

Office of Police Ombudsman 2011 Annual Report

“Trust but Verify”

Introduction

In October of 2008, the Spokane City Council and Mayor approved an ordinance that led to the creation of the Office of Police Ombudsman. In August of 2009 after a national recruitment, Tim Burns was selected as the City’s first Police Ombudsman.

During the hiring process, Tim indicated that he thought it would take between three to five years for the Office of Police Ombudsman to evolve into the office the Community envisioned it becoming. In the first two years of existence, the Office has made significant progress in becoming a valuable resource to the Community. The Office continues to be a work in progress.

In 2010 the City Council amended the Office of Police Ombudsman’s enabling ordinance to increase the authority of the Office. Immediately after, the Spokane Police Guild filed an Unfair Labor Practice action against the City for the changes made.

In 2011 the Spokane Police Guild prevailed in an arbitration hearing regarding the Unfair Labor Practice complaint. As a result, the increased authority granted to the Office through the previous Council action was rescinded and certain changes occurred.

The most visible change was that the Office stopped issuing closing reports associated with closed internal affairs investigations. Although the Office lost the ability to independently investigate completed internal affairs complaints, the Office did not investigate any closed complaints during the time the Office had the authority to do so.

In the 2010 Annual Report, the Ombudsman requested that closed internal affairs investigations be published. The request was contradictory to the Police Department’s past practice and the Ombudsman was advised that any change would require collective bargaining with the Police Guild.

In 2011 the Washington State Supreme Court ruled that closed internal affairs investigations had to be released to the public in a redacted format upon request. The Office of Police Ombudsman filed a Public Records request for all closed internal affairs investigations since

January 01, 2009. The Spokane Police Department is currently in the process of complying with the request. Once received, the closed internal affairs investigations will be published on the Office of Police Ombudsman website.

On November 01, 2011, Spokane Police Officer Karl Thompson was convicted in Federal Court of violating the civil rights of Otto Zehm by using excessive force and for lying to investigators. Mr. Zehm died on March 20, 2006 as a result of his encounter with members of the Spokane Police Department in a local convenience market on March 18, 2006. The Spokane County Medical Examiner ruled that Mr. Zehm's death was a homicide.

On November 04, 2011, upon conclusion of a court hearing that was held at the Federal Court Building in Spokane, several off-duty Officers who were in attendance stood and saluted Officer Thompson after he was taken into custody by U. S. Marshalls and escorted from the building. The action of the off-duty Officers was interpreted by a segment of the Community as insensitive and disrespectful. The Office of Police Ombudsman received eight complaints regarding the Officers' actions. Mayor Verner and Chief Kirkpatrick apologized publically to the Community for the Officers' actions.

While the conviction of Officer Thompson appears to close one chapter in the death of Mr. Zehm, additional members of the Spokane Police Department appear to be at risk of Federal prosecution. The civil litigation for the wrongful death of Mr. Zehm also remains unresolved. Until this chapter of Spokane history is resolved, the reparative or restorative justice process cannot be completely implemented to allow for the "healing of the Community" to begin.

On November 10, 2011, as a result of the questions raised by the Federal trial and investigation, the Ombudsman felt compelled to request that Mayor Verner request that the Department of Justice and the U.S. Attorney General's Office conduct a pattern and practice audit of the Spokane Police Department. On November 14, 2011, Mayor Verner made the request.

The year 2011 was also an election year for the City of Spokane. A new Mayor, a new City Council President and three new Council members were elected to office beginning January 1, 2012. Election campaigns focused on civilian oversight of law enforcement and the delivery of service to the Community. Those who were elected made strong commitments to the Community to reform the Police Department and improve the level of service provided. In addition, the Chief of Police and Assistant Chief of Police retired at the end of 2011.

During the transition of leadership, Mayor Elect Condon reinforced Mayor Verner's request for the Department of Justice to conduct a pattern and practice audit of the Spokane Police Department. The City Council supported the recommendation. The Police Guild and Lieutenants and Captains Association have also stated publically that they welcome the audit.

Mayor Elect Condon also agreed to move forward with Mayor Verner's recommendation to seat a committee to review the Police Department's Use of Force policy. In addition, Mayor Elect Condon created a transitional Public Safety Committee to evaluate Public Safety and the

delivery of service to the Community. The Committee has made several recommendations to the Mayor for his consideration.

While events that occurred in 2011 were the catalysts for change, 2012 has the potential to be the year where significant change for cause will be accomplished.

The Annual Report

This report is divided into six sections to explain the various functions of the office:

- I. Staff Profiles
- II. The Office of Police Ombudsman
- III. Ordinance Requirements
- IV. Statistical Data for 2011
- V. Recommendations
- VI. 2011 Accomplishments and Next Steps for 2012

This report shall be produced on an annual basis. It is intended to provide the residents of Spokane and City Officials with statistical analysis documenting the number of complaints made against members of the Spokane Police Department on an annual basis.

Pursuant to Spokane Municipal Code Section 04.32.110 (C) (1) (2), the data shall include the number of complaints received by category, disposition and action taken. The report shall also include analysis of trends, patterns and recommendations. The report is intended to provide the Community and its elected representatives with an opportunity to understand and evaluate the performance of the Office of Police Ombudsman.

The Ombudsman is accountable to the Mayor, the City Council and the people of Spokane. The Office of Police Ombudsman has an obligation to perform in a professional, ethical and service-oriented manner.

Recognizing that no Police Department can operate effectively without the trust of the Community it serves, the Spokane City Council approved an ordinance in 2008 which created the Office of Police Ombudsman. The Office was created to increase the public's trust in the Spokane Police Department. The mission of the Office of Police Ombudsman is to provide a professional presence to ensure quality internal affairs investigations of law enforcement misconduct complaints and to provide for a visible independent oversight to reassure the public.

The Office of Police Ombudsman may recommend policies and procedures for review, audit the complaint resolution process and review and recommend changes in departmental policies to improve the quality of Police investigations and practices.

Through these means, the operation and actions of the Spokane Police Department and their Officers will become more transparent to the Community.

I. Staff Profiles

TIM BURNS, POLICE OMBUDSMAN

In August 2009 Tim Burns was appointed Spokane's first Police Ombudsman. Tim is an accomplished professional who takes a realistic, no nonsense approach to problem solving and conflict resolution. Tim is a result driven professional with 37 years of experience in law enforcement, code enforcement, teaching, licensed contracting and conflict resolution. Tim has a reputation as a resourceful problem solver.

Tim is responsible for providing independent civilian oversight to the Spokane Police Department in conduct-related matters. Tim works under the direction of the Mayor and has prescribed authority through the Municipal Code. Tim frequently meets with the Spokane Police Administration, Spokane Police Department's Internal Affairs Unit, special interest organizations and concerned residents.

Tim is a member of the National Association for Civilian Oversight of Law Enforcement (NACOLE) and the United States Ombudsman Association (USOA). In 2010 Tim was appointed to the NACOLE Professional Standards Committee. In 2011 Tim was elected to the Board of Directors for the United States Ombudsman Association.

In 2010 Tim was certified as a Mediator through the Fulcrum Institute of Spokane Washington.

Tim was previously employed by the City of Visalia, California as the Neighborhood Preservation Division Manager, the City of Hollister, California as the Code Enforcement Officer and by the Town of Los Gatos, California as a Police Officer.

Tim graduated from San Jose State University with a Bachelor of Science Degree in the Administration of Criminal Justice with a minor in Sociology. Tim has a life time, part-time, California Junior College Teaching Credential. Tim has advanced certifications from the Police Officers Standards and Training Commission (POST) and the California Association of Code Enforcement Officers (CACEO).

MARNIE RORHOLM, ASSISTANT TO THE OMBUDSMAN

Marnie Rorholm is a lifetime Spokane resident, except for the four years she spent attending Santa Clara University in California. She has an MBA from Gonzaga University and also spent 14 years working there as an Administrator and Office Manager in Campus Security. In 2008 she

left Gonzaga for a position with the City of Spokane in Police Records, serving both SPD and SCSO.

After 16 months, Marnie moved to the Water Department where she was responsible for the Water Stewardship Program for the City of Spokane, including the city-wide “Slow the Flow” marketing campaign. This program was responsible for assisting over 800 homeowners in installing conservation devices and awarding rebates totaling more than \$150,000 for local citizens.

Marnie began work in the offices of the Ombudsman and Mayor in November, 2011. In addition to acting as the main point-of-contact for citizens calling and visiting the office, Marnie’s regular duties include scheduling appointments and Community outreach events, preparing informational materials, maintaining of the Office of Police Ombudsman website, researching law enforcement best practices and statistical analysis of Police Department and complainant data.

Marnie is married to a Gonzaga University Staff member and Lieutenant in the US Naval Reserve. She has two sons, ages 13 and nine. Outside of work Marnie enjoys all manner of local sports (EWU football, Zags basketball and Indians baseball), public speaking and acting in local theater, TV, film and radio.

SCOTT RICHTER, INTERN

Scott Richter was born and raised in Salem, Oregon. In 2010 Scott graduated from Eastern Washington University double majoring in Sociology and Criminal Justice with a minor in Psychology. In December 2011 Scott received his Master’s Degree in Public Administration from Eastern Washington University.

Before attending school, Scott spent most of his working life in skilled trades which helped him realize his ultimate goal of working in non-profit administration. Scott is passionate about advocacy and will continue to pursue his interests in social research and providing equal opportunities for all.

Scott has been an intern at the Office of Police Ombudsman since April 2011. When he is not interning, Scott enjoys his family, music, movies, gardening and sports.

REBEKAH HOLLWEDEL, INTERN

Rebekah, originally from the state of Florida, moved to Washington in 2006 to continue college. In February 2010 she began her internship/volunteerism at the Greater Spokane Community Oriented Policing Services. While there she assisted many different groups, in-person and over the phone, with access to information and resources they requested. In June 2011 she graduated from Eastern Washington University with a Bachelor’s in Sociology and a minor in Criminal Justice.

Rebekah began her internship with the Office of the Police Ombudsman in August of 2011. Currently, she is researching topics of interest to all groups within the Community with a desire to initiate further awareness and insight. She is excited to learn many more things while serving the Spokane Community that may assist her with her future goals.

Rebekah is currently working on a Master's degree in Criminal Justice at Washington State University. She plans to add a degree in Public Administration, with a focus in non-profits, to her background. Her ultimate goal is to work with a non-profit organization that assists offenders with rehabilitation and reintegration.

Spending time with her husband and beagle, while enjoying the beautiful scenery of Eastern Washington, is something Rebekah enjoys during her free time. She also likes reading materials on topics such as deviance, social stratification, policing, race, and gender.

TIM SZAMBELAN, POLICE OMBUDSMAN ATTORNEY

Tim Szambelan grew up in Chehalis, Washington. Chehalis is a small rural town 30 miles south of Olympia, Washington. In 1986 he received his undergraduate degree from Seattle University in Public Administration.

In 1987 Tim moved to Spokane to attend Gonzaga University School of Law. He graduated from Gonzaga University School of Law in 1990.

Upon graduation from law school, Tim worked at the Spokane law firm of Huppin, Ewing, and Anderson & Paul in their Litigation Department.

In 1991 Tim accepted a position with the Spokane City Attorney's Office in the Criminal Division as a Prosecutor. In 1998 Tim transferred to the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other Departments within the City.

Tim is licensed to practice law in Washington and Arizona.

II. The Office of Police Ombudsman

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.

GUIDING PRINCIPLES

The Office of Police Ombudsman will strive to:

- Provide equal, fair and impartial access to the services of the Office of Police Ombudsman without regard to age, race, gender, creed, color, nationality, sexual orientation or socio-economic standing.
- Insure that all individuals will be treated with courtesy, dignity and respect regardless of their attitude or demeanor.
- Deliver service in a timely, thorough and objective manner.

The Ombudsman believes:

- In the empowerment of all people to solve problems and receive service.
- Individuals must be responsible and accountable for their personal and professional actions and behavior.

CODE OF ETHICS

In 2010 the Office of Police Ombudsman adopted the National Association for Civilian Oversight of Law Enforcement's (NACOLE) Code of Ethics. As a result of the 2011 revision in the authority for the Office of Police Ombudsman, the Office has submitted an inquiry to NACOLE to determine whether the Office of Police Ombudsman is in compliance with NACOLE's Code of Ethics.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness and fortitude in order to inspire trust among your stakeholders and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when a significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the Communities that you serve. Pursue open, candid and non-defensive dialog with your stakeholders. Educate and learn from the Community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with and their relations with the Communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the Community, the law enforcement agency and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the Community, duty to uphold the law and to the goals and objectives of your agency above your self-interest.

ENABLING ORDINANCE

In October of 2008, the Spokane City Council and Mayor approved an ordinance that led to the authorization for an Office of Police Ombudsman. The ordinance is located in the City of Spokane Municipal Code under Title 04, Chapter 04.32.

In June of 2010, the Spokane City Council amended the Enabling Ordinance to increase the responsibilities and authority of the Office of Police Ombudsman. The Spokane Police Guild immediately filed an Unfair Labor Practice complaint against the City of Spokane.

On July 11, 2011, the Council's decision was reversed through an arbitrator's decision. The increased authority was rescinded and the Office currently operates under the original ordinance.

DUTIES AND RESPONSIBILITIES

In summation, the responsibilities and duties of the Police Ombudsman are to:

- Respond to critical incidents and act as an observer.
- Actively monitor all Spokane Police Department complaints and investigations.
- Receive complaints that are alleged to involve employees of the Spokane Police Department.

- Interview complainants and witnesses of misconduct allegations upon receipt of a complaint.
- Make recommendations to the Office of the Chief of Police to mediate complaints that involve employees of the Spokane Police Department when appropriate.
- Mediate complaints when aggrieved parties agree to mediation.
- Attend, observe and participate in Spokane Police Department interviews of Officers, complainants and witnesses involving complaints received by the Ombudsman.
- Attend, observe and participate in Spokane Police Department interviews of Officers when the consequences of a misconduct investigation could result in suspension, demotion or termination of an Officer.
- Certify Internal Affairs investigations that are timely, thorough and objective.
- Make statistical observations regarding the disciplinary results of sustained internal investigations.
- Recommend policies and procedures for review or implementation.
- Audit the complaint resolution process and review and recommend changes in Spokane Police Department policies to improve the quality of Police investigations and practices.
- Within five business days of case closure of all complaints of a serious matter and all complaints originated by the Office of Police Ombudsman, the Office of Police Ombudsman shall send a closing letter to and/or conduct a closing interview with the complainant to summarize the case findings.

III. Ordinance Requirements

MEDIATION (SMC 04.32.030 (D))

Pursuant to Spokane Municipal Code Section 04.32.030 (D), the Office of Police Ombudsman will have the opportunity to make a recommendation for mediation to the Chief of Police prior to investigations. In the event the Department, the complainant and the Officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation.

When the Office of Police Ombudsman authority was increased, the Ombudsman was required to provide the complainant with a copy of subsection (D) and obtain a signed statement from the complainant acknowledging that he or she has read and understands that the complaint will be resolved through the mediation process and the investigation into the complaint will be terminated. Although no longer required, the Ombudsman continues this procedure as a “best practice.”

Assuming the Officer participates in good faith during the mediation process, the Officer will not be subject to discipline and no disciplinary finding will be entered against the Officer. Good faith means that the Officer listens to all information presented, considers the issues raised by the complainant and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is

reached and the complainant thereafter refuses to participate, the Officer will be considered to have participated in good faith.

In 2011 eight complaints were resolved through the mediation process.

ADMINISTRATIVE INTERVIEWS (SMC 04.32.030 (F))

Pursuant to Spokane Municipal Code section 04.32.030 (F), the Internal Affairs Unit will notify the Office of Police Ombudsman of all administrative interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion or discharge) and all complaints originating at the Office of Police Ombudsman. The Police Ombudsman may attend and observe interviews and will be given the opportunity to ask questions after the completion of questioning by the Department.

In 2011 the Ombudsman independently interviewed 85 complainants and 17 witnesses. The Ombudsman participated with Spokane Police Department Internal Affairs' staff in the interviewing of 123 Officers, 10 complainants and 44 witnesses. The Ombudsman hosted 16 closing interviews with complainants and staff from Internal Affairs.

CRITICAL INCIDENT RESPONSE (SMC 04.32.040)

Pursuant to Spokane Municipal Code Section 04.32.040, in the event an employee of the Police Department is involved as a principal, victim, witness or custodial Officer, where death or serious bodily injury results or where deadly force was used regardless of whether a death or injury resulted, the Police Ombudsman shall be notified immediately and shall act as an observer to any administrative or civil investigation conducted by or on behalf of the Department. The Police Ombudsman and the Chief shall develop the necessary protocols for summoning the Ombudsman to the incident for the purposes of firsthand observation and subsequent monitoring of the investigation.

In 2009 a call out procedure was established and implemented by the Office of the Chief of Police to notify the Ombudsman in a timely manner when a critical incident occurs.

WHEN A CRITICAL INCIDENT OCCURS:

When the Critical Incident Protocol is invoked, members from the Spokane Police Department, the Spokane County Sheriff's Office and the Washington State Patrol will respond to the location of the incident. These agencies have entered into a mutual agreement to investigate each other's critical incidents. The Critical Incident Protocol can be reviewed at the Office of Police Ombudsman website (www.spdombudsman.org) in the "Documents and Reports" section.

Immediately after the incident occurs, a criminal investigation begins. Upon completion of the criminal investigation, the case is referred to the Spokane County Prosecutor's Office for review and consideration of any potential criminal violations that may have occurred. The Spokane Police Department's Internal Affairs Unit conducts an administrative investigation immediately

after the criminal case is sent to the Prosecutor. Upon completion of the administrative investigation, the case is sent to an Administrative Review Panel (ARP) to review and address questions regarding policy compliance and then to a Deadly Force Review Board (DFRB) to consider issues of tactics, training, investigative follow-up, equipment and any other pertinent issue.

In 2011 the Spokane Police Department was involved in four critical incidents requiring the Ombudsman's notification and response. Two of the incidents involved the use of deadly force by Officers, one involved a fatal auto-pedestrian traffic accident involving a Spokane Police Officer and in one incident, a Spokane Police Officer was indirectly involved in an incident where an individual died after interacting with hospital security staff.

On **Sunday, January 16, 2011** at approximately 5:38 a.m., the Ombudsman was contacted by Lieutenant Meidl and was advised that an individual had been shot and killed by an Officer who had responded to a domestic violence call. At the time of this incident, the Ombudsman was out of town on vacation. Arrangements were made to brief the Ombudsman and provide him with a drive by of the location of occurrence upon his return to Spokane.

The Critical Incident Protocol was invoked and the Spokane Investigative Regional Response Team (SIRR) conducted an investigation into the circumstances of the individual's death. The Spokane County Sheriff's Office led the investigation of this incident. Review of the investigation by the Prosecutor's Office determined that the Officers' actions were justified under the circumstances. A Spokane Police Department's internal review of the incident determined that the incident was handled within the scope of policy, procedures and training.

On **Sunday, January 30, 2011** at approximately 10:40 p.m., the Ombudsman was advised by Sergeant McCabe that a pedestrian had been struck by a patrol car at the intersection of Monroe and Montgomery while the Officer was responding to a call. The pedestrian later died at a local hospital. The Ombudsman met with Sergeant McCabe and responded to the scene where he was briefed on the incident and provided with a view of the scene.

The Critical Incident Protocol was invoked and the Spokane Investigative Regional Response Team (SIRR) conducted an investigation into the circumstances of the individual's death. The Spokane County Sheriff's Office led the investigation of this incident. This incident was addressed by the Ombudsman through a Closing Report. **Refer to attachment A.**

On **Saturday, August 13, 2011** at approximately 12:57 a.m., the Ombudsman received notice from Sergeant McCabe of a fatal incident that involved a response by the Spokane Police Department. The Ombudsman responded to the location with Sergeant McCabe.

At approximately 9:30 p.m., a Spokane Police Officer contacted an individual who was reported to be suicidal and under the influence of drugs. The individual voluntarily agreed to be transported to a local hospital by the Officer for treatment. The individual walked away from

the hospital approximately two hours later and Police were called while hospital security attempted to follow the individual.

The responding Officer located hospital security with the individual approximately two blocks from the hospital. Security personnel had detained and handcuffed the individual. The responding Officer noticed that the individual did not appear to be breathing and directed security to remove the handcuffs. The Officer initiated CPR and paramedics responded. The paramedics transported the individual to the hospital where he later died.

The Spokane Investigative Regional Response (SIRR) team is conducting an investigation into the circumstances of the individual's death.

On **Monday, September 26, 2011** at 8:59 p.m., the Ombudsman was notified of an Officer involved shooting in the area of Sherman and Seventh Ave. The incident involved the Spokane Police Department SWAT Team. The Ombudsman responded to the scene with Lieutenant Cummings for a preliminary briefing.

At 3:26 a.m. on Tuesday, September 27, 2011, the Ombudsman and Lieutenant returned to the location for a tour of the crime scene and further explanation of the incident.

The Critical Incident Protocol was invoked and the Spokane Investigative Regional Response Team (SIRR) is conducting an investigation into the circumstances of the individual's death. The Spokane County Sheriff's Office is investigating this incident. Review of the Investigation by the Prosecutor's Office is pending. A Spokane Police Department's internal review of this incident will determine whether the incident was handled within the scope of policy, procedures and training.

In the two incidents where Officers used deadly force, the fatal confrontations occurred with individuals who were involved in criminal conduct.

In the incident that occurred on **January 16, 2011**, the individual was armed with a knife and attempted to stab the Officer with the knife before the Officer shot the individual. The Officer had responded to a domestic violence call at the residence where the encounter occurred. Toxicology results for the decedent revealed the decedent had a high blood alcohol content level. While it is not against the law to be intoxicated in Washington in most instances, the decedent's level of intoxication may have been a factor in the decedent's ability to reason.

In the incident that occurred on **September 26, 2011**, the individual was barricaded in a van that had rolled onto its side while fleeing the Police. The individual was also armed with a gun. The individual was shot by a SWAT Officer after the individual pointed a gun at the Officer. This incident is still pending review and evaluation by the Prosecutor's Office.

RELEVANT CASE LAW REGARDING OFFICERS' ACTIONS

When evaluating the performance of an Officer, the following case law must be complied with in all instances.

U.S. Supreme Court *Graham v. Connor*, 490 U.S. 386 (1989): The Fourth Amendment "reasonableness" inquiry is whether the Officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable Officer on the scene and its calculus must embody an allowance for the fact that Police Officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Pp. 490 U. S. 396-397.

***Garrity v. New Jersey*, 385 U.S. 493 (1967):** The Supreme Court of the United States held that law enforcement Officers and other public employees have the right to be free from compulsory self-incrimination. It gave birth to the Garrity warning, which is administered by government employees to Officers accused of misconduct in internal and administrative investigations. This warning is issued in a similar manner as the Miranda warning is administered to suspects in criminal investigations.

***Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985):** Certain public-sector employees can have a property interest in their employment, per Constitutional Due Process. This property right entails a right to "some kind of hearing" before being terminated -- a right to oral or written notice of charges against them, an explanation of the employer's evidence and an opportunity to present their side of the story. Thus, the pre-disciplinary hearing should be an initial check against mistaken decisions -- not a full evidentiary hearing, but essentially a determination of whether there are reasonable grounds to believe that the allegations against the employee are true and support the proposed action.

***NLRB v. J. Weingarten Inc.*, 420 U.S. 251 (1975):** In 1975 the United States Supreme Court upheld a decision by the Labor Board that employees have a right, protected by Section 7 of the National Labor Relations Act, to insist upon union representation during an investigatory interview by the employer, provided the employee "reasonably believes" the interview "might result in disciplinary action." The Supreme Court explained that this right arises from Section 7's "guarantee of the right of employees to act in concert for mutual aid and protection." The right has been applied to unionized workforces and is limited to situations in which an employee specifically requests representation. An employer is not required to advise the employee of this right in advance and it applies only to investigatory meetings and not to meetings when, for example, the employer communicates a decision regarding a disciplinary matter.

Whether the belief that discipline might result from the interview is reasonable is based on "objective standards" and upon an evaluation of all the circumstances. If the employee does have a reasonable belief that discipline may result from the interview, the employer must grant the request, dispense with the interview or offer the employee the option of continuing the interview unrepresented or not having an interview. If an employer refuses to allow union

representation but goes ahead with the interview, or if the employer disciplines the employee for refusing to participate in the interview after denying the employee union representation, the employer has committed an unfair labor practice in violation of the National Labor Relations Act.

In review of the two critical incidents that occurred in 2011 where Spokane Police Officers used deadly force, it is the Ombudsman's opinion that Police personnel responded in a professional, necessary and appropriate manner.

It is important for the Community to recognize that Officers did not create the circumstances that led to the demise of the two individuals. The Officers simply reacted to the situation created by the two individuals. While it is a reasonable expectation that members of the Police Department be accountable for their actions, we must also demand that members of our Community be responsible for their behavior and accountable for their actions.

COMMUNITY OUTREACH (SMC 04.32.050)

Pursuant to Spokane Municipal Code Section 04.32.050, the Ombudsman shall develop and maintain a regular program of Community outreach and communication for the purpose of listening to and communicating with the residents of Spokane on matters subject to the Ombudsman's jurisdiction.

OUTREACH EFFORTS

In 2009 satellite offices were established at the East Central, Northeast and West Central Community Centers to provide Community outreach while attempting to minimize the cost and inconvenience to members and visitors of the Community. The Ombudsman maintains regular office hours at the three Community Centers on Wednesdays. Please contact the Office of Police Ombudsman to confirm the specific hours.

In 2010 satellite office hours were established on a monthly basis at the House of Charity, the Spokane Transit Authority Plaza located in downtown Spokane and at the NATIVE Project. Please contact the Office of Police Ombudsman for specific dates and times.

In 2011 the Office of Police Ombudsman had an increased presence and visibility in the Community by attending several neighborhood fairs. The Office also had an informational booth at Riverfront Park on Saturday afternoons during the summer months.

In 2011 the Ombudsman met with the following organizations:

- The House of Charity
- The League of Women Voters
- The NATIVE Project
- The Spokane Police Guild

In 2011 the Ombudsman attended the following meetings and events:

- **61** Neighborhood Council meetings were attended including 8 for the Hillyard Neighborhood Council and 7 for the West Central Neighborhood Council. In 2011, the Ombudsman attended at least one meeting for 24 of the 27 Neighborhood Councils.
- **31** Spokane City Council meetings, **2** Town Hall meetings
- **7** Spokane Community Assembly meetings
- **6** Spokane Human Rights Commission meetings and a joint meeting between the Kootenai County Task Force on Human Relations and the Human Rights Commission
- **3** Spokane Police Advisory Committee meetings
- The Community Assembly Retreat
- East Central Community Center Coats 4 Kids Distribution and the Santa Toy Distribution
- Homes Elementary School Junior Achievement Day
- Holmes Elementary 6th Grade Junior Achievement Class Graduation Party (sponsored by the Office of Police Ombudsman)
- The Native American Youth Leadership Camp presented by the NATIVE Project
- West Central Community Center Coats 4 Kids Coats Distribution

In 2011 the Ombudsman provided presentations to:

- 6th Legislative District
- Eastern Washington University Masters in Public Administration Class
- East Central Community Center, Draw the Line Against Youth Alcohol Consumption Campaign
- Engineers Forum in Spokane
- Friends of Eastern State Hospital Information Booth
- Humanist Focus Group of Spokane
- ITT Graduation Commencement Speaker
- ITT Institute Criminal Justice Class
- Jane Jefferson Club
- KHQ, KXLY and Comcast Television Interviews
- KTRW, KXLY and KRYS Radio Interviews
- League of Women Voters Annual Luncheon
- Balboa South Indian Trail, Bemiss, Chief Garry Park, Comstock, East Central, Emerson\Garfield, Five Mile Prairie, Grand View\Thorpe, Hillyard, Lincoln Heights, Logan, Manito\Cannon Hill, Minnehaha, North Hill, North Indian Trail, Northwest, Riverside and West Central Neighborhood Councils
- St. Matthew's Institutional Church
- Spokane City Human Rights Commission
- Spokane Community College, Criminal Justice class
- Spokane Falls Community College Criminal Justice class
- The Community Assembly
- The NATIVE Project Youth Program
- Washington State University Criminal Justice Graduate Class

In 2011 the Office of Police Ombudsman participated in the following Community events:

- Eastern Washington University Spring Fair at Riverpoint Campus
- East Central Community Center Summer Youth Character Camp Breakfast
- Hate Crimes in the LGBT Community Public Forum
- Hillyard Festival (3 days)
- Hispanic Festival
- KHQ Forum on Violence in Spokane
- Logan Neighborhoods “The Event”
- NAACP Community Forum “Just Talk About It”
- NAACP March
- Ombudsman in the Park, Riverfront Park (8 Saturday afternoons)
- Pow Wow for the Heart sponsored by The Native Project
- The NATIVE Project Youth Leadership Camp
- Unity in the Community Event
- West Central Community Center Neighbor Days Festival

PROFESSIONAL TRAINING (SMC 04.32.070)

Pursuant to Spokane Municipal Code Section 04.32.070, the Ombudsman shall continue his/her education throughout the period of employment as the Ombudsman in subjects consistent with the responsibilities of employment. At a minimum, such training shall include:

- A training program in Police procedures and orientation to the Spokane Police Department, including at least one ride along with the Police within six months of appointment.
- Completion of the Spokane Police Department’s Citizen Academy within one year of appointment.

TRAINING RECEIVED

In 2011 the Ombudsman attended:

- Diversity Awareness Training presented by Spokane County
- Harassment, Cultural Diversity and Social Media Risks and Policy related training presented by the Spokane Police Department
- LGBT Training Seminar
- PJALS Economic Justice Action Conference
- Professionalism Training presented by Spokane County
- The National Association for Civilian Oversight of Law Enforcement Conference in New Orleans, Louisiana
- The United States Ombudsman Association National Conference in Jacksonville, Florida

Due to budgetary constraints, the Spokane Police Department did not offer a Citizens Academy in 2011. As a result, the Ombudsman will be invited to attend future Police in-service and leadership training classes the Department intends to offer.

In 2011 the Ombudsman participated in 12 ride alongs with different Spokane Police Officers on different shifts.

REPORTING REQUIREMENTS (SMC 04.32.110)

Pursuant to Spokane Municipal Code Section 04.32.110 (C), the Ombudsman shall make a monthly report to the Mayor, the Chief of Police and the Public Safety Committee. In addition, the Ombudsman shall make an annual report to the City Council during a City Council meeting.

The report shall contain:

- Statistical analysis documenting the number of complaints by category, disposition, and action taken.
- Analysis of trends and patterns.
- Recommendations.

REPORTING

In 2011, 12 monthly reports were made to the Public Safety Committee. The reports were also received by the Mayor, the City Administrator and the Chief of Police.

In 2011 the Public Safety Committee was comprised of City Council President Shogan (Chair) and Council Members Apple, McLaughlin and Snyder. The Public Safety Committee met and continues to meet at the Spokane City Hall, Conference Room 5A on the third Monday of each month at 1:30 p.m. Public Safety Committee Meetings are open to the public. Public comment is not received during these meetings.

The Office of Police Ombudsman Report contains information from the previous month and can also be located on the website for the Office of Police Ombudsman (www.spdombudsman.org) in the “Documents & Reports” section.

The Ombudsman is also required to complete and present an Annual Report to the Spokane City Council. The 2009 Inaugural Report was completed and presented to the City Council on Monday, April 12, 2010 during the 6:00 p.m. Legislative Session. Recognizing that information needs to be timely, significant effort has been placed on completing future annual reports as soon as possible after the calendar year ends.

The 2010 Annual Report was presented to the Spokane City Council on Monday, March 7, 2011 during the 6:00 p.m. Legislative Session.

In 2011 a Mid Year Report was published in July. The Report was presented to the Spokane City Council on Monday, February 20, 2012 during the 6:00 p.m. Legislative Session.

IV. Statistical Data for 2011

PERSPECTIVE

In 2011 Officers from the Spokane Police Department made a minimum of **126,129 contacts** with individuals in the Community (134,615 in 2010). In 2011 the contacts resulted in the following enforcement action:

- 4,198 Arrests (4,391 in 2010);
- 2,495 Warrants Served (2,472 in 2010);
- 14,674 Citations Issued (19,863 in 2010).

These numbers are intended to provide a perspective on the number of public contacts made by members of the Spokane Police Department in 2011. These numbers **are not intended** to minimize the significance of complaints made against Officers and received by the Office of Police Ombudsman or the Spokane Police Department's Internal Affairs Unit.

COMPLAINT CLASSIFICATIONS

While the primary focus of the Ombudsman's Office has been to ensure that complaints received are investigated in a timely, thorough and objective manner, this responsibility is one of several duties the Office of Police Ombudsman performs on a daily basis. The Office spends a significant amount of time assisting people who have questions regarding the actions of the Spokane Police Department.

For the purpose of documentation, the Office of Police Ombudsman defines civilian interactions in one of the following terms:

CONTACT - Most contacts are received through phone calls. Many of the contacts do not rise to the level of a complaint or inquiry but typically involve general information questions such as: *How do I obtain a restraining order? Is panhandling against the law? Who can I contact for assistance with an imminent eviction? How can I retrieve a driver's license that was not returned during a traffic stop?*

CITIZEN INQUIRY – In 2010 Spokane Police Department adopted the Lexipol Department manual as a “best practices” document. The Citizen Inquiry classification was adopted as part of the Lexipol Manual. Pursuant to Spokane Police Department Policy 1020, when an uninvolved Police Supervisor receives a complaint and determines, after contacting a complainant, that the reporting complainant is satisfied that their complaint required nothing more than an explanation regarding the proper implementation of Police Department policy or procedure, a complaint need not be taken. A Citizen Inquiry form will be completed and forwarded to Internal Affairs. **Refer to attachment B for the Spokane Police Department Internal Affairs Unit Policy 1020.** Not all complaints received by Patrol Supervisors are classified as Citizen Inquiries.

This policy does not directly impact the Office of Police Ombudsman. The Office of Police Ombudsman has no input in this classification and only becomes aware that a complaint has been classified as a Citizen Inquiry after the classification has occurred.

This procedure has not been problematic; however, in order to promote Community awareness and organizational transparency, this procedure has been recognized in this report.

In 2012, to accurately document and report on the total number of complaints received, the Office of Police Ombudsman will review complaints classified by the Police Department as Citizen Inquiries.

The Office has also requested that Citizen Inquiries be redacted and published as complaints in 2011. The Police Department has agreed with this request.

INVESTIGATIVE INQUIRY – All complaints received directly by the Office of Police Ombudsman and the Internal Affairs Unit are processed and referred to the Office of the Chief for review and classification. This classification may only be made by the Chief of Police or the Chief’s designee. An Inquiry is a matter which constitutes a question involving Spokane Police Department policies, procedures, points of law or other issues not pertaining to misconduct.

FORMAL COMPLAINT - A “formal complaint” is an allegation received from a citizen alleging conduct by a Spokane Police Department employee which, if sustained would constitute a violation of law or the policies and/or procedures of the Spokane Police Department.

NOTE: Information received by the Office of Police Ombudsman is submitted to the Spokane Police Department Internal Affairs Unit for classification. Based on a case-by-case review of the information provided, complaints will either be classified as a Formal Complaint or Investigative Inquiry pursuant to Spokane Municipal Code Section 04.32.030e. In the event that the Ombudsman disagrees with the classification, the Ombudsman can appeal the classification and the matter is subject to review by the Chief of Police and, if necessary, the Mayor.

FINDINGS

In 2011, pursuant to Spokane Municipal Code Section 04.32.030, the Office of Police Ombudsman certified 45 completed Internal Affairs Unit investigations as timely, thorough and objective.

In 2011 the Office of Police Ombudsman appealed one complaint that was classified as an Inquiry by the Assistant Chief of Police. Chief Kirkpatrick reviewed the appeal and directed the Internal Affairs Unit to conduct further investigation. Upon completion of the additional investigative work, the investigation was certified by the Office of Police Ombudsman.

INTERNAL AFFAIRS COMPLAINTS RECEIVED IN 2011

In 2011 the Spokane Police Department received 105 complaints directly. 52 were classified as Citizen Inquiries. The remaining 53 complaints were assigned for investigation. 35 were investigated and 18 were classified as Investigative Inquiries.

In 2011 the Office of Police Ombudsman also forwarded 92 complaints to the Internal Affairs Unit for review and consideration. Sixty of the complaints were classified as Investigative Inquiries and 32 were assigned for investigation.

In 2011 a combined total of 197 complaints were received between the Office of Police Ombudsman and the Spokane Police Department. While the number of complaints appears to be significantly higher than the 132 complaints that were reported in 2010, the increase in number reflects a different method for how the Office of Police Ombudsman counted and reported the number of complaints received in 2010.

In previous years, Citizen Inquiries were not counted or reported. In 2011 there were 52 Citizen Inquiries reported. If the 52 Citizen Inquiries were subtracted from the total number of complaints received in 2011, the number of complaints received in 2011 would be more similar to the number of complaints received in 2010.

INTERNAL COMPLAINTS

In 2011, 10 of the 67 complaints assigned for investigation were internally generated (typically by Police Supervisors) and involved one Civilian Employee, one Volunteer, seven Police Officers and two Detectives. In one of the 10 complaints, two employees were the subject of investigation.

These 67 citizen complaints involved 79 different employees of various ranks; Police Officers received 25 complaints, Senior Police Officers received 33 complaints, Corporals received two complaints, Detectives received 10 complaints, Sergeants received four complaints. Lieutenants received three complaints, the Assistant Chief received one and the Chief of Police received one complaint.

Internal complaints included allegations of obstructing a Police Officer, Insubordination and Abuse of Sick Leave.

CITIZEN COMPLAINTS (including OMBUDSMAN RECEIVED COMPLAINTS)

Fifty-seven **citizen** complaints were assigned for investigation in 2011. Thirty-two, approximately 56%, originated through the Office of Police Ombudsman.

In 2011 citizen complaint allegations were resolved through the following process (six complaints remained open as of December 31, 2011):

- 4 complaints were Administratively Suspended due to inability to contact the complainant after multiple attempts.
- 3 complaints were resolved as incomplete meaning that the complainant would not respond to repeated requests for more information and the initial complaint was not enough to move forward with.
- 12 complaints were changed to Inquiry after additional review determined the complaints to be policy related.
- 32 complaints were Exonerated (previously Proper Conduct) meaning the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.
- 8 complaints were resolved through Mediation as an alternative to the investigation, adjudication and disciplinary process.
- 14 complaints were Not Sustained meaning the investigation disclosed that there was insufficient evidence to sustain the complaint or fully exonerate the employee.
- 6 complaints were due to Policy/Training Failure meaning deficiency in training was the cause of the alleged act.
- 45 complaints were Unfounded meaning the investigation disclosed that the alleged act(s) did not occur or did not involve department personnel.
- 7 cases were Sustained (previously Improper Conduct) meaning the investigation disclosed sufficient evidence to establish that the act occurred and that it constituted misconduct.

Due to the use of different reporting periods and counting methods, there are some variations within the accumulation totals provided by the Spokane Police Department Internal Affairs Unit and the Office of Police Ombudsman.

OMBUDSMAN RECEIVED COMPLAINTS

During 2011 the Office of Police Ombudsman was contacted 560 times for various reasons (456 in 2010). Of the 560 contacts, 92 complaints were received and forwarded to the Internal Affairs Unit for classification and assignment, 60 complaints were classified as Investigative Inquiries and 32 complaints were assigned for investigation.

There were 24 additional complaints received by the Office of Police Ombudsman involving jurisdiction outside the City of Spokane. Those complaints were documented and referred to the appropriate jurisdiction with authority to investigate the complaint(s).

The 32 Ombudsman-received complaints assigned for investigation resulted in the following 42 misconduct allegations:

- Inadequate response (12)
- Demeanor (9)
- Excessive Force (6)
- Unlawful Entry/Detention/Arrest (4)
- Untruthfulness (4)
- Theft (2)
- Failure to Identify (1)
- Negligent Driving (1)
- Racial Profiling/Biased Policing (1)
- Release of Confidential Information (1)
- Speeding (1)

EXCESSIVE FORCE COMPLAINTS

In 2011, 15 excessive force complaints were received involving 16 different Officers. None of the Excessive Force complaints received in 2011 were sustained. In each case, the Internal Affairs investigation determined that the accused Officers performed within the scope of their legal authority and within Department policies, procedures and training.

DISCIPLINE

In 2011, 67 Internal Affairs' complaint investigations resulted in seven members of the Spokane Police Department being disciplined for the following violations:

- 2 Demeanor
- 2 Conduct Unbecoming
- 2 Lack of/Inadequate response
- 1 Unlawful/Improper Search/Entry/Arrest Detention
- 1 Crime

Sanctions imposed by the Chief of Police, as reported by the Internal Affairs Unit, were:

- 1 Termination
- 1 Suspension
- 2 Letters of Reprimand
- 3 Employees Received Counseling.

Sanctions imposed involving vehicle collisions is provided on page 24.

OTHER STATISTICS OF INTEREST

TASER USE

In 2011 Spokane Police Officers applied the taser 32 times in 23 incidents in the performance of their duties (32 applications in 26 incidents in 2010). In each instance, the use of the taser was determined to be necessary, appropriate and used within the scope of Department policies, procedures and training.

In 2011 there were no complaints received by the Office of Police Ombudsman or the Spokane Police Department's Internal Affairs Unit regarding the use of the taser.

DEADLY FORCE

In 2011 Spokane Police Officers were involved in two critical incidents requiring the use of Deadly Force. No complaints were received regarding these incidents. The incidents are discussed on pages 11-12.

SPECIAL WEAPONS AND TACTICS (SWAT) CALL OUTS

In 2011 there were 52 call outs of the Special Weapons and Tactics (SWAT) Team (42 in 2010). In 2011 there was one Officer Involved shooting\fatality involving a SWAT Officer during a SWAT activation. No complaints were received by the Office of Police Ombudsman or the Spokane Police Department Internal Affairs Unit related to any SWAT deployments in 2011. The deployments were for the following reasons:

- 25 High Risk Drug Search Warrants
- 13 Barricaded Armed Suspects
- 4 Site Security Activations for Special Events
- 3 PACT Team Warrants
- 2 Targeted Crimes Team Warrants
- 2 Gang Warrants
- 2 Suicidal Subjects
- 1 Arson Warrant

SEARCH WARRANTS

In 2011 Spokane Police Department served no less than 372 search warrants. The 372 search warrants were served by Detectives. The number of warrants served by Patrol Officers and the Targeted Crimes Unit were not tracked.

In 2011 one complaint was received that involved the serving of a search warrant.

DOMESTIC VIOLENCE

In 2011 Spokane Police Officers responded to 6,782 Domestic Violence calls (6,446 in 2010). The neighborhood distribution of domestic violence related calls for service is

- | | |
|---------------------------|--------------------------------|
| • 1,119 Nevada/Lidgerwood | • 149 Minnehaha |
| • 633 West Central | • 109 Browne's Addition |
| • 616 East Central | • 68 Balboa\South Indian Trail |
| • 425 Bemiss | • 62 Southgate |
| • 392 Emerson/Garfield | • 60 West Hills |
| • 379 North Hill | • 59 Comstock |
| • 368 Northwest | • 58 North Indian Trail |

- 354 Cliff/Cannon
- 349 Logan
- 338 Hillyard
- 328 Riverside
- 309 Chief Garry Park
- 228 Lincoln Heights
- 152 Whitman
- 56 Latah Valley
- 38 Manito/Cannon Hill
- 26 Rockwood
- 25 Five Mile/Prairie
- 17 Grandview/Thorpe
- 7 Peaceful Valley
- 58 Outside City Limits

VEHICLE PURSUITS and ACCIDENTS

In 2011 members of Spokane Police Department were involved in 51 vehicle pursuits (90 pursuits in 2010). Pursuing Officers terminated 16 of the pursuits and the Officer's supervisors terminated four of the pursuits. In 2011 the vehicle pursuit policy was revised further restricting vehicle pursuits. **Refer to attachment C for the Spokane Police Department Vehicle Pursuit Policy 314.**

The results/consequences of the pursuits were:

- 39 Suspects were arrested
- 3 Suspects escaped
- 2 Suspects collided with a citizen's vehicle
- 4 Suspects were forcibly stopped
- 8 Suspects surrendered
- 16 Pursuits were terminated by the pursuing Officer(s)
- 4 Pursuits were terminated by a supervisor

In 2011, 47 members of the Spokane Police Department were involved in 56 collisions (58 in 2010). Investigation of the collisions revealed that:

- **12 collisions were through Legal Intervention (17 in 2010).**
- **23 collisions were Not Preventable (17 in 2010)**
- **12 collisions were determined to have been Preventable (25 in 2010).**
- **9 collisions involved property damage only (the number is not available for previous years).**

In 2011 no Officers were seriously injured in traffic collisions however one Officer was involved in a fatal auto-pedestrian traffic accident. That incident is discussed on page 11.

As a result of preventable vehicle accidents;

- 3 employees received a written reprimand
- 15 employees received an oral reprimand
- 1 employee received shift level counseling

MENTAL HEALTH RESPONSE

In the 2009 Annual Report presented to the Spokane City Council on April 12, 2010, the Office of Police Ombudsman recommended to the Office of the Chief that the Police Department document the number of Police encounters with individuals who displayed symptoms of “Excited Delirium” and report the number to the Public Safety Committee on an annual basis. The purpose of this recommendation was to quantify the actual number of encounters and review how the situations were resolved to assess future training needs.

In 2011 Spokane Police Officers responded to 633 incidents involving citizens with mental illness or disability (580 in 2010). The results of the contacts were:

- 325 contacts required no enforcement action (287 in 2010),
- 285 contacts resulted in an individual being transported to a medical or mental health facility (268 in 2010),
- 12 contacts resulted in an individual being arrested and incarcerated in a Spokane County jail facility (23 in 2010), and
- 11 individuals contacted exhibited symptoms of “Excited Delirium” (2 in 2010).*

**** Tracking of “Excited Delirium” cases began on September 22, 2010 and as a result the number of “Excited Delirium” cases reported for 2010 was underreported in all likelihood.***

V. Recommendations

In past years, recommendations have been made public with the presentation and release of the Annual Report.

As a result of the transition in leadership in 2012, the Ombudsman met individually with the Mayor, the Council President, Council Members and the Acting Chief of Police in December of 2011 to review and discuss this year’s recommendations. Regardless of future changes in leadership, this will practice will continue.

The following recommendations have been made to the Mayor, the Council President, Council Members and the Acting Chief of Police for consideration in 2012. They are in no particular order of significance or importance.

- **DOJ- US Attorney Audit Review of SPD:** Based on the information reported during the Federal prosecution of Officer Karl Thompson and the questions raised, the Ombudsman requested that Mayor Verner request a pattern and practice audit (Thursday, November 10, 2011).
- **SPD Adopt the COPS Standards and Guidelines Manual for Internal Affairs Units:** The Internal Affairs Personnel Complaint Procedure is addressed through Department Policy 1020. While attending the 2011 NACOLE National Conference, the Ombudsman became

aware that a “best practices” manual exists. After reviewing the manual, the Ombudsman has recommended to the Chief that the Department adopt the COPS Standards and Guidelines Manual to further formalize, strengthen and enhance the Police Department’s investigation process for personnel complaints. **The manual has been provided as attachment D. To compare the current policy against the recommendation refer to attachment B for the Spokane Police Department Internal Affairs Unit Policy 1020.**

- **Adopt a Discipline Matrix (Tucson PD):** While attending the NACOLE National Conference, the Ombudsman attended a presentation regarding the Tucson Arizona Police Department’s creation and use of a discipline matrix to address discipline issues with Department members. Believing that everyone benefits from knowing the consequences for unacceptable actions before the act occurs and believing strongly in the consistency of consequences in most instances, the Ombudsman recommended to the Chief that work begin to create a discipline matrix using Tucson’s experience and matrix as a template where possible.
- **Recruit and Hire a civilian Public Information Officer:** In 2011 certain instances occurred where the need for a civilian Public Information Officer became apparent to the Ombudsman. The lack of a well delivered message regarding the elimination of the Property Crimes Unit created and continues to create a misunderstanding throughout the Community. Comments like “it sucks for the Community,” while true (which may have been taken out of context), could certainly have been stated in a more professional way. The LGBT Community has also raised concerns regarding the way incidents involving members of their Community have been reported to the media by the Police Department. The members of the Police Department are well trained Police Officers, however, they are clearly not professional media liaison persons.
- **Create a display of force policy to document weapons displayed by Officers:** Spokane Police Officers encounter a number of challenging, difficult and sometimes dangerous situations that may require an Officer to point their firearm at an individual. While the intent of this recommendation is not to create a “chilling effect” on Officers, the intent is to require Officers to document the encounter after the fact. This is not the current practice. In addition, when the situation has been resolved, Officers should take the time to explain to individuals why they pointed their firearm at the individual. Officers have been given significant latitude in this area (RCW 9.41.270) where members of the Community might find themselves in violation of the law if they were engaged in similar circumstances. With this authority comes great responsibility. As incidents are documented, patterns may be identified and training opportunities may exist. **Attachment E is the Revised Code of Washington Section 9.41.270.**
- **Create an-un arrest policy:** In 2011 Officers arrested an individual for impersonating a Police Officer. When probable cause for the arrest diminished, the Officers released the individual. There was no formal or official documentation of the incident. There is no

policy requiring or regulating the documentation of an arrest and release when probable cause ceased to exist. Although this recommendation was based on a specific set of circumstances, anytime an individual is arrested and released, formal documentation should be required regardless of the nature or cause for the arrest and release.

- **Re-establish a Property Crimes Unit:** In 2011 a theme for public safety was “See Something, Say Something.” In January of 2011, as a Community we saw the direct benefit when an abandoned backpack containing a bomb was located on the Martin Luther King Parade route and disarmed. Members of the Community have been told that it is important to report crime regardless of whether the crime will be followed up on or not. While this is true for resource allocation, at some point members of the Community will become apathetic and stop reporting when their reports are not followed up on. In 2011 the Ombudsman received a complaint where a visitor had their credit card used by an establishment without authorization. Several hundred dollars was charged on the card. When the complainant reported the crime it was documented but the complainant was told that no further action would be taken even though the perpetrator was known. There are additional similar types of complaints. This lack of follow up by the Police Department on property crimes has significant potential ramifications.
- **Provide for a more thorough investigation process for victims of minor assaults:** This recommendation is based on a specific incident where a complainant was involved in an altercation and was the possible victim of an assault. The complainant provided Officers with the names of two suspects and two potential witnesses. Because the seriousness of the incident did not meet a minimum threshold established by the Police Department, the suspects and one of the witnesses were not contacted. There was no internal requirement or expectation that either would be contacted, however, the complainant certainly had a reasonable expectation that the case would be followed up on.
- **Revise use of sick leave policy to address abuse of leave:** In 2011 the Ombudsman participated in an internally generated complaint where an Officer was accused of inappropriately using sick leave. Although the investigation determined that the Officer’s use of sick leave was within policy, the Ombudsman is recommending that the policy be revised to address similar situations eliminating any confusion regarding what would be appropriate use versus inappropriate use of sick leave.
- **Further restrict use of in car computer while driving:** In January of 2011 a Spokane Police Officer was involved in a fatal auto-pedestrian traffic accident while responding to a call for service. During the investigation, the Officer advised that he had used his car computer moments before striking the pedestrian. Although use of the computer was within Department policy, the distracted driving was a contributing factor in the incident. The Ombudsman is recommending that the use of the in car computer be further restricted. **Refer to attachment E for supporting research data.**

- **Provide Officers with body video cameras:** In the 2010 Annual Report, the Ombudsman recommended the acquisition of dash cameras for Police vehicles. No significant progress was made with regard to the recommendation in 2010. As a result of the recent Federal prosecution of Officer Thompson, it was clear that store video of the incident played a significant factor in the jury's verdict. Comments were also made that the store video did not depict the entire incident as parts of the incident were obstructed by store shelving and/or merchandise. Had the Officer(s) been equipped with body cameras, a more complete version of the incident would have been recorded. Body cameras are in essence an "independent witness". Video may also improve Officer's safety, have potential evidentiary value and assist Officers' in report writing and addressing complaints received involving Officers. [Refer to Attachment G for supporting research data.](#)
- **Medical Inquest recommendation to County Commissioners:** As a result of the number of Officer involved fatalities throughout the geographical region during the past two years, the Office of Police Ombudsman is researching the Inquest process to determine whether it would be appropriate to recommend to the elected and appointed officials the implementation of an Inquest process in Spokane County. It is anticipated that the report will be released mid year 2012.
- **Spokane Media Ombudsman:** The media plays a critical role in the dissemination of information throughout the region. The media has a moral and ethical duty to insure that the information provided is factually accurate. When information is inaccurate, the media has a responsibility to acknowledge and correct the error. During the past two years, the Ombudsman has heard complaints from law enforcement and the Community that the media is inaccurate in their reporting and unfair in the portrayal of situations. The Ombudsman has also read bloggers' complaints regarding unfair censorship by the media. While attending the United States Ombudsman Association National Conference, the Ombudsman became aware that NPR (National Public Radio) has an Ombudsman to address a variety of complaints and insure fairness. The Spokane Police Ombudsman recommends that local media outlets create a similar position to address complaints that involve the local media. [Refer to Attachment H for supporting research data.](#)
- **Commission on Accreditation for Law Enforcement (CALEA) re-certification:** The CALEA website promotes standards that give the Chief Executive Officer a proven management system of written directives, sound training, clearly defined lines of authority and routine reports that support decision-making and resource allocation. Many agencies report a reduction in its liability insurance costs and/or reimbursement of accreditation fees. Accredited agencies are better able to defend themselves against civil lawsuits. Also, many agencies report a decline in legal actions against them once they become accredited. Accreditation provides objective evidence of an agency's commitment to excellence in leadership, resource management and service-delivery. Thus, government

officials are more confident in the agency's ability to operate efficiently and meet Community needs. Accreditation embodies the precepts of community-oriented policing. It creates a forum in which law enforcement agencies and citizens work together to prevent and control challenges confronting law enforcement and provides clear direction about Community expectations.

The Spokane Police Department was previously certified but allowed their certification to lapse.

V. 2011 Accomplishments and Next Steps for 2012

2011 Accomplishments were:

- The continuing refinement of the Office of Police Ombudsman website.
- The hiring of Marnie Rorholm as the Assistant to the Police Ombudsman.
- The development and implementation of an Intern Program for the Office of Police Ombudsman.
- The increased visible presence for the Office of Police Ombudsman at several Community events.
- The appointment of the Ombudsman to the West Central Community Center Board of Directors.
- The election of the Ombudsman to the United States Ombudsman Association Board of Directors.
- The United States Ombudsman Association selection of the City of Spokane as host city for the 2012 United States Ombudsman Association National Conference.

While considerable effort has been expended and visible progress has been made in 2011, the Office of Police Ombudsman continues to be a work in progress. The “Next Steps” for 2012, in no particular order, are:

- Continue to evaluate the Spokane Municipal Code ordinance regulating the Office of Police Ombudsman to insure that the ordinance is providing the tools necessary and appropriate to perform the duties for Police Ombudsman in an effective and efficient manner.
- Clarify the role of the Police Ombudsman in Critical Incidents. Recognizing that Spokane Police Department has entered into an agreement with the Spokane County Sheriff's Office and the Washington State Patrol to investigate each others' Critical Incidents. Clarification of the Ombudsman's role in the Critical Incidents process needs to be refined. Recognizing that the Ombudsman's jurisdiction is limited to Spokane Police Department, clarification is required to determine whether the lead investigating agency will cooperate with the Office of Police Ombudsman by providing reports and answering questions related to Spokane Police Department Critical Incidents being investigated (this is a carry over from the 2010 report).

- The Office of Police Ombudsman will publish all closed and redacted internal affairs investigation reports on the Office of Police Ombudsman web site.
- The Office of Police Ombudsman will research the Police Commission model of civilian oversight and report back to the Mayor and Council as a possibility for enhancing such oversight in Spokane.
- In 2011 the Office of Police Ombudsman was very fortunate to hire two very dedicated and talented graduate student interns to assist with Community outreach and project research. The Office of Police Ombudsman will continue to use student interns to assist in research and outreach efforts.
- In 2012 the Office of Police Ombudsman will research the hiring practices and educational standards for the Spokane Police Department.
- In 2012 the Office of Police Ombudsman will research Public Record Request compliance times nationally, regionally and locally.
- The Office of Police Ombudsman will have an increased presence at Community and neighborhood meetings.
- The Office of Police Ombudsman will annually report information collected about the race, age and gender of individuals contacted by the Police. Work will include working with local courts to access data regarding individuals who have been cited or arrested.

CLOSING REMARKS

In 2011 the Police Department continued to suffer the public outrage for a fatal encounter that involved Mr. Zehm on March 18, 2006. Since that Officer involved fatality, the integrity of the Police Department has been continuously questioned for cause. Until this matter is resolved, the actions of the Police Department will continue to be intensely scrutinized by the Community.

At some point, in order to move forward and begin the healing process, the Police Department as an organization and the leadership for the Police Department and City must publically take ownership of this incident.

Organizationally, the Police Department had approximately 400 employees at the time the Zehm incident occurred in 2006. Since this incident occurred, the Police Department has hired 174 new employees (73 commissioned and 101 non-commissioned, including seasonal employees). The number of total employees has not increased significantly since the incident occurred. While it is important to hold the leadership and those who were involved in the incident accountable, it is unfair to hold those that were not involved or employed by the agency at the time the incident occurred accountable for the actions of others.

As a Community we must never forget this tragic incident. Lessons must be learned by all. As time passes our memory will gradually fade. As a Community we must never forget the painful lesson(s) learned; we must remain vigilant. We must turn a negative into a positive.

As a reminder to future generations of the high price paid for transparency and accountability, I would recommend that the City of Spokane celebrate Mr. Zehm's life by naming a park, roadway or public building after Mr. Zehm or by erecting a statue of Mr. Zehm in a public place.

In 2008 the Office of Police Ombudsman was created as a result of a series of high profile incidents involving members of the Police Department that alarmed and concerned the Community. During the two and a half years the Office has been in existence, I have not witnessed any incidents of a similar magnitude.

Previous Annual Reports have been titled "Trust but Verify". This has never been more true or important than it is today. As a Community we need to be able to trust our Police; as a Community we want to trust our Police Department. Public safety is a quality of life issue and without a safe Community, there is no quality of life.

The dictionary defines trust as "assured reliance on the character, ability, strength, or truth of someone or something or one in which confidence is placed." Verify is defined as "to prove to be true by demonstration, evidence, or testimony; confirm or substantiate."

2011 was the year of the "Occupy" movement throughout the nation. Law enforcement resources were challenged nationally, regionally and locally. You don't have to look far to see how certain "Occupy" events were mishandled by law enforcement. Seattle, Portland and Oakland Police Departments are some of the major Departments in this geographic region that have received negative publicity for their handling of "Occupy" events.

Unlike those Departments, the Spokane Police Department has received positive comments for their performance in policing the "Occupy Spokane" events. Event organizers have spoken publically about their positive interactions with the members of the Spokane Police Department at City Council meetings.

The following thank you letter was also received which reinforces the good work members of the Police Department did in a specific incident and have done overall to address the "Occupy Spokane" events. Things could have gone very wrong but through training, experience, supervision, understanding and tolerance, things were handled professionally without incident.

"As a volunteer member of the Occupy Spokane movement, I would like to personally thank the Officers of the Spokane Police Department for their assistance in keeping the citizens of Spokane safe. You were instrumental in assisting our unofficial safety team in dealing with an individual that was slightly instable earlier last week. You conducted yourselves with professionalism and were courteous. Whatever the perceived negative actions of individual Officers in any of the other occupy movements; we acknowledge your dedication to protecting the citizens of this nation. Again, with deepest respect, thank you for being who you are and doing what you do in these trying times. We are all on the same side".

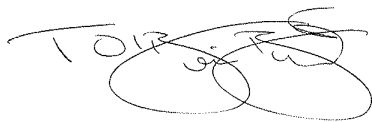
-Steven O.

The Annual Report is intended to provide the people of Spokane and City Officials with statistical analysis documenting the number of complaints made against members of the Spokane Police Department on an annual basis. In the 2011 Annual Report, the reader has been provided with the statistical information necessary to evaluate the performance of members of the Police Department in 2011.

Respect is defined as “to feel or show honor or esteem for; hold in high regard; to consider or treat with deference or dutiful regard or to show consideration for.”

Based on the statistical information for 2011, it is my opinion that members of the Spokane Police Department continued to perform exceptionally well under very difficult and challenging circumstances. Trust and respect are difficult to earn and easy to lose. Based on their performance in 2011, members of the Spokane Police Department continue to earn my respect. I hope that after careful review and consideration members of the Spokane Police Department have earned your respect and the respect of the Community as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Burns", with a large, stylized circular flourish at the end.

Tim Burns
Police Ombudsman
City of Spokane Washington



OFFICE OF
POLICE OMBUDSMAN
221 N. WALL SUITE 238 (OLD CITY HALL)
SPOKANE, WASHINGTON 99201
(509) 625-6742
FAX (509) 625-6748
www.SPDombsman.org

OFFICE OF POLICE OMBUDSMAN CLOSING REPORT (SMC 04.32.030(L))

OPO # 11-03 | IA # Inquiry 11-002

The Situation

On December 18, 2010 a police vehicle collided with a citizen's vehicle that was stopped for another traffic accident at the intersection of 6th Avenue and S. Walnut Street on Spokane's South Hill.

The Complaint

The Complainant advised that, following the incident, there was a significant delay in receiving a copy of the report detailing the accident. This delay prevented the complainant from receiving reimbursement for associated medical expenses and placed an additional financial burden on the complainant.

The Complainant advised that they felt the collision could have been avoided and inquired as to whether the police vehicle had snow chains on its tires at the time of the collision.

The Complaint Investigation

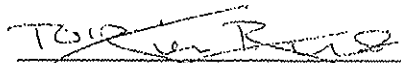
On Thursday, January 6, 2011 the Complainant met with the Ombudsman at the Office of Police Ombudsman. The Complainant's statement was recorded. The complaint was forwarded to and received by the Internal Affairs Unit on Friday, January 6, 2011.

On Wednesday, January 19, 2011 the complaint was classified as an "Inquiry" by Internal Affairs. Due to the nature of the complaint, the issue was referred to the City's Risk Management department. The Ombudsman concurred with the classification.

On December 19, 2010 the Officer who accidentally collided with the Complainant called the Complainant to see how the Complaint was feeling.

Office of Police Ombudsman Analysis/Conclusion

The City of Spokane is self insured. It is important for the City have an effective and efficient procedure in place when it is necessary for an individual or entity to file a claim against the City. The Risk Management Department needs to work together with the Police Department to ensure any claim filed against the Police Department is efficiently processed.



Timothy O. Burns
Police Ombudsman

April 7, 2011
Date

- This letter constitutes the final action that will be occur regarding the complaint received by the City of Spokane, Office of Police Ombudsman. Further, the Police Ombudsman does not have any authority for discipline or exoneration based on the investigation conducted in this matter. None of the contents contained in the final report should be viewed as to any recommendation involving possible discipline or exoneration in the matter.

Personnel Complaint Procedure

1020.1 PURPOSE AND SCOPE

The purpose of this procedure is to provide guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members and employees of this department.

1020.1.1 DEFINITIONS

Personnel complaints consist of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law.

Personnel Complaints shall be classified in one of the following categories:

Inquiry - Questions about 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.

Complaint - A matter in which the complaining party requests further investigation or which a department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor of rank greater than the accused employee or referred to the Internal Affairs Unit depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the Assistant Chief, such matters need not be documented as personnel complaints, but may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

Mediation - Is a voluntary process and an alternative to investigation, adjudication and the disciplinary process.

1020.2 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1020.2.1 AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the Public Safety Building lobby, at all COP Shops, from Internal Affairs, or at the Office of Police Ombudsman.

1020.2.2 SOURCE OF COMPLAINTS

- (a) A department employee becoming aware of alleged misconduct shall immediately notify a supervisor.
- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.
- (c) A complaint may be filed directly with Internal Affairs or the Office of Police Ombudsman.

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- (d) Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

1020.2.3 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, or by telephoning the department. Although not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

- (a) When an uninvolved supervisor determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper implementation of department policy or procedure, a complaint need not be taken. A Citizen Inquiry form will be completed and forwarded to Internal Affairs.
- (b) When the complainant's credibility appears to be unreliable, the person should be provided with a Personnel Complaint form and the supervisor should complete a Citizen Inquiry form, noting the credibility concerns.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.

1020.2.4 COMPLAINT DOCUMENTATION

Complaints of alleged misconduct shall be documented by a supervisor on a personnel complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

When a Personnel Complaint form is completed in person, the complainant should prepare a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. In an effort to ensure accuracy in any complaint, it is recommended, if practicable, that a recorded statement be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement.

1020.3 SUPERVISOR RESPONSIBILITY

In general, preliminary and follow-up investigative responsibility for some administrative complaints shall rest with the employee's immediate supervisor. The Chief of Police or authorized designee may, however, direct that another supervisor, Internal Affairs, or Human Resources, investigate the complaint. The supervisor shall be responsible for the following:

- (a) A supervisor receiving a complaint involving allegations of a potentially serious nature shall ensure that the Shift Commander is notified as soon as practicable. The Shift Commander will determine if the nature of the complaint warrants DSO notification.
- (b) A supervisor receiving or initiating a complaint, or conducting a preliminary investigation, shall ensure that a Personnel Complaint form has been completed as fully as possible to include; the names and contact information of all involved parties and witnesses, collection of evidence, photographing of alleged injuries as well as areas of non-injury, etc. The supervisor will send the original to Internal Affairs by the end of his/her shift, and forward a copy through the accused employee's chain of command. The chain of command will review the complaint and make recommendations as to the appropriate department response. The Assistant Chief

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will determine if the allegation is criminal or administrative. If the allegation is criminal, the Assistant Chief will notify the Chief of Police. A decision will then be made as to the proper method of investigation.

- (c) When the nature of a personnel complaint relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination, the supervisor or commanding officer receiving the complaint shall immediately contact the employee's Bureau Commander or the Duty Staff Officer who will initiate appropriate action. Internal workplace complaints of this nature will be investigated by Human Resources in coordination with the department's Internal Affairs Unit. The Internal Affairs Unit will ensure that all complaints/investigations are documented, monitored, and reviewed for thoroughness and objectivity.

1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

The Chief of Police may elect to place an employee on administrative leave when circumstances dictate such leave to be in the best interest of the department.

1020.4.1 ADMINISTRATIVE LEAVE

An employee placed on administrative leave may be subject to the following guidelines:

- (a) Under such circumstances, an employee placed on administrative leave shall continue to receive regular pay and benefits pending the imposition of any discipline.
- (b) An employee placed on administrative leave may be required to relinquish any badge, departmental identification, assigned weapon(s) and any other departmental equipment.
- (c) An employee placed on administrative leave may be ordered to refrain from taking any action as a departmental employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a supervisor. The employee shall be available to the department by pager, or other electronic means, during normal business hours, 0800-1600 hr., Monday through Friday.
- (d) At the discretion of the Chief, as an alternative to administrative leave, the employee may be temporally reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered.
- (e) The Chief of Police or designee, is authorized to place an employee on administrative leave.

1020.5 ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee of this department is accused of potential criminal conduct, a separate supervisor or assigned investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practical when an employee is formally accused of criminal conduct. In the event of criminal allegations, the Chief of Police may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian and the employee may not be administratively ordered to provide any information to an assigned investigator.

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No information or evidence administratively coerced from an employee may be provided to a criminal investigator.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a police officer, which has not led to a conviction, however, no disciplinary action, other than non-disciplinary paid administrative leave shall be taken against the accused employee based solely on an arrest or crime report. An employee charged with a crime may be placed on unpaid layoff status in accordance with Civil Service Rules.

1020.6 ADMINISTRATIVE INVESTIGATION OF COMPLAINT

Whether conducted by a supervisor, an assigned member of the Internal Affairs Unit, or the Human Resources Department, the following procedures shall be followed with regard to the accused employee(s):

- (a) Interviews of accused employees shall be conducted during reasonable hours, preferably when the employee is on-duty. If the employee is off-duty, the employee shall be compensated.
- (b) No more than two interviewers, and the Ombudsman if present, may ask questions of an accused employee.
- (c) Prior to their interview, an employee shall be informed of the nature of the investigation. If the employee is the subject of the investigation, they shall be given a general overview of the factual allegations in writing before the interview commences.
- (d) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated.
- (e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions that are narrowly tailored to establish the facts of the investigation or the employee's fitness to hold office, may be ordered to answer questions administratively or be subject to discipline for insubordination. Nothing administratively ordered may be provided to a criminal investigator, except at the direction of the Chief.
- (f) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview if requested by the employee.
- (g) Any employee who becomes the subject of a criminal investigation shall, prior to their interview, be notified that he/she is the subject of a criminal investigation and, further, that he/she is under no obligation to answer any questions or to remain in an interview setting involuntarily. A criminal investigation shall be interpreted as any investigation which could result in the filing of a criminal charge against the employee.
- (h) All employees subjected to interviews that could result in punitive action shall have the right to have a Collective Bargaining Unit representative present at any interview. In addition, they may also have legal representation at their own expense. These representatives may participate to the extent allowed by law.
- (i) All employees shall provide truthful and non-evasive responses to questions posed during interviews.
- (j) An investigator will not ask, nor will an employee be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any administrative investigation.

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1020.6.1 ADMINISTRATIVE SEARCHES

An employee of this department may be ordered to submit to a blood, breath, or urine test for alcohol and drugs as allowed by law.

Any employee may be compelled to disclose personal financial information pursuant to proper legal process.

Employees shall have no reasonable expectation of privacy in the use of city computers, telephones, radios, and electronic devices, and, in city property including desks, lockers, file cabinets, and vehicles, provided that employees retain a right of privacy in the personal possessions contained therein. Absent permission of the employee, no locker or vehicle search (excluding regular vehicle inspections) shall be conducted unless in the presence of a bargaining unit representative. Any removed items shall be inventoried.

1020.6.2 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints shall be detailed, complete and essentially follow this format:

Introduction - Include the identity of the employee(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

Synopsis - Provide a very brief summary of the facts giving rise to the investigation.

Summary Of Allegations - List the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence As To Each Allegation - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation of disposition will be provided during the chain of command review or by the Administrative Review Panel (ARP). Internal Affairs investigators will not submit a recommendation of disposition.

Exhibits - A separate list of exhibits (recordings, photos, documents, etc.) should be attached to the report.

1020.7 DISPOSITION OF PERSONNEL COMPLAINTS

Each allegation shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel.

Exonerated - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.

Not Sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

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Training Failure - Deficiency in training was the cause of the alleged act.

Closed Due to Mediation - Is an alternative to the investigation, adjudication and disciplinary process.

If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.8 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint shall proceed with due diligence. Recognizing that factors such as witness availability and the complexity of allegations will affect each case, every effort should be made to complete each investigation as required by Collective Bargaining Agreements. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed.

(a) If the complaint is investigated by the shift/unit:

1. The employee's supervisor will make a recommendation of finding and disposition. The supervisor will utilize the appropriate form, and forward the file through the chain of command to the Assistant Chief.
2. The Assistant Chief will forward to the Internal Affairs Unit with recommendations or for submission of the case to the Administrative Review Panel (ARP).
3. The Internal Affairs Unit will review the file for completeness and forward the case to the Chief for deliberation of finding and disposition. If the case was submitted to ARP, it will be returned to the Assistant Chief for review. The Assistant Chief will submit the completed file to the Chief for deliberation of finding and disposition.
4. Upon completion of investigations involving allegations of a serious nature or originated by the Office of Police Ombudsman (OPO), IA will forward a complete copy of the case file to the OPO for review. The OPO will have five business days to determine whether the investigation was thorough and objective.

(b) If the case was investigated by the Internal Affairs Unit:

1. Once Internal Affairs has completed their fact-finding investigation, the case will be submitted to the Assistant Chief for review. The Assistant Chief will determine if the case will be submitted for a chain of command review or referred to the Administrative Review Panel.
2. Upon completion of the chain of command review the case will be sent to Internal Affairs. The Internal Affairs Unit will review the file for completeness and forward the case to the Chief for deliberation of finding and disposition. If the case was submitted to ARP, it will be returned to the Assistant Chief for review. The Assistant Chief will submit the completed file to the Chief for deliberation of finding and disposition.
3. Upon completion of investigations involving allegations of a serious nature or originated by the OPO, IA will forward a complete copy of the case file to the OPO for review. The OPO will have five business days to determine whether the investigation was thorough and objective.

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Within 30 days of case closure, written notice of the findings shall be sent to the complaining party. This notice shall indicate the findings, however, will not disclose the amount of discipline, if any imposed.

The OPO will be notified by IA within five business days of case closure of all complaints of a serious matter and all complaints originated by the OPO. The OPO, in addition to the department's written Notice of Finding letter to the complainant, may send a closing letter to the complainant. The letter may summarize the case findings.

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Office of Police Ombudsman to discuss the matter further.

1020.8.1 CONFIDENTIALITY OF INVESTIGATIONS AND PERSONNEL FILES

All investigations of personnel complaints shall be considered confidential peace officer personnel files (Policy Manual § 1026). The contents of such files shall not be revealed other than as required by law, to the involved employee or authorized personnel, or pursuant to lawful process (RCW 42.56 et seq., and RCW 70.02).

Accused employees, while they have a right to prepare a response to the allegation and disclose to others that they are the subject of an investigation, must not interfere with the internal investigation process. In order to ensure that the integrity of the investigation is maintained and that all policies are understood and followed, employees shall not discuss the allegations or the investigation, nor allow anyone else to gain access to that information, without the express authorization of the Chief, his/her designate, or the Internal Affairs officer. The accused employee, however, may discuss the matter with his/her supervisor, collective bargaining unit representative, and/or his/her attorney without prior consultation with the Chief, his/her designate, or the Internal Affairs officer.

All investigative files shall be maintained for a period of no more than current year plus six years from the date of case disposition. Exceptions will be made for complaints associated with ongoing litigation.

A permanent history of all complaints shall be maintained in the employee's Internal Affairs electronic history file.

1020.8.2 ADMINISTRATIVE REVIEW PANEL

The Administrative Review Panel (ARP) will be comprised of a Bureau Commander or captain, serving as chair, with a panel comprised of captains and/or lieutenants. This panel will have both investigative and review/recommendation authority. Review/recommendation responsibilities would include reviewing for thoroughness and objectivity, and making recommendations as to finding and proposed discipline (Local 270 members will not include proposed discipline).

As part of the review/recommendation process, the Administrative Review Panel has certain investigative responsibilities, which could include, in certain cases, directing the Internal Affairs Unit to conduct additional investigation into a specific facet of the case.

The ARP may also direct employees to appear before the panel for specific questioning. In such instances, the employee's rights and responsibilities would be as provided in other areas of this policy.

ARP members will preserve the integrity of the process by maintaining the confidentiality of the complaint and investigative case file.

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1020.8.3 OFFICE OF POLICE OMBUDSMAN

- (a) The Office of Police Ombudsman (OPO) will provide a professional presence to help ensure a quality investigation in real time, and visible, independent oversight to reassure the public.
 - 1. The OPO will actively monitor all police department internal investigations.
 - 2. The OPO may receive complaints from any complaining party, including, without limitation citizens or employees of the police department. The OPO will forward all complaints to IA within three business days for processing and, when appropriate, investigation. The OPO will not conduct independent disciplinary investigations.
 - 3. In addition to complaints received by the OPO, Internal Affairs will provide copies of all other complaints to the OPO within three business days.
- (b) Once the case is closed, the OPO will return all case file materials to IA for retention, but will have subsequent access to closed cases.
 - 1. The OPO will have the opportunity to make a recommendation for mediation to the Chief of Police, prior to investigation. In the event the department, the complainant and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline and no disciplinary finding will be entered against the officer. Good faith means that the officer listens and considers the issues raised by the complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.
 - 2. Once any complaint is received by the Internal Affairs unit, it shall be submitted to the chain of command for review per existing policy. When either the Chief or her/his designee determines that the allegations warrant investigation, such investigation shall be approved, and IA will initiate the investigative process.
 - 3. Internal Affairs will notify the OPO of all administrative interviews on all complaints of a serious matter (complaints that could lead to suspension, demotion or discharge) and all complaints originating at the OPO. The OPO may attend and observe interviews, and will be given the opportunity to ask questions after the completion of questioning by the department. The OPO will not participate in criminal investigations of department employees but will be notified when the criminal case is concluded.
 - 4. Upon completion of investigations, IA will forward a complete copy of the case file to the OPO for review. The OPO will determine whether the investigation was thorough and objective.
 - 5. As a part of the review process, the OPO may conclude that additional investigation is needed on issues deemed material to the outcome. If there is any dispute between the assigned investigator(s) and the OPO regarding the necessity, practicality or materiality of the requested additional investigation, the Chief (or designee) will determine whether additional investigation will be undertaken. If the OPO is not satisfied with the determination of the Chief, the matter will be resolved by the Mayor, who's decision will be final. Once the matter has been referred to and resolved by the Mayor, the investigation will be completed consistent with the determination by the Mayor. After completion of

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the additional investigation, or the conclusion that no further investigation will be undertaken, the OPO will then certify whether or not, in the opinion of the OPA, the internal investigation was thorough and objective. This determination will be made within five business days. Once the above finding is entered in the investigation, the OPO will not be involved further in the disciplinary process in that case.

6. All disciplinary decisions will be made by the Chief (or designee).
 7. The OPO will be provided a copy of any letter or other notification to an officer informing them of actual discipline imposed as a result of an internal affairs investigation or any Notice of Finding in the event that the complaint is not sustained.
 8. The OPO will be notified by IA within five business days of case closure of all complaints of a Serious Matter and all complaints originated by the OPO. The OPO, in addition to the department's written Notice of Finding letter to the complainant, may send a closing letter to the complainant. The letter may summarize the case findings.
 9. Any complaining party who is not satisfied with the findings of the department concerning their complaint may contact the Office of Police Ombudsman to discuss the matter further. However, unless persuasive and probative new information is provided, the investigation will remain closed. In accordance with established arbitral case law, employees may not be disciplined twice for the same incident. In the event the investigation is re-opened and discipline imposed, the appropriate burden of establishing compliance with this section rests with the city in any subsequent challenge to the discipline.
 10. In addition to the investigative process, the OPO will have unimpeded access to all complaint and investigative files for auditing and reporting purposes. The OPO shall not retain investigative files beyond one year and will return the same to Internal Affairs for safekeeping. At all times and including, without limitation, issuing written reports, the OPO will not release the name(s) of employees or other individuals involved in incidents or investigations nor any other personally identifying information. The OPO may make statistical observations regarding the disciplinary results of sustained internal investigations, but shall not take issue with discipline imposed by the Chief of Police in specific cases.
 11. The OPO may recommend policies and procedures for the review and/or audit of the complaint resolution process, and review and recommend changes in departmental policies to improve the quality of police investigations and practices. Nothing herein shall be construed as a waiver of the Guilds right to require the city to engage in collective bargaining as authorized by law.
- (c) The OPO shall not have access to legally privileged documents held by the City Attorney or Attorney-Client communications held by the City Attorney's clients and shall not disclose confidential records.

1020.8.4 MEDIATION

Mediation is an alternative to investigation, adjudication and the disciplinary process. The OPO will have the opportunity to make a recommendation for mediation to the Chief of Police, prior to investigation. In the event the department, the complainant and the officer all agree to mediation, that process will be utilized rather than sending the matter on for investigation. Assuming the officer participates in good faith during the mediation process, the officer will not be subject to discipline and no disciplinary finding will be entered against the officer. Good faith means that the officer listens and considers the issues raised by the

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complainant, and acts and responds appropriately. Agreement with either the complainant or the mediator is not a requirement of good faith. In the event an agreement to mediate is reached and the complainant thereafter refuses to participate, the officer will be considered to have participated in good faith.

1020.8.5 POSTING OF DISCIPLINARY ACTION

Whenever any disciplinary action is taken which involves discipline beyond the level of a formal letter of reprimand (e.g., suspension, demotion, or termination), the Chief of Police shall cause to be posted on the department's official bulletin boards a notification setting forth the following: The name of the officer or employee being disciplined; a summary of the facts and findings in the disciplinary process; the nature and extent of the discipline imposed, with a summary of the rationale supporting that decision.

Copies of this notice shall remain posted on the official bulletin boards for six days in order to allow employees of the department who are on days off the opportunity to personally review them. After six days, the notices shall be collected and returned to the file. The contents of such notices shall be deemed as confidential and for internal use only, and any release of the information contained therein shall only be made through the office of the Chief of Police and with his/her authorization. The removal, defacing, or alteration of such notices and/or the release of their contents outside the department shall be considered improper conduct and/or a breach of confidentiality and therefore potentially subject to disciplinary action.

Discipline of AFSCME Local 270 employees will not be posted.

Vehicle Pursuit Policy

314.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to minimize the potential for pursuit related collisions. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved.

This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuit situations are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are proper self discipline and sound professional judgment. Officers' conduct during the course of a pursuit must be objectively reasonable. That is, what a reasonable officer would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement (RCW 43.101.225).

314.1.1 VEHICLE PURSUIT DEFINED

A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect who is attempting to avoid apprehension and is deliberately operating a motor vehicle in a reckless manner.

314.1.2 VEHICLE FOLLOW DEFINED

A vehicle follow is an event involving one or more law enforcement officers attempting to detain a suspect vehicle that is failing to yield to the visual and/or audio signals of the law enforcement officers but not operating the vehicle in a reckless manner.

314.1.3 ATTEMPTING TO ELUDE

Refers to the actions of a vehicle operator who after being given a visual or audible signal to bring the vehicle to a stop, fails or refuses to immediately stop the vehicle and drives in a reckless manner while attempting to elude a uniformed officer operating a pursuing police vehicle that is equipped with emergency lights and siren (RCW 46.61.024).

314.2 OFFICER RESPONSIBILITIES

It shall be the policy of this department that a motor vehicle pursuit shall be conducted only with emergency lights and siren as required by RCW 46.61.035 for exemption from compliance with the rules of the road. The following policy is established to provide officers

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Vehicle Pursuit Policy

with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by RCW 46.61.035(4).

314.2.1 WHEN TO INITIATE A PURSUIT

It is the policy of the Spokane Police Department that pursuits are permissible only when the necessity for immediate apprehension outweighs the danger created by the pursuit itself. Officers shall not initiate a pursuit solely for traffic infractions nor property crimes, whether misdemeanor or felony. Officers may initiate pursuits for the following reasons:

Violent Felony or warrant for same, DV Assault (within mandatory arrest window) DUI, Reckless Driving of an egregious manner prior to the officer encountering the suspect vehicle.

While officers may initiate a pursuit for the above listed reasons, officers shall at all times consider the following factors individually and collectively in deciding whether to initiate or continue a pursuit:

- (a) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (b) Apparent nature of the fleeing suspect(s) (e.g., whether the suspect(s) represent a serious threat to public safety).
- (c) Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
- (d) Pursuing officer(s) familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (e) Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of immediately apprehending the suspect.
- (f) Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (g) Vehicle speeds.
- (h) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (i) Availability of other resources such as helicopter assistance.
- (j) The police unit is carrying passengers other than police officers. Pursuits shall not be undertaken with a prisoner(s) in the police vehicle. Pursuits shall not be initiated or entered into when a passenger is in the vehicle. Exceptions may be granted by the Office of the Chief or designee.

As previously stated, pursuits are prohibited when initiated solely for traffic infractions and property crimes (whether felony or misdemeanor), or based on the mere fact that the vehicle is fleeing. The decision to initiate a pursuit must be based on the officer's conclusion that the immediate danger to the public and to the officer(s) created by the pursuit is less than the immediate or potential danger to the public/officer(s) should the suspect remain at large. Information not available to the officer at the time the pursuit was initiated will not be considered later in determining whether the pursuit was justified. In all instances involving vehicle

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pursuits, the initiating officer must be able to clearly articulate the reason(s) why the pursuit was initiated.

314.2.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect(s)' escape.

The factors listed in Policy Manual § 314.2.1 are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle(s).

"Terminate" shall mean all pursuing officers shall pull their vehicle to the side of the roadway, stop, shut off emergency equipment and notify the Combined Communications Center of their location. Officers not directly involved as primary or secondary vehicles shall discontinue following the pursuit.

In addition to the factors listed in Policy Manual § 314.2.1, the following factors should also be considered in deciding whether to terminate a pursuit:

- (a) Distance between the pursuing officers and the fleeing vehicle(s) is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) Pursued vehicle's location is no longer definitely known.
- (c) Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- (d) Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
- (e) Hazards to uninvolved bystanders or motorists.
- (f) If the identity of the felony offender is known and it appears that the immediate risks to the public and officer(s) associated with continuing the pursuit now outweigh the risks that the felony offender will continue to pose to the public if allowed to temporarily escape.
- (g) Directed by any commissioned supervisor, to include a corporal

314.2.3 SPEED LIMITS

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle. Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

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314.3 PURSUIT UNITS

Pursuit units should be limited to two vehicles^{3/4} however, the number of units involved will vary with the circumstances. An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspect(s). All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point in a safe manner.

314.3.1 AUTHORIZED PURSUIT VEHICLES

The Crown Victoria is currently the only manufacturer certified pursuit vehicle in use by the Spokane Police Department. Special service vehicles to include sport utility vehicles, trucks, vans, traditional passenger cars, motorcycles and other non-pursuit certified vehicles should not be used in pursuits.

314.3.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with emergency lights and siren are generally prohibited from initiating or joining in any pursuit. Officer(s) in such vehicles, however, may become involved in emergency activities involving serious crimes or life threatening situations.

Those officers should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of emergency police vehicles or any police helicopter. The exemptions provided by RCW 46.61.035 do not apply to officers using vehicles without emergency equipment.

314.3.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspect(s) without unreasonable danger to themselves or other persons.

Notify the Combined Communications Center that a vehicle pursuit has been initiated and as soon as practical provide information including, but not limited to:

- (a) Reason for the pursuit.
- (b) Location and direction of travel.
- (c) Speed of the fleeing vehicle.
- (d) Description of the fleeing vehicle and license number, if known.
- (e) Number of known occupants.
- (f) The identity or description of the known occupants.
- (g) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.
- (h) Traffic conditions, vehicular and pedestrian.
- (i) Weather conditions to include road surface.
- (j) Visibility and illumination.

The officer in the primary unit shall be responsible for broadcasting the progress of the pursuit unless directed otherwise by a supervisor or when practical circumstances indicate. Whenever possible, the primary unit, if a one-officer unit, should relinquish the

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responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft in order to concentrate on pursuit driving.

"Progress" shall mean updating speed, location, direction of travel and traffic conditions.

314.3.4 SECONDARY UNIT(S) RESPONSIBILITIES

The second officer in the pursuit is responsible for the following:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) The secondary officer should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

314.3.5 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles so that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units should exercise due caution when proceeding through controlled intersections.
- (c) Officers should not pursue vehicles that proceed the wrong way on a highway, freeway, freeway access or one-way street unless specifically authorized by a supervisor.
- (d) Notifying the Washington State Patrol and/or other jurisdictional agency if it appears that the pursuit may enter their jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or requested to do so by the primary unit.

314.3.6 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

Other officers in the area of the pursuit shall monitor the progress of the pursuit. They should not become directly involved in the pursuit unless requested to do so by the primary or secondary unit or the supervisor. They should be available in case they are needed to help provide resources that may be needed to terminate the pursuit and assist in the apprehension of the suspects after the pursuit has been terminated. Paralleling the pursuit is allowed for the limited purposes of assisting with traffic control or for other public safety purposes. Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian traffic to protect the public.

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Officers not involved directly in the pursuit, who are needed to assist, will operate their vehicles utilizing emergency equipment as necessary per RCW 46.61.035 and RCW 46.37.190.

The primary and secondary units should be the only units operating under emergency conditions (emergency lights and siren) unless other units are assigned to the pursuit.

314.3.7 AIRCRAFT ASSISTANCE

- When officers initiate a vehicle pursuit, the availability of air support should be considered.
 - The supervising sergeant and/or dispatch supervisor will ensure that this option is considered.
- If air support is available, officers or supervisors should request assistance.
 - "Available" means currently operating in-flight.
- When air support arrives on scene and is able to assume and maintain visual contact with the fleeing vehicle, SPD pursuing officers will discontinue close pursuit, unless the tactical needs of the situation clearly call for continuing close pursuit.
- The intent of discontinuing close pursuit is to encourage the fleeing vehicle to cease driving in a reckless manner because the driver believes police pursuit has ended. It is also recognized that a frequent result of discontinued pursuits is that the suspect driver stops the vehicle and flees on foot.
- When close pursuit is discontinued, units may continue to safely position themselves strategically to respond in the event that the fleeing vehicle stops and/or the suspect(s) flee on foot. This repositioning should be outside of the view of the fleeing vehicle and officers shall use due care and caution when doing so.

314.4 SUPERVISORY CONTROL AND RESPONSIBILITY

It is the policy of this department that available supervisory and management control will be exercised over all motor vehicle pursuits involving officers from this department. The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor (corporal or above) will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately ascertain all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engage in the pursuit, when appropriate, to provide on scene supervision.
- (c) Exercise management and control of the pursuit even if not engaged in it
- (d) Ensure that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Direct that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- (f) Ensure that aircraft are requested if available.
- (g) Ensure that the proper radio channel is being used.
- (h) Ensure the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Control and manage SPD units when a pursuit enters another jurisdiction.

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- (j) Complete additional reports as necessary and/or Pursuit Review Report.

314.4.1 SHIFT COMMANDER RESPONSIBILITY

Upon becoming aware that a pursuit has been initiated, the Shift Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. The Shift Commander has the final responsibility for the coordination, control and termination of a motor vehicle pursuit and shall be in overall command. The Shift Commander shall review all pertinent reports for content and forward them through the chain of command to the Patrol Commander.

314.4.2 PATROL COMMANDER RESPONSIBILITY

The Patrol Commander shall review all pertinent reports for content. The Patrol Commander shall be responsible to identify and address any trends that require training or correction within the Patrol Division. The Patrol Commander shall forward the pursuit reviews to the Traffic Unit for storage.

314.5 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher.

If the pursuit leaves the jurisdiction of this department, involved units may switch radio communications, whenever available, to a channel that is most advantageous for effective radio communications.

314.5.1 COMBINED COMMUNICATIONS CENTER RESPONSIBILITIES

Upon notification that a pursuit has been initiated, the Combined Communications Center will:

- (a) Coordinate pursuit communications of the involved units and personnel.
- (b) Notify and coordinate with other involved or affected agencies as practical.
- (c) Ensure that a field supervisor is notified of the pursuit.
- (d) Assign an incident number and log all pursuit activities.
- (e) Broadcast pursuit updates as well as other pertinent information as necessary.
- (f) Notify the Shift Commander as soon as practical.

314.6 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor should determine whether or not to request the other agency to assume the pursuit, taking into consideration distance traveled, unfamiliarity with the area, and other pertinent facts. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether or not such jurisdiction is expected to assist.

The potential for a pursuit to continue to another jurisdiction should be considered a factor that could influence the decision of the supervisor or shift commander to terminate the pursuit.

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Officers making a felony arrest in another state are responsible to have the defendant taken, without unnecessary delay, before a magistrate of the county in the state in which the arrest is made.

314.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when this agency has requested and the other agency has advised that it has assumed the pursuit and assistance of the Spokane Police Department is no longer needed. Upon discontinuing the pursuit, the primary unit may proceed upon request, and at the direction of a supervisor, to the termination point to assist in the investigation. The role and responsibilities of officers at the termination of a pursuit initiated by this department shall be coordinated with appropriate consideration of the units from the agency assuming the pursuit.

Notification of a pursuit in progress should not be construed as a request to join the pursuit.

Requests to or from another agency to assume a pursuit should be specific.

314.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the agency whose officers are in pursuit. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a unit from this department may join the pursuit until sufficient units from the initiating agency join the pursuit. When a request is made for this department to assist or take over a pursuit from another agency that has entered this jurisdiction, the supervisor should consider these additional factors:

- (a) The original reason for the pursuit is compliant with SPD pursuit policy, section 314.2.1.
- (b) Ability to maintain the pursuit.
- (c) Adequate staffing to continue the pursuit.
- (d) The public's safety within this jurisdiction.
- (e) Safety of the pursuing officers.

As soon as practical, a supervisor or the Shift Commander should review a request for assistance from another agency. The Shift Commander or supervisor, after consideration of the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by officers of this department will terminate at the City limits provided that the pursuing officers have sufficient assistance from other sources.

Ongoing participation from this department should continue until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, officers shall provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, coordination and completion of supplemental reports and any other assistance requested or needed.

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314.7 PURSUIT INTERVENTION/FORCIBLE STOPS

Forcible stops are an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures.

314.7.1 WHEN USE AUTHORIZED

In deciding whether to use forcible stops, officers/supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With these risks in mind, the decision to use any forcible stop should be reasonable in light of the circumstances confronting the officer at the time of the decision.

It is imperative that officers act within the bounds of legality, good judgment and accepted practices

314.7.2 DEFINITIONS

Blocking A slow speed coordinated maneuver where two or more patrol vehicles simultaneously intercept and block the movement of a momentarily stopped suspect vehicle, the driver of which may be unaware of the impending enforcement stop, with the goal of containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing Technique A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

Pursuit Intervention Technique (PIT) A maneuver designed to cause the suspect vehicle to spin out and terminate the pursuit.

Ramming The deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.

Roadblocks A tactic designed to stop a violator's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the violator's vehicle.

Spike Strips or Stop Sticks A device that extends across the roadway designed to puncture the tires of the pursued vehicle.

314.7.3 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances dictate that such use reasonably appears necessary to protect life. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

314.7.4 INTERVENTION/FORCIBLE STOP STANDARDS

Any intervention/forcible stop tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public, or anyone in or on the vehicle being pursued. Certain applications of intervention/forcible stop tactics may be construed to be a use of deadly force and subject to the requirements for such use. Officers who have not received certified departmental training in the application and use of any forcible stop or intervention tactic or equipment shall consider these facts and

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requirements prior to deciding how, when, where, and if an intervention/forcible stop tactic should be employed.

- (a) Blocking should only be considered in cases involving felony suspects or impaired drivers who pose a threat to public safety when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risks involved this technique should only be employed by officers who have received training in such tactics after giving consideration to the following:
 - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
 - 2. All other reasonable intervention techniques have failed or reasonably appear ineffective.
 - 3. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
 - 4. The target vehicle is stopped or traveling at a low speed.
 - 5. At no time should civilian vehicles be used to deploy this technique.
- (b) Pursuit Intervention Technique (PIT) Only those officers trained and certified in the use of the Pursuit Intervention Technique (PIT) will be authorized to use this procedure. PIT is authorized to apprehend fleeing offenders when less intrusive measures have been tried or considered and have been judged to be ineffective.
 - 1. The officer employing the PIT must balance the necessity of apprehension of the suspect with the risk of utilizing the technique. PIT executed at 40 MPH or less is at the discretion of the officer. PIT executed at more than 40 MPH may be considered only after supervisory approval. The use of a PIT maneuver shall be reported in the incident report and the pursuit review form. Damage to vehicles or property as a result of a PIT maneuver shall be investigated as a collision.
- (c) Ramming a fleeing vehicle should be done only after other reasonable tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations where there does not appear to be another reasonable and alternative method. This policy is an administrative guide to direct officers in their decision making process before the fact of ramming another vehicle. It is not a standard for civil or criminal litigation to judge the propriety of the act^{1/4} that is a matter for the courts to determine by established law. When ramming is to be employed as a means with which to stop a fleeing vehicle, one or more of the following factors should be present:
 - 1. The suspect is an actual or suspected felon who reasonably appears to represent a serious threat to society if not apprehended.
 - 2. The suspect is driving in willful or wanton disregard for the safety of persons^{1/4} or, driving in a reckless and life endangering manner.
 - 3. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (d) Boxing Technique: Pursuing officers should obtain supervisor approval before attempting to box a suspect vehicle during a pursuit. The use of such a technique must be carefully coordinated with all involved units, taking into consideration the circumstances and conditions presented at the time as well as the potential risk of injury to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle, a vehicle transporting hazardous materials, or a school

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bus transporting children, then officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.

- (e) Spike strips should be deployed only when the involved officers are reasonably certain that only the pursued vehicle will be affected by their use. Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle.
- (f) Because roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is discouraged and should not be deployed without prior approval of a supervisor and only then under extraordinary conditions when all other reasonable intervention techniques have failed or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risks of injury or death to occupants of the pursued vehicle, officers or other members of the public. If a roadblock is approved, there must be an escape route left for the pursued vehicle to use.

314.7.5 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspect(s) following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans to contain and capture the suspect.

314.8 REPORTING REQUIREMENTS

The following reports should be completed:

- (a) Officers shall complete appropriate crime/arrest reports. The primary officer shall complete a report, which shall minimally contain the following information.
 - 1. Whether any person involved in the pursuit or subsequent arrest was injured, specifying the nature of that injury and differentiating between the suspect driver, a suspect passenger and the officers involved.
 - 2. The violation(s) that caused the pursuit to be initiated.
 - 3. The identity of the officers involved in the pursuit.
 - 4. The means or methods used to stop the suspect being pursued.
 - 5. The conditions of the pursuit, including, but not limited to, all of the following:
 - (a) Duration
 - (b) Pursuit route
 - (c) Time of day
 - (d) Weather conditions
 - (e) Maximum speeds
 - 6. Whether the pursuit resulted in a collision and a resulting injury or fatality to an uninvolved third party, and the corresponding number of persons involved. Collisions involving serious injury or fatality, the Officer-Involved Fatal Incident Protocol shall be invoked.

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7. Whether the pursuit involved multiple agencies.
 8. How the pursuit was terminated.
- (b) Supervisors shall promptly complete a Pursuit Review Report summarizing the key details of the pursuit. This review will include:
1. Date and time of pursuit
 2. Initiating event
 3. Terminating event
 4. Forcible stop technique
 5. Arrest data
 6. Type of Police unit initiating pursuit
 7. Weather conditions
 8. Day of week
 9. Road type
 10. Locale
 11. Length of pursuit
 12. Number of police units involved
 13. Suspect vehicle type
 14. Police vehicle speed
 15. Suspect vehicle speed
 16. Collision information
 17. Supervisory and chain of command review
 18. Collisions involving serious injury or fatality, the Officer Involved Fatal Incident Protocol shall be invoked.

314.9 VEHICLES FOLLOWS

Officers will include the circumstances of a VEHICLE FOLLOW in the incident report in which it occurred. If the incident does not generate an incident report for some reason, officers will include detailed remarks in CAD. A pursuit review is not required for instances of VEHICLE FOLLOWS

314.10 EVOC TRAINING

In addition to initial and supplementary WSCJTC training on pursuits, all sworn members of this department will participate in periodic department and/or WSCJTC emergency vehicle operations training, thus addressing this policy and the importance of vehicle safety and protecting the public at all times.



STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS:

Recommendations from a Community of Practice



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This document is the result of collaboration among several large law enforcement agencies. References to the Internal Affairs methods or approaches of specific agencies are included in the document as illustrative examples only and should not be considered an endorsement, recommendation, or favoring by the U.S. Department of Justice.

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Letter from the Director

Since 1996, and as part of our mission, the Office of Community Oriented Policing Services (the COPS Office) has been supporting law enforcement agencies in a variety of initiatives and programs to create or strengthen local programs that help agencies build trust with the communities they are sworn to serve and protect. The COPS Office seeks to create the community policing environments that develop or improve that trust and mutual respect and ensure equal treatment for all citizens.

Mutual trust and respect are at the heart of effective policing and the overwhelming majority of our nation's law enforcement officers are principled men and women who provide professional services to the communities they serve with honor and distinction. The responsibilities they shoulder are great, and agency and public expectations are high.

Unfortunately, on the rare occasion when an officer is accused of misconduct or criminal activity, he or she may be subject to an investigation. Implementing an honest and fair fact-finding process that uncovers the truth is the important role of the internal affairs function of a law enforcement agency, and it is essential to maintain a process that protects the rights of all involved, including the accused officer.

This report, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, was developed by the National Internal Affairs Community of Practice group, a collaborative partnership of the Los Angeles (California) Police Department and 11 other major city and county law enforcement agencies. The agencies shared and developed standards and best practices in internal affairs work, discussed differences and similarities in practice, and looked at various approaches to improving their individual and collective agencies' internal affairs practices.

The COPS Office understands the importance of learning from the experience of others. It is in this spirit that we are pleased to provide this report to you. We hope you will find this publication helpful in your local efforts, and we encourage you to share this publication, as well as your successes, with other law enforcement practitioners.

Sincerely,

Carl Peed
Former Director
The COPS Office

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Introduction

On May 5, 2005, the Los Angeles Police Department was awarded a grant by the U.S. Department of Justice Office of Community Oriented Policing Services to convene and coordinate the National Internal Affairs Community of Practice group. The initial purpose of the National Internal Affairs group was to create an opportunity for major city police departments to come together in real time on an ongoing basis to share and develop standards and best practices in Internal Affairs work and share these products with the wider field of policing. In the end, the group learned considerably more. The group consisted of 12 major city and county police agencies in the United States. Many other agency¹ representatives and advisors contributed ideas and the dialog that ultimately shaped this document.

The group learned that even where we expected commonality in practice there was much more disparity than expected. We learned that the definitions of terms shared were not always universal. Where we assumed there would be shared definitions, the group found that the assumption was wrong. A large part of the time on this project was spent trying to agree on the terms common to each agency.

We also discovered that profound differences among state and local laws, collective bargaining agreements, and organizational and political cultures are factors in the struggle to reach commonality. There were also striking differences among the investigative models, processes, and structures among the participating agencies.

We learned that ensuring ethical conduct is an organizational responsibility, not just of Internal Affairs because Internal Affairs is not an isolated agency function. It is integral to a more complex interrelationship among entities within the agency that had not been seen as interrelated before. These include recruit and in-service training, risk managers, lawyers representing the agency in litigation, and agency members who interact with labor organizations.

The project reaffirmed that Internal Affairs serves two communities—law enforcement and the general public—and Internal Affairs is essential in building and maintaining mutual trust and respect between agencies and the public.

¹Although the term “Agency” in this report intends to denote the local law enforcement entity responsible for the general policing of a city, county, township, or other politically autonomous local body, the principles of the procedures and findings herein will likely be applicable to law enforcement entities of other kinds.

We did find that we faced many common issues, including a lack of resources, lack of understanding of the Internal Affairs function by many members of the agencies and by the public, and the need to be able to continue the community of practice discourse begun in this project.

Despite the sometimes striking disparity among the methods, models, and other features of the various agencies' Internal Affairs processes (see the Appendix at the end of this document), the group was still able to find ways of effectively accomplishing the Internal Affairs mission in different ways.

Inevitably the question should be asked: why didn't the Internal Affairs community of practice come up with best practices the same way investigators of homicides and narcotics come up with best practices? What we found was that because Internal Affairs investigates police officers, a unique set of challenges is created that do not exist in typical criminal investigations. These challenges are not solved with technical solutions because the challenges are not merely technical. The challenges include the dynamics of state and local laws, employment rights, collective bargaining agreements, community relationships and expectations, and organizational and political cultures.

It was not a goal of the group to fashion rigid and confining rules or standards binding all American law enforcement agencies. Neither was it the goal to impose best practices that would create a single measuring stick with which to judge each agency. Rather, the effort focused on drafting a set of general principles and guidelines, around which consensus had taken shape, that articulate the fundamental presumptions and values underlying the role of Internal Affairs in contemporary American policing.

We remain confident that police departments, managed properly, have the capacity to police themselves in a manner that enhances public trust. We believe that agencies that objectively and thoroughly police themselves, yet are accountable to the public and civilian authority, are stronger than agencies policed from the outside where internal accountability is not a priority.

1.0 Intake

“Intake” denotes the process of receiving a complaint. There is a wide range of accepted intake practices. The range of practices flows from the political, legal, labor-relational, and other factors incidentally affecting agencies using them.

The widest possible net should be thrown open at intake to receive all complaints from all possible sources of complaint. While the procedures for investigation and resolution of these complaints may differ depending upon their nature, it is a recommended practice to take in all complaints. Moreover, complaints as a whole provide the agency with insight as to how it is perceived by the public. Law enforcement is not doing its job if the public as a whole or in part believes the police are not effective, ethical, or respectful.

Section Topics:

- 1.1 What a complaint is and who may file one.
- 1.2 How a complaint can be transmitted and what forms it can take.
- 1.3 Receiving complaints at agency facilities.
- 1.4 Availability of complaint forms or other means of filing complaints.
- 1.5 Dissuading complainants.
- 1.6 Tracking complaints.
- 1.7 Complaint acknowledgments.
- 1.8 Auditing complaint intake.
- 1.9 Complaints and lawsuits.

1.1 What a complaint is and who may file one. Each event of alleged inappropriate behavior is an allegation, whether reported verbally or by other depiction. A complaint is one or more allegations by any person that an employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation. The person making the allegation is a complainant.

Commentary

Each agency should require that every complaint from the public be received and evaluated to determine the nature of the agency's response to the complaint. Because complaints can literally be anything from irrational statements to clear reports of criminal corruption, intelligent evaluation of each complaint at intake is crucial.

The complaint process from intake to final disposition should be clear to all involved, and should include at least a general description of the categories the agency uses to group complaints and the procedures for handling each category. The descriptions and procedures should be in writing and easily accessible to the public.

Employee complaints best resolvable beyond the realm of Internal Affairs² should be redirected to other areas of the agency as the nature of the complaint dictates (e.g., supervisory issues, personal grievances, employee disputes, etc.).

1.2 How a complaint can be transmitted and what forms it can take. To the extent permitted by law, a complaint should be received whether presented orally, in writing, or in some other reasonably intelligible form. The point is to make it as simple as reasonably possible for anyone, including an arrestee, to present a complaint without unnecessary burden. The public has a reasonable expectation that an agency presented with a complaint will act in good faith to accept it.

Public proceedings or filings in which declarations under oath reveal allegations of misconduct against an agency's employee should be considered sources of complaints when the allegations are brought to the attention of a member of the agency responsible for the intake of complaints.

²"Internal Affairs," denotes the entity or persons within an agency whose primary function is to investigate the conduct of agency personnel.

Nonsupervisory employees to whom a complaint is made should be required to summon a supervisory employee to receive the complaint. If a supervisor is not reasonably or practically available, the employee should explain to the complainant how to promptly meet with a supervisor and/or the process of filing a complaint. A supervisor receiving a complaint against another supervisor of similar rank should, when practical, summon a superior officer to receive the complaint.

Commentary

Nonsupervisory employees are ordinarily not trained to investigate complaints, not invested with the authority to do so, and may have conflicts of interest in accepting complaints against their peers. Likewise, a supervisor who receives a complaint against a peer or superior officer should as promptly as possible involve a superior officer in the complaint receipt process to avoid a conflict of interest. The most pressing conflict of interest to avoid is that of one employee investigating a complaint against a co-worker with whom the employee may have or benefit from a personal relationship.

1.3 Receiving complaints at agency facilities. An agency should receive complaints at any of its facilities ordinarily accessible to the public regardless of the assignment of the employee complained against. Where an agency can arrange to have complaints received and properly processed by local government officials at locations other than police facilities, the agency should do so.

Commentary

A complainant should have a wide choice of locations to file a complaint. Permitting nonpolice officials of an agency's local government (such as the city clerk, ombudsman, etc.) to accept complaints gives complainants neutral locations to present their complaints without fear. Such arrangements should include at least an understanding among the local officials that they need to promptly present the complainant information to the agency's Internal Affairs.

1.4 Availability of complaint forms or other means of filing complaints.

A public complaint form, or other means to file a complaint, should be available upon request at all units and patrol stations ordinarily accessible to the public. Information about how to file a complaint should be available at municipal offices and other appropriate identified locations. If an agency has a web site, an electronic version of the complaint form should be on the site, capable of being filled out and transmitted electronically. The means of collecting complaint information, whether via written forms or another specific mechanism, should capture all information necessary to initiate the intake of the complaint. Whenever practicable, a complainant should be provided with a copy of the initial intake complaint so that the complainant can verify that the facts as initially reported were accurately and completely received. If the information on such a complaint form is transferred to a different numbered and tracked document, such as an official internal form for registering complaints, the original complaint form should be retained and filed with the official form.

The complaint process should accommodate all languages spoken by a substantial proportion of residents of the region. Similarly, brochures explaining the procedure for the filing and investigation of complaints should be available in those languages wherever a complaint can be made. There should be signage in English and those other languages at each patrol station or other unit informing persons of their right to make a complaint and the availability of personnel to assist in the process.

Commentary

These practices are recommended to facilitate the making of a complaint and establish methods so that each complaint can be accounted for. While many agencies use dedicated forms for public use in making complaints, others accept letters of complaint or take verbal complaints via a dedicated process and thus have no such public complaint forms. Where agencies do not use dedicated forms, there must still be a specific, dedicated process for tracking complaints once received.

Because American cities and towns are increasingly multicultural and multilingual, agencies should consider acquiring resources to accommodate receiving and investigating complaints made in languages common in their jurisdictions.

1.5 Dissuading complainants. The public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear. Unless required by law, a complaint need not be under oath or penalty of perjury. Unless required by law, no threats or warnings of prosecution or potential prosecution for filing a false complaint should be made orally or in writing to a complainant or potential complainant. Practices such as running warrant or immigration checks on complainants at intake solely because they are complainants should not be tolerated.

Commentary

Employees who in bad faith attempt to dissuade complainants from filing a complaint or who attempt to convince a complainant to withdraw his or her complaint should be subject to discipline. However, where an agency has an officially sanctioned and regulated mediation process available as an alternative to the complaint process, a good-faith offer to a complainant to enter the alternative process is encouraged.

State law may require a complaint to be signed and made under oath or penalty of perjury. State law also may require warnings of potential prosecution for filing false complaints.

1.6 Tracking complaints. Every complaint should be tracked through final disposition. The tracking system should be automated, where feasible, and capable of capturing in separate data fields information regarding the complaint important for case tracking. The tracking system should alert investigators and those responsible for management of the complaint process when deadlines are about to expire or have expired.

Commentary

A reliable complaint tracking system is a means not only of managing cases but of providing public accountability for the follow-through on intake complaints. Absent a tracking system, an agency has no way of efficiently verifying that its cases are properly assigned, that investigators are providing due diligence, or that cases have been completed. For jurisdictions where statutes of limitation apply to complaints, system-generated alerts warning of impending benchmark or statute deadlines can help prevent cases from falling outside statutory time limits and avoid the appearance of deliberate indifference.

An example of one efficient means of ensuring that complaints are tracked from inception through disposition is the use of one official, agency-authorized complaint form. Such forms should contain a unique identifier, such as a number, that allows them to be audited and tracked. All original, official complaint information forms, as well as the finalized investigation, should be housed according to clear written procedures including at least the location(s) of the files, security measures to protect them, and the authorizations required to access them.

1.7 Complaint acknowledgments. A written acknowledgment of a complaint or a receipt should be provided to the complainant in person or by mail or e-mail promptly and should be documented in a retrievable manner. It should include a reference number, complete synopsis of the complaint, and the identity of the investigator or other responsible person and his or her contact information.

In some agencies, a complainant orally states the subject matter of the complaint to law enforcement personnel who then put the complaint in writing. In such instances, there is a potential for inaccuracy or omission. The complainant should be permitted to review for accuracy any oral complaint reduced to writing by any agency personnel. The complainant should receive a copy of any such complaint. If a complainant appears in person, he or she should be provided the opportunity to review and correct what has been written. If the complainant calls in, the complaint should be read back to the complainant for review and correction.

Commentary

A complainant should be certain that the complaint has been taken down completely and accurately. The complainant should have written notice that a complaint has been received and how it will be handled. When practical, the name and contact phone number of the investigator responsible for the complainant's case should be provided to the complainant. This saves time for the complainant and the agency when the complainant has a need to speak with the investigator.

1.8 Auditing complaint intake. As a routine matter, an agency should conduct regular audits to verify that complaints are being taken properly and to ensure that all employees are adhering to agency rules and standards.

Commentary

Some agencies use video cameras or undercover officers posing as complainants to test the integrity of its processes for the intake of complaints. It is not uncommon for organizations concerned with civil rights to send individuals posing as complainants to conduct similar tests. Some complaint forms ask directly whether any attempt to intimidate the complainant has been made. However achieved, agencies should devise means to test whether the reporting systems function as designed and whether the employees trusted to operate the systems know what to do and are following the procedures in good faith.

1.9 Complaints and lawsuits. Complaints that are legal claims against the agency or any of its personnel for on- or off-duty conduct under color of authority should be coordinated with the agency's or city's risk management unit and the attorneys representing and defending the city in civil matters.

Any civil lawsuit or civil claim filed against a municipality, agency, or law enforcement personnel for misconduct on duty or off duty under color of authority should be handled as a complaint.

Agencies should consider creating rules requiring employees who are the subject of lawsuits alleging off-duty misconduct under color of authority to report the lawsuit without delay to their Internal Affairs unit or their commanding officer.

Commentary

Any lawsuit or claim that alleges misconduct, including those filed with another governmental or administrative agency, should be immediately brought to the attention of the agency's Internal Affairs unit or its equivalent. Unless the claim is investigated elsewhere within the agency's government, it should be processed as a complaint at intake.

A lawsuit alleging on-duty activities would ordinarily be served on the officer and employer, putting both on notice of the alleged facts. This is dealt with in an earlier section of this report. However, lawsuits regarding off-duty actions under color of authority may not only implicate employer liability, but may reveal that an officer has violated agency rules regarding off-duty behavior.

2.0 Classification of Complaints

Promptly upon intake, it is the responsibility of the Internal Affairs unit to classify the complaint for purposes of determining where, when, and how the complaint will be investigated and resolved. It is helpful to classify complaints into either of two categories: criminal or administrative. A complaint that is criminal is investigated quite differently from a complaint that is administrative. Criminal misconduct may lead to prosecution and jail or prison. An administrative complaint may lead only to internal discipline or other corrective action.

Some agencies break administrative complaints into subclassifications of personnel complaints and service complaints. Personnel complaints address alleged misconduct by an employee. Service complaints address problems in the provision of service not linked in any way to an employee's possible misconduct, such as a complaint that the agency's response times are routinely too long.

Section Topics:

- 2.1 Criminal complaints.
- 2.2 When criminal prosecution is declined.
- 2.3 Internal administrative complaints.
- 2.4 Holding administrative complaints in abeyance during criminal proceedings.

2.1 Criminal complaints. As soon as is practicable, complaints alleging possible criminal misconduct of an agency member should be separated, classified as a criminal complaint, and handled accordingly.

Criminal misconduct is when there is reasonable suspicion to believe that the agency member committed a crime. A decision not to classify a possibly criminal complaint as such should be approved by the unit commander of Internal Affairs or its equivalent or the agency head or designee according to protocols agreed upon with the District Attorney. If that concurrence is verbal, Internal Affairs should reduce it to writing and place it in the file. Declination of prosecution should not be the sole basis for closing the agency's administrative investigation associated with the criminal case.

Because agencies typically have rules making it an act of misconduct to commit a crime, agencies should consider creating rules requiring officers arrested or named as a principal to a crime to report that to their agency's Internal Affairs or to their commanding officer. Consideration should also be given to requiring employees who know that their fellow employee has been arrested or named as a criminal principal to report that fact to Internal Affairs or to their commanding officer.

Commentary

Questions arise whether complaints of excessive or unnecessary force must always be dealt with as a criminal complaint. A suggestion for a resolution of the question is that a complaint that alleges or suggests that an officer's use of force was willfully, intentionally, recklessly, or knowingly excessive or unreasonable should be classified and investigated as a criminal complaint. Some agencies have negotiated agreements over what complaints need to be prosecuted or presented to prosecutors for a decision on prosecution. It is recommended that each agency establish an explicitly codified protocol for the presentation of cases for potential prosecution. Any doubt or uncertainty with respect to a criminal classification should be resolved in consultation with the District Attorney or other local prosecutor.

2.2 When criminal prosecution is declined. An Internal Affairs administrative investigation should be opened to gather facts and determine whether there is sufficient evidence to take disciplinary employment action against an employee who is under investigation for a criminal matter. The declination by a prosecutor to proceed criminally or a dismissal of charges or a not guilty judgment or verdict should not lead to a termination of an administrative investigation given the nature of prosecutorial discretion and the differing standard of proof (beyond a reasonable doubt) and admissibility of evidence in criminal matters in contrast to civil liability or administrative proceedings (preponderance of the evidence). Evidence of an employee's plea of criminal guilt in court should be among the items collected and considered by an agency when conducting an administrative investigation associated with the employee's criminal case.

Commentary

A criminal investigation focuses on whether a crime has been committed and concentrates on the specific actions and mental state of the accused. An administrative investigation of a police officer, on the other hand, should look more broadly at the tactical, strategic, and training implications of a particular incident in conjunction with an examination of whether agency policy was violated. There should be an active administrative investigation of any matter that is also being pursued as a criminal investigation. The degree to which the two investigations should proceed in parallel or not is discussed at section 2.4.

2.3 Internal administrative complaints. A complaint made by an agency employee alleging criminal conduct of another agency employee should be promptly received and processed as a complaint by Internal Affairs. However, an employee's report of another's violation of administrative policies should be handled according to the policies of the agency, which could in many cases reasonably involve a process other than a complaint.

Commentary

That Internal Affairs should handle criminal allegations made by one employee against another is a generally agreed upon procedure. However, the policies and customs of agencies throughout the country concerning the way agency-specific administrative rule violations are handled vary greatly. Philosophies of internal discipline, leadership styles of agency heads, the discretion given to supervisors and commanding officers to determine how employee behavior is dealt with, and factors related to tracking potentially at-risk behaviors affect whether a complaint will ensue.

When determining whether to create a complaint based solely on an administrative agency rule violation, some important considerations which would tend to suggest a complaint include at least the following:

1. The employee has a history of behavior of a kind similar to the instant case.
2. The behavior appears to be invidious discrimination.
3. The act is a breach of ethics.
4. The agency rules require discharge if the allegation is true.
5. No less formal intervention is deemed likely to change the employee's behavior.

Conversely, where the conditions above do not exist and counseling, training, an employee development plan, remedial agreement, or other alternative to traditional discipline seem a reasonably worthwhile option, consideration should be given to dealing with internal matters creatively and without a complaint.

2.4 Holding administrative complaints in abeyance during criminal proceedings. Each agency should create a protocol for determining how to proceed with an administrative complaint while a criminal case based on the same facts is pending.

Commentary

It is common practice to hold an administrative investigation in abeyance during the pendency of a criminal investigation based on the same facts. It is often the desire of the prosecutor that the investigations be consecutive out of concern that compelled statements in the administrative investigation, if not handled carefully, may taint the criminal investigation. On the other hand, consecutive investigations can prejudice the administrative investigation. The time delay has a negative impact on the memory and availability of witnesses. It means that a cloud lingers over the employee for a long time. The longer eventual administrative discipline, retraining, or corrective action is postponed, the less effective and meaningful it will be. Moreover, a lengthy delay undermines public trust and confidence that the agency is efficient and is taking speedy action to remedy police misconduct, thereby increasing public cynicism about law enforcement taking care of its own. If an agency does conduct consecutive rather than concurrent investigations, the agency should keep the complainant informed as to the progress of the investigations on a regular basis.

Some agencies conduct contemporaneous criminal and administrative investigations. To do so eliminates the negative features of consecutive investigations described above. Contemporaneous investigations are more difficult to perform because of the strict necessity of keeping the two investigations separate. Additionally, contemporaneous investigations may involve double interviews of witnesses and a potential for conflicts in the record. Unless otherwise prohibited by law, the facts gathered in the criminal investigation can be shared with those conducting the administrative investigation; the reverse is not necessarily true.

Great caution must be exercised to avoid a compelled statement or the fruits of a compelled statement from leaking into the criminal investigation. To do otherwise risks losing the potential criminal prosecution because of constitutional violations of the privilege against self-incrimination. For example: Compelled statements should not be disclosed during the course of an administrative investigation. Just as in any investigation, it is bad investigative practice to permit witnesses to learn what other witnesses have said. Accordingly, no witness, including other agency officer witnesses, or other subjects, should be allowed to see a subject's compelled statement. And, Internal Affairs investigators should take care when interviewing witnesses, including agency officer witnesses, not to reveal the content of a compelled statement.

Prosecutors have discretion as to how much time it will take to decide whether to proceed criminally. In some particularly sensitive cases, prosecutors have been known to take a year or more to make this decision. In the interim, the internal administrative investigation is neglected. Memories grow stale. Discipline, if any, is long-delayed. Accordingly, some agencies proceed with the administrative investigation, including taking a compelled statement from the subject officer, before the prosecutor has made a decision. The prosecutor's views should be solicited in this regard and a collective decision should be made to best protect the interests of both the criminal and internal investigation.

3.0 Investigation

The guiding principle informing this section of the report is that all complaints made by members of the public and all internal complaints of a serious nature, as determined by the agency, must be investigated. The extensiveness of the investigation may vary from complaint to complaint commensurate with the seriousness and complexity of the case. Some small number may be capable of resolution after a cursory or truncated investigation.

No complaint investigation should be closed or otherwise terminated without the concurrence of the commander of Internal Affairs at minimum.

Internal Affairs should be the guarantor that every investigation undertaken by its agency of its own personnel fulfills its investigative mission. All reasonable steps should be taken to assure that every investigation is free from conflict of interest, bias, prejudice, or self-interest. Accordingly, investigations should, where reasonable and feasible, be conducted by an Internal Affairs unit that reports directly to the agency head or designated immediate subordinate deputy or assistant agency head. Agencies should have a policy to address any instance where Internal Affairs confronts a conflict of interest or believes that it cannot conduct an objective and unbiased investigation, such as when the agency head or Internal Affairs commander is the subject of the complaint.

Whenever it is necessary to delegate certain investigations to the field, Internal Affairs should monitor such investigations for quality and due diligence, and take appropriate action if either is lacking. Internal Affairs should be empowered to remand investigations to the field for further work until Internal Affairs has determined that the investigative quality meets its standards.

The rules and procedures for an investigation must be framed to ensure its integrity, thoroughness, and fairness. To the extent possible under state or local law or existing union contracts, investigations should be prompt and present no opportunities for the fabrication or distortion of testimony or evidence. The rights of officers under law or pursuant to union contracts should be carefully observed. Internal Affairs is responsible for upholding these rights while at the same time ensuring a timely and proper investigation.

In some Internal Affairs units, it is common practice for Internal Affairs to propose a finding to the ultimate decision-maker. Sometimes, Internal Affairs also proposes discipline to the ultimate decision-maker. In those agencies, the investigators are seen as closest to the facts and as professionals best positioned to weigh evidence and testimony. In those agencies, Internal Affairs plays a role in assuring the consistency, accuracy, and appropriateness of the disciplinary process.

In other Internal Affairs units, the role of the investigator is narrowly defined to producing a neutral, objective, and accurate factual summary. In such agencies, the ability of the chain of command or senior executives to act as judge and jury to find facts and impose discipline is highly valued. In such systems, great importance is placed on allowing unit commanders wide discretion over those they supervise directly or indirectly. Furthermore, in those agencies, there is a perceived risk that investigators may lose neutrality and objectivity if they are permitted to recommend findings or discipline.

Both systems have advantages and disadvantages. Either can be effective as long as Internal Affairs is required to produce a report containing all relevant and unbiased information needed to fulfill the agency's mission for the case.

Section Topics:

- 3.1 "Complete investigation" defined.
- 3.2 Frequent or chronic complainants.
- 3.3 Special needs of criminal investigations.
- 3.4 Cases Internal Affairs should investigate.
- 3.5 Cases Internal Affairs should relegate.
- 3.6 Recommendations for time limits.
- 3.7 The use of administrative leave.
- 3.8 Electronic recordings of interviews.
- 3.9 Standards of investigative report quality.
- 3.10 The use of a chronology.
- 3.11 Agencies should consider using compliance audits.
- 3.12 Response to, and review of, lethal-force investigations.
- 3.13 Lethal-force investigations: interviews and evidence.
- 3.14 Investigations during lawsuits.
- 3.15 Post-resignation investigations.

3.1 “Complete investigation” defined. A preliminary investigation should encompass an effort to gather key statements or evidence if reasonably attainable. The goal of a preliminary investigation is to determine if the complaint should be further investigated and, if so, by whom.

A “complete investigation” is one which includes all relevant information required to achieve the purpose of the inquiry. A complete investigation is not necessarily exhaustive. There are many inquiries where a good faith professional judgment determines that sufficient relevant evidence of all points of view has been acquired, and where collecting more information merely would be cumulative.

One should expect of a complete investigation that a competent adjudicator will be able to make a finding without resorting to surmise, prejudice, or assumption of facts at issue. A complete investigation should take place where the allegations, if true, would likely result in formal discipline. Likewise, a complete investigation should be considered if it appears from a preliminary review that an agency’s policy, standard, or training may be a factor in unintended consequences apparent in the complaint.

Any decision not to proceed to a complete investigation should be made by the commander of Internal Affairs with a written explanation included in the file. Nonetheless, a small number of complaints will allege facts that defy science and reason and accordingly do not merit more than cursory investigation and should be closed with a finding that the complainant’s claim was impossible to investigate because the allegations were physically, logically, or technically impossible under any reasonable construal. An example of such a claim would be that an agency’s space satellite is continuously piercing the complainant’s brain with laser beams, or that the agency’s employees are stealing her internal organs from her every time she goes to the market. Complaints closed in this manner should be reviewed by the commander of Internal Affairs as a check against improper closure.

Commentary

Rules for complaint processing vary dramatically and for many reasons. Arriving at exactly one process applicable to all agencies in all cases appears to be impracticable. In general, agencies have to consider how much decision authority they are willing to repose in each part of the process, how much oversight they want to create to monitor the results of the exercise of that authority, and what counts as a complete investigation given at least the factors described above.

3.2 Frequent or chronic complainants. Some complaints are lodged by frequent complainants whose previous complaints have uniformly been found to lack a basis in fact. These complaints should not be summarily closed. A preliminary investigation, however, may be satisfactory to establish that the current complaint lacks a basis in fact or is a duplicate of facts alleged in another complaint. The complaint should be closed with a finding that there was no basis of fact or that it was a duplicate, after review by the Internal Affairs commander.

Commentary

So-called chronic complainants should not be dismissed out-of-hand. Persons who make unfounded reports on some occasions may accurately report misconduct on another. The predicament this creates can worsen as the number of unfounded complaints increases or the allegations become more dangerous if true. The following is a reasonable strategy to consider.

Where the number of unfounded complaints has gone beyond what is reasonable (20 or so within a year, for example), determine whether a pattern exists of reporting events that are one-on-one. If such a pattern exists, consider doing recorded covert audits of the complainant or of officers against whom the complainant has made allegations. If well-planned covert audits show that either the complainant lies or that the officers behave properly, these results should be considered when receiving future complaints from the same person. This is obviously very resource-intensive and, in fact, may be beyond the resources of some agencies. But it can be a resource saver if the complainant has become an extraordinary burden.

Other creative strategies should be sought. The point in creating a strategy to deal with a chronic complainant is to be reasonable about the strategy and its expectations, recognizing that whether every complaint is investigated exhaustively or each is handled as a merely patterned report, the agency assumes a risk of either wasting important resources or missing a true report among the noise of the false.

3.3 Special needs of criminal investigations. A criminal investigation of an agency employee, particularly one involving a felony or crime of moral turpitude, is so serious that an agency should consider extraordinary measures to ensure that the investigation is as thorough and independent of conflicts of interest as possible. Ideally, an Internal Affairs team trained in criminal investigations would handle such cases and answer only to the agency head or designee. If Internal Affairs does

not have a criminal investigation team, another team of investigators should be selected for its objectivity, integrity, and skill to handle the case, and the team should answer only to the agency head or designee for the progress and findings of the case and determination of filing charges. Having investigators from the supervisory ranks would be desirable to avoid conflicts of interest, as would having investigators from a chain of command outside that of the accused employee if the accused is a supervisor or manager.

Commentary

Internal Affairs units typically report to the agency head or designee and thus have certain independence. In some agencies, there is a specialized unit within Internal Affairs dedicated to criminal investigations. In other agencies, certain criminal investigations are handled outside of Internal Affairs by a detective or homicide unit, particularly in cases of officer-involved shootings. In yet other agencies, the District Attorney may have investigators who conduct some or all criminal investigations and may present a matter to a grand jury. In some instances, an agency might ask another agency, such as the FBI, or an independent prosecutor, or a blue ribbon commission to conduct an independent, outside investigation or to monitor an internal investigation. From time to time, it has been proposed that certain sensitive investigations be conducted by a specially appointed independent prosecutor.

The goal in all instances is to ensure that the case is properly investigated and presented to the District Attorney for filing consideration. Further, the degree to which the public and the agency respect the conclusion of the case depends greatly on the agency's choice of investigative process and personnel.

3.4 Cases Internal Affairs should investigate. Internal Affairs should conduct all serious administrative investigations, including but not limited to officer-involved shootings, in-custody deaths, alleged constitutional violations, allegations of racial profiling or discriminatory policing or racial prejudice, dishonesty, drug use, sexual misconduct, cases handled for other jurisdictions, interagency cases, and cases referred directly by the agency head or command staff. Internal Affairs should also conduct all administrative investigations of allegations of misconduct that are likely to result in litigation against the agency or its members. Unless there is a specialized unit to handle internal complaints by employees of discrimination, sexual harassment, and other unlawful employment practices, Internal Affairs should conduct such investigations.

Internal Affairs should investigate all allegations of misconduct of command-level personnel with the exceptions of allegations against the agency head or in any instance where there is an apparent conflict of interest. A complaint against the agency head should be investigated by expert investigators outside the agency acquired by and operating under the auspices of the authority responsible for appointing the agency head.

Commentary

Certain internal investigations are sufficiently serious that they should be conducted by the Internal Affairs unit in order to produce an objective and competent investigation which the general public and members of the agency will accept as trustworthy and credible. Some smaller agencies without a full-time Internal Affairs unit should consider contracting with an independent external investigator on a case-by-case basis. So, too, should a larger agency to avoid actual or perceived conflicts of interest.

3.5 Cases Internal affairs should relegate. Investigations of less-serious allegations of misconduct by the rank and file should be conducted by investigators where the agency believes the investigations can be properly done. Complaints alleging simple discourtesy or rudeness, without any suggestion of discrimination against a particular person or group, could be investigated at the unit level. Similarly, complaints by the public regarding traffic citations and traffic enforcement could be investigated at the unit level. Internal or external allegations of minor infractions of agency regulations or policies, preventable traffic collisions, or minor performance issues also are appropriate for investigation at the unit level. Alleged excessive or unreasonable minor uses of force not involving death, serious injury, or hospital admittance or willful, intentional, reckless, or knowing misconduct may be appropriate for investigation at the unit level.

Internal Affairs should monitor field investigations for quality and due diligence, and take appropriate action if either is lacking. Internal Affairs should be empowered to remand investigations to the field for further work until Internal Affairs has determined that the investigative quality meets its standards.

Commentary

Because many investigations do not require the expertise of Internal Affairs investigators, assigning those investigations to the employee's chain of command for unit-level investigation can be an excellent resource saving. It can also reveal to an employee's chain of command information about the workplace and personnel that they would not

know if they were not investigating the complaint. This benefit is often missed in assessing who will investigate a given complaint but should be seriously considered. Given that command officers and supervisors are accountable for their commands and their people, they should also be among the first to see complaints and get the first opportunity to act as leaders in resolving performance and behavior problems.

The absence of investigative expertise of local chain-of-command investigators can cause problems, however. Without the training and experience of Internal Affairs, local investigators may not produce the quality needed to fulfill the investigative mission. Time commitments to conduct administrative investigations by field supervisors may conflict with their primary responsibility of field supervision.

It is possible that the command officers in a chain of command can oversee such investigations adequately and remand for improvement substandard investigations. Yet consideration should be given to having Internal Affairs be the final judge of investigative quality with the final decision-making power to return to the chain of command substandard investigations for improvement. An advantage to having Internal Affairs manage investigative quality control is that it is most likely to provide increasing consistency and quality. Another advantage is that Internal Affairs' review of all complaints can reveal trends of investigative or leadership deficiencies that Internal Affairs can help resolve through agency-wide training.

3.6 Recommendations for time limits. Completion of Internal Affairs investigations should occur as rapidly as is reasonably necessary to fulfill the investigative mission. In all instances, however, an internal investigation should be completed within a reasonable time before any applicable statute of limitations or other bar to officer discipline has run out. It is preferable to conclude investigations within 180 days.

Commentary

Given localized statute requirements and wide variation in personnel and financial resources available to devote to Internal Affairs investigations, a specific, global standard for all agencies stating the time by which an internal investigation should be concluded is not feasible. Agencies with more limited staffing may, in good faith, require a longer duration of time for completing an investigation.

Statutory limits on investigative duration should be the minimum standard. Consideration should be given to the broader principles of the policy. It is valuable, for example, to complete investigations promptly

out of respect to employees, recognizing that they suffer stress awaiting the disposition their case. It is also valuable to the development of public trust when citizens are notified that their complaints have been investigated promptly. There is value in taking swift corrective action to help a wayward employee avoid further problems. An agency can exploit the opportunity inherent in an investigative duration policy to enunciate broader principles which at once inspire prompt investigations and inspire respect for people.

3.7 The use of administrative leave. During the pendency of an internal investigation, an agency may place involved officers on administrative leave or reassignment should they be determined to pose a risk to themselves, the agency, or the community; should their presence become disruptive to the successful completion of the investigation; or if the agency determines that termination is likely.

Commentary

There often are legal restrictions on whether an agency can suspend with or without pay, reassign, remove peace officer's powers, or take other actions to prevent a peace officer under investigation from becoming a threat or liability during an investigation. While taking such actions may well be within the agency's management rights, no decision should be executed without reasonable justification. This standard helps protect the agency not only from legal attack, but forces the agency to avoid knee-jerk reactions to embarrassing or politically frightening events. It also helps avoid conflicts with labor unions. Finally, using a reasonable justification standard can show that the agency is as respectful of the law as it expects its employees to be, a notion that can accrue to the credibility of the agency's investigative conclusions.

3.8 Electronic recordings of interviews. Electronic recording of the live, word-for-word statements of all interviewees, including accused employees, is the best way to avoid interpretive errors in recounting statements. Except in covert operations, all recordings should be done with the full knowledge of everyone involved, with a lead-in statement by the primary investigator announcing the date, time, and location of the interview as well as the names and titles of everyone present. Asking each person in the interview room to self-identify can be helpful to auditors, stenographers, or others who may need to listen to the recording later and know who is talking.

Telephone interviews, for the same reasons, likewise should be recorded, with the understanding that privacy laws usually require explicit notice to all participants that the phone conversation is being recorded.

E-mail interrogatories are occasionally an option because the e-mails themselves become verbatim electronic records. They are most useful when the questioning to be done does not anticipate much follow-up. To use e-mail interrogatories successfully it is important to ensure that there is a means of authenticating the identity of the sender and the receiver, such as using only agency e-mail addresses where policies and practices prohibit employees from permitting access by persons other than the intended user.

Commentary

Whether an agency transcribes, summarizes, or paraphrases witness statements, electronic recordings are the best means of testing the accuracy of written accounts of interviews. As a form of quality and integrity control, audits comparing electronic recordings with written statements should be at least done randomly. Where variances are found, the cause should be determined and quickly cured. An investigator whose written statements vary often or greatly from the electronic recordings should be trained or removed as an investigator: the cost of allowing interpretive error or intentional misstatement can be of significant harm to the agency's integrity or reputation.

The question about whether video recording should be done occasionally arises. Practically it is more intrusive, more difficult to do in small areas, may require special lighting to be successful, and often requires special training to implement well. It is not necessarily more effective than pure audio recording in capturing all that is said.

One method of using video recordings that can be seen as helpful to both labor and management is in cases where the interviewee is being video recorded pointing to positions on a map, objects in a room, or otherwise physically re-creating an event that cannot be done fully in just words. When a video recording is done in good faith only for the purpose of creating an ostensive record that could not be created merely through audio, video recording can help the witness explain his account more richly so the investigators understand it more fully.

Absent exigent circumstances, as restricted by law or contract, agencies should give employees a reasonable amount of advance warning before an administrative interview in order for such employees to secure union or legal representation should they want it. Unless provided by law, an employee is not automatically entitled to any specific information or evidence prior to an interview or interrogation, though an agency may choose to make some information available to an employee and his or her representative prior to an interview or during an interview on a case-by-case basis.

Questions asked during the interview should be open-ended and non-leading. Those conducting interviews should take care not to formulate instantaneous credibility assessments that might bias the investigation. Investigators should receive ongoing training in interviewing and fact-finding techniques. Investigators should thoroughly cover in each officer interview what information concerning the incident the officer discussed or received from other officers or outside sources.

3.9 Standards of investigative report quality. The documentation of investigations must be thorough, complete, and as comprehensive as reasonably necessary. Using standardized forms or formats helps in quality control, evaluating comprehensiveness and sufficiency of content, consistency, and in recordkeeping.

Commentary

Knowing when an investigation is “as comprehensive as reasonably necessary” is the most basic but often the most difficult task of the investigation. At the least, the investigation has to answer the questions posed to it by the allegations. Beyond that, professional training, experience, and the resulting professional judgment governs at least part of the determination of investigative depth. Furthermore, the report should provide the decision-maker with enough information to arrive at a well-based finding.

Investigative Report Standards

To achieve the investigative mission, each investigative report should meet these minimum standards:

1. All allegations are clearly stated and clearly answered.
2. All relevant facts bearing on the truth of each allegation are clearly stated.
3. All evidence (e.g., photos, recordings, etc.) is included or its means of retrieval specified.
4. Contact and identification information for all persons interviewed and for the investigator(s) is included.
5. The report is impartial, with no bias for or against any party.

Beyond minimum standards, consideration should be given to assessing report quality according to at least these standards:

1. The report is logically organized with the aim of helping the reader understand it.
2. Its language is clear, and where special terms of art are used, they are defined. The reader should not have to presume or guess the meaning of a term.
3. It avoids conclusionary statements wherever possible.
4. Sentences and paragraphs are direct, simple, and easy to understand, using the fewest words to clearly convey the point.
5. Estimates of time, distance, or other quantities should be as precise as reasonably useful, but need not be precise beyond that.
6. Unless explicitly permitted by agency policy, personal opinions should be avoided. If they are permitted, they should include explicit evidence to support the opinion.

Standardized Forms

Standardized forms and formats have advantages and disadvantages. Basic forms, such as the intake complaint form, fare well having essential information required on them, such as names, dates, locations, contact information, etc. Formats for the investigative narratives and adjudication documents can also be helpful in creating a template for investigators and agency auditors to use to ensure that crucial information is included and is adequate. Consideration should be given to allowing some variation in formats so that information not ordinarily included can be if it needs to be. Simply adding an optional heading of “Additional Information” into any format can achieve this.

Each investigative report should contain a detailed, comprehensive summary. Although the summary should be impartial, it should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.

3.10 The use of a chronology. Internal Affairs should track and maintain a chronological log of all internal investigations. A log of the investigation serves to preserve and maintain a history of the investigation and a means to keep track of the various parts of the investigation.

Commentary

A sound investigative practice common to investigations includes the use of a chronological log in which investigators make entries as they advance their investigations. Such a log would typically have entries of the dates, times, and contact information of each person the investigators called, interviewed, or attempted to call or interview. The log would include dates/times/contact information when items were sent for analysis. Any event that would evince investigative due diligence should be logged, particularly in jurisdictions with statutes of limitations or where complaint investigations are subject to discovery in legal proceedings.

Logs allow supervisors to determine the effectiveness of their investigators and also helps other investigators take over a case when the original investigator is on leave or is removed from the case. Whether to exhibit and track due diligence or to ensure investigative quality and continuity, a chronological log is a simple, effective investigation management tool that takes little time but offers great benefits.

3.11 Agencies should consider using Compliance Audits.

A Compliance Audit is a live test to determine whether policies are being followed. For example, a Compliance Audit of an agency's policy to document all complaints could be done by having someone call in a complaint and later see if the complaint was documented. Sending a letter alleging misconduct to the agency and determining whether a complaint was produced would also be considered a Compliance Audit.

Another example of a Compliance Audit is one in which undercover officers, or operatives, unknown to the on-duty officers pose as citizens, victims, or suspected criminals to determine how on-duty officers treat the public in various controlled conditions. These typically are video- or audio-recorded and include a substantial support team to ensure the secrecy of the operation and the safety of everyone involved. Compliance Audits can be quite complicated and resource-intensive, and typically require skilled, experienced undercover operators intensively overseen by supervisors with similar experience and skill.

Commentary

Where an agency has the resources to conduct them, Compliance Audits can help the agency detect misconduct before the misconduct is complained of by the public. Compliance Audits can also help pinpoint weaknesses in systems, policies, or personnel before anyone is ever accused of misconduct. Conversely, where well-done Compliance Audits continually show that the agency's personnel and policies are working

well, this information can be useful in defending against pattern-and-practice lawsuits, and can argue against some deliberate indifference claims by plaintiffs.

The use of Compliance Audits lets the public know that the agency takes its integrity seriously. While the specific details of each Compliance Audit should be kept secret to avoid compromising tactics or methods that may be used again, publicizing the fact that an agency conducts Compliance Audits can help inspire public trust, especially in jurisdictions with a history of reputed abuses by agency officers.

Compliance Audits give agency employees the understanding that they are not above testing, helping to keep honest people honest. This is not always received well by employees, however. In some agencies, the advent of Compliance Audits brought complaints from labor unions that management was out to get their members or that employees would stop working for fear of being caught up in a poorly designed or poorly executed audit. Such comments have some merit, insofar as agencies who design and execute their Compliance Audits in bad faith hoping merely to prove their worth by catching someone risk the very problem some unions have claimed: employees may simply slow or shut down to avoid getting caught in a bad-faith trap.

One way of avoiding the worst of the employee relations problems created by Compliance Audits is to design them so that an employee acting reasonably, albeit not perfectly, would not suffer significant penalty for an error. If Compliance Audits are set up to ascertain ethical integrity, careful consideration should be given to whether some minor infraction would even be mentioned outside the Compliance Audit unit. If employees continually get penalized for minor infractions in Compliance Audits designed to catch corruption, Compliance Audits can be sources of employee bitterness. But if the only products of Compliance Audits are the detection of acts which are universally known to be egregious, the Compliance Audits will gain a reputation for catching only those whom everyone knows should be fired.

It is not trivial to ask whether, in a Compliance Audit, an employee should be rewarded when caught doing the job well. In one large agency, employees receive a commendatory document when they have not merely passed an audit, but have done an exemplary job. These commendations are not handed out often, but when they are, they are issued months after the event, the facts are not specified, and the date of the Compliance Audit is not given so as to avoid having the employees detect the undercover operators and their methods and expose them later.

Unit Leadership and Confidentiality

The selection of the Compliance Audit unit leader is crucial, as the judgment of the leader in setting up and responding to employee behaviors in the Compliance Audits is crucial to the reputation of such audits throughout the agency. The Compliance Audit unit leader should operate under, and be able to speak confidentially with, the agency head or the Internal Affairs commander to ensure that his judgment and actions remain consonant with agency doctrine. The leader would also have to have a high level of skill in selecting the right people for the unit and quickly removing those who are not right.

The practices and methods of Compliance Audits are beyond the scope of this document. But agencies seriously considering the creation of a unit to perform these kinds of integrity checks should spend the time to research the units of large agencies with expertise in the complexities of establishing and running them (such as New York Police Department and the Los Angeles Police Department). The smaller the agency, the more difficult it is to create such units without the use of personnel from other agencies because with agencies small enough for everyone to know each other, there is no anonymous undercover pool from which to pick. A solution is to collaborate with other agencies to bring in unknown undercover officers to perform Compliance Audits if the protocols, methods, and tactics are well-designed and universally applied. A written memorandum of agreement or similar document signed by and trained through all involved agencies can be extremely useful when interagency personnel exchanges are involved, especially if the agencies are from different government levels (e.g., state and local, or local and federal).

3.12 Response to, and review of, lethal-force

investigations. All officer-involved shootings targeting or striking a human being, all in-custody deaths, and all serious uses of force as defined by the agency should generate an immediate response to the scene and an investigation conducted by Internal Affairs, or a team of investigators with special training in the investigation of officer-involved uses of deadly force, regardless of whether a complaint will be filed.

An administrative review, independent of any complaint, of a shooting, in-custody death, or serious use of force should consider the strategic, tactical, policy, training, and risk management implications of any such incident, including whether changes to policy, procedures, equipment, or training might mitigate the effects or reduce the number of similar incidents in the future.

To encourage the greatest degree of candor and revelation and to the extent permitted by law, the review should be handled as a confidential self-critical analysis and should occur in each case regardless of whether there criminal or disciplinary charges are made.

Commentary

There are multiple, concurrent purposes for an agency's investigation of its officers' serious use of force as defined by the agency. First is to determine whether the officer used force lawfully. Next is to determine whether the use of force was within agency policy. Finally, the investigation offers the agency a unique opportunity to review every feature of its personnel, policies, training, and other organizational practices that affect or are affected by officers' serious use of force.

Question of Lawfulness

An investigation that fails to provide the necessary relevant facts to allow a prosecutor to correctly determine whether the officer's use of deadly force was legally justified has failed its investigative mission. The public and the agency's officers expect that at minimum every agency will investigate to provide sufficient evidence to either prosecute the officer or to clear the officer of criminal liability.

Question of Procedural Compliance

A serious force investigation should provide enough evidence to determine whether the use of force complied with agency rules. In cases of agency rule violations, it can be helpful to the employee and the agency to have facts clearly stated in a report so that the internal follow-up actions will be properly justified and understood. An investigation that comprehends both the legal and procedural considerations is optimal.

Self-Critical Analysis

A serious use of force rigorously and candidly examined as a confidential self-critical analysis can be viewed as a research project with the aim of determining agency best practices throughout its systems, policies, and personnel by studying successes and failures in their real-world implementation. A serious use of force is a real-world test not only of that agency's organizational rules and systems, but can be a test of the theories and principles underlying them. There are few opportunities like officers' serious uses of force where so much can be learned from the exhaustive investigations typically conducted and expected.

It is important to consider that those who conduct such post-event analyses should include those in training, risk management, and all other agency units where the agency can draw on expertise to contribute to the discussion and analysis. The agency should seriously consider including not just high-ranking policy makers in these self-critical analyses, but also the practitioners at the lowest levels of the organization who know exactly and really what is taught and performed in the field. Outside experts can occasionally be helpful in this regard for special circumstances or questions beyond the expertise of the agency's personnel. In all cases the participants should be explicitly held to a standard of confidentiality such that the content of the discussions are not released to anyone but the agency head or designee.

3.13 Lethal-force investigations: interviews and evidence. The process of investigating an agency member's use of lethal force requires an extraordinary degree of attention to capturing and recording the statements of each participant and witness independently, accurately, and as soon as conditions allow.

Commentary

Given the disparity in the law across the country, in this section and throughout this document, agencies are best advised to consult with legal counsel about the applicable rules before implementation.

Unless otherwise required by law and without regard to whether the investigation is conducted by Internal Affairs or another specialized unit involved, witness officers should be physically separated as soon as possible to avoid even the appearance of collusion. Likewise, members of the agency either involved in or witnessing the critical incident should be ordered not to discuss the incident among themselves until after interviews of all involved agency members have been concluded and the employees have been explicitly authorized to discuss the matter. Where law permits, the officers should be compelled to submit to a comprehensive, electronically audio-recorded interview by agency investigators as soon as is practical and reasonable. Except for the Public Safety Statement (see below), members who were involved in or witnessed the incident in question should be permitted a reasonable amount of time to consult individually with legal counsel or a labor representative telephonically or in person before providing an interview with agency investigators. For some agencies, a "reasonable amount of time" can be as much as 3 to 5 hours or more. The point is to balance the employees' right to representation with the agency's responsibility to conduct its investigation without deleterious delay.

To prevent incidental collusion, members involved in or witnessing the incident should not be permitted to consult with legal counsel or labor representatives collectively or in groups: for example, two or more members should not be consulting in a group together at the same time with the same lawyer or labor representative.

Public Safety Statement

A Public Safety Statement is a statement made by an agency member involved in a lethal-force incident to a first-responder supervisor who was not involved in the incident, the purpose of which is to enable the supervisor to determine what immediate action is needed to find and protect injured persons, identify and apprehend the suspect, locate witnesses, protect the scene and its evidence, identify witnesses, and otherwise manage the emergency. Where the law permits, an agency employee is ordered to give the statement and is not permitted to await representation or refuse to make the statement. The first—or at least one of the first—uninvolved supervisor on scene orders the Public Safety Statements as soon as possible as part of his or her emergency management duties, and ideally would note the information to avoid error in the transmission of the information if needed. Once the emergency and tactical matters have been resolved, questioning of the officers is no longer part of the Public Safety Statement. Below is a set of questions one agency expects first-responder supervisors to ask in their Public Safety Statement transactions:

1. Were you involved in an officer-involved shooting?
2. How many rounds did you fire and in what direction did you fire them?
3. Where were you when you fired them?
4. Did any other officers fire any rounds? If so, whom, and where were they when they fired?
5. Is it possible the suspect fired rounds at you? If so, from what direction were the rounds fired?
6. Are there any suspects outstanding? If so, describe them, their direction and mode of travel, and how long ago they left. What crime(s) are they wanted for? What are they armed with?
7. Is anyone injured? If so, where is he or she?
8. Who witnessed this? Where can we find them?
9. Are there any weapons or evidence that need to be secured and protected? If so, where are they?

Once the emergency is resolved to a static protected scene, the involved employees are ordered not to discuss the incident with anyone except the investigators or their legal representative.

The answers to the Public Safety Statement questions help determine where unseen victims might be: asking where the rounds were fired, for example, allows an immediate area search for places outside the limited shooting scene where stray bullets could have struck bystanders in their homes. Knowing the armament, description, and flight mode of a suspect have obvious emergency utility. All the questions are designed to acquire crucial emergency information without the delay or depth of information formal interviews require. That is why, in many jurisdictions, the Public Safety Statement is compelled. If officers were allowed to remain silent, human life could be lost or harmed and criminal evidence could be compromised or lost.

The investigation team should participate in all scene walk-throughs with involved or witness officers. The practice of some investigators to conduct unrecorded “pre-interviews” of officers or witnesses prior to formal, electronically recorded interviews should be discouraged, but the practice of some agencies to solicit and obtain voluntary statements from officers should be encouraged.

In those agencies conducting contemporaneous criminal and administrative review or investigation, the criminal and administrative investigators should be empowered, should they choose and to the extent practicable, to conduct joint criminal-administrative interviews of all witnesses, including interviews of members of the agency and the general public. Similarly, where law permits, administrative investigators should be empowered, should they choose, to take a compelled statement from the subject officer or officers before or after the criminal investigation as long as great care is taken not to contaminate or compromise the criminal investigation. In any event, the electronic recordings from the criminal interview and, if possible, a transcript of them should be provided to the administrative investigators as soon as practicable.

In addition to documenting statements, sound investigative practices include the prompt seizure, preservation, and characterization of physical evidence and the most accurate depiction of the scene, its physical dimensions and the positions of all items of physical evidence relative to the time and place force was used.

3.14 Investigations during lawsuits. Each agency should decide as soon as practicable in each case whether the complaint investigation will be completed before or after a lawsuit on the same set of facts is concluded. Because the possible financial, legal, or political consequences of the decision could be extraordinary, the decision should be made by the agency head or designee.

Commentary

It is common in some agencies to hold an administrative investigation in abeyance during the pendency of civil litigation arising out of the same set of facts. Defense counsel fear conflicts in testimony between administrative interviews and deposition or trial testimony. Defense counsel also worries that the imposition of administrative discipline or a finding that a given officer's actions were out of policy or unjustified will prejudice the outcome of the civil litigation.

On the other hand, completing an internal investigation in as timely a manner as is reasonable, regardless of outside legal proceedings, helps the agency promptly find, and if necessary, resolve the questions or problems underlying the civil claims. The negative aspects of consecutive criminal and administrative investigations apply with equal force: witnesses' memories fade or the witness becomes unavailable; a cloud hangs over the head of the employee; eventual discipline, retraining, or corrective action is less meaningful with the passage of time; and the credibility of the agency in dealing with misconduct is undermined. Accordingly, some agencies proceed with the administrative investigation, including taking a compelled statement from the subject officer, before the civil litigation is final. The views of the agency's defense counsel in this regard should be solicited but should not necessarily be controlling.

Civil discovery and trial may create a fuller and more complete record than typical administrative investigations. Agencies should review, and consider reopening, an internal investigation if the result of litigation contains new information indicating misconduct.

3.15 Post-resignation investigations. Even if an employee resigns, consideration should be given to investigating the complaint as if the employee were still employed.

Commentary

The decision to complete the investigation of a complaint against an employee who has resigned is complex. The decision includes, but is not limited to, resources, local employment ordinances, interagency cooperation, agency self-critical analysis, and public confidence.

Resources

Continuing the investigation of a resigned employee could consume resources that might be needed elsewhere. Particularly if the investigation involves many witnesses, extensive travel, the resource-consuming retrieval or storage of evidence, the use of investigators who have other pressing cases to work on, or other situations taxing the agency's Internal Affairs resources, resources could be a legitimate factor in deciding whether to pursue a post-resignation case.

Local Employment Ordinances

The hiring/rehiring practices (including collective bargaining agreements) of many agencies are often determined by the ordinances of their local government. These may include rules requiring the rehire of previous employees unless there is documentation of reason to reject the rehire. "Reason to reject" standards can differ among jurisdictions, and an agency choosing not to complete the complaint investigation may be forced to rehire a bad employee because of it.

Interagency Cooperation

Because agencies often hire each other's personnel, a potential employer may end up hiring a bad employee for want of good information in the candidate's prior agency file. If an employee were to resign in lieu of termination and seek employment elsewhere, the agency he seeks to get hired by may not be able to determine his worthiness for hire if the agency he left did not finish the complaint investigation. If the practice of not completing investigations were widespread, agencies would find it more difficult to reject questionable prior-service applicants.

There are other means to determine whether an applicant has been a problem to a previous employer, and it is not necessarily the duty of one employer to protect potential employers from hiring mistakes. Yet as homeland security draws law enforcement into more sophisticated information-sharing relationships of all kinds, the question of how to document and share information related to the conditions in which an employee left an agency may become more important. It is not hard to imagine communities of agencies, particularly those likely to draw from the same employee pool, creating pacts or memoranda of agreement just for information on terminated or resigned employees. Such agreements could help prevent dangerous hiring errors, even a scenario in which a problem employee resigns upon accusation of passing unauthorized information only to find easy access to hiring at another agency.

In short, whether an agency completes a complaint investigation or not on an employee who has resigned, each agency should consider the benefit of developing local agreements to help determine the protocol for each agency's response to a resigned employee's complaint.

Agency Self-Critical Analysis

Information gained from a complaint can teach an agency about its policies, personnel, and activities that it may not learn otherwise. The careful leader will examine the complaint—wherever it is in the process when the employee resigns—for possible insights that might be gained if the complaint investigation were comprehensively done. An intuitive question such as, “What would make an employee feel like she could get away with this?” may lead to insights about the state of your field supervision or your agency's training. The answer to the question, “How did this supervisor harass this person for so long without anyone reporting it?” could lead to insight into the state of your discrimination enforcement practices. These kinds of questions do not require any more than common inquisitiveness and are well within the skill set of most agency managers.

Public Confidence

To complete the investigation reassures the public and agency employees that all complaints are taken seriously and provides the necessary safeguards to ensure a truthful outcome.

4.0 Mediation, Adjudication, and Disposition

Once a complaint investigation is completed, the agency has to determine what it will do with it. The agency also has to determine what it will do with the employee at the conclusion of the adjudication. This section explores the pathway and some of the most important considerations of that process.

Section Topics:

- 4.1 The four basic resolution categories.
- 4.2 The value of considering commanding officers' options.
- 4.3 Proposed reporting relationship of the head of Internal Affairs.
- 4.4 Standards for adjudication.
- 4.5 Penalty assessment and the use of a penalty matrix.
- 4.6 The advantages of mediation and the conditions of its use.
- 4.7 Settlement agreements and their value.
- 4.8 Exploring alternatives to traditional discipline.
- 4.9 Keeping investigations confidential.
- 4.10 Guidelines for selecting and retaining Internal Affairs investigators.

4.1 The four basic resolution categories. The findings in completed investigations should result in one of four resolutions: 1. sustained or founded; 2. not sustained or not resolved or unresolved; 3. exonerated; or 4. unfounded. Some unique state or local laws may require the addition of further categorical distinctions for some limited special circumstances.

Commentary

In general terms, a “founded” or “sustained” adjudication means that the allegations are true by a preponderance of the evidence and that the conduct at issue is a violation of agency rules. An “unfounded” adjudication means that the allegations are not true. A “not resolved” or “unresolved” or “not sustained” adjudication means that the allegations cannot be proven true or untrue by a preponderance of the evidence. “Exonerated” means that the conduct at issue occurred but is not a violation of agency rules.

Dispositions other than the basic four recommended above can be useful in categorizing outcomes that do not fall neatly into the basic four. One agency, for example, uses a disposition of “Actions Could Have Been Different” to depict a situation where the employee’s actions were less than ideal but were not misconduct. The disposition includes check boxes to indicate what measures were taken to improve performance, including “Counseling,” “Training,” etc. While such a disposition has shown useful in the agency, it is based on that agency’s broader disciplinary scheme, which may not apply to many others. Further, even that agency still also uses the basic four dispositions above.

Another reason to consider additional dispositions arises for agencies that use intelligent data systems to monitor employee conduct. The basic four dispositions are generally informative when assessing an employee’s discipline history, but increasing the information resolution or granularity of a tracking or “early intervention” system’s input can also improve the quality of decisions based on it. The more descriptive the dispositions, the more the decision-maker knows about the employee and the greater the decision space for the agency’s leaders.

If an agency chooses to use case dispositions beyond the basic four, it should do so carefully, employing only those that have a clearly defined function in its personnel processes. This is particularly true for agencies with data-driven employee monitoring systems. When doing annual agency- or unit-wide analyses for trends, results are less useful if disposition categories change often because comparisons are not

identically matched. Adding new disposition categories is like adding any other new field to a data system: it takes time to acquire enough events to produce a meaningful comparative dataset, and the smaller the number of new entries, the longer it often takes to derive meaning from them.

4.2 The value of considering commanding officers’

options. The recommendations of commanding officers and their chain-of-command superiors regarding the adjudications of cases and the actions taken regarding the accused employees should be considered by the final deciding authority.

Commentary

Commanding officers have an important interest in administrative actions involving their employees. Commanding officers typically have more knowledge of their employees than does the agency head, including their histories and reputations in the unit, the employees’ workplace environment, and sometimes their personal lives. Commanding officers have to continue cultivating their employees and their relationships with agency members and the public long after the cases conclude. The insights and interests of commanding officers could be important considerations in the determination of final case dispositions.

Involving commanding officers in the decision-making process can also be an opportunity for the agency head to mentor and develop the leadership and management acumen of their commanding officers, while in the same transactions learning from managers about conditions in the agency they might otherwise not know.

4.3 Proposed reporting relationship of the head of

Internal Affairs. The head of Internal Affairs should preferably report directly to the agency head. If a direct reporting relationship is not feasible, the Internal Affairs commanding officer should nonetheless have prompt, unrestricted, and confidential access to all agency executives, including the agency head.

Commentary

For purposes of independence, confidentiality, direct and unfiltered discussion, and some freedom from institutional politics and pressures, the head of Internal Affairs should report directly to the agency head. The role of Internal Affairs is too vital to the integrity of the agency to risk message transmission errors, misinterpretations, or personal biases that would interfere with the agency head’s clearest understanding of cases and their contexts.

4.4 Standards for adjudication. Adjudicators within the agency should use neutral and objective criteria, weigh evidence appropriately to distinguish strong evidence from questionable or less material evidence, and not indulge in presumptions that bias the findings of fact. The rationale for each adjudication should be in writing, and clearly related to the conduct, the employee, and the agency's rules.

Commentary

Minimum standards for adjudication of disciplinary cases include the following:

1. The burden of proof is on the agency.
2. The standard of proof is a preponderance of the evidence.
3. The standards of evidence are those of administrative law, not criminal law.
4. No presumptions of truth are made regarding facts in dispute.
5. No presumptions are made regarding witness credibility: all persons are equally credible unless an objective, fact-based evaluation of the witness's capacities, testimonial coherence, and other relevant and demonstrable factors justify otherwise.
6. Conclusions are logically deduced from the evidence.

A thorough review of adjudicative standards would exceed the scope of this report and would more easily be found in legal reference works or state jury instructions on assessing evidence and testimony. Nevertheless, an adjudication lacking in any of the six standards above should not be considered properly justified.

In weighing evidence, facts revealing a pattern of conduct should be considered. Where there is evidence that an employee has been accused of the same act before in other cases involving other independent complainants, the adjudicator may have reason to believe that the currently alleged act is not an isolated incident. Without contrary evidence, the greater the number of previous allegations of a substantially similar act, the more likely than not the current case is sustained.

Pattern of conduct evidence is evidence of specific acts, not merely categories of allegations. For example, if an officer has a history of complaints for rudeness, but each complainant alleges that the officer used different language, the pattern may be too general to be valuable. However, if in previous cases complainants alleged that the officer used

a substantially similar offensive phrase or wording as used in the current case, the pattern may be specific enough to be valuable in considering a “sustained” finding.

Pattern of conduct evidence may come from complaints that were sustained or not resolved. However, unfounded complaints, where it was determined that the alleged act did not occur, are not suitable as pattern of conduct evidence.

Pattern of conduct evidence may also come from interviews of persons who had never been complainants. When investigating a rudeness allegation, for example, if the investigator were to contact persons to whom the officer had given traffic citations and found some who stated that the officer used the same rude phrase or wording with them, a pattern of conduct can be established.

Sometimes pattern of conduct is a consideration in the investigative phase depending on the model of investigation and adjudication the agency uses.

4.5 Penalty assessment and the use of a penalty matrix.

Agencies should have some system or mechanism to ensure that discipline is fair and consistent. A penalty matrix or similar schedule has proven helpful to some agencies whose disciplinary systems are based on a “progressive discipline” theory or collective bargaining agreement. In such systems a matrix can help ensure consistency, objectivity, and predictable penalties for misconduct. A matrix best involves recommended ranges of discipline, allowing for the decision-maker to consider the totality of the circumstances, including aggravating and mitigating factors, in determining appropriate discipline.

Commentary

A matrix specifies the nature of offenses or policy violations and associates them with specific penalty options or ranges of discipline. Within such a system, a policy violation falls within a certain class or category of violation that, in turn, corresponds to a particular range or set of discipline options that a decision-maker can consider according to the totality of the circumstances present in a given case.

A matrix is a helpful tool but should not be applied inflexibly. The decision-maker should consider the totality of the circumstances, aggravating and mitigating factors, nondisciplinary outcomes, precedent, and consistency. Precedent, in the sense of prior disciplinary decisions for the same conduct, should be considered but should not straitjacket

the decision-maker. As times and police culture change, as the acuteness of particular forms of misconduct may grow in the eyes of the agency or the public, so also must disciplinary decisions change to reflect contemporary ethics and judgments about police behavior. While discipline should be reasonably predictable, fair punishment reflective of current ethical standards should not be held hostage to what may have been done in the past.

Broad disciplinary categories, such as Conduct Unbecoming an Officer, may be useful, but in order to give the greatest value to a matrix, it is suggested that misconduct be described more precisely.

4.6 The advantages of mediation and the conditions of its use. Voluntary mediation conducted by a neutral facilitator, in lieu of investigation and adjudication, permits resolution of minor complaints that are usually not easily resolved through investigation. Mediation should be encouraged except where an officer has a pattern of similar misconduct or where a broader review of the employee's performance suggests a need to analyze the results of the investigation in the current case. Agencies should consider enacting policies to codify all aspects of their mediation procedures.

Commentary

Mediation engages the community by giving individual members of the public who make a complaint the opportunity to have their concerns heard and considered in a way that might not otherwise occur if the complaint was investigated and adjudicated through the formal Internal Affairs process. Mediation is best used as a means of allowing an officer and a citizen to better understand each other's perspectives. Mediation should not take place unless the complainant and the subject officer each voluntarily agreed to mediate.

Complaints best resolved through mediation are complaints of officer discourtesy or rudeness and others that involve minor "one-on-one" interactions between officers and members of the community. The types of complaints that can be mediated should be described in a clear written policy. The determination whether a given complaint is eligible for mediation should be made according to guidelines established by the agency, including the rank or positions authorized to permit mediation.

Some agencies offer an incentive to officers who agreed to mediate. All agencies should establish written policies to ensure that an officer cannot elect to mediate multiple complaints where there is the possibility of a pattern or practice of misconduct or a motive to circumvent discipline or otherwise bypass an agency's early intervention system.

The decision to use internal or external facilitators may vary from agency to agency. Outside facilitators may make community members more comfortable that the mediation process is not biased against them or toward the officer, in turn making mediation a more attractive option, as well as a more effective means of improving relations with the community. Mediations facilitated by a member of the agency provide an opportunity for the agency's leaders to learn more about the conduct and attitudes of their employees. Above all, the person chosen to mediate the dispute must be adequately trained in dispute resolution and strive to mediate in a neutral and objective manner.

4.7 Settlement agreements and their value. Well-reasoned and fully justified settlement agreements, conditional suspensions of discipline, "last-chance" agreements, and legitimate dropping of charges or mitigation of penalties should be available when to do so will not undermine the values of fairness, consistency, predictability, and integrity. Decisions to modify discipline should be justified in writing.

Commentary

While it is important and efficient to settle grievances to avoid a proliferation of appeals and reviews, it is more important that individual officers or their representatives not be able to manipulate the system. Untrammelled deal making and plea bargaining can make a disciplinary system arbitrary, unpredictable, and introduce luck into the final disciplinary determination. In a thorough investigation, each founded charge against an officer will be supported by sufficient proof such that an impartial and honest reviewer will be hard-pressed to overturn a disciplinary decision.

There is a place nonetheless for settlement and last-chance agreements and mitigation in appropriate circumstances. Some agencies hold penalties in full or partial abeyance and do not make the officer serve the actual numbers of days off if the officer's conduct in the next year is free of similar misconduct. Wisely deployed, these devices can be a useful and progressive way to encourage good behavior. Used unwisely, habitual suspension of sentences can encourage excessive deal making and introduce arbitrariness into the disciplinary system.

4.8 Exploring alternatives to traditional discipline.

Creative alternatives to traditional punitive discipline may be useful in improving the performance of wayward employees in ways traditional punitive discipline is not. This is an area typically unexplored in larger agencies until recently and warrants further research and development.

Commentary

Traditional punitive discipline operates under a theory akin to criminal justice: an offense is committed and a punishment is imposed as a response. Typically in the interests of fairness, consistency, “progressive discipline,” and to deter further misconduct, the punishment imposed attempts to match the seriousness of the offense and the history of the offender. According to this theory, a corollary benefit of deterring the misconduct of the general employee population arises as those who have not yet committed misconduct see the punishment of those who have. The basis for this traditional model is the presumption that punishment either initially deters misconduct or succeeds at changing the behavior of recipients of punishment who were not initially deterred. Law enforcement agencies should be encouraged to explore nondisciplinary resolutions where other and more powerful means exist to change or modify conduct.

One alternative model is being developed³ in which the employer’s response to employee transgressions is not to seek a penalty to fit the offense, but to find a strategy to fit the employee.⁴ One phrase used to help inculcate this model is, “Think first strategy, not penalty.”

According to this strategic model, in cases where core facts are not at issue in a sustained complaint, a particular interactive process helps determine the error in thinking that led the employee to commit the problem act. The identification of the problem thinking provides the leader with a starting point from which to determine what strategy is likely to (a) reveal the errant thinking to the employee, (b) lead the employee to come up with a solution to change the errant thinking, and (c) enable the employee to transfer the new thinking to all situations in which the relevant principles—not just the rules—apply. Leading the employee to recognize the principles is a crucial feature of the system.

³This model is being developed and implemented by Los Angeles Police Department Deputy Chief Mark R. Perez, the commanding officer of LAPD’s Professional Standards Bureau.

⁴This applies only to nondischarge cases: employees whose acts render them unfit for duty are discharged from employment according to civil service rules. Such employees are beyond the reach of employee development.

The question of “penalty” is not important if the focus is on what is most likely to reinforce the employee’s new understanding of the principles and his obligations within them. A suspension or other punitive action is not necessarily the best way to induce improved thinking and behavior for most employees. For the strategic model, the presumption is that behavior changes by influencing the employee’s thinking toward acting on explicit principles, not just rules.

Another system is being developed⁵ in which alternatives to traditional discipline are pursued that are more constructive than punitive. An existing collective bargaining agreement already permits officers to surrender vacation days in lieu of being suspended. This is referred to in the contract as “Positive Discipline.” The agency, however, is seeking to go beyond “Positive Discipline” by creatively finding nonpunitive means to train, remediate, or otherwise involve officers in constructive activities to reorient their conduct. One constructive alternative, for example, is offering an officer the opportunity to participate in community projects within the jurisdiction, like doing free home repairs for persons who could not otherwise afford the labor costs in the open market. While an officer could decline the offer for the alternative activity, the system is nevertheless designed to increase the number of ways employees’ actions can be reoriented to the agency’s standards.

Both the strategic model and the constructive alternatives model share the following understandings:

1. The adverse effects of the traditional punishment model are considerable:
 - a. Punishment forces the employee to suffer loss, but does not reveal or necessarily resolve the underlying problem motivating the misconduct.
 - b. Punishment, especially in the form of unpaid suspensions, harms more than just the employee: the employee’s family loses money, the agency loses a deployment asset, and the jurisdiction’s citizens lose the safety work the employee would have provided had he not been suspended.

⁵This system is being developed and implemented in the Houston Police Department under the direction of Deputy Chief Michael Dirden.

- c. Punishment can create bitterness rather than a desire to improve.
 - d. Punishment can contribute to a code of silence—an unwillingness of employees to admit to or report misconduct—if the punishment is seen as costly.
 - e. The threat of punishment for misconduct can deter employees from engaging in desirable self-initiated activities if the discipline system is seen to punish rule violations mechanically or captiously rather than reasonably.
 - f. Punishment creates a constant threat of legal and labor actions against the employer that often takes significant resources to manage.
2. Properly done, alternative systems can have significant advantages over employee punishment:
- a. The adverse effects of punishment either disappear or minimize when punishment disappears or is minimized.
 - b. Alternative systems often find the causes of the problems of the misconduct and resolve them at their root.
 - c. Alternative systems tend to inspire goodwill in employees toward their work, their employer, and their agency's constituents
 - d. Alternative systems help create organizations where employees learn their responsibilities through direct mentoring interactions with their leaders and mutually-crafted development plans
 - e. Alternative systems impose and clarify a burden of responsibility on the employee to improve, not to suffer. Punitive systems impose only the burden of suffering a penalty.
 - f. Alternative systems make it easier to identify employees to be discharged: an employee who, after having had the opportunity to help reorient his thinking and actions based on an understanding of the agency's principles still violates those principles can no longer be seen as merely ignorant of those principles. Misconduct, especially a repeated violation of principles well conveyed in earlier employee development sessions, then becomes strong evidence of the employee's refusal to adopt the agency's standards. Alternative systems clarify the employee's intent far more clearly than the typical incrementally increasing "progressive discipline" of traditional punitive systems. Alternative systems can let the employer know a lot sooner when a recalcitrant employee should be terminated.

There are many more features and advantages to the strategic model and the constructive alternatives model than can be explained here. The point, however, is not to exhaustively detail the systems in this report, but to acknowledge that there are means other than traditional punitive discipline being seriously explored in the Internal Affairs community of practice, and that this is an area worthy of serious research and development.

4.9 Keeping investigations confidential. Internal affairs investigations should be closed to the officer and the public during their pendency. Nonetheless, the agency head should be fully informed of the progress of internal investigations and should regularly communicate the status of an investigation to the press and general public to the full extent permitted by law.

Commentary

To ensure that an officer's rights are preserved during the course of an Internal Affairs investigation, and to minimize interference and undue pressure on Internal Affairs and the department at large, it is important that investigations remain confidential during their pendency. There is nonetheless an obligation to keep the public informed of the progress of an investigation and such other disclosures that can be made without compromising the investigation and to the extent allowed by law.

4.10 Guidelines for selecting and retaining Internal Affairs investigators. To make certain that Internal Affairs units benefit from high-quality and experienced employees, agencies should consider utilizing promotional policies that recognize service in Internal Affairs as productive and useful for advancing an officer's career, and they should make such policies explicit and well-publicized. Tours in Internal Affairs should be limited to fixed terms.

Commentary

Agencies should consider providing officers with incentives to work in Internal Affairs, such as an explicit policy that places service in that unit as highly advantageous for promotional or assignment purposes.

Specific requirements should be established for the selection of individuals to work in Internal Affairs. Prior investigative experience or a strong investigative background should either serve as a requirement or a significant qualification for Internal Affairs service. Consideration should also be given to using supervisors instead of nonsupervisors because supervisors typically have agency-wide interests and accountability, and

are likely to consider broader organizational questions beyond just the question of guilt or innocence in the instant case.

Selected candidates should sign a confidentiality agreement that clearly states that it is an act of misconduct for an Internal Affairs investigator to reveal investigative information to any person, regardless of rank, unless that person has an authorized right and need to know, whether that revelation is made during or after the investigator's tour of duty in Internal Affairs.

After being selected, the agency should provide as much ongoing training or professional development in investigation and Internal Affairs investigation as possible, including training in effective interview techniques, development of case strategy, laws that apply to Internal Affairs investigations, and other subjects relevant to fulfilling the investigative mission.

Consideration should be given to limiting the tour of duty in Internal Affairs. One agency limits its tours to 2 or 3 years, with two 1-year extensions permitted in unusual circumstances up to a maximum of 5 years. There are at least several reasons for limiting the tour of service. Too long a stay in Internal Affairs may, in some cases, create investigators who become biased. The development of such an attitude—or any other bias—is not helpful to the employee or the investigations. In some cases, investigators become emotionally drained or even bored after extended stays in Internal Affairs. It is a uniquely difficult assignment and its psychological effects are important in determining whether a tour limit should apply and how long it might be.

The experience in Internal Affairs can be extremely valuable in the promotion process and in giving promotees a view on employee behavior that would not be available elsewhere. Seeing firsthand the kinds of trouble people get into by investigating the incidents and talking with the persons harmed by the allegations and the misconduct is a management insight that should be offered to as many qualified people as is practical. Also, knowing that not all allegations are true—even the most horrific ones—helps those who leave Internal Affairs respond correctly to allegations that come before them as they advance in rank. Finally, there is a wisdom that comes from dealing with the complexities of investigative controversies from start to finish that can be invaluable in helping form a mature leader. Allowing as many qualified investigators as practical to acquire that wisdom by cycling them through Internal Affairs can infuse the agency with a maturity in the leadership team they may otherwise lack.

Appendix: A Sampling of Major City Police Force Discipline Policies

On May 5, 2005, The Los Angeles Police Department was awarded a grant by the U.S. Department of Justice Office of Community Oriented Policing Services to convene and coordinate a National Internal Affairs Community of Practice comprising 12 major city and county police agencies. The Community of Practice's goal was to develop standards and best practices in Internal Affairs work and to share this work with the wider law enforcement community.

The Community of Practice soon discovered that there were significant differences among the participating agencies. In an effort to focus the discussion and ensure the development of a workable set of guidelines, Merrick Bobb, President, Police Assessment Resource Center, developed a matrix that would provide a snapshot of each agency's current policies and structures in the key areas of Internal Affairs: intake, classification, investigation, recommendation, adjudication, and discipline. Input from other agencies not directly participating in the Community of Practice was also sought.

We hope the matrices will provide a basic understanding of the organization and policies of the contributing police agencies and help guide policy development and organizational structure for the wider law enforcement community.

Internal Affairs Matrix—Atlanta Police Department

Intake

Manner in which complaints can be received: Any Source
 Anonymous complaints accepted: (Y)
 Third-party complaints accepted: (Y)
 Penalty of perjury for false statements: (Y Officers)
 Dispose of complaint prior to classification: (Y)
 If Y, how? Supervisor on-scene, but if complainant insists complaint must be taken.
 Complaint forms numbered and tracked: (Y)
 Complaint is forwarded for classification to: Office of Professional Standards

Classification

A complaint can be classified as: Maltreatment or Unnecessary Force, Vehicle Accident, Sexual Misconduct, Standard Operating Procedure, Property/Evidence, Person Shot, Misc., Firearms Discharge, FTA, Criminal Domestic, Criminal, Courtesy, Attendance.
 Once classified, a complaint is assigned to: Sergeant or Investigator

Investigation

At what command level is each type of complaint investigated: The Office of Professional Standards Investigates Priority I Complaints; Employee's Supervisor Investigates Priority II Complaints
 Investigation is supervised/reviewed by:
 In OPS Lieutenant
 Priority II Employee's Supervisor

Recommendation

IA recommends findings (sustained, not sustained, etc.): (Y)
 If Y, who makes recommendation:
 IA Commander- Lieutenant
 The recommendation is made to:
 OPS Commander - Major
 If Y, who reviews recommendation:
 If Sustained, E's Chain of command;
 If Not Sustained, No further Review

Adjudication

IA makes findings (sustained, not sustained, etc.): (Y)
 Complaints go back through the Chain of Command for adjudication: (Y)
 If Y, who makes final disposition:
 Chief of Police or His Designee
 Categories of findings: Sustained, Not Sustained, Exonerated, Unfounded, Exceptionally Closed

Discipline

IA recommends discipline: (N)
 If Y, who makes recommendation:
 The recommendation is made to:
 Chief of Police or His Designee
 Discipline is ultimately imposed by:
 Chief of Police or His Designee

IA is under what division/office: The Office of the Chief
 IA is headed by: Lieutenant
 Head of IA reports to: Major
 Rank of IA investigators: Investigators and Sergeants
 Number of IA investigators: 24
 Total number of sworn employees: 1,786

Internal Affairs Matrix—Boston Police Department

Intake

Manner in which complaints can be received:
Any method of complaint is processed
Anonymous complaints accepted: yes
Third-party complaints accepted: yes
Penalty of perjury for false statements: no
Dispose of complaint prior to classification: yes
When the allegation of misconduct does not describe a violation of our rules, the receiving superior officer will document it and forward to C.O. then to IAD Commander.

Classification

A complaint can be classified as: Violation of Rules/ Procedures-with the allegation specifying the conduct.
Misconduct of any kind will be included in our rules.

Once classified, a complaint is assigned to:
Investig. Sgt. Det. or Lt. Det.

Investigation

At what command level is each type of complaint investigated: Sgt.Det. or Lt. Det. will investigate all allegations of misconduct.

Investigation is supervised/reviewed by:
Lt. Det. and Deputy Superin.

Recommendation

IA recommends findings (sustained, not sustained, etc.): yes
If Y, who makes recommendation: Investigator, IAD Commander, Bureau Chief, and Legal Advisor reviews
The recommendation is made to: Up chain of command to P. Commissioner
Recommendations reviewed at each level
If Y, who reviews recommendation:

Adjudication

IA makes findings (sustained, not sustained, etc.): No
Complaints go back through the Chain of Command for adjudication: No, complaints go up chain, not down chain.
If Y, who makes final disposition: Up chain of command to P.C.. P.C. makes final disposition.

Categories of findings: Sustained,
Not Sustained, Exonerated, Unfounded

Discipline

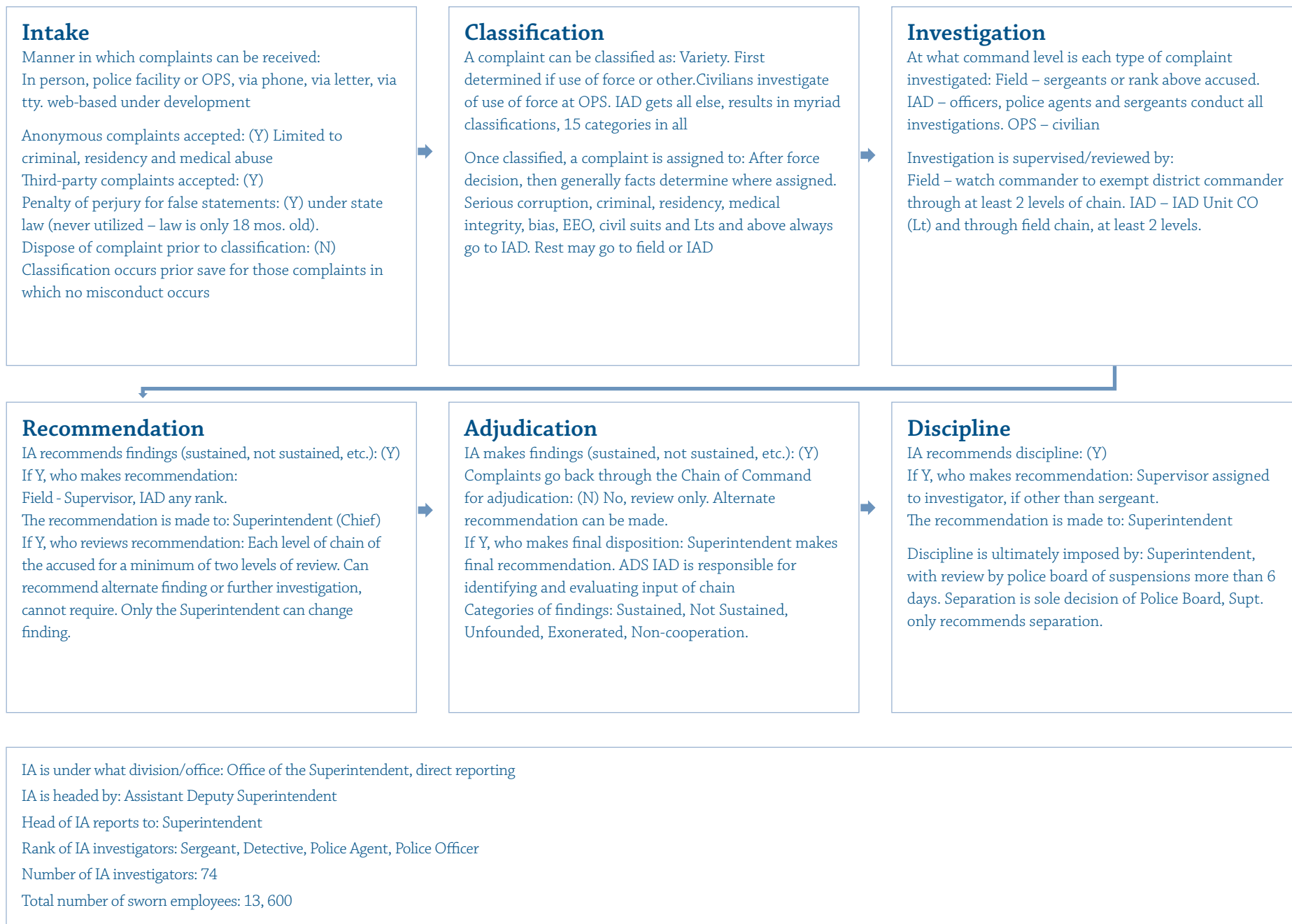
IA recommends discipline: No
If Y, who makes recommendation: Bureau Chief, Assist Bureau Chief, Legal advisor jointly recommend to P. Commissioner.

The recommendation is made to: PC

Discipline is ultimately imposed by: PC

IA is under what division/office: Bureau of Internal Investigation
IA is headed by: Deputy Superintendent
Head of IA reports to: Superintendent Bureau Internal Investigations
Rank of IA investigators: Sgt. Det. and Lt. Det.
Number of IA investigators: Twelve: Nine Sg. Dets. report to three Lt. Dets. – three teams
Total number of sworn employees: 2,050

Internal Affairs Matrix—Chicago Police Department



Internal Affairs Matrix—Dallas Police Department



Internal Affairs Matrix—Detroit Police Department



Internal Affairs Matrix—Houston Police Department



Internal Affairs Matrix—Los Angeles Police Department

Intake

Manner in which complaints can be received:
In person; telephonic; e-mail; TDD; verbal; written
(complaint form or any other); by any means.

Anonymous complaints accepted: (Y)
Third-party complaints accepted: (Y)
Penalty of perjury for false statements: (N)
Dispose of complaint prior to classification: (N)
If Y, how?

Complaint forms numbered and tracked: (Y)
Complaint is forwarded for classification to:
“Classifications Unit” specifically to classify

Classification

A complaint can be classified as: Any one or combination
of 31 total classifications (see Page 2)

Once classified, a complaint is assigned to:

1. IA – Administrative
2. IA – Criminal
3. Chain of Command

Investigation

At what command level is each type of complaint
investigated: Normally, Consent Decree paragraph 93
dictates where the case is assigned (see page 2), either IA
or Chain of Command. We have a “Quick Team” at IA to
handle those cases that have very minimum follow up
potential, or clearly Demonstrably False.

Investigation is supervised/reviewed by: Officer in
Charge (LT) or Commanding Ofcr (CAPT)

Recommendation

IA recommends findings (sustained, not sustained,
etc.): (N)

If Y, who makes recommendation:

The recommendation is made to:

If Y, who reviews recommendation:

Adjudication

IA makes findings (sustained, not sustained, etc.): (N)
Complaints go back through the Chain of Command for
adjudication: (Y)

If Y, who makes final disposition:
Chief of Police

Categories of findings: (see Page 3)

Discipline

IA recommends discipline: (N)
If Y, who makes recommendation:

The recommendation is made to:

Discipline is ultimately imposed by: Chief of Police

IA is under what division/office: Professional Standards Bureau

IA is headed by: Commander

Head of IA reports to: Professional Standards Bureau C/O, who reports directly to Chief of Police

Rank of IA investigators: Sergeants II, and Detectives II

Number of IA investigators: 264

Total number of sworn employees: 9,734

Los Angeles Police Department

Classifications (31)

| | | |
|-------------------------------|-----------------------|----------------------|
| Alcohol Related | Unbecoming Conduct | Narcotics/Drugs |
| Domestic Violence | Off-Duty Altercation | Shooting Violation |
| Accidental Discharge | Improper Remark | Ethnic Remark |
| Discourtesy | Unauthorized Force | Unauthorized Tactics |
| Discrimination | Dishonesty | Insubordination |
| Theft | Neglect of Duty | Sexual Misconduct |
| Gender Bias | Unlawful Search | False Imprisonment |
| Other Policy/Rule | Failure to Appear | Failure to Qualify |
| Preventable Traffic Collision | Service | False Statements |
| Failure to Report Misconduct | Misleading Statements | Retaliation |
| Racial Profiling | | |

Consent Decree Paragraph 93

The following types of complaints shall be investigated by Internal Affairs Group:

All civil suits or claim for damages involved on-duty conduct by LAPD officers, or off duty where the employee's actions are tied to the LAPD.

Unauthorized uses of force

Invidious discrimination, including improper ethnic remarks and gender bias

Unlawful search

Unlawful seizure (including false arrest and false imprisonment)

Dishonesty

Domestic Violence

Narcotics/Drugs

Sexual Misconduct

Theft

Retaliation or retribution against an officer or civilian

- All incidents where 1) a civilian is charged by an officer with interfering with a police officer (Penal Code Section 148), resisting arrest, or disorderly conduct, *and* 2) the prosecutor's office notified the Department either that it is dismissing the charge based upon officer credibility, or a judge dismissed the charge based upon officer credibility.
- All incidents in which the Department has received written notification from a prosecuting agency in a criminal case that there has been an order suppressing evidence because of any constitutional violation involving potential misconduct by an LAPD officer; any other judicial finding of officer misconduct made in the course of a judicial proceeding; or any request by a federal or state judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate.

(Los Angeles Police Department, continued)

- All incidents in which an officer is arrested or charged with a crime other than low grade misdemeanors.
- Any request by a judge or prosecutor that a misconduct investigation be initiated pursuant to information developed during the course of an official proceeding in which such judge or prosecutor has been involved.

Categories of Findings

Disciplinary:

- Unfounded
- Not Resolved
- Exonerated
- Sustained – No Penalty
- Sustained – Penalty
- Admonishment
 - Official Reprimand
 - Suspension Days
 - Board of Rights
 - Demotion

Nondisciplinary:

- Policy/Procedure
- Employee’s Act Did Not Rise to the Level of Misconduct
- Employee’s Actions Could Have Been Different
 - Training
 - Counseling
 - Comment Card
 - Notice to Correct Deficiencies
 - Referral
- Demonstrably False
- Department Employee Not Involved
- Resolved through Alternative Complaint Resolution

- Duplicate
- Withdrawn by the Chief of Police
- Insufficient Evidence to Adjudicate Complaint
- Other Judicial Review

Internal Affairs Matrix—Los Angeles County Sheriff's Department

Intake

Manner in which PUBLIC complaints can be received:
Mail; e-mail; phone; in person; web site; fax;
1-800 complaint line

Anonymous complaints accepted: Yes

Third-party complaints accepted: Yes

Penalty of perjury for false statements: No

Dispose of complaint prior to classification: No

Complaint forms numbered and tracked: Yes

Complaint is forwarded for classification to:

Complaint is classified at intake

Classification

A complaint can be classified as:

Personnel or Service; personnel complaints can contain criminal or policy allegations. Policy allegations can be resolved by conducting a review, or by conducting an administrative investigation. Criminal allegations are investigated by the Internal Criminal Investigations Bureau (ICIB).

Once classified, a complaint is assigned to: It could be assigned to the employee's Unit, Internal Affairs, or ICIB.

Investigation

At what command level is each type of complaint investigated: Reviews are conducted by sergeants or lieutenants; unit-level administrative investigations are conducted by lieutenants; IA investigations are conducted by sergeants; criminal investigations are conducted by sergeants.

Investigation is supervised/reviewed by: Lieutenant; Captain; Commander; Chief

Recommendation

IA recommends findings (sustained, not sustained, etc.): No
If Y, who makes recommendation:

The recommendation is made to:

If Y, who reviews recommendation:

Adjudication

IA makes findings (sustained, not sustained, etc.): No
Complaints go back through the Chain of Command for adjudication: Yes

If Y, who makes final disposition: Captain and Chief for written rep to 15 days' suspension; Assistant Sheriffs and Undersheriff for 16-30 days' suspension, demotion, and discharge.

Categories of findings: Founded; Unresolved; Unfounded; Exonerated (for admin invest.)

Discipline

IA recommends discipline: No
If Y, who makes recommendation:

The recommendation is made to:

Discipline is ultimately imposed by: Employee's Unit Commander; Undersheriff (for discharge and demotion)

IA is under what division/office: Leadership and Training Division

IA is headed by: Captain

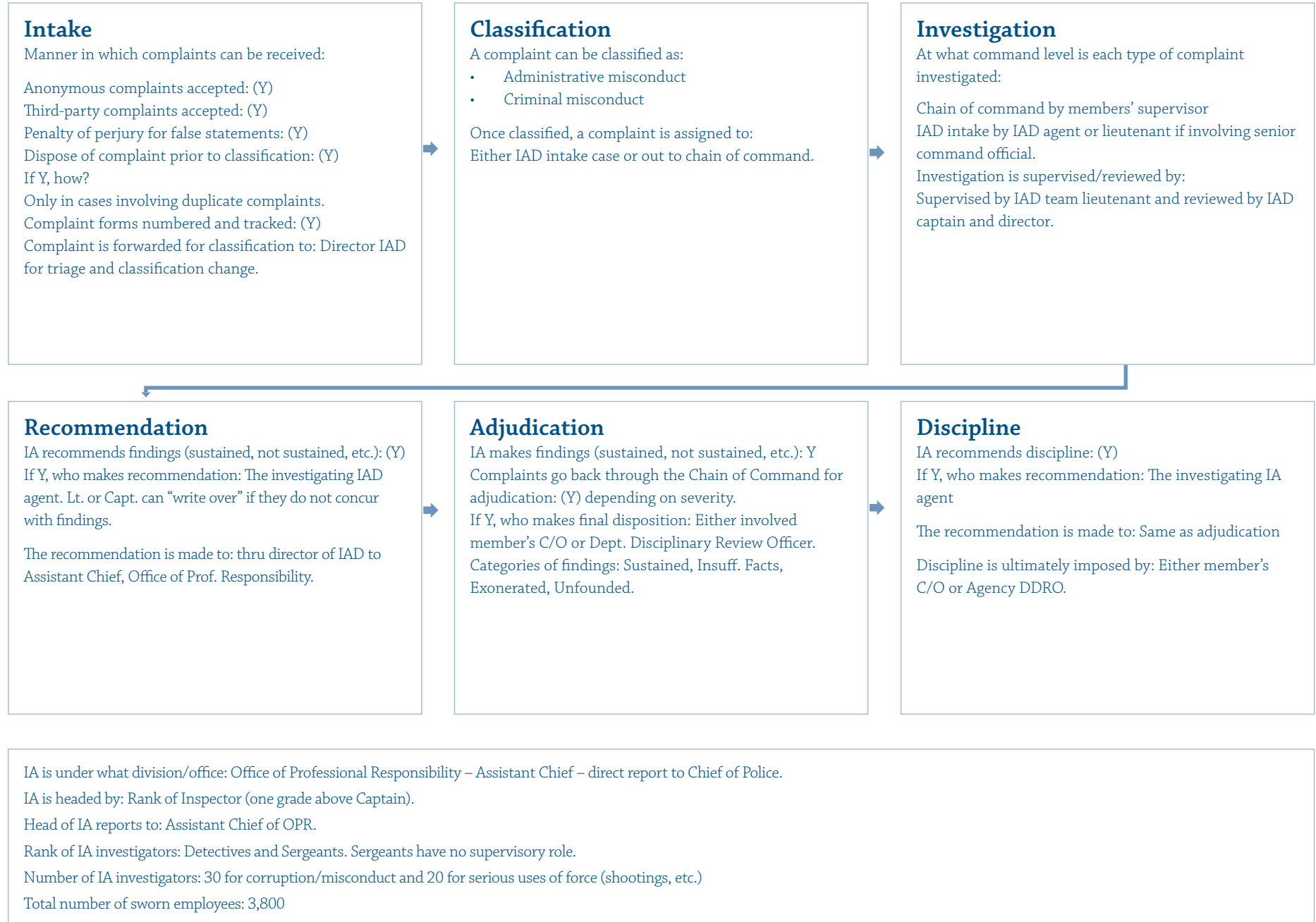
Head of IA reports to: Commander

Rank of IA investigators: Sergeant

Number of IA investigators: 22 (29 budgeted)

Total number of sworn employees: 8,346 (9,385 budgeted)

Internal Affairs Matrix—Metropolitan Police Department (Washington, D.C.)



Internal Affairs Matrix—Miami-Dade Police Department



Miami-Dade Police Department

Classification/Allegation Codes

| Code | Type | Description |
|------|------------|--|
| 1 | PC | Discourtesy |
| 2 | PC | Harassment |
| 3 | IA | Harassment/Sexual |
| 4 | IA | Harassment/Sex Discrimination |
| 5 | PC | Negligence |
| 6 | PC | Damage to Property |
| 7 | PC | Missing Property |
| 8 | PC | Traffic Law Violation |
| 9 | IA | False Arrest |
| 10 | (Severity) | Departmental Misconduct/Improper Procedure |
| 11 | PC | Departmental Misconduct/Improper Investigation |
| 12 | (Severity) | Departmental Misconduct/Overreacting |
| 13 | PC | Departmental Misconduct/Misinformation |
| 14 | PC | Departmental Misconduct/Misrepresentation |
| 15 | PC | Departmental Misconduct/Abuse of Authority |
| 16 | PC | Departmental Misconduct/Unnecessary Towing |
| 17 | (Severity) | Departmental Misconduct/Improper Search |
| 18 | IA | Criminal Misconduct/Misdemeanor |
| 19 | IA | Criminal Misconduct/Felony |
| 20 | IA | Criminal Misconduct/Battery |
| 21 | IA | Criminal Misconduct/Theft |
| 22 | IA | Criminal Misconduct/Narcotics |
| 23 | IA | Criminal Misconduct/Substance Abuse |
| 24 | IA | Criminal Misconduct/Bribery |
| 25 | (PC) | Minor Force/No Visible Injury (Mere Touching) |
| 26 | IA | Minor Force/Injury (During Arrest) |
| 27 | IA | Unauthorized Force/No Visible Injury (During Arrest) |
| 28 | IA | Unauthorized Force/Injury (During Arrest) |
| 29 | IA | Departmental Misconduct/Force Violation |
| 30 | (Severity) | Miscellaneous |
| 31 | IA | Death in Custody |
| 32 | IA | Discrimination |
| 33 | IA | Departmental Misconduct/Improper Arrest |
| 34 | IA | Departmental Misconduct/Conduct Unbecoming Violation |
| 35 | IA | Departmental Misconduct/Property Violation |
| 36 | IA | Departmental Misconduct/Substance Violation |
| 37 | IA | Departmental Misconduct/Force Violation-Domestic |
| 38 | IA | Departmental Misconduct/Battery-Domestic |
| 39 | IA | Domestic Related (Used with Other Allegation) |
| 40 | SI | Shooting/Contact |
| 41 | SI | Shooting/Non-Contact |
| 42 | SI | Shooting/Animal |
| 43 | SI | Shooting/Accidental |
| 44 | (Severity) | Enforcement Profiling |

Internal Affairs Matrix—Philadelphia Police Department



Internal Affairs Matrix—Phoenix Police Department

Intake

Manner in which complaints can be received: In person, letter, telephone, and e-mail.

Anonymous complaints accepted: (Y)

Third-party complaints accepted: (Y)

Penalty of perjury for false statements: (N)

Dispose of complaint prior to classification: (N)

If Y, how?

Complaint forms numbered and tracked: (Y)

Complaint is forwarded for classification to: Investigator

Classification

A complaint can be classified as: Criminal or Administrative

Once classified, a complaint is assigned to: Investigator

Investigation

At what command level is each type of complaint investigated: For non-supervisory involved, a detective or sergeant/first line supervisor will investigate. If the subject employee is a supervisor, a sergeant or Lieutenant will be primary. If the subject employee is Command or Exec level, the PSB Commander will attend the interview, but the investigation will be completed by a Lieutenant.

Investigation is supervised/reviewed by: Lieutenant, Commander, and Assistant Chief

Recommendation

IA recommends findings (sustained, not sustained, etc.): (Y)

If Y, who makes recommendation: Investigator

The recommendation is made to: Investigations Lieutenant

If Y, who reviews recommendation: PSB Commander

Adjudication

IA makes findings (sustained, not sustained, etc.): (Y)

Complaints go back through the Chain of Command for adjudication: (Y) Employee reviews draft for input before investigation is finalized.

If Y, who makes final disposition: Commander

Categories of findings: Sustained, Unfounded, Exonerated, Unresolved, Policy Failure, Training Issue

Discipline

IA recommends discipline: (Y or N)

If Y, who makes recommendation: N/A

The recommendation is made to: Discipline is based on a discipline matrix solution. For suspensions or greater, a disciplinary review board makes recommendation to Police Chief.

Discipline is ultimately imposed by: Employee's supervisor, Bureau Commander/Administrator, Police Chief

IA is under what division/office: Professional Standards Division

IA is headed by: 2 Police Commanders: Cmdr 1- Investigations, Inspections, Mayoral Security: Cmdr 2- Supv Invest., Invest., and Admin.

Head of IA reports to: Assistant Police Chief

Rank of IA investigators: Detective, Sergeant, and Lieutenant

Number of IA investigators: 22

Total number of sworn employees: 3,067

Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice

Through a grant from the Office of Community Oriented Policing Services, the Los Angeles Police Department (LAPD) convened the National Internal Affairs Community of Practice group comprising the LAPD and 11 major city and county law enforcement agencies. The purpose was to share and develop standards, recommendations, and best practices in Internal Affairs work, discuss differences and similarities in practice, and look at various approaches to improving individual and collective agencies' Internal Affairs practices. This report is the result of the group's work.

The project reaffirmed the vital importance of Internal Affairs as a critical internal police agency function. Internal Affairs serves two communities—law enforcement and the general public—and is essential in building and maintaining mutual trust and respect between the two.



U. S. Department of Justice
Office of Community Oriented Policing Services
1100 Vermont Avenue, N.W.
Washington, DC 20530

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- ★ TVW
- ★ Washington Courts
- ★ OFM Fiscal Note Website



[RCWs](#) > [Title 9](#) > [Chapter 9.41](#) > [Section 9.41.270](#)

[9.41.260](#) << [9.41.270](#) >> [9.41.280](#)

RCW 9.41.270

Weapons apparently capable of producing bodily harm — Unlawful carrying or handling — Penalty — Exceptions.

(1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1) of this section, the person shall lose his or her concealed pistol license, if any. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his or her place of abode or fixed place of business;

(b) Any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments.

[1994 sp.s. c 7 § 426; 1969 c 8 § 1.]

Notes:

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW [43.70.540](#).

Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW [9.41.010](#).

Mobile Data Terminal Use While Driving

Overview:

Driver factors have the greatest ability to cause accidents due to the cognitive distraction placed on the driver. Driver factors are divided into three categories: complex, moderate, and simple based on the likelihood engagement in such will lead to a critical incident. This is termed odds ratio. Texting is considered a complex secondary task with an odds ratio of 23.2. This means that engaging in this activity while driving is 23.2 times more likely to lead to a safety-critical incident.

Mobile Data Terminals (MDT's) are computers that are either mounted or portable. This device is utilized by Police Officers to access confidential records from the State, Department of Justice, and Department of Licensing databases. Usage of such while driving introduces the similar distractions as texting while driving due to its similar features. The cognitive load placed on the driver while using the MDT¹ cannot be avoided. This report is in response to the fatal incident involving a pedestrian and a Spokane Police Department (SPD) vehicle in January 2011. The official reports for such were reviewed for this report. It was found that the usage of the MDT has the capacity to distract the driver.

Spokane police departmental policy (448.2.1) allows for the use of MDT's while operating a vehicle as long as the officer remains aware of his/her driving duties. A record including 126 vehicle incidents from 2009 and 2010, provided by the SPD, was also reviewed and there were no reports of accidents due to the use of the MDT. It is

¹ The following acronyms are used interchangeably throughout this report: MDT (mobile digital terminals), MDD (mobile digital devices), and MDC (mobile digital computer). All refer to the digital device used by police officers to access confidential records while on duty.

recommended by the City of Spokane, Office of the Police Ombudsman that the policy on usage of the MDT while operating a vehicle be updated, further restricting its use as appropriate to reflect the potential hazards associated with its operation while driving.

Introduction:

A study conducted by the AAA Foundation, from 1995 to 1999, found that 8.3% of reported accidents detailed distraction as the cause and of that 8.3%, 1.5% claimed the usage of a cell phone specifically.¹ Out of the three main factors of critical incidents: driver, vehicular, and environmental, driver factors are the most likely to cause accidents. Driver factors involve tasks, objects, or events that shift the driver's attention away from successfully completing the driving task at hand. These secondary tasks such as texting or eating are divided into three categories: complex, moderate, and simple by the odds of involvement in accidents due to the activity.² The most dangerous of the secondary tasks involve all three types of cognitive distraction: visual, manual, cognitive. These are termed *complex secondary tasks*. Examples of such include reading while driving, writing, texting, and cell phone use. Texting ranks the highest, meaning the odds of involvement in a safety-critical incident while engaging in such while driving is significantly increased.

Reaching for a phone while driving increases the risk of a safety-critical event by 9 times. One text while driving equals 4 beers; one text equals that of a blood alcohol level of 0.08 which is legally drunk.³ While texting the reaction speed of a teen is reduced to that of a senior citizen. Texting takes a person's eyes off the road an average of 5 seconds.⁴ The average amount of time a driver has their eyes off the road while *sending* a

text message is 20 seconds.⁵ This task is extremely risky due to the drivers' inability to respond to driving situations.⁶ At 55 mph, it is like driving the length of a football field blind.⁷ Younger drivers can have increased difficulty maintaining lateral position and detecting hazards on the road. Response to safety signs while texting was also found to be an issue when operating a motor vehicle.

In a report from the AAA Foundation for Traffic Safety found 6.7% of Americans report texting or e-mailing while driving fairly often or regularly.⁸ Driver involvement in secondary tasks attribute to 22% of all crashes and near-crashes.⁹ Cell phone use significantly impairs reaction time. Hand-held and hands-free devices have the same amount of risk, which is increased above the baseline. Some facts include: 69% of drivers in the United States report cell phone use while driving in the last 30 days; one seventh report texting while driving.¹⁰ Higher levels of education have been found to be associated with higher levels of cell phone and texting while driving, which is most likely due to the enhancement of mobile devices that have e-mail and web browsing capabilities.

Talking or listening to a hand-held device (HHD) has been found to increase the risk of collision by 30%.¹¹ Dialing and talking/listening on a HHD contributes to a greater percent of crashes than other secondary tasks, due to the frequency of engagement in the task. Hands-free devices do not reduce the risk of collision due to the fact that the driver's attention is still withdrawn from the task of processing information in the driving environment.¹² This reduction of cognitive processing can cause a person to not notice unexpected stimuli, even if he/she looks at it.

Drivers that use hands-free devices (HFD) are more likely to notice traffic signals, slower to respond to brake lights of the vehicle in front, and more likely to cause rear-end crashes. These same drivers are also less likely to recall detailed information about specific visual stimuli; even if they fixated their vision on it. This suggests cell phone conversations induce ‘inattentional’ blindness. Many studies have found that drivers increase their following distance while texting, which suggests that they recognize that the likelihood of a safety-critical event is increased.

The Virginia Tech Driving Institute performed a study in which they tested drivers while using the in-vehicle system of the 2010 Mercury Mariner that supports text messaging and voicemail mobile devices via basic touches.¹³ The in-vehicle system for sending messages showed less performance decay with more task glances and a higher mental demand. It is important to note that the text-to-speech function for *incoming* messages showed no differences from the baseline.

Secondary tasks (e.g., eating, writing, reading, use of cell phones) that are performed while driving are measured in terms of the odds ratio (OR), which is the frequency of occurrence. Odds ratios are calculated to identify tasks that are high risk; 1.0 is the baseline. The baseline is defined as the likelihood an incident will occur when the driver is not involved in any secondary tasks. Less than 1.0 means it is less likely to occur and greater than 1.0 means a safety-critical event is more likely to occur. These secondary complex tasks have a high odds ratio, which increases the chances for a safety-critical event. The most risky behavior is text messaging, with an OR of 23.2.¹⁴ The 100-car naturalistic study found that the OR was not significantly different from 1.0 as task *duration* increased; suggesting task duration does not affect driving risk. This finding

connects to the fact that crashes have not increased, while involvement in secondary tasks by the public have increased.

Mobile Data Terminals (MDT's)

Mobile Data Terminals (similar to Mobile Digital Devices) are computers that are either portable or mounted that provide the police officer with the ability to run searches and access data while on the road. A radio, radar equipment and other electronic equipment is also located in the center with the computer in the cruiser. These portals are a great resource for police officers while on the road. Although these devices provide a wealth of information to the officer, usage of such while driving can be dangerous.

Collision reports are unlikely to detail Mobile Data Terminals (MDTs) as the specific cause for an accident, because the driver may not attribute the actual cause for the collision to the device. MDT's require users to manipulate buttons and switches in order to perform routine tasks. While driving this creates a safety issue due to the fact that the police officer must remove a hand from the steering wheel in order to operate it. It also requires the officer to take his eyes off the road for a period of time, which increases the likelihood of a safety-critical incident, as noted previously. Unfortunately, police officers must use these complex systems in order to perform their day-to-day tasks in serving the public. Even while limiting its use while driving, it cannot be completely avoided. In an effort to reduce such risks, the U.S. Department of Justice has provided support to a group within the New Hampshire academic system to develop devices and programs/software that enable law enforcement officers to perform their same duties with less risk.

Project54: Consolidated Advanced Technologies for Law Enforcement Program

Project54 (P54) is striving to create in-vehicle and remote software designed to aid police officers with the various tasks required and to increase safety through voice commands and steering touch buttons. The device and software are currently being tested in New Hampshire State Police cruisers. The project is also testing the use and application of hand-held devices, equipped with barcode scanners, in order to remotely access the P54 system.

It integrates general purpose computing facilities, voice and data, radio communications, and special purpose devices like the radar, lights and siren, video units, fingerprint sensors, and the GPS units into a single voice-activated system. The program also provides access to both local and remote data from the following applications: license and registration checks, criminal records databases, fingerprint checks, computer aided dispatch, vehicle navigation, reports/forms entry and so forth.

The P54 team is also researching and testing the use of a hand-held version of such which includes a barcode scan engine and wireless communication modules. The design of the Remote Access and Mobile Data Transaction System is based on the idea that the officer should be able to connect to the P54 system in the vehicle. This version would be useful for on foot, bicycle, and horse bound patrollers. It is also being designed to enable remote access to the P54 system.

As of December 2004, 240 police cruisers have been equipped with the P54 system in the state of New Hampshire. The P54 speech user interface (SUI) is also in use throughout these vehicles. The systems are continuously reevaluated. The police officers that use them are also continuously surveyed for issues regarding the system. It is an

ongoing effort to remove flaws from the systems and to improve any issues that are raised by those testing it.

A few studies have been conducted regarding any possibility synthesized speech may cause driving deterioration, no significance was found. Research has shown that speech-based interactions with in-vehicle computers may provide the driver with the illusions that it is safer. It is still similar to cell phone conversations, but it does not have the same pressures to respond like normal cell phone conversations. Speech-based interactions with in-vehicle computers can put a greater cognitive load on the driver due to poor voice recognition, compared to conversations with persons in the vehicle. A 30% increase in reaction time to an intermittently braking vehicle was found in one study.¹⁵ The complexity of the system, number of menus, has been found to increase reaction time. Drivers that use a simple-system for in-vehicle e-mails have a comprehension rate of 85.7% versus the complex system comprehension rate of 62.5%.¹⁶ The complexity of the driving environment and the use of a complex speech-based system could jeopardize driver safety.

Spokane Police Department Use of MDT's

The Spokane Police Department (SPD) currently uses Mobile Digital Devices (MDD's) to record "changes in status (e.g. arrival at scene, meal periods, in service)." All activities must be recorded by the officer via the MDD or by the Combined Communications Center, which is imputed into Computer Aided Dispatch (CAD) if initiated through voice by the officer. The device is used to access confidential records from the State of Washington, Department of Justice and Department of Licensing

databases. Use of the MDD is allowed while driving and the officer is to remain cognizant of their driving duties.¹⁷ While en route to an urgent call, the officer is to request information over the air from the Combined Communications Center (CCC). Use of the MDD is not allowed “within 300 feet of a suspected improvised explosive device.” There are currently no explicitly stated limitations or suggested alternatives about its use while operating a vehicle. While running code (i.e. usage of emergency lights and/or siren) it is stated that officers should request information over the air from the CCC.

The cognitive load placed on the driver while using such a device cannot be avoided, though it can be reduced through hands-free, speech-based devices like the P54 system. One hundred and twenty-six incident reports were reviewed for this report due to the recent collision of a police vehicle and a pedestrian on January 30, 2011, which lead to the fatality of that citizen. Of the 126 vehicle incidents provided by the SPD for 2009-2010, zero reported the usage of an MDT while driving as the cause.

The official reports detailing the incident involving an SPD vehicle and a pedestrian were also reviewed for this report. The Spokane County Sheriff’s Office (SCSO) report notes that Officer Ennis stated that he was “sharing his time between the roadway and his computer (mobile data computer – MDC) leading up to the collision.”¹⁸ It was also reported that Officer Ennis sent a message to another officer through the MDC “seconds” before impact with the pedestrian. The MDT has the similar attributes of texting and when placed in a driving situation it can introduce the same potential hazards, as previously reviewed. The cognitive load and distracting effects placed on a driver while operating such a device and driving cannot be avoided with presently available

technology. It is recommended that the Spokane Police Department reflect the potential hazards of such via reevaluation of departmental policy.

Notes

- ¹ AAA Foundation for Traffic Safety (2008). Cell phones and driving: Research update. Retrieved from AAA Foundation for Traffic Safety website:
<http://www.aaafoundation.org/pdf/CellPhonesandDrivingReport.pdf>
- ² (n.d.) Statistics and Facts about Distracted Driving. Retrieved from <http://distraction.gov/stats-and-facts/index.html>
- ³ Strayer, D.L., Drews, F.A., Crouch, D.J. (2003) Fatal distraction? A comparison of the cell-phone driver and the drunk driver. In *Proceedings of the Second International Driving Symposium on Human Factors in Driver Assessment, Training and Vehicle Design*, 1-6.
- ⁴ Box, S. (2009, July 29). New data from Virginia Tech Transportation Institute provides insight into cell phone use and driving distraction. Virginia Tech News. Retrieved from:
<http://www.vtnews.vt.edu/articles/2009/07/2009-571.html>
- ⁵ Box, 1
- ⁶ Olson, R.L., Hanowski, R.J., Hickman, J.S., Bocanegra, J. (2009). Driver distraction in commercial vehicle operations (Report No. FMCSA-RRR-09-042). Retrieved from U.S. Department of Transportation, Federal Motor Carrier Safety Administration website: <http://www.fmcsa.dot.gov/facts-research/research-technology/report/FMCSA-RRR-09-042.pdf>
- ⁷ Box, 1
- ⁸ AAA Foundation for Traffic Safety (2010). 2010 Traffic safety culture index. Retrieved from AAA Foundation for Traffic Safety website: <http://www.aaafoundation.org/pdf/2010TSCIndexFinalReport.pdf>
- ⁹ AAA Foundation for Traffic Safety (2008), 3
- ¹⁰ AAA Foundation for Traffic Safety (2010), 7
- ¹¹ AAA Foundation for Traffic Safety (2008), 3
- ¹² AAA Foundation for Traffic Safety (2008)
- ¹³ Owens, J.M., McLaughlin, S.B., Sudweeks, J. (2011). Driver performance while text messaging using hand-held and in-vehicle systems. *Accident Analysis & Prevention*, 43(3): 939-947
- ¹⁴ Olson, R.L., Hanowski, R.J., Hickman, J.S., Bocanegra, J., xx
- ¹⁵ Lee, J. D., Caven, B., Haake, S., & Brown, T. L. (2001). Speech-based interaction with in-vehicle computers: The effect of speech-based e-mail on drivers' attention to the roadway. *Human Factors*, 43(4): 631-40.
- ¹⁶ Lee, J. D., Caven, B., Haake, S., & Brown, T. L., 636
- ¹⁷ SPD policy 448.2.1
- ¹⁸ SCSO Report #11-31044, 4 & 8

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Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated With Its Use

Overview:

The use of technology by law enforcement has been steadily increasing as devices are created to suit the unique needs of the field. In-car video (ICV) devices have been continually integrated and updated since the 1980s. Evaluations of this type of recording device have shown that it has become a very useful tool within law enforcement. Unfortunately, ICV systems only record 10% of what law enforcement officers actually encounter. In more recent years, body-worn video (BWV) has found its way into the hands of officers in the hopes to increase public perception and to reduce frivolous claims against officers. Body-worn video can reduce expenditures in personnel time and resources. Many local agencies have begun to take advantages of such technology.

The major concerns are addressed regarding the use of such devices: admissibility in court, starting and stopping the recording, ability to edit/delete, and cost. The ICV has been tested in court and has been found to be admissible as long as certain stipulations passed down by the court are adhered to, such as ensuring proper chain of custody. Many of the types of BWV have limited amounts of recording capabilities, some as few as four hours. In order to overcome this issue, departments have instituted policies and procedures that dictate when the device should be turned on and off, including what is to be recorded. More expensive types of lapel BWV devices do not have the ability to edit or delete the video, although some concerns are placed around the accessibility of such video. Some software provided with the lapel style cameras offer the ability to record any and all access to the video. The cost of these devices varies depending on the manufacturer and features desired. Various grants are available to law enforcement agencies to aid in utilizing such technology.

It is recommended by the City of Spokane, Office of the Police Ombudsman that the Spokane Police Department (SPD) take steps to incorporate BWV into its standard equipment utilized by its police officers. It is also recommended that policies and procedures be drafted that explicitly addresses the following concerns:

- when to turn the recording device on and off

- proper chain of custody
- the storage and maintenance of the *video*
- the storage and maintenance of the *recording device*
- the accessibility of acquired video
- steps taken in the event the device should malfunction in the field

It is also recommended that ***each and every*** call for service and citizen contact be recorded to ensure even and appropriate application and usage of the device. Also standards should be put in place to ensure compliance with RCW 9.73.090, which places explicit stipulations on the usage of video by law enforcement.

Introduction:

In the 1980s, police departments began installing in-car video (ICV) systems in patrol cars in an effort to document stops involving individuals driving under the influence (DUI). ICV has been utilized in a variety of situations in order to gain evidence for trials during traffic stops, consent to search, and evidence of drug paraphernalia.¹ In a study performed by the International Association of Chiefs of Police (IACP), 33% of officers surveyed reported that the use of such cameras made them feel safer while on duty.² Officers reported that citizens would become less aggressive after being made aware of the camera. Officers also noted using the video in a self-critique manner, reviewing their own behaviors during their interactions with citizens to better increase their own safety and professionalism. The video recorded also allowed officers to be able to provide proof in false accusations of wrongdoing. In cases with video evidence, 93% of the time the officer was exonerated.³ With access to video, supervisors were able to clear these cases, which saved in personnel time and resources. The obtainment of video has granted prosecutors the ability to provide visual evidence of crimes. This increases the ability to obtain convictions and increase guilty pleas ahead of trial, also reducing costs for the judicial arm of the criminal justice system.⁴ With all the great qualities of ICV, it only records 10% of what police officers actually do.⁵ This is unfortunate, since claims of misconduct can stem from interactions away from the patrol car.

The cost of these systems can vary, reaching amounts near \$8000.⁶ The next wave in video technology utilized by law enforcement is body-worn video (BWV). Unlike the traditional ICV, BWV can accompany the officer wherever he/she may go. This tool can record the behaviors of the accused in a domestic violence call.⁷ It can also record the impact on the victim. Both of these can strengthen the prosecution's case, thus increasing conviction rates in these types of cases. These cameras can also record details provided by witnesses, aid officers in preparing statements, and record visual evidence. BWV also increases officer safety, reduces agency liability, reduces complaints on officers, and it can improve the public perception of police.⁸ The details of resisting arrest, use of force, lawful entry, and the establishment of probable cause can all be recorded via BWV. By providing a visual and audio record of an event, parties will not have to depend solely on an individual's recount of the details. Many departments nationwide have taken steps to incorporate this technology into their toolbox.

Since October 2006 police officers in the City of Plymouth, United Kingdom (UK) have been equipped with a BWV device that is worn on the head that records incidents in full color and high quality audio. The UK was the first to begin officially incorporating such technology into its police force. The video is admissible in their courts because the video is tamper proof. If the video is used for criminal prosecution, it is kept for ten years as a sealed master copy. It was found that those involved in crime were more likely to admit their involvement due to the video evidence. It was also found that officer received more respect when on patrol with the cameras. A 22.4% reduction in officer time spent on paperwork and file preparation in incidents with where the cameras had been used. A 14.3% reduction in complaints against police was also found. The reduction was noted to be specifically for "incivility and excessive use of force" when it was in use.⁹

In the United States (U.S.), there has been a growing trend in recent years to officially utilize BWV. Seventy-five police agencies in Texas use CopVu.¹⁰ This type of BWV is a small camera that resembles a pager. The camera is clipped onto the shirt of the officer and can record up to four hours of video. The Oakland Police Department has twenty of the VieVu type and Brentwood, Contra Costa County in California has three officers equipped with the same type of BWV cameras. Erlanger, Kentucky and

Lafayette, Colorado have also incorporated BWV cameras into their strategies.¹¹ San Jose tested the type made by TASER International called the AXON Pro system. The Chesapeake and Suffolk Police Departments have also acquired some BWV cameras and are testing them. Since 2008, the National Law Enforcement and Corrections Technology Center System's Small, Rural, Tribal, and Border Regional Center has been collecting data on the BWV cameras, in order to discover the value of such video in law enforcement.¹² More locally, the Airway Heights Police Department (AHPD), Post Falls Police Department, and the Kootenai County Sheriff's office in Washington State have begun utilizing BWV cameras. Also Lake Forest Park, Black Diamond, Pierce County, and Bainbridge Island in Washington State have purchased the VieVu lapel style of BWV.¹³ The Airway Heights Police Chief Bennett purchased the cameras for \$15,000 while they were on sale.¹⁴ The officers from the AHPD are required to turn the cameras on at the beginning of a call and keep them on until the call is finished.¹⁵

There are a few concerns surrounding the use of BWV in law enforcement. The issues of admissibility in courts have been cited as some to be a delaying factor in its use.¹⁶ With the relatively recent usage of such devices by law enforcement in the United States (U.S.), the issue of admissibility is yet to be tested. The ICV has been tested in court and has been found to be allowable, of course with certain stipulations regarding the proper chain of custody and storage. Eighty-one percent of police departments (PD) catalog tapes by hand and 90% of the tapes remain on-site for months.¹⁷ Many of the lapel style BWV products come with the company's software to download and manage the video. The video recorded by TASER's Axon Pro BWV product is automatically uploaded once the tactical computer is plugged into the docking device.¹⁸ It can be stored offsite and managed by the manufacturer via its software called Evidence.com. This software allows for reviewing and managing of the video using a browser, including the import and management of other types of evidence from various other sources.¹⁹ Washington legislation was amended in 2000 to allow police officers to utilize the latest ICV, which remotely records audio during police-citizen interactions. This legislation stipulates that officers must be in uniform, the sound recording device and video camera must both be activated in police-citizen interactions, and that the audio may not be intentionally turned off during the encounter.²⁰ It is stated that the person being recorded

be informed of such and that “the statement so informing the person shall be included in the sound recording.”²¹

Another large concern in the use of BWV in law enforcement is the issue of starting and stopping the recording. Many of the various types of BWV systems only record up to four hours of video. In order to gain the benefits of BWV, agencies have created policies and procedures detailing when to record and when the device is to be turned off. The third concern encircling these devices is the ability on some types to edit the video. The more expensive systems like the AXON Pro by TASER International does not have this ability, rather it allows the officer to replay the video through the tactical computer (ATC) attached to the officer’s belt. Any access to the video once it is uploaded into the managing software is recorded. The less expensive lapel style cameras that range around \$100 have the ability to delete video.²²

The fourth major concern in the use of BWV is the cost. Compared to ICV systems, the BWV is significantly more cost effective. The BWV can record all police-citizen interactions, rather than only what is in front and inside the car. The most expensive BWV is made by TASER International called AXON Pro and costs \$1,700 per unit.²³ The management of the video can be done through their software program called Evidence.com; it is separate and not required.²⁴ This can lessen the financial and resource expenditures associated with the ICV systems. The lapel style of BWV cameras range from \$100 to \$900. The more expensive lapel style cameras (e.g. VieVu, CopVu) do not allow editing or deletion.²⁵ The software used to manage the video is included, with the agency doing so.

There are various grants that can provide financial assistance, so agencies can begin including BWV technology into their strategies to achieve the organizational goals. The Edward Byrne Memorial Justice Assistance Grant Program (JAG) and COPS MORE (*Making Officer Redeployment Effective*) are examples of grants that may allow for the allocation of monies to obtain such equipment.²⁶ The American Police and Sheriffs Association provides a grant opportunity to agencies in need of equipment.²⁷ BWV is the next wave of technology that law enforcement agencies can draw upon in order to enhance public legitimacy and transparency, while also protecting the safety of both the citizen and the officer. Agencies and officers can also ensure all aspects of citizens’ rights

are documented for future questions and/or issues. Documenting all police-citizen interactions can protect officers from frivolous complaints by providing a record that can be referred to as needed. The citizen can be assured that all events that occur during their contact with law enforcement will be available for review should they have comments. The video can also be used to create evidence for court cases.

Taking steps to utilize such technology can illustrate that the agency and those that comprise it see the benefits and are striving to reach another level of professionalism and transparency. In order to gain the benefits of BWV, agencies must ensure the video acquired cannot be tampered with (i.e., edited or deleted), otherwise public skepticism can occur. This is also an imperative factor when it comes to the admissibility of the video in court, proper chain of custody must be met. Some critics suggest that the video should be downloaded and stored offsite,²⁸ which is provided by TASER International's video management software, Evidence.com.

It is recommended by the City of Spokane, Office of the Police Ombudsman that the Spokane Police Department (SPD) take steps to incorporate BWV into its standard equipment utilized by its police officers. It is also recommended that policies and procedures be drafted that explicitly addresses the following concerns:

- when to turn the recording device on and off
- proper chain of custody
- the storage and maintenance of the *video*
- the storage and maintenance of the *recording device*
- the accessibility¹ of acquired video
- steps taken in the event the device should malfunction in the field

It is also recommended that ***each and every*** call for service and citizen contact be recorded to ensure even and appropriate application and usage of the device. Also standards should be put in place to ensure compliance with RCW 9.73.090, which places explicit stipulations on the usage of video recording devices by law enforcement.

¹ Accessibility is meant in terms of who has access to the video and who has the ability to edit or manage videos. Certain software allows officers to add notes and audio to the video files. Other software allows for the management of the video in order to prepare it for court; it is unclear what is meant in this regard. Video should be kept in its ***context*** and should be used for evidence in its entirety.

The following images are the popular types of BWV:

FirstVu by Digital Ally



NO EXTERNAL CABLES OR COMPONENTS REQUIRED



²⁹ Price: \$795

AXON Pro & Evidence.com System by TASER International, Inc.



30

AXON Pro Price: \$ 1,700 per unit
Evidence.com is separate and not required

VieVu LE2 by VieVu



Price \$899.99

CopVu by WatchGuard



32

\$895

VIDMIC by Ear Hugger Safety



34

Price: \$700

Reveal Media

RS3-SX Model



36

Price: \$762.08

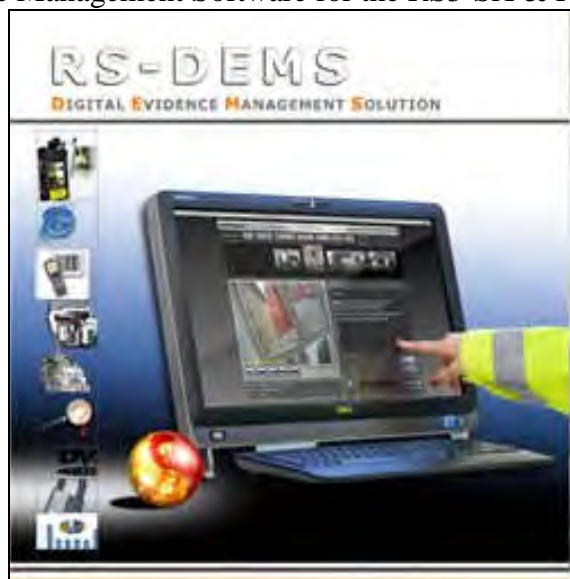
RS2 Model



37

Price: \$634

Evidence Management Software for the RS3-SX & RS2 models



38

Wolfcom 3rd Eye by WolfcomUSA



39

Price: \$975 (Retail); \$750 (Agency price)

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- ³³ <http://ehsequipment.com/images/vidmic-how.jpg>
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Media Ombudsmen: Increasing Accountability, Accuracy, and Legitimacy

Overview:

The position of an ombudsman in the media dates back to 1913. In a desire to increase accountability, accuracy, and balance, some news organizations have enlisted the services of an ombudsman to handle complaints from citizens on various issues. The debate on the subject falls around the issue of whether or not the role the ombudsman should be that of public relations. News ombudsmen can respond effectively and efficiently to public comments. They can also reorganize criticisms for staff, which provide quality reflections on the policies and practices of the organization. This can prevent serious allegations from ending in more formal means, such as court. Establishing an ombudsman position can increase public perceptions of news outlets and legitimacy of the institution through increased contact. It is recommended by the City of Spokane, Office of the Police Ombudsman that local media outlets take steps to incorporate an official ombudsman position in order to achieve increased levels of accountability, accuracy, balance, and legitimacy.

Introduction:

Originating as a Swedish term, “ombudsman” currently designates a person that, in few words, acts as more of an arbitrator. There are various definitions available, but they all incorporate a key element of listening to the public’s concerns and investigating these complaints regarding matters in their representing field. The first ombudsman-like functions among the media date back as early as 1913, when the *New York World* created the Bureau of Accuracy and Fair Play. Originally occurring in European countries as a government official, Nassau County, New York created the first local government ombudsman in the United States (U.S.) in 1966. The first newspaper ombudsman in the U.S. was in Louisville, Kentucky for The Courier-Journal and The Louisville Times in 1967.¹ By the early 1980s, 22 newspapers had created the position. As time passed, the creation of such a position has been slow to develop due to various skepticisms by editors, reporters, and academics. Although newspapers may not have an “ombudsman,”

common alternative titles are termed reader advocate, public editor, and reader representative.² Before the drive to have an individual that solely performed this duty, editors filled this role in conjunction with their other duties. The desire for accountability, accuracy, and balance has fueled the adoption of an ombudsman position among newspapers and other media outlets.

In 2009, the Pew Research Center for the People & the Press released research that was performed on the public's evaluation of the news media from 1985 to 2009. Since 1985, there has been a steady decline in the perceived accuracy of the news media. In 2009, only 29% of Americans believed that news organizations get the facts correct.³ The study also indicated that 41% of the public utilized newspapers for information about local news. In regards to national and international news, 42% reported getting this information from the internet, which is a noticeable amount greater than those that cite newspapers (33%).⁴ In 1985, 72% of respondents believed news organizations were "highly professional," compared to 66% in 2007.⁵ Only 18% stated that news organizations deal fairly with all sides; this is a 16% decline from 1985.⁶ In 1985, 53% said the press favored one side. In 2007, 66% of Americans agreed with this, and an increased 74% of Americans believed the press favored one side over the other in 2009.⁷ There has been a 21% increase in public perceptions believing media favor one side over the other.

Depending on the goals of the medium, the desire to include the task of public relations into the role of the ombudsman may or may not be a priority. However, there are many advantages to enlisting the qualities of an ombudsman. People have been found to have a greater perception of a newspaper's accountability when their own awareness of the ombudsman increased.⁸ First and foremost, the ombudsman can serve a public relations function by providing an actual person to hear and respond to public comments and issues of dissatisfaction with the content and actions of the media outlet. This can strengthen the connection with the reader.⁹ The ombudsman can also provide the perspective of the reader to editors and other staff. This helps generate quality reflection for growth and the reevaluation of policies and practices within the organization.

Often times the issues citizens have with newspapers and other media outlets can translate into the loss of business and/or readership. More serious allegations can turn

into complaints taken to a national news council, press commission, or court.¹⁰ The Washington News Council (WNC) is an independent, nonprofit organization. The WNC seeks to maintain public trust and confidence through the promotion of fairness, accuracy, and balance. It seeks to create a forum for the public and news media representatives to dialogue about ethics issues. In seeking to fulfill its mission, the council helps the public hold media outlets accountable for their product. News councils are created for the purpose of creating communication between citizens and journalists. These councils also provide alternatives to litigation through their complaint process, which provide a venue for mediation between both parties. The WNC's complaints committee, which includes both media and public members, decides if the complaint is serious and substantive. If so, the mediation process begins, thus striving to accomplish resolution for both parties via dialogue. The WNC also offers educational programs to youth interested in the council's activities.¹¹

Many perceived issues with ethics can potentially be solved through an ombudsman. Ombudsmen can address a multitude of readers' concerns' like offensive language, perceived unfair treatment, sources, and images.¹² Providing a mediator for such can take the pressure off editors to fill this role, so they can focus on their tasks. By providing an outlet for mediation, the opportunity for relationship building among readers and the ombudsman also arises. This can increase transparency and positive perceptions among the public at large. The goal overall is to "establish real recourse through which complaints might find satisfaction."¹³

A disadvantage noted by news staff and academics is that the ombudsman mainly serves a public relations function for the newspaper, having less time to focus on increasing the actual transparency and accuracy of the newspaper. Editors tend to believe that the ombudsmen are inherently biased due to the fact they are employed by the same organization they are also overseeing, noting that the ombudsman should be more detached from the daily activities of the newsroom. It has also been argued that other accountability measures are sufficient. The fact that some distance is needed between readers and the paper is viewed as helpful to the process, but an argument against such is the notion that this distancing has caused reporters and other staff to be shielded from the complaints made by citizens.¹⁴ Some argue that by placing an ombudsman in this position

would not get rid of the gap. In this debate it has been noted that reporters and editors upholding the distances from their constituents are violating a fundamental rule among the practice.¹⁵ It has also been argued that the individual that fills the ombudsman position is an experienced journalist and has therefore been socialized to the process, which limits their ability to be objective.¹⁶

Throughout the years, some very troublesome mishaps have occurred that have shaken the public's perception of the accuracy, accountability, and transparency of the media. The Jayson Blair scandal in 2003 really shook the accuracy pillar in the foundation of news reporting. Blair, a reporter for the New York Times fabricated numerous stories. In 2004, CBS utilized falsified documents regarding George W. Bush's military service.¹⁷ The misreporting during the Katrina disaster in 2005 furthered the debate regarding the systematic appointment of ombudsmen within the media. During the Katrina disaster, numerous newspaper reporters detailed inaccurate accounts of events based on unchecked sources. The issue of certain language attached to images of certain groups of victims fueled the need and desire for increased quality and integrity. More recently, National Public Radio (NPR) misreported the health status of Congresswoman Gabrielle Giffords on January 8, 2011, reporting her dead when in fact she was not. For thirty minutes the news that Congresswoman Giffords was dead flooded the news media and social networking outlets before a correction was made via e-mail alerts. NPR relied on information from two sources, which turned out to be second-hand.¹⁸ The emotional trauma incurred by such misreporting could have been avoided. These familiar instances of inaccurate reporting among news media create a constant interest in striving for increased levels of accountability and accuracy.

In 1980, the Organization of News Ombudsmen (ONO) was formed and is comprised of international and domestic ombudsmen. The ONO strives to enhance member education, high ethical standards among news reporting, and to provide a forum for the exchange of ideas, information, and experiences. It also desires to establish contacts with many other news personnel (i.e. publishers, editors, press councils). The ONO also seeks to increase the dispersion and accuracy of news outlets.¹⁹ The ONO also holds regular mini-conferences and a larger annual conference to aid in the organizational goals.

Many of the larger news agencies have elected to appoint an official ombudsman position to enhance their accuracy and accountability to their readers. Some of these are: the Corporation for Public Broadcasting, the Washington Post, Canadian Broadcasting Corporation, National Public Radio (NPR), The Miami Herald, and the America Abroad Media. The New York Times lists the Public Editor as the individual that handles the tasks that an ombudsman would. The ombudsmen tend to have a blog where they discuss suggestions for improvement and other public concerns they have received. Here they are able to foster constructive criticism and public suggestions for improvements. This helps to foster positive relationships and increase media legitimacy in the eyes of the public. For example, the NPR ombudsman at the time, Alicia Shepard, commented on where the mistakes were made during the reporting process of the Giffords misreporting incident in 2011. Via her blog, she noted that sources should have been checked and that the misreporting could have been avoided had the family and/or treating hospital been contacted. She also states that the correction to Giffords' condition should have been updated at the next available broadcast, instead of only e-mail alerts. NPR had previously provided a correction, but reported it on the next broadcast as unknown, when her condition as being "in surgery" was confirmed by the treating hospital 30 minutes before the next broadcast.²⁰

Since internal criticism occurs behind closed doors, some suggest that bringing this out into the public would help increase public legitimacy. Helping to establish an external citizen or community media council would also aid in this matter.²¹ In 1947, the Commission on the Freedom of Press stated that "if the press is to be accountable—and it must be if it is to remain free—it's members must discipline one another by the only means they have available, namely, public criticism."²² By enlisting the services of an ombudsman, quality and integrity can be upheld, aiding in increasing public legitimacy of this vital institution.

It is recommended by the City of Spokane, Office of the Police Ombudsman that the local media outlets take steps to incorporate an official ombudsman position in the effort to increase accountability, accuracy, balance, and legitimacy.

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- ²⁰ Shepard, A. (1/11/2011), 2
- ²¹ Kenney & Ozkan 2011
- ²² Commission on the freedom of the press (1947). *A free and responsible press: A General report on mass communication: Newspapers, Radio, Motion Pictures, Magazines, and Books*. Chicago, IL: University of Chicago Press (Quoted by Nemeth 2003, 5)

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