Office of Professional Accountability
Auditor's Report on Obstruction Arrests
January 2006 – July 2008

Introduction

Mayor Nickels asked the Civilian Auditor of the Office of Professional Accountability [OPA] to look into issues related to arrests for obstructing or hindering police. The assignment recognizes that obstruction arrests may provide a window on the Department's interface with the public. The Auditor's job includes the review of "substantive policies, procedures and/or training that impact police accountability and/or the disciplinary system." Therefore, this report focuses on police accountability, particularly in the last two and a half years, where people have been arrested and charged with "obstruction only," or hindering the police without any other charge resulting.

This is not a statistical report, but a search for patterns and possible reasons for them. It is based on general information-gathering: from OPA cases, arrest reports, and court files; review of policies and procedures; interviews with SPD personnel, civil rights' attorneys, the ACLU, defense attorneys, prosecutors, and national experts in police oversight.

Key Issues:

1. Do some officers regularly abuse or stretch their discretion to bring obstruction charges?
2. Is obstruction regularly used as a "cover charge" when force is used?
3. Is tracking obstruction cases a way to identify officers who resort to force early and/or often?

4. Is identifying such officers a useful management tool? If so, what policies or procedures should follow?
5. What is the relationship of "obstruction only" arrests to cases investigated by the OPA?
6. Is there a relationship to issues identified by OPA, the Auditor, and the Review Board, such as the treatment of bystanders or the force used in pursuing investigative "social contacts" and "*Terry"* stops?
7. What training or policy changes have been made, and what further changes, if any, are recommended?

Summary of Findings

Management and policy-makers should continue to be aware of issues that may emerge from "obstruction only" arrests. However, in the cases over the past two and a half years involving officers who made three, four, or five "obstruction only" arrests, there was no apparent pattern of abuse of discretion. For one thing, only 16 officers had three, four or five such arrests between January 2006 and July 2008, meaning an average of less than one every six months at the most. These arrests were a tiny fraction of the 521,037 police contacts in 2007.

Plaintiffs' attorneys perceive that obstruction is used as a cover charge to justify officers' use of force, but those opinions are based on a few, though sometimes significant, cases of people who contact them to seek damages from the City. Unfortunately, these cases are often not available to be assessed by OPA until after trial or settlement.

Of the 76 cases examined for this report, only 14 resulted in complaints to the OPA; so for the other 62 the only information available was arrest reports and dockets indicating outcomes in

court, which may not reflect a full picture of the situation on the street.

The Police Department has made significant changes to address the issues involved in some of the "obstruction only" arrests: new policy guidelines for responding to bystanders; evaluating obstruction arrests as part of the Early Intervention System employee review; training on *Terry* stop and social contact guidelines; analysis of specific cases with the Risk Management Advisory Team and the precinct commanders.

The OPA has sought to broaden its usefulness by encouraging aggrieved citizens to make complaints: offering multiple ways of filing complaints; translating brochures into many languages and attending community meetings; allowing friends or supporters to accompany complainants; opening some cases where substantial claims are made or settled with the City; training investigating sergeants in interviewing techniques; relocating to office space outside the Department headquarters; annually briefing supervisors about trends in complaints; suggesting training subjects and policy changes.

Although OPA is a critical tool to assess whether police are abusing their discretion, there are still barriers to cooperation. One important impediment is the 180-day contract rule, by which officers must be disciplined within 180 days of when a case is opened. If a citizen has a claim or criminal case pending, he/she may well not wish to cooperate and provide a statement until that case is resolved. If only the officer's report of the arrest or interaction is documented, the subject is not likely to be happy with the outcome of the investigation. This structural impediment should be addressed to make OPA more effective.

Seattle Municipal Code 12A.16.010 Obstructing a public officer:

A. A person is guilty of obstructing a public officer if, with knowledge that the person obstructed is a public officer, he or she:

1. Intentionally and physically interferes with a public officer; or
2. Intentionally hinders or delays a public officer by disobeying an order to stop given by such officer; or
3. Intentionally refuses to cease an activity or behavior that creates a risk of injury to any person when ordered to do so by a public officer; or
4. Intentionally destroys, conceals or alters or attempts to destroy, conceal or alter any material which he or she knows the public officer is attempting to obtain, secure or preserve during an investigation, search or arrest; or
5. Intentionally refuses to leave the scene of an investigation of a crime while an investigation is in progress after being requested to leave by a public officer;

B. No person shall be convicted of violating this section if the Judge determines, with respect to the person charged with violating this section, that the public officer was not acting lawfully in a governmental function.

Case File Reviews

Of the 76 "obstruction only" cases reviewed, 14 were chosen because they resulted in an OPA complaint of some kind. The other 62 cases were selected because the primary officers had three, four or five such arrests from 2006 through June 2008. No officer had more than five. Only one of these 62 arrests led to an OPA complaint.

In some cases another charge might have been recommended, but not charged, or there were warrants out for defendants, also justifying the arrest. In some cases there were multiple defendants; and not all dispositions were final or available; so all of the numbers cited in this section are approximate.

For the 14 cases involving an "obstruction only" arrest where an OPA complaint was made, the OPA file included police reports, subject and witness statements. For the remaining 62 "obstruction

only" cases, there were only police reports and court dockets. While some of the reports described situations that, in retrospect, could have been handled differently, the reports reflected good faith efforts to maintain order at the time.

Prosecution Outcomes

Of the 76 cases, 22 [29%] were dismissed "without prejudice" or on defense motion because of apparent proof problems. Another 18 [24%] were dismissed "with prejudice" after a period of months up to a year, described as "dispositional continuance," deferral or pretrial diversion, usually contingent on no arrests during that time. Two defendants were found not guilty after a trial and an additional 31 [41%] either pled guilty or were found guilty. The sentences were invariably suspended. The outcomes in a few other cases were unavailable, for instance because of competence problems, the disposition was pending, or because the defendants' juvenile files are sealed.

While some may see in these numbers a waste of court, defendants', defense attorneys', prosecutors' and jail resources for a third of the cases, others may point to the dispositional continuances and suspended sentences as effective deterrents to those who would interfere with officers on the street. When looking at the individual fact situations, it is important to ask what other recourse the officers had at the time of the arrests to deal with the problems at hand. It should also be noted that the arrests were screened by sergeants, either on scene or at the precinct, and usually at the first court appearance, where a judge made a finding of "probable cause." Probable cause means that it is deemed more likely than not that the defendant committed the offense. To pursue a case, the prosecutor must ethically be convinced there is sufficient evidence to meet the "beyond a reasonable doubt" standard.

Robert Hood, Chief of Public and Community Safety in the City Attorney's Office, pointed out a number of reasons that court outcomes may not be good "markers" for evaluating whether officers' appropriately used their arrest powers. What happens to a case when reviewed by a prosecutor may depend on a number of factors: if a person is arraigned over the weekend, for instance, the City prosecutor is dealing with a minimum of information – arrest record and police report. If the report does not document well the elements of the offense, the prosecutor may dismiss at that point. On the other hand, a case may be dismissed later because of information brought to light by the defense attorney, information that was not known to the officer at the time of the arrest.

Precinct captains stressed the critical importance of screening arrests, either on scene or at the precinct. Where two units or more respond to a scene, they want a sergeant there – to assess the situation firsthand, talk to the arrestee, release the person from handcuffs if warranted, and generally have a cooler view of the best outcome of the situation.

The key question to be asked in screening, whether on scene or at the precinct, is: what was the officer's legitimate action that the arrestee interfered with? If that cannot be articulated, it is important to release the suspect, with as good an explanation as can be given, even if a Use of Force Report is also in order. As one captain put it, "a bad arrest does not improve with age." Police sometimes cite an informal culture that says, "If you go hands on, book 'em." Variations on this view are sometimes voiced, according to the captains, but more from new recruits than veteran officers. Both the Street Skills instructor and precinct captains say that is NOT the advice given now, though it often was in the past.

Racial Distribution

The racial breakdown in these 76 cases was as follows: 51% African American, 37.5% White, 10% Asian, two arrests "other." Whatever the appropriate statistical inferences, then, a majority of those arrested were Black. In fact these percentages are not different from those reflected in arrests for violent felonies.

While population is arguably not the correct statistical comparator, African Americans are over-represented in the criminal justice system. Racial disparity in arrests remains an issue of concern. The "blue ribbon" panels of both the Mayor and Council have asked the OPA Review Board, the OPA Director, and the Auditor to look into the broader question of the relationship of the Department to communities of color. Because that project is ongoing, no analysis or policy recommendations will be included in this report.

Crimes Leading to Police Contact

What kinds of crimes were suspected that led to these police interventions? Many cases involved suspicion of street level narcotics violations. For instance, in three cases an individual threw a glass pipe on the ground and crushed it when the officers confronted him. In three more, the person attempted to swallow suspected narcotics. In another four or so, the officers observed suspected hand-to-hand sales in high narcotics areas and pursued known dealers or apparent buyers.

In about seven more cases, the contact was for jay walking or pedestrian interference. In two, drinking or urinating in public was the suspected crime. These arrests were made for on-view conduct rather than in response to 911 calls.

In some 911 cases, officers were dispatched to a fight or disturbance on a bus, outside a bar or at a mission. These cases often involved a group event and uncertainty about who was a suspect.

When, Where and By Whom are Frequent Obstruction Arrests Made?

What are the specific descriptors of the officers who made three, four or five "obstruction only" arrests in 2006 - June 2008?
The particular shift and beat of the arresting officers has a lot to do with the situations they repeatedly face on the street. The arrests tended to be concentrated in certain parts of town and notably on the nighttime watches, including by drug enforcement and Anti-Crime Teams.

There may be a significant increase in obstruction situations where the officers are "proactive," as opposed to responsive to 911 calls. For instance, in certain areas of town, police presence on the street is requested by merchants and residents to discourage drug trafficking. Sometimes this is attempted through uniformed officer presence and sometimes through undercover buy/bust operations.

Where population is concentrated, or social service centers located, there is often a greater concentration of people on the street at night. Where there is a concentration of establishments that serve alcohol, or sell over the counter fortified single drinks, there will be an upswing in alcohol-fueled conduct, particularly as the bars close. There is no doubt that alcohol or drug intoxication does not help people make the right choices in the face of police authority.

The numbers reviewed did not suggest that there is a profile or a number of individuals using "obstruction" as a cover charge. For one thing, five arrests over a period of two and a half years is not

extreme – averaging one every six months. And only 16 officers had three, four or five such arrests.

Resource Allocation

Because of the number of suspected street level narcotics cases that lead to obstruction only arrests, it is perhaps appropriate to comment on that enforcement effort. Also, the Anti-Crime teams are described as the "proactive assets of a precinct," often addressing on-sight conduct, that sometimes leads to obstruction arrests. Anti-Crime Teams can be assigned to any watch and sector.

The policy questions for the Department are whether, for instance, heavy attention to buy-bust narcotics deals, with surreptitious surveillance and undercover operations, including "cooperation" by arrested buyers or dealers in making other arrests, is the best response to requests to "clean up" drug trafficking and loitering in a neighborhood. Budget restraints in the prosecutor's office have resulted in revised felony prosecution guidelines, as well as the loss of a dedicated "drug unit," which will mean non felony prosecution for small amounts of drugs. A case can also be made that intensified presence of uniformed officers and community policing techniques yield better long term results than arrests at the user level. The Captain of the North Precinct has designated a liaison to University sororities and fraternities, for instance, to prevent alcohol fueled misconduct. Unfortunately, this doesn't work with "flop houses" or drug distribution houses.

The challenge for Command Staff is always to step back and assess what and where is the most productive investment of police presence and action – how can community policing and the positive relationships sought to be built thereby relate to aggressive, negative enforcement actions? What are the ultimate costs of letting a jay-walker ignore an officer and keep walking vs.

insisting on going hands-on when the jay-walker disrespects or disobeys the officer? What are the options for an officer concerned about pedestrian safety in a specific situation? What conduct, if any, should be de-criminalized? What about a vociferous, antagonistic crowd outside a bar at closing time? How can that incipient violence best be dissipated rather than intensified? By removing the trouble-makers or other tactics? These are questions individual officers and supervising sergeants as well as command staff grapple with on a continuing basis.

Conduct Deemed to be Obstructive

What conduct did officers decide interfered or hindered them? There were certain oft-repeated scenarios: In approximately 19 cases, the defendants ran or walked quickly away from officers who ordered them to stop. While individuals may say they are afraid of officers or didn't recognize people as police, running is perceived by officers to be indicative of guilt. In a couple cases, individuals attempted to leave before citations were completed for dog license and bicycle helmet violations. In the majority of these "running cases," the officers were responding to some kind of disturbance, sometimes involving a group of people, and one or two of the individuals took off before the officers could investigate who was gambling, fighting or causing trouble.

Legal Limitations on Public Officers' Authority

The decision to detain or not when an individual takes off depends on an often close legal analysis that is sometimes difficult to make on the fly.

Over 20 cases involved either a "social contact" or a *Terry* stop, the latter meaning the officer believed he had reasonable suspicion that a crime was being committed by the individual stopped.

Under Washington law, a person is "detained" when his/her freedom to move is restricted, including asking for identification from someone in a car the officer has stopped. *State v. Rankin,* 151 Wn.2d 689 (2004). On the street as well, commanding someone to stop is a seizure. *State v. O'Neill*, 148 Wn.2d 564, 677 (2003). If the suspected crime is a misdemeanor, it must be committed in the officers' presence, unless it is on a list in RCW 10.31.100. *State v. Duncan,* 146 Wn.2d 166 (2002).

If there is objective reasonable suspicion meeting these requirements, an officer is justified in temporarily detaining the person and exploring the circumstances. If there are grounds to believe the person may be armed, the officer is also permitted to perform a precautionary pat-down search.

Yet, if reasonable suspicion is lacking, an officer only has the option to make a "social contact" to explore what he/she sees as suspicious or noteworthy. The individual remains free to ignore the officer, "blow him off," refuse identification, be rude, or even take off running. Running away does not give rise to reasonable suspicion, because the officer has to *have* reasonable suspicion before ordering him to stop. Under the Washington Constitution, an individual is seized at the moment the officer yells "Stop!"

Thus, officers are frequently confronted with circumstances they deem to be suspicious, and tasked to decide on the spot whether they have a legal right to detain the individual. The situation may be even more complicated, when they are called to some kind of disturbance involving potential criminal activity in a group of individuals, but it is difficult to focus on one suspect without further investigation. It is understandable to conclude that the person who takes off running may be responsible, but that does not justify an arrest for obstruction, unless there was reasonable suspicion to detain that individual at the outset.

Training

Because this law is difficult to apply on the street, the Department has expended considerable resources and time in the mandatory annual training of officers. The Street Skills program this year contained a two-hour training session largely devoted to search and seizure law, well presented with realistic hypotheticals. Because the legal issues are complicated, the Command Staff has determined that the differences between interpretations of the U.S. Constitution and the Washington State Constitution justify even more attention in training.

Precinct captains say that the most important training is at the precinct level, by supervising sergeants and at roll call immediately before officers hit the streets. They agree the most valuable mode of training is discussion of actual cases and situations. It would be helpful to have short videos to review and discuss – though they should be specific to Seattle Department policies, State and City law, which means investing the resources in producing them here.

Arrests of Bystanders for Obstruction

Another frequent scenario, approximately 24 of the 76 cases reviewed, involved the interference by an individual with the arrest or investigation of someone else – the "bystander problem." The bystander arrested for obstruction is often a friend or relative who wants to take control of a suspect or prevent his being taken into custody. In some cases, the individual simply "refuses to leave the area."

Both Auditor and Director of OPA have recommended policy clarification to address the rights of bystanders. The Department's new manual Section 17.070, entitled Citizen Observation of Officers, is meant to clarify those rights for the benefit of citizens and officers. It provides clear guidance as to what conduct is

permissible for both. Officers are to assume their activities are being recorded at all times. In fact, in-car video training requires officers to record incidents themselves if possible. People not involved in an incident should be allowed to remain in the proximity of any stop, detention or arrest, so long as they do not interfere. See Appendix A for the full policy. Officers may tell people to step out of the way but not order them to "leave the area" or "go home" or seize their cameras if they are not actively interfering.

Relationship to OPA Complaints

The OPA-IS investigations are a crucial means of tracking patterns of police conduct and surfacing policy and training recommendations. The OPA briefs supervisors annually about patterns in the complaints filed, including a breakdown by precinct. Supervisors are able to access the names of officers on those lists. The Lieutenant has also briefed Command Staff on profiles of complaints and patterns of conduct reviewed by the OPA-IS.

Ongoing review of obstruction arrests is possible when complaints are made to OPA. In two of the 14 "obstruction only" arrest cases reviewed, where a complaint was also filed, the Auditor raised questions about the sufficiency of circumstances for a *Terry* stop and therefore whether the degree of force was appropriate. In both cases, the officers were exonerated, meaning OPA concluded they had reasonable suspicion and therefore justifiable cause for the force used.

The OPA is sometimes faced with analyzing difficult arrest or investigative stop situations in retrospect. A recently closed case is a good example. The officer observed a man in parked car midday in a high prostitution/narcotics area call out to a female who "looked like a transient." Though initially smiling and talking as

she leaned in the car window, the officer says he could see as he drove by that they suddenly noticed him and looked "terrified" and/or "enraged." He pulled over nearby and the parked driver started to yell at him, such things as "I've known this woman for a long time," and "flailing his arms around in the car." The officer decided he had reasonable suspicion at this point and ordered the man out of the car. After a tug of war over the car door, the officer undid the seat belt and had some degree of physical contact getting the driver out while allowing the passenger to sit there. The officer warned the suspect he would be arrested for obstructing if he didn't calm down. The officer then handcuffed the man and made him sit on the bumper, now under arrest for obstruction.

Other officers arrived and the primary officer interviewed the woman and eventually arrested her for a crack pipe found in her pocket while patting her down for weapons. The Complainant driver reported that he was dragged from his car to the ground and forcefully pushed around by the named officer, injuring or re-aggravating a pre-existing back injury. The responding sergeant and other witnesses did not see injuries to support this or the need to file a Use of Force Report but called the Fire Department Medics to the precinct and an ambulance transported the Complainant to Harborview for evaluation.

The OPA-IS Captain initially recommended a sustained finding. While the degree of force alleged by the Complainant was not supported, even the minimal amount of force was unwarranted, since the officer lacked reasonable suspicion to detain the man – and therefore to open the door, grab the complainant, help him from the car and handcuff him. The Auditor agreed with the finding, noting that it is always difficult to second guess an officer's instincts, but that the law of reasonable detentions requires it.

The Director and OPA-IS Captain then decided to modify the finding to Supervisory Intervention, which the Auditor criticized. The Director noted that this wasn't an officer making random stops, but a judgment call on evaluating factors, so that a Supervisory Intervention would be more appropriate.

As this case illustrates, lack of probable cause for arrest or reasonable suspicion for physical intervention can lead to an allegation of violation of policy and to administrative discipline.

Impediments to OPATracking and Assessing Obstruction Arrests

Complaints and investigations by OPA are a major way of tracking and assessing the issues associated with obstruction only arrests. Unfortunately, this does not happen unless an OPA case is opened.

In the review of 62 of the cases discussed above, only the officers' reports and the court records of disposition were available. In the other 14, where there were OPA complaints, there was a fuller picture available because the perspectives of those arrested were included. There was therefore a basis for knowing whether there is a problem with individual arrests or a pattern. The Department also had a basis for feedback to supervisors or early intervention where there were multiple complaints against officers, regardless of the outcomes in the OPA cases.

Most of the attorneys who frequently represent individuals injured by police, either as criminal defense attorneys or as plaintiffs' advise their clients not to cooperate with OPA or to file a complaint for two stated reasons: The first is lack of confidence in the system; they have simply seen very few cases in which the Department has sustained excessive force complaints. This is indeed the case here and nationally, though this Department has sustained two use of force complaints this year so far. When asked

for specifics, civil rights and defense attorneys cite their experience in one or sometimes two cases, after which they have ceased cooperation.

They believe the Department bends over backwards to exonerate individuals, at one stage of the process or another. They expressed serious concern at the outcome of "Supervisory Intervention" or that the Chief may overrule the recommendations of the OPA. The Auditor has also expressed concern over the increased use of Supervisory Intervention as an outcome. One recent revision does address the Chief's findings: he will now document to the Mayor and City Council his reasons if he changes a result from that recommended by the OPA, for instance from "Sustained" to "Supervisory Intervention" at the discipline meeting.

The second reason for non-cooperation is a structural problem often raised before the Council's as well as the Mayor's blue ribbon panels. Cooperation with OPA-IS while a client has a civil or criminal case pending exposes him or her to an extra interrogation or deposition, from which any inconsistencies will later be mined. An officer must be notified of proposed discipline for misconduct within 180 days of when the Department is advised of the allegations, so investigations must be completed within that timeframe. If an officer is facing criminal charges, the administrative process is extended to allow completion after the court case has been resolved. Not so for a complainant. The investigation time is neither tolled nor extended, unless the Department requests and the Guild agrees to such an extension.

This problem could possibly be addressed in the next Guild contract by extending the time limits for obtaining complainant statements; or by State statute, which could make complainant or witness statements to OPA inadmissible in court. A present alternative might be to create an administrative "wall" within the Department, but such a policy would have to include agreement of

prosecutors and attorneys representing the City to be effective. The civil rights attorneys differed on whether the option to submit a sworn statement might improve cooperation in the meantime.

These attorneys had several other criticisms of the OPA process: that Guild and officers see subjects' statements before they give their interviews and can therefore craft their testimony; that subjects are not offered the opportunity to testify after the officers; that the Department keeps records of complaints in an officer's file for only three years, instead of his/her term with the Department; and that all successful verdicts and all claims for substantial damages filed with the City do not lead to OPA investigations.

The Department does keep a summary of "sustained" findings in an employee's personnel file for the duration. Offering the complainant the opportunity to go last in the investigation may be an option to assess.

Claims Against the City

OPA looks at every claim that is settled by the City for injuries caused by police. The Director or Associate Director sits on the risk management committee to look at all such settlements. The OPA also sees some claims earlier, referred by the Department's Legal Adviser. An inquiry is then made about whether this is an appropriate OPA-IS case. If an attorney or claimant indicated in the past that he/she did not want a file opened, a file was not always opened.

The OPA should look at the possibility of assessing every serious claim when it is filed. The downside of this is that the citizen may not, on advice of counsel, cooperate within the mandatory 180-day investigation time limit. If, for any reason, an attorney or claimant is not willing to cooperate with the OPA, the situation cannot be

fully investigated and it is unlikely that the claimant will be satisfied with the outcome.

In 1996, the Department's Legal Adviser, Leo Poort gave a number of "Tips for Avoiding Civil Liability," including the following: "Don't arrest for 'contempt of cop;" "avoid custodial arrests for minor offenses;" and don't arrest "without probable cause." The Risk Management Advisory team recently met with the Chief and precinct captains to discuss specifics of closed lawsuits or pending situations. Emphasis was on the importance of active supervision and positive interface with community members at the scene.

EIS and Obstruction Arrest Tracking

The Department rolled out its long-planned Early Intervention System [EIS] in January 2005 as a pilot and then in 2006 in full working form. It can be found at Seattle Police Department Policies and Procedures Section 3.070 (Go to Seattle.gov, then to "police", then to "policies.") Its purpose is to identify and support Department employees who demonstrate symptoms of job stress, training deficiencies and/or personal problems that may inhibit job performance. Initial criteria identify employees who may need this support, including, for instance, numbers of use of force reports, vehicle collisions, failures to report for court, and/or receipt of OPA complaints over a given period. The second tier addresses steps or actions designed to intervene in the employee's behalf in a "positive and supportive manner."

While the thresholds for a review of an employee's performance remain the same, the second tier of EIS was revised on July 29, 2008. The complete review of an employee's record now includes, as appropriate, a review and discussion of the "number of arrests for obstructing, resisting arrest, or hindering a law enforcement officer." While this does not provide a comprehensive record of

obstruction arrests, it does provide a window on that information during the review of an individual who may be "at risk."

The Department opted for treating obstruction arrests this way after querying eight comparable police departments in other states as to how they handle that information.

Seattle does not track obstruction arrests, a suggestion made by the former Auditor, Hon. Terry Carroll in his 1994 report:

> Tracking of Resisting Arrest/Obstruction charges to claims of unnecessary force: This remains important to me. It is generally accepted that there is a correlation between an officer's accumulation of excessive force complaints and the filing of criminal complaints for resisting arrest and/or obstructing. The computer programming currently underway should be adapted to pick up Seattle Municipal Court records. Likewise, IIS needs to be more apprised of civil lawsuits against officers – many of which never result in an IIS complaint.

In the last five years under the current Auditor, this "correlation" seems much less obvious than earlier: perhaps because the culture has changed. Use of an Obstruction charge as a catch-all, or perhaps the way "disturbing the peace" was once used, seems less prevalent. The EIS should be given time to prove itself as a means of looking at obstruction arrests that may be problematical.

Further Training

There is a great demand for the limited amount of time available for mandatory training that officers go through each year. This year, substantial time was devoted to teaching officers the new reporting software, called "Spider," plus operation of in-car video cameras. In fact OPA has been using Supervisory Interventions as a way to impress officers with the importance of using in car video, once trained.

Mandatory training is planned year by year. The de-escalation training repeatedly recommended in Auditor reports has been

dropped from mandatory training, at least temporarily. As noted, the Command Staff is looking at further training on *Terry* and social contact stops as part of the use of force training module. OPA cases also sometimes result in suggested training on particular subjects or situations. In sum, competition for training time will remain keen.

The most useful training is that which is reinforced by the supervising sergeant and at roll call, all precinct captains agree. The review of real cases or specifically relevant video hypothetical situations brings these issues into practice watch by watch. Having a designated precinct training officer or supervisor may be helpful.

At a minimum, officers should be well advised that an arrest for obstruction will get a thorough evaluation on the scene or soon afterwards at the precinct. Officers must have a clear answer for the question: "what conduct was this person interfering with?," which shifts the focus from the arrestee to the officer. Moreover, officers must be encouraged to state their reasoning clearly in their reports.

Conclusion

While a few officers use obstruction more than their colleagues, their reports do not reflect a pattern of abuse over the past two and a half years. It does seem that there has been a shift in training and oversight away from using obstruction as a catchall, particularly when an interaction gets physical. That being said, de-escalation training, including role-plays in non-physical interventions in suspicious circumstances, continues to be important and not regularly occurring. The Department is also assessing further cultural and racial awareness training that may help address the racial disparity in arrest patterns.

The Department is making important and ongoing reviews of information available through the EIS, OPA, and risk management systems. Significant advances have been made in the coordination and sharing of information. Policies such as the Bystander Policy and the EIS Manual Revision reflect active engagement with these issues. The OPA has made many changes to encourage cooperation with its investigations. Continued attention is necessary to make OPA more successful and trusted, including removal of barriers to citizen cooperation.

Respectfully submitted, October 8, 2008
_____/s/_____
Katrina C. Pflaumer
OPA Auditor

Appendix A

Seattle Police Department Policies and Procedures	Section 17.070
Title: 17 - Patrol Operations	Chapter: 070 – Citizen Observation of Officers

POLICY

It is the policy of the Seattle Police Department that people not involved in an incident may be allowed to remain in proximity of any stop, detention or arrest, or any other incident occurring in public so long as their presence is lawful and their activities, including verbal comments, do not obstruct, hinder, delay, or threaten the safety or compromise the outcome of legitimate police actions and/or rescue efforts. Officers should assume that a member of the general public is observing, and possibly recording, their activities at all times.

I. Witnessing Stops, Detentions, Arrests and other Police Actions

A. With the prevalence of digital cameras, cell phone cameras, etc. in existence, it is common for police incidents to be photographed by citizens as well as the media. Officer safety, the protection of the suspect or person being detained, including his/her right to privacy, and the safety of onlookers are the most important factors. With these factors in mind, officers shall recognize and obey the right of persons to observe, photograph, and/or make verbal comments in the presence of police officers performing their duties.

B. Citizens, regardless of their intent to video and/or audio record an activity, may not enter any established marked and protected crime scene or a restricted area that would normally be unavailable to the general public. Officers and follow-up investigators will determine who enters or leaves a secure scene.

C. In public areas, there is no distinction between citizens employed by news media organizations and those who are not. The existence of "press credentials" extends no special privileges to any citizen, nor does the absence of such credentials limit a citizen's free access to record law enforcement activities while in public, under most circumstances.

II. Bystander Filming of Officer-Suspect Contacts

A. It is increasingly common for bystanders, who are not involved in any criminal activity, to record contacts between officers and citizens. Bystanders have the right to record police officer enforcement activities, except when:

1. The safety of the officer or the suspect is jeopardized.
2. Persons interfere or violate the law.
3. Persons threaten others by words or action, or they attempt to incite others to violate the law.

B. Although a contact with citizens to obtain evidence is encouraged, officers will not detain citizens or seize their recorded media when that media contains video, still images or sounds associated with a crime.

C. When recorded media is being sought from an uninvolved citizen, the first course of action should be a request for voluntary surrender of the media. This request and the citizen's response should be documented. If the citizen surrenders the media they should be given a case number and the requesting officer's name.

D. If officers do not have sufficient authority to seize the media but think it may be of value investigation, then officers should advise citizens that a court order will be sought for the media a it should not be tampered with, altered or destroyed, since it may be evidence of a crime.