



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2017

CASE NUMBER: 2017OPA-0813

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6. Screening Sergeant Will Approve Report	Sustained
# 2	8.400-POL-3 Use of Force - TYPE II INVESTIGATIONS 1. In Conducting a Type II Investigation, a Sergeant Will Respond to the Scene and Thoroughly Investigate the Event,	Sustained
# 3	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Lawful and Proper)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)
# 5	8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Unfounded)
# 4	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 5	15.020 - Charge-By-Officer (CBO) 2. Suspects Must Be Thoroughly Identified and Documented in the General Offense Report	Not Sustained (Training Referral)
# 6	15.020 - Charge-By-Officer (CBO) 3. Officers Must Document How the Suspect was Identified	Not Sustained (Training Referral)

Named Employee #7

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Management Action)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Training Referral)

Named Employee #8

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)

Named Employee #9

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)

Named Employee #10

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

This investigation, which is a consolidation of two separate cases (2017OPA-0677 and 2017OPA-0813), concerns the use of force on a subject. That subject was chased down and tackled onto concrete when he ran after being stopped for a citation. This force resulted in injuries and bleeding to the subject's face and body.

OPA received a complaint from Named Employee #2 who, when reviewing In Car Video (ICV), identified that the subject had alleged that his head was ground by officers into the concrete and that he was kneed in the head. OPA added additional allegations that the decision to pursue and tackle the subject may not have been consistent with the mission of the Department and out of proportion to the severity of the crime and public safety issue being addressed.

This matter was later reviewed by the Force Review Board (FRB). The FRB identified a number of issues concerning the force reviews performed by Named Employees #1 through #3, as well as possible failures to document force on the part of the other Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 6. Screening Sergeant Will Approve Report

SPD Policy 6.010-POL-6 requires that the sergeant who screens an arrest also review the final arrest paperwork, including the general offense report, to ensure that it is complete and accurate, and then approve it.

Here, NE#1 approved the general offense report even though it was not complete. Most notably, as discussed more fully below, NE#6 failed to identify the subject but still proceeded to charge-by-officer, contrary to policy. This resulted in the City's Attorney's Office ultimately declining prosecution. NE#1 should have identified this issue and disapproved the report, but he failed to do so.

His conduct in this regard was inconsistent with policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.400-POL-3 Use of Force - TYPE II INVESTIGATIONS 1. In Conducting a Type II Investigation, a Sergeant Will Respond to the Scene and Thoroughly Investigate the Event,

SPD Policy 8.400-POL-3(1) requires that, when conducting a Type II force investigation, the sergeant will respond to the scene and thoroughly investigate the incident. The expected scope of that investigation is set forth both in this policy and in SPD Policy 8.400-TSK-6.

As identified by the Force Review Board (FRB) during their review of this incident, NE#1's force review was not thorough, complete and critical. The FRB noted the following deficiencies: the officers' failure to completely identify the subject and decision to proceed to charge-by-officer regardless; the failure of NE#7 to properly identify the force used and the extent of injuries to the subject; NE#1's failure to ask the subject about what force was used on him; the failure of NE#1 to identify other possible involved officers and/or to require witness reports from other officers who were at the scene of arrest and used de minimis force; the failure to identify the late activation of NE#6's and NE#7's ICV and to seek an explanation for why that was the case; blurry photographs of the subject that were submitted in DEMS; and the failure to review NE#10's ICV to determine that an allegation of excessive force had been made.

I note that, as discussed below, there was no Administrative Lieutenant working on that date; however, this is simply not an excuse for failing to conduct a thorough, complete and critical use of force investigation.

As such, based on the above, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

This section of the policy requires that the sergeant must evaluate the force used, classify the level of force, and then conduct an investigation into the force. (See SPD Policy 8.400-POL-3.)

Here, NE#1 properly classified the force used as Type II and initiated an investigation into the force. While I ultimately find that the investigation was deficient, he complied with the requirements of this portion of the policy.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #4

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that “supervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” As a general matter, allegations of minor misconduct may be investigated by the chain of command while allegations of serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)

As identified throughout this memorandum, the chain of command, including NE#1, failed to identify potential misconduct and, with regard to at least some of that misconduct, to either investigate it or to refer it to OPA.

With regard to NE#1, specifically, he failed to review NE#10’s ICV and thus did not hear the complaint of serious misconduct made to NE#1. While NE#10 claimed that he orally conveyed this complaint to NE#1, NE#1 denied that assertion and stated that he did not know about the complaint until he received a notification of this investigation from OPA. NE#1 told OPA that he did not review NE#10’s ICV because it was not germane to the force itself. However, I am not sure, based on the record, what the basis was for that determination.

Even excusing the above, NE#1 also did not identify other minor misconduct. However, given that other similar allegations herein are recommended sustained, given that NE#2 and NE#3 both received training referrals, and given that I cannot conclusively determine whether NE#10 actually told NE#1 about the subject’s complaint of excessive force, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the Department’s expectation that he will thoroughly review uses of force and identify potential misconduct when appropriate. This training and associated counseling from NE#2’s chain of command should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #5

8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION

The conduct captured in this allegation is largely the same as that set forth in Allegation #2. The gravamen of both is that NE#1 failed to conduct a thorough and complete investigation of the force. As I recommend that Allegation #2 be sustained, I find it to be unnecessary to also sustain this allegation. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning his obligations to conduct a thorough, complete and critical investigation of force as set forth in SPD Policies 8.400-POL-1 and 8.400-TSK-6. NE#1’s chain of command should explain to him how his investigation in this instance failed to meet that standard and their expectations for his investigations in the future. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that “supervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” As a general matter, allegations of minor misconduct may be investigated by the chain of command while allegations of serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)

During his review of the force used in this incident, NE#2 reviewed ICV, including that from NE#10’s vehicle. As discussed below, NE#10’s ICV captured a conversation with the subject during which the subject alleged that his face was ground into the concrete and that he was kneed in the head. Based on this allegation, NE#2 properly made an OPA referral. NE#2 also properly identified, based on a review of the video, the possibility that NE#6 had used a knee strike and ordered NE#6 to complete a supplemental report.

While NE#2 properly identified the above issues, the FRB criticized several aspects of the chain of command’s force review. The FRB’s criticisms included, but were not limited to: the failure to refer NE#10 to OPA for failing to report alleged misconduct; the failure to identify deficiencies in NE#1’s force investigation; the failure to note that at least two individuals involved in the force did not complete use of force reports; and the failure to recognize that the involved officers did not completely identify the subject before proceeding to charge-by-officer. I agree with these criticisms.

As identified by the FRB, I note that NE#2, and as discussed below NE#3, failed to identify possible misconduct and failed to either investigate or refer that misconduct to OPA.

During his interview, NE#2 relayed to OPA that the Administrative Lieutenant was out during the review of this incident. As such, NE#2 had to perform both his role as a Lieutenant and the Administrative Lieutenant role during this review. NE#2 recognized that, because of this fact, some aspects of the investigation fell through the cracks.

Given this, as well as the fact that NE#2 did identify the complaint of excessive force and the possible knee strike, I recommend that this allegation not be sustained. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning the Department’s expectation that he will thoroughly review uses of force and identify potential misconduct when appropriate. This training and associated counseling from NE#2’s chain of command should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires that “supervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” As a general matter, allegations of minor misconduct may be investigated by the chain of command while allegations of serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)

The force review completed by NE#3, who was the captain ultimately overseeing the investigation, was also criticized by the FRB for largely the same reasons as NE#2’s review. The FRB also noted that NE#3’s specific review had several errors.

As a captain, NE#3 is understandably held to a high standard. NE#3’s review in this case failed to meet that standard. Most notably for the purpose of the allegation classified here, NE#3 failed to identify officers’ conduct that rose to the level of potential misconduct.

While I find that NE#3's force review ultimately fell short of the Department's expectations for completeness, thoroughness and the critical evaluation of potential misconduct, I do not believe that this rises to the level of a violation of policy. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#3 should receive additional training concerning the Department's expectation that he will thoroughly review uses of force and identify potential misconduct when appropriate. This training and associated counseling from NE#3's chain of command should be memorialized in a PAS entry.

Recommended Finding: Not Sustained (Training Referral)

Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all force used except for de minimis force.

Here, it is unclear why this allegation was classified against NE#4. He was not on the scene at the time of the arrest and he did not use any force against the subject. As such, he had no obligation to generate a use of force report.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: Not Sustained (Unfounded)

Named Employee #5 – Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all force used except for de minimis force.

NE#5 responded to the scene with NE#8 and NE#9. By the time they got there, the subject had already been taken to the ground by NE#7 and was surrounded by both NE#6 and NE#7.

At their OPA interviews, NE#5 and NE#8 reported using de minimis force on the subject. NE#9 reported using no force. This was corroborated by ICV, which showed that NE#5, NE#8 and NE#9 arrived at the scene, exited their vehicle and assisted in taking the subject into custody. NE#5 and NE#8 held the subject's body to control him, but used no other force. The force used by NE#5 and NE#8 was clearly de minimis, and, as such they were not required to complete reports. NE#9 used no force and he was also not required to complete any report.

Recommended Finding: Not Sustained (Unfounded)

Named Employee #6 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

A portion of the force used by NE#6 was captured on ICV. The ICV shows NE#6 and NE#7 trying to hold the subject's body down while the subject turns his body away from them. At this point in the interaction, NE#6 and NE#7 are both pulling and pushing the subject's body, but the force appears, in my opinion, to be de minimis.

At the tail end of the interaction, however, NE#6 appears to make a movement with his knee consistent with a knee strike. This potential strike was identified by NE#2 during his review of ICV and NE#2 ordered NE#6 to complete a supplemental use of force witness report. NE#6 did so on July 5, 2017 (four days after the incident), and he indicated that when he was trying to stabilize the subject with his knee, he slipped. He claimed that he then used his knee to push the subject onto his stomach.

From my review of the video, NE#6's movements appear more consistent with a knee strike to the subject's back rather than him slipping and then using his knee to move the subject. However, I cannot definitively determine that this was the case. If he did do so, it may be that such a strike was consistent with policy. The subject was on his side, trying to move onto his back, and was actively resisting the officers' attempts to secure him in handcuffs. My larger concern, as discussed below, is that if a knee strike was actually used then NE#6 failed to report it and later provided inaccurate information to his chain of command and OPA about this force. Without further exploration, I cannot make conclusive determinations of these issues.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: Not Sustained (Inconclusive)

Named Employee #6 – Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

As indicated below, while NE#6 may have played a role in the decision to stop and cite the subject – which I find completely reasonable – he did not appear to be consulted in NE#7's later decision to engage in a foot pursuit – which I have significant concerns with.

Moreover, as discussed above, if NE#6 used a knee strike and then later misled both his chain of command and OPA when he denied that fact, that would exhibit, in my opinion, a lack of discretion. However, I do not reach a definitive conclusion on this specific issue.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: Not Sustained (Inconclusive)

Named Employee #6 – Allegation #3

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

SPD Policy 8.100-POL-1 requires that "when safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force." Among the types of de-escalation outlined by the policy is the "avoidance of physical confrontation unless absolutely necessary"; for example, when required to protect someone or to stop dangerous behavior. (SPD Policy 8.100-POL-1.)

NE#7 made the decision to pursue the subject on foot. This was a split second decision that was not discussed with NE#6 before it occurred. Once NE#6 arrived at the location of arrest, the subject was already on the ground with NE#7. He then used what he described as de minimis force to place the subject in custody. At that point, and at the instant that the foot pursuit occurred, NE#6 had no ability to meaningfully de-escalate.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #6 - Allegations #4

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all force used except for de minimis force.

While NE#6 used force, he did not generate a use of force report because he believed his force to have been de minimis. He did, however, generate a witness report on the date of the incident after being ordered to do so by NE#1. In that report, he indicated that he viewed NE#7 tackle the subject to the ground. He further stated that, once the subject was on the ground, NE#7 grabbed his left wrist and NE#6 took hold of his right wrist. Both officers were trying to handcuff the subject. NE#6 described the subject trying to pull his arms underneath him, described as “turtling.” NE#6 also described that the subject attempted to roll onto his back, but the officers used control holds to prevent him from doing so and rolled him back onto his stomach. The officers were then able to handcuff him. NE#6 is correct that, based on this force, no reporting was required.

However, if NE#6 used a knee strike, which I find to have been possible based on my review of the video, he would have been required to report this force. He did not initially do so and only generated a use of force witness report pursuant to an order from NE#2.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #6 - Allegation #5

15.020 - Charge-By-Officer (CBO) 2. Suspects Must Be Thoroughly Identified and Documented in the General Offense Report

SPD Policy 15.020 is generally concerned with the process and procedures concerning the charge-by-officer program, which allows officers to refer a completed misdemeanor investigation directly to the Seattle City Attorney’s Office. SPD Policy 15.020-POL-2 specifically requires that “suspects must be thoroughly identified and documented in the general offense report.” The policy explains that if a suspect’s identity is not complete, the City Attorney’s Office will not charge the offense. (SPD Policy 15.020-POL-2.)

In the general offense report associated with this case, NE#6 wrote that the name that the subject originally gave the officers did not return any Washington DOL results. While the subject insisted that this was his name, the other arrested individual indicated that the subject’s name was something else. This name also did not come back with any Washington DOL results. As noted in the report, the subject was taken to the King County Jail but was rejected because of injuries and sent to Harborview Medical Center for treatment. He was then released from Harborview.

It appears from a review of NE#6’s general offense report that he did list the name, address and date of birth of the subject. However, this information appears to have been that relayed to NE#6 from the subject and, thus, could have been untrue. Notably, when NE#6 did a search of the subject’s name in his MDT, no Washington DOL records were returned. This was the case even though the subject told NE#6 that he had a Washington issued driver’s license.

At his OPA interview, NE#6 stated that he believed that when the subject was taken to jail he would be fingerprinted and identified in that manner; however, the subject was released from custody from Harborview and never went to the jail. As such, he was never conclusively identified. While NE#6 went to the address that the subject had given him the next day and verified that he lived at that residence, that he took this action was not indicated in his general

offense report. Ultimately, his report was drafted in a manner that suggested that the subject had never been conclusively identified.

NE#6 proceeded to charge-by-officer and referred the case directly to the City Attorney's Office. He noted in the general offense report that he sent the citation to the City Attorney's Office for mailing to the subject. The prosecution was ultimately declined by the City Attorney's Office for the following reason: "officers did not identify subject."

Here, NE#6 was able to largely verify the identity of the subject. NE#6 was not, however, able to conclusively identify him. For that reason, a better course of action in this case would have been to not charge by officer. Moreover, the basis for the decision to decline the prosecution appears to stem largely from NE#6's incomplete report. Had he indicated that he had verified the subject's address, perhaps the case would have been charged.

Ultimately, I conclude that NE#6's conduct was well intentioned even if technically in violation of policy. I further commend him for taking the affirmative steps to go to the subject's residence in an attempt to identify him. For these reasons, I believe that a training referral, rather than a sustained finding, is the appropriate result.

- **Training Referral:** NE#6 should receive additional training concerning the requirements of SPD Policy 15.020-POL-2. Specifically, NE#6 should be instructed that when he cannot conclusively identify a subject, charge by officer is inappropriate. Moreover, NE#6 should receive counseling from his chain of command concerning his report writing and its expectations that his reports will be complete and clear. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #6 - Allegation #6

15.020 - Charge-By-Officer (CBO) 3. Officers Must Document How the Suspect was Identified

SPD Policy 15.020-POL-3 further requires that when completing a charge-by-officer, the officer document in the general offense report how the subject was identified.

As indicated above, as NE#6 failed to identify the subject, he also violated this portion of the policy. However, as I recommend that Allegation #5 be sustained, I believe it to be unnecessary to also sustain this allegation. Accordingly, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#6 should receive additional training concerning the requirements of SPD Policy 15.020. Specifically, he should be reminded that charge-by-officer is not appropriate unless he has completely identified the subject and described how he did so in the general offense report. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #7 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As indicated above, much of NE#7's and NE#6's interaction with the subject, including the force to take him to the ground, was not captured on ICV. NE#5's and NE#8's ICV captured the end of the interaction and, at that time, NE#7 and NE#6 only used de minimis force to try to control the subject's body and prevent him from resisting.

However, the force used to take the subject to the ground – tackling him from behind onto the concrete – was at least Type II force. NE#7 rationalized that the force was reasonable and within policy in order to prevent the subject from running into traffic. As such, NE#7's apparent explanation is that he put the subject at risk of substantial physical harm in order to prevent him from being hit by a car, thus ultimately protecting the subject. Not only is this assertion unsupported by the record, it simply does not make logical sense. I note that prior to the foot pursuit of the subject and tackling him to the concrete, the subject did not present a threat of harm to NE#7, any other officers, the public at large, or himself. Moreover, based on my review, there were other alternatives to tackling the subject onto the concrete. NE#7 could have radioed the direction that the subject was running in and requested other units to assist, he could have waited until he was on a softer surface to perform the takedown, or he simply could have decided that the need to immediately take the individual into custody was outweighed by the risk from the takedown. Notably, had he decided not to effectuate the takedown, he still had another individual in custody and could have learned of the subject's name and address from that individual. Instead, he tackled the subject onto the concrete, subjecting both of them to the potential of very serious injuries and causing the subject to actually suffer fairly significant lacerations and bleeding to his face and body.

For these reasons and under these specific circumstances, I believe that the tackling of the subject to the concrete was not reasonable, necessary or proportional, and was, thus, inconsistent with policy. However, as indicated below, it is my understanding that NE#7's behavior was within the expectations of the Department and was consistent with his training. For these reasons, I do not believe it to be warranted to sustain this allegation as against NE#7. Instead, I recommend that this be Not Sustained – Management Action, and I refer to the Management Action Recommendation detailed below. (See Named Employee #7, Allegation #2.)

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #7 – Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

NE#7 engaged in a foot pursuit with a subject who had committed an infraction, namely urinating on the side of a building, and decided to tackle him onto the concrete. This could have resulted in significant injuries and, in fact, caused a number of injuries to the subject's face, shoulders and knees.

While there is a strong Departmental interest in enforcing the law, that interest needs to be balanced against the risk of harm to the subject and, for that matter, the public. As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

The offense in question here was extremely minor – a citation for urinating in public – and, overall, did not represent a "severe" public safety issue. Certainly NE#7 was justified in making the stop and issuing the citation. However, in my opinion, the risk of harm from chasing the subject down and tackling him to the concrete greatly outweighed the interest in taking law enforcement action. I thus question NE#7's decision making and exercise of discretion when he took this action.

That being said, it is my understanding that this conduct was consistent with the Department's expectations and NE#7's training. I note that SPD policy provides no guidance on when it is appropriate for an officer to engage in a foot pursuit. Indeed, there is no policy in this area. By not providing any policy governing when a foot pursuit is appropriate and under what circumstances the risk of harm to the officer, the subject, and the public outweighs the interests in effectuating an arrest, it places officers in a tenuous and unenviable position of uncertainty. For this

reason, I do not recommend that this allegation be sustained against NE#7; however, I issue the following Management Action Recommendation.

- **Management Action Recommendation:** The Department should develop a policy concerning when foot pursuits of suspects are appropriate. The Department should evaluate whether it expects its officers to engage in such pursuits when the subject is suspected of a misdemeanor or of only committing a citable offense. This policy should provide guidance as to when the risk of harm to officers, the subject, and the public outweighs the law enforcement interest in effectuating an arrest. This policy should further consider what force is appropriate during such pursuits. Specifically, the Department should evaluate whether it is in its interests, both as a matter of potential civil liability and in upholding constitutional policing, for officers to be permitted to tackle at full speed individuals who have committed non-violent, non-felony offenses, and who pose no risk to officers, civilians, or themselves.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #7 – Allegation #3

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

SPD Policy 8.100-POL-1 requires that “when safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.” Among the types of de-escalation outlined by the policy is the “avoidance of physical confrontation unless absolutely necessary”; for example, when required to protect someone or to stop dangerous behavior. (SPD Policy 8.100-POL-1.)

Here, NE#7 could have avoided the physical altercation had he made the decision to not engage in a foot pursuit and tackle someone to the ground based on an infraction. It is undisputed that his conduct in this regard was not necessary to protect someone or to stop dangerous behavior. While, as indicated above, NE#7 justified the foot pursuit and force on the basis that he was protecting the subject from running into traffic, I find such a contention to constitute a logical stretch.

However, given that I have recommended that both the force and discretion allegations be Not Sustained – Management Action, I cannot sustain this allegation. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#7 should receive additional training from his chain of command regarding SPD’s de-escalation policy. He should be specifically counseled concerning his decision making in this case and whether that decision making was consistent with this policy and the Department’s expectations. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #8 – Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reasons as stated above (see Named Employee #5, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #9 – Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

For the same reasons as stated above (see Named Employee #5, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: Not Sustained (Unfounded)

Named Employee #10 – Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

After the subject had been arrested and force had been used, he was transported to the precinct by NE#10. During that time, the subject and NE#10 engaged in conversation. The subject told NE#10 that, during the incident, the officers “grinded” his face into the pavement. He told NE#10 that the officers had hurt him. NE#10 explained to the subject that he had been tackled onto the concrete, but the subject alleged that it was more than that. He said that there was “grinding and like knees in my head and shit.” NE#10 stated that when he first observed the subject, he had been kicking and fighting with the officers. The subject denied that.

SPD Policy 5.002-POL-6 requires that employees report any alleged serious policy violation to both a supervisor and OPA. An allegation of excessive force constitutes a serious policy violation. (See SPD Policy 5.002-POL-5(a).) Here, the subject’s complaint was that he was subjected to excessive force, namely his face being ground into the concrete and knees to the head. As such, NE#10 had an obligation to report this allegation to both a supervisor and OPA.

At his OPA interview, NE#10 stated that he disclosed the subject’s allegation to a sergeant, NE#1. At NE#1’s OPA interview, however, NE#1 stated that he first time he heard the allegation that the subject’s head had been pushed into the cement was when he received a notification from OPA. NE#1 further indicated that, to his memory, NE#10 did not convey this information to him. As such, given that both of these individuals abdicate responsibility on this issue and given that ultimately one of them made an inaccurate statement to OPA, this question is inconclusive.

Under a technical reading of the policy, even if NE#10’s account was the correct one, he was still required to refer the serious misconduct flagged by the subject to OPA. He failed to do so, and thus acted inconsistent with policy. NE#10’s chain of command, however, indicated that officers have been trained by the Department that they are only required to report misconduct to a supervisor, not to both a supervisor and OPA. Officers have been instructed that once they report misconduct to a supervisor, they have satisfied their obligations under the policy. If this is the case, which I have no reason to doubt, it would be unfair for me to sustain this allegation against NE#10 where he was following Department training and guidance. That being said, I believe that a Management Action Recommendation, as detailed below, is appropriate.

To the extent the Department is instructing officers that they are not required to report misconduct to both a supervisor and OPA, they are sanctioning officers to engage in conduct in violation of policy. The Department should, instead, take one of two courses of action: (1) train and instruct its officers to do what the policy says; or (2) amend the policy to remove the requirement that an officer report misconduct to both a supervisor and OPA, with the understanding, however, that other protections are built into the policy.

If the Department takes the latter course of action, I would strongly recommend that it establish procedures to ensure that misconduct is still ultimately reported to OPA. Here, the way the policy is written provides two routes for misconduct to come to OPA – both from the officer and the supervisor. Thus it ensures that misconduct is reported in the vast majority of cases. My concern is that changes to the policy could result in cases, such as this one, where an officer asserts that he or she disclosed an allegation of misconduct to a supervisor, but the supervisor denies ever learning that information. In these cases, the entire system suffers as misconduct is not identified and employees that violate policy are not investigated and, where appropriate, held accountable. To avoid this, the Department could, for example, require that officers record their reporting of misconduct on video (either on ICV or

BWV) or, in the alternative, that they memorialize and report the allegation in an email sent that same day to a supervisor.

OPA is willing to work with the Department to help draft a policy that incorporates current Department practice and recognizes the reasons underlying the training and guidance being provided to officers, while ensuring that misconduct is still reported in all cases. To the extent this revised policy fails in this regard, however, OPA puts the Department on notice that any officer who fails to report misconduct to a supervisor or supervisor who fails to refer that misconduct to OPA will be the subject of an investigation without exception.

Recommended Finding: **Not Sustained (Management Action)**



City of Seattle

Office of Police Accountability

April 5, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATIONS – FIRST QUARTER 2018

Dear Chief Best:

I write to inform you of a number of Management Action Recommendations (MAR) that have been recently issued by OPA. This is the first of what will be ongoing quarterly MAR notifications. OPA hopes that one letter will be easier to review and respond to than numerous communications received throughout a quarter.

The MARs contained herein are for the following cases: 2017OPA-0031; 2017OPA-0318; 2017OPA-0420; 2017OPA-0667; 2017OPA-0705; 2017OPA-0751; 2017OPA-0755; 2017OPA-0813; 2017OPA-0820; 2017OPA-0909; 2017OPA-0937; 2017OPA-0967; 2017OPA-1015; and 2017OPA-1131.

1. 2017OPA-0031 – *Clarifying the Responsibilities of Bureau Chiefs Regarding Recommended Findings from the CRB*

This case arose out of a patrol vehicle accident, in which a Department employee failed to put his vehicle in park when he got out and, as a result, the vehicle rolled over the legs of the subject. While this did not result in significant injuries to the subject, it was still a significant error by the employee and an easily avoidable accident. The accident was reviewed by the Collision Review Board (CRB) and then referred – apparently in error – to the former Assistant Chief of the Investigations Bureau. While the Assistant Chief approved the CRB's finding and agreed that the accident was preventable, he failed to forward his approval and his recommendations for any discipline and/or re-training to the Chief of Police. As such, the Chief at that time did not have the opportunity to issue any such discipline and/or re-training that may have been warranted.

As a result of its investigation and the concerns identified, OPA recommends that SPD's command staff be reminded of their obligations under SPD Policy 13.015 generally, and 13.015-PRO-1 specifically, to recommend potential discipline and/or re-training and to forward those recommendations to the Chief of Police in a timely manner. Without this clarification, the Department risks harming the legitimacy of SPD's administrative investigation processes and creating mistrust in the community. Moreover, the Department should take steps to ensure that CRB rulings are properly forwarded to the correct bureau chief. It is OPA's understanding that this policy is currently being re-evaluated and revised by the Department. If this is the case, it may obviate the need for this MAR.

2. 2017OPA-0318 – *Using Tasers on Fleeing, Non-Violent Subjects*

In this case, one of the allegations was that the Named Employee utilized his Taser in potential violation of policy. The subject upon whom the Taser was used was fleeing from the officer at the time and was running on the pavement. The subject had previously been involved in a vehicle pursuit that had resulted in a crash. Prior to the Taser being used, the subject had tried to climb a fence and had been pulled backwards by the Named Employee. The Named Employee described that he and the subject circled each other, the subject ran away, and the Taser was then used. The Named Employee did not allege that the subject ever attempted to assault him, raised his fists, or engaging in any violent behavior towards him. The Named Employee justified his application of the Taser based on his belief that the fleeing subject represented a threat to himself, the Named Employee, other officers, and the public. The Named Employee further stated that he believed that, if he was required to go hands on with the subject, it was likely that both he and the subject would suffer injuries.

Initially, OPA recommended that this allegation be Sustained because the risk of harm caused by the subject's actions and fleeing were outweighed by the risk of potential injury to the subject when he was Tased while running on pavement. In reaching this conclusion, OPA cited Ninth Circuit case law, recommendations from the Police Executive Research Forum (PERF), and the training materials generated by Taser International. Notably, Taser International's training materials warn that the use of a Taser on a fleeing subject can result in an elevated risk of harm. This appears to be even more so when the subject is fleeing on a hard surface.

However, at the discipline meeting on this matter, the Named Employee's chain of command disagreed with OPA's finding and asserted their belief that the Named Employee had acted consistent with his training. As such, and with the Guild's agreement to an extension, OPA further investigated the matter, which included reviewing training materials and interviewing three members of the Department's Training Unit, including a designated Taser expert.

OPA's additional investigation revealed that the Training Unit deemed the Named Employee's conduct to have been consistent with his training. As such, OPA reversed its finding. Nonetheless, OPA has significant concerns with the training being provided by the Department, as well as with the Taser policy itself and its application to the facts presented in this case.

First, case law in this area appears to be relatively unsettled. However, recent decisions by district courts within the Ninth Circuit appear to be trending towards a determination that using a Taser on a non-violent fleeing subject is a potential violation of that individual's Fourth Amendment rights. Given this, as well as the risk of serious injury that could be incurred under these circumstances and the guidance from both PERF and Taser International, OPA recommends that the Department reconsider the guidance it is providing to officers concerning Tasing fleeing subjects and that the Department make an informed decision as to whether, given the significant risk and potential liability, this is conduct in which it wants its officers to continue to engage.

Second, regardless of the determination made by the Department, OPA recommends that the Training Unit consider amplifying the Taser training to include the following:

- Additional scenarios involving fleeing subjects;
- More robust education on the potential risks of harm when a Taser is used on a fleeing subject and particularly a suspect running at full speed on a hard surface;
- Clearer guidance as to what constitutes an imminent risk of harm justifying use of a Taser;
- More explicit explanations of what constitutes the “public safety interests” that are referenced in the second prong of the Taser policy and what conduct is sufficient to meet the requisite “level of resistance” from the subject; and
- Clearer instruction as to the Department’s expectations in this area and an evaluation of whether a bright-line rule can be applied, rather than having the decision as to whether to use a Taser on a fleeing subject be a completely subjective determination.

Third, based on OPA’s review of this case, there appears to be a lack of clarity as to when Taser warnings are required or when they are excused under the circumstances. OPA recommends that the Training Unit provide refresher training to Taser operators in this area and make it abundantly clear in which situations Taser warnings are required. This could be appropriately integrated into planned upcoming trainings.

3. 2017OPA-0420 – *Clarifying When Officers Are “Involved” in a Pursuit*

This case involved an out of policy pursuit in which several officers were engaged. One of the officers told OPA during his interview that he was only involved in the pursuit, which he realized was out of policy, because he was trying to ensure the safety of another officer, who was, for a period of time, the only unit involved in the pursuit. The officers’ supervisor failed to have the trailing officer complete a Blue Team Vehicle Pursuit Entry. In explaining why he failed to do so, the supervisor told OPA he did not believe this officer was required to complete documentation because he was not “involved” in the pursuit as indicated by the policy. In support of this assertion, the supervisor contended that the officer was not pursuing but was only trying to ensure the safety of a fellow Department employee.

OPA does not view this language as being as ambiguous as both the trailing officer and supervisor appear to believe. However, OPA recognizes that “involved” officer could be further defined to make clear that it refers to any officer engaging in conduct that constitutes a pursuit under the policy, regardless of the purpose for engaging in this conduct. The policy should make it clear that all such officers should document their actions in a Blue Team Vehicle Pursuit Entry.

4. 2017OPA-0667 – *Generating a Policy Governing High-Risk Vehicle Stops and Clarifying When Provision of Identification May Be Required from a Handcuffed and Detained Individual*

OPA investigated a case in which a Terry stop was effectuated on a car. The stop was requested by two officers who viewed the car drive away from the scene, but was effectuated by four other officers who received a dispatch asking that the stop occur. OPA determined, and the chain of command agreed, that there was insufficient reasonable suspicion supporting the stop.

During the stop, which was carried out as a high-risk vehicle stop, the four occupants were removed from their car, handcuffed, frisked, and placed in the rear of a locked patrol vehicle. After that point,

it became clear to the officers that the detained individuals were not involved in the underlying crime; however, they were kept handcuffed in the rear of the patrol vehicle and officers requested their identifying information. The officers provided conflicting information as to why this information was requested. One officer indicated that it was requested so that the officers could determine whether the detained individuals were related and to get their contact information. Another officer said the information was requested to run the individuals for warrants.

SPD Policy 6.220-POL-6 states that “officers cannot require subjects to identify themselves or answer questions on a Terry stop” and that “in general, subjects are not obligated to provide identification upon request and have the right to remain silent.” The policy provides for three exceptions to this rule (*see id.*), none of which applied in this case. Here, the officers contended that they did not require identification, they simply requested it. While that is true, it ignores the fact that virtually no one who is handcuffed in the back of a patrol vehicle would feel that this request could be refused. Moreover, while Fourth Amendment case law provides legal authority for a request for identification during a Terry stop, the request must be “reasonably related to the detention.” It is unclear how the request for identification in this case was reasonably related to the detention given that the reasonable suspicion for the stop had already dissipated at the time it was made.

In general, this case further raised concerns for OPA regarding the lack of any mention of high-risk vehicle stops in policy and the absence of formal guidance concerning requirements and limitations of such stops. Accordingly, OPA recommends that the Department draft a policy governing when it is appropriate for officers to conduct high-risk stops and what conduct officers may engage in during those stops. It would make sense for this policy to be included in Title 6 of the SPD Manual. The Department should also clarify in policy and in training whether, once the reasonable suspicion for a Terry stop has dissipated, an officer remains permitted to request identifying information from a handcuffed and detained individual.

5. 2017OPA-0705 – *Allowing Officers to Sign Themselves Up for Trainings*

OPA investigated an allegation that an officer failed to attend a mandatory training in potential violation of SPD Policy 5.001-POL-3. At his OPA interview, the officer contended that he did not attend the training on the date for which he was scheduled because he was sick. He further stated that he informed his sergeant that he missed the training and was unaware of what steps his sergeant took to reschedule him for a subsequent training.

During this investigation, OPA learned that officers are not able to register themselves for training, but, instead, are required to request that supervisors do so. It is unclear to OPA why this is the case. It seems, in my opinion, that this system is inefficient and wastes valuable supervisor time. Moreover, I believe that officers, not their supervisors, should be responsible for managing their own calendars and accountable when they fail to attend trainings. It may very well be that there is a reason for why the Department has supervisors register officers for training, but this reason has not been evident in any of the investigations that OPA has conducted into missed trainings.

For these reasons, OPA recommends that the Department consider shifting the responsibility for registering for trainings from supervisors to officers. To the extent there is a reason why this is not feasible or is inadvisable, please provide that information to OPA.

6. 2017OPA-0751 and 2017OPA-1131 – *Recording ICV When Following an Ambulance Transporting a Subject to a Hospital*

In both of these cases, Department employees failed to activate their In-Car Video (ICV) systems when they were following ambulances transporting subjects to Harborview Medical Center.

These cases were virtually identical to another case (2017OPA-0504) in which OPA issued a MAR requesting that the Department clarify the ICV policy regarding whether it expects its officers to record in these situations. In that same MAR, issued on December 7, 2017, OPA requested that the Department also evaluate the current list of law enforcement activities that are required to be recorded and determine whether that list needs to be amplified or clarified. It is OPA's understanding that the Department is presently working on modifications to this policy consistent with OPA's recommendations; however, OPA renews this MAR herein.

7. 2017OPA-0755 – *Logging in and out of Secondary Employment at Large-Scale Events*

In this case, OPA investigated an employee's failure to have a valid secondary work permit for his employment at Safeco Field. During its investigation, OPA determined that the Named Employee did not log in and out via radio, as required by SPD Policy 5.120(II). OPA discussed this matter with the Named Employee's chain of command and was informed that, even though this was a requirement of the policy, officers were instructed that they were not required to do so when working secondary employment at large-scale events, such as baseball, football, or soccer games.

The reason for this modification of the log in and out requirement makes sense – where numerous officers are working an event, it is more practical and time efficient to have one supervisor log all the employees in and out at one time. Indeed, the Department has a form that is utilized for exactly that purpose. OPA agreed with the chain of command that this modification of the policy was appropriate, but asked that the policy be updated to reflect that this was an acceptable practice.

After this discussion and the issuance of the Director's Certification Memo containing this MAR, this policy was, in fact, updated to formalize an exception for large-scale events. The new language is consistent with OPA's recommendation. As such, no further action needs to be taken.

8. 2017OPA-0813

OPA's investigation into this case resulted in two MARs. The first concerned foot pursuits that resulted in uses of force and officers' decision-making regarding the potential consequences of their actions. The second concerned reconciling the policy on mandatory reporting of potential misconduct with the current training and guidance being provided to officers by the Department.

a. *Foot Pursuits and Officer Decision-Making When Using Force*

In this case, officers stopped a subject who had been urinating on the side of a building. When the officers attempted to detain him, the subject fled. The officers chased after him, and the Named

Employee tackled the subject from behind onto the pavement. As a result, the subject suffered lacerations and bleeding to his face and body.

During his OPA interview, the Named Employee contended that he tackled the subject from behind onto the pavement in order to prevent the subject from running into traffic. First, this threat was entirely speculative. There was no evidence that the subject was at imminent risk of running into traffic. Second, the Named Employee's logic appeared to be that he put the subject at risk of substantial physical harm in order to prevent him from being hit by a car, thus ultimately protecting the subject. Third, the Named Employee appeared to put little to no thought into the potential consequences of the force he used. He was chasing a subject who had committed a non-violent, citable offense and had not posed or caused any harm to the Named Employee.

OPA initially recommended that the allegations concerning the use of force and the Named Employee's discretionary decision to tackle the subject to the ground both be sustained. The Named Employee's chain of command disagreed. The primary reason for their disagreement was their belief that, in acting as he did in this case, the Named Employee conducted himself consistent with the Department's expectations and his training. Thus, while OPA found that his actions were contrary to policy and constituted poor decision making, OPA reversed its Sustained findings and, instead, issued a MAR.

OPA noted that SPD policy provides no guidance on when it is appropriate for an officer to engage in a foot pursuit. By not providing any policy governing when a foot pursuit is appropriate and under what circumstances the risk of harm to the officer, the subject, and the public outweighs the interests in effectuating an arrest, it places officers in a tenuous and unenviable position of uncertainty.

As such, OPA recommends that the Department consider developing a policy concerning when foot pursuits of suspects are appropriate. OPA believes that the Department should evaluate whether it expects its officers to engage in such pursuits when the subject is suspected of a misdemeanor or of only committing a citable offense. This policy should optimally provide guidance as to when the risk of harm to officers, the subject, and the public outweighs the law enforcement interest in effectuating an arrest. This policy should further consider what force is appropriate during such pursuits. Specifically, the Department should evaluate whether it is in its interests, both as a matter of potential civil liability and in upholding constitutional policing, for officers to be permitted to tackle at full speed individuals who have committed non-violent, non-felony offenses, and who pose no substantiated risk to officers, civilians, or themselves.

Lastly, OPA strongly advises the Department to include in training a discussion of officer decision-making when using force. Specifically, OPA believes that the Department needs to better train its officers to consider the downstream consequences of their actions prior to using force. Whether an officer decides to tackle onto the pavement a person suspected of a citable offense who is running from the police, Tasers from behind a subject who is sprinting away on the sidewalk, or pushes someone with an outstanding warrant for a non-violent felon offense off of her moving bicycle, potentially subjecting her to catastrophic injuries, OPA has evaluated a number of cases where these necessary calculations have not been made. OPA contends that this informed decision-making is a trained skill like anything else and that it should be stressed by the Department in the 2018 use of force and/or defensive tactics training.

b. Reporting Potential Misconduct

This case also involved allegation of excessive force that was made by the subject in the presence of an officer. The officer claimed that he relayed this allegation to a supervisor, but the supervisor denied that this occurred. Even assuming that he did report the allegation to a supervisor, OPA found that the officer still violated policy because he also did not report the claim of excessive force to OPA. Notably, SPD Policy 5.002-POL-6 requires that officers report allegations of serious misconduct – which includes excessive force – to both a supervisor *and* OPA.

At the discipline meeting in this case, the Named Employee's chain of command told OPA that, while they agreed that the policy compelled reporting to both a supervisor and OPA, officers were being trained that they only needed to report to one or the other, not both. While this direction may make practical sense, it is telling officers to do something that is contrary to the explicit language of the policy.

Given this, OPA recommends that the Department do one of the following: (1) train and instruct its officers to do what the policy says; or (2) amend the policy to remove the requirement that an officer report misconduct to both a supervisor and OPA, with the understanding, however, that other protections are built into the policy. With regard to the latter course of action, OPA also recommends that the Department establish procedures to ensure that misconduct is still ultimately reported to OPA. For example, OPA believes that the Department could require that officers record their reporting of misconduct to a supervisor on video or, in the alternative, that they memorialize and report the allegation in an email sent that same day to a supervisor. This would ensure that there were no situations where an officer claimed that they reported and the supervisor denied that this occurred.

9. 2017OPA-0820 – *Department Re-Training on DUI Investigations and Arrests, BAC Machines and Tickets, and the Requirements for the Content and Submittal of DUI Packets*

This case involved an arrest of an individual for suspected DUI. A Student Officer and his Field Training Officer (FTO) effectuated the stop and arrest. At the scene, the Student Officer conducted the DUI investigation with some difficulty. Upon their return to the precinct, the Student Officer was tasked with generating the DUI paperwork, using the Blood Alcohol Content (BAC) machine, and printing a BAC ticket. There were a number of deficiencies with the DUI paperwork, and an incomplete DUI packet was submitted to the prosecutor, even though it was reviewed and approved by the FTO. There was also a significant anomaly with the use of the BAC machine and the printing of the BAC ticket, which resulted in OPA investigating both officers for potential dishonesty (these allegations were Not Sustained – Inconclusive for the Student Officer and Not Sustained – Unfounded for the FTO).

Based on OPA's investigation into this case and on OPA's discussions with the Named Employees' chain of command, it appears that the vast majority of patrol officers lack experience and sufficient training in conducting DUI stops and arrests and the resulting paperwork that must be generated. Given this, OPA recommends that the Department consider retraining all patrol officers, or at the very least those officers expected to engage in DUI investigations, on the following:

- DUI arrests, generally;
- How to conduct sobriety tests;
- The usage of Preliminary Breath Tests;
- The usage of BAC machines and the printing of BAC tickets; and
- The mandatory requirements for the contents and submittal of DUI packets.

10. 2017OPA-0909 – *Making Revisions, Clarifications and Improvements to the De-Escalation Policy*

In this matter, the Named Employee was involved in a use of force with a woman who was riding a bicycle without a helmet. Officers had attempted to stop and arrest this woman (who had an outstanding felony warrant for a non-violent offense) and she fled from them on her bicycle. The supervisor chased the woman on foot, while the Named Employee and another officer drove behind her. The Named Employee got out of the patrol vehicle and positioned himself in front of the woman with the intent to stop her. The woman, who was driving the bicycle towards the Named Employee traveling between 10 and 15 miles per hour, swerved to the left of the Named Employee, at which point he pushed her off of her bicycle, causing her to fall to the ground and suffer various injuries, including a separated shoulder.

OPA initially found that the Named Employee used force inconsistent with policy and failed to de-escalate prior to using force. While the Named Employees' chain of command agreed that the force used was outside of policy, the chain disagreed that the Named Employee had failed to de-escalate. In support of their argument in this regard, the chain asserted that, under the circumstances of this case, no de-escalation was safe or feasible. The chain noted that containment, which was referenced as an option in OPA's initial recommendation, was not possible with a moving target such as a person on a bicycle. They further noted that there was no way to place a barrier to stop the woman from riding away under the circumstances of this case. While the chain recognized that it could have been possible to summon more resources, they noted that this would have necessitated calling numerous officers away from other equally if not more important calls and would not have conclusively resulted in stopping the woman and placing her under arrest. OPA found this argument convincing and agreed to amend its finding. However, OPA also raised its concerns with the subjectivity and application of this policy, which were largely shared by the chain.

This case was the most recent of a number of cases in which OPA and the Department either disagreed as to whether an officer properly de-escalated or where it was simply unclear whether the officer de-escalated consistent with policy, even when the relevant facts of the cases were fully explored and illuminated during OPA's investigation and were agreed to by all the parties.

At the outset, it is important to note that OPA strongly supports the concept of de-escalation and believes it to be absolutely essential to constitutional and equitable policing. SPD's commitment to de-escalation is a product of and requirement of the Consent Decree and it is a practice that puts SPD head and shoulders above most other police departments nationwide.

That being said, the de-escalation policy is consistently one of the most challenging policies to apply and evaluate. When looking at it, OPA generally has a number of questions. Do all the suggested

de-escalation tools called out in the policy need to be used before force can be applied? If not, how many? How long do officers need to try to de-escalate before they can use force? 2 minutes? 5 minutes? 1 hour? 2 hours? When is physical confrontation “immediately necessary” to permit force to be used? What is meant by the phrase “without compromising law enforcement priorities”? If effectuating an arrest is always a compelling law enforcement priority, does that not potentially unworkably expand the policy?

This policy, like many others, is subjective. In that respect, I recognize the difficult place that officers are put in. On one hand, they are told that, in order to preserve public order and safety, it is essential to make arrests and, with some arrests, to use a degree of force. On the other hand, the de-escalation policy, if read literally, could be construed to dissuade such active policing and instead encourage officers to not take action that could result in force unless all other possible options are exhausted and the force is immediately necessary. OPA worries that the policy, while incredibly important and well-intentioned, has the potential to create unclear standards and expectations for officers, thus risking affecting the officers’ procedural due process during the disciplinary stage.

Unlike most MARs, OPA does not have what it believes to be an immediate fix to the policy. Instead, OPA is simply identifying some concerns and its belief that it may be time to look at revising, clarifying and improving this policy. To be clear, OPA is not calling for the policy to be removed or in any way undermined; however, now that the Department is five-years into the Consent Decree, OPA believes it is necessary to evaluate the policy to determine whether changes are warranted and, if so, what those changes should be. OPA also believes that the Department should reevaluate training on de-escalation and related tactics to ensure that it is providing needed clarity and rules of conduct for officers. OPA further believes that the evaluation of both the policy and associated training should be led by the Department, but should intimately involve OPA, the Community Police Commission and the Inspector General at the research, deliberation and drafting stages.

11. 2017OPA-0937 – *Clarifying How Officers Are to Verify That Their ICV Systems Are Working Prior to Their Shifts and Including in Policy the Sergeants’ Obligations Regarding Ensuring That Wireless Microphones Are Charged Prior to Assigning to Officers*

During its investigation of this case, OPA determined that the Named Employee’s ICV system recorded video but failed to record audio. At his interview, the Named Employee stated that he logged into his system, synched his microphone, and engaged in all other necessary steps to ensure that both his ICV video and audio were working. He further stated that he saw no evidence from his review of his microphone that it was low on battery. However, OPA found that the battery of the wireless microphone was not fully charged and the failure to fully charge the microphone, potentially coupled with distance of the microphone from the receiver, resulted in the lack of audio.

The previous iteration of this policy required that each officer conduct a ICV system check before beginning their shift. This system check, which was recorded, was purposed to verify that the system was working and to catch any problems. The amended policy removed the system check and, thus, created a potential gap in policy that was exemplified by this case. Moreover, it was unclear, based on OPA’s reading of the policy, how officers were now expected to verify that their ICV systems were working prior to beginning their shifts.

During its investigation, OPA also learned that sergeants were now expected to assign ICV wireless microphones to officers prior to their shifts and to verify that these microphones were fully charged. However, that obligation was not contained in policy and it was unclear whether it occurred in this case.

As such, OPA recommends that the Department consider amending SPD Policy 16.090-TSK-1 to explain how officers are expected to verify that their ICV wireless microphones and BWV systems are fully charged and to inform officers what the appropriate level of charging is prior to them utilizing those systems in the field. This will, in OPA's opinion, provide clarity to both officers and OPA. Moreover, if it is the Department's expectation that sergeants will bear some responsibility for verifying that the wireless microphone batteries are charged, it should also consider memorializing those specific obligations and expectations in policy.

12. 2017OPA-0967 – Documenting All Terry Stops Using a Terry Template, Regardless of Whether Officers Had Probable Cause to Arrest at the Time of the Stop and Detention

In this case, the Named Employees detained an individual who was in a City park after hours. The officers did not arrest this individual and, instead, released him after requesting and obtaining his identification and running his name for warrants. Even though the individual was detained for a prolonged period of time, the officers did not document the detention using a Terry Template. The officers explained to OPA that, at the time of the detention, they had probable cause to arrest the individual for trespassing. As such, they believed that they had no obligation to generate a Terry Template.

While OPA does not believe that these officers intended to violate policy, their failure to document this detention anywhere not only violated SPD policy but also City law. Accordingly, OPA recommends that the Department clarify SPD Policy 6.220-POL-10 to make it abundantly clear that when officers perform a Terry stop, a Terry template is required to be completed each and every time. The Department should further clarify that this is the case regardless of whether the officers had probable cause to arrest at the time of the Terry stop. What ultimately controls for the purpose of reporting is the nature of the stop. Lastly, the Department should include in its policy that this requirement is a requirement under City law and should cite to SMC 14.11.060(C).

13. 2017OPA-1015 – Clarifying Expectations for the Quality and Thoroughness of Follow-Up Investigations and Associated Reports

This case involved an investigation by the Sexual Assault Unit into a rape allegation. At the time of the investigation, the case was past the statute of limitations and the investigator reported that she was informed by a prosecuting attorney that it would not have been prosecuted regardless due to burden of proof issues. Nonetheless, the Department's expectation was that the investigation conducted would be comprehensive and high quality. Unfortunately, that did not occur.

The investigator's deficient investigation and reporting was evaluated under SPD Policy 15.080-POL-1(2), which concerns investigations conducted by follow-up units. The policy sets forth the

minimum components of follow-up investigations and includes: "When appropriate, the case detectives will contact and interview listed suspects, witnesses, and victims"; and "Case files shall be prepared to satisfy standards established by the prosecuting attorney's office. The Criminal Investigations Bureau will publish these standards."

First, both OPA and the investigator's chain of command agreed that the documentation that she generated, which included a Supplemental Report and a memorandum, was not complete, thorough, and accurate. However, there was no requirement that reports generated during follow-up investigations be complete, thorough, and accurate. This was the case even though SPD policy specifically required that General Offense Reports completed during primary investigations had to meet those standards. It was unclear and illogical to OPA why follow-up investigations should be held to a lower standard than primary investigations. This was especially the case given the specialized training given to investigators in follow-up units.

Second, the investigator failed to complete a Case Investigation Report (CIR). At her OPA interview, she claimed that there was no requirement in policy that she do so and that it was unnecessary, as she knew the case was never going to be prosecuted. Both OPA and her chain of command disagreed with the investigator's latter assertion, but recognized that there was no explicit requirement in policy that a CIR be generated in each follow-up investigation.

Third, the investigator failed to include in her report an itemization of the interviews that she conducted or unsuccessfully attempted to conduct. Here, this resulted in the victim believing and alleging that the investigator deliberately included misleading information in her reports and in turn led to OPA investigating whether the investigator was dishonest.

Fourth, OPA's investigation yielded the conclusion that investigators in follow-up units lacked sufficient guidance concerning the expectations for investigations and the associated documentation.

As a result, OPA suggested, and the investigator's chain of command, including the Assistant Chief of the Investigations Bureau, agreed, that the Department take the following steps to ensure that reports generated during follow-up investigations are held to the same standards of those written during primary investigations and are complete, thorough and accurate: (1) SPD Policy 15.080-POL-2 should be amended to require that reports generated during follow-up investigations be complete, thorough, and accurate; (2) SPD Policy 15.080-POL-2 should also be amended to require that a CIR be completed in every follow-up investigation, regardless of whether the assigned investigator or an investigations supervisor believes that the case will be prosecuted; (3) SPD Policy 15.080-POL-2 should be modified to include the requirement that all witness interviews or the fact that a witness interview was attempted be documented; and (4) the Investigations Bureau should provide all investigations personnel with a manual setting forth examples of reports that meet the expectations of the Department and standards for what information should be contained in follow-up investigation paperwork.

During its investigation, OPA also determined that the investigator conducted a video recorded interview of the victim, but that the fact that this interview occurred was not documented in the investigative file. The policy governing such documentation – SPD Policy 7.110-POL-6, only referenced documenting audio recorded interviews and was silent on video recorded interviews.

OPA believes that the Department should encourage investigators to take video statements and believes that the Department must ensure their documentation.

Similarly, in reviewing SPD Policy 7.110-POL-5, which governs the uploading of audio recorded statements to the Department's evidence management system (DEMS), OPA discovered that the policy is silent as to where and how video recorded statements are to be stored. It is OPA's understanding, based on its investigation, that DEMS does not accept the uploading of video recorded statements, as only audio files or .jpg files can be uploaded into that system. In this case, the Named Employee stated that she saved the video recorded statement in the Sexual Assault Unit's "vault" and "drive." OPA recommends that the Department provide more formal guidance in policy concerning the expectation for how and where video recorded statements should be stored.

Consistent with the above, OPA further recommends that the Department amend SPD Policy 7.110 to account for the practice of video recording interviews. Specifically, SPD Policy 7.110-POL-6 should be updated to require Department employees to document in an appropriate report when they have conducted and created a video recorded interview.

Thank you very much for your prompt attention to these matters. Please inform me of your responses to these recommendations and, should you decide to take action as a result, the progress of these actions.

Please also feel free to contact me with any questions or concerns.

Sincerely,

Andrew Myerberg

Andrew Myerberg
Director, Office of Police Accountability

cc: Deputy Chief Chris Fowler, Seattle Police Department
Assistant Chief Lesley Cordner, Standards and Compliance, Seattle Police Department
Rebecca Boatright, Senior Police Counsel, Seattle Police Department
Fe Lopez, Executive Director, Community Police Commission
Tito Rodriguez, OPA Auditor
Josh Johnson, Assistant City Attorney, Seattle City Attorney's Office
Anne Bettesworth, Senior Policy Advisor, Office of Police Accountability