




## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 1, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0031

### Allegations of Misconduct & Director's Findings

**Named Employee #1**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |

**Named Employee #2**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |

**Named Employee #3**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |

**Named Employee #4**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |

**Named Employee #5**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |



**Named Employee #6**

| Allegation(s): |   | Director's Findings       |
|----------------|---|---------------------------|
| # 1            | 5.001 - Standards and Duties 14. Retaliation is prohibited                        | Not Sustained - Unfounded |
| # 2            | 5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded |
| # 3            | 5.001 - Standards and Duties 6. Employees May Use Discretion                      | Not Sustained - Unfounded |

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

**EXECUTIVE SUMMARY:**

It was alleged that Named Employees #1, #2, #3, #4, #5, and #6 (NE#1-6) retaliated, engaged in biased policing based on political ideology, and used abused discretion by unlawfully arresting, or causing the arrest of, Community Members #1, #2, #3, and #4 (CM#1-4) for writing political messages on a precinct wall.

**ADMINISTRATIVE NOTE:**

The Seattle Office of Inspector General (OIG) reviewed OPA’s investigation and certified it as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

During its investigation, OPA reviewed the related civil suit, computer-aided dispatch (CAD) call report, incident report, body-worn videos (BWVs), and photographs. OPA also interviewed NE#1-6 and Witness Employee #1 (WE#1). CM#1-4’s attorneys declined OPA’s request to interview CM#1-4.

*A. Court Record*

This OPA complaint arose from CM#1-4’s lawsuit against the City of Seattle (hereafter, “the City”) and NE#1-6. CM#1-4’s civil complaint argued SMC 12A.08.020 (property destruction)<sup>1</sup> is unconstitutional since the ordinance “sweeps within its criminal ambit an inordinate degree of entirely innocent and constitutionally protected expressive activities, affording police an astonishing degree of discretion regarding when, and against whom, to enforce it.” The complaint alleged NE#1-6 retaliated against CM#1-4 for writing political messages criticizing police officers written in chalk or charcoal but tolerated politically neutral or pro-government political messages written in chalk or charcoal. The complaint said CM#1 wrote “peaceful protest” in charcoal on a concrete wall and was arrested by officers. The complaint also said CM#2-4 wrote similar messages in charcoal or chalk in response to CM#1’s arrest, and they were arrested.

<sup>1</sup> SMC 12A.08.020 was amended in 2023. When the lawsuit was filed, SMC 12A.08.020 read, in pertinent part, as follows: “A person is guilty of property destruction if he or she: 1. Intentionally damages the property of another; or 2. Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person.”



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*B. Computer-Aided Dispatch (CAD) Call Report*

On January 1, 2021, at 10:33 p.m., CAD noted, “[northwest] corner barrier wall entrance to the sally port entrance.” At 10:34 p.m., CAD noted two subjects “tagging the barrier wall” and provided the subjects’ descriptions. At 10:54 p.m., CAD noted, “One more chalking by the ramp,” and provided that subject’s description.

*C. Incident Reports*

NE#2, WE#1, and NE#3 each wrote officer statements.

NE#2 wrote WE#1—the East Precinct clerk—reported that two subjects were “tagging” the northwest corner of the precinct. NE#2 wrote officers arrested the subjects—CM#1 and CM#2. NE#2 wrote that after their arrest, he reviewed a security video showing CM#1 and CM#2 writing on the precinct’s wall with charcoal. NE#2 wrote that officers then saw, on security video, CM#3 and CM#4 writing on a wall. NE#2 wrote that officers arrested CM#3 and CM#4. NE#2 wrote CM#1-4 were transported to King County Jail and booked for violating SMC 12A.08.020.

WE#1 wrote that he monitored multiple security cameras around the precinct. WE#1 wrote that he saw four individuals—CM#1-4— “damaging” the precinct wall. WE#1 stated he had “unobstructed and continuous views of all four individuals” from when he first saw them “damaging” the wall until officers arrested them. WE#1 wrote that he directed officers to CM#1-4 and verified their arrests. WE#1 also wrote that he photographed the wall.

NE#3 wrote that he arrived at the East Precinct after CM#1’s arrest. NE#3 wrote that a community member live-streamed the encounter on Instagram. NE#3 wrote that he watched the live stream and saw CM#2 “defacing” the precinct’s wall, prompting him to arrest CM#2. NE#3 wrote that he resumed watching the live stream and saw CM#3 “defacing” the wall, prompting him to arrest CM#3. NE#3 wrote that he also watched a security video showing CM#2 and CM#3 defacing the wall.

*D. Body-Worn Videos (BWVs)*

BWV captured CM#1-4’s arrests.

NE#2 was inside the East Precinct, then exited with NE#1 at the sally port entrance, where a small group gathered. NE#1 and NE#2 approached CM#1 and CM#2, and NE#1 told them they were “not free to go.” NE#1 handcuffed CM#1 and escorted CM#1 into the precinct. NE#1 told CM#1 he was detained for property destruction.

NE#3 was in a patrol car with NE#5. NE#3 drove to the East Precinct’s sally port entrance, then NE#3 and NE#5 exited the car. NE#3 approached and handcuffed CM#2 and asked NE#4 to escort CM#2 into the precinct.

NE#3 was in a patrol car with NE#5. NE#3 drove to the East Precinct’s sally port entrance, then NE#3 and NE#5 exited the car. NE#3 approached and handcuffed CM#3. Another officer escorted CM#3 into the precinct.

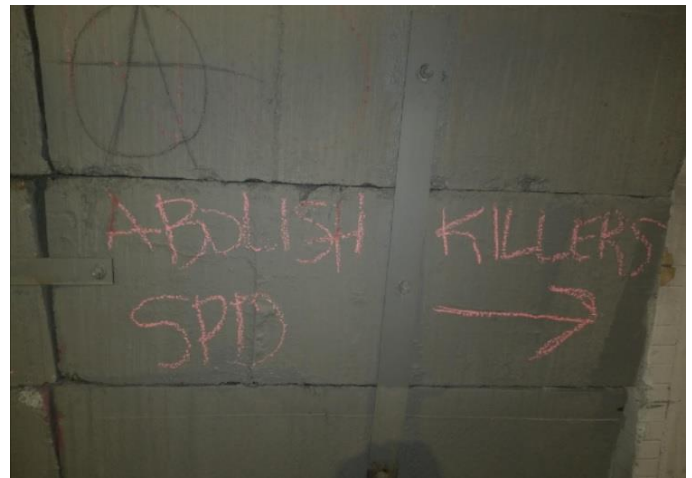
NE#6 was inside the East Precinct, then exited with NE#4 and NE#5 at the sally port entrance, where a small group gathered. NE#4-6 approached and handcuffed CM#4. NE#4 told CM#4 he was under arrest for property destruction “Just like everybody else was tonight.” CM#4 asked, “Did anything get destroyed? Did anything get destructed or



destroyed per se? Did you see any destruction?" NE#6 issued CM#4 *Miranda* warnings, then escorted CM#4 into the precinct.

*E. Photographs*

WE#1 took the following photographs:





*F. OPA Interviews*

*1. Witness Employee #1 (WE#1)*

OPA interviewed WE#1, whose account was consistent with his written statement. WE#1 said on January 1, 2021, he worked as a clerk at the East Precinct, responsible for monitoring precinct security cameras. WE#1 said the precinct was “under attack like this almost on a daily basis” for a period, so if he saw people “damaging” the precinct, he routinely announced it over the radio. WE#1 said people often wrote graffiti, damaged cameras with lasers or paint, or threw trash and feces over the wall. WE#1 said his job was to secure the precinct and minimize damage.

WE#1 said he was unsure who determined which community members should be arrested. WE#1 said he simply narrated and provided physical descriptions of those writing on the wall. WE#1 said the content of the writing did not matter. WE#1 said the arrests were based on property damage—which he described as a crime—and the cleanup efforts that would ensue rather than the community members’ positions.

*2. Named Employee #1 (NE#1)*

OPA interviewed NE#1, whose account was consistent with OPA’s BWV review. Before arresting CM#1, NE#1 said he did not see what CM#1 wrote but said the content would not have mattered. NE#1 said CM#1 admitted to using charcoal. NE#1 said CM#1 was arrested for property destruction in violation of SMC 12A.08.020 and booked into King County Jail. NE#1 said he had previously arrested people for drawing on public property, and they usually went to jail. NE#1 did not believe writing or drawing on a public wall was a constitutionally protected right because the City had a right to defend and maintain its property.

NE#1 said there was no bias, prejudice, or discriminatory intent that influenced his decision to arrest CM#1 and said the arrest was based solely on enforcing the law. NE#1 believed CM#1’s arrest was reasonable and consistent with the department’s mission, stating that unchecked graffiti led to more graffiti, graffiti remained a public nuisance that the City devoted millions of taxpayer dollars to combat, and graffiti was a symbol of disorder that eroded public confidence. NE#1 said using chalk, charcoal, or another washable instrument was still graffiti because it left a mark that someone had to clean.



*3. Named Employee #2 (NE#2)*

OPA interviewed NE#2, whose account was consistent with his officer statement and BWV. Additionally, NE#2 recalled seeing, via precinct camera, someone writing with black chalk on the wall but did not recall what it said. NE#2 did not believe NE#1 retaliated based on anything that was written because, according to NE#2, NE#1 arrested multiple people for graffiti. NE#2 believed there was no bias, prejudice, or discriminatory intent that influenced NE#1's decision to arrest CM#1 and believed the arrest was based solely on CM#1's writing on public property.

NE#2 said the content of the writing did not affect his response. NE#2 said when he previously arrested people for graffiti, he booked them into King County Jail. NE#2 believed CM#1's arrest was reasonable, citing property destruction and cleanup. NE#2 also believed CM#1's arrest was consistent with the department's mission and proportional to the severity of the crime because it prevented further property damage. NE#2 said past instances where officers chose not to arrest resulted in escalated behavior.

*4. Named Employee #3 (NE#3)*

OPA interviewed NE#3, whose account was consistent with his incident report and BWV. NE#3 said graffitiing the precinct's wall was a property destruction crime, so decided to arrest CM#2 and CM#3. NE#3 said he could not recall what CM#2 and CM#3 wrote but said the content would not have mattered. NE#3 also said cleaning graffiti had an economic impact requiring time and manpower.

NE#3 said there was no bias, prejudice, or discriminatory intent that influenced his decision to arrest CM#2 and CM#3. NE#3 also said their political views did not influence his decision. NE#3 said that before this incident, he arrested people for graffiti using spray paint, and they would go to jail. NE#3 said CM#2's and CM#3's arrests were appropriate because an arrest should be based on "neutral judgment" and the law, not on political views. NE#3 believed CM#2's and CM#3's arrests were consistent with the department's mission because he was responsible for preventing crime and enforcing the law. NE#3 also believed the discretion to arrest CM#2 and CM#3 was proportional to the severity of the crime because they were released the next day.

*5. Named Employee #4 (NE#4)*

OPA interviewed NE#4, whose account was consistent with BWV. NE#4 said he did not observe any officer retaliating against the community members. NE#4 did not recall what the community members wrote on the wall but said the content would not have affected his decision-making because they were damaging public property, which was a crime. NE#4 said there was no bias, prejudice, or discriminatory intent that influenced the arrests. NE#4 also said before this incident, he arrested people for graffiti, and they were jailed.

NE#4 believed the arrests were reasonable and consistent with the Department's mission, stating that officers had probable cause for the arrests, cleaning graffiti required time and money, and officers had a duty to protect property. NE#4 also believed the discretion to arrest the community members was proportional to the severity of the crime because officers did not use force against them.



6. *Named Employee #5 (NE#5)*

OPA interviewed NE#5, whose account was consistent with BWV. NE#5 did not recall what the community members wrote on the wall or what they wrote with but said the content would not have affected her participation in the arrests because they damaged public property. NE#5 said there was no bias, prejudice, or discriminatory intent that influenced her participation in the arrests. NE#5 also said their political views did not influence her participation. NE#5 said before this incident, she arrested people for graffiti using spray paint, regular paint, and a Sharpie. NE#5 believed the arrests were reasonable and consistent with the department's mission since property destruction was a crime. NE#5 also believed the medium used to write graffiti did not matter because cleaning graffiti required manpower and money.

7. *Named Employee #6 (NE#6)*

OPA interviewed NE#6, whose account was consistent with BWV. NE#6 did not recall what CM#4 wrote on the wall but said the content would not have affected his participation in CM#4's arrest because CM#4 damaged public property. NE#6 said there was no bias, prejudice, or discriminatory intent that influenced his participation in CM#4's arrest. NE#6 also said CM#4's political views did not influence his participation. NE#6 said before this incident, he arrested people for graffiti using spray paint, chalk, and charcoal.

NE#6 believed the arrests were reasonable and consistent with the department's mission, stating that SMC 12A.08.020 made no distinction between writing graffiti using a permanent or nonpermanent medium and that officers had a duty to arrest community members for crimes committed. NE#6 also believed the decision to arrest the community members was proportional to the severity of the crime, citing prior experiences in which failing to arrest led to bigger and more violent crowds. Therefore, NE#6 believed removing the community members responsible for violating SMC 12A.08.020 was necessary to prevent greater disturbances.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

It was alleged that NE#1 engaged in retaliation.

SPD policy precludes its employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are specifically prohibited from retaliating against a person who engages in activities, including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy," or "who otherwise engages in lawful behavior." *Id.* Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. *Id.*

Here, OPA cannot conclude that NE#1 retaliated against CM#1. First, NE#1 had a legal basis to arrest CM#1 for property destruction, which SMC 12A.08.020 defined—at the time—as writing, painting, or drawing any inscription, figure, or mark of any type on any public or private building or other structure. The constitutionality of SMC 12A.08.020 is currently being litigated in federal court. NE#1's legal duty to arrest, however, was tethered to a law that was in effect at the time of the arrest, regardless of that law's fate. Second, NE#1 denied seeing what CM#1 wrote on the precinct's wall prior to CM#1's arrest, undermining the allegation that NE#1 retaliated based on the political message



inscribed on the wall. Third, CM#1's arrest was consistent with prior arrests NE#1 said he made for the same crime. In other words, there is insufficient evidence that the community members were treated differently from others who commit the same crime.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

It was alleged that NE#1 engaged in biased policing based on political ideology.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the political ideology of the subject. *See id.*

Here, OPA cannot conclude that NE#1 engaged in biased policing against CM#1 based on CM#1's political ideology. First, NE#1 appears to have treated similarly situated community members the same way by arresting them and booking them into jail. Second, NE#1 said he did not see what CM#1 wrote on the precinct's wall prior to CM#1's arrest. Third, NE#1 said the arrest was based solely on enforcing SMC 12A.08.020, not on bias, prejudice, or discriminatory intent. NE#1 said CM#1's political views did not influence NE#1's decision to arrest CM#1.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

It was alleged that NE#1 used improper discretion.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” SPD Policy 5.001-POL-6.

Here, OPA cannot conclude that NE#1 used improper discretion to arrest CM#1. NE#1 had probable cause to arrest CM#1 for property destruction. NE#1 said CM#1's arrest was based solely on violating SMC 12A.08.020, which he has done with other community members in the past. OPA finds NE#1 used discretion in a reasonable manner consistent with the mission of the Department and duties of his assignment.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.





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Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the reasons specified in Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the reasons specified in Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the reasons specified in Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the reasons specified in Named Employee #1 – Allegation #1—as applied to CM#2 and CM#3—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the reasons specified in Named Employee #1 – Allegation #2—as applied to CM#2 and CM#3—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***



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For the reasons specified in Named Employee #1 – Allegation #3—as applied to CM#2 and CM#3—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #4 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the reasons specified in Named Employee #1 – Allegation #1—as applied to CM#2 and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #4 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the reasons specified in Named Employee #1 – Allegation #2—as applied to CM#2 and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #4 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the reasons specified in Named Employee #1 – Allegation #3—as applied to CM#2 and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #5 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the reasons specified in Named Employee #1 – Allegation #1—as applied to CM#2, CM#3, and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #5 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the reasons specified in Named Employee #1 – Allegation #2—as applied to CM#2, CM#3, and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**



**Named Employee #5 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the reasons specified in Named Employee #1 – Allegation #3—as applied to CM#2, CM#3, and CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #6 - Allegation #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

For the reasons specified in Named Employee #1 – Allegation #1—as applied to CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #6 - Allegation #2**

***5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the reasons specified in Named Employee #1 – Allegation #2—as applied to CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #6 - Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the reasons specified in Named Employee #1 – Allegation #3—as applied to CM#4—OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**