Semi-Annual Report of the Independent Auditor

For the City of Seattle

Office of Professional Accountability

January - June, 2015

Judge Anne Levinson (ret.)

OPA Auditor

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Introduction

This is the Semi-Annual Report of the independent civilian Auditor for Seattle's Office of Professional Accountability (OPA), the agency responsible for handling misconduct complaints involving Seattle Police Department (SPD) employees. This report covers the period from January through June, 2015.

Although OPA has a civilian director and is intended to be operationally independent of the Seattle Police Department (SPD), OPA is organizationally housed in SPD (which provides it unfettered and immediate access to all relevant SPD data systems, personnel, and information) and utilizes sworn personnel for the intake and investigation process. All OPA employees, whether civilian or sworn, are SPD employees. To enhance public trust and confidence in OPA's independence and impartiality, the City contracts with an individual who has judicial or legal expertise to provide additional oversight of OPA's complaint-handling and internal investigations. This individual, referred to as the "OPA Auditor", reviews in real-time how OPA proposes to classify each complaint (which determines whether a complaint is investigated, referred to the employee's supervisor for follow-up, or handled through an alternative resolution) and whether each internal investigation conducted by OPA is thorough and objective. The OPA Auditor is required to issue a public report twice per year[1], summarizing the number of complaints reviewed and any concerns as to how they were classified; the number of investigations reviewed, and any for which additional investigatory work was requested; issues or trends noted as a result of her reviews; recommendations for changes to SPD or OPA training, policy or practice; and the results of any special audits conducted.

Complaints Reviewed

When OPA receives or initiates a complaint, the first step is for an Intake Sergeant to interview the complainant and gather information about the incident or concern. Within five days, the employee, his or her Captain, and the applicable union receive written (electronic) notification of the allegation(s) and within 30 days they are notified as to how the complaint is being classified.[2]

[1] See: "Auditor Publications" at http://www.seattle.gov/opa/opa-reports for previous semi-annual reports.
[2] These deadlines are set forth in their collective bargaining agreements.

The OPA Lieutenant reviews the preliminary information and recommends whether the complaint requires an investigation into possible misconduct ("Investigation"), would best be handled by the employee's supervisor through coaching or counseling ("Supervisor Action"), or was a request for information or assistance, involves a different agency or for other reasons does not require any additional action ("Contact Log"). Recommendations are also made as to the employees named and the specific policies that are alleged to be at issue. These collectively are referred to as "intake classifications", and are each then reviewed by the OPA Director and OPA Auditor. During this reporting period, there were 989 complaints and inquiries made to OPA. 963 were classified.[3]

Five hundred and seventy-seven (577) were initially recommended for Investigation or Supervisor Action. After a number of referrals from SPD related to mandatory training requirements or compliance with In-Car Video (ICV) protocols were determined during intake to be in error, there were ultimately 540. Two hundred and fifty-five (255) of these were classified for Investigations and 285 were classified for Supervisor Action. The remaining 423 were recorded as Contact Log (as an additional measure of oversight, these are each reviewed by the Director and Auditor to ensure that no further follow-up is necessary). Of the 963 complaints, 645 were from the public or others and 318 were referrals from SPD[4], with 132 involving training and 49 involving ICV requirements.[5] For purposes of comparison with past reporting periods, setting aside these training and ICV referrals, there were 406 complaints warranting investigation or follow-up by supervisors in the first six months of 2015, as compared to approximately 325 and 292 in the past two reporting periods.[6]

During this reporting period the Lieutenant did an excellent job in recommending classifications, and in identifying allegations and named employees. There were only a few cases where I felt a complaint warranted investigation rather than referral to a supervisor, or where other allegations or additional named employees needed to be included. Where the Director concurred, those changes were made.

[3] 26 were still in the intake pre-classification stage as of the drafting of this report on July 14.
[4] This data was produced by the IAPro staff with the assistance of OPA staff.
[5] Now that employees and supervisors are attentive to the mandatory obligations related to training and ICV, internal referrals related to those issues should decrease significantly in future reporting periods.
[6] In Seattle's system, the OPA Director issues statistical reports; the OPA Auditor is to provide a high-level summary.

The Director and I each reviewed 214 completed Supervisor Action cases (SAs) to ensure that each supervisor addressed the complainant's concerns appropriately. Now that SPD is fully utilizing a Performance Appraisal System (PAS) database, any coaching or counseling conducted pursuant to OPA direction is required to be documented in PAS as well. SPD supervisors again did a much better job during this reporting period than in the past in substantively responding to the issues raised. Timeliness remains an area for improvement (see more on this below).

Pursuant to the Department's Bias-Free Policing policy, the Director and I each reviewed 72 reports of possible bias handled by the supervisory chain, and confirmed that none warranted action by OPA. I also reviewed the status of cases that OPA was monitoring because they were being criminally prosecuted or had been referred by OPA for possible criminal investigation.

Audits and Trends

Training Referrals

During this reporting period I conducted a limited audit of cases that had resulted in a finding of Training Referral. These are cases where a policy violation is found to have occurred but it is not considered to be a willful violation and/or the violation is viewed as very minor, so it does not result in a Sustained finding. Instead, the employee's chain of command is to provide appropriate training. There have been different schools of thought over the years in Seattle about whether a finding of Training Referral[7] is a good practice. There are those who believe strongly that training, as an education-based approach, is the best way to address technical or minor violations of policy, rather than imposing discipline, because it allows employees to learn from their mistakes and improve performance. There are others who believe that Training Referrals have been used in the past to avoid a Sustained finding, perhaps misused as part of a culture of not holding officers accountable, often through command staff decisions that were not transparent or consistent and appeared to be based on inappropriate criteria.[8] Those skeptical of the use of Training Referral findings argue that training can always be included as a part of discipline in a Sustained finding

[7] When OPA adopted its operations manual in 2013, it began using the finding "Not Sustained/Training Referral", which in essence was the same as the prior practice of a stand-alone finding of Training Referral.
[8] See my special report on discipline regarding several disciplinary decisions over-turned in the first quarter of 2014: http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA_Auditor_Special_review_SPD_disciplinary_procedures_April_2014.pdf

(i.e., the employee receives a written reprimand *and* a referral to training), or that Seattle can approach it as many other law enforcement agencies do, through a Sustained finding but with education-based discipline for certain types of violations rather than traditional discipline, such as days without pay. In their view, all policy violations should result in a Sustained finding, in order to ensure consistent accountability, and a finding of "Sustained/Training Referral" supports both accountability and performance improvement through education.

In my view, neither option is effective unless the Training Referral finding actually results in needed training and improved performance. I had discussed with OPA my concern that OPA's practice of Training Referrals did not uniformly include documentation that: 1) the appropriate training need was identified by OPA and communicated to the supervisor; and 2) there was confirmation to OPA that the training was completed as directed. Other concerns include ensuring that the violation and the training were captured in SPD employee performance appraisal and early intervention data systems; that training in lieu of a Sustained finding was appropriate given an employee's history or the nature of the allegation; and that the employee did not have additional complaints with respect to that same policy after the training. Further, because OPA and SPD do not use a pre-approved set of trainings for these, there needs to be sufficient information to assess whether the training provided was of good quality and effective.

To see if these concerns were borne out, I conducted a brief audit of investigations that had resulted in Training Referral findings between 2014 and the end of May, 2015. There were four cases that OPA did not have record of as Training Referral findings due to data entry errors. Including those, there were 91 investigations closed during this period that resulted in at least one finding of Training Referral (some cases have more than one employee with a Training Referral finding). Of these 91, 29 were for failure to comply with mandatory firearms training requirements. The other 62 covered a wide range of allegations, including professionalism, use of force, searches, Terry Stops, ICV, and advising individuals of their right to counsel. There was insufficient documentation or other controls to ensure that OPA provided clear direction to supervisors as to the needed training, deadlines for completion, and confirmation from

supervisors that the training was conducted.[9] Two employees were identified as having a Training Referral finding in 2013 and again in 2014 for the same type of courtesy allegation.

OPA has acknowledged the importance of ensuring follow-through on training, and reports that on July 1, 2015 they implemented a protocol for handling Training Referrals through the IAPro system. As noted in the recommendations below, a more thorough review should be conducted to ensure that the appropriate training has been done and documented for any case prior to July 1, 2015, in which an OPA investigation led to a finding of Training Referral and that the necessary elements for a rigorous system noted above are in place going forward.

Recommendation:

1. OPA and SPD should conduct a thorough audit of cases where training was directed through a finding of Training Referral in 2014 or 2015 to ensure that effective training was conducted and its completion documented in SPD and OPA databases. This review, and report, should also assess whether systems are now in place so that OPA can ensure with sufficient confidence that the use of Training Referrals meets public expectations for improving performance and changing organizational culture. Because there has not been rigorous tracking of these cases, the public's trust that OPA and SPD are fairly and appropriately using training as a legitimate alternative to traditional disciplinary approaches may be undermined.

Increased Caseloads and Timeliness

There was public, SPD, union, and City interest during this reporting period as to the reasons for an increase in OPA complaints, as well as to why it continues to take six months or more to complete investigations and close cases. All of these stakeholders have an interest in OPA completing cases faster and ensuring that limited resources are used as efficiently and as effectively as possible. While OPA took steps during this reporting period to improve timeliness by fully implementing electronic processing of cases and by adding a second Lieutenant, so that a single individual does not have to supervise all intake as well as all investigations, the following changes would further improve timeliness without requiring additional resources.

[9] Prior to 2014, the OPA Captain sent a memo to the supervisor and the supervisor was required to document that the training was completed. This was a manual process with no one in OPA responsible to ensure timely completion. At some point in 2013 even this practice was discontinued.

Recommendations:

2. To its credit, SPD has acknowledged there must be accountability when employees do not attend mandatory training. However, in following up on these alleged policy violations, SPD sent a significant number of such referrals to OPA based on SPD Human Resources (H.R.) and Education & Training Section records that were inadequate. In many instances, those employees were exempted for reasons such as extended sick leave, light duty status, paternity leave, or special assignment. Some were miscategorized as required to take certain training and others had retired. Those cited for failure to complete "e-learning modules" (online training) often reported they had completed the training but the system verification had glitches. In addition to improving H.R. and training records,[10] SPD should also make it clear in policy that supervisors are responsible for ensuring their employees attend training, and the training management system should provide ready access to accurate information supervisors need to do that. If that responsibility is not met, then OPA is the correct venue for accountability.
3. Similarly, it is a policy violation when employees do not use their In-Car Video (ICV) as required. Here, too, SPD has attempted to address this, often by way of referrals from the Force Review Board to OPA. But the Force Review Board also referred a number of cases to OPA as technical violations that, with more upfront review, would not have been referred. OPA's preliminary investigation determined there were appropriate reasons why ICV did not exist (the employee was on a bicycle; the employee arrived at the scene after the incident, etc.)[11] More robust screening before referral would ameliorate the same negative consequences in terms of impact on OPA workload and on named employees.
4. Because more than half of the cases in any given reporting period are addressed through referral to supervisors rather than through investigations, it is important that these Supervisor

[10] OPA is for the time being trying to address this large number of training compliance allegations by a pilot approach of having the relevant supervisor conduct the recorded employee interview and returning the case to OPA for regular processing at that point, including Auditor review, and Director findings and certification.

[11] Some of these can also be remedied by supervisors reminding employees of the policy that requires documentation at the beginning of the relevant reports of the reason for not having ICV. The policy was initially recommended for exactly this purpose –to make the reason readily apparent and avoid unnecessary OPA referrals.

Actions (SAs) are resolved in a timely manner as well. Per the OPA Operations Manual,[12] the supervisor has 30 days to take the recommended action, document it in the file and return it to OPA. With the time needed for the initial intake investigation and classification before the case is forwarded to the supervisor, along with review and closing, OPA's Manual provides for a goal of 60 days for SAs. OPA reports the *median* time for closing SAs in this reporting period was 67 days, with OPA data indicating that more than 80 SAs took significantly longer, some more than six months. With OPA's transition from hard copy files to handling SAs in the IAPro software system, so that the OPA routing, the supervisor's documentation, and review of these SAs will now all be done electronically, the response time for supervisors will be shortened from 30 days to 15 days. OPA should adjust its closure time commensurately to 45 days, and report data with regard to timeliness of case-handling for SAs so that OPA and SPD can more readily determine how well supervisors are doing at meeting their 15-day turnaround, as well as whether OPA is meeting its benchmarks.[13] Because OPA is now processing cases electronically, OPA can provide the time each phase of the process takes (OPA intake & referral to supervisors; supervisor follow-up; OPA review & closing) and break out the data by precinct or unit. That will allow clearer evaluation of whether the important metrics of timely response to complainants and timely counseling of employees are being met.

5. Allowing OPA 10 or more days,[14] rather than the five-day requirement in the collective bargaining agreements, before having to send notice to named employees that a complaint has been initiated, would provide OPA time to gather initial information that could potentially obviate the need to initiate investigations where an incorrect referral is made, such as in the circumstances described above.

[12] In 2010 I recommended OPA create a manual that would guide its training and operations to help ensure consistent use of best practices among investigators and supervisors. Pursuant to the Settlement Agreement with the Department of Justice, OPA did adopt an Internal Training and Operations Manual in 2013, which was accepted by the Federal Court and now guides OPA's practices. It is posted on the OPA website. For brevity, it is referred to in this report as the OPA Operations Manual.

[13] Once OPA reinstitutes the mediation program, similar reporting on timeliness should be done for those cases.

[14] Recommendations 5-8 have been raised in my prior reports as operational improvements but have not yet been implemented by SPD or OPA. Each would have the added benefit of being a cost-effective way to enhance caseload management and timeliness. Pilot or temporary agreements could be instituted if the pace of collective bargaining continues to forestall full implementation.

6. OPA and SPD should use a "rapid adjudication" alternative for certain types of policy violations, such as training, ICV, or secondary employment permits, where an employee can either self-report or quickly acknowledge a policy violation rather than triggering an OPA investigation. The employee would sign a one-page document agreeing to the pre-determined discipline for that type of violation, waiving the right to an interview, a due process hearing and an appeal, and avoiding a drawn-out investigation. OPA could then focus its resources on other, more serious violations. The case would be documented as a finding made through rapid adjudication so that it would be clear in SPD systems that the employee responded in this way, strengthening the Department's culture of accountability by making it clear that acknowledging mistakes is encouraged.

7. OPA should re-institute a robust mediation program, integrating recommendations made in a 2012 OPA mediation program review. Mediation provides an alternative to the traditional complaint and disciplinary process, through use of a neutral third-party facilitator, and can often better address complainants' underlying concerns in certain types of complaints. OPA was among the first agencies to adopt a mediation program, but it has been largely dormant since 2013 (with a single case referred to mediation in this reporting period and none in the prior period).[15]

8. The long-standing practice that only members of the Seattle Police Management Association ("SPMA", the union representing Lieutenants and Captains) may interview Lieutenants and Captains who are named or witness employees in an OPA investigation should be abolished. This practice unnecessarily forecloses all OPA investigators (who are Sergeants) from conducting these interviews, or even communicating with these personnel. In addition to negatively impacting caseload management, it sends the wrong message – that investigators should remember they are a lower rank than some employees and that these employees are to be treated differently than front-line officers. This runs counter to an organizational culture

[15] In 2010 I recommended OPA assess what barriers were limiting expanded use of its mediation program. The former OPA Director conducted a review in 2012. The OPA Director has acknowledged the importance of revitalizing OPA's mediation program and reports it is now on OPA's work plan for the second-half of 2015.

of equal accountability for all ranks and to reinforcing the independence of those who work in OPA.[16]

Policy, Procedures, Training, or Systems Review

In each report the OPA Auditor makes recommendations for improvements to policy, procedures, training, or systems based upon the review of complaints, investigations, and other OPA operations. SPD should be commended for quickly implementing recommendations from my last report, issued this past February. In addition to those noted above, other recommendations are:

Recommendations:

9. To improve transparency and enhance community trust, after a recent shooting by an officer SPD quickly provided press briefings at the scene, distributed information using social media and posted video. SPD should further strengthen transparency with regard to these kinds of significant incidents (often referred to as "Officer-Involved Shootings"), as is now being done by other law enforcement agencies,[17] by establishing a practice of posting updates and results of incident reviews. For example, there were several reviews of shootings by SPD officers conducted in 2014 that have not yet been publicly reported.
10. For those sworn employees who are terminated or resign in lieu of termination as a result of an OPA investigation, documentation should be included in the case file verifying: a) a letter was sent by SPD to the Washington State Criminal Justice Training Commission (WSCJTC) requesting de-certification of the officer;[18] b) whether action was taken by the WSCJTC; c) that the Chief will not grant the employee authorization to serve in a Special Commission capacity, as a reserve officer, or as a retired officer in a private company that provides flagging, security or related services; and d) that the Chief will deny any request from the employee to be

[16] Presumably, if OPA and SPD move forward with a recommendation I have made to add civilian investigators, they too would be foreclosed from investigative actions involving these ranks unless this restriction is lifted.
[17] Philadelphia's website page on shootings by officers: http://www.phillypolice.com/ois/
Dallas' website page on shootings by officers: http://dallaspolice.net/ois/ois.html
[18] To be a law enforcement officer in Washington State, one has to be certified by the WSCJTC after completing the Academy. Under state law (RCW 43.101.105), officers are to be de-certified based on certain types of misconduct. That prohibits them from working at any law enforcement agency in the state. In my January, 2014, I also recommended the City work with the Legislature to strengthen this de-certification law so that it better comports with community values.

granted the privilege of carrying a concealed firearm.[19] The latter two actions should also be considered when any officer resigns or retires with a pending complaint and does not fulfill an obligation to fully participate in the OPA investigation. This recommendation builds on one I made in 2014, that investigation files include all aspects of the case, including documentation of what occurs after the case transitions from OPA to the Chief's Office for a final determination on sustained findings and discipline, documentation of any appeal or grievance, and final results, so that the complainant and the public have accurate information on the full outcome of any OPA investigation. Similarly, it is important that there is an accurate accounting of actions after termination or retirement in lieu of termination, as those actions are also important elements of ensuring that the Department is taking all appropriate steps consistent with a robust accountability system.

11. SPD policy and practice should make clear that the Chief of Police must approve any SPD board, unit or process created to review performance, and its procedures should be set forth in SPD's Policy Manual. In the past, individual command staff have made decisions to establish separate internal review processes or policies for certain specialty units have been revised without approval. As a consequence, certain practices were not necessarily consistent with best practices and/or may have undercut OPA's authority. Requiring the Chief's approval for creation of a special unit or board and the review by stakeholders such as the OPA Director, OPA Auditor and the Community Police Commission (CPC) of any proposed or revised policies and authorities (including the authority to recommend discipline), will provide an important check to ensure these units or boards are created for appropriate reasons, and operate consistently with best practices, accountability, and other Departmental expectations.

12. SPD's Audit, Policy & Research Section (APRS) should have a schedule for policies it plans to update or initiate to ensure proposed policies or revisions receive timely input not only from the line, but also from the Chief's Office, the OPA Auditor, the CPC and the OPA Director prior to finalization. Pursuant to the Settlement Agreement, there is a schedule for certain policies

[19] The Law Enforcement Officers Safety Act (LEOSA) authorizes qualified retired law enforcement officers to carry a concealed firearm under certain conditions. See 18 U.S.C. 926(B) &(C). To get this authorization, the retired officer has to obtain documentation from the law enforcement agency from which the officer retired that states the officer was retired in good standing for service or physical disability. See also RCW 9.41.060.

to be submitted to the Federal Court, but a similar schedule is not in place for policies not subject to Federal Court approval. A master list of policies under review, including those identified in the Monitor's work plan, will allow stakeholders to let APRS know those policies for which they would like to provide input, and make the process flow more smoothly. Emergent issues which require policy changes outside the schedule can be addressed through timely notification to stakeholders on a case by case basis. Similarly, OPA should have a schedule for review of its required submittal to the Federal Court of proposed updates to the OPA Manual and to the policies involving reporting of misconduct and retaliation.[20]

13. After SPD and the CPC complete their collaborative surveys gathering community and officer input regarding the Body-Worn Camera (BWC) pilot project, SPD should update (with appropriate input) the In-Car Video (ICV) and BWC policies to address lessons learned and other issues noted since the policies were last updated. As well, the City still needs to lay out a clear path for developing a state legislative proposal to amend the State's Public Records Act (PRA) to better balance privacy issues and the need for transparency, as had been recommended for the 2014 legislative session. While SPD's use of blurring technology has received attention, it does not ameliorate the privacy issues raised by BWCs under the PRA that will be exacerbated once BWCs are widely used. Some other issues noted in the interim BWC policy and in the last version of the ICV policy were: a) whether officers should be allowed to view their video prior to writing reports; b) whether ACT and SWAT actions are to be recorded; c) what should occur in private residences if one person gives consent but another does not; d) how situations involving victims of certain types of crimes or individuals in crisis should be handled; e) whether searches of property are to be recorded; and f) whether the Department is obligated to ensure all vehicles used by SPD personnel for law enforcement purposes have ICV, so that there is not a situation in which actions must be recorded but the officers are in a vehicle that does not have that capability.
14. Building on a recommendation made in my last report (and since implemented by the Department), to better align appointments to specialty unit assignments with accountability, SPD should also review policy 13.080 and associated guidelines that authorize certain

[20] OPA's next submittal to the Federal Court is due by September 10, 2015.

employees to use a 'take-home' car. In at least three cases during this reporting period, the alleged misconduct occurred when the officer was using a Department-owned vehicle, which the officer had been granted the privilege of driving home. Generally speaking, the putative purpose of allowing a take-home car is to make these employees available at any hour without undue delay. In one instance, no SPD business was being conducted at the time of the officer's alleged misconduct, and in the others the employee's decision to take possible law enforcement action on a roadway outside the city limits was questionable. As well, there was no obvious public benefit gained by the employee taking the Department vehicle home. Further, it can be detrimental to a culture of accountability when peers see that certain individuals are granted this privilege regardless of their performance or conduct history.

15. The Department should ensure that its GPS tracking system for Department-owned vehicles is operational outside city limits and determine if it should be utilized for any vehicle that may be used by an employee taking an enforcement action or called to a scene. The GPS system allows OPA or SPD to know where Department vehicles are at any given time, which is useful for supervision and for being able to determine which officer was at a given location at a certain point in time. In OPA cases where the employee was driving the SPD vehicle outside of the city limits, OPA investigators reported that there was no available GPS data.

Investigations Reviewed

Overview

During this reporting period OPA investigators completed 121 investigations. In addition to the regular caseload, OPA also did an excellent job on several significant or particularly challenging cases. OPA should also be commended for now posting case summaries online in real-time as cases are closed, implementing the 2010 recommendation that complainants and named employees should be able to check the status of their cases online as an investigation proceeds and the 2014 recommendations to create a new finding of Management Action[21] and to include

[21] The addition of a finding of Management Action was recommended as a way to address problems identified by complaints where there are SPD policies or practices that caused or contributed to the employee's action. In these cases, whether a finding is sustained or not sustained, there is also required follow-up by the Department, which could include a change to training, policy or practices.

information about appeals in OPA reports. OPA has also eliminated the delay in finalizing case closing documentation noted in my last report.

Except as noted below, the intake and investigations reviewed in this reporting period were thorough and objective, and OPA met the key elements and controls set forth in its Operations Manual. The Operations Manual, adopted in 2013 and updated in 2014, incorporated past recommendations for best practices related to intake and investigations. The Manual was approved by the Federal Court pursuant to the Settlement Agreement between the City and the Department of Justice, and compares well to that of other internal investigations agencies. Thus, if the OPA Auditor finds that OPA is in compliance with the Operations Manual, that should give the public confidence that internal investigations are being conducted in accordance with best practices. In determining that OPA investigations were, with a small number of exceptions, thorough and in compliance with its standards and procedures, I found that:

- the intake process is open and unrestricted (e.g., a criminal record, a history of prior complaints or anonymity are not constraints on filing a complaint and complaints can be made in-person, by phone, email, using the OPA website or with the help of an advocate, friend or relative),
- complainants are treated respectfully, empathetically and impartially, with intake personnel taking care to also *reflect* impartiality (e.g., not wearing a badge),
- complainants are offered the opportunity for an in-person interview; if they prefer a telephonic interview or decline an interview entirely, that is documented, and all interviews are taped and preserved if the person being interviewed agrees to be recorded,
- complainants are asked open-ended questions and encouraged to describe their concerns, with appropriate follow-up inquiry to learn as much as possible about who was involved, where and when it occurred, what witnesses and evidence might be available,
- allegations not made by the complainant but indicated by the evidence are addressed,
- intake personnel are familiar with data systems and technology and quickly gather the breadth of available evidence,

- video, 911 tapes and other electronic media are reviewed and are summarized and explained in the context of their materiality to the allegations,
- each step taken during intake and the investigation is properly documented[22],
- where there is possible injury, complainants are asked if photos may be taken and whether they will sign a release to allow for medical records to be provided to OPA,
- complainants for appropriate types of allegations are offered the option of mediation,
- complainants are told about public disclosure laws and asked their preference with regard to release of personal information,
- allegations are described using objective and neutral language, both in the case file and in the required notice of complaint to employees,
- required notices are sent according to contractual timelines,
- Every contact to OPA is logged, even if only a request for information or about actions by non-SPD employees, in order to have a comprehensive record,
- allegations are based on policies that are in effect at the time of the incident (not at the time of the complaint),
- employees are treated equally, regardless of rank, with regard to allegations and findings,
- all witnesses are interviewed unless there is a documented reason why there is a determination that an interview would not add anything of probative value,
- investigators are fair and impartial, and use open-ended, non-leading questions,
- employees have their union representative present during the interview unless the employee chooses not to, in which case that decision is documented in the record,
- interviewees are asked if they have anything else to add or anyone else who they think should be interviewed to help ensure all material evidence is obtained,
- case files include audio and transcribed documents for every investigative interview,

[22] One step now required is that investigators update complainants every 30 days as to the progress of the investigation. Rather than document this in the case file, it is done as a 'task' in the IAPro system, which allows OPA supervisors to view it, but does not result in documentation in the case file as occurs for all other communication and actions taken.

- every investigation conducted is submitted for Auditor review, and
- all investigations are sent to the chain of command for comment before the Director closes the case or for review prior to any disciplinary meeting.

Areas where I have raised the need for continued improvement, either through changes to the OPA Manual and/or more consistent implementation are:

- investigative plans are reviewed with the Captain or Lieutenant to help focus investigations on the most salient points and ensure any potential weaknesses in evidence are addressed,
- investigations are submitted to the Auditor for review quickly enough after the interviews and collection of evidence so that if additional steps are needed there has not been a passage of time that diminishes memories, means certain evidence is no longer available or otherwise weakens the investigation, and if more investigation is needed, doing so is not compromised by the contractual deadline for potential discipline to be imposed,
- investigations requiring due process hearings and the possible imposition of discipline are submitted to the Chief of Police with sufficient time for thorough review,
- additional clarity is provided by OPA for the investigators as to the purpose and best practice for case summaries, so that investigators uniformly use a more consistent approach in describing the key facts and evidence garnered in their investigations,
- embedded legal counsel is utilized to ensure recommended sustained findings are well-supported by the evidence and analysis,
- during interviews, investigators follow-up where answers are unclear or present conflicting information, and ask employees to watch a video or listen to audio to enhance specificity,
- investigators to whom a case is assigned prioritize review of evidence not reviewed during intake, even if they do not have time to take other investigative steps, so that perishable evidence is not lost or deadlines for notification of additional allegations are not missed,
- notifications are not sent to employees where there is a possibility of ongoing misconduct (an exception allowed under the collective bargaining agreements),

- intake personnel are knowledgeable about how long various SPD and jail records are retained and when it might be important to go to a location (or have someone else go) to quickly to observe an interaction or gather perishable evidence,
- intake personnel ask complainants who are being interviewed by phone if any witness is present so the witness interview is not tainted by listening to the complainant's interview,
- intake personnel consistently inquire of complainants and intake witnesses if they have personal digital media and take steps to obtain it,
- intake personnel do not ask for more information than is required, such as date of birth, or home address, that might have a chilling effect[23],
- case exhibits are consistently ordered and named,
- to help reinforce the independence of OPA, investigators introduce themselves as with OPA (not SPD), do not include their SPD badge in their signature block on emails and the opening letter to complainants does not go out over the Chief of Police's name,
- informational materials about OPA and the complaint process are in languages other than English and are updated to reflect current information, and
- OPA fully utilizes the IAPro system to continue to refine case flow processes that can reduce the time it takes to complete investigations.

An area that I did not have the capacity to review, but need to do during the next reporting period, is OPA's orientation and training protocol for new supervisors, investigators and staff.

Investigations Not Certified

Of the 121 investigations submitted for my review in this reporting period, there were seven that I did not certify as thorough and objective, two based on not obtaining certain evidence; one on lack of thoroughness and timeliness; two on the approach taken in the investigation; one on not interviewing witnesses with regard to a second allegation (although video provided sufficient information to meet the preponderance standard); and one that was closed without further

[23] In response to this concern, OPA recently changed its practice to collect this information but record it in a separate data system outside of the investigative file. While this may help with public disclosure element of the concern, it does not remedy the potential chilling effect of OPA asking for this information.

investigation (the Director's decision not to use limited resources was reasonable, but I could not certify the investigation as thorough since was not completed).

#1

The first involved an allegation that a young African American man was stopped and detained at a transit station for no reason. The complainant, a colleague of the young man, stated in his intake interview that he was not there when the incident occurred but that the young man had later described being stopped at the station by two officers who demanded his identification, who were later joined by five additional officers, and that the officers would not let him leave for 45 minutes. The complainant had no identifying information about the officers, but thought they were Seattle police. OPA encouraged him to have the young man contact OPA to provide a first-hand account. OPA contacted Sound Transit Police and they had no record of any contacts occurring at that time. OPA contacted Fare Enforcement and they advised that the only way they could verify if any contact was made with an individual was to provide the subject's name, which the complainant had not wanted to provide to OPA without the subject's permission.

After the OPA investigator sent the complainant a contact letter, no investigative steps were taken for two months. OPA then tried several times to reach the complainant to again ask if he would encourage the subject to contact OPA, or if he could provide any more specifics, but the complainant did not respond. The investigator conducted a GPS search for any SPD units that had been in the vicinity of the transit station and determined none were in the area during that time for more than 30 seconds. OPA then attempted to obtain video from the transit platform, and was advised their video is retained only for 15 days. Particularly given the lack of other evidence, including no description of the officers, the video in this case potentially had significant evidentiary value. Unfortunately, OPA did not attempt to acquire the video until months after the complaint was made. For that reason, I did not certify the investigation as thorough.

#2

In another case, intake was in August but the investigator did not conduct his initial file review until mid-October and did not request the precinct holding cell/sally port video (HCV) until mid-November. Because HCV is retained for only 90 days, the evidence was destroyed before it was

requested. Significantly as well, the investigator did not request either the HCV or the named employees' training records until *after* the employee interviews were conducted. He should have requested and reviewed them in order to inform the interviews. No investigative actions were taken between mid-November and mid-January. As with the case above, while I did not certify the investigation as thorough, I did not request additional follow-up since there was nothing more that could be done at that point.

#3

The third case involved the type of complaint I would like to see OPA be able to handle through mediation, and share with the Education & Training Section as an example for LEED[24] and Bias-Free Policing training. In this case, a motorcycle officer using a LiDAR[25] tried to stop the complainant for speeding, but the complainant did not recognize the officer's motorcycle and uniform as that of a real officer. The complainant called 911 from his car because he was concerned and asked dispatch to send an officer in a police car. On the 911 tape, the complainant spoke with an accent, which may have been indicative of a different cultural background, and relayed to the dispatcher that he thought this person might be a "copycat" of some sort. He said he would not get out of his car until a patrol car arrived. What was relayed from dispatch to the secondary officer, however, was simply that the complainant was refusing to get out of the car, so that officer approached the situation as a "high risk vehicle stop"[26], not as a situation with a confused or concerned driver who had called 911 because he was unsure if it was safe to get out of the car.

In his OPA interview, the complainant described that he was driving when he noticed an "older man" standing by a green car with its hazard lights blinking. He stated the male was wearing a dark jacket, khaki pants, and a helmet. He thought the man needed help. He stated as he drove by and stopped at the red light, the male (later identified as the officer) approached his car and pounded on the hood, tried to open the driver's door and demanded that he roll down the

[24] LEED is an acronym for Listen and Explain with Equity and Dignity, premised on the tenets of procedural justice. LEED principles have also been incorporated into SPD's Bias-Free Policing training.
[25] A LiDAR speed gun is a device used for speed limit enforcement that allows a police officer to measure the speed of an individual vehicle within a stream of traffic.
[26] And because he thought it was a high-risk vehicle stop, the officer parked his vehicle in a way that he was trained to do for those kinds of stops, which meant that it was facing the wrong direction for capturing useful video of the interaction.

window and pull his car over to the side of the road, but the male did not appear to him to be a police officer. He did not pull his car to the side of the road because he does not stop for any strangers and he didn't think the person was wearing a police uniform. Once he saw the police vehicle arrive, he then pulled into a nearby 7-11 parking lot. He stated the traffic officer came up to the car and yelled at him, "You're f---ing going to jail" and "You could have gotten away with a speeding ticket only." The traffic officer then returned with two citations, one for speeding and one for failing to yield. On the ICV, one cannot hear any use of profanity, but the complainant can be heard trying to explain to the second officer what his concerns were and the officer stating "You're about to go to jail today. You're about to go to jail today. It's all you can do not to go to jail today." After about six minutes, the second officer can then be heard telling the complainant that he did the right thing in calling 911 if he wasn't sure it was a legitimate police officer making the stop.

Given the concerns raised by the complainant in his call to 911, and at the scene as captured on the ICV, I felt that part of OPA's assessment should have been whether the dispatcher's and officers' responses were consistent with LEED principles (whether they tried to understand what the complainant was saying, listened and treated him with respect). While to both the named employees and the OPA investigator the attire of the officers and the motorcycle were readily identifiable as SPD, the uniform and motorcycle were not traditional and may well have been unfamiliar to members of the public. (For this reason I had requested at intake that OPA include in the case file photos that would best capture what uniform and motorcycle markings the complainant would have seen, including the additional inclement weather attire which may have made the officer's uniform more difficult to see). It also would have been good for OPA in the employees' interviews to have played the 911 tape and ask if they understood why the complainant was concerned and acted as he did[27].

While one could argue that this was a technically thorough investigation, my view was that it could have been approached with more attention to the complainant's underlying concern that he did not feel heard or respected. The OPA intake interview was well done, but I felt the investigation with regard to the professionalism allegation was too narrowly focused on whether

[27] It should be noted that the Seattle Municipal Court dismissed with prejudice the citation for failing to yield.

there was a use of profanity and pounding on the car, and did not fully capture the complainant's frustration with the interaction, including the dispatcher's communications and the officers' communications with the complainant after he was out of his car. Just as I and others in the past had advocated that use of force review should not be narrowly focused only on whether the force used was reasonable, but instead assess whether the force could have been avoided and other steps taken, cases of possible bias and professionalism often require a broader look not just at whether bias or disrespect was intended, but to see if actions were driven by assumptions, not listening and understanding the subject's perspective and what the impact might have been, regardless of intentions.

#4

The fourth case was the only one of this reporting period where I used the authority provided the OPA Auditor to direct additional investigation in any case where the OPA Director disagrees with a request made by the Auditor for additional work. It is another case that would be a good example for SPD to include in its Bias-Free Policing training.[28]

A Field Training Officer (FTO) and his then student-officer were working patrol in the South Precinct when they initiated contact after observing someone sitting in a car near a park and community center. The incident was largely captured on the ICV (there was no audio for the first portion of the encounter). After the officers illuminated the subject's car with the patrol car's spotlight, both officers and the subject, an African American male, exited their respective vehicles. The student-officer initially told the subject to return to his vehicle. After the subject inquired if there was a problem, he was told by the officers that there was no problem. The subject returned to his vehicle. The officers then moved over to the sidewalk area several feet from the passenger side of the subject's vehicle and observed him. The audio then began to record.

The subject again exited his vehicle. He asked the officers what the problem was and said they were harassing him. The FTO at this point said "I don't know, you're getting awfully uppity" and mentioned they were standing on a public sidewalk. He asked the subject if he wanted to chat

[28] An early recommendation by this Auditor to OPA, the City Attorney and SPD was to develop a continuous-learning protocol where OPA cases or litigation cases that highlight practice issues are shared with command staff and the Education & Training Section. For example, often, if an OPA case doesn't result in a Sustained finding, others in the organization may not be aware of it, so its value as a learning tool is not captured.

with them. The subject returned to his car and then drove off. The subject then called 911 and later went to OPA to complain that he believed he had been subjected to racial profiling and harassment. Allegations were that the officers may have violated SPD policy with regard to Stops, Detentions, and Arrests and Bias-Free Policing.

I raised two concerns. The first was lack of timeliness. The complaint was received by OPA in late October but the investigation was not submitted for my review until April. Under the employees' collective bargaining agreement, any proposed disciplinary notification would have to be issued in less than two weeks. (This would require that my review, any additional investigation requested, the Director's review and meeting to consider the preliminary disciplinary determination would have to be completed within those two weeks. Given the contractual requirements to notify employees of an OPA interview, this was not a practical reality.)

Second, I was concerned that OPA, throughout the intake, investigation and review process did not see that the FTO's comment to the complainant, "You're getting awful uppity" needed to be addressed (all the more so because he was an FTO). The complainant had not specifically raised the issue, but OPA best practice is to address all possible misconduct regardless of whether it was articulated by the complainant, and it had been clear from the ICV that the statement was made. I requested that OPA re-interview the named employee. The OPA Director and Captain asked to discuss my request. They and others in OPA had watched the ICV as part of their review of the case as it proceeded, but did not associate that phrase with possible bias or lack of professionalism and did not feel it needed to be addressed. The OPA Director disagreed with my request, but agreed that pursuant to SMC 3.28.855 the OPA Auditor may direct additional investigation where the OPA Director disagrees, so the case was to be returned to the investigator for a follow-up interview with the named employee. Approximately a month after my initial request for follow-up, the investigator was asked to conduct the follow-up interview. The interview was conducted and the case then re-submitted for my review approximately three months after it was first submitted to me. The 180-day contractual deadline had long since passed. Ultimately, when the follow-up interview with the named employee was conducted, it entailed the following questions and responses:

OPA: When [the complainant] gets back out of his car, your ICV captures [the complainant] asking if there's a problem, and you saying, quote, "I don't know, you're getting awfully uppity.", unquote. What did you mean by this comment?

NE: Oh, I thought he was just gonna be, be angry with us.

OPA: Are you aware the term "uppity" has a racial connotation?

NE: No

OPA: "Okay, did you intend to use the, the term in a racially derogatory way?"

NE: No

OPA: Okay. Have you ever heard others use the term uppity in a racially derogatory way?"

NE: No

OPA: Okay. Is there anything else you think I should know or would like to say?

NE: No.

Notably, the named employee was not asked why using that phrase was an appropriate response to his concern that the subject was going to be angry, or if he had ever used that phrase with non-African American individuals or whether he understood why using that phrase might be received as offensive or disrespectful. As well, in my view, the audio of the OPA interview suggested a tone of amusement on the part of the named employee, rather than an understanding of SPD's stated purpose in its Bias-Free Policing policy to "build mutual trust and respect with Seattle's diverse communities and groups" and the officer's concomitant obligation to be courteous and professional.

#5

I did not certify a case involving Use of Force as thorough, although I did find it sufficient to meet the preponderance standard and did not request additional investigation. The incident was referred to OPA by the SPD Lieutenant who had reviewed the Use of Force. He only raised the issue of the complainant's allegation captured on the ICV that he had been choked, not his additional allegation on the ICV that he had been bitten by the SPD canine on site. As noted above, the OPA best practice is to address all possible misconduct regardless of whether it was articulated by the complainant in his OPA intake interview or written complaint. In this instance, the OPA investigator who reviewed the ICV during intake did document all of the complainant's

allegations captured by the ICV. With regard to the dog bite allegation, the intake log and the OPA ICV transcript summary both noted: "Suspect says'…I got bit by this motherf--ing dog, Right now…..check my neck out.'"

Thus, the OPA investigative plan should have included this particular allegation of Use of Force as well (pursuit and/or bite by a canine constitutes a Use of Force.) Although the ICV provided sufficient evidence to meet the preponderance standard with regard to the dog-bite allegation, it would have been a more thorough investigation had OPA: 1) interviewed the Canine Officer who was at the scene; 2) inquired about this allegation in each of the officer interviews; and 3) checked for any Fire Department or other medical documentation. This was particularly important to do in light of the fact that the Chain of Command's Use of Force review also did not address the alleged dog bite, so there was no documentation in the file that the Sergeant at the scene had interviewed the Canine Officer and nothing was noted in any of the officer reports or the Chain of Command's Use of Force review documentation. Had that occurred, OPA would not have needed to take those steps.

#6

At issue in this case was whether supervisors were aware of inappropriate comments on citations and did not refer the matter to OPA. The former OPA Captain conducted the investigation (due to the SPMA constraints mentioned above) and submitted the case for review after the 180-day contractual deadline had passed. This investigation did not meet OPA standards for thoroughness or timeliness. One command staff witness was not interviewed in-person, with the interview taped and transcribed as required. As well, he was not clearly asked if any information had been shared with him about the report or the citations at an earlier point in time, and if so, what that information was. There was no documentation as to why a phone interview was conducted in lieu of an in-person interview, or a record of the questions asked and answers given. Further, no investigative steps were taken from the end of October until early February, a period of more than three months. Based on the OPA goal of completing investigations within 60-90 days (and this was *not* a complex investigation), the investigation should have been *completed* by December.

#7

The final case involved a retired employee flagging, apparently without appropriate authorization. (Readers of my past reports will be familiar with my frequent recommendation that the City eliminate Extended Authority Commissions and narrow the authority of Special Commissions for retired officers.) In this case, the OPA investigation had been referred to SPD for criminal investigation (possible impersonation of a police officer); the case was not returned to OPA for four months. The criminal investigation and review by the City Attorney's Office determined that the Department lacked adequate proof that the named retired employee had been properly notified of the suspension of his commissioned or reserve police officer authority. At that point the OPA Director felt there was no purpose for additional OPA investigative work on the case because the subject was no longer an SPD employee and it was up to the Chief to define what, if any, Seattle police authority the named retired employee should have or to take whatever steps were needed to clearly withdraw that authority. Given that, the OPA Director believed the best use of OPA resources was to close the case. Because it was not a complete investigation at that point, I was not able to certify it as thorough.

Timeliness

There were several cases in which a particular investigator did no casework for a period of several months and case submittals were delayed; OPA took steps to improve his performance, but that remains an issue. In addition to these cases and others with timeliness problems noted above, timeliness also unrelated to increased caseloads was an issue in the following two investigations.

#1

In one case from 2014, the investigation was excellent, but the former OPA Captain neglected to submit the case for review until it was more than seven months old, by which time the 180-day contractual deadline had long since been missed. The allegations involved Use of Force, Terry Stops and Retaliation. The employee's Lieutenant felt that the incident had been sufficiently addressed through review of ICV and counseling the employee. In my view, since no discipline could attach given the delay in the former OPA Captain's case management, and the employee had prior complaints of a similar nature, at a minimum OPA should have obtained verification that

the Lieutenant documented the counseling of the named employee as required, and that the counseling addressed an additional allegation of a similar nature involving this employee that had been handled as a Supervisor Action instead of an investigation. The OPA Director did not recommend any sustained findings; he recommended a Training Referral on the issue of providing identification when making a Terry Stop.

#2

This case was submitted for review with only days left on the 180-day contractual deadline because the OPA investigator who was assigned the case did not begin work on it for nearly four months. It had also been delayed by a less than timely referral to OPA by the SWAT supervisors who were made aware of the incident and determined they should conduct some initial inquiry prior to referring the case to OPA. The investigation resulted in sustained findings and discipline.

Additional Investigation Requested or Considered

#1

I requested additional investigative steps in a case where the named employee was alleged to have behaved in an intimidating manner to the complainant's family, related to the employee's views about his daughter's role on her high school basketball team. The named employee articulated in his interview that his rationale for his actions was that he was concerned for *his* safety because the complainant and her family were following *him*. There were no follow-up questions by OPA as to, even if this were true, how the named employee intended to enhance his safety by parking and sitting in front of the complainant's home; whether he informed his supervisor he was concerned for his safety; or the appropriateness of his use of a Department-issued vehicle for the purpose of following this family and parking in front of their home. Since the husband and wife were interviewed prior to the named employee's interview, it would have been a good investigative step for the OPA investigator to conduct a brief follow-up interview with each of them after the named employee made this assertion in his OPA interview to confirm on the record whether or not they behaved as asserted by the employee. I also asked OPA to follow-up with the witness who stated in her interview that the complainant's daughter had texted the witness about the named employee following them home from a meeting. (The OPA

investigator referenced the text in his interview of the named employee, but did not obtain the text.) Additionally, the complainant stated in her OPA interview that she had asked her daughter to take a photo of the named employee's vehicle (from which she obtained a license plate) and OPA had not asked the complainant for that; I asked OPA to obtain both for inclusion as exhibits in the case file. Because OPA submitted the case for my review with only 17 days left in the 180-day contractual deadline, they felt there was not sufficient time to do that follow-up and still ensure a disciplinary meeting was held in time for the preliminary disciplinary notice to be served on the named employee in the required timeframe.

#2

In a case where the complaint arose from an incident that occurred in 2003, I did not request that additional investigation be conducted, due to the limitations of the collective bargaining agreement for cases older than three years. The complainant had written in an email to OPA during the intake process that she was represented by a public defender who "also knew of her (the named employee's) reputation". While OPA followed up with private counsel who initially handled the criminal case in 2003, there was no indication in the record that OPA asked the complainant if she could provide the name of the public defender or the name of the public defense agency who apparently took over the case from private counsel, to see if either had any additional relevant information.

Additionally, in her OPA interview, the named employee was asked if she had any recollection of the incident:

> OPA: Okay. So she's saying that that is a lie, she was never in the car. And she's stating that you actually threw her down when she was handcuffed on the ground *so* hard, causing her to hit her head, convulse, and defecate herself. Do you have any recollection of anyone in your custody doing that?
>
> NE: No.
>
> OPA: Okay. Is it possible—not that it's possible, but is it, does this incident at all spark *any* memory?
>
> NE: No, not at all.
>
> OPA: Okay.

NE: I *can* tell you the only person I ever remember when I was in DUI Squad, I, I remember only one person in my whole time in the DUI Squad defecating, and it, it's something that you don't forget, to be honest with you.

OPA: Okay.

NE: So I can, I can say if she had defecated her pants, I would have remembered, 'cause it's...

OPA: Memorable.

NE: ...it stands out.

Given that the accuracy of the incident report was the underlying issue in this case, and the named employee had written in her incident report that the complainant, after being placed in the back of the patrol car, lunged at the named employee when she opened the patrol car door and that the complainant "had defecated and urinated in her pants", OPA should have followed up on this inconsistency.

#3

In a case where I noted that it would have been better practice for OPA to interview another witness, because the other evidence later gathered during the investigation was sufficient to reach a clear determination of outcome, I did not request further action be taken. The case involved a complainant with mental illness who had stated in his intake interview that in addition to his children, friends were walking with him during one of his interactions with the named employee. OPA did not attempt to obtain their names and contact information during intake or the investigation in order to interview them. While I did not request that further investigative steps be taken, I did request that OPA discuss the importance of following up whenever a complainant or witness mentions the presence of another possible witness.

#4

In a case where a traffic officer was alleged to have let a friend off with a warning while citing other drivers, the named employee acknowledged that the favorable treatment had occurred but he did not feel it was inappropriate. The allegation was sustained. I thought OPA should have further inquired of the named employee as to whether there were other instances in which he based traffic enforcement or other law enforcement decisions on personal relationships.

#5

In an investigation where a named employee had multiple allegations across different cases, the OPA investigator had done an excellent job. There was one thread of questioning though where during the named employee's second interview, he was asked if he recalled the special order the Department had issued. He stated that he did not recall it; then in response to the OPA Investigator's follow-up questions, stated he did not regularly check his email and had no idea that he was ever required to check his email. This was in clear violation of SPD policy, since so many directives and orders are communicated via email. Although minor, I asked OPA to add an allegation to address the violation, which they did through a separate case.

Other Cases of Interest

#1

A case which could provide a useful example for Bias-Free Policing training involved an African American male who went to OPA to file a complaint because he felt his interaction with officers was not as it might have been had he not been African American. The incident occurred as he was picking up his grandson from daycare. He backed up, his car's tire went into a ditch, and he could not get the vehicle out. He called AAA for assistance. While waiting, two officers were dispatched to that location based on a call from a nearby security guard who reported him as a possible drunk driver. The officers noted he had red eyes and his speech was somewhat slurred. He said he had not consumed any alcohol for a year and a half, he had cataracts as well as a bad hip, and his slurring was due to medication. When the officer asked him to do the field sobriety tests, he said he didn't think he could because of his hip. He said the officer told him he did not have to do it if he did not want to, making it sound like it was an option. He said he was then handcuffed when he told the officer he could not walk the line and the officer told the AAA driver he could leave because the officers were going to impound his car. The complainant emphasized to OPA that he was not refusing the field sobriety tests, just that walking a straight line was difficult due to his hip problems. He said he told the officers about his grandson inside the daycare and that he was not supposed to remain there after hours. The officer asked if there was anyone else who could pick the child up, but there was not. The officers transported him to the

precinct where he blew a .00. Then he was driven to the tow lot to retrieve his car, for which he had to pay $175.00, along with having to pay for the extra time his grandson was in daycare. The ICV did not indicate the officer told the complainant he would be subject to arrest if he did not perform field sobriety tests; but instead said "you don't have to take the test if you don't want to." The complainant felt that if he had not been African American, his medical issues might have been perceived differently. The OPA investigation was thorough, and the officers stressed they treated the complainant as they would any driver with those indications of possible DUI, given the mandatory obligations with regard to DUI enforcement. Nonetheless, the investigative process did not really answer the question as to whether they had the discretion to take into account his medical issues in a different way and effect a result that would not have resulted in a financial hardship for him. The process did not lead to a better understanding of the unintended consequences of various police actions, or the importance of questioning assumptions, and of listening and problem-solving where possible.

#2

Another case involved an African American driver and passenger who felt their interaction with officers was not as it might have been had they not been African American. This interaction occurred while they were parked in a disabled space in the parking lot of a 7-11, and revolved around their failure to display a disabled parking placard. The officers were walking into the 7-11 to get a beverage when they made reference to the lack of placard to the driver, so there was no In-Car Video. Before the OPA complaint, the driver had contacted the precinct directly; the officers' supervisor had then spoken with him and the officers. During his OPA intake interview the complainant mentioned that the 7-11 would have video, but there was no indication in the case file that OPA had then taken any steps to obtain the video. Because the named employee and witness employee in their OPA interviews and discussion with their supervisor independently verified that the interaction with the complainant and his passenger occurred as described, and what remained at issue is what specifically was *said*, at that point the 7-11 video [with no audio] would not have probative value, so I did not request any follow-up. The named employee and witness employee were also not asked by OPA if they should have documented the interaction with the complainant and his passenger and the SPD supervisor was not asked by OPA if he

documented his counseling of the officers as required, nor was he asked to provide OPA a copy of the documentation. Also problematic in this case was that no investigative steps were taken from December until March, a period of more than three months. The differing perspectives of the driver and passenger as opposed to that of the officers might make for another useful training example.

#3

In a case where I would have reached a different conclusion, the named employees were dispatched to a call of trespass at a restaurant. A witness had identified the subject as the individual causing the disturbance in the business and refusing to leave. The witness said he told one officer that the subject had pushed an employee and called him a "faggot". The witness stated the subject also said, "he was going to beat everyone up [those in the business] and kill them because they were a bunch of faggots and bitches." The officer stated he spoke to witnesses, and no one else mentioned the remark. That officer returned to the patrol vehicle and placed the subject under arrest for misdemeanor assault, not Malicious Harassment. The second officer conducted a search of the subject and placed him in the patrol vehicle. The second officer told OPA that while en route to the precinct with the subject, the first officer stated the incident was just an assault and there was no Malicious Harassment.

In addition to the concerns noted by the OPA investigator as to how the two officers conducted their investigation, there was also nothing in the General Offense Report or other documentation indicating that either officer or the Sergeant looked for or inquired about restaurant or private video. The restaurant manager stated in his OPA interview and in his written statement that he told officers the restaurant had a video. The officers, in response to a question from the OPA investigator on this point, stated in their interviews that no one mentioned the restaurant video. There should have been a follow-up question as to whether the officers independently looked for video, regardless of whether someone mentioned it to them, and whether the supervising Sergeant made sure those steps had been taken. Neither named employee had requested that a supervisor respond to the scene, and they did not inform the supervisor of the allegation of Malicious Harassment during screening of the arrest [the incident was screened by the second

officer, but the first officer was also at the precinct]. The OPA Director recommended a finding of Training Referral regarding the policy as to when allegations of Malicious Harassment are made.

#4

Lastly, in a case I reviewed at the beginning of 2015, involving the purchase and possession of illegal steroids to which the employee admitted and the King County Prosecutor provided transactional immunity, I felt the case also presented two other possible policy violations which could have been addressed - whether the employee complied with employment requirements and Departmental policy on truthfulness and completeness of information and Departmental policy limiting use or possession of controlled substances to those directed by a medical authority or per duty requirements – and that OPA should have required the employee to produce all relevant medical or pharmaceutical records.

The Prosecutor/King County Sheriff's Office's (KCSO) partial transcript of the named employee's interview suggested that a prima facie case had been established with regard to dishonesty. The named employee only changed his statement during his interview with the Prosecutor's Office after he was confronted with evidence, such as text messages, that the KCSO had already gathered and was told the Prosecutor intended to subpoena him to testify. The named employee also admitted in his first OPA interview that he had initially been dishonest in the KCSO/Prosecutor interview. Based on this, in my view, OPA could have alleged dishonesty in addition to violations of law. Then the named employee in his OPA interview made a number of other statements that appeared to conflict with the KCSO statement or did not appear to be completely accurate or consistent, that the violations of law were somehow mitigated by a defense of medical necessary and prescribed use of steroids. His answers then raised the issue as to whether OPA needed to address a possible honesty violation focused on his statements made as part of the administrative investigation.

The named employee offered no witnesses or other evidence and could not clearly articulate specific information asked of him by the OPA investigator. The Prosecutor's transactional immunity agreement foreclosed OPA from obtaining the named employee's complete testimony in the criminal matter that might have helped corroborate his assertions. Thus, when OPA asked the named employee to produce relevant medical records or to allow OPA to contact his medical

professional or pharmacies, it was not for the purpose of embarrassment or needlessly requesting information OPA already had through other evidence, but was solely for the purpose of trying to address the defense the named employee had himself raised.

The union, on behalf of the named employee, argued that OPA's request was an inappropriate invasion of the named employee's privacy rights. In response, OPA agreed to a limited disclosure by the named employee of whatever records he was willing to produce that could be viewed by the investigator, but would not be retained in the investigative file. The named employee then submitted certain partial records. After reviewing them, OPA interviewed him again in an effort to clarify his previous answers in order to understand why or how his asserted explanations were material. After that interview the named employee's statements were still inconsistent and did not appear to be forthright, so OPA interviewed him a third time.

Because the named employee did not produce comprehensive, relevant records or authorize OPA to contact his medical professional or pharmacies, OPA was unable to thoroughly address a possible violation with regard to honesty.

This raised several concerns. First, OPA's request for the medical or pharmaceutical records was not simply a fishing expedition. It was the employee's asserted defense and his conflicting statements that justified OPA's request for medical or pharmaceutical records. If the named employee's statements had been consistent and clear and/or there was corroborating evidence, one might find that the medical records were not essential and on balance production might not then be required. But that was clearly not the case here.

Second, his lack of honesty in the criminal matter also meant he may present Brady concerns.[29] Thus, the lack of honesty in the criminal case is directly related to the employee's ability to perform his job, meaning the named employee's professional duties *were* squarely at issue, even though his statements to the Prosecutor were made in his personal capacity.

[29] In 1963 the Supreme Court ruled in *Brady v. Maryland* that the defense has the right to examine all evidence that may be of an exculpatory nature. Under *Brady,* evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and should be given to the defense during discovery.

Third, the named employee acknowledged he had a duty to fulfill his employment obligation to be truthful and complete in the information provided pursuant to an OPA interview. All employees are advised by an OPA investigator at the beginning of every OPA interview that they are ordered to answer all questions asked truthfully and completely and that failure to do so may result in discipline up to and including termination. The named employee was asked if he understood and replied that he did. This obligation did not appear to have been met.

Thus, in my view, because the employee himself raised a single defense of medical necessity, presented seemingly inconsistent and conflicting information, offered no other evidence, and his untruthful statement to the Prosecutor and KSCO triggered possible Brady issues, if there were relevant documentary records or testimony from his medical professional or pharmacist which could have confirmed the named employee's assertions, he should have been required to produce them (or to give OPA authorization to acquire them) or allow OPA to conduct interviews, in order to fulfill his obligation to be honest and complete. OPA could have had any proffered evidence reviewed by a medical expert and then an allegation of violation of the Department's honesty policy could have been squarely addressed.

Similarly, OPA could have alleged that SPD's policy on use or possession of controlled substances had also been violated, but would not have been able to thoroughly investigate it without required production of relevant medical records and/or access to the named employee's pharmacist or medical professional. Again, recognizing the obvious importance of employee privacy rights and that employers must take great care in this arena to not over-step with medical inquiries unrelated to the job, if an allegation is made to OPA based on reasonable suspicion, and the employee cannot through his or her interview(s) and other testimonial or documentary evidence provide information to address it, OPA will not be able to meet its obligation to conduct a thorough investigation of the allegation unless the production of medical or pharmaceutical records is required.