

**OPA REVIEW BOARD
STATUS REPORT
December 5, 2006**

I. Scope of This Report

This is the Board's fifth report since City Council's appointment of the inaugural panel in May 2002. These biennial reports constitute the Board's core mission on behalf of Seattle citizens, intended to be based upon our in-depth review of closed, redacted police misconduct case files. However, because the legislation unanimously passed by City Council on May 30, 2006, to ameliorate the problem of Board member personal liability is not yet effective,¹ this report does not discuss any misconduct cases, intended instead as an overview of OPARB's activities since our fourth report.

II. OPARB Activities: April 30, 2004, to Present

A. Efforts to Improve Seattle's Police Accountability System

We issued our last report on the Seattle Police Department's Office of Professional Accountability (OPA) over two years ago, on April 30, 2004.² Late that same year, the City and the Seattle Police Officers' Guild (SPOG) entered into the current collective bargaining agreement. While paving the way for overdue personnel performance reviews and a mediation program, the current contract failed to correct either OPA's burdensome redaction requirement (for closed cases, prior to Board review) or OPARB's untenable personal liability dilemma, which has hampered our ability to issue substantive reports.³ In response, OPARB convened members of the original 1999 Citizens' Panel that had called for OPA's creation to discuss prospects for OPARB's continuing viability.⁴ As a result of these efforts, City Council unanimously endorsed our call for a clearer statement of our confidentiality obligations on May 30, 2006, by enacting new legislation.

¹ Legislative Appendix, Ordinances 122126 and 122127; Resolution 30871.

² OPARB, Final Report, YE 2003, dated April 30, 2004. All of OPARB's reports can be downloaded from our website at <http://www.cityofseattle.net/council/OPARB/>.

³ Agreement By and Between the City of Seattle and Seattle Police Officers' Guild, Effective through December 31, 2006.

⁴ Participating in the October 4, 2005, panel discussion was the Honorable Charles Johnson, the Honorable Terrance Carroll (who served for approximately 11 years as the original OPA Auditor), Professor Hubert Locke, public safety committee chair Nick Licata, and OPARB consultant Michael Pendleton.

The City's agreement with SPOG expires at the end of this year, and renewed bargaining will soon get underway. SPOG has also recently instituted an unfair labor practice challenging the legislation⁵; either proceeding could nullify the new Council legislation. We have nonetheless reached out to each of SPOG's two succeeding presidents following the untimely death of Guild President Ken Saucier,⁶ and have worked to maintain communications with our community stakeholders.

OPARB continues to meet the first and third Tuesdays of each month and also meets with the OPA Director and the OPA Auditor quarterly. Board members have also attended numerous public forums and responded to many concerned citizens in person, by letter and via email. OPARB has met with two separate Russian delegations to discuss Seattle's model of police accountability, under the auspices of the Federation for Russian-American Economic Cooperation. Closer to home, we have counseled Eugene, Oregon, City Councilor Bonnie Bettman in advance of that city's establishing its own police oversight system. Board Chair Peter Holmes further testified before the blue ribbon panel that recently recommended creation of an Office of Independent Oversight for the King County Sheriff's Office.

All current Board members attended the 10th Annual Conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) in Chicago in October 2004, where Mr. Holmes addressed fellow conferees on the local political support necessary for successful civilian oversight of police. In addition, City Councilmember Nick Licata joined Seattle's NACOLE delegation. In December 2005, two-thirds of the Board attended the 11th Annual NACOLE Conference in Miami, in the wake of Hurricane Wilma. In September 2006, two-thirds of the Board attended the 12th annual NACOLE conference in Boise, Idaho, again accompanied by City Council President Nick Licata, along with OPA Director Sam Pailca, Associate Director John Fowler, and OPA Auditor Kate Pflaumer.

Defending transparency against the fiscal demands of police accountability, we successfully opposed the elimination of half of OPA's civilian management as part of proposed biennial budget cuts, in a direct appeal to City Council.⁷ More recently, the Board has worked hard to improve its own operating procedures and practices. Attached as Exhibits A, B, and C, respectively, is a working definition of OPARB roles and responsibilities, OPARB's protocols for Citizen Access, and OPARB's Code of Ethics. With the assistance of Legislative Department staff, OPARB has also recently updated its web page to reflect

⁵ PERC Case No. 20687-U-06-5271, filed Oct. 5, 2006.

⁶ Letters to Sgt. Kevin Haistings dated August 10, 2004, and November 15, 2004; letter to Sgt. Richard O'Neill of February 27, 2006.

⁷ Letter dated October 15, 2004, to Council President Jan Drago.

current member terms and update information and links. OPARB continues to exist and operate well below its annual budget allotment.

B. Closed Case Review & Board Reports

Throughout the past two years your Board has continued to review OPA's closed, redacted cases, although not without difficulty, and not entirely due to our concerns over personal liability. After our last report was released in May 2004, responses by the OPA Director and the Seattle Police Department suggested areas for further inquiry by the Board.⁸ Consequently, we requested, among others, all OPA cases involving Tasers in 2003 (the period covered by our last report), along with all cases that year in which the Chief had overruled the OPA Director.⁹ Due to limited resources, the Department ultimately delayed OPARB's production requests by more than a year, and at the expense of our regular, ongoing case sampling—forcing us to revise our reporting schedule. Both the Board's "normal" and special case review was thus disrupted for a significant portion of the two-year reporting hiatus just past.

A draft report for all blind sampled cases reviewed in CY 2004 has been prepared by Board members Holmes and Moericke. Due to the case production delays described above, however, the Board continued reviewing its renewed case sampling but shifted report writing efforts to separate reports pertaining to the June 2004 requests—received, in large part, during 2005. This includes a draft report by Board member Secrest on all cases involving Tasers, and a separate draft report by Board Chair Holmes on the 11 misconduct cases in which the Chief of Police overruled the OPA Director's recommended discipline. All three of our draft reports were requested by the Seattle Times and Seattle Post-Intelligencer newspapers pursuant to public disclosure requests, but none will be issued in full final form until the liability provisions enacted by City Council become effective. The following includes some of the recommendations OPARB intends to make and support in these pending reports:

- ***OPARB recommends that the Department join in conducting a public forum on best practices for the policing of mass events.***
- ***OPARB recommends that OPA investigators receive standardized training in best investigative practices***

⁸ Letter to Sandra Pailca dated June 30, 2004; her reply dated July 12, 2004; and the Board's response dated August 5, 2004.

⁹ We must note having reviewed one case in which the Chief of Police sustained a complaint previously exonerated by OPA. A case alleging excessive force that had been captured on surveillance video, the Chief apparently saw through OPA's blatantly leading questioning of the named officer.

- ***OPARB recommends that OPA investigators be evaluated on the thoroughness of their OPA investigations.***
- ***OPARB recommends that OPA institute performance standards for non-OPA investigations, and carefully evaluate the proposed disposition of all non-OPA investigations.***
- ***OPARB recommends that City Council hold hearings prior to negotiations with SPOG to determine what the citizens perceive as important issues that may be subject to bargaining.***

III. Changes on the OPA Review Board

OPARB has just concluded a significant period of transition.¹⁰ The Board's first chair, John Ross, resigned for personal reasons and moved his family out of state during the last quarter of 2003. Peter Holmes succeeded Ross as Board Chair¹¹ and, along with fellow Board member Lynne Iglitzin, completed the YE 2003 Final Report. In July 2004, Bradley Moericke, a veteran of the Sumner Police Department and Seattle businessman, was appointed by City Council to fill the remainder of Mr. Ross's unexpired term in the Board's law enforcement position.¹² Mr. Moericke has since received his J.D. from Seattle University School of Law, was admitted to the Washington State Bar, and is currently employed by the Pierce County Prosecuting Attorney as a deputy prosecutor. In October 2004, Sheley Secrest, a recent graduate of Seattle University Law School and liaison to the Minority Executive Directors' Coalition from the Seattle Chapter of the NAACP, was appointed by the Council to replace Ms. Iglitzin in the Board's community activist position, and reappointed in May 2006.¹³ Ms. Secrest is currently President of the NAACP, Seattle-King County Chapter, and is employed by the Defenders Association.

¹⁰ Seattle Municipal Code Ch. 3.28.900, et seq., which created the OPA Review Board, presently provides for the appointment of three board members—one each with backgrounds in law enforcement, community activism, and a member in good standing of the Washington State Bar, respectively. Filling those respective positions on the original Board were John Ross, former officer in charge of the Seattle Office of Alcohol, Tobacco & Firearms; Lynne Iglitzin, former chair of the Seattle Human Rights Commission, and Peter Holmes, a downtown Seattle civil business litigator with twenty years' experience.

¹¹ Mr. Holmes' second two-year term expired in April 2006. City Council amended the OPA Ordinance to permit Board members to serve a third two-year term, and Mr. Holmes was reappointed to his final term, which will end in April 2008.

¹² Mr. Moericke was reappointed in May 2005 to a two-year term which expires in April 2007.

¹³ Ms. Secrest's first term expired in April 2006, and has been reappointed to a second two-year term.

In addition, the City has just begun a nationwide search for OPA Director Sam Pailca's replacement, representing yet another important milestone for police accountability in Seattle. Your civilian review board looks forward to maintaining the same collegial working relationship with the new OPA Director as it has enjoyed with Director Pailca, in service to the City of Seattle.

IV. OPARB: Self-Assessment

The Board continues to work hard behind the scenes and in the community to advocate for effective police accountability. Several OPARB recommendations from our last report have been implemented by OPA. In addition, OPARB has worked hard to implement elements of its own strategic plan, create specific policies and procedures, and solve the thorny redaction and liability problems.

In our last report, OPARB made twelve specific policy recommendations. For example, OPARB recommended that the OPA reexamine its definitions used to describe case dispositions, finding that OPA over-used the term "unfounded" to describe complaints that could not be proved or disproved. OPA Director Sam Pailca worked to revise SPD policies and procedures section 1.121 to clarify the proper dispositions, and revised the language used in OPA disposition letters to complainants to better explain the bases for outcomes. Likewise, OPARB recommended that OPA stop the practice of requesting criminal background checks on complaining civilians, except where such background checks may be relevant to the investigation. OPARB understands that this practice has been eliminated.

In response to OPARB's and other groups' recommendations, the Seattle Police Department revised and clarified its policy on the use and reporting of Taser use by its officers. OPARB also called for a more uniform application of the department's requirement to file use of force statements in all cases where force is applied by an officer. OPARB commends Chief Kerlikowske and Deputy Chief Kimerer for their response to these recommendations and the policy changes made to date. OPARB strongly recommended that OPA investigators limit the use of leading questions posed to officers during OPA investigations, and to date OPARB has seen progress in this area when reviewing subsequent transcripts of closed OPA interviews. Lastly, OPA complied with OPARB's recommendation that it receive copies of the OPA Auditor's input and policy recommendations along with closed, redacted files, so that OPARB may compare these recommendations with its own and track all such recommendations with future changes in OPA practices.

In an effort to strengthen its own credibility and efficiency, OPARB has recently adopted a code of ethics, member roles and responsibilities, and most importantly, Public Access, Case Monitoring & Review Protocols. While these protocols are by no means inclusive and are still evolving, your review board has taken steps to incorporate best practices as a guide to clarify how the Board will

conduct itself. More importantly, the Board has addressed how it will conduct open meetings, confront concerns of aggrieved citizens, and maintain transparency in light of its role in the oversight process.

V. Improving Police Accountability: Next Steps

Just before our last report, the City released a very important study by the Vera Institute of Justice on racial profiling by Seattle police in early 2004.¹⁴ Every citizen concerned with police accountability should obtain a copy of this report and become familiar with its findings. That a clear majority of Seattleites believe their police engage in racially-biased policing and other misconduct is troubling enough; the fact that less than one percent of respondents dissatisfied with their involuntary encounter with Seattle police bothered to contact OPA is especially distressing. More plainly needs to be done to promote OPA as the fair and impartial forum to resolve citizen complaints of police misconduct, rather than escalating tensions on Seattle streets.

OPARB envisions a fair and effective OPA, so trusted by officer and civilian alike that it becomes THE forum for airing grievances. Although we are not there yet, the promise of a safer Seattle makes opposition to a strong OPA short-sighted. Law enforcement should recognize that it may have the most to lose, because if Seattle's model of police accountability—where police essentially retain the privilege of policing themselves—fails, the only alternative may be independent civilian oversight, complete with investigative and disciplinary authority. Whether the Seattle public possesses the will to demand better police accountability within or as an alternative to OPA remains to be seen.

The OPA Review Board nonetheless looks forward to continued support for its mission and work. We remain committed to ensuring a fair and efficient system of police accountability, with the goal of making Seattle a safer, more inclusive community for civilians and officers alike. We remain optimistic that a City which can lead the Nation in local implementation of the Kyoto Accords on Global Warming can similarly set the bar by which police-community relations are judged.

¹⁴ Davis, Robert C., Nicole J. Henderson & Yury Cheryachukin, "Assessing Police-Public Contacts in Seattle, WA", Vera Institute of Justice (New York, January 2004). The study can be downloaded at <http://www.cityofseattle.net/Police/Publications/Special/VeraInstituteStudy.pdf>. Two new, important books are recommended reading on police accountability matters, including Samuel Walker's *The New World of Police Accountability*, (Sage Publications 2005), and former Seattle Police Chief Norm Stamper's *Breaking Rank: a Top Cop's Expose of the Dark Side of American Policing*, (Nation Books 2005). We also urge Seattle citizens to continue reviewing OPA's monthly commendation/complaint summaries online at <http://www.seattle.gov/mayor/issues/OPA.htm>.