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# CITY OF SEATTLE

## Office of Professional Accountability Review Board

# Semi-Annual Report For the Period January 1, 2011 to June 30, 2011

August 18, 2011

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CITY OF SEATTLE
11 SEP -6 AM 10:45
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## Review Board Mission

The review board's mission is to provide community oversight and awareness of Seattle Police Department practices and its employee accountability system by independently:

- Reviewing the quality of the accountability system,
- Promoting public awareness of and full access to the accountability system,
- Obtaining information and opinions from police officers and the community on police practices and accountability, and
- Advising the City on police practices and accountability.

## Report Topics

This report covers:

- Board outreach efforts to the community and findings
- Board review of closed OPA files and recommendations
- Recommendations on improvements to the OPA system of complaint classification and findings (with the civilian OPA Director and the civilian OPA Auditor)
- Community Engagement Project to implement a collaborative process similar to the process established in Cincinnati, Ohio that improved relations between the community and the police
- Recommendations
    - Chief of Police disciplinary decisions
    - Discipline for inappropriate language
    - Release of names of disciplined employees

## Community Outreach

Board members continued to engage the following community groups to explain the accountability system and to solicit comments and concerns about the system and allegations of police misconduct generally:

Minority Executive Directors Coalition (MEDC)
Latino/Latina Bar Association board of directors
Loren Miller Bar Association
African American Advisory Council
Isis House homeless youth social service agency

Seattle University Department of Criminal Justice Continuing Education panel on police accountability
El Centro de la Raza
Seattle Women's Commission
Greater Seattle Business Association
Seattle Police Officers

Board members find this one of the most enjoyable parts of their service. They have been warmly and courteously received and all participants seem to learn from the process, and the board will continue to seek opportunities to interact with segments of the Seattle community, with special emphasis on those disconnected, e.g., homeless youth, homeless adults, mentally ill, and undocumented persons.

Because marginalized groups tend not to actively engage the accountability system the board has proposed to the management of some service agencies that case workers and outreach workers learn about the accountability system, i.e., learn how to use the OPA web site so that when they encounter complaints of misconduct they can assist their clients. The contacted agencies have yet to respond to this board proposal.

Loren Miller Bar Association

The OPA Review Board reached out to the Loren Miller Bar Association and requested an opportunity to meet with them to discuss the police accountability system and any questions or concerns their members have about the system and community-police relations in general. LMBA invited the board to attend their March meeting. The agenda was full. Attorney General Rob McKenna presented at the meeting, along with members of the Seattle Police Department's Community Outreach Department. The SPD officers in attendance were Nick Metz, Deputy Chief of Operations & Community Relations, Ron Wilson, Commander of Community Outreach, and Lieutenant Carmen Best. The board was the final group to present. Our presentation was brief because of the full agenda. We were able to provide some information and insights regarding the accountability system. There were no specific questions directed to us about the accountability system, but there was quite a robust discussion regarding community-police relations and recent events.

There was concern expressed about the perception in the community that Guild President Richard O'Neil is one of the leaders of the SPD. They expressed the need for Chief Diaz to clearly distinguish his role and the police department from the Guild. There was concern expressed regarding the city's contract with the Guild and that in order for change to occur, there needs to be changes in the contract. There was a strong sentiment expressed that the Guild has considerable power and influence over SPD, and that the board does not have any power because of the Guild.

There was also concern expressed that when problems occur, the SPD leadership does not clearly state, "We've done something wrong," Members expressed that unless the community hears this sentiment from the SPD, there will never be trust between the police and community. In order for there to be systemic change, the leader has to acknowledge the problems. It's not enough to just come to meetings and be in the room.

There was a question raised regarding what is going on internally within the department to help officers deal with the issues that are leading some to escalate inappropriately in certain situations. The board is interested in what SPD is doing to change the mentality of some of the officers. There was a suggestion that there needs to be a greater focus on de-escalation and street skills training.

Latino/Latina Bar Association Board of Directors

The OPA Review Board reached out to the Latino/Latina Bar Association Board of Directors and requested an opportunity to meet with their association to discuss the police accountability system and any questions or concerns their members have about the system and community-police relations in general. The board was invited to attend the April meeting of their board of directors.

There was a comment expressed that there is a sentiment in the Hispanic and African American communities that filing complaints about the police department is futile as nothing ever seems to result from the complaints. Another reason that people within their community do not file complaints is because they are intimidated by the police and fear retaliation. There are also immigration concerns that keep people from filing complaints.

One member relayed a personal account of her encounter with a Seattle police officer who stopped her for jaywalking and she believed it was an example of biased policing. This matter is the subject of an OPA complaint.

There was a question raised about the board's authority, and the sentiment expressed was the belief that the board lacks authority. We expressed that one of our important functions is to express the concerns of the community to OPA, SPD and the City Council verbally and in our reports and help to ensure that the voice of the community is heard.

Minority Executive Directors Coalition

Members of the OPA Review Board attended a meeting of the board of the Minority Executive Directors Coalition (MEDC) to provide information about the

accountability system and obtain the board members' feedback on their experiences with SPD. MEDC board members were very open and some related personal accounts of their or their loved ones' experiences to support the general concerns they have about police practices and the accountability system, including the following:

- Stereotypes drive the interactions of the police with communities of color and other diverse communities, causing them to not take seriously enforcement situations involving those community members. They said this is a major reason why many people of color won't file complaints or call the police.

- The OPA Review Board is not diverse enough. One MEDC board member said people of color respond better to people of color; many expressed concern that there were no Hispanics, Asians or Native Americans on the OPA Review Board.

- The board lacks the authority they feel a review board should have, including the authority to review open cases.

- Many MEDC board members expressed frustration at the power of the Guild over the accountability system and felt that needs to be remedied. They wanted to know how they could influence the Guild contract. We explained the negotiation process and reminded them that the board and the City Council host a public hearing prior to every negotiation period. Many did not know that, and those that did said the notice did not get their attention sufficiently. They felt the board needed to publicize those hearings better and to a larger audience. There were a few changes in the last Guild contract and in the "29 Points" that came directly from the Coalition, and they were pleased to be reminded of that.

- Several MEDC members felt the board's outreach to the black community needs to be improved. They felt we should be diligent and reach out "over and over again" to the community.

Seattle Police Officers

Board members appeared at a meeting of the Seattle Police Officers Guild in December 2010. Since then individual members have met informally with members of the department, including officers and a sergeant. The employees expressed a common concern and genuine perplexity that some in the community do not seem to understand that when an officer gives an order there are legitimate enforcement consequences for failure to comply. Officers' explained that they are trained to respond in certain ways that the public sees as aggressive or bias-based. The board has identified that the need for communication between officers and the community is paramount to bridging

the gap between the two and establishing the trust and respect needed for effective law enforcement.

The outreach that the board has conducted over time, in addition to highly-publicized events over the last year, have highlighted the need for such collaboration, and our resulting proposal is detailed below under "Community Collaborative Process."

Occasionally the board hears anecdotes of police misconduct, usually second- or third-hand, and the complainants are encouraged to pass the information along to OPA. In the past two years of outreach the board is aware of just one instance where outreach efforts have resulted in a complaint to OPA.

**Closed File Review**

Historically, the OPA Review Board reviewed and commented on a random sample of closed OPA files, with identifying information redacted. After the board was expanded and its duties reorganized by ordinance in 2008, file review was deemphasized, partly because redacted files were so cumbersome to evaluate, partly because the board questioned the utility of file review, and partly to allow the board to focus on its newly assigned outreach efforts. Review of closed files was greatly enhanced in 2009 when the board was authorized to look at unredacted files.

In January 2011, the board decided to try a more focused kind of file review. Members requested to review eight OPA files alleging unnecessary force. These cases had been identified in a letter to the U.S. Attorney and the U.S. Department of Justice asking for an investigation into the department's patterns and practices. The board wanted to have knowledge of the same body of information that might be the subject of a federal inquiry. Six board members set to work looking at the files and supporting evidence. The board established a process under which any request to OPA for a class of files is formally approved by the board. At this writing, seven of the eight cases have been closed and thus are available for board review.

The file review process proved instructive in several areas.

- The task of file review is very time consuming and the process took months longer than anticipated. A single file might require two to four hours of work, time taken from board members' workdays and occasionally requiring OPA staff to remain in the office after normal office business hours.

- Review by the board often took place a year or more after the incident in question and after review by the civilian auditor and the civilian head of OPA. None of the findings could be overturned and none of the disciplinary decisions could be amended. The board has some suggestions for improving investigative performance by OPA, including care to avoid leading questions and care to avoid the appearance of bias in favor of the officer, but the time lag between the investigation and our review means our review does not capture any improvements that may have been implemented by OPA.

- The files reviewed did not include the clearance letters sent to complainants. The board is unable to evaluate the way in which the findings of investigations are communicated to the community. The director reported later that these letters were kept in a separate file.

- Board members experienced in investigations were troubled by the heavy reliance on telephonic interviews of subjects and witnesses by the OPA Investigations Section (OPA-IS). This is not to be confused with the filing of complaints which can be accomplished over the telephone, electronically, on paper, and via third parties, all to encourage easy access to the accountability system. However, if it is not already standard practice at OPA, we recommend that intake interviewers ask the complainant for an in-person interview. Employees are interviewed in person. Telephonic interviews do not allow the investigator to evaluate the demeanor of the witness and forego the advantages of the investigator encountering the witness in person. Telephonic interviews are apparently standard practice at Seattle PD since they were used in one criminal investigation referenced in the files reviewed. This concern about telephonic interviews was echoed by the San Diego Police Department's audit of a criminal investigation.

- In three of the seven files reviewed witnesses did not consent to have interviews recorded. In those instances the investigators summarized the statements. These summaries seemed overly brief considering that the witnesses were the subjects (persons against whom the alleged misconduct was directed) in the complaints.

- In a few cases investigators gave an appearance of bias in various ways: in emails to officers being investigated they addressed the named employee by first name and were too informal; in emails to witnesses

they sometimes characterized cases in a way that favored the employee; and on at least one occasion the investigator made comments at the outset of a witness interview indicating the investigator's conclusion that the employee had acted properly.

- In transcribed interviews the reviewers noticed a pattern of leading questions by OPA-IS investigators suggesting that the investigators had reached conclusions about the findings and were seeking evidence to support the conclusions.

- In the investigations preceded by criminal investigations, OPA-IS did no original investigation, relying instead on the contents of the criminal investigation. In one closed case the board was not provided the underlying criminal investigation so the board cannot evaluate those investigations for fairness or completeness. If the criminal investigation is flawed this could impact the OPA finding. The audits by other agencies provided comfort to the board that the criminal investigations were thorough and fair. The director later reported that the criminal investigation can be provided to the board upon request. The auditor reported that additional investigation by OPA-IS is possible if required by either the director or the auditor.

At its retreat early in June, the board discussed the preliminary outcome and utility of these case reviews and unanimously decided to continue to review cases on an as-needed basis as a core board function, crafting requests to OPA so as to comply with contract language. The board will comment privately to the Director and the Auditor on the selected closed files, because of contractual limitations on commenting publicly on individual cases. Although this might not satisfy expectations for complete transparency in the accountability process, the principle of civilian oversight remains in place. The board also notes that some of its concerns about investigator appearance of bias and use of leading questions were echoed on page 15 of the Auditor's most recent semi-annual report.

**Advocacy vs. Review**

The board has observed a tension between its role conducting outreach to the community on behalf of the accountability system and its role reviewing and recommending changes to the system. On one hand the board informs the community how the system operates, and encourages community members—some already dubious about the OPA system—to engage the system with assurances that civilian oversight insures fairness and transparency, in effect advocating for the system. But on the other hand the board reviews and comments on the structure and performance of the system and identifies areas for improvement. For anyone already questioning the integrity of the accountability system this tension plays into the argument that current civilian

oversight does not go far enough. Board members have noticed and commented that community members are receptive to our outreach until they hear the limitations on the board's authority.

## OPA Complaint and Classification System—Recommendations for Change

Public confidence in the accountability system has been impaired by a long and complicated menu of classifications of incoming complaints and findings for completed investigations. The board, in cooperation with the civilian OPA Director and the civilian OPA Auditor, has issued recommendations to compress the number of classifications and findings and simplify their definitions. These recommendations will not change the way that allegations of misconduct are investigated and reviewed by civilians. This process builds on best practices among civilian oversight agencies around the country. The new language also reinforces the principle that there is civilian oversight of the accountability system at all levels.

The recommendations also include development of a system that quickly redirects less serious allegations of misconduct to the supervisory level in the precincts and units and away from the OPA investigative process. These are more properly termed customer service and performance (as opposed to misconduct) issues. The board sees this as positive in several areas. This will free up OPA-IS resources for the most serious allegations of misconduct. Secondly it reinforces the role of the line supervisor in the department who would deal not just with the employee but also with the members of the community concerned about public safety. Ideally the process will build community at the precinct level as issues are resolved in the neighborhoods. One thing the board learned in its outreach efforts is the extent to which individuals and groups, particularly social service agencies, rely on personal relationships with local sergeants, lieutenants, and captains to resolve questions, problems and issues that thus never reach the attention of the accountability system.

These recommendations will have to be adopted by the police department in order to take effect. The development of this proposal has raised a question for the board in light of labor contracts and negotiations between the City and the bargaining units. The board is charged with making recommendations about police department policies and procedures and the accountability system, but some of these matters may be subject to negotiation. The board is concerned that its recommendations would be caught up in the contract negotiations and ultimately compromise what is best for civilian oversight and transparency of the accountability system.

## Community Collaborative Process

In response to the high-profile incidents over the past eighteen months the board examined its role during these controversies. The active engagement of the community by the chief of police and his staff and elected officials made board efforts in these issues redundant and potentially not constructive. Many of these incidents remained entirely outside the accountability system for many months while they were investigated as criminal violations and reviewed by prosecutors. The OPA Review Board was left to sit on the sidelines while the media, City officials, community groups, and other voices grappled with allegations and accusations.

In pursuit of the board's charter to look for best practices, the board sought to develop a sustainable community engagement model that could be used to strengthen the board's outreach efforts and yield recommendations, conclusions and insights to the community, the Seattle Police Department and the city council regarding the police accountability system and building community-police relations. The board examined the community collaborative process in Cincinnati, Ohio between the police department and the community developed ten years ago. There were sad similarities between events in our two cities all centered on the gulf between the police and parts of the community. Board members communicated with some of the main players in the Cincinnati process, including Special Master Jay Rothman, U.S. District Court Judge Susan Dlott, and Chief of Police Tom Streicher, and read the final report of the Independent Monitor appointed by Judge Dlott.

The board has proposed some next steps to explore if and how a collaborative process can work in Seattle. The entire proposal is Appendix A to this report.

## OPA 2010 Statistics Report and OPA Auditor Report Comments

The board plans to review these reports beginning in July 2011 and may issue reports on them.

## Chief of Police Disciplinary Decisions

In a recent incident the chief of police imposed a discipline of suspension without pay instead of termination because he believed that his decision would not prevail on appeal. Reportedly both Chief Diaz and Chief Kerlikowske made decisions not on their sense of what was best for the department, but what would prevail at appeal. The board finds this trend disappointing. Although the appeals process is an important check against unjustified management decisions, this would seem to leave a critical portion of the management of the police department in the hands of quasi-judicial bodies.

A disciplinary decision by the chief can be overturned or downgraded on appeal because he departed from past practices. If lighter discipline has been insufficient to deter employee misconduct the board is interested in how the chief will "turn up the volume" so that the discipline has the desired effect.

**Recommendation**: The board thinks that the chief should take the disciplinary course he sees fit and let other officials make their decisions. Using the advice of counsel and the fear of appellate reversal does not serve the principle of accountability. The chief should make his best judgment. If his judgment is modified or reversed on appeal, the reasons and responsibility for the outcome will be clear to management, policymakers, and the public. If complaints arise that discipline has failed to deter misconduct, the responsibility can fall on the person(s) actually responsible for the outcome, including the civilians in the appeals process.

**Discipline for Inappropriate Language**

The chief has announced that officers using racial, nationality, and ethnic insults will presumptively face termination. His position in favor of civility, respect, and professionalism is commendable (several board members do not agree that termination is the best or most appropriate response in all of these cases), but the board question how will this be sustained in future cases. The board has been informed that the SPD manual section on derogatory language will be revised. The board has offered its help in the revision process and will be seeking to insure the conduct is defined in sufficient detail, and that the proper legal groundwork is laid for discipline.

**Release of Names of Disciplined Officers**

The board supports the City's position that the names of disciplined officers are subject to disclosure. This matter is now the subject of litigation.

Visit www.seattle.gov/council/oparb for the board's web page.

Approved by the board,

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David W. Wilma, Chair Date
Office of Professional Accountability Review Board

Attachment