requiring that where the Chief of Police and the OPA director disagree about the final disposition of a misconduct complaint investigation, each shall make a written explanation of the basis for that disagreement. Those written explanations must be made available upon request to the Mayor and City Council, and must be summarized by the OPA director in the OPA semiannual reports. Implementation of this ordinance would provide a degree of transparency regarding such disagreements.

The Seattle Police Officers Guild is pursuing an unfair labor practice charge opposing the implementation of this ordinance. Even in the absence of that challenge, however, it is unclear whether the ordinance would function as intended. Although the ordinance creating the OPA expressly requires that the OPA Director make recommendations to the Chief of Police, under

current practice the OPA recommendation is actually made by the OPA Captain. The OPA Director can make her own recommendation if she disagrees with the OPA Captain, but is not required to do so. If only the OPA Captain made a recommendation, and the Chief of Police disagreed with that recommendation, the 2007 ordinance--and the attendant disclosure and reporting requirements--would seem not to apply.

Although the Auditor is directed to audit the closed OPA case files and the OPA complaint and contact log, the scope of this mandate appears to omit a significant part of the decisionmaking process. Not every person aggrieved by what he or she perceives as police misconduct files a complaint with OPA. Some instead decide to sue the city or police officer; claims that result in civil litigation are likely to include those resulting in more serious injuries. A number of Seattle attorneys who represent such plaintiffs advise their clients not to file complaints with OPA. The OPA Director, however, ultimately learns about those complaints of misconduct after the claimant files suit or submits a monetary claim to the city Clerk; in either instance the claim would be known to Risk Management, which would in turn notify the Director. The Director has the authority, even in the absence of a complaint to OPA itself, to open a file regarding any incident revealed in this manner. If, however, the Director decides not to do so, that would not be revealed by a review of the OPA records by either the Auditor or the OPA Review Board.

The Importance of Transparency

Abuse of authority or use of excessive force by a police officer is a legitimate matter of public concern. Police officers are accorded unique powers, and the law properly imposes significant constraints on when and how those powers can be utilized. The police are permitted to use force in circumstances in which a private citizen could not do so without committing a crime. Police officers need that authority to do their essential and at times dangerous work. Preventing misuse of these powers--misuse that often would violate the Constitution--is essential for the legality and legitimacy of police work. The public is entitled to know whether the legal constraints on the use of this power are being enforced.

Misuse of police authority, of course, is *also* a personnel matter, but that does not mean that the Department's response to such problems should be shrouded in secrecy. Some personnel matters--such as misuse of sick leave or having a messy locker--are of little public concern, and some personal issues (such as an officer's medical history) might warrant a presumption of confidentiality. But when a city police officer wields the official power accorded to him or her by the city of Seattle and by Washington state law, that officer has no right to ask that his or her actions be accorded the privacy that might be appropriate for a personnel matter regarding a night watchman at Nordstroms.

The public interest implicated by such misconduct is all the greater because an abuse of authority or use of excessive force can interfere with effective law enforcement. One officer's victim may become (with his or her relatives and friends) another officer's missing witness. If an officer makes false statements to cover up misconduct, prosecution attorneys may become

obligated--as occurred in the Patterson case--to disclose those inaccuracies to defense counsel in numerous other cases, undermining the evidence against other defendants.

More broadly, the practices of the Seattle Police Department and its Chief in dealing with instances of asserted police misconduct are emphatically policy matters for which the Department and the Chief should be accountable to the City Council and, ultimately, to the voters. There are a number of obviously important such policy questions: which alleged incidents should be investigated and which ignored? how thorough an investigation is warranted? is fact-finding unfairly tilted in favor of or against the officer? is the level of disciplinary sanctions imposed excessive or a mere slap on the wrist? Reasonable people will certainly disagree about those matters; presumably the Seattle Police Officers Guild and the NAACP, for example, do at times differ. But if the electorate or the City Council disapprove of the manner in which the Department has chosen to deal with these issues, they are entitled to insist that those choices--or the responsible officials--be changed.

A lack of transparency is fatal to this system of public accountability. Neither meaningful public debate nor democratic control over the Department are possible--in this regard, or any other--if the public and the City Council do not know what the Department is doing. The City Council in particular cannot meet its responsibility to oversee and legislate regarding the Police Department if it leaves in place a system which deprives the Council itself of essential information.

The existing system is particularly undesirable because, rather than forbidding everyone from disclosing anything about the handling of misconduct problems, it leaves largely in the hands of the Chief of Police (and in some situations the City Attorney or the Mayor) control over what information is, and is not, made public. The Chief (unlike the Board) has access to all the internal information at the time when a controversy first arises, and the Chief (unlike the Board, Auditor and OPA Director) is under few legal or practical constraints in making disclosures. The Chief thus enjoys discretion to pick and choose among the facts and disclose, if he wishes, only those favorable to his position and record. If I were the head of an important and at times controversial government agency, I might be delighted to have just such authority; after all, few officials have lost their jobs, or been subject to public criticism, because of problems they were empowered and able to keep secret.

But according the any agency official that sort of authority is fundamentally inconsistent with the state policy embodied in the Public Records Act.

> The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what it is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

RCW § 42.56.030. The power to control what information the public or other branches of government can obtain about a government agency, once accorded to an agency official, will

inevitably be abused. Any public official would understandably prefer to avoid disclosing facts that would embarrass that very official, rile his or her subordinates, or inconvenience his or her boss. Particularly in times of great controversy, too many officials with that authority would be tempted to resort to three-quarter truths and cagey omissions.

Such a danger is particularly serious in this instance because any lack of candor at the upper levels of the Police Department can have a corrosive effect on the Department as a whole. If a high ranking official, protected by this system of selective confidentiality, were to make a public statement that is incomplete, misleading or inaccurate, the public and the City Council might never know, but the rank and file officers probably would. The example set by such high level officials and followed by the rank and file is of great importance--for good or for ill--because the reliability of police reports and testimony is essential to the criminal justice system.

The city's system of selective confidentiality also undermines the reliability of the Department's internal factfinding and disciplinary process. Before any discipline can be imposed, the Seattle Police Officers Guild and (at least usually) the officer in question have access to the OPA file; that enables them (quite properly) to seek to correct misunderstandings, point to additional relevant evidence that may have been overlooked, object to unwarranted conclusions, and offer information and argument regarding the appropriate level of discipline. But because the file and the OPA analysis otherwise remain secret, neither the charging party nor any group that might be concerned about possible police misconduct are accorded a similar opportunity. The system is well calculated to correct errors harmful to the officer, but not to avoid errors that would work to the officer's advantage. Of course, any attorney who represented a police officer charged with misconduct would probably favor such a system. But one-sided confidentiality rules of this sort skew the process in a manner inconsistent with the public interest.

Transparency is never convenient for public officials, and it would not be in this instance. Police officials, who already have to worry about how the specifics of their actions will be scrutinized by the Guild, an arbitrator, or the Public Employee Relations Commission, would have to be concerned as well about what will happen when the same information falls into other hands. Problems that might otherwise have been papered over may have to be dealt with openly. Public statements--if certain to be checked against an open record--will have to be a model of candor. I do not suggest that that sort of change would necessarily be welcome. But it is a change that the Department needs and to which the public is entitled.

The Role of the Review Board

The OPA Review Board is for several reasons an indispensable part of assuring transparency at the Police Department.

First, because the Board--unlike the Auditor and OPA Director--has no role other than issuing public reports regarding the actions of the Department, the Board can do so without concern

about the reaction of Department officials to whatever it may say, or to the documents or events that it may make pubic. Actions of the Board that disclose or allege failures on the part of the Department may well anger the Chief of Police, provoke the ire of the Seattle Police Officers Guild, or discomfit some elected officials. Even requests for potentially embarrassing information may trigger a hostile response. There is, however, a substantial likelihood that the members of the Board will be properly indifferent to such adverse reactions, correctly regarding them as an inevitable and unavoidable part of their job.

Second, the Board--unlike individual members of the public--is in a position to devote significant time and effort to analyzing in detail the documents and events surrounding a specific incident or regarding a particular recurring issue. The materials bearing on such analyses are often complex, and with regard to recurring issues can be voluminous. Where problems do exist, that may only become apparent through careful and time-consuming evaluation of those materials, in some instances ferreting out the truth obscured by a benign but pretextual account. The current Board members--whether or not one agrees with their conclusions--have exhibited exemplary diligence in carrying out their duties. The Panel wisely recommends that in the future the Board be provided with staff assistance to enhance its ability to meet its statutory responsibilities.

This is not to suggest that the Board itself will never err. To the contrary, the Board members are just as fallible as the officials of the Department itself. At times the Board will misapprehend the facts, or voice criticism that is overstated or simply erroneous. But right or wrong, the actions of the Board play an essential role in triggering and informing a robust public debate about the work of the Department and its officials.

At this point in time, the viability of the Board is in jeopardy. If the Guild's unfair labor practice charge is sustained, the sweeping confidentiality agreement would again threaten financial ruin whenever the Board members issue a public report. Should that transpire, the Board members might well and quite sensibly conclude that the better course of action would be to discontinue making informal requests for OPA materials (which might if obtained in that manner be subject to a claim of confidentiality), and instead only request OPA files under the Public Records Act, resolutely filing suit whenever the Department's response to such a request is untimely, incomplete, or redacted in a manner that renders the material unintelligible. If the Board chose to proceed in that manner, I am confident one of the city's major law firms would volunteer to represent the Board, and the public's right to know, in the campaign of litigation that would in all likelihood ensue.

Conclusion

None of this should be understood as a comment on any Seattle police officer or official, past or present. The problems discussed are fundamental institutional issues that would tend to shape the conduct of whichever individuals held the positions in question. I would have favored the identical recommendations, and would have offered the same explanation, even if during the

course of the Panel's work the positions of Chief of Police, OPA Director and President of the Seattle Police Officers Guild had been filled by the outgoing members of the OPA Review Board.

Criticism of police actions is not an inexcusable affront to the dignity of its officers, an illegitimate form of interference with officials entitled to be left alone to do their jobs, or part of some left wing conspiracy to assist the criminal elements in our society. Criticism of police actions is just like criticism of any other public officials, a routine and healthy part of the democratic process. Every concerned individual and organization has a right to take part in public debate about the Police Department and its leadership; none is entitled to distort that debate by silencing those with differing views or by managing the public's access to relevant information. The voters and the City Council should view with a jaundiced eye any claim that the conduct of some aspect of the city government needs to remain confidential and thus, inexorably, beyond the reach of informed public debate.

The genius of the American system of government is that it does not rest on the credulous assumption that competent people in positions of power can be trusted to do the right thing without need for scrutiny or review. Our system relies instead on incentives and deterrents, checks and balances, and -- above all -- transparency to shape the conduct of unavoidably imperfect office holders. We place our confidence, not in the Police Chief, the Auditor, the OPA Director, the Mayor or the City Council, but in the public, enlightened by full disclosure of the conduct of government affairs, and wielding the ballot to remove from office elected officials who perform inadequately or tolerate appointed officials who do so.

That is the spirit by which the Seattle Police Department -- and the city government as a whole -- should be guided.