



Office of Police Ombudsman Commission

Special Meeting Agenda

March 23, 2021

5:30PM – 7:00PM

WebEx Meeting

TIMES GIVEN ARE AN ESTIMATE AND ARE SUBJECT TO CHANGE

Commission Briefing Session:

5:30 – 5:35pm	1) Welcome to public	Commissioner Smith
	2) Agenda approval	Commissioner Smith
	3) Approval February 16 th Minutes	Commissioner Smith

Items:

5:36 – 6:10pm	1) Public Forum	Citizens Signed up to Speak
	2) Monthly Report Format Change	Christina Coty
	3) Ombudsman Report	Bart Logue
	4) OPO Annual Report	Bart Logue/Luvimae Omana

Commission Business:

6:11 – 7:00pm	1) OPOC Annual Report	Commissioner Rose
	2) OPO/OPOC Annual Report Approval	Commissioner Smith
	3) Deputy Ombudsman Position Update	Commissioner Smith
	4) Op-Ed Discussion	Commissioner Smith
	5) Commissioner Speak Out	Commissioners

Adjournment:

Next OPOC meeting will be held April 20, 2021

Join by WebEx:

Meeting link: <https://spokanecity.webex.com/spokanecity/j.php?MTID=m4b5fc918cd05ac833e51e3fe373bea45>

Meeting number: 187 600 2887

Password: 8jmEetPfb58

Join by phone:

+1-408-418-9388

Access code: 187 600 2887

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Office of Police Ombudsman Commission Minutes

February 16, 2021

Meeting Minutes: 1:45

Meeting called to order at 5:30pm

Attendance

- OPOC Commissioners present: Ladd Smith, Jenny Rose, James Wilburn, Luc Jasmin and Lili Navarrete
- Legal Counsel: David Bingaman
- OPO staff members present: Bart Logue, Luvimae Omana and Christina Coty

Items Session

- New Commissioner for District 2 Introductions – Lili Navarrete
- Agenda approved
- January 19th minutes approved
- Guest Speaker – Council President Beggs
 - Update on the Police Guild Contract – The City, Police Guild and Legal have come to a tentative agreement.
 - Changes to the Oversight portion of the contract
 - OPO Closing Reports are authorized to publish once the disciplinary process is over.
 - The OPO will have more and easier access to information.
 - Independent investigations will require written notice to IA as to what the OPO would do different in the investigation. IA will be given the opportunity to conduct the investigation with said recommendations. If they decline, the decision will go to the OPOC to vote on how to proceed.
 - If the OPO is acting outside of their authority, the matter will go to arbitration. The arbitration process will only determine if the OPO is working outside of their authority. They will not have the authority to remove the Ombudsman, OPO Staff, or an OPOC Commissioner

Public Forum

- None

OPO Report

- January Report
 - 6 community events for the year
 - 106 Contacts, 0 complaints and 11 referrals
 - 7 cases certified, 1 Critical incident (OIS)
 - Trainings - Daigle Use of Force Seminars, NACOLE Webinar - Analyze Use of force data

Commissioners' Business

- OPMA Overview – Mr. Bingaman
 - Went over some basics of OPMA violations and the quorum and provided suggestions
- OPO/OPOC Annual Report – Commissioners Smith

- Discussed the reports content and expectation of delivery
- Deputy Police Ombudsman – Commissioner Smith
 - Would like to send a letter requesting action on the title for Luvimae by HR
 - Motion – for letter creation, Motion approved unanimously
- Commissioner Speak out – Why did you become involved in the OPOC?
 - Commissioner Smith – His focus is on why we are doing what we are doing. How can I help get oversight that is recognizable that moves for our citizens?
 - Commissioner Rose – She wanted to do something for the community and applied. Was asked to speak in Olympia on Senate Bill 5436. Her focus was that the Police Guild should not be able to choose the Ombudsman and the Ombudsman should be able to write anything in closing reports. If we want to be 100% transparent, the Police Guild should not have any input on the Ombudsman or on any reports from the OPO. The Bill is moving forward to the next stage.
 - Commissioner Wilburn – He recognized that some police officers act a certain way but they have alternatives and his focus is on that.
 - Commissioner Jasmin – He was interested in the commission because many in the community do not trust the people that you are supposed to call for help.
 - Commissioner Navarrete – She wanted the Latino community to have greater representation. Many of them do not report crimes or DV situations because of language barriers and possible threats of deportation.
- March Meeting Date Change
 - Vote to change the OPOC meeting from March 16th to March 23
 - Vote to cancel the March 16th OPOC Meeting - Unanimous
 - Vote to have meeting on March 23rd - Unanimous

Motion Passes or Fails: 4

Meeting Adjourned at: 7:15

**Note: Minutes are summarized by staff. A video recording of the meeting is on file -
Spokane Office of Police Ombudsman Commission**

<https://my.spokanecity.org/bcc/commissions/ombudsman-commission/>

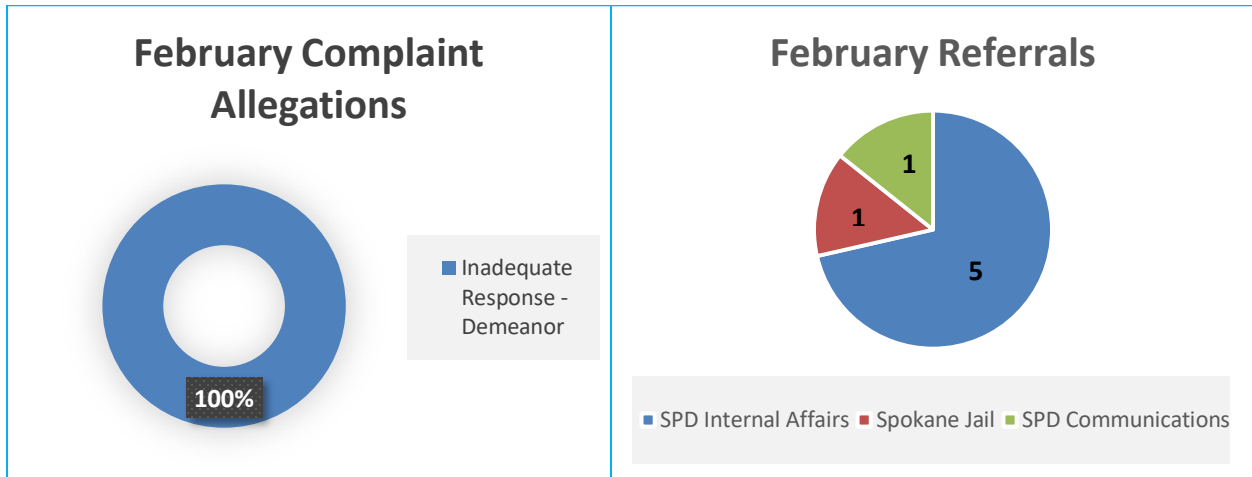


Office of the Police Ombudsman

Public Safety & Community Health Committee Report

Reporting Period: February 1-28, 2021

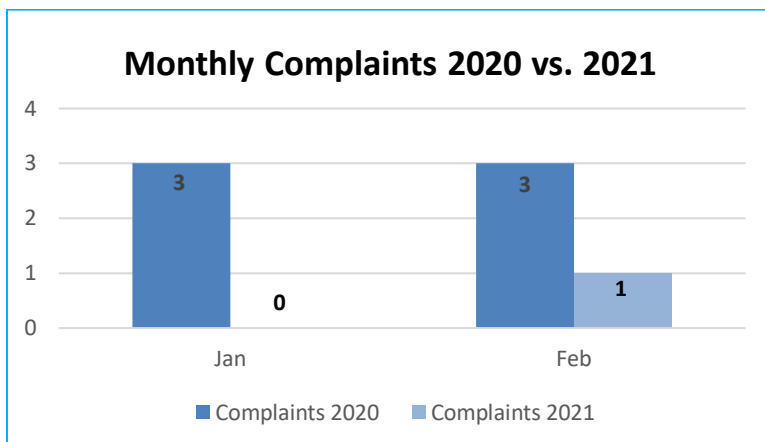
Complaints/Referrals/Contacts



Highlights:

In February the OPO received 1 complaint and made 7 referrals for various agencies, examples include:

- Community member had concerns about a relative not receiving medical attention at the Jail – Spokane Jail
- Community member had questions about how to carry a weapon without a Conceal Carry Permit – SPD Communications
- Community member had a use of force question during an arrest that occurred outside of the 1 year – SPD Internal Affairs



Complaint Comparison

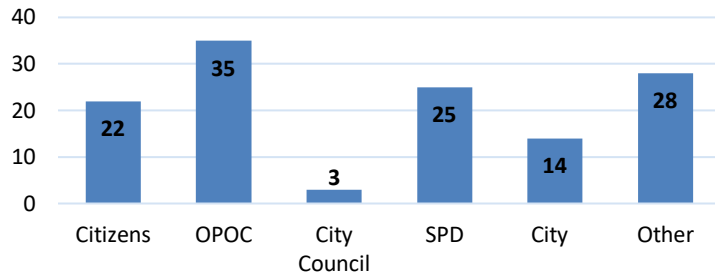
The OPO saw a decline in complaints in February 2021 (1) compared to February 2020 (3).

Overall complaints are down YTD (1) compared to 2020 (6).

February Contacts

- 136 total contacts
- 5 community member interviews were conducted
- City contacts emphasis on Deputy Police Ombudsman Position

February Contacts

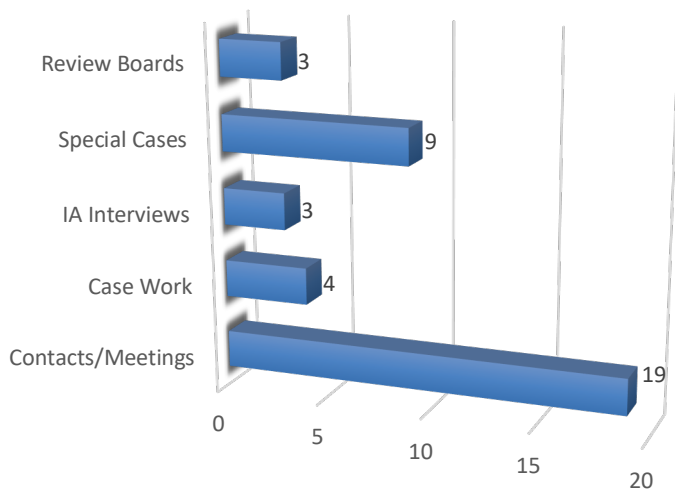


Oversight Activities

Highlights:

- The OPO attended 3 Internal Affairs interviews
- The OPO attended 3 review boards during the month of February – Deadly Force Review Board, Use of Force Review Board and Collision and Pursuit Review Board
- The OPO attended the Internal Affairs Bi-Weekly meeting
- The Ombudsman had several discussions with Chief Meidl regarding the annual report
- The OPO began discussion with IA on TA changes to current practices
- The Ombudsman identified 7 cases for closing reports and recommendations

February SPD Engagement



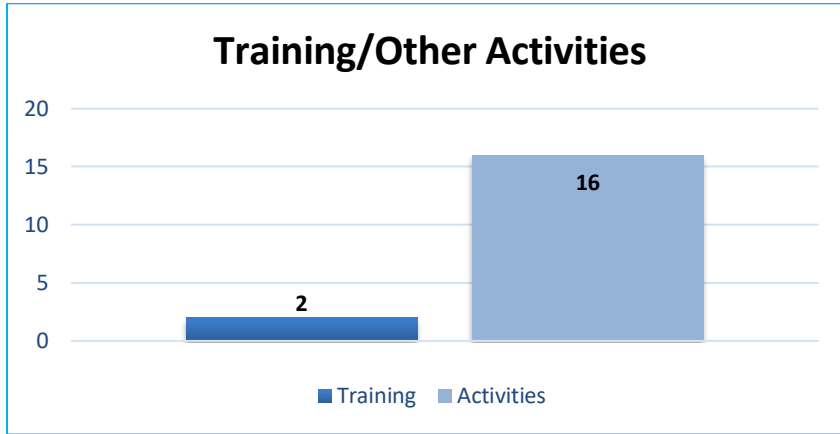
Case Work

- 3 cases certified
- 1 case returned for further investigation
- 1 case recommended for mediation

Special Cases

- Use of Force - 5
- Collision - 2
- Pursuit - 2

Training/Other Activities



Training:

Daigle Law Group: Use of Force Summit Webinar Series

WSBA: Due Process and Administrative Hearings during the time of Covid19

Highlights:

- Outreach – PSCHC Meeting, Quarterly Department Head meeting, C.O.P.S. board meeting, Spokane Human Rights Commission
- Oversight – OPOC monthly meeting, NACOLE Use of Force Working Group, NACOLE Strategic Planning Committee, NACOLE Member Development and Support Committee, Task force 2.0 Policing and Alternatives to Policing subcommittee
- Other – Leadership Spokane Executive Board meeting, Leadership 2021 meetings, Leadership Spokane Social Committee, Transformational Leadership Round Table

Upcoming

OPO/OPOC Annual Report Presentations to City Council Scheduled for April 12th

Office of the Police Ombudsman Commission Meeting:

Held virtually, the 3rd Tuesday of every month at 5:30pm

Agendas and meeting recordings can be found at:

<https://my.spokanecity.org/bcc/commissions/ombudsman-commission/>

2020 ANNUAL REPORT

Office of the Police Ombudsman



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STAFF

Bart Logue, Police Ombudsman – Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, Analyst / Deputy Police Ombudsman – Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a *Juris Doctorate* from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is also a certified Advanced Force Science Specialist.

Christina Coty, Administrative Specialist – Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, OPO Attorney – Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

OFFICE OF THE POLICE OMBUDSMAN

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Mission

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

Office of the Police Ombudsman

Commission

Jenny Rose, *Chair*

Ladd Smith, *Vice-Chair*

Blaine Holman

Elizabeth Kelley

James Wilburn

Luc Jasmin

LETTER FROM THE OMBUDSMAN

February 25, 2021

Mayor Nadine Woodward
Council President Breean Beggs
City Council Members
Office of the Police Ombudsman Commissioners
Chief Craig Meidl

This report covers the period from January 1, 2020 through December 31, 2020. Oversight efforts in 2020 saw both successes and challenges. As with every department in City Hall, the Office of the Police Ombudsman (OPO) was immediately impacted by the COVID-19 pandemic (the pandemic). As City Hall remained closed to the public, we transitioned to working from home and the majority of our work was performed remotely. We stayed connected as an office through virtual meetings 2-3 times per week which helped us stay on task, stay abreast of any challenges, and maintain office morale; especially as the pandemic continued.

Despite the pandemic, the OPO was consistently contacted by the community at a rate similar to when the office was open to the public in 2019, only seeing a slight decrease of 62 contacts. We conducted interviews to determine if an allegation rose to the level of a complaint 129 times. This represents over a 400% increase from 2017, when only 29 interviews were conducted. Overall, community member complaints submitted to Internal Affairs (IA) for investigation declined from 77 complaints in 2019 to 50 complaints in 2020. Considering that complaints spiked in June following the death of George Floyd in Minneapolis and the resulting nationwide protests, it is fair to say that overall complaints against the Spokane Police Department (SPD) saw a substantial decrease during 2020, which has continued thus far into 2021.

When the OPO receives an allegation that we do not believe rises to the level of a complaint, our practice is to send the information over to the police department in the form of an Internal Referral. In 2020, we submitted 71 referrals to IA. In previous years, these referrals would have been submitted to IA as Inquiries and counted as part of the number of complaints against the department. As such, the total number of complaints and referrals submitted in 2020 represent a 400% increase since I became the Ombudsman. We did not offer a mediation for a complaint during 2020 due to the pandemic.

The OPO attended a variety of virtual training opportunities in 2020. The OPO and the Office of Police Ombudsman Commission (OPOC) attended the virtual National Association for Civilian Oversight of Law Enforcement (NACOLE) conference. The NACOLE annual conference provides the training necessary to become a Certified Practitioner of Oversight. This year's conference was held over a period of approximately 8 weeks, in which 3-4 classes a week were held. Because of this unique setup, we were able to attend substantially more training than we would normally receive as none of the classes overlapped. We also took advantage of the remote learning environment to attend the Use of Force Summit which is held annually in Connecticut. I also completed the requirements to become an Advanced Force Science Specialist in 2020, joining Luvimae Omana with this certification. As for missed training, I requested that the annual requirement in the Spokane Municipal Code (SMC) for the Ombudsman to participate in two ride-alongs with SPD be waived due to the restrictions in place due to the pandemic. The Chief of Police, the OPOC, and City Council all agreed to waive that requirement for both the Ombudsman as well as OPOC Commissioners for 2020.

We are appreciative of many things that occurred throughout 2020. Two highlights: the OPO was honored to receive a proclamation from the City Council for Ombuds Day and we are extremely grateful that we received budget approval that allowed for our Administrative Specialist to become a full-time employee. On the flip side, 2020 showed us that we still have work to do to ensure our voices are heard in City Hall. Human Resources has just begun (in March, 2021) to take action on the promotion of Luvimae Omana to the position of Deputy Police Ombudsman in 2019. While some delay is understandable with the transitions in Human Resources as well as the pandemic which caused focus to turn elsewhere, waiting more than a year for action on a personnel request is excessive. I am also troubled by the general insistence by the Human Resource representative for the Police Guild that the Police Guild should have some sort of say in the OPO's Human Resource requests despite the OPO's clear authority to request the action and the clear lack of authority for the Police Guild to do so. This extremely inappropriate intrusion into personnel matters combined with the lack of action by a city department shows just how important the independence of our office and the OPO is. It also shows how easily our independence can be manipulated or ignored as it has greatly exacerbated the length of time in which an employee is not being appropriately compensated for their duties. Even if a grievance had been filed regarding the 2019 action by the OPO, and there hasn't been; the length of time for the City to take action on a Human Resources request has caused significant concerns.

The Police Guild also, for the second time, inappropriately (without sanction or recourse and outside of the governing contract and the SMC) attempted to have the Mayor remove the Ombudsman from a case and also interfered with several other matters which would have enhanced oversight in Spokane. When the Police Chief requested that the OPO do an independent review of SPD's response to the May 31st protest, the interference was at such a level that the police department has still not provided requested documents, despite the requirement to do so being set forth in the current contract and existing SMC. We have not received any documents nearly nine months into the request. At this point, the delay has been so great, an attempt at any meaningful evaluation is greatly diminished. Appropriate access to systems and information is also still being denied for employees of the OPO.

Therein lies the principal problem which will be at the forefront of our efforts during 2021: Increasing transparency on matters that are important to the community. We began this in 2020 when we published a Closing Report on C19-040 following the guidelines set forth in the existing governing bargained contract (2012-2016) as well as the SMC. In so doing, we provided a comprehensive review of an incident regarding the use of a K9 and used that review to issue 23 recommendations to the police department, largely consisting of recommendations to improve reporting and evaluating an incident in which there was a questionable use of force. As of this writing, the Police Chief has agreed to implement or partially implement 21 of those 23 recommendations. To get to that point, the Chief and the Deputy Chief both sat down with the OPO on several occasions to discuss the recommendations. This is a vast improvement from 2018/2019 when the Chief removed the OPO from the Police Advisory Committee. The OPO is committed to bringing well-researched effective practices from around the country to the Chief for discussion and consideration moving forward.

I put these concepts in the letter last year, but I feel it is especially pertinent to again mention NACOLE's basic principles for effective oversight, especially in light of the tentative agreement between the City of Spokane and the Police Guild which was issued mid-year and was voted down by City Council unanimously. I would ask that you, as leaders of our city, strenuously consider whether the following basic principles have been adequately addressed in future agreements. The basic principles for effective oversight include independence, clearly defined and adequate jurisdiction and authority, adequate funding and operational resources, and public reporting and authority. Below is a synopsis regarding why NACOLE believes these principles are the building blocks for effective oversight:

- Independence is one of the most important and defining concepts of civilian oversight. In the broadest sense, it means an absence of real or perceived influence. To maintain legitimacy, the agency must be able to demonstrate its independence from law enforcement, especially in the face of high-profile issues.
- When an agency does not have clearly defined and adequate jurisdiction and authority to perform its mission, it simply cannot be effective. Stakeholders must ensure the level of authority of an oversight agency has in relation to its core oversight functions permits the agency to successfully perform its duties to the greatest degree possible and without limitation.
- Allocating adequate funding and operational resources are necessary to ensure that work is being performed thoroughly, timely, and at a high level of competency. Political stakeholders must ensure support for civilian oversight includes a sustained commitment to provide adequate and necessary resources. Civilian oversight agencies must have adequate training on a regular basis, perform outreach, and disseminate public reports and other outreach materials in order to be effective.
- Issuing public reports is critical to an agency's credibility because it is an effective tool in bringing transparency to a historically opaque process. Reports provide a unique opportunity for the public to learn about misconduct complaints and other areas of the law enforcement agency that serves the community.

In 2021, I will continue my efforts to push SPD towards greater transparency and public accountability, beginning with a greater emphasis on report writing. I look forward to engaging in a robust communication effort as we work to increase community trust; ensure transparency; and continue to work towards greater accountability of the complaint process and use of force analysis and review.

Respectfully Submitted,

Bart Logue
Police Ombudsman

OPO ACTIVITIES

2020	Highlight of Activities
1232	Citizen contacts
56	Participation or attendance in community meetings and events
7	Letters of officer appreciation / commendation
50	OPO generated complaints
110	Referrals to other agencies / departments
1	Cases offered to SPD for mediation
0	Cases Ombudsman declined to certify
129	Interviews of citizens with ongoing or potential complaints
51	Oversight of IA interviews
150	Special cases reviewed
337	Meetings with SPD
17	SPD review boards attended

DUE TO COVID-19, THE OPO BEGAN WORKING REMOTELY FROM MARCH 2020 THROUGH THE END OF THE YEAR AND INTO 2021.

TRAINING

Per Spokane Municipal Code (SMC) §04.32.070(A)-(C), The Ombudsman must complete 2 ride-alongs with SPD per year. However, due to the pandemic, the requirement was waived by the OPOC and City Council, with agreement with the Chief and the Police Guild for 2020. The OPO attended SPD's Fall In-Service on October 14, 2020.

Other highlights include:

- NACOLE Annual Conference
- International Association of Chiefs of Police Annual Conference
- Daigle Law Group's Advanced Internal Affairs course
- Daigle Law Group's Internal Affairs course
- Daigle Law Group's Use of Force Summit

Other training and activities:

- The Police Ombudsman was certified as an Advanced Force Science Specialist with the Force Science Institute.
- The Police Ombudsman was re-certified as a Certified Practitioner of Oversight
- The Police Ombudsman continued work on the NACOLE Strategic Planning Committee which is focused on a strategic plan for oversight nationally.
- The Deputy Police Ombudsman joined Task Force 2.0 convened by Seattle University School of Law to make recommendations to the state supreme court to address racial disproportionality in the criminal justice system.
- The OPO attended short seminars on:
 - COVID-19 Changing Times
 - Mediators Perspectives on Officers
 - Anti-Asian Racism Bystander Intervention
 - Racial Justice and Police Reform
 - Approaches to Handling Protests and Riots

- New York City Citizen Complaint Review Board and Oversight
- Attorney General Office’s Public Records University

REPORTING

The OPO reports, on a monthly basis, to the Public Safety & Community Health Committee, the Mayor, the City Council, the City Administrator and the Chief of Police. In 2020, the Ombudsman completed 1 annual report for 2019 and 12 monthly reports. Per SMC §04.32.110(C), the Ombudsman briefed City Council on October 5, 2020.

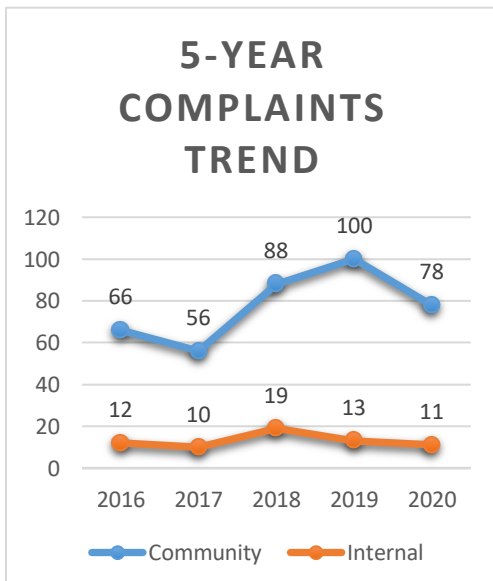
COMMENDATIONS & COMPLAINTS

COMMENDATIONS RECEIVED

ALL OF THE COMMENDATIONS SUBMITTED BY THE OPO WERE RECEIVED FROM MEMBERS OF THE PUBLIC

Commendations Submitted by the OPO	
1)	An officer was complimented by an observer for excellent mental health response provided to someone in crisis.
2)	SPD was commended for how they handled the riots downtown this summer.
3)	An officer was commended for the assistance provided following an accident.
4)	A community member wanted to show support for all police in our city continuing to do great work during the riots.
5)	An officer was commended for their kind and courteous response to an incident.
6)	An officer was commended for helping locate a stolen vehicle.
7)	SPD was commended for positive community policing to deter crime in the Perry District neighborhood.

COMPLAINTS RECEIVED



In 2020, community generated complaints were down 22% from 2019. This decrease is likely due in large part to the pandemic. The OPO office has been closed since March 2020 and the staff has been working remotely. Despite working from home, the OPO received several complaints of note.

↓22% IN COMMUNITY GENERATED COMPLAINTS FROM THE PREVIOUS YEAR.

Notable complaints the OPO received in 2020

1. **3 complaints on officers working the Planned Parenthood protest event.** Two of the complaints were based on body worn camera footage viewed from a public records request. The complaints allege Demeanor and Inadequate Response policy violations.

This case was Administratively Suspended. The officer received verbal counseling from multiple members of their chain of command prior to the receipt of the complaint. This led to a change in SPD's Personnel Policy regarding third party complaints.

2. **6 complaints on the protests following George Floyd's death last summer**, with 1 complaint comprised of 9 complainants. These complaints allege:

- Excessive force
- Property loss/mishandling of another
- Policy/standard violation – required reporting
- Demeanor
- Criminal – hit and run
- Improper tactics

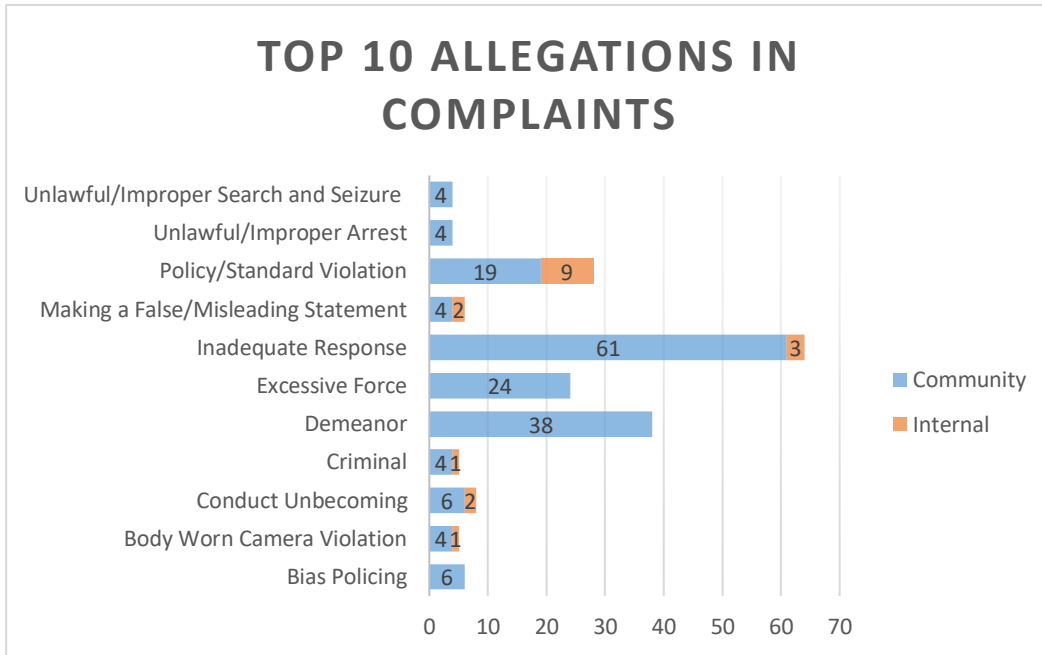
These complaints were all suspended due to a combination of not being able to identify a specific officer and investigators not being able to reach complainants after they filed their complaints. Another reason for suspension included ongoing criminal proceedings.

3. **1 complaint alleging officers improperly received gifts from Tom Sawyer Coffee and immediately after the owner made racist comments online, SPD officers were seen patronizing the establishment.** This complaint was closed.

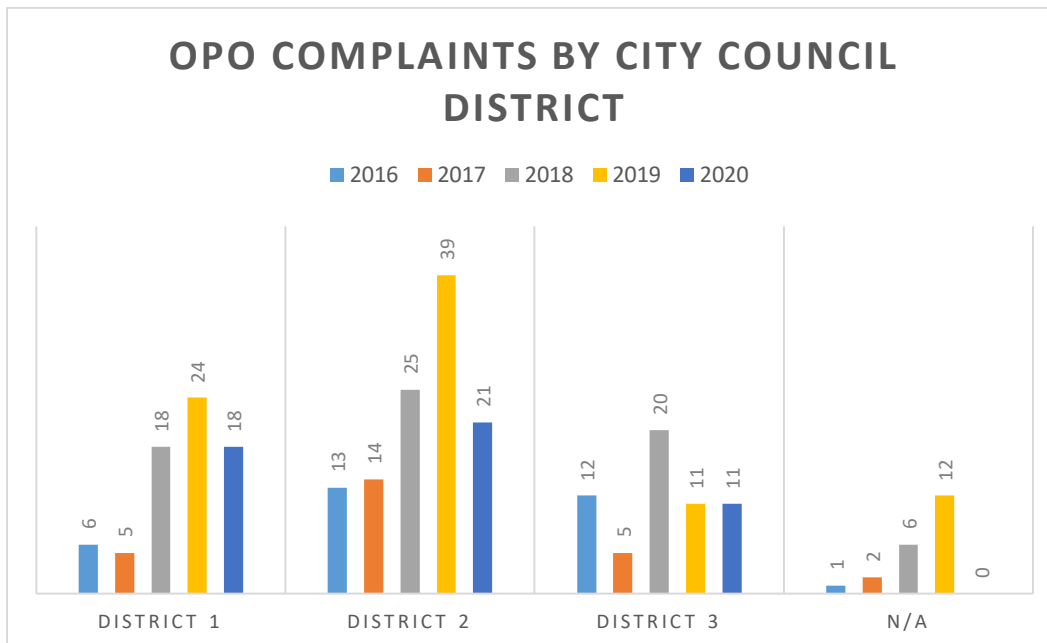
4. **1 complaint alleged Inadequate Response after officers failed to detain and cite private citizens who brandished a weapon and held a woman at gunpoint in a South Hill parking lot.** This complaint received a chain of command review and exonerated 2 officers and found the allegations to be not sustained against a 3rd officer.

5. **1 complaint alleging an officer put their knee on a man's throat while assisting Park Rangers in detaining the man.** The officers in this case were exonerated.

6. **2 complaints on officers' off-duty actions.** 1 complaint on an officer allegedly creating a fake Facebook profile to make racist comments online. 1 complaint of an officer allegedly refusing to wear a mask while getting a haircut. Respectively, one complaint received a chain of command review and was found not sustained and the other was closed.



THE COMMUNITY CONTINUES TO SUBMIT THE MOST COMPLAINTS ON INADEQUATE RESPONSE AND Demeanor.



DISTRICT 2, WHICH INCLUDES THE DOWNTOWN CORE AREA, CONTINUED TO GENERATE THE MOST COMPLAINTS FOLLOWED CLOSELY BY DISTRICT 1, WHICH HAS SEEN AN INCREASE IN PROPORTION OF COMPLAINTS GENERATED.

REFERRALS



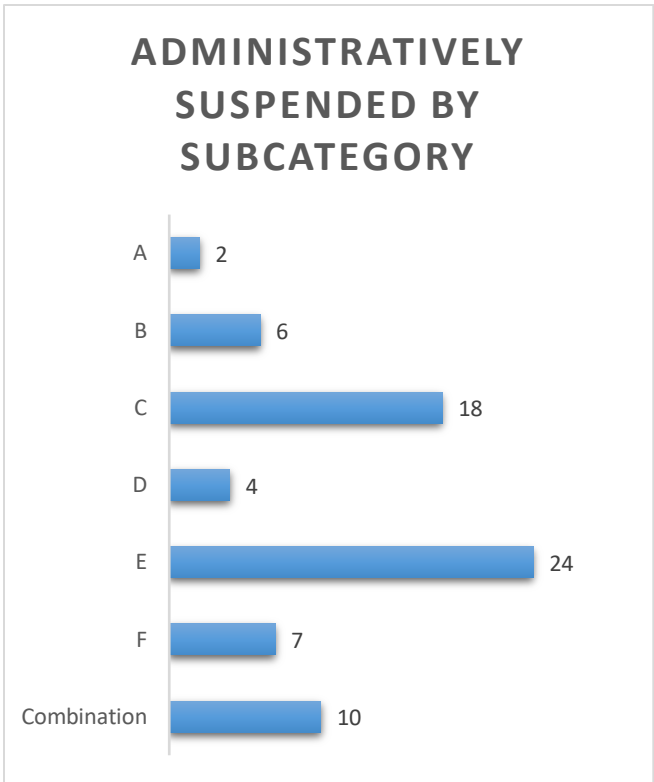
REPEAT COMPLAINANTS DECREASED BY 30%, TOTAL REFERRALS WERE SIMILAR TO 2019 AFTER EXCLUDING REPEAT COMPLAINANTS.

The OPO made **110 referrals** in 2020. 39 referrals were external and 71 were internal. Excluding the repeat complainants, the OPO still made 93 referrals total in 2020, equal to the referrals made in 2019. Internal referrals refer to inquiries or concerns to other areas in the Police Department outside of Internal Affairs, while External Referrals refer to all other referrals made. Repeat complaints from the same individual on similar incidents were also forwarded as referrals for review instead of artificially inflating the number of complaints against SPD.

Referrals Made Outside of SPD	
911 Dispatch	Human Resources
Cheney Police Department	Jail
City Council	Long Term Care Ombudsman
Code Enforcement	Mayor's Office
Colfax Sheriff Department	Park Rangers
County Assessor	Spokane County Sheriff
Crime Check	Streets Department
Dispatch	Washington State Department of Health

COMPARING COMPLAINTS OVER A 3-YEAR PERIOD

3 Year Comparison of Community Complaints	2018	2019	2020
Inquiry / Suspended / Closed	38%	68%	63%
Unfounded / Exonerated / Not Sustained	42%	20%	17%
Sustained	10%	4%	5%



IA HAS BEGUN THE PRACTICE OF LISTING SUBCATEGORIES TO PROVIDE MORE INFORMATION ON WHY A CASE WAS SUSPENDED.

Most complaints the OPO and IA receive are minor in nature that do not warrant an IA investigation. In 2020, 63% of allegations raised in community based complaints did not rise to the level of an IA investigation. This is comparable to 2019 but slightly down 5%.

75 allegations were subsequently Administratively Suspended, with 71 allegations suspended cited to a specific subcategory. This is a new practice IA has begun to provide more information on why cases are suspended. The subcategories are defined in the table below.

Subsection E suspended due to employee’s Subsection C made up 25% of allegations. These were suspended due to a pending criminal prosecution that could impact the outcome of the administrative investigation.

In 2020, the OPO sending cases to

Administratively Suspended Subcategories
A – complainant refuses to cooperate
B – complainant is unavailable and further contact is necessary to proceed
C – complaint involves pending criminal prosecution
D – complaint involves civil suit or claim for damages has been filed with the City
E – minor allegation sent to the officer’s supervisor for informal follow-up
F – all reasonable investigative leads were exhausted and no evidence of wrong doing was uncovered

made up 33% of allegations. These were being minor in nature and sent to the supervisor for informal follow-up.

observed IA’s continued practice of an officer’s supervisor to recommend

¹ Spokane Police Department Policy Manual 1020.1. - The “inquiry” classification is defined as questions about an employee conduct, which, even if true, would not qualify as a personnel complaint may be handled informally by a department supervisor and shall not be considered complaints.

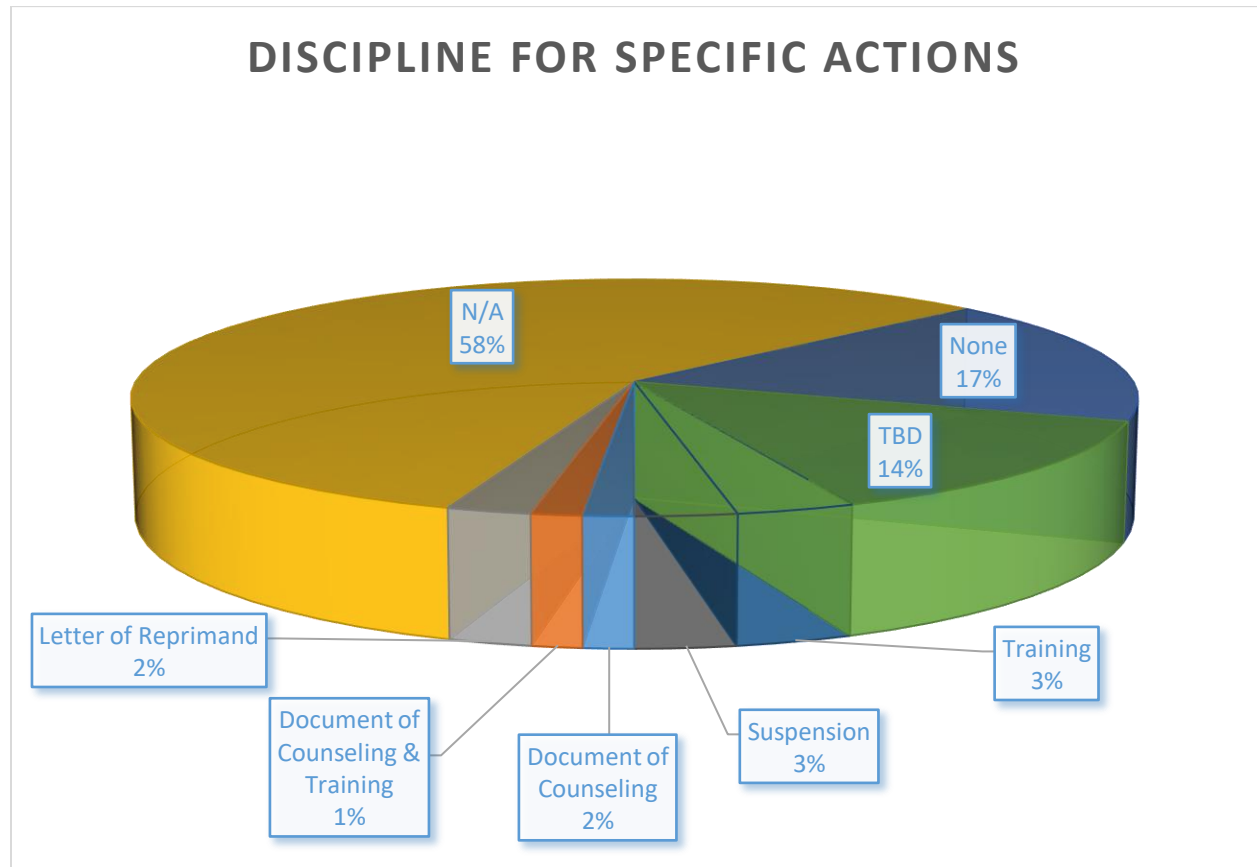
Suspended. When a case is classified as an Inquiry or Closed,² the issue being complained upon does not rise to the level of a policy violation and the Department does not require further action after the initial review. The OPO commends SPD for recognizing opportunities to use an incident for a supervisor to informally but directly mentor an officer.

3 Year Comparison of Internal Complaints	2018	2019	2020 ³
Inquiry / Suspended /Closed	11%	28%	14%
Unfounded / Exonerated / Not Sustained	21%	16%	23%
Sustained	68%	56%	36%

Of the internal complaints received, sustained complaints were down 20% while complaints that were found in favor of the officer are up 7%. The number of internal complaints that did not warrant an IA investigation decreased by 14% compared to 2019.

² SPD Policy Manual 1020.1. - The “closed” classification is defined as either an allegation of misconduct that is disproved upon initial review (i.e. BWC footage or other evidence clearly disprov[ing] an allegation) or the accused officer leaves employment.

³ This accounts for 68% of all internal findings. The remaining findings rounded to the nearest whole number is still under review and TBD 27%.



Of all complaints received in 2020, 28% received a Chain of Command review. This is almost equal to last year, down 1%. This does not include 14% of total allegations that are still TBD. Of the complaints the Chain of Command reviewed, they found 42% of allegations to be Unfounded, Exonerated, or Not Sustained, with 5% as a Training/Policy failure.

The Chain of Command sustained 20% of all allegations. Of the sustained allegations, 11% received some form of discipline. This includes: 3% training, 3% of some type of suspension, 2% Document of Counseling, 1% Document of Counseling and Training, and 2% Letter of Reprimand. Suspensions issued varied from 1-day to 120 hours suspension.

**36% OF ALLEGATIONS
REVIEWED BY THE CHAIN OF
COMMAND RECEIVED SOME
TYPE OF DISCIPLINE. WHILE
48% OF ALLEGATIONS
REVIEWED WERE FOUND TO
BE UNFOUNDED OR
EXONERATED.**

STATISTICS OF INTEREST

	2019	2020	Change
Non-Deadly Use of Force	117	71	↓39%
Critical Incidents	5	3	↓40%
Pursuits	30	14	↓53%
Preventable Collisions	23	17 ⁴	↓26%

The statistics of interest reflect a sharp decline across almost all categories. This may likely be due to the impact of the pandemic, which restricted calls for service and contact, but can also be attributed to positive efforts within the department. Calls for service decreased by 14% from 2019 (116,168) to 2020 (100,468). As an example, preventable collisions decreased greatly in 2020 proportionate to changes SPD made to its Pursuit policy, Policy 315. The updated policy strictly limits when an officer may engage in pursuit to dangerous felonies specifically listed. 2 of 14 pursuits were found out of policy, while 4 are still under review and TBD.

SPD officers got into 45 total collisions in 2020. 2 cases do not have a final disposition, 1 was a legal intervention found in compliance with policy, 1 collision was not in compliance, and 17 collisions were found preventable.

The reduction in uses of non-deadly force, while not directly measurable, may be attributed in part to SPD's greater emphasis on reducing use of force incidents; update of its Use of Force policy, Policy 301; and implementation of a De-Escalation policy, Policy 300.

Typically the data points are finalized by the Office of Professional Accountability before providing them to the OPO. However, SPD is still in the process of reviewing cases from 2020 as of the date this report was written. The data points were obtained from IAPro and an unofficial count kept by IA and may differ from statistics the department may publish.

⁴ This information was current as of the date this report was written on February 16, 2021.

CRITICAL INCIDENTS

SPD officers were involved in a total of **3 critical incidents**. Under SMC 04.32.040, SPD shall notify the Ombudsman to observe any administrative or civil investigation conducted by or on behalf of the Department. Due to the passage of I-940 in 2018, IA is no longer allowed on-scene once the designated investigating agency under the Spokane Independent Investigative Response (SIIR) Team arrives. Previously an IA sergeant or the lieutenant would brief the Police Ombudsman on-scene. Since the passage of I-940, the Police Ombudsman's brief has been reduced to a phone call and SPD's media release. The OPO is navigating how to receive information to remain in compliance with the SMC. The summary below is generated from information obtained from SPD and the SIIR Team media releases.

Date	Location	Race	Status	Incident Type	Summary
8/7/20	Crestline Street and Courtland Avenue	Native American	Survived	Officer involved shooting	Officers from the Patrol Anti-Crime Team (PACT), Special Investigative Unit (SIU), and SWAT team responded to a string of armed robberies at cell phone stores in the area. The suspect was located in a vehicle at an intersection when officers moved in to detain the suspect. As officers moved in, the suspect displayed a handgun. Officers attempted to de-escalate the situation prior to firing their service weapons.
9/11/20	6309 E. Broadway Ave, Spokane Valley	White	Deceased	Officer involved shooting	Officers from the PACT Team were investigating a report of a robbery/carjacking that occurred in Airway Heights the previous day after a terminated pursuit. On the day of the incident, PACT officers located the suspect's vehicle, pursued it, and located it at the incident location. As the officers moved in to contact the suspect, the suspect exited the vehicle, and exchanged gunfire with one officer. Both the officer and the suspect were both struck. Despite attempting life-saving measures, the suspect was pronounced deceased on scene.
9/24/20	9030 W. Sunset Hwy	White	Deceased	Officer involved shooting	Officers from the PACT and SIU team were following up on information from the SPD Domestic Violence (DV) Team. A wanted DV suspect was believed to be in the motel at the incident location. As officer waited for additional resources, the suspect was spotted walking through the parking lot with a firearm. The suspect and officers exchanged words before two officers fired their service weapons. Officers on scene attempted to apply life-saving measures before the suspect was transported by medics. Efforts to save the suspect were unsuccessful.

RECOMMENDATIONS

UPDATE ON 2019 RECOMMENDATION

Recommendation #1: Juvenile Miranda Advisements

Summary: The Ombudsman recommended that SPD create a policy for juvenile *Miranda* advisements, or at a minimum, ensure officers take extra steps to ensure that minors comprehend the advisement. Additionally, this will help preserve any information officers obtain from the minor in a court setting.

Status: Completed.

2020 RECOMMENDATIONS

The Ombudsman provided **23 recommendations** to SPD related to policy and/or training. The recommendations and Chief's response are:

RECOMMENDATION #1: I recommend IA investigators, as a matter of practice, identify disputed facts in an investigation provide the available evidence for both sides of the dispute, and document them clearly so that the designated person can make fully informed determinations on how to view the facts.

Chief's response: In progress. I believe a template for the IA investigators will ensure consistency and readability. Having a separate category for "disputed facts" will allow clarity and conciseness to the review and recommendation process.

I will have IA staff update the template for approval to guide future reports.

RECOMMENDATION #2: I recommend SPD either update the function of their review boards to critically analyze the officer's tactical conduct and make findings similar to LVMPD and/or enhance the chain of command review function of categorical uses of force similar to LAPD that examine an officer's tactics and uses of force that result in specific findings. (See Appendix A for a sample categorical use of force review and findings)

Chief's response: In progress. Similar to recommendation #1, a template of all factors to consider when evaluating a use of force will ensure all levels of response are analyzed for best practices (e.g., use of time, distance, cover, word choice, de-escalation efforts when appropriate, etc.). Additionally we will make it clear that dissenting opinions should be noted and included in the report.

An outline has been developed, however I will ask that IA work with the OPO (which has experience attending UOFRBs) to determine what, if any, enhancements should be instituted.

RECOMMENDATION #3: I recommend that SPD ensure officer safety is at the forefront of every tactical review and ensure that every officer follows established training and procedures, particularly in high risk events. Officers who take unnecessary risks or put other officers or the public in unnecessary danger should be immediately referred for additional training.

Chief's response: Completed. This incident was forwarded to the Training staff at the Academy with direction to incorporate high risk vehicle stop training into future in-services. Additionally the deployment of the K9 was analyzed by Sgt. Spiering, who updated the K9 policy to provide clearer guidance for K9 deployments. Since that direction was forwarded to the Academy, this training has

occurred.

RECOMMENDATION #4: I recommend reinforcing in training that when officers test compliance of subjects, they give them an opportunity to respond to commands before making the decision to use force, if feasible. This opportunity to respond to commands before making the decision to use force, if feasible. The opportunity for compliance should also be critically looked at as part of a tactical review following any use of force.

Chief's response: Ongoing. SPD provides on-going training, in addition to training received via BLEA as directed by the CJTC, at measuring compliance, de-escalation, procedural justice and proper use of force based on level of resistance. In 2021, SPD has incorporated ongoing training into its de-escalation curriculum and has committed to training on these topics into perpetuity.

RECOMMENDATION #5: I recommend SPD continue to reinforce its new de-escalation policy through training, encouraging officers to provide many opportunities for compliance before resorting to using force. Officers should fully consider other alternative means before resorting to using force, if feasible.

Chief's response: Completed / Ongoing. SPD believes strongly in the expectation of its officers to de-escalate when reasonable. Because of our conviction, we created a separate de-escalation policy to ensure the importance of this policy is stressed. Additionally we continue to train at in-services on this topic and will do so into perpetuity.

RECOMMENDATION #6: I recommend SPD reevaluate its culture of accountability on both direct and indirect levels. Supervisors should randomly audit the BWC videos of their officers to safeguard against problematic behaviors, working to recognize and change problematic behaviors before they become issues through a strong mentoring program. Any reviewing authority, whether in an ARP or in a chain of command review, should critically examine incidents in order to limit liability.

Chief's response: Completed / Ongoing. SPD supervisors are not authorized to proactively audit BWC footage randomly based on labor law. The SPD administration is interested in exploring this with the Guild, and desired to include this in negotiations as a bargaining topic for several years. Based on the dynamics of the current unsettled contract, we were not able to incorporate this into the current open contract. It is our desire to explore this with the Guild upon settlement of the current open contract.

Additionally the SPD chain of command is addressing officer policy violations (of a minor nature, not specifically complained about or related to the Blue Team cause of action) as the incident works its way through the Blue Team review, prior to the conclusion.

RECOMMENDATION #7: I recommend SPD research best or effective practices to update its K9 guidelines into a policy. The OPO is ready to collaborate with SPD to research different K9 models (i.e. on leash and off leash) and their implications for liability on the department and the City.

Chief's response: Completed. Sgt. Spiering updated the K9 deployment policy in 2020. Additionally he has noted that this policy will be a living document that will be frequently reviewed and updated as necessary to stay current with case law and best practices as they relate to K9 programs.

Ombudsman's response: This report has yet to be provided to the OPO for review.

RECOMMENDATION #8: SPD should consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and any other guiding documents and training to reduce department liability. SPD should also consider listing every device that an officer can use in utilizing force. By limiting the force options an officer has, the department is likely to reduce liability. (See Appendix B for Seattle PD's Use of Force Tools Policy that lists every force option allowed by the department)

Chief's response: Partially implemented and partially not implemented. The WA State Criminal Justice Training Commission (CJTC) offers a limited number of techniques, and limited number of hours to train on those techniques, under the defensive tactics umbrella. Many officers have taken advanced training outside their employment and obtained, and maintained, a level of proficiency in control tactics otherwise not obtainable with staffing, budget and training hours offered by SPD. The "exceptional technique" category allows tactics used by an officer, those tactics not being a part of the CJTC training curriculum, to be examined for reasonableness. The same standard of reasonableness in utilizing a tactic is followed whether the tactic used is officially trained by the CJTC or a tactic not trained on by the CJTC. SPD continues to utilize as its foundation the Graham standard, "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," the test's "proper application requires careful attention to the facts and circumstances of each particular case." (Graham v. Connor).

The below quote was taken from Lexipol and has implications for uses of force:

(*Strickland v. Washington*, 466 U.S. 668 (1984) at 687).

"Specific Rules. One proposal that sometimes comes up in the police use of force debate is to judge officer actions using *very specific rules* (emphasis added). Here is what the *Strickland* court said about using specific guidelines to judge the decisions of a criminal defense attorney:
More specific guidelines are not appropriate. No particular set of detailed rules ... can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would ... restrict the wide latitude counsel must have in making tactical decisions." (*Id.* at 688-689)

Though this case specifically relates to adequate representation by defense counsel, the concepts are similar to the variety and unpredictability of use of force encounters, and the dangers in having "very specific rules" that cannot "take account of the variety of circumstances" or the "range of legitimate decisions."

Related to the second prong in recommendation #8, "SPD should also consider listing every device that an officer can use in utilizing force," SPD does list out the various tools they are specifically trained on in the Defensive Tactics manual (184 pages).

Ombudsman's response: I disagree that principles of legal representation transfers to our recommendation on the department limiting the use of exceptional techniques to limit liability because

the mission of legal counsel in a criminal trial is different from that of a police department evaluating an officer's conduct administratively. In the *Strickland v. Washington* case, the defendant alleged a Sixth Amendment violation due to ineffective counsel. Legal counsel did not seek out character witnesses or request a psychiatric evaluation at sentencing. This prevented mitigating evidence from entering the record and therefore the trial court sentenced the defendant to death. The Court addressed whether the defendant received effective counsel. The Court found that in evaluating claims of ineffective counsel, judges should be deferential to counsel because they must have "wide latitude" to make "reasonable tactical decisions," and detailed guidelines for representation could distract from counsel's overriding mission is the vigorous advocacy of the defendant's cause.⁵ Here, the police department's role in evaluating uses of force is vastly different. The department is not an advocate, but the arbiter of whether an officer's conduct fell in or out of policy to protect the safety of officers and members of the public they interact with.

While I agree that in a deadly force encounter, an officer should utilize any tool available to prevent lethal harm, in the cases where less than lethal force is used, officers should be provided clear guidance on what standards the department will use to evaluate their conduct. A manual is not binding like a policy. Listing the tools an officer is allowed to use in the Defensive Tactics manual has no effect if the Department's policy does not hold the officer to a standard on what tools the Department allows an officer to use.

RECOMMENDATION #9: I recommend SPD clearly define the allegations of misconduct against an officer at the beginning of a review or investigation and document if the allegations are later modified and the subsequent reasons for doing so.

Chief's response: *In progress; work with OPO's office on format.* Allegations being investigated are typically noted at the beginning of the IA case file, as well as sent to the officer(s) being investigated. This specific notification of policies being investigated is required by law, as departments are not authorized to go on "fishing expeditions" (phrase used by the Courts to describe investigations that are not specifically and narrowly focused based on allegations). Additionally the chain of command or Administrative Review Panel (ARP) may add additional allegations that the investigation reveal may be warranted based on the evidence presented. For the ARP review, the final allegations addressed are always placed at the back of the ARP finding letter to clearly spell out the allegations and findings.

As noted during our recent meeting, clearly breaking down each of the allegations for each employee, along with findings and recommended sanctions under each employee, makes sense. We will ensure this process is documented in the Internal Affairs SOP manual and each employee assigned to Internal Affairs, as well as the ARP members, are trained to follow this protocol.

Additionally my sense is the OPO has a template or format that they were exposed to at recent training. We would welcome the opportunity to review this material and adjust our documents and documentation accordingly.

RECOMMENDATION #10: I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.

⁵ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

Chief's response: In progress. The example provided by the OPO during our recent meeting was the difference between, as an example, some supervisors utilizing the Blue Team software to document their recommendations, and others using an IA additional 'Word' document and incorporating that document into Blue Team as an additional report. The OPO recommended following a consistent format for review and submission. Internal Affairs will update the IA SOP to reflect the method that should be used when providing a review through the chain of command.

RECOMMENDATION #11: I recommend SPD safeguard the due process rights for its officers by forbidding all informal and formal interactions by the chain of command with an officer that is currently undergoing an IA investigation and/or a chain of command review regarding the matter with the exception of formally recorded interviews.

Chief's response: Implemented. At the time of this incident, uses of force, pursuit and collision reviews were finalized at the Major level. Since this report, all findings related to Blue Team reports and investigations are now determined by the Assistant Chief or Chief. Those resulting in discipline beyond a letter of reprimand are decided by the Chief.

RECOMMENDATION #12: I recommend SPD clearly designate who maintains disciplinary authority to ensure an officer is not disciplined more than once for the same offense. Further, all discipline issued should be immediately documented for the record and any subsequent discipline issued should explain whether it is in addition to the previous discipline or if the previous discipline issued has been rescinded or modified.

Chief's response: Implemented. Related to recommendation #11.

RECOMMENDATION #13: I recommend SPD promptly initiate an IA investigation under the requirements of SPD Policy 301.14.3 in all cases. This will ensure an officer's right to due process, proper notification of the Police Ombudsman, and an impartially conducted investigation by IA.

Chief's response: Completed. SPD's policy manual was updated shortly after this incident to address this issue (see policy 301.14.3).

301.14.3 REFERRAL TO INTERNAL AFFAIRS

The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the appropriate Major.

If upon review of an application of force by an officer(s), the supervisor believes that the application of force could rise to the level of misconduct, or the supervisor sees conduct that could rise to the level of misconduct, the supervisor shall initiate an internal affairs complaint in BlueTeam. If the subject of the use of force makes a complaint about the use of force or demeanor of the officer(s) involved in the incident, an Internal Affairs Complaint will be generated in BlueTeam. The supervisor shall forward the Internal Affairs Complaint and the Use of Force report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.

RECOMMENDATION #14: I recommend the Chief insist upon policy compliance by senior members of his staff. Impartial IA investigations should be initiated for any misconduct that would not be

considered minor. SPD already had a policy that required initiating an IA investigation, but it was not enforced. Strong policies set the standards of acceptable conduct, but those policies are only effective if they are clearly defined and enforced.

Chief's response: Completed. SPD updated its policy and disseminated its updated policy related to Blue Team reviews and identification of potential misconduct to the entire agency (see Recommendation #13). Based on conversations with the OPO, "serious violations" discovered during the review (specifically related to uses of force, demeanor, etc.) will have an Internal Affairs investigation initiated. De minimis violations (e.g., not activating BWC immediately upon exiting the vehicle) will be handled through Documentations of Counseling (or Letters of Reprimands if appropriate under the progressive discipline umbrella).

RECOMMENDATION #15: I recommend SPD explicitly require an IA investigator to initiate a complaint investigation when he or she is made aware of potential allegations of misconduct.

Chief's response: Not implemented per se, however the expectation is that the IA supervisor ensure the appropriate Bureau supervisor initiate the IA investigation or bring to the attention of a higher rank. This recommendation, as it relates to C19-040, revolves around a scenario that had not been experienced prior by staff at SPD (different findings at different levels of the review process, related to a use of force, with the final decision at the time being determined by a Major, who had the final say in determining the appropriateness of the use of force and disagreed with his subordinates). This has been rectified with the elevation of final findings to the Assistant Chief or Chief of Police. If either the Assistant Chief or Chief of Police determines that misconduct arises to the level that a misconduct investigation should be initiated, their decision will be final. Additionally the chain of command will be reprimanded with the appropriate training or discipline for "fail to supervise".

The supervisors within the Bureau are expected to initiate an Internal Affairs investigation if they become aware of misconduct. This duty is an expectation of their leadership position. In this scenario, due to the dynamics not experienced prior, a different finding was determined at multiple levels during the review process. An Internal Affairs Lieutenant cannot be expected to have a clear understanding of potential misconduct under the facts of this specific incident when the chain of command itself was not in agreement of the misconduct.

Having said that, any supervisor within SPD has an obligation to ensure a misconduct investigation is initiated upon learning of serious policy violations (as an example, if the chain of command at the Captain level determines misconduct occurred that rises to the level of an IA investigation, that Captain will traditionally direct the lower rank to initiate the investigation. This occurs for multiple reasons, one being to develop the supervisor and reinforce expectations –especially with newly promoted supervisors).

RECOMMENDATION #16: I recommend documenting all investigatory steps taken in a review or investigation for consistency across the board in investigations and reviews conducted.

Chief's response: Implemented

RECOMMENDATION #17: I recommend SPD update its Administrative Investigation Format Policy to require IA investigators to critically evaluate evidence by conducting credibility assessments,

identifying disputed facts, and providing other relevant information to the investigation. (See Appendix C for a Sample IA Investigation template)

Chief's response: In progress. This recommendation appears to parallel recommendation #1. In discussions with the OPO, this recommendation was given more detail as it relates to conflicting statements. The OPO suggested conflicting statements be clearly spelled out (under a separate section of the Internal Affairs summary), with the statements attributed specifically to who stated what (or what the evidence – BWC – clearly reveals). Internal Affairs will update the IA SOP to reflect this recommendation as part of the template for summary reports.

RECOMMENDATION #18: I recommend SPD require its IA investigator sign a recusal form as part of their investigation.

Chief's response: Implemented. SPD Internal Affairs has developed a form that encompasses concerns brought forward in this recommendation.

RECOMMENDATION #19: I recommend a strong *Graham* statement to begin any review of a use of force.

Chief's response: In progress. SPD officers have been directed to include a Graham statement in their use of force reports for the past several years, and these reports are part of the chain of command review. The example provided from the LAPD Board of Commissioners contains essentially the same information already provided in SPD's use of force reports and reviews, though in a different format. I am always supportive of examining what other agencies are doing, while weighing the resources SPD has available as compared to other agencies. The 8 page report provided as an example, for each use of force, will take considerable supervisory time, removing supervisors from the field for even longer periods of time and diminishing the much need field supervision we try to achieve. Having said that, developing a consistent template may help meet the genesis of much of this recommendation. I will direct IA to collaborate with the OPO on what that template should look like.

RECOMMENDATION #20: If SPD uses a subject's history as part of its determination, it should limit the information to what involved officers knew at the time of the incident, and also include the officers' applicable history in its consideration.

Chief's response: Implemented. SPD agrees with this recommendation, and case law requires that only those factors known to the officer using force at the time force was used, may be considered in determining the reasonableness of the application of force. As it relates to this incident, the officers were working with the US Marshall's Office violent offender task force. The subject in this incident told the officer two times that he had a gun, the officers had information about his prior arrest for being a felon in possession of a gun, and that he had been seen purchasing ammunition several months prior by a DOC officer. Additionally at least one officer had information that the subject told a cooperative individual prior to this incident that he would not go back to jail. This was documented in the officers' reports.

In terms of considering the officer's applicable history in each incident where force was utilized, SPD follows a progressive discipline matrix. Where no misconduct has occurred in the officer's past, those incidents do not bear on whether the current incident's use of force is justified or not justified. Each incident stands on its own merits. Where misconduct has occurred, the sanctions will always take into

account the IA history of the employee.

Additionally SPD utilizes an EIS (Early Intervention System) that “flags” employees who have met a pre-determined threshold for uses of force, pursuits, collisions and complaints. This flag occurs even when the incidents were determined to be in policy. Internal Affairs coordinates a review of these officers with the officer’s chain of command in an effort to be proactive in determining, as an example, officers who may use force within policy, but means other than force may have been a viable option.

RECOMMENDATION #21: I recommend the ARP, or IA in its investigation, note any discrepancy in facts and disputed evidence and make a determination of each matter. The ARP should arrive at a finding for every allegation in a case. The ARP should also critically evaluate any other additional policies and training guidelines that may apply.

Chief’s response: In progress. SPD agrees with this recommendation, specifically having a separate category where disputed facts are noted, as well as individually listing out each officer involved and what the allegations / findings are for each officer. This recommendation will be part of the updated template used by IA.

RECOMMENDATION #22: I recommend SPD consider shortening the timeframe for release of BWC and records related to both critical incidents and community impact cases to be in line with industry standards of 45 days or less, subject to applicable exemptions.

Chief’s response: Not implemented. SPD has spoken extensively with City Legal regarding the release of BWC footage more quickly. At times the release may be delayed due to investigative processes that must be followed to protect the integrity of the investigation or at the request of the Prosecutor’s office. Additionally each minute of BWC footage takes approximately 10 minutes to review for redaction to avoid the release of prohibited information per RCW. Records staffing has not grown in proportion to the utilization of BWCs and one person has been assigned to this task full time, while the demands placed on Records staff have also grown (records requests, CPLs, gun transfers, etc.). In conversations with the OPO, there has also been a lack of alignment with the OPO’s research versus direction provided by City Legal. SPD is in agreement that the sooner the video can be released, the more productive and healthy it is for the community and SPD.

RECOMMENDATION #23: I recommend SPD update its Policy 703.11, Release of Body Camera Videos to maintain compliance with case law on public records requests that involve internal investigation records.

Chief’s response: In progress. This recommendation parallels the logistics of recommendation #22, and the response is the same. SPD relies heavily on City Legal to ensure we are complying with all laws and will request clear guidelines to ensure we are following case law.

2020 COMPLAINTS RECEIVED

OPO	IA	City Council District	Allegation(s)	Days Investigated	Receipt Date	Ombudsman Review Completed	Status	Chief's Findings	Officer Discipline
20-01	C20-001	2	Policy Violation	N/A	1/2/2020	N/A	Administratively Suspended - Sent to HR	N/A	TBD
20-02	C20-002	1	Abuse of Authority / BWC Violation	32	1/7/2020	2/19/2020	Mediation	N/A	N/A
20-03	C20-004	1	Inadequate Response / Demeanor	18	1/14/2020	2/6/2020	Administratively Suspended	2/6/2020	N/A
20-04	C20-007	1	False Statement	10	2/6/2020	2/19/2020	Closed	2/19/2020	N/A
20-05	C20-009	1	Demeanor	7	2/12/2020	2/20/2020	Inquiry	2/21/2020	N/A
20-06	C20-018	1	Demeanor	35	2/25/2020	4/13/2020	Administratively Suspended	4/14/2020	Counseled prior to complaint received
20-07	C20-019	1	Demeanor	10	3/5/2020	3/18/2020	Inquiry	3/20/2020	N/A
20-08	C20-020	2	Demeanor / Inadequate Response	68	3/16/2020	6/17/2020	Unfounded	8/27/2020	None
20-09	C20-027	1	Demeanor / Inadequate Response	17	4/7/2020	4/29/2020	Closed	4/28/2020	N/A
20-10	C20-029	3	Inadequate Response	13	4/14/2020	4/30/2020	Inquiry	4/30/2020	N/A
20-11	C20-031	1	Inadequate Response / Demeanor	62	4/16/2020	7/10/2020	Unfounded / Exonerated	9/10/2020	None
20-12	C20-032	1	Inadequate Response / Demeanor	4	4/25/2020	4/30/2020	Closed	5/1/2020	N/A
20-13	C20-033	3	Inadequate Response / Demeanor	11	4/29/2020	5/13/2020	Closed	5/14/2020	N/A
20-14	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A

OPO	IA	City Council District	Allegation(s)	Days Investigated	Receipt Date	Ombudsman Review Completed	Status	Chief's Findings	Officer Discipline
20-15	C20-030	3	Improper Search and Seizure / Excessive Force / False Arrest / Criminal	20	4/9/2020	5/6/2020	Unfounded / Sustained – Unlawful / Improper Search and Seizure	8/14/2020	Document of Counseling and Training
20-16	C20-037	2	Inadequate Response	28	5/26/2020	7/2/2020	Inquiry	7/22/2020	N/A
20-17	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A
20-18	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A
20-19	C20-038	2	Excessive Force	19	6/2/2020	6/26/2020	Exonerated	9/17/2020	None
20-20	C20-040	2	Excessive Force	21	6/2/2020	6/30/2020	Administratively Suspended	7/1/2020	N/A
20-21	C20-039	2	Demeanor / Harassment	96	6/2/2020	10/13/2020	Unfounded	11/13/2020	None
20-22	C20-041	2	Excessive Force	101	6/3/2020	10/21/2020	Administratively Suspended	10/22/2020	N/A
20-23	C20-042	2	Excessive Force	100	6/3/2020	10/20/2020	Administratively Suspended	10/22/2020	N/A
20-24	C20-043	2	Criminal	22	6/3/2020	7/2/2020	Administratively Suspended	7/2/2020	N/A
20-25	C20-044	2	Excessive Force / Demeanor	104	6/2/2020	10/23/2020	Administratively Suspended	10/30/2020	N/A
20-26	C20-046	2	Demeanor / Improper Tactics	96	6/9/2020	10/20/2020	Administratively Suspended	10/23/2020	N/A
20-27	C20-045	3	Inadequate Response	37	6/9/2020	7/29/2020	Closed	7/31/2020	N/A
20-28	C20-047	2	Excessive Force	100	6/10/2020	10/27/2020	Administratively Suspended	11/6/2020	N/A
20-29	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A
20-30	C20-048	1	Demeanor /Inadequate Response	54	6/16/2020	8/28/2020	Administratively Suspended	8/28/2020	N/A

OPO	IA	City Council District	Allegation(s)	Days Investigated	Receipt Date	Ombudsman Review Completed	Status	Chief's Findings	Officer Discipline
20-31	C20-049	1	Demeanor / Inadequate Response	34	6/16/2020	7/31/2020	Administratively Suspended	8/30/2020	N/A
20-32	C20-050	2	Criminal / Property Loss / Inadequate Response	12	6/16/2020	7/1/2020	Closed	7/2/2020	N/A
20-33	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A
20-34	C20-051	1	Traffic	10	6/17/2020	6/30/2020	Inquiry	7/1/2020	N/A
20-35	C20-053	2	Policy Violation	43	6/23/2020	8/20/2020	Closed	8/20/2020	N/A
20-36	C20-054	1	Inadequate Response	49	6/23/2020	8/28/2020	Inquiry	9/3/2020	N/A
20-37	C20-052	3	Inadequate Response	21	6/24/2020	7/22/2020	Closed	7/23/2020	N/A
20-38	N/A	N/A	Commendation	N/A	N/A	N/A	N/A	N/A	N/A
20-39	C20-057	2	Inadequate Response	75	7/1/2020	10/13/2020	Exonerated - Officers 1 & 2 / Not Sustained - Officer 3	12/17/2020	None
20-40	C20-060	1	Inadequate Response	12	7/2/2020	7/17/2020	Administratively Suspended	7/17/2020	Referred to supervisor
20-41	C20-064	1	Policy/Standard Violation	83	7/13/2020	11/4/2020	Not Sustained	11/12/2020	None
20-42	C20-061	2	Demeanor	78	7/16/2020	11/2/2020	Closed	11/3/2020	N/A
20-43	C20-066	3	Inadequate Response	63	7/27/2020	10/21/2020	Administratively Suspended	10/22/2020	N/A
20-44	C20-069	3	Policy/Standard Violation / Demeanor	73	7/27/2020	11/4/2020	Officer 1 Sustained, Officer 2 Exonerated	12/15/2020	Letter of Reprimand
20-45	C20-068	2	Inadequate Response	26	7/27/2020	8/31/2020	Inquiry	9/1/2020	N/A
20-46	C20-070	2	Inadequate Response / Demeanor	15	10/8/2020	10/28/2020	Inquiry	11/3/2020	N/A
20-47	C20-073	1	Inadequate Response	45	9/1/2020	11/2/2020	Closed	11/3/2020	N/A

OPO	IA	City Council District	Allegation(s)	Days Investigated	Receipt Date	Ombudsman Review Completed	Status	Chief's Findings	Officer Discipline
20-48	N/A	N/A	<i>Not Assigned</i> ⁶	N/A	N/A	N/A	N/A	N/A	N/A
20-49	C20-075	1	Demeanor	32	9/10/2020	10/23/2020	Closed	10/27/2020	N/A
20-50	C20-076	2	False Arrest	33	9/15/2020	10/29/2020	Administratively Suspended	10/30/2020	N/A
20-51	C20-078	1	Bias Policing / Demeanor	38	10/20/2020	12/10/2020	Unfounded	2/2/2021	None
20-52	C20-079	2	False Arrest/False Statements	23	10/25/2020	11/25/2020	Administratively Suspended	11/25/2020	N/A
20-53	N/A	N/A	<i>Not Assigned</i>	N/A	N/A	N/A	N/A	N/A	N/A
20-54	C20-083	3	Demeanor / Inadequate Response	18	11/20/2020	12/15/2020	Administratively Suspended	12/17/2020	N/A
20-55	N/A	N/A	<i>Commendation</i>	N/A	N/A	N/A	N/A	N/A	N/A
20-56	C20-087	2	Inadequate Response	TBD ⁷	12/10/2020	TBD	TBD	TBD	TBD
20-57	C20-088	3	Excessive Force / Demeanor	26	12/22/2020	1/26/2021	Closed	1/26/2021	N/A
20-58	C20-089	2	Inadequate Response	TBD	12/29/2020	TBD	TBD	TBD	TBD
20-59	C20-090	3	Excessive Force / Demeanor	TBD	12/30/2020	TBD	TBD	TBD	TBD

⁶ Due to administrative error, OPO 20-48 and 20-52 were omitted from being assigned a number.

⁷ As of the date this report was written, OPO 20-56/C20-087, OPO 20-58/C20-089, and OPO 20-59/C20-090 were still pending review or investigation.

**2020 ANNUAL REPORT
OFFICE OF POLICE OMBUDSMAN COMMISSION
SPOKANE, WASHINGTON**



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LETTER FROM THE OPOC CHAIR

February 2021

Mayor Woodward
Council President Breean Beggs
City Council Members
Office of Police Ombudsman
Chief Craig Meidl

The year 2020 turned out to be an interesting year due to COVID-19. We started out the year meeting in person but by our March meeting – it all went virtual and will remain that way indefinitely. However, the commissioners were able to stay in touch and cover many issues over the year.

We also started the year without a legal counsel but by March we were introducing David Bingaman from Northwest Corporate Counsel who has been a great asset to our commission.

With the death of George Floyd and protests across the country and in Spokane – Police Oversight became a big topic. The Police Guild and the City had finally negotiated their collective bargaining agreement in May and the Spokane City Council was about to vote whether to move forward with it when several protest meetings were held in Spokane. Activist groups and citizens demanded that members of City Council not approve it because of too much power that the police union held over our ombudsman. As of December 2020 – the police collective bargaining agreement (CBA) was still under negotiation.

On May 31st, there was a big protest downtown regarding the murder of George Floyd. The protest started off peaceful but later in the late afternoon and evening – it turned violent. A few businesses were looted and many police crowd control tactics were used. Chief Meidl requested the OPO to conduct a report of the police response to the protest. It was immediately blocked by the Spokane Police Guild filing a grievance. To this day, eight months later – no documents have been received regarding May 31st. This is the blocking pattern that the OPO and OPOC have dealt with since the beginning (2014) and this needs to change for “The police ombudsman and any employee of the OPO must, at all times, be totally independent.” (Spokane City Charter)

The OPO published a closing report on C19-040 where we voted to approve 23 recommendations by the OPO to the Chief and SPD. Most of the recommendations were accepted and several have been implemented or are in progress of being fully or partially recommended. When we work together – good things can happen for our community!

In September, we were fully prepared when our police ombudsman had to take an extended absence and our deputy ombudsman stepped right in. The OPOC voted to elevate Luvimae Omana to the position of deputy ombudsman back in 2019. One issue we are still dealing with is the official recognition by City of Spokane HR to fully compensate Ms. Omana fairly for this position. This still has not been resolved.

One of the best news items of 2020 is when the OPOC Administrative Assistant, Christina Coty, was made a full-time employee. This happened in December! We wish to thank the Mayor and members of City Council for helping us make this a reality.

Commissioner Elizabeth Kelley's position expired in September and she decided to step down to take on other community volunteer efforts. Also, in September, Blaine Holman moved out of the city limits and had to resign from the commission. We wish to thank them both for their hard work with the commission. In November, we welcomed Luc Jasmin as a new commissioner taking Commissioner Holman's position. As of December 2020 – one position was still open.

We look forward to 2021 with more positive interactions with SPD and the Spokane Police Guild and hopefully getting back out (physically) in our community. Thank you for taking time to read our annual report.

Respectfully submitted,

Jenny Rose
Chair

COMMISSIONERS

Jenny Rose (September 2015 – Present), *Chair*

Jenny recently retired from teaching after being in the education field for almost 30 years. She also served eight years as President of the Spokane Education Association. She has a B.A. in elementary education from WSU and a M.A. in Curriculum and Instruction from EWU.

Blaine Holman (July 2019 – September 2020)

Blaine has a B.S in Sociology from the University of Idaho and a B.S. in Paramedicine from Lewis and Clark State College. Blaine is also a member of the Spokane Association of Realtors.

James Wilburn Jr. (October 2017 – Present)

James specializes in administrative leadership with over 15 years of teaching experience. He has served as the Supervisor for Youth Initiative and Community/Parent relations with Spokane Public Schools and Adjunct Professor of Interdisciplinary Studies at Whitworth. He has also served as President for the NAACP Spokane Branch from 2008-2010.

Elizabeth Kelley (November 2017 – September 2020)

Elizabeth is a criminal defense lawyer with a nationwide practice focused on representing people with mental disabilities. She is co-chair of the National Center for Criminal Justice and Disability. She is the editor of *Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers* published by the American Bar Association (ABA) in 2018. She serves on the Editorial Board of the ABA's *Criminal Justice Magazine*. She served three terms on the board of the National Association of Criminal Defense Lawyers (NACDL). In 2009 and 2015, she traveled to Liberia as part of a delegation sponsored by the U.N. Commission on Drugs and Crime and NACDL to train that country's criminal defense bar. She is Vice President of the Spokane Symphony and The Arc of Spokane.

Ladd Smith (August 2015 – Present), *Vice Chair*

Ladd is currently an elementary teacher and has over 30 years in public education. He has a B.A. in Elementary Education and an M.A. in School Administration.

Luc Jasmin III (September 2020 – Present)

Luc is the owner of Parkview Early Learning Center in Spokane County. Luc began his career in the public school system and decided to transition to early childhood education. Growing up a first-generation Haitian-American has really propelled him to understand and focus on equity, racial bias, and cultural differences. He is also invested in protecting small businesses by mitigating the economic strain they face on a regular basis.

David Bingaman, *Legal Counsel* (March 2020 – Present)

David is General Counsel to the Office of Police Ombudsman Commission. He is the owner of the Northwest Corporate Counsel law firm where he provides city-attorney services to municipalities and general-counsel services to businesses.

OFFICE OF THE POLICE OMBUDSMAN COMMISSION

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Monthly meetings are every 3rd
Tuesday, unless otherwise indicated.

Mission

The OPOC exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing, through the Ombudsman, independent review of police actions, thoughtful policy recommendations, and ongoing community outreach. The Commission also assists the OPO in communicating with Spokane's diverse communities and the general public about the complaint filing and investigation process.

2020 Annual Report

STATUTORY AUTHORITY

This OPOC Annual Report is a compilation of the work performed by the OPOC in 2020. The annual report is a requirement of §04.32.150 of the Spokane Municipal Code (SMC), and includes a summary of: the OPOC's activities, findings, and recommendations; the OPOC's community engagement; the OPO's recommendations for changes to the police department's policies, procedures and training; and an evaluation of the work of the OPO.

The report is divided into five sections to explain the various functions of the OPOC:

- I. Summary of OPOC Actions and Developments
- II. Community Engagement
- III. Training
- IV. OPO Recommendations
- V. Evaluation of the OPO

I. SUMMARY OF OPOC ACTIONS AND DEVELOPMENTS

2020 was a year challenged by a global pandemic that shut down our country for most of the year. National demands for police reform after numerous deaths of minorities at the hands of various police departments, most notably, the death of George Floyd at the end of May, saw protests and civil unrest across the nation including here in Spokane. Commissioner Blaine Holman and Commissioner Elizabeth Kelley both left their positions in the OPOC at the end of their terms, creating vacancies in District 1 and District 2. The District 1 position was filled by Commissioner Luc Jasmin in September. In March, the OPOC hired David Bingaman from Northwest Corporate Counsel as their legal counsel for the remainder of the year.

The global pandemic prevented Commissioners from being as active in the City and in the community due to the required social distancing and cancellation of public gatherings. Commissioners held 7 regular meetings and 2 special meetings. Throughout the year, Commissioners held virtual meetings with the Ombudsman, Mayor Woodward, City Council President Beggs, Council Members, City Legal, and Police Chief Meidl.

UPDATE ON PREVIOUS OPOC ACTIONS

UPDATE #1: DEPUTY POLICE OMBUDSMAN POSITION

Summary: In October, 2019, the OPOC voted unanimously to promote the Analyst to the Deputy Ombudsman.

Outcome: Pending – At this point the City has not made the necessary changes to have the promotion go through the system.

UPDATE #2: FULL-TIME ADMINISTRATIVE SPECIALIST POSITION

Summary: The Commission sent a letter requesting funds be added to the budget and the position be made full-time.

Outcome: Approved. After 3 years of requests the position has been approved for the 2021 budget cycle.

2020 OPOC ACTIONS

ACTION #1: CLOSING REPORT ON C19-040 AND RECOMMENDATIONS

Summary: The Office of the Police Ombudsman wrote a closing report on Internal Affairs case C19-040 from an incident from February 2019 that involved allegations of excessive use of force during a K9 deployment. The OPO analyzed the internal review process, tactics officers employed, and then provided the department with 23 policy and training recommendations to improve policing practices.

Outcome: The Commissioners unanimously voted to approve the closing report and the 23 recommendations that went along with the report.

ACTION #2: RESOLUTION TO ORDINANCE 04.32.070(A)

Summary: A resolution of the Office of the Police Ombudsman Commission to Waive the Training Requirement under the Spokane Municipal Code §04.32.070(a) due to a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease. The State of Emergency prohibited all people from leaving their homes except under certain circumstances. The resolution also recommended that the ride-along requirement for the police ombudsman be waived for 2020.

Outcome: The Commissioners unanimously voted in favor of Resolution to Spokane Municipal Code §04.32.070(a).

II. COMMUNITY ENGAGEMENT

Commissioners are consistently looking for ways to become engaged with the community. In 2020, Commissioners were able to attend the Martin Luther King Jr. March and Celebration before the State of Washington shut down due to the Covid-19 pandemic. A few commissioners attended virtual meetings with various community groups.

III. TRAINING

While training opportunities in Civilian Oversight continue to be an area of focus for the Commissioners, the opportunities during 2020 were very limited. However, the Commission was able to

attend the NACOLE (National Association of Civilian Oversight over Law Enforcement) Annual Conference via 32 - 1.5 hours webinars over 3 months.

Commissioners identified priorities and goals moving forward in their previous retreat. They continued to use their platform to stay relevant to the community's needs by inviting a guest speaker from the community or someone with expertise in an issue related to policing or oversight to present at OPOC meetings. The Commission maintained a commitment to speaking out on important issues, discussing community impact cases or issues, and continuing to support the OPO's initiatives.

IV. RECOMMENDATIONS AND FINDINGS

2020 RECOMMENDATIONS

The Ombudsman provided **23 recommendations** to SPD related to policy and/or training. The subject matter of the recommendations and the Chief's response are:

RECOMMENDATION #1: I recommend IA investigators, as a matter of practice, identify disputed facts in an investigation provide the available evidence for both sides of the dispute, and document them clearly so that the designated person can make fully informed determinations on how to view the facts.

Chief's response: In progress. I believe a template for the IA investigators will ensure consistency and readability. Having a separate category for "disputed facts" will allow clarity and conciseness to the review and recommendation process.

I will have IA staff update the template for approval to guide future reports.

RECOMMENDATION #2: I recommend SPD either update the function of their review boards to critically analyze the officer's tactical conduct and make findings similar to LVMPD and/or enhance the chain of command review function of categorical uses of force similar to LAPD that examine an officer's tactics and uses of force that result in specific findings. (See Appendix A for a sample categorical use of force review and findings)

Chief's response: In progress. Similar to recommendation #1, a template of all factors to consider when evaluating a use of force will ensure all levels of response are analyzed for best practices (e.g., use of time, distance, cover, word choice, de-escalation efforts when appropriate, etc.). Additionally, we will make it clear that dissenting opinions should be noted and included in the report.

An outline has been developed, however I will ask that IA work with the OPO (which has experience attending UOFRBs) to determine what, if any, enhancements should be instituted.

RECOMMENDATION #3: I recommend that SPD ensure officer safety is at the forefront of every tactical review and ensure that every officer follows established training and procedures, particularly

in high risk events. Officers who take unnecessary risks or put other officers or the public in unnecessary danger should be immediately referred for additional training.

Chief's response: Completed. This incident was forwarded to the Training staff at the Academy with direction to incorporate high risk vehicle stop training into future in-services. Additionally, the deployment of the K9 was analyzed by Sgt. Spiering, who updated the K9 policy to provide clearer guidance for K9 deployments. Since that direction was forwarded to the Academy, this training has occurred.

RECOMMENDATION #4: I recommend reinforcing in training that when officers test compliance of subjects, they give them an opportunity to respond to commands before making the decision to use force, if feasible. This opportunity to respond to commands before making the decision to use force, if feasible. The opportunity for compliance should also be critically looked at as part of a tactical review following any use of force.

Chief's response: Ongoing. SPD provides on-going training, in addition to training received via BLEA as directed by the CJTC, at measuring compliance, de-escalation, procedural justice and proper use of force based on level of resistance. In 2021, SPD has incorporated ongoing training into its de-escalation curriculum and has committed to training on these topics into perpetuity.

RECOMMENDATION #5: I recommend SPD continue to reinforce its new de-escalation policy through training, encouraging officers to provide many opportunities for compliance before resorting to using force. Officers should fully consider other alternative means before resorting to using force, if feasible.

Chief's response: Completed / Ongoing. SPD believes strongly in the expectation of its officers to de-escalate when reasonable. Because of our conviction, we created a separate de-escalation policy to ensure the importance of this policy is stressed. Additionally, we continue to train at in-services on this topic and will do so into perpetuity.

RECOMMENDATION #6: I recommend SPD reevaluate its culture of accountability on both direct and indirect levels. Supervisors should randomly audit the BWC videos of their officers to safeguard against problematic behaviors, working to recognize and change problematic behaviors before they become issues through a strong mentoring program. Any reviewing authority, whether in an ARP or in a chain of command review, should critically examine incidents in order to limit liability.

Chief's response: Completed / Ongoing. SPD supervisors are not authorized to proactively audit BWC footage randomly based on labor law. The SPD administration is interested in exploring this with the Guild, and desired to include this in negotiations as a bargaining topic for several years. Based on the dynamics of the current unsettled contract, we were not able to incorporate this into the current open contract. It is our desire to explore this with the Guild upon settlement of the current open contract.

Additionally, the SPD chain of command is addressing officer policy violations (of a minor nature, not specifically complained about or related to the Blue Team cause of action) as the incident works its way

through the Blue Team review, prior to the conclusion.

RECOMMENDATION #7: I recommend SPD research best or effective practices to update its K9 guidelines into a policy. The OPO is ready to collaborate with SPD to research different K9 models (i.e. on leash and off leash) and their implications for liability on the department and the City.

Chief's response: Completed. Sgt. Spiering updated the K9 deployment policy in 2020. Additionally, he has noted that this policy will be a living document that will be frequently reviewed and updated as necessary to stay current with case law and best practices as they relate to K9 programs.

Ombudsman's response: This report has yet to be provided to the OPO for review.

RECOMMENDATION #8: SPD should consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and any other guiding documents and training to reduce department liability. SPD should also consider listing every device that an officer can use in utilizing force. By limiting the force options an officer has, the department is likely to reduce liability. (See Appendix B for Seattle PD's Use of Force Tools Policy that lists every force option allowed by the department)

Chief's response: Partially implemented and partially not implemented. The WA State Criminal Justice Training Commission (CJTC) offers a limited number of techniques, and limited number of hours to train on those techniques, under the defensive tactics umbrella. Many officers have taken advanced training outside their employment and obtained, and maintained, a level of proficiency in control tactics otherwise not obtainable with staffing, budget and training hours offered by SPD. The "exceptional technique" category allows tactics used by an officer, those tactics not being a part of the CJTC training curriculum, to be examined for reasonableness. The same standard of reasonableness in utilizing a tactic is followed whether the tactic used is officially trained by the CJTC or a tactic not trained on by the CJTC. SPD continues to utilize as its foundation the Graham standard, "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," the test's "proper application requires careful attention to the facts and circumstances of each particular case." (Graham v. Connor).

The below quote was taken from Lexipol and has implications for uses of force:

(*Strickland v. Washington*, 466 U.S. 668 (1984) at 687).

"Specific Rules. One proposal that sometimes comes up in the police use of force debate is to judge officer actions using *very specific rules* (emphasis added). Here is what the *Strickland* court said about using specific guidelines to judge the decisions of a criminal defense attorney:

More specific guidelines are not appropriate. No particular set of detailed rules ... can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would ... restrict the wide latitude counsel must have in making tactical decisions." (*Id.* at 688-689)

Though this case specifically relates to adequate representation by defense counsel, the concepts are similar to the variety and unpredictability of use of force encounters, and the dangers in having “very specific rules” that cannot “take account of the variety of circumstances” or the “range of legitimate decisions.”

Related to the second prong in recommendation #8, “SPD should also consider listing every device that an officer can use in utilizing force,” SPD does list out the various tools they are specifically trained on in the Defensive Tactics manual (184 pages).

Ombudsman’s response: I disagree that principles of legal representation transfers to our recommendation on the department limiting the use of exceptional techniques to limit liability because the mission of legal counsel in a criminal trial is different from that of a police department evaluating an officer’s conduct administratively. In the *Strickland v. Washington* case, the defendant alleged a Sixth Amendment violation due to ineffective counsel. Legal counsel did not seek out character witnesses or request a psychiatric evaluation at sentencing. This prevented mitigating evidence from entering the record and therefore the trial court sentenced the defendant to death. The Court addressed whether the defendant received effective counsel. The Court found that in evaluating claims of ineffective counsel, judges should be deferential to counsel because they must have “wide latitude” to make “reasonable tactical decisions,” and detailed guidelines for representation could distract from counsel’s overriding mission is the vigorous advocacy of the defendant’s cause.¹ Here, the police department’s role in evaluating uses of force is vastly different. The department is not an advocate, but the arbiter of whether an officer’s conduct fell in or out of policy to protect the safety of officers and members of the public they interact with.

While I agree that in a deadly force encounter, an officer should utilize any tool available to prevent lethal harm, in the cases where less than lethal force is used, officers should be provided clear guidance on what standards the department will use to evaluate their conduct. A manual is not binding like a policy. Listing the tools an officer is allowed to use in the Defensive Tactics manual has no effect if the Department’s policy does not hold the officer to a standard on what tools the Department allows an officer to use.

RECOMMENDATION #9: I recommend SPD clearly define the allegations of misconduct against an officer at the beginning of a review or investigation and document if the allegations are later modified and the subsequent reasons for doing so.

Chief’s response: *In progress; work with OPO’s office on format.* Allegations being investigated are typically noted at the beginning of the IA case file, as well as sent to the officer(s) being investigated. This specific notification of policies being investigated is required by law, as departments are not authorized to go on “fishing expeditions” (phrase used by the Courts to describe investigations that are not specifically and narrowly focused based on allegations). Additionally, the chain of command or Administrative Review Panel (ARP) may add additional allegations that the investigation reveal may be warranted based on the evidence presented. For the ARP review, the final allegations addressed are

¹ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

always placed at the back of the ARP finding letter to clearly spell out the allegations and findings.

As noted during our recent meeting, clearly breaking down each of the allegations for each employee, along with findings and recommended sanctions under each employee, makes sense. We will ensure this process is documented in the Internal Affairs SOP manual and each employee assigned to Internal Affairs, as well as the ARP members, are trained to follow this protocol.

Additionally, my sense is the OPO has a template or format that they were exposed to at recent training. We would welcome the opportunity to review this material and adjust our documents and documentation accordingly.

RECOMMENDATION #10: I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.

Chief's response: In progress. The example provided by the OPO during our recent meeting was the difference between, as an example, some supervisors utilizing the Blue Team software to document their recommendations, and others using an IA additional 'Word' document and incorporating that document into Blue Team as an additional report. The OPO recommended following a consistent format for review and submission. Internal Affairs will update the IA SOP to reflect the method that should be used when providing a review through the chain of command.

RECOMMENDATION #11: I recommend SPD safeguard the due process rights for its officers by forbidding all informal and formal interactions by the chain of command with an officer that is currently undergoing an IA investigation and/or a chain of command review regarding the matter with the exception of formally recorded interviews.

Chief's response: Implemented. At the time of this incident, uses of force, pursuit and collision reviews were finalized at the Major level. Since this report, all findings related to Blue Team reports and investigations are now determined by the Assistant Chief or Chief. Those resulting in discipline beyond a letter of reprimand are decided by the Chief.

RECOMMENDATION #12: I recommend SPD clearly designate who maintains disciplinary authority to ensure an officer is not disciplined more than once for the same offense. Further, all discipline issued should be immediately documented for the record and any subsequent discipline issued should explain whether it is in addition to the previous discipline or if the previous discipline issued has been rescinded or modified.

Chief's response: Implemented. Related to recommendation #11.

RECOMMENDATION #13: I recommend SPD promptly initiate an IA investigation under the requirements of SPD Policy 301.14.3 in all cases. This will ensure an officer's right to due process, proper notification of the Police Ombudsman, and an impartially conducted investigation by IA.

Chief's response: Completed. SPD's policy manual was updated shortly after this incident to address this issue (see policy 301.14.3).

301.14.3 REFERRAL TO INTERNAL AFFAIRS

The supervisor shall complete a Use of Force Report through BlueTeam. The supervisor shall forward the Use of Force Report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the appropriate Major.

If upon review of an application of force by an officer(s), the supervisor believes that the application of force could rise to the level of misconduct, or the supervisor sees conduct that could rise to the level of misconduct, the supervisor shall initiate an internal affairs complaint in BlueTeam. If the subject of the use of force makes a complaint about the use of force or demeanor of the officer(s) involved in the incident, an Internal Affairs Complaint will be generated in BlueTeam. The supervisor shall forward the Internal Affairs Complaint and the Use of Force report through BlueTeam to the Internal Affairs Group and copy each member of the chain of command to include the Chief of Police in the routing.

RECOMMENDATION #14: I recommend the Chief insist upon policy compliance by senior members of his staff. Impartial IA investigations should be initiated for any misconduct that would not be considered minor. SPD already had a policy that required initiating an IA investigation, but it was not enforced. Strong policies set the standards of acceptable conduct, but those policies are only effective if they are clearly defined and enforced.

Chief's response: Completed. SPD updated its policy and disseminated its updated policy related to Blue Team reviews and identification of potential misconduct to the entire agency (see Recommendation #13). Based on conversations with the OPO, "serious violations" discovered during the review (specifically related to uses of force, demeanor, etc.) will have an Internal Affairs investigation initiated. De minimis violations (e.g., not activating BWC immediately upon exiting the vehicle) will be handled through Documentations of Counseling (or Letters of Reprimands if appropriate under the progressive discipline umbrella).

RECOMMENDATION #15: I recommend SPD explicitly require an IA investigator to initiate a complaint investigation when he or she is made aware of potential allegations of misconduct.

Chief's response: Not implemented per se, however the expectation is that the IA supervisor ensure the appropriate Bureau supervisor initiate the IA investigation or bring to the attention of a higher rank. This recommendation, as it relates to C19-040, revolves around a scenario that had not been experienced prior by staff at SPD (different findings at different levels of the review process, related to a use of force, with the final decision at the time being determined by a Major, who had the final say in determining the appropriateness of the use of force and disagreed with his subordinates). This has been rectified with the elevation of final findings to the Assistant Chief or Chief of Police. If either the Assistant Chief or Chief of Police determines that misconduct arises to the level that a misconduct investigation should be initiated, their decision will be final. Additionally, the chain of command will be reprimanded with the appropriate training or discipline for "fail to supervise".

The supervisors within the Bureau are expected to initiate an Internal Affairs investigation if they become aware of misconduct. This duty is an expectation of their leadership position. In this scenario,

due to the dynamics not experienced prior, a different finding was determined at multiple levels during the review process. An Internal Affairs Lieutenant cannot be expected to have a clear understanding of potential misconduct under the facts of this specific incident when the chain of command itself was not in agreement of the misconduct.

Having said that, any supervisor within SPD has an obligation to ensure a misconduct investigation is initiated upon learning of serious policy violations (as an example, if the chain of command at the Captain level determines misconduct occurred that rises to the level of an IA investigation, that Captain will traditionally direct the lower rank to initiate the investigation. This occurs for multiple reasons, one being to develop the supervisor and reinforce expectations –especially with newly promoted supervisors).

RECOMMENDATION #16: I recommend documenting all investigatory steps taken in a review or investigation for consistency across the board in investigations and reviews conducted.

Chief's response: Implemented

RECOMMENDATION #17: I recommend SPD update its Administrative Investigation Format Policy to require IA investigators to critically evaluate evidence by conducting credibility assessments, identifying disputed facts, and providing other relevant information to the investigation. (See Appendix C for a Sample IA Investigation template)

Chief's response: In progress. This recommendation appears to parallel recommendation #1. In discussions with the OPO, this recommendation was given more detail as it relates to conflicting statements. The OPO suggested conflicting statements be clearly spelled out (under a separate section of the Internal Affairs summary), with the statements attributed specifically to who stated what (or what the evidence – BWC – clearly reveals). Internal Affairs will update the IA SOP to reflect this recommendation as part of the template for summary reports.

RECOMMENDATION #18: I recommend SPD require its IA investigator sign a recusal form as part of their investigation.

Chief's response: Implemented. SPD Internal Affairs has developed a form that encompasses concerns brought forward in this recommendation.

RECOMMENDATION #19: I recommend a strong *Graham* statement to begin any review of a use of force.

Chief's response: In progress. SPD officers have been directed to include a Graham statement in their use of force reports for the past several years, and these reports are part of the chain of command review. The example provided from the LAPD Board of Commissioners contains essentially the same information already provided in SPD's use of force reports and reviews, though in a different format. I am always supportive of examining what other agencies are doing, while weighing the resources SPD has available as compared to other agencies. The 8-page report provided as an example, for each use of

force, will take considerable supervisory time, removing supervisors from the field for even longer periods of time and diminishing the much need field supervision we try to achieve. Having said that, developing a consistent template may help meet the genesis of much of this recommendation. I will direct IA to collaborate with the OPO on what that template should look like.

RECOMMENDATION #20: If SPD uses a subject's history as part of its determination, it should limit the information to what involved officers knew at the time of the incident, and also include the officers' applicable history in its consideration.

Chief's response: Implemented. SPD agrees with this recommendation, and case law requires that only those factors known to the officer using force at the time force was used, may be considered in determining the reasonableness of the application of force. As it relates to this incident, the officers were working with the US Marshall's Office violent offender task force. The subject in this incident told the officer two times that he had a gun, the officers had information about his prior arrest for being a felon in possession of a gun, and that he had been seen purchasing ammunition several months prior by a DOC officer. Additionally, at least one officer had information that the subject told a cooperative individual prior to this incident that he would not go back to jail. This was documented in the officers' reports.

In terms of considering the officer's applicable history in each incident where force was utilized, SPD follows a progressive discipline matrix. Where no misconduct has occurred in the officer's past, those incidents do not bear on whether the current incident's use of force is justified or not justified. Each incident stands on its own merits. Where misconduct has occurred, the sanctions will always take into account the IA history of the employee.

Additionally, SPD utilizes an EIS (Early Intervention System) that "flags" employees who have met a pre-determined threshold for uses of force, pursuits, collisions and complaints. This flag occurs even when the incidents were determined to be in policy. Internal Affairs coordinates a review of these officers with the officer's chain of command in an effort to be proactive in determining, as an example, officers who may use force within policy, but means other than force may have been a viable option.

RECOMMENDATION #21: I recommend the ARP, or IA in its investigation, note any discrepancy in facts and disputed evidence and make a determination of each matter. The ARP should arrive at a finding for every allegation in a case. The ARP should also critically evaluate any other additional policies and training guidelines that may apply.

Chief's response: In progress. SPD agrees with this recommendation, specifically having a separate category where disputed facts are noted, as well as individually listing out each officer involved and what the allegations / findings are for each officer. This recommendation will be part of the updated template used by IA.

RECOMMENDATION #22: I recommend SPD consider shortening the timeframe for release of BWC and records related to both critical incidents and community impact cases to be in line with industry standards of 45 days or less, subject to applicable exemptions.

Chief's response: Not implemented. SPD has spoken extensively with City Legal regarding the release of BWC footage more quickly. At times the release may be delayed due to investigative processes that must be followed to protect the integrity of the investigation or at the request of the Prosecutor's office. Additionally, each minute of BWC footage takes approximately 10 minutes to review for redaction to avoid the release of prohibited information per RCW. Records staffing has not grown in proportion to the utilization of BWCs and one person has been assigned to this task full time, while the demands placed on Records staff have also grown (records requests, CPLs, gun transfers, etc.). In conversations with the OPO, there has also been a lack of alignment with the OPO's research versus direction provided by City Legal. SPD is in agreement that the sooner the video can be released, the more productive and healthier it is for the community and SPD.

RECOMMENDATION #23: I recommend SPD update its Policy 703.11, Release of Body Camera Videos to maintain compliance with case law on public records requests that involve internal investigation records.

Chief's response: In progress. This recommendation parallels the logistics of recommendation #22, and the response is the same. SPD relies heavily on City Legal to ensure we are complying with all laws and will request clear guidelines to ensure we are following case law.

EVALUATION OF THE OFFICE OF POLICE OMBUDSMAN

The OPOC continues to be impressed with the work and professionalism of the OPO. COVID – 19 completely changed the working environment of the OPO while the pace of work continued to increase. As the push for police reform increases, the OPO has been inundated with complaints, peer requests, and projects to work on; yet the quantity AND quality of work is to the highest standards. Bart, Luvimae, and Christina put together a remarkable closing report which has been widely reported on in the local media. The report was expansive, totaling 50 pages of well-researched information regarding a questionable use of force incident in Spokane from 2019. This closing report has helped push the OPO towards greater compliance with the Spokane City Charter and has fueled the efforts towards police reforms in Spokane. The quality was of such significance, Chief Meidl pointed to this closing report as the reason he wanted the OPO to review the Spokane Police response to the protests of 2020.

In December 2019, Mr. Logue met with Chief Meidl, the first meeting in a long time, and the topic of collaboration was reenergized as open dialogue and collaboration must be the path to move forward. The Chief agreed and communication between the OPO and the police department has steadily improved.

After the death of George Floyd, protests and riots erupted around the country, and Spokane was not immune from this. The Chief formally asked the OPO in writing to review and publish an

independent report of their response to the protests. The OPO is still waiting to write this report as SPD has sent no information to OPO due to a grievance from the Spokane Police Guild.

The OPO has been closed to the public since early 2020, resulting in the entire office working from home. To facilitate the team atmosphere of the office, the OPO instituted an office call three times a week on WebEx to check in, maintain visibility on projects, and discuss upcoming items of interest. Commissioners were also welcomed to check in anytime with these WebEx meetings which greatly helped our supervision of the office.

Our Ombudsman, Bart Logue, is fully engaged on tasks, doing deep research as well as interacting with peers around the country on issues, particularly with police use of force. The City Council recognized the Ombudsman's expertise and asked him to attend a study session and express his viewpoints on items for police reform. Bart has received inquiries from as far away as the City Attorney's Office in New York City regarding his work. The Ombudsman has also maintained his position on the Strategic Planning Committee for NACOLE, taking responsibility for the future planning and organization of civilian oversight of law enforcement nationally and was also asked to serve on the NACOLE Member Support and Development Committee and the NACOLE Use of Force Working Group. He was also certified as an Advanced Force Science Specialist (a 6 month endeavor) during 2020.

The Deputy Ombudsman – Ms. Luvimae Omana continues to be responsible for the timeliness and accuracy of every report that the OPO published. Luvimae also established herself as a permanent fixture in the Spokane Police Department's Use of Force Review Board and the Collision and Pursuit Review Boards. Additionally, Luvimae has maintained some administrative duties such as managing the OPO's budget, including continuing to be responsible for processing all travel for the OPO and OPOC. She provides all coordination with the outside mediator we engage with when an opportunity for mediation arises. Luvimae has provided testimony for the American Bar Association's Women in Criminal Justice Task Force listening session for women in criminal justice. Luvimae was also responsible for shepherding the Use of Force Dashboards.

The Administrative Specialist – Ms. Christina Coty continues to provide exceptional customer service to citizens, assisting in 1,232 community member contacts. What makes this truly exceptional is that City Hall was closed for the majority of 2020. As such, Christina was required to reach out remotely to every community member that contacted the OPO. In addition to her work on Public Records Requests, complaint intake interviews, and complaint coordination with Internal Affairs, Christina's willingness to take on more and more aspects of the complaint intake process is commendable. While the office did see a slight decline in contacts and complaints in some months last year, the months of May, June, and July greatly impacted the office with community concerns regarding the police response to the May 31st protests/riot in Spokane. Christina was asked to work a substantial number of hours above her established schedule to document these concerns and interview complainants. In a selfless display of commitment to the community and the OPO mission, Christina provided this additional service without complaint, ensuring OPO compliance with SMC §04.32 on complaint intake.

Our Ombudsman, Bart Logue, is steadfast in fulfilling the requirements of complaint case review; and he has managed to elevate the cooperation with the Spokane Police Department while simultaneously standing firm on the independence of his office and publishing a critical report. Chief Meidl implemented or partially implemented 21 of 23 OPO Recommendations this year. All this in a year full of unexpected impacts. The entire OPO team has exceeded our expectations with their performance in 2020.

Craig Meidl: House Bill 1054 significantly limits or disallows many crucial law enforcement tools

Sun., Feb. 7, 2021

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By Craig MeidlSpokane Police Department

One of our biggest successes – guarding the majority of the community from the quantity and scope of violence we respond to on a daily basis – may also be one of our biggest failures. Spokane police officers contact hundreds of people each and every day, many in dangerous, uncertain and dynamic situations. The community mandates that we arrest those who have violated the law, even those who do not want to go to jail. Many who have violated the rights of another will go to great lengths to avoid going to jail, up to and including directing resistance and violence toward officers. In our efforts to protect the community from the realities of police work, we have allowed the void to be filled with emotional decisions and proposals that will have a negative effect on the safety of our community.

The Spokane Police Department strives to ensure its response to criminal activity is met with the right tools and techniques needed to complete an arrest. SPD has recommitted itself over the past decade to improving stringent policies and training procedures on the correct use of force, de-escalation and the appropriateness of those actions. Those changes are based on extensive and ongoing community, academic, and other third-party review and input. We continue to evolve and use data-driven research, not emotion, to stay at the forefront of best practices.

There is much at stake this legislative session. House Bill 1054 significantly limits or disallows many tools that law enforcement agencies across the state rely on to bring perpetrators of crime to justice. Chemical agents, with no permanent or long-term effects, used to extract violent criminals from barricaded locations, or to quell destructive rioters ... gone. Police K-9 teams, a

vital tool in helping police track and locate evasive persons, recover contraband and find missing persons ... no longer allowed. Neck restraints – often confused with a chokehold – are a highly effective de-escalation tactic that has never resulted in a serious injury or death in Spokane ... no longer authorized. Protective equipment, like helmets and munitions suppressors, essential for effective police work and officer safety ... eliminated with the stroke of a pen.

In the absence of these valuable tools and tactics, already regulated and only authorized in specific and limited circumstances, officers will have to revert to other tactics that may put them and others at greater risk. Removal of intermediate interventions leaves officers fewer options to safely resolve dangerously volatile situations. Arrests will take longer to accomplish, injuries to officers and suspects will increase and unfortunately so may the prospect of more officer-involved shootings. Additionally, as officers wait for the backup needed with fewer tools, the community will suffer.

Another bill of concern is House Bill 1202, which seeks to remove qualified immunity protections for law enforcement. Some mistakenly believe qualified immunity is a special immunity for police that insulates them from liability cases.

This is false; qualified immunity can only be granted by a state or federal judge, and only after hearing from the plaintiff. It is a first step to limit harassing and retaliatory lawsuits. If the judge determines the complaint brought forward does not warrant civil action, he or she can make a determination that no civil recourse follows – judges err on the side of allowing a trial to proceed if there is doubt.

Qualified immunity is rarely exercised, but it gives officers the peace of mind of knowing that if what they do is reasonable, or not yet established by law, they will be protected from unnecessary lawsuits. Without this protection, officers may hesitate when we need them most.

I've thought long and hard about how to inform the community without sounding like the apocalypse is coming, but there's no tactful way to do that. Injuries for all will certainly go up, shootings may increase with fewer tools available to control violent subjects, and crime will increase as officers wait for more backup before inserting themselves into a situation in which the tools available to them have diminished. The removal of the tools in these proposed bills will certainly create more dangerous situations and result in the opposite of what the bills seeks to accomplish.

The majority of our officers see their work as a calling. They respond overwhelmingly in an appropriate and professional manner.

They deserve our support and protection for willingly placing themselves between us and danger. Let's hold accountable those who betray this public trust, while protecting those who overwhelmingly serve with professionalism and integrity every single day.

Craig Meidl is chief of the Spokane Police Department.

<https://www.spokesman.com/stories/2021/feb/07/craig-meidl-house-bill-1054-significantly-limits-o/>

Rob Curley

Spokesman-Review editor Rob Curley loves to talk with people and learn about their lives, whether it's a best-selling author or a stranger he meets downtown on his walk to lunch. It's that inquisitive nature combined with a playful sense of storytelling that helps make our newspaper different than most.