

Comments to the Mayor's Panel on OPA

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What does the Auditor do?

I review files in real time on weekly basis; before the Director or the precinct chain of command. My job is to assess the sufficiency of the investigation and suggest additional avenues, or improvements in methods. I sometimes suggest reclassification of investigations. I often comment on the underlying employee conduct, though that is not part of my obligations under the ordinance. I am tasked with writing reports twice yearly and making trend observations and policy recommendations. I have attended the public meetings, gone on ride-alongs, read in the field of civilian oversight and legal research about such issues as search and seizure, gone to staff trainings and meetings, and received citizen comments.

What value does it have?

I am an outside contractor, not in anyone's Chain of Command. The Auditor's compensation has not been increased in the 15 years the contract has existed. I operate part-time and can only be fired by the Mayor. I am only as successful as my suggestions make sense. I often highlight an issue for the Director, have good dialogues with the Lt. and Capt, and indeed with the Chief. The Director's position is rather overloaded with responsibilities in the present set-up, and I offer a sounding board, support, and an independent perspective.

What might increase that value?

It is difficult for me to suggest further IIS interviews or questions to be asked given the timing, that is the conduct occurred several months before. My suggestions usually end up being forward leaning – "next time we have this situation, we should...."

Shortening the time it takes to complete investigations remains a critical goal urged by citizens and employees. I must be noted that the 99 day average is from the time the complaint enters the Dept. and when the Captain has reviewed it, that is before it goes to me, the precinct chain of command, the Director or the dispositional meeting (in the case of a sustained recommendation.). Another change might be to empower the Auditor to make comments on outcomes, with some procedure for highlighting those cases where the Auditor and the Director disagree, or where they agree and the Chief changes the recommended finding. Should the Auditor's opinion on the underlying conduct be documented and reviewed at the dispositional meeting?

Questions of overall structure:

There are a number of obvious questions for this panel to address, and I would like to give some very brief input from my perspective.

- 1. Keep the investigations in-house.** I think it is important to have the Director at the Command Staff meetings, for sergeants to have the experience of serving in IIS, and for the Department to benefit from the many policies changes that are influenced by IIS. I find that the public and complainants can get very involved in the outcomes of a few cases, and I understand that. But they tend to miss the critical function of changing culture and systems, policies and programs, that is at least as important as the outcome of any single case. I would urge this panel to look at all the policy changes that have been made during Sam Pailca's tenure at hers and my suggestions. Furthermore, OPA IS has credibility with employees precisely because the investigations are done by people who understand police work.

2. **Take a hard look at the Director's job.** I fully support a civilian in that position. But look at the number of different functions the Director is mandated to perform.
3. **Ask the Mayor and Council** to be more specific about the role they can agree they want the Board to serve. As a public sounding board, they convey issues and dissatisfaction from various stakeholders. Review of large numbers of closed cases is redundant and of questionable value. The Mayor and Council need to confer and cooperate in reassessing the Board's role and perhaps giving more direction. Should they serve a limited appeal function? How would that work and still achieve timeliness and closure?

Those of us serving in these three avenues of civilian input meet regularly. Some of the areas of our discussion have been:

1. Should there be legislation segregating administrative investigations from evidentiary use in criminal proceedings? This would involve some complex issues, but would allow administrative investigations to go forward regardless of criminal investigations or charging decisions made elsewhere and would make citizens less wary of cooperating when they have charges pending.
2. Should the Chief be excluded from involvement in or direction of the internal investigation before the OPA Director certifies it? Again, complex issues here: would an Assistant Chief make decisions about fitness to serve in the meantime?
3. Should the operational chain of command be excluded from comment until after certification? What should be the role of their comments in the disciplinary phase?
4. The discipline meeting actually addresses three different questions: what happened? Was there a violation of Dept. policy? What should be the disposition and sanction if it did? Should these questions be separated at the discipline meeting?
5. Should formal certification be required before the disciplinary phase is begun?
6. Should the Director be present during the employee's *Loudermill* so-called "hearing" with the Chief?
7. Should the Chief be required to write his reasons when he reverses the recommended finding from the OPA? If so, how could those conclusions be used or made public?
8. Is the early intervention system working well?
9. Should the OPA have budgetary independence?

Finally, a couple of cautions: I would be careful in spending a great deal of time on a few individual cases. I don't think they will give you good insight into potential structural changes, as they tend to be exceptional, or to be capable of many different interpretations, depending on your starting perspective.

Secondly, if you are thinking of major changes in structure, take a look at other places around the country where they have been tried. There are a lot of models out there, and I have yet to see one that is working more efficiently or justly or productively than ours.

Thank you for the opportunity to join you this evening.