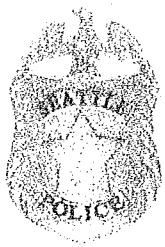
#22

SEATTLE POLICE DEPARTMENT



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Policy Recommendation 2009 – 2010 and SPD Response to Recommendations about Use of Force, De-escalation and Respectful Policing

KATHRYN OLSON
OPA DIRECTOR

INTRODUCTION

A vital function of civilian oversight involves reviewing policies and procedures law enforcement employees are expected to follow as they perform their duties. A focus on improving policies helps create and sustain a culture that refuses to tolerate misconduct through organizational reforms that also prevent future misconduct.[1] The Seattle Police Department (SPD) recognizes the importance of upholding the highest standards in training and policies, is one of only six of the largest 25 cities in the country to have received accreditation through the Commission on Accreditation of Law Enforcement (CALEA), and is receptive to recommendations for improvement received from the oversight community. Since Seattle's police oversight system was first created, the Office of Professional Accountability, OPA Auditor and OPA Review Board (OPARB) have worked with SPD to clarify and strengthen existing policies and suggest new protocols where needed. These entities and others have encouraged consideration of improvements to the civilian oversight function itself, also.

POLICY AND TRAINING RECOMMENDATIONS FOR SPD AND SEATTLE'S CIVILIAN OVERSIGHT STRUCTURE 2002 - 2008

In 2007, Mayor Nickels appointed an 11-member Police Accountability Review Panel to perform a comprehensive review of Seattle's police accountability system. During this review, lists were compiled of all policy recommendations submitted by OPA, the OPA Auditor and OPARB beginning in 2002 through 2007, with notes concerning the status of the 122 proposals that had been made by that time.[2] The OPA worked with the City Legislative Department and Office of Policy and Management to create a master list of 52 unimplemented recommendations.[3]

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[1] See, e.g., Nobel, Jeffrey J. and Alpert, Geoffrey P. Managing Accountability Systems for Police Conduct: Internal Affairs and External Oversight. Waveland Press, Inc. 2008. p. 265; Walker, Samuel. The New World of Police Accountability. Sage Publications, 2005, p. 140.

[2] See September 6, 2007 report "Office of Professional Accountability Summary Report – Policy Recommendations 2003 – 2006" (TAB 1) and September 27, 2007 memorandum authored by Peter Harris, Legislative Department, regarding "Recommendations by the OPA Auditor and OPA Review Board" between 2002 and 2007, including recommendations made directly to PARP by the former OPA Director, Sam Pailca (TAB 2); http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/9-10-07_Policy_Recommendations_Summary_2003-2006.pdf and http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/10-1-07_memo_PARP_Auditor_RB_recs_final.pdf

[3] September 27, 2007 memorandum regarding "Unimplemented recommendations about the oversight system from the OPA, Auditor and Review Board," addressed to PARP from John Fowler (OPA), Peter Harris (Legislative Department), Kathryn Olson (Director, OPA) and Bob Scales (Office of Policy & Management) (TAB 3); http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/10-1-07_memo_unimplemented_recommendations_final.pdf

The 2007 list of 52 unimplemented policy recommendations then was organized around a series of questions and issues: (1) Who investigates misconduct complaints, sworn or civilians? (2) Who decides on discipline, the Police Chief or others? (3) If the investigators are sworn and the chief decides discipline, what are the roles and responsibilities of civilian overseers otherwise? How are they organized and to whom do they report? (4) What processes should the civilian overseers follow? (5) Other recommendations about specific police practices.

After considering all of these unimplemented recommendations, along with many other proposals, documents and testimony from a range of law enforcement and civilian representatives, PARP issued its Final Report on January 29, 2008.[4] PARP made 29 suggestions to enhance and strengthen the work of SPD and Seattle's oversight system in the areas of accountability and public confidence, independence, professional conduct and transparency.

OPA coordinated with the Police Department to immediately implement all recommendations that did not require collective bargaining or that needed to be addressed legislatively or by entities outside SPD. In December 2008, the OPA Auditor commented on the initial implementation of PARP's proposals and in April 2009, the OPA Director published a report with more detailed information on adoption of PARP's 29 recommendations.[5] The April 2009 OPA report also summarized policy and training recommendations made in 2007 and 2008 by OPA (after the time OPA had initially reported to PARP), with comments as to implementation status for all proposals.

OPA POLICY AND TRAINING RECOMMENDATIONS
2009 and 2010

Since publication in April 2009 of its "Policy Recommendations 2007 – 2008 and Implementation of PARP Recommendations" report, OPA has made a number of other suggestions regarding SPD policy and training. Topics covered by the more recent recommendations are varied and included ethical issues related to the acceptance of discounts or gifts by Departmental employees, re-issuance of the In-Car Video Policy, clarification of protocol and training related to search warrants, refinement of secondary work policies, suggestions related to Domestic Violence investigation training, and other matters.

OPA also made recommendations related to use of force, de-escalation and respectful policing. Given recent police incidents in Seattle, this report will focus on the Department's response to these particular recommendations, while a chart beginning on page 9 summarizes the status of the other policy and training suggestions noted above.

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[4] PARP Final Report, January 29, 2008: http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/1-29-08_PARP_Report_Final.pdf (TAB 4).

[5] OPA Auditor's December 2008 report: http://www.cityofseattle.net/police/OPA/docs/Auditor_Report_April_Sept_08.pdf (TAB 5). OPA Director's April 2009 report: http://www.seattle.gov/police/OPA/docs/OPA_POLICY_RECOMMENDATIONS_4-17-09.pdf (TAB 6).

USE OF FORCE, DE-ESCALATION AND RESPECTFUL POLICING

The OPA Director, Auditor and others have made recommendations in the past that the Department ensure force is used appropriately and that de-escalation is included in SPD training, and the issue came up again during the time period covered by this report. Because de-escalation and good communication skills have always been considered part of the use of force continuum, earlier Departmental responses focused on the question as to whether officers were given sufficient training to understand the legal justification necessary for legitimate use of force. It was thought that the relatively low use of force by SPD was indicative that the Department's approach to training on this front was actually working well. For example, in 2009, 99.88% of all encounters with the public did not involve use of force and nearly 98% of arrests were concluded without force.[6] The use of force rate in Seattle has declined over the last three years and 2009 figures are less than one-fifth the national rate.[7] However, Chief Diaz wants and the community expects that the Department get it right 100% of the time, and events over the past eight months have caused SPD Command Staff to step back and re-evaluate whether there's more that can be done to promote alternatives to use of force.

A related issue involves concern that some officers do not understand all that is involved with respectful policing. The community's perceptions about the legitimacy of police action is negatively impacted if officers use offensive language or are otherwise disrespectful and can complicate the interaction even when a use of force is necessary.

SPD has taken a number of steps to analyze and address these issues regarding force, alternatives to force, and respectful policing. A review of organizational changes and recent emphasis in training is provided below, along with an initial assessment of use of force training received by SPD officers, and a discussion of next steps underway to ensure they are using best practices in law enforcement.

1. Organizational Changes and Recent Training Highlights

As a series of high profile incidents involving allegations of unnecessary use of force and other police misconduct began in the spring of 2010, the Department made organizational changes and initiated other steps to assess and address the situation. Chief Diaz has made the issue of strengthening community relations one of his top three priorities, creating a new Community Outreach Section under the leadership of Deputy Chief Metz, Captain Ron Wilson and Lieutenant Carmen Best. A "Community Relations Plan" and "Crisis Communication Plan" have been developed which set out clear goals and a strategy to build, strengthen and sustain community relationships and open communications with respect, equality and trust.[8] The Community Outreach Section is reinvigorating the demographic advisory councils, getting advice from academic

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[6] See "Use of Force by Seattle Police Officers 2006 – 2009." (TAB 7)
[7] Ibid.
[8] See "Seattle Police Department Community Outreach Section Community Relations Plan" and "Seattle Police Department Crisis communications Plan.: (TAB 8)

consultants on ways to build community and, in addition to regular forums held in public venues, is setting up a series of innovative "Living Room Forums" to allow for small group discussions about public safety throughout Seattle.

In recognition of his strong leadership skills as commander of the West Precinct, Captain Steven Brown was selected to take charge of the Training Section on October 1. He is spearheading both short and long-term strategies to improve SPD's comprehensive training program. To give more officers a wider array of tools to use in handling challenging incidents, SPD is increasing the number of officers trained in Crisis Intervention. A group of approximately 75 officers recently attended a full day of "Verbal Judo," a program on tactical communications for police aimed at generating voluntary compliance during citizen interactions.[9] Lisa Thurau from Boston's Strategies for Youth was invited to Seattle for a two-day visit in early October to meet with Chief Diaz, Captain Brown and other SPD representatives, along with the OPA Director and Auditor, to explore approaches directed at improving law enforcement/youth interactions.[10]

Chief Diaz is regularly meeting with Joe Hawe, the new Executive Director of the Washington State Criminal Justice Training Commission, to explore ways to improve instruction at the Basic Law Enforcement Academy. The OPA Director, Chief Diaz and others from SPD and other law enforcement agencies around the state will be part of a working group to specifically address training on use of force alternatives. Chief Diaz is also working with Executive Director Hawe to consider training on "procedural justice," as discussed on page 8 of this report.

The Department continues to address issues of diversity through the "Perspectives on Profiling" training required of all SPD employees over the past year. In addition, approximately 65 employees, including the full Command Staff, recently have participated in "Race: the Power of Illusion" groups facilitated through Seattle's Race and Social Justice Initiative. Also, a diverse group of community leaders is scheduled to participate jointly with Departmental employees in a session of the "Perspectives" training to promote dialogue between SPD and the community about issues of race and social justice and to consider next steps in this discussion.

Recent issues related to respectful policing also have generated Departmental changes. OPA investigations of several complaints alleging that officers used profanity in their dealings with the public resulted in a recommendation that the SPD policy on profanity be clarified and reissued. Assistant Chief Sanford led an effort with Precinct Commanders to conduct a series of roll call trainings to remind officers that profanity and other demeaning, derogatory or inflammatory language is unprofessional and will not be tolerated. The policy itself was clarified to state that the onus is on the employee to justify any use of profanity. Another issue related to professionalism and respect arose when it was discovered that an officer took a picture of a deceased subject and

[9] For more information about Verbal Judo, see: http://www.verbaljudo.com/
[10] For more information about Strategies for Youth, see: http://www.strategiesforyouth.org/

disseminated it outside the Department. The officer involved quickly accepted responsibility and the Department immediately sent a notice reminding employees to be vigilant in protecting the privacy of citizens involved in law enforcement actions.

2. Review of Use of Force Training

While the changes summarized above were taking place, at the direction of Chief Diaz and under the guidance of the OPA Director, Captain Tag Gleason conducted an initial review of the use of force training an officer typically receives from the time he/she is a recruit through employment with SPD. The purpose was to provide an overview to help guide the Department as it weighs the strengths and weaknesses of these programs and considers next steps in light of recent incidents.

As summarized by Captain Gleason, "A police recruit receives his or her first formal exposure to the topic of use of force/defensive tactics in the [Basic Law Enforcement Academy (BLEA)]. Upon completion of the BLEA, the recruit, now an officer, receives additional training in the Department's Post-BLEA training program and during the Field Training Program portion of the officer's training. Throughout the officer's career, the officer will receive continuing training in the use of force/defensive tactics during annual Street Skills training and even more specialized training if the officer is selected for assignment to a unit whose missions includes situations where the use of force/defensive tactics training is more critical, e.g., assignment to the Special Weapons and Tactics Unit (SWAT) or to a precinct Anti-Crime Team (ACT)."[11]

At BLEA, officers are taught how to use physical force appropriately, as well as the importance of alternatives to use of force. The BLEA use of force philosophy can be summed up in its "Ask, Tell, Make" approach to gaining compliance from a subject. As noted in a BLEA explanatory memo, "When new police recruits enter training, many of them have a natural reluctance to go hands-on and use force even if tactically and legally appropriate in the situation. They are hesitant and 'fail to engage.'...It is the duty of the academy to prepare new officers to appropriately use force when the situation demands it."[12] The memo recognizes that, "For most contacts, there should be an attempt at discussion and de-escalation if feasible. Solid communication skills are just as important as the ability to use reasonable force... [R]ecruits spend many hours of class time and mock scene training on verbal and non-verbal communication skills."[13] Recruits at BLEA are also trained in Dr. George Thompson's "Verbal Judo" model which focuses on a persuasive approach to gaining compliance involving five steps: Ask, Explain, Present Options, Confirm Choice and Act.[14] Both the "Ask, Tell, Make" approach and Verbal Judo emphasize that reasonable use of force is an option when verbal skills alone will not

[11] See memo directed to OPA Director Olson from Captain Tag Gleason regarding Use of Force Issues for Consideration dated October 12, 2010. (TAB 9)
[12] See BLEA memo attached to Captain Gleason's October 12, 2010 memo directed to OPA Director Olson.
[13] Ibid.
[14] Ibid.

accomplish the lawful outcome. However, there is concern that the overall message at the BLEA emphasizes physical defense strategies over verbal de-escalation options.

The post-BLEA use of force training that a new hire initially receives at SPD is mostly discussion-based with a focus on legal issues, Department specific policy, and best practices taught in a classroom setting and through the Field Training Officer (FTO) program. All officers then receive annual training on a variety of topics, including use of force, through Street Skills. As Captain Gleason summarized, "The Street Skills use of force training features an Integrated Combat & Control (ICC) approach that emphasizes grappling, striking, ground fighting, and preventive/pre-emptive use of force to stop, diminish, or mitigate a perceived threat. The approach highlights recognition of threats, prompt responses to those threats, various physical techniques to employ, and legal justification for the force used."[15] SPD provides training on less-lethal use of force options, including the Taser, and use of this option is closely monitored to detect and address any related problems.[16] Finally, the SWAT and ACT use of force training covers a variety of other specialized techniques and also emphasizes sound legal principles necessary to justify use of force.

Captain Gleason concluded that SPD's use of force training is very good, with an emphasis on defensive and control techniques, legal justifications, and Departmental reporting requirements when force is used. The current training appears to sensitize officers to being vigilant for threats to their safety, including the use of preventative force to address perceived threats before there is escalation into actual threat or harm. This approach emphasizes officer safety, focusing on *can* the officer use force rather than *should* the officer use force.

While SPD's use of force training on officer safety, technique, legal justification, and reporting are all commended, it is the view of the Command Staff that more attention needs to be paid to instruction directed at the question of whether an officer *should* use force, even if legally justified. Captain Gleason's assessment confirmed a growing sense by SPD Command Staff that the Department should include more training on use of discretion, decision making and communication skills, to supplement the tactical and legal training officers receive. This involves a renewed commitment to professionalism and respectful policing, too - as the Chief has said, asking officers to be peace negotiators and ambassadors as they work to ensure public safety.

3. Next Steps

In his new role with the Training Section, Captain Brown is exploring how best to teach professionalism, including decision-making and communication skills. He has conducted extensive interviews with personnel inside and outside the Department to get input on how to approach changes in the training curriculum. For example, Captain Brown was advised by police risk manager Gordon Graham to select SPD officers with proven street skills and communication skills to serve as in-service trainers for the newest

[15] See Captain Gleason's memo referenced above.
[16] The Department has committed to deploying more Tasers for use by officers.

police officers, rather than bring consultants in to teach. Toward that end, Captain Brown is working to identify Departmental role models and the best methods to provide ongoing coaching and instruction for new officers in phase III (following completion of their Field Training Officer assignment). He has recommended that the training that is developed be first offered to Captains and Lieutenants, Sergeants and FTOs. As these individuals all act in supervisory roles, it is imperative that they understand the professionalism message and, in turn, can reinforce it with the officers on the front line.

Next, there is a sense newer officers in particular would benefit from training to increase their knowledge and competencies in the use of discretion, exercise of authority and the impacts their decisions have in the community. Officers may not adequately understand how critical their use of discretion is and the importance and priority of de-escalation techniques to be used where possible. Thus, training aimed at addressing discretion, decision-making and communication skills will first be directed towards the 200 newest patrol officers at SPD, following training roll-out with commanders and supervisors.

While these efforts are moving forward in the SPD Training Section, Chief Diaz is also working with law enforcement representatives on the local, state and federal level to develop a comprehensive training curriculum to promote procedural justice. After examining four decades of research on policing, the National Research Council of the National Academy of Sciences concluded that the public held two broad expectations of law enforcement: one, the expectation that the police deal effectively with crime and disorder; and two, that the police carry out their duties in a fair and impartial manner.[17] The purpose of the curriculum Chief Diaz is advocating is to improve law enforcement practices so as to enhance public perception of fairness and legitimacy in policing.[18] Procedural justice highlights the importance of allowing people to explain their situation, encouraging officers to be unbiased and objective in their interactions, promoting dignified and respectful treatment of citizens, and encouraging officers to explain actions they take which helps instill trust in authority figures. The project envisions development of a curriculum suitable both for the Basic Law Enforcement Academy as well as in-service training for SPD officers.

Further, the Department is reviewing its philosophy and approach to low level contacts and pedestrian infractions. On several occasions, the OPA Auditor at the time has commented on the need to address the issue of escalation of low-level incidents, and a recent investigation has presented another opportunity to consider SPD responsibilities to enforce the law in the context of public resistance to jay walking prohibitions. The OPA Director recommended that SPD convene a work group (comprised of SPD and community representatives) or a community forum to explore these issues more broadly.

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[17] National Research Council (2004). *Fairness and Effectiveness in Policing: The Evidence.* Committee to Review Research on Police Policy and Practices. Wesley Skogan and Kathleen Frydl, editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington DC: The National Academies Press.

[18] Concept Paper in Support of a Request for Technical Assistance to Develop and Test a Law Enforcement Curriculum on Procedural Justice. (TAB 10)

Finally, the Department is also exploring a research and training opportunity that would have SPD partner with an outside entity studying effective law enforcement/citizen interactions. The project would entail a detailed task analysis of officers who routinely display strong communication skills and are able to defuse tense situations while showing respect for the citizens involved. This analysis would then be used to train SPD officers through simulations and other experiential means, with a performance evaluation built into the instruction throughout. The expenses related to the research and training would be borne by the outside entity, a significant factor in a time of limited resources. The Department expects to confirm within the next month whether this program will move forward.

Though this report has focused on issues related to use of force, de-escalation and respectful policing, OPA also has made recommendations for other improvements to SPD policy and training. A summary of recommendations by made by the OPA since publishing its last policy report in April 2009 follows:

Office of Professional Accountability
Policy Recommendations Log
2010

#	Policy	Date Initiated	Notes
1	**Requests for translators:** The Audit, Accreditation and Policy Unit should consider whether a policy change or training is necessary to help officer understand expectations for interpreter requests when on a call or making an arrest.	3/6/08 – IS 07-0451	The current policy on the use of translators provides adequate guidance. No further action necessary, though the need for training with regards to use of translators came up in later case. **CLOSED**
2	**Secondary Work Permits:** The Audit, Accreditation and Policy Unit should address the issue of whether the Department requires a Secondary Employment Permit for secondary employment in a non-law enforcement capacity. Clarify authority to work secondary employment under LEOSA, a Retirement Commission, and Extended Authority Commission. Resolve any inconsistencies in the policy language	12/18/08 – IS 08-0183; 3/11/09 – IS 08-0495 7/21/10 – 09-0452 7/20/10 – 09-0510 9/2/10 – LI 10-0159	OPA submitted proposed policy revision to COP and Command Staff and issue has been discussed in JLMC. Awaiting review and further direction. **OPEN** – Pending final review.
3	**Enforcement of the Mobile Vending Ordinance:** The Audit, Accreditation and Policy Unit should review policy on how the Mobile Vending Ordinance, SMC 15.17 is being applied. Ordinance was intended to regulate food and merchandise vendors and not ticket sales around or near the stadiums.	5/11/09 – PIR 09-0130	City Law Department is presently involved in litigation over the City's Mobile Vending Ordinance. Our review of the matter will be placed on hold pending the outcome of that legal proceeding. **INACTIVATED PENDING CITY COUNCIL ACTION 09/02/10**
4	**Accepting discounts or gifts:** The Ethics Commission, acting on a recommendation from Wayne Barnett of City Ethics and based on a conversation with Captain Low re-defined and established a Gift Rule that allows the acceptance of gifts and discounts under certain circumstances.	12/22/08 – IS multiple cases	Audit, Policy, & Accreditation Section worked with City Ethics & Elections Office on matter. Captain Gleason drafted proposed language and gave to Audit, Policy, & Accreditation, and that section passed it to City Ethics and Elections commission for review. Audit, Policy, & Accreditation Section incorporated proposed revision. **CLOSED**
5	**Accepting gift cards:** Discussion as to whether city employees can accept routine gifts of appreciation from public. Rather than returning all gifts, which may have been sent as a gesture of appreciation, under certain circumstances gifts will be accepted and converted to Department use.	6/23/09 – IS multiple cases	Audit, Policy & Accreditation Section worked with City Ethics & Elections Office on this matter and item #4 above. Audit, Policy, & Accreditation Section incorporated proposed revision. **CLOSED**

#	Policy	Date Initiated	Notes
6	**Review SPD Explorer Program**	12/28/09 – IS 09-0247	Recommend review of goals and objectives of Explorer Program, selection and evaluation process for both Explorers and Advisors, record keeping systems, the role of WALEEA and its policies governing Explorer programs, whether SPD polices and the Explorer Manual adequately address conduct expectations for advisors. Some changes made and review on-going. **ON-GOING**
7	**In-Car Video Policy:** Draft Directive for Chief's signature to remind patrol officers that it is his expectation that they would use the In-Car video whenever possible.	7/1/09 – IS multiple cases	In-Car Video Policy reissued. Audit, Policy & Accreditation Section is planning an audit on use of ICV in early 2011. **ON-GOING**
8	**Social Media Policy:** Prepare Department notice to remind employees to be prudent regarding the nature of information posted on social networking sites.	3/1/10 – IS 09-0366 3/16/10 – IS 09-0469	Publication of Department Notice – Use of Social Networking Sites **CLOSED**
9	**Search Warrants:** Address need for officers to document and screen residence searches involving warrantless, exigent circumstances searches. Development of enhanced training on search policy and procedures to offer more broadly throughout the Department. Review Consent to Search Form which is directed at searches of residences and vehicles and not on the street level, where a consensual search of personal property might take place.	10/20/10 – IS 10-0208 4/30/10 – IS 09-0432 4/29/10 – IS 09-0426 4/29/10 – IS 09-0425 12/18/10 – IS 09-0260	OPA, on 11/19/10, submitted proposed policy revision to COP and Command Staff for review and direction. Awaiting response. **OPEN** – Pending direction from COP Discuss with Training Unit about need for enhanced training. **ON-GOING**
10	**Drug Paraphernalia:** Clarification of drug paraphernalia policy regarding processing of paraphernalia, 15.150.VI.	10/20/10-IS 10-0092	OPA, on 11/19/10, submitted proposed policy revision to COP and Command Staff for review and direction. Awaiting response. **OPEN** – Pending direction from COP
11	**Use of Force Reporting:** Clarification of use of force reporting language when first complaint of misconduct occurs long after the event, 6.240.E.	7/31/10 – IS 10-0040	Proposed language revision being reviewed by KO. **OPEN** – Pending review by KO
12	**Professionalism/Language:** Re-issue profanity policy to remind personnel to use appropriate language, 5.001.	10/01/10 – 10-0022	COP approved changes. Training took place. **OPEN** – Pending JLMC review
13	**Professionalism/Use of Force:** De-escalation training to assist officers in preventing initially minor events from escalating into major events.	8/16/10 – 10-0010	OPA referred issue to the Training Section for incorporation into the Department's use of force training. **ON-GOING**

#	Policy	Date Initiated	Notes
14	**Injured Persons:** Whether Department needs policy regarding compelling competent, injured person to receive medical care.	07/9/10 – 10-0019	Department lacks the legal authority to enforce such a policy. **CLOSED**
15	**Illness & Injury Policy** – Restrictions while on sick leave. Recommend Audit Unit review the Department's Illness and Injury Policy to clarify whether *all* volunteer activities are prohibited and the hour's employees are expected to remain at their place of recovery when out on sick leave.	11/2/10 – 10-0102	**OPEN** – Pending review by Ethics Captain
16	**DV Investigations** Recommend that Audit, Accreditation and Policy Unit consider whether SPD policy on DV is sufficiently clear on the circumstances requiring a written report following police contact with a potential DV victim. Recommend training on DV investigations be incorporated into 2011 Street Skills training.	12/8/10 – 10-0232	**OPEN** – Pending review by Ethics Captain

For more information or questions regarding the activities of the Office of Professional Accountability, please visit our website at http://www.seattle.gov/police/accountability/ or call (206) 615-1566.

TAB 1

Office of Professional Accountability
SUMMARY REPORT
POLICY RECOMMENDATIONS 2003 - 2006
Police Accountability Review Panel
September 6, 2007

The Office of Professional Accountability devotes a significant portion of its work to the review of police operations including looking for ways to clarify or strengthen existing policies or create new ones in an effort to promote respectful, professional, and dependable police services. This Summary Report provides an overview of the many policy recommendations made by OPA from 2003 to 2006.

Chief Kerlikowske has been very receptive to OPA's devotion of resources to the review process, and to recommendations advanced by OPA. Many substantive recommendations have been supported by the Department's command staff and implemented in the Department's policy manual, operational procedures, or in training. The Department's Mission reinforces a culture of openness to change by its commitment to best practices in policing and by identifying, prioritizing and solving problems. However, it is important to note that, while some OPA policy recommendations can be easily implemented, such as those involving an OPA-IS procedural revision (e.g., Recommendations #1, 5 and 6 on the attached list), others would constitute significant change and/or involve collective bargaining, legal or substantial cost considerations (e.g., Recommendations #11 and 39).

OPA performs its policy review function primarily through: (1) review of individual complaints, complaint trends and statistics; (2) participation in command staff development and review of policy; (3) participation on the Department's Risk Management Advisory Team; and (4) interaction with the Training Section. These mechanisms frequently overlap and of course, OPA is just one of many parts of the Department committed to critical analysis and continual improvement.

This Summary Report of policy recommendations made by the OPA includes issues and recommendations forwarded for review from September 2003 through June 2006. Policy recommendations are divided into four categories: (1) recommendations on OPA policies and procedures, (2) recommendations on policies concerning professional standards, training, risk management, and accountability, (3) recommendations relating to the Firearms Review Board proceedings, and (4) recommendations relating to use of force.

The complete reports on the policy recommendations listed in this summary can be found at http://www.seattle.gov/police/opa/Docs/2004PolicyRecommendations.pdf (OPA's Role in Policy Review and Risk Management at Seattle Police Department published on May 16, 2005 covering the period of September 2003 to December 2004), http://www.seattle.gov/police/opa/Docs/2005%20Outreach%20&%20Policy%20Report%20Report.pdf (OPA Policy Review and Outreach published on June 23, 2006 covering the period of January 2005 to June 2006), and http://www.seattle.gov/police/opa/Docs/UOF_2007_Report.pdf (Report on Use of Force Complaints Received in 2003, 2004, and 2005 published on January 19, 2007).

Policy recommendations for 2001, 2002, and up to September 2003 were not published separately in policy reports and are not included in this Summary Report. Information concerning these earlier policy recommendations can be found in the OPA annual reports for 2001, 2002, and 2003 at http://www.seattle.gov/police/opa/publications.htm.

Likewise, OPA policy recommendations made since June 2006 have not been published and are not included in this report. Finally, this Summary Report is limited to recommendations made by OPA, and though there may be overlap, does not include recommendations made by the OPA Auditor or OPA Review Board.

Attached is a summary of recommendations made September 2003 until June 2006, with notation as to the status of implementation by the Department.

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RECOMMENDATIONS ON OPA POLICIES AND PROCEDURES

Published in OPA's Role in Policy Review and Risk Management at SPD dated 5/16/05

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
1. **Hard-copy complaint form** – Though none was required, sometimes citizens expressly asked for a "form" that could be filled out and turned-in at a later date.	A new form was developed and distributed at Precincts and throughout the community to fulfill this need.	I			
2. **Establish additional forum for intake of citizen complaints** – Citizens needed an alternative forum outside of the police department to report issues of misconduct.	OPA partnered with the City's Customer Service Bureau to receive and forward complaints to OPA. OPA staff provided training on complaint intake; brochures and informational bulletins were updated and distributed to inform citizens of this option.	I			
3. **Response to complaints alleging biased policing** – In follow up to the OPA 2003 Report on Biased Policing and as part of a continuing effort to improve service quality and customer support in this critical area of concern.	An internal policy was developed to address the specific issues of intake protocol, classification standards, investigative procedures and quality control.	I			
4. **Criminal History** – OPA procedures included a presumption against running the criminal history of complainants or civilian witnesses but the names were still run in a number of cases. In addition, the OPARB questioned whether OPA was complying with Department policy.	OPA IS asked for a legal opinion regarding running criminal history in the course of an administrative investigation. The policy was restricted further. And criminal history checks are no longer requested. Procedures were put in place to ensure compliance with the policy by precincts or units conducting line investigations.	I			

5.	**Content of closing letters** - Letters sent to complainants at the conclusion of an investigation relied too heavily on internal, technical jargon that would be confusing to citizens. The OPA Review Board had also raised concerns about the impact of the Department's terms for findings on complainants.	Closing letters were revised to provide a clearer description of the evidence, finding and rationale behind the decision, and to omit the technical terms used internally to describe findings. (*Note: The omission of terms from the closing letters was not endorsed by OPARB.*)	I
6.	**Unit Commander Follow-up** – In the complaints that did not amount to misconduct, the OPA-IS lieutenant noted that several would nonetheless benefit from additional follow-up or contact by the precinct.	OPA-IS added a unit commander follow-up section to the Preliminary Investigation Reports.	I

RECOMMENDATIONS ON OPA POLICIES AND PROCEDURES

Published in OPA Policy Review & Outreach dated 6/23/06

7.	**Criminal History of Complainants** - Review by OPA-IS of criminal history of complainants had already been significantly curtailed by policy. However, questions remained about the propriety of running checks for criminal history of complainants in administrative investigations of Department employees.	OPA renewed its request for a legal opinion governing this practice, and obtained more definitive advice from the NCIC Administrator *against* running criminal history checks. OPA policy has been further modified to prohibit the running of criminal history checks on complainants in administrative investigations of Department employees.	I
8.	**Documentation of Search and Seizure** – OPA identified an urgent need for additional training for officers on search and seizure. OPA reviewed two cases involving a significant intrusion that was not documented.	OPA recommended review of the incidents and training for all ACT (anti-crime) team members. In addition, OPA recommended that a policy be developed and published to require documentation of significant search, seizures, and entries.	I
9.	**Sergeant Selection Criteria** - OPA-IS drafted selection criterion reflecting the desired traits and demonstrated skills of an OPA-IS Sergeant.	The criteria was provided to all sergeants with a cover memo setting forth the importance of the job, and establishing a contact point for sergeants to call with questions.	I
10.	**Opinions of Non-Witnesses** - OPA-IS staff was cautioned about references to the opinions of those who are not witnesses in the OPA-IS case, i.e., attorneys who comment on character of witnesses, strength of the case, etc.	It was agreed that follow-up entries should typically be restricted to objective facts and information provided.	I

11. Referral of Criminal Investigations – OPA is responsible for conducting or overseeing investigations of SPD employees alleged to have committed crimes.

For crimes alleged to have been committed outside the city limits, and under the investigation of another law enforcement agency, OPA serves as the liaison to the outside agency and monitors the case. At the point where charges are either filed or declined, or otherwise not pursued, OPA takes over and completes the administrative case.

As for crimes alleged to have occurred within the City limits, OPA in the past bore primary investigative responsibility. However, beginning in 2005, changes were made to this practice. A new contract provision called for OPA to determine the appropriate investigative unit with expertise in the type of criminal conduct alleged to conduct the criminal investigation. The referral unit would conduct the investigation, then refer the case back to OPA for completion upon the filing or decline of charges. The change was intended to utilize special expertise within the Department, so that, for example, allegations of domestic violence would be investigated by the subject matter experts currently assigned to the Department's Domestic Violence Section.

Experience has shown that the 2005 change has not achieved the intended results. The referral of cases by OPA has met with resistance, strained Department resources, posed difficult management problems, diminished confidentiality, jeopardized compliance with contractual obligations and deadlines, and resulted in unintended consequences. With the referral to multiple outside units, OPA's ability to exercise management and oversight of these important cases has been compromised.

OPA recommended that OPA retain primary investigative responsibility for these criminal investigations, with the option to utilize in-house expertise via temporary assignment of a specific investigator to work with OPA on a particular case. This change would facilitate compliance with SPOG contract provisions, provide the best protection for confidentiality, and ensure direct accountability.

The Department sees this as a collective bargaining issue and outside of the realm of pure policy reconsideration.

U

12. In-Person Interviews of Complaints Alleging Excessive Force - OPA-IS staff was reminded that, where possible, interviews with complainants alleging unnecessary or excessive force be done in person.	OPA recommended that serious attempts at in-person interviews be made whenever there are significant injuries or other egregious circumstances alleged.	I
13. Confidentiality Agreements	OPA ensured that all staff members signed a confidentiality policy and agreement. In addition, OPA included a similar memo in the packet to other units conducting criminal investigations at the request of OPA.	I
14. Review of Open Criminal Investigations - OPA was concerned about the timeliness of criminal investigation cases awaiting review for possible charges by the appropriate prosecuting authority.	OPA developed a computer based tracking system for all criminal cases to keep track of status and to consider parallel investigation in appropriate cases.	I
15. Immediate Interview of Subjects in Custody	OPA-IS staff was reminded of the need to attempt immediate interviews of in-custody complainants and subjects.	I
16. Restricting Representation by Guild Representatives Who Were Fact Witnesses – In several OPA cases, concerns have arisen about Guild representatives, who themselves have personal knowledge of the events under investigation, representing named or witness employees.	OPA recommended that the Department's legal advisor raise the issue with SPOG. The Guild attorney, while disputing a conflict existed in a particular case, agreed with the underlying premise. OPA-IS staff has been advised to not go forward with officer interviews if they believe the Guild representative may be a fact witness in the case.	I

RECOMMENDATIONS ON POLICIES CONCERNING PROFESSIONAL STANDARDS, TRAINING, RISK MANAGEMENT AND ACCOUNTABILITY

Published in OPA's Role in Policy Review and Risk Management at SPD dated 5/16/05

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
17. Administrative Reviews - An administrative review (AR) is a review by a supervisor of an officer's performance conducted when the number of complaints indicates a possible problem. OPA identified weaknesses in the area of consistency, content, and follow-up.	OPA initiated corrective training to improve the process. This is an on-going OPA initiative. The Department's Early Intervention Program has replaced the Administrative Review system.	I			
18. Review of Mobile Data Terminal (MDT) transmissions for professionalism - In several cases, OPA noted inappropriate MDT messages between officers.	At OPA's recommendation, supervisors were reminded of the need to (1) reinforce the expectation that transmissions be appropriate and professional, and (2) to regularly review this administrative message traffic. This expectation was also included in the Department's newly revised Standards of Conduct manual section.	I			
19. Officer-involved domestic violence policy - An OPA Investigation raised questions about the appropriate role of the chain of command when their employee is the subject of an investigation by another agency.	The role of the agency and immediate supervisors in response to officer-involved domestic violence was clarified in new policies and procedures.	I			
20. Stops, Seizures, Searches - A significant number of OPA complaints involved questions related to the legality of a stop, search, or seizure.	OPA made a training recommendation for priority attention to these issues in the Department's training curriculum.	I			
21. Citations based on attitude and demeanor - As a result of several complaints, OPA recommended that the Department amend its policy on issuing citations to address the question of attitude and demeanor.	New policy language was developed to emphasize that enforcement actions will not be issued based on attitude and demeanor, but that attitude may be taken into account if it is apparent that a lesser action will not have the desired effect of correcting prohibited actions.	I			

22. Pretext stops - Several OPA cases raised questions about the law relating to pretextual traffic stops. Concerns about pretext stops often overlap and compound the perception of racial profiling.	OPA recommended additional training for officers and supervisors in this fact-specific and complex area of law.	I
23. Detention of witnesses - A complaint investigation revealed legal problems with the detention of an uncooperative material witness in a homicide case.	OPA recommended updated training regarding the law as it relates to witnesses during investigations. The commander of the affected unit responded with a detailed discussion and written reminder that was shared with all follow-up units.	I
24. Conflicts of interest in investigations - OPA raised concerns regarding officers investigating possible crimes in which they or a family member is the victim.	Language proscribing this conflict of interest was included in the newly revised Standards of Conduct.	I
25. False Testimony - Review of an OPA-IS case highlighted the fact that SPD did not have a policy section explicitly addressing "false reporting or false testimony".	Upon OPA recommendation, the new Standards of Conduct was revised to include one.	I
26. Gratuities - OPA investigated a case involving the purchase by an officer of a firearm from a citizen who contacted him in the course of his duties. The purchase was determined to be a conflict of interest (gratuity).	Language prohibiting such conduct was added to the new Standards of Conduct section.	I
27. Information concerning guilt or innocence - A complaint investigation discovered facts suggesting that an officer was aware of conflicting testimony provided by a fellow officer. Though no intentional misconduct was found, the information could have been relevant to the guilt or innocence of the suspect. This information should have been reported to a supervisor.	OPA recommended additions to the new Standards of Conduct section to require mandatory reporting of information that might bear on innocence.	I

28. Correction to criminal history records – During a case review, it was determined that the complainant had been arrested without probable cause. No procedure existed for the removal from databases of any record of the arrest.	A draft policy was drafted by the OPA and forwarded for review and implementation to permit such corrections.	**P**
29. Buy-Bust procedures – A review of an excessive force complaint raised issues concerning implementation of screening or compliance with policies with respect to strip searches of buy-bust arrestees.	Current policy reviewed by Legal Advisor and found to be consistent with State laws (supervisory screening included which exceeds State requirements).	**I**
30. On-lookers viewing police actions – OPA reviewed several complaints arising out of conflicts between the police and citizens who had stopped to watch police activity.	This issue was forwarded to Operations and to the Training Section for further review and discussion of policies, practices, training and public education that may minimize these confrontations. The issue was incorporated into Street Skills training.	**I**
31. Verification of ID in vice arrests – Fictitious names are often provided by suspects arrested for vice-related crimes.	A recommendation was forwarded by the OPA to examine SPD procedures for booking and transport to keep misidentification issues to a minimum.	**U**
32. Photographing dark-skinned subjects – Poor quality photographs of dark-skinned individuals in use of force documentation by the precincts sometimes preclude conclusive findings.	OPA recommended that the Department pursue improved equipment and practices to achieve better quality photographs. The Department is moving to all digital photography equipment to enhance quality of photographs.	**I**
33. Joint task forces – Upon review of several complaints in which SPD officers were serving on joint task forces, it was determined that there was a lack of understanding concerning whether SPD employees were expected to follow SPD policy and directives.	OPA recommended a review of arrangements and the development of policy and guidelines.	**U**
34. Arrest reports during protest events – In a case involving the arrest of an anti-war protester, OPA found that the arrest report recited facts that were not accurate. It was discovered that the report was confused with a separate incident also involving a female arrestee.	New policies and practices were initiated to more accurately document arrests. Short form narrative now completed by arresting officer(s).	**I**

RECOMMENDATIONS ON POLICIES CONCERNING PROFESSIONAL STANDARDS, TRAINING, RISK MANAGEMENT AND ACCOUNTABILITY

Published in OPA Policy Review & Outreach dated 6/23/06

35. Documentation of Detentions – Department policy required supervisor notification and incident reporting whenever an arrest or detention involved handcuffing. However, there was no policy requiring documentation for other significant detentions, i.e., felony stops, ordered to ground at gunpoint, lengthy investigative detentions, etc. An absence of paperwork inhibits OPA's ability to review the reasonableness or propriety of officer conduct and provide explanations to citizens who have experienced a very stressful event. Supervisory and command review of the operation is similarly restricted, impacting the ability to recommend changes in tactics or to spot trends. Finally, the lack of documentation makes it difficult for the Department to defend its actions against subsequent challenges of false arrest, unnecessary force, or racial and ethnic bias.	OPA renewed its recommendation to revise Department policy with an eye toward requiring documentation of major arrests and incidences.	I
36. Radio/Dispatch Procedures for Responding to Citizen Complaints – OPA reviewed two complaints in which complainants called 911 to report alleged police misconduct.	OPA suggested a review and revision of current policies and procedures used by Communications in handling complaints made via 911.	I
37. Supervision of Strip Searches – OPA noted inconsistency and lack of compliance with Department policy requiring supervision of strip searches.	The form was revised to provide better documentation as to the supervisor who screened and witnessed the strip search.	I

38. Safeguarding Personal Property and Evidence — OPA-IS commanders noted policy, procedure and training problems in the area of evidence and property handling.	In addition to video cameras which have been installed in patrol cars which can be used to monitor the handling of property, a new sophisticated digital video camera system has been installed in the Evidence Unit, and video cameras are being installed in precinct property rooms and holding cells. New policies relating to the use of these camera systems are being finalized.	I
39. Closing Down Businesses — A complaint was made by the manager of a restaurant and bar for unnecessary force by two officers. The force issues were resolved, but review of the case revealed concerns about the decision to close down the establishment prior to closing time for code violations. OPA raised concerns about a lack of training on the necessary predicate and about a lack of policy or procedure governing such actions.	OPA recommended that the Department develop and publish policies that address the circumstances under which a business may be closed down, and the procedures that should be adhered to, including review/screening by a supervisor. This was part of the considerations put forward in the "nightlife" ordinance issue currently under consideration.	U
40. Strip Searches: Removal of Contraband/Evidence — Review of OPA cases raised questions about whether existing policy and/or state law allowed for any touching of strip search subjects by SPD employees to remove contraband or evidence.	Current policy reviewed by Legal Advisor and found to be consistent with State laws (supervisory screening included which exceeds State requirements).	I
41. Review of Field Training Officers	The Administrative Services Bureau worked with OPA to ensure systematic vetting of officers before being assigned to the FTO program. A list of current FTOs is forwarded to OPA on a monthly basis. The Supervisor of FTO is advised if there are any complaint issues.	I
42. Clarification of Use of "Ruse" by Detectives	OPA issued a reminder to the Criminal Investigation Bureau that the use of ruses and deception, while permissible in undercover work, could not be used to obtain consent to search or in an advisement of rights.	I
43. Retrieval of In-Car Video — Investigation of a citizen complaint illustrated difficulty in ascertaining whether patrol car video cameras captured any footage of the incident.	OPA recommended a comprehensive accounting system with redundancy and cross-referencing capability to prevent errors.	I

44. Training on Exercise of Judgment and Discretion – The new Standards of Conduct policy included a new section on Failure to Exercise Judgment and Discretion. The section represented a new articulation of an important, potentially far-reaching standard.	OPA recommended formal training on the new standard.	**I**
45. Policy on Carrying Weapons Off-Duty	OPA alerted Audits and Inspections to a contradiction between a new policy in the new section on Standards and Duties, allowing for the carrying of a weapon while off-duty to be at the option of the employee, and an older provision in the Firearms section that still indicated that officers must be armed with a firearm. The policies are now consistent.	**I**
46. Policy on Statements about Discharge of Weapons – Provision in SPD Manual stated that officers should not make statements to anyone outside of their chain-of-command regarding discharge of firearms. This requirement was noted to be inconsistent with the need to report a firearms discharge to any on-scene investigators/responders outside the employees' immediate chain of command.	OPA recommended revision to existing policy language.	**R**
47. Appropriate Use of SPD Uniform – OPA received a complaint about a Department of Corrections officer working with SPD officers wearing a Seattle Police bicycle jacket. In addition, there was an investigation into pictures of a recruit in uniform posted on a public website.	OPA recommended adoption of a policy governing the appropriate use of SPD uniforms.	**P**
48. Claims Processing – OPA noted that the Department was receiving requests for information from the city claims office for "arrest records" of claimants. The Department was responding with complete criminal histories.	The Department's Administrative Support Bureau stepped in to re-design the forms to reflect that the request was limited to arrest and/or incident reports that were the subject of the claim. Criminal histories are no longer provided.	**I**

49. Duration of Secondary Employment Permits – Following the submittal of all new secondary employment permits required in January 2005, Human Resources was considering the permits valid for one-year plus the time until an employee's anniversary date. That meant that the permit could be good for close to two years, assuming early application and late anniversary. This practice conflicted with secondary employment regulations providing that permits were only valid for one year.	OPA recommended that this practice be discontinued, and that a process to ensure a bridge review and/or extension of the permits be adopted.	I
50. Secondary Employment	OPA recommended modification/clarification to secondary employment permit application form to include restrictions from Standards of Conduct section of the manual that states, "Employees holding the rank of sergeant and above shall not engage in secondary employment that is coordinated, brokered, supervised or scheduled by an employee of lower rank."	I

RECOMMENDATIONS RELATED TO FIREARMS REVIEW BOARD PROCEEDINGS

Published in OPA Policy Review & Outreach dated 6/23/06

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
51. Objectivity of Reports prepared by Homicide Section – OPA raised concerns about the appearance of a lack of objectivity in investigative reports prepared by the Homicide Section. The reports sometimes included conclusory statements about an officer's thoughts, decisions, and actions, rather than an objective recitation of facts and information. In addition, separate components of the investigation, i.e., of the officer-involved shooting and of crimes committed by the subject of the shooting, were merged, rather than bifurcated. It was noted that such practices might give the appearance that the neutrality of the investigation was compromised from the outset. A resulting diminution in credibility would be a disservice to the integrity of the process, and to the officer involved in the shooting.	OPA recommended bifurcation of investigation by Homicide and strict objectivity of incident, follow-up, or major incident summary reports.		**P**		
52. Record of Order to Give a Compelled Statement – OPA noted that there was no record of the individual supervisor or commander in Homicide that gave the order to the involved officer(s) to give a compelled statement ("Garrity" order), or of when the order was given. This information could be important in a particular case, and should be subject to review in every case.	OPA recommended that a record of this information be maintained in the Homicide Investigation file and included in the FRB notebook.		**P**		

53. Recording of FRB Proceedings – Testimony at the FRB proceedings is not memorialized. This poses a clear impediment to review of the proceedings and of the underlying circumstances surrounding the shooting.	OPA recommended that FRB testimony be recorded by tape or court reporter and transcribed for the file.	**U**
54. Documentation of Involved Officer Statements – OPA noted a lack of and/or ambiguous notation regarding date and time on officers' statements. One statement of an involved-officer was marked as having been given just hours after the shooting, although it was clear from the investigative file that the written statement was not received by Homicide for several days.	OPA recommended that policies should clarify that involved officer statements should accurately note when the statement was commenced and when it was completed, and that the investigative file should note when the statement was received.	**P**
55. Testimony of Civilian Witnesses at FRB Proceedings – It was noted that in one case, although the investigative file contained written and/or tape-recorded statements from multiple civilian witnesses, only sworn SPD personnel testified in-person at the FRB proceedings. Current SPD policy does allow for testimony by civilians, although such witnesses cannot be compelled to appear and testify in internal Department proceedings.	OPA recommended that the FRB chair consider and address in advance of or during the FRB proceedings whether civilian witnesses would be beneficial to a thorough and objective review.	**P**
56. Issuance of Garrity Order to a Witness Officer – OPA noted that the statement of witness officers were sometimes denoted as "Involuntary True and Compelled Statements" pursuant to a "Garrity" order by an individual supervisor or commander in Homicide. Witness officers do not face potential prosecution, and thus do not require protection of their right against self-incrimination. Moreover, reporting their actions and observations in connection with an officer-involved shooting is a fundamental duty of their position.	OPA recommended that the Homicide Unit be instructed that an order to give a compelled statement should not be given to witness officers.	**P**

RECOMMENDATIONS RELATED TO USE OF FORCE

Published in OPA's Role in Policy Review and Risk Management at SPD dated 5/16/05

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
57. Use of Force Policy - Based in part on OPA input, the Department made significant changes to the Use of Force policy. The changes were intended to enhance use of force reporting and review and to achieve greater consistency throughout the Department on the interpretation and application of the policy.	OPA followed-up with a recommendation to provide training to patrol officers and supervisors on the implemented changes.	I			
58. Citizen ride-along program - Issues and concerns were noted in two areas: (1) allowing juveniles and children of officers to go on ride-alongs and (2) listing citizens as witnesses in incident reports.	These recommendations resulted in audits by the Department and policy changes to improve the program.	I			
59. Invocation of "Garrity" language - Law derived from the Fifth Amendment provides that statements compelled by an employer in an administrative investigation cannot be used in criminal proceedings. In several cases, employees used the "true and involuntary" language of Garrity in circumstances where it did not apply and should not be invoked.	At OPA's recommendation, a directive from the Chief was published to clarify and restrict the invocation of Garrity protection.	I			
60. Use of Bicycles during protests or mass events – OPA reviewed a case involving a bicycle officer who unintentionally struck the complainant in the face with his bicycle during a demonstration, causing minor injury.	OPA pointed out that the use of bicycles as mobile fencing raises policy and legal issues, and recommended that the tactic be subjected to additional review.	I			

61. Cameras in holding cells – Several complaints were reviewed in which misconduct by police while in custody at police facilities was alleged.	Video cameras are being installed in precinct holding cells and property rooms. New policies relating to the use of these camera systems are being finalized.	I

RECOMMENDATIONS RELATED TO USE OF FORCE

Published in OPA Policy Review & Outreach dated 6/23/06

62. Training on Response to "Onlookers" and to "Street Allegations of Biased Policing" – Review of OPA cases revealed multiple complaints involving SPD interaction with "onlookers," or people who are observing police enforcement activity. In addition, response by officers to allegations in the street of biased policing continued to emerge as an issue.	OPA recommended that specific training on these common street scenarios be incorporated into a new block of training for Street Skills 2006.	I
63. Garrity Admonishments – Additional examples came to OPA's attention of improper issuance of an order to an officer to give a compelled statement under "Garrity." "Garrity" is the name of a case that held that, if public employees are ordered to answer questions under threat of termination, the statements they give couldn't be used against them in subsequent criminal proceedings.	OPA renewed its previous recommendation that Department commanders be reminded of the limits of the proper application of Garrity admonishments.	I

RECOMMENDATIONS RELATED TO USE OF FORCE

Published in Report on Use of Force Complaints received in 2003, 2004, and 2005 dated 1/19/07

64. Use of Force and Race – a review of complaints for 2003 to 2005 indicated a disproportionate number of use of force complaints filed by people of color.	This topic is of high priority for the new OPA Director. She is considering different approaches to further analyze and respond to the data on the high percentage of complaints of use of force by people of color.	U

65. OPA-IS Response to Critical Incidents – The Seattle Police Department has a low rate of use of significant force, and a low rate of force resulting in significant injury. And, for the most part, use of force screening and documentation by the chain of command is diligent and of high quality.

At the same time, of the over seven hundred force incidents reported in each year of the review period, OPA is not aware of any where a reviewing commander found a policy violation. Outside of one officer-involved shooting found out of policy by the Firearms Review Board, no force incident has ever been referred to OPA for further investigation.

Significant force events represent a serious use of the power and authority of a police officer. They merit a heightened response and scrutiny from outside the chain of command. Many departments have adopted protocol calling for an on-scene response by a designated unit, usually within internal affairs or the professional standards unit. Several also have members of their civilian review entities respond to such incidents as well.

OPA recommends development of a protocol that calls for an on-scene response by OPA to critical incidents. Based on review of policies in other jurisdictions, and the three-year review of use of force cases, such a response is recommended when the following criteria are present: **R**

- Officer-involved shootings (including "misses" and accidental discharges)
- Substantial force, with or without serious injury, to include: multiple tasing; strikes to face; multiple/sustained application of force
- Substantial injury: treatment at hospital
- Significant force while subject in custody
- Force on restrained subject, with or without injury
- Accidental injury to subject caused by officer, i.e., hit with bike/car, tripped/fell, hit head on patrol car, etc.
- Force used on following individuals: juveniles under or presumed under 16; females known or believed to be pregnant; individuals with significant physical or mental disability
- At request of supervisor at scene (advised in incidents with significant potential for citizen complaint, tort claim, media attention, etc.)

Response by OPA to the scene of critical incidents does not presume an OPA investigation for policy violations. Rather, protocol could include a screening function by OPA, with the discretion to preempt, shadow, or defer to the standard chain of command investigation.

Presence and input by personnel outside of the chain of command at the scene of critical incidents would enhance objectivity and build public trust. It is time that the Department takes this step toward greater accountability.

TAB 2

September 27, 2007

To: Police Accountability Review Panel

From: Peter Harris, Legislative Department

Re: Recommendations by the OPA Auditor and OPA Review Board

Introduction

Below is a list of the recommendations made by the Office of Professional Accountability (OPA) Auditor and OPA Review Board in their reports since 2002 and in their recent communications to you, and also the recommendations of the former OPA Director in her August 20 comments to the Panel. I have sorted them into four groups:

A. Recommendations about the structure of the civilian oversight system

B. Recommendations about procedures within the civilian oversight system

C. Recommendations about Police Department policies and procedures

D. Other recommendations

They are listed chronologically within the groups. The references are these:

Auditor 2002: Internal Investigations Auditor Report to the Mayor & City Council, 9/02

Auditor 2004a: Report of the Civilian Auditor for April-December 2003

Auditor 2004b: Report of the Civilian Auditor for January-September 2004

Auditor 2005: Report of the Civilian Auditor for October 2004-March 2005

Auditor 2006: Report of the Civilian Auditor for October 2005-March 2006

Auditor 2007a: Report of the Civilian Auditor for October 2006-March 2007

Auditor 2007b: Kate Pflaumer's comments to Panel, 8/20/07

Review Board 2002: OPA Review Board, First Quarterly Report, 9/02

Review Board 2003: OPA Review Board Briefing to City Council, 4/7/03

Review Board 2004: OPA Review Board 2003 Year End Report, 4/30/04

Review Board 2006: OPA Review Board Status Report, 12/5/06

Review Board 2007a: OPA Review Board 2007 Mid-year Report, 7/2/07

Review Board 2007b: Letter from OPA Review Board to Terrence Carroll, 9/6/07

Pailca 2007: Sam Pailca's comments to Panel, 8/20/07

The list begins on the next page.

Recommendations of the OPA Auditor and OPA Review Board, 2002-present			
What is the recommendation?		**Source?**	**Implemented?**
A.	**Recommendations about the structure of the civilian oversight system**		
A.1	The Police Department should create a pilot program for complaint mediation.	Auditor 2002; Auditor 2004a	Mediation program began in August 2005.
A.2	The City should restructure OPA Director's role for greater autonomy from Police Department.	Review Board 2003	
A.3	The City should review overlap in functions of OPA Director, Auditor and Review Board.	Review Board 2003	
A.4	The City should consider implementing appeals from OPA decisions, possibly to the Review Board.	Review Board 2004	See also A.15.
A.5	The City Council should hold hearings prior to negotiations with SPOG to determine what the citizens perceive as important issues that may be subject to bargaining.	Review Board 2006	City Council has held such hearings.
A.6	Complaint investigations should be kept in the Police Department.	Auditor 2007	Status quo.
A.7	The City should review the different functions of and demands on the OPA Director.	Auditor 2007	
A.8	The Mayor and Council should clarify the role of the Review Board.	Auditor 2007	
A.9	The Police Chief should not be able to reverse an OPA Director's certified disposition based on exculpatory evidence that contradicted officer's interview or was available during the OPA investigation.	Review Board 2007b	
A.10	The Police Chief should be able to reverse OPA Director's certified disposition only for cause.	Review Board 2007b	

A.11	The Auditor should be required to be civilian.	Review Board 2007b	
A.12	The OPA should serve as investigatory arm of the Firearms Review Board.	Review Board 2007b	
A.13	The Auditor or a Review Board member should be considered for inclusion on the Firearms Review Board	Review Board 2007b	Firearms Review Board currently has one civilian member.
A.14	The budget authority for the OPA should be separate from the Police Department.	Review Board 2007b; Pailca 2007	The OPA budget is one of 26 specific appropriations within the Police Department.
A.15	Civilian complainants should be able to appeal OPA decisions to an independent agency, possibly the Review Board.	Review Board 2007b	
A.16	The Review Board should be expanded and compensation for members should be increased.	Review Board 2007b	
A.17	Reporting relationship of OPA Director to Executive should be clarified and strengthened. Executive should be more engaged with and supportive of OPA.	Pailca 2007	
A.18	OPA should respond directly to and review officer-involved shootings and other critical incidents.	Pailca 2007	
A.19	Responsibilities of Review Board should shift from reviewing and reporting on individual cases to executive or advisory board.	Pailca 2007	
B.	**Recommendations about procedures within the civilian oversight system**		
B.1	The Review Board should have access to unredacted OPA files.	Auditor 2002; Review Board 2002 & 2004	Implemented.

B.2	The time limit for OPA complaint classifications should be increased from 5 to 20 days.	Auditor 2002	Implemented; current labor agreement allows 30 days for complaint classifications.
B.3	Closed case files provided to the Review Board should include the ultimate disposition and any input from the Auditor.	Review Board 2004	Implemented.
B.4	The OPA should provide civilian intake personnel to assist complainants in framing misconduct complaints	Review Board 2004	Citizens Service Bureau can receive initial complaints. OPA allows complainants to bring representatives to OPA interviews.
B.5	When Police Chief and OPA Director do not agree about complaint disposition, Chief should state his reasons in writing.	Review Board 2004 & 2007a	Legislation pending.
B.6	The OPA should eliminate criminal record searches on complainants as a routine part of complaint investigations.	Review Board 2004	Implemented.
B.7	Leading questions should be prohibited in OPA interviews.	Review Board 2004	OPA believes leading questions may sometimes be useful.
B.8	The OPA should develop written guidelines for resolving officer vs. complainant credibility issues.	Review Board 2004	
B.9	The OPA should reexamine its Findings definitions, mainly by shifting "unfounded" and "exonerated" to "not sustained."	Review Board 2004	Findings definitions are mainly for internal use in the formal disciplinary system. The OPA now gives complainants simple descriptions of the reasons for complaint dispositions.
B.10	The Review Board should be able to issue meaningful reports without fear of legal liability or censorship.	Review Board 2004	Ordinance 122126 revised confidentiality and indemnification requirements for Board.

B.11	The OPA should have presumptive dates for completion of various aspects of an investigation	Auditor 2004b	No timelines have been instituted. Investigations are managed case by case.
B.12	The OPA's role in investigating claims of dereliction of duty by supervisors should be clarified.	Auditor 2004b	
B.13	The OPA's administrative investigations should not be delayed while criminal investigations of officers proceed.	Auditor 2004b & 2007a	These conflicts are addressed case by case. Some administrative and criminal investigations are concurrent and others not.
B.14	City and Police Department risk assessment mechanisms should be coordinated with OPA process.	Auditor 2005	Implemented. OPA Director and Associate Director are on Department's Risk Management Advisory Team. OPA and Law Department coordinate oversight of claims that may involve misconduct.
B.15	The Police Department should improve timeliness of line investigations.	Auditor 2005	Auditor reported in Fall 2005 that timeliness of line investigations had improved. Timeliness is monitored by Chief of Police.
B.16	OPA staffing should be increased to handle increased workload and improve timeliness of investigations.	Auditor 2006	One Sergeant-Detective was added to the OPA in 2007.
B.17	OPA investigators should receive standardized training in best investigative practices.	Review Board 2006	Significant improvements have been made and others are under consideration.
B.18	OPA investigators should be evaluated on the thoroughness of their OPA investigations.	Review Board 2006	OPA investigators receive annual performance evaluations.
B.19	The OPA should institute performance standards for non-OPA complaint investigations, and carefully evaluate the proposed disposition of all non-OPA investigations.	Review Board 2006	OPA Lieutenant classifies all complaints. OPA Director and Auditor review proposed dispositions from line investigations.

B.20	The OPA Director's function must be kept separate from the Chief's final disciplinary decision making.	Review Board, 2007a	OPA Director participates in discipline discussions, including Chief's Loudermill hearings.
B.21	The OPA or an independent commission should continue to investigate the apparent lack of supervision uncovered at the West Precinct during the course of the Patterson investigation, free of interference from the Chief.	Review Board, 2007a	
B.22	The OPA Director should be present at all Chief's "Loudermill" hearings on discipline.	Review Board 2007b	See B.20.
B.23	The OPA Director should complete the certified disposition in all cases before Chief begins the disciplinary phase.	Review Board 2007b	OPA Director concurs.
B.24	The Police Chief should be prohibited from involvement in OPA investigations prior to OPA Director's certified disposition.	Review Board 2007b	
B.25	The Chain of command should be prohibited from input on possible discipline before OPA Director's certified disposition.	Review Board 2007b	OPA Director intends to certify dispositions before the discipline hearings with the chain of command.
B.26	Supervisory Referrals from misconduct complaints should be included in officers' personnel records for the Early Intervention System.	Review Board 2007b	
B.27	The Police Chief should be required to respond in writing to policy recommendations by the OPA Director, Auditor and Review Board.	Review Board 2007b	
B.28	Officers who agree to mediation but fail to participate in good faith should be subject to discipline from the complaint.	Review Board 2007b	
B.29	OPA should have enhanced role in final decision-making on discipline.	Pailca 2007	

C.	**Recommendations about other Police Department policies and procedures**		
C.1	The Department should consider introducing rudeness or "overreaction" provisions in officer code of conduct.	Auditor 2002	Implemented. Department Manual section 1.003 includes standards for professional conduct that cover rudeness. See also C.2.
C.2	The Department should train officers in de-escalation techniques.	Auditor 2004a, 2004b, 2005 & 2006	The Department added a new standard of conduct on "Failure to Exercise Judgment and Discretion" in 2005 and implemented de-escalation training in 2006 Street Skills Training.
C.3	The OPA should monitor and routinely report on use of tasers.	Auditor 2004a	OPA reported on taser use in 2007 report on use-of-force complaints from 2003 to 2005.
C.4	The Department should apply policy on Use of Force Statements uniformly.	Review Board 2004	Implemented. Training recommended by OPA was completed 2004.
C.5	The Department should videotape interrogations.	Auditor 2004b	Videotaping is an occasional investigative tool in interrogations.
C.6	The Department should join in conducting a public forum on best practices for the policing of mass events.	Review Board 2006	
D.	**Other recommendations**		
D.1	The public should review the OPA's monthly Commendations & Complaints report on the City's website.	Review Board 2004	OPA monthly reports are available on the OPA and Mayor's websites.
D.2	The OPA budget for investigator training should be increased.	Review Board 2007b	
D.3	OPA complaint proceedings should not be used against complainants in criminal proceedings.	Review Board 2007b	

TAB 3

September 27, 2007

To: Police Accountability Review Panel

From: John Fowler, Office of Professional Accountability
Peter Harris, Legislative Department
Kathryn Olson, Director, Office of Professional Accountability
Bob Scales, Office of Policy & Management

Re: Unimplemented recommendations about the oversight system from the OPA, Auditor and Review Board

Introduction

You have separately received lists of recommendations by the Office of Professional Accountability (OPA), OPA Auditor and OPA Review Board. The purpose of this memo is to organize some of this material – namely, the unimplemented recommendations from past reports and the recent recommendations from the Auditor, Review Board and former OPA Director – in a different way. The recommendations are organized around these questions:

1. Who investigates misconduct complaints, sworn officers or civilians?

2. Who decides on discipline, the Police Chief or others?

3. If the investigators are sworn and the Chief decides discipline, what are the roles and responsibilities of civilian overseers otherwise? How are they organized and to whom do they report?

4. What processes should the civilian overseers follow?

5. Other recommendations

The list begins on the next page. The references to specific reports are listed at the end.

Who investigates complaints, sworn officers or civilians?

1	Complaint investigations should be kept within the Police Department.	Auditor 2007b Pailca 2007
2	Officers may retain the privilege of sworn investigations if other conditions are met.	Review Board 2007b

If sworn investigators: Who decides on discipline?

3	Civilian complainants should be able to appeal OPA decisions to an independent agency, possibly the Review Board.	Review Board 2004, 2007b
4	The Police Chief should be able to reverse the OPA Director's certified disposition only for cause.	Review Board 2007b
5	The Police Chief should not be able to reverse an OPA Director's certified disposition based on exculpatory evidence that contradicted officer's interview or was available during the OPA investigation.	Review Board 2007b

If the investigators are sworn and the Chief decides discipline: What are the roles and responsibilities of civilian overseers otherwise?

General review of roles and responsibilities:

6	The City should restructure the OPA Director's role for greater autonomy from the Police Department.	Review Board 2003
7	The City should review the overlap in functions of the OPA Director, Auditor and Review Board	Review Board 2003
8	The City should review the different functions of and large demands on the OPA Director.	Auditor 2007
9	The Mayor and Council should clarify the role of the Review Board.	Auditor 2007
10	The reporting relationship of the OPA Director to the Executive should be clarified and strengthened. The Executive should be more engaged with and supportive of the OPA.	Pailca 2007
11	The responsibilities of the Review Board should shift from reviewing and reporting on individual cases to an executive or advisory board.	Pailca 2007

One major new role:

12	The OPA should respond directly to and review officer-involved shootings and other critical incidents.	OPA 2007 Pailca 2007

Some specifics:

13	The Auditor should be required to be civilian.	Review Board 2007b
14	The budget authority for the OPA should be separate from the Police Department.	Review Board 2007b
15	The OPA should serve as the investigatory arm of the Firearms Review Board.	Review Board 2007b
16	The Auditor or a Review Board member should be considered for inclusion on the Firearms Review Board.	Review Board 2007b

17	The Review Board should be expanded and compensation for members should be increased.	Review Board 2007b

What processes should the civilian overseers follow?

Investigations:

18	Leading questions should be prohibited in OPA interviews.	Review Board 2004
19	The OPA should develop written guidelines for resolving officer vs. complainant credibility issues.	Review Board 2004
20	The OPA should reexamine its Findings definitions, mainly by shifting "unfounded" and "exonerated" to "not sustained."	Review Board 2004
21	The OPA should have presumptive dates for completion of various aspects of an investigation.	Auditor 2004b
22	The OPA's administrative investigations should not be delayed while criminal investigations of officers proceed.	Auditor 2004b & 2007a
23	The OPA should have primary responsibility for investigating criminal complaints against officers.	OPA 2006
24	In investigations of cases involving possible criminal misconduct by an officer, the Homicide Section should ensure separation between the misconduct investigation and other aspects of the investigation, and should observe strict objectivity of incident, follow-up and major incident reports.	OPA 2006
25	In investigations of shootings by officers, Homicide Section files and Firearm Review Board files should record who compelled the subject officer to give an involuntary statement and when this occurred.	OPA 2006
26	In its investigations the Homicide Section should not necessarily apply "Garrity" protections to statements by witness officers.	OPA 2006

Investigations and Chief's decisions:

27	When the Police Chief and OPA Director do not agree about a complaint disposition, the Chief should state his reasons in writing.	Review Board 2004 & 2007a
28	The OPA Director's function must be kept separate from the Chief's final disciplinary decision making.	Review Board 2007a
29	The OPA Director should be present at all Chief's "Loudermill" hearings on discipline.	Review Board 2007b
30	In all cases the OPA Director should complete her certified disposition before the Chief begins the disciplinary phase.	Review Board 2007b
31	The Police Chief should be prohibited from involvement in OPA investigations prior to the OPA Director's certified disposition.	Review Board 2007b
32	The chain of command should be prohibited from input on possible discipline before the OPA Director's certified disposition.	Review Board 2007b
33	The OPA should have an enhanced role in final decision-making on discipline.	Pailca 2007

Other roles and responsibilities:

34	The OPA's role in investigating claims of dereliction of duty by supervisors should be clarified.	Auditor 2004b
35	The OPA or an independent commission should continue to investigate the apparent lack of supervision uncovered at the West Precinct during the course of the Patterson investigation, free of interference from the Chief.	Review Board 2007a
36	Supervisory Referrals from misconduct complaints should be included in officers' personnel records for the Early Intervention System.	Review Board 2007b
37	The Police Chief should be required to respond in writing to policy recommendations by the OPA Director, Auditor or Review Board.	Review Board 2007b
38	Officers who agree to mediation but fail to participate in good faith should be subject to discipline from the complaint.	Review Board 2007b

Other recommendations

Police practices:

39	The Department should videotape interrogations.	Auditor 2004b
40	Arrests of complainants without probable cause should be removed from arrest records.	OPA 2005
41	The Department should improve procedures for verifying the identification of suspects in vice crimes.	OPA 2005
42	The Department should develop policies and guidelines on whether Department employees serving on joint agency task forces should follow Department policies and directives.	OPA 2005
43	The Department should develop policies on the circumstances in which officers may close a business before closing time due to code violations.	OPA 2006
44	Officers should be required to make statements regarding the discharge of firearms to any on-scene Department investigator, not only those within the officer's immediate chain of command.	OPA 2006
45	The Department should adopt a policy governing the appropriate use of Department uniforms.	OPA 2006
46	Testimony at Firearms Review Board proceedings should be recorded and transcribed for the file.	OPA 2006
47	Statements from officers involved in shootings should accurately record when the statement was commenced, completed and received.	OPA 2006
48	In advance of a Firearms Review Board proceeding, the Board Chair should consider whether the testimony of civilian witnesses would benefit the review.	OPA 2006

Other:

49	The Department should join in conducting a public forum on best practices for the policing of mass events.	Review Board 2006

50	The Department should review and respond to the disproportionately large number of use-of-force complaints by persons of color.	OPA 2007
51	The OPA budget for investigator training should be increased.	Review Board 2007b
52	OPA complaint proceedings should not be used against complainants in criminal proceedings.	Review Board 2007b

References

Auditor 2002:	Internal Investigations Auditor Report to the Mayor & City Council, 9/02
Auditor 2004a:	Report of the Civilian Auditor for April-December 2003
Auditor 2004b:	Report of the Civilian Auditor for January-September 2004
Auditor 2005:	Report of the Civilian Auditor for October 2004-March 2005
Auditor 2006:	Report of the Civilian Auditor for October 2005-March 2006
Auditor 2007a:	Report of the Civilian Auditor for October 2006-March 2007
Auditor 2007b:	Kate Pflaumer's comments to Panel, 8/20/07
Review Board 2002:	OPA Review Board, First Quarterly Report, 9/02
Review Board 2003:	OPA Review Board Briefing to City Council, 4/7/03
Review Board 2004:	OPA Review Board 2003 Year End Report, 4/30/04
Review Board 2006:	OPA Review Board Status Report, 12/5/06
Review Board 2007a:	OPA Review Board 2007 Mid-year Report, 7/2/07
Review Board 2007b:	Letter from OPA Review Board to Terrence Carroll, 9/6/07
OPA 2005:	OPA report on Policy Review and Risk Management, 5/16/05
OPA 2006:	OPA report on Policy Review and Outreach, 6/23/06
OPA 2007:	OPA report on Use of Force Complaints 2003-2005, 1/19/07
Pailca 2007:	Sam Pailca's comments to Panel, 8/20/07

TAB 4

2007 Police Accountability Review Panel

FINAL REPORT

January 29, 2008

Judge Terrence A. Carroll, ret., Chair
Bob Boruchowitz, Vice Chair
Jenny A. Durkan
M. Lorena González
Pramila Jayapal
Gary Locke
Hubert G. Locke
Judith Krebs
Mike McKay
Norman B. Rice
Jennifer Shaw

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Executive Summary

Public safety is paramount to the effective functioning of a civil society. Seattle is fortunate that its neighborhoods and communities enjoy a relatively high degree of safety and stability. The Panel recognizes that this is due, in large part, to the dedication of Seattle police officers. The majority of these officers work day in and day out, forging bonds with residents and successfully improving communities in which they serve. Most are rarely subject to any form of disciplinary complaint. Similarly, the Panel recognizes the work of the current and former Office of Professional Accountability (OPA) staff, the OPA Auditor and the OPA Review Board. Their dedication to their work, along with their contributions and candor toward the Panel, reflects an ongoing commitment to improving police accountability.

Unfortunately, the public perception and reputation of the Seattle Police Department, including its disciplinary system and its ability to properly discharge its duties, can be tarnished by a limited number of troubled investigations or the actions of a minority of officers. This makes it imperative that the City respond decisively to cases that might indicate any problems with the integrity of the police accountability system.

The Panel wants to emphasize that police accountability involves much more than the disciplinary process. First and foremost, of course, it begins with the actions of each individual officer and is best enforced in every precinct by the leadership and direction of sergeants, lieutenants and captains. Yet, just as crucial, is the leadership of both the Chief of Police and elected City leaders. The Panel has made a number of recommendations that it believes will strengthen Seattle's police oversight system.

Critical to success and long-term accountability is the ongoing commitment by the Mayor and City Council to implement, monitor and fund the necessary improvements. The police accountability system in Seattle includes a variety of oversight mechanisms and reports. Without coordination, monitoring and follow-up, both accountability and public confidence suffer. Moreover, important improvements to the system should not substitute for employee benefits and should not be bargained away in labor agreements.

Seattle's multilayered police oversight structure is unique. Seattle's current system has operated for six years. The system has three separate components: 1) the Office of Professional Accountability, which is responsible for receiving and investigating complaints of misconduct and making recommendations to the Chief of Police; 2) the OPA Auditor, who is responsible for auditing completed case files and reviewing and making recommendations on pending investigations; and 3) the OPA Review Board, which is responsible for reviewing the OPA complaint process and resolving disputes between the OPA Auditor and the Police Chief.

In June 2007, Mayor Greg Nickels appointed an 11-member Panel to perform a thorough and comprehensive review of Seattle's police accountability system. The Police Accountability Review Panel completed its work in January 2008.

The Panel concludes that the general structure of the OPA with the civilian Director, Auditor and Review Board should continue. The Panel finds all three components play roles in the oversight

process. The Panel also finds that many aspects of the current police accountability system are valuable and encourage an effective citizen-complaint process.

The Panel does, however, find room for improvement. This report presents 29 specific recommendations for enhancing and strengthening the police accountability system in the following four areas:

- Accountability & Public Confidence
- Independence
- Professional Conduct
- Transparency

The recommendations can be found in full in this report. Here are some highlights:

- **EXPAND THE ROLE OF THE OPA AUDITOR**

  To increase accountability and public confidence, the Panel recommends both an expansion and a clarification of the role of the OPA Auditor. The OPA Auditor's current role of conducting real-time review of OPA investigations while those investigations are under way should be maintained because it enhances the independence and quality of OPA investigations.

  The OPA Auditor should conduct in-depth audits of substantive policies, procedures and/or training that impact the accountability of the Department or the public's perception of that accountability. Also, the OPA Auditor should focus on making recommendations to strengthen Department accountability after reviewing public reports regarding the functioning of the Department. The OPA Auditor should issue a public report on its findings.

  In light of the additional duties of the OPA Auditor, the Panel recommends the amount of time allocated to the role be significantly expanded, with compensation and resources made commensurate with the responsibilities.

  The first in-depth review by the OPA Auditor should be the relationship between the Department and diverse communities, particularly communities of color.

- **INCREASE INDEPENDENCE AND AUTHORITY OF THE OPA DIRECTOR**

  To ensure independence, the Panel recommends the OPA Director be given control of the OPA budget and report to the Mayor and City Council on the adequacy of OPA funding during the annual City budget process. The OPA Director, in consultation with the Police Chief, should be given the authority to select and transfer OPA staff, including sworn investigators and the Deputy Director. The OPA Director should attend all disciplinary hearings. If new material facts are disclosed at the disciplinary hearing, the case should be sent back to the OPA for further investigation. The 180-day limit to investigate a complaint of police misconduct should be able to be extended by the OPA for good cause.

- **ESTABLISH THE OPA REVIEW BOARD AS THE KEY LINK TO THE COMMUNITY**

  To increase public confidence in Seattle's police accountability system, the Panel makes several recommendations to clarify the role of the OPA Review Board, including expanding its membership to between five and seven members; functioning as the primary link between the OPA and community; leading community engagement activities; researching and reporting on national trends and best practices in police accountability and oversight; reviewing OPA policies and procedures and providing recommendations for improvement; and offering suggested topics for officer training. In addition, the Panel recommends that the Seattle Office for Civil Rights formally designate one or two employees as civilian advocates to assist OPA complainants through the process as needed.

- **MAXIMIZE PUBLIC ACCESS TO INFORMATION REGARDING THE ACCOUNTABILITY SYSTEM**

  The OPA should adopt a policy that requires public disclosure of all OPA records to the maximum extent allowed by law. Records of all sustained complaints, including the punishment imposed, should be made public in a format designed to protect the privacy of the officers and complainants to the extent required by law.

- **MAINTAIN THE HIGHEST PROFESSIONAL STANDARDS**

  To help ensure professional conduct, the Seattle Police Department should adopt a policy that presumes an officer will be terminated for sustained complaints involving dishonesty that either relate to or occur within the scope of the officer's official duties, or that relate to the administration of justice. If the Police Chief chooses to impose a disciplinary sanction other than termination, he should be required to state his reasons in writing. This written statement shall be provided to the OPA Director and, upon request, to the Mayor and City Council.

- **ENHANCE THE COOPERATION AND COORDINATION OF THE OPA ENTITIES**

  Each year the OPA Director, OPA Auditor and OPA Review Board should agree upon at least three substantive policy or procedural areas that will be the focus of enhanced review by the OPA Auditor. One of the first issues that should be examined is how the Department's policies, practices and procedures affect communities of color. The OPA Director, OPA Auditor and OPA Review Board should meet quarterly and each should independently prepare and jointly present a semiannual report to the Mayor and City Council.

Through its recommendations, the Panel attempts to reconcile the valued aspects of the current police accountability system with areas that could use some improvement.

The Panel believes the integrity and trust for the citizen-police complaint process must be founded on the clear goals of improving the following aspects of the OPA system: accountability; public confidence; independence; professional conduct; and transparency. The Panel's recommendations are offered to the Mayor to help the City of Seattle achieve these goals.

Background

Public safety is paramount to the effective functioning of a civil society. Seattle is fortunate that its neighborhoods and communities enjoy a relatively high degree of safety and stability. The Panel recognizes that this is due, in large part, to the dedication of Seattle police officers. The majority of these officers work day in and day out, forging bonds with residents and successfully improving communities in which they serve. Most are rarely subject to any form of disciplinary complaint. Similarly, the Panel recognizes the work of the current and former Office of Professional Accountability (OPA) staff, the OPA Auditor and the OPA Review Board. Their dedication to their work, along with their contributions and candor toward the Panel reflects an ongoing commitment to improving police accountability.

Unfortunately, the public perception and reputation of the Seattle Police Department, including its disciplinary system and its ability to properly discharge its duties, can be tarnished by a limited number of troubled investigations or the actions of a minority of officers. This makes it imperative that the City respond decisively to cases that might indicate any problems with the integrity of the police accountability system.

The Panel wants to emphasize that police accountability involves much more than the disciplinary process. First and foremost, of course, it begins with the actions of each individual officer and is best enforced in every precinct by the leadership and direction of sergeants, lieutenants and captains. Yet, just as crucial, is the leadership of both the Chief of Police and elected City leaders. The Panel has made a number of recommendations that it believes will strengthen Seattle's police oversight system.

Critical to success and long-term accountability is the ongoing commitment by the Mayor and City Council to implement, monitor and fund the necessary improvements. The police accountability system in Seattle includes a variety of oversight mechanisms and reports. Without coordination, monitoring and follow-up, both accountability and public confidence suffer. Moreover, important improvements to the system should not substitute for employee benefits and should not be bargained away in labor agreements.

Seattle's multilayered police oversight structure is unique. Seattle's current system has operated for six years. The system has three separate components: 1) the Office of Professional Accountability, which is responsible for receiving and investigating complaints of misconduct and making recommendations to the Chief of Police; 2) the OPA Auditor, which is responsible for auditing completed case files and reviewing and making recommendations on pending investigations; and 3) the OPA Review Board, which is responsible for reviewing the OPA complaint process and resolving disputes between the OPA Auditor and the Police Chief.

The Office of Professional Accountability was created in November 1999, in response to recommendations of a citizen review Panel appointed by then-Mayor Paul Schell to evaluate the issue of employee accountability within the Seattle Police Department and the process used to investigate reports of police misconduct.

In 1999, after more than three months of investigation, the 1999 Panel's report concluded Seattle had a top-rate police department. No evidence of widespread corruption or misconduct was

found. The Panel's report offered a series of recommendations to increase confidence in the department's ability to maintain standards of professional integrity.

The cornerstone of the Panel's report was the creation of an Office of Professional Accountability. The first OPA Director, Sam Pailca, was nominated by the Mayor and confirmed by the Council in 2000. Under City law, OPA Directors can serve a maximum of six years. The current OPA Director, Kathryn Olson, was appointed by the Mayor and confirmed by the Council in 2007.

The Mayor also appoints and the Council confirms the Office of Professional Accountability Auditor. The Office of Professional Accountability Review Board is a three-member citizen Panel created and appointed by the City Council.

On June 29, 2007, Mayor Greg Nickels appointed an 11-member Panel to review Seattle's police accountability system and recommend improvements.

The Panel was asked to examine both the structure and processes of Seattle's police accountability system and to produce a final report offering its assessment of the system, as well as any recommendations for improving the structure or function of the system.

The Panelists have a broad range of experience and perspectives. The Panel members are: Judge Terrence A. Carroll, ret., Chair; Bob Boruchowitz, Vice Chair; Jenny A. Durkan; M. Lorena González; Pramila Jayapal; Gary Locke; Hubert G. Locke; Judith Krebs; Mike McKay; Norman B. Rice; and Jennifer Shaw.[1]

The Panel began its work in July 2007 and completed it in January 2008. Over the course of those seven months, the Panel held six public meetings and heard from 30 people at those meetings. The Panel also received written comment from approximately 10 people. Additionally, the Panel was provided with and reviewed more than 80 documents.[2] In addition to public meetings, the Panel as a whole held seven working sessions and the Panel's two subgroups each met three times for a total of six additional working sessions.[3] After examining both the process and structure of Seattle's police accountability system, the Panel prepared a series of recommendations and presented them to Mayor Greg Nickels on January 29, 2008, in the form of this report.

This Panel is acutely aware of the fact that its creation stemmed in part from several widely reported encounters between Seattle police officers and citizens from communities of color in the city. It highlights and underscores the degree to which race continues to be a critical factor in police-community relations, not only in Seattle but also across America.

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[1] Please see "2007 Police Accountability Review Panel Biographies," Appendix, page 15.
[2] Please see "Materials Provided to the Police Accountability Review Panel," Appendix, page 19, for a list of these materials.
[3] For additional information regarding Panel meetings, please visit this Web site: http://www.seattle.gov/policeaccountabilityreviewpanel/

Over the past several decades, the Seattle Police Department has improved its image and reputation in communities of color in our city. Periodic assessments of community attitudes toward the Department indicate this general development. At the same time, other indicators point to how much remains to be accomplished if a genuine climate of trust and cooperation is to exist between police officers and communities of color in Seattle. Recent media reports, for example, have highlighted racially disproportionate arrest and prosecution rates for possession of marijuana; a similar racial disproportionality has long been noted for arrests for crack and powdered cocaine. Incidents of stopping and searching vehicles and their occupants are often cited as a police practice in which race is a frequently determining factor. In general, a widespread impression maintains in communities of color in our city that the law is often enforced based on different assumptions and expectations where the race of citizens and neighborhoods are concerned.

Professional policing acknowledges that the law is enforced best and order maintained most effectively in communities where the police and citizens actively engage cooperatively and collaboratively in these tasks. From the police perspective, coming to terms with the factor of race and its impact on police attitudes, policies and practices should be a major, ongoing concern of the Seattle Police Department – one that should merit the attention and concern not just of its chief and the executive staff but precinct commanders, supervisors, the Police Guild, the Police Management Association, and every rank-and-file officer in the police service.

Police accountability is not a responsibility that can be assigned exclusively to an office and staff to carry out. Police accountability begins with the recruitment process – with the kind and character of the women and men who are admitted to the police ranks. It continues with their training, with their supervision once they are assigned to their posts, with the continual process of assessment and evaluation that is an essential part of every good personnel management process, and with the continuing education that is a necessary element in the professional growth and development of good officers.

The receipt and investigation of complaints regarding officer conduct or behavior is a vitally necessary part of assuring the public that accountability is a serious objective of the Department. The recommendations made in this report are designed to strengthen that process. In the final analysis, police accountability will be effective only to the extent that the Department and its officers acknowledge that the community that it is sworn "to serve and protect" is a community of citizens of widely diverse backgrounds, interests and ambitions, each one of whom is entitled to fair, courteous professional enforcement of the law.

General Bases of Recommendations

After reviewing the multitude of documents and public testimony, the Panel has defined the following as the bases upon which its recommendations are made. Although these are not designed to be "findings" per se, they are the overarching issues the Panel finds with regard to the existing police accountability system.

- The general structure of the police accountability system with the civilian OPA Director, OPA Auditor and OPA Review Board should continue. All three components of the existing system play roles in Seattle's police accountability system. Many aspects of the current police accountability system are valuable and encourage an effective citizen-complaint process.

- The intended working relationships among the OPA Director, OPA Auditor and OPA Review Board need to be better defined. Overlapping responsibilities and a lack of clarity around some of the roles of the individual components undermine the effectiveness, transparency and accountability of the system as a whole. These three components are not required to work together by ordinance or policy.

- The independent civilian review of the current system must be strengthened. A successful police accountability system can – and should have – entities playing both an internal role (as does the OPA Director) and a truly independent role (as do the OPA Auditor and OPA Review Board). Independent review directly affects public trust of decisions made by the Police Chief.

- All the Panel recommendations the City deems as not requiring collective bargaining prior to implementation should be implemented without delay. Any recommendations the City deems to require collective bargaining before implementation should be at the top of the City's agenda at the bargaining table. If agreement cannot be reached, the City should take the applicable proposals to arbitration with Panel members available to assist as witnesses. In addition, to the fullest extent of the law, existing aspects of the police accountability system endorsed by the Panel in this report must be vigilantly protected from erosion at the bargaining table.

Recommendations

The recommendations contained in this report are intended to provide the basis for moving forward to ensure Seattle has an effective and transparent process of police accountability.

While the Panel has concluded the existing police accountability system does not need to be replaced, the Panel does, however, find room for improvement and offers the following 29 recommendations for enhancing and strengthening the police accountability system in these four areas:

- Accountability & Public Confidence
- Independence
- Professional Conduct
- Transparency

Accountability & Public Confidence

1. The role and duties of the OPA Auditor should be clarified and expanded. This will require the responsibilities of the OPA Auditor to be increased beyond its current part-time independent contractor status. Specifically, the OPA Auditor's duties should include making recommendations to strengthen police accountability; performing in-depth reviews (audits) of substantive policies, procedures and/or training that affect police accountability; and issuing public reports on its findings. The compensation and resources available to the OPA Auditor must be made commensurate with its responsibilities.

   To increase accountability and public confidence, the Panel recommends both an expansion and a clarification of the role of the OPA Auditor. Currently, the central role performed by the OPA Auditor is the real-time review of OPA investigations while those investigations are under way. The OPA Auditor then issues a report on completed investigations. This is an important component of our existing civilian oversight system and should be maintained because it enhances the independence and quality of OPA investigations.

   However, the Panel also finds that the public's perception of independence is not necessarily enhanced for a number of reasons. First, the OPA Auditor's work is largely confidential and is conducted in conjunction with the Department. Second, the OPA Auditor's reports include a review of the very investigations in which the OPA Auditor played a role, leading to the perception that there is a potential conflict of interest. Third, the OPA Auditor's primary function of involvement in the real-time review has limited the OPA Auditor's ability to provide regular and thorough review of policies and practices and recommendations for improvement.

   The Panel recommends that the independent role of the OPA Auditor should be strengthened and expanded to ensure public confidence and accountability. In addition to its present duties, the OPA Auditor should focus on making recommendations to strengthen Department accountability after reviewing all reports regarding the

functioning of the Department, including public reports from the Firearms Review Board, the Civilian Observer to the Civilian Review Board, and the Police Intelligence auditor. The OPA Auditor also should conduct in-depth audits of substantive policies, procedures and/or training that affect the accountability of the Department or the public's perception of that accountability. The OPA Auditor should issue a public report on its findings. The policy, procedures and training topics to be audited should be decided in conjunction with the OPA Review Board and OPA Director. The OPA Auditor should publicly report in more detail about how the audit function was performed and should specifically state whether each audited investigation was complete, thorough, objective and fair, and if not, why not and what should be done differently in the future. The OPA Auditor should also state, for each investigation audited, whether he/she agrees with the classification and finding, and if not, why not.

In light of the additional duties of the OPA Auditor, the Panel recommends the amount of time allocated to the role be significantly expanded, with compensation and resources made commensurate with the responsibilities.

The Panel recommends that if this enhanced OPA Auditor role is adopted, the first in-depth review by the OPA Auditor should be the relationship between the Department and diverse communities, particularly communities of color.

2. Each year the OPA Director, OPA Auditor and OPA Review Board should agree upon at least three substantive policy or procedural areas that will be the focus of enhanced review by the OPA Auditor. One of the first issues that should be examined is how the Department's policies, practices and procedures affect communities of color.

   The review regarding how the Department's policies, practices and procedures affect Seattle's diverse communities would include not just the disciplinary system, but could include issues of training, allocation of resources among precincts or squads, deployment and use of lethal and less-lethal weapons, policing approaches and enforcement policies. Over the last several decades, the Department has improved its image and reputation in communities of color. Yet, it is also undeniable that challenges remain. Much remains to be accomplished if a genuine climate of trust and cooperation is to exist between police officers and communities of color in Seattle.

3. There should be a separation between OPA investigations and any related criminal or civil proceedings. OPA investigators should not be involved as investigators in any related civil or criminal matter. Pending civil or criminal matters should not delay OPA investigations.

   An OPA investigator should play no investigative role in any related civil or criminal proceeding. An OPA investigation should not be directed or influenced by counsel for any related civil or criminal proceeding. Any evidence uncovered in an OPA investigation should be made available in a criminal or civil proceeding, as required by law. An OPA investigation should move forward as much as possible and should not be delayed solely because a witness is unwilling to testify because he faces criminal charges. If a critical witness (including an officer or complainant) cannot be interviewed because of the pendency of a criminal matter, the OPA should have the discretion to extend the 180-day investigative period as necessary to gather relevant evidence.

4. SPD should adopt a rule that precludes the use of overtime or accrued vacation time to satisfy a disciplinary penalty that mandates suspension without pay.

   The imposition of a penalty that suspends an officer from duty without pay is one of the most serious disciplinary actions the department can impose. It should send a clear message that the behavior that results in suspension without pay is the most serious disciplinary sanction other than termination. The seriousness of this sanction should not be mitigated by allowing an officer to use vacation or other accrued time to satisfy it.

5. The OPA should focus its investigative resources on serious cases of misconduct. The OPA should identify complaints of a less serious nature as early as possible and encourage the resolution of these complaints through mediation.

   While every complaint filed with the OPA is a serious matter in the mind of the complainant, the OPA should explore other investigation and resolution options that would allow the office to concentrate its efforts on those complaints that are more serious in character and consequence. The Department must be cognizant that a pattern of "less-serious" complaints could be an indicator of a more serious problem and should treat it accordingly. There are, however, favorable reports regarding the mediation program initiated by SPD and we would encourage its continued use.

6. The OPA Director should attend all disciplinary hearings.

   Currently the OPA Director is not allowed to attend disciplinary hearings. By being present at the disciplinary hearing, the OPA Director will be made aware of all the circumstances surrounding the case and will be able to identify whether any new material information is being brought forward that was not disclosed during the OPA investigation.

7. If new material facts are disclosed at the disciplinary hearing, and the Chief is inclined to act contrary to the OPA Director's recommendation, the case should be sent back to the OPA for further investigation.

   OPA investigations may be undermined if material information is withheld or not disclosed during the OPA investigation, but then subsequently revealed during the disciplinary hearing after the investigation has been completed. This is particularly problematic if the Chief uses this new information to alter the recommendations of the OPA Director and command staff that did not have knowledge of the information. Allowing employees facing discipline to raise new material facts with the Chief after the investigation has concluded undermines the integrity of the OPA process and may encourage employees to be less cooperative during disciplinary investigations.

8. The 180-day limit to investigate a complaint of police misconduct should be able to be extended by the OPA for good cause (e.g., when further investigation is required due to new information introduced at a disciplinary hearing or when a material witness cannot be contacted due to a pending criminal proceeding).

   There is no specific time requirement in which to investigate cases if discipline is not contemplated, though timeliness is a concern for everyone involved. However, if discipline is to be imposed, labor union contracts require that OPA investigations be completed within 180 days. The Panel learned that the Department's ability to impose discipline was lost in a limited number of cases due to the failure to meet the 180-day deadline. The OPA has recently made great improvements in reducing the average time for all investigations, and is developing systems to ensure that discipline opportunities are not lost because of the Department's failure to adhere to time limitations. If there are reasons for delay in completing an investigation beyond the control of the Department, the 180-day rule should be permitted to be extended.

9. The City should review, evaluate and consider amending its policy relating to the use of *Garrity*[4] protections. Officers and City staff involved in implementing *Garrity* policy should be regularly trained in its appropriate use.

   The City must ensure its Garrity policy is clear to officers and City staff, and consistent with the City's system of professional accountability.

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[4]In Garrity v. New Jersey, the U.S. Supreme Court held that police officers are not required to sacrifice their right against self incrimination in order to retain their jobs. 385 U.S. 493 (1967). An officer cannot be compelled, by the threat of serious discipline, to make statements that may be used in a subsequent criminal proceeding. In a related case, Gardner v. Broderick, the Court held that an officer cannot be terminated for refusing to waive his Fifth Amendment right to remain silent. 392 U.S. 273 (1968). Therefore, if an officer gives a coerced statement, the statement is "protected," and cannot be used in a subsequent criminal prosecution. Such statements made by officers after receiving *Garrity* protection may be used for departmental investigation purposes, however, and refusal to provide a statement after invoking such privileges can be grounds for discipline. The practical application of *Garrity* is complicated as there are many issues involved, such as when an officer's statement is considered "coerced," whether *Garrity* extends to witness officers vs. the officer involved in an incident, and whether *Garrity* can/should be asserted routinely in incident and use-of-force reports.

10. OPA investigators should be provided with comprehensive training in the specialized skills needed for police internal investigations.

Police internal investigations are different from regular criminal investigations. When officers rotate into the OPA, it is essential they be provided with the specialized training needed to be an effective investigator. The Panel learned that OPA training in the past has been sporadic and inadequate to meet the needs of the investigators.

11. The OPA Review Board should be the primary link between the community and the police accountability system. The OPA Review Board should conduct at least four public hearings and/or community listening sessions each year.

The OPA Review Board's primary role should be to solicit and receive community input, identify areas of concern around policies that need to be addressed and bring those to the attention of the OPA Auditor and OPA Director. Each year, the OPA Review Board should develop a plan for community outreach efforts, in conjunction with the OPA Director to ensure full engagement of the public. The OPA Review Board's public hearings should provide a formal and public opportunity for communities to engage with the police accountability system, raise concerns and identify areas for policy review.

12. The OPA Review Board should research and report on national trends and best practices in police accountability and oversight; review OPA policies and procedures and provide recommendations for improvement; and should offer suggested topics for officer training.

There is a considerable body of knowledge and practice nationally regarding police accountability and the civilian oversight of law enforcement, based on the experiences of a number of American cities. The OPA Review Board should periodically examine this literature, maintain contact with other accountability and civilian review agencies, and recommend to the Department and, where necessary, the Mayor and City Council, those policies and practices that would improve the effectiveness of Seattle's process.

13. The OPA Review Board membership should be expanded from three to between five and seven members. The members should reflect the diversity of Seattle and should be Seattle residents.

To effectively engage the community, the OPA Review Board should be increased in size and its membership should be actively engaged with the residents they represent.

14. Civilian advocates from the Seattle Office for Civil Rights (SOCR) should be made available to assist OPA complainants through the process as needed.

SOCR should formally designate one or two employees as civilian advocates and widely publicize their availability as a resource to complainants. The advocates should provide complainants with information on how to access and navigate the OPA process.

Independence

15. The OPA Director should have control of the OPA budget and should report to the Mayor and City Council on the adequacy of OPA funding during the annual City budget process.

    The OPA Director should consult directly with the Mayor to establish OPA's budget requirements and should also have control over the use of that budget independent from the Chief of Police. This will help ensure the office has sufficient resources to carry out its mission.

16. The OPA Director, in consultation with the Police Chief, should have the authority to select and transfer OPA staff, including sworn investigators and the Deputy Director.

    The OPA Director needs to have the ability to manage OPA personnel and select the most qualified and best suited staff for the job.

17. The OPA Director should not have worked for the City of Seattle during the preceding 10 years.

    This recommendation is needed to avoid any potential conflicts of interest or other undue influences on the OPA Director's decisions.

18. The OPA Director should not become a member of the Firearms Review Board.

    A firearms review is not a disciplinary hearing. If a shooting raises disciplinary concerns, the Firearms Review Board can and should refer the matter to OPA for an independent review. These two functions need to be kept separate, although the OPA may have a role in providing additional public education to better explain the unique function of the Firearms Review Board.

19. The OPA Auditor should be a civilian and the position should remain outside of the Seattle Police Department.

    To ensure the independence of the OPA Auditor, it should continue to be a civilian position and the person appointed should have the highest reputation for integrity and independence.

Professional Conduct

20. SPD should adopt a policy that presumes an officer will be terminated for sustained complaints involving dishonesty that either relate to or occur within the scope of the officer's official duties, or that relate to the administration of justice. If the Police Chief chooses to impose a disciplinary sanction other than termination, he should be required to state his reasons in writing. This written statement shall be provided to the OPA Director, and upon request, to the Mayor and City Council.

    A police officer's honesty and integrity are key to the success of both individual officers and the Department. An officer's integrity is his/her calling card on the street; honesty is indispensable in courtroom settings to effectively prosecute those who violate the law. The Panel believes there cannot be too much emphasis in the Department on honesty and integrity.

21. The Police Chief should appoint a high-ranking ethics officer who would provide advice and guidance to SPD employees on issues related to professional conduct and accountability.

    The challenge of translating the demands and responsibilities that are a part of police professionalism into terms that rank-and-file officers will understand, accept and uphold is one that can be addressed by the appointment of an ethics officer who is a senior member of the Department with command experience. This person should have a major responsibility for developing appropriate training materials, especially for use in the police academy but also at other training levels in the Department, that provide opportunity for discussion of situations, circumstances and dilemmas encountered by officers that raise questions or problems regarding professional conduct. It should be the overarching goal of this post to invest the ideal of police professionalism and accountability with meaning and substance, so that it will be seen by Seattle police officers as a career goal toward which to aspire and one valued both by the Department and the community.

22. SPD should adopt a policy prohibiting retaliatory contact with a complainant.

    The Panel heard some concerns about officers who were the subject of a complaint having contact with complainants. While it is possible that officers may have contact with complainants in the normal course of their duties, the Department should have a clear rule that any type of retaliatory contact is prohibited and will result in discipline. This will improve public confidence.

23. SPD should implement additional training and policies to improve the cultural competence within the Department to reflect the greater diversity of Seattle.

    The Panel recommends that this item be among the first things addressed in the audit of the relationship with communities of color.

Transparency

24. The OPA should adopt a policy that requires public disclosure of all OPA records to the maximum extent allowed by law. Records of all sustained complaints, including the punishment imposed, should be made public in a format designed to protect the privacy of the officers and complainants to the extent required by law.

    The Panel believes the existing labor agreements restrict public access to OPA records to such a degree there is a lack of understanding of the OPA process and how decisions are made. Consequently, public trust is undermined when controversial issues arise and the records and the reasons for decisions are kept from public view. The City should renegotiate current labor agreements to allow maximum public access to OPA records.

25. When the Police Chief changes a recommended finding from the OPA, the Chief should be required to state his reasons in writing and provide these to the OPA Director. A summary of the Chief's decisions should be provided to the Mayor and City Council upon request.

    While the OPA Director makes findings and disposition recommendations to the Police Chief, the Chief has the final word and may alter the finding or the recommended disposition. It is essential the OPA Director be informed of the Chief's reasons for altering the OPA Director's findings or recommendations. This would help the OPA identify potential problems with the investigation process and/or disparities in how policies are interpreted. The OPA Auditor should monitor the number of and the rationale for differences of opinion between the OPA Director and Chief, and identify areas in need of improvement or clarification.

26. The OPA Director, OPA Auditor and OPA Review Board should meet quarterly and each should independently prepare and jointly present a semiannual report to the Mayor and City Council.

    Coordinating the release of their reports will make it easier for the community to track issues and recommendations related to Seattle's police accountability system. The reports should include recommendations for improvement and a status report on the implementation of prior recommendations. The reports should be presented publicly and distributed widely in the community. In particular, those reporting should look for patterns of concern emerging over the course of a year that may be addressed through disciplinary practices and policies, as well as additional training.

27. Within 60 days of receiving recommendations from the semiannual reports, the Police Chief should respond in writing with a list of the recommendation(s) that the Chief is rejecting, an explanation for the rejection(s) and a timetable for implementing the accepted recommendations.

During the course of the Panel's work, the OPA was asked to provide a status report for the implementation of all recommendations made by the 1999 Citizens Panel, the OPA, the OPA Auditor and the OPA Review Board since the inception of the OPA. This list included more than 100 recommendations. While many recommendations had been implemented, some were only partially implemented and some had been rejected by the Police Chief. Requiring the Police Chief to provide a timely response to any recommendations presented will provide the public with an early indication of how the Police Department will respond and the OPA Auditor with the means of identifying and tracking those recommendations that will be implemented.

28. The OPA Auditor should monitor the progress of all OPA-related recommendations being implemented by the Police Department, including the recommendations that are accepted from this report. The OPA Auditor should report on the implementation status in the semiannual reports.

The Panel found there is currently no process for identifying which recommendations the Department is implementing and for monitoring the progress of implementation. The OPA Auditor is well positioned to keep track of those recommendations that are being implemented.

29. The OPA Director should document all correspondence and substantive interactions with the OPA Auditor and the OPA Review Board relating to the disciplinary process and the oversight system.

The Panel found there was sometimes miscommunication between the different components of the police accountability system, as well as some regular substantive communications that may later be called into question. To ensure an accurate and transparent process, substantive communications should be well documented.

Conclusion

The Panel believes the general structure of the police accountability system with the civilian OPA Director, OPA Auditor and OPA Review Board should continue. However, there are a number of improvements and enhancements that should be made to each of the components and the coordination between the components should be strengthened. Aspects of the current police accountability system are valuable and work to encourage an effective citizen-complaint process. The Panel has attempted to reconcile those valued aspects of the existing police accountability system with those areas that could use some improvement.

The Panel believes the integrity and trust for the citizen-police complaint process must be founded on the clear goals of improving the following aspects of the police accountability system:

- Accountability & Public Confidence
- Independence
- Professional Conduct
- Transparency

The Panel's recommendations are offered to the Mayor to help the City of Seattle achieve these goals. These goals should be viewed as interconnected and as offering a seamless path for strengthening the compact of trust between our citizens and police. Without these goals, the system fails.

2007 Police Accountability Review Panel Biographies

Terrence A. Carroll, Chair

Carroll served as a consultant advisor to the 1999 Citizen Review Panel convened by then-Mayor Paul Schell to evaluate the issue of employee accountability within the Seattle Police Department, and was the first Internal Affairs Auditor for SPD, serving from 1992-2003. Carroll was appointed to the King County Superior Court in 1980 and served until 1992. During his tenure on the bench, Carroll conducted several hundred settlement conferences. In addition, he presided over hundreds of jury and non-jury cases. He also served as Chief Criminal Judge and Presiding Judge at Juvenile Court. He stepped down from the bench to join the private Judicial Arbitration and Mediation Services and formed his own company, Judicial Dispute Resolution, LLC, with several other retired judges in 1997. Since starting his mediation and arbitration work, Carroll has heard more than 4,000 mediations and more than 1,000 arbitrations. He most frequently hears cases in the areas of business, probate, tort, property and construction law. He has also served as special master in dozens of complex cases. Carroll is a frequent lecturer at legal seminars in the area of alternative dispute resolution. He has participated in a wide range of community activities and has served as a consultant to the Port of Seattle, the King County Sheriff's Office and the Commission on Judicial Conduct. Also, he has served as a rule of law adviser to several countries following the breakup of the former Soviet Union. From 1974 to 1980, he was in private practice with experience before that as a deputy prosecutor and public defender. In 1966 Carroll earned a Bachelor of Arts degree from Seattle University and a law degree from Georgetown in 1969. He graduated from the National Judicial College in 1981.

Bob Boruchowitz, Vice Chair

In 2007, Bob Boruchowitz became a Visiting Professor at Seattle University's Youth Advocacy Clinic, teaching courses in juvenile law, after stepping down as Director of The Defender Association (TDA), where he worked for 33 years. While at The Defender Association, he began the Defender Association's Racial Disparity Project; oversaw the establishment of TeamChild with Columbia Legal Services; led a management team in negotiating the first collective-bargaining agreement for public defenders in the county; and helped develop state and national public-defender standards. Boruchowitz also served as president of the Washington Defender Association for 20 years and served on dozens of other local and national committees and boards; and argued a case before the U.S. Supreme Court in 2000. He is on the Washington Minority and Justice Commission. He was a Soros Senior Fellow in 2003. He is a frequent speaker at legal seminars on a variety of topics, including ethics. He has participated in evaluations of public defender programs in five states and the District of Columbia. He earned a Bachelor of Arts degree in political science from Kenyon College in 1970 and a law degree from Northwestern University School of Law in 1973.

Jenny A. Durkan

Jenny Durkan is a prominent Seattle attorney known for successful criminal and civil litigation, and for her continued civic leadership. Formerly the Governor's Executive Counsel, she chaired the Attorney General's Consumer Privacy Task Force, co-chaired the U.S. District Judge selection committee, served as the first Citizen Observer on the Seattle Police Firearms Review Board and was a member of the 1999 Citizen Review Panel convened by then-Mayor Paul Schell to evaluate the issue of employee accountability within the Seattle Police Department. Durkan

taught Trial Advocacy at the University of Washington Law School and serves on the WSBA Board of Governors. She is a founding board member for the University of Washington's Center for Women and Democracy. She recently worked with the Center and the National Democratic Institute doing political training in Morocco.

M. Lorena González

Lorena González is an associate at Schroeter Goldmark & Bender. For the past two years, González has represented individuals and workers whose rights have been violated or individuals who have been severely injured by negligence or governmental misconduct. Her practice has focused on race and national origin discrimination, police misconduct and employment discrimination. She has litigated against the State of Washington, Washington counties, private companies and insurance companies on behalf of individuals. González is a native Washingtonian who grew up in the Lower Yakima Valley as a migrant farm worker. In 1999, she earned a Bachelor of Arts degree in business administration from Washington State University and a law degree from Seattle University School of Law in 2005. Upon graduation, Lorena began working as a full-time associate for Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP, where she focused her practice in civil rights, governmental misconduct, employment discrimination, medical malpractice and negligence. She has litigated numerous cases in both federal and state court.

Pramila Jayapal

Pramila Jayapal is the founder and Executive Director of Hate Free Zone (HFZ), a nonprofit organization whose mission is to advance the fundamental principles of democracy and justice through building power in immigrant communities in collaboration with key allies. Since its creation, HFZ has grown into a leading voice for its courageous and ground-breaking work on behalf of immigrant and refugee communities targeted post-9/11. Under Pramila's leadership, Hate Free Zone has successfully passed numerous policy initiatives at the City, County and State levels to recognize the contributions of immigrants and to ensure they have access to essential services. Hate Free Zone has also organized thousands of immigrants in diverse communities and in conjunction with allies from numerous sectors to ensure fairness and justice for all immigrants. Hate Free Zone won early successes, including a successful class action lawsuit with pro bono counsel against the Federal government for the deportation of more than 4,000 Somalis back to Somalia. Hate Free Zone's civic engagement work has included the registration of more than 21,000 new immigrant citizens to vote. Pramila's previous work includes more than 15 years in international and domestic social justice issues, working across Africa, Asia and Latin America. Pramila has a Masters in Business Administration from Northwestern University's Kellogg School of Management, and a B.A. from Georgetown University in English and Economics.

Judith Krebs

Judy Krebs serves as General Counsel at Service Employees International Union (SEIU) Healthcare 775NW, a union representing more than 30,500 long-term health care workers. Prior to that, she served as an Assistant Attorney General, representing Washington residents in telephone and energy utility matters before the Washington Utilities & Transportation Commission, other administrative agencies and the courts. Before joining the Attorney General's staff, Judy was an Associate at Schwerin Campbell Barnard & Iglitzin LLP, focusing on labor

and employment issues. She has served as President of the Seattle Jobs Initiative, is currently a member of the Seattle City Light Advisory Board and is treasurer of the Washington Association of Churches. In 1989, she earned a Bachelor of Arts degree in Philosophy and Political Science from the State University of New York at Oswego. After college Judy enjoyed a career leading campaigns and organizations devoted to economic justice, including passage of the 1998 Washington initiative increasing the minimum wage. In 2001 she received a law degree from the University of Washington.

Gary Locke

Gary Locke was elected Washington's 21st governor on Nov. 5, 1996, making him the first Chinese-American governor in U.S. history. On Nov. 7, 2000, Locke, a Democrat, was re-elected to a second term. Upon leaving Washington's governorship, Locke joined the Seattle office of international law firm Davis Wright Tremaine LLP, in its China and governmental-relations practice groups. After receiving his law degree from Boston University in 1975, Locke worked for several years as a deputy prosecutor in King County, prosecuting felony crimes. In 1982, Locke was elected to the Washington State House of Representatives, where he served on the House Judiciary and Appropriations committees, with his final five years spent as chairman of the House Appropriations Committee. Prior to being elected governor, Locke served as chief executive of King County in 1993 and took on the issues and challenges facing Washington's largest county. Locke received a Bachelor of Arts in political science from Yale University in 1972.

Hubert G. Locke

Hubert G. Locke is Professor of Public Affairs, Dean Emeritus, and Marguerite Corbally Professor of Public Service at the Evans School of Public Affairs at the University of Washington. Locke served as a consultant advisor to the 1999 Citizen Review Panel convened by then-Mayor Paul Schell to evaluate the issue of employee accountability within the Seattle Police Department. After graduate work at the University of Michigan, Locke became the first Executive Director of the Citizens Committee for Equal Opportunity, a civil rights organization in Detroit, where he worked from 1962 to 1965. Subsequently, he was appointed Administrative Assistant to the Detroit Commissioner of Police, serving from 1966 to 1967. Between 1967 and 1972, he was an Adjunct Assistant Professor of Urban Education and Fellow of the Center for Urban Studies at Wayne State University, and from 1972 to 1975 was Dean of the College of Public Affairs and Community Service and Associate Professor of Urban Studies at the University of Nebraska at Omaha. Locke joined the University of Washington in 1976 as Professor of Public Affairs and Associate Dean of the College of Arts and Sciences. In 1977, Locke was appointed Vice Provost for Academic Affairs and in 1982, Dean of the Evans School. His major research interests are in management and policy issues in American policing. He is author and editor of several books and numerous chapters in publications dealing with race, criminal justice, religion and public policy. His publications in the field of American policing and the administration of justice include **The Detroit Riot of 1967**; *Police Brutality and Police Review Boards* and an essay in **The Color of Law and the Issue of Color: Race and Abuse of Police Power** entitled *Justice for All: Understanding and Controlling Police Abuse of Force.*

Mike McKay

Mike McKay is one of the founding partners of McKay Chadwell, PLLC. With his experience as a former U.S. Attorney, he has established a law practice focusing on commercial litigation, white-collar criminal defense, and corporate internal investigations. As U.S. Attorney for the Western District of Washington in Seattle from 1989 to 1993, McKay supervised the litigation of many prominent lawsuits filed on behalf of or against the United States. In 1999, then-Mayor Paul Schell asked McKay to investigate police policies and procedures in the wake of allegations that a police detective stole money from a homicide victim. As a result, he served as vice chair of a four-member Citizens Review Panel which made more than 20 recommendations to improve the Seattle Police Department. McKay graduated from the University of Washington in 1973 with a Bachelor of Arts degree in Political Science and in 1976 received a law degree from Creighton University School of Law.

Norman B. Rice

Norm Rice, Seattle's 49th Mayor, served two terms beginning in 1990 and was Seattle's first and only African-American Mayor. Prior to becoming Mayor, he served 11 years on the Seattle City Council. When he left City government in 1998, he jointed the Federal Home Loan Bank of Seattle, serving as President and CEO until 2004. Rice is the former Vice Chairman of Capital Access LLC, an investment bank specializing in municipal, energy and philanthropic finance. He is now a visiting practitioner at the Evans School of Public Affairs at the University of Washington. Before entering City government, he worked as a reporter at KOMO-TV News and KIXI radio, served as Assistant Director of the Seattle Urban League, was Executive Assistant and Director of Government Services for the Puget Sound Council of Governments, and was employed as the Manager of Corporate Contributions and Social Policy at Rainier National Bank. Rice earned a Bachelor of Arts degree in communications from the University of Washington in 1972 and received his Master of Public Administration from the Evans School in 1974.

Jennifer Shaw

Jennifer Shaw joined the American Civil Liberties Union of Washington as the Legislative Director in November 2004. Shaw was a trial attorney with the firm Aoki & Sakamoto for eight years, representing individuals in criminal defense, personal injury, civil rights, and discrimination cases. Prior to that, she was a staff attorney for the Seattle-King County Public Defender Association for seven years. Ms. Shaw has served as a Commissioner Pro Tem for King County Superior Court and has chaired the Criminal Law Section of the Washington State Trial Lawyers and the Legislative Committee for the Washington Association of Criminal Defense Lawyers. In 2006 she served on the King County Sheriff's Blue Ribbon Panel, charged with reviewing and researching management systems for addressing employee misconduct and discipline in the Sheriff's Office; gaining an understanding of best management practices in other police departments and their applicability to the office; and making recommendations for improvements to the accountability system for misconduct and discipline. She also participated in a series of community forums in Spokane discussing police accountability and independent oversight. She is a 1987 graduate of Seattle University Law School and earned undergraduate degrees in English and Political Science from the University of Washington in 1984.

Materials Provided to the Police Accountability Review Panel

Meeting Date	Materials Provided
December 10	1. Clerk File No. 307684, SPD Firearms Review Board, Citizen Observer Report 2005 2. Clerk File No. 304128, SPD Firearms Review Board, Citizen Observer Report 2000
November 19	1. Presentation provided by Pierce Murphy, Community Ombudsman, Boise, Idaho (dated 11/19/07)
November 5	1. Memo from OPA REVIEW BOARD re: 180 day rule (dated 10/30/07) 2. Memo from K. Olson re: Mediation Program (dated 10/31/07) 3. Memo from K. Olson re: Sample OPA Complaint Closure Letters (dated 11/1/07) 4. Memo from K. Olson re: Investigation Tenure and Avg Investigation Time Comp (dated 11/1/07) 5. Memo from K. Olson re: OPA Outreach and Training within SPD (dated 11/1/07) 6. Memo from K. Olson re: Duty to Report (dated 11/1/07) 7. Memo from K. Olson re: Source of OPA Complaints (Internal vs. External) (dated 11/1/07)
October 22	1. Presentation on OPA Case Processing: Two Sample Cases, presented by Lt. Michael Kebba and Sgt. Randal Woolery in OPA (dated 10/22/07) 2. Memo from K. Olson re: 180-day rule (dated 10/17/07) 3. Memo from K. Olson re: Training of OPA staff (dated 10/17/07) 4. Memo from Sgt. David Sweeney to K. Olson re: Overview of Early Intervention (dated 10/17/07)
October 1	1. Recommendations by the OPA Auditor and OPA Review Board (from Peter Harris, dated 9/27/07) 2. Letter from OPA Director to PARP (dated 10/1/07)
September 10	1. Summary of OPA Policy Recommendations and Implementation 2003-2006 (dated 9/6/07) 2. Chief's Expectations for Employee Conduct (dated 8/1/00) 3. SPD Unbiased Policing Policy (effective date 1/28/04) 4. SPD Mission Statement and Priorities (effective 7/22/02) 5. Supervisory Interventions Statistics (dated 9/10/07) 6. Letter from OPA REVIEW BOARD to PARP re: OPA REVIEW BOARD's Recommendations for OPA (dated 9/6/07)

Materials Provided to the Police Accountability Review Panel

Meeting Date	Materials Provided
August 20	1. Chief Kerlikowske's Comments to PARP (dated 8/20/07) 2. Sam Pailca's Comments to PARP (dated 8/20/07) 3. Kate Pflaumer's Comments to PARP (dated 8/20/07) 4. Mediation Program Review (dated 8/15/07) 5. Mayor Review Panel - 2004-2006 Statistics (dated 8/15/07)
July 30	1. Public Disclosure Act Primer, prepared by Jeff Slayton, City Law Department (dated 7/30/07) 2. Police Labor Relations Overview, prepared and presented by Mike Fields, City Labor Relations and Paul Olsen, City Law Department (undated) 3. Police Accountability System Overview, prepared by Kathryn Olson, OPA Director (dated 7/30/07) 4. 2006 OPA Statistics Update (undated)

Miscellaneous Materials: (these materials were provided to the Panel prior to the first meeting)

- A Review of Police Accountability in Seattle: Rationale and Overview (included in Mayor's press release dated 6/29/07)
- 2007 Police Accountability Review Panel member biographies (included in Mayor's press release dated 6/29/07)
- Citizens Review Panel Final Report (37 pages, dated 8/19/99)
- Seattle Police Department Accountability Action Plan (42 pages, dated 9/21/99)
- SMC 3.28, Subchapter VII, Office of Professional Accountability (13 pages)
- Council Bill Number 112993, Ordinance Number 119805, establishing an Office of Professional Accountability Director's position effective January 1, 2000 (4 pages)
- Council Bill 113040, Ordinance Number 119816, creating an Office of Professional Accountability and adding a new Subchapter VIII to Section 3.28 of the Seattle Municipal Code (7 pages)
- Council Bill 114088, Ordinance 120728, relating to the Office of Professional Accountability, the Office of Professional Accountability Auditor, and the Office of Professional Accountability Review Board (repealing sections of the SMC and adding new sections of the SMC) (25 pages)
- Roster of U.S. Civilian Oversight Agencies (20 pages)
- Citizen Review of Police – Approaches and Implementation, US Department of Justice (167 pages, dated March 2001)

OPA Reports: (these materials were provided to the Panel prior to the first meeting)

- 2001 OPA Mid-Year Report, submitted by Sam Pailca (26 pages, dated July 2001)
- SPD OPA Annual Report, submitted by Sam Pailca (36 pages, dated June 2002)
- SPD OPA Annual Report, submitted by Sam Pailca (49 pages, dated Fall 2003)
- SPD OPA Complaint Statistics 2003, submitted by Sam Pailca (23 pages, dated Summer 2005)
- SPD OPA Complaint Statistics 2004/2005, submitted by Sam Pailca (31 pages, dated Spring 2006)

- SPD OPA Policy Review and Outreach, submitted by Sam Pailca (21 pages, undated)
- SPD OPA Role in Policy Review and Risk Management at SPD, submitted by Sam Pailca (17 pages, undated)
- SPD OPA SPD Mediation Program Review, submitted by Sam Pailca (32 pages, dated August – December 2005)
- SPD OPA Statistical Review of the SPD Mediation Program, submitted by John Fowler (14 pages, dated 2006)
- SPD OPA Seattle's Response to Concerns about Racially Biased Policing, submitted by Sam Pailca (29 pages, dated June, 2003)
- SPD Special Report – Use of Force by Seattle Police Department (19 pages, dated November 2001)
- SPD OPA Report on Use of Force Complaints Received in 2003, 2004, and 2005 (25 pages, dated January 2007)
- SPD OPA Commendations & Complaints Report (10 pages, dated May 2007)
- SPD OPA Brochure entitled "How Concerns About Police Misconduct are Resolved (2 pages, undated)
- SPD OPA Report of the OPA Director in Response to Mayor Nickels' Request for Review of Investigation of the OPA Complaint Filed by George T. Patterson (24 pages, dated July 9, 2007)

OPA Auditor Reports: (these materials were provided to the Panel prior to the first meeting)

- SPD OPA Report of the Civilian Auditor for April – December, 2003, submitted by Kate Pflaumer (15 pages)
- SPD OPA Report of the Civilian Auditor for January – September, 2004, submitted by Kate Pflaumer (13 pages)
- SPD OPA Report of the Civilian Auditor for October 2004 – March 2005, submitted by Kate Pflaumer (7 pages)
- SPD OPA Report of the Civilian Auditor for April – September, 2005, submitted by Kate Pflaumer (7 pages)
- SPD OPA Report of the Civilian Auditor for October 2005 – March 2006, submitted by Kate Pflaumer (11 pages)
- SPD OPA Report of the Civilian Auditor for April – September, 2006, submitted by Kate Pflaumer (11 pages)
- SPD OPA Report of the Civilian Auditor for October 2006 – March 2007, submitted by Kate Pflaumer (8 pages)

OPA Review Board Reports: (these materials were provided to the Panel prior to the first meeting).

- OPA REVIEW BOARD Strategic Plan, 2003-2005 (3 pages)
- OPA REVIEW BOARD Second Quarterly Report (5 pages, dated January 2003)
- OPA REVIEW BOARD Semi-Annual Report (3 pages, dated June 30, 2003)
- OPA REVIEW BOARD 2003 Year End Report (20 pages, dated January 2003)
- OPA REVIEW BOARD Status Report (6 pages, dated December 5, 2006)
- OPA REVIEW BOARD Annual Retreat Summary Report (4 pages, dated March 4, 2007)
- OPA REVIEW BOARD An Oversight Considerations and Discussion Paper by Michael Pendleton, Ph.D. (4 pages, dated June 18, 2003)

- Council Bill 113041, Ordinance Number 119825 abolishing the position of the Internal Investigations Auditor and replacing it with an Office of Professional Accountability Review Board and amending the SMC (8 pages, dated December 22, 1999)
- Council Bill 115542, Ordinance Number 122126, modifying SMC to allow OPA REVIEW BOARD access to unredacted OPA files (4 pages, dated June 12, 2006)
- Council Bill 115573, Ordinance Number 122127, amending SMC to establish the number of terms OPA REVIEW BOARD members may serve (2 pages, dated June 12, 2006)

TAB 5

Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
April-September 2008

STATUS OF CIVILIAN OVERSIGHT: Recommendations and Implementation of Changes

The three-part system for civilian oversight of the Police Department has undergone re-examination and adjustment in the past year. Two "blue ribbon" panels of prominent volunteers met extensively and received testimony. On January 29, 2008, the Police Accountability Review Panel [hereinafter the Mayor's Panel] released a report with 29 suggested changes in civilian oversight of the police, which the Mayor accepted. On June 12, 2008, the Seattle City Council Police Accountability Panel [hereinafter the Council's Panel] released a report supporting those recommendations and suggesting others intended to "complement and extend them." Both panels recommended that sworn personnel should continue to investigate allegations of misconduct by police employees under the leadership of a civilian Office of Professional Accountability [OPA] Director, who would continue to sit on the Command Staff. Both recommended expanding the role of an independent OPA Auditor and the membership of the OPA Review Board.

Combined with these suggested changes, the present Auditor is operating under a revised contract; the City signed a contract, with addenda and MOA's, with the Seattle Police Officers' Guild [hereinafter the Guild;] and the City Council passed a modifying Ordinance. Below is a summary of the major recommended changes in roles, reporting obligations, and procedures, with implementations to date.

Roles

<u>The OPA-IS and Civilian Director</u>

Both reports recommended that sworn personnel, under the leadership of a civilian Director, continue to provide initial classification and investigate allegations of misconduct by Department employees. The panels chose this mode over an outside investigative body: a choice in favor of effectiveness and credibility within the Department. The Director continues to sit on the

Command Staff and to recommend policy changes at that level. The Mayor's Panel recommended that the Director should attend "disciplinary" or so-called *Loudermill* "due process hearings," which are meetings of the employee with the Chief when a sustained finding and discipline are proposed. This change has been implemented by the new Ordinance and in practice. The Panel also recommended that the Director have control of the OPA budget. Under the new Ordinance, the Director makes recommendations regarding the OPA budget directly to the Mayor and the Council. It was also recommended that the Director have authority, in consultation with the Chief, to select and transfer OPA staff. This was the practice prior to the Panel's recommendation and continues.

There were two negative precautions: the Director should not have worked for the City in the preceding ten years and should not become a member of the Firearms Review Board. So far these recommended prohibitions have not been an issue.

The Director was advised to document all correspondence and substantive interactions with the Auditor and Review Board relating to the disciplinary process. This was and is the practice.

The Mayor's Panel suggested that the Chief appoint a high-ranking ethics officer who can provide advice and guidance to employees on issues of professional conduct. The Chief appointed a "Captain of Ethics and Professional Responsibility," in April 2008. The initial and primary focus is on ethical decision-making and the exercise of discretion "... in dealing with arrest, search, and seizure." The Captain is to serve as a Department resource for best practices on issues such as "...immigration policy; race and social justice; and racial profiling...."

The Council Panel recommended that "at least one third of the officers assigned to work at OPA should be detectives." All but one of the investigators of OPA-IS are detective sergeants, meaning they have passed qualifications for detective.

Role of the Auditor

In contrast to the last "blue ribbon panel" five years ago, which advised the City to abolish the Auditor position, both the Mayor's and Council's Panels recommended expansion of the role, continued as a civilian outside the

Department, doing real-time review of investigations. The Mayor's Panel opined that the Auditor's responsibilities "...should be increased beyond its current part-time independent contractor status." The commentaries regarding this new role and a recommended report on the Department's relationship with communities of color suggested that the Auditor review substantive policies and procedures beyond the OPA, to include the Firearms Review Board, the Police Intelligence Auditor, and "...issues of training, allocation of resources among precincts or squads, deployment and use of lethal and less-lethal weapons, policing approaches and enforcement policies." While the Mayor adopted and the Guild agreed generally to an expanded Auditor role, the job crafted so far has a more narrow focus on the OPA and on policies and procedures that relate to investigation of alleged misconduct. The term of this Auditor has been extended, subject to Council confirmation, until April 10, 2009. A modified contract explicitly authorizes critical review of outcomes; requires reporting on implementation of recommended changes in oversight, provides for quarterly meetings with the Director and Review Board, and coordination of in-depth reviews of "substantive policies, procedures and/or training that impact police accountability and/or the disciplinary system."

Although not endorsing a Department-wide inspector, the Mayor approved a larger role in review of policy and practice by requesting the Auditor to examine obstruction arrests where no further charges resulted. The Auditor reviewed 76 such cases from the past two and a half years and published a report in early October.

The City Council passed an Ordinance that also expands the powers of the Auditor, by giving him/her the authority to order rather than merely suggest additional investigation and assuring that all OPA records will be available.

Role of the OPA Review Board

The same Ordinance expanded the membership of the volunteer civilian Review Board to seven members of diverse backgrounds, tasked to review the complaint handling process as a whole, particularly its fairness, thoroughness and timeliness; advise the City and Department on policies and practices related to accountability and professional conduct; and organize and conduct public outreach focused on the complaint handling process and the professional conduct of police officers. The Mayor's Panel recommended the Board conduct at least four public hearings and/or community "listening sessions" each year. As well as being the primary link with the public, the Board is asked

to report on national trends and best practices in police oversight. The Ordinance and an MOA with the Guild provide that the Board not seek to influence or comment on the outcome of any particular case. The Board may continue to request and review randomly selected closed, redacted case files.

The Council's Panel also recommended the City indemnify the Review Board members and provide unredacted case files to them. The issue of unredacted files is pending in litigation.

The seven new Board members took office in September 2008. The Board has conducted a half-day training session attended by the Auditor and Director, who served as instructors for part of the session. The Board has set a regular schedule for its meetings. Various new members are learning about the system by attending the National Association for Police Oversight of Law Enforcement [NACOLE] conference, the Police Academy, going on ride-alongs, and sitting in on internal training sessions, as well as meeting informally with police and community groups.

Reports

The Review Board is tasked by the Ordinance to recommend topics for the Auditor's review of Department policies and practices related to accountability. The Board itself is to submit semiannual reports to the Council, Mayor, Chief, City Attorney and Clerk. The Auditor is also to prepare semiannual reports, as has been the practice. The Director is to compile and report on statistics concerning OPA case processing, which can be reviewed by the Board and Auditor, and make policy recommendations. This has also been the practice to date.

The Mayor's Panel suggested the reports of the OPA Auditor, Director and Review Board should be independently prepared, but jointly presented. The Auditor's contract specifies the Auditor, Director and Review Board should combine semi-annual reports into a single document. At this point, the Review Board is not yet in a position to report. This Auditor's Report includes commentary by the Director, as was done in the Spring 2008 Report, particularly where there were different views of cases or policy. The Chair of the Review Board has reviewed a draft and offered suggestions for this Report.

In keeping with the recommendations of both Panels, the Auditor's present contract and the Ordinance provide for consultation among the Review Board,

Director and Auditor on subjects for enhanced review by the Auditor. The Obstruction Report was such a subject, agreed to by the former Review Board and contributed to by the Director and Associate Director of OPA, as well as two designated members of the new Review Board and its Adviser.

The Panels recommended an in-depth look at the Department's relationship with diverse communities. The OPA Director and Auditor have begun by assessing the Department's own outreach to communities of color and diversity. The Review Board has designated liaisons for immediate cooperation with the Auditor and Director, and will address its public outreach role in the coming year.

The Council Panel recommended an annual Auditor report analyzing the "level of discipline imposed for various types of police misconduct." This has not been done to date. This Panel also recommended the Auditor annually report on OPA's response to "possible police misconduct as reported by Risk Management." While a specific report has not been done on this issue, the interaction of Risk Management and OPA was addressed in the Obstruction Report.

Procedures

The Panels and the new Ordinance foresaw greater cooperation among the three oversight entities, and it is fair to say that recommendation is being followed to the extent practicable. A Review Board training participated in by the Auditor and Director occurred on November 15th and was the second joint meeting; a joint report on diverse communities is anticipated; and the Auditor's reports include the Director's perspective on issues and cases.

Other recommendations for process changes are somewhat more difficult. The Mayor's Panel's third recommendation, for instance, was that:

> [t]here should be a separation between OPA investigations and any related criminal or civil proceedings. OPA investigators should not be involved as investigators in any related civil or criminal matter. Pending civil or criminal matters should not delay OPA investigations.

The commentary following this section is somewhat at odds with the last sentence, suggesting that the OPA extend its investigation time to accommodate

the unavailability of an employee or witness due to pending criminal charges. The Council's Panel made a similar suggestion. The Guild agreed to the separation of criminal and administrative investigations, but continues to control the timing of internal investigations. Its contract provides that an officer must be advised of potential discipline within 180 days of when the OPA or a sworn supervisor is notified of the alleged misconduct. That time may be extended if the officer is unavailable, but only with Guild approval for the unavailability of a witness or subject.

The OPA does complete its investigations (by and large) within the 180-day period even if a witness or complainant chooses not to cooperate. It generally awaits the outcome in misdemeanor criminal cases against the officer. The Department's former practice of discharging any employee facing a felony was invalidated by the Public Safety Civil Service Commission recently, so administrative discipline will now likely await the outcome of felony charges as well. The Auditor is regularly made aware of pending criminal cases against officers, without the names. The OPA monitors the status of pending criminal investigations through regular meetings with the Chief. In sum, then the separation of criminal and civil investigations has been accomplished, with some consequences not anticipated by the Panels, discussed under "Policy Issues" at the conclusion of this Report.

The Mayor's Panel also suggested that the OPA should identify serious cases of misconduct and focus investigative resources thereon as soon as possible. This is and has been the practice, including review of OPA's classifications by the Auditor. The Panel went on to recommend that the OPA should encourage mediation of less serious charges. Both parties must agree to mediate a complaint, and the Director reviews all cases and refers those that seem suitable for this face-to-face disposition. Following mediator training in August, OPA coordinated with the Guild to approve an expanded list of available mediators. The Council's Panel suggested in addition that there be written guidelines for mediation cases, which would exclude serious cases, cases where the officer has a history of complaints, or where individuals have in the past failed to participate in good faith. Since these guidelines are adhered to in practice, the Director does not feel it necessary to set any hard and fast rules.

The Council's Panel also recommended the OPA be explicitly authorized to investigate misconduct that may come to light through a lawsuit or claim filed against the City, or a criminal case. It is presently so authorized. The Auditor has similarly recommended that OPA review all claims when received by Risk

Management. Presently, all settlements are reviewed for potential investigation by OPA-IS. Though OPA is thus involved with reviewing potential misconduct that comes through Risk Management, earlier attention to a case risks starting the 180-day clock before a complainant is prepared to cooperate with an investigation. This is one of a number of repercussions of the 180-day contract rule discussed in the Policy section at the end of this Report.

The Council's Panel made several suggestions to increase the autonomy of the OPA: It recommended that the OPA should not consult with police officials outside OPA regarding classification or recommended findings of fact. This has not been adopted, as often there are discussions about case facts, for instance, in deciding whether to put an accused officer on administrative leave pending investigation. In a similar vein, the Council's Panel suggested that the Director should make a final dispositional recommendation in writing before a case is referred to the Chief. The Director has not accepted this requirement and City Council did not adopt it in the new Ordinance. Though she advocates her position on each specific case in which OPA-IS recommends a Sustained finding, the Director believes there is merit to engaging in discussion with the Chief and others about police practices or disposition in past cases, before making her own final decision.

The same Panel made two recommendations about how the OPA relates to complainants: that OPA-IS should re-interview them when necessary to assess new information and that the explanation of the finding sent to them should be specific enough that they can ask for reconsideration or identify any omissions. These are related but separable issues. The Director comments that OPA does consider new information when it comes to light and pointed out to this Auditor a number of cases in which re-interviews have happened. The OPA has also, in the past several years, changed its format for closure letters, intended to give complainants clear and specific reasons for the findings in their individual cases. The Auditor has proposed to review these letters and follow-up investigation conducted when new information is received. There are obvious issues where the 180-day time limit is near expiration.

The Mayor's Panel made suggestions about what happens when a discipline case goes to the Chief for final disposition by the Department: If new facts are disclosed at the discipline [*Loudermill* or "due process"] hearing, the case should be sent back to OPA for further investigation. This is being done. The Guild contract, however, provides that the 180-day clock for completion of the investigation is again running during that additional investigation.

If the Chief changes a finding recommended by the OPA, he is now required to state his reasons in writing and a summary of these decisions is available to the Mayor and City Council upon request. The Ordinance also requires the Director to summarize these explanations and also to keep track of cases where the 180-day time limit was exceeded, if discipline was contemplated. The Auditor has requested regular review of both of these records.

The Mayor's Panel asked that the Chief report within 60 days on implementation or not of policy recommendations made in the semiannual reports of Director, Auditor, and Review Board. The Director does keep track of OPA's recommendations, and includes them in her reports.
The Panels made several miscellaneous recommendations about the process, some of which have been adopted: a review of the City's policy pursuant to *Garrity v. New Jersey* (discussed between Auditor and Director and under review by the Director); specialized training for OPA-IS investigators (begun with a two day interviewing course); availability of civilian advocates for complainants from the Seattle Office for Civil Rights (the Director trained SOCR staff in how to assist citizens, civilian advocates from SOCR are welcome to accompany a complainant, and SOCR and OPA websites were changed accordingly); a policy prohibiting retaliatory contact with complainants (drafted by OPA and accepted by the Chief); training and policies to improve cultural competence (training begun with "Perspectives in Profiling," part of the "Tools for Tolerance" program); presumptive firing for dishonesty in the course of official duties (in place); suspensions to be in working days, not leave time (adopted); document release under the standards of the Public Records Act (police reports and videos already available on request from the Department; sustained cases made public).

As the above summary reflects, there have been structural and procedural changes in civilian oversight of the Seattle Police Department in response to the recommendations of the Mayor's and the Council's Panels.

AUDITOR ACTIVITIES

The scope of the contract for this Auditor changed in 2008, as noted above. I am tasked to coordinate with the Review Board and the Director to "identify substantive and procedural areas" for enhanced review. The Director and I have been working on the first stage of a report on the Department's relationship with diverse communities, focusing on the Department's own

initiatives. The new Review Board will be primarily responsible to solicit input from community members. We expect the second phase to be a coordinated effort among the Auditor, Director and Board to assess the success of departmental efforts and to suggest future directions.

I issued a report on obstruction arrests, available at www.Seattle.gov/police/opa. I examined OPA files where available, and court and police records for all cases where obstruction was the only resulting charge and either an OPA complaint was filed or the officer had made three or more such arrests over the past two and a half years, 76 cases in all. This intensive review of recent obstruction arrests revealed no pattern of abuse or misuse of the obstruction ordinance, but did point out oft-repeated situations that suggested policy and training changes – specifically support for the new bystander policy and for further training on the standards for "reasonable suspicion" detentions on the street.

I attended four days of the annual conference of the National Association for the Civilian Oversight of Law Enforcement, which included sessions on international oversight initiatives, crime reduction strategies, Taser use and guidelines, discriminatory policing, and assessment of the different modalities of oversight.

The Director brought in outside experts for a two-day training session on interview techniques for OPA-IS and County personnel, which I attended. It was highly successful in presenting innovative interview techniques for civilian witnesses. The OPA-IS sergeants pointed out that, at least in some cases, interviewing police officers requires some different techniques and the Director and I are looking forward to another session focusing on interviewing sworn personnel.

I testified before and conferred with members of the Mayor's and Council's Panels and spoke before the Civil Rights Commission as well as a Washington State Bar Association CLE.

I have continued to review OPA-IS investigations on a real time basis and sometimes suggested further avenues to explore. In this six-month period I reviewed 66 completed OPA-IS investigations. The number of full investigation cases is consistent with the average for other six-month periods I have reviewed. In nine of these, I asked for further investigation or had comments about the investigation conducted. In each case, further investigation was

conducted, I was convinced in consultation that it was unnecessary, or it was too late to be practical to conduct. There were no cases where I was dissatisfied with the OPA's response about further investigation.

I also audited OPA-IS investigations with a "critical review of outcomes," as mandated by my new contract. I disagreed with the disposition in seven of the 66 completed cases, not counting my general concern about the frequent use of Supervisory Intervention. While dispositions were generally not changed, there were full and useful discussions with the Director and OPA-IS staff, and the Director articulated clear reasons for her decisions. In my opinion, this is how our coordinated oversight functions are meant to operate: while the OPA Director and Auditor might not always agree, accountability is served by a frank and thorough discussion of different perspectives, and disclosure to the public in cooperative reports such as this one and the Auditor's Report of last Spring.

I reviewed 14 Line Investigations before they were referred out and had questions about the classification of two of these. I reviewed eight completed Line Investigations and disagreed with the outcome in one. The Director and I agreed that one line investigation should be promoted for a full OPA-IS investigation that in turn resulted in discipline.

I reviewed 22 Supervisory Referrals [SR's], down from the 56 reviewed last period. I disagreed with the classification of two. I reviewed 140 Preliminary Investigation Reports [PIR's], in keeping with numbers in previous six-month periods. In four of these I disagreed or had comments about the classification.

I reviewed 400 contact logs, which include a wide variety of calls to OPA-IS, the majority of which do not fall within the purview of the office. Many were referred on, or the screening sergeant attempted or accomplished the requested customer service. A few were converted to PIR's.

AUDITOR AND DIRECTOR COMMENTS ON SPECIFIC CASES

OPA-IS Cases

For the most part, I found the OPA-IS investigations to be complete and well reasoned in outcome. I commented on or asked for further information in nine out of 66 cases reviewed this period. Examples of simple follow-up I requested: I wanted an officer to listen to the in-car video and explain the time

variance with his recollection about an event that happened over a year earlier; asked to learn the result of criminal charges in one case; suggested OPA-IS attempt to help with the release of property in another; asked that employee records be reviewed for an employee's time taken off in various categories where fraud was suggested; and asked for detectives' justification for seizing victims' clothes at the hospital during investigation of a shooting. I have suggested more than once that back-up officers who are particularly vague in their interviews need to be pressed by OPA-IS investigators.

I criticized the outcome of approximately seven of the 66 cases I reviewed, not counting my general criticism of what I consider an overuse of the "Supervisory Intervention" disposition, discussed in a separate section *infra*. I focus here on those cases where I was critical, but recognize the vast majority were handled well and appropriately resolved.

In one case, I disagreed with "Administrative Exoneration" in a claim of excessive force made by an individual in jail. He claimed officers had struck him with their hands around his face and head, causing injury to his left eye, dizziness, a sense of fear and bad dreams and to hear voices. He was apparently refused admission to the jail and taken to Harborview for medical treatment. When released, he was unaware there was an outstanding arrest warrant for him until he was arrested three months later.

His taped statement from the jail at that time was interrupted by a fellow detainee trying to help him understand, and an operator who cut him off. The intake sergeant tracked down the original arrest and ordered the documents. Interestingly, the Use of Force report was "not yet available" three months after the incident. After the case was assigned for follow-up, another sergeant spoke again to the complainant and made an appointment to visit the person in six days. Meanwhile his public defender called and said he didn't want the complainant to phone OPA anymore. Twelve days later an envelope addressed to the complainant was returned.

The investigating sergeant recommended Administrative Exoneration because: the Use of Force packet was complete and thorough, and the force described was similar to that described by the complainant, and the photos of injuries were also consistent.

In my view, often repeated, when complainants call from the jail, even about incidents happening some time earlier, OPA-IS should make every effort to

physically visit, get an in-person statement, and get releases signed as soon as possible. This is particularly true when dealing with someone for whom English is a second language. Where injuries are serious enough to require in-patient treatment at Harborview Hospital, the justification and the extent should be explored. The fact that a Use of Force form is complete and accurately describes those injuries should be one of the first steps in investigation, but not the last. Of course there was very little remedy at the time I received the summary of investigation, because of the time elapsed and the objection of the defense attorney.

The Director agrees that more effort could have been made by OPA-IS at the outset, particularly with someone with limited English speaking abilities. However, the "justification and extent" of the complainant's injuries could not be explored because he and his attorney failed to provide a medical release.

The Director and I have also had discussions about the Use of Force Policy, specifically what qualifies as an "injury" resulting from "physical force." SPD Policies and Procedures Section 6.240 I.E. defines "physical force" to include "Any force... which causes an injury, could reasonably be expected to cause an injury, or results in a complaint of injury." Section 6.240I.E.1.c. defines "bodily or physical injury" to be "significant physical pain, illness, or impairment of physical condition."

Our discussion was in the context of a case that reflected the difficult decisions officers must make on the street as to whether they have sufficient, objective facts to justify a temporary detention, also called a "*Terry* stop," named after a Supreme Court case. In this case the officers wanted to talk to an individual in a high drug/prostitution area at 4:30 in the morning. The individual took off running and the officers chased him down, grabbed him by the arms and shoved him forcibly to the ground. He went immediately to a pay phone after this encounter and called the police to say: "I am not hurt but want to file a complaint." A sergeant responded to the scene and observed a minor cut lip, scuffed wrist, scraped knee and eye glasses from which the lens had been popped out. The subject also complained that he was punched and kicked, but the sergeant could not see any injuries consistent with that. This is an example of a case in which notification of a supervisor (the sergeant) was deemed by the Guild to start the investigative clock running. The complainant was unavailable for later follow-up.

The original OPA-IS and Director's recommendation was a finding of Sustained as to the officers' lack of reasonable suspicion to detain the man, which the Chief determined should be a Supervisory Intervention. OPA-IS and the Director resolved the force allegation as a Supervisory Intervention, and the Chief agreed. I disagreed with both resolutions, particularly in light of the officers' statement that they stop anyone in that area at that hour and that "stopping" apparently included the discretionary use of force.

The Director and I have suggested in a number of cases further training of SPD personnel to help them appreciate the sometimes difficult distinction between "social contacts" and legitimate *Terry* stops. Though the Director agreed with the Auditor that the facts of this particular case did not support reasonable suspicion justifying detention, the Chief preferred to emphasize the need for training through a Supervisory Intervention finding.

Because of the definitional issues, the Director has asked for a thorough review of the current Use of Force Policy. The OPA, Ethics Captain, and Audits unit are involved in considering force policies from other jurisdictions and ways the Department's can be clarified and improved..

In another case I agreed with a Sustained finding for excessive force where the back-up officer's in-car video had recorded the interaction. The officer had been jumped on from the rear as he took control of the subject's jay-walking friend. When the attacking young man was down and under control, the officer continued to use punches and knee strikes, which he claimed were necessary to control resistance. In the majority of cases, the in-car videos I have seen support the officers. In this case, however, the video was at 180-degree variance with the officer's perceptions or recollections and a Sustained finding was recommended by OPA and confirmed by the Chief.

I was troubled by a case with very similar circumstances three months later, involving the same officer, same kind of strikes delivered, same justification claimed, and same words spoken; but where no in-car recording was available. In that case a person with a felony warrant fled from the officers, was tackled, and was delivered knee strikes in the mid-section during handcuffing. Since the officers' testimony was consistent and supportive of each other, the result was a finding of Exonerated. The Director and I agreed that, despite some similarities, there was no evidence available to sustain an allegation of excessive force against the employee.

I was critical of the response of officers investigating a sleeping truck driver parked in a private parking lot, and of the OPA's conclusions about that encounter, which eventually led to his being Tased twice. The case involved a situation where an African American's non-cooperation was apparently based on fear or negative past encounters with police and the officer perceived that non-cooperation as highly suspicious of criminal conduct. The Director concurred with the OPA-IS Captain's recommendation of exoneration in this case, as there were *Terry* stop indicators in the hour and circumstances and the driver's non-cooperation in her opinion justified forceful removal from the truck, followed by warnings and handcuffing with the aid of the Taser.

Line Investigations

I questioned the classification of several line investigations, but was satisfied with the responses of OPA. One case was reclassified as a full OPA-IS investigation that resulted in discipline. Another was a *Terry* stop case that I thought required considerable legal sophistication to analyze, and was satisfied that the lieutenants who would be in charge of the investigation were up to date on the law. In another case, I thought the LI should be downgraded to a PIR, but was convinced by OPA-IS that there were several issues that needed to be explored to determine whether an officer was qualified to work off-duty. In a fourth, the Director downgraded the complaint to an SR so that compromise of damages could be accomplished, but asked the Ethics Captain, Law Department and Audits/Accreditation Department to look generally into situations where officers attempt to resolve disputes between neighbors by "brokering restitution." The case exemplified the neighborhood conflicts that can follow such a well-intentioned attempt at community problem solving.

I registered disagreement with one outcome of Supervisory Intervention. I suspect one reason for that outcome was that the event occurred in 2006. On the other hand, the officer's failure to write a collision report was a clear violation of policy, as there was extensive, obvious vehicle damage and some of those involved were treated by the Fire Department medics and transported to a local hospital. In my view, the passage of time, the drivers' exchange of information, and the fact that the officer had already been counseled should mitigate any punishment, after a Sustained finding for policy violation. Police reports can become vitally important to citizens as insurance companies sort out compensation for their damages.

The Director concurred with the OPA-IS Captain in the recommended finding of Supervisory Intervention because the named employee did not believe that a collision report was required and because he turned his attention to clearing the scene after the drivers exchanged information. Furthermore, because the complainant did not file her complaint until 16 months after the incident, some details were difficult to assess. The LI concluded with a recommendation for discussion and training with the officer.

Most Line Investigations are being completed on time. The Chief has continued to oversee the 60-day limit by reviewing all pending LI's every two weeks and personally contacting supervisors where appropriate. I did criticize the delay in one investigation. A complainant alleged that he was stopped without cause and called a "nigger" by the officer. The incident occurred on January 31; it was referred as an LI on February 7; an extension was requested on May 6, which apparently was the first follow-up at the precinct. The precinct investigator thereafter was unable to contact the complainant or witness. The officers vehemently denied ever using that language and described the stop as friendly and minimally intrusive. I recommended that in future all requests for extensions be accompanied by stated reasons for the need for more time and a statement of the investigation conducted by that time.

Supervisory Referrals

I registered a difference of opinion about one Supervisory Referral. The complainant alleged that the named officer, while investigating a property damage/anti-harassment situation, entered the woman's home without invitation, aggressively lectured her and "took sides." It appeared to be an ongoing conflict between neighbors, but was treated as a domestic violence complaint, which I did not understand. I thought the complaint was serious enough to warrant either a Line Investigation or an investigation by OPA-IS, primarily because of the three different interactions with police who insisted on entering the complainant's home.

The Director indicated that her decision to keep the case classified as a Supervisory Referral was based on previous contacts by the Department with the parties involved, and her assessment that the allegations could best be addressed by a supervisor and Precinct Commander.

In several cases classified as SR's, I have been unclear what exactly OPA was asking the supervisors to do. In the PIR cases, there are often explicit directions

as to how to resolve the case to the greater satisfaction of the complainant or subject and to suggest another way for the officer to handle a similar situation in the future. With the SR cases, deemed to be more serious, there is an expectation that the supervisor will assess the situation, do some further inquiry, handle it as he/she sees fit, including by informal mediation, and report back to OPA.

Since the referral out is by form letter, I intend to make a review of the returns of SR's for my Spring 2009 report in order better to audit these cases.

Preliminary Investigation Reports

PIR's are often good resolutions of complaints that are not serious, but that can negatively affect the Department's relationship with the public if not attended to. One complaint demonstrating the benefit of the PIR designation, for instance, was that officers did not explain well why an individual, who matched the description of a suspect with a gun, was "singled out" and removed from a Metro bus to be detained and searched. The complainant discussed this with the patrol sergeant and the OPA-IS intake sergeant and was satisfied that his concerns would be shared with the officers' chain of command.

Approximately six PIR's were upgraded to SR's during this six-month period, which often happens at the suggestion or with the concurrence of both Director and Auditor. One which I suggested upgrading was a complaint that the officer was rude and had violated traffic laws himself, causing unnecessary danger by driving backwards in the wrong lane. The original PIR directed the supervisor to discuss this with the officer and remind him of the impression he may be making on the public. The complaint was upgraded to an SR so that the supervisor would make contact with the complainant and hear her out and "help her more fully understand the officer's conduct." The Director also determined this might be a good case for mediation.

Two related PIR's alleged that protection orders had been dropped off at the precinct, but never served. On callback to the precinct, they were told no record of the orders could be found. The cases were sent to the precinct as PIR's with a request that the precinct procedure for handling protection orders be reviewed to assure proper tracking and accounting for such documents. I asked that there be follow up to see if the respondent in these cases actually showed up for the scheduled hearing, which would indicate she was in fact served. Given the

importance of service of domestic violence protection orders, both the Director and I thought it was important to assure prompt handling of such orders.

I initially disagreed with the classification and handling of a complaint by a public housing resident who claimed the police had come into her apartment at night three or four times without leaving any paperwork. OPA-IS classified it as a PIR and asked a supervisor from the named employee's chain of command to contact the "complainant to address her concerns and discuss her rights/responsibilities as the resident of a SHA housing unit." I felt the allegations merited a more serious response, given the nighttime entries and demand for identification from all people present. The Director declined to reclassify because the complainant had not been cooperative to date in responding and providing more information, despite efforts by OPA-IS to contact her. The Director also pointed out that a major problem for SHA is dealing with nonresident guests who become unauthorized permanent residents. Finally, the PIR classification anticipated follow-up and feedback from the supervisor. I was satisfied with the Director's resolution of the case.

I suggested an impound situation be upgraded from a PIR to an SR. In the OPA-IS Lieutenant's analysis, the "documents provided by the intake sergeant clearly are a guide for using discretion and suggest impoundment in this situation was not reasonable. However, without being there and without hearing for [*sic*] the employee, OPA-IIS is not in a position to judge the named employee.... No misconduct is identified." I failed to follow this reasoning and opined that if a complaint appeared to demonstrate a violation of policy, the case should be classified at least as an SR or a Line Investigation. The Director upgraded the case to an SR.

POLICY ISSUES

Increased Use of Supervisory Interventions

A "Supervisory Intervention" means "while there may have been a violation of policy, it was not a willful violation, and/or the violation did not amount to misconduct. The employee's chain of command is to provide appropriate training, counseling and/or review of deficient policies or inadequate training."

Supervisory Intervention is easily confused with "Supervisory Referral," which is an initial classification for what may be a minimal violation, requiring the

supervisor to investigate, contact the complainant, mediate and/or counsel the employee. At the very least, the similar wording and outcomes are confusing.

Supervisory Intervention is a disposition added in 2005, one of eight possible dispositions for administrative cases. In my opinion, that is too many; it is confusing to the public and to employees. The Director has stated publicly on a number of occasions that allowing for so many findings does not serve the goal of transparency. She is looking into the possibility of changing the number and definition of possible outcomes.

There has been a trend to use Supervisory Intervention more frequently in the years since its adoption. It is an outcome that, along with every disposition other than Sustained and Mediated, goes on an employee's "card," a record of the current year plus three more. (By contrast, a summary of the findings in a Sustained case is also posted in the employee's permanent personnel file.) Like the other dispositions short of Sustained, the Director has the final authority to impose it and the Chief does not review it unless flagged by the Director as a case of significance. The Chief has the final departmental decision where OPA recommends a Sustained finding and can downgrade it to Supervisory Intervention, and has done so on occasion.

The Sustained rate has remained at approximately the same level, so the Director believes that the increase in Supervisory Intervention findings primarily reflects a move towards requiring training and counseling in cases that before would have resulted in a Not Sustained or Exonerated finding. The Director further points out that she is obligated to use the findings as defined by the Department. Because the definition of "Supervisory Intervention" provides for a result for non-willful policy violations, she believes it must be considered in appropriate cases. By extension, she states that consideration of intent may impact whether a finding should be Sustained or treated as a Supervisory Intervention. The Director agrees that it is timely to consider the full panoply of findings, including Supervisory Intervention, with consideration given to the role of intent or willfulness when assessing police conduct. The OPA Director has initiated a review of the Department's overall approach to discipline and is considering research in the field and best practices from other jurisdictions. She anticipates reporting on her findings and making recommended changes in 2009.

Whether as a result of Sustained findings or of Supervisory Interventions, the Director strongly believes that the Department's discipline system should

provide for training and counseling in appropriate situations. The Department should consider whether punishing misconduct is as effective as other approaches to changing behavior. While certain violations should and will result in discipline up through termination, other misconduct can more appropriately be addressed through a wide range of training options.

My major disagreement with the widespread use of Supervisory Interventions is that it undercuts the duty of officers to be aware of Department policies and adds an implied requirement of intent to the finding of Sustained.
A Sustained outcome is defined to mean that the allegation of misconduct is supported by a preponderance of the evidence. The definition of "misconduct" seems to have been somewhat reinterpreted since 2005 from a simple violation of Department policy to something requiring a "willful" intentional element. In criminal law, this implies an intention to violate a known norm. I have in the context of a number of cases over the past several years questioned this interpretation in the application of administrative discipline. In my view, the question should be whether a policy was violated. In most cases, lack of intent mistake, and good faith should be brought to bear to mitigate the resulting administrative discipline, including training or counseling.

One case illustrating these two views involved a field training officer who directed his trainee to put a person's identification into a mailbox, on the assumption that it would be delivered back to the individual, who had been transported to the hospital after an accident. While both officers should have been aware this was not a sufficient means of returning an ID, I felt that Supervisory Intervention was particularly inappropriate for the training officer. I also thought the result tended to downplay the importance of an identification card to an individual. The Director felt that the field training officer's understanding of postal procedures was not unreasonable, though inaccurate.

As noted in my report on obstruction arrests, and earlier in this Report, there is often not a bright line establishing when facts are sufficient to support a temporary detention or *Terry* stop of an individual on the street. On the other hand, the focus of the annual Street Skills training has been on this subject, and on policies surrounding this situation, which they regularly face on the street. Where there is a significant deficit of objective facts justifying detention, or failure to follow procedures, I believe Sustained is the proper outcome, however the discipline might be mitigated. For instance, given the training emphasis and public notoriety about the issue, I felt in two cases that the officers should have

had the basic understanding that they needed to call a supervisor before releasing a detained, handcuffed individual.

I disagreed with another Supervisory Intervention disposition of a Line Investigation where a Fraud Unit detective stopped a driver for using a cell phone and kept him waiting for a period of time until someone with a ticket book arrived and informed the detective that the cell phone law was not yet in effect. The driver perceived the officer as rudely abusive of his power, given the traffic situation that led to the stop, the delay, and the lack of explanation.

The Director concurred with the finding of Supervisory Intervention recommended by the Line Investigation because the named officer acted within his discretion. There was a recognized need for training in regard to Traffic Contact Reports and the finding resulted in training for the named officer and others in his unit.

In another case a Supervisory Intervention was determined because a supervisor did not understand his obligations in handling a Supervisory Referral. This is a good example of why I object to this outcome: an officer (in this case a sergeant) can simply say he didn't understand the policy, and he doesn't get a Sustained on his/her record.

I appreciate the Director's point that the percentage of cases resulting in Sustained has remained fairly consistent at the same time as the use of Supervisory Interventions has increased. However, as the above examples illustrate, my objections were specifically in cases where I thought the outcome should have been Sustained. I believe that further education on policies and practices can well come after a Sustained finding, and may have a good deal more impact at that point.

As is clear, this is a philosophical difference of opinion about how best to improve police practices. Given the increasing use of this disposition over recent years, I intend to review the returns of these cases for my Report in Spring of 2009 to see what supervisors in fact are doing in their "interventions." Such a review may add to this ongoing conversation.

Due Process *(Loudermill)* Disciplinary Hearings and Access to Files

Both the Mayor's and Council's Panels were concerned with employees presenting new information at the "hearings" before the Chief prior to discipline being imposed. Two remedies were crafted in the new Ordinance: 1/ the Director is to be present at these "hearings," which are in practice a meeting of the Chief, the employee, his representative, a representative of Human Resources, and an Assistant or Deputy Chief; and 2/ the case is to be sent back to OPA for further investigation if new information is presented. The Guild contract may make these solutions unworkable, however, since the 180-day clock is again running during the period of additional investigation.

I have been disturbed to note Guild representatives or members advising that information be purposely withheld from OPA-IS investigators in favor of presenting it directly to the Chief at the *Loudermill* hearing or even bypassing that hearing altogether and submitting new evidence in the "appeal" process. These developments should be closely watched and may require adjustment of the administrative discipline process, including the appropriate scope of review by the Public Safety Civil Service Commission in the future.

A related issue may arise in the new remand procedure: when and how does the Auditor have access to the new information presented at the *Loudermill* and the follow-up investigation? The Director has assured me I will be included in the follow-up loop.

Contrary to what many civil rights attorneys understand, the officers do not, as a rule, see the investigative file until after they have testified in their cases. In the initial notice of the complaint the officer receives a brief explanation of the allegations only. Where there is more than one officer interviewed they are directed not to discuss the matter, except with their Guild representative. Whether the Guild rep passes on information, is of course another matter.

As the Council's Panel opined, there is a sense among complainants that they are at a disadvantage, and should get an opportunity to "correct" the record, have their own appeal process, or produce information that may contradict what the officers say happened. While the Council Panel opined that access to OPA's files should be governed by the Public Disclosure laws, there are contractual obstacles that need to be addressed to accomplish that.

The public does have other avenues available now – complainants can obtain copies of the in-car video and police reports, either before or after their interviews, by making simple records requests on the first floor of the Department's headquarters. More specific and detailed closure letters after disposition, and access to in-car videos, may ameliorate the public perceptions noted by the Panels.

Separation of Criminal and Administrative Cases

Panel recommendations to separate the criminal and administrative cases were based on a concern that OPA-IS investigations not be used against complainants in court. The separation may, however, undercut the integrity of the administrative process in unforeseen ways. The prior contract allowed dual supervision of a case against an officer who, for instance, was investigated for domestic violence. The Domestic Violence Unit detectives would investigate and the OPA would be aware in real time of the interviews and evidence gathered, and thus be able to suggest avenues to be pursued. This allowed subject matter expertise to be combined with OPA oversight and insistence on timeliness.

The Panel recommendations resulted in a contractual change requiring complete separation between OPA and any criminal investigation of an employee. Now the investigating detectives have no timeline and no collaborative responsibilities. They can forward their conclusions to OPA whenever they complete their investigation, which may be too late for any meaningful OPA-IS inquiry to follow. The Auditor is deprived of any real time oversight as well, except to note to OPA that a case against an unknown employee has been pending for a long time when he/she reviews the quarterly log. The OPA, as noted above, can monitor these cases to some extent by asking the Chief to inquire on the progress of the criminal investigation.

The process is unclear where there are dual allegations in a complaint, for instance that an officer used excessive force and also stole money from an arrestee. Will the excessive force complaint await the investigation of the criminal allegation of theft? To what result under the 180-day rule?

The complexities of the interactions between criminal and OPA cases and the consequences given the 180-day rule are illustrated in a case involving one officer who committed a hit and run of occupied cars while blacked out and four colleagues who went to check on his welfare when he failed to show up for

roll-call. The case was initiated when a routine records check revealed a bench warrant outstanding for two years that the officer was ignorant of. The case was left open while that criminal case was resolved, which took almost a year. It was at that point, when the officer could be interviewed, that focus shifted to the roles of the co-workers: what did they know about the accident, given their visit to their colleague's home and observation of his seriously damaged car?; did they report the accident?; did they advise their supervisor of the employee's problems? They did attempt to investigate whether there had been a hit and run, but gave various answers about whether anyone advised the supervisor of any of these issues. Given that the events occurred three years earlier, and the officers had permission to check on their colleague, and the supervisor did not remember whether anyone reported the accident or the employee's serious drinking problems, there was a decision to give these officers a Supervisory Intervention. Factored into that decision was uncertainty as to whether the 180-day rule would prohibit a Sustained finding or discipline. The circumstances of this case illustrate the problems attendant to waiting for the completion of criminal charges against an officer before full facts are developed by OPA; the 180-day contract rule; and the use of Supervisory Intervention where a Sustained finding cannot be made.

CONCLUSION

After extensive review, Seattle decided to maintain its unique "hybrid" system of civilian oversight. The aim is to combine independent, outside review with effective investigations by sworn personnel and policy access at the Command Staff level. The OPA, Chief, Mayor, City Council, and Guild have all cooperated to put into effect substantial adjustments to that system. The collaboration among all three civilian oversight modalities will be worked out in the coming year. My extended term of office allows me to bring my experience to bear during that process and perhaps to overlap with the incoming Auditor.

I intend in the present six-month period closing out my tenure as Auditor, to examine cases exceeding the 180-day deadline where discipline was contemplated, the sufficiency of detail in letters to complainants regarding resolution of their cases, and responses of supervisors to Supervisory Referrals and to cases with a final disposition of Supervisory Intervention.

Since I am near the conclusion of five years as Auditor, it is perhaps time to reiterate some of my continuing concerns, that I believe should be addressed in

bargaining with the Guild: I have often voiced and continue to believe that the greatest flaw in our present system of administrative discipline is the contract requirement that investigations and findings must be made within 180 days. The contract should provide, at minimum, the same rule for officers who are facing criminal proceedings as for subjects or complainants. The 180-day rule should be a guideline, with flexibility specifically allowed for completion of parallel civil or criminal proceedings involving any party, and perhaps crucial witnesses. I am fully aware that timely closure of cases is an important interest to the Guild. However, using the 180-day limit as a guideline would allow immediate OPA attention to claims filed against the City, and thereby initiate timely administrative investigations, and perhaps expedite settlements of the claims through Risk Management. It would resolve many of the problems of completely separating criminal and administrative investigations.

In the alternative, the OPA-IS should proceed with all investigations without delay and offer the officer the choice of relinquishing his Fifth Amendment rights or not, the choice presently offered subjects who are facing criminal prosecutions. This might expedite administrative resolution of cases as well. Of course the third alternative would be legislation prohibiting the use of complainant and witness statements in parallel civil or criminal trials.

I would make another recommendation for the next round of contract bargaining: the contract with the Guild should be modified to put back in place concurrent jurisdiction between the OPA and criminal investigative departments over crimes alleged against officers. What evidence developed by OPA-IS may be admitted in the parallel criminal court proceedings could be dealt with as a separate matter.

Finally, I hope the City will look at modifying and simplifying the menu of outcomes so that it will be clear to employees, subjects, and the public.

Respectfully submitted,

Katrina C. Pflaumer
Civilian Auditor

Dated this 9th day of December, 2008

TAB 6

SEATTLE POLICE DEPARTMENT

OFFICE OF PROFESSIONAL ACCOUNTABILITY

Policy Recommendations 2007 – 2008 and Implementation of PARP Recommendations

KATHRYN OLSON
OPA DIRECTOR

This report summarizes policy and training recommendations made by the Office of Professional Accountability in 2007 and 2008 and provides information on implementation of recommendations made by the Mayor's Police Accountability Review Panel.

A vital function of the Office of Professional Accountability (OPA) involves reviewing polices and procedures Seattle Police Department (SPD) employees are expected to follow as they perform their duties. This review may lead to recommended policy changes, suggestions for training, or other follow up. A focus on policies and procedures helps determine "whether or not the organization has created a culture and environment that roots out, identifies, and refuses to tolerate officer misconduct."[1] Policy review essentially involves management's responsibility to set, communicate and enforce expectations about police work in Seattle.

OPA previously has published reviews of its role in policy development and submitted a Summary Report of Policy Recommendations for the years 2003 – 2006 to the Police Accountability Review Panel (PARP) in September 2007.[2] As noted there and elsewhere, Chief Kerlikowske, Acting Chief Diaz, and other command staff support OPA in its policy review efforts and have been receptive to suggested changes. Over the years, many revisions recommended by OPA have been incorporated into the Department's policy manual or contributed to new training.[3]

In addition to routine policy review, OPA worked with PARP in 2007 and 2008 as it performed a thorough assessment of Seattle's police accountability system. In addition to the Summary Report of Policy Recommendations by OPA, recommendations made by the Auditor and the OPA Review Board were compiled, and unimplemented policies from all three oversight entities were identified for consideration by PARP.[4]
After PARP issued its Final Report on January 29, 2008, OPA worked with the Police Department to implement a number of changes, while other recommendations required collective bargaining, or needed to be addressed legislatively or by entities outside SPD.

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[1] Nobel, Jeffrey J. and Alpert, Geoffrey P. Managing Accountability Systems for Police Conduct: Internal Affairs and External Oversight. Waveland Press, Inc. 2008. p. 265.
[2] The Summary Report can be found at: http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/9-10-07_Policy_Recommendations_Summary_2003-2006.pdf. Cites to the complete reports included are listed in the Summary.
[3] The Summary Report of Policy Recommendations for the years 2003 – 2006, referenced in Footnote 2, includes information as to the status of specific recommendations.
[4] See the following report for information about policy recommendations made by the OPA Auditor and OPA Review Board: http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/10-1-07_memo_PARP_Auditor_RB_recs_final.pdf. For a list of unimplemented policy recommendations prior to 2007, see: http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/10-1-07_memo_unimplemented_recommendations_final.pdf.

OPA POLICY AND TRAINING RECOMMENDATIONS 2007 - 2008

OPA performs its policy review function primarily through: (1) review of individual complaints, complaint trends and statistics; (2) participation in Executive Staff development and review of policy; (3) involvement on the Department's Risk Management Advisory Team; and, (4) interaction with the Training Section. These roles frequently overlap and OPA is just one of many parts of the Department committed to critical analysis and continuous improvement efforts.

Policy review is an integral part of complaint investigation. When citizens contact OPA with concerns about police conduct, intake includes a review of the SPD Manual to determine whether the issue raised is one implicating a specific policy.[5] As complaints are investigated, the police incident underlying the complaint is assessed against the policy involved. At times the review of police conduct in the context of Departmental policy brings to light problems with the policy itself. For example, OPA might discover that a particular policy does not adequately spell out how officers are expected to handle a situation. Regardless of the determination made on a specific complaint, OPA is in a position to recommend further review of the policy involved. Recommendations might also grow out of cooperative discussions with the OPA Auditor following her own case review.

Investigation of specific complaints might also result in training recommendations. For example, a finding of Supervisory Intervention usually entails training for the named officer, though a Sustained finding might also lead to training. At other times, particularly if OPA observes that a number of complaints are raising similar issues, OPA works with the Training Section to address the problem.

In addition to policy and training review during complaint investigation, OPA's involvement with other Departmental functions can result in operational changes. The OPA Director is a member of the Executive Staff, meeting regularly with commanders and other civilian directors. As the Executive Staff considers Departmental functions, the OPA Director participates in discussions about the need for policy review or training to address specific concerns raised. The OPA also is centrally involved with the Risk Management Advisory Team, a group with representatives from across the Department. The team reviews claims and lawsuits, patrol vehicle accidents, and a variety of other data to assess whether trends can be identified requiring Departmental changes.

The following chart summarizes policy and training recommendations made by OPA in 2007 and 2008. Note that many of the PARP recommendations reviewed later in this report also resulted in substantive policy changes in which OPA was actively involved, though most are not included in the chart below.

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[5] The SPD Manual can be found at: http://www.seattle.gov/police/publications/Policy/SPD_Manual.pdf.

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Management
1. Citizen Observation of Officers: A photographer was taken into custody after shooting pictures of two officers making an arrest on a public street. He was later released and not charged with a crime. A civil case he pursued through the ACLU was settled for $8000.	Enact a new SPD policy clarifying that citizens are permitted, with a few exceptions, to remain as onlookers and/or photograph officers in the field performing their duties.	X			
2. Obstruction arrests: While obstruction related arrests comprise less than 1% of total arrests and criminal citations by SPD, and less than 1/10 of 1% of total public contacts; concerns have been expressed about how SPD tracks officers with unusually high numbers of obstruction arrests.	When conducting a review of an employee through SPD's Early Warning System, the number of arrests she or he has had for obstructing, resisting arrest, or hindering an officer will be considered, along with other factors, in assessing the need for intervention or other steps to be taken with the employee.	X			
3. Retaliation: Though other provisions of the SPD Manual arguably prohibited retaliation against a complainant for filing a complaint with OPA, there was no explicit policy on point.	OPA and PARP recommended that SPD enact a new policy specifically prohibiting retaliation against anyone for filing a complaint with OPA.	X			
4. Social contact verses Terry Stop: A "social contact" between officers and citizens is voluntary and consensual, and does not require reasonable suspicion	The SPD Training Unit should devise supplemental training on social contact/Terry stop issues and this training should be made a part of the annual mandatory Street Skills training.		X		

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
or probable cause. A "Terry Stop" is a stop if the officer reasonably suspects that the person has committed, is committing, or is about to commit a crime. Case law and SPD policies lay out a number of factors considered in determining reasonable suspicion for a Terry Stop. However, the law in this area is complex and it is often difficult to assess whether the legal predicate has been established in the fast paced environment of law enforcement.					
5. Guarding suspects in a hospital: SPD Manual Section 6.070 covers procedures to be followed when an SPD officer is assigned guard duty for a suspect requiring medical attention. When a prisoner escaped while an SPD officer was on guard duty, it became apparent that the policy was not clear on responsibilities when one officer is relieving another in guard duty.	The Audit, Accreditation and Policy Unit should review SPD Manual Section 6.070 to clarify responsibilities where more than one SPD officer is involved in guarding a hospitalized prisoner.			X	
6. Secondary Work Permits: SPD Manual Section 5.120 regulates an officer's employment outside the Department but is ambiguous regarding whether an	The Audit, Accreditation and Policy Unit should address the issue of whether the Department requires a Secondary Employment Permit for secondary employment in a *non-*			X	

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
employee engaged in a secondary employment of a *non*-law enforcement capacity must comply with that policy.	law enforcement capacity, and to resolve any inconsistencies in the policy language				
7. Coordinating taser deployment: In an OPA-IS investigation in which the underlying incident involved a number of officers who were deployed and had tasers available to use in bringing the subject into compliance, concern was raised about the coordination of taser use among the officers.	Consideration should be given to a policy and/or protocol for coordination and management of the scene where multiple officers are present and using or may use a taser.			X	
8. Use of taser in flash/display mode: When the subjects approached officers in an aggressive manner, one officer used a taser to take a subject to the ground and "flash-tased" (used the taser in display mode rather than on a subject) the taser so that other citizens gathering would not interfere. The use of the taser in this capacity is not addressed in SPD policy.	It was recommended that the Deputy Chief of Operations and others involved with review of less-lethal weapons consider a policy or protocol to address the use of taser in flash/display mode.			X	
9. Death investigations: Two officers were dispatched to an incident involving a woman who appeared to be having a miscarriage. She	The Homicide Unit should determine whether a policy or operational directive should be issued to help officers understand the Department's			X	

Issue	Recommendation	Implemented	Pending Implementation	Under Review	Rejected by Department
was later determined to have delivered 3rd trimester twin fetuses and the case was assigned to the Homicide Unit for follow up. There was an issue as to whether the officers should have reported the incident as suspicious, despite the fact neither observed any trauma or criminal activity, but rather understood a medical emergency was in progress.	expectations regarding such incidents.				
10. Requests for translators: There was an issue as to whether a subject required a translator while officers were giving Miranda at the scene of an incident. SPD Manual Section 17.270 III (A) addresses how to handle a request or need for a translator when subjects are being interviewed or interrogated. The policy does not speak as clearly to expectations for interpreter requests when officers are on a call or making an arrest.	The Audit, Accreditation and Policy Unit should consider whether a policy change or training is necessary to help officers understand expectations for interpreter requests when on a call or making an arrest.			X	

PARP RECOMMENDATIONS

The Mayor's Police Accountability Review Panel recognized the dedication of Seattle police officers, noting, "The majority of these officers work day in and day out, forging bonds with residents and successfully improving communities in which they serve."[6] The Panel concluded that the general structure of civilian oversight in Seattle should continue, and that many aspects of the system are valuable and encourage an effective citizen-complaint process. Nonetheless, PARP found room for improvement and made 29 specific recommendations to enhance and strengthen police accountability. What follows is an overview of the response to the Panel's recommended changes.[7]

> Recommendation 1: *The role and duties of the OPA Auditor should be clarified and expanded.*

On July 30, 2008, the Seattle Municipal Code was amended to make a number of changes regarding the OPA, the Auditor and OPARB. SMC 3.28.850 (A) extended the OPA Auditor's role from two years to three years and allows for reappointment for two subsequent three-year terms. The amended ordinance also expands the Auditor's authority to require, rather than merely suggest, additional investigation in an OPA complaint, and clarifies that OPA shall make requested information available to the Auditor. SMC 3.28.855 (C) and (G). Specific expectations for the current Auditor also were incorporated in her latest contract; for example, she was authorized to conduct a critical review of OPA-IS complaint outcomes and examine the issue of SPD obstruction related arrests. Likewise, in addition to what is required by ordinance, the exact duties and time required of the Auditor in the future largely will be defined by contract.

> Recommendation 2: *Each year the OPA Director, OPA Auditor and OPA Review Board should agree upon at least three substantive policy or procedural areas that will be the focus of enhanced review by the OPA Auditor. One of the first issues that should be examined is how the Department's policies, practices and procedures affect communities of color.*

New OPA Review Board members took office in September 2008 and, following an initial period of orientation to civilian oversight issues, have been working with the Director and Auditor to identify issues that will be the focus of enhanced review. Meanwhile, OPA and the Auditor collaborated on gathering and assessing information for the Auditor's Report on Obstruction Arrests and her Report on SPD's Relationship with Diverse Communities.[8] As noted in the Diverse Communities report, it is expected that the Auditor, OPA Director and Review Board will complete that inquiry by soliciting

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[6] PARP Final Report, January 29, 2008: http://www.seattle.gov/policeaccountabilityreviewpanel/Docs/1-29-08_PARP_Report_Final.pdf.

[7] In her April – September 2008 Report, the OPA Auditor also commented on implementation of major PARP recommendations: http://www.seattle.gov/police/OPA/docs/Auditor_Report_April_Sept_08.pdf.

[8] Copies of these two reports are available at:
http://www.seattle.gov/police/OPA/docs/Auditor_Obstruction.pdf and
http://www.seattle.gov/police/OPA/docs/Auditors_Report_Diverse_Communities_09.pdf.

broad community responses. The Auditor also includes commentary from the OPA Director in her semiannual reports where they have different perspectives regarding specific cases or policies. All three oversight entities are routinely reviewing and providing feedback on each other's reports prior to publication.

> Recommendation 3: *There should be a separation between OPA investigations and any related criminal or civil proceedings. OPA investigators should not be involved as investigators in any related civil or criminal matter. Pending civil or criminal matters should not delay OPA investigations.*

The SPOG contract was changed in response to this recommendation. Section 3.7 provides, "OPA will determine the appropriate investigative unit with expertise in the type of criminal conduct alleged to conduct the criminal investigation and the associated interviews of the named employee(s), witness employee(s) and other witnesses. OPA will not conduct criminal investigations. There shall be no involvement between OPA and specialty unit investigators conducting the investigation. Subject to the timelines contained in section 3.6.B of the collective bargaining agreement, pending civil or criminal matters involving an officer should not delay OPA investigations. In the discretion of the Department, simultaneous OPA and criminal investigations may be conducted. In the event the Department is conducting an OPA investigation while the matter is being considered by a prosecuting authority, the 180-day timeline provision continues to run. The criminal investigation shall become part of the administrative investigation. The Chief of Police may, at his/her discretion, request that an outside law enforcement agency conduct a criminal investigation." The Auditor has criticized this result for its potential to delay and weaken administrative investigations of misconduct, a result not intended by PARP.

> Recommendation 4: *SPD should adopt a rule that precludes the use of overtime or accrued vacation time to satisfy a disciplinary penalty that mandates suspension without pay.*

The SPOG contract now reads, in Section 3.4, "An employee will be precluded from using accrued time balances to satisfy a disciplinary penalty that mandates suspension without pay when the suspension is for eight or more days. However, if precluding such use of accrued time negatively affects the employee's pension/medical benefit, the unpaid suspension may be served non-consecutively."

> 5. *The OPA should focus its investigative resources on serious cases of misconduct. The OPA should identify complaints of a less serious nature as early as possible and encourage the resolution of these complaints through mediation.*

OPA continues to improve its complaint triaging system, such that it can focus its investigative resources on the more serious allegations of misconduct. Further, OPA encourages resolution of complaints through its mediation program. In an effort to expand the pool of mediators available to handle OPA complaints, in August of 2008, a group of professional mediators was selected to receive training in unique issues raised in

OPA complaints. OPA then coordinated with SPOG to approve an expanded list of individuals available to mediate OPA complaints.

6. *The OPA Director should attend all disciplinary hearings.*

The Municipal Code was amended to direct that the OPA Director shall: "Attend employee due process hearings with the Chief of Police concerning possible employee discipline resulting from OPA recommendations." SMC 3.28.810(G). The SPOG contract, at 3.5(D), also was changed to identify the persons to be present at such hearings and specifically includes the OPA Director. Since these provisions went into effect, the Director has attended all *Loudermill* due process hearings, the meeting held by the Chief of Police with the named employee after the notice of a proposed sustained finding and discipline has issued but before a final decision is made.[9]

7. *If new material facts are disclosed at the disciplinary hearing, and the Chief is inclined to act contrary to the OPA Director's recommendation, the case should be sent back to the OPA for further investigation.*

New language in the SPOG contract, at 3.5(F), provides, "If new material facts are revealed by the named employee during the due process hearing and such new material facts cause the Chief to act contrary to the OPA Director's recommendation, the case must be sent back to the OPA for further investigation. The 'further investigation' described above must be completed within the original 180-day time period."

8. *The 180-day limit to investigate a complaint of police misconduct should be able to be extended by the OPA for good cause (e.g., when further investigation is required due to new information introduced at a disciplinary hearing or when a material witness cannot be contacted due to a pending criminal proceeding).*

An MOA dated October 27, 2008, between the City, SPD and SPOG provides that, "The parties may mutually agree to extend the 180-day time period in circumstances not meeting the criteria set forth in Section 3.6(C) of the collective bargaining agreement, provided the request for extension is made before the 180-day time period has expired. Any such extensions must be in writing..." Section 3.6(C) arguably limited the situations in which the 180-day deadline could be extended to those where there was a showing of "due diligence in conducting the investigation of the complaint" and where OPA is "unable to complete the investigation due to the unavailability of witnesses or other reasons beyond the control of the Department."

9. *The City should review, evaluate and consider amending its policy relating to the use of Garrity protections. Officers and City staff involved in*

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[9] *Loudermill* affirms the principle that certain procedural steps should be taken before an officer is terminated or receives other significant discipline. These procedures include notice of the charges on which the discipline is based, an opportunity to review the evidence, and a chance to respond to the charges in the context of a due process review. *Cleveland Board* of *Education v. Loudermill*, 470 U.S. 532 (1985).

implementing Garrity policy should be regularly trained in its appropriate use.

The OPA Director has initiated a review of the Department's policy and practices related to *Garrity* protections.[10] She recently was involved in reviewing a new SPD protocol addressing officer-involved shootings in which the role of *Garrity* was clarified for different personnel who might be involved in such an incident. Training concerning the new protocol, including the use of *Garrity*, is planned.

10. OPA investigators should be provided with comprehensive training in the specialized skills needed for police internal investigations.

OPA coordinated with King County Sheriff's Office to provide a 2-day staff training in September 2008 on a variety of substantive and procedural issues related to conducting internal investigations. In addition to SPD and Sheriff's Office staff, presenters included experts from UCLA, the King County Prosecutor's Office, and the Summit Law Group. The program covered interviewing techniques and role-playing, investigating off-duty conduct, and credibility assessments, among other topics. A variety of training topics are covered at regular OPA-IS staff meetings and another comprehensive training is being planned for the fall of 2009.

11. The OPA Review Board should be the primary link between the community and the police accountability system. The OPA Review Board should conduct at least four public hearings and/or community listening sessions each year.

Following amendments effective July 30, 2008, SMC 3.28.910 (B) provides, "The OPA Review Board shall organize and conduct public outreach on behalf of itself, the OPA and the OPA Auditor. The Review Board shall solicit public comments on the fairness, thoroughness and timeliness of the OPA complaint handling process and on the professional conduct of Seattle police officers. The Review Board shall invite the OPA, OPA Auditor and Police Department to participate in its outreach efforts." The OPARB has power under the Ordinance to fulfill other functions, though it has determined, with the OPA Director and Auditor concurring, that it will primarily focus on coordinating outreach efforts and using the information grained from outreach to assist the OPA Director, OPA Auditor and OPA Review Board in their annual determination of at least three substantive policy or procedural areas that will be the focus of enhanced review by the Auditor, as suggested by PARP Recommendation 2. (See page 8, above.) Information

[10] In *Garrity v. New Jersey*, the U.S. Supreme Court held that police officers cannot be compelled, by the threat of serious discipline, to make statements that may be used against them in a criminal proceeding. 385 U.S. 493 (1967). In a related case, the Court held that an officer cannot be terminated for refusing to waive his Fifth Amendment right to remain silent. *Gardner v. Broderick*, 392 U.S. 273 (1968). Though coerced officer statements cannot be used in a subsequent criminal prosecution, such statements may be used for departmental investigation purposes. Refusal to provide a statement for administrative purposes can be grounds for discipline. The practical application of *Garrity* is complicated as there are many issues involved, such as when an officer's statement is "coerced," whether *Garrity* extends to witness officers, and whether *Garrity* should apply in incident and use of force statements.

concerning this approach and activities of the new Review Board members who took office September 1, 2008, can be found in the OPARB Report, 9/1/08 – 3/1/09.[11]

> *12. The OPA Review Board should research and report on national trends and best practices in police accountability and oversight; review OPA policies and procedures and provide recommendations for improvement; and should offer suggested topics for officer training.*

SMC 3.28.910 (C) now provides, "The OPA Review Board shall advise the City on Police Department policies and practices related to police accountability and professional conduct. The Review Board shall base its recommendations on its review of the OPA complaint handling process and of the OPA Director's and OPA Auditor's reports, on any public comments it has received, and on its own research on national trends and best practices in police accountability and civilian oversight of law enforcement. The Review Board shall present its recommendations in its semiannual reports." The OPA Director and Auditor have similar responsibilities and plan to work jointly with the OPA Review Board on these issues.

> *13. The OPA Review Board membership should be expanded from three to between five and seven members. The members should reflect the diversity of Seattle and should be Seattle residents.*

The Municipal Code was amended to provide that the OPARB will consist of seven members. SMC 3.28.900(C). The seven members of the new OPARB took office September 1, 2008.

> *14. Civilian advocates from the Seattle Office for Civil Rights (SOCR) should be made available to assist OPA complainants through the process as needed.*

The OPA Director conducted training with SOCR staff concerning Seattle's civilian oversight system, the types of allegations of misconduct brought to the OPA, and the complaint investigation process. The OPA and SOCR websites, pamphlets, and other informational sources have been changed to indicate OPA complaints can be made through SOCR. Efforts are underway to track whether citizens are using SOCR to assist with filing OPA complaints.

> *15. The OPA Director should have control of the OPA budget and should report to the Mayor and City Council on the adequacy of OPA funding during the annual City budget process.*

The OPA Director manages the OPA budget and has input with the Mayor and City Council during the annual budget process.

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[11] See OPARB Report, 9/1/08 – 3/1/09: http://www.seattle.gov/council/oparb/reports.htm.

16. The OPA Director, in consultation with the Police Chief, should have the authority to select and transfer OPA staff, including sworn investigators and the Deputy Director.

As needed and in consultation with the Chief, the OPA Director has selected new staff for OPA-IS. In 2007 and 2008, new staff included the OPA-IS Lieutenant, an OPA-IS Sergeant/Investigator, and an Intake (Acting) Sergeant.

17. The OPA Director should not have worked for the City of Seattle during the preceding 10 years.

Though this provision was not in effect at the time the current OPA Director was appointed, she had not worked for the City of Seattle during the preceding 10 years.

18. The OPA Director should not become a member of the Firearms Review Board.

The OPA Director is not a member of the Firearms Review Board.

19. The OPA Auditor should be a civilian and the position should remain outside of the Seattle Police Department.

The OPA Auditor is a civilian and is employed on a contract basis by the City outside the Seattle Police Department.

20. SPD should adopt a policy that presumes an officer will be terminated for sustained complaints involving dishonesty that either relate to or occur within the scope of the officer's official duties, or that relate to the administration of justice. If the Police Chief chooses to impose a disciplinary sanction other than termination, he should be required to state his reasons in writing. This written statement shall be provided to the OPA Director, and upon request, to the Mayor and City Council.

The SPOG contract was amended as follows: "In the case of an officer receiving a sustained complaint involving dishonesty in the course of the officer's official duties or relating to the administration of justice, a presumption of termination shall apply. For purposes of this presumption of termination the Department must prove dishonesty by clear and convincing evidence. Dishonesty is defined as intentionally providing false information, which the officer knows to be false, or intentionally providing incomplete responses to specific questions, regarding facts that are material to the investigation. Specific questions do not include general or "catch-all" questions. For purposes of this Section dishonesty means more than mere inaccuracy or faulty memory." Section 3.1.

If the Chief of Police does not follow OPA's written recommendation on the disposition of a complaint (involving dishonesty or any other allegation), the Municipal Code now requires that he make a written statement of the material reasons for his determination.

This written explanation shall be provided to the Mayor and City Council and the OPA Director is required to include summaries of such explanations in her regular reports. SMC 3.28.812 (A) and (D). A procedure for submission of this information to the Mayor and City Council through the Public Safety, Human Services and Education Committee has been developed.

21. *The Police Chief should appoint a high-ranking ethics officer who would provide advice and guidance to SPD employees on issues related to professional conduct and accountability.*

The Chief of Police appointed Captain Neil Low to oversee the function of Ethics and Professional Responsibility. In addition to providing advice on ethics questions, Capt. Low is now the SPD liaison with the King County Prosecutor's Office on *Brady* matters, is centrally involved with SPD's efforts on the Mayor's Race and Social Justice Initiative, and works closely with OPA and the Training Unit on a number of other projects.

22. *SPD should adopt a policy prohibiting retaliatory contact with a complainant.*

An SPD policy was adopted December 19, 2008, providing, "No employee shall retaliate against any person who initiates or provides information pursuant to any citizen or internal complaint, or against any person who provides information or testimony at a Department hearing, because of such person's participation in the complaint process. Such retaliation may be a criminal act and/or constitute separate grounds for discipline."

23. *SPD should implement additional training and policies to improve the cultural competence within the Department to reflect the greater diversity of Seattle.*

The OPA Director, Ethics Captain, and Training Captain are developing a Department wide program that addresses distinctions between racial profiling and criminal profiling, and helps build an appreciation for the varied experiences evident in police/citizen interactions. In November 2008, a group of sworn and civilian employees participated in a "train the trainer" course on "Perspectives in Profiling." Final preparations for rolling out training for all SPD staff later in 2009 are underway, including the consideration of suggested changes from the community.

24. *The OPA should adopt a policy that requires public disclosure of all OPA records to the maximum extent allowed by law. Records of all sustained complaints, including the punishment imposed, should be made public in a format designed to protect the privacy of the officers and complainants to the extent required by law.*

The SPOG contract was changed to provide: "To the extent allowable by law at the time of the request, the City will consider application of relevant exemptions to the public disclosure law set forth at RCW 42.17.310 with respect to personally identifying information in internal disciplinary proceedings files and OPA files, the nondisclosure of which is essential to effective law enforcement." Section 3.6 (K). The section continues,

"Records of all sustained complaints, including the punishment imposed, should be made public in a format designed to protect the privacy of the officers and complainant..."

25. *When the Police Chief changes a recommended finding from the OPA, the Chief should be required to state his reasons in writing and provide these to the OPA Director. A summary of the Chief's decisions should be provided to the Mayor and City Council upon request.*

The Municipal Code now provides, "If the Chief of Police decides not to follow the OPA's written recommendation on the disposition of an OPA complaint, the Chief shall make a written statement of the material reasons for the decision. The statement shall not contain the officer's name or any personal information about the officer. If the basis for not sustaining the complaint is personal, family or medical information about the officer, the statement shall refer to 'personal information' as the basis. The Chief shall make the written statement within 60 days of his or her final decision on the disposition of the complaint." SMC 3.28.812(D) directs that this written statement be provided to the Mayor and city Council, with summaries included in the OPA Director's regular reports. A procedure for submission of this information to the Mayor and City Council through the Public Safety, Human Services and Education Committee has been developed.

26. *The OPA Director, OPA Auditor and OPA Review Board should meet quarterly and each should independently prepare and jointly present a semiannual report to the Mayor and City Council.*

The OPA Director, Auditor and Review Board meet at least once a month, and certainly more often than quarterly. Each entity independently prepares and submits reports to the Mayor and City Council, though they jointly present at the Public Safety, Human Services and Education Committee.

27. *Within 60 days of receiving recommendations from the semiannual reports, the Police Chief should respond in writing with a list of the recommendation(s) that the Chief is rejecting, an explanation for the rejection(s) and a timetable for implementing the accepted recommendations.*

OPA has developed a procedure for tracking policy and training recommendations. One new step involves regular review and discussion of the implementation status of these recommendations with the Police Chief at bi-monthly meetings held with the OPA Director.

28. *The OPA Auditor should monitor the progress of all OPA-related recommendations being implemented by the Police Department, including the recommendations that are accepted from this report. The OPA Auditor should report on the implementation status in the semiannual reports.*

The current contract with the OPA Auditor provides that she is to monitor and report on implementation of the PARP recommendations. The Auditor reported on implementation

of major changes recommended by PARP in her report for the period April – September 2008.[12] The OPA Director also will continue to track and regularly report on the implementation status of OPA policy and training recommendations.

29. *The OPA Director should document all correspondence and substantive interactions with the OPA Auditor and the OPA Review board relating to the disciplinary process and the oversight system.*

The OPA Director or other OPA staff document all correspondence and substantive communications with the OPA Auditor and OPA Review Board.

CONCLUSION

Review of SPD policy is one of the most important functions OPA performs, because it is directed towards future improvements in the work of the Seattle police and allows for the implementation of "best practices" identified both internally and externally. In 2007 and 2008, OPA worked to put into practice specific recommendations made by PARP to strengthen civilian oversight. OPA also continues to perform its own review function to identify opportunities to clarify policy and improve training for Seattle police officers.

[12] See: http://www.seattle.gov/police/OPA/docs/Auditor_Report_April_Sept_08.pdf.

TAB 7

SEATTLE POLICE SPECIAL REPORT

Use of Force by Seattle Police Department Officers 2006 - 2009

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ABOUT THIS REPORT:

The public safety agenda of the Seattle Police Department consists of three inter-related objectives: **Fight Crime, Reduce Fear and Build Community**.

In order to build community, community members need to believe in the efficacy of police actions and have confidence that police power is being used fairly, effectively and appropriately. Perhaps the most fundamental police power is the power to use force to achieve lawful public safety purposes. To increase public confidence in how, when and toward whom force is being applied, the Department is providing this Special Report.

8/12/2010

Use of Force Statistics in the US & Seattle

Police use force infrequently.
Despite what is shown on television and in movies, national studies reveal that less than 1% of all interactions between police officers and the public involve the use of force.[1] To do their jobs, police officers rely on the public's compliance, which they gain 99% of the time. **In Seattle, the use of force rate has declined over the last three years going from 0.18% in 2006 to 0.12% in 2009. This is less than one-fifth of the national rate.**

Even in making arrests, police use of force is rare.
Arrests are the type of police-public contact where one would expect force to be used most often. One study of adult custody arrests in six police agencies found that 98% of arrests occurred without any police use of a weapon.[2] In Seattle, the rate of force use relative to arrests went from 3.3% in 2006 to 2.4% in 2009. This means that **Seattle police officers accomplish arrests without any use of force over 97% of the time.**

Most often, police officers use force at the lowest end of the force spectrum.
A study by the International Association of Chiefs of Police (IACP) found that physical (bodily) force (which is at the lowest level of force options available to officers) was the type of force used by police officers in 87% of use of force incidents.[3] In contrast, firearms were reportedly used in 5% of force incidents. **In Seattle in 2009, officers used their own bodies (i.e., hits, kicks, etc.) in 78% of use of force incidents and used firearms in 0.6% of such incidents.**[4]

In the majority of incidents when police use force, those subjected to force are not injured.
Nationally, about 15% of those who experience force by police are injured.[5] **In Seattle, 6.3% of use of force subjects sustain injuries, with major injuries limited to 0.8% of the subjects.**[6] Most use of force subjects in Seattle sustain either no injuries (31%) or minor injuries such as scrapes or scratches (62%).

Complaints about police use of force are relatively infrequent.
Nationally, most persons (83%) who had force used or threatened against them by police felt that the force was excessive, but only 13.1% indicated they had filed complaints with the police.[7] **In Seattle, for the four-year period of 2006-2009, complaints were received in just over 10% of use of force incidents.**

[1] See Bureau of Justice Statistics, *Contacts between Police and the Public, 2005*, (Washington, DC: US Department of Justice, NCJ 215243), April 2007. Force was used or threatened in police-public contacts 1.6% of the time. When threatened use is removed, the rate of force use was estimated at 0.88% of public contacts.
[2] See Joel H. Garner and Christopher D. Maxwell, "Measuring the Amount of Force Used By and Against the Police in Six Jurisdictions," in *Use of Force by Police, Overview of National and Local Data*, (Washington, DC: US Department of Justice, NCJ 176330), October 1999.
[3] See Mark A. Henriquez, "IACP National Database Project on Police Use of Force," in *Use of Force by Police, Overview of National and Local Data*, ibid.
[4] It should be noted that the IACP study was completed before the widespread use of the Taser in law enforcement agencies. Taser use constituted 11% of the force used in Seattle in 2009.
[5] See Bureau of Justice Statistics, *Contacts between Police and the Public, 2005*, op.cit.
[6] This is based on an in-depth study of use of force injuries in 2006. These findings were confirmed in a separate study by the Emergency Medicine Department of the University of Washington Medical School.
[7] See Bureau of Justice Statistics, *Contacts between Police and the Public, 2005*, op.cit.

Use of force is one of the most controversial issues surrounding the work of law enforcement professionals. Police officers are invested with the legal authority to use force against another person, including the use of deadly force. Law enforcement agencies recognize that with that authority comes the responsibility to ensure that force is used reasonably and appropriately.

The Seattle Police Department (SPD or the Department) takes pride in the restraint shown by our officers as well as in our training programs on defensive tactics and on decision-making in the application of force. The countless incidents in which officers have defused dangerous situations, or where they themselves have been injured in the interests of public safety, generally go unnoticed. Instead, official reports on use of force tend to concentrate on cases where complaints have been made. Focusing only in this area, however, can be misleading. This Report aims to provide context and information on the use of force by Seattle Police Department officers over the four-year period from 2006-2009.

Use of Force Challenges for Police

Documenting and monitoring trends in use of force are important steps the Department takes to be accountable for force use. Nevertheless, use of force is an area of responsibility that presents significant policy, training and oversight challenges for SPD and law enforcement generally. Among the most prominent of these challenges are

- **Training for the rare event.** As noted above and cited elsewhere in this Report, force use by SPD officers is very infrequent and quite unusual for any individual officer in any given year. In the main, 99% of the time, officers are involved in situations where the people they contact are compliant with their commands or requests. Training programs focusing on force, then, are dealing with the rare situation that an officer may encounter. There is no single best way to train for such rare events, and agencies differ in the emphases placed on training that focuses on skill acquisition with various force tools versus scenario-based practice in force decision-making versus de-escalation tools and techniques. The Department attempts to combine best practices in each of these areas, while at the same time shaping annual, in-service training to address force patterns observed in the field. Nevertheless, it remains a key challenge to provide the most effective as well as the right balance among the various types of training for officers when facing rare incidents that may require force.

- **Encountering the unpredictable and unexpected.** Not only are use of force incidents rare events for officers to confront, they also evolve rapidly and are wildly unpredictable. Often an incident will change dramatically between the time it is broadcast on the radio and when officers arrive. The change can be either positive or negative. For example, initial reports of a subject with a weapon may turn out to be unfounded, but officers will not know that until they arrive and can take stock of what is going on. If the scene is chaotic, with

multiple people involved, it may take some time to unravel what is happening. All the while, officers must handle the call as though a weapon is involved and respond accordingly. The officers' behavior may seem an overreaction to observers on the scene who are unaware of the information that police were given when dispatched. On the other hand, apparently simple calls may turn into serious incidents in situations where subjects intensify their level of aggression when confronted by officers. SPD and other policing agencies, then, must prepare officers to navigate incidents that occur rarely and that are characterized by dynamics that are difficult – if not impossible – to predict. To add to the complexity, officers are required to gauge what is going on very quickly in order to avert more serious harm or an escalation in the situation. Courts, recognizing such dynamics in use of force incidents, consider the totality of the circumstances faced by officers when determining whether the force applied was reasonable and appropriate.

- **Actions versus reactions.** A major area of public confusion and of frequent outcry concerning police use of force is the notion that force is only appropriate if officers progress through escalating levels of force until they match what a subject is doing. In other words, a subject's actions should result in an officer's equal, opposite reaction. This is not the training that officers receive. To put it bluntly, officers are not trained to fight fair. Instead officers are trained to take appropriate action to bring a situation under control as quickly as possible in order to minimize the risk of harm to everyone. There is no matching of action/reaction, and no requirement to try varying levels of force. Instead officers are expected to use judgment to determine how best to resolve the situation before them, always with the goal of gaining control as quickly as possible. If, for example, an incident justifies the use of deadly force, officers are not required to try other options first, nor are they expected to "shoot to wound." Similarly, officers are not expected to "duke it out" with combative subjects who are unarmed in preference to using other tools that may be available to them, such as OC spray or Tasers. The subject's actions will dictate an officer's response, but rather than trying to match what the subject is doing, the officer is expected to assert control of the situation as quickly and effectively as possible.

- **Difficulty in developing comparative statistics.** SPD force rates and complaint rates appear to benchmark well against national data, but it remains hard to establish true use of force norms. Because police agencies vary widely in their standards for reporting force use and for determining when complaints are investigated, making comparisons among departments is difficult. Some agencies, for example, report force only when injuries have occurred; others require reports when complaints are made; still others report when force is threatened though not used. With respect to complaint handling, there is even more variety in terms of when cases are referred for investigation and how those investigations are classified and reported. Since force and complaint rates are based on official reports, these varying standards will frequently result in inappropriate comparisons. In light of these difficulties, the Department has committed to monitoring its own force applications over time, seeking to understand patterns in force use, injuries and complaints that will help inform and shape training and accountability programs.

Trends in Use of Force in Seattle, 2006 - 2009

SPD policy requires officers to document their actions whenever they use deadly force, less lethal force or physical force in the exercise of their duties. "Deadly force" is defined as the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. "Less lethal force" is defined as a level of force such that the outcome is not intended to cause death. "Physical force" is defined as any force that causes an injury, can reasonably be expected to cause an injury or results in a complaint of injury. Officer actions that do not require SPD use of force documentation include unholstering/display of a firearm, escorting or moving a non-resisting person, or handcuffing someone with no or minimal resistance.

To ensure that consistent information is gathered in each use of force incident, SPD revised its use of force reporting forms in 2006. An examination of these reports for the period 2006 – 2009, reveals the following key findings:

- **Reported use of force incidents in Seattle have gone down 37% since 2006.** In 2006, Seattle police officers reported 872 use of force incidents. In 2009, the number of documented incidents with force use totaled 549.

- **Use of most types of "force options" has declined since 2006.** The new use of force reporting forms make it easier to identify the types of force used by each officer in a use of force incident. Nearly all force options are down markedly in the four-year period studied. Some examples are found below.

Changes in the Use of Individual Force Options by SPD Officers between 2006 and 2009

Type of Force	# of uses in 2006	# of uses in 2009	Δ from 2006 to 2009
Hands/elbows/arms	1080	711	-34%
Feet/knees/legs	346	200	-42%
Taser in probe mode	292	123	-58%
Taser in touch mode	119	43	-64%
Chemical spray/OC	123	38	-69%

- **In any given year, the majority of officers are not involved in any use of force incidents.** In 2009, for example, a total of 425 SPD officers filed at least one use of force report, representing 36% of officers and detectives. Of those officers filing use of force reports, nearly half (48%) were involved in only one use of force encounter.

- **The distinguishing characteristic of officers involved frequently in use of force incidents is their job assignment.** In a special study of force use among officers in 2006, the Department found that officers who had been involved in a larger number of force encounters did not use different types of force, nor did they have higher rates of force-related complaints, when compared with other officers. The chief distinction they shared was their assignment to the third watch in Patrol, the shift from 8:00pm to 4:00am.

- **Assault incidents give rise to the most uses of force by Seattle police officers.** In 2009, 40% of use of force incidents arose out of assault situations. Other incident categories included robberies, persons with a weapon and disturbances, including domestic violence. When these are added to the assault incidents, it is clear that most of the time (in 56% of incidents) SPD officers are using force in incidents characterized by interpersonal violence.

- **Most of the persons confronted by SPD officers in use of force situations are impaired.** In 2009, 73% of the use of force incidents involved subjects who were impaired. Impairment related to drug or alcohol use was cited most often (54% of the time), while impairment related to mental illness was cited about 12% of the time.

- **The racial characteristics of use of force subjects are similar to those of persons arrested by SPD officers.** A frequent comparison in use of force studies looks at the similarities between persons arrested and subjects of force use. This is because arrest situations are likely to be the most common types of police contacts when force may be used. Since arrestees are the most likely use of force subjects, arrest statistics are more appropriate and more reliable than general population data for assessing those to whom force is applied.

  The comparison of SPD use of force subjects and arrestees in 2009 is shown below.

Racial/Ethnic Composition of SPD Use of Force Subjects and Arrestees, 2009
[Only cases where race/ethnicity were known are included.]

Racial/Ethnic Group	% of Use of Force Subjects	% of Total Arrestees*
Caucasian	45%	51%
African American	43%	39%
Asian/Pacific Islander	7%	6%
Native American	3%	3%
Hispanic/Latino	3%	4%

*Note: Hispanic/Latino origin is captured separately from race in arrest data.

As can be seen in the table, the two largest groups of arrestees (Caucasians and African Americans) are also the two largest groups of use of force subjects.

- **Men are more frequent use of force subjects than are women.** Women comprised nearly one-fifth (22%) of the arrestees by SPD officers in 2009, but only 12% of the use of force subjects. This gender representation in arrests and force incidents has been stable over the last four years.

Trends in Force-Related Complaints to SPD, 2006 - 2009

Complaints alleging that SPD officers used unnecessary force have been dropping steadily, from 146 complaints in 2006 down to 105 in 2009. This decline may be related to the Department's training efforts that focus on the use of sound decision making and de-escalation techniques when encountering combative individuals. Also, when force is used, in addition to written reports required of officers and their chain-of-command, a supervisor screens the incident, ensures photographs are taken of any injury and speaks with the subject about the event. Where the subject has concerns about the force used, supervisors are in a position to help explain the dynamics of the situation and respond to questions that, had they gone unanswered, might previously have led to a complaint. Where individuals express a desire to file a use of force complaint, SPD officers and supervisors are required to assist with information about filing a complaint with the Office of Professional Accountability (OPA).

Some notable statistics related to force-related complaints are as follows:

- **The rate of complaints about SPD officers' use of force is well below the national norm.** The national use of force complaint rate for large, metropolitan police agencies is 9.5 complaints per 100 full-time officers.[8] The comparable rate for SPD officers was 5.3 complaints per 100 officers, which is 44% lower than the national rate for metropolitan agencies and 20% below the complaint rate in law enforcement agencies of any size.

- **The number of SPD officers receiving use of force complaints has dropped steadily since 2007.** In 2007, 111 SPD officers received one use of force complaint. This number dropped to 98 officers in 2008 and to 72 officers in 2009. The number of officers receiving two force-related complaints within a single year has dropped from 11 officers in 2007, to 7 officers in 2008 and down to 5 officers in 2009. There were two officers with three or more use of force complaints in 2007. This number went up to seven in 2008, but dropped again to two officers with three or more complaints in 2009.

- **SPD has an Early Intervention System to track officers involved in an unusually high number of use of force incidents.** In addition to investigating all complaints involving use

8 See Bureau of Justice Statistics, Citizen Complaints about Police Use of Force, (Washington, DC: US Department of Justice, NCJ 210296) June 2006.

of force, the Department also monitors the number of times individual officers use force. All use of force incidents are tracked and an early intervention system is alerted if any officer uses force more than seven times within a six-month period. In such instances, the officer's immediate supervisor and chain-of-command, in coordination with SPD Human Resources, will analyze the incidents involved, along with other information about the employee's performance to determine if training or other intervention may be necessary.

- **Complaints about use of force incidents have resulted in SPD policy and training changes.** In addition to assessing whether officers require discipline, training or other intervention regarding their uses of force, complaints may also result in Department-wide training or policy changes. In-car video/audio recordings are often invaluable in evaluating the conduct of both officers and complainants in a use of force incident and can help the OPA assess the complaint from the outset. In light of the importance of such recordings, the Department has reissued policy statements pertaining to in-car video/audio recordings, making it clear that officer use of this system is not discretionary under most circumstances. Disciplinary actions have been taken for failure to adhere to this policy. Complaints arising from officer objections to being observed or recorded have also resulted in development of a policy on the rights of public observation of officers.

SPD Force-Related Policy and Procedures Changes, 2006 - 2009

During the four-year period from 2006 to 2009, SPD has been active in reviewing force-related issues and diligent in making improvements to policies, procedures and training where needed. Some of the key changes that have been made are profiled below.

- **Changes in emphases in force-related training.** In much force-related training, the focus is often on the technical details involved in applying various force options. SPD training has always emphasized both the correct use of various force options as well as the decision-making involved in applying force. Since 2007, however, the Department has been emphasizing de-escalation techniques as part of the post-basic academy training for new officers and as part of the annual, in-service training for existing officers, called "street skills." Based on feedback from new officers, SPD's Advanced Training Unit has also influenced the content of the force training provided in the state Basic Law Enforcement Training Program, to include de-escalation and decision-making in force situations. New user and annual re-certification training in the SPD Taser program has also emphasized how important it is for officers to articulate both the need to use force as well as the response of subjects to each force application. These changes in training emphases are credited, at least in part, in helping to reduce the number of use of force incidents since 2006.

- **Revision of use of force reporting forms.** As noted earlier, the Department revamped the forms used to document use of force in 2006. This was done not only to ensure uniformity in what information is gathered in use of force incidents, but also to increase the amount of

information provided. Of particular importance was the need to document both the actions and the physical and mental condition of use of force subjects. The reason this was important is because these subject characteristics likely influenced their behaviors, resulting in the need for officers to apply force. At the same time that the forms were revised, a new system for recording use of force information was acquired, providing more detail about such incidents and allowing easier monitoring of trends in force applications.

- **Changes in policies governing officer-involved shootings.** Firearms represent the most consequential type of force employed by officers and there have been a number of developments across the country in how departments respond to such incidents. These developments have been the result of research into such events, as well as widespread dissatisfaction with traditional approaches to officer-involved shootings on the part of officers and community members. After a thorough examination of available research and best practices, the Department has made the following modifications to its officer-involved shooting response:
    - Obtaining a "Public Safety Statement" from the involved officer(s) or witness officer(s) regarding the directional path of bullets, possible injuries, outstanding suspects and any other possible dangers to the community and first responders. This statement is designed to address immediate safety hazards and is distinct from the official statements that officers are required to provide during the investigation of the incident.
    - Designating the Homicide Unit as the investigating unit for all officer involved shootings, providing advanced training and establishing firm on-scene protocols for event reconstruction, photography and other investigative activities.
    - Providing involved officers with information packets for themselves and family members after a shooting incident that detail the steps the Department and others will be following in response to the incident. Also provided is information about, and access to, peer support services.
    - Obtaining the statement of the involved officer(s) within 72 hours of the incident and permitting the officer(s) to review available video footage prior to making a statement.
    - Requiring a post-shooting screening prior to an officer's return to duty, as well as a mandatory visit to the SPD Shooting Range to ensure that the replacement weapon[9] provided the officer is in good working order and that the officer is comfortable using the new weapon.

[9] Officers are provided replacement weapons because their service weapons are placed into evidence as part of the investigation in officer-involved shootings.

SPD Use of Force Innovations

Some of the work being done by the Department in the use of force area is on the cutting edge of the law enforcement profession. Examples are:

- **The SPD Less Lethal Options Program** is widely regarded as one of the best in the nation, as evidenced by the frequency with which SPD personnel are called upon to provide training and guidance in the development of policy and procedures in other jurisdictions. Shaped from the beginning with community input, the Program combines expanded crisis intervention training with the addition of the Taser as a force option for first responding officers. Strengths of the Program are the selection of motivated officers to participate, effective training and recertification to ensure skill attainment and maintenance, incorporation of field experience into training programs, multi-level monitoring and accountability, and transparency through regular reporting on Program experience.

- **Adoption of a protocol for handling "excited delirium" cases.** Law enforcement confrontations with individuals who are drug-intoxicated, delusional and/or hyper-adrenalized – labeled "excited delirium" by emergency departments and public safety responders - too often result in the deaths of such persons. This is because their behaviors may obscure their medical crises until it is too late. The Department has developed a protocol that alerts officers and dispatchers to the signs of excited delirium and provides guidelines for how to respond in such a situation. The protocol emphasizes the need to address the individual's medical condition first, before dealing with any unlawful conduct.

- **Collaboration with University of Washington Medical School.** Since 2007, the Department has been engaged in a research partnership with the Department of Emergency Medicine of the UW Medical School. As part of this collaboration, medical researchers have examined medical outcomes in incidents where Tasers have been used as well as in other force applications and have documented the medical treatment of force subjects based upon officer descriptions of injuries. Planned work will look at cases of "excited delirium," officer injury profiles and incidents where excessive force is alleged. The research partnership has resulted in one published paper[10] and several others in progress. This collaboration underscores the importance the Department places on minimizing injuries in use of force situations.

- **Convening an expert panel to review SPD use of force training and related protocols.** In response to community concerns, the Department is convening a panel of experts from around the nation and region to review the training provided to SPD officers and the procedures used to document and monitor use of force incidents. Out of this review, the Department is committed to making changes that will provide officers with the best available training and policy to guide their uses of force.

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10 Strote, Jared, Mimi Walsh, Matthew Angelidis, Amaya Basta and H. Range Hutson, Conducted Electrical Weapon Use by Law Enforcement: An Evaluation of Safety and Injury, Journal of Trauma, Vol. 68:5, May 2010, pp. 1239ff.

TAB 8

Seattle Police Department
Community Outreach Section
Community Relations Plan

Mission

We are committed to ongoing and proactive communication with our neighborhoods, businesses and community based organizations to strengthen our public safety practices and programs to ensure the Seattle Police Department is working toward responding to and reducing the fear of crime.

Vision

Build, strengthen and sustain community relationships and open communications with respect, equality and trust.

Goals

- Strengthen relationships and build opportunities for open communications and dialogues between the Seattle Police Department and Seattle's geographic and demographic communities.
- Increase participation of individuals from minority communities working in partnership with the Seattle Police Department on public safety issues.

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- Facilitate honest and open interactions between the Seattle Police Department and Seattle's geographic and demographic communities, while adhering to the standards of mutual respect and a commitment to address problems and concerns.
- Respond to community concerns in an honest, timely and respectful fashion.

Current Climate

The formation of the Community Outreach Section resulted from 3 high profile incidents that created concern about SPD's policing practices (especially in communities of color). The communities' expectations have been heightened with the public announcement and commitment made by the Chief and Mayor regarding the priority the department has placed on improving community relationships. Key to responding to this is the acknowledgement that community engagement is a responsibility of all levels of the organization. Without a comprehensive and supported strategy to incorporate this into every corner of the organization the chance of successfully moving from the current climate is compromised.

Concept of Community Outreach

Community outreach is the responsibility of everyone in the department, not just a selected few. Community outreach starts at the highest level (beginning with the Chief of Police) and filters throughout the agency to the newest employees, be they a police recruit, 911 dispatcher, PEO or records clerk. With over 1,800 employees SPD has hundreds of thousands of contacts with community members each year. By virtue of those contacts, each employee has a role in the community outreach efforts of SPD.

Experience has shown that relegating community outreach to a few, select individuals is a disservice to SPD and to the community it serves. Experience has also shown that community members will show deference, and in some cases affinity to department members, for whom they have established a relationship with, however those positive feelings do not transcend to SPD as a whole, and in fact it is very possible for community

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members to trust one person in the agency while at the same time feeling very distant from the agency as a whole.

Community Outreach Strategy

To be effective the community outreach strategy must be multi-faceted and diverse, in great part because the community we serve is multi-faceted and diverse.

The strategy we propose focuses on multiple areas:

- Precinct Frontline Involvement
- Demographic Advisory Councils
- Community Police Academy
- Youth Issues, Explorers
- Crisis Communication
- Community Meeting Notification/Protocol/Analysis
- Unit Manual
- Academic Collaboration
- Non-traditional Community Outreach
- Recruiting
- Media and electronic communications such as SPD Blotter, Twitter, Facebook, etc.

Precincts

Precinct involvement and support is essential to the success of the community outreach strategy. In addition, sustaining the mission of the community outreach unit is heavily contingent on precinct involvement. Community Police Team officers and patrol officers under the direction of Precinct commanders are the harbingers of the department.

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The role of the Community Outreach Unit as it pertains to the precincts is to ensure information about specific issues and messages are consistent and are known to all precinct personnel. The unit will strive to ensure that community issues arising throughout the city are communicated to the precincts and facilitate responses that ensure the community concerns are addressed. The goal is to identify where precincts and community connects are missing (or could be stronger) and engaging them in a sustainable, positive manner where that is currently not occurring. This communication will strengthen credibility of the department with the community and show that we are serious about our commitment to transparency. Avenues for communication will continue via the Media Relation Unit, the Video Unit, the web page, Facebook, Twitter, and public service announcements.

Citywide Advisory Council

The City Wide Advisory Council was created in October, 2003 to bring representatives from the ten demographic advisory councils, the five precinct advisory councils, and the now disbanded CPAC (Community Policing Action Council) together on a quarterly basis to discuss broad issues that affect many different segments of the community with the Chief of Police.

Demographic Advisory Councils

Strengthening the role and participation of the Demographic Advisory Councils (DAC) is important to the overall mission of the Community Outreach Unit. The DAC's will be more effective with consistent support staff from the department to record and maintain records and provide follow-up. An engaged and active liaison officer assigned to each DAC to assist with answering questions, providing speakers, and trainers will also enhance the effectiveness of the DACs. Ensuring the ability to track issues that are noted at various advisory councils and to distinguish where there are gaps in structure

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or potential areas for problems will also enhance the DAC and allow SPD to get in front of issues that may be brewing or surfacing on the horizon. DAC will play an important role in educating the community and they will be a great resource for the department. As a step towards reinvigorating the DAC's, each has been asked to identify a project that they feel is important to them. The Council will then work with SPD to address the issue or problem. The hope is that this will focus energy and give those involved a sense of accomplishment and buy-in that participation on the Council is worthwhile. Already the East African Community Advisory Council has identified finding a place for Somali youth to get together for positive interactions as their project.

Community Police Academy

The Community Police Academy (CPA) has been an outstanding tool to educate the public about the realities of policing. Unfortunately there has been no curriculum change since its inception. A thorough review of the classes will be completed by both internal and external parties. This review will help ensure that participants are getting the most out of the academy. A third party analysis of the format and structure of the CPA to include an effectiveness survey will identify any potential areas of concern if they exist. The effectiveness survey would focus on determining how many participants attending the CPA pass the word along about the CPA and if or how that information about the CPA is shared.

In addition, we will perform a survey to determine if community members would be interested in a one day workshops specific to their communities concerns. If there is enough interest then we can "pilot" the program and evaluate the success of a one-day CPA.

Youth Issues

Currently we are in full participation with the Seattle Youth Violence Prevention Initiative as well as full participation with the Mayor's Youth Commission, Role Reversals, Donut Dialogues, and various youth forums. These activities rely heavily on

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consistent police involvement to be successful. Officers assigned to youth oriented outreach need high levels of energy and enthusiasm, youth-specific training, and flexibility.

Explorers

Although youth-related in nature, the Explorer program is separated from youth issues as it is specific to young people who apply and dedicate time and work within the agency in a specific role.

Crisis Communication

Much of how the community perceives SPD hinges on our ability to communicate clearly in times of crisis. By the same token, how individuals respond to crisis internally also depends on our communication processes. To that end, an update of the current crisis communication plan is underway. The revised plan will provide specific direction when addressing internal and external communication and outreach in critical incidents. Whatever the crisis may be, it is important that these audiences be addressed in a timely manner:

- SPD employees
- Mayor's Office and City Council
- Media representatives
- Precinct Advisory Councils
- Demographic communities based on crisis via Demographic Advisory Councils

Community Outreach Short Term Work Plan

The Community Outreach Unit will:

- Engage in a comprehensive assessment of the department's activities in regards to community outreach and engagement. This assessment will look at geographic and

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demographic needs as it relates to communication and continuity of response from the department. Included in the assessment will be the development of several key responses to institutionalize our community outreach and engagement activities, including but not limited to:

- Development of a comprehensive citywide calendar outlining all community meeting being held to address public safety issues. This calendar will be available to all SPD personnel and regularly updated.
- Develop a database system and protocol that will allow the department to track who is attending which meetings and if there are any actionable or policy issues that need attention based upon the meetings. This will be a valuable tool for precinct commanders, command staff, and the Community Outreach unit.
- Develop a Unit manual that clearly lays out how the unit will be run and delineates responsibilities for each participating party.
- Convene a committee of recognized academics to ensure focus, vision and innovation for the outreach efforts of the department.
- Implement a form of "living room forums" that will engage community members from every area of the city, particularly representatives of various demographic groups.

Personnel

The overall COU mission is daunting and enormous and will need personnel assigned to the unit to complete. One captain and one lieutenant assigned to conduct community outreach on behalf of the 1,800 plus employees of the Seattle Police Department will not be sufficient to implement the operational components of the mission and/or to meet the stated objectives, particularly in light of the fact that there are additional responsibilities for the lieutenant and captain of the unit.

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In order to be effective there has to be sufficient personnel assigned to carry out the mission, just as there needs to be sufficient personnel assigned to oversee the mission.

At a minimum the Community Outreach Unit will need:

- One sergeant to ensure the there is consistent structure and supervisory oversight and that the necessary mandates and needs of personnel are handled at the squad level such as: sick time, vacation time, timesheets, evaluations, street skills, qualifications, equipment, inspections and other functions and checks are being handled. This Sergeant should have the ability to direct and focus the staff and take highly complex issues and develop operational responses to them.
- At a minimum, five officers are needed to complete a thorough and comprehensive assessment of the current state of community engagement in the SPD. Based on this assessment, the Sergeant and officers will work in cooperation with the rest of the Community Outreach staff to develop a work plan to ensure the following preliminary work functions are addressed.

    - Attend the advisory councils and provide continuity of information and protocol at DAC meetings.
    - Address specific issues that are trending and ensure the command staff person assigned to the DAC has someone to assign tasks to on behalf of the department.
    - Ensure that Precinct commanders are informed and consulted regarding overall strategies being implemented to address community outreach and engagement. Also ensure that each Demographic Advisory Council has the same level of communication to ensure continuity and open communication.
    - Ensure staffing levels to support the function of working with the explorers, updating manuals, and ensuring protocols are being followed.
    - Representation on the various panels and forums that we are asked to attend and coordinate with the precincts to ensure that their personnel stay involved in the outreach process.

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- Assist in gathering facts, providing department approved information and messages as well as ensuring the information is researched, approved and is consistent for everyone that needs to be notified, when specific community issues arise.

Budget

- For operating expenses such as immediate marketing efforts, printing materials and organizing community functions, the Community Relations Unit will submit a $10,000 grant request to the Seattle Police Foundation. (See Accomplishments to Date)
- Overtime budget to support the work of Community Outreach, including those of the Officer Liaison to ensure the responsibilities of the position is being met. An estimate of what this might cost will be presented with the 6 month work plan.

Accomplishments To Date

- Application to the Seattle Police Foundation for $20,000 was reviewed and the Section was awarded $15,000 of the requested amount. In addition to having resources to implement a marketing strategy, the funds will also support the "Chief Kerlikowske Award" and the ongoing needs of the Demographic Advisory Councils.
- A second Seattle Police Foundation Grant was awarded to Officer Adrian Diaz to support the Youth Activities (Explorers)($2,000) and the Living Room Forums ($3,000). The Foundation has also indicated that they would consider funding in the next round of grants for the additional funds that were not awarded in this cycle ($10,000).
- Dr. Julias Debro, Dr. Michael Pendleton, Dr. Hubert Locke and Dr. Darlene Conley have agreed to participate as Academic Consultants and have scheduled their first meeting for December 9, 2010. The meeting will be moderated by Mercia Whitehall

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- We have eleven (11) community members confirmed to attend the Perspectives on Profiling class being held on December 9, 2010
- A meeting with the Defenders Association regarding training in the area of immigrant and refugee issues, particularly as they relate to "unintended consequences" of arrests.
- Met with Communities Uniting Rainer Beach (CURB) and People Of Color Against Aids Network (POCAAN) to discuss concepts regarding diversion of bookings for low level offenders. Future partnership with SPD for community relations building.
- On-going Student Forums with Seattle Central Community College.

Strategy Timeline

0-3 Months: Comprehensive Assessment of all the efforts currently underway in regards to community outreach and engagement. This will look at geographic and demographic efforts, with an eye for gaps that currently exist, trends that are emerging, and what is currently working well.

3-6 Months: Development of a comprehensive set of strategies that will address the findings of the assessment. This work plan will incorporate information garnered from a "mini-summit" of all five Precinct Commanders and Training Unit Commander, which will be held to gather their input and solicit ideas about how Community Outreach Section can support their efforts and a similar process with the Demographic Advisory Councils. Present short-term and long term goals.

6-12 Months: Implement strategies that are finalized from the "mini-summit" and work with the DAC's. Present a Year One report on the accomplishments of the Department as they relate to Community Engagement and outline goals for Year Two.

# # #

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Seattle Police Department
Crisis Communications Plan

The Seattle Police Department believes in responsible and effective communications that focus on community, employee and media relations, all of which are vital to our mission. As an agency practicing the philosophy of preventing crime, enforcing the law and promoting public safety, we must carry out proper responsibilities to the best of our ability: Be accountable, take action and commit to change—if and when required. We must also be truthful and honest. Prepare for the worst. Remain calm and in control if a crisis happens, and be proactive after it occurs.

Crises, incidents and accidents involving SPD will occur at any time. When they do, SPD must be prepared to act—not react and understand that every situation is different. So it is important SPD has in place a crisis communications plan to provide a framework for action to make sure everyone knows what to do. A crisis communications plan can be our most valuable resource, covering all foreseeable situations.

GOAL

To provide a systematic response to any situation; which could have an adverse effect on our ability to promote public safety to the general public and to maximize our efficiency and effectiveness of response before, during and following a critical situation.

In the event of a crisis, this plan will explain the criteria for activating and deactivating the communications plan, the response procedures, members of the crisis communications team, their roles and responsibilities, the target audience, and offer various communication strategies. It also includes a set of response procedures intended to jump-start the team when activated.

CRITERIA TO ACTIVATE & DEACTIVATE

ACTIVATION

Any command staff or designee will determine whether to activate the Crisis Communications Plan based on sound judgment and any one of the following criteria:

1. Use of deadly force by an officer
2. Line-of-duty death; employee-related death
3. Community conflicts/relations based on race
4. Youth & school violence
5. Domestic violence
6. Hate crimes
7. Riots, demonstrations or civil disturbances
8. Weapons of mass destruction/terrorist attacks

And take into consideration the following guidelines:

- Scope and impact of significant activities occurring at the scene
- Extent of difficulties or complications being encountered
- Progress being made to counter problems and threats
- Level of community interest and climate of community relations
- Level of media interest and climate of media relations
- Types of information requests that are being made by the community and media

DEACTIVATION

Any command staff or designee will determine to deactivate the Crisis Communications Plan when the crisis has been adequately addressed.

CRISIS COMMUNICATIONS TEAM

SPD's *core* crisis communications team will consist of the following:

- Deputy Chief of Operations
- Incident command staff
- Media relations sergeant
- Media relations officers
- Captain of Community Outreach Section

- Lieutenant of Community Outreach Unit
- Strategic Advisor
- Video Specialist
- Administrative Specialist

ROLES & RESPONSIBILITIES

DEPUTY CHIEF OF OPERATIONS

- Provide guidance and direction to the Crisis Communications Team.
- Maintain ongoing communications with Command Staff to ensure up-to-date and accurate information is being reported.
- Review and approve all written information before releasing to the media, general public and employees.

INCIDENT COMMAND STAFF

- Release up-to-date and accurate information to Deputy Chief and Captain of COS

MEDIA RELATIONS SERGEANT

- Supervise media relation officers.
- Manage the implementation of press conferences and other media needs.
- Recommend to Deputy Chief and/or Captain of COS when additional resources are needed.

MEDIA RELATIONS OFFICER

- As the department spokesperson, respond to all media calls and coordinate all media request.

STRATEGIC ADVISOR

- At the direction of the Deputy Chief and/or Captain of COS, assist in the internal and external written communication strategies.
- Assist media relations unit.

COMMUNITY OUTREACH SECTION COMMANDERS

- Captain of COS receives briefing as function of notification process.
- COS Captain will contact the Lieutenant of COS requesting the communication plan be activated.
- On scene media officers will provide the Lieutenant of the Community Outreach Unit with a briefing on the incident and current information regarding investigation status.

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- Lieutenant of Community Outreach (at the Captain's direction) will contact the appropriate personnel and request that they begin the notification process. This will include:

    a. Summary of event
    b. Current status of the investigation
    c. Contact information for the community to get additional information
    d. Information will be vetted through the investigative bureau to ensure release of said information will not have an adverse impact on any investigation.
    e. Questions/concerns raised in the primary contact will be addressed within 24 hours and a report back to the community member will be made. The Lieutenant of COS will ensure that follow up information is vetted through investigations personnel to protect non-public information.
    f. Within 30 days of an activation of the communications plan, an "After Action" report will be completed to review and assess how the plan was carried out and recommend any changes that may be needed to the plan. This report will be presented to Senior Command Staff and will be available to public for review.
- Ensure that Seattle Police Community Advisory Councils, City Wide Advisory Council, and Precinct Advisory Councils, interested members and key community leaders and representatives are notified of incident as appropriate.
- Ensure that any needs which may arise from the incident be addressed, e.g., security surveys, crisis intervention services or crime prevention education.

VIDEO SPECIALIST

- Provide visual and audio documentation of press conferences.

ADMINISTRATIVE SPECIALIST

- Assist in administrative and clerical functions of communication strategies.

CRISIS RESPONSE PROCEDURES

Once a decision is made to activate the Crisis Communications Plan:

1. Notify Crisis Communications Team to appropriate location and AC designates the first available team member.

2. Initiate contacts.

   a. Assigned personnel will make contact with community members identified and provide them with the information regarding the incident.
   b. Community members will be asked to pass along information when and where appropriate with the goal of addressing rumors and misstatements of fact and providing accurate information throughout the community.
   c. Any information that is provided to assigned personnel regarding concerns and/or information from the community will be written up and given to the Lieutenant of the Community Outreach Unit.

3. Follow-up

   Depending on the nature and severity of incident, a follow up call will be made within 12-48 hours to those initially contacted to apprise them of additional information and to gauge the communities concerns and response to the incident.

AUDIENCES

Communication efforts and resources should target the following audience:

- General public – members of community; demographic advisory councils; precinct advisory councils; other community based agencies, and audiences with special needs
- Media – newspapers; television stations; radio stations; ethnic/community papers
- Elected Officials – Mayor's Office; City Council; and other county, state and federal agencies
- Employees – all Seattle Police and other City employees

COMMUNICATION STRATEGIES

Media Relations—hold press briefings and press conferences when necessary; have visuals and distribute news releases and other supporting documents, e.g., fact sheets, Q&A, reports, and/or chronology of incident/accident.

External Communications—contact leaders and members of the respective community to advise initial findings of the incident; begin a dialogue when required; and ensure all

reasonable requests of that community is addressed and completed. In addition, post electronic messages via web "Blotter" and social networking sites "Twitter."

Internal Communications—personally notify individual employees affected by incident; advise all employees via SPD All, inweb, e-mail, or voice mail.

CONCLUSION

Debrief immediately to discuss what worked and what didn't work following the deactivation of the crisis and if necessary, recommend changes to the Crisis Communications Plan to further improve implementation.

# # #

TAB 9

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Director Kathryn Olson
OPA

DATE: October 12, 2010

FROM: Captain Tag Gleason
OPA

SUBJECT: USE OF FORCE ISSUES FOR CONSIDERATION

The comments below are based upon my review of various course outlines covering use of force and defensive tactics, Powerpoint presentations used by the Department's Training Section for use of force and defensive tactics training, and Department policy related to the use of force, in addition to calling upon my recent experience in addressing use of force issues in OPA-IS. I have also briefly spoken with representatives of the Washington State Criminal Justice Training Commission (WSCJTC) Basic Law Enforcement Academy (BLEA). This cursory review of the materials noted is not intended to be an exhaustive evaluation of the topic of use of force/defensive tactics training used or presented by the Department; it is intended to highlight some of the more notable issues that may call for further consideration.

A police recruit receives his or her first formal exposure to the topic of use of force/defensive tactics in the BLEA. Upon completion of the BLEA, the recruit, now an officer, receives additional training in the Department's Post-BLEA training program and during the Field Training Program portion of the officer's training. Throughout the officer's career, the officer will receive continuing training in the use of force/defensive tactics during annual Street Skills training and even more specialized training if the officer is selected for assignment to a unit whose missions includes situations where the use of force/defensive tactics training is more critical, e.g., assignment to the Special Weapons and Tactics Unit (SWAT) or to a precinct Anti-Crime Team (ACT).

During my review, I did not focus attention on identifying the number of hours given to a particular use of force/defensive tactics training course due to the presumption that a course title/number of hours per course focus could lead to a potentially misleading perception that the greater the number of hours attached to a particular course title is evidence of the quality of the training in both developing technical tactical skills and critical thinking skills in evaluating whether to apply the particular tactical skill. My focus, instead, was upon the inherent tension in any use of force situation between the questions: "Could the officer use force?" and, "Should the officer use force?"

The bulleted points under each segment of training listed below are intended to identify issues for further discussion and evaluation:

Basic Law Enforcement Academy Training on the Use of Force:

- Approximately 100 hours of the 720-hour BLEA curriculum contains an emphasis on the use of force. The use of force training is comprised of lecture, demonstration, practice, use of firearms simulators, and mock scene scenarios.

- The use of force philosophy of the BLEA is summed up in its "Ask, Tell, Make" (explanatory memo attached) approach to gaining compliance from a person. The BLEA notes that many police recruits are initially hesitant to apply force and this easy-to-remember phrase is to assist them in overcoming their initial anxiousness about using force when appropriate.

- A single individual at the BLEA is responsible for the development and implementation of the use of force/defensive tactics training. The remainder of the curriculum is under the coordination of a Program Administration Manager in the WSCJTC Development Training & Standards Division who relies upon various subject matter experts to develop and implement the curriculum. The individual who is responsible for the use of force/defensive tactics training for the BLEA also certifies the instructors for this training, i.e., without his certification a person cannot present the use of force/defensive tactics training approved by the WSCJTC.

- The WSCJTC recently hired a new Executive Director who is very experienced, well respected in the criminal justice field, and readily available to assist not only the Department but the wider criminal justice community.

Seattle Police Department Training on the Use of Force:

- The Department provides additional use of force training in the Post-BLEA program, during the FTO program, during the annual Street Skills training program, and for officers assigned to specialized units, such as SWAT and ACT.

- The Post-BLEA training is mostly discussion-based using the Training Section's "2006 SPD Search, Seizure, and Use of Force Guidebook" (with updates) along with the Department's use of force policy. The training seeks to incorporate use of force training within a best practices/legal update context.

- The Street Skills use of force training features an Integrated Combat & Control (ICC) approach that emphasizes grappling, striking, ground fighting, and preventive/pre-emptive use of force to stop, diminish, or mitigate a perceived threat. The approach highlights recognition of threats, prompt responses to those threats, various physical techniques to employ, and legal justification for the force used. The Street Skills program seeks to continually build upon the techniques taught but such continuity of skill development is premised upon the participants practicing the techniques throughout the year and maintaining adequate physical conditioning to perform the techniques, which may or may not occur.

- The Taser program provides comprehensive, on-going training in the use of this less-lethal force option and closely monitors applications of the Taser in order to detect developing problems, to remedy them, and to maintain a model program.

- The SWAT and ACT training on the use of force, in addition to covering techniques, emphasizes developing a sound legal understanding of when the use of force is justified.

Suggestions for Further Consideration:

Regarding the use of force training currently provided by the Department, it appears to be very good, with an emphasis on defensive and control techniques, legal justifications for the use of force, and reporting requirements when the force is used. It appears that the focus of the criticism of the use of force by officers is not so much upon the techniques used or the legal justification for the use of the force but more upon whether the force *should* have been used, even if it was legally justified.

The current training appears to sensitize officers to being very vigilant for threats to their safety, including prompting officers to use preventive force to address a perceived threat before it escalates into an actual threat or actual harm. Understandably and rightly, there is a strong emphasis on personal safety.

Here are some specific issues for further consideration:

1. Continue to present use of force training in the context of scenarios involving social stops, investigative detentions, stops for minor offenses or traffic violations, and serious offenses but emphasize the issue of force as it may arise in the less serious, ambiguous, and more controversial circumstances. After stand-alone instruction on practical control and defensive techniques and the legal justifications for using force, it is suggested further instruction on these topics be incorporated into inter-active scenarios during which the instructors may periodically stop the process for further instruction and class discussion.

2. Continue to focus upon the legal justification for the use of force at the point at which the force is used but broaden the perspective of the officer employing the force to include addressing circumstances that led up to the use of the force and also to addressing how the application of the force will be subsequently perceived by various segments of the community and beyond. In other words, broaden the definitions of what is a justifiable or a successful use of force beyond legal and policy standards to include consideration of the effects of the use of force on the relationship between the Department and the community.

3. Emphasize that the use of force is but one option an officer has available to address a particular situation and that the officer will not be sanctioned for not using force even if legally justified. Focus on the purpose for using the force, i.e., what was the officer attempting to accomplish and was the benefit of the approach taken greater than the cost (consequences to the officer, the Department, and to others) of the approach used.

4. Expect officers to recognize and competently respond to the often differing, and sometimes competing, perspectives and interests of various segments of the community to assist them in viewing their use of force in a broader context than the mere moment of application. Assist officers to better understand how their actions may be subsequently perceived, regardless of whether they were legally justified or within Department policy.

5. Create a peer review process, possibly including participants from outside the police field, through which issues and incidents regarding the use of force can be frankly discussed and evaluated for the purpose of maintaining or improving performance, similar to the way the medical profession evaluates its performance.

6. Prompt critical thinking by officers through the open discussion of the discretion they exercise when addressing situations. Include such training in the annual Street Skills program.

7. Educate the community, possibly through regular community meetings when there is no "hot topic" distorting the discussion, to the importance of cooperating with the police, especially during the midst of an encounter, and to the need of the officer to ensure his or her safety during the encounter. Educate the community to those behaviors that can cue an officer to the presence of a threat or risk to the officer's safety. Explain to the community that there are ways to express dissatisfaction with the conduct of the officer that can be pursued more productively after the encounter.

8. Emphasize a "spirit of service" outlook in the use of force training in conjunction with the "officer safety" emphasis that is often a focus in such training. This outlook might involve a discussion of whose safety is a priority in an encounter, e.g., innocents, the officer, the officer's partner, the suspect, etc. While officer safety is a critically important component of the current Department training, the balancing of officer safety and the safety of others is also a consideration that warrants discussion. Officer safety and a spirit of service should not be incompatible concepts and could spur a productive discussion of the purpose of using force.

9. The Department appears to have adequate and practical policies addressing the use and reporting of the use of force.

10. Developing a training component in the Post-BLEA and Street Skills programs focusing on discretion, critical thinking, engagement/disengagement decision-making, and recognition of the after effects of using force. This could include a scenario-based "act-don't act" segment modeled on the shooting simulator and featuring unexpected, ambiguous situations arising from social contacts and stops for minor violations.

In conclusion, the Department appears to provide traditionally accepted and quality training on the use of force that highlights prompt threat/risk recognition; a quick, sometimes preventive, response to the threat/risk; thorough reporting of the use of force; a need for a legal justification for the use of the force; and a sensitivity to liability for the use of force.

There appears to be a strong emphasis on various tactical techniques, notably in the Integrated Combat and Control instruction. While the instruction provided appears to be good for what it is attempting to

convey, i.e., officer safety, technique, legal justification, and reporting, it is suggested that consideration be given to reducing the emphasis on technique to permit more time to be devoted to instruction on the issues noted above. Again, this is suggested because much of the current criticism of the Department's use of force appears to result not from whether an officer legally *could* have used the force but more from whether the officer *should* have used the force. ?" When preparing officers to provide ethical and excellent public service in situations that are frequently spontaneous, impulsive, dynamic, ambiguous, dangerous, and subject to all the complexities of the human condition, it is as important to not only train them in the physical skills necessary to promote individual and public safety but also to provide them training that will promote prudent use of discretion, productive communications skills, and sound decision-making. Putting more focus on discretion, critical thinking, prudence, and broader perspective may help to address the question of, "Should I have used force, even if I was legally justified in using it

Use of the Phrase "Ask-Tell-Make" in Basic Law Enforcement Training

When police recruits enter the Basic Law Enforcement Academy (BLEA), many of them have never been in a position where they have been required to take control of volatile situations. Many have never needed to give a loud verbal command, physically hold onto a person in a crisis, or use aggressive physical force to protect themselves or others. Competent police officers must be able to use their persuasive verbal skills and body language to resolve conflict in the most efficient and peaceful manner possible; however, when discussion is not working or not appropriate, it sometimes becomes necessary for officers to go "hands-on" and use reasonable force to accomplish their duties.

For most law-abiding citizens (the kind of people we hire to be officers), unless they have military or corrections experience, physical force has probably been something they've tried their whole life to avoid. Rational people know to use force as a last resort. When new police recruits enter training, many of them have a natural reluctance to go hands-on and use force even if tactically and legally appropriate in the situation. They are hesitant and "fail to engage." For a new officer, physically taking hold of and/or intentionally causing injury to another person can seem very strange, even if it is the most logical response to a situation. It is the duty of the academy to prepare new officers to appropriately use force when the situation demands it.

Any intentional force used by a law enforcement officer or a citizen in Washington State must meet the criteria established by RCW 9A.16.010(1):

> "Necessary" means that no reasonably effective alternative to the use of force[1] appeared to exist[2] and that the amount of force used[3] was reasonable[4] to effect the lawful purpose intended[5].

This section of law includes five distinct elements:

1. ***no reasonably effective alternative to the use of force*** – Other options were considered, and of those other options, none would have been as effective and suitable in the given situation.
2. ***appeared to exist*** – The decision to use force will be evaluated based on what person was aware of at the time – not what was actually happening. (Example: If a suspect uses a toy gun in a threatening manner, the police officer will be held to the standard of what *appeared* to exist (an apparently real gun), as opposed to what it actually was (a fake gun)).
3. ***the amount of force used*** – This phrase establishes that this section of law is specifically about the use of physical force and alternatives to physical force.
4. ***reasonable*** – The force used was similar to what other rational, law-abiding persons would have done. Police officers will be held to the "reasonable officer standard" (*what would other experienced, competent officers have done?*). Citizens will be held to the "reasonable person" standard (*what would a regular person have done?*).
5. ***effect the lawful purpose intended*** – The application of force can only be for a legal purpose. Legal purposes for using force are laid out in other written laws, court cases, and in common law.

The use of physical force should be one of several options considered, and falls within a use of force continuum model (see attachments). For most contacts, there should be an attempt at discussion and de-escalation if feasible. Solid communication skills are just as important as the ability to use reasonable force. In the BLEA, recruits spend many hours of class time and mock scene training on verbal and non-

Use of the Phrase "Ask-Tell-Make" in Basic Law Enforcement Training

verbal communication skills. In particular, they learn a five-step model originated by Dr. George Thompson, author of the book Verbal Judo. The five steps are as follows:

1. *Ask* – ask for the person's cooperation / ask the person to do the task
2. *Explain* – spend a short amount of time and explain the situation to the person
3. *Present Options* – tell the person his or her choices, both good and bad, including the ramifications of each choice
4. *Confirm Their Choice* – give the person an opportunity to choose (if the person still does not comply, try one additional time to verbally gain compliance by asking, "Is there anything I can do to earn your cooperation?")
5. *Act* – if the person still refuses to comply with these attempts at reasoning, then move on to whatever action would be next to accomplish the lawful purpose, including reasonable and necessary physical force.

The phrase "Ask-Tell-Make" is also used in the training of new police officers at the BLEA. This is common teaching phrase throughout law enforcement and refers to the progression of force in the accomplishment of lawful duties. The phrase is extremely popular because it is simple, rhythmic, and easy to remember. It succinctly summarizes how, as a police officer, force may be an option when verbal communication has failed. New recruits sometimes need reminding that a competent police officer should not waste unnecessary time begging and pleading with a suspect in a dangerous situation when an application of force would be a more appropriate course of action. This phrase is usually used in connection with mock scene training where a suspect is not obeying, and verbal persuasion will not work rapidly enough or at all. An instructor can quickly say this phrase to jolt a recruit out of a dangerous pattern of inaction. By using this phrase, instructors help new recruits understand that using force is indeed a part of police work; this allows recruits get over their initial anxiousness about using force when appropriate.

The phrase "Ask-Tell-Make" should not be used without the proper context of the law and other verbal communication techniques. Recruits at the BLEA are trained that Thompson's five-step model coincides with the phrase "Ask-Tell-Make." Both models/phrases emphasize that reasonable use of force is an option when verbal skills alone will not accomplish the lawful outcome.

AGGRESSIVE:	Ask		Tell		Make
PERSUASIVE:	Ask	Context	Options	Confirm	Act (Make)

"Ask-Tell-Make" is not the answer to every situation, and it has its limits. It is not an excuse to use force when some other option should have been exercised. It does not grant blanket permission to use force when the purpose is not lawful and reasonable. We should also be careful that the phrase is used in the appropriate settings. Without complex training and discussion on the context presented above, the phrase by itself can appear to encourage the blunt use of force without thinking. If a citizen hears "Ask-Tell-Make" without any explanation, it sounds unduly harsh.

Use of the Phrase "Ask-Tell-Make" in Basic Law Enforcement Training

There is another frequently-used saying in military and law enforcement training: "*If you're not cheatin', you're not tryin'.*" This phrase relates to combat and deadly force situations. The purpose of this saying is to remind trainees to tactically think outside the box, be creative, and do whatever possible to win the firefight and stay alive. The message is about using superior tactics to survive and prevail in a life-threatening situation. However, if we just throw this phrase around in front of the public, without any explanation, it presents law enforcement in a negative light. We don't want the public to think we encourage police officers to *cheat*. Taken out of context, the phrase is rightfully misunderstood and harmful to the public's trust.

"Ask-Tell-Make" has a place in the training of new police recruits. The phrase is only a simple reminder about the appropriate use of force as a legal option instead of stalemate. It is not a full representation of all the verbal and non-verbal communication techniques which should be employed by a competent police officer. It also does not adequately represent that most contacts with citizens will be handled without a use of force, and that de-escalation is always preferred to escalation.

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TAB 10

Concept Paper in Support of
A Request for Technical Assistance to Develop and Test
A Law Enforcement Curriculum on Procedural Justice

Executive Summary. The largest law enforcement organizations in the State of Washington, the Seattle Police Department and the King County Sheriff's Office, together with the Washington State Criminal Justice Training Commission, propose to develop a curriculum on procedural justice. The purpose of the curriculum is to increase knowledge of procedural justice elements on the part of law enforcement officers and awareness of how their actions may be perceived by the public, as well as to influence how they go about their day to day work. The materials developed in the project will be suitable for inclusion in the basic training academy as well as for in-service training of officers and deputies. Rigorous testing and evaluation will accompany each phase of the project.

Background. In its exhaustive examination of four decades of research on American policing[1], the National Research Council of the National Academy of Sciences concluded that the public held two broad expectations of law enforcement: one, the expectation that the police deal effectively with crime and disorder; and two, that the police carry out their duties in a fair and impartial manner. While the available evidence suggests that the police capacity to deal effectively with crime and disorder has improved dramatically in the last four decades, the public's perception of the fairness and rectitude of police conduct has remained stagnant and at especially low levels of approval within minority communities[2]. Accordingly, two of the eight recommendations made by the National Research Council for improving law enforcement practice address efforts to enhance the lawfulness and the legitimacy of policing actions and behaviors.[3]

The issue of police legitimacy is of more than academic interest. Belief in the fairness of police actions impacts the willingness of community members to cooperate with authorities to report crimes, to serve as witnesses or to follow directions/orders given. It also influences the level of budgetary support the community is willing to provide law enforcement. At a broader level, policing in a democracy is based upon a compliance model that requires confidence that authority is being exerted appropriately and fairly.

Studies of police legitimacy demonstrate that it is closely linked to what is termed "procedural justice,"[4] or the public's belief that the procedures by which legal rules are created and implemented are themselves right and just. Rather than being interested only in outcomes that favor them, people appear to be more influenced by their perception of the fairness of the procedures themselves and of the way these procedures were applied to them.[5] In specific analyses of trust and confidence in police,

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[1] National Research Council (2004). *Fairness and Effectiveness in Policing: The Evidence.* Committee to Review Research on Police Policy and Practices. Wesley Skogan and Kathleen Frydl, editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.
[2] See, for example, Gallup Poll News Service (1999). Available at http://www.gallup.com/poll/specialReports/pollsummaries/sr010711.asp
[3] National Research Council, op.cit., pages 7-8.
[4] See Tyler,T.R., R.J. Boeckmann, H.J. Smith, and Y.J. Huo (1997). *Social Justice in a Diverse Society.* Boulder, CO: Westview Press; and Typer, T.R. and H.J. Smith (1997). Social justice and social movements. In D. Gilbert, S. Fiske and G. Lindsey, eds., *Handbook of Social Psychology,* (4th Ed). New York, NY: McGraw-Hill.
[5] See Lind, E.A. and T.R. Tyler (1988). *Social Psychology of Procedural Justice.* New York, NY: Plenum Press; and Tyler, T.R., et. al., (1997), op.cit.

evaluations of crime control effectiveness were less important than judgments about fairness and impartiality in shaping public attitudes.[6]

The studies reviewed by the National Research Council[7] found that four factors influence the public's sense of procedural justice. The first of these factors is participation, that is, where people feel they had the opportunity to explain their situation and have it considered by authorities. The second factor is neutrality, i.e., where the authority figure is seen as unbiased and objective. The next factor is the quality of interpersonal treatment received, in particular being treated with dignity and respect. Finally, people evaluate procedures as fairer when they can trust the motives of the authority figure. In this regard, the willingness to explain decisions and actions that have been taken tends to instill trust in authority figures.

Nature of the Problem. Establishing police legitimacy is important not only for law enforcement generally, but also for the day to day activities of individual police officers. A number of studies have found that the willingness of people to consent to police directions is directly related to their perception of how fairly and respectfully the police behave.[8] When less public cooperation leads to more resistance, resulting in more coercion leading to more use of force, then possibly to more complaints, it is not difficult to see how officers are better served to establish the legitimacy of their actions as clearly as they can.

But how is this to be done? And how does the concept of "establishing legitimacy" coexist with the police dictum of "establishing authority" clearly and affirmatively in order to bring situations under rapid control? Can police training inculcate the principles and importance of procedural justice in ways that make sense for and influence the day-to-day work of officers?

The Seattle Police Department (SPD), King County Sheriff's Office (KCSO) and Washington State Criminal Justice Training Commission (WSCJTC) propose a project to address these questions. With the assistance of technical experts, the project envisions development of a training curriculum on procedural justice suitable both for inclusion in the basic law enforcement training academy as well as for in-service training of existing officers and sheriff's deputies. The curriculum will combine classroom instruction with interactive video scenarios designed to illustrate principles of procedural justice and to increase awareness on the part of law enforcement officers of how their actions are perceived by the public.

Once developed, the curriculum materials will be tested with community members to gauge and ensure their resonance on procedural justice elements for the public. Then the curriculum will be used to train

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[6] See Tyler, T.R. (2001). Public trust and confidence in legal authorities: What do majority and minority group members want from the law and legal institutions? *Behavioral Science and the Law.* 19:215-235; and Sunshine, J. and T.R. Typer (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law and Society Review.* 37:555-589.

[7] National Research Council, op.cit., at page 304.

[8] See Tyler, T.R. and Y.J. Huo (2002). *Trust in the Law: Encouraging Public Cooperation with the Police and Courts.* New York, NY: Russell Sage Foundation; Paternoster, R. R. Bachman, R. Brame and L.W. Sherman (1997). Do fair procedures matter? The effect of procedural justice on spousal assault. *Law and Society Review.* 31:163-204; Mastrofski, S.D., J.B. Snipes and A.E. Supina (1996). Compliance on demand: The public's response to specific police requests. *Journal of Research on Crime and Delinquency.* 33:269-305; and McCluskey, J.D., S.D. Mastrofski and R.B. Parks (1996). To acquiesce or revel: Predicting citizen compliance with police requests. *Police Quarterly.* 2:389-416.

SPD officers and KCSO deputies. Pre- and post-training evaluations will be used to determine if the curriculum meets its objectives of increasing law enforcement knowledge and awareness of procedural justice issues. Overall success of the curriculum will be assessed by changes in the nature and number of complaints received by SPD and KCSO concerning rudeness, language, etc., by officers participating in the training. If the curriculum is shown to achieve its objectives, it would be considered for inclusion in the basic training academy for all law enforcement officers in the State of Washington.