

REPORT OF THE OPA DIRECTOR IN RESPONSE TO MAYOR NICKELS'
REQUEST FOR REVIEW OF INVESTIGATION OF THE
OPA COMPLAINT FILED
BY GEORGE T. PATTERSON

July 9, 2007

Overview and Summary of Findings

By letter dated June 20, 2007, Mayor Nickels asked me for a review and written report of matters relating to the complaint filed by George T. Patterson with the Office of Professional Accountability (OPA). Specifically, Mayor Nickels asked for a report on: (1) the original investigation of Mr. Patterson's complaint and the findings by the OPA; (2) concerns regarding the investigative process, including inquiries by the Chief of Police; and (3) the OPA Review Board's draft report on Mr. Patterson's case given to the Seattle Times on June 18, 2007.

Following an in-depth review of the investigation¹, my findings are as follows:

- 1) The original investigation of Mr. Patterson's complaint by the OPA-Investigation Section (OPA-IS) generally supports the OPA's findings issued by then Acting OPA Director / Captain Neil Low. The OPA findings that I deem supported by the investigation are as follows:
 - a. The OPA finding that the Officers were exonerated on the allegation they used unnecessary force with Mr. Patterson is supported by a preponderance of the evidence.
 - b. The allegation that the Officers did not follow proper arrest procedures for screening a male, who had been handcuffed and released around the time Mr. Patterson was arrested was supported by a preponderance of the evidence and properly sustained by the OPA.

¹ In preparing this report, I: (1) reviewed the OPA case file and related materials on Mr. Patterson's complaint, including the video taken of his arrest; (2) interviewed OPA-IS staff and other Seattle Police Department (SPD) employees involved with the investigation, including Chief Kerlikowske and other Command Staff; (3) interviewed the former OPA Director, Sam Pailca, regarding her involvement, and her knowledge and experience with regards to OPA investigations; and (4) met with two members of the Office of Professional Accountability Review Board (OPARB) in an attempt to clarify concerns of the Review Board as discussed in the report given to the Seattle Times on June 18, 2007. I also discussed with the OPA Auditor her involvement and opinions about the case, and met with community representatives, who sought input. A representative of the Defender Association requested I consider an analysis conducted by Grant Fredericks, a Forensic Video Analyst, regarding the video of Mr. Patterson's arrest. I reviewed the analysis and attended a briefing he provided to the Seattle City Council Public Safety, Governmental Relations, and Arts Committee on July 3, 2007. I was asked by James Kelly of the Minority Executive Directors Coalition to determine if there was bias in the process or the Chief was biased in the process, and to provide an explanation of the investigation process itself. I have attempted to answer those concerns in my review.

- c. As the evidence was neither proved nor disproved on the allegation the Officers failed to cooperate with the internal investigation, the OPA finding of “not sustained” was appropriate.
 - d. Because the allegation that property or evidence was mishandled was neither proved nor disproved by a preponderance of the evidence, it was properly not sustained.
- 2) I disagree with the OPA finding of exoneration on the Officers’ honesty as to their communications about the Patterson arrest. While the Officers were exonerated on this issue, it is my opinion that the Officers’ alleged misconduct as it relates to their honesty was neither proved nor disproved, making a finding of “not sustained” more appropriate. However, I appreciate that reasonable minds can differ on these findings.
- 3) The investigation process was “thorough, fair, and expeditious.”² The OPA staff arrived at their recommended findings without undue influence by Chief Kerlikowske or others on the SPD Command Staff. The Chief’s inquiries about the investigation followed standard practice and ordinances governing the review process. The Chief’s suggestion that efforts be made to locate a female witness to Mr. Patterson’s arrest was not inappropriate or calculated to elicit biased testimony from her. Locating this witness actually led to a more complete investigation.
- 4) I disagree with criticisms about the handling of this case as outlined in the draft OPARB report received by the Seattle Times on June 18, 2007. (OPARB draft report). To the contrary, I find that the Chief’s involvement was typical of the role he sometimes plays in Seattle’s hybrid model of civilian oversight. There is no requirement in the ordinances or SPD policy governing complaint processing that there be a “fire wall” between the Chief and the OPA. Moreover, the Chief’s input can contribute to complete and high quality investigations and is appropriate since he relies on the investigation in making his final decision about discipline. I also believe that, as a rule, credibility determinations are best made by the investigators, who interview witnesses, rather than by a reviewing body based solely upon the written record. However, I do agree with the OPARB that there was confusion about the OPA’s finding with regards to screening procedures used by Bike Officers at the West Precinct.³

² Seattle Police Department Policy and Procedures Manual, Section 1.117, Public and Internal Complaint Process, effective 12/08/2003. All citations to the Seattle Police Department Policy and Procedure Manual refer to the May 8, 2007 revised version.

³ In addition to the issues examined at the Mayor’s request, I have observed in the process of preparing this report that the OPA needs to review its practices on archiving complaint related e-mail that is generated outside the OPA-IS, and needs to address other administrative questions about maintaining case files.

I. Seattle's Hybrid System of Civilian Oversight

Seattle has a three pronged system of civilian oversight of police accountability issues.⁴ This “three legged stool” provides for checks and balances, but also can be confusing to the public.

The Office of Professional Accountability (OPA) is responsible for management and oversight of the investigation process when complaints of police misconduct are filed. The OPA is headed by a Director, a civilian appointed by the Mayor and confirmed by the City Council. Under the Ordinance, the Director reports directly to the Chief of Police.⁵ The Director is responsible for regularly advising the Chief, as well as the Mayor and City Council on all matters involving the Police Department's investigatory and disciplinary functions, recommending policy on issues concerning SPD professional standards, evaluating the investigation process and making recommendations to improve the process.⁶ In addition to the Director, there is a civilian Associate Director (who does not review IS investigations and is not in line to be Acting Director), the OPA-Investigation Section (the OPA-IS), which includes a Captain, a Lieutenant, and staff of Sergeants who handle the day to day work on OPA investigations, and three civilian support staff for the OPA and IS. I, Kathryn Olson, am the current OPA Director. Sam Pailca was my predecessor. However, there was no civilian Director most of the time that the Patterson matter was under investigation. The Acting OPA Director during this period was Captain Neil Low.

The second prong involves the OPA Auditor, an independent, respected member of the community appointed by the Mayor and confirmed by City Council.⁷ The Auditor reviews the classification of complaints and audits all cases that go through a full investigation, including all allegations of unnecessary or excessive use of force. She can and does recommend follow up investigation.⁸ The Auditor also is required to prepare semiannual reports of her auditing activities, with a summary of issues, problems or trends she notes, and recommendations for training, policy or procedural changes.⁹ Katrina Pflaumer is the current OPA Auditor.

Finally, there is the OPA Review Board (OPARB), composed of three civilians appointed by City Council.¹⁰ The OPARB reviews closed OPA cases and identifies and reports on issues, problems, and trends, and may make recommendations for officer training, or policy or procedural changes.¹¹ As necessary, the OPARB also resolves disputes between the OPA Director and the

⁴ Seattle Municipal Code Chapter 3.28.

⁵ Seattle Municipal Code Section 3.28.810.D.

⁶ Seattle Municipal Code Chapter 3.28.

⁷ Seattle Municipal Code Section 3.28.850.

⁸ *Id.* at D.1.

⁹ Seattle Municipal Code Section 3.28.860.

¹⁰ Seattle Municipal Code Section 3.28.905.

¹¹ Seattle Municipal Code Section 3.28.910.

OPA Auditor over investigations. The three individuals currently serving on the OPARB are Chair Peter Holmes, Brad Moericke, and Sheley Secret.¹²

II. Overview of the Investigation and Disciplinary Process

All complaints coming into the SPD involving allegations of police misconduct are referred to the OPA. An initial determination is made on classifying the complaint; all cases involving serious or complex allegations of misconduct, including all claims of unnecessary use of force, are referred for a full OPA-IS investigation.¹³ The OPA-IS investigators then look for evidence to support or refute the allegations made.

A preponderance of the evidence standard is used in weighing the information discovered in the investigation, and a variety of findings are possible. If the facts support the allegation by a preponderance of the evidence, the allegation is “sustained.” An allegation is determined “not sustained” when it is neither proved nor disproved by a preponderance of the evidence. When an allegation is “unfounded,” a preponderance of the evidence indicates the alleged act did not occur as reported or is false. “Exonerated” means a preponderance of the evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful, and proper. When there is a finding that there may have been a violation of policy, but it was not a willful violation, and/or the violation did not amount to misconduct, there is a finding for “supervisory intervention.”¹⁴

When the investigation is complete, a Case Summary is written summarizing the various steps taken by the investigator and all evidence that was collected. The file is then forwarded to the Lieutenant, who oversees the OPA-IS caseload. Following his review, the Lieutenant forwards the completed file to the OPA-IS Captain. The Captain makes his recommendations in the case, incorporating his conclusions in a document called a “Proposed Disposition.” The Proposed Disposition memo is then forwarded to the named employee’s Section Commander, who has ten days to provide input, along with a copy to the OPA Director. If none of the allegations are sustained, once the Director receives the Section Commander’s input, if any, the case is generally Certified and closed.

If there is a sustained finding on any allegation in the Proposed Disposition, however, a meeting is held to review the findings and discuss discipline. Typically, this meeting is attended by Chief Kerlikowske, the Deputy Chief, Assistant Chief, and Section Commander in the named employee’s chain of

¹²Sheley Secret recused herself from involvement with the Patterson matter given a conflict of interest. The Seattle Police Officers Guild is pursuing a grievance with regards to Brad Moericke’s involvement, asserting his membership on OPARB had expired at the point OPARB began its review of this matter.

¹³ Some complaints are closed almost immediately because they do not involve misconduct issues or are otherwise not suitable for the OPA’s review. Other complaints are referred to the employee’s supervisor or line of command for handling; these are generally matters where misconduct is likely not involved but counseling or training with the named employee might be appropriate. And still other cases are referred to the OPA’s mediation program.

¹⁴ In addition, a case may be found to be “administratively unfounded/exonerated” or “administratively inactivated” if a complaint is determined to be significantly flawed procedurally or legally, or the investigation cannot proceed due to insufficient information or other pending investigations.

command, the OPA-IS Captain, the OPA Director, and a legal advisor. A preliminary decision about appropriate discipline is made following discussion, and a letter goes out to the named employee along with a “Disciplinary Action Report” outlining the misconduct found and the proposed discipline. A date is set for a “Loudermill”¹⁵ meeting, providing the employee, with or without a representative, an opportunity to meet with the Chief of Police to discuss the proposed discipline, and any additional facts or mitigating circumstances to be considered. Following this meeting, Chief Kerlikowske makes a final decision with regards to the underlying misconduct and discipline to be imposed. A notice is issued to the employee with this final determination and the employee is informed of the right to appeal.

While this process is followed in each individual case being investigated by the OPA, other checks and balances are at work. First, the OPA Auditor receives information on the initial classification of complaints filed with the OPA, and can offer her input if she believes a case is misclassified (e.g., a case is referred for a full investigation, but she believes a Chain of Command investigation is more appropriate given the allegations involved). The OPA Auditor also reviews all completed investigations, before the case is sent to the Captain. This provides an opportunity for her to suggest other avenues of investigation or express her opinion on conclusions to be drawn from the evidence. She can and does share her views with the OPA-IS staff, the Director, and sometimes the Chief of Police.¹⁶

In addition, there are regular meetings between the Chief of Police and the OPA Director (and other OPA staff) scheduled every two weeks. This time is used to brief the Chief on the status of various projects underway, management issues of concern, and the like. It is also an opportunity to discuss the investigation process in any particularly sensitive case. Individual cases also may be discussed in routine Command Staff and other meetings, allowing for the Chief’s input to the OPA Director and IS staff.

III. The Original Investigation of Mr. Patterson’s Complaint and the Findings by the Office of Professional Accountability

On January 2, 2007, George T. Patterson was arrested by Officer G. Neubert and Officer M. Tietjen for investigation of a violation of the Uniformed Controlled Substances Act (VUCSA) occurring at 3rd and Pike Street, in downtown Seattle.¹⁷ In their written report and statements of the incident, the Officers document they had observed hand-to-hand narcotic exchanges between Mr. Patterson two

¹⁵ In 1985, the United States Supreme Court decided *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985). *Loudermill* affirms the principle that a non-probationary police officer may not be terminated, or otherwise disciplined so as to lose significant pay, without certain procedural steps. These include a pre-termination notice of the charges on which the discipline is based, an opportunity to review the evidence, and a chance to respond to the charges.

¹⁶ Seattle Municipal Code Section 3.28.855.

¹⁷ Unless otherwise noted, facts asserted concerning Mr. Patterson’s case are ascertained from review of the OPA-IS Case No. 07-0013.

individuals. The report states the Officers were at a fixed position using a telescope to enhance their vision. The Officers reported they left their fixed position, could not immediately find Mr. Patterson, but then located him about one minute later. The report states that the Officers could see in plain view several small crumbs of suspected rock cocaine in Mr. Patterson's lap area. Mr. Patterson was placed in custody and searched, when one larger piece of rock cocaine was found in his front waist area according to the officers' reports. Mr. Patterson was booked into King County Jail and Acting Sergeant Diamond screened the arrest. In addition to the suspected cocaine (later field tested positive for cocaine), the officers placed \$110.00 in cash into evidence.

On January 5, Mr. Patterson made an in-person complaint to the OPA-IS. He alleged that while he was being processed at the West Precinct following his arrest, Officer Neubert used unnecessary force when he slapped Mr. Patterson twice on his left ear and twisted and bent his fingers, while telling him to "Spit out the dope." Mr. Patterson also alleged that another officer (later identified as Officer Tietjen) used unnecessary force when he held Mr. Patterson by his throat.

As the investigation proceeded, other allegations were added to the complaint. The OPA-IS added the allegation that an authorized Sergeant did not properly screen Mr. Patterson's arrest, and that an individual, who was handcuffed and at the scene of Mr. Patterson's arrest was released without properly screening his detention. When the handcuffed individual was identified and interviewed, he claimed that Officer Tietjen recovered a bag of marijuana from him and did not return it. This claim led to an allegation against Officer Tietjen that he had mishandled property or evidence. Additionally, both officers were alleged to have failed to cooperate with an OPA-IS investigation by rendering incomplete or inaccurate statements regarding their initial contact with Mr. Patterson, the recovery of the suspected drugs, and the details and duration of the other subject's detention and release. Further, the officers were alleged to have omitted material facts from their incident report and statements, leading to dismissal of charges against Mr. Patterson by the King County Prosecutor's Office.

The investigation conducted by the OPA-IS included an extensive review of documents and testimony. At the time of his complaint, photographs of Mr. Patterson were taken to document any alleged injury. King County Jail records and Highline Medical Center records related to his arrest and medical screening were reviewed. The reports and statements filed by Officers Neubert and Tietjen related to the arrest were reviewed. Computerized records developed during the arrest by the Officers were examined, including information on CAD and Officer Tietjen's Blackberry device. An Officer Safety Bulletin dated December 12, 2006, regarding an incident when Mr. Patterson bit an officer on his thumb while the officer was attempting to recover drugs from his mouth was included in the file. A video made from a Walgreen's surveillance camera of Mr. Patterson's arrest was recovered and analyzed. Visits were made and daytime photographs were taken

of the 3rd and Pike area, where Mr. Patterson was arrested. Nine witnesses were interviewed by the OPA-IS, including Mr. Patterson, Officers Neubert and Tietjen, the handcuffed male witness at the scene, a female witness at the scene, and four Officers or Sergeants involved with transporting or processing Mr. Patterson the night of his arrest. In addition, Acting OPA Director/Captain Low, Deputy Chief Diaz and Deputy Chief Kimerer looked at 40 to 50 incident reports from recent cases in which Officers Neubert and Tietjen had been involved, reviewing them for report quality.¹⁸ Deputy Chief Kimerer also secured computer print-outs for all evidence these Officers had entered into the SPD Evidence Unit back to 2004 and a spot check was done of evidence where marijuana, cocaine, and other drugs had been involved.¹⁹ Finally, unsuccessful efforts were made to locate two other people the OPA Auditor identified as potential witnesses.

The OPA findings on the allegations made against the two arresting officers were as follows:

- (1) The officers were Exonerated on the use of Unnecessary Force alleged to have occurred at 3rd and Pike while Mr. Patterson was initially detained, searched, and arrested.
- (2) The allegation that the officers used Unnecessary Force with Mr. Patterson, while he was in the holding cell at the West Precinct was determined to be Unfounded.
- (3) The allegation the officers failed to follow Arrest Procedures with regards to the handcuffing and release of the male witness at the scene of Mr. Patterson's arrest was Sustained.
- (4) Allegations against the officers for Failure to Cooperate with the Internal Investigation were Not Sustained.
- (5) The officers were Exonerated on allegations they had not met Honesty requirements in performing their police duties.
- (6) The allegation against Officer Tietjen for Mishandled Property or Evidence was Not Sustained.

A. Unnecessary Force

Seattle Police Department Policies and Procedures provide, "Officers may, in the performance of their official duties, use only the amount of force necessary and reasonable to effect the lawful purpose intended. When determining the necessity for force and the amount of force required, officers shall consider

¹⁸ Olson interview notes, pp. 1-2, Acting OPA Director/Capt. Neil Low. Deputy Chief Kimerer stated it's possible Chief Kerlikowske or Assistant Chief Linda Pierce might have reviewed some reports, too. Olson interview notes, pp. 13-14, Deputy Chief Clark Kimerer.

¹⁹ Olson interview notes, pp. 13-14, Deputy Chief Clark Kimerer, and pp. 12-13, Sgt Shane Anderson.

known circumstances, including, but not limited to, the level of threat or resistance presented by the subject, the danger to the community, and the seriousness of the crime.”²⁰ There were two allegations regarding use of force – one related to Mr. Patterson’s arrest at 3rd and Pike and the other regarding his treatment after being transported to the West Precinct.

- (1) The OPA finding that the officers were exonerated on the allegation they used unnecessary force with Mr. Patterson at 3rd and Pike is supported by a preponderance of the evidence indicating the officers used force as alleged, but that it was justified, lawful and proper.

The Officers were exonerated on the allegation that they used unnecessary force during Mr. Patterson’s arrest while at 3rd and Pike, meaning a preponderance of the evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper. The Walgreen’s video of the arrest of Mr. Patterson shows that Officer Neubert used a hold on Mr. Patterson typically used to force an individual suspected of carrying drugs in his mouth to spit them out. Officer Tietjen used a move forcing Mr. Patterson’s left hand into a wrist lock and moved his arm behind his back. He was also observed making a twisting motion with Mr. Patterson’s left hand fingers. An Officer Safety Bulletin had been issued three weeks earlier regarding an incident when Mr. Patterson bit an officer on his thumb while the officer was attempting to recover drugs from his mouth. The testimony of the female witness present at the scene of the arrest, who claimed the officers were restrained in their treatment of Mr. Patterson during his arrest, was also used to support the OPA finding on this allegation.

In reviewing the OPA investigation of the force used in Mr. Patterson’s arrest, I also considered the analysis done of the Walgreen’s video by Grant Fredericks, a Forensic Video Analyst. His analysis was initially conducted at the request of The Defender Association, and I was asked to review the affidavit he prepared incorporating his observations about Mr. Patterson’s arrest. The affidavit is dated May 9, 2007, and was not considered by the OPA during the initial investigation. Mr. Fredericks notes in his affidavit that Officer Neubert used a “clamp” hold on Mr. Patterson, stating, “An appropriately applied ‘clamp’ hold is a safe and accepted method used to prevent a suspect from swallowing small quantities of drugs hidden in one’s mouth.”²¹ Later in his affidavit, Mr. Fredericks notes, “Neubert’s actions are consistent with an attempt to force Patterson to spit out any objects that may be in his mouth.”²² Mr. Fredericks makes observations throughout his affidavit about the continuing use of the “clamp” hold by Officer Neubert and Officer Tietjen’s wrist lock on Mr. Patterson’s left hand. The “clamp” hold was reported to last approximately three minutes and forty-four seconds, and the wrist hold nearly as long.²³

²⁰ SPD Policy and Procedure Manual Section 1.145, Use of Force, effective 01/31/2006.

²¹ Affidavit of Grant Fredericks, p.6-7.

²² Id. at p.7.

²³ Id. at p.10.

Nowhere in Mr. Fredericks' affidavit does he offer an opinion that the force used by Officer Neubert or Officer Tietjen at Mr. Patterson's arrest was unnecessary or unreasonable. At a briefing sponsored by the Seattle City Council Public Safety Committee on July 3, 2007, Mr. Fredericks reviewed his analysis. In responding to a question related to the appropriateness of the force used by Officers Neubert and Tietjen, Mr. Fredericks unequivocally said that he is not a use of force expert and that he should not comment. The OPA finding that the officers were exonerated on the allegation they used unnecessary force with Mr. Patterson at 3rd and Pike is supported by a preponderance of the evidence indicating the Officers used force as alleged, but that it was justified, lawful and proper.

- (2) A preponderance of the evidence indicates the allegation that the officers used unnecessary force with Mr. Patterson at the holding cell is unfounded.

Next, the OPA determined that the allegation that the officers used unnecessary force with Mr. Patterson once he was in the holding cell at the West Precinct was unfounded. An allegation is "unfounded" when a preponderance of evidence indicates the alleged act did not occur as reported or is false. Mr. Patterson's claim of unnecessary force alleged to have occurred inside the holding cell did not appear credible to OPA-IS from the outset.²⁴ He did not report to other Officers at the West Precinct at the time that he had been slapped on his ear, nor had his fingers twisted. Officer Estrada testified that while he was in the holding cell, Mr. Patterson appeared to purposely try to fall out of his wheelchair. When he did fall out, Officers Neubert and Tietjen helped Mr. Patterson back into his wheelchair and examined him to be sure he had not injured himself. While Mr. Patterson later told King County Jail staff that he had ringing in his left ear, Highline Medical Records indicate that there was no evidence of trauma to Mr. Patterson's head or the ear, though tenderness to an (unspecified) extremity is noted. The OPA-IS photos taken of Mr. Patterson three days after his arrest, when he filed his complaint, did not show any injuries. I agree with the initial OPA finding that a preponderance of the evidence indicates the allegation that the Officers used unnecessary force with Mr. Patterson at the holding cell is unfounded.

- B. The allegation that the Officers did not follow proper arrest procedures for screening the handcuffed male was supported by a preponderance of the evidence and properly sustained.

The allegation the officers failed to follow arrest procedures with regards to the handcuffing and release of the male witness at the scene of Mr. Patterson's arrest was sustained, meaning the allegation of misconduct was supported by a preponderance of the evidence. SPD standards clearly place a duty on a primary officer involved in an arrest or detention to notify a sworn SPD supervisor (sergeant or above) prior to booking or otherwise releasing control of a person in

²⁴ Olson interview notes, p. 10, Sgt. Brian Miles.

custody (e.g., handcuffed).²⁵ The Officers admitted to the failure to appropriately screen their handcuffing and detention of the other male suspect at the scene of Mr. Patterson's arrest. I agree with the OPA's sustained finding that the officers did not follow proper arrest procedures for screening the handcuffed male.

What is less clear is whether there was a finding by the OPA on an allegation with regards to concerns that Mr. Patterson's own arrest was not properly screened with a supervisor. The Proposed Disposition memo written by Acting Captain/Lieutenant Michael Kebba discussed the evidence developed on this point, and he recommended a sustained finding on failure to follow arrest procedures with both the handcuffed male and Mr. Patterson. However, the Acting OPA Director/Captain Neil Low's final Certification does not address the screening of Mr. Patterson's arrest, and only notes the Officers did not follow proper procedures with regards to the handcuffed male. This is a point that will be discussed more fully below, in Section V.

C. As the evidence was neither proved nor disproved on the allegation of failure to cooperate with the internal investigation, a finding of "not sustained" was appropriate.

SPD policy provides that, "Employees shall cooperate in a Department internal investigation of an allegation of misconduct ...shall truthfully answer questions and render complete, material and relevant statements, including all facts and circumstances surrounding the subject matter of the investigation, which may be known to the employee."²⁶ Here, the allegation Officers Neubert and Tietjen failed to cooperate with the OPA-IS was not sustained, indicating the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence.

Officers Neubert and Tietjen were each interviewed twice, once before the Walgreen's video was available and again afterwards. In their second interviews, they were first led through a series of follow-up questions based on their original interviews and then shown the Walgreen's video and asked further questions. In his Proposed Disposition, Acting Captain/Lieutenant Michael Kebba expressed concern that the Officers' responses to some questions lacked clarity in establishing what they recalled or knew at the time of the interviews. Lieutenant Kebba concluded that the Officers' lack of attention to their duty reflected poorly on them, recommending a finding of "not sustained" on this issue. The Acting OPA Director/Captain Low opined that the Officers' second interview partially explains their memory lapses on their first interview, certifying a "not sustained" finding on the allegation of failure to cooperate.

At the heart of this issue is the fact that the Officer's' incident report and statements about Mr. Patterson's arrest do not include details evident from the

²⁵ Seattle Police Department Policy and Procedures Manual Section 2.001, Arrest Procedures, effective 05/23/2006.

²⁶ SPD Policy and Procedure Manual Section 1.117, III.F., Public and Internal Complaint Process, effective 12/08/2003.

Walgreen's video, and they did not remember certain details evident from the video when questioned during the OPA-IS investigation. For example, the video shows the officers interacting with a handcuffed male at the point that Mr. Patterson arrives on the scene. The handcuffed male is present throughout most of the video. However, neither Officer mentioned the handcuffed male in their incident report and statements. Sergeant Woolery, the primary OPA-IS investigator on this case, noted that in the first interviews, before the video became an issue, the Officers offered up the fact they had made contact with another male with whom they were talking prior to Mr. Patterson coming onto the scene.²⁷ Officer Neubert notes that they were "speaking with an individual directly when Mr. Patterson came around the corner" and then describes the handcuffed male later seen in the Walgreen's video.²⁸ Officer Tietjen notes that they were in contact with another male at the time Mr. Patterson arrived, and acknowledges checking with his Blackberry device for outstanding warrants on the male.²⁹ When asked if he handcuffed the male, he initially answered, "No," and indicated he did not think Officer Neubert handcuffed the individual, either; "I don't remember him being in handcuffs at all."

Officer Tietjen thought they had been dealing with the handcuffed male about 5 or 10 minutes at the point they started dealing with Mr. Patterson.³⁰ Officer Neubert stated in his incident report that he made contact with Mr. Patterson 1 minute after arriving at the scene, which could not take into account the Officers' interaction with the handcuffed male. Because we do not have any video coverage for the period of time before Mr. Patterson's arrest, we cannot confirm the time frame, though the handcuffed male thought he had been detained 20-30 minutes at the point Mr. Patterson arrived. On the other hand, the handcuffed male testified that he believed the Officers detained Mr. Patterson for 20 minutes before Mr. Patterson was handcuffed, while the video establishes only approximately 4 minutes elapsed.

There was a sense of struggle to figure out if some of the Officers' details around the time line and failure to report the handcuffing of the second male should be construed as an outright lies or lies of omission. However, in the end, Sergeant Woolery concluded the Officers did not lie but gave the process "short shrift."³¹ Sergeant Shane Anderson, another OPA investigator at the time, sat in on second interviews of Officers Neubert and Tietjen, apparently because of his background in narcotics. He offered that in his opinion, the Officers seemed to answer questions in a noncommittal sort of way; they were "not completely forthcoming but not deceptive."³²

²⁷ Olson interview notes, pp. 2-4, Sergeant Randy Woolery.

²⁸ Statement of Officer Greg Neubert, 2/15/07, p. 8.

²⁹ Statement of Officer Michael Tietjen, 2/15/07, p. 14.

³⁰ Id. at p. 15.

³¹ Olson interview notes, pp. 2-4, Sergeant Randy Woolery.

³² Olson interview notes, pp. 12-13, Sergeant Shane Anderson.

In sum, the “not sustained” finding on the allegation the Officers failed to cooperate with an OPA investigation captures the sense that the employees were not necessarily forthcoming but not outright deceptive.

D. Allegations related to the Officers’ Honesty

The allegation concerning whether the Officers were honest is closely related to the issue of whether they failed to cooperate in the investigation. Seattle Police Department Policies provide, “Employees shall be truthful, accurate and complete in oral and written communications, statements, and reports; testimony; official administrative and employment records; and statements and interviews in internal investigations.”³³ The OPA determined the Officers were “exonerated” on the issue of honesty.³⁴ A finding of “exonerated” means that a preponderance of the evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper.

There is agreement that the incident report and statements completed by these officers following the arrest of Mr. Patterson omitted certain facts. The documents fail to note details obvious from the Walgreen’s video, such as the presence of the male witness detained in handcuffs prior to Mr. Patterson’s arrival. There were also questions raised about the time-line of events as reported by the Officers in their incident report and statements, and during their OPA interviews, as compared to what is observable on the Walgreen’s video.

An issue that Mr. Patterson did not directly raise when he filed his complaint but was investigated by the OPA-IS relates to insinuations made that the Officers planted drugs on Mr. Patterson. The Officers reported observing several small crumbs of rock cocaine on Mr. Patterson’s lap at the time of his arrest, and that a large piece of rock cocaine was located in his waist area. Approximately .3 grams of rock cocaine was turned in as evidence by the Officers. However, the Walgreen’s video is not conclusive about exactly when the Officers observed and recovered the drugs. At one point, Officer Tietjen reaches forward toward the area of the center of Mr. Patterson’s body and then appears to lean towards the ground. After he stands back up, Officer Tietjen “appears to be examining something small in his hands.”³⁵ There is an apparent inconsistency because Officer Tietjen reported that Officer Neubert recovered the drugs from Mr. Patterson, while it appears that Officer Tietjen may have done so himself. However, Grant Fredericks notes in his affidavit that at one point, “Given the position of Neubert, it is not possible to determine from the video whether anything was extracted from Patterson’s mouth.”³⁶ At another point, Neubert makes a motion towards the center of Mr. Patterson’s body, and, as Mr.

³³ SPD Policy and Procedures Manual Section 1.003, V.A., Standards and Duties, effective 06/01/2006.

³⁴ There is some confusion because the final Certification by the Acting OPA Director/Captain Low shows on the front of the form that the employees were “Exonerated,” yet indicates the allegation of honesty is “unfounded” in the discussion that follows. Acting OPA Captain/Lieutenant Kebba’s recommendation on the honesty allegation was that the Officers be exonerated.

³⁵ Affidavit of Grant Fredericks, p. 11.

³⁶ Id. at. 9.

Fredericks notes, “Due to the position of the camera it is impossible to determine if Neubert is examining Patterson’s lap area,” where the drugs were reported to have been observed and recovered by Neubert.³⁷

Two other witnesses provided information related to the recovery of drugs by the Officers. The handcuffed male who was present for Mr. Patterson’s arrest testified that he observed the Officers recover suspected crumbs of drugs from Mr. Patterson’s lap when he was placed in handcuffs. This is consistent with the Officers’ report and statements.³⁸ The female witness who was at the scene asserted that she saw Mr. Patterson “throw” something out of his mouth and that she observed one of the Officers recover, apparently from the ground, “a rock, a cocaine rock in a plastic bag.” The female witness said she recognized what it was, “crack cocaine,” because she’s an addict. She stated, “I don’t recall nor did I witness the police officer planting any dope on Mr. Patterson at all.”

As with the issue on cooperation, it appears the Officers were not completely forthcoming, though not outright deceptive about details concerning Mr. Patterson’s arrest. However, there is another factor to consider on this allegation. The Officers were disciplined for their failure to properly screen the arrest of the handcuffed male; however, their failure to note the presence of this known witness to Mr. Patterson’s arrest could be considered the omission of a relevant, material fact. The omission calls into question whether the officers were “accurate and complete” in their reports, as required by Section 1.003. Mitigating against a finding of “sustained” on this issue, though, is the fact that in their interviews, before being shown the video, the Officers did offer up information about the male present at Mr. Patterson’s arrest. Though they did not recall him being handcuffed, they did not attempt to cover up the fact they had detained him and checked for outstanding warrants on him.

Others have raised concerns about the accuracy of the incident reports in that the written account with regards to observing and recovering the drugs at issue does not completely mesh with what is observed on the Walgreen’s video. Similarly, those who believe that the allegation of unnecessary use of force should have been sustained argue that there is a problem with the lack of detail in the report on the force used during the arrest. The facts underlying these issues are less clear. What is clear is that the Officers did not report a material and relevant fact, that there was an identifiable witness to Mr. Patterson’s arrest, the handcuffed male. With the benefit of hindsight, I would have recommended at least a finding of “not sustained” on this allegation.

³⁷ Id. at 12.

³⁸ In his affidavit, Grant Fredericks observes that there was a “high wind” present in the area the night of Mr. Patterson’s arrest, and that “it is unlikely that ‘numerous chips and pieces of cocaine’ as described in the Officers’ reports, could adhere to Patterson’s lap area as he wheeled himself down the street.” Affidavit at p. 17. It’s not clear what expertise Mr. Fredericks would have to offer such an opinion, but in any case, his conclusion is not supported by the testimony of this witness.

- E. Because the allegation against Officer Tietjen for mishandled property or evidence was neither proved nor disproved by a preponderance of the evidence, it was properly “not sustained.”

The handcuffed male at the scene of Mr. Patterson’s arrest claimed that he was in possession of a dime sized baggie of marijuana that was removed from his person by Officer Tietjen. When asked if he had recovered evidence, Officer Tietjen responded, “I don’t believe I did...I don’t believe he had any marijuana.” When asked if he had disposed of marijuana after this incident, he responded, “I don’t believe I did, no.” And when asked if he had placed any marijuana inside his pocket, Officer Tietjen responded, “I don’t believe so, no. I can’t tell you with certainty that this didn’t occur, but I’m telling you it doesn’t sound familiar to me.” If it occurred, the Officer states he would have remembered it and documented it. But he failed to mention the handcuffed individual in his incident statement, much less the alleged marijuana taken. The OPA Auditor credited a statement from the male witness that he asked for the return of his marijuana and the Officers refused to do so as indicating he was telling the truth.

Members of the Command Staff checked outside the usual evidence gathered through IS to see if there was any pattern with these two Officers creating suspicion about their drug arrests. Deputy Chief Kimerer contacted the Evidence Unit and asked for a report on all evidence submitted by Officers Neubert and Tietjen back to 2004. He was checking to see if there was “spotty entry of evidence of marijuana or other drugs.” He concluded that, “Everything appears scrupulously entered.”³⁹ Deputy Chief Kimerer had also looked at 12 to 15 incident reports done by the Officers and compared them to the evidence reports, and found the information matched up.⁴⁰ The Officers were roughly equal in terms of frequency of entries, and had a similar number as compared to other Officers.⁴¹ Since there was no corroborating evidence to verify the assertions of the handcuffed male, Acting OPA Captain/Lieutenant Kebba recommended a finding of “not sustained” on this issue. Because the allegation against Officer Tietjen for mishandled property or evidence was neither proved nor disproved by a preponderance of the evidence, it was properly “not sustained.”

IV. Concerns Regarding the Investigative Process, including Inquiries by the Chief of Police

Efforts were taken to ensure that the investigation of Mr. Patterson’s complaint was “thorough, fair and expeditious,” as required by SPD Policy. The Office of Professional Accountability Review Board 2007 Mid-Year Report, issued July 2, 2007, concluded that there was “excellent investigative work by OPA from the

³⁹ Olson interview notes, pp. 13-14, Deputy Chief Clark Kimerer.

⁴⁰ Id.

⁴¹ Id.

outset of this case...⁴² In addition to thoroughness, there is also ample evidence that employees, including Chief Kerlikowske, strived to ensure fairness, credibility of the findings and integrity in the process during the investigation of Mr. Patterson's complaint.

For example, Captain Neil Low, who was the Acting OPA Director, and Lieutenant Michael Kebba, who was then the Acting Captain, both indicated that they were explicitly told that the Command Staff was not looking for a particular outcome in this investigation. Captain Low said, "[I] remember going to [the] Command Staff meeting and Mike [Kebba] was working on the summary and [Deputy Chief] Diaz [said], 'Don't discuss this with me. You guys make your decision.'⁴³ He also noted, "We felt empowered to do what we needed to do."⁴⁴ Though feeling empowered, Captain Low and Lieutenant Kebba reported that they struggled with the evidence as it was uncovered, though again, Captain Low said, "We had a discussion and I told [Kebba] that we didn't need Command Staff permission to make any findings."⁴⁵ Along the same lines, Sergeant Randy Woolery, the lead OPA-IS investigator on the case, noted that though there is room to disagree, "Nobody asked me what I thought or told me what to do, beyond Chief [Kerlikowske] suggesting we find [the unidentified woman in the video of Mr. Patterson's arrest]."⁴⁶

Lieutenant Kebba indicated that, "[Captain] Low said nobody upstairs wanted to prescreen my recommendations," as he worked on finalizing his Proposed Disposition.⁴⁷ "I felt stress but not from the Chief's office. Did I have influence? No. Did I feel uncomfortable? [It] comes with responsibility...Absolutely not – [the] Chief didn't meddle. For him to ask questions, [that's] not unusual. We welcome that because we might not be looking at all of the angles. If he has unanswered questions, we have to go get answers before [the] case is closed. He's the person ultimately responsible for the finding. No outside influence one way or the other. Everyone [was] resting on our ability to investigate this thoroughly and allowed [the] process to play out. I cannot even say if anyone had any hopes for [an] outcome. If [anyone] had favoritisms [about the outcome], [they were] not made known to [Kebba]. Nobody [was] circling around these officers."⁴⁸

Questions have been raised about Chief Kerlikowske's role in suggesting that the OPA-IS locate a female witness present at Mr. Patterson's arrest. Sergeant Woolery only had a first name for the witness and had been unsuccessful in his attempts to reach her by phone at a number Mr. Patterson provided. According

⁴² Office of Professional Accountability Review Board 2007 Mid-Year Report, issued July 2, 2007, p.8. The Review Board noted, "The assigned OPA Sergeant in particular is to be commended for the thoroughness of his investigation, the care taken and expertise exhibited in his interviews, and his dogged determination to get at the facts." Id. at p. 20.

⁴³ Olson interview notes, pp. 1-2, Acting OPA Director/Captain Neil Low.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Olson interview notes, pp. 2-4, Sergeant Randy Woolery.

⁴⁷ Olson interview notes, pp. 4-6, Acting OPA-IS Captain/Lieutenant Mike Kebba.

⁴⁸ Id.

to Sergeant Woolery's case notes, on April 2, 2007, he was asked by the Acting OPA Director/Captain Low to show the Walgreen's video to Chief Kerlikowske. After viewing the video, the Chief suggested that officers working downtown might be able to identify the witness, and told Sergeant Woolery to print stills from the video of the unknown female and try to ID her.⁴⁹ Flyers with her picture were printed up and distributed to Second Watch Bike Officers and others, to try to locate this witness. Two days later, Sergeant Woolery received a phone call from a West Precinct Bike Officer Drummond, advising that a woman matching the photo was in custody.

Sergeant Woolery and Sergeant Anderson made contact with the female witness at the West Precinct.⁵⁰ Initially, she confirmed her identity from the still photos and that she was at Walgreen's on January 2, 2007, and that she witnessed the interaction between the Officers and Mr. Patterson. She also confirmed she had received phone messages from Sergeant Woolery but said she did not respond because "she did not want to become involved in this incident or any altercation." The witness "indicated that she would only give me a statement tonight if we could release her on the drug arrest...she indicated that she did not want to go to jail." Sergeant Woolery advised the witness that the charges would not be dropped as a trade for her statement, but she would not give a voluntary statement. In my interview of Sergeant Anderson, he described how he had offered to bring in a narcotics detective who could work with the witness to work off her charge in exchange for information about other drug deals. But he made it clear to her that the administrative investigation was separate and that she would not be released from her charges in exchange for a statement.⁵¹ Acting OPA Director/Captain Low was notified of the situation and agreed the witness should not be released from her charges in exchange for a statement.

Next, Acting OPA Director/Captain Low spoke by phone with Deputy Chief John Diaz about the situation. He told him that "I didn't think was ethical to let her out of her charges....charges had to be hanging over her head...had to face music for what she was doing...if I let her out, she's beholden to department."⁵² Deputy Chief Diaz agreed at that point. According to Acting OPA Director/Captain Low, he and the Deputy Chief spoke again a little later and he was concerned that if they did not get a statement from her that night, the witness would be released and she might disappear. Captain Low believes it was his plan to suggest to the witness that they could investigate and release (I&R) her that evening in exchange for a statement, but that she would still have to face the charges.⁵³ Deputy Chief Diaz does not recall if Captain Low asked his permission to do the I&R in exchange for a statement from the witness or just reported that he had done it after the fact. Deputy Chief Diaz had "no problem

⁴⁹ Olson interview notes, pp. 2-4, Sergeant Randy Woolery.

⁵⁰ My report of what happened during this first meeting with the witness is taken from Sergeant Woolery's case notes.

⁵¹ Olson interview notes, pp. 12-13, Sergeant Shane Anderson.

⁵² Olson interview notes, pp. 1-2, Acting OPA Director/Captain Neil Low.

⁵³ Id.

with the approach” and noted that the witness would have been “kicked lose by morning anyway.”⁵⁴

Sergeant Bill Edwards was called into the office at that point, because it was after regular work hours and he lived closest to the OPA-IS office.⁵⁵ “We were very clear with her that it had no effect on [her] pending charges and [the] only thing we were asking is her statement of what [she] observed that night.”⁵⁶ Once the witness agreed to give a statement in exchange for being released that evening, with the understanding that the underlying charges would not be dismissed, Captain Low took care of the paperwork involved.⁵⁷ Captain Low was the Night Duty Captain that evening. There was a potential conflict, or appearance of conflict, in this arrangement because Captain Low was in effect wearing two hats, one as Acting OPA Director and one as Night Duty Captain. Once the witness was ready to give her statement, though, Captain Low consciously chose not to sit in on the interview, both not to influence the witness because he was in his uniform, and also because he would be later reviewing the case for the OPA certification.⁵⁸

There were advantages to having Sgt. Edwards interview this female witness. Though he was aware of the broad allegations involved and some details with the case, and had seen the video, he was not familiar enough to steer questions with the witness.⁵⁹ Sgt. Edwards intentionally did not do a pre-interview of the witness because he did not want her to have any sense of what the OPA-IS was going to question her about.⁶⁰ He “made it very clear up front that all we were asking for [in exchange for] the release is for her to give a truthful statement.”⁶¹

In sum, as Sergeant Anderson stated in his interview, “everyone wanted to hear [the female witness’s] side of the story.”⁶² He indicated he had no sense of what her testimony would be and that they told her, “it didn’t matter what she had to say,” they just wanted her side of the story.⁶³ Acting OPA Director/Captain Low stated, “All we want[ed] is for her to tell us what happened.”⁶⁴ As noted by the former OPA Director, Sam Pailca, an exchange of release from jail for a witness statement is a legitimate technique to use in appropriate cases.⁶⁵ An investigator must weigh the competing interests and consider whether the “benefit and need to know information outweigh[s] potential harm.”⁶⁶

⁵⁴ Olson interview notes, pp. 8-9, Deputy Chief John Diaz.

⁵⁵ Olson interview notes, pp. 6-8, Sgt. Bill Edwards.

⁵⁶ Id.

⁵⁷ See Olson interview notes, pp. 1-2, Acting OPA Director/Capt. Neil Low.

⁵⁸ Id..

⁵⁹ Olson interview notes, pp. 8-9, Sgt. Bill Edwards.

⁶⁰ Id.

⁶¹ Id.

⁶² Olson interview notes, pp. 12-13, Sgt. Shane Anderson.

⁶³ Id.

⁶⁴ Olson interview notes, pp. 1-2, Acting OPA Director/Capt. Neil Low.

⁶⁵ Olson interview notes, pp. 9-10, Former OPA Director, Sam Pailca.

⁶⁶ Id.

There is no evidence that Chief Kerlikowske's suggestion that efforts should be made to locate the female witness present at Mr. Patterson's arrest was inappropriate or calculated to elicit biased testimony from her. There is no evidence anyone knew what the witness would say even if located. The Chief's inquiries about the investigation followed standard practice and actually led to a more complete investigation. After he suggested the idea of printing up photo flyers of the missing woman to give to Bike Officers in the area, Sergeant Woolery noted it was an "[e]xcellent strategy that I should have thought of."

Similarly, the Chief and others on the Command Staff were interested in checking other sources to see if Officers Neubert and Tietjen were turning in narcotics and other evidence recovered.⁶⁷ Forty or fifty incident reports done by the Officers were reviewed for quality. Chief Kimerer secured a computer print out dating back to 2004 to determine if evidence was entered regularly by the two Officers. Sergeant Anderson also visited the Evidence Unit with a list of cases in which the Officers had been involved to spot check if the narcotics noted as turned in, had in fact been filed as evidence and in the amounts to be expected.⁶⁸

Under Seattle's hybrid civilian oversight model, the OPA Director and the OPA-IS Captain and Lieutenant have regular contact and opportunities to discuss case developments with the Chief and Command Staff. The fact the Chief was briefed on the status of Mr. Patterson's case before it was finalized in the Proposed Disposition was not unusual, and if he viewed the video of Mr. Patterson's arrest or made a visit to the Walgreen's site, it was only for purposes of informing himself about the details.

The OPA Auditor also reviewed the case and weighed in with her opinions about the investigation before it was finalized. She agreed with the Chief on the allegation that caused him the most concern, that the Officers should be exonerated on the claim they planted drugs during Mr. Patterson's arrest.⁶⁹

Sergeant Randy Woolery, the OPA-IS investigator who did the bulk of the investigation in this matter, offered the following observation: "We do a good job of policing ourselves; [at] lots of points [we] could do leading questions...not go interview another witness... [This] case highlights how well we can police ourselves; we are good at it, we don't hide anything, we turned over [evidence] to the prosecutor...we did the right thing in turning over evidence in [a] felony. This is transparency." I conclude that the investigation of Mr. Patterson's case was thorough, fair and expeditious, as required by SPD policy.⁷⁰

⁶⁷ Olson interview notes, pp. 11-12, Chief R. Gil Kerlikowske.

⁶⁸ Olson interview notes, pp. 12-13, Sgt. Shane Anderson.

⁶⁹ Olson interview notes, pp. 11-12, Chief R. Gil Kerlikowske.

⁷⁰ With the benefit of hindsight, there are other steps that could have been taken during this investigation. For example, Sergeant Woolery regrets that he did not seek the Walgreen's video earlier, or alternate camera views or video from the time period just before Mr. Patterson's arrest before the system taped over the relevant portions. The OPA Auditor suggested recently that it might have been useful to have had the handcuffed male witness and female witness view the Walgreen's video for their comment. Failure to take such steps did not impact the basic integrity of the investigation, but OPA-IS staff appreciate the lessons to be learned from their experience.

V. The Office of Professional Accountability Review Board's Draft Report on Mr. Patterson's Case Given to the Seattle Times on June 18, 2007

The Office of Professional Accountability Review Board (the OPARB or Review Board) prepared a document titled "Special Report: OPA's Investigation into the Arrest of George T. Patterson," previously referred to in this document as the draft OPARB report. A draft copy of the report, clearly marked "Not for Publication" and a "Privileged Attorney-Client Communication" was provided to the Seattle Times on June 18, 2007. Specifics from the report have been widely disseminated and discussed since the report was given to the media. The OPARB subsequently issued a report that incorporates some or all of the original draft report regarding Mr. Patterson's arrest.⁷¹ Questions have been raised as to whether a report focused on a single case is within the scope of the OPARB's duties.⁷²

It is unclear what conclusions the OPARB draft report draws with respect to the OPA's investigation of Mr. Patterson's complaint. The Review Board lauds the "excellent investigative work by the OPA" and notes that it does "not challenge the ultimate determination of Exonerated with respect to Mr. Patterson's Unnecessary Force allegation-or, for that matter, any other determination against the officers."⁷³ Yet the report also challenges in detail the interview of the female witness, criticizes follow up questions asked by the OPA-IS investigator, and attempts to resolve credibility issues as between Mr. Patterson, the male handcuffed witness and the female witness.⁷⁴ In part because I wanted to clarify what conclusions the draft OPARB report meant to draw, I arranged a meeting with two members of the OPARB in an effort to share perspectives and to identify the Review Board's major concerns with the OPA investigation in this matter.

First, OPARB members expressed concern that the OPA did not finish its review of the OPA-IS investigation before Chief Kerlikowske weighed in. This was a specific issue the Mayor asked that I consider and, as noted above in Section IV, I determined there was nothing "extraordinary," as the OPARB report asserted, about the Chief's role in the Patterson matter. Had a civilian director been in place at the time, there is reason to conclude that the Chief of Police would have been similarly involved and in a position to provide input on evidence to gather in the investigation. There is nothing in the enabling ordinance or any other policy that applies that requires a "fire wall" between the OPA staff and the Chief and Command Staff. To the contrary, the ordinance explicitly requires that the OPA Director report directly to the Chief and advise him on all matters involving the SPD's investigatory function.⁷⁵

⁷¹ Office of Professional Accountability Review Board 2007 Mid-Year Report, issued July 2, 2007.

⁷² Seattle Municipal Code Section 3.28.900 et seq.

⁷³ Office of Professional Accountability Review Board draft report, dated 06/14/07, pp. 2 and 9.

⁷⁴ Id. at pp. 7-12.

⁷⁵ Seattle Municipal Code Section 3.28.800.

There is no evidence that Chief Kerlikowske or anyone else knew what the unidentified female's testimony would be when he made the suggestion for the OPA-IS to provide copies of a picture of the unidentified female witness to SPD Officers to assist in locating her. Some assumed her testimony would support Mr. Patterson's allegations, given that Patterson knew her and she was attempting to get keys to his car and money while he was being arrested.⁷⁶

The decision to release the female witness from jail the evening she was arrested, in exchange for her statement, was a legitimate technique to use under the circumstances.⁷⁷ First, in light of the OPARB's criticisms, it is important to note that Chief Kerlikowske was not involved in the decision to release the witness. That decision was made by Acting OPA Director/Captain Low, with concurrence from Deputy Chief Diaz.⁷⁸ Second, everyone involved made it patently clear to the witness that, though she was being released, she still had to face the underlying drug possession charges.⁷⁹ Third, Captain Low made a conscious decision to not sit in on the interview so that he would not influence the witness's testimony since he was dressed in uniform and because he would be later reviewing the case for certification.⁸⁰ Fourth, Sgt. Edwards, the investigator who interviewed the female witness, made a deliberate effort to avoid talking with her outside the recorded interview and did not conduct a pre-interview of the witness which might alert her to subjects of interest to the investigator. He received no direction from anyone as to how to handle the interview and had no idea at the time of the interview whether there were any leanings by the OPA-IS on the ultimate findings.⁸¹

An email from the Acting OPA Director/Captain Neil Low to Deputy Chief Diaz and Assistant Chief Linda Pierce (ccd to Chief Kerlikowske) concerning the decision to release the female witness in exchange for her testimony helped inform my conclusion that the release of the female suspect was a legitimate technique. The email summarizes what happened after the decision was made to offer to release the female witness in exchange for her statement on the Patterson matter. Captain Low noted that the witness had not been released earlier because she would then only give a statement "in trade for getting out of her charge."⁸² He indicated she "knows she will have to face the narcotics charges," but she was willing to talk. "I made it clear that I wanted the truth—whatever direction that took us—and if it looked like she was cooperating in that regard, not playing us for fools, we would release her, whether it helped the officers or not, no strings attached."⁸³ Captain Low then summarized the testimony provided by the female witness, concluding, "In sum, [the female

⁷⁶ See e.g., Olson interview notes, pp. 2-4, Sgt. Randy Woolery.

⁷⁷ See e.g., Olson interview notes, pp. 9-10, Former OPA Director, Sam Pailca,; pp. 4-6, Acting OPA-IS Captain/ Lt. Michael Kebba; pp. 8-9, Deputy Chief John Diaz.

⁷⁸ See references to Olson interview notes on this issue above, Section IV.

⁷⁹ Olson interview notes, pp. 1-2, Acting OPA Director/Capt. Neil Low; pp. 6-8, Sgt. Bill Edwards.

⁸⁰ Id.

⁸¹ Olson interview notes, pp. 6-8, Sgt. Bill Edwards.

⁸² Email dated Thu, Apr 5, 2007 5:13 AM, from Neil Low to John Diaz and Linda Pierce, cc to Gil Kerlikowske.

⁸³ Id.

witness] supports the officers' version of Patterson's arrest and that they did not plant dope on him."⁸⁴ I provided a copy of this e-mail to the OPARB between the release of their draft report and the issuance of their final July 2 report. However, the OPARB's final report does not mention this e-mail.⁸⁵

The OPARB also criticized the credibility determination made by the OPA-IS with regards to the female witness. However, I have concluded that the person conducting the interview of a witness is in the best position to judge credibility. For example, Sgt. Edwards, who conducted the interview of the female witness after she was released from jail, was in the best position to assess the testimony of this witness in light of her demeanor, voice inflection, and body language. He found the female witness "was credible in what she told me but that there was some minimizing going on...I don't think the basic facts were inaccurate..."⁸⁶ In response to one criticism from the OPARB about the female witness's inability to recall the handcuffed male witness present at Mr. Patterson's arrest, Sgt. Edwards commented that the female witness was focused on Patterson and trying to talk him into giving her his money and might have been high or coming off a high, so the fact she did not remember the handcuffed male present at the scene did not bother him.⁸⁷ Sergeant Woolery was not in the interview but was very familiar with the detailed facts uncovered in the case and commented that the statement of the female witness was "consistent" with facts already uncovered.⁸⁸

Next, the OPARB members indicated to me that they were particularly concerned about whether Officers Neubert and Tietjen's Section Commander was involved in reviewing the proposed findings in the Patterson investigation, because the case file did not include a signed concurrence from Captain Brown. Despite the fact he did not actually sign the concurrence form, Captain Brown was provided a copy of the case file, attended a meeting on April 12 to discuss the findings and proposed discipline, and had the opportunity to provide his input in the decision making process.⁸⁹

The OPARB report incorrectly concludes that the date "4/9/07" was handwritten on the Proposed Disposition "to coincide with the Chief's April 9 Press Statement."⁹⁰ Actually, the Proposed Disposition was created by Acting Captain/Lt. Kebba on April 3 and last modified on April 6.⁹¹ Leslie Thornburg, an ASIII civilian working in the OPA-IS, entered the handwritten notation, "4/9/07" on the memo as she prepared to copy and distribute it. Ms. Thornburg handwrites

⁸⁴ Id.

⁸⁵ The fact the email was not in the case file provided to OPARB originally is another issue. As noted elsewhere, I recommend that OPA review its practices related to archiving case related email created outside OPA-IS.

⁸⁶ Olson interview notes, pp. 6-8, Sgt. Bill Edwards.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ The Section Commander, Captain Brown, was out of the country during the time I sought to interview him, so I verified with others that he had an opportunity to provide input before and during the discipline meeting. See, e.g., Olson interview notes, p. 11, Chief R. Gil Kerlikowske.

⁹⁰ OPARB draft report, p. 6; OPARB 2007 Mid-Year Report, p. 12.

⁹¹ See Olson interview notes, p. 10, ASII Leslie Thornburg.

the date the day that she's copying and mailing the Proposed Disposition because the 10 day review period for the Section Commander begins ticking on the date noted.⁹² The fact she entered the date and copied and distributed the file on 4/9/07 was driven by the fact that the disciplinary meeting was scheduled for later that week, on April 12, and not related to the Chief's April 9 press statement.

Prior to a disciplinary meeting, copies of the file, marked "confidential," are distributed to everyone who will attend. In this case, the individuals notified of the April 12 meeting to discuss discipline of the two officers included Chief Kerlikowske, Deputy Chief Diaz, Capt. Steven Brown, Assistant Chief Linda Pierce, Acting OPA Director/Captain Neil Low, Acting OPA-IS Captain/Lt. Mike Kebba, and Mark McCarty. The legally required "Loudermill" meeting was held with the two officers the next day, on April 13.⁹³ Following the Chief's meeting with the employees on April 13, the standard notice to the Officers was issued on April 19, 2007, incorporating the Chief's final determination.⁹⁴

Though there was no civilian OPA Director in office during this investigation, it is important to note that the civilian OPA Auditor, Katrina Pflaumer, had an opportunity to review the case on April 6, 2007. At the OPA Auditor's request following her review, Sergeant Woolery attempted to locate two more witnesses who might have information related to the handcuffed male's claim that Officer Tietjen took a dime bag of marijuana from him.⁹⁵ Further, the Auditor had discussions with the Acting OPA Director/Captain Low and with Chief Kerlikowske about her view of the evidence. As noted by my predecessor, Sam Pailca, the OPA Auditor here was an "important check" in the absence of a civilian Director.⁹⁶

Finally, the OPARB raised a concern regarding the OPA's failure to clearly address the issue of whether Bike Officers in the West Precinct fail to properly screen arrests by relying too heavily on an "Acting Sergeant," rather than seeking out someone who has actual supervisory authority. Though the allegation that the Officers had failed to follow arrest procedures was sustained, the OPA Certification focuses on the failure to properly screen the handcuffed male witness. The Certification, in the final paragraph, notes that the Officers could have avoided the perceived problems in this matter if they had properly screened the arrest/release of the handcuffed individual with a Sergeant, along with taking a number of other steps. No reference is made to a related issue that the arrest of Mr. Patterson was screened by an Acting Sergeant, rather than a regular supervisor. In his Proposed Disposition, however, Acting Captain/Lt. Kebba notes the issue of the Acting Sergeant and recommends a finding of sustained

⁹² Id.

⁹³ Though notice of the Loudermill meeting and proposed discipline is usually sent in writing to the employee, in this case, the Officers were already aware of the proposed discipline and agreed to meet on April 13, without having received formal written notice. Olson interview notes, p. 12, Legal Advisor Mark McCarty.

⁹⁴ Id.

⁹⁵ Olson interview notes, pp. 2-4, Sgt. Randy Woolery.

⁹⁶ Olson interview notes, pp. 9-10, Former OPA Director, Sam Pailca.

with regards to the inadequate arrest procedures for both the male handcuffed witness and for Mr. Patterson.

Given the disconnect between the Proposed Disposition and the final OPA Certification, it is unclear whether this issue was adequately addressed in the final resolution of the case.⁹⁷ The OPARB recommended that the Chief be required to establish an independent commission to assess the extent of the problem, reporting to the Chief and City Council.⁹⁸ Such a step appears over-reactive at this point. Given confusion regarding the conclusions drawn by the OPA on this issue, I recommend that as the OPA Director, I take it upon myself to investigate the issue of how Bike Officers in the West Precinct screen their arrests, specifically looking at the role of Acting Sergeants when a regular supervisor is unavailable. I propose I work with Assistant Chief Linda Pierce and Captain Brown to determine if there is a problem, and to propose solutions if a problem is detected.

Conclusion

Reasonable minds can differ about some of the conclusions to be drawn from the evidence gathered in Mr. Patterson's investigation, and various opinions about the case may continue to be expressed. Though I would have determined the misconduct allegation regarding honesty in the Officers' communications should have been "not sustained" rather than "exonerated," I am convinced that the investigation process overall was "thorough, fair and expeditious," as required by SPD policy. Efforts were made by the OPA-IS staff to discover every potentially relevant fact and witness. Chief Kerlikowske and others on the Command Staff followed a typical pattern of providing suggestions as they learned about progress in the investigation, with a goal of creating the most complete and "best case" possible.⁹⁹ There was nothing "extraordinary" about the Chief providing an idea about how to locate an unidentified female witness. The OPARB's criticisms in this regard are unfounded. Similarly, the credibility determinations made by the OPA-IS staff in this case have ample support from the evidence, and investigators are in the best position to make credibility determinations. The one issue raised by the OPARB draft report that I propose following up on involves the use of Acting Sergeants in the West Precinct to screen arrests by Bike Officers. I propose that I coordinate with Assistant Chief Linda Pierce and Captain Brown to investigate this issue and determine if changes in policy or practice are needed.¹⁰⁰

⁹⁷ See Olson interview notes, pp. 4-6, Acting OPA-IS Captain/Lt. Michael Kebba.

⁹⁸ OPARB draft report, p. 14.

⁹⁹ Olson interview notes, pp. 13-14, Deputy Chief Clark Kimerer.

¹⁰⁰ Also, there are administrative issues that came to light during my review that should be resolved under my direction. OPA-IS does a good job of saving and printing hard copies of email during an investigation, but the OPA needs to review its procedures for archiving case related email generated outside OPA-IS. Also, there are questions related to what material generated outside of OPA-IS should be considered a part of the case file, and how to track case related events after a case is considered closed.

The investigation that resulted from the complaint Mr. Patterson filed was thorough, fair and expeditious. Though a civilian Director was not in place during this period, Seattle's hybrid system of civilian oversight worked to ensure that the Officers named were held accountable for their actions, but treated with respect in the process. Transparency in civilian oversight has further been served through public discussion about Seattle's oversight system. The hybrid system developed in Seattle provides for multi-layers of checks and balances, and fosters thoroughness in the investigation process. However, the process is cumbersome and difficult for many civilians to understand. I look forward to working with the 2007 Police Accountability Review Panel to address such issues and to work towards improving Seattle's unique hybrid system.