

CITY OF SEATTLE

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

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June – November, 2011

**Judge Anne Levinson (Ret.)**  
**OPA Auditor**  
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## Introduction

This report is the second semi-annual Seattle Police Department Office of Professional Accountability (OPA) Auditor report for 2011. In Seattle's police accountability system, the OPA is responsible for addressing issues of alleged misconduct and the Auditor is a civilian (each Auditor has been either a retired judge or former federal prosecutor) who provides independent oversight of the OPA's work. The Auditor reviews every misconduct complaint filed and every investigation to help ensure that each complaint is addressed as it should be and every internal investigation is fair, thorough and objective. The Auditor also makes recommendations to City policymakers for systemic reforms and suggests ways to improve performance through critical appraisal of policies, procedures and practices.

To enhance the transparency and openness of Seattle's police accountability system, the OPA Auditor is required by ordinance to issue a public report twice per year, summarizing the number of complaints and investigations reviewed; her requests for reclassifications of complaints or additional investigations to be conducted; a summary of issues, problems and trends noted as a result of her reviews; recommendations for additional officer training, including any specialized training for OPA investigators; any recommendations for policy or procedural changes; any findings from audits of OPA records or the OPA Director's reports; and any other activities.<sup>1</sup>

My initial report, covering the second half of 2010, can be found at [Auditor Report July-Dec. 2010](#). It includes a summary of how Seattle's civilian oversight system works, describes how complaints are classified and investigations are conducted. My report covering the first half of 2011 makes a number of additional recommendations and can be found at [Auditor Report Dec 2010-May 2011](#). The Director of the OPA, also a civilian, issues monthly and annual reports summarizing trends and statistics, at <http://www.seattle.gov/police/OPA/publications.htm>.

## Policy, Procedure and Training Recommendations

Civilian oversight of police practices is most valuable when it results not only in ensuring individual cases are appropriately addressed, but also when changes in policy, organization and practice are identified and implemented. For that reason I was particularly pleased with the Chief's recent decision to create the new Professional Standards Section within the Department. This Section will play an instrumental role in helping the Department be clear about expectations, stay abreast of best practices nationally, provide leadership to help ensure implementation of recommendations in a timely fashion and, in an integrated way horizontally and vertically through the Department, involve employees. As the Chief noted, the new Section will help "make better use of the insights possessed by the employees who will be affected by new policies as well as by our in-house subject matter experts." The intent is to give employees of all ranks opportunities to engage in continuous

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<sup>1</sup> Cases included in the totals of complaints and classifications for this reporting period are not discussed unless the case has concluded. For example, cases where the investigation or mediation is still ongoing or cases where disciplinary decisions are pending cannot be discussed.

improvement strategies by providing input as to what policies and training changes are most needed, and whether what is being proposed is clear and understandable as it is being developed.

This approach should provide fresh perspective, re-prioritize some long-standing areas for improvement that have languished, provide consistent opportunity for cross-departmental collaboration, make better use of those with expertise regardless of rank, help communicate change effectively and reinforce the SPD's cultural expectation of service and professionalism.

Below I will touch on several priorities for systemic change I recommended in previous reports, many of which this new Section has begun to address. Other recommendations, such as directives needed to reinforce specific policies that were at issue in complaint investigations, are also now being integrated into better tracking mechanisms for timelier implementation.

I applaud the Department as well for moving forward with other changes that they could have delayed in order to use at the bargaining table in the prolonged negotiations with the Police Guild. In my last report I noted "two of the most important changes the Department can make to improve performance are to return to the unity of command approach to shift assignments and to provide clear expectations of responsibilities to sergeants, with concomitant tools and training." In my view, many of the current issues of officer and sergeant performance stem from the approach of in-squad relief that was intended to make possible the new beat boundaries and shift structure of the Neighborhood Policing Plan. Returning to the approach of floating relief squads means officers will again have consistency in the sergeants who supervise them and sergeants will have clear accountability. The Department reports that it is on schedule with the necessary changes to shifts and boundaries for a return to the traditional relief squad approach to take effect in January.

The Department has also conducted additional training for sergeants. I observed the new one-day sergeants training the first time it was offered and expressed concern that initially it was not of the quality it could have been. I suggested advance involvement of the sergeants in determining the priorities to be covered, explaining more clearly at the start the training objectives and goals, and having more interactive teaching rather than a lecture approach.

The Department has continued to work on the training, along with additional training for report writing. Sergeants need to feel comfortable that they understand exactly what is expected of them and how their success is measured. Excellent supervisory skills are not easy in any profession, and police work is no exception. Continued emphasis on the role of supervisors should remain a priority. I would still like to see additional thinking on other ways for mentoring, use of exemplars, or perhaps even the concept of 'lead sergeant' or a lieutenant whose role is to coach and mentor sergeants. The Department should also continue moving forward with opportunities for use of In-Car Video (ICV) by supervisors to mentor and coach officers, notwithstanding the Police Guild's (the Guild) filing of an unfair labor practice claim related to the Department's viewing of ICV. This is an area where the Guild could instead work collaboratively to help their officers improve performance rather than opposing the use of video for fear misconduct might be spotted. (The Guild should recognize its position is inconsistent with enhancing public trust and respect and that the defense of poor performance tarnishes all officers).

With regard to other training, the Department still needs to inform policymakers when the “Justice Based Policing” or “LEED”<sup>2</sup> training will be underway. The same is true for the Defense Department’s Defense Advanced Research Projects Agency (*DARPA*) partnership, a unique effort with a great deal of potential for enhancing future training.

With regard to hiring recommendations, there was not any progress in this past budget by policymakers in the development of a segregated fund to help level out year-to-year hiring. This unpredictable fluctuation in hiring is a decades-old dilemma for the Department that results in diminished ability to keep the bar consistently high for hiring criteria and maximize training capacity for new recruits, which can later be reflected in problems with officer performance.

The Department is also working to improve its approach to review of use of force incidents. The U.S. Department of Justice will be advising the Department on this topic, but in the meanwhile the Department has begun implementing some changes previously recommended, including a broader, cross-departmental approach to incident review, ensuring the video is always a part of the incident review and supervisors receiving additional training on how to conduct a review. The Department’s new approach for review should help assess whether changes in hiring, training and supervision result in fewer interactions where force is used when other options exist.

I am also pleased to see ongoing command staff communication with the Law Department to comprehensively review all litigation and legal issues to inform best practices in departmental operations. As well, improvement appears underway for another issue where in past reports I recommended the Department dedicate effort to enhancing its operations and work more collaboratively with the Law Department - public disclosure. The law in this field remains in flux, and the resource demands are significant. In my view, the Department has tried to operate in good faith; nonetheless, I felt that the Department’s credibility with the public and the media was lessened by how it was handling some public disclosure requests, whether for general police information, internal investigations, discovery requests or videos. Greater transparency should in turn result in less time and money spent on litigation and an increase in public trust.

An area where the Department has not made sufficient improvement is officers’ required use of their In-Car Video system. OPA continues to see far too many cases where officers are not using the system as they should and supervisors are not addressing it. The Department needs to have a single point of command and move forward to rectify the too long-discussed array of policy, technological and training gaps. We are well past the time when all officers should have been trained and know their ICV responsibilities, supervisors understanding their role to ensure that ICV is used properly, and malfunctioning equipment fixed. Additionally, the City’s legislative agenda should include the necessary amendatory language for RCW 9.73.090 to provide a clear exemption with regard to second-party consent for use of body cameras.

Another long overdue area for organizational improvement is the Department’s secondary employment system (off-duty work for employers other than SPD). As I mentioned in prior reports, the Department could reduce the number of issues that arise from this context by centralizing and modernizing its secondary employment system.

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<sup>2</sup> “Listen and Explain with Equity and Dignity” training stresses respect and listening skills as an alternative to the use of force.

With regard to OPA-specific recommendations, one of my initial observations during my first quarter as OPA Auditor was that the classifications of complaints (deciding how a complaint is to be addressed) and the findings (results of investigations) are somewhat confusing and do not further the goals of transparency and understandability. I recommended that we focus on ways to reduce the number of classifications and clarify the definitions of classifications and findings. During the first half of 2011, these recommendations were the subject of a work group that included the Director, the Auditor and representatives from the OPA Review Board (OPARB).

A key objective for changing the classification system is so that more complaints can be handled directly by supervisors or precinct command, rather than referring them to OPA, while still preserving civilian oversight to ensure all allegations are taken seriously, accountability occurs, and problem trends are spotted. Our work group recommended a bifurcation of complaints filed with the OPA so that more minor complaints are handled directly or are referred to supervisors. The number of classifications is reduced to two major categories, while the number of findings and their names are changed to improve understanding of outcomes.

The proposal can be found online at [Joint Proposal for OPA Classifications & Findings](#). The Department has indicated it will begin implementing the changes in January, 2012.

Also still on the list for OPA improvements is an assessment of ways to increase the number of complaints resolved through mediation, which allows both the complainant and the officer to view the incident from each other's perspective. Both complainants and officers report satisfaction with the result reached when mediation is used. However, complainants still do not use mediation as frequently as they could. In this six-month period, only a handful of complaints recommended for mediation were successfully resolved that way, with complainants declining to participate in nearly a third of the cases. In 2012, we will evaluate the barriers to more frequent use of mediation.

A number of recommendations to improve transparency and accessibility are still in process. A recommendation from my initial report was to look for ways to use the OPA software system to provide additional tools for complaint tracking, workflow assessment, trend reporting and analysis. (A small example mentioned was to change the coding so that an allegation could also include the nature of the underlying incident, not just the misconduct allegation, e.g., 'use of force -obstruction' or 'use of force - jaywalking', rather than 'just use of force', to better spot problem trends).

Also recommended was to update the training manual for new OPA investigators and intake personnel to ensure institutional consistency regardless of sworn personnel assigned or the civilians involved in oversight. Some progress was made on the recommendation that all the letters, complaint forms and other OPA-related materials be reviewed and updated to make sure they are as explanatory and helpful as possible to complainants, officers and the public. Great improvement was made to the SPD website, including some changes to the OPA page, but work is still in the queue for a number of website improvements previously recommended to promote transparency and understandability.

## Complaint Review

The OPA Director and OPA Auditor, both civilians, review all cases at the intake stage to determine whether the complaint should be investigated, handled by a supervisor, can be resolved without referral or might instead be successfully mediated. In the period covered by this report, the OPA Director and I reviewed 268 new complaints alleging misconduct (this compares to 289 in the previous reporting period).

We agreed with the recommended classification for all but 17.<sup>3</sup> For those we reclassified, 4 were from Preliminary Investigation Report (PIR) to Supervisory Referral (SR); 1 SR to PIR; 4 SR to Investigation Section (IS), for investigations to be conducted directly by OPA investigators (sworn SPD sergeants assigned to OPA); 1 Line Investigation (LI) for investigations to be conducted by the precinct or unit to SR; 4 IS to LI; and 3 LI to IS. The final classification results were 112 as PIR, 70 as SR, 6 as LI and 80 as IS. 31 cases were recommended for mediation. I also reviewed 385 inquiries that had been entered by staff into the OPA 'contact log' from May through October. These are contacts and inquiries that may require information or assistance, but do not involve possible misconduct. Each month the Director and I review these to make sure nothing warrants further attention and all inquiries are handled appropriately.

In reviewing the initial complaints to determine how they should be classified for follow-up, we also added 18 allegations. Most frequent among them were allegations concerning failure to use In-Car Video (ICV). Other examples include biased policing, failure by an officer to identify his or her name, profanity, improper search & seizure, report writing and honesty.

Lastly, in regard to filing of possible misconduct complaints, I was pleased to see the trend continue that complaints were initiated from within the Department as well as externally. During this period, a number of complaints were initiated from supervisors, command staff or other officers. Willingness to report possible misconduct from the inside is one indicator of a healthy system.

## Criminal Investigations

Each quarter the Auditor reviews complaints that may also result in possible criminal prosecution. Previously, I recommended that the Department change its protocol to refer these types of cases for both felony and misdemeanor filing decisions at the same time, and that the City Attorney establish a faster timeframe within which criminal filing reviews will be completed. Both recommendations have been implemented and should result in more timely resolutions of certain complaints, with less frustration about lengthy delay for both the complainant and the officer.

For the same reasons, I also recommended that the Department change its practice of always delaying the administrative investigation until completion of the criminal proceedings, and instead establish a protocol to move forward with the internal investigation, unless there is a legitimate

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<sup>3</sup> Complaints are currently classified at intake in one of four ways: Preliminary Investigation Report (PIR) or Supervisory Referral (SR) where the complaint is referred to the employee's supervisor. Generally, PIRs are for information only, while SRs require that the supervisor resolve the complaint and report back to OPA. Complaints classified as needing an investigation are either a Line Investigation (LI) where the complaint is investigated by the Line of Command or an "OPA-IS" investigation conducted directly by OPA investigators. All investigations are reviewed by the Auditor and the OPA Director, both of whom are civilians.

reason to wait. The Department of Justice in its recent letter to the City reinforced this recommendation, advising SPD to develop procedures for conducting parallel criminal and administrative investigations that do not compromise the integrity of either investigation so that the administrative investigation may proceed regardless of the status of the criminal investigation. There are instances where it is prudent for the Department to wait (for example when the named officer is not aware of the criminal investigation, it would not be a good idea for OPA to initiate the administrative investigation, thereby alerting the officer), but there are other cases that could proceed without risk of contaminating the criminal process. Allegations involving DUI's often fall into this category.

### Investigation Review

In Seattle's system of police accountability, civilians provide oversight not only as to the intake and classification of complaints; they also review every investigation before it is closed to make sure OPA or line investigators have been impartial, thorough and fair, ensuring no judgment is made until all facts have been gathered, policies and training assessed and discrepancies analyzed. It is not the Auditor's role to be an advocate for either the named employee or the complainant, but to ensure that all complaints of misconduct are addressed with integrity and objectivity.

During this reporting period I reviewed 99 investigations (as compared to 111 during the last reporting period). In recent months, the investigators have incorporated previous recommendations made, and the quality of the intake and investigations has reflected those improvements.

Areas where I would like to see continued improvement include moving more quickly on approving an investigative plan after the intake is complete, particularly where there is a need to obtain time-sensitive information; and conducting complainant and non-employee witness interviews in person whenever it doesn't significantly slow down the process or discourage complainants and witnesses from participating. Investigators should, among other things, routinely inquire in interviews as to the officer's understanding of the policy at issue so the Department can determine whether the policy is unclear or additional training is needed; elicit information as to the specifics of relevant training the officer had in terms of content and timing so the Department can assess training accordingly; and drill down in each instance where there are apparent inconsistencies in information among interviews or between an interview and a video or other piece of evidence.

One area, where despite an additional directive from the Chief, we did not see improvement, is in the quality and timeliness of those investigations referred to the precinct to conduct (a 'Line Investigation'). As a result, we essentially stopped referring any investigations and instead assigned them to OPA investigators. While improving the quality, this inhibits the ability to focus OPA resources on the most complicated or serious cases. It also does not bode well for our recommendation, intended to streamline the process, to overhaul the classifications and findings system so that more complaints are handled directly by supervisors at the precincts.

Timeliness of OPA case closure also remains an issue. I continue to believe that many cases could be handled in less time than the contractually-imposed 180 days, and that there are ways to more

efficiently handle the cases that are less complex in order to bring them to closure more quickly, to be more responsive to the complainant, and to provide clarity to the employee sooner. Several OPA-IS investigations in this reporting period were completed just at the 180-day deadline and one missed the deadline due to a clerical mistake by SPD HR personnel during this reporting period (further discussed below).

Although the system since its inception had the Auditor reviewing cases as they were being finalized and sent to the Chief, during this reporting period we began a new approach where I reviewed the investigation at its preliminary completion stage: that is when the investigator had finished the initial investigation and referred it to the Lieutenant and Captain for their review and recommended findings. The goal in making this change is to better address what I consider a diminished value of having the Auditor ask for additional investigation when five or more months have passed since the incident. By this point in some cases, witness' memories can be even less reliable, and/or other evidence no longer exists. OPA will always pursue gathering the additional information or conducting additional interviews if I request it, and an investigation is not closed until the Auditor signs off on it, but the shorter the time between the incident and any additional investigation, the better. And if it helps conclude cases faster, shortening the time between the incident and any supervisory intervention or discipline, that is always preferable. Longer duration is less impactful in terms of addressing the underlying behavior, harder on the citizen and officer who are left in doubt for those months, and can appear to the public or other officers that the Department is taking accountability less seriously.

Unfortunately, even though Auditor review was completed within two or three days, where we used this preliminary review approach and I determined no additional work was needed, these cases were still not necessarily then concluded expeditiously. Some cases during this reporting period took as long to move through to conclusion after the initial investigation was complete as the investigation itself took.

As I have noted in earlier reports, the OPA investigators are professional, dedicated individuals who take their role of helping ensure police accountability very seriously. Their investigations are usually thorough, objective and well-done. The intake is always respectful and comprehensive. Where I have raised concerns, OPA has taken steps to address them. Where I have requested additional follow up, it has been done or they have presented a good rationale as to why they might disagree. Where I have concerns but do not believe the outcome would change as a result, we review the case nonetheless in order to have continuous improvement for future cases.

In a handful of investigations early in the reporting period I felt leading questions had been asked, personal comments offered and information about possible witnesses had not been solicited. By and large, those investigations had been conducted prior to my last report where I noted areas for improvement. I did not see these problems in later interviews. Below are investigations I reviewed during this period where I felt they either could have been more thorough, I disagreed with the findings, or they highlight a constraint based on the Guild contract.

I've also included some cases that show trends related to officer performance. For example, several cases during this period highlighted the need for continued training on search and seizure law, a complicated area of law that is often challenging for officers. This was an area I noted in earlier

reports as being an important one to focus for additional sergeants training (along with Use of Force, In-Car Video, report writing, and mentoring officers, especially in regard to listening and communication skills). Similarly, we continue to see cases where the charge of obstruction may be too freely used and cases where drivers refuse to answer questions or step out of the vehicle, resulting in use of force, another area where the force that is permissible in a particular situation is not always well understood.

As mentioned above, there continue to be too many cases where officers are not complying with the In-Car Video policy and their sergeants are not ensuring that there is useful video or, if a good reason why not, making sure it is noted on the General Offense Report. Similarly, there continue to be examples of sergeants not reviewing incident reports or officers seeking sergeants to sign off on their reports who they know will only provide a cursory review, if that. Now that additional sergeants training has occurred, and expectations have been reinforced, I would recommend OPA start including allegations to address the responsibility of sergeants to ensure there is useful video (just as we started adding ICV allegations for officers this year) and that the Department adopt a policy that the unit sergeant or the sergeant who screened the arrest must be the one to approve a General Offense Report (rather than allowing any sergeant to approve it) and take responsibility for its contents.

An example of a case where I disagreed with findings and the thoroughness of the investigation was an investigation that had been referred out to the precinct to conduct. The suspect had trespassed in an apartment and claimed to the officers he was confused, thinking the apartment belonged to his sister, due to the medications he was taking. He then told the officers that he remembered his sister lived in Kent and he could find his way there by bus. The officers let him go, without charges, without contacting his sister or doctor to determine if there was any veracity to his claim, without assessment by a mental health professional, and without taking the time to determine what had actually occurred in the apartment. The lead officer never went into the apartment. The second officer took a cursory look and reported back to the lead officer that the apartment was messy but that nothing had been stolen. The officers left after allowing the suspect to go on his way.

In fact, the suspect had urinated and ejaculated in several places in the apartment, including on the shower curtain and walls and on clothing; a set of false teeth not belonging to family was found; a computer had been knocked to the floor; and many things were in disarray. The family ultimately spent \$7500 to move from the apartment because they were fearful the suspect would return.

The recommendation by the precinct lieutenant was for a Supervisory Intervention finding on the allegation involving Professionalism/Exercise of Discretion - Failure to Take Appropriate Action. I felt that the line investigation was not sufficiently thorough, should not have been signed off on by the precinct or OPA Investigations Section, and that Sustained, not Supervisory Intervention, was the appropriate finding. I also requested the precinct follow up directly with the complainants to apologize if that had not yet occurred. The OPA Director concurred, there was a Sustained finding, and the precinct reached out to the complainant to apologize as well.

In a case involving other jurisdictions and the FBI, the complainant was a drug dealer who alleged that an SPD officer used his position to demand the complainant erase a drug debt allegedly owed by the officer's son. The complainant/dealer was also a confidential informant working on behalf of

Bellevue. Bellevue declined to pursue the matter and turned it over to the FBI. The FBI found no proof, but in the meanwhile had let the case drag on before OPA could proceed. OPA found no evidence of wrong doing, but I requested additional investigation be conducted to determine what happened to a ledger of debts and payments the complainant/informant allegedly kept and to bank records of the officer, to obtain phone recordings of relevant conversations between the informant and a supposed witness/friend imprisoned at Walla Walla, to determine if an additional alleged corroborating witness would have any direct knowledge, to inquire of the named employee if he had the identifying clothes and hat matching that as described by the complainant, and to follow up on a discrepancy as to timing arising from the interviews as to when certain information was disclosed.

OPA investigators pursued the additional information and found no evidence that corroborated the allegation. OPA Investigation Section recommended a finding of Unfounded on the Violation of Law allegation and Not Sustained on the Integrity – Misuse of Authority allegation. I felt the latter finding should have been a Supervisory Intervention, with the better course of action by the officer to notify his superiors or other authorities as to the situation rather than leaving himself open to the perception that he was misusing his authority when trying to help his son, especially given that the complainant/dealer and witnesses were aware that he was an officer. The OPA Director concurred and the outcome was a Supervisory Intervention finding.

A case where the underlying allegation was Use of Force provides another example of an issue I have raised in prior reports – the Guild’s position that the collective bargaining agreement does not allow for an allegation to be sustained if it is not identified in the first 30 days after the initial complaint is made. This case involved a 17-year old and the issue of ‘contempt of cop’. The officer used his patrol car’s public address system to warn the subject about jaywalking in front of the police. The subject was embarrassed by this public scolding and admitted that in order to save face in front of a friend he raised his middle finger. The officer then stopped the subject and wrote him a citation for failure to obey a pedestrian control device. The subject alleged that during this stop the officer called him an expletive and a “thug” while he frisked him on the hood of his patrol car. While the allegation of excessive force was determined to be Unfounded, and there was no corroborating testimony with regard to the derogatory language, so it was determined to be Not Sustained, I felt the officer did not have reasonable suspicion to stop and frisk the complainant.

The officer claimed his justification for the frisk was that the subject had "given him the finger," may have said "f--- you," and did not immediately comply with an order to put his hands on the hood of the car. There was no reason to believe, or even any assertion by the officer, that the complainant was armed or that the officer's safety or that of the public was at risk. This was classic ‘contempt of cop’ behavior which should have been sanctioned, but could not be addressed by OPA because the complainant had made no allegation with regard to search and the issue wasn’t evident at the time of intake. Further, there was no mention of the frisk in the citation and there was no In-Car Video documenting the stop. A Supervisory Intervention finding was made on failure to use ICV since that was identified within the required 30-day window.

This issue of allegations not addressing the totality of the situation and asserted limitations of the Guild contract also arose in a case where the named employee was supposed to be providing back-up to other officers who were investigating a disturbance at a known problem location. While at the

location, the officer saw someone flick a cigarette to the ground and the officer told him to pick it up. When the individual would not pick it up, the officer kept pursuing it, allegedly then using force. The complainant stated that the officer was initially rough with him but eased up once the witness officer was present. The witness officer indicated that she did not observe any force being used, though she did not witness the entire interaction. The named officer stated that he simply escorted the complainant by the arm. Based on the differing accounts provided by the involved parties, there was no preponderance of evidence and a finding of Not Sustained was recommended for the Use of Force allegation. But not addressed was why the officer thought it more important to confront the littering violation at that particular time when he was providing back-up to other officers to help ensure their safety. At a minimum, he was completely distracted from his primary responsibilities. Due to the asserted 30-day limitation, the issues of lack of professionalism, unnecessary escalation and poor judgment were not addressed.

These cases highlight the importance of gathering as much information as quickly as possible at the intake stage since the actions ultimately at issue may be beyond the four corners of the initial allegations made by the complainant. Additionally, if there was no way to know about an issue prior to the interviews of the employees, OPA does have authority under the Guild contract to stop the interview and issue a new notice of allegations, starting the clock again.

One case reviewed early in this reporting period involved allegations of excessive force and rudeness stemming from an incident where officers had been called about a fight between two groups waiting near an indoor nightclub. The videotape had been erased by the private Security firm so there was no video of the interaction. The concerns I had with the investigation were that one security guard's 'interview' was simply an email from him offering his perspective. As a result, there were no questions of him as to where he was standing, what he could in fact see and hear or other specifics. The complainant and witnesses who were interviewed were only interviewed by phone although their credibility was important to discern. They should have been asked their level of intoxication that evening and whether they had spoken with each other before they were interviewed. Other friends in the groups there that evening were not interviewed. The analysis also needed to weigh the credibility of one witness who was also the victim of the alleged assault by the complainant's friend. The credibility of the complainant's friend who allegedly punched the young woman, creating the incident, was also at issue. I reviewed my concerns with the investigators and have not seen similar issues arise since that time.

Another allegation of force arose from a case where officers tackled a man who jaywalked on a busy thoroughfare in the midst of two-way traffic after the man did not respond to officers' verbal requests, flashing lights and sirens for him to get out of the road. It was raining, dark, road conditions were bad and cars had to drive around him. The lead officer felt that the best way to address both the pedestrian's safety and that of drivers was to chase and tackle the subject onto the sidewalk to get him out of the road. The subject's face hit the pavement as a result of being tackled. Both officers held him down to handcuff him. He was combative and while they had him on the ground he spat at one officer, who then punched the man. The subject, who had a history of such behavior, continued to spit and fight at jail. The incident was observed by woman in a nearby car, who then attempted to talk with the sergeant when he arrived at the scene. From her perspective, the sergeant was rude, would not identify himself, and would not tell her how to file a complaint.

She also alleged that he initially denied the officers had punched the subject and told her that he would have punched the subject as well if he had been spat upon. I also noted that the sergeant did not include this witness' name and contact information as a possible witness in the Use of Force report, so if she had not filed a complaint, there would not have been a way to reach her. He also checked the box 'no impairment' in the report, which contradicted the description he and the officers provided, and did not inquire of the officers about the lack of an ICV.

OPA Investigation Section recommended a finding of Sustained on the allegation involving unnecessary use of force in taking down the pedestrian who was walking in the middle of moving traffic and recommended a finding of Exonerated (meaning it was consistent with policy and training) for the officer who responded to the subject spitting in his face by striking him. I questioned not only the tackling and the punch, but the need to handcuff the subject, which then led to the spitting followed by the use of force.

Following a discipline meeting after OPA made its recommendation, the final determination made was that the original take down was consistent with training and appropriate given the circumstances, but that the punch in response to spitting was not. Due to a clerical error by the Department's Human Resources Director (HR, not OPA, issues discipline hearing notices), the wrong officer was named in the discipline notice issued and by the time the error was discovered, the contractually imposed 180-day deadline for completing an internal investigation had passed. The officer who threw the punch received a Supervisory Intervention finding, resulting in counseling and training, which is what the discipline would have been had there been a Sustained finding.

OPA is mandated by Seattle Municipal Code 3.28.812 (B) to report to City Council and the Mayor any situation in which an officer did not receive discipline because the investigative timeline was not met. This was the only case in my tenure as OPA Auditor where the deadline was missed. [It should be noted that the OPA Director was out of town when this notice was issued.]

This was one of the cases in this reporting period where citizen observers questioned the appropriateness of the officers putting a 'spit sock' hood on the subject. (The spit sock is a see-through mesh hood designed to prohibit the transfer of saliva, blood or other bodily fluid.) I felt in both cases the use of the mesh hood was warranted, but found no policy on point. I would recommend that the Policy Manual be updated to include the use of spit socks, with a requirement that their use be noted in the General Offense (or Supplemental) Report, since it is difficult to find an act is consistent with policy if it is neither referenced in the incident reports nor articulated in policy. Also, it would be helpful for the officers to note in the General Offense Report if it was non-police personnel who made the decision to use the spit sock, as a firefighter did in this case.

In a case involving an officer expressing displeasure via the media with City and Department policy, I felt that not all violations raised in the complaint had been addressed either in the officer interviews or the final analysis of the case and that the officer's actions did violate Departmental policy. These sorts of cases always involve a careful balancing of First Amendment rights with Departmental policy, but nonetheless, this appeared to be a clear violation. In this instance there were some allegations not covered in the interviews and other allegations where I felt the officer's responses were inconsistent or conflicted with those of a witness. It also appeared to me that the

OPA analysis emphasized certain elements of the controlling policy that comported with the conclusions reached while other elements of the policy were not afforded equivalent weight. There was also reference to voicemail and email communications, which were not produced or reviewed.

Supervisory Intervention was the ultimate finding. I expressed concern that the delay in the handling of this case might not have allowed for discipline to be imposed, should that determination have been made. Additionally, the case highlighted the need to clarify several relevant Departmental policies related to media interactions to provide better guidance to others in the future. The Audit, Accreditations and Policy Unit (Audit Unit) was directed to follow up on the necessary policy revisions.

Lastly, I felt this case again highlighted the need for a 'conduct unbecoming' policy, as previously existed in Departmental policy, to clearly articulate the expectation that officers' words and actions, whether they are on or off-duty, should not reflect poorly on the Department and undermine public trust. This is a recommendation I have made previously.

I had concerns about an investigation where the allegation was that the named officer failed to report alleged sexual abuse of a female minor by the officer's brother. The teenage girl's mother had stated during a Vice Unit investigation related to the brother that her daughter had told her that the officer knew the teenager was a juvenile and knew she was dating his adult brother. The mother stated that her daughter would not tell anyone else this for fear of getting her adult boyfriend or his brother (the officer) in trouble. Both the mother and the daughter appeared reluctant to pursue the matter. The Vice Unit conducted an investigation and concluded, "Knowledge by the named employee is at the heart of this allegation and the mother is the only person to have indicated such knowledge existed." In my view, OPA relied too much on the Vice Unit's interviews with the mother and daughter. As well, there was another brother who was at a family interaction on at least one occasion, and perhaps more, when the named officer, suspect and minor were together. There was a brief phone call between the investigator and this brother but he was reluctant to be interviewed.

With regard to the interview of the minor, even though she was 14 years old and potentially a victim of child trafficking, already known from the Vice investigation to be fearful of saying anything, this interview was done over the phone, not in person (and there was no indication in the file that there was permission by her mother for the interview to be conducted). Additionally, she was not asked during the interview whether she ever told anyone the named officer knew she was a juvenile and was 'dating' his brother (as the mother apparently stated her daughter had said).

I was also concerned that in the interview of the named officer, many of his answers were either vague, inconsistent or evasive. He gave conflicting responses regarding the alleged interaction at the suspect's car when the victim was a passenger saying he was concerned about his brother's history of bad behavior toward women, and then saying he was only joking when he asked after the minor's welfare. If it was the latter, that would be inconsistent with the conclusion drawn by the Vice Unit and OPA that the named officer was appropriately concerned and acted prudently. Further, the named officer, after stating he was only being humorous, was not asked about references in the Vice Unit report that described that interaction differently, per the girl's interview with Vice.

In the interview of the named officer, he stated, "...I don't even know this, this female. I've never seen her before, this teenager or whoever you guys are talking about." And then added, "I, I don't even know if we're talking about the same girl that he is bringing around or the same girl that..." This answer was in direct contradiction to other information from the mother and daughter, and the entirety of the interview preceding that was supposedly about the officer's knowledge of this girl, so this response would either have been untruthful or meant the named officer gave all of the preceding answers not knowing who the investigator was talking about. The investigator did not pause at that point to show the named officer the photo of the minor to pursue this further. The investigator needed to confirm that this was the minor whom they had been discussing and then track back to confirm that indeed the named officer had seen her and had interacted with her before, and then go back through his inconsistent statements. Due to conflicting evidence, the finding was Not Sustained.

The opportunity lost by not allowing supervisors to review video of day-to-day patrol work with their officers or to use video at roll call or on-line in order to help officers improve performance (as is done in other professions) was evident in one case where the finding was Exonerated and I felt a Supervisor Intervention was warranted. In this case, the officers made a situation more difficult than it might otherwise have been by spending quite a bit of time explaining to the suspect and the companion that the officers did not intend to arrest him regardless of his comments that he had an outstanding warrant and then, after receiving confirmation from radio about the warrant, grabbed him without warning, which caused the suspect to get volatile again, resulting in taking the suspect to the ground. Similarly, they spent quite a bit of time telling the companion that the knife she had was illegal, giving her the idea that she might be arrested, then - while the suspect was still not under arrest and she was still nearby - returning the knife to her and telling her it was not illegal if she kept it in her purse, then effecting the arrest of her companion while she was there with a knife in her purse. When the sergeant arrived, the officers then told the sergeant the female had to be kept away because she had a knife, which created additional problems. The officers did not appear to violate any policy or to be intentionally antagonistic, but there was certainly an opportunity to learn from the mistakes made in how they interacted with both subjects.

At issue in one Line Investigation was whether the named officer should have taken steps to pursue a DUI investigation rather than simply mailing tickets to the driver who was found in his car (having hit a parked car) and who appeared to the responding ambulance, Seattle Fire Department (SFD) and hospital personnel to be quite intoxicated. In this investigation I felt that there should have been interviews of both ambulance personnel on the scene, the SFD Captain on the scene or any relevant other SFD personnel there and the hospital personnel who treated the driver. I felt the interview of the named officer by the precinct was bare bones at best, not covering the discrepancies, conflicting information, unclear statements made on the scene or gaps in information on point to the issue as to whether he took the appropriate steps to investigate or take action (the allegation at issue). The summary write up, while articulate and helpful with regard to the underlying policy, did not address the core issue, which in my view was whether further diligence by the officer would have provided facts to warrant further investigation. Indeed, other responding personnel appeared to be quite concerned by the officer's lack of diligence. A finding of Supervisory Intervention was determined and the Precinct Captain was directed to follow up with the officer.

Whether an officer had taken \$150 cash from the wallet of a domestic violence suspect during his arrest was the allegation in one case. I commended the investigator for the thoroughness of the investigation, in several regards. He noted that the offense report stated there was an ICV and made two requests for it. After twice being told there wasn't one, he went to the precinct, located the vehicle that had been used by the officer that night (it was a spare car), pulled the hard drive and uploaded the videos himself. (The hard drive contained 68 videos.) After the videos were uploaded, he made another request and received the relevant ICV (since it was now uploaded into the system). When the complainant did not follow through, he attempted to locate and contact the complainant in-person at the listed address of the underlying incident report. He also went to the address listed in the arrest booking sheet (not a residence address). Then he called the mother-in-law for additional contact information. He appropriately and timely transitioned a witness officer to 'named officer' status, based on his interview responses. His follow-up form notes were detailed and thorough, extending from initial intake through his interviews and submittal. I did ask that he follow up on some information that I felt had not been elicited from the interviews; he conducted an additional interview to further drill down on some important points.

A case stemming from an allegation that an officer following up on a sexual assault investigation may have contacted the victim of the assault more than what was required of him acting in his official capacity raised the issues of the importance of OPA moving quickly to obtain evidence and having a protocol to compel production of records. Text messages were the critical evidence in this case and the complainant did not provide them; she decided after filing the initial complaint that she did not want to pursue the case. I was troubled that the investigator had not pursued further with the complainant the importance of obtaining the texts even if she did not want to proceed, and had not inquired quickly with the named officer as to whether his text messages were available. If so, he should have been ordered to retain them. If not, and the carrier was part of the City cell phone account, then OPA could have pursued the records that way. If it was a private cell phone contract, OPA could have used SPD's authority to send the carrier a letter indicating the records were needed as part of an investigation. If OPA needed to compel production, a request should have been made of the City Attorney.<sup>4</sup>

The officer was not directed to bring billing records or copies of the texts. Of his own accord he brought to the interview his phone billing records, which showed when calls and texts were sent and received and their duration, but not their content. There was no indication in the investigation file that, from the time when the complaint was first made, there had been any vigorous effort to obtain the records. The officer was not interviewed until four months later. The officer stated on his own during his interview that he "checked with 'a Verizon outlet' and the employee there told him they don't save text records." There was no further inquiry. It could be that the texts were not

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<sup>4</sup> OPA and SPD legal counsel should work with the City Attorney's Office to develop a protocol to obtain evidentiary records where production must be compelled. (Officers are already compelled by contract to appear and be interviewed by the investigator, so that is not an issue. An officer refusing to appear or lying to an investigator is, in itself, a violation that could result in severe discipline up to and including termination.) OPA should also determine what records are retained by each telecommunications company and the appropriate contact person in each company for records requests in order to have that information available for any investigator in the future.

available, but all effort should have been made to obtain them, given their importance to the investigation.

Also at issue was whether the officer was on or off-duty when the texts were sent, but there was no mention that the investigator verified the officer's schedule and no exhibit containing relevant records. There was conflicting testimony by the officer that he had only contacted the complainant to return her call. The officer in his interview also said that he had a discussion with another officer about the texts. The name of that officer was provided, but there was nothing in the record to indicate he was contacted or an interview requested and no reason given as to why not.

Significantly in this case the complainant had called OPA soon after she initially filed the complaint to say she wanted to drop the complaint for a variety of reasons. One reason was her concern that the rape suspect had not been served even though the named officer had told her he knew the suspect's new address. She had called the officer to find out the status and had not heard back from him. She thought perhaps she had 'shot herself in the foot' by filing the complaint (meaning the named officer was not then going to follow up on ensuring the court order was served because of her OPA complaint.) There were no questions asked in the interview of the named officer as to why he had not called her back on this or whether he had otherwise ensured the court order had been served. If the personal interactions had in some way affected the underlying criminal investigation and the safety of the complainant, that would be an important inquiry. In my view this investigation was neither timely nor thorough, and without participation by the complainant, an independent witness or the phone records, the alleged misconduct could not be addressed.

In another case the complainant and husband were both retired from SPD, and their adult daughter, who witnessed the encounter, currently works at SPD. They are all familiar with what is expected of SPD employees. The complainant had called 911 to request that an officer be dispatched to her residence to take custody of found property. As the Proposed Disposition Memo summarized, the complainant found the named officer to be "downright rude," "abrupt," and commented that he "cut" her off as she attempted to speak, generally appeared uninterested and inconvenienced by her call for service, and instead of exiting his patrol car to assist her, waved his fingers toward her, gestured for her to approach the patrol car and then made her sit in the backseat to provide information for the report.

The complainant later called the captain at the precinct to describe what had occurred and he directed the named officer's lieutenant and sergeant to meet with the officer "to discuss the incident as a training/counseling opportunity." (The kind of immediate, supervisory response we encourage.) The officer immediately requested a Guild representative and asked if the meeting was "administrative or disciplinary". When told it was administrative and was meant to reinforce the importance of positive citizen interactions, he refused to participate. There was also no ICV of the encounter.

The daughter was interviewed and concurred with her mother's perspective as to the officer's rudeness. The officer indicated in his OPA interview that he saw nothing wrong with his behavior. In response to questions regarding his failure to use the ICV, including during traffic stops, the officer replied that, "I just don't make traffic stops." He then stated that he had never asked to be trained on the use of the system and he has never responded to calls at which he thought using

video would be useful. I would have sustained both allegations of rudeness and failure to use In-Car Video; the ultimate findings were instead Supervisory Intervention and Unfounded (because he had not gone through ICV training).

In one case, a narcotics lieutenant, while processing the paperwork and evidence from a large scale narcotics sales and distribution investigation, became aware that six bills of unidentified currency were missing from a zipper pouch that had been contained within the trunk of one of the suspect's vehicles. The lieutenant initiated his own investigation rather than referring the case directly to OPA, which inhibited OPA's ability to conduct a thorough investigation. The lieutenant determined all procedures had not been followed, but was unable to determine what had happened to the six bills or their exact value. (Up to 40 people had access to the area during the time at issue.) To further complicate matters, the lieutenant promised confidentiality to the detective he had determined had not followed proper procedures. On the positive side, it was good to see effort to quickly address a problem and the Section Commander did issue a verbal reprimand. They also identified several recommendations for procedural improvements. Once notified, the OPA investigation was then 'tolled' (put on hold) while Burglary/Theft detectives investigated it as a possible criminal matter. The criminal investigation took three months, but no additional evidence was found.

OPA determined that an administrative investigation would not likely be any more productive, but neither of the previous investigations produced interview notes or transcripts or other corroborating evidence in the file, just summaries. Among the issues were that officers did not take photos of the money when processing the evidence so they did not know the exact value of the six bills; they had not closed the car trunk; did not wait by the truck while the civilian driver was there; and the lot was not secure. The initial investigation's recommendations for improvements for vehicles and evidence processing included 'hardening' the vehicle processing room for exclusive use, installing a camera in the area and installation of locked fence. The Audit Unit was directed to follow up on ensuring implementation of best practices for vehicle searches, safe storage of evidence, re-training on proper evidence recovery techniques, and reducing the amount of time it takes to process vehicles taken into custody for a search warrant.

Several cases involved issues of search and use of force after a traffic stop, an area of the law that can be challenging for officers. In one case the driver would not open his car window more than a crack and, when he did, the vehicle smelled strongly of marijuana. The officers described the driver as belligerent, refusing to get out of the car, causing them to call for back-up. They also said he refused to put his cell phone down so they grabbed it and put it on the roof. They dragged him out of car and he scraped his face on the ground. The passenger said he would drive the car home and at first they agreed to allow that, but then the lead officer said no because the driver was being belligerent. In one officer's view, it was reasonable to then impound the car, which in turn gave them a rationale to do a contents search where they then found pot and a scale in the trunk. They arrested him for obstruction. I felt the use of force and the search were both questionable, along with the officer's decision not to allow the passenger to drive the car.

In a case involving an assault at a gas station, the officers conducted a search of the complainant's car, including the glove compartment and trunk. The complainant said he did not give permission for the search and the officers did not use a 'consent to search' form. Additionally, they did not

mention the search in their General Offense Report and did not inform the sergeant who screened the arrest. There was also no ICV. All officers mentioned exigent circumstances, but once the immediate stop turned into a search, there was an opportunity to turn on the ICV. I would have sustained the allegations.

In another vehicle search the complainant had been stopped for a possible stolen car based on a tampered temporary permit in her back window. She, too, refused to provide a license or get out of the car and refused to stop talking on her cell phone. She was pulled out, with arm twisted, talking on cell phone, and ignoring the officer's request for her license. They took her aside, searched the console, put her purse on the car roof, and later searched the purse. Their rationale for searching the purse was that it could have contained a weapon, she had reached for it while in the car, and when out of the car she was not handcuffed and could have grabbed it. In reviewing the ICV, it was clear they had not made a decision to arrest her, so it was not a custodial search at that point. And, she had been stopped for either falsifying paperwork or driving a stolen car, not for a weapons-related offense. The officers did not mention the search to the screening sergeant and the sergeant did not inquire. As with use of force and ICV, in my view there need to be clear expectations regarding the search requirements and responsibilities for officers and sergeants when screening arrests, writing or reviewing reports or citations.

The Crime Stoppers program was at issue in a case involving a retired SPD employee with an extended authority commission. As a result of the OPA investigation, it was recommended that the Department conduct a thorough review of its relationship with Crime Stoppers to clarify roles and functions, including roles in managing funds, and ensure that contractual terms are being met. Additionally, the Audit Unit was directed to develop a clear policy to address questions about access to, and dissemination of, potentially confidential SPD information by Crime Stoppers personnel.

Similar concerns arose in another case as to whether the Department has sufficiently clear policy to address the issues related to private security firms with officers in uniform acting under authority as commissioned officers. Issues of conflict of interest, misuse of authority, prohibited employment, and secondary employment all can arise in these situations. At least three firms are run by SPD officers, and have been for years. The Audit Unit needs to address the practice.

As a result of a different complaint, the Audit Unit was also directed to conduct a review of the administrative operation of a training program for undercover officers to ensure there is no real or apparent conflict of interest due to the involvement of SPD personnel.

Where there had been two complaints about a retired officer working as a flagger in the same location during the course of a single week, the Director and I agreed that there should have been a finding of Sustained, rather than Not Sustained, for a Use of Force allegation. And I disagreed with a finding of Unfounded in a case when there was a credible third-party witness who gave specific examples of rudeness in his interview.

Other cases highlighted the prohibition against running one's own or another's name through criminal justice records systems absent legitimate law enforcement purposes; a range of secondary employment issues, such as to the need to obtain prior written approval before working, the prohibitions against certain types of work and the requirements for civilian employees; the proper way of handling prisoner personal property; the requirement that digital photos be sent to the

Departmental photo lab after hard copies are made for reports; and the need to ensure OPA personnel are trained in use of TTY line for hearing-impaired complainants and witnesses.

### Other Auditor Activities

In addition to the work discussed above, I participated on the City Attorney's panel to review proposals for outside legal representation for the City and the Police Department in cases the City Attorney's Office cannot handle due to conflicts or capacity issues. I observed training at the Basic Law Enforcement Academy, including domestic violence, use of OC ("Oleoresin Capsicum") or pepper spray, beat patrol mock exercises and mock scenario testing for high risk vehicle stops and crisis responses. With regard to this testing, I was particularly interested in the changes made to evaluations to better focus on performance for each element of the interaction, including communication with the individual being stopped and the other officers on the call, rather than just pass/fail for the scenario.

I attended the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference, which had an excellent array of sessions for civilian oversight practitioners from across the country. Along with the City Auditor and OPA Director, I met with the Bainbridge Island City Manager and police personnel to review their use of body cameras. As part of coordinating with the OPA Review Board, I attended the Board's monthly meetings and met with experts board members were considering bringing to Seattle who had worked on Cincinnati efforts for community engagement in police accountability issues.

To better understand hiring criteria and changes to be made in scenario testing, I met with the City police exams analyst and OPA Director. I met with the new Captain and Lieutenant who will be in charge of the Professional Standards Section discussed above to review progress implementing prior recommendations.

Lastly, I observed a mediation and will observe additional ones next quarter as part of our work to assess how we can increase utilization of this program.

### Conclusion

The dilemma for any police accountability system, whether organized with civilians conducting the investigations or civilians reviewing them, or utilizing a civilian auditor, a civilian director, a civilian review board or some combination of all three, is how to build reforms into the culture of the organization and institutionalize them so that they endure. It is necessary but not sufficient that each and every complaint is handled as it should be, and each investigation is as timely, thorough and as objective as possible. We also need to make sure that reforms are implemented and that departmental priorities, organizational structure, approaches to supervision, hiring, promotion, and training all reflect the preferred culture.