

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 As a result, the increased authority granted to the Office through the previous Council action was rescinded and certain changes occurred.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 Coroner 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.

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 two years, 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 Huppig, 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 2011 Annual 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. 60 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)

57 **citizen** complaints were assigned for investigation in 2011. 32, 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 vigilante. 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".

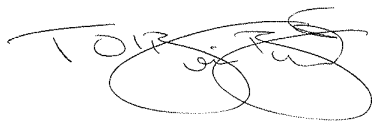
-Steven O.

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 flourish at the end.

Tim Burns
Police Ombudsman
City of Spokane Washington