Seattle Police Department
Office of Professional Accountability
Report of the Civilian Auditor
For September 2007 – March 2008

INTRODUCTION

As referenced in my last report, the system for civilian oversight of the Seattle Police Department is undergoing re-examination and adjustment. The Mayor's Police Accountability Review Panel has issued a Report recommending that investigations of policy violations by employees stay within the Department, overseen by a civilian Director of the Office of Professional Accountability [OPA]. The Panel did suggested numerous changes in the other two modes of civilian oversight, including more intensive review by the contract Auditor and an expansion of the OPA Review Board [OPARB.] The Mayor reviewed and adopted these recommendations, and the Guild leadership is reported to have agreed to them in the proposed new contract.

The City Council also appointed an expert panel to focus on "1) Legal Review and 2) Organizational Leadership Culture and Philosophy." [Quoting Counsel Member Licata.] Council Member Licata also predicted the Panel will report this spring its "findings and recommendations for legislative action and organizational improvement." Their work is ongoing.

In the meantime, the Executive has modified my contract to expand the role of the Auditor for the remainder of 2008. Though still under independent contract, and part-time, I will attempt to coordinate my second semi-annual report with that issued by the OPARB and the Director for issuance by November 15th and have included the Director's comments in this Report. I am also tasked to "monitor the progress of all OPA related recommendations being implemented by the police department including the recommendations from the 2007 Police Accountability Review Panel." I am to "conduct enhanced reviews of all ongoing investigations by the OPA IS, with special attention paid to training and interviewing skills as well as a critical review of outcomes." I am to perform, as needed, "…in-depth reviews of substantive policies, procedures and/or training that impact police accountability and/or the disciplinary system." These duties represent a

more in-depth version of my present job, and include many, but not all, of the expanded functions recommended by the Mayor's Panel.

My new contract also tasks me, pursuant to the recommendation by the Mayor's Panel, to coordinate with the OPARB and Director to "identify substantive and procedural areas" to be the subject of enhanced review. One of the first is to be "…how the police department's policies, practices and procedures affect communities of color." Recognizing that this is a serious and complex subject, we have already met and discussed work plans to address it cooperatively. We have also discussed other policy areas for cooperative, enhanced review, including taser use and standards, obstruction cases, and an exploration of the reasons some citizens decline to cooperate with the OPA. The membership of the OPARB is about to change, however, so we can expect some delay in follow through on these cooperative projects.

The OPA continues to issue cumulative statistical reports. The latest Report summarizes the results of investigation of 199 allegations of misconduct in 2007: 11% sustained, 27% unfounded, 31% exonerated, 4% not sustained, 8% administratively unfounded, 5% administratively exonerated, and 14% SI. These figures do not include 97 cases closed with a Supervisory Referral and 315 cases closed as Preliminary Investigations, where no misconduct is alleged and often IIS sergeants act as problem solvers for citizens' issues or precinct supervisors complete the communication with employees and the public. The OPA January/February Report, as usual, is a good sampling of how individual complaints have been handled. It is available at www.Seattle.gov/police/opa.

In the past six months I have continued to review open case files on a real time basis to improve the quality of investigations and sometimes suggest further avenues to explore, better lines of questioning, and consideration of a different perspective. I have also reviewed the classification of complaints as to seriousness and extent of the investigation. I have continued to comment on disposition where I felt appropriate and to review policies and areas of ongoing concern. I have testified before both panels, met with panel personnel and City Council members as well as appeared at public forums and on subpoena for depositions in lawsuits.

I will limit this Report to my specific activities in the six months covered since my last Report and save in depth discussion of policy issues for

upcoming combined reports with the OPARB and Director to be issued later in the year. In discussing cases referenced in this Report, the Chief and the Director of OPA and I have agreed that I should include the perspective of the Department, particularly where it is at variance with my own, so that both are easily accessible to the public. As the number of cases commented on makes clear, I have had no concerns or requests for further investigation in the great majority of cases reviewed in each category. Most of the comments included in this report are meant to reflect issues or trends, both in investigation and underlying officer conduct, that might well bear consideration in training and perhaps policy review.

SUMMARY OF ACTIVITIES

In the six months covered by this Report, I have reviewed 69 completed OPA-IS investigations, just above the average of 63 for the prior seven six-month periods.

I reviewed 14 Line Investigation [LI] referrals, to be able to comment if I disagreed with the classification. I reviewed 6 completed Line Investigations. The actions by the OPA, the Chief, and Precinct Commanders have resulted in expediting Line Investigations, which I continue to monitor.

I have also reviewed, for classification and comment on possible follow-up, 56 Supervisory Referrals [SR's] and 148 Preliminary Investigation Reports [PIR's]. I have reviewed 317 contact logs, some of which have been converted into PIR's or SR's, but most of which have not raised issues within the purview of the OPA or the parties have not wished to initiate OPA review and therefore these entries have not led to investigations.

Internal Investigations

Of the 69 completed OPA-IS investigations, I commented on 22 cases. In several I requested further investigation or commented on the interviews conducted; in some I commented on the underlying employee conduct or the recommended disposition; in a couple I had questions about status and timeliness. I reviewed video and complete interviews in a number of cases where I had questions.

I raised concerns about a number of **cases alleging excessive force**.

Creation of Hazardous Situations:

In three cases alleging excessive force, I felt the police created **serious traffic risks** by their actions:

In one case an officer on foot stepped into the lane of traffic to stop a speeding motorcyclist, stepping out of the way and hitting her helmet as she passed him.

Though OPA-IS initially recommended a sustained finding on Unnecessary Force, the Director determined that the employee's actions were not clearly outside policy on use of force. However, she was concerned the he did not "apply reason, professional experience and judgment in decision-making" as required by the policy on Exercise of Discretion, and recommended a sustained finding on that allegation, which the Chief adopted; and the officer received discipline.

In a second case, I thought it was highly dangerous for a traffic officer to reach into a vehicle to hit the driver over his right eye with a plastic flashlight, while said driver was objecting to the length of his traffic stop by proceeding slowly forward. The officer was understandably concerned about the crowd in the crosswalk ahead, but I thought that hitting the driver next to his eye would just as likely have caused him to press down the accelerator and cause more danger. I should note that I also commented on the quality of the investigation in this case, noting that the interview with the officer did not explain or challenge how he actually ran alongside the car while holding the hinge of the door with his left hand and back-handing the driver's right eye with the flashlight in his right hand.

Though the Director expressed concern about the potentially hazardous situation involved in this case, she saw the officer as having reacted in something of an instinctive manner as the car moved toward a crosswalk with pedestrians. She suggested that training to consider alternative approaches could be useful, but concluded that misconduct was not involved.

It must be noted that the injured driver and his witness declined to participate in the OPA IS investigation despite multiple attempts to secure their cooperation even after the driver's criminal case was resolved. I have

recommended that the lawyer and subject be re-contacted after any criminal cases are resolved whenever the time limits allow, something OPA-IS is now attempting to do.

These two cases add to the training and policy concerns I expressed in my last report about reaching into cars or using force against a driver while in the driver's seat with the engine running, a concern that is shared by the Director, though we may disagree on the appropriate outcome of a particular case.

In a third case the officers again felt their actions were justified in the face of possible injuries in traffic; yet I thought they created far more hazardous conditions than they prevented. This situation escalated after the individual involved in a "Terry" stop had been explicitly told he was free to leave. He turned and ran, again raising the officers' suspicions. He ignored their command to stop. Other officers joined in a chase of the man across Aurora Avenue, without understanding what was going on. Pursuing officers drove the wrong way on Aurora, and then up onto the sidewalk, which chased the man back into the street. An officer decided to tase the man for public safety, but did so when the man was 15 feet away in the middle of Aurora, which was described as busy, dark and wet. The subject went down on his head without using his hands to break his fall, having been tased in the head. The struggle of five officers and the wounded suspect, including six additional tasings for a total of 35 seconds then occurred in the middle of the street. The man was hit in the head multiple times "to get his attention," despite the fact that someone was also holding his head against the concrete and he was visibly bleeding from head wounds. An officer's knee and body weight were holding his left shoulder down, another's knee was on his head to hold it against the pavement, and someone's knee was on his upper arm, while another officer was hitting him in the lower back and yet another was tasing him and the subject was "squirming." The subject remembers little of this, as he says he was passed out from the blows. All officers were exonerated.

Stepping back from the adrenalin and the lack of information most of these officers had, this was an extremely dangerous situation created by a few officers' choices. The choice to tase the man in the middle of the dark and wet street was dangerous to all the officers and all drivers and passengers traveling on Aurora, as well as to the subject.

The OPA Director concurred with the OPA-IS recommendation that the officers be exonerated in this case. In particular, she focused on the fact that the entire episode grew out of a miscommunication, which was unfortunate but should not result in discipline. After the individual involved in the stop was told by one officer he was free to leave, a second officer who did not hear that statement observed the individual with his hands in his pocket walk towards the first officer in what he thought was an aggressive manner. The second officer was confused as to what was happening and ordered the individual to stop, at which point he took off running. At the same time, another patrol car arrived on the scene and observed the chase begin and joined in. The OPA Director concluded that the evidence indicated that the individual ran back and forth across the arterial and it was, at least in part because of safety concerns for him, that he was initially tased. The Director concluded that the use of the taser and other force appeared within policy, though it was unfortunate because the escalation resulted from what appears to have been a misperception of the subject's intent before the chase began. She noted that the incident provides material for an excellent training opportunity, particularly as to the use of the taser with a fleeing suspect.

I was also very critical of the investigation by OPA IS in this case. The interviews were full of leading, conclusory questions. The interviewing sergeant kept suggesting justifications to the officer and answers to the civilian witness, supplying words like "flailing his arms" or "animated", despite the independent witness' description that the subject did "nothing aggressive" and seemed to be "cooperating" with the police in the early encounter. The investigating sergeant was correspondingly incredulous when interviewing the subject, including criticism that the man didn't file a complaint until seven months later. (The present system in fact encourages this, so that a complainant doesn't start the 180 day "clock" running until after his criminal case is closed.) I also criticized the recommended disposition for citing the cocaine found sometime later in the subject's jacket as justification for the officers' actions and for failing to address the force applied taking the subject to the pavement and when he was down.

My feedback is shared with staff, either immediately or through the Director. Furthermore, the Director and I have both met with staff to discuss interview techniques and other ways to improve the quality of OPA investigations. The Director is considering other approaches to staff training.

Investigative Stops

Other cases also raised the issue of what degree of restraint and ultimately what force is justifiable in the face of suspicious circumstances, or **the limits on *Terry* stops.**

Section 6.220 of the Department's Policies and Procedures addresses "Social Contacts, Terry Stops and Arrests. It instructs officers to introduce themselves, with rank and title, and the reason for the stop as early as possible. For a *Terry* stop, meaning temporary detention, there must be reasonable suspicion "that the person has committed, is committing, or is about to commit a crime." The officer may pat down the subject if he/she has an objectively reasonable, independent basis for believing the person to be armed.

In several cases handled by OPA IS recently, the extent of detention and investigation during a *Terry* stop was somewhat questionable.
I have excluded extensive discussion of one here at the Director's request, since she has not yet reviewed it or made a finding or recommendation. In short, a man rousted from sleep in his truck, parked at night in a business parking lot, ended up tased, handcuffed on the ground and charged with obstruction during a brief investigation into what he was doing there.

The **extent of justifiable temporary "reasonable suspicion" or *Terry* detentions** came up in other cases as well.

In one case, an off duty officer, reasonably concerned about reckless driving by a possibly inebriated individual, elected to follow the car and call in for marked patrol to respond. He followed the erratically driven car all the way to West Seattle, where it pulled over in a *cull de sac*. The three men had gotten out by the time the officer pulled over a hill and stopped. The officer decided to detain all three men and had them sit on the ground. After some complaining, all three sat down; but when a back-up patrol car arrived, one of them jumped up and ran in the direction of the officer. It turned out he had been run over as a child and this was a reflex reaction. The officer did a "head control take-down," pulling the man to the ground. A number of officers assisted putting the subject into handcuffs as he squirmed for 10-15 seconds.

This case was opened by departmental personnel in response to an article in the PI. All three participants were unavailable for interview, although the IIS sergeant even went to one court hearing in an attempt to gain cooperation and/or medical records. Because of the 180 day deadline, the case had to be closed before the reckless driving and obstruction cases were resolved.

The officer received a "supervisory intervention" disposition for his decision to take on the incident alone and the Director echoed my concern that he had no justification to detain all three subjects once they had exited the car. The Director recommended in her certification that the Department consider a training review with regards to "Terry" stop requirements.

Taser Cases

As in some of the cases discussed above, it is not unusual for these "reasonable suspicion" detentions to devolve into situations where an officer uses his/her taser. In one, a man was detained as a car burglary suspect. He refused to take his hands out of his pockets as ordered and was hostile and swearing. When the officers tried to escort him to the patrol car, the officers and the suspect tripped and fell to the ground together. The suspect was described as continuing to resist and was tased several times and taken into custody. A witness to the car prowl was brought to the incident and able to eliminate the man as the suspect observed in the car prowl.

The officers were exonerated in this case. The complainant fit the description of a car prowl suspect in the area, possibly armed. The Director noted that a citizen ride-along witness observed the incident and corroborated the officers' testimony that the complainant refused to cooperate, resisted verbal orders to comply and struggled with the officers.

Another involved suspicion of domestic violence, where officers faced the difficult decision of how to control an individual they said had a "wild crazed look in his eyes" and started yelling at them and trying to close his door. They insisted on entering his home to ascertain the well being of his mother and immediately ordered him taken to the ground. The suspicion of domestic violence was thin: they knew the reported combatants had left except for the subject, and based the domestic violence suspicion on the suspect saying he was just yelling at his mother. Nonetheless, the officers were legitimately concerned not to be ejected from the house. No further negotiation was attempted (like asking his mother to come to the door,) but

precipitate action instead, which resulted in a melee in the hall involving taser use and other force. There is no doubt that this subject was struggling significantly by the time the taser was applied. This case exemplifies the difficult choices facing officers who believe they have to check on the safety of someone within when an owner of the house refuses entry.

The Director concurred with the recommendation from OPA-IS that the officers be exonerated on the allegation related to use of force. The subject reportedly had been drinking heavily when he became violently out of control in his home. Officers responded at 2:00 a.m. to a reported fight disturbance, allegedly involving several males with an elderly female in the home. Although they knew these men had left, the complainant refused to let the officers in, bracing himself against the door. The Director did not agree that the evidence of domestic violence was "thin," and believed that the officers only resorted to use of force, including the taser, when the complainant himself actively resisted their efforts to determine whether everyone was safe on the premises.

I questioned the amount of force used in a case involving a disturbed and extraordinarily strong arrestee. Several officers used the term "excited delirium." He was seen urinating and masturbating in public. The police response was reported to OPA IS by a disinterested witness who felt the officers' response was "excessive compared to the youth's resistance." She described the youth as "resisting their hold, but appear[ing] to be non-aggressive in that he wasn't fighting." She watched the initial response by two officers, who "buckled" the subject's knees to take him to the pavement; then one officer held his legs to the ground while the other "held the youth from behind and then hit/punched the youth in the face/jaw while his head was against the pavement." Back up arrived after that, eventually eight officers. Some officers said the youth was stiff on the ground. Since his shorts were halfway down his thighs, it is unlikely he was reaching for a weapon underneath him. Nonetheless, he was tased for an "unknown number of five second interval" applications. While there is no question that the arrestee was eventually struggling with these officers, and not passively noncompliant, and even attempting to spit blood (the officer's justification for punching his jaw), it is certainly questionable whether this kind of take-down and all out struggle was necessary in face of a nonviolent offence by an obviously unarmed suspect. Would other control methods have been more effective in this case?

The officers in this matter were administratively exonerated, a finding in which the Director concurred. According to the Director, the subject had been witnessed urinating and masturbating by a number of witnesses. When the officers arrived, the complainant started to run from them. He was immediately grabbed and taken to the ground. He continued to resist arrest and kept repeating, "penis, juice." This witness was approximately 50-60 feet from the scene and reported she could not hear what was happening, and only observed a slice of the incident as she was at a stop-light. The Director believed that the incident would provide a good scenario for training purposes, in particular because the subject displayed what is termed "excited delirium," a condition which is often caused by use of controlled substances and which results in "superhuman strength" by the user. The Director did not believe that the use of force required to subdue this subject, including the involvement of many officers and ultimately the use of the taser, amounted to misconduct.

Cases Involving "Take-Downs"

The question of what force is reasonable and necessary under the circumstances arises in other cases where the officers forcibly take individuals to the ground, and then have trouble getting their hands out from under the body to cuff them.

In one case the officers were exonerated for force used in taking a youth to the ground during a felony traffic stop involving a stolen vehicle in which he was the passenger. The young man received a cut on his left cheek requiring several stitches. The subject said he was complying with the officer's orders, but was slow getting out of the car and onto the ground, confused by the yelling, display of guns, and so on. The officer pulled him onto the sharply graveled ground, head down into a large puddle. The subject said the officer stomped his face into the rocks. The compliantly detained driver claimed to see the officers kick his friend in the face and grind his head into the gravel, though this co-arrestee's viewpoint was questionable. Neither the subject nor the complainant (his mother) cooperated past the intake interview.

The officer stated that the subject just stared at first; then got out of the car slowly and onto his knees. The subject started to get up so he pushed him twice with his foot, then "took a knee on neck, knee on deck" position. The officer's partner also leaned on the prostrate youth and together they were

able to cuff him. Each of the officers weighed in excess of 250 pounds with their gear on.

The reviewing Captain, while concurring with the justification, questioned whether going to the ground should be taught as the primary control tactic. While I agree that "more control means more safety," I continue to question whether aggressive take-downs in fact lead to more control, since they seem frequently to capture hands under bodies and often call forth more resistance and fear in subjects. The Director noted that there was disagreement in the Use of Force review as between the Lieutenant, Captain and Acting Assistant Chief about what technique is taught to be used in these circumstances, and recommended a review of the training curriculum.

In a case originally classified as a PIR but upgraded by the Director to an SR, I also criticized the IIS Lieutenant and intake sergeant for contacting a witness to justify the officer's actions without more facts. The citizen called to express concern after witnessing a suspect thrown to the ground during a buy/bust in Steinbreuck Park.

In another case, the complainant alleged the officer used excessive force when he mistook her for a felony warrant suspect, threw her to the ground, and "smashed" the left side of her head against the pavement. The officer told the IIS that she in fact fell down, which was supported by his partner's testimony. Supervisory Intervention was deemed appropriate, because the primary officer had not included any mention of the woman's fall in his report.

Line Investigations

Most line investigations are coming back to OPA in a timely fashion. I did comment on one that was a year old, as did with the Director. In another, I would have suggested interview of witnesses from the Liquor Control Board to address discrepancies between the subject's and the officer's statements, but the incident had occurred six months before I saw the returned investigation.

I also requested that classification be reconsidered in several cases on their way out to the precincts for investigation. The Lieutenant and I agreed that a complaint involving a rude comment by a traffic officer should be

reclassified downward to a Supervisory Referral. One that involved greater discourtesy and alleged profanity was reclassified upward for investigation by OPA IS.

Another was also reclassified as an IIS. I expressed understanding at the frustration of the officers trying to get cooperation in a murder investigation, but doubted that taking the SWAT team along was going to increase the chances of a successful "knock and talk" with a witness.

Supervisory Referrals and Preliminary Investigations

Neither a PIR nor SR goes on an employee's record. A PIR documents the complaint, and often involves significant service assistance to the complainant by the OPA IS intake sergeant. It goes to the chain of command for information, and sometimes requests minimal follow-up to clarify something with the complainant and/or the employee.

An SR requires supervisory attention, counseling and, follow-up, as well as reporting back to OPA. (It should not be confused, however, with "Supervisory Intervention" which is a disposition, usually after a full investigation and possibly a disciplinary meeting.) An SR classification reflects a minor misconduct infraction, and the conclusion that the issue is best resolved by the employee's supervisor. The SR formalizes the complaint and the packet gives explicit instructions to the supervisor and requires documentation. OPA keeps the file, once returned and closed, for three years, but it does not go on the employee's record.

I commented on about 16 SR's and PIR's. As I have in other cases, I expressed concern that potential constitutional violations should be articulated as violations of policy. The Director and I agreed that one SR should be upgraded to a full investigation, which revealed legal justification for a warrant-less, safety check entry into a home.

Allegations of constitutional violations are often not easily separated from underlying criminal cases and therefore often present difficult issues for OPA IS investigation. I recommended that OPA IS investigate a claimed illegal arrest for false reporting domestic violence, classified as a PIR, and upgraded to an SR by the Director. The Lieutenant felt this was not a violation of policy, as the supervisor had signed off on the arrest. He felt the issue should be raised in court, not through the OPA process, and that the

City Attorney could "refer any complaint if the complainant's allegations ha[d] any merit." I did not think that was a practical solution, but I recognize the problems of OPA investigating probable cause for arrest. This case has not yet been reviewed by the Director.

While OPA does not always follow my suggestions to upgrade complaints, they usually deal with the issues I raise. For instance, I was concerned about lack of medical treatment at the precinct in one case, and the unit followed up on that issue. The OPA-IS Lieutenant and Director felt, however, that the rude reception of a juvenile's parents should be dealt with at the precinct level, as an SR. The Sergeant who followed up with the parents was able to determine and address their real concerns, which had little to do with the initial complaint. He also talked to the officer involved and counseled him on alternate approaches to handling such situations. In other cases, the Director shared my opinion, upgrading one SR to an LI before she received my email suggesting it.

In some cases my major comments were about the underlying conduct rather than the classification or investigation. Two PIR's involved employees who failed to appear on subpoena to court. Department Policies and Procedures Section 1.245 provides notification to the Precinct Commander and referral of the inquiry plus recommendations up the chain of command. It is not therefore deemed a separate violation of policy but rather a management issue. In practice, this meant that two complainants' allegations of misconduct were never tested, as the cases against them were dismissed when they came to court. Significantly, one arrestee spent 57 days in jail awaiting his trial.

Though failure to appear is handled through other internal review systems, the Director reports that repeated instances of failure to appear could be investigated by OPA.

I was seriously concerned about an underlying issue of service as well as the proficiency of the 911 operator in one PIR case because it took officers over an hour to respond to a violent home invasion and violation of protective order. If the operator had known that shots had been fired, it would have moved the call's priority up.

Most of my issues with SR's and PIR's were handled through the follow-up directed at the precinct level.

Issues about Investigations and Standard of Proof

As noted above, I criticized some OPA IS interviews for assumptions, leading questions, and failure to ask critical questions in specific cases. For instance, one investigator asked, with no follow-up, "It's my understanding, and I'm not making judgments, that you and your friends were drinking that evening?" I reminded sergeants in a staff meeting of the importance of "who, what, where, when" questions in their interviews, with appropriate follow-up. In several instances, I thought the sergeant did not ask a question or two that went to the heart of the complainant's allegations.

I suggested that variations on the normal order of interviews might be appropriate in particular circumstances. For instance, if a subject wished his/her interview to be postponed until after the employees' interviews, I suggested this be an option offered. In one case, an attorney declined cooperation because he wished the officers to be on record about the force they used before he revealed the extent of his client's injuries.

In another case, the delay in interviewing the employee until after officer witnesses were interviewed added a different perspective on the events.

I suggested when a case comes in where obstruction charges have been dismissed, that the intake sergeant should prioritize certain actions, contacting the prosecutor and obtaining any witness notes and the reason for the dismissal. In one case, those notes had been destroyed by the time OPA IS requested them.

In a couple of cases I had issues with the investigating sergeants' summaries, particularly the characterizations of the complainants' allegations, and the focus of the questioning. For instance, I suggested the focus in one case should have been on the force used after the officer had been bitten and had gotten the subject into handcuffs. I did not argue for a different outcome, but for a different focus for the analysis and summary.

Finally, I took issue with application of the preponderance of proof issue in two very well investigated cases.

CONCLUSION

I want to conclude by saying that the issues raised about these investigations are the exceptions. By and large the interviews are objective and open-minded. As the tenure of OPA IIS investigators has been lengthened, it means there is an added opportunity for training and honing of interviewing skills.

There has been a very productive give and take in all my discussions with the Director and the staff of the OPA IS, and the cooperation and support from all members of the OPA is very much appreciated.

There have been a number of significant cases in this six-month period that I have not commented on in this Report. I have tried to focus on those that raised recurring issues about underlying conduct and policy as well as those where I have been critical of investigations.

Report respectfully submitted April 30, 2008

/s/

Katrina C. Pflaumer
Civilian Auditor