

SEATTLE POLICE DEPARTMENT



OFFICE OF PROFESSIONAL

ACCOUNTABILITY

Report on Seattle's
Response to Concerns about
Racially Biased Policing
June, 2003

Prepared by: Sam Pailca, Director

Office of Professional Accountability



City of Seattle

Gregory J. Nickels, Mayor

Seattle Police Department

R. Gil Kerlikowske, Chief of Police

June 30, 2003

Honorable Mayor Greg Nickels
Honorable Members of Seattle City Council
Citizens of Seattle

The attached report on the OPA and the Seattle Police Department's response to concerns about biased policing is submitted for review and approval. This report covers the data collected in calendar years 2001 and 2002.

I welcome your comments and observations regarding this report as well as any other issues pertaining to the course and direction of the Office of Professional Accountability

Respectfully submitted,

R. Gil Kerlikowske
Chief of Police

A handwritten signature in cursive script that reads "Sam Pailca".

Sam Pailca, Director
Office of Professional Accountability

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EXECUTIVE SUMMARY

INTRODUCTION

The beginning of the 21st century was marked by a new focus on an old problem: widespread perception of racial bias in law enforcement. Fueling the public debate and media attention was a proliferation of reports from across the nation depicting unequal treatment and racial disproportionality in traffic stops and searches. At the heels of these reports were lawsuits, consent decrees, and state and local laws mandating data collection. Talk of “depolicing” by frustrated officers soon followed.

In November 2000, the Seattle City Council passed a resolution establishing a Racial Profiling Citizen Task Force that was charged with designing a data collection instrument for police officers. The Task Force met for almost two years and ultimately chose a standard data collection model that was used by many other jurisdictions. During the period of time that the task force was meeting, dozens of statistical studies were released from police departments around the country. Nearly all of these reports showed some level of racial disproportionality in traffic stops and searches. However, none of these reports was able to conclusively state whether or not racial profiling was the cause of the disproportionality. Consequently, these studies did not lead to any positive changes or reforms in police policies, procedures or practices.

In July 2002, Mayor Nickels examined the efforts of other jurisdictions to combat this problem and to assess whether all of the city resources devoted to this issue should be spent on data collection alone. While still retaining some data collection elements, the Mayor chose instead to adopt a “comprehensive set of initiatives to ensure police accountability; improve police-community relations; and address concerns about racial profiling and racially biased policing.” The strategy features initiatives in the areas of policy, accountability, community outreach, training, and data collection.

The Office of Professional Accountability is just one part of the Department’s comprehensive response to the problem and perception of racial profiling. The Department’s “Bias-Based Profiling”¹ policy, though, charges OPA with the responsibility to report at least annually on the “status of the Department’s effort to prevent bias-based profiling.”

¹ Further discussion and recommendations regarding the Department’s current policy is contained, *infra*, at page 18.



Further, the OPA has maintained since 2001 a database compiling information about complaints of biased policing, and is required to report on the work of the OPA and any recommendations for policy changes. SMC 3.28.820.

In furtherance of these responsibilities, the OPA issues the following report – from the OPA’s perspective – on the OPA biased-policing complaint database and the status of the Department’s efforts to address concerns about biased policing.

Contents of the Report

In this report the OPA presents information collected during 2001 and 2002 about allegations of biased policing. This report is presented as a second 2002 OPA report focusing on a particular issue; it does not replace the OPA annual report on all complaint activity during 2002.

In addition to information from the OPA biased-policing complaint database, the report includes a discussion of the challenges presented by these complaints, and the overall OPA response to the problem and perception of biased policing. Also outlined are upcoming changes to OPA tracking, investigation, and reporting policies.

Further, the report describes and gives an updated status on the Department’s initiatives to address the problem and perception of biased policing, including a discussion of the current policy, data collection, community outreach, and training components.

Finally, the report outlines recommendations for an even more meaningful OPA and Departmental response to the problem and perception of biased policing. The recommendations are summarized below.

Summary of Conclusions and Recommendations

OPA Database of Allegations of Biased Policing. 2001 and 2002 data show that about **10%** of all citizen complaints to OPA include an allegation of biased policing. The allegations range from profiling in traffic enforcement to bias in investigation or the degree of force used in an arrest. Review of complaint data revealed no pattern or cause for concern about equal treatment on the part of any individual officers.



Recommendations for Enhanced OPA Response. OPA has a thorough, innovative program in place that exceeds available “best practices” recommendations. Improvements to the OPA program are being made in the following areas: (1) the articulation of classification standards for investigation of

complaints of biased policing; (2) notification to complainants that allegations of biased policing are tracked and reported by the OPA; (3) expansion of the capabilities of the OPA database to permit review by other categories; and (4) written protocols for investigation of biased-policing complaints.

Recommendations for Enhanced Department Response. The Department has embarked on an ambitious and comprehensive program to address community concerns. This Report documents OPA recommendations to strengthen the program by (1) prioritizing the data collection plan; (2) strengthening the foundation for the review of search data; (3) articulating guidelines for the application of information obtained; (4) revising the biased-policing policy; (5) training enhancements; and (6) implementation of early intervention and mediation programs.



ALLEGATIONS OF BIASED POLICING

The OPA Biased-Policing Allegation Database

Since 2001, the OPA has maintained a record of complaints by citizens that include an allegation of biased policing.² The database includes allegations of bias on account of gender, age, and sexual orientation as well as race and ethnicity.

The term “biased policing” is preferred to that of “profiling” for several reasons. First, the traditional definition of profiling was that of law enforcement activity initiated *solely* on the basis of race. This definition is far too restrictive. Decision-making and motivations for action are far more complex, especially in police work. Even an officer motivated by racial prejudice likely considers more than the single factor of race when taking law enforcement action.

In addition, a definition that prohibits enforcement decisions based “solely” on race would exclude actions based on reasonable suspicion or probable cause plus race. So, even an officer who only ticketed Hispanic traffic violators may not be guilty of profiling. Moreover, the debate over “racial profiling” in recent years has tended to focus on traffic stops, though most citizens use the term to refer to a wide range of law enforcement activity. Finally, concerns about biased policing are raised by citizens who identify with other racial, ethnic, or religious minorities, as well as with sexual minorities. The OPA database has thus included complaints raised about bias on the basis of race, national origin, language, religion, gender, age, and sexual orientation, in all law enforcement activity.³

The database is not a scientific measure of the perception of biased policing that exists in our community. Its primary limitation is that it only captures complaints to the OPA by citizens. Only a very small percentage of police/citizen contacts result in complaints.

Further, as an assessment of complaints involving an allegation of biased policing, the database is both over- and under-inclusive. It is over-inclusive because it includes complaints in which the citizen’s actual complaint was about something else. For example, a citizen may call to complain that an officer neglected to write a report at the scene of an accident. Only at the end of a lengthy telephone interview does the complainant mention that he thinks the officer gave more credit to the account of the accident given by the white driver.

² Per ordinance, the OPA maintains records and issues public reports with information about all citizen complaints.

³ In the wake of the recent Iraq war demonstrations, several citizens contacted OPA to complain that the police were biased against anti-war protestors. These complaints are tracked in OPA databases maintained for each large-scale “unusual occurrence” in the city that generates complaints.



At the same time, it may be under-inclusive by not counting complaints that never invoke references to race or another protected status. The OPA does not *presume*, for example, that a citizen alleging ‘harassment’ by repeated police contacts on the street is complaining of biased policing. Nor would it include a complaint by a citizen about being asked about gang affiliation, merely because the complainant has an apparently Hispanic surname. If the complainant never links the conduct to race or other status, it is not included in the database.

Despite its limitations, the OPA biased-policing database is a useful tool. By tracking, over time, allegations of bias by citizen complainants, the database may yield information about:

- The degree to which concerns about biased policing motivate citizens to complain;
- The types of situations in which citizens perceive bias;
- Areas of the city where concerns are most prevalent;
- Individual officers or groups of officers whose behavior may indicate bias or lead citizens to perceive bias;
- The effectiveness of the complaint investigation and discipline process in responding to concerns; and
- The effectiveness of other Department efforts to respond to concerns and reduce the perception of biased policing in the community.

EXPLANATION OF TERMS

All complaints received by the Department are documented and sequentially numbered. The OPA-IS makes an initial recommendation to determine at what level the complaint will be investigated. This classification is an important one, since it determines who will conduct an investigation and what consequences may result from it. Both the OPA Auditor and the OPA Director review all new complaints. The OPA Director may accept the classification recommended by OPA-IS or direct a different classification. The complaint classification categories and their implications for Departmental action and officer consequences are as follows

Classification Category	Department Action Taken	Outcomes
Contact Log	Complaint receipt and review are recorded, but case is not assigned for full investigation.	Information/referrals to complainant; review by supervisor.
Supervisory Referral	Complaint is referred to officer’s chain of command for resolution.	Review, conciliation, counseling, and additional training.
Line Investigation	Complaint is referred to officer’s chain of command for investigation.	If proven, discipline may be imposed.
OPA-IS Investigation	Complaint is investigated by OPA-IS.	If proven, discipline may be imposed.



Complaints classified as contact logs are those that upon review by OPA-IS investigators do not require a full investigation. The investigator may provide information to the complainant to explain the incident, and will notify supervisors about the complainant's concern. Complaints designated as OPA-IS investigations are assigned to an investigator for the gathering of facts and evidence.

Completed investigations are reviewed and the evidence analyzed. One of the following findings for each of the allegations is made:

Unfounded: The allegation of misconduct did not occur as described.

Exonerated: The event described did occur, and the actions taken by the officer(s) were lawful and proper.

Not Sustained: The evidence neither proves nor disproves the allegation of misconduct.

Sustained: The allegation of misconduct is supported by the evidence.

2001 Data

There were approximately 945 total citizen complaints to OPA in 2001. Eighty-nine of these complaints, approximately 12%,⁴ included an allegation of biased policing. Of the 682 contact logs, 61 alleged bias (11%). Of 263 investigations, including Supervisory Referrals, 28 – 14% – looked at allegations of bias. These numbers include five allegations of bias on the basis of sexual orientation, and one of bias due to youth. The rest are allegations of bias on the basis of race or ethnicity.

Thirty-eight allegations arose out of traffic stops; fifty-one arose from other circumstances, e.g., pedestrian citation, response to call, or on-views by officer.

Key Findings:

- **12% of all complaints allege bias**
- **43% involve traffic stops**
- **57% involve other police/citizen contacts**

2002 Data

2002 saw a slight drop-off in total complaints to OPA, and this held true for bias allegations as well. Of the approximately 866 total citizen complaints to OPA, 75, or 9%, were allegations of bias. About 49, or 9% of the contacts logs, alleged bias, and approximately 26, or 9%, of the investigations did. Included are allegations based on sexual orientation, age, and a disability. In 2002, 27 allegations arose out of traffic stops, and 48 from other circumstances.

⁴ Stats were kept for last three quarters of 2001; percentages reported are extrapolated for entire year.



Key Findings:

- **9% of all complaints allege bias**
- **Ratio of 37% traffic to 63% other circumstances is similar to 2001 ratio.**

A Closer Look at the 2002 Allegations

The OPA undertook a review of the 2002 bias allegations. The review confirmed that the allegations span a wide variety of circumstances and their nature defies easy categorization.

Just ten complaints fell into the archetypal “Driving While Black” scenario. Fifteen incidents were reported as a direct result of traffic enforcement. Another five alleged their traffic stop was motivated by race, national origin, race of passenger, or other – there was one complaint each from a Hispanic driver, an Arab-American driver, an Asian driver; a Middle-Eastern driver with an African-American passenger; and a young male driver with long hair.

Nine alleged they were harassed on the street – mostly about drugs – due to race.

The largest category is “other” – allegations that race influenced law enforcement activity in a non-traffic or “street harassment” setting. These allegations are as varied and complex as police work in a modern society. They include allegations of bias involved in:

- investigation follow-up
- enforcement focus on minority-owned business
- interview at bus shelter
- undercover officer following women because her son is African-American
- focus on Asian man in enforcement of ticket-scalping laws
- arrest
- contact on street of Pakistani man following 9/11
- degree of force used due to race
- traffic investigation
- harassment *during* traffic stop
- directing traffic
- special operations
- domestic violence investigation

Other complaints reflect the continuing conflict in society about race. Five complained of general racism by the Department, not tied to a specific incident or event. Another five complained that the Department gave preferential treatment to African Americans, citing a freeway march by a crowd of mostly African-American protestors, and an allegation that a black officer had swept an incident under the rug because the suspect was black.

Finally, six citizens complained of bias in enforcement due to sexual orientation.



Multiple Complaints of Biased Policing

As part of a comprehensive accountability program, OPA conducts at least annual reviews of all complaint data. Officers who have had two or more complaints in a twelve-month period are referred for a formal Administrative Review.⁵ In addition, any other apparent anomalies will be shared with Department commanders for further review at their discretion.

The issue of individual officers has featured prominently in the debate over proper data collection methods. It also figures in the discussion of whether the problem of biased policing is due to deployment and enforcement policies, or just a problem of a few “bad apples.”

But, as has frequently been the case with traffic-stop data collection and analysis, numbers don’t tell the whole story.

Review of 2002 data in the OPA biased-policing database showed three officers who had more than one complaint of biased policing in the OPA database. A thorough review of these complaints, however, revealed no patterns or cause for concern about equal treatment. Consider the following:

Officer A. Officer A works in the traffic unit. He is a white male. In less than one month, he received two complaints from citizens he had ticketed who alleged bias. Complaint # 1 was from a black male who received three traffic citations from Officer A in a fifteen-minute period. The first citation was for going 51 mph in a 30 mph zone. After the stop, the now angry complainant revved his car engine and made an illegal U-turn maneuver in the presence of the issuing officer. He was stopped a second time and issued a citation for the illegal U-turn. The complainant then told the officer that he was going to continue to do U-turns and again revved his engine, spun his rear wheels, and made an illegal U-turn in front of oncoming traffic. This time, the complainant was cited for negligent driving.

Complaint #2 came from a white male who was pulled over for not having a driver’s side mirror. Officer A identified himself, and asked for the driver’s license, registration, and proof of insurance. Officer A ran the driver’s name, then returned to the car. The driver told Officer A that he was harassing and profiling him because of his long hair, and berated Officer A at some length, including telling Officer A that he would “nail his ___ to the wall.”

Both complainants admitted committing the infractions, and stated that Officer A had explained the infractions and had not said anything inappropriate.

Officer B. Officer B works patrol. She is an African-American female. Officer B also received two complaints in less than one month from citizens alleging bias.

⁵ For a discussion of the current Administrative Review process, see OPA Annual Report, 2003.



The first was from a black female that Officer B had pulled over for expired license tabs, though it was later discovered that the information from the Department of Licensing was in error. During the traffic stop, Officer B thought she recognized the driver as a woman involved in a theft from a retail store where Officer B works off-duty. The driver was questioned and released after a ten-minute stop.

The second complaint was from a white male who called 911 to report that his children were jumped by a “car load of blacks.” Officer B was one of the responding officers who investigated the incident. The officers located the suspect vehicle and talked with two possible suspects. They did not have enough information to make an arrest, but the officers wrote a report and referred the case to a follow-up unit. The complainant was not satisfied, and alleged that Officer B may have swept the incident under the rug because she appeared to be part African-American.

Officer C. Officer C works patrol in a high-crime area of downtown. He is a white male. Three complainants alleging bias named him in a nine-month period. In the first, a citizen, whose race is unknown, witnessed the arrest of an African-American male at Third and Pine. She objected to Officer C’s use of an “escort hold.”⁶ The complainant had not witnessed the circumstances that led to the arrest, but just felt that once a person was in handcuffs they should be free to walk on their own accord. The person taken into custody was arrested on a felony warrant and drug charges.

Next, Officer C served as the back-up officer only in a citation for public drinking. The arrestee complained that the officers were biased against him because he was a transsexual.

Finally, an African-American male alleged he was detained and ticketed by Officer C and another officer because of his race. The narrative stated that the officers observed the complainant toss a cardboard carton onto the ground, and asked him to pick it up. The complainant instead began to yell and shout profanities at the officers. The officers cited the subject, who has made multiple complaints of profiling against officers, for littering.

Investigation of Allegations of Biased Policing

The OPA has upheld or “sustained” one allegation of biased policing. In that case, the OPA-IS determined that an officer made a derogatory comment about the sexual orientation of an arrestee. The Chief directed that the officer be counseled and required to attend a meeting of the Department’s Sexual Minorities Advisory Council.

Other investigations into biased policing have received findings of not sustained, exonerated, or unfounded. The most frequent allegation investigated is that an officer made inappropriate race-based comments or racial slurs. These allegations are difficult to sustain for the same reason that other complaints against police

⁶ An escort hold is used to guide and assist both compliant and non-compliant individuals and is a passive form of restraint. The escort hold is used to ensure the safety of both the officer and the individual being escorted.



officers are difficult to sustain, i.e., lack of independent witnesses; problems with the credibility of complainants; and lack of follow-through with the complaint process by the complainant.⁷ For a thorough discussion of the sustainability of citizen complaints, see OPA 2002 Report.

Allegations of inappropriate remarks aside, however, traditional allegations of biased policing, or “profiling” are difficult to investigate, much less sustain, for an additional set of reasons.

First, the complaints are about conduct that is part of the police officer’s essential duties. In other words, unlike using unnecessary force or profanity, writing a traffic citation or investigating suspicious persons are tasks the police officer is expected and paid to do. So, the actual *behavior* is not misconduct.

Compounding this dilemma is the fact that the complainant’s conduct is frequently *not* legal. Most complainants admit they committed the infraction, for example. Or, even if the individual stopped was innocent of any crime, there may be objective evidence supporting that they resembled the culprit.

What is objected to and reasonably questioned is, “Why me and not him?” “Why here and why now?”

And this leads to a third reason for difficulty in investigating biased policing complaints. Police officers have tremendous *discretion* in carrying out their law enforcement duties. They may choose to enforce jaywalking laws one day and not another. If there are reports of an armed bank robber of a certain description, they have legal justification to frisk first and ask questions later. Assuming the existence of probable cause, there is nothing to prevent them from arresting someone because they flunked the attitude test.

Finally, the greatest challenge posed by such complaints in a traditional complaint investigation context is the near impossibility of proving discriminatory intent. “I stopped the car because it caught my attention by speeding by me.” “The driver and passenger were making furtive movements as though hiding something under the seat so I searched the car for weapons when I pulled them over.” “I cited him for open container as part of a special emphasis in response to complaints from local business owners.”

Even in situations where the legal justification of a stop or search is questionable, there are still rarely any positive indicators of bias. In the state of Washington, so-called “pretext” stops are impermissible. If an officer lacks adequate justification to conduct an investigative stop, so instead relies on a traffic infraction to stop and

⁷ In fact, there is some indication from the database that allegations of biased, derogatory comments have a higher than average rate of unreliability. Records indicate that 15 of these allegations in the two-year period reviewed were categorized as ‘unfounded,’ meaning the allegation did not occur as described.



investigate, the stop is unjustified as a pretext – even if there was a legitimate infraction. State v. Ladson, 138 Wash.2d 343 (1999).

But the term “pretextual” is not interchangeable with the term “profiling.” In one 2002 complaint, for example, officers on patrol in a high drug-trafficking area noticed a car that appeared to turn around when it noticed the patrol car up ahead. While turning, the driver made an illegal maneuver. The officer stopped the driver and asked about his purpose for being in the area. The driver gave a confusing, inconsistent response. He was warned about the traffic infraction, and given a warning about the high-crime area. Moments later, the driver was observed using the phone and bathroom of a nearby park known for drug activity, then driving slowly in a direction inconsistent with the purpose he had originally given. This time, the driver was stopped for suspicion of narcotics activity, questioned, and issued a trespass admonishment authorized by the owner of the public housing nearby.

The driver, a Hispanic male, complained that he was profiled. The officers responded that they were doing proactive police work for a community plagued by crime, and responding to suspicious and illegal behavior. At the completion of the investigation, it was recommended that they review the complex, fact-specific, and constantly changing law regarding vehicle stops and searches. The officers were not, however, found to have engaged in biased policing.



OPA RESPONSE AND INITIATIVES

That there are formidable challenges to investigation and positive findings on complaints of biased policing does not relieve the agency from its obligation to review and investigate them, nor should it diminish the importance of an investigative response. Law enforcement action motivated by race is against the law and contrary to the mission and values of the Seattle Police Department. As with other misconduct, the OPA needs to maintain and enhance its capability to conduct a credible investigation utilizing best investigative practices.

OPA has a solid and innovative program in place. The Department of Justice' Office of Community Oriented Policing Services released last year the excellent publication of the Police Executive Research Forum: *Racially Biased Policing: A Principled Response*. The report makes three recommendations for response in the area of public complaints:

1. Regular reviews of the complaint reception process to ensure complainants are not subject to any form of discouragement, intimidation or coercion in filing complaints;
2. That complaint systems include a separate category to permit clear and accurate monitoring of complaints of biased policing, with the capacity to identify patterns and practices; and
3. That regular audits of the complaint system are conducted, comparing performance against policy and using spot-checks and reviews to evaluate effectiveness and efficiency.

OPA meets these recommendations with its policies governing intake, separate tracking, and audit and review through the database and public reporting process.

Moreover, the OPA's response goes *beyond* these requirements, by incorporating into the areas of classification, investigation, tracking, and reporting efforts to address concerns of biased policing.

Classification

In the past, complaints were assigned allegations by OPA-IS according to the primary complaint. For example, if a complainant alleged unnecessary force was used in his arrest because of his race, the complaint was generally tracked and investigated as an unnecessary force allegation, and the concern voiced about the role of race tended to fall away.



OPA is ensuring more consistent recording and classification of complaints alleging biased policing. Now, if the complainant alleges that race – or ethnicity, religion, sexual orientation, gender, etc., – played a part in the encounter, an allegation of biased policing will be noted and, where appropriate, investigated.

The mere incantation of bias or profiling, however, will not be enough to automatically trigger an investigation. OPA will still consider whether the alleged conduct, if true, amounts to misconduct. The OPA will likewise continue to evaluate whether the review of existing documentation is adequate or whether an additional investigation will be necessary.

Recommendation: To systematize and explain the classification standards for investigation of complaints of biased policing, the OPA has articulated standards. These will be incorporated into the OPA-IS procedures manual, which will be available to the public. Allegations to be investigated include:

- Allegations of misconduct where it is alleged the misconduct was motivated by or because of race, e.g., unnecessary force, failure to ID, rudeness/profanity, failure to take appropriate action, improper search;
- Allegations of derogatory remarks; and
- Allegations of biased policing where there is some positive corroboration or indicators that bias may have motivated the law enforcement action.

Investigation

Again, individual complaints of biased policing are very difficult to investigate, much less sustain. There is little discussion of this fact in the academic literature, and almost none in the national debate. Yet it bears repeating, because of the over-reliance on complaint investigation in police reform and accountability initiatives.

For years, communities have wrangled over the question of “who” should investigate. Some community activists and civil rights groups believe the only answer is an independent investigative agency with subpoena power.

But no matter who investigates, the fundamental limitations of discerning intent, and of “proof,” will remain. Consider the following scenarios taken from OPA complaints:

- A woman’s violent ex-husband knocks at her apartment door. She calls 911, warning the dispatcher that her ex has threatened violence against the police. Her boyfriend, holding a large flashlight, steps outside to open the outside apartment door and assist the police. Police confront the boyfriend, who closely matches the description of the ex-husband. They tell him to drop the flashlight, but he instead starts to explain that they have the wrong man. He is ordered down on the ground, at which point officers see a handgun in his



waistband. He is forcibly handcuffed, the handgun is seized and unloaded, and he is detained over 15 minutes while police sort out the facts and verify the concealed weapons permit.

The boyfriend has never been in any trouble with the police, and he thinks the police didn't listen to his protestations of mistaken identity because he is a black man and presumed a criminal. The police say that they were concerned for their safety, and that they explained the situation to the boyfriend.

- A young African-American male alleges that officers watched him eat in the parking lot of a fast-food restaurant, then pulled him over and searched his vehicle without cause. The search revealed only several shopping bags filled with candy. The officers state they first observed the driver when he crossed several lanes of traffic illegally. While following with their lights and siren on, the subject and his passenger made furtive movements as though they were hiding something under the front seat.
- A woman and her African-American boyfriend sat in their car outside a fast-food restaurant on Aurora Avenue in the early morning. They alleged that an officer watched them, drove around and watched the boyfriend use his employee keys to open the restaurant, and then, after the girlfriend left for work, the officer pulled her over.

The girlfriend said she wasn't looking at her speedometer, but she couldn't have been speeding, and she must have been pulled over because of the race of her boyfriend. The officer said he was watching the early-morning activity in a strip mall experiencing high crime. When the car sat idle in front of the closed restaurant, he checked it out. All was fine, so he went back onto the street to watch for violators, and saw the girlfriend driving 20 miles over the speed limit.

Compassionate people sympathize with the subjects who feel they are targeted for police attention and scrutiny because of the color of their skin, and lament that this degree of distrust and bitterness still lingers in our society.

But fair-minded people cannot condemn officers on such evidence. Public employees who may only be disciplined for "just cause" are entitled to a review that finds a violation based not on empathy for the subject, a desire to balance the statistics, or even suspicion, but only on the facts.

Despite the inherent difficulties, OPA has taken steps to ensure the quality of its investigative response on several fronts. Measures in place in the area of reception, fact-finding, and review of complaints and the evaluation of the process, are outlined below.



Receptivity to Complaints: First, OPA has worked closely with the OPA-IS commanders and staff to be sure that the OPA intake process does not subject complainants alleging biased policing to any form of discouragement.⁸ Intake sergeants frequently discuss alternative explanations for police behavior to complainants. They also are candid with complainants about whether their complaint alleges misconduct that will be investigated further. However, the intake sergeants are expected to maintain neutrality, and the appearance of neutrality, during the intake of complaints. They report the allegations as nearly as possible as described by the complainant, with limited paraphrasing or summarizing. The intake sergeants also inform citizens that their allegations will be reviewed by the OPA chain of command.

Recommendation: In addition, the OPA has recently directed that complainants alleging biased policing be informed that such allegations are maintained by the OPA as part of its mission to identify themes, trends, and possible problems.

Fact-Finding Process: Significant effort is directed toward achieving high quality in the fact-finding process. In the past, just as the naming of allegations tended to center on a traditional misconduct allegation, so too did the investigation. For example, in one complaint a citizen stated that she and her African-American husband were driving slowly in the early morning hours because they were delivering newspapers. She alleged an officer traveling in the opposite direction looked at them, turned around, then pulled them over for a defective license plate light. When it was discovered that the driver was driving with a suspended license, the car had to be towed and a shouting match ensued. She alleged the officer told her to “shut up.” The subsequent investigation focused almost entirely on whether the officer was rude, even though the citation stating the officer was following the driver was at odds with her account of the U-turn.

Now, when an allegation of biased policing is assigned for investigation, OPA investigators probe for information about facts and circumstances that could support or detract from the bias allegation.

This charge has proved challenging at times, as it has required re-thinking commonly held and barely noticed assumptions about police work and investigations.

For example, “routine license plate check” is a common response to a charge of racial profiling, and generally considered definitive. Thorough investigation requires additional probing. How many checks did the officer do that day? What method was used to determine what plates would be checked? Are there any patterns

⁸ The recent publication of the Police Executive Research Forum, “Racially Biased Policing: A Principled Response,” Community Oriented Policing Services, U.S. Department of Justice, 2002, includes as a recommendation that: The chief executive should direct regular reviews of the complaint reception process to ensure that complainants are not subject to any form of discouragement, intimidation or coercion in filing their complaints.”



discernible in the race, ethnicity, or gender of drivers in the vehicles whose plates were checked? If so, can the pattern be explained by circumstances, such as the demographics of the sector the officer worked?

An upcoming OPA training program will serve to systematize and reinforce best practices in the investigation of bias complaints.

Review: A review of these investigations includes critical evaluation of whether all relevant facts and circumstances were gathered and considered. In addition, the review is conducted with an eye toward identifying if assumptions were made, or a credibility determination relied upon.

Moreover, it must be acknowledged that police officers have grown weary of accusations of bias and profiling. Much of the media coverage and public debate has been needlessly vitriolic and uninformed, and many officers feel personally and unjustly accused of being a racist. As a result, there may be a tendency to too quickly dismiss or explain away claims of bias as just another cry of wolf.

It is incumbent upon reviewers, then, to stand as a guardian of objectivity. Reviewers must remain vigilant for conscious or unconscious bias against biased-policing allegations, whether or not it affected the outcome of any particular case.

Evaluation: OPA is using a complainant survey as a final assessment of OPA performance. Quality assurance surveys are now going out to complainants and officers at the completion of investigated cases. In addition, review of complaints by the OPA Auditor and OPA Review Board serve as an additional check.

Tracking and Reporting: Two years experience with the OPA database has raised as many questions as it has answered. More work is needed to realize the potential of this information.

An important first step, discussed above, is to standardize the classification of allegations of biased policing. This will enable the Department to take maximum advantage of the data.

Next is to broaden the capabilities of the database to allow searches by other categories.

Recommendation:

Specifically, in addition to classification of complaint and involvement of individual officers, the OPA database should be reviewed by geographic precinct and sector, by shift, commander, and squads or teams of officers.

Despite the inherent limitations of a database comprised entirely of complaints, with these improvements the database will be a better barometer of the existing climate



between the police and the public, and a better bellwether of potential problem areas.

Moreover, meaningful tracking allows for meaningful reporting. The OPA database affords the department an opportunity to report publicly on information about alleged discrimination by race. This greater transparency in and of itself will lead to greater public trust and confidence in the Seattle Police Department as a race-neutral law enforcement agency.

Summary: OPA is not aware of any existing recommended guidelines for investigations of biased policing. Moreover, as investigations of police misconduct complaints are very fact-specific, it will be a challenge to develop specific guidelines. Nonetheless, OPA is compiling these measures in the areas of classification, investigation, review, evaluation, and tracking and reporting as part of a protocol for investigation of biased-policing complaints. A written protocol will be more successful at sustaining noticeable improvement in these investigations.



DEPARTMENTAL RESPONSE

The investigation of citizen complaints is only one facet of the Department's efforts to address citizen concerns about biased policing.

A description of the components of the Department's strategy and an update on progress follows.

Data Collection

It should be noted that SPD had established itself as a leader in this area. The Department voluntarily initiated a study of traffic tickets and race in 1999 and reported publicly on the results. SPD has also taken the lead on racial profiling in state agencies, such as the Washington Association of Sheriffs and Police Chiefs (WASPC). Deputy Chief John Diaz has an acknowledged expertise and has been asked to present on the subject frequently.

The City's current data collection plan has four major components:

Collect *quantitative* information on all citations or arrests.

Of note, the data collection is to be *ongoing*, rather than limited to a finite period of time. The data on warning citations and consent searches will be input by the Department, while data on all other stops will come from the municipal court.⁹

Document all traffic stops not resulting in citations or arrests by creating new "warning citation."

The Department conducted a 30-day pilot study with the new warning citation forms in its Traffic Unit from 12/15/02 to 01/15/03. Feedback from the Unit was used to fine-tune the final forms to be used throughout the Department. Forms are to be distributed for use Department-wide, though it has not yet been determined when. A training video is being produced that explains the use of the warning citations.

The City has signed a contract with an independent consultant to analyze the data from both sources. The consultant's final report is due the first quarter of 2004.

Add new information to forms documenting consent searches.

Current SPD Policies and Procedures Manual language on consent searches provides:

⁹ The Department is building a database for this purpose. However, the Department expects that in the near future, the proposed Department-wide Record Management System (RMS) will capture this data automatically.



“Officers electing to search by consent shall have the consenting person sign a ‘consent to search’ form.” SPD Policies and Procedures Manual, 3.017.II.A.

The forms used to document these searches were revised to include the same data on race, gender, and age that is available from traffic citations. These revised search forms are now in use.

Obtain *qualitative* data through a citizen survey.

A comprehensive survey was being designed by Vera Institute to assess, track and monitor community attitudes toward the police department. The survey questions 1,600 residents in English and Spanish, with minority groups over-sampled. It is currently being field tested by the consultant. Preliminary results are expected later this summer with a final report by the end of the year.

Video Cameras in Cars

The Department has continued with a demonstration project to determine the best technology and best practices for deploying video cameras in patrol cars. Currently, nine patrol cars and four traffic vehicles are equipped with VHS cameras. The officer can record an audio and video upon initiation of a stop.

In addition, the Department has secured a commitment for \$750,000 in federal funds to purchase digital cameras and is currently comparing products available in the marketplace. The goal is to install digital cameras in all traffic unit vehicles and approximately half of the 225 patrol vehicles.

The Department expects to reach a purchase decision by the end of summer 2003; train officers on the use of the video cameras in fall 2003; and begin a phased deployment by the end of 2003.

Community Outreach

To discuss issues of local concern, each of the Department’s four precincts was to hold quarterly community forums. The first round of forums, held in November 2002, were poorly attended. The next round of forums is to be held as follows: June 10 (South), June 18 (Southwest), June 19 (West), June 26 (North), and July (date to be determined) (East). This round has been more widely advertised and will have a different format. Facilitators will be used, and the participants will be asked for suggestions on creating future forums. Both the SPD and OPA website post the dates and locations for these forums and new forums as they are announced.

Training

Included in the City’s strategy was a commitment to continue and update training about racially biased policing and best practices for police-community engagement. The City further undertook to incorporate data and information obtained from surveys and data collection into the training curriculum.



The Department's Training Section has for several years aimed for a proactive approach to addressing community concerns regarding police practices. A "Best Practices" program has been a core element of in-service Street Skills training since 2002.

Best Practices training in 2002 had a course-specific goal: To provide members of the Department with a better understanding of the legal, perceptual, and emotional aspects of the phenomenon of racial profiling, and to improve their skills in preventing and mitigating real or perceived incidents of it. The course included a discussion of "de-policing;" traffic enforcement; standards from federal and state law; Terry stops; control of passengers; identification and vehicle searches; and pretext stops. Communication was emphasized, and a suggested communications model was presented as a way to maintain both control and professionalism during contacts.

Despite the sensitivity of the subject among officers coming into the training, feedback to the Training Section showed the course was generally well received. The training was provided to at least 937 officers over approximately 90 sessions. A condensed version was also presented to the City's Racial Profiling Task Force.

Best Practices training in 2003 is focusing on the legal aspects of seizures and the use of force. The Training Section found that when many of the allegations of racial profiling were examined, the issue of race stood out emotionally, but the actual foundation for most allegations was treatment that would be inappropriate regardless of race, such as the legality of the seizure and the reasonableness of force used. In 2003, 1,000 officers are expected to receive this training; and all 1,200 officers are expected to receive it in 2004.

In addition to Best Practices, the Training Section also looks for opportunities to incorporate cultural issues into training. For example, officers are shown how drivers in other countries are expected to exit their vehicle when stopped by police, illustrating that a driver may be doing what he or she thought was appropriate. In other situations, role players in tactical scenarios sometimes present language barriers that the officers have to work through.

Finally, members of the Training Section have provided or supported training for community members. A Use of Force seminar was offered in which participants were presented information about the law and Department policies, allowed to experience situations through simulation, and able to discuss issues with police officers. Members of the Section have supported the Minority Community Engagement initiative and presented blocks of training to the East-African community through translators. The OPA Review Board sought and received several blocks of training. In addition, the Training Section helped produce two educational segments about traffic stops and pedestrian contacts for the Beyond the Badge television show.



Policy

Seattle Police issued its first policy on racial profiling in August 2000. Newly appointed Chief Kerlikowske met with every new officer to give them the policy and discuss it with them.

In 2002, SPD revised its policy directive on racially biased policing based upon a national model developed by the Police Executive Research Forum (PERF). OPA had significant input into the review of the policy, which was a substantial improvement over the previous directive. (See OPA Policy Recommendation, Report on International District Incident).

The purpose of the policy was to reaffirm the Department's commitment to unbiased policing, to clarify the circumstances in which officers can consider race/ethnicity when enforcing the law, and to reinforce procedures that serve to assure the public that the Department is providing service and enforcing the law equitably.

Key provisions of the policy affirm that officers **shall not**:

- Consider race or ethnicity in establishing either reasonable suspicion or probable cause; or
- Consider race or ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on "trustworthy, locally relevant information that links a person or persons of a specific race or ethnicity to a particular unlawful incident. Race or ethnicity can never be used as the sole basis for probable cause or reasonable suspicion."

In this context, "trustworthy" means worthy of confidence. It is the same standard officers apply to any information used to establish reasonable suspicion or probable cause. The "locally relevant" standard precludes reliance on general stereotypes or information that in some parts of the country, a certain race/ethnicity is linked to a certain crime. Instead, officers must have information supporting a link to a *specific* crime in their *own* jurisdiction. The qualifier of "specific" also precludes the use of race/ethnicity as a general indicator of criminal activity. The trustworthy, locally relevant information must link specific suspected unlawful activity, e.g., a commercial robbery, to a person or persons of a particular race/ethnicity.

The PERF publication gives two examples of situations where the policy allows officers to consider race/ethnicity in finding reasonable suspicion or probable cause:



- Reports of undercover officers and several recent arrests indicate that white students from the local college are buying cocaine at a particular inner-city apartment complex – the residents of which are primarily black. (Race could be considered as one factor that could justify a stop that is related to suspicion of drug activity.)
- Several middle school students have reported that Hispanic men are selling guns to students in the area surrounding the school. (The officer could consider ethnicity as one factor in the “totality of the circumstances” that could justify a stop related to suspicion of illegal gun sales.)

In the following example, the policy *prohibits* the consideration of race/ethnicity:

- An officer sees a poorly dressed young African-American male walking in an upper-class white neighborhood. (No trustworthy, locally relevant information linking African-American males to particular crimes in the area; may not detain people merely because they appear “out of place.”)

Another important provision of the policy speaks to the general principle of equal protection. It provides, simply: “Except as provided above [referring to restricted circumstances where race may be considered], race or ethnicity shall not be motivating factors in making law enforcement decisions.”

In other words, this provision sets up a “but for” test for officers in evaluating their interactions with citizens. The restriction prohibits an officer from stopping a white public inebriate and releasing the violator *because* he or she is white, or from stopping a black traffic violator and requesting consent to search *because* that violator is black. Even though race may not have been considered, or was permissibly considered to justify law enforcement intervention, this broad restriction prohibits officers from disproportionately targeting certain groups who are suspected or guilty of breaking the law, and from treating people differently based on race/ethnicity.

Finally, the policy incorporates a provision that is aimed at preventing the *perception* of biased law enforcement. A growing body of research, coupled with experience and common sense, tells us that minorities would be much more likely to suspect that a police stop was racially motivated if they were treated discourteously or not informed of the reason the stop was made.

The Department’s new biased-based profiling policy (SPD Policies and Procedures Manual, 1.010) states that officers shall do the following when conducting pedestrian and vehicle stops:



- Be courteous and professional.
- Introduce him- or herself to the citizen (providing name and agency affiliation), and state the reason for the stop as soon as practical, unless providing this information will compromise officer or public safety. In vehicle stops, the officer shall provide this information before asking the driver for his or her license and registration.
- Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the citizen understands the purpose of reasonable delays.
- Answer any questions the citizen may have, including explaining options for traffic citation disposition, if relevant.
- Provide his or her name and badge number when requested, in writing or on a business card.
- Once the reasonable suspicion for the stop is dispelled or the stop was made in error, the officer will explain why the error was made, and apologize to the citizen if appropriate.

Again, this policy, which articulates the circumstances in which race/ethnicity can and cannot be used to make decisions, is a marked improvement over a policy that merely declares a statement against racially biased policing.



OPA EVALUATION OF DEPARTMENT RESPONSE

The Departmental response outlined above is a great start. Particularly impressive and promising are (1) the commitment to ongoing – rather than limited duration – data collection; (2) a training philosophy that integrates equitable and courteous treatment of citizens into all classes; and (3) innovative and far-reaching minority community outreach programs. Too, everyone can applaud the benefits to safety and accountability offered by video cameras in all patrol cars.

From the OPA's point of view, however, there is more work to be done to realize the solid, enduring benefits of a comprehensive response to the issue of biased policing.

Racial profiling and the perception thereof is not a problem the Seattle Police Department – or any department – can fix. Moreover, it is recognized that any program – particularly in data collection – will reflect a balancing of the need for information against considerations of time, resources, community priorities, officer safety, and convenience. There can be no perfect plan in the real world, and second-guessing or quibbling with components of the plan after the decision has been made would be counterproductive.

Thus, the suggestions outlined below are restricted to those that support or build upon the current framework. They are offered in the spirit of ensuring the success of the City's program for a response to the problem and perception of biased policing.

Data Collection

The arguments for and against any data collection are not reviewed here. Seattle has chosen to conduct ongoing data collection, a practice that appears a necessary component of sound management.

The OPA's primary concerns and recommendations regarding the data collection component are the (1) the Department's prioritization of the data collection plan; (2) inadequate foundation for the review of search data; and (3) the failure to articulate guidelines for the meaningful application of information obtained through data collection.

Implementation of Data Collection Plan. The City's strategy in response to racially biased policing was outlined in June 2002. There has been progress made in the successful completion of the pilot project in the Traffic Unit for the warning citations. However, there is as yet no firm timetable for making the database operational or for using the new consent search forms.



This length of time is not concerning in and of itself. The complexity of the project would require deliberative time and effort, even in the absence of the extraordinary competing demands for the Department's time and resources.

Of greater concern is the low visibility of the project within the Department and the community. There has been little information shared with employees about the plan since June 2002. Advertisements for the precinct quarterly forums were conspicuously lacking in any reference to concerns about racially biased policing.

Unlike many agencies, the Department is in the relatively advantageous position of having shaped its own data collection plan, rather than have one imposed by ordinance or consent decree. This advantage should be pressed by a timely and visible implementation. Strong and vocal leadership of the data collection project would enhance accountability to the public and the prospects for officer support of the plan.

Collection of Search Data. As discussed earlier, the plan for collection of search data is simply to modify existing consent search forms to include information about race, ethnicity, etc., so that they may be analyzed along with citation and arrest data.

The problem is that the requirement to document searches in a form is not currently enforced. OPA files and discussions with commanders and officers confirm that it is simply not practice to document such searches. Thus, it appears likely that the plan will produce very little data.

Moreover, the current plan does not call for the documentation of other discretionary searches, such as occupant or vehicle pat-downs during traffic stops.

SPD should consider revising and re-issuing its search policy to ensure compliance, and to document all searches other than searches incident to arrest. The plan should also incorporate accountability elements to ensure supervisors are enforcing compliance with the new policy.

Guidelines for Application. The question whether data collected should be linked to individual officers proved the most controversial issue of all in the Task Force's deliberation. The strong objection by officers to any linkage is certainly understandable. Benchmarks have been shown to be unreliable, and officers are concerned they will be stigmatized or disciplined based on misleading or invalid data. The law enforcement community is also reasonably concerned about inappropriate use of the data in civil or criminal cases.

However, having committed to collecting and reviewing data as part of its regular course of business, the Department owes it to its employees and to the public to address the issue head-on. First, the Department needs to state whether its plan has the capacity to identify *potentially* problematic officers. If not, the Department



should explain what it is doing to respond to concerns about whether a few “bad apples” on the Department are racially profiling.

If the data collection does have the capacity to identify *potentially* problematic officers, the Department should take great care in articulating the circumstances under which data can be reviewed for this purpose, and in articulating how data should be used.

It must be understood that the data cannot prove *causation*, but only show *correlation*. There are likely to be legitimate explanations for any data indicating disproportionate stops, searches, or arrests of racial/ethnic minorities.

Challenges and controversy notwithstanding, the Department has a responsibility to review the data, determine whether there are indicators of statistically significant disproportion not explained by other factors, and take reasonable steps to address any apparent problems.

Policy

Again, the new biased-policing policy is significantly improved over the previous, somewhat vague directive.

However, after almost a year of experience with the policy, it is clear that additional revisions are necessary, mostly in the section mandating certain best practices in pedestrian and vehicle stops.

First, the section needs a clearer statement of the scope of its application. The policy states that it applies to officers “conducting pedestrian and vehicle stops.” To officers, the term “pedestrian stops” has a specific meaning: stops of pedestrians for traffic infractions, i.e., jaywalking. To the public, however, “pedestrian stops” has a broader meaning, which may include social contacts and investigative stops on the street.

Second, the entire best-practices section should be changed to a stand-alone section outlining a standard or expectation of conduct. Obviously, the expectations – for courteous and professional conduct, introducing oneself and stating the reason for the stop, answering questions and identifying oneself, etc., – apply to all stops, not just to stops of racial and ethnic minorities.

In fact, several of the requirements outlined in the biased-policing policy overlap with other policy provisions. For example, separate sections of the SPD manual address the obligation to provide a name and badge number when requested, and to act courteously and with professionalism. If a complaint alleges a violation of these practices, it is unwieldy and perhaps stigmatizing to note an allegation of a violation of the biased-policing policy if the complainant expressed no concern about racial or



ethnic bias. The biased-policing policy could simply cross-reference the separate policies as part of the effort to combat perceptions of bias.

Training

The OPA has two suggestions to enhance the already strong Training program as part of the Department's response to biased policing:

- In January of 2002, the OPA recommended that SPD include in its in-house curriculum training on how officers and supervisors should respond to allegations of bias that they hear in the course of their duties. It appears that this topic is not yet specifically addressed.

Now, many officers and supervisors have no doubt adopted skillful, respectful strategies that defuse situations and provide the context citizens need to assess police action. Few of these interactions will result in complaints.

Review of complaints received, however, shows a broad range of responses – unhelpful at best, exacerbating at worst. Again, officers are understandably tired of hearing it. But, as concerns about bias and profiling are likely not going away anytime soon, it may make their job easier if they were given suggestions for how to respond.

- A final recommendation regarding training overlaps with concerns already outlined about the biased-policing policy in particular, and the low visibility of the Department's program in general.

Though the policy was issued last June, it was included as part of the City's overall response, and was not specifically highlighted to officers. To date, there has been no specific issuance of the policy and no communication from the Department about its importance. Many commanders and most officers are unfamiliar with the policy. Moreover, there has been no training on the policy provided to officers, or to supervisors charged by the policy with ensuring their personnel comply.

The Department should embark on an effort to publicize, emphasize, and provide training or guidance regarding the (hopefully revised) policy.

Additional Efforts that Impact Biased Policing

Early Intervention System. The Department is currently involved in union contract negotiations over the development and implementation of a progressive, comprehensive early intervention system. In the meanwhile, the OPA has made changes to its procedures to enhance the usefulness of the existing administrative review system. Those changes are outlined in the OPA's 2003 Annual Report.



However, a stronger early intervention program could plug up existing holes in the administrative review system and impart a strong supervisor accountability measure.

Further, the Department needs to consider whether, as some agencies have, it will include in their early intervention criteria a review of activity by race as one indicator of a possible problem.

Mediation. The Department is also negotiating a mediation program as an alternative method of resolving citizen concerns and complaints. OPA has reviewed many complaints of biased policing that would have been perfect candidates for mediation. The delay in implementation has denied both officers and citizens the opportunity for a meaningful exchange of perspectives and perceptions outside of the constraints, limitations, and stigma of the formal discipline system.



SUMMARY

In the post-September 11 world, the focus of law enforcement has necessarily shifted from racial profiling to homeland security, management of anti-Iraq war demonstrations, and juggling competing priorities in the face of a deepening budgetary crisis.

Though it would be easy to backslide on the commitments the City has made to address concerns about racial profiling, it would be a mistake. Racial profiling is not a public-relations problem, but a fundamental issue of human rights.

The information and conclusions in this report are intended both as a reminder of the need for vigilance in protection of human rights and to advance thoughtful discussion and examination of the success of our efforts.