

CITY OF SEATTLE

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

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December 2011 – May 2012

**Judge Anne Levinson (Ret.)**  
**OPA Auditor**  
**8/16/2012**

## **Introduction**

This report is the semi-annual Office of Professional Accountability (OPA) Auditor report covering the six-month period from December, 2011 through May, 2012. In Seattle's police accountability system, OPA is the unit within the Seattle Police Department (SPD or "the Department") responsible for addressing issues of alleged misconduct by SPD officers and employees. Its Director is a civilian who reports to the Chief of Police and serves on the Department's command staff. The Auditor is also a civilian; however she is independent of the Department, and provides outside oversight. In this context, the term Auditor is used differently than in other contexts (each Auditor has been either a retired judge or former federal prosecutor). The Auditor reviews every misconduct complaint filed as soon as the initial intake is completed to help ensure that each complaint will be addressed as it should be. She also reviews every investigation before it is finalized to ensure all investigations are fair, thorough and objective. As well, the Auditor makes recommendations to City policymakers and the Department for systemic reforms and suggests ways to improve performance through changes to policies, procedures and practices.

To enhance the transparency and openness of Seattle's police accountability system, the OPA Auditor is required by ordinance to issue a public report twice per year. She is directed by ordinance to report on 1) the number of complaints and investigations reviewed; 2) those investigations where she requested that additional investigatory work be conducted; 3) her requests for reclassifications of complaints (the determination as to whether a complaint will be referred to a supervisor or investigated); 4) issues, problems and trends noted as a result of her reviews; 5) recommendations for additional officer training, including any specialized training for OPA investigators; 6) any recommendations for policy or procedural changes; 7) any findings from audits of OPA records for other purposes; and 8) any other activities.

## **Policy, Procedure and Training Recommendations**

An important aspect of the Auditor's independent oversight role not only to assess each individual case, but also to point to needed changes in policies, systems and training that cases or trends highlight. This section of the report summarizes the status of some of the recommendations made in past reports and lays out new recommendations based on cases from this period.

### **Previous Recommendations**

In previous reports I have recommended a number of systemic changes, some of which the Department of Justice and City have incorporated into their agreements and others of which will be integrated into the Department's "20/20 Plan".

In my initial 2011 report I noted that one of the most important changes the Department needed to make to improve overall performance was to return to the relief squad approach to shift assignments for officers and their sergeants, so that officers would again have consistency in the sergeants who supervise them (rather than different sergeants rotating coverage), which should lead to clearer accountability. The Chief also felt this was a top priority, and beginning in January of this year, the Department started the process of implementing this change. As of July, 51 out of 66 squads had transitioned from in-squad relief to the relief squad approach.

The second critically important recommendation from my initial 2011 report was that the Department provides clear expectations to sergeants of their supervisory responsibilities and provides them with better

training to handle the most common problems that arise. Improved clarity of responsibility and enhanced training for sergeants is critically important because they are the first line supervisors for all officers and set the tone for preferred practices. Additional training was conducted during the latter part of 2011 and the first half of 2012, but the Department has not yet reported the specifics of the enhanced curriculum or the measures used to indicate effectiveness. The Department has committed to the implementation of a “sergeants’ academy” in the 20/20 plan, but further specifics remain to be articulated. Two training improvements now being implemented in response to prior recommendations to address the need for improved communications and de-escalation skills are the “Justice Based Policing” or “LEED”<sup>1</sup> training and the Defense Department’s Defense Advanced Research Projects Agency (*DARPA*) partnership for enhancing training. The OPA Director will discuss in more detail in her upcoming report the specific schedule for implementation and the work completed to date for each of these initiatives.

Another priority highlighted in previous reports is the improved use of In-Car Video (ICV). The OPA Director and I made a number of recommendations beginning in late 2010; reports were issued and policy, training and technology concerns identified. The City Auditor recently issued a report as well, making several additional recommendations related to retention and responsiveness to requests for videos. The Department still needs to articulate a plan of action to address what are now well-known areas needing improvement, with clear responsibility and deadlines for implementation. Related to this is the implementation of on-person cameras, which has been in a pilot phase for some time, while the City continues to advocate for a needed change in State law. A remaining obstacle is an Unfair Labor Practice complaint filed by the Police Guild as to who can watch ICV and for what purpose. (In earlier reports I had strongly recommended more review of ICV as a teaching tool)

The Department’s secondary employment system (off-duty work for employers other than SPD) is another organizational improvement that has been longstanding. As I mentioned in prior reports, the Department could reduce the number of issues that arise from this context by centralizing and modernizing its secondary employment system. This work has not yet occurred. The Department’s Professional Standards Unit was tasked earlier this year with moving this work forward and is likely to recommend systemic changes.

One recommendation from my first report that has now been implemented<sup>2</sup> is the streamlining and simplification of OPA's complaint classifications (deciding how a complaint is to be addressed) and findings (results of investigations) for misconduct complaints. The existing system was confusing and did not further the goals of transparency and understandability.

As of January 2012, every complaint will be classified in just one of two ways, as either Supervisory Action (SA) or Investigation. Supervisor Action is used for complaints for such issues as quality of service and courtesy. This part of the complaint process has been refined so that SAs are quickly referred to supervisors who reach out to the complainant directly, talk with the officer, and take necessary steps such as mentoring or training for the officer, or roll call training for all officers if warranted. Supervisors receive a memo from OPA with a check list of requested steps to address the matter, are required to report

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<sup>1</sup> “Listen and Explain with Equity and Dignity” training stresses respect and listening skills in all interactions.

<sup>2</sup> The Department still needs to update the manual and other materials with the new classifications and findings.

back in writing to OPA with the actions taken and send a closing letter to the complainant as well. Every SA is now also reviewed by the Auditor as well as the OPA Director, at the time of classification and when returned to OPA by the supervisor. The entire process from complaint intake to final review has been cut down to a target of 60 days.

Complaints that involve allegations which could potentially result in discipline, and those which might otherwise have been categorized as an SA but the officer involved has had multiple complaints of that nature, are classified as Investigation. For these an OPA Sergeant is assigned, the Director may be consulted, an investigation plan is reviewed between the OPA Lieutenant and the investigator who then gathers all relevant evidence (In-Car Videos, premises video, medical records, shift assignments, phone records, photos, relevant policies, training materials, etc.), interviews the complainant, civilian and officer witnesses and the named employee and writes a summary report. The Lieutenant then reviews the investigation. The Auditor will then ensure the investigation is thorough and unbiased, and the summary is an accurate reflection of the evidence and interviews. If the Auditor has questions or requests additional interviews or the gathering of additional evidence, those concerns are addressed before the investigation can be considered complete. The OPA Captain will then write a memo with recommended findings. The OPA Director will then review the investigation, the recommended findings and Auditor's analysis, and either issue a certification if the complaint is not Sustained or participate in the disciplinary process.

Findings are now easier to understand as well: Sustained (which results in discipline), Training Referral (which results in required training), Lawful & Proper (the officer's actions were consistent with law, policy and training), Inconclusive (the investigation could neither prove nor disprove the allegation), or Unfounded (the investigation proved that the alleged misconduct did not occur).

Implementation of a recommendation to assess ways to increase the number of complaints resolved through mediation, which allows both the complainant and the officer to view the incident from each other's perspective, is still underway. Both complainants and officers often report satisfaction with the result reached when mediation is used. However, complainants still do not use mediation as frequently as they could. In the first quarter of 2012, an evaluation project with two university interns was initiated, with the charge to learn what barriers may be leading some to decline mediation.

Several recommendations to improve transparency and accessibility from earlier reports have not moved forward, or are dependent on staff and budget. Among them are: online access for complainants and employees to track their complaints (as is done for voters to be able to track their mailed-in ballots online); ways to better use technology to provide additional tools for workflow tracking and review of intake or investigations by multiple reviewers simultaneously and electronically; and improved early-warning trend reporting and analysis.<sup>3</sup> There is a workgroup in SPD assessing a new software system.

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<sup>3</sup> For example, analysis of types and numbers of complaints an officer has compared to his or her peers (those who work the same shifts in the same areas doing the same kind of work); complaint trends where officers had the same field training officer, sergeant or precinct; trends related to a particular training; comparison of frequency and type of complaint with calls for service, contacts, arrests, searches; types of force used; a pattern of more minor complaints; years of service, age, race, ethnicity and so on. Also recommended was to change the coding so that an allegation would include the nature of the underlying incident, not just the misconduct allegation, e.g., 'use of force –obstruction' or 'use of force – jaywalking', rather than 'just use of force', to better spot problem trends of minor interactions that escalate for a particular officer, shift or supervisor.

Also recommended in my initial 2010 report was a detailed training manual and orientation program for new OPA investigators and intake personnel to ensure institutional consistency regardless of changes in staff, supervisors or the civilians involved in oversight. That work was initiated by OPA this year and is still underway.

Progress was made on the recommendation that all the letters, complaint forms and other OPA-related materials be reviewed and updated to ensure they are as helpful as possible to complainants, officers and the public. Improvement was made to the SPD website, but to date work has still not moved forward with a number of previously recommended website improvements to promote transparency and understandability.

### New Recommendations

With regard to Use of Force (UOF), based on the more than 100 investigations I reviewed during this period, below is a sample of some issues which arose. The Department of Justice incorporated a number of these recommendations as part of the proposed improvements to policy, training and supervisory review.

- SPD officers are trained that any force used is not to be detailed in the General Offense Report (GOR), but instead in the UOF report. But the current UOF policy sets the threshold for submitting a UOF report to be those interactions deemed likely to have possibly resulted in injury, in fact did result in injury or the subject complained of injury.<sup>4</sup> If the physical interaction does not rise to this level, a UOF report is not written. In effect this means that where the resistance was not deemed to qualify as reportable force, it may not be described anywhere, including what the resistance was, what actions the officers took to effect the arrest, how many officers it took and so on. Wherever the threshold is ultimately set, the GORs need to thoroughly and completely describe what occurred to the extent the information is not provided in a UOF report. The GOR should not simply state “subject was arrested”, as opposed to “subject refused three commands to get on the ground, I grabbed his arm and forced him to the ground, used my knee on his back to hold him there. When I was unable to get his arm out from underneath his body to handcuff him, Officer Smith assisted by...”. There should not be any gap between what actually occurred and the totality of the reporting (whether in a GOR, UOF report or other documentation) and the thoroughness of reporting should not be affected by which report is used.
- Similarly, officers should always be required to write an ancillary report that describes the force used by a King County Sheriff’s deputy, State Patrol or other agency when SPD officers are also involved with the incident. Current policy is that no report is written if another agency is the lead agency for the arrest. Without this obligation, an interaction can involve multiple officers and there is no report of what occurred by SPD officers who are involved. Again, this can leave the impression that officers are not being honest or thorough, and if there is resistance to a stop or an arrest, or if any force is used, there is not a record that can be used for investigative, trial or performance review purposes.
- Additionally, policy should be clear that if officers from another agency are effecting the arrest<sup>5</sup> but it is the SPD officer who uses the force, the SPD officer should either take responsibility for the arrest, or at a minimum create a case number, document it with both a GOR and a UOF report, and have either the arrest and/or the use of force screened by a sergeant.

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<sup>4</sup> The DOJ settlement agreement has addressed the issue of reportable force.

<sup>5</sup> If there is an inter-local agreement on point that dictates which agency should effect the arrest, that should be referenced in the policy manual.

- Department policy should more clearly articulate that when OPA reviews whether a use of force was appropriate and reasonable, all steps and actions taken preceding the actual force will also be assessed. Under Departmental policy, and under federal law, an allegation of inappropriate force might not be sustained because the force was appropriate and reasonable *as it was being used*. The public, however, expects a review of the totality of the incident - did the officer's tactical decisions, assumptions or actions lead him or her to a place where force had to be used and could other actions have been taken so as not to arrive at that point? Was sound judgment exercised? There should be a burden on the officer to describe the thinking and actions that led up to the force needing to be used. It may be the case that OPA will have to include an additional allegation related to discretion in decision-making in order to address whether other reasonable options existed for different decisions or actions preceding the use of force. If so, then OPA should make that a practice, so that interactions that do not reflect best practices can always be addressed, even where the force itself might meet the legal standard for 'reasonableness'.
- SPD policy requires each arrest to be screened by a Sergeant and each incident report (GOR) and UOF report to be signed off by a Sergeant. Officers often have a different Sergeant sign off on the incident report than the Sergeant who screened the arrest. Unless circumstances require otherwise, the Sergeant who screens the arrest should be the one to review and approve the GOR and UOF reports.
- Each incident report also includes what is called an "incident narrative preliminary investigation summary", where the officers are required to check off what additional information they have submitted, including In-Car Video, photos, and various other reports, but it does not include any indication of whether a UOF report has been submitted. This should be included.
- The UOF chain of command review form includes this statement above the signatures for the supervisors in the chain of command "I reviewed the Incident Report, Hazard report, Officer statement and Use of Force statement. Given the facts of the incident and the actions of the suspect during the incident it is my opinion that the Force Used was appropriate and within The Department's Use of Force Policy." Review of the In-Car or On-Person video is not required and should be. (This may be further delayed by the Unfair Labor Practice complaint noted above.)
- The final UOF report that has been reviewed and approved – or not – by the UOF review board and all required reviewers should be included in every investigative file for UOF cases. Because it takes time for the UOF review process to occur, the UOF report provided to OPA at the beginning of an investigation is often just the initial report and does not reflect the results of the review process. Whether supervisors thought the force was within policy is relevant, although certainly not determinative. As well, going forward, now that there is a UOF review board process, a protocol will need to be developed for those cases where there is an OPA complaint so that efforts are not duplicated.

Another policy that still needs to be reviewed to more clearly articulate Departmental expectations based on issues arising from complaints relates to an officer's duty to identify him or herself and explain why a person was stopped. The current policy is written in such a way that suggests there is only a clear, affirmative duty to do this for traffic stops, with the obligation for other types of stops less clear. In my view, the preferred practice for many types of interactions should be officer identification and explanation for why the person is being stopped, unless there is a safety, exigency, or an investigative reason not to (e.g., it may be a dynamic situation). Explanation is one tool to help minimize confusion or mistaken assumptions that can escalate an otherwise minor interaction.

As in previous reporting periods, cases arose during this reporting period that continue to speak to the need for a specific policy for off-duty conduct. The language “I . . . will behave in a manner which brings credit to myself and my agency” is found in the Department's Law Enforcement Code of Ethics, at the front of the Policy and Procedure Manual. The Standards & Duties Section says, “Being an employee of the Seattle Police Department and, in particular, a sworn officer places all of us in a position of trust and high esteem in the eyes of the public . . . . We must be ever mindful that concurrent with this (police) authority comes additional responsibility and that our actions are subjected to review and oversight through a variety of systems not imposed on others.” A “conduct unbecoming” policy, as previously existed in Departmental policy, would more clearly articulate the expectation that officers’ words and actions, whether officers are on or off-duty, should not reflect poorly on the Department and undermine public trust.

Some of the other policy issues that arose from cases during this reporting period:

- OPA lacks the authority to compel testimony from witnesses other than employees or compel the production of key evidence such as texts on private cell phones or videos from private businesses or bank records.
- The Department's retaliation policy needs to encompass retaliation for actions beyond the filing of an OPA complaint.
- Officers should be required to input their vehicle number when logging in so the GPS system is activated and it can more readily be determined whether they were at a particular call, whether there was a delay in responding to a call and so forth.
- The policy on court appearances needs to be updated to reflect that there is no longer a witness coordinator position, and to address civil matters as well as criminal (officers should have to receive approval before appearing in court in an official capacity for any legal proceeding, not just for those matters where they were subpoenaed.)
- Consideration should be given to a regulation that officers turn off car radios (i.e., radio stations, not SPD radio) when the ICV is activated for purposes of citizen interaction and transport of subjects who have been arrested. Based on cases reviewed, there are two reasons for this: 1) it interferes with the ability to hear what is being said, which in some instances allows an officer to say he or she *did* turn on the ICV, even when the audio is then not useful; and 2) it can diminish the professionalism of the officer when he or she is transporting a subject.

### **Complaint Review**

The OPA Director and OPA Auditor, both civilians, review all cases at the intake stage to determine whether the complaint should be investigated, handled by a supervisor, can be resolved without referral or might instead be successfully mediated. In the period covered by this report, the OPA Director and I reviewed 300 new complaints alleging misconduct (this compares to 268 in the previous reporting period). We agreed with the initial classifications recommended by OPA staff for all but 18. For those we reclassified, 2 were from Preliminary Investigation Report (PIR) to Supervisory Referral (SR) and 4 SR to Investigation Section (IS) in December before the classification system was changed. From January through May, we reclassified 8 Supervisor Action (SA) to IS (Investigation); 2 IS to SA; 1 contact log (information only) to SA and one SA to contact log. The final classification results were 94 classified for Investigation, 172 classified for Supervisory Action and, in December, 18 as PIR and 16 as SR. 31 cases were recommended for mediation, 9 of which were related to Occupy Seattle protests. I also reviewed 465 inquiries that had been entered by staff into the OPA “contact log” from November through June. These

are contacts and inquiries that may require information or assistance with general Department or other referrals, but do not involve possible misconduct or supervisory attention. Each month the Director and I review these to make sure none warrant further attention and all inquiries are handled appropriately.

In reviewing the initial complaints to determine how they should be classified for follow-up, we also added 21 allegations. These added allegations included biased policing, failure by an officer to identify his or her name, discretion, professionalism, profanity, failure to report use of force, use of force, consuming alcohol, courtesy and failure to use In-Car Video.

I reviewed the quarterly reports of alleged misconduct being prosecuted criminally or considered for prosecution (e.g., DUIs or domestic violence allegations). I also reviewed 103 completed SAs from March through May (the new system started in January, so the first group of SAs were due 60 days later, in March). An example of an SA involved a person going to a game at Safeco field, who due to disability, was walking with a cane. A motorcycle officer told him he had to use the stairs instead of the ramp he had used on previous occasions. He was unable to get the officer to understand why use of the stairs would be painful and difficult. After the game, the complainant went on line, found the OPA website and filed a complaint. He stated he was not looking for anything other than for officers assigned to ballgames to be more sensitive to the fact that not everyone can use the stairs. While he was not able to identify the officer, through the SA process the traffic section supervisor was asked to contact the complainant, let him know that a roll call training would occur on the topic so all officers who work at Safeco would be better informed in the future. Other SAs often involved situations where officers were not as thorough as they should have been in following up or writing a report, were perceived as rude or otherwise less than professional.

### **Investigation Review**

In Seattle's system of police accountability, the Auditor also reviews every investigation before it is closed to make sure OPA investigators have been impartial, thorough and fair, all relevant evidence has been gathered and all questions that should have been asked were asked. It is not the Auditor's role to be an advocate for either the named employee or the complainant, but to ensure that all misconduct complaints are addressed with integrity and objectivity and best investigatory practices are used.

During this reporting period I reviewed 102 investigations (as compared to 99 during the last reporting period). The overwhelming number of intakes and investigations during this period were of excellent quality and were thorough. OPA is to be commended for continuing to incorporate Auditor recommendations that further improve the usually high quality of the intake and investigations.

An area still needing continued improvement is the timeliness of case review by the Lieutenant after the initial investigation has been turned in by the investigator and the timeliness of issuance of recommended findings. Rather than measure success against the contractually mandated 180-day timeline, timeliness should be thought of in terms of responsiveness to the complainant, the officers and others involved. Another recommendation I made during this reporting period for those doing intake in particular, was whenever intake is done over the phone, interviewers always need to ask whether the complainant is alone or whether a possible witness is there with the complainant and can overhear the complainant's description of events. It is important that the complainant and witnesses are not together during the initial intake interview (in addition to being interviewed separately during the investigation). I have also suggested that investigators always close an interview by asking the complainant or witness whether there



is there anything else the investigator should have asked, anyone else the investigator should interview, and whether there is any other evidence that might be useful. This is a good technique for allowing the person being interviewed to offer information that might not have been mentioned in responding to questions, and can be particularly helpful at initial intake. Intake sergeants should also always inquire whether there is any relationship between a witness and the complainant or officer and whether the person being interviewed has spoken to anyone else about the incident. I also asked that mediation not be routinely offered at intake for certain types of allegations where we would not permit its use even if requested by the complainant (e.g., misuse of authority, criminal law violation, dishonesty). The offer of mediation is well intentioned to encourage mediation, but is sometimes not appropriate.

To help with timeliness, where the officer is out on extended illness/injury leave, rather than extending the timeline due to the officer's unavailability as is the normal practice, I asked OPA to determine if it might be prudent to interview the officer at home rather than delay the case a month or more. With regard to investigative plans, to address the challenges sometimes presented by the way in which SPD policies are written, the investigative plan should specifically take into account the challenges presented with proving a violation of the particular policy cited, along with critical evidence, key facts, variables and time-sensitive elements.

I would also recommend that in considering to how to best address issues in performance across the Department, OPA be given more flexibility for investigators and supervisors to assess, articulate and share what else is learned through their reviews that may not be encompassed in a specific allegation or finding. The OPA Auditor and Director each issue reports and make policy and practice recommendations through the complaint certification process, but OPA could play a more robust role in this regard.

Below are investigations for which I either directed additional investigation or raised issues for improving future investigations, or where I disagreed with the findings, or that highlighted a need for clearer policy or a constraint based on the Guild contract.

#### Quality of the Investigation

There were several issues in a case where the allegation was that two officers working secondary employment, in uniform, for a non-profit housing provider, were alleged to have been seen kissing in a parking garage. Because of a possible conflict of interest between an OPA employee and one of the named officers, this case was handled in an unusual manner (by an investigator outside of OPA), which meant that the usual checks and balances weren't followed, impacting both the quality and the timeliness of the investigation. After reviewing the preliminary investigation, I asked why two civilian witnesses had not been interviewed and whether sufficient attempts had been made to seek their participation. They had refused to participate, which should have been clearly articulated in the case file. (As mentioned above, OPA lacks the authority to compel non-employee testimony.) Additionally, an officer who had been present when the complainant initially reported the officers' behavior was not interviewed. During the interviews, another officer stated that the named officer had made what appeared to be a statement of admission to him. The named officer had not been asked about this in his interview and I asked that he be re-interviewed to address it and other points. I also asked whether relevant records had been obtained that could corroborate testimony that the named officers were on site at the time the incident had allegedly occurred and whether an effort had been made to see if any relevant video from the garage was available (and if not, given the passage of time, the record needed to reflect that). Additionally, because of the wall set up during the investigation to address a possible conflict of interest, the investigative plan was not

reviewed prior to commencing the investigation and the assigned investigator cited the wrong policy sections. Even if the conduct had been determined to have occurred as alleged, the conduct would not have been a violation of the incorrect policy cited. Because of the lack of corroborating evidence, the ultimate finding was inconclusive, so the error was not material.

An investigation conducted by the precinct line of command<sup>6</sup> was not timely in a case involving two officers who allegedly used derogatory language. They were inside their vehicle and their conversation was captured by the In-Car Video system. A second allegation was for Discourtesy. I also felt that the Proposed Disposition Memo was not of the usual quality and agreed with the OPA Director that a Training Referral finding was appropriate for each allegation.

SPD Policy 5.001.VII.A.2.a. provides, "Employees shall strive to be professional and courteous at all times, whether in person or through other means of communication." Though the employees did not direct their comments to the complainant or others or intend for them to be heard, they were in a public vehicle where their words were captured by In-Car Video and, thus, covered by the policy. Also, the complainant, who had been hit by a car and had sought the In-Car Video for possible use in litigation, commented that he received a citation for jaywalking that was placed on him, along with an SPD business card, as he lay unconscious in the ambulance after the accident. I questioned whether this was the most appropriate way to convey the citation, or whether it could have been mailed or otherwise delivered to the complainant and asked that this be discussed with the officers as well.

I was concerned about the thoroughness of the investigation in a case where a traffic officer who was assigned a traffic control post after a Seahawks game at CenturyLink Field had physical contact with the subject. The subject was trying to cross the street and in a hurry to catch his ferry when he disregarded the officer's order not to enter the street. The subject pushed past the officer's outstretched arms ignoring his commands to stop. When the officer tried to stop the complainant from behind they both ended up falling to the pavement. I felt that the investigative plan should have included interviewing the witnesses at the beginning, since a key aspect of the use of force was whether the officer volitionally 'took the subject to the ground', as the other officer stated had occurred, and which conflicted with the UOF report. That inconsistency was not noted by reviewers in the chain of command, nor did the sergeant on the scene interview witnesses. I also disagreed with a finding of Lawful & Proper (at that time called 'Exonerated') on the allegation of Unnecessary Use of Force.

In a case where the complainant was involved in a disturbance with night club security personnel who were ejecting him from the club for unruly behavior, he alleged that he had been injured by an SPD officer. It appeared from the evidence gathered at intake that the Seattle Fire Department arrived first and that the complainant was already injured and in handcuffs when the officers arrived. It was very likely from the outset that whatever force may have been applied had been applied by night club security personnel prior to the arrival of the responding officers. The investigator should have interviewed the SFD personnel and nightclub personnel to confirm this at the beginning of the investigation, which would have expedited the investigation and provided even greater certainty. None were interviewed and the investigation took several months to conclude. I did not direct further investigation at that point since the preponderance standard had been otherwise met.

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<sup>6</sup> Due to ongoing problems with timeliness and quality, we discontinued the practice of 'line investigations' as of January, 2012.

In a case where Use of Force and Failure to Report Use of Force was alleged against the arresting officer, the complainant stated he complained that his thumb was injured to the officer who transported him. Based on the evidence gathered, it was not clear exactly what the complainant said to the officer about his thumb allegedly having been injured. While the complainant clearly complained about his handcuffs causing pain, handcuffing with minimal or no resistance is not reportable force under current policy. Because there was no allegation against this particular officer regarding Failure to Report Force, the investigator did not clarify in his interview what the officer understood about the complainant's reference to his thumb hurting. I requested that the supervisor review reporting requirements with the officer rather than direct additional investigation on that point since a new allegation could not have been pursued for that officer within the contractually required timelines.

In a case where officers were dispatched to investigate possible domestic violence at a business, the complainant was the alleged perpetrator against his girlfriend, an employee at that business. She had phoned a co-worker to report that the complainant was en route to her place of employment and that she feared he was going to assault her. The complainant (the alleged DV perpetrator) alleged that while at the scene the named officers choked him, threw him to the ground, and kicked him, causing injury. I was concerned that the intake with the complainant had occurred over the phone while his girlfriend (who was apparently fearful of him based on the 911 call) was with him. That tainted her interview. I felt they each should have been interviewed in-person, separately and the complainant photographed to provide evidence of any injuries (with permission). I also expressed concern that it was the girlfriend who was asked whether there might be video or other witnesses, rather than a third party such as the store manager. The investigative plan should have been reviewed by the Lieutenant at the start of the investigation and these issues addressed.

An officer's behavior was less than professional in a case where the allegations were Use of Force and Profanity. I felt we erred by not recognizing before the 30-day deadline imposed by the Collective Bargaining Agreement that there should also have been allegations for lack of professionalism and Miranda, based on the initial review during the intake. I also raised the issue that the sergeant should have been named for not doing a thorough screening of the officer's actions, but the deadline had passed for that prior to my review of the investigation. (This was an example of where earlier review soon after conclusion of interviews would have made a difference, had it been forwarded in a more timely manner). In my view, the investigation should have noted inconsistencies among the complainant's statement, witness statements and the officer's General Offense Report and Use of Force Statement as to whether the complainant was taken to the ground; and there was a question as to whether the complainant had been pushed on the car in such a way as to split his lip. The officer did not submit photos taken at the scene. Witnesses had not been listed in the officer's reports and the screening sergeant didn't interview any or do a particular rigorous review. Nor did it appear from the record that others in the chain of command who reviewed the case noticed these issues or reviewed the ICV. At one point when the complainant was heard to say "you split my lip", the officer's response was "you bet", then telling him to shut up, that he should have obeyed the officer's instructions. Further indicative of lack of professionalism was that the officer turned up the music in the car during transport, was clearly frustrated and refused to answer any questions from the complainant. Then, while giving the Miranda warning, the officer did not speak up despite the complainant indicating he couldn't hear the officer.

In a case where the officer had been dispatched to investigate someone waving a screwdriver around in public and threatening to kill people, and whom the officer arrested for pepper spraying a passerby on the

street, there was an allegation that the officer failed to properly safeguard property that the complainant kept in a plastic bucket with him at the time. While the items in the bucket apparently had no monetary value, the complainant could be heard on the In-Car Video asking the transporting officer several times if his bucket and items were being taken care of and the officer assured him that they were. The In-Car Video showed that the bucket had been left on the ground and was not in fact taken by the transporting officer, so I asked that the investigator determine if the other officer had it in fact put it in safe-keeping so that the complainant could get it back, which was why the complainant had filed the initial complaint.

A reserve police officer with the Department for over 40 years was the named employee in a case involving an interaction while he was volunteering at a local church. While he occasionally worked as a security guard/parking lot attendant at the church, he was not employed at the time of the event at issue, either on-duty or in that capacity; he was in civilian clothes attending a social event at the church. An anonymous complainant contacted OPA to allege the reserve officer unnecessarily engaged in a pushing match with another person at the church and that the reserve officer demonstrated a lack of discretion and poor judgment when interacting with the other person. In this case I had raised the issue that there were some inconsistencies in the interviews that the investigator did not pursue as to whether the officer was at any point during the interaction identifying himself as acting in his official capacity. There was also an issue as to who authorized his secondary employment at the church given his reserve officer status.

#### Findings & Classifications

Unnecessary Use of Force and Dishonesty were alleged in a case where an officer was dispatched to a call involving a reportedly suicidal person reported who was inside a closed parking garage. Seattle Fire Department personnel were tending to the unconscious subject who was seated on the driver's side of his car. As the paramedic unit tried to wake the subject he became aggressive and hostile, exited the vehicle, and approached the officer. There was conflicting witness testimony as to what occurred next. Firefighter witnesses and the officer stated that the officer gave the subject multiple warnings to stay back and "stiff-armed" the subject twice, before hitting him with the bevel of his Taser. The primary issue in dispute was whether the subject first struck the officer and he responded by punching the subject, as the officer reported, or whether the officer struck the subject first and, thus, was dishonest in his written report and interview.

There was an initial recommendation by the OPA Captain for findings of Lawful and Proper on the allegation of Unnecessary Force and Sustained on the Dishonesty. The ultimate findings by the Chief were Inconclusive on both allegations. Regarding the allegation of Dishonesty, the Collective Bargaining Agreement sets forth a required standard of clear and convincing (rather than the normal preponderance standard) because a Sustained Dishonesty violation results in termination. Given the conflicting testimony, it was reasonable to conclude that that standard was not met. Regarding the Use of Force allegation, I would have had a finding of Sustained, as I thought the force might have been avoided all together if the officer had not engaged physically at that point given the mental health of the subject and instead attempted to verbally diffuse the situation until the second officer arrived. Compounding the problem was that there was some evidence that the second officer was in violation of policy for his lack of timeliness in responding to the call, and I felt he should have been added as a named officer in this investigation to be able to address the totality of the incident in the same investigation. That issue is now the subject of an additional investigation. The Chief's determination was based on additional information gathered through the discipline process about the employee's work history; as well as the fact that the

subject reportedly suffered from Intermittent Explosive Disorder, which involves inability to deal with frustration without violent outbursts; the testimony of witnesses that the subject was agitated and acting aggressively; and the testimony of the firefighters that they believed the officer was acting to protect them from a hostile subject and several noted they were grateful for his actions.

An example of a case where, as discussed in the policy recommendations above, I felt the UOF review should include an assessment of the totality of the interaction, involved an officer working a patrol assignment at the Bumbershoot Festival on the Seattle Center grounds. He observed the complainant standing in a pathway passing around a cigarette while in the company of a group of about six young people of similar age (16-17 years old). The officer, thinking the complainant was underage to be smoking, walked up to the complainant from behind, identified himself as a police officer, and asked the complainant his age. The complainant, after turning toward the officer and turning back away from him, began to pull away. The complainant alleged that the officer then tackled him to the ground, causing a 7-stitch cut on his right forehead. The officer stated that the combination of having his hand resting on the complainant's shoulder when he began to pull away and the officer being caught off-balance caused the officer to instinctively grasp the complainant's shoulder, with the movement of the complainant and the falling of the officer causing both to fall to the ground with the officer on top of the complainant. The complainant's head hit the sidewalk, causing the injury. The officer promptly summoned medical aid for the complainant and a supervisor to respond to the scene.

The Use of Force allegation revolved around the question of whether the officer intended to tackle the complainant, or accidentally tripped and fell as he made contact. I disagreed with the analysis and findings in the investigation and felt the complaint should have been Sustained. I was concerned about the judgment of the officer in this situation that ultimately resulted in the complainant being handcuffed while on the ground, two officers on top of him, and serious injury. In my view, the explanation that he had been handcuffed for "officer safety and his own safety" was inconsistent with the testimony that the officer had accidentally fallen. Either it was an accident in which case the officers using any force at that point and the handcuffing were not appropriate or it was an intentional take-down once the youth turned and appeared ready to flee. (The investigation determined the youth was on probation and was concerned this violation would have caused his probation to be revoked.) I was also troubled that the screening of the arrest and use of force reporting and review were insufficient.

In a case with allegations of Improper Search, Failure to Identify and Unnecessary Use of Force, I would have made a finding of Inconclusive on Use of Force because of conflicting testimony between the complainant and her housemate and the witness officers. One of the officers pushed the complainant back away from the door in order to enter, which the complainant described as being forcefully pushed against a wall. The OPA Director felt that the correct finding was Unfounded, based on the preponderance of the evidence standard (because the testimony from the four named officers and the sergeant who screened the incident was consistent that the force used was minimal, and necessary and reasonable under the circumstances) and the fact that under current SPD policy, even if the force was as the complainant described it, she did not report an injury and the Sergeant did not observe any injury and therefore the standard for reportable force was not met. The facts of the case also provide another example of where a different Use of Force reporting threshold might better comport with community expectations.

Similarly, I would have made a finding of Inconclusive rather than Lawful & Proper on the allegation of Unnecessary Use of Force and Unfounded on the issue of Failure to Properly Investigate in another case

because there was no useful In-Car Video showing the use of force and there was conflicting testimony between the officer and the complainant and his father about the level of force used, despite the credibility issues of the complainant and his father and the complainant's aggressive and combative behavior. The OPA Director disagreed, arguing that a credibility determination can and should be made where there are inconsistencies between complainant and his father's account and between their accounts and ICV that was available from a witness officer concerning another issue, where the use of force was well documented and screened, and the officers' accounts were consistent. She also took into account that the complainant did not contact OPA until approximately 18 months after the incident, claiming he didn't know his options, which I did not believe was relevant to the complainant's credibility.

I was also concerned in this case that the reports by the officer described that the complainant had been "touched". The complainant had been handcuffed when taken to the car and allegedly pushed away from the car during the search in such a way that he was taken to the ground for a second time (while handcuffed). It was a multiple officer use of force with a possibly intoxicated subject and the screening sergeant as well as the Use of Force reviewers should have required a thorough, accurate reporting.

A thorough and detailed investigation was done in a case where an off-duty officer was involved in an altercation outside of a nightclub. The off-duty officer initiated contact with a woman he believed had stolen his and his friend's coats, took back the coats, and then called 911 requesting officers respond to investigate an alleged theft. Prior to officers arriving, he asserted that he was on-duty by displaying his badge and verbally identifying himself to woman as a Seattle Police officer (he was not wearing a police uniform at the time and was outside his regular work shift hours but this action created a nexus between his off-duty conduct and his employment as an officer). He followed her as she walked away, not believing he was an officer. Their heated verbal exchange over ownership of the coats attracted the attention of other people in the area, some of whom then intervened on the woman's behalf. This resulted in a physical altercation between the officer and his friend and several others. Patrol officers responded to the 911 call and, as they were investigating, handcuffed several individuals involved in the fight. The off-duty officer walked over to one of the handcuffed individuals lying on the ground and his right foot made contact with that individual's head, which appeared on an in-car video recording to cause a downward movement of the person's head.

The "contact" to the head was prosecuted as an Assault and the officer found not guilty, at which point OPA administratively investigated four allegations of misconduct against the officer. Criminal Violation of Law (Assault) and Unnecessary Use of Force addressed the conduct of the officer contacting the head or other portion of the body of the handcuffed individual with whom he had just been fighting, who was lying face down on the ground. The evidence demonstrated that the officer was unjustified in using his foot to contact the head or other portion of the body of a handcuffed person who posed no imminent threat to him or others, particularly given the presence of several uniformed patrol officers in close proximity. The force used was neither necessary nor reasonable. I concurred with the Sustained finding on Unnecessary Use of Force.

The third allegation centered on whether the officer showed a lack of professionalism in his exercise of discretion. In my view, the evidence demonstrated that he exercised poor discretion in the manner that he chose to confront the woman outside the night club, including his initial accusation that she stole the coats, and the way in which he then interacted verbally and followed her with the intent of having her arrested even though he had the coats back and the circumstances indicated it had been a mistake on her

part. When asked during his interviews with the OPA-IS investigator about why he did not simply walk away from the woman after getting the two coats back, the officer stated he thought to himself, "I'm a police officer. Why is she taking my coat?" and stated that the woman was very disrespectful and hostile toward him, disrespecting him, the Seattle Police badge, and the Seattle Police Department. The finding on this allegation was Training Referral. I would have Sustained the allegation.

The final allegation concerned whether the officer violated the Department's policy addressing the use of intoxicants while on-duty, including having the odor of alcohol on one's breath while displaying any part of the SPD uniform, including the badge. While some witnesses stated the officer's conduct and speech led them to believe that he was under the influence of intoxicants, he denies that he was and stated that he consumed less than one serving of beer while inside the night club with his friend and had not consumed any other alcohol in the hours prior. His friend's statement corroborated the officer's. Therefore a finding of Inconclusive was appropriate.

The OPA Director expressed concern that racial or ethnic animus or bias may have played a part in the incident, based on comments one of the woman's friends made in the car while being transported and disbelief by the woman and her friends that the named officer was actually an officer. While I appreciated the role that race may have played, I felt the evidence indicated that the conduct of the officer escalated the situation and that at the time he confronted the woman and when he had "contact" with the handcuffed person on the ground, he knew nothing about a comment made in a patrol car. There was also some question as to whether in fact the friend who used the word "spook" in the patrol car while being transported after his arrest intended it as a racial slur or as a descriptor of an undercover police officer, because the named officer was not in uniform, flashed what appeared to be some kind of badge, and was perceived by the others involved as behaving in a manner not immediately recognizable as what might be expected of a police officer.

In a case involving a search of a home, there were two officers at the scene. With regard to the second officer, there was a recommendation by OPA for a finding of Sustained on the allegation of Improper Search. Following a discipline meeting, the Deputy Chief instead recommended a Training Referral. The Chief initially decided that the Improper Search allegation should be Sustained. Following a grievance filed by the officer, the Chief reconsidered and determined there should be a Training Referral instead.

The Director and I agreed that the officer's entry into the complainant's home was not justified and we both would have Sustained this allegation. The officers had responded to a neighbor's concern about an open window with what appeared to be a wooden pallet beneath it, and blinds askew. As the officers approached the house, the complainant was seen sleeping in a front room. He awoke and opened the front door. The officers explained why they were contacting the complainant and asked for his ID. He indicated he wanted to change out of his pajamas, and that he would get his ID, and tried to close the door. The officer then pushed through the entry and into the house. Soon thereafter, another tenant came in and explained why the bedroom window had been open. With that explanation, the officers left, without further requests for ID or checking the bedroom.

The officer's rationale for entry focused on officer safety concerns; he felt that he and the other officer were vulnerable standing in the front door area. He did not articulate with any specificity that safety concern. I didn't feel that there was any evidence presented which indicated that an emergency existed requiring a warrantless search. Because of the disagreement between the Chief and OPA Director with regard to the Improper Search finding, the Chief is required by City ordinance to provide a written

explanation to the Mayor and City Council of his reasons. This requirement stemmed from a recommendation from a citizen's panel several years ago addressing concerns with the Chief at that time overturning recommendations made by the OPA Director. This case is the first time during this Chief's tenure this has occurred.

Search and Seizure/Social Contacts/Non-Custodial Interviews/Terry Stops were at issue again this period in several cases, suggesting the need for continued training for both officers and for sergeants who screen their arrests. One case also reflected the importance of civilian review of classifications. The case was originally recommended for classification as a Supervisory Referral; I requested it be classified as an Investigation. The allegations included Professionalism/Courtesy; Improper Search; and failure to use In-Car Video. The named officer was a back-up to the primary officer who was on the sidewalk talking with the victim of a commercial burglary. The named officer, while sitting in his patrol car across the street from the primary officer and victim, observing the area, noticed the complainant walking along the sidewalk approaching, from behind, the primary officer and the victim. The named officer stated that because the person approaching was wearing a vest and hat adorned with many pro-gun/NRA patches, he stopped him and temporarily detained him by escorting him to his patrol car, taking a handgun from his possession, and returning it to him disassembled, after he and the primary officer had completed the call for service. The investigation resulted in a finding that additional training on search and seizure law was warranted and highlighted another area where it was not clear to the officers involved that Department policy would have required use of video under these circumstances.

A second case that I requested be reclassified for investigation resulted in a Sustained finding. In this incident there was a failure to take appropriate action when a female called 911 for help, relaying that her boyfriend had called from a car saying an armed robber had jumped into his car. The dispatch personnel told the woman that her boyfriend would have to call directly and she did not immediately receive assistance as she should have.

A third case that I recommended be reclassified for investigation involved an officer who decided to assist firefighters with a subject laying on his back on the sidewalk who suddenly started resisting medical treatment. He did not file a complaint but the jail nurse did, based on the way the officer acted when she declined to book the subject. Her role was to medically screen individuals before booking; she rejected this individual because of his extremely low blood pressure. The officer then allegedly began berating and shouting at her and her fellow nurses. Eventually a jail sergeant who was her supervisor asked the officer to stop his harangue against jail personnel, in particular the screening nurse. The officer eventually left the pre-book area and once in the sally port shouted loudly, apparently in frustration. The allegation of Professionalism/Courtesy was Sustained, with which I agreed. The Director and I disagreed, however, about the officer's actions initially at the scene. I recommended adding a Use of Force allegation because he had used a Taser and I felt in reviewing the In-Car Video that it might have been handled differently. Her perspective was that the complaint was centered on the officer's actions at booking and that the underlying incident involving force had already been reviewed by the Use of Force Review Board.

#### Policy & Training Issues

The inability to compel production of records not within the control of the employee or the City arose in two cases during this period. In one, a determination could not be made regarding an allegation of Misuse of Authority where an officer was accused of asking his estranged wife's phone company to reactivate a



shared cell phone account, allegedly saying he needed it as an officer. In the other, though the investigator reviewed a relevant hotel video, the hotel refused to provide a copy of the video without a warrant.

An example of needing to ensure that General Offense Reports (GORs) are sufficiently detailed even when the officer does not believe the physical interaction constituted reportable force (as recommended in the policy section above) involved a case where there was little evidence that reportable force was used or that there was a complaint of injury that would clearly require reporting. But, the GOR stated that the complainant "was angered because she felt she'd been pushed to the ground." The inference was that she believed the officer pushed her, but there was no other documentation and no follow-up was done by the screening sergeant at the time. The officer felt she had fallen on her own. The In-Car Video was not dispositive. Even if the officer was not responsible for the complainant's fall and she did not appear injured or complain of injury, it would have been preferable for the officer to provide more information in the GOR detailing the incident, have the screening sergeant interview the complainant and witnesses, take photographs as appropriate, and conduct any other follow-up. Without this information, OPA could not resolve the allegation of Unnecessary Use of Force later made by the complainant. In this instance it was recommended that the Precinct Captain or Operations Lieutenant review best practices for such situations with both the named officer and his sergeant.

In another case, the attempted use of the arm control technique taught in training and the complainant's hyper-extended thumb were not noted in either a King County Incident Report or the SPD Computer Aided Dispatch (CAD) Event summary. As mentioned in the policy section above, where the incident ultimately is investigated and handled by King County, but force allegedly was used by an SPD officer, the policy should be crystal clear that the officer has an obligation to create an incident report and a UOF report and the sergeant should assess the incident even though s/he may not be officially screening the arrest since it is being effected by another agency. If there is any question as to whether the force constitutes reportable force under SPD policy, a detailed incident report should document what occurred.

There were several cases during this reporting period stemming from the Occupy Seattle protests. OPA recommended mediation so that several could be handled collectively and directly with those commanders on the scene, with the goal of gaining insights into any needed improvements for how to best handle demonstration management. For those cases, as well as those that were investigated, the information gathered enhanced the after-action analysis conducted by the Department and will be incorporated into the Department's "20/20 Plan's" section on demonstration management reform.

I concurred in the recommended finding of Training Referral for a case where an allegation was Failure to Take Appropriate Action (investigating a possible DUI). Though the named officer had discretion about whether to arrest the victim of an assault/robbery for DUI, the OPA Director and I both concluded that there was more that could have been done to investigate the DUI at the scene and the named officer might not have understood she had the option to arrest under the circumstances. I also suggested that other officers at the same Precinct might benefit from roll call training on this point since the witness officers were not clear in their authority in this situation either.

In a case involving Domestic Violence (DV), I had raised the issue of delay in 911 response time which emerged from the evidence but was not relevant to the allegations per se. For reasons that were not clear, it took two hours and dispatch did not make it a priority 1 call even though it was DV, nor give the caller any status call-back. As well, a civil standby with the husband was underway from a separate 911 call. This is an example of where OPA can also play a role in best practices separate and apart from addressing

allegations against a particular officer. Here no one involved in the investigation or in the officer's line of command was in a position to assess the 911 issue but follow-up by the OPA Director with Dispatch to see if the call was handled as it should have been helped determine whether that aspect should be further pursued, and whether additional training or other action is appropriate.

The need to address various secondary employment policies was highlighted again in a case where the allegation was that a Crime Prevention Coordinator for the Department was alleged to have co-mingled his private business interests with his SPD employment by recommending a contractor when the complainant mentioned she needed some work done while the employee was at her home conducting department business and operating a private security company in violation of department policy prohibiting such secondary employment. The Department's secondary employment policy on point is vague and confusing, which makes compliance difficult. The facts of this case suggested that the employee had not attempted to conceal his activities but had conducted his business for some years with informal or formal approval of Department supervisors and thus the Department needs to address the issue as part of its comprehensive look at secondary employment issues.

Similarly, in another case the evidence suggested that an SPD officer donated old SPD equipment to, and had been working at, the Seattle Police Museum, while being paid by SPD. This apparently was with the longstanding approval of superiors in the Department, in contravention of City policy which requires express budgetary authority from the City Council to provide financial support to a non-profit. The recommendation was for SPD to review the past and existing practice with City ethics staff and seek any needed authorization from the City Council if appropriate.

The lack of a written policy or procedure to guide officers in recognizing and responding to boat engine problems was the crux of a case where a Police Department boat engine was significantly damaged when officers did not shut it down quickly enough after a problem arose. The Harbor Patrol Unit was asked to address this in written procedures.

### **Other Auditor Activities**

In addition to the work discussed above, during this reporting period I met with the Department of Justice to discuss recommendations, observed an Occupy Seattle mediation, attended an ACLU forum on policing practices, attended a Minority Executive Directors Coalition Multiracial Task Force on Police Accountability retreat, and various OPA Review Board meetings. I was also briefed on the Professional Standards Unit's priority projects.

I observed a new training focused on multi-officer use of force, with improved emphasis on communication, clarity of direction by a lead officer and roles of other officers, use of alternatives to force, how to protect subjects from injury with cushioning techniques and different approaches getting at an arm that is underneath the subject's body when the officer cannot tell if the subject has a weapon. As part of the training, I participated in an exercise involving being handcuffed and taken down so that I would have a better understanding of what the physical interaction actually feels like when done correctly.

Lastly, at the request of the training section, I observed a new training on verbal communication skills and techniques using several communication models, along with foundational principles for ensuring better communication. I provided feedback to the training personnel as to which aspects of the training I felt best addressed the skills I had identified in previous reports that would be helpful for officers.