

Judge Anne Levinson (Ret.), OPA Auditor
Answers to Written Questions from the City Council for Reconfirmation
Submitted September 13, 2013

Reconfirmation Questions:

1. Having served as OPA Auditor for the past three years, please tell us what you have learned from this experience. In particular, what do you identify as successful outcomes from your tenure and what, if any, areas do you wish more progress could have been made during your first term?

My first term as OPA Auditor began in July, 2010, just as a number of high profile incidents were occurring and public concern about police accountability became particularly heightened. I began my role as Auditor by assessing how the work of the OPA Auditor could be done in a way that would be of most benefit to the public, policy-makers and the Department, particularly in light of these incidents and the understanding that issues not addressed over the years resulted in a growing erosion of community trust.

The Auditor has a very specific role of ensuring that every complaint of possible misconduct is handled as it should be, that all complainants are treated with respect and dignity, and that all investigations are of high quality, thorough and impartial. Some examples of recommendations I made in that regard that have been implemented include:

- Streamline the classifications and finding system so it is less cumbersome and easier to understand
- Require that OPA look at the totality of the incident, not just the “4 corners” of the complaint in determining allegations so that the complaint is not limited by complainant's knowledge of what Seattle Police Department (SPD) policies require
- Have earlier review of investigations in the process so as to have any additional follow up required occur as soon as possible and thus be of maximum evidentiary value
- Make sure OPA Use of Force investigations analyze, in addition to whether the force used was appropriate and reasonable as required by law, whether other options involving either no or less force existed and if all steps and actions taken preceding the actual force were consistent with best tactics and policy, with the burden on the officer to describe the thinking and actions that led up to the force needing to be used. Technically the action may be consistent with policy, but did the officer make decisions and conduct him/herself in a way that created the situation that then required the force? Did the officer wait for back-up, explain reason for stop, or consider better alternatives?

Some still need to be implemented, including:

- Improve OPA's training manual and provide training and orientation for OPA investigators, supervisors and intake personnel before they start so that anyone who is rotated to an assignment in OPA has the same knowledge of best practices and OPA's unique role

- Assess obstacles to more frequent use of mediation and look at use of alternative ‘problem solving’ options that can be more quickly responsive to complainants and better fit the nature of their concern
- Improve transparency and accessibility through better use of technology and enhanced communications with the public
- Help eliminate any appearance of retaliation when an OPA complainant also has pending criminal charges by enacting a policy clearly stating that although there often needs to be communication with prosecutors to ensure their timely review of cases for possible filing of criminal charges, there should be *no* communication between OPA and prosecutors with regard to the prosecutorial decision *as to whether charges should be filed*, OPA investigators always identifying themselves as with OPA when interacting with others in the criminal justice system and adoption of a protocol for handling investigations in cases where an allegation of retaliation or any other allegation is made against OPA staff

The second critical role of the Auditor is to identify needed changes in policy, training, systems and practices. There has been quite a bit of progress on some of those recommendations, in no small part because of their incorporation (or similar approaches) in the Consent Decree or Settlement Agreement now monitored by the federal court or in the Department’s 20/20 plan. Some that have been implemented include:

- Eliminate the in-squad relief system so that every officer has an assigned and consistent Sergeant as supervisor
- Clarify what Sergeants are expected to do, for what they will be held accountable and how success will be measured
- Provide necessary tools and training for Sergeants for priorities such as Use of Force (UOF) review; probable cause to stop; search & seizure; verbal communications skills; obligation for an officer to identify him/herself; best practices for use of In-Car Video (ICV); writing and review of General Offense Reports (GORs) for thoroughness and accuracy; screening arrests; and how to address problems in performance
- Unless circumstances require otherwise, the Sergeant who screens the arrest should be the one to review and approve the GOR and UOF reports and the Sergeant should screen the arrest at the scene rather than at the precinct
- Develop training and policies that promote de-escalation, communication skills, listening, good use of judgment, and understanding of cognitive differences and behaviors for juveniles, those with mental illness or impairment
- Supervisors, command, field training officers (FTOs) and training staff should use ICV as a teaching tool for individual officer coaching; roll-call and departmental scenario training, performance appraisal, review of force, promotional and hiring exams and other learning opportunities (and not limit its use to disciplinary investigations)
- The Academy should adjust its training philosophy about force, moving away from the traditional command & control emphasis and prioritizing effective communication as a tool
- Improve the Department’s review of force so it is not simply a pro forma sign-off by the chain of command, but instead ensures actions leading up to the force being used were

tactically sound, that the UOF reporting is accurate and thorough, that supervisors are trained in how to conduct a UOF investigation and that the ICV is reviewed and is consistent with the written documentation

- Officers should document all aspects of an interaction, including all involved officers and any physical interaction, whether it meets the reportable force standard or not
- Training for officers should include the importance of knowing and articulating who is primary and having good communications skills when multiple officers are involved
- Training and policy revisions should address Terry stops, social contacts and searches
- Broaden the biased policing policy to encompass the range of decisions made from initial stops through prosecution

Some still need to be implemented, such as:

- Clarify public disclosure obligations, provide additional training for relevant staff and implement departmental practices that are consistent, timely and understood for public, media and litigation requests so as to improve responsiveness and transparency
- Adopt a discipline matrix to help ensure consistency over time in disciplinary decisions and minimize the likelihood of appeals overturned discipline
- Review recruiting, hiring, testing and promotional criteria to ensure each is aligned with most important skills sets needed based on issues and trends seen by OPA, FTOs, training personnel, supervisors and command (e.g., communications skills, judgment, maturity, empathy)
- Review hiring and promotional practices so that judgment, performance and skills are the prerequisite to testing, not the other way around, and that those without the requisite skills are not promoted, regardless of test scores
- Work with executive and legislative branches to implement strategies for creating a segregated hiring budget to allow for year-to-year consistency in hiring new officers and minimize bow-waves resulting from retirements that can diminish ability to get best qualified personnel or result in pressure to retain new recruits despite red flags because of the need to hire too many recruits at one time and can result in a disproportionate percentage of newer officers in patrol
- The City, through its Law Department, should assess whether there are additional options (such not supporting an application by a retired officer to carry a concealed firearm under the Law Enforcement Officers Safety Act (LEOSA) privileges; holding back salary, accumulated sick leave or pension) to help ensure accountability when an officer chooses to retire or resign rather than be subject to discipline and/or offer testimonial evidence in an administrative investigation. Officers retiring when there is an allegation of misconduct is not unique to Seattle (or to Washington State) and is particularly important for those cases that are declined for criminal prosecution or do not result in a conviction, but where the allegation was, or might have been, sustained under the preponderance standard used for administrative proceedings
- The City's recently-appointed Gender Pay Task Force that is developing short-term and long-term strategies to address gender-pay inequities should include in its review of

gender pay disparity the possible unintended consequences for local jurisdictions of federal, state or local laws requiring the use of Veterans' Preference Points in hiring and promotional opportunities, particularly in regard to SPD's female and LGBT applicants and employees. While the City cannot (and may not wish to) change these laws, it may be able to create ways to balance out any inequities that may have resulted from the laws for SPD and/or other City agencies (such as adding an equivalent number of points for bi-lingual skills or expertise in mental health or other particular educational credentials)

2. How do you see the role of, and where do you see opportunities for added value by, the OPA Auditor in the ongoing efforts related to implementing the Department of Justice (DOJ) and City of Seattle agreement related to police reform?

In addition to new areas for improvement that were identified by the Department of Justice, the Consent Decree and Settlement Agreement have been very helpful in providing added urgency and oversight to the OPA Auditor-recommended changes to policy, training and systems that might otherwise have languished. The federal court mandate has also resulted in prioritization of additional funding and staff capacity in order to implement identified reforms. As the DOJ was doing its initial review, they made a point to review and understand issues and recommendations that had been raised by the Auditor, and incorporate those that were within the scope of their work. Since implementation began, both the federal court monitoring team and the Community Police Commission (CPC) have been very attentive to past recommendations and collaborative in their approach to the work.

Reviewing every complaint filed, every investigation and every supervisory referral provides some unique insights into what is being done well, where officers and supervisors are not using best practices, where policies are unclear and where training is needed. So I see my role as continuing to provide whatever expertise and knowledge I have in whatever way is helpful to each player in the reform efforts. For example, I have made many recommendations related to less than optimal use by officers of ICV. Since all SPD patrol vehicles will have a new ICV system in place by the end of September, the CPC offered to re-prioritize its work to include a comprehensive review of the status of implementation of all the recommendations made by the OPA Auditor to the Department to improve its ICV practices. We then made sure to include as well past recommendations from the OPA Director, City Auditor and Human Rights Commission. It was important to use this collaborative approach so as not to miss the window quickly closing with the Department's schedule for acquisition, installation and training for its new ICV system. The goal is to help ensure that contractual, technical, training and policy issues are addressed by then.

Similarly, the new OPA Director and I were able to provide input to the monitoring team in regard to the proposed Use of Force policies, based on our collective experience from review of many misconduct complaints and investigations related to Use of Force, and I was able to provide the CPC some thoughts on their proposed bias and stops policy development. Likewise, I anticipate I will be able to help the CPC and monitoring team in their future work assessing the structure of the

accountability system and their work endeavoring to measure the effectiveness of the various new policies and training as they get implemented.

3. What are your goals for the next three years if reconfirmed and what do you see as the most significant challenges to achieving those goals?

Given the current context of the Consent Decree, Settlement Agreement, involvement of the Department of Justice, federal court monitoring team, Community Police Commission, the stated desire of the interim chief to embrace and lead reform and the new OPA Director's philosophy and expertise, there is a unique opportunity to work collaboratively to affect significant change in Seattle's approach to accountability and to policing for years to come. If I am confirmed for a second term, I am committed to helping that happen in whatever way I can. Additionally, I am also very committed to a collaborative approach to review of the accountability system, and would not hesitate to recommend or support an option that might not include an Auditor role or might include a very different approach to that role that is less designed for judicial or legal expertise and thus better filled by a different appointee.

There are several areas that can help improve the accountability system that are beyond the control of OPA and SPD and so present additional barriers or challenges to affecting needed change. The impact of veteran's preference points, the available tools for accountability should an officer choose to retire, the statutory criteria for an arbitrator or other appellate body being able to overturn a disciplinary decision, the statutory criteria for revoking certifications, the criteria for hiring and promotion, the curriculum at the Basic Law Enforcement Academy, the adoption of statutory language for use of body cameras, and the change to budgeting to allow for consistent year to year hiring of officers are examples of areas for potentially very impactful reform that require the work of policy-makers or other departments, agencies and jurisdictions to help get implemented and in several instances might more likely be successful in partnership with others.

4. Given what you have observed of how the OPA functions and what you have learned or seen from other models with civilian oversight from across the country, what do you see as the strengths and weaknesses of our current police accountability structure?

Although the number of citizen oversight systems has grown exponentially in recent years, there are considerable variations in oversight models with respect to the structure, staffing, procedures, authority (e.g., who investigates, who recommends the disposition, whether a reinvestigation can be ordered, are systemic issues addressed), internal vs. external and so on, and the research on effectiveness of different models has yet to develop. There is not as of yet a preferred, evidence-based model that is more effective than alternative forms in reducing citizen complaints, inappropriate use of force, disrespectful behavior or deterring other misconduct. We don't yet know whether differences in systems have any impact on improving public attitudes toward the police, perceived legitimacy of the police in particular with traditionally disenfranchised

communities, providing thorough and fair investigations, increased satisfaction for complainants and officers, or enhancing the professionalism of a department. Nor are there yet any correlations about the percentage of complaints sustained or the meting out of education-based discipline (training and mentoring) vs. traditional discipline (reprimand, suspension) with any of those outcomes. Comparisons across jurisdictions are difficult because of the significant differences in laws, labor contracts, policies and regulations, size of agencies, suburban vs. urban demographics and crime stats, options and standards for appealing discipline and terminations, and other factors constraining or enhancing accountability beyond the structure itself. Lastly, it may well be the case that these systems should be regularly modified to be most effective, so that as the issues and needs in a particular jurisdiction change over time, the oversight structure is best suited to meet the new challenges and community expectations.

The most significant criticisms of Seattle's system often center on two things: whether a Director who sits on the command staff and reports to the Chief can be truly independent; and whether having sworn personnel handle the complaint and investigations process will result in the highest quality, fair and impartial investigations (and even if so, whether the community will trust that they are). There are pros and cons to external vs. internal organizations and to sworn vs. civilian investigators. There are additional challenges presented by being outside of the Department, with some jurisdictions experiencing less access to information, less ability to influence change, and longer times to conclude cases. Additionally, there is a lost opportunity for requiring those sworn personnel who want to be promoted to serve in these roles, which can be an invaluable perspective to gain. On the other hand, locating the accountability function outside of the Department makes its independence clear to the public and officers both. One way to achieve more independence while remaining within the Department that I support and which the new Director is already implementing is to change some of the processes OPA uses to make it very clear that investigations and findings are not influenced by others in the Department. Another way would be to have not just a civilian Director, but to also have all or some of the investigators and supervisors be civilians. That helps have consistent expertise over time, as non-sworn staff will not be regularly rotated. One also has to keep in mind that with Seattle's collective bargaining agreements, many of these kinds of changes must be negotiated, so the possible gain must be weighed against other needed OPA and SPD reforms and other negotiating priorities.

First and foremost in my view is the problem that much of what the community might consider to be most important with regard to accountability is not actually within the jurisdiction of OPA. Officer-involved shootings, firearms review, use of force investigation and review where misconduct is not alleged, and possible criminal law violations are all handled by other parts of the Department. This has a significant impact on community trust in the accountability system, as those incidents or interactions which may be most in the public eye or in fact have most negative impact may never be addressed by OPA but leave the appearance that OPA must be ineffective or passive.

As I have mentioned in my reports, I would also like to see a more clearly-defined role for OPA in improved use of best practices. Each case presents an opportunity to make sure the supervisory conduct as well as the decisions and tactical choices made by the officer, whether or not

misconduct occurred, are also addressed. Second, what is learned from complaints and investigations can highlight trends, alert supervisors to the need for mentoring and coaching, and provide training with examples that identify gaps in skills. In my view, the Director should have a clearly defined role in affecting training, hiring and promotional standards, and policy development, with awareness of litigation, citizen excessive force or other conduct City claims, appeals of discipline, unfair labor practice claims and EEO/EIS issues as well as OPA cases.

Another critically important aspect of the current system that one would have to say is on the ‘con’ side, is the lack of a process by which there is clear accountability for the Department to follow through on implementation of recommendations made by the Director, Auditor or others charged with oversight.

The system would also be strengthened by more direct involvement by the Director and Auditor in the City’s labor negotiation agenda-setting, since so many aspects of the oversight system and Department’s ability to improve practices are constrained by contractual limitations. It is important for policy-makers to be aware of what impact various contractual language has on ability to implement reforms.

Seattle’s system is an unusual hybrid, with civilians playing three different oversight roles. That had the potential to lead to more robust oversight, but it has had the unintended consequence of creating some confusion and redundancy in the system, as well as less transparency and accessibility. For example, in some jurisdictions commissions such as the OPA Review Board (OPARB) are the citizen arm to review investigations, but in Seattle’s system there is already a civilian director and a civilian auditor reviewing every investigation (it is rare for a system to have both a civilian director and a civilian auditor). Some have thought that the primary role of OPARB was to lead community engagement, helping make the system more accessible and understandable and assessing why many who have negative experiences don’t file complaints. Others thought playing that role somehow made OPARB the defender of the system. With the addition of the CPC, that has made it even more difficult for OPARB to have a clearly defined role.

The authorizing legislation for the Director and Auditor in the current system has led to approaches and prioritization of work that are not necessarily the way one would do it today, given all that has changed in Seattle’s system over the years. For example, the Auditor provides important oversight in some regards, but is not designed to be a traditional auditor or inspector general, with a more systemic responsibility and staff to conduct performance audits. (One option might be for the City Auditor to have a unit that is designed to assist with this work.) The OPA Director has a wide-range of work to oversee complaints, investigations and mediations, and also needs to prioritize public outreach, but has no civilian deputy or operations staff to manage the programmatic needs or implement Auditor recommendations. That is one of the drawbacks of having sworn personnel who cannot take on additional roles outside their assigned ‘body of work’. (There is a position currently proposed in the budget to add a senior-level civilian staff to OPA.)

5. *In your opinion, is SPD's current policy regarding courtesy as set forth in the Policy and Procedures Manual sufficient to address officer escalation and intimidation? What changes would you recommend to the Policy and Procedures Manual to specifically address escalation and intimidation?*

The professionalism section of the standards and duties policy includes the most frequently cited and most frequently sustained allegations for OPA cases. This section includes courtesy, profanity, discretion, duty to identify, and derogatory language, among other things. I have recommended this section be included in the policy revisions now underway and recently met with an Assistant Chief to try to ascertain why those revisions have been delayed. The section needs to more clearly articulate expectations consistent with enhanced community trust and legitimacy, such as the LEED training was intended to do (to listen, explain, be empathetic, treat people with dignity and respect; community care-taking is at times the focus, not command and control). The sub-section on courtesy is very brief and effectively addresses basic rudeness. It should be clear that the guiding principle is to treat the public with respect and courtesy, guard against employing an officious or overbearing attitude and refrain from language, demeanor and actions that may result in the individual feeling belittled, ridiculed, or intimidated. The courtesy sub-section currently does not address escalation, which is generally alleged under the discretion section (in 2011-2012 courtesy and profanity were sustained the most frequently, followed by discretion). Other prohibitions against this kind of behavior are the bias policy and the retaliation policy which are also being revised to make expectations clear and the use of force policies, which will soon require de-escalation approaches. In addition, I have recommended the derogatory language sub-section be revised so it does not list classes of people against whom derogatory language may not be used, but instead simply makes clear that officers shall not use derogatory language, period.

6. *What are your thoughts about mandating the use of body cameras?*

I support requiring the use of body cameras, as long as policies for their use include appropriate privacy safeguards, clearly governing when officers should turn on the cameras, and require how footage must be stored, who has access to it and when it will be disclosed to the public. The cameras can help exonerate officers accused of misconduct where cases otherwise would result in inconclusive findings due to the conflicting statements. They can also serve as check on officer conduct, making the cameras potentially a very effective tool to improve community trust.

Body cameras can help in reducing the costs of investigations and of claims stemming from police incidents and provide helpful evidence at trial. They are not particularly expensive, can capture a wide-angle view of what the officer is seeing, and be automatically uploaded without allowing tampering in any way. The evaluations done to date show that the cameras result both in less use of force and in a reduced number of citizen complaints of perceived misconduct. When we are aware we are being recorded, most of us will likely modify our behavior in positive ways that result in reduced conflict for all involved.