

**Seattle Police Department  
Office of Professional Accountability  
Report of the Civilian Auditor  
For April – December, 2003**

**INTRODUCTION**

The Annual Report of the Director of the Office of Professional Responsibility will be issued later in 2004, when the majority of 2003 cases have been completed and the most meaningful statistics and analysis will be available.

The Review Board has also indicated it will issue its report in the near future.

This Report will focus on my activities as Auditor from appointment in April to the end of the year, as well as some of the issues that surfaced in that time bearing on the functions of the OPA, the Auditor, and the Review Board. By Ordinance, it is due to be distributed by the Chief of Police by April 30, 2004 to the Mayor, City Council, OPA Review Board and the City Clerk.

**STRUCTURE OF OVERSIGHT**

There are three distinct aspects of civilian review of internal investigations conducted by the Seattle Police Department: Auditor, OPA Director, and Review Board.

The Auditor position was created in 1992. This was the first time in the history of the Department that a civilian was given direct and complete access to the complaint investigation system. The Auditor is a part-time, independent, appointed official and not an employee of the City. The Auditor has access to all complaints and investigations, but official authority only to advise OPA and/or the Chief to take action. Since 2001, a significant portion of the Auditor's time has been spent reviewing investigations and interfacing with the OPA Director about classification and investigation of complaints.

In 2001, following a report by the *ad hoc* Citizens' Review Panel, a new Office of Professional Accountability (OPA) was established, with a civilian

Director to lead it. The Director manages the operation of the investigative system – from receipt of complaint, to investigation and recommended disposition. There are detailed procedures providing for input and discussion among line commanders, the OPA Investigations Commander, and the Director in reaching a recommended or OPA “certified” disposition. After obtaining input, the Chief of Police makes the final decision in every case where a “sustained” finding is recommended. At that point, there may be a disciplinary hearing as provided in the operations of the Human Resources Department [HR] and contract with the Seattle Police Officers’ Guild.

The Director supervises a Captain, Lieutenant and six Sergeants in the Investigations Section of OPA. The Director reports to the Chief and is the only civilian serving on the Chief’s Command Staff.

In 2002 an OPA Review Board comprised of three volunteer citizens was formed. Although the Board’s access to files is more limited than the Auditor’s, the members have shown a deep commitment to understanding and improving the complaint investigations system. They have reached out to the community and have compared the disciplinary system in this City with other models. In June 2003 they issued a Strategic Plan for future work, which “proposed a framework for case analysis that includes an assessment of compliance with the established process, of the investigation methods used in the case, and of the implications for protocols and policy. [They] proposed to review patterns of cases in order to better understand the causes of complaints. [They] proposed to continue [their] community outreach efforts. [They] described a special project to study the use of force by the Police Department.” *Memo from the Review Board to Council-member Licata, dated October 10, 2003.*

Each of the three levels of civilian review of the OPA was approved by the Mayor, City Council, and Police Guild. The functions of each and relationships among these three have been the subject of review by the Council and by the Board. The working relationship among the three continues to evolve and they have met together several times.

## **OPERATIONS UNDER THE PRESENT STRUCTURE**

The City Council can and does solicit direct civilian input through public hearings. On a very stormy night in November, over 100 citizens turned out

to air complaints about the functioning of the Police complaint investigation system. The recurring theme was that the City has over the years bargained away important accountability measures to the Police Guild and that further civilian input into and oversight of internal investigations was needed. Specific non-mandatory bargaining issues mentioned were an early warning system for employees with significant complaint histories and the timing of interviews of accused officers. Specific complaints included perceived racial profiling and non-responsive or insensitive investigations. Some advocated for civilian intake personnel, an appellate process, subpoena power for the Review Board, expanded time for investigation before notifying officer, and an evaluation of the complaint process by the University of Washington's Sociology Department. Many asked that the process be more transparent and understandable, and that the revised manual for the OPA be published soon.

On the other side, the Guild President has seen fit to ridicule the OPA and the functions it performs in "The Guardian." (see, e.g., "*The President's Message*," November and December, 2003.) Attendees at the November hearing displayed an ad placed several years ago by the Guild for an investigator to expose those who file frivolous complaints, which attendees saw as an intimidation tactic.

Criticism from both sides is a fact of life for those serving within the OPA.

In his *May 5, 2003 Memo to the City Council Police, Fire, Courts and Technology Committee*, Peter Harris summarized the City's goals for citizen oversight: integrity, legitimacy, and prevention of misconduct. He also referred to the 1999 Citizens' Review Panel recommendations and the resulting Ordinance creating the Review Board with a broad but rather nebulous mandate. He referred to the Auditor's role (at page 7) as a "check" on the OPA process.

As noted above, the Auditor role predates the civilian Director and Review Board. Its function is primarily in meeting the goal of integrity of the investigative process: helping to assure that internal investigations are fair, thorough and objective through contemporaneous review of un-redacted files and advice on classification and further investigation.

The Auditor's activities have developed over time and are not strictly tracked in the Ordinance, SMC Sections 3.28.850ff. The Ordinance uses the

term “audit” in two ways in different sentences: to review files and to appraise critically. It mandates that the Auditor review all complaints and completed OPA investigations. If the Auditor seeks further investigation, he or she is to inform the Chief in writing. In practice, the primary point of contact is the OPA Director. The Auditor confers regularly with the Director and often with the Captain about specific recommendations and we have frequently reached agreements on further investigative actions. So far this has been a very cooperative and productive process, although the paper trail of emails and responses may be something less than contemplated in the Ordinance. In fact, such formal written correspondence would be nearly impossible given the time deadlines involved. Even for the current weekly, cooperative, informal communication that exists, the short timeframe allowed for review and recommendations is a problem, as noted by my predecessor, Terrence Carroll.

The Auditor’s job has expanded considerably beyond the review of completed internal investigations by the OPA. Rather than a monthly review of “contact logs,” I review weekly all Preliminary Investigations (which have largely replaced “contact logs”), all Supervisory Referrals, and all Line Investigations both at the time of classification and after completion, as well as completed OPA investigations. The new category of “Preliminary Investigation” is a very good one. It represents a real outreach to citizens, even though their concerns may not rise to the level of officer misconduct.

The Auditor will often opine on classification of certain complaints or ask that further investigation or follow-up be done when a Supervisory Referral comes back to OPA or when some further phone calls might be in order. Again this is done in informal consultation, as it was by Terrence Carroll, rather than with written memos to the Chief. Service on Preliminary Investigations and Supervisory Referrals is aimed at satisfactory resolution for all parties of the relatively minor issues involved, rather than at potential discipline.

I would stress that my lines of communication with the OPA are open and frequently used, and that this is at the heart of the Auditor’s advisory function.

Although other organizational models might serve as well as the present three-part system for civilian input, there is value in the stability achieved to date. People can and will continue to have disagreements over the outcomes

in specific cases and there is always room for improvement. Regular citizen hearings may be an appropriate avenue to help assess the system. My perception, however, is that the City is well served by the dedication and professionalism of members of the OPA and the input of civilians through three distinct institutional channels. The outreach engaged in by the current Director and the upcoming new manual, as well as last year's report on racial profiling issues, and upcoming reviews and policy recommendations about demonstrations and searches, serve to help make the system more transparent and address persistent systemic issues between police and the community.

I second the conclusions of my predecessor, Terrence Carroll, after ten years as Auditor: the complaint and discipline process should not be over-emphasized as a means of addressing far broader issues of police/community relations. "Hiring, training, and supervision are more important in the long run than discipline in meeting community concerns." *2002 Report of Terrence Carroll, Auditor, page 3*. I would also stress the importance of the regular, non-crisis contacts that characterize community policing. As Susan Paynter noted in her March 15, 2004 column in the *Post-Intelligencer*, media emphasis on excessive force and police accountability eclipses the rare mention of daily neighborhood policing and crime prevention. A review of the Commendations based on citizen input gives a much fuller picture of Seattle's Police Department.

Terrence Carroll and the OPA Director have repeatedly suggested the adoption of a pilot voluntary mediation program so that civilians and police can better understand the perspectives each bring to a confrontation. Unfortunately, the City and the Seattle Police Officers' Guild have not yet reached an agreement including one. I join the OPA in urging the Guild and City to seek such an agreement. There are many situations where voluntary mediation might produce better mutual understanding between citizens and officers.

## **COMPLAINT CLASSIFICATION AND INVESTIGATION**

For many years, complaints that did not merit full investigation were reviewed and recorded as "**contact logs**." Since July 2003, only inquiries about policies, referrals, or requests for information and service are still termed "contact logs."

The term “**Preliminary Investigation Report**” [PIR] better describes the substantial preliminary investigative work, interaction with the complainant, and appropriate supervisory follow-up that actually occurs. OPA-IS gathers and reviews relevant documents, determines if further investigation is necessary, and, if not, explains the results of its review to the complainant. Importantly, the complainant’s concerns are forwarded to the affected bureau, so the employee gets feedback on performance even where no misconduct is involved.

A “**Supervisory Referral**” [SR] is a complaint of minor misconduct, e.g. service quality, tactics, demeanor, or adherence to policy that, if proven, would be appropriate for supervisory resolution. These complaints, which may come from within or outside the Department, are forwarded to the employee’s chain of command for resolution with the complainant and employee. SR’s are returned to OPA with the follow-up noted, but do not result in discipline, or full investigation/review/findings. Many of the SR’s involve rudeness, profanity, tone of voice, or other concerns about professionalism and courtesy.

More serious, but straightforward, allegations of violations of policy are referred as “**Line Investigations.**” The named employee’s precinct or section commander conducts these investigations. Upon completion, they are sent back to OPA with a proposed disposition.

An **OPA-IS investigation** is conducted when a citizen or internal complaint alleges serious misconduct or the possibility of criminal misconduct, including all allegations of excessive use of force that do not involve a shooting.

After a full investigation, the finding may be any of the following:

“**Sustained**” means the allegation of misconduct was proved by a preponderance of the evidence.

“**Not sustained**” means the allegation of misconduct was neither proved nor disproved by a preponderance of the evidence.

“**Unfounded**” means a preponderance of the evidence indicates the alleged act did not occur as reported or classified, or is false.

**“Exonerated”** means a preponderance of evidence indicates the conduct alleged did occur, but that the conduct was justified, lawful and proper.

**“Referred for Supervisory Resolution”** is self-explanatory, and usually includes contact by the supervisor with the complainant as well as the employee.

**“Training or Policy Recommendation”** means there has been no willful violation but that there may be deficient policies or inadequate training that need to be addressed.

**“Administratively Unfounded/Exonerated”** is a discretionary finding that may be made prior to the completion of an investigation that the complaint was determined to be significantly flawed procedurally or legally; or without merit, i.e., complaint was false or subject recants allegations, preliminary investigation reveals mistaken/wrongful employee identification, etc.; or the employee’s actions were found to be so clearly justified, lawful and proper and according to training that the investigation should be terminated early.

**“Administratively Inactivated”** means that the investigation cannot proceed, usually due to insufficient information or the pendency of other investigations. The investigation may be reactivated upon the discovery of new, substantive information or evidence. Inactivated cases will be included in statistics but may not be summarized in OPA reports if publication may jeopardize a subsequent investigation.

The number and subtlety of these classifications is to some extent confusing and frustrating to the public. The distinctions made and the careful application of the “preponderance” standard of proof are crucially important to Department employees, who may be in jeopardy of terminated careers.

## ACTIVITIES OF THE AUDITOR IN 2003

OPA's January report contains cumulative totals for 2003:

<b>PIR's</b>	<b>415</b>
<b>Cases Assigned as SR's</b>	<b>79</b>
<b>Cases Assigned for OPA-IS or LI</b>	<b>185</b>
<b>Cases Closed</b>	<b>82</b>
<b>Commendations from outside SPD</b>	<b>861</b>

Because my term began in April 2003, the number of files I reviewed will not correspond to the totals for the year. At the outset, I was reviewing line investigations only at the time they were assigned out. I now see them for classification issues then and for investigative issues when completed and returned to OPA.

**I reviewed 64 completed OPA-IIS investigations. In 19 of these I had questions, requested further investigation, or had discussions with OPA staff.** In each of these, I was satisfied afterwards: further investigation was conducted, I was convinced that it was unnecessary, or we worked out a different way to handle the issue. For instance, one excessive force complaint also alleged mishandling of property because the officer left a cell phone and wallet in the arrestee's car on its way to impound. There was no disagreement over the investigation of the force issue, but I disagreed with OPA that the property had been handled according to departmental policy. The Director revised her recommendation, so that the officer would receive a Supervisory Referral for counseling on the property issue, which would also mean the Supervisor would contact the complainant, and explain how to file a claim with the City if that was appropriate.

In another case, I asked that the son of a demonstrator who alleged excessive force be contacted for further information about what the officer and the demonstrator did. The Director demurred as the real issue was the orders for handling the demonstration that had been given the officers. She also revised the disposition to "not sustained" to indicate the allegations of misconduct really could not be proved nor disproved under the circumstances.



In another case, an officer casually punched a suspect in handcuffs, claiming he was about to spit. I requested further review of the investigation and the OPA and Chief went on to sustain the allegation, as the evidence did not support the officer's perception.

From my perspective, these exchanges with the Director and Captain have been useful and productive, and I have not appealed any requests to the Chief of Police. I did meet with the Chief about one domestic violence allegation and expressed my concerns, which were shared by him and OPA.

**I reviewed 35 assigned line investigations, but only two completed line investigations. In seven of these I had questions to discuss with OPA staff.** We are awaiting outcomes in many of these, so there may be future requests for investigation. In most of these I have simply questioned the classification, and been satisfied with the reasoning.

**I reviewed 51 Supervisory Referrals and requested further investigation or reclassification in nine of these.** In one, for instance, an officer approved a juvenile "ride-along," but there was an allegation that the form was not available for a citizen who sought the passenger's name as a witness to the events that happened during the shift. I recommended that the Department assist the citizen in obtaining the witness' name. The file was also upgraded at my request to a line investigation to determine the timing of the filing of the approval and to look into possible policy violations.

**I have not kept a total of the numerous contact logs and PIRs I reviewed, but have requested reclassification in five or six.** An example here would be a complainant who alleged she witnessed a domestic violence incident and the police focused on her and her fiancé among the bystanders, apparently because they were African American. The PIR was forwarded to the precinct so that the supervisor could call the complainant.

In another, a complainant alleged his 21-year-old son was arrested without probable cause at a fraternity party when he was taken with under-aged drinkers to the station to "continue the investigation." The reason for the arrest was not obvious on the face of the police report and OPA is not allowed to question the named employee before a complaint has been classified. The case was reclassified from PIR to SR so that the Supervisor could have the conversation with the officer about the justification for the arrest and contact the complainant. The file will return to OPA thereafter.

In a third case, I asked that allegations of harassment of boaters be upgraded. OPA declined, but did further follow-up. In a fourth case, I asked for further investigation of claimed officer harassment of a vendor of *Real Change* newspapers. The Director decided she would do further investigation if another such complaint were received.

In my first nine months in office, I have also spoken with numerous individuals and met with the Chief, the Mayor's Senior Policy Advisor, the ACLU, the staff of OPA, and the Review Board. I have attended a use of force tutorial by police trainers with the Review Board and reviewed materials from other jurisdictions on police accountability. I have been impressed by the Director's outreach to the public, the very good forms that are available, and the responsiveness of the entire OPA staff.

## **RECURRING ISSUES**

Section 3.28.860 of the Seattle Municipal Code also tasks the Auditor to summarize "issues, problems, and trends noted" as a result of review of files; and to recommend any appropriate officer training or policy or procedural changes. There have been a number of recurring issues over the last year.

### **Demonstrations**

Many complaints follow a demonstration or "unusual occurrence," alleging for instance, that police pushed demonstrators with their bicycles, ripped signs out of their hands, or arrested people trying to follow police orders. City officials often refer complaints to the OPA that involve policies for handling "unusual occurrences," such as the use of lifted bicycles to move a crowd. The OPA can spot issues, talk, share information with event commanders and report publicly, but its core function of investigation of policy violations is not involved. When complaints allege that individual officers acted rudely or aggressively and beyond departmental policy or orders, the OPA can conduct an investigation. In one of these, for instance, the OPA Director changed the findings regarding a force allegation and changed the Conduct Unbecoming an Officer to an SR, so that the supervisor would discuss the incident with the officer. Examination of the Department's policies for handling "unusual occurrences," use of bicycles for crowd control, and training in strict neutrality toward content of

protected speech, would be useful. The OPA Director will publish a report summarizing issues and complaints this spring.

### **Searches**

Quite a number of the complaints I reviewed, as well as those made orally at the November hearing, involved police searches. Does an unconstitutional search automatically violate Department policy? This is not always easily answered when officers make good faith mistakes. While the evidence might be suppressible in a criminal prosecution, it does not necessarily justify administrative discipline. Good faith actions might best be addressed through a training referral.

In one case, for instance, officers pushed their way into a private club about which there had been noise and liquor violation complaints. Their justification was to make a “premises check.” I raised questions about the training of the OPA sergeant as well as the officers he was investigating in this area of law. In another case, an Anti-Crime Team [ACT] stopped a young man without apparent justification for the stop or pat-down search that followed. The Director reviewed the file and declined my request for further investigation, as such stops are common practice by the ACT teams and justification is often not documented in the files. The scope of proactive investigations of youth narcotics contacts by these teams might bear better training and the justification for *Terry* stops and pat-downs should be documented in their reports.

Following discussions about such concerns, the OPA is separating these files for more in-depth review of policies, training, and methods for resolving these kinds of complaints.

### **Use of Taser Guns**

Nine files have presented questions about the use or threatened use of taser shock guns to subdue resisting arrestees. Tasers can be used to project a pair of darts at a distance of 6-21 feet or applied directly to the skin as a pain compliance tool that creates a temporary and very localized muscle contraction. They transmit about 50,000 volts of electricity to disable a suspect for several seconds. They are widely praised by all as an alternative to deadly force, but controversial as a compliance tool. See, e.g., *New York Times, Sunday, March 7, 2004*.

Taser guns were introduced beginning in 2001 on the recommendation of an internal SPD study group and a community workgroup. Trainers have been fairly consistent about appropriate use: for instance, that tasers may be directly applied on shoulder areas when officers need to “end the struggle quickly and they feel their life is in danger.” Nonetheless, tasers have been used on vulnerable areas such as necks in questionable circumstances. These tools give officers more options short of lethal force, but SPD should continue to monitor carefully their use in subduing non-cooperative subjects.

All taser uses are documented and reviewed by the patrol operations bureau chiefs and a member of the SPD Office of Strategic Policy, Planning and Development, who also authored the *Special Report on Year One Implementation* in May 2002. OPA began tracking complaints involving tasers in 2003 and will include a discussion of the taser cases in the upcoming report on the use of force. I would recommend such careful monitoring and public reporting continue.

### **HR/OPA Jurisdiction**

Another area that has received attention this last year is the overlap between Human Resources and OPA. I questioned the standards by which HR issues were distinguished from OPA issues in a number of cases. The Chief revised the policy to make this demarcation more clear.

In one case a driver alleged that a retired officer used profane language while directing traffic at a construction site. The SR went to HR as the “supervisor” of retired officers with Special Police Commissions.

In another case, an officer apparently admitted taking unauthorized leave numerous times. The case was referred to HR and then back to OPA and for unique reasons finally landed in HR. In the future this kind of case will be handled at OPA, because it involved a matter that could result in discipline.

In a third case, an officer forged his doctor’s signature so that he could be deemed fit to return to work. This case is also appropriately one for OPA.

Under the revised policy, all cases will come to OPA for screening. Issues involving employee performance or adherence to workplace rules will generally go to HR, as well as cases where HR is the “supervisor” of record. Matters that could result in discipline will remain with OPA.

## **Persistent Community Issues**

I have reviewed my predecessor's reports and those from the OPA and of the Review Board to gain fuller perspective on some of these recurring issues.

In the interviews I have had with individuals, in correspondence with the OPA, as well as in testimony at the November public hearing, civilians have repeatedly asserted that non-police witnesses are ignored or their credibility discounted. There is no question that members of the OPA have empathy for fellow police officers, as they have had to make similar tough calls on the street. How should an officer respond when a subject on the ground refuses repeated orders to take his hand out of his waste-band or pocket? A judgment call as to whether the suspect might have a weapon must be made quickly and decisively. Investigating OPA sergeants do their best to set this empathy aside in assessing whether such judgment calls were reasonable under the circumstances.

The best line and OPA investigations involve thorough, recorded interviews with both police and civilians witnesses, who frequently have very different experiences of the events. **Open, simple questions, not anticipating the answers**, are critical to thorough objective investigations. Some issues of credibility are appropriate to apply: Does the complainant have a lengthy criminal record? Does the officer have a history of similar complaints? (I recognize this recommendation is controversial among officers, but it is similar to assessing arrest history of the complainant.) Is the complainant defending against a serious criminal charge arising out of the same incident? The potential of civil litigation can of course cut both ways. On the other hand, increased credibility may be appropriate where a citizen witness was uninvolved in the incident.

In many of the less serious complaints, of rudeness or conduct unbecoming an officer, there are simply totally different experiences of the event. A member of a minority community, with unhappy experience with police, may interpret peremptory attitude or orders as racially motivated. An officer may well perceive the response as uncooperative, and things may escalate from there. In one report I read, the officer justified his profanity as a "shock technique" to gain control of the situation. I would suggest that training in de-escalating such confrontations might involve other techniques.

I recommend **greater emphasis on training and valuing of de-escalation techniques**. Currently a short discussion of such techniques is included under “best management practices” in the “Street Skills” section of an officer’s training.

An ability to de-escalate a situation is one of the most important skills officers have, and this skill is frequently praised in the commendations received by the Department. When a traffic jam or jay-walking incident after a ballgame leads to an angry exchange, this skill may get lost. For instance, an after game jay-walker with his hand in his pocket was automatically assumed to be a danger and yelling quickly escalated to the use of force in one case. In another, an apparent “prank” indecent exposure in the street led to a forceful tackle and injuries, where the situation might well have been defused with a different approach. Many complainants recounted what appeared to them to be over-reactions and escalations in hostility by responding police. In some cases, simply giving an arrestee the reason he is being taken into custody can defuse a situation.

Another issue frequently at issue for complainants is the **standard of proof** that favors the accused employee. In all the allegations warranting full investigations, a recommended finding of “sustained” or “exonerated” or “unfounded” must be based on a preponderance of the evidence. When complainants choose not to cooperate with the investigation or cannot be reached after their initial complaint, or medical releases are not returned, it is exceptional that this burden of proof can be met to sustain a complaint. Although “not sustained” (neither proved nor disproved) is an outcome that frustrates complainants, application of an appropriate burden of proof is a necessary component of a fair system of accountability, as it is the bulwark of our civil and criminal legal systems.

## **CONCLUSION**

I am presently finishing my first full year as Auditor. I will continue to use my own experience with law enforcement, with victims, and with arrestees to assess the classification and investigation of complaints as well as trends and policies bearing on the integrity of internal investigations of employee conduct.

**Final Report respectfully submitted April 21, 2004,**

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**Katrina C. Pflaumer**