

Office of Law Enforcement Oversight | First Report



King County

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PART ONE Introduction

On January 6, 2006, former King County Sheriff Sue Rahr asked that a Blue Ribbon Panel be formed to review management systems for addressing employee misconduct and discipline in the King County Sheriff's Office (hereinafter referred to as the "Sheriff's Office"). Once formed, the Blue Ribbon Panel considered best management practices of other police departments and their applicability to the Sheriff's Office. The Blue Ribbon Panel also conducted 18 confidential interviews with current and former employees of the Sheriff's Office and met with numerous police departments, national organizations, and community stakeholders to gain perspective on policing in King County. Upon completing its review, the Blue Ribbon Panel released its first report¹ on September 11, 2006. Although the Blue Ribbon Panel's review of the Sheriff's Office revealed "no evidence of corruption, excessive use of force, racial profiling, or widespread misbehavior by deputies," it identified significant organizational challenges that influenced "the quality and effectiveness of the misconduct and discipline processes of the Sheriff's Office."²

To mitigate this concern, "the Blue Ribbon Panel's report present[ed] 43 findings, six major recommendations, and 36 implementing actions that address accountability in the Sheriff's Office" to improve "the internal management and organizational systems for addressing employee misconduct and discipline."³ One of the six major recommendations called for the King County Executive and the Metropolitan King County Council (hereinafter referred to as the "County Council") to create and fund an Office of Independent Oversight. In doing this, an external independent agency would suggest reforms to the Sheriff's Office to ensure compliance with best practices in the law enforcement community and provide transparency of police operations to ensure accountability and to maintain the public trust. On October 9, 2006, following the leadership of Councilmembers Bob Ferguson, Julia Paterson, Reagan Dunn, and other stakeholders, the County Council approved Ordinance 15611 to establish the Office of Law Enforcement Oversight (hereinafter referred to as "OLEO") to ensure the integrity of internal investigations of misconduct and to restore the public's trust of the Sheriff's Office. However, as the reforms underlying Ordinance 15611 had a direct impact on working conditions within the Sheriff's Office, the King County Police Officer's Guild (hereinafter referred to as the "Guild") filed an unfair labor practice claim against King County, which delayed the establishment of OLEO. After extensive contract negotiations with the Guild, most of Ordinance 15611 was repealed. Pursuant to a labor agreement with the Guild, the County Council approved Ordinance 16511 on May 11, 2009 and reaffirmed its commitment to ensuring accountable and transparent policing in King County.

Following through on the County Council's commitment to civilian oversight of law enforcement, King County Executive Dow Constantine commenced the recruitment for the Director of the Office of Law Enforcement Oversight. On July 11, 2011, following a nationwide recruitment, Executive Constantine nominated Charles E. Gaither to serve as OLEO's first Director. On Executive Constantine's recommendation, the County Council convened a confirmation hearing at which Mr. Gaither's appointment was unanimously approved. On October 17, 2011, Mr. Gaither began his work as OLEO's first Director.

¹ Report of the King County Sheriff's Blue Ribbon Panel (September 11, 2006).

² *Id.* at 1.

³ *Id.* at 2.

PART TWO Biography of the Director

Prior to heading OLEO, Mr. Gaither served as a special investigator with the Los Angeles Board of Police Commissioner's Office of Inspector General. In that role, he maintained investigative oversight of detectives and police performance auditors assigned to the Los Angeles Police Department's Force Investigation Division and Internal Audits and Inspections Division. He also ensured compliance with the mandates of a federal Consent Decree and managed politically sensitive investigations of officer involved shootings, in-custody deaths, and other critical incidents. Further, Mr. Gaither served on the Los Angeles Police Chief's Executive Committee to revise investigative and audit standards to comply with federal guidelines underlying the investigation of terrorism. Prior to joining the Office of Inspector General in 2005, Mr. Gaither served as a postal inspector with the United States Postal Inspection Service where he investigated the crimes of robbery, assault, and battery perpetrated by and against postal employees. His responsibilities included preparing and presenting investigative findings to federal grand juries, the District Attorney's Office, and the United States Attorney's Office for prosecution. He was also assigned to a financial crimes task force and worked in partnership with the Federal Bureau of Investigation, the Secret Service, and other law enforcement agencies to abate the crimes of bank fraud and identify theft.

Before joining the United States Postal Inspection Service, Mr. Gaither served as a police officer with the Los Angeles Police Department. In that role, he worked with Community Police Advisory Boards and other stakeholders to reduce criminal activity in southeast Los Angeles and resolved conflicts through mediation. He was also a member of several specialized units and worked diligently to abate gang violence, burglaries, and narcotic sales.

Mr. Gaither is a graduate of Seattle University School of Law and worked in the Seattle City Attorney's Office. He also served as a trustee in the Young Lawyers Division of the King County Bar Association and served as a law clerk with the local law firm of Riddell Williams. Mr. Gaither earned a bachelor's degree in Criminal Justice and a master of Public Policy and Administration from California State University at Long Beach.



"I am humbled by the opportunity to serve as the Director of OLEO and look forward to working closely with the Sheriff's Office, elected officials, and community leaders and stakeholders alike. I am committed to ensuring accountability of County policing and will endeavor to maintain the public's trust."

- Charles E. Gaither

PART THREE OLEO's Review Authority

Ordinance I6511 (hereinafter referred to as the “Ordinance”) forms the organizational structure by which OLEO ensures accountable policing in King County. The Ordinance provides OLEO the authority to “receive complaints from any complaining party concerning the Sheriff’s Office, [to] track complaints, and [to] transmit the complaints to the Internal Investigations Unit.”⁴ The Ordinance also ensures OLEO is 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 the notice of finding if the complaint is not sustained.”⁵ Further, to assure transparency of the Sheriff’s discipline and complaint handling process and to guarantee adequate information is made available to OLEO, the Ordinance provides OLEO the authority to “monitor the investigation and resolution of all complaints to ensure they are handled in a timely fashion and [that] complainants are notified of the final disposition of their complaints.”⁶ While the Ordinance does not authorize OLEO to conduct independent internal disciplinary investigations of Sheriff’s Office employees, to participate in any aspect of a criminal investigation until its conclusion, or to be notified of any part of a criminal investigation, staff assigned to OLEO may attend and observe administrative interviews and ask questions once the Sheriff’s Office has concluded its interview of the employee.⁷

The Ordinance also provides OLEO with “unimpeded and real-time access to unredacted case information and all information related to ongoing investigation files.”⁸ However, should an investigative file relate to an ongoing criminal investigation of a Sheriff’s Office employee, OLEO will be denied access to this information until the matter has concluded. Once the Sheriff’s Office has completed its internal investigation, the Internal Investigations Unit (hereinafter referred to as “IIU”) shall forward a complete copy of the internal investigation to OLEO for review. The Director will then assess the quality of the investigation and will determine, in writing, if it was thorough and objective and investigated in a timely manner. If the Director determines that additional investigation is needed on issues material to the adjudication of the case, he shall request that further investigative action be completed. Should a dispute arise among investigators assigned to IIU and the Director regarding the “necessity, practicality, or materiality” of the request for further investigation, the commanding officer of IIU shall determine if further investigative action will be taken.⁹ If the Director is not satisfied with the determination of the commanding officer, the matter will be referred to the Sheriff for further review.¹⁰ Should the dispute remain, the matter will be referred to the King County Executive for final resolution and investigated in a manner consistent with his determination.

⁴ Ordinance I6511 at 12. (May 12, 2009)

⁵ *Id.* at 14.

⁶ *Id.*

⁷ *Id.* at 16.

⁸ *Id.*

⁹ *Id.* at 17.

¹⁰ *Id.*

Consistent with its review authority, OLEO is required to issue an annual report (hereinafter referred to as the “First Report”) that provides statistical analysis of personnel complaints, investigative findings, and final discipline for sustained complaints. The First Report should also “include information about the number and type of misconduct complaints in which the Director did not certify.”¹¹ It will also “make recommendations for action by the Sheriff on needed improvements in policies, procedures, and practices stemming from analyses that look beyond individual cases of misconduct to identify systemic problems within the Sheriff’s Office.”¹² In doing so, the Director “shall make use of all available materials, including internal and external audits and reviews of the Sheriff’s Office and critical incident reviews,¹³ in developing and making recommendations for improvements.”¹⁴

Pursuant to these mandates, OLEO presents its First Report for the calendar year of 2011. This First Report, however, is somewhat different from those that will follow. Here, because the Director did not begin his work until October 17, 2011 and was immediately tasked with establishing OLEO’s operating budget, enhancing its review authority, and securing the necessities required to oversee the Sheriff’s Office, the First Report will not address systemic problems underlying the Sheriff’s Office or make recommendations on possible reforms. Rather, the First Report will provide statistical data on personnel complaints filed during 2011 and provide background on OLEO’s activities and accomplishments between October 17 to December 31, 2011.

I. Statistical Data

A. Methodology

The statistical data reviewed by OLEO encompasses personnel complaint information compiled during 2011. OLEO does not currently have the services of a statistician. Therefore, the data presented reflects research and calculations of staff assigned to OLEO and the Sheriff’s Office. The statistics presented in this report focused on the number of allegations received rather than the total number of complaints filed with the Sheriff’s Office. This is because a single complaint filed by a citizen may contain multiple allegations. For example, a citizen indicating that unnecessary force was used to effectuate his arrest may also state that the officer was rude and that his detention was the result of racial profiling. In this case, such a citizen would have made a single complaint with three allegations: Unnecessary Force, Discourtesy, and Biased Policing.

¹¹ *Id.* at 14.

¹² *Id.*

¹³ “Critical incidents review means the written findings of a shooting review board and an accident review board conducted by the Sheriff’s Office [*sic*].”

¹⁴ Ordinance I6511 at 14-15.

I. Personnel Complaints

In 2011, the Sheriff's Office received 128 complaints of misconduct that contained 214 allegations.¹⁵ Forty-eight of these complaints were generated by the Sheriff's Office while eighty complaints were generated from outside of the department. The following table denotes the frequency and type of personnel complaints filed with the Sheriff's Office.

Table I - Allegations contained in complaints

Allegation	Received
Abuse of Authority	15
Biased Policing	9
Conduct Criminal in Nature	21
Conduct unbecoming ¹⁶	66
Dishonesty	16
Excessive Force	11
Insubordination or Failure to Follow Orders	11
Performance Standards ¹⁷	65
TOTAL ALLEGATIONS	214

Table 2 - Resolution of Allegations of Misconduct

Findings¹⁸	Number
In Progress	49
Exonerated	11
Information Only	33
Non-sustained	43
Sustained	47
Undetermined	10
Unfounded	21
Total	214

A total of 214 allegations of misconduct were filed with the Sheriff's Office in 2011. However, of these allegations, only 47 of them were sustained. In order for an allegation to be

¹⁵ OLEO did not receive any completed misconduct cases during 2011. Therefore, it was unable to certify that these investigations were thorough and objective.

¹⁶ Conduct Unbecoming is a "catch-all" complaint that covers a wide range of behavior including courtesy, ridicule and inappropriate use of profanity.

¹⁷ Performance Standards includes failure to comply with internal policies governing the submission of reports, poor performance evaluations, failure to give name to a citizen and other violations of department performance standards.

¹⁸ For a definition of "Findings" please refer to Appendix A-I.

sustained and for discipline to be imposed, there must be sufficient factual evidence that the accused employee violated department policy. The following table denotes the discipline and the corrective action taken by the Sheriff's Office in 2011:

Table 3 - Summary of Remedial Action

Action	Number
Corrective Counseling	6
Oral Reprimand	1
Performance Improvement Plan	6
Suspension	11
Termination	3
Training	8
Written Reprimand	22

Table 4 - Comparison of Prior Years Findings

Metric	2011	2010
Percentage of sustained cases	22%	19%
Suspensions	11	15
Terminations	3	3
Written Reprimands	22	19
Internal Complaints	48	61
External Complaints	80	126

II. Activities and Accomplishments

OLEO began its operations in October of 2011 with a clear mandate: to assure the integrity of the Sheriff's Office through meaningful participation in the review of its internal investigations process. At the onset, OLEO recognized the consequences of expressing opinions of the Sheriff's Office without first establishing a strong working relationship and acquainting ourselves of the policies and procedures governing internal investigations. Accordingly, we spent many hours meeting with command staff, deputies, and employee organizations to ascertain their perception of current needs and to identify deficiencies underlying sheriff operations. Listening and learning first, rather than accusing without cause, was essential to establishing trust with the Sheriff's Office and remains so today. This approach engenders candor and establishes credibility necessary for OLEO to perform its work and to identify risks that would otherwise escape review. Because OLEO does not yet have investigators assigned to it, it relies on the current investigative structure of the Sheriff's Office. This relationship has been successful in identifying deficiencies in the investigative process and has facilitated dialogue for reform, transparency, and accountability. OLEO is confident that its reliance on this process is not misplaced. For example, when OLEO

retained Merrick Bobb¹⁹ to conduct a Risk Assessment of the Sheriff's Office, the Sheriff's Office was cooperative and provided access to any and all information necessary for Mr. Bobb to conduct his review. The Sheriff's Office supports civilian oversight of law enforcement and is in full support of its mission.

In following through on its mission to ensure accountability and transparency of internal investigations and to maintain the public's trust, OLEO engaged in the following activities in 2011:

- Enhanced the security and infrastructure of the Office of Law Enforcement Oversight.
- Established an operating budget for 2012.
- Purchased needed office supplies and necessities required to oversee the Sheriff's Office.
- Met with major stakeholders including members of the ACLU, the NAACP, the County Council, the Executive's Office, the Guild, and the U.S. Attorney's Office to foster a transparent and open working relationship.
- Conducted community outreach to convey OLEO's mission to gain support from community members and law enforcement organizations.
- Reviewed internal protocols of the Sheriff's Office, noted significant deficiencies, and advised the Sheriff of our observations (i.e., in-service training, accountability models, etc.).²⁰
- Partnered with the Prosecuting Attorney's Office to create "One-Minute Briefs" as a means to provide legal updates to members of the Sheriff's Office.
- Collaborated with the Sheriff's Office to establish the parameters for the creation of volunteer mediation program as required by the Ordinance.
- Reviewed various complaint receipt, tracking, and investigation protocols for internal use.

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¹⁹ For information on Mr. Bobb's background, please refer to Appendix A-2.

²⁰ OLEO is presently conducting a Risk Assessment of the Sheriff's Office and will formally present its findings and recommendations to the Sheriff in the coming weeks.

PART FIVE 2012: Moving Forward

OLEO is looking forward to continuing the work it began in 2011 and will build on the success of last year. In the second quarter of 2012, OLEO plans to release its Risk Assessment of the Sheriff's Office and will offer recommendations to assure compliance with best practices in the law enforcement community. Further, OLEO and the Sheriff's Office will finalize the creation of a voluntary mediation program. The mediation program will serve as an alternative method for resolving personnel complaints by allowing citizens and deputies to resolve their differences under the guidance of a professional mediator. It is anticipated that low level complaints such as rudeness would be addressed through mediation while serious complaints such as abuse of authority would be investigated as misconduct. Additionally, OLEO has initiated a recruitment process to fill vacancies and anticipates extending an offer in the second quarter of 2012.

To provide meaningful oversight of the Sheriff's Office, OLEO has three primary functions: (1) it serves as an alternative forum where a personnel complaint may be filed; (2) it reviews the investigation of personnel complaints; and (3) it promotes transparency and accountable policing in the Sheriff's Office. To that end, OLEO will establish regular meetings with various community organizations and professional groups to educate the public about the functions of the office and its mission. OLEO will remain a staunch advocate of accountable policing and will advance its mission by engaging in the following activities in 2012:

- Conduct an audit of use of force investigations (i.e., officer involved shootings, in-custody deaths, law enforcement related injuries, and other use of force incidents).
- Collaborate with the Prosecuting Attorney's Office to promulgate One-Minute Briefs throughout King County.
- Partner with the County Council to craft labor policy to enhance OLEO's review authority.
- Receive personnel complaints of misconduct by members of the Sheriff's Office.
- Partner with the King County Ombudsman to coordinate the receipt of any and all personnel complaints filed against members of the Sheriff's Office.
- Review various complaint receipt, tracking, and investigation protocols for internal use.
- Once formed, partner with the Citizen's Committee on Independent Oversight.
- Advance an operational plan, which outlines the Director's future vision of OLEO.

Despite not being fully staffed in 2011, OLEO had a productive and eventful year. It established strong working relationships with major stakeholders, established an internal framework by which to assess the Sheriff's Office, and initiated a Risk Assessment to identify systemic problems of policing in King County. OLEO will work diligently to ensure the public's trust by advancing reforms outlined in the Report of the King County Sheriff's Blue Ribbon Panel and best practices of the law enforcement community. OLEO is committed to accountable policing and looks forward to an even more productive and informative 2012.

Appendix A-I

Definitions of Findings

1. **Unfounded** - The allegation is not factual and/or the incident did not occur as described.
2. **Exonerated** - The alleged incident occurred, but was lawful and proper.
3. **Non-Sustained** - There is insufficient factual evidence either to prove or disprove the allegation.
4. **Sustained** - The allegation is supported by sufficient factual evidence and was a violation of policy.
5. **Undetermined**
 - a. The investigator is not able to use classifications one through four.
 - b. This may involve the following:
 - i. The complainant withdraws the complaint.
 - ii. The complainant cannot be located.
 - iii. The complainant is uncooperative.
 - iv. The accused member separated from the Sheriff's Office before the conclusion of the investigation and the investigator cannot reach another classification.
 - c. Notwithstanding the above situations, if enough information has been collected to close the investigation with a classification of one through four, an undetermined classification will not be used.
6. **Performance Related Training** - The incident was handled as a training issue rather than as a matter requiring discipline.

Appendix A-2

Merrick Bobb is the founding director of the Police Assessment Resource Center (PARC), a national resource center on policing and police reform, under the auspices of the Vera Institute of Justice and funded by the Ford Foundation. Over the past 10 years Mr. Bobb has served as a legal staff member and then as a Deputy General Counsel of the Christopher Commission investigation of the Los Angeles Police Department (“LAPD”); General Counsel of the Kolt’s investigation of the Los Angeles County Sheriff’s Department; Special Counsel to Los Angeles County to monitor the Sheriff’s department; Special Counsel to the Los Angeles Police Commission to help establish the Office of Inspector General. Mr. Bobb conducted an investigation of the LAPD five years after the Rodney King incident and the Christopher Commission Report, resulting in the publication of a report in May 1996. Mr. Bobb also has consulted for the United States Department of Justice on law enforcement matters since 1998. He is a graduate of Dartmouth College and received his law degree from the University of California, Berkeley.