



POLICE ACCOUNTABILITY

A strategic roadmap for the Seattle Police Department



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THE PARATUS GROUP
Bernard Melekian, DPPD

Methodology

In February of 2014, I was tasked by Mayor Murray to conduct an analysis of the Seattle Police Department's (SPD) complaint and disciplinary process. That review was a consequence of the controversy that emerged in late February around the settlement of seven disciplinary cases. The ensuing publicity cast light on the department's appellate process.

A review of this process was already being conducted by the Community Police Commission (CPC) and the Office of Professional Accountability (OPA) Auditor. As a result, this report has expanded into a broader review of police accountability, of which the disciplinary process is a portion, albeit a significant one.

The preparation of this report involved the gathering of information from multiple sources. I met several times with both the Commission and the OPA Auditor in order to ensure the maximum amount of alignment in the ensuing recommendations. The work of both the Commission and the OPA Auditor has been extraordinarily thoughtful and will contribute significantly to the advancement of police accountability. Their recommendations, and my comments, are included as appendices of this report.

My experience in this area includes thirteen years as a police chief, four years as the Director of the Office of Community Oriented Policing Services (COPS) and my doctoral thesis; *Values-Based Discipline: the Key to Organizational Transformation within Law Enforcement Agencies*. During my tenure at COPS, we developed a policing reform model entitled Collaborative Reform. It was first introduced in Las Vegas in 2012 and is currently being utilized in Philadelphia (PA) and Spokane (WA). Internal accountability is a key component of Collaborative Reform.¹

As part of this analysis, I conducted interviews with numerous stakeholders including members of the SPD command staff, leadership of the Seattle Police Management Association (SPMA) and the Seattle Police Officers Guild (SPOG). Also consulted were a previous police chief, one of the previous OPA Directors and a former OPA Auditor. All of their perspectives were very informative. I spoke with several members of the City Council, members of the City Attorney's staff and the federal monitor for the city of Seattle.

I reviewed the appropriate sections of the Seattle Municipal Code pertaining to the functions of the OPA Auditor, the OPA Director and the OPA Review Board (OPARB). Additionally, the document review included the current contract between SPOG and the city of Seattle as well as the OPA policy manual.

¹ Walker, Samuel and Archbold, Carol. *The New World of Police Accountability, Second Edition*. Sage Publishing, Los Angeles, 2014. Pp3

This timing of this report was advanced significantly by the controversy associated with the post-disciplinary reviews conducted by the Seattle Police Department. Indeed, the review of those seven cases proved very illustrative in terms of how the complaint and disciplinary process functions. I am very appreciative of the cooperation and access provided by the Seattle Police Department.

Lastly, this process included an academic literature review. The recommendations in this report drew heavily on the work of Professors Tom Tyler and Tracy Meares from Yale who have written extensively on the concept of police legitimacy and procedural justice². Equally critical to this review was the work of Professors Scott Wolfe and Alex Piquero whose critical work on Organizational Justice has pointed out the need for administrative processes that reflect the organization's stated values.³

This report contains the following sections:

1. *An Executive Summary including a list of my recommendations concerning both structure and process*
2. *My analysis of the current OPA structure*
3. *My analysis of the current OPA policy and practice including observations on the recommendations from both the CPC and the OPA Auditor*
4. *Appendices*
 - a. *Appendix 1 – Listing of the CPC Policy and Practice recommendations*
 - b. *Appendix 2 – Listing of the OPA Auditor's recommendations*
 - c. *Appendix 3 – Listing of SPOG contractual items that affect the accountability process*

² Tyler, Tom R. *Why People Obey the Law*, Princeton NJ; Princeton University Press, 2006.

³ Wolfe, Scott E. and Alex R. Piquero, *Organizational Justice and Police Misconduct*, Funded under NIJ grant#98-IJ-CX-0066, Criminal Justice and Behavior, (2011)

Executive Summary

This analysis of the accountability process in Seattle is focused on two areas; the structure of the current system and the component parts of the police disciplinary process. Both of these areas have been subject of much discussion and many recommendations for over twenty years.

The work of the CPC and the 55 recommendations they submitted provide a solid foundation for reform of the accountability process and the development of best practices. It does so by reflecting an appropriate balance between the need for meaningful civilian oversight, the need to establish trust with the community at large and to gain the trust of the officers of the Seattle Police Department.

After careful review and extensive discussion with the CPC, I concurred on 93% of their recommendations in the area of the complaint and disciplinary process. With respect to their recommendations regarding structure, my recommendations in this area reflect those discussions as well.

It is important to note that there is no “silver bullet” in terms of designing an ideal structure that will address every concern, both in and out of the department, around accountability. Rather any structure and its process should address those issues and concerns that are unique to Seattle and its police department.

The current OPA Auditor has done excellent work in terms of providing true oversight and review of the SPD complaint process. Indeed, the success of the work she has done points directly to the need for a broader auditing role in the form of an Inspector General. In response to the recent controversy over a police disciplinary matter, she released her own independent report on April 3. That report included 19 specific recommendations. Of those, I concurred completely with eleven of them (58%) and partially with an additional four (21%).⁴

The residents of Seattle are strongly committed to the concept of civilian oversight of their police department. They have been refining the structure of the current accountability system for several decades. The structure of the current accountability system has four operating parts; the police department, the OPA Director, the OPA Auditor and the OPA Review board. The OPA components did not evolve in a linear fashion, but rather emerged in response to various crises of confidence, generally around high-profile police actions.

This report contains a number of recommendations in terms of both operations and structure. However, none of these recommendation, even if fully implemented, will achieve the desired outcome without the full involvement of police management and the police labor organizations. Accountability and transparency need to serve as the guiding principles in order to reestablishing the trust between the Seattle Police Department and the people they serve.

⁴ See Appendix 2

Lastly, there is a critical need to develop standardized terminology for every aspect of the process. There have been changes in wording over the past several years that have not been uniformly communicated. Thus public reporting is confused over the use of wording that would appear to mean one thing, but in reality conveys a different reality entirely.⁵

Findings & Recommendations⁶

The supervisors and managers of the Seattle Police Department are a critical component of the disciplinary process. The critical role of line supervision and the need for the Chief of Police to be directly accountable for the disciplinary process cannot be overstated. The OPA process needs to ensure that in the search for transparency and true accountability that their role is not ignored.

1. The OPA Director should establish a long-term goal of allowing the investigation of certain complaints by line supervision. The protocol should include a formal reporting by the precinct chain of command to OPA of their findings and recommendations. Final approval of such recommendations should be made by the OPA Director.
2. Complaints that either do not appear to rise to the level of misconduct or appear to be minor policy violations should be investigated at the precinct level. This work should be done by precinct supervision in collaboration with precinct supervisors. Such incidents should be documented, reviewed by the precinct Captain and forwarded to OPA.
3. A strong data-driven system, as described by the Federal Monitor and others, should be utilized in order to develop a meaningful performance mentoring process.

There should be a strong civilian oversight body. The role of this body should be clarified. It must have adequate authority, staffing and resources.

4. The Oversight Body⁷ should be adequately staffed and resourced to be able to carry out the functions designated to it by the Seattle Municipal Code (SMC)

⁵ In the recent controversy over case settlement, there was reference to the term “closed cases”. In actuality, the cases were closed in the sense of OPA involvement, but were still open in terms of the officers’ appeal rights. This created significant confusion, not only for the public but those tasked with reviewing the matter.

⁶ Numbering is for convenience and ease of reference and does not suggest a specific priority.

⁷ The term Oversight Body is used in place of CPC, OPARB or whatever entity replaces OPARB throughout this report.

5. The OPA Director should deliver regular reports to the Oversight Body.
6. Significant OPA policy changes should be submitted to the Oversight Body for approval prior to implementation.
7. The Oversight Body should deliver regular written reports to the City council. Currently, a joint public meeting (Council/OPARB) is required to be held 90 days prior to the onset of labor negotiations. This requirement should be expanded to an annual report to the public as to the current state of police accountability.
8. The Oversight Body should work closely with the SPD labor organizations. This could be accomplished through:
 - a. Regularly scheduled meetings with labor representatives or
 - b. Creating a position on the Oversight Body for a SPOG representative
9. The Oversight Body should have the authority to ensure that cases of significant public interest are reported on to the Oversight Body, at least as to process and timeline. This is not to infer that the cases themselves should be commented on prior to a completion of the investigation.
10. The Oversight Body should neither comment on individual cases while they are being investigated nor should they make independent recommendations about such cases to the Chief of Police as this is most appropriately handled by the OPA Director

The current organizational relationship between the OPA Director and the Chief of Police is inherently contradictory and should be clarified.

11. The OPA Director should be appointed by the Mayor and confirmed by the council, but should report to the Oversight Body. However, a requirement to work collaboratively with the department, the parties to the settlement agreement and the monitor should be a component of the Director's annual work plan.
- OR
12. If the OPA Director is to remain under the direction of the Chief of Police, an MOU outlining the duties and responsibilities of the Director, within that framework, should be developed.
 13. The OPA Director should ensure that the complaint handling process maximizes the involvement of SPD supervisory personnel as it is critical to the long-term success of accountability. It is through the involvement of SPD supervisors that a culture of sustainable accountability will be created.

14. The OPA Director should be held responsible for the development and maintenance of an appropriate personnel intervention program (i.e. “a performance mentoring program”) to identify issues with training and personnel at their earliest possible stage.
15. The CPC structural recommendations, with respect to the OPA Director should be followed, although serious consideration should be given to ensuring that a recommendation to the City Council pertaining to the removal of the OPA Director come from the Oversight Body. Such a recommendation should be a requirement before the Council could take up that issue.
16. The OPA Director should not publicly comment on matters currently under investigation. A protocol should be developed in collaboration with the Oversight Body and the Chief of Police for the dissemination of information concerning cases that generate significant public interest.

The OPA Director needs to be given greater autonomy with respect to budgeting and personnel.

17. The OPA Director should have control over the selection of personnel, particularly at the senior level. The Police Department should provide a pool of candidates from which the Director could make a selection. These candidates should meet a set of qualifications as defined by the Director.
18. Sworn SPD personnel should serve defined terms of service within OPA. The authority of civilian OPA personnel to supervise sworn personnel should be affirmed.
19. The OPA should conduct its budgeting requests separately from the general departmental budget function so as to ensure that such requests are evaluated on the merits of the OPA mission rather than being balanced against the general needs of the department.
20. The proposed precinct liaison program should be approved. The OPA must be sufficiently staffed in order to make this an effective program. The OPA Director should establish strong collaborative relationships with both the Chief of Police and the precinct Captains.

There is a strong need for an overarching system of audits and inspections in the SPD. The OPA Auditor's role should be restructured so as to ensure capacity to carry out an independent auditing function. Ideally this should encompass more than the police disciplinary process. Further, the role of the OPA Auditor as currently structured overlaps with the role of the OPA Director.

21. The position of OPA Auditor should be absorbed into an Office of Inspector General. The Inspector General should have adequate staff and funding to carry out oversight of all departmental functions, including the accountability process, as necessary.

OR

22. During the transition phase to an Inspector General model or should the OPA Auditor position be retained:

- a) The duties of the OPA Auditor as described in the SMC should be modified so as to remove the OPA Auditor from direct operational oversight of individual cases. Rather the OPA Auditor should review the process employed and the overall outcomes for fairness, effectiveness and transparency.
- b) The OPA Auditor could select areas and/or cases related to accountability to review at their choosing. Additionally, they could open investigations in the same three ways proposed for the Inspector General. These would include:
 - A monthly review of randomly selected cases that are reviewed for appropriateness of classification, thoroughness of investigation and adherence to timelines, etc. This is similar to what the Auditor currently provides.
 - A review of a specific incident at the direction of the Oversight Body or the appropriate legislative authority.
 - Random inspections of the precinct liaison functions including review of incidents that were found to not rise to the level of misconduct
- c) The OPA Auditor should be provided additional staff so as to carry out the auditing function in a thorough and effective manner.

23. The reporting relationship between the OPA Auditor and the Oversight Body should be more clearly defined.

Over the past few years, the terminology used to describe various components of the disciplinary process has been changed to such a degree as to create confusion.

24. A glossary of terms related to accountability, suitable for use by the public as well as SPD/OPA should be developed. Once accepted by all stakeholders, the terms should become standard usage and should not be changed for a set number of years.

In addition to the structural changes in the OPA process, modifications must be made in the handling of complaints, the imposition of discipline and the appellate process.

25. A working group consisting of the CPC, OPA, the Police Department and the Mayor's office should review these over 100 recommendations. The group should identify those recommendations which require legislative action and report to the City Council. Those recommendations requiring legislative action should be given priority.

26. The role of SPD line supervision within the OPA process should be clarified and codified.

27. The chain of command review should be linear, that is it should be reviewed sequentially and commented on, in writing, by each member of the officer's chain of command.

28. There should be greater reliance on mediation and other forms of alternative dispute resolution particularly where the complaint centers on perceived attitudes or motivations rather than specific conduct.

29. Decisions with respect to the settlement of appeals should not originate in the police department. Rather they should be first considered by the city's Law Department. Regardless of process, no settlement should be authorized without the specific approval of the Law Department. Conversely, no settlement should be approved without the concurrence of the Chief of Police.

OPA Structural Issues

There are four critical component parts of the accountability process. These include the OPA Director, the OPA Auditor, the Oversight Body and, perhaps most importantly, the members of the Seattle Police Department. The commitment of the Police Chief, command staff, the mid-managers and line supervisors to the concept of complete accountability is critical.

The purpose of discipline is both the education of employees as to the expectations of the department and the demonstration of both accountability and transparency to the public. It is through the disciplinary process that the values of the organization are made real in the eyes of the employees. It is through that same process that the public makes a value judgment as to the truth or falsity of the police department's claim to be committed to a search for justice.

The role of SPD personnel will be addressed later in this report in the discussion on process. However, I would be remiss if I did not address two aspects of the accountability process. First, there must be a place at the front end of this process for the labor associations, particularly the Seattle Police Officers' Guild (SPOG). The rhetoric of describing police labor organizations as being a force of active resistance to accountability serves little purpose.

The relationship between the interests of accountability and the interests of labor are often seen to be in conflict. The role of labor is to be the voice of and for their membership. That role is defined by law and practice. Where there are aspects of the existing labor contract that do not facilitate true accountability, they should be revised during upcoming labor negotiations.⁸

The new reality, defined by the settlement agreement and the best interests of all concerned parties requires a reset. Without the active participation of labor groups in the planning and policy-making process, the relationship will continue to be defined by acrimony and litigation.

Secondly, with rare exceptions, the purpose of discipline is not punishment, it is education. The overwhelming number of complaints against officers are minor in nature. It is through those cases that the OPA process will be defined. With the high-profile cases, the process is tested and in both cases, the process must treat the officers in the manner in which the department wants those officers to treat the public. It is through the disciplinary process that officers are taught the truth or falsity of the department's stated values.⁹

⁸ See Appendix 3

⁹ Melekian, Bernard K. *Values-Based Discipline: the Key to Organizational Transformation Within Law Enforcement Agencies*. University of Southern California, 2012

OPA Director

The position of OPA Director was created in 1999 in response to a scandal involving the theft of money from the home of a suspect who died after a gunfight with the Seattle Police. Mayor Paul Schell created a Blue Ribbon Panel that made a number of recommendations with respect to police accountability. Those recommendations included the creation of the Office of Professional Accountability headed by a civilian director.

The OPA Director was to be part of the police department, reporting directly to the Police Chief. However, the OPA Director was appointed by the Mayor, confirmed by the council and served a fixed term of three years with the option of being reappointed for two additional terms. The Director is to handle the intake, classification and investigation of civilian complaints against the police. Additionally, the Director is charged with attending due process hearings and making recommendations and analysis to the Chief of Police.¹⁰ A portion of OPA is housed in the police department, although it is in the process of moving to a separate building.

The position as currently structured has some inherent tensions. Although independently appointed, the OPA Director reports to the Chief and is dependent on the department for the selection of personnel to staff the OPA. This structure is inherently contradictory; the Director is to be independent of the police department, but is to report to the Police Chief.

Consequently, the relationship of the OPA Director to the department's command staff is a function of the personality and preference of both the Director and the Chief. For example, OPA Directors and Police Chiefs have differed as to whether the Director should attend command staff meetings and be considered part of the command structure as opposed to being a completely independent entity.

This distinction has manifested itself in the approaches that different OPA Directors have taken with respect to the classification of complaints. Some previous OPA Directors reviewed the facts of the case with the Chief of Police prior to making a determination while others, including the present Director, have not. While each approach has positive and negative aspects, there is no right answer. However, if the OPA is to remain under the direct control of the Police Chief, then a clear set of guidelines that articulates duties and expectations should be agreed upon.

The OPA Director is the face of OPA and its process for the men and women of the Seattle Police Department. It is also the first point of contact with members of the community

¹⁰ SMC 3.28.810

who wish to register concerns about SPD personnel. Both of these constituencies have different expectations and different definitions of success.

The community will look for visible demonstrations that they are being listened to and their concerns given credence. From their perspective, the legitimacy of the accountability process will be determined by actions that actively demonstrate that serious police misconduct will have real consequences.

Conversely, the members of the department will look for procedural justice through a process that considers the complexity of the environment in which the officers work and takes those complexities into account. As previously mentioned, the stated values of the department must be made manifest through the accountability process.

Thus the credibility of the OPA Director depends upon a very delicate balancing of relationships. The Director can never appear to have prejudged an incident and should always take steps to avoid public criticism or comment about matters currently at hand. The acknowledgement of the symbolic aspects of the position are a critical component of the Director's role. The perceived legitimacy of OPA is directly linked to the perceived legitimacy of the OPA Director.

The OPA Director should not be a formal member of the command staff. Rather they need to have a respectful, collaborative relationship with the Chief of Police that retains an appropriate professional distance. Additionally, the OPA process should be used to identify personnel issues in the earliest stages (i.e. a Performance Mentoring program) and to identify training issues so that the department can anticipate problems and address them before they become significant issues, either in terms of liability or public confidence.

The OPA function is currently highly centralized, that is all complaints flow through the OPA Office. The OPA Director, with OPA Auditor approval, may refer the complaint back to the appropriate supervisors for handling, but the complaint must be reviewed by OPA. Prior to 2012, supervisors could handle certain complaints as long as their actions were documented. This procedure was referred to as a line investigation. This process was suspended due to concerns over the quality and consistency of the work being performed.

It is important that SPD supervisors and managers remain directly involved in the accountability process. The proposed precinct liaison officers which would move the OPA process directly into the patrol precincts is a solid step in this direction.¹¹ The culture of SPD must reflect a recognition that accountability is the responsibility of everyone in the

¹¹ CPC recommendation#28 talks about staffing this program with civilians. It is less important whether this person is sworn or civilian than they report to OPA and are committed to a culture of accountability.

organization and not merely the OPA. It should be the responsibility of the OPA Director to develop a system that utilizes the experience of sworn supervisors. Failure to do so would represent an abdication of a critical responsibility in the creation of a culture of accountability.

The OPA Director's role is further complicated by the relationship with the OPA Auditor. The OPA Auditor has a direct charge of overseeing the classification of complaints and the thoroughness of investigations.¹² These duties were assigned by ordinance when the position was initially created and the Internal Investigations Section (IIS) was composed entirely of sworn members of the department. These duties seem less appropriate when working with a civilian Director.

Currently, the OPA is directed to work with the OPA Auditor, on a weekly basis, to review all of the complaint classifications for the previous week. The OPA Auditor is authorized to change the complaint classification, direct further investigation by the OPA or, at least by inference, personally conduct an investigation.¹³ All of this was more appropriate when the OPA Auditor was the only face of civilian oversight. Under the current structure, like the relationship between the OPA Director and the Department, the relationship between the OPA Auditor and the Director are overly dependent on the personalities of the individuals involved.

The OPA Director must have true management oversight of the OPA if it is to maintain actual independence. Currently, the Director has only limited control over the selection of the personnel assigned to OPA. Assignments to OPA are made by the department, with little to no input by the Director. Personnel can, and have been, promoted or reassigned on very short notice. For example, during the recent realignment resulting from the creation of the Compliance Bureau, both the Captain and Lieutenant assigned to OPA were reassigned on very short notice. Further, there was no transition time between their departure and the arrival of the new personnel which created additional challenges. While some Police Chiefs in the past have made an assignment to OPA an informal requirement for promotion, currently it does not appear that OPA is judged to be a desirable assignment.

In summary, the OPA Director must be independent of the department in order to do its work properly. There must be a close collaborative relationship between the Director and the Police Chief for the process to work effectively. The OPA Director should be appointed by the Mayor and confirmed by the Council, but should report operationally to the Oversight Body. However, a requirement to work collaboratively with the all parties concerned with accountability should be part of the Director's annual work plan.

¹² SMC 3.28.855

¹³ Ibid, section A

If the OPA Director is to remain under the direction of the chief of police, an MOU outlining the duties and responsibilities of the Director, within that framework, should be developed between the Director and the chief of police. The MOU should specifically cover the rules regarding the ability of the OPA Director to comment publicly on matters under current investigation. Different Directors have taken different approaches to this issue. This can place the Chief and the Director in a somewhat awkward position with respect to their duties and responsibilities.

The OPA should submit its budgeting requests separate from the general departmental budget function so as to ensure that such requests are evaluated on the merits of the OPA mission and not balanced against the general needs of the department. This concept was discussed with both OPA and the departmental command staff and both parties agree with this concept

The OPA should move forward with establishing the precinct liaison functions. This will move accountability into the precincts and, by extension, the community. OPA must be sufficiently staffed so as to have adequate personnel to carry out this work. These liaisons should work with the precinct Captains, but should report to the OPA Director. The OPA Director should establish professional working relationships not only with the Chief of Police, but the precinct Captains as well.

OPA Auditor

The position of OPA Auditor was created in 1991 although at that time the position was called the Internal Investigations Auditor (IIS). The purpose was to provide civilian oversight over the Internal Investigations section, which was composed entirely of sworn personnel. The IIS Auditor was given the authority to review case files, recommend changes in complaint classification and audit any and all records.¹⁴

At the time that the position was created, the Auditor provided the only independent oversight of the Internal Investigations Section (IIS) which was composed exclusively of sworn personnel. The Auditor was never provided any staff to assist with their work and the funding has always been rather limited. The current annual budget for the Auditor is \$160 per hour with an annual cap of \$151,000 which covers all expenses associated with the Auditor's function¹⁵

When OPA was created in 1999 it included a civilian director who was given oversight responsibilities. However, the duties of the OPA Auditor were not modified, other than a name change, to reflect this new reality. The result is an overlap of oversight duties; the most notable

¹⁴ SMC 3.28.855

¹⁵ Per the OPA Auditor

of which is the requirement to review all incoming complaints on a weekly basis and requiring Auditor approval for classifications. At the time the Auditor position was created, the Auditor was given the authority to order further investigations, make recommendations to changes in complaint classifications and review completed case files after the case has been submitted to the chain of command.

These duties were both necessary and appropriate when the Auditor was the only form of civilian oversight of the police complaint process. However, the performance of these duties in conjunction with a civilian director create a blurring of the respective roles. The OPA Auditor's review function, to some degree, becomes a review of their own work. This is both unnecessary and unproductive.

As will be discussed in the section of the OPA Review Board, the OPARB was also assigned a number of analytical tasks that overlap with the OPA Auditor's function. It is specifically directed to review the OPA complaint handling process in its entirety.¹⁶ It is prohibited from commenting on specific cases or the discipline involving specific officers. It is also tasked with reporting to the city on all aspects of the OPA process which is a task also required of the Auditor. The relationship between the OPA Auditor and the OPA Review Board should be more clearly defined.

The OPA Auditor's semi-annual reports have expanded beyond a review of the complaint process.¹⁷ Whether this is what was intended by the Council when they created the position is not for this report to determine. Nevertheless, the quality of these reports and the areas in which they focus are of significant value to the police department. The reports demonstrate the value of an expanded, and significantly altered, role for the OPA Auditor.

The high-profile incidents that have occurred over the last several years, the findings of both the Monitor and the Department of Justice, and my initial review of the police department suggest that the position of OPA Auditor should be replaced by the position of Inspector General (IG). This position would be responsible for audits and inspections of the entire departmental operations, not just those dealing with complaints and accountability. Issues of training, financial management and informational technology, just to identify some areas that have emerged over the last few years as significant problems, could and should have been identified and addressed prior to their becoming major issues.

It must be made clear that the role of the Inspector General is far broader in scope than the role currently held by the OPA Auditor and that the auditing of the accountability process is

¹⁶ SMC 3.28.910

¹⁷ The July-December 2013 report included recommendations on the location of the training academy, hiring standards and the use of extended authority commissions.

in no way diminished by this change. The creation of this office will be a significant change for the police department and a significant step forward in the advancement of accountability. Such a process will not be instantaneous and should the decision be made to go forward with it, allowance should be made for the transition time required. Accountability cannot and should not be suspended while this process goes forward.

Should the decision be made to establish the Office of Inspector General, all stakeholders should be involved in determining the duties and responsibilities of the office. Care must be taken to ensure that the valuable contributions of the current Auditor position are not lost. With respect to the accountability process specifically, in addition to the authority to conduct audits of any nature they feel appropriate, the IG would be tasked with reviewing the work of the OPA Director in some combination of the following:

1. A monthly review of randomly selected cases that are reviewed for appropriateness of classification, thoroughness of investigation and adherence to timelines, etc. This is similar to what the Auditor currently provides.
2. A review of a specific incident at the direction of the Oversight Body
3. A review of a specific incident or issue at the direction of the Mayor and/or city council

The creation of this position would in no way diminish the current level of accountability. A significant duty of the Inspector General would be to continually review the accountability process, particularly specific issues that might be brought forward from the Oversight Body. Additionally, the presence of this position would foster a culture of the accountability in all aspects of the SPD, not just those areas dealing with civilian complaints.

Conversely, should the position of OPA Auditor be retained in its current form, the roles and duties should be modified so as to create an operational bright line between the Auditor and the OPA Director. The role of the Auditor should be to review the process and the outcomes, in the aggregate, of the OPA procedures. As previously cited, the weekly review of complaint classifications may have been an appropriate auditing role when that was the only civilian oversight. However, performing that function when there is a civilian director and a review board impedes the effectiveness of each component.

If the position is maintained, the OPA Auditor should be provided additional staff so as to carry out the auditing function in a thorough and effective manner. Additionally, the distinction between the duties of the Auditor and the Oversight Body should be more clearly defined.

OPA Review Board

The OPA Review Board (OPARB) was created in 1999 and its role was modified in 2007.¹⁸ As originally created, the mission of the OPARB was to provide an independent review of the complaint handling process so as to ensure the confidence of the public that there was independent oversight of the police accountability process. Originally, the OPA Auditor's position was intended to serve as staff for the OPA Review Board.¹⁹

From 2004 to 2006, there was additional legislation passed by City Council to clarify the role of OPARB and ensure access to unredacted OPA files. This reportedly grew out of a dispute between the Chief of Police and OPARB over their role and that of the OPA Auditor in providing oversight and review of the OPA process. It was at that time that the requirement was added for OPARB and the City Council to conduct hearings prior to the commencement of the collective bargaining process.²⁰

From 2007 to 2008, there were additional council actions designed to strengthen the role of the Auditor and to ensure that OPARB served as OPA's link to the community. OPARB was charged with organizing and conducting public outreach about the OPA as well as soliciting public comment as to the public's perception of the "fairness, thoroughness and timeliness of the OPA complaint handling process..."²¹

There is a perception by some stakeholders that the OPARB has been of limited effectiveness. An analysis as to the reasons, or accuracy, of this perception was not attempted due to limitations in both time and resources. However, there is widespread agreement as to the need for a civilian panel to oversee the work of the OPA. OPARB, or its successor, may well serve the most critical role in terms of providing the appropriate level of civilian oversight. Having the OPA Director report to the Oversight Body, redefining the duties of the Auditor (or Inspector General) and providing Oversight Body with appropriate resources with which to do its work, will result in a significant increase in public trust and confidence in the police accountability process.

The Community Policing Commission has suggested that the OPARB be eliminated and its work assumed by the CPC. While the decision as to the nature of the civilian oversight board should ultimately be determined by the city's governance structure, there can be no doubt as to the need for such a body and for providing it with adequate resources to do its work.²²

¹⁸ SMC 3.28.910

¹⁹ Harris, Peter, Central Staff. *Recent History of Police Accountability Legislation*, memo to the Public Safety, Civil Rights & Technology committee, January 11, 2012

²⁰ Council resolution 30871, May 30, 2006

²¹ SMC 3.28.910

²² DOJ Findings Letter, December 14, 2011, Appendix D

Regardless of how the Oversight Body is structured, it needs to be adequately staffed and given the appropriate level of authority to conduct the necessary process reviews and community outreach. Additionally, a formal protocol should be developed to ensure that complainants can bring concerns to that body both in terms of individual matters as well as process concerns, and that those concerns can be given to the OPA for action. Additionally, the Director should provide reports to the Oversight Body on a regular basis and the joint city council/OPARB meeting which is currently held 90 days prior to the onset of labor negotiations should be held annually.

There are a number of operational changes that could be made to strengthen the role of the Oversight Body in a way that OPARB does not currently enjoy. For example, the Oversight Body should have operational oversight over the OPA Director. The names of potential Directors of OPA should be sent to the Mayor by the Oversight Body. The OPA Director should deliver regular reports to the Oversight Body. Significant OPA policy changes should be submitted to the Oversight Body for approval prior to implementation.

The Oversight Body should deliver regular written reports to the City council. The joint public meeting currently required to occur 90 days prior to the onset of labor negotiations are very informative for the public. Consideration should be given to holding these meetings annually. With respect to the Auditor, that person, or entity, will need a publicly accepted forum to present their findings. It is the Oversight Body that should assume that role.

The Oversight Body should be more directly involved with the SPD labor organizations. This could be accomplished through the holding of regularly scheduled meetings with labor representatives or creating a position on that entity for labor representatives.²³

The Oversight Body should have the authority to ensure that cases of significant public interest are reported to and discussed by that body, at least with respect to process and timeline. However, the Oversight Body should refrain from commenting on individual cases nor should they make independent recommendations on such cases to the Chief of Police as this is most appropriately handled by the OPA Director.

OPA Process Issues

²³ The CPC recommendations includes a position on the CPC for representatives from both SPOG and the SPMA

The police disciplinary process serves several critical purposes. Properly executed it educates the individual employee as to what the organization expects in terms of desired behavior and, by extension, shapes that employee's career long after the specific incident has been resolved.

Secondly, the process serves to educate the entire organization. As with the individual employee, it provides guidance as to expected behavior. Additionally, through the process used to arrive at the outcome, it demonstrates congruence, or lack of same, to stated organizational values.

Lastly, it demonstrates the same congruence, or values-adherence, to the complainant. If the situation under review generates significant public interest, that same demonstration will apply to the public at large.

Although every jurisdiction has unique aspects as to how it chooses to handle citizen complaints, in every jurisdiction, there are three distinct phases to the process; complaint intake and investigation, disciplinary decisions and imposition and the appellate process. In each of the phases, the Seattle process has aspects that work well and aspects that demand change in order to align with professionally accepted standards.

The current complaint process is unevenly implemented in terms of public access and lacks transparency, both for the involved officer and the complainant. Too many complaints are solely handled by OPA without sufficient involvement of line supervision. Not only is this inefficient from a workload management perspective, it contributes to an ability of supervisors to relieve themselves of the responsibility for ensuring accountability.

The complaint intake phase should allow for those cases classified for investigation that are relatively minor in nature to be conducted by precinct supervision. This part of the process will need to evolve over a period of time in order to thoroughly address the issues raised by the Department of Justice. Every effort must be taken to insure that such investigations are thorough and transparent and meet OPA's standards.

Ultimately, OPA would refer complaints out to supervision for investigation and reporting back. Such investigations and reporting should be coordinated with the precinct liaisons. Timelines should be developed for both the sworn chain of command and the precinct liaison officers. Both the line supervisors and the precinct liaisons, whether sworn or civilian, should be completely integrated into this process.

The disciplinary process is a crucial part of leadership and management development. It is important, both for the integrity and legitimacy of the process that sergeants, lieutenants and precinct captains play a pivotal role. It is equally important to involve the complainant in the process and to keep that person informed at each step in the process. The recommendations of both the CPC and the OPA Auditor address this point.

The disciplinary phase of the process needs restructuring in terms of possible findings with respect to complaints so that the educational aspects of discipline are not placed into an either/or scenario with accountability. The ability to make a separate finding of *Training Referral* en lieu of sustaining a complaint should be eliminated.

The appellate process is focused internally to the SPD rather than outwards towards the public and the city government at large. The decision as to whether to contest appealed discipline or settle the matter should not originate in the police department. This is a matter more appropriately determined by the city's Law Department.

Regardless of what changes in the current disciplinary process are developed, what must not be lost is ensuring that the supervision and management of the SPD must be fully engaged with OPA. If the process moves completely outside of the department, then perceived responsibility for accountability will accompany that shift.

OPA should return to a use of Line Referrals, but that process must carry with it a requirement to provide full documentation of what occurred and what remedial actions were taken. The use of supervisory action must have a standardized protocol and an audit structure to verify that the protocol is scrupulously followed.

Accountability must become an integral part of the SPD culture. There is a great need to make OPA a desirable assignment and perhaps even a requirement for promotion to management ranks. Officers must come to view the process as serving their long-term interests. In the same fashion that training modules such as tactical response and emergency vehicle operations contribute to saving the lives of officers and members of the public, a properly structured disciplinary process will save both the careers of officers and the trust of the public.

To that end, the police labor groups, particularly the Seattle Police Officers' Guild (SPOG), must be directly involved in any restructuring efforts that are undertaken. However, their role must be truly constructive and focused on achieving a better process than currently exists rather than merely strengthening their rights under the collective bargaining agreement. A commitment to accountability and the duty to represent their members need not be mutually exclusive.

The keys to community policing and partnership are the administrative processes of the department, particularly the disciplinary process, which operationalize the stated values of the organization. The alignment between the organization's stated values and the perceptions, both internally and externally, as to how those values are being carried out, is referred to as organizational congruence.²⁴

²⁴ Melekian, Bernard K. *Values-Based Discipline: the Key to Organizational Transformation Within Law Enforcement Agencies*. University of Southern California, 2012

A disciplinary process that is overly legalistic and process driven does not carry the requisite educational component necessary to shape organizational culture. Conversely, a disciplinary process that does not inform the public as to both its process and its outcome will fail in its core mission of trust building. In that spirit, there should be greater reliance on resolving attitudinal complaints with mediation and other forms of alternative dispute resolution.

The work of the CPC and the OPA Auditor in this area has been particularly helpful. Each of these areas has been reviewed extensively by the Department of Justice, the federal monitor, the OPA Auditor and the Community Police Commission. I will provide only minor additions to their work.

CPC Recommendations

On April 23, 2014 the Community Police Commission submitted 55 recommendations to the Mayor's Office relative to police accountability²⁵. This recommendations were grouped under six broad categories; Values & Standards, Complaint Handling, Communications, Investigations, Post OPA Investigations and Systemic Improvements.

The CPC's work in this area was thorough and professional. I met with them several time during their development process. I am very grateful for their inclusiveness and demonstrated desire to put forward recommendations that reflected the views of all stakeholders. Their recommendations are generally reflective of best practices throughout the police profession. The CPC recommendations provide an excellent framework for moving forward in the area of police accountability.

Of the 55 recommendations put forward by the CPC, I concurred with fifty-one of them (93%). I did not concur with three of their recommendations. These are discussed here briefly:

- #2 (adoption of preference points for alternative skills): This is a sound idea and worthy of consideration, but I felt that it was outside the scope of the OPA/police accountability process.
- #28 (employ civilian staff in the precinct liaison program): The precinct liaison program is a critical component of any police accountability process. It is critical that police management and supervision be directly involved in that process. Therefore, it is far more important to design a workable structure than assuming that the key to success hinges on whether the precinct liaison person is sworn or civilian. To be clear, I am not opposed to the use of civilian precinct liaison personnel, but it seems unnecessary to restrict it in the manner this recommendation suggests.
- #40 (The OPA auditor should be notified of appeals/grievances and provide input): This recommendation concerning the providing of input places the OPA Auditor in an

²⁵ See Appendix 1

operational position rather than truly providing oversight. One of the structural issues that needs to be addressed is the lack of a bright line distinction between the OPA Auditor and Director. This is an area that should fall solely with the OPA Director. However, the issue of providing notice is not of concern.

Additionally, I had no opinion on recommendation #18, the granting of subpoena authority to OPA. While the reasons for needing such authority are not readily apparent, it was supported by a number of stakeholders. Consequently, I determined it to be a policy decision for the city government to resolve.

There were four recommendations which I supported, but provided some additional insight based on past experience. The clarifying comments are included in Appendix 1. Those items were #26 (OPA Director bring complainants to the Chief of Police), #29 (use of a discipline matrix), #36 (PSCSC members having appropriate expertise) and #51 (internal civilian management of secondary employment).

OPA Auditor Recommendations

On April 3, 2014 the OPA Auditor issued a report entitled Special Review of SPD's Disciplinary Procedures. The report consisted of two distinct parts: a discussion of a variety of issues and reports that had been issued prior to the April 3 report and a listing of recommendations on the SPD disciplinary process.

My discussion will focus on the second portion of the report as the first portion of the Auditor's report focused on discussing issues that seem to have been either resolved or at least reached a saturation point in terms of worthwhile discussion. To continue to reargue these matters would divert attention from the second portion of the report which is more substantive.

The second portion of the report lists 19 recommendations of which I concur completely with 11 of them (58%) and partially with an additional 4 (21%).²⁶ Of the remaining 4 recommendations, I differ in substance with the following recommendations:

#3: I concur with the idea of enforceable timelines, but not with the recommendation that they cannot be mutually waived. There are a myriad of circumstances that might require the need to extend timelines. As long as these waivers were publicly stated and the reasons articulated, there is no reason not to allow for such an option.

#7: An employee should be allowed to raise additional evidence at Loudermill hearings. The entire purpose of the hearing is for the employee to be able to argue to the Chief

²⁶ See Appendix 2

that either 1) the facts being alleged are inaccurate or 2) the facts are accurate, but the discipline is unreasonable.

I could support this recommendation if it was modified to state that evidence could not be presented during the grievance or appellate process unless it could be demonstrated that this evidence was not available prior to the Loudermill hearing.

#8: The recommendation to use a professional hearing examiner would be a very positive step in making the accountability process more objective. However, the requirement for sides to have two attorneys available is unreasonable.

#18: This is an illustrative example of the need for a bright line between the role of the OPA Auditor and the role of the OPA Director. The provision of input to the Chief and the Director when appeals or grievances are filed, unless specifically requested, would be outside the scope of an Auditor's role.

Other than the items listed above, the Auditor's recommendations, if implemented in conjunction with those provided by the CPC, would provide an excellent foundation for reform of the accountability process.

Conclusion

One of the myths with respect to police accountability is that there is an ideal process which, if it can only be duplicated, will solve all of the issues related to public trust. It is a myth for two reasons. First, no such process exists. Each form of accountability, like each police department, reflects the community it serves. It is only through the creation of an accountability system that reflects the broader community, that such a process acquires legitimacy in the eyes of its stakeholders.

Secondly, and perhaps most importantly, such discussions generally assume the officers of the department to be passive actors in the design of such a process. The history of police accountability suggests otherwise. Indeed, most of what is perceived as obstructionist positions on the part of police labor groups actually grew in response to abuses by police management, both real and perceived. Collaboration with police labor groups, wherever possible is critical to the success of process design.

A great deal of analysis of the Seattle Police Department's accountability process has taken place over the last 23 years. A number of changes, both in structure and process have been put forward. All of these changes have moved the department forward although not always smoothly and never without controversy.

The uneven progression of these changes and the seemingly adversarial manner of their emergence have brought us to where the department finds itself today; in a position to collaboratively arrive at both a structure and a process that will move accountability forward in

a more direct fashion. There is near total agreement that the current process does not serve either of the primary stakeholders, the public and the men and women of the SPD, well.

What has developed over the past several decades is a system that is overly reliant on process and a legalistic framework. From the perspective of the public, the process is opaque and conveys the message that handling their complaints is a burden that the police department only minimally cares about. From the officers' perspective, the process is equally opaque, seems to presume their guilt and puts them at the mercy of anyone who doesn't happen to approve of how they did their job.

Discussions of accountability and police disciplinary process usually center on high-profile incidents, often those involving use of force. These incidents become especially volatile when there are video recordings available to the public. While such incidents serve the purpose of shining a bright light on the process, they obscure the fact that the overwhelming number of complaints against the police are often relatively minor, involve perception as much as provable facts and therefore are more difficult to resolve.

Resolving issues of alleged brutality or corruption is far easier than determining whether an officer stopped someone legitimately or because of their race. There is no legalistic system that will answer the latter question to anyone's satisfaction. This is one of the strongest arguments for making greater use of mediation and other alternative dispute resolution techniques, particularly where the complaint centers on perceived attitudes or motivations rather than specific conduct.

The best process is one that contributes to what is sometimes referred to as a culture of accountability. That is an organization in which the underlying question in each employee's mind shifts from "can I do this" to "should I do this?"²⁷ In a culture of accountability, that question is broadened to "should I have done this?" The burden for right conduct is then distributed throughout the organization.

Such a system cannot succeed if based solely on good intentions. There must also be oversight and continual audits of both process and performance. Such oversight must come from outside the organization and provide continual feedback to the department, the public and the governing authority. In turn, the feedback must be used to constantly update policies, practices and training.

Seattle, and its police department, are at a critical juncture in terms of designing and implementing a system of accountability. The OPA process is an excellent model that will require some revision in order to maximize its effectiveness. The labor contracts should be reviewed and those provisions which present a barrier to accountability should be modified so as to protect the rights of officers without shielding those whose actions tarnish the badge.

²⁷ Josephson, Michael. *Becoming an Exemplary Peace Officer: the guide to ethical decision making*. Los Angeles: The Josephson Institute, 2007.

Accountability is the key to achieving legitimacy and promoting community policing. For Seattle, it will be the key to determining whether the Mayor's vision of SPD as a national model for urban policing becomes a reality.

Appendix 1: CPC Process Recommendations

#	Description	Concur	Comments
1	Standards and Value should support	Yes	

	a robust and legitimate accountability system		
2	Adoption of hiring preference points for skills in current policing	No	Not a bad idea, but outside the scope of the OPA process
3	Professionalism policy should articulate...community caretaking	Yes	
4	Professionalism policy should add CUBO	Yes	
5	Professionalism policy should broaden the prohibition concerning derogatory language	Yes	
6	Add additional community-based channels for complaint filing	Yes	
7	Revise SPD Policy 5.002	Yes	
8	Public response protocol for major or high-profile incidents	Yes	This is a critical area that is currently deficient within SPD and should be addressed quickly
9	City Attorney's office to ensure impartial practices w/ respect to public disclosure requests	Yes	There is a need for a standardized practice re: such requests
10	All materials should describe appellate and grievance review	Yes	
11	OPA should increase the frequency of communication with complainants and named employees	Yes	
12	OPA should provide a mechanism for tracking the status of complaints on-line	Yes	
13	OPA should post results of investigations...on-line	Yes	
14	OPA should post results of appeals and grievances on-line	Yes	
15	Chief should be required to notify Mayor and Council when findings are modified due to outcome or settlement...	Yes*	No case should be settled without the approval of the City Attorney's Office. Ideally, this is where such a process would be initiated
16	OPA Jurisdiction should be expanded	Yes	
17	OPA involvement should be strengthened in case involving criminal misconduct...allows tolling	Yes	
18	OPA should be given administrative subpoena power	N/A	I cannot determine any justification for such authority
19	Rapid adjudication process	Yes	

20	Informal problem solving process for certain types of “customer service complaints...	Yes	
21	Improve the use of mediation and other alternative resolution processes	Yes	This is another critical area for improvement.
22	Merge Firearms Review and Use of Force	Yes	
23	Establish a protocol for investigation of allegations against OPA staff	Yes	
24	Make Training Referral an option in Sustained cases rather than a separate finding...	Yes	
25	Add a provision for Management, Policy or Training Correction required	Yes	
26	OPA Director should have the option to provide complainants an opportunity to meet with the Chief...	Yes*	The OPA Director should be able to recommend such a meeting. The determination as to whether to meet with the complainant should rest with the Chief
27	Staffing support recommendations	Yes	
28	SPD should use civilian staff in the precinct liaison program	No*	A properly run program does not require a distinction between sworn and civilian staffing
29	Use of a discipline matrix	Yes*	The use of a discipline matrix must be designed in such a fashion so as to ensure maximum flexibility for the chief.
30	Department should maintain a tracking tool to maintain disciplinary records	Yes	
31	Develop enforceable time limits...	Yes	
32	The role of SPOG should be to ensure contractual & due process rights	Yes	
33	Discipline should be imposed...upon the Chief’s final decision...	Yes	
34	The grievance process should be exclusively used to review...contract violations	Yes	The current practice of allowing a decision to impose discipline to constitute a contractual violation for “just cause” should be stopped
35	...only one avenue of disciplinary	Yes	

	appeal		
36	PSCS members should be impartial experts...	Yes	
37	The Chair of the PCSC should be a City Hearing Examiner	Yes	
38	Appellate hearings should be open to the public...	Yes*	This section should apply to formal hearings and not document review
39	Notice of appeals should be provided to the City Attorney's Office	Yes*	My recommendation is that the City Attorney should handle appeals with input from the Chief
40	OPA Auditor should be notified of appeals...and provide input...	No	This is a role for the OPA Director and not an Auditor
41	The City Attorney's office should provide timely notice of appeal results to OPA	Yes	
42	Settlement discussions should not be initiated by the department.	Yes	This is a very critical and necessary change. No settlement which reduces or eliminates discipline should be reached without the approval of the chief
43	...broaden the grounds for revocation...	Yes	
44	Departmental data systems should document all relevant information...	Yes	
45	The Seattle Law Department should establish a regular review of litigation...	Yes	
46	The City Attorney's Office should assess Arbitrator rulings...	Yes	
47	The city should establish a system to ensure responsiveness	Yes	
48	The City Attorney's Office should alert OPA of issues raised...that suggest practice improvements	Yes	
49	The OPA Auditor should analyze the appropriateness of discipline imposed in prior cases	Yes*	This appears to be an appropriate recommendation, but the final wording will be critical
50	...discontinue "extended authority commissions".	Yes	The utilization of retired officers could be of great benefit, but the system should be restructured
51	The Department should create an internal, civilian office for	Yes*	The idea is sound, but it does not need to be run by civilians. As with

	management...of secondary employment		recommendation #28, it is the process that is of most importance
52	...revise in-car video policy...	Yes	
53	...retain holding cell video for 90 days	Yes	
54	Reports...should include changes made as a result of appeals or grievances	Yes	
55	The Law Department and Personnel Division should provide the OPA Auditor with quarterly reports on challenged cases	Yes	

*Indicates that there is general concurrence, but not without some concerns

Appendix 2: Commentary on the Auditor's Report

<u>*</u>	<u>Narrative</u>	<u>Bkm**</u>	<u>CPC***</u>	<u>Comments</u>
1	Ensure that disciplinary...processes take into account public trust and employee respect...	Yes	Y	

2	Create a single appellate entity	Yes	35	
3	Create enforceable timelines that cannot be waived...	No*#	31	The concept of enforceable timelines is an excellent suggestions, but the provision that they cannot be mutually waived is too inflexible. The CPC recommendation does not contain the no-waiver language.
4	Eliminate Training referral... and add a management action requirement...	Yes	24, 25	
5	Allow the OPA Director to recommend that the Chief meet the complainant...	Yes	26	
6	...Police disciplinary hearings should be open to the public	Yes	38	
7	Require the employee...to disclose all evidence prior to raising it at appeal, Loudermill, etc...	No*	34	I would support this if it indicated that the employee could raise it if they demonstrated that they discovered it subsequently...
8	..Use a hearing examiner in lieu of arbitrators. Require both sides to have two attorneys...	No*	36, 37	Yes to the hearing examiner, but the requirement for two attorneys is too inflexible
9	Amend the SMC to require the Chief to report to Council re: settlement findings	Yes*	15	Settlement discussions should originate outside of the police department
10	Require consultation with the OPA Director and City Attorney's office...	Yes*	39, 41	Same as above; at the very least, no settlement agreement should be reached with the formal concurrence of the CA's office
11	Use of a data-base to capture all aspects of the disciplinary process	Yes	44	
12	Enact protocol to ensure the accuracy of all documentation...	Yes	30,44, 54	
13	...creation of an appropriate disciplinary matrix...	Yes	29, 30	
14	Require immediate referral to the City Attorney's office upon receipt of notice of	Yes*	39	See #9 and #10 above

	appeal			
15	Require City Attorney review of any settlement of disciplinary case...	Yes*	41	As above; formal approval should be required
16	All materials should include ...description of the possible appellate process	Yes	10-14	
17	All reports describing results...should include any changes made as a result of appeals, etc.	Yes	10-14	
18	OPA Auditor should be notified and provide input to the OPA Director...	No	40	This is an operational role that should be reserved to the OPA Director.
19	The OPA Auditor should receive a quarterly report concerning appeals, grievance...	Yes	55	

*The OPA Auditor did not number her recommendations. I did so for ease of reference.

**The column labeled “bkm” refers to my agreement or lack of same with the OPA Auditor’s recommendations. The * again refers to specific concerns that did not change the overall recommendation

***The column labeled CPC refers to the numbered CPC recommendations that correspond with the OPA Auditor’s recommendations.

Appendix 3: SPOG Contractual Items

As part of my review of the Seattle Police Department’s complaint and disciplinary process, I have reviewed Article 3 of the Memorandums of Understanding with the Seattle Police Officers Guild (SPOG). This is the section which pertains to the disciplinary process. I suggest that the following sections be reviewed and consideration given for changes in the contract as part of an overall effort to improve the SPD disciplinary process.

3.2: This section makes written reprimands subject to the grievance procedure. This section should be eliminated or reworded to require that grievances be based on violations of the MOU and brought forward earlier in the process. To say that the receipt of a written reprimand is subject to the grievance process makes the outcome the subject of review and not the process.

3.4: The ability to use accrued balances to satisfy disciplinary suspensions seems counter-intuitive. Some consideration should be given to eliminating the section altogether or lowering the number of days where this is an option (e.g. 2 days or less).

3.5B: This section seems to suggest that the recommendations through the chain of command are not included on the form. I am not necessarily suggesting a change, merely saying that it is a point of curiosity.

3.5F: This section states that when, in the course of an investigation, new facts are discovered, "...the case must be sent back to OPA..." While this isn't a problem, what should be reviewed is the statement that the 180 day clock appears to be based on the original investigation. It would seem that the new facts should warrant a new clock. The wording of this section is somewhat confusing, so unless I am reading it incorrectly, perhaps the wording could be clarified.

3.5H: There should be one avenue of appeal in police disciplinary matters. There have been suggestions that sworn members of the department should not participate in this process. A compromise position might be to replace active members of the department with retired members. If the DRB process is to be retained, perhaps Council appointed members with specific terms would be helpful.

3.5H6: There is a provision that allows for one civilian observer, appointed by the Mayor, to attend DRB hearings. Depending on the purpose, this section could be expanded to allow for greater public access to DRB hearings. My understanding is that in those rare cases where an employee utilizes the PSCSC, those are open to the public.

3.6B1: It isn't clear to me why 60 days should be taken off the 180-day clock when the involved officer can't be identified.

3.6C&D: Depending on how these sections are actually utilized, this also has the potential to unnecessarily delay the completion of investigations.

3.6F3: This section should be reworded or eliminated. It mandates that if in the course of an ongoing investigation facts concerning new allegations emerge, the new process must start over unless both sides agree to waive that requirement. Depending on how this clause has actually been utilized, it has the potential to impede ongoing investigations.

3.6L: Requires that files not be retained longer than three years under certain circumstances. I'm not sure if this is something that is required by state law, but at a minimum three years isn't long enough.

3.8: This language would presumably reflect standard practice. However, it isn't what is articulated in the OPA manual (which talks about the employees Captain and Bureau Chief reviewing the OPA file as part of the chain of command review). This section should be clarified and brought into alignment with the OPA manual.

3.10A2: Complainants should have the right to opt out of mediation/Alternative Dispute Resolution (ADR), with the proviso that nothing discussed in the mediation/ADR process can be utilized in the internal investigation.