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CITY OF SEATTLE

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

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Mission & Structure

There are various models of civilian oversight used by cities and counties across the country. The structure for civilian oversight of police in Seattle utilizes civilians in three distinct roles. First, the Police Department's Office of Professional Accountability ("OPA"), replaced the Internal Investigations Section, and is overseen by a civilian Director who reports to the Chief. The civilian Director is the Department's lead for all Seattle Police Department ("Department") matters related to police accountability. She oversees the intake, classification, investigations and findings for all complaints of police misconduct. When a complaint is sustained, the Director recommends to the Chief the disposition and discipline. Reporting to the civilian Director are a captain, two lieutenants, six detective sergeants, two acting sergeants, an EEO sergeant and three administrative staff.

The OPA Review Board ("OPARB") is the second part of the civilian accountability structure for Seattle. The seven-member board, appointed by the City Council, plays the lead role in public outreach and education about the OPA system, solicits community input about issues and trends, can review closed files, and makes recommendations about police policies and procedures.

The final part of Seattle's police accountability structure is the OPA Auditor. The Auditor is a civilian who serves as an independent advisor to the City, appointed by the Mayor and confirmed by the City Council. The Auditor provides an additional civilian perspective, reviewing every case to see if it is properly classified as to seriousness, reviewing each investigation to make sure it is thorough, objective and timely, and ordering further investigation if she determines it is needed. The Auditor has unfettered access to all documents and records that are relevant to any investigation. She may also audit any other OPA records, assess the procedures related to how complaints are handled and make recommendations for process, policy or training to improve police accountability and professional conduct.

Introduction

To enhance the transparency and openness of Seattle's police accountability system, the Auditor is required by ordinance to issue a public report twice per year, summarizing her activities; the number of complaints and investigations reviewed; her requests for reclassifications of complaints or additional investigations to be conducted; a summary of issues, problems and trends noted as a result of her reviews; recommendations for additional officer training, including any specialized training for OPA investigators; any recommendations for policy or procedural changes; and any findings from audits of OPA records or the OPA Director's reports.

Traditionally, each Auditor's report covers the previous six months. In 2010, there was not an Auditor's report for the first half of the year due to the Auditor stepping down in March and appointment of an interim Auditor prior to this Auditor's appointment and confirmation. This report covers the period from mid-July through the end of November, 2010.

Note that incidents are not discussed in this report if they are still the subject of open investigations.

Complaint Review

Complaints of police misconduct in Seattle may be filed in person, by telephone, by mail, by email or via the online form on the website. A core responsibility of the Auditor is to ensure the quality, fairness and integrity of how complaints are received, assessed and investigated.

Ease of understanding as to how to file a complaint, being treated respectfully once one decides to file a complaint, being kept informed about the progress of a complaint and receiving a clear explanation of how a complaint is addressed are all important elements to the community's perception that the accountability system is responsive and fair. I have been impressed with the professionalism and respect of the OPA staff toward all complainants. My review of their investigations has found them to be fair and thorough. OPA also deserves high marks for documenting and addressing each complaint, no matter how minor, and triaging them so that resources are directed appropriately. OPA can, however, continually improve accessibility and understanding by the public and complainants, which I discuss below under process improvements.

Each complaint of possible police misconduct is documented and sequentially numbered so that it can be tracked. An intake sergeant and lieutenant make an initial recommendation to determine at what level a complaint will be investigated. This is referred to as the 'classification'. In Seattle's accountability system, complaints are classified as outlined below. Civilian review helps ensure that this classification is not subjective, that a classification is not made to avoid the possibility of discipline being imposed, or that a complaint is not taken less seriously due to the challenges or history presented by the complainant. Proper classification also helps focus resources on the most significant investigations.

'Contact log' is the classification for those complaints recorded but not investigated. These include requests for information, often involving other City departments, complaints or comments that don't reflect possible misconduct, or that involve officers from other jurisdictions. This could be, for example, a disagreement with a parking ticket or a question about how to retrieve property. Whichever OPA staff receives the inquiry records it into the master log. If it is clear that there is not a possible issue of misconduct or mistake by an officer, questions are answered or referrals are made to the appropriate place. Previously this contact log had been reviewed quarterly. I changed this practice to monthly review, so if a contact did need follow up, it could be initiated more quickly. I reviewed the logs back to April when the previous Auditor had stepped down. From April through October there were 1149 contacts logged, a higher than average amount, likely due to the publicity attendant to several high profile cases. There were only a few about which I had questions as to whether additional action was needed; I discussed each with the Director. I did not find any that needed to be reclassified as a complaint for further investigation.

Depending on the nature of the allegation and complexity of the investigation, all other complaints are classified at different levels for further action. That classification determines who investigates the complaint and what the range of possible consequences can be. Intake sergeants gather information in the initial weeks for the lieutenant to help determine the correct allegation (what policy was violated by the alleged misconduct) and classification. Under the contract with the Police Guild, these determinations typically must be made within 30 days; the contract is silent as to

whether changes can be made later during the course of an investigation. Then, each week the Auditor reviews all new complaints filed, and discusses with the Director each allegation and classification proposed by the lieutenant.

This is also the stage where the Auditor and Director recommend cases for mediation. Earlier this fall, as part of the continual effort to shorten the time it takes to process complaints, the Director and I advanced the time at which we review allegations and classifications, saving several days of processing time and reducing work by administrative staff. We also changed the practice whereby, based on the preliminary recommendation from the lieutenant, the complainant had initially received a communication from OPA as to the classification. If the Auditor and Director's final decision were different, that could lead to confusion by the complainant. Now the complainant is notified once the classification decision is final, and it is happening sooner. The complainant is also notified as to next steps and given the name of the lead OPA staff handling the complaint.

This classification review provides complainants an additional level of accountability – no decision about how a complaint is to be addressed is made without review by the civilian Director and the independent Auditor.

Preliminary Investigation Report (PIR) is the first level of classification. These complaints take some initial work by the intake sergeant, gathering relevant records and documentation such as general offense reports, 911 or radio transmission records, to determine what is at issue. At that early point it can then be determined that further investigation is not required and no other action is needed or the concern can be directly referred to the employee's chain of command for them to be aware of or follow up. For example, a citizen might raise a concern about a possible traffic violation or illegal parking by an officer, but the complainant just wants to make sure someone knows about it so it doesn't happen again. Complainants are informed that the information has been shared and often comment that they appreciate the follow up.

Supervisory Referral (SR) is the next level of classification. These are mistakes indicating a training gap as opposed to misconduct, not requiring further investigation and best addressed by mentoring or training by the officer's supervisor. They do not result in findings, nor may any discipline be imposed. Some are technical violations where imposing discipline seems inequitable given the nature of the mistake. Some are concerns about attitude and demeanor where coaching is needed. The supervisor talks with the officer and the complainant, then reports back to the OPA Director as to action taken. SRs are often appropriate cases for mediation.

Line Investigation (LI) is the classification used for allegations of possible misconduct where a full investigation is needed, but the nature of the alleged misconduct and the complexity of the investigation don't require the expertise of the OPA investigators. Instead, these can be investigated by the named officer's chain of command. The Auditor still reviews the investigation for thoroughness, timeliness and fairness, and the proposed disposition is still certified by the Director or the Chief.

Those complaints of more serious misconduct or where the facts require a greater complexity of investigation or involve more witnesses are investigated by OPA staff. This classification is termed Investigation Section (OPA-IS). Use of force investigations, for example, are classified as OPA-IS. Each of these investigations is reviewed for thoroughness, timeliness and objectivity by the Auditor prior to final disposition. The Auditor can direct that additional investigation be conducted before the Director certifies the findings or makes a recommendation to the Chief for discipline.

In the period covered by this report, the Director and I reviewed 225 complaints. We agreed that 86 should be classified as PIR, 45 as SR, 16 as LI and 78 as IS. We recommended 38 for mediation. We reclassified 14 (12 upward; 2 downward), added 4 allegations, dropped 2 and changed 1. The Director and I discussed these weekly. The complaints were then immediately referred for investigation, chain of command follow up or mediation.

Finally, in regard to filing of complaints, I was pleased to see that complaints were initiated from within the Department as well as externally. This, too, is a valuable metric for a successful accountability system in that it suggests an improvement with regard to the age-old problem of institutional reluctance to highlight and address possible problems from within. As a recent case mentioned in the media indicates, however, there still may be times when individuals within the Department have information that could be indicative of possible misconduct but that information does not immediately get referred to OPA. It could be that the individuals are simply thinking of the information as pertinent to a routine investigation and prosecution, and are not attuned to other issues. Or it could be that from their perspective the action was consistent with training and policy so they don't see it as problematic. Or they could assume that someone else already referred it to OPA. Nonetheless, every member of the Department has an obligation to report possible misconduct, and failure to report is, in and of itself, a policy violation. Upon learning of a possible failure to report, either the OPA Director or someone in the command staff will initiate an internal complaint immediately, as occurred recently. In the recent instance, a directive from the Chief reminding every employee of this obligation was issued as well. Given that any incidence of failure to report diminishes the public trust and the ability to hold officers who do violate policy accountable, Department leadership must continue to take actions to ensure that there is not a pattern or practice of failure to report.

Criminal Investigations

I also reviewed with the Director each quarter the list of those complaints where OPA's investigation is tolled (put on hold) because there is a pending criminal investigation. Here the issue is generally that this sequencing of investigations can cause a long delay and frustrate both the complainant and the public that the Department's internal investigation does not move forward. It can take several months for the consideration by the prosecutor of possible felony charges, followed by another period of time for a separate review for possible filing of misdemeanor charges. The complainant's and public's frustration is exacerbated if a criminal prosecution ultimately does not proceed and then the OPA internal investigation can take up to several months more time before a determination is made as to whether discipline should be imposed. While some jurisdictions proceed to do both types of investigations on parallel paths, the 2007 Police

Accountability Review Panel (PARP) supported the approach that OPA investigations not be undertaken until any associated criminal investigation is completed. A special review report by the Director, previous Auditor and OPARB looked at the issue again and reached the same conclusion. The sequencing of investigations in this way does help ensure that a criminal investigation is not negatively affected by the administrative investigation and helps address the 'Garrity' issue (where an officer is required to provide his or her employer information related to an administrative proceeding but that testimony or information flowing from it cannot be used to contravene the officer's right against self-incrimination in a criminal prosecution.)

Thus, Seattle's usual practice is to hold off on the OPA internal investigation, pending a decision by the Prosecutor or City Attorney on the criminal charge. This generally preferred approach and usual practice notwithstanding, the Director does retain the authority to make a case-by-case decision about whether to wait for the criminal filing decision(s) or move forward with the internal investigation. I would encourage the Department to work with the Prosecutor and City Attorney on whatever protocols or process changes might help expedite the sequencing or allow for a parallel internal investigation to proceed where appropriate. Department command staff should keep at top of mind that the public's trust in accountability can be diminished by these long delays. As soon as an incident occurs, command staff should act swiftly to share information with the public, issue or re-issue directives reinforcing expectations and standards for all officers and, when appropriate, put the officer on administrative leave, pending the outcome of the investigation(s).

Investigation Review

Prior to investigative findings and recommended dispositions being finalized, the Auditor reviews each completed investigation to make sure it is thorough, objective, timely, competent and well-documented. The Auditor can also direct that additional investigation be conducted, such as additional witnesses interviewed or additional evidence obtained.

In the period covered by this report I reviewed 61 completed investigations. I found the investigations conducted by OPA to be of good quality. OPA-IS investigators were respectful of complainants, interviews were thorough, all relevant documentation and evidence was gathered. As part of my initial outreach to groups concerned about police accountability, one issue that I was asked about was whether OPA used the same standards for serious allegations as for cases involving complaints of a more minor nature when determining whether a complaint should be sustained. From my observations and reviews, the analytical framework for recommended dispositions by OPA was consistent across the various levels of complaints.

I did ask that to further improve the quality of the case files, going forward each file have all information organized in the same order, with a checklist on top to make it easier to ensure all relevant evidence (e.g., Use of Force Report, medical records, CAD, photos, surveillance camera, In-Car Video, interview transcripts) has been obtained or, if not, an indication as to why not. This should make it more readily clear when certain evidence is not included whether there is a valid justification for its absence. In addition, if a witness is described as 'unable to contact', there should always be documentation as to the attempts made by the investigator to contact him or her. I also

asked that each allegation and disposition include the citation and the specific language from the relevant policy that is at issue, rather than simply referencing the general policy.

I did express concern about the timeliness of some Line Investigations. These are the investigations assigned to the precinct to conduct where the alleged misconduct is of a minor nature and the necessary interviews are limited in scope and number. None were outside of the 180-day limitation under the Police Guild contract, but they should not have taken months to complete. The Chief issued a memo to precinct captains reiterating the importance of timeliness and reminding them that accountability is a shared responsibility throughout the Department.

I requested additional investigation in only two cases. The cases at issue were two companion domestic violence (DV) cases. I felt that both raised issues that were not addressed sufficiently in the interviews of the named officers. After further discussion with the Director, I concurred with the decision that in the first case the problem was one of training and policy, which could not be addressed by additional interviews. It was not that the officer failed to comply with policy, but that the existing policy, procedure and training with regard to DV are lacking. (I discuss this further in the section on policy below.)

In the second case, my request to re-interview the named officer was complied with promptly. The result was a finding of Supervisory Intervention for the officer to have additional training on cultural issues that could have been at play during his interaction with a victim for whom English was not her first language and where there may have been other cultural issues that prevented her from sharing important details, regardless of whether there was a language barrier. It was recommended that the employee undergo DV Victim Support training on cultural competence, develop a directive on cultural issues that can arise in DV investigations, and provide follow up roll call training.

Another case involved an allegation of domestic violence against an officer made by his spouse. A DV criminal investigation was first conducted by the police department in the jurisdiction where they resided. That jurisdiction declined to prosecute, at which point OPA conducted an internal investigation. The practice for cases where a criminal investigation has been done is to rely on it where the OPA investigators assess it to be thorough and competent, rather than conducting a redundant investigation. In this instance, the OPA investigators interviewed the officer and a key witness (the original complainant refused to be interviewed), and these transcripts were in the file. But I could not tell from the case summary the degree to which the criminal investigation had been relied on and asked that the information from the underlying investigation be more thoroughly described.

There were two cases during the period covered by this report where the investigations raised issues of whether the officer had to use force as a result of the decisions he had made leading up to that point. While the force may at that point have been legally justified, better judgment, discretion and prudence might have allowed the officer to approach the situation differently or to change course without putting his or the citizen's safety at risk.

In one case, the underlying incident had occurred prior to the start of my term, during the tenure of the interim Auditor, but the investigation concluded after I became Auditor. This case involved a 17-year old stopped for jaywalking in a residential neighborhood. The officer observed the young man twice walking into the street facing straight ahead, without checking for traffic, and the officer thought there might be an issue of intoxication or mental illness. When the officer caught up with the complainant, he was walking in the street while talking on his cell phone. The officer requested that the young man show his license, and he refused. This went on for some time, with the officer holding onto the subject's arm, out in the street, and the subject continuing to say he didn't have to produce the license. A neighbor was there who identified the young man as from the neighborhood, pointed out his house and mentioned he didn't think the young man was a problem. This neighbor started videotaping the interaction. At the same time, another neighbor observed what was going on from her home and thought it was a scuffle. She called 911 and said that an officer needed assistance. That resulted in a "Help the Officer" dispatch, with additional units being sent to the scene, with sirens and lights, because they thought an officer was in trouble. These officers arrived at the scene, saw the officer and the subject in what looked like a struggle, jumped out of their cars and tackled and hit the subject until he was on the ground and handcuffed. He suffered some injuries.

The initial findings with regard to the allegation of Unnecessary Use of Force by the responding officer and the back-up officers were 'Exonerated', meaning their actions were found to be consistent with policy. Both the interim Auditor and I were concerned that this was another minor incident that escalated into a situation where force was used. The Director and the Chief both reviewed the investigation, including the In-Car Video, which captured the first officer's initial interaction with the complainant and attempts to escort him out of the roadway, and the use of force once the back-up officers arrived. The Director and Chief concurred with the findings. With regard to the initial responding officer, they noted that the complainant was uncooperative, refusing to identify himself or move out of the roadway, and traffic was blocked. They also took into account the complainant's mental disability which may have been a factor in the verbal combativeness with regard to refusal to show his license.

The Chief and Director took into account that the first officer was concerned about the complainant's safety as he was crossing streets without looking for traffic and then walking in the roadway while talking on his phone; the complainant was uncooperative when contacted; the back-up officers were responding to a "Help the Officer" call, not knowing anything about the underlying incident; and, the complainant continued to physically resist after the back-up officers arrived. The specific force used by each involved officer was also detailed in a Use of Force Report as is required.

The Director did note in her certification that as the Department undertakes its review of its Use of Force Policy and training, and considers new approaches to teaching de-escalation techniques, it might be useful to consider the facts of this case in the process. She mentioned as well that the incident might also be instructive for those involved with the SPD pilot project set to begin soon pairing mental health professionals with police officers.

Because the complaint focused on use of force, and the force used was determined to be consistent with existing policy and training, neither discipline nor supervisor intervention resulted. When the

finding is Exonerated, no other conditions or actions can be attached. Thus, the issues of discretion and escalation were not addressed. In my view, there were several problems with this interaction and would have been helpful to address the entirety of the decision-making process used by the initial responding officer, and have it drive a review of the training officers receive at the Academy about verbal conflict, discretion, decision-making and de-escalation, as well as any additional coaching and mentoring for the initial responding officer.

Another incident where the use of force by the officer was found to be consistent with policy involved a teenage girl jaywalking across a busy street near a high school. The officer punched the subject after being pushed by her while he was attempting to cite her cousin and several others for jaywalking. Review of the incident took into account the force employed by the officer and the context in which it was used, along with consideration as to whether there were alternative tools available to him for handling the situation.

First, as has been noted by many others, escalation that leads to any use of force for incidents that are very minor in nature is going to be viewed by the public as a disproportionate response, excessive or discriminatory. Such a response may be legal and consistent with existing policy and training, and therefore a complaint will not be sustained, but the officer's actions likely will not be viewed by the community as legitimate, impartial or consistent with community values.

In my view, these cases highlighted a problem with what has been a guiding philosophy for most police training over the years. Officers are taught – or conclude from their training – that first and foremost is situational control where they must take certain actions to minimize risk. That is absolutely essential where there is a real public safety threat. The problem is where all interactions are approached in that way. Rather than use discretion and take context into account, commands are given - ask, then direct, then order, then take-down. In this model, the officer is always right to issue the initial request, so failure to comply with it then legitimizes the escalating commands and force. If the individual is rude and disrespectful, the next step becomes getting the individual in line instead of ascertaining whether there really is a public safety issue for the officer, the individual or the community.

Training such as 'Verbal Judo' teaches officers that for encounters where there is not a threat to the public or the officer, the preferred approach is greater use of discretion, focusing on positive conflict resolution. The goal is not to make sure the citizen does what he is told; the goal is to de-escalate the encounter and solve the problem. The officer strives to achieve the public safety outcome with as little conflict as possible, so that each interaction meets community standards of legitimacy as well as legality. Officers are taught that it is ok to use discretion, to take into account the context, and to rely on communication skills to defuse hostility. They are trained to be respectful, even when the citizen is not, to explain the reason for the stop or other action and to try to objectively understand the perspective of the citizen.

Some argue that this approach to policing means that people 'get away with' being disrespectful or having less regard for the rule of law. That may well be true. But officers, as do others, have a greater responsibility on behalf of the larger society. They are our proxies; they reflect our

community standards. They should be trained to use discretion, to consider the context and to solve problems, just as they do with community policing.

As was noted in the Final Report of the Cambridge Review Committee resulting from the arrest of Professor Henry Louis Gates, Jr., "Police officers ideally should always conduct themselves both lawfully and in ways that lead citizens to consider their actions legitimate. Yet it is possible for officers to behave lawfully while also undermining perceptions of legitimacy among citizens. This is important to note because researchers have demonstrated that increased perceptions of legitimacy not only lead to greater understanding between officers and citizens, but also to higher levels of voluntary compliance with the law, which in turn leads to less crime and fewer incidents that put officers at risk."

It is true that if we want legitimacy as well as legality, and officers act in good faith to exercise that discretion, they need to know they will have our support. If and when there is misconduct, there must of course be accountability. Where good faith mistakes are made, the focus should be on education, training or change in hiring, supervision or policy that will lead to a better result in the future. We as a community can't demand officers use discretion and judgment, instead of relying on the bright yellow line of command and control, and then punish them when they use their discretion in good faith. We also have to take responsibility when we have differing expectations as a community, as is the case with regard to how aggressively jaywalking should be enforced across the board.

In the first jaywalking case noted above, the action of holding onto the subject until he complied with the direction to produce a license may have been lawful, but could it have been handled differently without compromising the safety of the officer or the public? There was no threat to either the public or the officer. Yes, the young man had wandered down the street without paying attention and now he was refusing to do what he was told to do. But how important was it that he produce his license? What was the public safety goal in making that demand? Was continuing in that manner actually creating more of a safety issue as traffic backed up? Perhaps the officer just as easily could have asked the neighbor who knew the subject for more information. Or the officer might have said, 'ok, let's walk over to your house, I want to make sure you are all right and your parents are aware of the situation' and then get the young man off the street that way. When the officer heard the call on his radio from dispatch of 'Help the Officer', that was another point at which a more prudent approach would have been to let the subject's arm go, and communicate back to dispatch that the officer was not being threatened, so lights and sirens, followed by use of force, would not have occurred.

A decision point analysis review would have assessed each of the choices the officer made that led to the result, coaching or mentoring could have occurred, and the case could have been used for roll call scenario training. It provides another example of the importance getting more officers through Verbal Judo or equivalent de-escalation training officers need in order to have the skills to be able to intervene in a different way. Equally important is a review the overall training philosophy underlying Academy and annual training. Just as the public expects medical training to evolve so

that current practice matches community standards, so too should police training evolve. If these recurring minor interactions where force is used are always going to be found to be consistent with policy and training – legal but not legitimate, technically correct but not procedurally just - it is time to change the policy and training.

In another case involving an allegation of use of force, the complainant was stopped and arrested for DUI by the officer and his partner. He was transported to the precinct for processing and secured in a precinct holding cell. The complainant alleged the officer intentionally stepped on his arm, causing a bruise, while he was lying in the cell and refusing to take the breath test as part of the DUI processing. The holding cell video showed the officer entering the complainant's holding cell with pen and notepad in hand. He was in the holding cell with the complainant for only about 40 seconds. Initially he could be seen standing over the complainant, who was lying handcuffed on the floor facing away from the officer and into the wall. The complainant was awake but did not face the officer. About 30 seconds into this contact the officer can be seen moving closer to the complainant and carefully positioning his feet up against the complainant's left arm. He then placed his right foot onto the complainant's left forearm and seemed to rest it there for about 10 seconds. The complainant did not seem to notice until the officer leaned in slightly toward the wall in an apparent effort to see the complainant's face. The complainant reacted by sitting up. The officer backed away and immediately left the holding cell. The complainant then rolled over and went back to sleep.

In his interview, the officer did not recall exactly why he placed his foot onto the complainant's left arm but supposed that he did it to restrict complainant's movements while he stood over him. He justified this because the complainant had been uncooperative and at times hostile during the arrest. The disposition memo concluded that since this control technique did not appear to cause discomfort until the officer momentarily leaned into the wall, thereby increasing pressure on complainant's arm, his explanation of his motives for using this method of restraint seemed reasonable.

In addition, none of the involved officers remembered the complainant making a complaint of being injured or in pain at any time during their contact. There was also no record that he complained of injury to either medical personnel or corrections personnel. The complainant produced photos of bruising above the elbow of his right arm, but it was clear on the video that officer had his foot over the complainant's left forearm.

The determination was that under the circumstances, the officer's use of his foot to restrict the movement of a hostile prone prisoner was not unreasonable and that from the video it appeared that the transient pain caused by the officer's foot was inadvertent, as he immediately released his foot from the complainant's arm, backed away, left the holding cell and the complainant went back to sleep. I thought it was a fair conclusion that the complainant's bruises were not caused by the officer, but the officer's actions did not strike me as necessary under the circumstances or reflective of best practices.

Lastly, I disagreed with the analysis in a case involving a possible violation of impound policy because the officer had not verified that the vehicle had not been moved for 72 hours. A second officer had been interviewed and he indicated he thought the vehicle had been moved, so in my view the analysis did not objectively reflect the evidence gathered during the investigation. The Director agreed and the allegation ultimately resulted in a Supervisory Intervention.

I also reviewed Proposed Disposition Memo's (PDMs) for investigations (and the analogous Analysis and Recommendations Memo's for Line Investigations). PDMs are the reports written by Lieutenants at the conclusion of investigations which analyze the information gathered and recommend findings. The next step is for the Director to certify those findings. If a disposition other than discipline is recommended, the Director's decision is final. If discipline is warranted, the Director makes that recommendation to the Chief. In Seattle's system, the Auditor does not have a formal role as to the findings or the discipline ultimately imposed, but I reviewed every PDM and certification and offered input for consideration by the Director and Chief. During the period covered by this report, I reviewed 90 PDMs.

With the perspective that PDMs are part of the totality of the case file, I reviewed each PDM to see if the analysis was thorough, accurately weighed all the evidence, and objectively summarized the investigation. I found the PDMs usually to be well written both in substance and tone, but I did comment with regard to the analysis and phrasing used in a few. In those I thought either the language came across as advocacy rather than a balancing of the evidence or, while I thought the investigation was fine, I didn't feel the analysis fairly reflected the evidence.

I reviewed the PDMs as well to make sure they captured any suggestions for change in training or policy that arose from the complaint investigation. In one case involving an allegation of use of force at a crisis residential center (CRC) for youth, while I agreed with the finding that there had not been inappropriate force, I also felt that the investigation had highlighted an ongoing situation where the CRC was using the police to deal with problems among residents. I suggested that precinct command staff convene a meeting with CRC staff to establish a better protocol. The precinct captain had come to the same conclusion and moved to address it. The outcome of the case was an improved relationship and better use of police resources.

Policy Recommendations

The OPA Director is issuing a separate report that updates the status of policy recommendations made over the years with regard to police accountability. Often, the public and complainants may measure the success of the police accountability system simply by the metric of percentage of cases in which discipline is imposed, or whether discipline was imposed in a particular case. But a critically important measure for a robust police accountability system is whether improvements in policy and procedure are also made as a result of complaints. These changes can have broad and lasting results across the Department. We should do a better job of showing citizens that their complaints lead to improvements, regardless of whether a particular allegation is sustained. For this reason I have recommended to the Department that the past policy changes be culled from all the various reports, summarized in an easily readable chart form that shows the source and date of the recommendation, what was recommended and the result. This chart should be available on the

OPA Web site, and updated regularly as policy changes are implemented. That will allow the public and policymakers to have readily available in one place the actions the Department has taken over the years to improve performance and accountability as a result of complaint investigations or in response to other recommendations made.

I'll note here just a few of the policy changes that derived from specific complaints during the period covered by this report. One complaint involved a warrantless search of a residence. It turned out to be the wrong residence, but the search was consistent with policy and law, so the complaint was not sustained. However, it was noted as part of the investigation that SPD policy does not specifically address the need for officers to document and screen residence searches involving warrantless, exigent circumstances. It was pointed out that policy should be clearer that a supervisor must be notified where officers determine that they mistakenly enter an individual's home and detain the occupants, even if only briefly and no other action occurred.

There were several OPA cases involving profanity, so the Department reissued its policy, more strongly emphasizing that profanity should not be used in the course of performing police work and that, when it is used, the involved employee will bear the burden of justifying its use.

Another need for policy change arose from a complaint where a juvenile was moved from one parent's custody to another and there was a verbal dispute without evidence of a DV crime. Departmental policy seems to be unclear with regard to the requirement that officers complete a general offense report (GOR) on *all DV calls* because the policy also says "officers shall complete a GOR for all DV '*crimes or allegations*' ". In this instance, there was not a crime or allegation, so the complaint of failure to file a report was not sustained. The recommendation was made to clarify the policy to require reports for all DV-related calls.

In another case involving domestic violence, an officer responded to a complaint by an elderly Asian husband who had said his wife barricaded their apartment door. (This was one of the two cases referenced above where I requested additional investigation.) When the officer arrived he spoke to the husband with the wife standing nearby. The officer determined there was not a need for further investigation. This raised the concern of making sure both DV training and policy speak clearly to the appropriate protocol of separating the two involved parties in a possible DV situation and talking to each individually, out of range of the other. Appropriate DV protocol is for the officer to make sure the victim can share information safely and comfortably, with a professional translator if the officer is not fluent in the victim's preferred language.

Additionally, the officers viewed the quiet assent and politeness of the wife as consistent with there not being a problem, rather than consistent with a possible problem of control by the husband. (A complicating factor was that it was the husband, not the wife, who made the initial 911 call.) I looked to see what the Departmental DV protocol or policy requirements were to see if there was a specific section on point, but could not find a specific policy related to DV investigation protocol. As well, it seemed to be the case that there was not much by way of current required training on DV investigations.

These three DV cases will result in the Department's DV investigation protocol being re-issued, the policy on required reports made clearer as to the circumstances requiring a written report following police contact with a potential DV victim, and a change in the Street Skills training to once again include training for officers addressing DV issues.

Another complaint involved an officer's car parked in front of a building where the officer was getting something to eat and the car engine had not been shut off. The complainant asked whether leaving police cars running is consistent with the City's sustainability policy. The Department's motor pool staff explained that much of the equipment inside the car that is needed to respond to a call takes time to start up, so turning off the engine could result in delay in a 911 response. A recommendation was made for the Department to work with City fleets to further explore this issue.

One other complaint highlighted the need for existing policy to provide more specific guidance for officers as to the preferred way to dispose of drug paraphernalia.

Issues & Trends

There are several areas that continue to create challenges for the accountability process. Although failure to use the In-Car Video (ICV) system is now considered a separate policy violation, and discipline or training can be imposed if a complaint is sustained, OPA is still seeing a significant number of cases where the circumstances don't allow for ICV to be turned on in a timely fashion or where it is not useful (wrong angle, out of range, etc.). For that reason I support the pilot project testing the use of lapel video cameras. The City's significant budget issues, including I.T. staff needs, remain as very real barriers to moving forward in this direction. Those obstacles notwithstanding, consistent use and quality of video remains an ongoing priority.

I also have significant concern about the limitation in Department's ICV policy (17.260) that prohibits supervisors or precinct commanders from reviewing video and using video as a teaching tool for officers within their command. The policy states that "*Imagery recorded by the DICVS will not be routinely or randomly reviewed to monitor officer performance. A commander/supervisor may conduct a performance review of an officer's recorded imagery only when there is an articulable reason justifying such review. Notice of the performance review must be provided to the subject officer and the Seattle Police Officers Guild (Guild), and the officer must be given the opportunity to be present with Guild representation during the review. Requests for copies of recorded incidents, which will be the subject of a performance review, should be approved by the precinct/section commander and directed to the commander of the Training Section for final approval and processing.*" Video can be a very helpful way to walk through various scenarios, to show other ways to handle a particular situation or type of interaction. To not be able to make use of it means a lost opportunity for the Department to enhance mentoring and training.

A related ICV issue is that video is retained for only 90 days, due to the cost and storage demands of saving it longer. If a complainant waits too long to file a complaint, the video might no longer be available. Where this matters most is use of force cases. In the next quarter I will do a review to see if there have been complaints in any significant number of cases where this has been a problem. If

so, it may be worth considering saving all video in cases where there was a use of force video report for a longer period than other video, if the storage capacity permits.

Another area where existing limitations can create challenges is the wall between the early intervention system information (EIS) and OPA complaint information. A strong early intervention system was another improvement made by the Department as a result of earlier recommendations. Housed in the Department's human resources section, that system captures data across a broad spectrum that may indicate performance concerns, including such things as sick leave usage, vehicle collisions, failures to appear in court or for training, use of force, litigation or EEO complaints. A certain number of instances occurring for each criterion within a period of time, or an aggregate of some of the factors, will result in an EIS review. Existing limitations mean OPA does not have access to the information unrelated to OPA complaints. (OPA has access to prior OPA complaints, but an additional constraint is that those are limited to the past three years.)

At times it would be very helpful to know the rest of the picture with regard to the officer. Was this alleged incident indicative of a pattern of bad judgment? Does it highlight a problem other than misconduct that needs to be addressed? The Police Guild has raised concerns in the past about fairness to officers, and there is an important balance (just as it is not appropriate to color a complaint by including in an investigation the complainant's criminal record, it can also be unfair to take into account personal information about an officer if not done appropriately.) In my view, however, additional human resources information would be particularly valuable in cases where domestic violence, alcohol use, professionalism and honesty are at issue.

Another area where a change in approach may be helpful is mediation. Here again the Department made some important improvements based on prior recommendations to offer mediation to citizens as a way to help address problems more quickly and to help both the complainant and the officer see things from the other's perspective. Unfortunately, while those cases going to mediation appear to have a high success rate judging from the evaluations, and the Director and Auditor continue to suggest mediation frequently, too few cases are being mediated. One obstacle is that the officer and complainant both have to agree to do it. Some officers won't do so unless they are at risk of discipline ("why bother") and some complainants won't do it because they have to give up the right to possible discipline if the mediation is not successful. I recommend we take another look at what else we can do to increase the frequency of mediation, seeing if there are ways to encourage both the complainant and officers to make more use of it. But we also may need to consider other informal problem solving strategies that can provide for quicker, constructive results.

Another consistent problem reflected in complaints is the issue of secondary employment (off-duty work for employers other than SPD). Here the issues include such things as failure to get required permits, taking direction from the employer that may be inconsistent with Departmental policy or training, or parking without paying as a private citizen is required to do. The Department continues to work on ways to reduce the number of issues that arise from this context.

Training

As noted above, there have been a number of high profile cases, highlighting the need for more and different training. There is a great deal of work under way in this regard by the Department, that they will articulate, so I won't belabor the point here except to say that I strongly support more officers going through additional training sooner rather than later. The Department would be well served to lay out for policymakers and the public exactly what additional training will now be provided, how the underlying philosophy will evolve from the traditional approaches of the past, which types of gaps training will address, which type of officers will be going through each training and when.

The Department should also better articulate the continued education or training that is required throughout an officer's tenure with the Department. Promotional opportunities must continue to be tied to completion and regular refreshers of all priority training. Newly appointed supervisors should always receive training about OPA. It is also important to ensure there is mentoring and transition of knowledge as those with expertise across the department retire. (This is particularly important for those specialty units that require expertise to successfully deal with unique needs, such as mental illness).

In my view, priorities for training include updating the academy curriculum so that the model being used is consistent with community values; providing sergeants more supervisory skills; training on effective communication, discretion, de-escalation, and decision-making; crisis intervention training, which focuses on interactions with individuals who are mentally ill; specialty training for interacting with adolescents (understanding how brain development at that age affects decision-making and behavior); and cultural competency training.

It would be helpful to have more training that is done in 5 or 10 minute increments by scenarios at roll calls and more training offered online in a web-based format, particularly given budgetary constraints.

Procedural & Process Improvements

Despite many improvements over the years, there is still a perception that the accountability process is difficult to access and understand, and that a complaint can 'disappear into a black hole'. OPA is continually striving to decrease the time investigations take. Staff notifies complainants by letter when a complaint is assigned for investigation and provides the OPA investigator's phone number to call to check on progress of the complaint. If the City's I.T. system will allow, I have recommended incorporating a way for complainants and officers to check the status of the complaint on line, much as a voter can check on the progress of her ballot on the elections Web site.

We can also do a better job of articulating results so that the public can see the impact of the accountability system. As noted above, we should make more visible and understandable the fact that filing a complaint can be helpful not just in terms of an individual officer's accountability, but also can result in change in policy or training that affects all officers.

The OPA Director, OPARB and I are collaborating on two projects. The first is to assess whether the Department's databases can be used in different or additional ways to enhance complaint tracking, reporting, analysis and management tools. For example, can information be provided to command staff more contemporaneously so they can see trends or issues sooner and respond accordingly? Can different reports be generated that focus on special areas of interest, and provide additional demographic analysis or comparative information for the public and policymakers? Can data entry and review of information be changed to help OPA staff continue to improve timeliness of investigations, while also handling emergent needs and other workload demands? Can data help provide a measure for ascertaining the effectiveness of the PIRs, Supervisory Referrals, Supervisory Interventions and investigations? Did the discipline, training, mentoring, mediation, change policy, new directive or sharing of information result in improved performance, fewer complaints, or some other measure? Are the same issues still coming up as concerns for the public? This sort of measurement is one of the purposes of the regular statistical reports and semi-annual reports done by the Director, Auditor and OPARB, but there are perhaps more robust ways to do that.

The second is to see if there is a way to simplify classifications and findings. While this issue has been raised previously and there were changes made in years past, it may be time to take another look. Both the number of classifications and findings and the terms used can at times be confusing to the public, the complainant and the officer. Additionally, only one finding appears to indicate the complaint led to a result ('Sustained'), since most of the public doesn't know 1) what the term 'Supervisory Intervention' means; 2) what the intervention was; or 3) what systemic policy or training changes may have resulted, regardless of the finding.

In 2011, we also will work on continued improvement in accessibility, making the website more user-friendly, providing links for filing complaints to websites of agencies serving adolescents and communities of color, and making sure the precinct staff all know the easiest way to help someone file a complaint when asked. This work will tie in with OPARB's work on public education and outreach. The Director and I will also review all the letters, complaint forms and other OPA-related materials to make sure they are as explanatory and helpful as possible. Lastly, we will also work on an updated training manual for OPA.

Ideally, while each is independent, the system functions best when there is coordination and collaboration among the OPA Director, Auditor and OPARB. As well, given limited resources and the elimination in past years of a project manager staff in OPA, special reviews, reports and projects have to be sequenced and prioritized. In that spirit, we undertook work on the above database and findings projects collaboratively, have another one in the queue for 2011 (ICV issues) and will continue to look for ways to coordinate in the future.

Other Auditor Activities

In addition to the work discussed above, I met with a range of community groups and individuals to get their insights and perspectives with regard to the history of police accountability in Seattle, their views as to how well we are succeeding at fundamental objectives such as transparency, objectivity, fairness and community trust, their thoughts about priorities and their concerns about barriers to further progress. I met with the previous Auditors (two of whom were also retired

judges; the third a former federal prosecutor), the previous OPA Director, and some past and present members of OPARB and the 2007 Police Accountability Review Panel (PARP). I reviewed all prior reports issued by the Director, the Auditor, OPARB and PARP to gain an understanding of the nature and frequency of complaints, systemic reforms to date and recurring policy or procedural issues that continue to present challenges. I also reviewed the relevant ordinances, statutes, departmental policies and manuals, the Seattle Police Officers Guild ("Police Guild") contract and Memoranda of Understanding (MOUs), additional reports and documents from those in the field or other jurisdictions related to best practices.

I joined the National Association for Civilian Oversight of Law Enforcement (NACOLE), which provides to its members regular updates on police accountability issues occurring in jurisdictions across the country. I participated in the NACOLE conference in Seattle, which highlighted best practices and covered a range of important police accountability topics facing many cities. I attended OPARB meetings, along with the Director, as part of our ongoing collaborative interaction among the three entities, which also includes alignment of some priority projects and reviews, discussed further below.

I met with the City's Department of Information Technology, to begin the process of updating the website as a tool to help improve accessibility and understandability of OPA for the public. (Due to the press of other I.T. priorities for the City, this work had to be delayed until next quarter.) I observed the verbal judo training, designed to address de-escalation techniques for the more than 90 percent of police interactions that do not require any use of force; the Crisis Intervention Training (CIT), designed to improve police response to those in crisis, including those with mental illness; participated in the "Shoot Don't Shoot" simulation, designed to replicate the split second decision-making for officers facing a threatened use of force; watched the Perspectives in Profiling training video, designed to help address issues of bias in policing; and, together with the Director, met with a potential trainer specializing in police interactions with adolescents.

Conclusion

Whether the issue is an allegation of use of force, biased policing or other violations of policy, the role of the independent Auditor in this system is to help ensure that citizens have trust in the process because every complaint is addressed appropriately, there are thorough and fair investigations and objective determinations on the merits of each case, alternatives to disciplinary actions, such as training, education or mediation are utilized where appropriate, policies and training are improved where complaints reflect potentially recurrent issues or trends, and the rights of both the complainants and the officers are respected. The Auditor must also help ensure that the system is accessible, transparent, and responsive.

High profile events in recent months have focused attention on the importance of the Department quickly assessing the cause, and then taking appropriate action to forcefully address, what appears to the public to be a pattern of incidents involving excessive force, escalation or biased policing.

As discussed in this report, the Department has several tools it can deploy: different and more frequent training for greater numbers of officers; improved supervision and mentoring; a shift in practice to problem solving, discretion and reduced conflict for non-threatening interactions; emphasis on these skills in hiring criteria and training; quicker acknowledgment and accountability when possible misconduct does occur; and better communication with the public about institutional changes that have been or are being made.

As I mentioned at my confirmation hearing, Seattle Police work hard to build relationships with diverse communities, but any time there is disproportionate action, disparate treatment or the perception of either, those relationships and that trust can quickly be put at risk. The overwhelming majority of officers work day in and day out with the highest standards and deep commitment to those they serve. Policing is a difficult and complex profession and there inevitably will be officers and situations where issues must be addressed.

Policing at its best means that everyone in a community feels the law works fairly for all. It is not just a matter of reducing crime, but of doing so in such a way that all individuals feel that they are being treated fairly, equally and with respect. Of course the enforcement must be legal, but legality alone isn't enough. There needs to be legitimacy as well in order to have public trust. That means behavior that is not just legal, but is viewed as consistent with community values. When done well, policing brings a community together to solve problems, reduce crime and build relationships of trust. Seattle has a very good Police Department and a strong police accountability system, but there is work to do to regain the public trust.