

**Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For January - September, 2004**

INTRODUCTION

The Office of Professional Responsibility has continued to issue monthly reports that reflect up to date statistics on cases handled and outcomes, the latest one for September 2004.

The Review Board [OPARB] issued its fourth report on April 30, 2004.

My 2003 Report, issued April 2004, covers the structure of oversight and operations under that structure. This report should be read in conjunction with my April Report, which is available through the website:
www.Seattle.gov/police/opa

This Report will focus on my activities as Auditor from January through the end of September 2004, as well as some of the issues that continue to bear on the functions of the OPA, the Auditor, and the Review Board. By Ordinance, this report is due to be distributed by the Chief of Police by October 30, 2004 to the Mayor, City Council, OPA Review Board and the City Clerk.

I have met with the Chief of Police, frequently with the civilian Director of the OPA and Captain and staff of the OPA IS. I have discussed some issues with members of the public and attended one public forum. I have met with Council-member Licata and the Public Safety Subcommittee of the Council and with the Review Board, as we continue to coordinate our related but distinct roles in civilian oversight.

Councilman Nick Licata gave me the opportunity to join him and the OPARB, along with the OPA Director and the OPA IS Lieutenant, at the annual conference of the National Association for Oversight of Law Enforcement. It was extremely informative about the various structures for civilian input in law enforcement departments across the country. There was a particularly impressive presentation about the pioneering work of the LA Sheriff's Office to involve the civilian oversight group with the Department's risk assessment and their early diagnosis of potential civil claims. It has

resulted in dramatically reduced claims against the County, and bears investigation by Seattle. All in all the conference was very worthwhile.

The majority of my time continues to be spent in twice-weekly review of files and interfacing with the OPA Director and OPA IS Captain and Lieutenant about classification and the investigation of complaints.

I continue to see my role as a "check" on the OPA process (per Peter Harris May 5 2003 memo to the Council) - serving to assure integrity of the investigations through contemporaneous review of un-redacted files, advice on classification and suggestions for further investigation.

In the first nine months of this, year, I have reviewed 129 completed internal investigations, some dating from 2003. I have reviewed at least 15 line investigations on their referral out, to be able to comment on classification. I have reviewed seven completed line investigations, some dating from 2003. **I am still holding a backlog of 27 case files referred for Line Investigation but not yet completed, some incidents dating from a year ago.** I reviewed 38 Supervisory Referrals. [SR's] In the second two quarters, I reviewed 133 Preliminary Investigation Reports. [PIR's] In the first quarter, I did not keep track of the number. If I take the average of the other two quarters, and add the three together, it would be 194 PIR's for the nine-month period, which is probably fairly accurate and corresponds roughly to the OPA cumulative numbers in the September 2004 report.

My last report covered eight months, so some comparisons of numbers are perhaps justified:

4/30/03-12/31/03 8 months

64 OPA investigations
35 assigned Line Investigations
2 completed Line Investigations
51 Supervisory Referrals
un-counted PIR's and Contacts
861 Commendations

1/1/04-9/30/04 - 9 months

129 OPA investigations
15 assigned Line Investigations
7 completed Line Investigations
38 Supervisory Referrals
approximately 195 PIR's
541 Commendations

As these figures make clear, there appears to be a marked increase in completed OPA investigations, though the staff has remained stable.

These numbers are impressive and may go significantly to one of the major problems inhibiting my role as Auditor: the time lag between incident complained about and completed investigation referred for my review.

The reduction in assigned line investigations is in part the result of the OPA IS staff's observation that it is very difficult for a watch commander to continue to supervise an employee in day to day duties and at the same time be responsible for an in-depth investigation of his or her conduct in a past incident. For this reason, the OPA IS staff has often chosen to complete the investigation within the Office, I believe for sound policy reasons. (While SR's always and PIR's sometimes require supervisors to follow-up with the employee and with the complainant, it is immediate and not an ongoing fact-finding role.)

ACTIVITIES IN 2004 THROUGH SEPTEMBER

It is difficult to comply with the letter of the Ordinance governing my duties. It anticipates full review of completed OPA investigations, at intervals of not more than 90 days. In fact, I review these files as completed, picking up copies or reviewing them in the office usually twice a week. There is a presumptive 10-day window for my review, in order to have input before the OPA IS recommendations are forwarded to the field. The Ordinance also anticipates a monthly review of Contact Logs and Complaint records. In practice, this occurs on the same weekly schedule and entails a review of all the PIR's and SR's, which encompass virtually all the complaints. The log is now used only where a complaint should be forwarded to another agency.

The review is much more intensive and the communication with the OPA, as the Chiefs designated contact, is frequent and usually by email, thus creating a record for the Review Board and the command and line staff that review completed cases. The comments offered are sometimes about classification, sometimes about further investigation, sometimes about issues of policy and law, sometimes recommendations of a different outcome. Conferences that follow and email exchanges may modify investigations or classifications or outcomes, but no clear tally would reflect the real interchanges, as I hope can be seen from a few examples below. I have not had occasion to appeal beyond this process to the Chief or to the Review Board. Where I have had substantial differences about investigation, it has simply not been practical to go back and re-interview or find another witness, due to the time lag between the incident and the completion of the OPA IS investigation. Again, I stress that this problem is directly related to staffing, and I am sensitive to the budget situation that is resulting in decreased personnel in the

Department as a whole.

Of the 129 completed OPA investigations, I had questions, comments, discussions, or requested further investigation on a total of 44. Of the 15 cases assigned out for line investigations, I had a classification question on one. Of the seven completed line investigations, I requested further investigation in two. Of the 38 SR's, I had comments on 10. Of the approximately 195 PIR's, we had email exchanges about approximately 10.

Without disclosing investigative details, I will give some examples:

Further investigation requested:

The allegation was that the officer used unnecessary force breaking a drug dealer's wrist at the precinct. I requested another attempt to get a medical form the hospital would accept and attempt to locate the other arrestee witness.

In another, OPA agreed to keep a file open pending a soldier's return from abroad.

In another, the OPA Director and I agreed to further investigation of a domestic violence incident in the context of a divorce. Though criminal charges had been declined, it was important to assess whether administrative discipline might be in order. OPA IS explored the evidence presented to the prosecutor and other facts available about the incident.

Domestic Violence cases in general are carefully reviewed and the outcome in a criminal case or protective order hearing is not conclusive on the OPA investigation. In one case I was concerned that the OPA explore further the facts and the Captain satisfied me that the case had been thrown out for insufficient evidence and there was no appropriate basis for administrative discipline either.

A claim that an employee had pursued an unwelcome personal relationship with an adult victim of domestic violence by exploiting his position of trust as a Seattle police officer was thoroughly investigated, including the exploration of his relationship with other women, resulting in a sustained recommendation and finding by the Chief.

I recommended further investigation of an anonymous report of an officer with alcohol on his breath. Though it was difficult to do, given 18 shifts and numerous calls, the Chief ordered further investigation.

I asked that all witness statements be carefully reviewed in one case, as the summary did not seem accurately to reflect the emails and statements in the file. I had some specific questions about the printouts and we discussed the case and I was satisfied. The underlying allegation was that an officer failed to take appropriate action by arresting a heckler and letting assault suspects leave.

The Captain sent a personal letter over the Chief's name at my suggestion to one citizen who claimed an unknown employee was spreading false rumors in the community regarding a homicide suspect. This amounted simply to written verification that the citizen could show neighbors. In other cases as well, OPA personnel added supervisory follow-ups or additional actions at my request. In one case, for instance, a PIR was reclassified to an SR so the supervisor would review the housing authority "knock and talk" procedures where a resident alleged he was being harassed.

In cases where further investigation has been ordered, I receive word of the results. In a few cases the Deputy Director has declined to order further investigation on an economy of resources rationale. On review I have understood his position and not taken the issues further.

Comments on outcomes:

In a number of other cases, I expressed opinions for the benefit of those determining the outcome. This is arguably beyond my purview as Auditor, but the OPA has engaged in good faith consideration of the points I have made.

In one case I commented that the "complainant has exaggerated his injuries, but the question remains whether the officer took him to the ground or not." In that case the witness' statement was unclear on some aspects of the arrest, but clear that the officer at one time placed his knee on the arrestee's head while on the ground. The officer claimed that no force at all was used and the arrestee was on his feet the entire time.

In another case, The OPA Director changed her conclusion from "exonerated" to "not sustained," indicating that the evidence fell short of the preponderance burden of proof. In another she convinced me the evidence

fell short of that burden. Since the incident had occurred over five months earlier, I saw no point in asking for re-interviews or further follow-up.

In a case not resolved as of this date, I opined that the arrest for obstruction did not seem credible and that the complainant, though causing a loud ruckus in objection, seemed to have some reason. The search of the arrestee's car trunk looked to be illegal under the impound justification offered. In this case, the defendant waited five months to file a complaint, presumably until after his court case. Since his letter, another four months had elapsed in OPA IS investigation time. This is typical of a case where further investigation would be fruitless. Mediation about claims of repeated police harassment might be helpful however.

In a recent case, a suspicion of car prowling turned into an arrest for obstruction (for walking away) that was later dismissed. Officers acted on the report of an eyewitness who later appeared, given the OPA IS investigation, to be quite unreliable. The arrestee suffered minor abrasions when taken to the ground and has had a more serious exacerbation of what he describes as his pre-existing "social anxiety disorder." The alleged misconduct was the officers' refusal to hear his side of the story on the street and the response to his friend's complaining call to the precinct. Again, there was a long delay in reporting, apparently due to the arrestee's extended saga in the courts. I did not think further investigation was in order, but recommended serious treatment of the allegations.

One forceful arrest for a minor traffic infraction and then charge for resisting arrest occasioned serious disagreement among me and various members of the OPA IS staff about the appropriate outcome, though I agreed that the investigation had been thorough and fair. In the end the Director recommended a sustained finding on one officer and not the other, as I had, and the Chief decided on "not sustained" for both. The Director facilitated a remedy of sorts for the arrestee, however, by seeking to have his arrest "expunged" from police records (so it would not come up if he were stopped again) and asking the prosecutor to dismiss with prejudice the resisting charge.

Comments on policies or legalities of actions:

Section 3.28.860 of the Seattle Municipal Code also tasks the Auditor to summarize "**issues, problems, and trends noted**" as a result of review of files; and to recommend any appropriate officer training or policy or

procedural changes. I have commented on such issues throughout my tenure. Those detailed below should be added to the **Recurring Issues** section of my April Report.

I wrote OPA to complain about one Line Investigation that took almost a year - to speak to two officers and a complainant. Though the complexity and difficulties encountered vary greatly, it might be good to have some **presumptive dates for completion** of various aspects of an investigation. Thus if employees or complainants asked for three postponements of their interviews, OPA IS could give them a cut-off time, after which the sergeant would complete the file with or without the interview. Similarly, line investigations should be returned in reasonable time. My job as auditor, and certainly the tight time limits for my turnaround of files, make little sense if the event occurred months before I see the investigation.

The issue of how **off-duty work** is assigned and supervised came up in several cases. In one case where officers were acting with/as/in aid of bouncers at a club, it appeared to me their arrival turned a pushing match into a full-fledged melee where the violence escalated and charges against one patron were exaggerated. I recommended that this type of situation should induce more skepticism, better questions and more follow-up on OPA IS's part.

The issue of OPA's role when **management dereliction of duty** is alleged has come up. In one case, an anonymous complaint stated that a supervisor ordered officers into an unsafe situation in a recently burned-out house and yelled at them in public. The OPA IS investigation was thorough and objective. It seems to me that the OPA's role is to provide management with a clear record of the facts, just as they try to do in investigations of incidents involving other employees.

Another case alleged **supervisor misconduct** when a sergeant failed to properly secure a vehicle with potential evidence at the request of the Special Assault Unit investigator. The case was not referred until after five months' attempt to resolve it at the precinct level – through a Performance Management Record forwarded by HR to the sergeant's supervisor. Finally the named employee asked it be forwarded to OPA for "objective investigation." While the OPA investigation was thorough and professional, it could not be timely at that point. I recommend that OPA's role in investigating claims of dereliction of duty by supervisors be clarified.

A case that occasioned a very different policy recommendation involved a

woman who had falsified her application to work, been fired, and returned there, possibly causing some damage. She was arrested at her home and her recount of the arrest was markedly different from other law enforcement officials present. She was taken to the precinct where she alleged coercion and intimidation took place during a long interview by one officer. The officer denied it and said he spent only a half hour interviewing her before she confessed. Holding cell records indicate she was held for two hours, thirty-six minutes, then transported to the jail. While the complainant's letter and complaints to other officials were articulate and quite detailed, she declined to respond to repeated attempts for personal contact. Other witnesses contradicted her allegations about the arrest and the officer's motivations. **Videotaping of interrogations** would have conclusively shown what actually happened when the two were alone in the interview room. This is a major policy change that would be aided by a new exception to the State law on wiretapping or provision of consent forms in police precinct stations. This complainant thought the events were recorded and asked investigators to find the tapes, so it seems she would happily have signed a consent form.

There is a recurring pattern of **arrests of witnesses for obstruction** when the officers feel citizens are too close to a law enforcement situation. Interested witnesses who see something that disturbs them, or a person waiting for a friend to relieve himself in an alley after a game, do not see themselves as threats and cannot understand why officers repeatedly warn them to leave. This is a difficult judgment call for officers sometimes and they don't have the time to assess the actual potential for interference. It seems that some further training in this area might be useful.

An example of a different type of **bystander issue**, was the arrest of a party-goer when police arrived and asked all to leave after noise complaints were made. One guest, who had planned on staying the night, was in the back yard, trying to avoid the police. He was arrested somewhat forcefully for refusing to leave. I agreed with the OPA IS Captain's recommendation that the complaint should be sustained: the force was not serious, but it was unnecessary. A disinterested neighbor's observations were decisive. I suggested some serious follow-up as to other ways the situation should have been handled, in that officers should not be pushing invited, inebriated guests into their cars to drive nowhere (this man explained that the last ferry home had left.)

In one case the disputed appropriate distance for **bystanders** led to quite a confrontation. The real questions involved an officer's attempt to investigate

a situation not amounting to probable cause. How could he legitimately maintain the status quo in a gathering crowd? The officer described his actions in asking a bystander to leave as part of Department policy to ask, tell, then "make them do it." Though there was a great dispute about the force used or legitimate, it was the initial handling of the situation that suggested further **training in de-escalation** would be useful. Again, there was not much point in further investigation, since the incident occurred over five months before I got the report (three months spent in looking for the use of force report, two months in IIS supervisory review.)

In general, officers' tactical decisions sometimes eventually put them in situations where the use of force becomes necessary and justified. Training in earlier, better early tactical decisions is in part what I mean by **de-escalation**.

A number of the files I reviewed cause me to suggest, as I did in my April report, that further **training in de-escalation** might be useful. In one, employees at the bus station became upset and asked the police to arrest a woman for trespassing. The woman claimed she was leaving but wanted a refund of her ticket first. Instead of calming the situation, the officer appeared to escalate the frayed tempers on both sides and ended up making a forceful arrest.

Bystander situations sometimes present issues similar to **crowd situations**. In a labor demonstration, officers made an obstruction arrest when a demonstrator insisted on leading the crowd in a 3-5 minute song before moving the demonstration across the street. This appeared to be a situation much exacerbated by the officer's impatience. The Department's Directive that police should use "physical arrest" as a "last resort" in strikes and labor disputes is well founded. This Directive led to the referral of another case to the Deputy Chief of Administration to review a PIR for response to labor leaders' questions and review of prisoner processing and handcuffing procedures at different precincts.

Complaints growing out of crowd situations require a categorically different kind of review, carefully distinguishing policy from individual violation of policy, as discussed in my April report.

I recommended a **training referral** in one case for witness cooperation persuasion and the limits of lawful coercion. In this case, the officers had handcuffed and arrested an uncooperative person they believed had information about a homicide. She called in to complain about rough

treatment and too tight handcuffs. Thereafter she failed to cooperate with OPA IS, as she had with the officers.

Another troubling area is the handling of complaints when the **officer may be charged with a crime**. The OPA reports these cases to me on a quarterly basis, as required by the Ordinance. I get a spreadsheet that indicates as well the status of the officer - i.e. whether he is administratively reassigned pending the outcome. The specifics of interviews with employees, a result of labor negotiations and Fifth Amendment law, present some problems. For instance, an officer, now resigned, got into a fistfight with his neighbor. Of concern to me was the police response: they were concerned not to ask the officer what happened, as it quickly became evident that he threw the first, and probably the only punch. This meant he might be subject to prosecution and the concern on site was not to "compel" a response that might effectively "immunize" the officer. The civilians in this neighbor dispute saw this as favoritism as they were aggressively questioned and asked for ID. A supervisor should not be afraid to ask an officer what he or she did in the course of duty or to file a use of force report because it will endanger a criminal investigation by "compelling" an answer. What are the rationales for not treating police suspected of crime like citizen suspects, given *Miranda* warnings and the choice to waive their rights? This particular neighbor case was delayed at OPA for five months while the officer was on administrative leave, until someone in the prosecutor's office decided to give him a deferred sentence. It seems to me in a situation like this the administrative case should go forward and the officer should not be "compelled" to give any statement - in other words he or she could choose to talk or not, without any pressure if he or she chooses not to. The case could then go forward, with or without the statement. It concerned me that the Department needed to deal in an expedited fashion with an officer who appeared to be a hothead, and administrative leave at taxpayer expense was not a good solution. I understand this is a complex issue and was interested to hear how other jurisdictions handle it: some "wall off" the administrative from the criminal investigation so all administrative statements and investigation is not shared with those making the prosecutorial decision.

The rules circumscribing interviews of officers come up frequently. One allegation of rudeness and failure to take a call was classified as an SR primarily so the supervisor could ask the officers what happened. (Neither PIR's nor SR's go on employees' records or result in discipline, so officers can be interviewed as a normal part of supervision and follow-up.)

In another case the officer's DUI resulted in a five year deferred sentence. At

my request the OPA asked Human Resources, the employee's supervisor, to follow-up on the treatment plan with the employee, as the BAC was exceptionally high, indicating a serious alcohol problem.

The OPA Director made several concrete suggestions for policy change as a result of one complex investigation involving testimony at a robbery suspect's trial years before: the SPD Manual should address explicitly false reporting or testimony and officers should be required to report circumstances suggesting it. There was a great deal of discussion among OPA staff and myself about how to follow-up on this troubling incident that happened quite a time ago.

Comments on classification

I suggested one SR should be classified down to a PIR. The officer had done a thorough investigation of a minor traffic incident where both parties claimed "road rage" about the other's behavior. I suggested that if more follow-up was necessary, a call or two could have been made by the investigating sergeant. OPA replied that it would be better to have the line supervisor do any follow-up appropriate, and therefore an SR was the better way to ask for that or in effect suggest he mediate between the officer and the complainant.

Cases that might benefit from mediation

In another I suggested the follow-up in a claim of racial profiling would be appropriately handled as an SR. The Captain pointed out that the complainants could not articulate why they felt the investigation of a minor assault was deficient and the decision to arrest was influenced by racial bias. The Captain also pointed out that the arrest decision would be reviewed in court. Because of the sensitivity of the issue, however, the PIR included the unusual request that the officer's supervisor discuss the incident with the officers and the complainants. This is an example of the kind of case that might benefit from face to face mediation, so officers and citizens could better understand each others' points of view.

In another case, an arrestee proprietor of a restaurant claimed undue force in a tussle over locking the doors of the restaurant. The OPA investigation was exemplary, including translators and lengthy difficult interviews. The need for people of color as investigating sergeants and the desirability to visit premises was reflected in the investigation though. The real complaint, I felt, was less about force resulting in a few

bruises, than about claimed police harassment at a restaurant officers said gang members frequented. It appeared that the officers stopped by once or twice a night to perform a "premises check." In mediation the owners might have been convinced to discourage drug deals in the restaurant in return for fewer visits by officers.

Quality of Investigations

As these cases I hope illustrate, my function as an Auditor has developed into something more than simply requesting further investigation. I have tried to point out excellent investigations where **open-ended questions** were used and facts were followed up on. In one, the investigator took the time to go to the complainants' house within days of the complaint. She followed the complainants to the scene of the underlying incident and they showed her where they had taken a photograph. She was thus able to conclude that the picture did not accurately reflect the officer's location and could objectively explain this, thus resolving what would have appeared to be a serious conflict about what happened. While the citizens might not have been satisfied with the result, hopefully they appreciated her objectivity.


I have also not hesitated to criticize bad investigations, one done by a sergeant in his last weeks at OPA IS. Many leading, conclusory questions were asked and the sergeant clearly discounted evidence that showed the officers had over-reacted to a groggy drug addict's failure to obey their orders. It appeared to me useless to order further interviews since the incident occurred around last Christmas, the interviews were in March, and I got the case in June, before the OPA Director had seen it.

I saw very few cases where the subject's criminal record was accessed, and this is an improvement. I did see investigators asking occasionally whether civilian witnesses had discussed the events with each other, something they do not ask officers.

CONCLUSION

I continue to enjoy working with the dedicated staff of the OPA as they perform a demanding and difficult job, criticized from both sides. I will continue to use my own experience with law enforcement, with victims, and with arrestees to assess the classification and investigation of complaints as well as trends and policies bearing on the integrity of internal investigations of employee conduct.

Report respectfully submitted October 22, 2004,



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