



Seattle City Council Police Accountability Panel (SCCPAP)
Minutes of Monday, January 28, 2008 Meeting
6:00 pm – 9:00 pm

Present: Panelists Eric Schnapper, Leo Hamaji, Steve Herbert; Michael Pendleton, facilitator; Nancy Roberts, staff

Guests: Michael Fitch, Attorney, Chair, Public Safety Task Force, Seattle Human Rights Commission; James Bible, NAACP; Fred Diamondstone, Attorney

Administrative:

Meeting was convened at 6:20 pm

Approval of Minutes –

Michael Fitch spoke first. His Public Safety Task Force has met with OPA, IPARB, and the OPA Auditor in an effort to determine how Seattle's accountability system meets citizens' needs. He stated that if new information is revealed during a meeting with the chief, that the matter should be kicked back to OPA to review in light of the new information. There needs to be a fresh look at the system. It was not designed to meet the needs of the citizens; it was meant to be a process between the chief and officers.

James Bible – the NAACP deals with more than just African-American complaints. Solid citizens complain as well as those with frequent contact with the law – they see a cross section of the population. Often it has to do with rough and/or disparate treatment. OPA insulates officers and wrongdoers to the detriment of victims. He's concerned about the chief's ability to countermand and go against recommendations. He feels that the chief misrepresents information, and that the chief has demonstrated an unwillingness to follow just cause and to do what is necessary, and that he should step down. He cited the Patterson case: officers made misrepresentations to OPA, which went unchecked.

SPD's culture was described as the blue wall of silence. People of color and poor people do not see SPD officers as peacekeepers.

Citizens' civil rights have been bargained away. The culture at SPD allows for a certain amount of misconduct, resulting in an adverse relationship between the police and the policed. He feels that they cannot remain silent and trust the process; the process is broken.

Suggestions:

- Perhaps there should be a complaint advocate that does not involve police. This person would help citizens navigate these unfamiliar processes.
- Institute a multi-tiered process in which there is an opportunity to appeal and have a hearing that would include an automatic opportunity to appeal, plus another discretionary appeal to council, who can choose to hear the appeal, and choose to hear it publicly or privately.

There needs to be checks and balances.

Fred Diamondstone – He has been involved in police issues since the 1970's, and works for those who bring cases against SPD. He feels that officers have enormous power, up to deadly force, but their powers are not unlimited. They must use reason when using this huge power. They must remember to use reasonable and necessary force. Police officers ARE public employees, there to serve the public and with public accountability. They knew this when they chose their jobs.



Seattle City Council Police Accountability Panel (SCCPAP)

His biggest concern is structural bias. OPA words hard, but the system has biases. The possible outcomes are unfounded, exonerated, not sustainable, and sustained (based on a preponderance of evidence). There is now another category, supervisory intervention, which has nothing to do with sustainability.

The national standard for sustained is a preponderance of evidence. In the city of Seattle, the Chief uses a higher standard. The reason for this is that the chief is concerned about having his decision overturned by officer appeal, a concern also voiced by the OPA Auditor. The Civil Service Commission's burden of proof is stated as "good cause" standard. There have been dozens of cases where the chief did not follow OPA's recommendations. This concern has been addressed by City Council, which now requires that disagreements be explained in writing.

A second issue is around public disclosure. The Guild takes extreme positions, threatens OPARB when they disagree. Mr. Diamondstone makes the point that OPARB sees cases after they are closed, so the process is not impaired if these files are open to public disclosure. The public is better served by knowing the outcome of findings, whether good or bad.

Officers typically respond well when asked questions around public disclosure of cases. They have no greater privacy than that provided in state law. It is appropriate for the citizens and officers to know who has done well, who has not.

The Facilitator was requested to talk with the City's Law Department in order to allow Fred to talk openly and privately with the panel about the Alley-Barnes case. There is currently a protective order that prevents him from discussing it. Mr. Diamondstone did promise to forward summary judgment pleadings that were not under seal to Nancy Roberts for distribution to the panel. The panel agreed to hear from the Mayor's panel members before deciding whether to push this issue further. The guests were asked for more specific information on the idea of citizens having an advocate to help them navigate the system. James Bible wants a Complain Advocates program to assist citizens. This would be separate from SPD, could help to ensure that available, appropriate processes are being followed. Perhaps it could be staffed by law school or social work students? There are resources available to make this happen. Many cases are lost at intake. Citizens become alienated, are talked out of pursuing an issue, or are intimidated by the person who they're lodging a complaint against. This happens frequently enough to be considered a problem.

How is this the same or different from the advocacy offered through ACLU or NAACP? James Bible responded that it is beneficial to standardize the process. Those very organizations can make some people uncomfortable, or people are simply ignorant of the system of help that is available to them. He stated that citizens are really looking for validation of their experience. He wants to look at alternatives to the current system, something that would offer people hope for a system change. He also expects more civil suits in the future.

Mr. Fitch stated that access is a problem. The place where citizens currently go to lodge complaints is off-putting. It's in the basement of an SPD headquarters, and complainants must go past officers to get there. The officers who staff this service are not there by choice. It's an assignment that is required if an officer hopes to ascend in the ranks. Also, the claimant has no right of appeal, but the officer does. The current system is really a labor/management system, not a citizens' process.

Mediation is now an option at SPD, but it is a catch-22. By agreeing to mediation, you must also agree to accept the outcome, no matter what it is. There are no further rights of appeal, no alternatives. It serves to insulate the officer and eliminates alternative avenues for the citizens.

Mr. Diamondstone talked about the "serious offender" at SPD. History on such a person is kept only 3 years, so long-term histories are non-existent. Also, the playing field for complainants is not level. The



Seattle City Council Police Accountability Panel (SCCPAP)

citizen may be asked “do you really want to do that“ (complain, pursue the issue). Facing a guild rep AND an officer is intimidating. There is no advocate for the citizen that is similar to the guild rep. It is difficult, even for an attorney, to find out the outcome of investigations.

One of the panel members stated that there are problems inherent in using a labor/management discipline process, which is designed to favor the employee (officer). Discipline processes with several layers of appeal are hard on officers as well. We seem to be asking something of this system that it was not made to deliver. Regardless, the City needs a method for responding to complaints that is outside of the discipline process.

Mr. Fitch stated that the mediation program meets some of the required criteria, but is limited. This “labor system” give the perception that it will protect people from civil rights violations, but it favors officers and disappoints and fails citizens, who may feel further victimized.

James Bible stated that OPA gives merely the perception of providing a process for citizens, but actually serves to insulate officers. It’s a cultural issue – that of SPD. Profiling net is often cast too wide, catching the poor, citizens of color, and residents of certain neighborhoods.

What is a better avenue? James Bible responded that training, counseling, many other things are needed.

Comment from panel member: OPA is being used to fix the wrong things. There are various OPA outcomes but they are ultimately unsatisfying and unsatisfactory. Some of the decisions translate to “we’re not sure, so don’t want to punish unnecessarily.” That is understood, from an employee’s rights standpoint. But perhaps “we’re not sure” should mean “needs more investigation.” The next step may be to move to an excessive force claim, requiring further investigation, examination of medical records, interviewing other witnesses in order to try to break the tie.

Risk management protects the City; is not designed to investigate citizen complaints.

James Bible reminded everyone that testimony taken under oath in a criminal case cannot be used by OPA. Does the Prosecuting Attorney’s office provide a check and balance in any way? The P.A. is not involved; these cases go through the City Attorney’s office, who looks out for the City’s interests. Fred Diamondstone clarified that misdemeanor charges are prosecuted by the City Attorney. Their criminal division defers largely to police rather than exercise any oversight.

Suggestion was made that when an individual files a complaint about treatment by police, the City Attorney’s office should not make a decision about filing criminal charges, since they have a financial interest in the outcome. Perhaps they should defer to the Prosecuting Attorney?

Panel member observation. It appears that after a citizen makes a complaint and is interviewed, in the SPD headquarters basement), there is no more involvement until the end of the process, which is in the form of a letter of final decision. Is the only alternate recourse to hire an attorney to pursue the matter? Note: Someone from the NAACP may be asked to accompany the citizen at the interview to level the perceived playing field.

Are OPA investigations conducted in a forthright manner? The statistics tells us that 24 complaints that were sustained by OPA in the course of three years were overturned by the Chief. Michael Fitch stated that the Chief wants a VERY STRONG case so as to not be overturned on appeal. This is a concern that has been shared by the OPA Auditor.

A suggestion had been made to the Mayor’s Panel – that this be an independent process, with the Chief’s role being on the side of the officer. An independent body would make the decision regarding discipline.



Seattle City Council Police Accountability Panel (SCCPAP)

James Bible agreed with the independent aspect but with a twist – the body in control of the finding should be separate from the chief, with the chief handling the final decision. The distinction is that the Chief cannot interject himself into the process. Currently there are many points where he can interject, guide, or otherwise affect the outcome.

The facilitator was asked to work with James Bible to get more information and more complete documentation on the Patterson case.

A panel member observed that in mediation, the complainant wants acknowledgement and validation, which may be appropriate, despite the official findings. How can the system be modified to address the interests of the complainant?

Michael Fitch felt that this suggestion was appropriate in the case of communication problems such as rudeness. He is concerned that there are no further avenues or remedies, regardless of the outcome, within the mediation option. However, the program has a good track record thus far – both parties are largely satisfied with the system.

Panel question: What if OPA's practice was to offer redacted files to complainant prior to disposition of the case? In that way they could see the process by which the facts were considered.

James Bible stated that wants mediation to be non-binding. What is the level of investigation? Are some cases so serious that this avenue is not made available to them? For each complainant who comes forward, there are most likely many others who have not.

With regard to mediation standards, the Chief told the SHRC that there are some cases he won't allow to go to mediation. The Chief also told NAACP that he has some control over what is mediated. Perhaps the Director of OPA could record what her thought processes are when classifying cases, and that data could be revisited at some point to see if trends emerge.

A panel member had concerns about the way SPD is run. There are many policies on many things. But the only process options are through the Chief (a non-transparent process), private litigation, or through OPA, which has a limited focus. Perhaps Council or OPARB can assist? Perhaps a board with plenary authority that could act as the eyes and ears of the council, with no connection to SPD? OCR does this type of work, but they have no jurisdiction over SPD.

The comment was made that the chief is concerned about morale and guild appeals. However, the Chief's primary responsibility should be to the citizens, ensuring fair, equitable and humane treatment.

Fred Diamondstone stated that the concept of an independent oversight board (vs. an internal board) won't happen; the Guild won't allow it. He favors better documentation – the decision to place videos in all police cars is moving forward slowly. In many cases, the video will exonerate an officer. If it serves to implicate, that's a service to the City as well.

Discussion turned to the Alley-Barnes case. Fred Diamondstone stated that this is Federal Cause #06-0882, and much of the information on the case is available there, perhaps a banker's box worth. Kim Gordon of Schroeter Goldmark Bender was the attorney of record.

The guests left, and the Facilitator offered to engage Terry Carroll to speak to the panel, but suggested reviewing the panel's report first. It was scheduled to come out the day after this meeting. Remember, all the materials provided to/produced by the Mayor's Panel are available to this panel.



Seattle City Council Police Accountability Panel (SCCPAP)

The facilitator will try to determine the volume of those available materials. The panel asked him to request the Alley-Barnes and Patterson files, even if they are redacted versions.

The group still would like to talk to the chief, but feels they need a mastery of the materials first.

It was requested that other panel members be invited, in addition to Terry Carroll. Perhaps there was someone on the panel who represented a minority view of the panel?

Meeting was adjourned at 8:42 p.m.

Next Meeting

The date of the next meeting is Monday, February 11, from 6 – 9 pm in the City Hall Boards & Commissions Room, room L280.

Minutes recorded by: Nancy Roberts