

SEATTLE  
POLICE  
MONITOR

# Fourth Systemic Assessment: Office of Professional Accountability (OPA)

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## Executive Summary

This report summarizes the Monitoring Team's systemic assessment of investigations conducted by the civilian-led Office of Professional Accountability ("OPA") of the Seattle Police Department ("SPD"), which "conducts the Department's complaint-driven administrative investigations" of officer misconduct.<sup>1</sup>

This assessment was focused on evaluating one aspect of OPA's work – intake of complaints and investigations.<sup>2</sup> As such, it does not evaluate other aspects of OPA's work, such as how OPA handles cases referred for follow-up action by supervisors ("Supervisor Action"), mediation, management action, or training Referrals.

Additionally, because the investigation explores the quality of investigations, reviewers did not assess the accessibility of the complaint process leading up to investigations; the way in which investigations are certified; the timeliness, fairness, certainty and transparency of the disciplinary and/or appeals processes after the investigations have concluded; or the limitations on OPA's authority to supervise investigations where there is possible criminal conduct.

Further, questions such as how investigations are integrated into hiring, training, EEO, assignment and promotional processes; or generally how effective the system is in ensuring follow through on recommendations made by civilian oversight of investigations are beyond the scope of the assessment.

### The Purpose of this Assessment

The Department of Justice's 2011 investigation of SPD found that the investigations OPA itself conducted generally were thorough, well-organized, well documented, and thoughtful.<sup>3</sup>

The Consent Decree noted the same and stated that "SPD should continue to strive to ensure that all complaints regarding officer conduct are fully and fairly dealt with; that all investigative findings are supported by the evidence and documented in writing; and that officers and complainants receive a thorough, fair, and expeditious resolution of complaints."<sup>4</sup>

The Consent Decree sought to ensure that OPA's good investigative practices would continue in two targeted ways: (1) by requiring SPD to revise two discrete policies, namely, on when and how employees must report misconduct and on what retaliation is; and (2) by requiring SPD to complete its Training and Operations

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<sup>1</sup> Fourth Semiannual Report at 47.

<sup>2</sup> We note that many of the Monitoring Team's findings throughout this assessment reflect issues that have also been identified by the OPA Auditor in her periodic reviews.

<sup>3</sup> United States Department of Justice, Civil Rights Division and U.S. Atty's Office, W.D. Wash., Investigation of Seattle Police Department (Dec. 16, 2011) [hereinafter "2011 Findings Letter"] at 5 & App. D at 3, available at [http://static.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/5436d96ee4b087e24b9d38a1/1412880750546/s\\_pd\\_findletter\\_12-16-11.pdf](http://static.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/5436d96ee4b087e24b9d38a1/1412880750546/s_pd_findletter_12-16-11.pdf) ("Many community members we spoke to also emphasized that they believe SPD officers should be doing much more to de-escalate confrontations"). However, because of deficiencies separate and apart from the investigations OPA itself conducted, DOJ found that OPA did "not provide the intended backstop for the failures of the direct supervisory review process." *Id.* at 5.

<sup>4</sup> Dkt. 3-1 ¶ 164 (emphasis added). See also *id.* ¶ 58 ("'Shall' or 'will' means that the provision imposes a mandatory duty; 'should' does not indicate a mandatory duty," although "should" is also used in the Decree to describe imperatives that relate to requirements in the Decree).

Manual (“OPA Manual”), which would “formalize OPA’s procedures, best practices, and training requirements.”<sup>5</sup>

Through the latter, SPD would institutionalize and build off the good practices already established as a result of years of work on OPA by SPD and by various community leaders and members. Through the former, SPD would address two important and lingering issues within its control: internal reporting of misconduct, which were “rare to non-existent,”<sup>6</sup> and concerns about retaliation by officers on complainants. An examination of the “structure” of the external oversight system itself and its perceptions in the community were to be governed by the accompanying Memorandum of Understanding and not the Consent Decree.<sup>7</sup>

In short, the City’s requirements in this area under the Consent Decree were to complete those two policies and the OPA Manual, both of which in fact were approved by the Court in July 2014.<sup>8</sup> Revisions to these policies and to the OPA Manual were submitted to the Court on January 14, 2016.

In contrast to nearly all other assessments (*compare* the FRB and Public Confidence assessments), the purpose of this assessment is not to assess compliance with specific requirements under the Consent Decree, nor to declare that the SPD is in initial or full and effective compliance with the Decree.

The purpose of this assessment, rather, is to provide the Parties, the Court and the Monitoring Team itself vital information to complete two important tasks: (a) to revise the OPA Manual with evidence-based data, informed by real-world experience, actual SPD trends, and objective facts observed across cases by neutral reviewers, not hypotheticals or unsubstantiated claims;<sup>9</sup> and (b) to advise the Court, armed with such data, about how to “create a better framework of independent review of the various policies, organizations and systems that will monitor the performance of the Seattle Police Department.”<sup>10</sup>

As to the former, the proposed revisions to the OPA Manual were submitted due on January 14, 2016.<sup>11</sup> As to the latter, the Monitor has indicated that, following this and other assessments, he will “convene the Parties and stakeholders to discuss these assessments” and, no later than January 20, 2015, “will make recommendations to the Court about a process going forward for Parties and stakeholders to address the issues and arguments outlined in the stakeholder submissions and the Monitoring Team’s assessments regarding elements of the accountability system.”<sup>12</sup>

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<sup>5</sup> *Id.* ¶¶ 165–67.

<sup>6</sup> 2011 Findings Letter at App. D at 2. These issues were also identified and addressed by the OPA Auditor in various reports.

<sup>7</sup> MOU ¶15, *available at* [http://www.justice.gov/crt/about/spl/documents/spd\\_mou\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_mou_7-27-12.pdf).

<sup>8</sup> Dkt. No. 161. It is noteworthy that, according to the Monitor, the Community Police Commission (“CPC”), including key sub-groups of commissioners, “actively and constructively provided important recommendations to the policies and OPA Manual.” *Id.* at 2.

<sup>9</sup> Dkt. No. 232 at 2; *see also* Dkt. No. 204 at 2 (updates to the UOF policies).

<sup>10</sup> Dkt. 228.

<sup>11</sup> Dkt. No. 236.

<sup>12</sup> Dkt. 248 at 2.

## Summary of Findings

With that as prologue, we have divided our review into the three key areas of most administrative investigations: (1) the strength of the design of the process and protocols; (2) the strength of the adjudication/review phase; and (3) the strength of the investigations themselves.<sup>13</sup>

As to the first, the design of SPD's complaint investigation process is exceptionally strong and very well structured. The process itself requires extensive documentation and redundancy from intake to follow-up to case summary to case completion, some of which have clear, required timelines. The investigative components were seemingly designed as an integrated system to produce a product that is thorough, accurate and conclusive, all by following a series of standard and reasonable steps. Internal and external transparency is now built into the structure by requiring a series of email notifications at various intervals, and opening and closing correspondences to complainants, officers, chain of command and the police union, thereby keeping everyone in the proverbial loop. It is possible, however, for contacts to be documented better and for communications to be even clearer.

Another important advance from DOJ's investigation in 2011, which found that OPA's then classification and findings systems were so complex that they damaged OPA's credibility and undermined public confidence in OPA,"<sup>14</sup> is the now streamlined findings and classifications system.

As to the second (the strength of the adjudication/review component), we find that the "back-end" review phase is among the strongest we have seen. The Director's Certification Memo (DCM) routinely closely examined all evidence and testimony for every single allegation in the complaint investigation, listing SPD policies and procedures as review standards directly in the adjudication document.<sup>15</sup> The focal point of the DCM is to rationally weigh the strength of the evidence, veracity of testimony and reasonableness of decisions made and actions taken. The process further involves the OPA Auditor review function, in which the Auditor is charged with examining the consistency, quality, content, completeness and accuracy of each investigation. SPD's review process should lend greater credibility to the entire investigative process.

This too is an important advance from DOJ's investigation in 2011, which found that OPA's overuse and misuse of the now-defunct finding "Supervisory Intervention," improperly disposed of allegations as serious as excessive use of force and discriminatory policing simply to avoid the "stigma" of a formal finding.<sup>16</sup>

As to the third (the strength of the investigations themselves), we find that, although the quality of the great majority of OPA's investigations are generally satisfactory or better<sup>17</sup>, OPA should make certain targeted

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<sup>13</sup> As previously indicated, this assessment is solely concerned with an analysis of OPA investigations and their effectiveness. It does not evaluate other possible performance measurements – such as public, complainant and employee satisfaction, the deterrent or enhancing effect on police conduct, whether there has been a decrease in litigation or litigation costs, or the de-certification of officers.

<sup>14</sup> 2011 Findings Letter at 5. This is not to say that the community's confidence in OPA (let alone the "disciplinary" systems) has materially changed, but that the cause of that lack of confidence, if it exists, should not be due to the transparency and simplicity of its investigated system.

<sup>15</sup> See Judge Anne Levinson, "Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: December, 2010 – May, 2011" (June 21, 2011) at 16, <http://www.seattle.gov/Documents/Departments/OPA/Auditor/AuditorReportDec10May11.pdf>.

<sup>16</sup> 2011 Findings Letter at 5.

<sup>17</sup> About 44 percent of cases ranged from above-average to superior because they were thorough, well-documented, and complete. Another 42 percent of cases were adequate – meaning that some aspects could be improved but that the

changes to its operations, and formalize the same in a revised OPA Manual, before it can be considered in practice, and not merely existing on paper, as the “backstop” to the failures of any other part of the accountability system, including the direct supervisory review process.<sup>18</sup>

The source of the weaknesses varied, but can be grouped into three major areas: (1) the quality and consistency of interviews; (2) the timeliness of the interviews; and (3) those investigations that raise potential criminal or terminable offenses (such as false statements).

First, the biggest “wild card” in every investigative system is the appropriateness, strength and thoroughness of the interviews. It was very clear that OPA investigators derived their questions from a structured format, which guided the questioning of the interviewees and which can easily (and should) be audited for accuracy simply by reviewing the transcripts. There were also case follow-up forms and case summaries to ensure consistency, both within the case itself and from case to case.

Nonetheless, the Monitoring Team identified deficiencies related to interviews of involved officers, witness officers, and civilian witnesses. In officer interviews, Monitoring Team reviewers sometimes observed leading, biased, or otherwise inappropriate questioning.<sup>19</sup> The Monitoring Team was troubled by the obligation of OPA, when requested, to allow more senior supervisors and members of the command staff to send answers to written questionnaires rather than sitting for in-person interviews. While the collective bargaining agreement with the Seattle Police Management Association – the union that represents lieutenants and captains – makes such a protocol mandatory, the OPA Auditor and OPA Director have previously identified this practice as problematic, and the Monitoring Team agrees.

It is the opinion of the Monitoring Team that most of these concerns could be ameliorated by the presence of additional civilian investigators in interviews, particularly in interviews of more senior supervisors and members of the command staff. The deference (or at least the perception of deference) to SPD witnesses and skepticism towards civilian witnesses may be mitigated by the presence and active participation of a civilian investigator, particularly at key moments such as a witness interview.<sup>20</sup> Indeed, the OPA Director emphasized this same point in his October 16, 2015 Memorandum to the Court regarding SPD Accountability Systems, observing that “the current situation of an all-commissioned intake and investigations staff is a serious challenge to OPA’s actual and perceived independence.”<sup>21</sup>

The second area of concern relates to the timeliness of OPA timeliness. After 180 days from the initiation of a complaint investigation, any findings cannot form the basis of discipline. In a full one-fourth of OPA cases, the unit did not meet the well-known, 180-day deadline. Accordingly, in these cases, officers would not serve discipline even if the Chief determined that they should.

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identified flaws did not materially impact the quality of the overall investigation and the ability of the investigatory file to provide sufficient information to fairly and objectively evaluate the incident. The remainder, 14 percent, were deemed inadequate – meaning that the investigation did not establish sufficient information to support an evidence-based evaluation of the incident because of investigative deficiencies, material omissions, or other issues.

<sup>18</sup> 2011 Findings Letter at 24.

<sup>19</sup> See also Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: December, 2010 – May, 2011” (June 21, 2011) at 15, <http://www.seattle.gov/Documents/Departments/OPA/Auditor/AuditorReportDec10May11.pdf>.

<sup>20</sup> See also Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: January – June, 2014” (August 12, 2014) at 6, [http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA\\_AuditorSemi-AnnualReport\\_January-June2014.pdf](http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA_AuditorSemi-AnnualReport_January-June2014.pdf).

<sup>21</sup> Dkt. 239.

The Monitoring Team suspects that, in some cases, OPA's failure to meet the 180-day deadline can be attributed to limitations on resources, thus resulting in a determination made by the agency to de-prioritize cases in which a sustained finding is unlikely based on the complaint and initial investigation. At the same time, however, SPD's commitment to ensuring the strength and integrity of OPA, and SPD management's support, respect, and deference to OPA through additional staffing, bears important mention. As discussed above, and throughout this assessment, OPA operates independently of SPD. SPD management is responsible for providing personnel who, although they remain sworn personnel, report exclusively to OPA management and not the Chief. To that end, the Monitoring Team notes approvingly that Chief O'Toole has honored every personnel request from the Director, as well as created accommodations and incentives to allow the Director to recruit the most capable personnel. Further, despite cutting the overtime budgets of all other SPD units, SPD left the OPA overtime budget untouched so as to support OPA in meeting its deadlines. Thus, while the Monitoring Team believes that additional resources, such as civilian investigators or administrators, may ameliorate this concern over the timeliness of certain investigations, the Monitor expressly acknowledges that any shortages that may exist in current staffing levels do not appear to reflect any reluctance on the part of SPD to further strengthen OPA and its operations.<sup>22</sup>

The Monitoring Team recognizes that, in some cases, OPA's failure to meet the 180-day deadline can be attributed to limitations on resources, thus resulting in a determination made by the agency to de-prioritize cases in which a sustained finding is unlikely based on the complaint and initial investigation. As indicated above, adding additional resources, such as civilian investigators or administrators, could ameliorate this concern.

Third, some investigations involved or raised potential criminal allegations of sworn and civilian personnel. In those instances, OPA addressed less than it could and should have on issues that came to light during the context of the criminal investigation. For instance, it did very little with an officer who admittedly provided false and misleading statements, which is a terminable offense. The issue was either never addressed or framed with insufficient flexibility to sweep it into the investigation. Similarly, in another case, OPA opted not to address an employee's involvement in a domestic violence incident because the prosecutor chose not to file charges. In another investigation, an SPD employee faced potential criminal charges, which the prosecutor agreed to defer if the employee satisfied its other requirements. Thus, it appears that OPA should be more comfortable to reach its own, independent conclusions about officer performance – regardless of whether a criminal investigation related to the same underlying facts is also conducted.

Again, there is no question that much of the concern addressed in this report could be ameliorated by additional staffing in OPA, particularly in the form of civilian investigators or administrators.<sup>23</sup> It should not go unremarked that OPA investigators carry significantly heavier caseloads than neighboring agencies, in part due to limited resources, and in part because, under current policy, more minor policy violations that in many

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<sup>22</sup> It is also worth remarking that OPA investigators carry significantly heavier caseloads than neighboring agencies, in part due to limited resources, but likely also because, under current policy, more minor policy violations that in many agencies would be handled by first line supervisors are referred instead to OPA. This latter issue is one that should be addressed through upcoming revisions to SPD Manual Policies 5.002 and 5.003, which will place more responsibility on supervisors to address more minor policy violations, thus leaving OPA with greater ability to focus its limited resources on potentially more serious matters.

<sup>23</sup> See Judge Anne Levinson, "Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: December, 2010 – May, 2011" (June 21, 2011) at 15, <http://www.seattle.gov/Documents/Departments/OPA/Auditor/AuditorReportDec10May11.pdf>.

agencies would be handled by first line supervisors are referred instead to OPA. This latter issue is one that should be addressed through upcoming revisions to SPD Manual Policies 5.002 and 5.003, which will place more responsibility on supervisors to address more minor policy violations, thus leaving OPA with greater ability to focus its limited resources on potentially more serious matters. The importance of equipping SPD sergeants with the training and authority necessary to effectively investigate allegations of minor misconduct was emphasized in the OPA Director's October 2015 Memorandum to the Court.<sup>24</sup>

Finally, the Monitoring Team wishes to emphasize the important roles that the OPA Director and OPA Auditor play in this system. For one thing, the crucially important preliminary review and classification process appears to be strong, working well, and producing fair results. In the vast majority of cases, all appropriate allegations were identified. In an even greater percent of cases, the classification appeared appropriate given the facts raised in the complainant's preliminary interview. The preliminary contacts with complainants appeared, on the whole, to be generally thorough and unbiased. Also in the great majority of cases, reasonable steps were taken to gather evidence and documents.

For over a decade, OPA Directors and Auditors have been, in countless other areas, striving to make OPA investigations more sound and OPA ever more independent. We have previously "applaud[ed] Pierce Murphy and OPA" for creating the OPA Manual from scratch and moving OPA's offices to a location separate from SPD headquarters.<sup>25</sup> The OPA Auditors, over the course of countless reviews of OPA investigations and semiannual reports to the public, have provided crucial quality control and made numerous recommendations for policy or procedure trainings that SPD has, in fact, codified. However, it is important to continue to work to ensure that the feedback loop is closed and that the recommendations made to the system are, in fact, acted upon.

Again, however, the OPA Director and Auditor— both civilians — do not independently conduct OPA investigations. Instead, they oversee or review investigations that have been conducted by SPD officers, under the direction of SPD supervisors. Under the existing constraints, the OPA Director and Auditor appear to be doing a good job of trying to continue an OPA process that, in prior eras, perhaps managed to get good results without necessarily and rigorously adhering to clearly articulated expectations. This assessment is about how OPA can better function and is a topic, the Monitoring Team, the Parties and key community stakeholders shall be working on.

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The origins of the current OPA structure are decades old.<sup>26</sup> The first civilian auditor overseeing internal affairs functions was appointed in 1992.<sup>27</sup> The civilian-led OPA was established in December 1999.<sup>28</sup> In 2002, the OPA Review Board ("OPARB" or the "Board") was created.<sup>29</sup>

Thus, for the past thirteen years, Seattle has had "a three-part police accountability system"<sup>30</sup> based on OPA investigations and focused nearly exclusively on the adjudication of specific instances of possible officer misconduct. OPA investigators, who are sworn SPD personnel and not civilians, "take direction from and

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<sup>24</sup> Dkt. 239 at 3.

<sup>25</sup> Fourth Semiannual Report at 49.

<sup>26</sup> See Elaine B. Sharp, Does Local Government Matter?: How Urban Policies Shape Civic Engagement 107 (2012).

<sup>27</sup> OPA Review Board Home, <http://www.seattle.gov/council/oparb/> (last visited Oct. 23, 2015).

<sup>28</sup> "Seattle: Police Accountability – Who Makes Public Policy?," American Civil Liberties Union of Washington (Jan. 30, 2002), <https://aclu-wa.org/news/seattle-police-accountability-who-makes-public-policy>.

<sup>29</sup> OPA Review Board Home, <http://www.seattle.gov/council/oparb/> (last visited Oct. 23, 2016).

<sup>30</sup> 2011 Findings Letter at 7.

answer to only the [civilian] OPA Director and OPA [sworn] supervisors,”<sup>31</sup> and serve as an internal-affairs unit, conducting “the Department’s complaint-driven administrative investigations.”<sup>32</sup> The OPA Auditor “reviews in real-time how OPA proposes to classify each complaint (which determines whether a complaint is investigated, referred to the employee’s supervisor for follow-up, or handled through an alternative resolution) and whether each internal investigation conducted by OPA is thorough and objective.”<sup>33</sup> Where the OPA Auditor makes recommendations for systemic improvements, they are based on issues that have surfaced in the review of misconduct cases. OPARB oversees the quality and integrity of the work conducted by all of the OPA, OPA Director, and OPA Auditor.

Although OPA has played an important role in ensuring the quality of misconduct investigations, the OPA system does not provide ongoing, systemic evaluations or assessments of the performance of SPD and its officers. Because of this cabined nature of OPA’s charge, Seattle has not previously benefitted from other, progressive innovations in civilian oversight that address not just individual incidents on a case-by-case basis but tackle “systemic problems of police culture and procedure.”<sup>34</sup> “Issues of training, financial management and informational technology, just to identify some areas that have emerged over the last few years as significant problems,” are important issues related to accountability that OPA by its nature cannot readily address.<sup>35</sup> It should be noted, however, that current OPA Director Murphy indicates that he has, to date, made 12 formal recommendations regarding training, policy, tactics, financial controls, and operations in the past 18 months.

It is possible that some of the dissatisfaction with Seattle’s system of police accountability expressed over time may originate, then, not with what OPA, its Director, its Auditor, or OPARB do but, instead, with dissatisfaction with what they do not and cannot do. Regardless of whether the Seattle community decides to pursue more comprehensive and systemic oversight across SPD’s functions or remains with the case-by-case oversight of the OPA-focused system, OPA is currently where the vital and difficult work of investigating officer misconduct takes place.

Consequently, this systemic assessment evaluated whether OPA investigations were conducted consistent with the requirements of the operative 2014 OPA Manual and SPD’s policies on reporting officer misconduct to OPA. Five Monitoring Team reviewers (and the Department of Justice separately) used a standardized assessment instrument to evaluate 36 OPA investigations that were completed between August 1, 2014 and April 30, 2015, with reviewers randomly assigned cases for independent review and each case being evaluated by multiple reviewers.

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<sup>31</sup> Dkt. 156 at 18.

<sup>32</sup> Fourth Semiannual Report at 47.

<sup>33</sup> Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: January – June, 2015” (July 20, 2015) at 1, <http://www.seattle.gov/Documents/Departments/OPA/auditor/JanJun2015AuditorSemiAnnualReport.pdf>.

<sup>34</sup> Police Assessment Resource Center, “Review of National Police Oversight Models for the Eugene Police Commission” (Feb. 2005) at 21, <http://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54caf3abe4b04c8e2a3b6691/1422586795583/Review+of+National+Police+Oversight+Models+%28Feb.+2005%29.pdf>.

<sup>35</sup> Barney Melekian, “Police Accountability: A Strategic Roadmap for the Seattle Police Department” (June 23, 2014) [hereinafter “Melekian Police Accountability Report”] at 14, [http://www.seattle.gov/Documents/Departments/Mayor/6-2014/PoliceAccountability\\_Melekian.pdf](http://www.seattle.gov/Documents/Departments/Mayor/6-2014/PoliceAccountability_Melekian.pdf).

The Monitor has elsewhere and repeatedly observed that “the Consent Decree requires SPD to break conclusively with the days where OPA was the only mechanism of critical analysis within the Department – and where deficiencies in OPA investigations could eliminate the lone opportunity for accountability.”<sup>36</sup> The results of this assessment underscore that “no viable, long-term accountability system can depend solely on the good will of one person or entirely on the good efforts of one entity” – like the OPA Director, the OPA Auditor, or OPA generally. Instead, the Consent Decree implements numerous, new internal mechanisms promoting critical self-analysis and accountability – including the new force investigation and reporting process that the Monitoring Team has previously addressed in detail<sup>37</sup>, the Force Review Board, the Early Intervention System, the Crisis Intervention Committee, and others. As stakeholders in this process consider long-term changes to what has been referred to as the “accountability structure,” the conversation may need to include consideration of whether, just as the SPD is adding many layers of intentionally redundant internal mechanisms to identify problems, the City and Seattle community should likewise provide for additional layers of systemic civilian oversight rather than relying exclusively on OPA or existing structures.

As always, we stand at the ready to work closely and collaboratively with OPA as it considers any additional refinements to the Manual or the OPA process to ensure stronger investigations – and with City and community stakeholders as accountability issues beyond OPA are weighed.

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<sup>36</sup> See Fifth Semiannual Report at 24; Dkt. 204 at 18.

<sup>37</sup> See *generally* First Systemic Assessment.

# I. OPA Under the Consent Decree

## Origins of the Current OPA Structure

The origins of the current OPA structure are decades old. In 1989, the then-SPD Chief commissioned a study which “documented [that] the department’s structure and process for handling misconduct complaints was far from transparent to citizens . . . , lacking in objectivity, and unduly secretive.”<sup>38</sup>

“In 1992, the City of Seattle appointed its first civilian auditor of the Police Department’s Internal Investigations Section”<sup>39</sup> as a “response to serious community concerns about police misconduct.”<sup>40</sup> It did so with the support of the Seattle Police Officers’ Guild (“SPOG”), which co-sponsored the ordinance creating the auditor.<sup>41</sup>

Since that time, four individuals have been engaged to audit the Department’s internal investigations.<sup>42</sup> During the tenure of the first, “the number of citizen complaints lodged against the police department declined noticeably,” with some “attribute[ing] these favorable developments” to the work of the auditor.<sup>43</sup> The current auditor, who since the creation of OPA is called the OPA Auditor, is former municipal judge Anne Levinson, who began in the position in June 2010 and was reappointed by the City Council for another three-year term in September 2013.

The City Council established the Office of Professional Accountability in December 1999.<sup>44</sup> It did so partially “in response to recommendations of a citizen review Panel appointed by [the] then-Mayor.”<sup>45</sup> That group’s report “offered a series of recommendations to increase confidence in the department’s ability to maintain standards of professional integrity.”<sup>46</sup> The most significant was the creation of a new entity, OPA, within SPD responsible for investigating officer misconduct that would be led by a civilian. A 1996 case, “involving a detective who stole \$10,000 from a crime scene” and officers who “knew about the theft” failing to report it, was also a driver of establishing an internal affairs unit headed by a civilian.<sup>47</sup>

<sup>38</sup> Elaine B. Sharp, *Does Local Government Matter?: How Urban Policies Shape Civic Engagement* 107 (2012).

<sup>39</sup> OPA Review Board Home, <http://www.seattle.gov/council/oparb/> (last visited Oct. 23, 2016); accord Tim Burgess, “Police reform in Seattle is long overdue,” *Crosscut* (Aug. 14, 2012), <http://crosscut.com/2012/08/police-reform-means-seattle-safer-streets/>.

<sup>40</sup> William Lyons, *The Politics of Community Policing: Rearranging the Power to Punish* 157 (2002).

<sup>41</sup> Samuel Walker, “Should Civilians Review Cops? Many Police Believe Police Investigators Always Give Their Fellow Officers the Benefit of the Doubt,” *Philadelphia Inquirer* (Nov. 27, 1992), [http://articles.philly.com/1992-11-27/news/26010563\\_1\\_civilian-review-police-misconduct-police-officers](http://articles.philly.com/1992-11-27/news/26010563_1_civilian-review-police-misconduct-police-officers).

<sup>42</sup> Judge Anne Levinson, “Seattle Police Department Office of Professional Accountability Semi-Annual Report of the Civilian Auditor: December, 2010 – May, 2011” at 1 (June 21, 2011), [http://www.seattle.gov/police/OPA/Docs/Auditor/Auditor\\_Report\\_Dec\\_10\\_May\\_11.pdf](http://www.seattle.gov/police/OPA/Docs/Auditor/Auditor_Report_Dec_10_May_11.pdf).

<sup>43</sup> Elaine B. Sharp, *Does Local Government Matter?: How Urban Policies Shape Civic Engagement* 108 (2012).

<sup>44</sup> “Seattle: Police Accountability – Who Makes Public Policy?,” American Civil Liberties Union of Washington (Jan. 30, 2002), <https://aclu-wa.org/news/seattle-police-accountability-who-makes-public-policy>.

<sup>45</sup> Police Accountability Review Panel Final Report [hereinafter “2008 Panel Report”] at 1 (Jan. 29, 2008), <http://www.prearesourcecenter.org/sites/default/files/library/policeaccountabilityreviewpanelfinalreport.pdf>.

<sup>46</sup> 2008 Panel Report at 2.

<sup>47</sup> Hector Castro, “Police Oversight Director Leaving Job,” *Seattle Post-Intelligencer* (Feb. 8, 2007), <http://www.seattlepi.com/local/article/Police-oversight-director-leaving-job-1227826.php>; accord Melekian Report at 10.

The first OPA Director, Sam Pailca, was confirmed by City Council in 2000<sup>48</sup> and began work in January 2001.<sup>49</sup> She was the Director through 2007. Kathryn Olson was the Director from 2007 through 2012. Pierce Murphy has been Director since July 2013.<sup>50</sup>

In 2002, the OPA Review Board (“OPARB” or the “Board”) was created to serve as a kind of watchdog to the watchdogs. Among other things, OPARB’s charge is to “solicit[] community input about police accountability and police practices,” “conduct[] an independent review of the quality of the OPA complaint and investigation process . . .,” review policies and national best practices, “report[] to the community . . . on the citizen input it receives . . .,” and “recommend[] topics to the OPA Auditor for the Auditor’s review of OPA.”<sup>51</sup>

## What the OPA System Does & Its Limitations

For the past thirteen years, then, Seattle has had “a three-part police accountability system” based on OPA investigations of specific instances of possible officer misconduct<sup>52</sup>:

The first [part], and the cornerstone of the system, is OPA, which sits within SPD. A civilian director leads OPA and reports directly to the [Chief of Police], who is the ultimate arbiter of discipline. The second part of the system is the OPA Auditor, who does not sit within SPD, but serves as an independent civilian advisor to the City on the quality of OPA’s investigations and SPD’s policies. The third and final part of the system is the seven-member civilian OPA Review Board. OPA-RB conducts community outreach regarding accountability issues and audits the operation of OPA by reviewing some of OPA’s closed investigative files.<sup>53</sup>

On a day-to-day basis, then, OPA “conducts the Department’s complaint-driven administrative investigations.”<sup>54</sup> OPA investigators, who are sworn SPD personnel and not civilians, “take direction from and answer to only the [civilian] OPA Director and OPA [sworn] supervisors, not any other command staff or SPD employees.”<sup>55</sup> They serve as an internal-affairs unit, conducting administrative investigations of employees.

The OPA’s investigations “result from complaints, which can be filed by anyone – a member of the public, SPD personnel, or the OPA Director himself.”<sup>56</sup> Thus, OPA investigations concern any and all types of employee misconduct whether generated from a member of the public or “by SPD employees and entities, including but not limited to the Force Review Board, the Force Investigation Team, the Traffic Collision Investigation Squad, and members of the SPD’s chain of command.”<sup>57</sup>

<sup>48</sup> 2008 Panel Report at 2.

<sup>49</sup> Hector Castro, “Police Oversight Director Leaving Job,” *Seattle Post-Intelligencer* (Feb. 8, 2007), <http://www.seattlepi.com/local/article/Police-oversight-director-leaving-job-1227826.php>.

<sup>50</sup> About OPA Director Pierce Murphy, seattle.gov (last visited Oct. 23, 2015), <http://www.seattle.gov/opa/about-the-opa-director>.

<sup>51</sup> OPA Review Board Home, seattle.gov, <http://www.seattle.gov/council/oparb/> (last visited Oct. 24, 2015).

<sup>52</sup> 2011 Findings Letter at 7.

<sup>53</sup> *Id.* at 7–8.

<sup>54</sup> Fourth Semiannual Report at 47.

<sup>55</sup> Dkt. 156 at 18.

<sup>56</sup> Fourth Semiannual Report at 48.

<sup>57</sup> *Id.*

Regardless how the complaint originates, the first step in OPA's process is generally to interview the complainant.<sup>58</sup> OPA subsequently conducts a preliminary investigation "aimed at answering basic informative questions about the incident" relating to "who was involved," "what happened," where the involved conduct happened, when it happened, how it came to light, and why it happened.<sup>59</sup>

"Within 30 days of OPA receiving notice of a complaint, OPA must issue a 'classification report', listing all 'allegations.'"<sup>60</sup> It "includes a brief factual summary of the underlying incident and allegations made, and lists the SPD Manual section(s) implicated. . . ."<sup>61</sup> The overall case may "be classified in one of two ways – Supervisor Action ('SA') or Investigation."<sup>62</sup> An SA classification relates to conduct that either did not violate policy or "was a minor violation of policy that may be addressed through education, communication, counseling, or coaching."<sup>63</sup> An Investigation will continue to be investigated by OPA investigators.

Currently, "[e]ach new complaint and preliminary investigation is reviewed by the OPA Director and OPA Auditor" and they "discuss the preliminary classification," with the Director "mak[ing] the final decision."<sup>64</sup>

Subsequently, for cases classified as an OPA Investigation, the full investigation of the complaint proceeds. "Once all steps in the investigation have been completed, relevant and material evidence is summarized" in a case summary.<sup>65</sup> The entire investigation, including that investigator's summary, is reviewed by the OPA Lieutenant, a Captain (both being sworn member of SPD), the OPA Deputy Director, and by the OPA Director.<sup>66</sup> The OPA Director then "issues to the Chief of Police a recommended finding on each allegation using the preponderance of the evidence standard."<sup>67</sup> As the OPA Manual notes, the "preponderance of the evidence" standard simply refers to the recommended filing that is supported by the greater weight of the whole of the evidence.<sup>68</sup> The OPA Director also makes recommendations on discipline associated with "sustained" findings.<sup>69</sup> The Chief of Police "makes the final decision on findings and determines the discipline to be imposed by any Sustained allegation."<sup>70</sup>

It should be noted that the current SPOG collective bargaining agreement "requires that the named employee . . . receive notice of any proposed discipline within 180 days of being filed with OPA, or otherwise received by a Department sworn supervisor, or discipline cannot be imposed."<sup>71</sup> An investigation is complete "once a proposed Disciplinary Action Report (DAR) is issued, following a recommended finding of Sustained on any

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<sup>58</sup> OPA Manual at 18.

<sup>59</sup> *Id.* at 18–19.

<sup>60</sup> *Id.* at 22.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 23.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 36.

<sup>66</sup> *Id.* at 37.

<sup>67</sup> *Id.* at 38. The exception is "where the allegation is one of dishonesty, in which case the [union collective bargaining agreement currently] requires the application of a clear and convincing standard of proof." *Id.*

<sup>68</sup> *Id.* This is in contrast to "proof beyond a reasonable doubt" or "clear and convincing evidence," or other greater requirements for certainty.

<sup>69</sup> *Id.* at 40.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 36.

allegation in the complaint.”<sup>72</sup> If OPA misses the 180-day deadline, “discipline cannot be imposed,” though OPA can still make a recommended finding of “sustained.”<sup>73</sup>

The OPA Auditor “provide[s] objective, third-party review of complaint-handling, internal investigations, and other OPA activities” and makes “recommendations . . . about OPA and SPD policies, procedures, and practices based on review of complaints and internal investigations.”<sup>74</sup> Specifically, the Auditor:

[R]eviews in real-time how OPA proposes to classify each complaint (which determines whether a complaint is investigated, referred to the employee’s supervisor for follow-up, or handled through an alternative resolution) and whether each internal investigation conducted by OPA is thorough and objective.

The OPA Auditor is required to issue a public report twice per year, summarizing the number of complaints reviewed and any concerns as to how they were classified; the number of investigations reviewed, and any for which additional investigatory work was requested; issues or trends noted as a result of her reviews; recommendations for changes to SPD or OPA training, policy or practice; and the results of any special audits conducted.<sup>75</sup>

Accordingly, the scope of the Auditor’s work is to review officer misconduct investigations conducted by the OPA and to issue periodic reports “contain[ing] a systemic review of complaints and officer investigations” and recommendations for improving issues that have surfaced in the review of misconduct investigations.<sup>76</sup> “The OPA Auditor may audit any and all OPA records” and could, upon review of a file, request that OPA “conduct further investigation.”<sup>77</sup>

OPARB’s mission is “to provide community based oversight and awareness of Seattle Police Department practices and its employee accountability system by independently reviewing and commenting on the effectiveness of the accountability system; promoting public awareness of and full access to the system; obtaining information and opinions from police officers and the community on policing practices and accountability; and advising the City on police practices and accountability.”<sup>78</sup> The Board therefore is intended to oversee the quality and integrity of both OPA investigations and their review by the OPA Auditor.

<sup>72</sup> *Id.* at 37.

<sup>73</sup> *Id.* We note, however, that the timely and accurate issuance of the preliminary and final DAR, as well as other required steps in the disciplinary process, rest with the Department’s human resources and the Chief’s Office, and not with OPA.

<sup>74</sup> Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: July – Dec, 2014” (Feb. 10, 2015) at 1, [http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA\\_Auditor\\_Semi-Annual\\_Report\\_July-December\\_2014.pdf](http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA_Auditor_Semi-Annual_Report_July-December_2014.pdf).

<sup>75</sup> Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: January – June, 2015” (July 20, 2015) at 1, <http://www.seattle.gov/Documents/Departments/OPA/auditor/JanJun2015AuditorSemiAnnualReport.pdf>.

<sup>76</sup> Linda Byron, “Auditor Criticizes SPD’s Hiring Practices, Disciplinary System,” KING 5 (Feb. 24, 2015), <http://www.king5.com/story/news/2015/02/24/seattle-police-opa-audit-2014/23968091/>.

<sup>77</sup> Seattle Municipal Code 3.28.855(B), (C) (last updated Sep. 29, 2015), [https://www.municode.com/library/wa/seattle/codes/municipal\\_code?nodeld=13857](https://www.municode.com/library/wa/seattle/codes/municipal_code?nodeld=13857).

<sup>78</sup> “Office of Professional Accountability Review Board Strategic Plan 2014 – 2015,” <http://www.seattle.gov/council/oparb/attachments/OPARB%20Strategic%20Plan%202014-15.pdf>.

What the OPA accountability system does not do is provide accountability in areas beyond “just those dealing with complaints and accountability.”<sup>79</sup> “Issues of training, financial management and informational technology, just to identify some areas that have emerged over the last few years as significant problems, could and should have been identified and addressed” by some institutionalized accountability structure “prior to their becoming major issues.”<sup>80</sup> Many of the areas covered by the Consent Decree lay well beyond the scope and charge of any of the OPA Director, OPA Auditor, or OPARB – including the Force Investigation Team (though the OPA Director rolls to the scene of such events), the Force Review Board (though the OPA Director attends), Early Intervention System, supervision (including the appropriate deployment of supervisors to ensure constitutional policing), crisis intervention issues, stops and detentions, the analysis of data on officer performance in the field, and others.

However, the OPA system is concerned with officer misconduct complaints and investigations. The OPA Auditor primarily oversees the quality and integrity of the work conducted by the OPA and its Director. OPARB oversees the quality and integrity of the work conducted by the OPA, OPA Director, and OPA Auditor. Whatever systemic recommendations the OPA Auditor may make or that OPARB may advocate come about only as a result of the review of officer performance about which the Auditor has been made aware through OPA investigations. Indeed, the OPA Director and OPA Auditor currently do not have ongoing access to files, records, and data necessary to address many areas of concern and focus beyond initiated misconduct investigations. Instead, the Director and Auditor only investigate instances in which SPD officers or Seattle citizens refer misconduct to them – and do not themselves have a clear means of determining whether the Department is, in fact, referring all of the potential misconduct that it must.

Thus, although OPA has played an important role in ensuring the quality of misconduct investigations, the OPA system does not provide ongoing, systemic evaluations or assessments of the performance of SPD and its employees. The panels and commissions of prior eras that have evaluated what is often referred to as the “accountability system” have tended to focus on incremental modifications to the existing layers of oversight that address misconduct investigations – but not on implementing new or additional forms of oversight to address the host of other core departmental functions and areas of officer performance having little to do with the adjudication of officer misconduct.<sup>81</sup> The Consent Decree has done that hard work.

Because of the cabined nature of OPA’s charge, Seattle has not previously benefitted from other, progressive innovations in civilian oversight that address not just individual incidents on a case-by-case basis but tackle “systemic problems of police culture and procedure.”<sup>82</sup> In other jurisdictions, such as Los Angeles, New Orleans, and New York, inspectors general or full-time institutionalized police monitors provide ongoing, systemic evaluations across all aspects of police operations and functions. There, reform advocates have argued that “[i]t is one thing to achieve a fair result in a given investigation; it is far more powerful . . . to change police culture in general by requiring strict accountability.”<sup>83</sup>

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<sup>79</sup> Melekian Accountability Report at 14.

<sup>80</sup> *Id.*

<sup>81</sup> See generally 2008 Panel Report.

<sup>82</sup> Police Assessment Resource Center, “Review of National Police Oversight Models for the Eugene Police Commission” (Feb. 2005) at 21, <http://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54caf3abe4b04c8e2a3b6691/1422586795583/Review+of+National+Police+Oversight+Models+%28Feb.+2005%29.pdf>.

<sup>83</sup> *Id.*

It is possible that some of the dissatisfaction with Seattle’s system of police accountability expressed over time may originate, then, not with what OPA, its Director, its Auditor, or OPARB do but, instead, with dissatisfaction with what they do not and cannot do. Regardless of whether the Seattle community decides to pursue more comprehensive and systemic oversight across SPD’s functions or remains with the case-by-case oversight of the OPA-focused system, OPA is currently where the vital and difficult work of investigating officer misconduct takes place.

## Ongoing Concerns about OPA-Based Accountability

Regardless of the source of such concerns, the OPA system, consisting of the OPA, its Auditor, and OPARB, has been the subject of criticism and recommendations for improvement over time.

An eleven-member panel was appointed in June 2007 “to perform a thorough and comprehensive review of Seattle’s police accountability system.”<sup>84</sup> In their January 2008 report, the panel recommended that, although “the general structure of the OPA with the civilian Director, Auditor and Review Board should continue,” there was “room for improvement.”<sup>85</sup> The Panel recommended that the OPA Auditor continue to “conduct[] real-time review of OPA investigations” but also “conduct in-depth audits of substantive policies, procedures and/or training that impact the accountability of the Department or the public’s perception of that accountability.”<sup>86</sup> It recommended measures to increase the independence and authority of the OPA Director.<sup>87</sup> It proposed that the OPA Review Board “function[] as the primary link between the OPA and community,” “leading community engagement activities” and “reporting on national trends and best practices in police accountability and oversight.”<sup>88</sup>

Other groups and community stakeholders have questioned the efficacy and independence of the OPA. The American Civil Liberties Union (“ACLU”) of Washington observed in February 2012 that “Seattle’s civilian oversight system is confusing, delayed and diffused, undermining its effectiveness” and “fail[ing] to effectively prevent or deter police misconduct.”<sup>89</sup> It concluded that “Seattle has too many layers of process and confusion at each layer.”<sup>90</sup>

Others have questioned OPA’s “lack of true independence and control over investigations and information by SPD.”<sup>91</sup>

<sup>84</sup> 2008 Panel Report at i.

<sup>85</sup> *Id.* at i-ii.

<sup>86</sup> *Id.* at ii.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at iii.

<sup>89</sup> ACLU of Washington, Recommendations Regarding the Consent Decree Between DOJ and the City of Seattle” at 7 (Feb. 24, 2012), [https://www.aclu.org/files/assets/aclu\\_wa\\_rec\\_s\\_for\\_consent\\_decree.pdf](https://www.aclu.org/files/assets/aclu_wa_rec_s_for_consent_decree.pdf) (quoted in sentence case).

<sup>90</sup> *Id.*

<sup>91</sup> James Baldwin, Seattle Crimes.com, “Black Lives, Blue Privilege,” [http://seattlecrimes.com/black\\_lives\\_blue\\_privilege.html](http://seattlecrimes.com/black_lives_blue_privilege.html); 2011 Findings Letter, App. D at 7 (“[C]oncerns about the independence of the OPA Director have arisen in our investigation from a broad range of persons and communities. An OPA Director . . . must remain objective and welcoming of any criticism of SPD practices from persons of good will.”); Third Semiannual Report at 72 (“Whereas OPA was considered by some for the last few years to be a cat’s paw of SPD executives, this perceptions has seemed to change markedly under the leadership of OPA’s current Director, Pierce Murphy.”); Tracy Vedder, “Seattle PD’s accountability office director falls under scrutiny,” KOMONews.com (Sep. 14, 2014), <http://www.komonews.com/news/local/Seattle-police-office-professional-accountability-director-kathryn-olson-under-scrutiny-169854346.html>.

OPARB has also been the source of “pervasive distrust . . . among many community members.”<sup>92</sup> Some within the community have retained “confusion . . . about the role of the review board” and inaccurately “assumed” that the Board was “part of the police department.”<sup>93</sup> Many believe that it has “seen its influence wane in recent years,”<sup>94</sup> with “a perception by some stakeholders that the OPARB has been of limited effectiveness.”<sup>95</sup> Others note that “[t]he Board accomplished [a] significant body of work despite efforts to impede and silence it,” with the Board “endur[ing] multiple vacancies that the City Council neglected to address . . . in some cases for almost two years” and never being assigned the staff authorized to it when created by City Council in 2002.<sup>96</sup>

Ultimately, a belief commonly shared by a number of community members and SPD officers alike appears to be that “[w]hat has developed over the past several decades is a system that is overly reliant on process and a legalistic framework.”<sup>97</sup>

### How the Consent Decree Addresses OPA

The Department of Justice’s 2011 investigation of SPD found, on the one hand, that “the structure of OPA is sound” and that OPA’s investigations “generally are thorough.”<sup>98</sup> Indeed, the Consent Decree observes that OPA’s investigations were “well-organized, well-documented, and thoughtful.”<sup>99</sup>

On the other hand, the DOJ found “that OPA fails to provide adequate oversight to prevent a pattern or practice of excessive force.”<sup>100</sup> In particular, OPA “do[es] not provide the intended backstop for the failures of the direct supervisory review process” – with OPA sending too many citizens’ complaints to precincts for a chain of command investigation in which the quality was “appalling,” using “classification and findings systems [that] are so complex that they damage OPA’s credibility and undermine public confidence in OPA,” and overusing a “supervisory intervention” finding to dispose of serious allegations “that does not subject an officer to formal discipline.”<sup>101</sup>

Consequently, the Consent Decree contains provisions to encourage SPD to “ensure that all complaints regarding officer conduct are fully and fairly dealt with; that all investigative findings are supported by the evidence and documented in writing; and that officers and complainants receive a thorough, fair, and expeditious resolution of complaints.”<sup>102</sup>

<sup>92</sup> CAIR Washington, “Frustration bubbles over at SPD’s OPA Review Board meeting,” <http://www.cairseattle.org/cair-wa-news/frustration-bubbles-over-at-spds-opa-review-board-meeting> (last visited Oct. 24, 2015).

<sup>93</sup> Aaron Burkhalter, “Proposal Seeks to Grant Citizen-Led, Police-Reform Program More Responsibility,” Real Change News (July 24, 2013), <http://realchangenews.org/2013/07/24/proposal-seeks-grant-citizen-led-police-reform-program-more-responsibility>.

<sup>94</sup> Steve Miletich, “Mayor Unveils Plan to Fix Puzzling Police-Discipline System,” *Seattle Times* (Nov. 12, 2014).

<sup>95</sup> Melekian Accountability Report at 16.

<sup>96</sup> Elizabeth Holohan, “Open Letter: Office of Police Accountability Rejects CPC’s Dissolution Idea,” Rainier Valley Post (July 16, 2014), <http://rainiervalleypost.com/open-letter-office-of-police-accountability-rejects-cpcs-dissolution-recommendation/>.

<sup>97</sup> Melekian Accountability Report at 23.

<sup>98</sup> 2011 Findings Letter at 5.

<sup>99</sup> Dkt. 3-1 ¶ 164.

<sup>100</sup> 2011 Findings Letter, App. D at 1.

<sup>101</sup> 2011 Findings Letter at 5; *id.* App. D at 4, 5.

<sup>102</sup> Dkt. 3-1 ¶ 164.

One such set of provisions required that OPA “complete an update of its Training and Operations Manual (“OPA Manual”) that will formalize OPA’s procedures, best practices, and training requirements.”<sup>103</sup> However, “because no manual in fact had ever been finalized” within the SPD previously, current OPA Director Pierce Murphy “needed to create one.”<sup>104</sup>

Put another way, since the OPA’s creation in 2001 and despite recommendations that an operations manual be created<sup>105</sup>, it had operated without a codified manual of policy and guidelines for its investigators, employees, and supervisors.

As the Monitor noted in his Fourth Semiannual Report, the process of distilling sound investigative processes and practices to a manual with the weight of policy was a highly collaborative one – with the Parties engaging in numerous formal and informal discussions with the Monitoring Team, the CPC, other community partners, OPA Auditor Levinson, OPA Director Murphy, and the Department.<sup>106</sup> The Court approved the Manual on July 10, 2014 and became effective on August 1, 2014.<sup>107</sup>

The OPA Manual “ma[d]e the OPA policies and processes for investigating officer misconduct more transparent than they ever were before . . . The Manual sets forth in detail the previously obscure and complicated policies, procedures, and roles of OPA within the City and the SPD”<sup>108</sup>:

It clearly states, for public and internal use, the guiding principles and philosophy of the OPA. It lays out, in detail, the road that each complaint travels within OPA from beginning to end. It describes the different mechanisms for making a complaint, the procedures used to investigate it, and the process used to decide whether the actions in question amount to actual misconduct. It defines and describes the findings and formal outcomes of investigations and explains disciplinary considerations opportunities for appealing findings. It describes the structure and composition of OPA and outlines the roles of the Auditor and OPA Review Board, which both provide ongoing oversight of OPA . . . .

The Manual codifies a set of investigatory processes and procedures to ensure that OPA investigations are rigorous and fair. It provides OPA investigators with specific guidance on gathering evidence, interviewing witnesses, managing investigations, reviewing and evaluating evidence, and constructing a case summary for review by the OPA chain of command.<sup>109</sup>

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<sup>103</sup> *Id.* ¶ 167.

<sup>104</sup> Fourth Semiannual Report at 48–49.

<sup>105</sup> See Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: July – Dec, 2014” (Feb. 10, 2015) at 2, [http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA\\_Auditor\\_Semi-Annual\\_Report\\_July-December\\_2014.pdf](http://www.seattle.gov/Documents/Departments/OPA/auditor/OPA_Auditor_Semi-Annual_Report_July-December_2014.pdf).

<sup>106</sup> Memorandum from Pierce Murphy to Mayor Ed Murray re: Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability (Feb. 24, 2015) at 1, [http://www.seattle.gov/Documents/Departments/OPA/Special%20Reports/OPA\\_Memorandum\\_Re\\_Auditor\\_Semi-Annual\\_Report\\_June-Dec\\_2014.pdf](http://www.seattle.gov/Documents/Departments/OPA/Special%20Reports/OPA_Memorandum_Re_Auditor_Semi-Annual_Report_June-Dec_2014.pdf).

<sup>107</sup> Fourth Semiannual Report at 49.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 49, 50–51.

The Manual also reduced the number of OPA findings from many to just two (“sustained” and “not sustained”).<sup>110</sup>

Another set of provisions addresses the requirements for when SPD employees must themselves report misconduct of their colleagues, supervisors, and other employees. The Consent Decree charged SPD with revising its policies on “when and how officers must report misconduct” and its anti-retaliation policy to “clarify that prohibited retaliation includes discouragement, intimidation, coercion, or adverse action against any person who reports misconduct, makes a misconduct complaint, or conducts or cooperates with an investigation of misconduct.”<sup>111</sup>

In July 2014, the Court approved policies on the referral of officer misconduct and on anti-retaliation.<sup>112</sup> Under those policies, “[e]mployees must report both any conduct that a reasonable officer would believe is misconduct and any allegations of misconduct brought to their attention that fall outside” a defined, small list of exceptions “to a supervisor or directly to OPA.”<sup>113</sup>

Early in the monitoring process, the Monitoring Team charged a Team member with periodically reviewing some closed OPA investigations. These spot-check reviews, which largely occurred before the written policies and procedures of the OPA Manual were finalized and were geared toward maintaining a familiarity with the issues being referred to and addressed by OPA, found that the OPA investigations that the Team managed to review generally appeared to be “careful, thorough, and impartial,”<sup>114</sup> with officers gathering relevant evidence and pursuing relevant lines of inquiry.

The Monitor noted that the Monitoring Team would base any views going forward about whether OPA was “in need of structural or other change” and on “progress under the Settlement Agreement” based on a more formalized “evaluat[ion of] the thoroughness, completeness, objectivity, and fairness of internal SPD investigations.”<sup>115</sup> With the OPA Manual effective as of August 2014 and wholly implemented from the standpoint of OPA’s day-to-day operations, OPA’s investigations can, for the first time, “assess[ed] systemically” with respect to “whether they are conforming to the Consent-Decree[-]required OPA Manual . . .”<sup>116</sup>

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<sup>110</sup> Under the “not sustained finding” remains a sub-set of multiple findings, including unfounded, inconclusive, training referral and management action.

<sup>111</sup> Dkt. 3-1 ¶¶ 164, 165.

<sup>112</sup> Dkt. 156 at 74–75.

<sup>113</sup> *Id.* at 16, 82.

<sup>114</sup> Second Semiannual Report at 39; see *id.* at 40 (noting that the Monitoring Team had “reviewed almost 100 closed complaint files”); Third Semiannual Report at 72 (“Even before the Parties finalize the OPA Manual, the Monitoring Team continues to find that OPA’s investigations appear to be thorough, complete, and professional.”).

<sup>115</sup> Second Semiannual Report at 40.

<sup>116</sup> Fourth Semiannual Report at 48; see also Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: January – June, 2015 (July 20, 2015) at 12-16, <http://www.seattle.gov/Documents/Departments/OPA/auditor/JanJun2015AuditorSemiAnnualReport.pdf> (assessing how 121 investigations reviewed in 2015 comport with the requirements of the OPA Manual).

## II. Methodology

The methodology<sup>117</sup> used by the Monitoring Team, and summarized here, is consistent with accepted best practices for evaluating internal investigations.<sup>118</sup> Dr. Joseph Doherty, the Monitoring Team's lead social science expert, worked closely and transparently with the Parties on the study's design.<sup>119</sup> Several members of the Monitoring Team collaborated on the creation of an instrument to assess force case files. The methodology was reviewed and agreed to by both the Department of Justice and the City of Seattle.

### What OPA Investigations Were Reviewed

The population of cases reviewed included all OPA investigations, sometimes referred to within the Department as "cases," that were completed between August 1, 2014 and April 30, 2015 (the "study period").

For purposes of this report, "investigations" and "cases" refer to individually-numbered OPA complaints that were referred for investigation. Those inquiries could involve multiple or several allegations relating to multiple or several employees. Nonetheless, the base unit of this assessment is in terms of the inquiry, which includes any and all investigated allegations or employees.

The study period of August 1, 2014 to April 30, 2015 was originally identified in May 2015 as an appropriate study period for several reasons. First, OPA began using IAPro as its day-to-day case management platform in Spring 2014 by initiating new cases there – but continuing to complete previously initiated and ongoing investigations in its former system. Accordingly, it was not until mid-Summer 2014 that all OPA case management activities take place in the updated environment.<sup>120</sup> Second, the Third-Year Monitoring Plan originally contemplated that the Monitor would identify for SPD in May 2015 the files that it would need to review in its sample and that SPD would have produced all the relevant files by the end of July 2015. The Monitoring Team conducted its review over an intensive, 8-week period in August and September 2015. Thus, as with any major study that evaluates

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<sup>117</sup> Because the methodology used to review OPA investigation was similar to that used to assess force investigations and reporting in the Monitor's First Systemic Report of September 2015, this section incorporates several elements and passages of that methodological discussion without citation.

<sup>118</sup> See, e.g., Denise Rodriguez King, et al, Community Oriented Policing Services (COPS) Office, U.S. Department of Justice, *Collaborative Reform Model: A Review of Use of Force Policies, Processes, and Practices in the Spokane Police Department* (2014) at 9, 12 (describing random sampling of use of force reports for analysis "using a 95 percent confidence level and a confidence interval of 5 percent"); George Fachner & Steven Carter, *Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department*, Community Oriented Policing Services (COPS) Office, U.S. Department of Justice (2015) at 16 (describing "investigative quality evaluation" of officer-involved shootings of "randomly selected . . . case files" using a survey instrument "of 'yes/no' and Likert scale (1–5 items)" evaluated by "expert, experienced investigators").

<sup>119</sup> Dr. Doherty is the Director of the Empirical Research Group at the University of California, Los Angeles School of Law, which is a "methodology-oriented research center that specializes in the design and execution of quantitative research in law and public policy." Empirical Research Group, About the Empirical Research Group, <http://law.ucla.edu/centers/interdisciplinary-studies/empirical-research-group/about/> (last visited Sep. 21, 2015). He is also Co-Director of the UCLA-RAND Center for Law & Public Policy, a group dedicated to "legal scholarship grounded in multidisciplinary empirical analysis to guide legal and public policymakers in the 21st century." About the UCLA-RAND Center for Law and Public Policy, <http://law.ucla.edu/centers/interdisciplinary-studies/ucla-rand-center-for-law-and-public-policy/about/> (last visited Sep. 21, 2015). He has substantial experience – across several fields, including policing – with designing research and empirical methods to answer complicated legal questions and address public policy issues.

<sup>120</sup> See First Systemic Assessment at 18.

phenomena across time, the data may be a “lagging indicator” to the extent that, in the intervening period between April 2015 and the filing of this report with the Court, some 8 to 12 months have elapsed.

“Completed” means that the investigation has concluded, that both the OPA Director and Auditor have certified the investigation as complete, and that the Director has forwarded the Director’s Certification Memorandum (“DCM”) to the Chief of Police for adjudication.

The Monitoring Team identified that there were 80 completed OPA investigations during the study period. Reviewers evaluated a significant, random sample of reports. That is, we reviewed a randomly selected subset of OPA investigations<sup>121</sup> that included a number of cases large enough to ensure, within generally accepted levels of confidence within social science, that the subset was unbiased and representative of the whole set of cases. This “random-sampling approach is the best way to ensure that the selected sample represents the population” of all OPA investigations that occurred during the studied period “and that the findings in the sample” of reviewed cases “can be generalized to the population” of all of the force cases “from which the sample was obtained.”<sup>122</sup> To determine how many cases needed to be examined to ensure that inferences about all SPD force cases could be made, multiple factors were examined and statistically evaluated.<sup>123</sup>

Ultimately, the Team reviewed 36 OPA investigations. The nature of the underlying incident or allegations involved involved a host of officer misconduct issues.

## How the OPA Investigations Were Evaluated

Five members of the Monitoring Team reviewed OPA investigations. Each case was randomly assigned for review by two separate reviewers. Accordingly, all OPA investigations were reviewed twice and by two independent Monitoring Team reviewers. This two-tiered reporting structure sought to ensure that any unduly outlying determinations would be identified or “checked” by another equally comprehensive review.

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<sup>121</sup> See Michael S. Lewis-Beck, et al, 3 *SAGE Encyclopedia of Social Science Research Methods* 985 (2004); see also *id.* at 986 (“Simple random sampling is often practical for a population of business records . . .”).

<sup>122</sup> Lemuel A. Moye, *Statistical Reasoning in Medicine: The Intuitive P-Value Primer* 30 (2006); Timothy C. Urdan, *Statistics in Plain English* 48 (2001) (“[W]hen we do inferential statistics, we want to know something that we observe in a sample represents an actual phenomenon in the population.”).

<sup>123</sup> The first factor was a benchmark, or “null hypothesis,” against which the outcome of the assessments could be compared. See Michael K. Le Roy, *Research Methods in Political Science* 91 (2008) (“A null hypothesis states that there is no relationship between the variables in a hypothesis . . . [Researchers] actually test the null hypothesis rather than the hypothesis . . . [T]he basic strategy of scientific research focuses on disproof rather than on proof.”); Neil J. Salkland, 1 *Encyclopedia of Research Design* 1301 (2010) (“The most common approach when planning an appropriate sample size is the power analytic approach, which has as its goal rejecting a false null hypothesis with some specified probability.”). For this inquiry, the benchmark contemplated was “90/10” – reflecting the desire to have a sample with sufficient power to detect a deviation from a hypothetical 90% “acceptability” rate. That is, the sample needed to be sufficiently large to enable the Team to identify a deviation in quality or other attributes evaluated from a hypothetical level at which 90% of cases were of acceptable quality or sufficiently possessed the attribute. However, to expand the power of the sample even further, we calibrated the benchmark at “80/20,” which required a larger sample size, to ensure confidence that the Team was reviewing a sufficient number of cases for detecting significant downward deviations in quality. See Andrew Gelman & Jennifer Hill, *Data Analysis Using Regression and Multilevel/Hierarchical Models* 440 (2007).

The second factor to establish was the desired confidence interval. The Team wanted enough power to reject the benchmark or null hypothesis with 95% confidence. Of OPA investigations cases, the total number of cases during the study period was only 58. As such, 36 OPA investigations could be sampled to have the requisite confidence that the reviewed cases adequately represented and described all 58 OPA cases during the study period.

Reviewers considered the whole OPA investigation materials supplied to the Monitoring Team by the SPD. The OPA investigations were evaluated using a standardized assessment instrument that contained both audit-like and more purely evaluative elements. For example, reviewers were asked whether the initial review of the preliminary investigation and classification of the OPA investigation was appropriately completed within 30 days, per the OPA Manual. Across this and many similar dimensions, reviewers logged whether the investigation complied with that element of SPD policy – marking “yes,” “no,” “unable to determine,” or “not applicable.”<sup>124</sup>

On the other hand, they were also asked whether officer OPA interviews contained any “incomplete questioning.” This required a more qualitative assessment in which the experienced and seasoned reviewers needed to determine whether or not the questioning was, in fact, incomplete under the facts and circumstances presented in the case. In making many of the more generalized qualitative and evaluative determinations about the quality of OPA investigations, case summaries, and certification memos, Monitoring Team reviewers considered whether, under the totality of the circumstances, the investigation, summary, or evaluation provided a sufficiently objective, fair, thorough, and complete record to allow a subsequent SPD reviewer to fairly and systematically apply SPD policy with respect to the officer’s performance. Thus, we operationalized the concept of “quality” – or “convert[ed] . . . the abstract idea or notion into a measurable item” – in terms of whether it would ultimately permit a neutral factfinder to fairly and fully apply SPD’s officer use of force policy.<sup>125</sup>

Ultimately, “[u]sing methods that gather and represent human phenomena with numbers (such as standardized questionnaires and structured observation protocols), along with methods that gather and represent human phenomena with words (such as . . . unstructured observations) are classic instances of mixing data gathering and analysis techniques” that are widely used by contemporary social science researchers.<sup>126</sup> The use of this hybrid quantitative-qualitative approach allows this report to do more than provide vague or general conclusions. That is, rather than only being able to say that certain features or trends apply “[i]n many cases” or “in some cases”<sup>127</sup>, the methodology allows this report to identify the size or scope of the identified trends.<sup>128</sup>

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<sup>124</sup> See Floyd J. Fowler, *Survey Research Methods* 121 (2009, 4th Ed.) (noting that, for self-administered questionnaires, “[c]hecking a box, clicking a response, or circling a number should be” emphasized because self-generated responses “are usually incomplete, vague, and difficult to code” or aggregate).

<sup>125</sup> Mark L. Dantzker & Ronald Hunter, *Research Methods for Criminology & Criminal Justice* 47 (2012, 3d Ed.)

<sup>126</sup> Jennifer C. Grenne, et al, “Combining Qualitative and Quantitative Methods in Social Inquiry,” in *Research Methods in the Social Sciences*, Bridget Somekh & Cathy Lewins (eds.) 274, 274 (2005).

<sup>127</sup> Police Executive Research Forum, “U.S. Customs & Border Protection Use of Force Review: Cases and Policies” at 5, 6 (Feb. 2013).

<sup>128</sup> See Phil K. Eure, Office of the Inspector General for the NYPD, “Observations on Accountability & Transparency in Ten NYPD Chokehold Cases” (Jan. 2015), available at [http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold\\_report\\_1-2015.pdf](http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold_report_1-2015.pdf).

## III. Results

### Overview

About 44 percent of OPA investigations ranged from above average to superior because they were found to be generally thorough, well-documented, and complete. Approximately 42 percent of cases were adequate – meaning that some aspects could be improved but that the identified flaws did not necessarily impact the quality of the overall investigation and the ability of the investigatory file to provide sufficient information to fairly and objectively evaluate the incident.

Approximately 14 percent of OPA investigations were judged to be inadequate – meaning that both reviewers determined that the investigation did not establish sufficient information to support an evidence-based evaluation of the incident because of investigative deficiencies, material omissions, or other issues.

### Intake & Preliminary Investigation

Civilians were the source a majority (66 percent) of OPA complaints, with 55 percent of overall complaints originating with a civilian who was the subject or direct witness to the incident or performance that generated the complaint and another 11 percent originating with an anonymous or third party. About one-third (39 percent) of OPA complaints were initiated by SPD – with an officer, supervisor, or other internal source such as OPA itself or the Force Review Board. This is a remarkable number given that, during DOJ's 2011 investigation, internal complaints were “rare to non-existent.”

### Intake Interview with Complainant

After receiving a complaint, OPA attempts to interview the complainant.<sup>129</sup> In a majority of reviewed cases where there was a complainant other than the Department itself (86 percent), the complainant was interviewed during the intake phase. In most instances (89 percent) where the complainant was interviewed, the complainant permitted the interview to be recorded. In most instances, no translation or accommodation was necessary during the interview process.

In 82 percent of reviewed cases, the interview with the complainant was judged by the Monitoring Team to be thorough and unbiased. Although the Team identified some interviews that contained leading or inadequate questioning, left material inconsistencies in the complainant's account unaddressed, or permitted relevant questions to go unanswered, the quality of the intake interview was generally sound.

- A complainant alleged that an officer deliberately tightened handcuffs, causing pain and injury. The OPA investigator's intake interview focused inappropriately on the delicate nature of the complainant's skin, the complainant's drinking, and his resistance to officers – which appeared to the Monitoring Team to be more than merely healthy skepticism and probing and possible indicia of bias.

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<sup>129</sup> OPA Manual at 18.

Where an intake interview occurred, it was audio recorded and accurately summarized in nearly all of the case files where such a summary was required.

In about 30 percent of reviewed cases, there was a possibility of an injury to a subject or involved civilian. Of those, photographs were taken, with the permission of the complainant, in approximately half of all instances.

The OPA process and Manual provide a “mediation option” as “an alternative to the traditional means of handling complaints,” “particularly those involving possible miscommunication or misperception between the complainant and an officer or other employee . . . .”<sup>130</sup> Thus, “[u]nless the complaint involves particularly egregious allegations, [including] use of force, possible violation of law or appears to be otherwise inappropriate for mediation, the mediation alternative” to the standard misconduct investigation “should be briefly discussed during intake.”<sup>131</sup> Of the OPA cases reviewed for this assessment, about 19 percent of complaints appeared appropriate for mediation.

- An officer was called to a public park to investigate a suspicious male subject photographing children. A witness and the complainant interacted with the officer. The complaints were that the officer had engaged in unprofessional conduct, failed to take enforcement action, and failed to activate in-car video. OPA offered mediation to the complainant, and the complainant accepted.

However, of those that appeared good candidates for mediation, the mediation alternative was discussed with the complainant only about 70 percent of the time. Some work needs to be done in this area to increase the use of mediation.<sup>132</sup>

- A former out-of-state public safety officer believed his car was stolen and stopped a police car near a large store. The complainant alleged that an SPD officer was rude, unhelpful, and gave the citizen the finger.

The case boiled down to a “he said/she said,” with one public safety officer’s word pitted against that of another. Despite it being especially well-suited for resolution by mediation, OPA failed to offer mediation to the complainant to consider.

- A complainant alleged that an officer, responding to a burglary call, did not adequately investigate because the officer failed to lift prints from a bedroom window purportedly forced open. She also complained that he did not leave behind an inventory form for her.

The nature of the allegations was a “he said/she said,” which appeared to Monitoring Team reviewers to be a candidate for mediation. OPA did not appear to offer this as an option to the complainant.

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<sup>130</sup> *Id.* at 21.

<sup>131</sup> *Id.*

<sup>132</sup> See Judge Anne Levinson, “Semi-Annual Report of the Independent Auditor for the City of Seattle Office of Professional Accountability: July – November 2, 2010 (December 7, 2010) at 14, <http://www.seattle.gov/Documents/Departments/OPA/Auditor/AuditorReportJulyNov2010.pdf>.

## Preliminary Investigation

During the preliminary investigation, Monitoring Team reviewers found that OPA investigators took reasonable and appropriate steps to quickly gather material evidence and documentation in some 85 percent of cases. In most instances (88 percent of cases), the OPA investigator appropriately focused on retrieving items or evidence that might perish or degrade.

Crucially, the initial case file documenting the intake interview and preliminary investigation was judged by Monitoring Team reviewers as sufficient to fairly classify the case in all cases reviewed.

“[D]ue to certain notification requirements contained in the City’s contract with employee unions, the preliminary investigation must be completed soon enough to allow the OPA Director to make a classification decision within 30 days from the day on which the complaint was received by OPA.”<sup>133</sup> The preliminary investigation was completed in a timely manner in most cases (97 percent). More than half (58 percent) were completed within two weeks. Reviewers found that the remaining cases were completed after two weeks but within 30 days.

## Notice to Involved Employees

The OPA Manual, and current requirements of union contracts, requires “that employees be notified within five days after OPA receives a complaint against them.”<sup>134</sup> Appropriate notifications were made in a majority (94 percent) of cases reviewed by the Monitoring Team.

## Review & Classification

“Within 30 days of OPA receiving notice of a complaint, OPA must issue a ‘classification’ report” that “includes a brief factual summary of the underlying incident and allegations made, and lists the SPD Manual section(s) implicated.”<sup>135</sup> Additionally, it indicates whether the complaint will be classified as “Supervisor Action,” which is “used for conduct that either was not a violation of policy or was a minor violation of policy that may best be addressed through education, communication, counseling or coaching”; or whether it will be classified as an “OPA investigation” for a full investigation by OPA investigators.<sup>136</sup>

The Monitoring Team’s review found that the review and classification was appropriately completed within 30 days in nearly all cases.

In the classification report, all appropriate allegations raised in the preliminary investigation were identified and listed in 86 percent of cases. Similarly, all corresponding and relevant manual sections were accurately listed in the report in nearly all of the cases. The OPA Director, after consultation with the OPA Auditor, made a final classification in each instance, which the Monitoring Team found appropriate in all instances.

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<sup>133</sup> OPA Manual at 21.

<sup>134</sup> *Id.* at 22.

<sup>135</sup> *Id.* This is also required by collective bargaining agreements.

<sup>136</sup> *Id.* at 23–24.

Pursuant to collective bargaining agreements, the OPA Manual requires that the complainant be sent a “30-day notification” upon the classification of the complaint.<sup>137</sup> Where applicable, a notification appears to have been sent in an appropriately timely manner in 91 percent of cases.

The “30-day notification” must also be circulated to the involved employee, “[t]he named employee’s Captain or equivalent non-sworn supervisor, and the named employee’s collective bargaining unit.”<sup>138</sup> This appears to have been done in 94 percent of relevant instances.

Thus, the design *and execution* of the process to this point was found to be exceptionally strong and very well structured. The process to this point requires extensive documentation and redundancy from intake to investigation, all with required timelines. Internal and external transparency was built into the structure by requiring a series of email notifications at various intervals to complainants, officers, chain of command and the police union, thereby keeping everyone in the proverbial loop.

## Investigation

### Witness Interviews

#### *Subject/Complainant Interviews*

In the full OPA investigation, subject or complainant interviews were generally audio-recorded (in 87 percent of cases). In at least one instance where a subject interview was conducted but not recorded, it was not recorded because the subject refused.

Where a recording of the interview was available, the Monitoring Team’s noted incomplete questioning in 41 percent of interviews with complainants. Possible bias was noted in more than one-quarter (27 percent) of complainant interviews.<sup>139</sup>

Leading questions, or other investigative techniques with the potential of contaminating the veracity of the subject account, were also identified in more than one-quarter (30 percent) of interviews.

- One OPA investigator asked many leading questions, which evidenced her belief that the named officer’s conduct was inappropriate in the case. Although the investigator appeared to succeed in obtaining the necessary information from the complainant, the leading questions were unnecessary.

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<sup>137</sup> *Id.* at 24.

<sup>138</sup> *Id.* at 24.

<sup>139</sup> It should not be inferred that, in all cases where incomplete or potentially biased questioning was noted, that automatically meant that the overall OPA investigation was inadequate. Some deficiencies with respect to some requirements of the OPA Manual did not, taken in the context of the rest of the investigation, ultimately result in material deficiencies that appeared to affect the overall quality of the investigation.

### *Civilian Witness Interviews*

Of those cases where witnesses were identified during the preliminary investigation or during the course of the full OPA investigation, and where in person interviews were possible, all identified witnesses were in fact interviewed in person in only one-third (35 percent) of instances. While there is significant discretion in OPA investigators interviewing strategies, this warrants further discussion.<sup>140</sup>

- During a use of force review, a lieutenant viewed video captured on an officer's in-car video indicating that an officer referred to a civilian as an "idiot" and that another officer shoved a handcuffed arrestee's head against a patrol car. During the use of force investigation, a civilian claimed that his backpack was missing after the encounter. The reviewing lieutenant appropriately referred the matter to OPA for investigation.

OPA did not interview the handcuffed individual or the individual alleging the missing backpack. Although the individuals were interviewed as part of the use of force review and the lieutenant initiated the OPA investigation, the involved civilians should have been interviewed separately by OPA investigators. There was no indication that the civilians refused an OPA interview. The lack of interviews with the two involved civilian subjects rendered the investigation inadequate.

- An officer was alleged to have pointed a firearm at the complainant without justification, resulting in an unreported use of force. OPA investigators failed to interview individuals who called 9-1-1 to initiate police response in the first instance, as well as other neighbors, to see if they saw the subject officer point a firearm.

Where civilian witnesses were interviewed, they tended to be the most thorough, objective, and complete of any interview type. About three-quarters (75 percent) were either video- or audio-recorded.

When they were able to review recordings of the interview, Monitoring Team reviewers observed incomplete questioning in 8 percent of interviews. There was less evidence of possible bias, leading questions or other interview techniques that could contaminate witness accounts.

### *Officer Interviews*

In cases where the nature of the underlying complaint appeared to warrant interviewing an involved and/or witness officer(s) (97 percent of overall cases), OPA investigators did not conduct in-person interviews with all involved or witness officers in approaching one-third (30 percent) of cases. Again, while there is significant discretion on whether and who to interview, this warrants further discussion.

- An officer was alleged to have lived rent-free for several years in a place run by Seattle Housing Authority in exchange for providing police services to a nearby community that the officer patrolled. Thus, the allegations concerned possible gain through office and the failure to disclose such conflicts.

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<sup>140</sup> In approximately 8 percent of instances, Monitoring Team reviewers were unable to determine, based on the OPA investigation file, whether all identified witnesses were interviewed in person or not.

The DCM notes that three of the officer's supervisors approved the arrangement, and that the approval was problematic. However, these three supervisors were not interviewed. Instead, they were able to respond to written questions rather than submit to a rigorous, recorded interview.

- A civilian alleged that officers had used unnecessary force. Between making the complaint and being interviewed, the complainant's version of events had changed. Civilian witnesses were interviewed and denied seeing any excessive force.

OPA elected not to interview the three officers who were present at the scene, with the OPA investigative file containing no explanation as to why.

- An otherwise sound investigation was judged only adequate because the questioning in the officer interviews were inappropriately leading. Although the factual record was otherwise sound and supported the OPA's sustained finding against the subject officer, the interviews should have been more professional and objective.
- Two officers effectuated a takedown of a subject who subsequently complained of a back injury. Although the ultimate OPA resolution of not sustained was likely correct, the investigation appeared mishandled. Because the complainant arguably recanted that he was injured, no officers were interviewed during the OPA investigation, including the subject officers.
- A captain refused to cooperate in an investigation by not answering questions posed by the OPA investigator. The lack of cooperation delayed completion of the OPA investigation by at least 60 days.

Where interviews with officers were conducted, the appropriate 5-day minimum notice was provided in nearly all instances (94 percent).<sup>141</sup> The interviews themselves were nearly all conducted by an investigator of a rank appropriate in light of the rank of the interviewed officer. In-person interviews were recorded in nearly all cases.

By union contract, SPD officers may elect to have a union representative at the OPA interview. The OPA Manual instructs interviewers to ensure that "the union representative . . . not be allowed to interrupt or otherwise disrupt an OPA interview."<sup>142</sup> The union representative may "place any objections on the record [either] before the Investigator begins asking questions and at the end of the interview, if necessary."<sup>143</sup> After the OPA investigator has completed the questioning, "the union representative may be invited to ask follow-up questions relevant to the investigation."<sup>144</sup> Overall, although most of the protocols for union representation were followed, representation tended to interrupt the interview too regularly – in (25 percent) of cases where representation was present during such interviews. This too is a significant improvement from DOJ's 2011 investigation, which found that the union representative "does not remain silent, but appears to be coaching responses to the investigating Sergeant's questions."<sup>145</sup>

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<sup>141</sup> OPA Manual at 30 ("For SPD employees covered by the SPOG contract, interview notices should be sent at least 5 days ahead of the scheduled interview day, per the contract.").

<sup>142</sup> *Id.* at 32.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> 2011 Findings Letter, App. D at 4.

- In an interview with a lieutenant who was the subject of the investigation, a union representative's speaking objections were overly long, numerous, and leading. In the aggregate, they made the interview appear less rigorous and objective than it could have been. The quality of interviews with supervisors implicated in the case, who submitted to interviews without union representation, were substantially more sound.

Overall, incomplete questioning was noted across officer interviews in many (38 percent) of the reviewed cases. Leading questions, or other interview techniques capable of compromising the integrity of officer accounts, were observed in more than one-third (29 percent) of instances where officers were interviewed. There were some indications of possible bias in about 14 percent of cases in which officers were interviewed. There were indicia of pre-interview questioning or discussion, which runs contrary to best investigative practices, in about 5 percent of cases where an officer interview was conducted.<sup>146</sup>

- A female complainant came into contact with the subject officer during a domestic violence call. She alleged that the officer inappropriately hugged her at the scene, subsequently made inappropriate romantic overtures via both text and phone calls, and reportedly drove past her residence. The complainant saved some of the text messages. The involved officer affirmed that he sent the messages but denied any romantic overtures and insisted that all correspondence was duty-related.

The OPA investigator missed key questioning when interviewing the involved officer. For example, the officer insisted that he did not make romantic overtures – but the investigator never inquired about text messages where the officer expressed a hope that he could hug the complainant again some day.

- One otherwise sound investigation contained several leading questions throughout the interview of the involved officer. Although they were not necessarily detrimental to the overall integrity of the evidence gathered during the interview, the tone suggested that the investigator might have been steering the officer in a favorable direction.
- An investigator in another case asked a series of leading questions about central and material issues in the investigation. The bias seemed geared toward a finding that the subject lieutenant's behavior was inappropriate and inconsistent with SPD policy.

Multiple Monitoring Team reviewers identified an apparent practice of OPA interviewing lower-level officers in person but sending written questions to higher-ranking SPD officials. While the Monitoring Team recognizes that this practice is not discretionary, but, mandated when requested pursuant to the collective bargaining agreement between SPMA and the City, it is a concern.

- In one case, an OPA investigator tried to conduct an in-person interview of a (former) Assistant Chief who was a witness with knowledge material to the case. However,

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<sup>146</sup> As with civilian interviews, it should not be inferred that, in all cases where incomplete or potentially biased questioning was noted, or where the interview was interrupted by outside parties, that automatically meant that the overall OPA investigation was inadequate. Some deficiencies with respect to some requirements of the OPA Manual did not, taken in the context of the rest of the investigation, ultimately result in material deficiencies that appeared to affect the overall quality of the investigation.

the Assistant Chief claimed to be too busy to sit for an interview and asked to be able to respond in writing to questions submitted by the investigator.

The same, then-Assistant Chief was not interviewed in person in another case involving allegations of insubordination.

- A complainant, originally arrested in connection with a home invasion burglary, claimed that, when his wife picked up his property while he was in King County Jail, cash, car keys, and bags of marijuana that he had in his possession when arrested were missing.

For reasons that were unclear to Monitoring Team reviewers, OPA determined that it was unnecessary to interview the arresting officer, even though he was the first officer who was involved with the subject, searching and taking possession of his personal property – including his cash, marijuana, and possibly his car keys – at the scene. OPA also determined that it was not necessary to interview the sergeant who stated that he saw the missing items in a property bag when it was at the South precinct. Especially given that the complainant's, and his wife's, primary concern was finding out what happened with the car keys, there should have been a fuller and more complete investigation about what happened to them.

The Monitor agrees wholeheartedly with the OPA Auditor's recommendation that all SPD officers be interviewed by OPA in person in misconduct investigations – and that the practice of sending written questions in lieu of in-person interviews is neither consistent with best practices nor consistent with cultivating an environment in which supervisors are incentivized to take seriously their duties in holding officers under their command strictly accountable for their performance.

## Collection/Analysis of Physical Evidence

All relevant evidence was documented in 86 percent of cases where evidence was, in fact, identified, referenced, or otherwise something that a reasonable investigator would seek. Specifically, where physical or documentary evidence was relevant to the investigation, all such evidence was collected in about 82 percent of cases.

The analysis of collected evidence was sufficient for the purposes of the investigation in approximately 88 percent of cases.

Of the approximately one-third (38 percent) of overall cases involving a possible subject injury, a majority (57 percent) of injuries were documented.

## Timeliness

OPA investigations were completed within the necessary 180-day timeline<sup>147</sup> in three-fourths (75 percent) of cases. Thus, in too many cases, investigations were not completed within a timeframe that would allow for the imposition of discipline if appropriate.

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<sup>147</sup> OPA Manual at 37–38.

- A civilian told a lieutenant about a pattern of unprofessional comments. The OPA Director initiated an investigation into the lieutenant's failure to adequately address the potential misconduct after it came to light via another avenue.

The OPA investigator let the investigation sit untouched for approximately three months, causing the investigation to be completed after the 180-day deadline had passed. Despite the time taken, both the director and auditor noted that the investigation was sorely inadequate – with the investigator failing to interview several key witnesses and failing to address several key inconsistencies within or among involved officer statements. It should be noted that both the OPA Director and Auditor expressed significant disappointment, disapproval, and frustration on the investigation's lack of timeliness and quality.

- A relatively straightforward case – involving allegations involving warrantless entry – took nearly nine months to resolve (July 2014 until February 2015) despite the fact that the OPA investigation was somewhat truncated, with not all witness officers interviewed and ICV footage of the complainant's arrest seemingly missing.
- An anonymous complainant alleged that an SPD employee had been improperly using a parking space for a protracted period of time. It was referred to OPA from City Ethics, after OPA initially referred the complaint to Ethics to avoid a conflict of interest. The 180-day deadline was January 1, 2015. The case was closed on February 27, 2015. The Monitoring Team was concerned about why the 180-day deadline was not met for a relatively straightforward case involving a relatively minor allegation.

Even where investigations were completed within the time limit, the Monitoring Team saw substantial, unexcused delays.

- An investigator waited from July 2014 until November 2014 to initiate contact with a complainant who had been the subject of an involuntary commitment due to suicide risk.
- A complaint was initiated in October 2014. It was not assigned out for investigation until January 2015. Accordingly, the 180-day time limit was nearly violated. It was not apparent that the OPA Lieutenant was held accountable for the unexplained delays in processing the case.
- A complaint was initiated on May 23, 2014. Very little happened on the investigation in June and July or within OPA in October 2014 – without justification or rationale.
- An OPA investigator receiving a case for review took an unreasonable amount of time to conduct the investigation (from August 5 to October 10 to contact a complainant to secure photos and an update on the case) and until October 17 to submit the case for review.

As noted in the Executive Summary, OPA investigators carry heavy caseloads, in part due to limited resources and in part because, under current policy, more minor policy violations that in many agencies would be handled by first line supervisors are referred instead to OPA. This is likely one of the direct causes of the timeliness

concerns that we raise and could be ameliorated by additional resources and staffing in OPA, particularly in the form of civilian investigators or administrators.

## Case Summary

The OPA Manual requires that “[o]nce all steps in the investigation have been completed, relevant and material evidence is summarized in the Case Summary.”<sup>148</sup> Overall, the Monitoring Team concluded that the great majority of case summaries were adequate because they were thorough, accurate, unbiased, and complete – meaning that they complied with the OPA Manual, contained all relevant evidence and information, and properly addressed all material inconsistencies or questions resulting from the investigation.

Of those that were incomplete, Team reviewers found that some case summaries did not include all relevant evidence.

- OPA received an anonymous complaint from an individual serving as a role player for the Training section who represented that an officer has indicated that he will give desired overtime assignments in exchange for alcohol. The complainant alleged that other role players also knew about the subject officer’s inappropriate conduct.

Investigators did not obtain information about the roster of other role players during the time period in which the alleged bribery scheme purportedly took place. No member of OPA endeavored to obtain rosters, training assignments, or overtime-related records to discern whether there were any patterns – despite the fact that an interviewed sergeant in the Training section noted that a spreadsheet was readily available with such information logged.

The case summary credits the named officer and his supervisors as assigning work equitably. Accordingly, there was no underlying analysis of the actual assignments handed out. Nor was there any effort to contact a sample of role players to see whether any would corroborate the anonymous complainant’s allegations. Despite these omissions, the investigation was certified as complete by the OPA Director and Auditor.

For the evidence that was considered, the case summaries tended to evidence, describe, and weigh it appropriately. In some 94 percent of cases, Monitoring Team reviewers found that the identified evidence was examined and describe appropriately in the summary. Testimonial and interview evidence was also weighed in 94 percent of cases. The case summary likewise weighed the importance of various pieces of evidence in 94 percent of instances.

In the 81 percent of instances where material inconsistencies were identified among various pieces of evidence, those material inconsistencies were identified, and resolved if appropriate, some 62 percent of the time. These included inconsistencies among statements (in about 50 percent of cases) and problems with video being inconsistent with statements (in about 6 percent of instances).

- A complainant alleged that she had been improperly detained and that an involved officer had twisted her arm, causing pain. The complainant’s interview during the OPA investigation was inconsistent with officers’ accounts. Monitoring Team

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<sup>148</sup> *Id.* at 37.

reviewers concluded that the preponderance of the evidence supported the officers' accounts, as OPA likewise concluded.

- Two officers effectuated a takedown of a subject, who complained of back injury before recanting such allegations. OPA neither acknowledged or dealt with conflicts between two eyewitnesses – a third party who saw the incident unfold and the complainant's girlfriend, who was at the scene.

## Case Review and Recommendations

After completing the case summary, the OPA Manual provides for the investigator to “submit the completed investigation to an OPA Lieutenant for approval.”<sup>149</sup> The investigation “is then reviewed by the OPA Captain Deputy Director and finally by the OPA Auditor to ensure that it is complete, thorough, and objective.”<sup>150</sup> The OPA Auditor may direct that the investigation be “referred back to an OPA Lieutenant who works with the Investigator” to address any deficiencies, problems, or issues.<sup>151</sup> Once the investigation “has been reviewed and certified by the OPA Auditor, the OPA Director reviews the case . . . , certifies the investigation as complete[, and] issues to the Chief of Police a recommended finding on each allegation using the preponderance of the evidence standard.”<sup>152</sup> The Director issues the findings to the Chief “via a Director's Certification Memo (DCM), issued by the OPA Captain Deputy Director, summarizing the evidence collected in the investigation.”<sup>153</sup>

The Monitoring Team could identify, based on the OPA files that SPD provided and that were represented as being complete to the best of the Department's and OPA's knowledge, that investigations were certified as complete by the OPA Director and OPA Auditor in approximately 96 percent of cases reviewed.

Nevertheless, in some of cases, the OPA Director and OPA Auditor did not adequately address or resolve outstanding issues, concerns, or problems with the underlying OPA investigation.

- A lieutenant sent an email with an implied threat relating to FRB review of an officer-involved shooting. The officer also later defied an order not to contact superiors regarding the FRB issue and swore in a heated phone call exchange with a then-Assistant Chief.

The DCM clearly suggests that the lieutenant was not being truthful during portions of his investigative interview. However, no charges were ever added relating to making false statements to an investigator.

- An officer self-reported that he had purchased prescription drugs from a law enforcement officer after being contacted by the other law enforcement officer's agency. OPA investigators identified several inconsistencies between statements made by the officer in various interviews.

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<sup>149</sup> *Id.* at 39.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 40.

However, the OPA focus was unnecessarily restricted to the illegal drug purchases and not the dishonest efforts to try and throw prosecutors off his trail by lying in prior statements. Neither the case summary nor the DCM fully evaluated available evidence that may well have tended to support allegations related to both dishonesty and the improper possession/use of controlled substances. The available evidence should have been more fully evaluated with regard to the possibility of sustaining a dishonesty allegation.

- In the case where an officer was alleged to have inappropriately hugged a female complainant and subsequently sent her romantic text messages, the OPA ultimately concluded that, contrary to the officer's repeated and firm denials and based on the complainant's statement and the text messages themselves, he was pursuing a personal relationship with the complainant.

However, the OPA made no additional charge or allegation related to dishonesty during the course of an internal investigation. This is a significant issue to have left not only unresolved but unaddressed.

- The Force Review Board asked OPA to investigate whether an officer had violated the stops and detentions policy by unnecessarily detaining a civilian subject, who had been stopped at the scene of a fight and lied about her identity. OPA conducted only an 8-minute interview of the involved officer, which failed to explore whether the prolonged detention was actually necessary. The involved officer said that he did not know that the primary officer had already cleared the subject, which would have rendered any ongoing detention inappropriate. Nonetheless, the interview did not address what the officers communicated nor interviewed the other officer who was at the scene.

The investigation was certified as completed by OPA Director and OPA Auditor. Although the implicit assumption behind the analysis in the DCM was that the detention as unavoidable, it was not at all clear from the OPA investigation itself.

- In the case in which the complainant claimed that SPD officers had stolen his property when he was arrested on home invasion-related charges, the DCM questioned the reason as to why involved officers were not interviewed – but was apparently satisfied by the investigator's response that the arresting officer had provided a statement in the GO (General Offense) report, which made an interview unnecessary. The Monitoring Team found that the certification of the investigation as complete was, at best, premature.

The Monitoring Team did find evidence of the OPA Director and/or Auditor identifying underlying issues in the investigation and sending the case back for additional investigation.

- A complainant alleged that an officer called him a “dumb a\*\*” while the officer was directing traffic. The OPA Auditor certified the case as complete only after indicating that a witness officer needed to be interviewed.

Furthermore, the analysis and explanation of the recommended findings in the DCM was judged sufficiently thorough and complete to allow a subsequent decision-maker to reach a fair, objective, and well-supported adjudication decision in the great majority of the cases.

Overall, the quality of the Director's Certification Memo was judged adequate in the great majority of cases. It was inadequate by both reviewers in approximately 17 percent of cases.

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