

CITY OF SEATTLE

Seattle Police Department
Office of Professional Accountability
Semi-Annual Report of the Civilian
Auditor

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Mission & Structure

To help ensure accountability, deter misconduct and enhance public confidence and trust in the police, Seattle has a three-pronged citizen oversight system (Office of Professional Accountability with a civilian Director, civilian Auditor, and Review Board). In my first semi-annual report, I described Seattle's police accountability and civilian review structure and the way in which complaints are classified. For those not familiar with Seattle's police accountability system, the roles that the OPA Director and Review Board each play, or what happens when a complaint is made, my initial report can be found on line at [OPA Auditor July-Nov. 2010 report](#).

Introduction

The OPA Auditor is an outside advisor to the City on issues of police accountability, providing independent civilian oversight so that the community can have greater trust that the police are operating with legitimacy and integrity. In this context, the term "auditor" refers both to the role as an outside reviewer of all files related to complaints of police misconduct and to the role of critically appraising policies, procedures and practices.

Since civilian oversight was first instituted in Seattle in 1992, there have been four Auditors. Three of us were former judges and one was a former federal prosecutor. The Auditor is required by ordinance to assure that all internal investigations are fair, thorough and objective through contemporaneous review of investigative files. If the Auditor believes that a case warrants further investigation, she may direct it. Together with the OPA Director, she reviews every complaint at the intake stage to make sure it is correctly classified as to whether the matter has already been addressed, should be referred to the named employee's supervisor for handling, or requires a full investigation, and whether all appropriate allegations have been included.

The Auditor is also required to issue a public report twice per year, summarizing the number of misconduct complaints and investigations reviewed; her suggestions for reclassifications of complaints, changes to allegations and requests for additional investigations to be conducted; identification of issues, problems and trends noted as a result of her reviews; recommendations for additional officer training, including any specialized training for OPA investigators; any recommendations for policy or procedural changes; any findings from audits of OPA records or the OPA Director's reports; and any additional activities undertaken during the reporting period.

This report covers the period from December, 2010 through the end of May, 2011. Cases that are still open will not be discussed other than in a generalized way in regard to policy, training or other systemic recommendations which may have arisen from them. Statistical reports summarizing the number of complaints, the allegations made and the outcomes are issued by the OPA Director monthly and then wrapped into an annual report that is published each spring covering the previous calendar year. The most recent statistical reports issued by the Director can be found at [OPA statistical reports](#).

Issues and Trends

Seattle, as with many cities across the country, has in recent months experienced a great deal of dissonance between the police and some parts of the community it serves due to a series of incidents involving use of force. Seattle's crime rate is lower and cases are being successfully closed, yet day-to-day policing on the street in today's environment brings with it new challenges and pressures that go beyond the traditional metrics of crime rates and response times. Many aspects of policing are often beyond the control of the Department but nonetheless require it to make significant adaptations. Among the changes we are experiencing here in Seattle are such things as:

- changing societal norms and values on what constitutes appropriate use of force, which can result in the Department finding itself in conflict with the community it serves;
- increased threats to officer safety;
- limited resources that have not kept pace with citizen needs, both in terms of providing a social safety net to those with untreated mental illness or other human service needs and to permit preferred levels of hiring and training of officers;
- new technologies such as cameras, videos and social networking resulting in real-time, wide dispersal of interactions in a visually dynamic way;
- demographic shifts requiring a greater understanding of cultural differences;
- generational differences leading to younger officers who may be less skilled in interpersonal interactions;
- social acceptance of issues where the law has not yet changed, where federal, state and local law may not be in harmony or where the public policy is unclear (e.g., marijuana or jaywalking), sometimes leaving officers in untenable positions with regard to enforcement actions; and
- the trade-offs of privacy protections vs. transparency, in the midst of a fluid landscape with regard to public disclosure laws.

These are just a few of the areas that provide the backdrop as we assess how officers are performing their jobs.

Added to these challenges are frustrations by the public that the various disciplinary mechanisms can take a long time to work and are difficult to understand; that once a disciplinary decision is made, it can be overturned as a result of an even less accessible and understandable appeals process; that the criminal charging process is based on the predicate that an officer is not required to make 'the best' decision, only a decision that comports with law (permissible, not necessarily preferred); and that policy makers and command staff often do not have the authority to implement improvements or innovations without paying something for them at the bargaining table. Below I have made recommendations to address some of the challenges within the Department's control.

Policy, Procedure and Training Recommendations

In my first semi-annual report, I made a number of recommendations. So that the Mayor, Council and public do not have to go back and look through past reports to keep track of the status of past recommendations, I will note the progress made on past recommendations as well as make new recommendations in each reporting period.

Unity of Command and Supervisory Responsibility

Two of the most important changes the Department can make to improve performance are to return to the unity of command approach to shift assignments and to provide clear expectations of responsibilities to sergeants, with concomitant tools and training. Several years ago, as part of the move toward neighborhood policing, the Department changed shift assignments. Traditionally a precinct would have assigned squads with a floating relief squad that filled in for each other squad on their days off. This meant that sergeants and lieutenants were working together with their officers regularly. In contrast, the change to the use of what is referred to as “in-squad relief”, has led to officers often finding themselves with other sergeants (akin to substitute teachers), resulting in less continuity of supervision and sergeants with less direct responsibility for a particular squad. That, combined with more officers in single-officer cars, a third of the force having less than three years experience, and perceived contractual constraints on use of In-Car Video by supervisors to mentor and coach officers (so that even if they were not on duty at the same time they could sit down later in the week and watch ICV with the officer to suggest areas for improvement), led to a number of performance and cultural expectation issues in recent years.

I was pleased to see a message from the Chief earlier this month to all officers that the Department will be addressing the unity of command issue. Additionally, it would be helpful for the Department to look for other ways for newer officers to be less isolated and receive more mentoring, such as an additional rotation with a Field Training Officer (FTO) or appointing certain supervisors as ‘exemplars’ for groups of newer officers.

The Department has also begun an effort to clarify expectations and improve training for sergeants, but the work here has only just started. Sergeants are the ones who are trusted to lead, mentor and train their subordinate officers. The Department needs to be clear with sergeants exactly what their responsibilities are (as opposed to the Lieutenants’), for what they will be held accountable, and how success is measured. A new sergeants training was to occur in early 2011. It recently started, with a goal of all sergeants having additional training by October.

Based on complaints received by OPA, 2011 and 2012 training for sergeants should include, among other things, how to best address problems they may see in officer performance; the process for supervisory review of use of force, including reporting; appropriate communication techniques (sometimes referred to as de-escalation strategies), including procedural justice or LEED principles (see below); best practices with regard to In-Car Video; search & seizure protocols; how to review incident reports to help officers make sure their reports have sufficient detail and are accurate; and the importance of reminding officers of their responsibility to identify themselves. It would also be good for the Chief and other senior leadership to do some more “ride alongs” with sergeants to observe their on-the-job performance first-hand as part of this focus on first-line supervisors.

Use of Force Policy and Reporting

Incidents over the last year have reinforced the importance of reviewing the Department's Use of Force policy, related training and reporting. The U.S. Department of Justice will be advising the Department on this topic, so I will limit my recommendations to reiterating the importance of policies and training that are consistent with community norms and values, the importance of ensuring that general offense reports and use of force reports are consistent and an accurate reflection of what transpired, and the value of an internal audit of certain types of cases (e.g., obstruction) to see if there is an issue with regard to under-reporting use of force as some in the community believe to be the case.

Hiring and Training

In my review of training I was impressed with the expertise and seriousness of purpose of personnel in the training section. I spent time observing each component of the Street Skills curriculum, the CIT training, the Perspective in Profiling training and meeting with training personnel to understand how they monitor and mentor new recruits through their four and a half months at the Basic Law Enforcement Academy (BLEA) and then conduct post-BLEA training and rotations with field training officers (FTO). Training staff are continually scanning the landscape to make sure training stays current as best practices in policing evolve.

They also strive to modify training each year based on incidents that occur here or elsewhere. Recent threats to officers or shootings of officers often provide a window into additional factors to take into consideration. Another change was made to post-BLEA and FTO, which used to run separately. An officer would complete the time at the Academy, then do five and a half weeks of post-BLEA training, then do rotations with field training officers, followed by field training check off, and then a probationary period of up to seven months. Recognizing that people tend to retain information better if they can relate it to actual experience, the training staff moved from this traditional model to instead intersperse field training with the additional post-BLEA curriculum, so that now new recruits do a 15-day rotation of post-BLEA, followed by a field training rotation, then two more cycles each of five more days of post-BLEA curriculum followed by another field training rotation. Each of these periods include daily observation reports to make sure all the various trainers are in communication about any issues and need for remedial training for any individual recruit.

I do have several concerns related to how the Department leadership is addressing training. First, I would like to see a greater sense of urgency in moving forward with changes in training. A variety of commitments have been made, but implementation has been slow. It is good to see the Department partnering with the King County Sheriff's Office and the Washington State Criminal Justice Training Commission to develop training at the Academy for new officers focused on promoting dignified and respectful treatment of citizens. But the curriculum for this "Justice Based Policing" or "LEED" (standing for listen and explain with equity and dignity) training which stresses respect and listening skills, emphasizing use of verbal tactics as an alternative to use of force, has yet to be written. Once written, it still has to be approved by Commissioners.

Based on some of the challenges seen with newer officers, it would be good for Academy training to not only have a 'checklist' approach to ensuring officers know what steps are required and what the law is, but also, among other things, how to think through options and plan several steps ahead;

what it means to communicate effectively as part of a team; how and when to take time as opposed to rushing in; and a less rote approach to the assessment of so-called “pre-attack indicators”.

There has also been delay in developing and implementing the classroom curriculum component of this year’s Street Skills. And work is still underway with regard to improving the availability of on-line training and short roll call scenario training. There was initial inquiry into possible trainings about interactions with adolescents, in particular how brain development impacts their behavior, but due to cost that has not proceeded. The Department’s partnership with the Federal Government on training that focuses on ‘exemplars’ is still a work in progress. Recognizing that there have been budget cuts, that the Academy is not run by the Department, and that there have been many competing demands, such as the Department of Justice review, some delay is understandable, but it would be helpful for the Department leadership to clearly articulate externally the “deliverable date” of various new trainings in development and the schedule for then conducting these trainings.

A few suggestions I have made during this reporting period related to training don’t require additional resources. I encouraged command staff to attend at least part of each year’s new trainings (e.g. Street Skills) so that they would have a good handle on what is being taught. They could, for example, get a one-hour overview before officers start cycling through a new block of training. My view on this is that whoever is going to be reviewing possible discipline for officers who are alleged to be acting contrary to training should be as familiar as possible with what current training practices are. A directive recently went out requiring command level participation.

A critically important component to improving policing is understanding why some police officers are more effective than others, identifying and recognizing their excellence, and helping other officers learn from them. For this reason I would like to see more use of officers with great skills utilized as exemplars for others. As noted above, the Department is in discussions with the Defense Advanced Research Projects Agency (DARPA) about a possible partnership for this kind of approach. I would also like to see a way for institutional knowledge of more senior personnel to be shared prior to retirement, particularly given the large number of sworn personnel expected to retire over the next few years.

Two other tools that can help improve performance are the creation of an on-line database of exemplary General Offense Reports, search warrants requests, and other frequently used documents for easy access by officers at the precincts and a return to providing hard copy notebooks in the cars, as used to exist prior to the shift to an electronic version, to make it easier for officers in the field to look up most frequently used ordinances, laws and procedures.

As with any organization, performance effectiveness is improved with mechanisms that encourage continuous information-sharing. In the Police Department, that means whenever possible improving communication channels among those who have the opportunity to observe officer performance in order to inform adjustments to hiring, promotion or training highlighted as a result of a particular case or incident, or from supervisory review of interactions. For example, hiring or testing criteria should be changed to take into account problems that we have seen with social-emotional intelligence (knowledge of self, others, effective communications, an ability to see shades of gray, a broad capacity for tolerance and empathy). Recruiting and hiring should be improved by tracking those who don’t do well at the Academy, field training, at any point during probation, or

have red flags in the Early Intervention system. Information should be shared from an officer's BLEA training personnel, FTO, supervisor, in-service trainer to an officer's sergeant or precinct leadership. 'Post-incident reviews' should happen at a precinct after an internal investigation is completed to assess whether flags were missed or some other precinct-wide information or roll call training might be of help. Criminal cases against the City or officers and problems that OPA spots should inform Department-wide training on a regular basis as well.

Lastly, with regard to hiring, an ongoing challenge for every police department is the ebb and flow of hiring based on year-to-year budget directives, coupled with the need to plan ahead for retirement patterns. There is a great deal of value in having balance in a police department in terms of tenure – personnel with more years on the job have valuable experience and insights that only years on the job can provide. New officers require supervision and mentoring. Too many retirements in a short period of time or too many new officers coming onto the force at the same time creates an imbalance that is less than ideal. In addition, recruiting and qualifying too many new officer candidates at one time can diminish both the quality of the hiring pool and training staff's ability to coach and mentor them through the Academy and their probationary period. I would encourage policy makers to look for ways to set aside a fund that would allow for the Department to hire a consistent number of new officers annually, to get ahead of the future bow-wave of retirements.

Public Disclosure

Another issue that has become more challenging in recent years, and when not done well can really impact the Department's credibility, is the issue of Public Disclosure. There is increased demand for, and heightened public interest in, Department investigative files, videos and other information. The apparent inconsistency between the current Guild contract and the requirements of the Public Records Act (PRA) with regard to what information related to internal investigations can or must be released is the subject of ongoing litigation. State and Federal Court decisions may differ as to the obligation to disclose open files and release names of officers who have been the subject of complaints. Discovery requests during criminal or civil trials add another layer of complexity. There are competing values of employee privacy vs. accountability and transparency to the public. Whenever it appears that the Department is not being responsive and open in its information-sharing, it hurts the credibility of the Department. Often the Department is making a good faith effort to do what it thinks it is required by law or contract to do. A dedicated effort to enhance the Department's handling of public records requests should be a priority.

In-Car and On-Person Video Cameras

The increasing use of In-Car Video (ICV) systems and citizens recording encounters with police is a significant trend impacting police accountability. ICV systems have been around for some time and several jurisdictions have moved ahead to the next generation of video recording devices such as a tiny, high-quality wearable camera that rests on the ear, much like a wireless cell phone headset, or a camera mounted on other parts of an officer's uniform or equipment. There are differences of opinion about privacy concerns for video-taping of citizens, particularly in their homes. There is also concern that Washington law may not permit recording of private conversations, whether in a public or private location, without first obtaining two-party consent. There is currently a specific

exemption in Washington law for ICV, but not one for on-person or so-called “body cameras”. Nevertheless, the benefits of video make it imperative that the Department quickly correct a variety of issues with the ICV system to make its use more comprehensive and helpful for officers and citizens alike, as well as move forward with use of on-person video cameras as other jurisdictions have done. A pilot focused on traffic patrol would ameliorate concerns related to being in homes.

The goal of the Department’s ICV work in 2011 should be to: 1) maximize effective use of ICV so that it provides useful evidence as frequently as possible; 2) ensure timely and appropriate production of ICV in response to requests by OPA, the public disclosure unit, and prosecutors, and pursuant to litigation discovery; and 3) address ICV issues to allow for a pilot project for on-person cameras to proceed successfully.

2010 and 2011 cases to-date reviewed by the OPA Director and Auditor, along with further discussion and observation with the SPD video unit staff, have highlighted several obstacles to department-wide best practices use of ICV: Not all officers are trained in use of ICV; some Field Training Officers are not yet trained and so are not training new officers during their initial months of post-academy training; Sergeants may not have sufficient training or may not have been given direction by command to check on, mentor and give direction to officers with regard to best ICV practice to ensure it occurs and is done correctly; training has been cut from two days to four hours, so officers may not be getting all the essential elements of training (e.g., entering data on the screen, angle of cameras, audio recording outside the vehicle, disabling the light and tones for safety.)

With regard to policy, the ICV policy may be interpreted differently by different commanders and officers, particularly in regard to what State law allows if video of the interaction is not within view of the camera, but audio could be used. To some, the policy appears to say that officers will use it at all times, but then also appears to say they are not to use it when the subject matter would not be within camera range. Also the policy states audio and video must operate simultaneously, but that is unclear in certain situations and perhaps is written more conservatively than State law requires.

Department policy requires officers to record incidents whenever it is reasonable and practical to do so. Some officers state that they do not activate their ICV systems because of the nature of the incident – that the incident requires their immediate attention, thus negating the requirement to record. The policy may be unclear in this regard as well. Other officers partner with the Department of Corrections (DOC), and their DOC vehicles are not necessarily ICV-equipped. The expectation is that under SPD policy, SPD officers should be making every effort to use the ICV system to document all citizen contacts and thus should not use DOC vehicles for citizen interactions.

There are also some equipment and technical issues, including the fact that not all SPD vehicles have ICV, there may not be a clear, frequent and understood schedule across the precincts for repair of equipment that is malfunctioning, wireless uploading at precincts has some glitches, and microphones need to be charged. The Department has done a sample audit of ICV issues but now needs to set deadlines, clarify expectations of officers and sergeants, and implement improvements.

I have been pleased to see the Department move forward with a recommendation from my initial report that supervisors, command and training personnel use video as a teaching tool for

mentoring, providing feedback, roll-call training, department-wide training and highlighting exemplary performance.

Complaint Classification and Findings System

One of my initial observations during my first quarter as OPA Auditor was that the classifications of complaints (deciding how a complaint is to be addressed) and the findings (results of investigations) were somewhat confusing and did not further the goals of transparency and understandability. I recommended that we focus in 2011 on ways to reduce the number and clarify the definitions. This work has been the subject of a work group with the Director, the Auditor and representatives of the Review Board during the first half of the year.

As I mentioned in my initial report, OPA does a very thorough job of documenting and addressing each complaint of possible misconduct, no matter how minor. In terms of public trust, this is an important element of Seattle's system. No complaint is ignored or deemed unworthy of attention. No complainant is denied an opportunity to be heard, regardless of criminal record, past complaint history or nature of the allegation. Complaints may be filed in person, by telephone, by mail, by email or via the online form on the website. They may be filed anonymously or with the help of a third party. One aspect of the Auditor's role is to ensure that complaints are received and assessed fairly and impartially. This classification review provides the first step in accountability – no decision about how a complaint is to be addressed is made without review by two civilians: the Director and the Auditor.

One reason for civilian oversight of the classification and referral system is to help ensure each allegation is understood and handled properly. Sometimes there are issues in play that were not expressly called out by the complainant or interview, or articulated in a way that allows for easy identification, but that we need to make sure are addressed. Another reason for review is to triage all complaints so that resources are directed appropriately, the objective being that the most expertise and time is then focused on the most significant investigations, while still being responsive and timely with regard to more minor complaints.

An equally important reason that all complaints, no matter how minor, are reviewed by both the Director and Auditor is so that trends or issues needing attention by the Command staff or at the precinct level are captured. For example, there may be several complaints where citizens feel officers are being rude, and only by seeing the totality of them can we discern whether certain officers are acting unprofessionally and need individualized attention, whether there is confusion about the Department's protocol for certain situations or whether a certain shift or precinct is at issue. The cumulative nature of complaints, as well as individual complaints, provides important information for improvements in performance.

One of the weaknesses of the current system (in addition to the number of classifications and the somewhat confusing nature of the distinctions among them) has been that for some complaints that come in directly to the precinct, often a supervisor could quickly address them, but instead forward them to OPA if the complaint has the potential for being considered misconduct. If the possible misconduct involves issues such as use of force, violations of law, biased policing, honesty, officers with multiple complaints, or allegations requiring more complex investigations, referral to OPA is without question necessary. However, other issues such as lack of professionalism or failure to

comply with certain regulations might in fact be handled more swiftly and responsively directly at the precinct or unit, with quick follow up to the citizen and the officer rather than a referral to OPA.

Referral and processing by OPA of these types of complaints necessarily adds to the time it takes to resolve the issues, as OPA takes in the complaint and then either directs it back out as a 'Supervisory Referral (SR)' or 'Preliminary Investigation Report (PIR)' or conducts an investigation that then results in a Supervisory Intervention. Thus, OPA involvement results in less timely intervention and means there are fewer OPA resources focused on the more significant allegations of misconduct. A key goal in re-tooling the classification system is whether these types of complaints can be handled directly, rather than referring them to OPA, while still preserving civilian oversight to ensure all allegations are taken seriously, accountability occurs, and problem trends are spotted.

Our work group completed its review earlier this month, and is recommending a bifurcation of complaints so that more minor complaints are handled directly by the supervisors or are referred out to the supervisors if they come into OPA, the number of classifications are reduced to two major categories and the number and names of findings are changed to improve understanding of outcomes. These system improvements will require the collaborative involvement of the OPA Director, Auditor and others in the Department to design and implement. In July, the work group will be briefing the City Council Public Safety & Education Committee on this 'classifications and findings' project.

Mediation

Seattle was among the first jurisdictions to establish a mediation process as an alternative to traditional complaint processing, as a way to help both the complainant and the officer see things from the other's perspective. Those who have been through mediation – both complainants and officers – report satisfaction with the result. However, we are still not using mediation as frequently as we could. One reason for this is that, both the complainant and the officer have to agree to mediate. As I mentioned in my initial report, some officers won't do so unless they are at risk of discipline ("why bother") and some complainants won't participate because they have to give up the right to possible discipline if the mediation is not successful or they have other concerns. I recommended that we take another look at the barriers to more frequent use of mediation. This was not done in the first half of 2011, but the OPA Director has it on her work plan for the second half of the year and has asked the OPA Review Board to do some outreach to complainants to see if we can learn more as to why they have declined mediation as an option.

Secondary Employment

Problems related to secondary employment (off-duty work for employers other than SPD) continue to be reflected in complaints. These issues are not always visible to the public but use up valuable time and resources to address. The Department would be well served to reduce the number of issues that arise from this context by centralizing and modernizing its secondary employment system.

Use of a Discipline Matrix

Police officers at times feel discipline is arbitrary and isn't consistent or fair. Unless it is a high-profile case, few in the community are interested in the police disciplinary process so when discipline is imposed in a case about which they are paying attention, it is not always clear why certain discipline was or was not imposed (and the process is confidential). If the Department moves forward with the changes we have recommended which will result in more complaints being addressed directly at the precinct, a discipline matrix would be a good instrument to consider as a way to continue achieving consistency in discipline. Matrices specify the presumptive action to be taken for each type of misconduct and take into account an officer's previous disciplinary history as well as specific circumstances. As with sentencing guidelines, there is an inherent tension in balancing between fairness and consistency, allowing for appropriate discretion, and a need to have penalties revisited over time as organizational and community values change.

Unbiased Policing Policy

The National Association for Civilian Oversight in Law Enforcement (NACOLE) noted that San Jose had updated its policy on Biased Policing to encompass a broader range of decision-making. The Department may want to compare and contrast to its current policy to consider whether the language used by San Jose would be helpful.

OPA Transparency and Accessibility

Citizens everywhere find accountability systems difficult to access and to understand, and Seattle is no exception. Transparency improves confidence and trust in the police. It helps assure citizens that their complaints are taken seriously, investigated thoroughly in an unbiased fashion, and that officers who are found to have violated departmental policies are appropriately sanctioned or directed to improve performance through education-based discipline. Last fall, soon after I started, I made a number of recommendations to help improve transparency and accessibility. The most significant one - changing the classifications and findings system - was discussed above.

I also recommended overhauling the website to make information easier to find without having to know which part of the system is responsible for it or which report covers the topic, providing links for filing complaints to websites of agencies serving adolescents and communities of color, incorporating a way for complainants and officers to check the status of a complaint on line, much as a voter can check on the progress of her ballot on the elections web site, and posting a summary chart of recommendations implemented as a result of the accountability system. Given limited I.T. personnel with a number of competing demands, and a variety of City institutional barriers, none of these was implemented to date; work on the web site has recently begun.

A related recommendation from my initial report was to ascertain whether the software system used by OPA could be used in different ways to provide additional complaint tracking, reporting, analysis and management tools. In the first half of 2011, the OPA Director, an OPARB member and I collaborated on a project to examine whether different reports could be generated from the computerized case tracking system to more easily monitor case workflow and better identify the causes of any delay in the investigation process. We also worked on whether current reports such as the Director's annual and monthly reports could reach a broader audience if different

approaches to presentation of information were used. The Director's 2010 annual report will reflect this improved transparency in reporting.

I was also interested in improvements to the data entry system to allow for easy-to-access reports to help spot trends and be able to more accurately assess certain parts of the system. For example, we changed the categories related to by whom, how and where a complaint was filed so we can more accurately track how the system is used. More work still needs to be done on this, such as how to best categorize a complainant when a friend, relative or advocate is actually filing the complaint on someone else's behalf. If the incident involved a homeless white female but the person who filed the complaint is an Asian male case worker, the system often does not have accurate information about the subject. Another improvement OPA can make is to change the coding so that it includes the nature of the underlying incident, not just the misconduct allegation (e.g., 'use of force -obstruction' or 'use of force - jaywalking').

Also recommended was an updated training manual for new OPA investigators, which is now in the process of being revised. Change was made as well to address another recommendation with regard to improving the timeliness of notice of final outcomes to the officers who are the subject of complaints. Some officers had raised the issue that they feel they are left in limbo by not hearing for months as to the result of a complaint after certification or disciplinary decision. Still on the list to do is a review of all the letters, complaint forms and other OPA-related materials to make sure they are as explanatory and helpful as possible to complainants, officers and the public.

Complaint Review

In the period covered by this report, the Director and I reviewed 284 new complaints alleging misconduct. We agreed that 15 of them should be reclassified from the original classification recommendations (8 from PIR to SR; 2 from PIR to LI; 2 from PIR to IS; 2 from SR to IS; and 1 from IS to SR¹). The final classification results were 109 as PIR, 65 as SR, 19 as LI and 90 as IS. One was administratively inactivated as a contact log. We recommended 28 for mediation. We also reviewed 397 inquiries that had been entered by staff into the OPA 'contact log', discussing a few that warranted some additional follow-up, but found none that needed to be reclassified as a complaint. OPA gets a significant number of contacts and inquiries that do not involve possible misconduct. The citizen is helped by OPA staff and the contact is noted in the log. A lieutenant, the OPA Director and I each review these to make sure nothing was treated less seriously than it should have been.

In reviewing the initial complaints we also added 23 allegations. If the original information provided at intake indicated the potential for other possible violations or was silent as to why something had or had not occurred, an allegation needed to be added to allow for further investigation of the issue. For example, we added allegations concerning failure to use In-Car Video (ICV), failure to complete a use of force report, lack of probable cause, failure by an officer to

¹ Complaints are currently classified at intake in one of four ways: Preliminary Investigation Report (PIR) or Supervisory Referral (SR) where the complaint is referred to the employee's supervisor. Generally, PIRs are for information only, while SRs require that the supervisor resolve the complaint and report back to OPA. Complaints classified as needing an investigation are either a Line Investigation where the complaint is investigated by the Line of Command or an "OPA-IS" investigation conducted directly by OPA Investigators. All investigations are reviewed by the Auditor and the OPA Director, both of whom are civilians.

identify his or her name, rudeness, profanity and biased policing. The OPA Director and I discussed all new complaints weekly, making the final decisions about classifications and allegations. The complaints were then immediately referred for investigation, chain of command follow up or mediation.

Finally, in regard to filing of complaints, I mentioned in my first report that I was pleased to see that complaints were initiated from within the Department as well as externally. Every member of the Department has an obligation to report possible misconduct, and failure to report is, in and of itself, a policy violation. Last fall the Chief issued a directive reminding every employee of this obligation. While we did not see a trend away from this in the first half of 2011, we did encounter a case that highlighted the need to clarify the reporting policy. The policy refers to 'serious misconduct', which is not defined, leaving some types of issues in a gray area. The Director and I requested the Department clarify this policy so that each employee's obligation is as clear as possible, to minimize the risk of any failure to report misconduct that then diminishes the public trust.

Criminal Investigations

The Director and I review each quarter the list of those complaints where OPA's investigation is tolled (put on hold) because there is a pending criminal investigation by one or more other police departments or the FBI. For example, if an officer who is off-duty is charged with a DUI or domestic violence in another jurisdiction, it can take some time for that case to wind its way through from initial charging to trial. Or if a jurisdiction decides not to charge, they may not be cognizant of the importance of alerting OPA to the decision so that the administrative investigation may proceed in a timely manner. Once a charging decision or any criminal proceeding has concluded, the case is no longer tolled. OPA monitors these cases and keeps in touch with the other involved agencies so that if OPA's investigation ultimately results in a recommendation of discipline, there will not be grounds for challenging it based on an assertion that the investigation took more than the contractually permissible 180 days.

As I mentioned in my initial report, even where the conduct happened in Seattle, there is a need to minimize delay in those cases referred for possible criminal prosecution. The sequencing of investigations – County Prosecutor reviews for possible criminal felony prosecution, City Attorney reviews for possible misdemeanor prosecution, and then the OPA investigation commences - can cause a long delay and frustrate the complainant, the officer and the public. I recommended in my first report that the Department change its protocol to instead refer cases where the actions may constitute criminal conduct for both felony and misdemeanor filing decisions at the same time. The Department indicated it did make this change during the first quarter of 2011.

I had also made the recommendation and continue to believe that the Department's usual practice notwithstanding, it does retain the authority to make a case-by-case decision about whether to wait for the criminal filing decision(s) or move forward with the internal investigation. There are cases where the value of moving forward more quickly outweighs the risk of proceeding (the risk being that a self-incriminating statement made during an administrative investigation and any evidence derived from it cannot be used in the criminal proceeding). To further help improve this part of the process, the City Attorney should establish a timeframe within which any misdemeanor review by

his office will be completed. Regardless of the timeliness of the charging decision, the Department should consider moving forward on certain cases rather than waiting. Continued delay makes it harder on both the complainant and the officer, and leaves the public feeling there is insufficient accountability whatever the final result.

During this reporting period there were several high visibility cases involving referral for possible criminal prosecution regarding use of force. One was an officer-involved shooting resulting in a fatality. The Department did a very thorough job with the investigation led by the Firearms Review Board, utilized peer review, and upon completion of the inquest proceedings then also conducted an OPA review, which ultimately resulted in termination. OPA determined that while the Prosecutor found the officer's use of force comported with State law, it did not comport with the Department's use of force policies, and that the officer failed to use good judgment in the execution of his duties which then resulted in poor tactics ultimately contributing to a sequence of events leading up to the death of the victim. The officer resigned and the City reached a settlement with the family of the victim.

Another case involved allegations of use of force, profanity and derogatory language, with multiple officers and two crime scenes. It was a complicated investigation, and OPA used additional outside expertise. My concern in that case was not the quality of the investigation or the ultimate disciplinary decision, but the length of time it took. The underlying incident occurred on April 17, 2010 and the Chief announced his disciplinary decision on May 12, 2011, more than a year later. The community, the involved officers and the other officers in the Department are not well served by going for so many months without clear answers. Other cases involving use of force, some of which are still open investigations, are currently under review by the Department of Justice.

Investigation Review

One of the key roles of the civilian Auditor in Seattle's police accountability system is to review each internal investigation that is conducted in response to a complaint of misconduct. This civilian oversight helps ensure that all employees of the Police Department act with the highest degree of integrity, in full compliance with the federal and state Constitutions, State and City laws and Department policy and regulations. In our system, the investigation is conducted by the OPA investigations section or is referred by OPA to the line of command at the employee's unit or precinct. Every completed investigation is then reviewed both by the civilian Auditor and the civilian OPA Director. During this reporting period I reviewed 111 investigations and PDMs. When I requested additional investigation or further information, OPA was very responsive.

These internal investigations are "administrative" in nature, not criminal. The standard of proof for an administrative investigation is "preponderance of the evidence." Standard of proof refers to the level of certainty and the degree of evidence necessary to meet the Department's burden of establishing that the Department's policies or procedures were violated. The preponderance of the evidence standard requires that evidence simply be of greater weight or more convincing than the evidence that is offered in opposition to it; in other words, that the standard is met when it is more likely than not that the individual engaged in the alleged misconduct.

If a complaint is sustained, discipline up to and including termination can be imposed, and education-based discipline, such as individual training, supervisory actions, community involvement, and mediation can be utilized. Improvements to policy and department-wide training intended to improve best practices can also be directed. We endeavor to approach accountability not solely from a punitive perspective, but to also be forward-looking, focusing not just on specific incidents, but also drawing insights from the incidents as to what may be larger systemic failures.

This civilian oversight can also help improve the quality of the internal investigations, making certain that the investigation process has been conducted and the findings determined without bias toward the citizen or the officer(s) involved, that the investigation was conducted appropriately according to applicable laws and policies and that the gathering and review of evidence was thorough. Additionally, as Auditor I look to see that the correct analysis and standard of proof was applied to the evidence gathered and the conclusions reached were supported by the evidence and the analysis.

In the last two quarters of 2010 and the first two quarters of 2011, OPA had a high level of activity, which requires an additional role for the civilian reviewers. Given finite resources and staff, not every investigation can be done with the same degree of detail while also being responsive to all case deadlines and focusing resources on the most serious allegations. Thoughtful triaging of levels of investigation also becomes important. Every investigation must be thorough, fair and conducted to determine the truth, but the standard of reasonableness and adequacy may differ from case to case. For example, if the allegation is of a more minor nature, I would not direct that additional effort be made to find other potential witnesses, if the existing record suffices. Likewise, if I think there are shortcomings, but believe that the conclusions which were reached in the investigation comport with the evidence and were correct, I might not request additional investigation be done. In other cases however, an investigation would not be considered thorough unless additional steps were taken.

For every investigation I reviewed during this period, OPA did a good job of making sure each complainant received a timely intake and an explanation of the process, including the opportunity for mediation, gave permission to be interviewed and was asked to state that his or her statement was truthful. Relevant In-Car Video, use of force reports and medical records were quickly gathered. Subject and witness officers² were provided proper notice, all of the officers were advised that they were being compelled to provide a statement, were interviewed with representation as required by their Guild contract, were advised that they were required to cooperate with the investigation, and that they were required to provide full and accurate information regarding the incident under investigation. All were asked to describe their SPD and other law enforcement experience. At the conclusion of the interviews, all were admonished to refrain from discussing any aspect of the interview and complaint with anyone other than their Guild representative or lawyer.

Complainants, witnesses and subject officers were treated with respect and the investigations were conducted with fairness. Officers were not provided evidence or statements of other officers prior

² For brevity I use the term officers or employees interchangeably throughout this report, but complaints of misconduct may be against any employee of the Police Department, including civilians and sworn personnel of any rank.

to their interviews. I saw no cases where investigators chose to interview only witnesses who might favor the officer or did not interview a witness who might have disputed the officer's account of the incident. Several complainants in this period had criminal records and/or were incarcerated, but there was no diminution in the quality of the initial intake or in the investigative process.

Investigators were never discourteous and gave complainants whatever time they needed to share their information. I was concerned on a couple of occasions about the possibility of the perception of bias in favor of officers due to informal communications in emails sent to schedule interviews or discussion at the beginning or end of the interview session. I have asked that investigators take care to understand that those sorts of pleasantries ('congratulations on x' or 'sorry to drag you in here'...) can lead to a perception that relationships will result in favoritism toward the officer.

OPA case files were consistently complete, with exhibit lists, reference documents, notifications, medical records, requisite authorizations, photos, transcripts, case summaries, video and 911 tapes, and other necessary documents and evidence. Where a complainant or witness interview was not included, OPA investigators also did a good job of making sure the case file reflected that appropriate efforts were made to locate the individual and/or to obtain the necessary permissions. With regard to the interviews, all officers were interviewed in-person, all interviews were transcribed and all interviews were conducted individually as they should be. The investigators maintained control of the interview; Guild representatives or lawyers were allowed to ask follow up questions only after the investigator completed his or her interview questions. Objections to questions were noted for the record. Officers were asked to demonstrate conduct that was difficult to describe and to audibly describe gestures or exhibits for the record that would otherwise be difficult to discern from the audio transcription.

The interviews conducted were generally well done, but I recommended additional training to address a few areas. I would like to see more uniform quality across all investigations in the use of short, open-ended, non-leading questions that require the officers to provide a narrative response, as well as less interruption of their responses. In several interviews I felt the questions were leading in nature, moving the officer to a particular statement or conclusion regarding their action or thinking. In a couple of interviews I felt that the investigator interjected his or her own personal opinion or rationalization of the officer's behavior rather than leaving to the officer to explain. Additionally, there were occasions when I felt the investigators could have asked appropriate follow up questions, but did not, or could have further pursued what appeared to be a discrepancy in information either between the information provided in the interviews and that in the incident report or among different interviews. During this reporting period the Director led training on interviewing and will do additional trainings on a regular basis.

I would also like to see the complainant or witnesses routinely asked during intake to identify other potential witnesses, how those witnesses might be reached, and whether the complainant has talked to them. During interviews, officers should routinely be asked what reports, tapes or other evidence they reviewed relevant to the complaint prior to the interview, who they have talked to about the incident, including the subject officer(s), and from whom did they first learn about the internal investigation. As well, complainants, witnesses and officers should be asked about any prior contact or relationship with each of the other parties.

Frequently the investigator elicited from the officer his or her understanding of the law, policy or regulation at issue to help determine the officer's level of understanding. This should also be a routine line of questioning as it sheds light not only on the officer's conduct but on whether there is need for a policy to be re-written, re-issued, explained at a roll call or added to training.

Another area to be addressed involves cases where the question arises as to whether the officer's actions were consistent with training. Here the investigators should ask necessary foundational questions to elicit information about what training the officer had, when he had it, who the instructors were and what the curriculum was. Investigators should then include the relevant training records and if helpful, interview the relevant training personnel as witnesses. Training evolves from year to year; without this information assumptions may sometimes be made based on training experience of the investigator or the reviewers, which may not in fact reflect the training this particular officer had.

After reviewing the interviews and exhibits, including any available video or audio tape, I then review the report written by the OPA Lieutenant summarizing the evidence and offering recommended discipline (Proposed Disposition Memo or 'PDM'). In my view, a very important part of the overall case file is the accuracy, completeness and objectivity of this memo. If the PDM doesn't appear to fairly reflect the evidence, including the credibility of the officers as well as the complainants, it tends to negate the competency of the underlying investigation. Given the large number of cases, writing these well, while still meeting required deadlines for all the cases in the queue, is a constant balancing act.

To be as useful as possible for any reviewer, including command staff making decisions on discipline, the Auditor, a judge or others, this narrative needs to contain all of the information necessary to be able to make sound judgments, be clearly objective and impartial and accurately describe all of the facts of the case that are relevant to prove or disprove the allegations. Information both favorable and unfavorable to the officer should be included for each allegation and care should be taken that credibility assessments are not made only for certain discrepancies and not for others. All allegations made should be addressed, so that it is clear the investigation or intake personnel investigated the entire complaint and not just certain parts of it.

The OPA PDMs during this reporting period were well written, and led the reviewer through the incident and the evidence in a cogent and understandable way. The exact wording of the underlying policy, regulation or law alleged to have been violated was included for each violation in some PDMs, but not all (I recommended in my initial report that the exact language from the policy alleged to have been violated should always be included in the PDM) and a summary of the evidence tending to prove or disprove each allegation was summarized. On a few occasions I felt the PDM minimized statements or information unfavorable to the officer or was overly conclusory without a clear basis or failed to address all of the relevant material. At times there might have been alternative interpretations based on conflicting yet credible evidence, and each possibility should have been analyzed. I provided this feedback to the OPA Director for ongoing training purposes.

OPA continues to work on the issue of timeliness of investigations. Fewer investigations were completed within the 120-day goal during this period, but there was also a 20% increase in complaints filed. Each quarter I conducted a review of open cases to ensure that no cases where

discipline might be imposed missed the 180-day deadline imposed by the Guild contract. Several OPA-IS investigations were completed just at the deadline and several Line Investigations took longer than they needed to, but none exceeded the allowable time. Delay can minimize the value of directing that additional investigation be done, as a longer period of time has passed since the incident. Meeting all timelines with sufficient time for the possibility of additional investigation was a particular challenge in recent months due to several complex cases that demanded greater than usual time by OPA staff.

In our system, the Auditor does not have a formal role as to the findings or the discipline ultimately imposed. On several occasions where I disagreed with initial findings I provided that input to the Director as part of my review. If I do not request any additional work, the Director then certifies the findings if she agrees that a disposition other than discipline is recommended. If discipline is warranted, a disciplinary meeting is held with the chain of command. The discipline to be imposed for any misconduct is ultimately in the sole discretion of the Chief of Police. The employee is afforded an opportunity to present his or her position. The Chief takes into account the seriousness of any violations, the employee's full record and any mitigating circumstances.

In my initial report covering the period from July through November of last year, I discussed at length cases where escalation stemming from minor incidents had led to a use of force that appeared to be a disproportionate response, excessive or discriminatory. I described a historical pattern of police conduct that while technically legal also undermined perceptions of legitimacy among citizens. That in turn can lead to greater distrust between officers and citizens, to less voluntary compliance with the law, which in turn can lead to more incidents that put officers at risk. I was pleased to note that we did not see a pattern of these sorts of actions during this reporting period, separate and apart from other use of force incidents.

The overwhelming number of the 111 investigations reviewed during this period were thorough and objective. On occasion I requested additional investigation, which was done. In a handful I had concerns with thoroughness or objectivity or I disagreed with the findings. Several cases highlighted a policy or training gap and one highlighted the challenges of differing perceptions and the potential value of mediation when concerns of bias arise.

I requested additional investigation in a case involving a civilian employee who was the subject of a complaint being investigated by the Seattle Ethics and Elections Commission (SE&EC) with regard to using a City vehicle to take care of rental properties during working hours. The SE&EC investigator asked to see the employee's daily desk calendar, since it potentially contained information relevant to the investigation. It was alleged that the employee returned to his desk and obscured some handwritten items on the calendar before providing it for the investigation. The issue was whether the employee violated the Department's Integrity policy by tampering with potential evidence in an administrative investigation. The employee admitted to the OPA investigator during the interview that he scribbled out some items on the calendar. He stated to the witness sergeant at the time of the incident and also to OPA during his interview that he had scratched them out because he was embarrassed by the swear words that he had written on the calendar in Chinese. He said that the writing that he scribbled over had no relevance to the investigation being conducted by SE&EC.

The credibility of the employee was questionable. When I reviewed the calendar at issue it appeared to me that some entries could still be read because they had not been completely erased by the employee. I asked OPA to have an independent source who could read Chinese review the calendar. OPA did that and determined that the Chinese words were not swear words but instead confirmed the employee had been conducting personal business. An allegation of dishonesty was then added and both allegations were sustained. The presumptive discipline for dishonesty is termination.

In one case, I asked that OPA re-write a section in a PDM to show why an allegation would be sustained even if the DUI criminal matter were to be overturned on appeal, so that discipline could proceed rather than continuing to toll the case while on the criminal appeal continued. OPA was again very responsive.

In one case involving domestic violence, including a threat to kill by a felon with a history of violence, both the Director and I were concerned that the investigation also needed to examine why the initial responding sergeant didn't call in a SWAT team or consult with the Duty Captain. The sergeant chose to handle it himself and ended up directing his team to withdraw from the scene, leaving the suspect in the house even though the sergeant knew the suspect was inside (the victim was elsewhere). We disagreed with the OPA staff recommendation of findings of 'Unfounded' and 'Supervisory Intervention'. The Director requested a discipline meeting, and a determination was made to enter a finding of 'Sustained' on the allegations of Exercise of Discretion and Responsibility of Supervisors. As was noted in the PDM, a number of decisions were made in the early stages of this incident that did not reflect best practices with regard to incident investigations and supervisory decision-making.

In another case, the PDM suggested the use of force was appropriate based on the evidence, including video, where in my opinion the video was too dark to be of much use in that regard. The video was helpful to show the combativeness and intoxication of the subject, but did not provide specific evidence of as to the degree of force used to restrain and get the subject under control. I disagreed that the evidence would lead to a finding of Exonerated (in compliance with policy) rather than a finding of Not Sustained (there was not a preponderance of evidence to prove more force was used than was necessary nor did the evidence disprove it.) I also thought there should have been an allegation included when OPA initially received the complaint related to the complainant's assertion that the officer yelled in a threatening way.

A case involving lack of professionalism highlighted the importance of looking at the totality of the incident, not just the specific allegation (and if need be pausing the investigation to provide written notice to the officer of an additional allegation, as required by the Guild contract), and the need for timely transition of the case when another part of the Department initially has the investigation. In this case the officer was on his way into the precinct in his personal car to begin his shift. The complainant and her 20-year-old daughter were walking across at mid-block (jaywalking) as the officer drove by. The complainant made a comment to her daughter concerning the officer's driving, which prompted him to stop and to contact them. It was alleged that during the course of their interaction the officer threatened to find and kill the complainant when the officer was on-duty. The officer gave the following description of his encounter with the complainant:

"I was on my way to work, a nice day in June, windows down, I was driving south on [...]. At mid-block, two ladies stepped off of the curb walking westbound. [...] As they stepped off the curb past the parked cars into the northbound travel lane, I drove, was driving by, I continued driving. I don't stop for jaywalkers, never have, never will. Two ladies, one of them carrying a removable car seat thing with the handle. As I'm driving by, again, I had my music playing, I heard yelling. I had no clue what was going on. At that point they had just barely entered into the center turn lane. I stopped, turned around, went back and was like, is there a problem, and one of the ladies starts just yelling at me. No clue, you almost hit me, etcetera. I made the mistake of pointing out how good of a mother she was jaywalking on a busy street like that, at which point she starts cursing me up and down. A bus passed, I lost half the conversation, there. And I told her, you know, when I get on duty I'm gonna, I'm gonna write you, I'm gonna find you and I'm gonna write you a ticket for jaywalking, and which point she says my husband will kill you. And I was like okay, well, you know, that's, this is enough. I told her I work a block away, precinct's right there, I'll meet you there and we'll deal with this there. I pull into the front lot of the precinct, there was CPT giving a bunch of, I assumed Boy Scouts, a tour of a patrol car. Based on how upset she was, I'm like, I'm not gonna even pull into the lot and, and deal with this. I didn't assume she would follow me there anyway. So I parked my car and I went into roll call or went into the locker room, changed, and went to roll call."

The officer denied saying that he would kill the complainant. He said that it was the complainant who said her husband would kill *him*. My concern was that based on the fact pattern and on the admission above by the officer during his interview, an allegation should at that point have been added with regard to unprofessional conduct. Instead the allegation was narrowly focused on what the complainant had raised - that the officer threatened to kill her. A finding of Not Sustained on that allegation, while technically correct based on the initial complaint, did not suffice to address the overall unprofessional conduct. Further, the timeliness issue caused by the initial investigation of 'threat to kill' by the Homicide/Assault Unit (not OPA) precluded discipline. There was a nearly three-month delay in Homicide between receipt of the case and initial attempts to contact the complainant in July and mid-August and the final attempt in early November. Given that the complainant had moved and left no forwarding information and the case was inactivated, it should have been transitioned back to OPA in a more timely fashion so as to allow completion within the 180-day window required by contract for the imposition of discipline.

In another Line Investigation, the issue was whether the officer was officious and unprofessional when he stopped a driver for speeding. The driver initially could not find his proof of insurance, but when the officer returned to the driver's car with the completed citation, the driver then produced it. The driver also appeared to be behaving somewhat obnoxiously. The officer stated in his interview that he refused to accept proof of insurance because he felt it had taken too long to produce, the driver had not gotten out of his car and walked the insurance card over to the officer, and the officer had already written up the ticket so the driver should have to be the one to go get it dismissed.

The precinct investigator concluded from this that the allegation with regard to discretion should be sustained, but did not find the behavior unprofessional. This was another example of how the contractually-imposed requirement for specific categorization of allegations at the time of intake may result in a finding that the action is not a violation of that particular policy, and yet the totality of the situation does not reflect best practices. My other concern was that the analysis by the precinct investigator was inappropriately conclusory, in essence concluding that since the officer

had made thousands of stops he wouldn't have been rude and that since the complainant couldn't cite the specific words used, the incident didn't meet the threshold of unprofessional conduct. The findings were 'Not Sustained' on rudeness and 'Sustained' on discretion, and the discipline was an oral reprimand. I would have sustained on both allegations of discretion and rudeness.

The incident underlying one complaint involved a fight between the complainant and another woman. The issue was whether the force used by the officer was necessary and reasonable under the circumstances. The officer and a witness officer observed the fight and ordered the women to stop and to sit on the ground. As the certification described it:

"All witnesses (the two officers, the complainant and her civilian witnesses) agree that both women initially complied and then the complainant got up and started walking away. All but one witness noted that the complainant was told to sit back down, with the witness officer stating that she was told to sit back down several times. Officer [R.] stated that the complainant appeared hostile and that she was trying to leave the scene when he used force to control her. He used a foot sweep to take her to the ground, placed a knee on her back to restrain her, kept his knee on her back as she tried to push up, and handcuffed her. The complainant has a history of seizures and appeared to suffer a short seizure while on the ground. SFD was called to the scene and, after examining her, noted that she had no complaints and did not require further medical attention. Later, complainant experienced bleeding in her ear which she believed was not caused by the fight and may have been caused by the officer's use of force. However, she declined to be interviewed and there is no medical or other evidence to determine if the bleeding was related to the fight, the use of force, the seizure, or any other intervening cause. She also complained that it was difficult to breathe when the officer had his knee on her back. From the perspective of the complainant and her civilian witnesses, the officer's use of force was unnecessary. However, in light of the complainant's refusal to comply with the officers' lawful orders to sit down and her apparent intent to leave the scene, the force used was within policy."

I felt that the handwritten statements from witnesses gathered by the complainant suggested a finding of 'Not Sustained' as opposed to 'Exonerated' and that the PDM was not as objective as it could have been. The Director articulated her position that while the case summary did not thoroughly explain why the perspective of witnesses was in conflict with permissible force, nonetheless, this level of force was allowed by policy, particularly given that the complainant was combative and mercurial at the time.

In a case involving a stabbing at a large party, when officers arrived they were told the suspect was in the house. They found no one upstairs then found the subject lying face down in a bed downstairs with his right hand under a pillow. They announced themselves, directed him to show his hands and when he did not respond two officers approached him to grab his arm and get control; he thrashed and kicked; one officer struck him mid-section with a flashlight multiple times; a second officer punched him; another struck him multiple times in his midsection with a knee. I was concerned that if the suspect was either asleep or passed out from drinking and his first language was not English, there may have been a legitimate reason why he did not respond to commands. When they took him outside, the crowd said he was not the suspect. (The actual suspect had fled.) He was arrested for assault on officers and obstructing.

I did not think the interviews in this particular investigation were of the usual quality. The interviews should have drilled down on the issue as to whether in fact the suspect may have been

asleep or passed out or not fluent in English when the officers announced and then started attempting to restrain him. I was also troubled that the watch commander, lieutenant or others who screened the arrest did not take issue with the charges for the same reason. Similarly, the use of force and arrest reports, as well as the investigation summary, indicated the suspect had resisted and assaulted the officers and no one who reviewed the reports asked the discrepancy be corrected.

In a Line Investigation, the issue was whether off-duty assignment requests were requested and approved as required. The officer didn't get necessary off-duty work permits but then also may have lied when he said he had a permit and didn't follow orders from supervisors to not perform off-duty work without getting a permit. The Director and I were concerned that issues of honesty and failure to obey an order should have been pursued further to determine if additional allegations were warranted. The interviews conducted by the line supervisors were not thorough and because those issues weren't pursued in a timely fashion, they could not be addressed. As well, an exhibit was missing. I asked that additional work be done. The allegations that were included were ultimately sustained and the discipline imposed was that the officer was prohibited from working off-duty for a year.

In another case, an officer gave out his personal phone number to a domestic violence victim. OPA staff initially recommended a finding of 'Unfounded', but additional information from precinct command led to a finding of Supervisory Intervention. The precinct command had information that the officer had sent a photo and a text message. The concern I raised for this case is that the interview was not done in a way so as to elicit the relevant information. The investigator should have asked the officer in his interview direct questions such as 'exactly what did you send the victim', 'how often', do you still have a copy of it', etc. and should have gathered information from precinct command staff during the initial phase of the investigation.

Probable cause to search was at issue in one case. The officer had on-viewed a group of young men (minors) huddled around a can of beer, so he stopped to investigate. Other officers responded to back him up. The complainant was reportedly uncooperative and was taken to the ground and arrested. An issue was justification for officers to frisk him and his companions. During their OPA interviews, the officers listed a number of other factors leading them to believe the subjects could be armed, which would provide a threshold justification for the frisk. Rather than exonerating the officers on this issue, the Director and I felt that a 'Supervisory Intervention' was more appropriate to remind the officers of the required basis for a frisk and that they need to fully articulate their justifications in their incident report.

The officer's directions to the complainant to move out of his way or face the possible application of physical force was at issue in one case. The evidence demonstrated that it was the behavior of the officer that created the circumstances of this encounter and provoked the actions and words of the complainant. The officer, in response to prompting from his Guild representative during the OPA interview, used the phrase "pre-attack indicators" to describe some of the complainant's actions and positioning, and volume of the complainant's voice as something that could cause the officer concern for his safety and thus could be used to justify the application of pre-emptive physical force. This was an example of an interaction that reaffirms the importance of improving some elements of Basic Law Enforcement Academy training, as discussed in my initial report. As pointed out by the OPA Lieutenant in his analysis, the officer's misinterpretation of these "pre-attack

indicators” could lead him or her to provoke behavior by an individual that, in response, would then prompt the officer to apply a pre-emptive use of force.

The challenges inherent in complaints alleging biased policing arose in a case where an African American male was out walking for exercise very late at night as was his normal habit. Two officers in a patrol car stopped him for jaywalking because they saw him crossing with a green light but against a red stop ‘hand’ light, and the car in front of them had to quickly detour to avoid hitting him when making a left turn. The officers were not intending to issue a citation, but simply to encourage him to be careful. The complainant became upset because he thought the light was green and he was only stopped because he was an African American man. From his perspective, the officers had no good reason for stopping him other than ‘walking while black’. To make matters worse, as he became upset, the officers decided to frisk him because he was wearing a loose hoody and had a bulge in the front pocket (he was wearing a hoody because he was exercising and the bulge was his cell phone). During the frisk, they touched him high up between his legs, as is protocol for frisks but can feel personally invasive for the recipient. He got argumentative and requested a citation rather than a warning so he could get information about the officers and pursue his concerns later. He also asked for a copy of the police car’s video. By this point two other officers had arrived at the scene along with a Sergeant. At one point an officer referred to him jokingly as Shug, a reference to a Black hip hop artist (this officer was also African American). The officer immediately apologized but, given the other context, the complainant felt that the comment was further indication of racial motivation for the stop.

My concerns were that the original allegations for this incident didn’t include one of biased policing; that this would have been perfect for mediation but that did not occur because the complainant declined mediation; and that the analysis looked at the situation only from the officers’ point of view. While each of their actions was technically correct (except for the Shug comment), the analysis should have also reflected the complainant’s perspective with regard to the stop; the intrusive nature of the frisk; why he wouldn’t have I.D. if he was just taking a walk; why he would have a hoody with a cell phone in the pocket; and the perception of being ‘surrounded’ by four officers standing there while requiring him to sit on the car.

As it turns out, the light was green, but there was also a red hand indicating not to cross, which the complainant either didn’t see or ignored. Further, when he asked for a copy of the ICV, the officers by then did not at all understand why he was upset and basically told him he needed to subpoena it; the back-up officers and the sergeant also said in their interviews they couldn’t understand why he was ‘making a big deal’ when he was just being asked to be careful about crossing against the light and wasn’t even going to get a citation. The video in this instance would be a good teaching tool to help enhance understanding.

Whether an officer tried to get a discount on tanning was the issue in one complaint where I disagreed with the initial finding of ‘Not Sustained’ and the final determination of ‘Supervisory Intervention’ on the allegation involving Integrity - Gratuities. I would have sustained the allegation based on the officer’s assertion of the need for tanning for official purposes, the identification as an officer for no legitimate purpose, the attempt to get a discount twice, the consistent interviews of the store sales associate and the manager, as well as a letter from the manager’s mother, who in fact works for another police department. The facts described an employee who went to a tanning salon

off-duty and completed a contract to purchase a tanning package. He allegedly told the sales associate two or three times that he was an undercover police officer and needed to tan for his undercover work. The business owner felt that the officer was using his position as an officer to intimidate the sales associate into giving him a reduced rate on the services.

The determination of a finding of 'Supervisory Intervention' was based on the fact there was no proof of intent to seek a gratuity, although both women perceived the officer as seeking a gratuity, even if that was not his intent. A supervisor was directed to counsel the officer about his responsibilities to ensure public trust and the need to avoid even the appearance of unprofessionalism.

Issues arising from off-duty actions where the employee is known to be an officer and is perceived differently by a citizen because of it were highlighted in this certification of a case:

"While off duty and in his personal vehicle, the named employee was involved in a minor car accident with the complainant, in which he was at fault. The named employee suggested he would pay for the damage to her vehicle without submitting an insurance claim. The complainant later left a phone message for the named employee indicating she had obtained an estimate and that she planned to submit a claim through her own insurance company and would require a rental car for three days during the repair period. She then received a voicemail from the named employee in which she claimed he was angry and threatening. The recorded message was not available, though the complainant transcribed it. The complainant and named employee agreed to the basic content of the message. Though he said he thought her claim was "ridiculous," that he would "fight her all the way," that he wouldn't be her "mark," and such, there were no direct threats made. At the time of the accident, the employee had noted he was a police officer, apparently in the context of trying to reassure the complainant and to encourage her to move her car out of the lane of traffic onto the shoulder. Because she was aware he was a police officer at the time she received his message, she felt increased fear and intimidation. However, it is not clear what she feared he might do and he made no threats, other than indicating that he intended to contest the claim she made. Though the named employee stated he was surprised by the repair quote and her plan to submit a claim, and the words he used could be interpreted as angry or rude, it is difficult to say by a preponderance of the evidence that he was threatening. The complaint involves off-duty behavior that the complainant said would have caused her to be mad, as opposed to feel threatened, other than the fact she knew the named employee is a police officer. She did not provide any example of what she feared as a result of the message and did not follow up with names of witnesses who allegedly had personal bad experiences with the named employee. It is difficult to say under these circumstances that the employee engaged in specific misconduct."

This case also raised the policy issue of an employee wearing a uniform shirt in his driver's license picture, though there were no identifiable badges or insignia indicating his SPD employment. There is no SPD policy regulating officers being photographed in uniform for non-police forms of identification (e.g., passport or driver's license). Because having a non-SPD ID with a photo of an employee in police uniform might create a potential for at least an appearance of impropriety, i.e., a subtle effort to obtain professional courtesy when stopped off-duty for traffic infractions or other reasons, we requested that the Department review the issue and make a recommendation as to whether a policy on this is advisable.

Several cases raised issues with regard to use of In-Car Video. One highlighted a policy issue with regard to the somewhat ambiguous nature of the ICV policy and another noted the potential for

legitimate confusion as to when and how officers are to use ICV. The policy appears to state both that officers will 'use it at all times' and 'not when the subject matter would not be within camera range'. These two options conflict, so the policy needs to be clarified. The policy also states audio and video must operate simultaneously but that is unclear in certain situations as well. (See below for further discussion of ICV policy.)

Other cases highlighted the issue of self-identification by officers, as required by policy. With regard to traffic stops, the policy is: "Employees will introduce him or herself [sic] to the citizen, providing name, rank or title, and agency affiliation, and state the reason for the stop as soon as practical when safety considerations allow, unless the employee believes providing this information will compromise officer or public safety." In general for all sworn personnel, the policy is: "Provided that no investigation is jeopardized, no police function is hindered, and safety considerations permit, when a citizen requests a Department employee engaged in Department related activities to identify themselves (including but not limited to requests for name, badge number, or serial number), the employee shall do the following: (1) Uniformed, sworn employees and Parking Enforcement Officers shall provide their name, and Department serial number verbally, or if requested, in writing, or provide a Department-issued business card that contains their name and serial number." I commented about the importance of having a singular, clearly articulated policy requiring identification and explanation of the rationale for the stop whenever practical as basic tools to minimize escalation and for citizens to feel interactions are respectful.

One case raised issue of the need to remind all employees of their duty to report license suspensions. This case involved a civilian employee who does not drive an SPD car and said she was unaware that there was a duty to notify a supervisor that her license was suspended. Supervisory Intervention was the outcome and the Director and I asked that the policy regarding the duty to report changes in license status be reissued.

Issues relating to an officer's use of social media were raised in one investigation. Because this will be a more frequent issue in the future, we recommended review of the existing policy on point. The result was a new directive issued this month by the Chief reminding employees that they should avoid posting language that may diminish the morale of Department employees, adversely affect the confidence of the public in the Department's performance, or tarnish the reputation of the Department in the eyes of the community.

Another case raised the policy issues that there used to be a general 'catch-all' section of the policy manual capturing the importance of all actions by officers reflecting well upon the Department. For what were perhaps valid reasons at the time, that sort of 'conduct unbecoming' language no longer exists. In this reporting period, OPA had a complaint involving an employee where the allegations, if true, did not reflect behavior that exemplified what one would want to see. Due to the fact that supervisory employees do not have clear demarcations as to when they are on- and off-duty, the employee's behavior may not have been a violation, absent more generalized language such as a 'conduct unbecoming' policy.

The OPA Lieutenant brought to our attention in one case that while policy requires that all search warrants have the approval of a lieutenant, existing policy did not directly address incidents of the sort underlying the complaint. Where possible, an officer should screen with a sergeant all arrest

attempts potentially involving non-consensual entry to private property. SPD policy is not clear on this. As a result of this complaint the policy will be reviewed to clarify Departmental expectations.

Domestic Violence (DV) reporting was raised in a case where the result was a request that the Department develop a directive that, if in doubt about the need to report a potential DV situation, officers should always err on the side of documenting the incident. Stemming from complaints related to DV in 2010, a recommendation had already been made for the Department to include training on DV investigations in this year's Street Skills training, and to consider developing a video or web-based overview on DV investigative techniques that can be viewed by officers at any time.

Cases where a policy is subject to differing interpretations served as good reminders that officers will find themselves in situations not specifically or precisely addressed in their policies and regulations. In training, officers should be reminded the best course is to use common sense and good judgment.

Other Auditor Activities

In addition to the work discussed above, I attended a number of community activities, including "Building Bridges," a forum to discuss youth and police relations held at Garfield by the Seattle Department of Parks and Recreation, Seattle Police Department, Students Against Violence Everywhere, and the Seattle Youth Commission. I also attended the African American Advisory Council annual volunteer of the year dinner. I participated in panels on police accountability sponsored by the Stranger and by Seattle University, spoke to the Seattle Neighborhood Council, met twice with the Department of Justice as part of their "pattern and practice" investigation, with various Department Command staff, the Police Guild President, City staff and City officials, County staff setting up their new oversight office and with the ACLU.

Because many of the issues raised in my first report spoke to the need for changes to traditional training practices, I spent a quite a bit of time meeting with training staff and observing trainings, including defensive tactics, integrated combat and control (ICC), firearms qualification and firearms training and defensive driving (Emergency Vehicle Operations Course or EVOC), all of which comprise what is referred to as Street Skills training, the Perspectives in Profiling training and the Crisis Intervention Training (CIT), which focuses on interactions with those who are mentally ill. I went on a 'ride-along' during the 3rd watch in West Precinct to get a more detailed look at the issues of late night intoxication, street drug dealing, interactions with individuals with untreated mental illness and city-wide dances at Seattle Center. I also attended, along with the OPA Director, two weekly deployment meetings with Captains and Lieutenants and a number of OPARB meetings, to help make sure the three elements of the accountability system are coordinating as much as possible.

I observed the Community Police Academy where almost 50 citizens took the time to spend 10 evenings attending classes four hours in length to learn from Police Department personnel about search and seizure law, arrest procedures, Use of force, OPA, patrol operations, 9-1-1 operations, the arson/bomb squad, officer safety/defensive tactics, firearms training, elder abuse, Crime Scene Investigation, domestic violence, hostage negotiations, bias crimes, and recruiting, among other

topics. I was impressed by the age, gender, racial and ethnic diversity of attendees. Attendees also reflected quite a wide variety of occupations. I was impressed as well by the Departmental staff who coordinated and participated in the training. In listening to the attendees it was clear that this outreach, openness and information-sharing is a valuable way to strengthen relationships and improve understanding between the police and the community.

Conclusion

We give police significant power: the power to deprive individuals of their liberty and to use physical force, including the taking of life where necessary. Policing – and community expectations of what is legitimate and appropriate – have changed over the years. Just as with other professions, what we expect of our officers has evolved. The basic goal of citizen oversight, regardless of the structure used, is to open up the historically closed complaint process and to provide an independent, citizen perspective, asking fundamental questions such as: Who is being arrested and why? Is the power to arrest and use force being used legitimately and fairly? Is the officer acting to protect him or herself or the public, to control a dangerous situation or is the action taken to punish perceived or real disrespect or challenge to authority ('contempt of cop')? In essence are the police effectively preventing crime, while at the same time respecting the rights of all those they serve, with their actions conforming to standards of due process and equal protection?

We ask a lot of officers - to be very visible to all of us as they do their work, often to work alone, to go into all neighborhoods, indeed to go into peoples' homes and address personal, difficult problems that we don't talk about with friends, let alone strangers, such as family violence or mental health concerns. There we want them to be more like social workers, acting with discretion and sensitivity. Then we want them to go deal with others who are violent, out of control and committing crime. There we expect different behavior and different results. Throughout all of their work, we want their behavior to be not just technically within the bounds of what the law allows, but professional, respectful, fair and legitimate. We want them to act with integrity in every interaction they have.

There is no one accountability structure that works best to help accomplish this goal. What is critical is that the complaint process is fair, thorough and accessible to all *and* that all members of the public, officers and policy makers also perceive it to be that way. Outcomes should include not only appropriate individual measures imposed to discipline an officer for misconduct, as well as to deter future misconduct, both by that officer and by other officers, but also practices designed to improve officer performance through education-based intervention such as counseling, mentoring and training. Lastly, an effective accountability system serves to identify management and procedural problems that may underlie complaints; highlight needed systemic reforms in policy, practice and training; and focus officials on the attendant leadership and political will needed to effect those changes.