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**CITY OF ALBUQUERQUE**  
**CITY COUNCIL**

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**INTEROFFICE MEMORANDUM**

**TO:** Don Harris, President, City Council  
**FROM:** Laura Mason, Director, Council Services *LM*  
**SUBJECT:** Evaluation of the Police Oversight Ordinance and Police Oversight System by MGT of America, Inc.  
**DATE:** November 18, 2011  
**CC:** All Councilors

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Attached is the final report prepared by MGT of America, Inc., pursuant to Section 9-4-1-11 of the Police Oversight Ordinance. That section requires the City Council "to issue a Request for Proposals for an independent consultant to undertake a complete evaluation and analysis of the entire Police Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process." The POC ordinance was adopted in 1998 and this report is the third evaluation of the process. The firm selected through the 2010 RFP process, MGT of America, Inc., based in Austin, Texas, was also selected in 2006 to conduct the evaluation, so MGT was able to discuss whether recommendations from 2006 had been implemented to date. MGT staff interviewed elected officials, citizens, the Independent Review Officer, Police Oversight Commissioners and members of APD, particularly those in Internal Affairs. MGT also reviewed oversight processes from other cities throughout the country. Several recommendations were offered for improving the ordinance and oversight process in general. If the Council decides to implement those recommendations, additional legislation may be needed to amend the existing ordinance.

# City of Albuquerque, New Mexico Evaluation of the Police Oversight Ordinance and the Police Oversight System



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# 1 INTRODUCTION AND BACKGROUND

## Introduction

In November of 2010, the City of Albuquerque released a Request for Proposals (RFP) for an “Evaluation and Analysis of the Police Oversight Ordinance and Police Oversight System.” This evaluation and analysis will be the fourth of its kind since 1997. The Police Oversight Ordinance, adopted in 1998, requires an independent consultant to complete an evaluation and analysis of the entire police oversight process every four years and to recommend changes or amendments that would improve the process.

MGT of America, Inc. (MGT) responded to the RFP and was selected by the city in early 2011 to conduct the evaluation and analysis (the study). The contract between MGT and the City of Albuquerque was executed in June of 2011 and work on the project began soon after.

The MGT consultant team consisted of the partner-in-charge and project manager, Bob Lauder, MGT staff consultant Chad Lersch from MGT’s Austin, Texas office and two independent consultants, both of whom have more than 30 years experience as police officers and commanders. Ron Glensor and Bruce Mills regularly team with MGT to conduct law enforcement reviews. Ron Glensor enjoyed a career of more than 35 years in law enforcement and retired as the assistant chief of police of the Reno, Nevada, Police Department. Bruce Mills also enjoyed a lengthy career in law enforcement and since his retirement as the assistant chief of police of the Austin, Texas Police Department, Bruce has served the city of Austin in various capacities, including his tenure as the Chief of Austin’s Bergstrom International Airport and Director of the city’s Public Safety Department. Both Bob and Chad have extensive experience conducting program evaluations, management reviews, and performance audits, with most of their experience focused on law enforcement and corrections departments.

MGT relied on a rigorous project work plan to guide the project. The work plan served as a guide for the consultant team to help ensure the project remained on track. The project approach and methodology are more fully described in the next chapter of this report.

## **Background**

After years of only internal police oversight and investigations of citizen complaints of members of the City of Albuquerque's Police Department (APD), a Police Advisory Board (PAB) was created by the Albuquerque City Council in June 1978. This was the city's first foray into civilian oversight of its law enforcement agency. In 1987, the Independent Counsel was created. After numerous reviews by committees, boards, task forces, independent counsels, and two major external consulting firms, civilian oversight of the police department has been in its present form since the passage of the Police Oversight Ordinance in 1998.

The 1998 ordinance created the Police Oversight Commission (POC) "to provide oversight of the Albuquerque Police Department and oversee all citizen complaints..." The specific model created by the Albuquerque ordinance was not taken from any particular city but is more of a compilation of many of the best practices found in other cities. While the unique oversight process created by this ordinance represents no single model or type of oversight body, rather it is largely an external investigative model with the framework for a mutation of the civilian auditor model.

### ***A Brief History***

Prior to 1978 oversight of the police department was strictly an internal matter. In June 1978, based on growing concern over civil liability for actions of some APD members, especially those involving officer shootings, the Albuquerque City Council created the Police Advisory Board (PAB). Its purpose was to provide some civilian oversight over certain police actions. About the same time, a six-month long investigation into allegations of police brutality at APD began.

Because the PAB proved to be largely ineffective, in 1987 the city council created the Office of Independent Counsel (IC) and it adopted the Independent Counsel Ordinance to provide civilian review of police internal affairs investigations, which was beyond the PAB's role. The City Council amended the ordinance in 1989 to rename the PAB the Public Safety Advisory Board, which expanded the role of the PAB to include oversight of the fire and corrections departments and continued the Independent Counsel oversight role over APD internal affairs investigations.

Concerns over insufficient civilian oversight remained. In March 1996, the City Council ordered a study be conducted regarding civilian oversight of the police. The council approved a contract for an independent review by consultants Sam Walker and Eileen Luna of the University of Nebraska at Omaha. They issued the Walker–Luna report in February 1997. The report concluded that the existing oversight process and mechanisms were “not functioning effectively.” Later Walker discussed Albuquerque's failed Independent Counsel citing the primary reasons for its failure as the failure of the individuals holding the office to *fully utilize its existing authority to review the policies and procedures of the APD and make recommendations for change* and the IC failure to *engage with the community*; therefore, resulting in a failure to build the necessary public confidence in the system.<sup>1</sup>

City leadership exhibited wisdom and courage by hiring Mr. Walker to conduct the study. He is at the top of a list of experts in this subject area and he and Ms. Luna provided a detailed report that listed findings and recommendations describing the current system's deficiencies.

### ***The Walker-Luna 1997 Report***

In 1997, the Albuquerque Police Department was facing problems. This study concluded that the rate of fatal shootings by APD officers over the past decade was unusually high, while the crime rate in Albuquerque was very close to the national average. There were also problems of

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<sup>1</sup> SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* 166 (2005). (*emphasis added*)

high annual payments for tort claims involving police officers, an inadequate citizen complaint system, and much tension between the APD and parts of the city's community. To conduct this study, consultants reviewed official documents, conducted personnel interviews, performed an audit of the Internal Affairs section, and conducted a survey of police officers. The consultants also compared Albuquerque with other jurisdictions.

### **Citizen Complaint Process**

Prior to the Police Oversight Ordinance, the responsibility for investigating citizen complaints had been with the Internal Affairs (IA) section of the APD. As such, the APD recognizes that the public's trust depends upon "the personal integrity and discipline of all personnel *and* on the effectiveness of the Internal Affairs Unit."<sup>2</sup> IA investigated both citizen complaints (CPC) and internal complaints (I) that were initiated internally by APD. Official complaints were made when a citizen provided his or her name and contact information and signed a completed written statement. Unofficial complaints were of a non-criminal nature made by a citizen who refused to complete a signed statement. The Walker-Luna study found that IA did sustain a high rate of the complaints and it did receive and publish detail information about complaints in its quarterly report.

In addition, the Walker-Luna study found no pattern of racial or ethnic bias in IA's investigations and there were a large number of officers who wanted **more** discipline in the department and were not opposed to citizen oversight. Where IA was failing in terms of oversight was its efforts and/or ability to reach out to the community as many in the community were unaware of its existence or purpose. The low volume of complaints received by the IA unit in 1995 and 1996, as compared to other jurisdictions, reflected the communities' lack of awareness regarding the oversight function. In short, citizens were not filing complaints when they should because citizens were unaware of a mechanism to do such. Moreover, the literature advertising

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<sup>2</sup> Albuquerque Police Department, Standard Operating Procedure 3-41, March 16, 2011. (*emphasis added*)

and explaining the mechanism by which they could file a formal citizen complaint was not widely available.

Prior to the current system police oversight system, the city had created the office of Independent Counsel (IC) by ordinance in 1987. Similar to the current ordinance, the 1987 ordinance required the IC be an attorney. In addition, the ordinance limited the term of the IC to no longer than one year and required the IC to report to the mayor and city council on a quarterly basis or upon request. The ordinance further defined the purpose of the Independent Counsel was to “ensure a fair, objective and impartial investigation” and to “review all Albuquerque Police Department Internal Affairs section investigations for the purpose of making recommendations to the Chief of Police as to whether disciplinary action should be taken.” The IC had the authority to conduct an independent investigation with hired outside investigators.

The IC also had a policy review function in which it could recommend policies related to the complaint process and general police practices. The Walker-Luna study found that the IC directed the complaint investigation process and added an element of professional citizen oversight to the process, but it was not fully utilizing its authority to review policies and procedures of the APD. Furthermore, there were questions about the overall quality of the complaint investigations, for which the IC and Internal Affairs shared some responsibility. Moreover, the IC engaged in no public outreach and this lack of visibility undermined the positive accomplishments related to oversight of the APD.

The report found the Public Safety Advisory Board (PSAB) was not being directly involved in the complaint process; but rather, was only providing citizen oversight of general policies and procedures. Its 11 members were appointed by the mayor with advice and consent from the city council. The PSAB was authorized “to conduct studies, receive information, and make recommendations” regarding “policies, practices, and procedures” of the police, fire, and corrections and detention departments and was designed to be proactive rather than just reactive.

The study found the PSAB generally failed in its mission to provide oversight of the APD. The board had hardly used any of its powers and was universally criticized by community groups and leaders of the police department for not giving citizens a platform to address their complaints. The Walker-Luna report recommended the IC report to the PSAB and the PSAB provide input into activities of the IC. The report concluded that the PSAB needed to be restructured and a formal reporting structure should be established for the IC.

### **Others dealing with police oversight**

At the time of the Walker-Luna report, the city attorney advised APD on legal matters and defended the city in lawsuits involving actions by APD officers. The city's Risk Management Office oversaw claims against the city arising from lawsuits or other liabilities. Tort claims were of concern because Albuquerque was consistently paying out significant sums for tort claims. The Walker-Luna report suggested the city was too quick to settle claims involving police misconduct and the city attorney and risk management functions provided no feedback to APD leadership. The mayor and city council had substantial oversight of the APD, the IC, and the PSAB because they had ultimate authority over the budgets and the mayor appointed the members of the PSAB. The report noted that at that time the city council showed little interest or knowledge of the problems in the police department, while the mayor had an overly optimistic view of the situation.

The Walker-Luna report included many recommendations to improve the overall police oversight process. Several of them are listed below.

- The independent counsel should make more use of its authority to oversee the APD and should be a more active participant in investigations and be present at interviews as well as conduct investigations.
- The independent counsel should play an active public role in the community.
- The position of independent counsel should be filled through competitive bid, which would facilitate hiring decisions based on comparative competency and the presentation of innovative ideas about how the IC should function.

- The Public Safety Advisory Board should make full use of its authority to conduct studies and make recommendations and participate in long-term planning in order to identify major problems.
- The PSAB should oversee the activities of the IC, giving the PSAB a clearer focus and help elevate the low visibility of the IC.
- The Internal Affairs section of the APD should begin an active outreach program to publicize the complaint process, including outreach presentations to the community and distribution of the APD brochure.
- Internal Affairs should reorganize its citizen police complaint (CPC) filing system and include face sheets (brief one-page summary of each CPC), an early warning system, and a formal process for requests to waive time deadlines.
- The City Attorney and Risk Management Office should reduce tort claim payments and provide more feedback to APD.
- Steps should include a policy on settling tort claims against the city that addresses the underlying behavior of APD officers, the establishment of specific goals and timetables for reducing tort claims based on payments from comparable cities, and a formal system of feedback to APD officers regarding problems that might require additional training.
- The city council and the mayor should take a more active role in overseeing the APD.
- All public officials need to work closely with mental health professionals to examine both the range of services for the mentally ill and APD policies for handling mentally ill persons.

In July 1997, the city council held town hall meetings on the Walker-Luna report and committed to evaluate the report's recommendations and revise the oversight system. In November 1997, a Task Force on Police Oversight began meeting to review and analyze the report and consider overhauling the existing oversight system. The task force completed its report in May 1998 and made the following recommendations:

- Accept citizens complaints at police and non-police sites;
- Monitor and track all citizen complaints;
- Improve analysis of complaints and the timeliness of investigations;
- Implement an early warning system;
- Establish a civilian board or commission for oversight of police matters only;
- Include an active program of community outreach by the oversight body; and
- Provide full-time staff and adequate funding to ensure civilian oversight of the APD.

The task force discussed five different civilian oversight models and ranked them, but did not recommend any of the models. The Albuquerque Citizens on Police Accountability recommended a model that included a commission or board with the ability to conduct independent investigations leaving discipline to the Chief of Police. The task force also made nine recommendations on the oversight system. Based on a system that included a police oversight board or commission, it recommended:

- Members of an oversight board or commission be appointed by the mayor after being recommended by the city council and with advice and consent of the city council or appointed by the city council without mayoral involvement;
- Provide mediation as an alternative to investigations;
- Hold public hearings after all fatal incidents involving police;
- Re-examine oversight commission after 18-months;
- Citizens should have appeal right that include cross-examination of police officers;
- Selected the Independent Counsel by competitive bid and there should not be an attorney client privilege between the IC and the city;
- Investigate and respond to citizens upon receipt of a petition of 75 residents on issues raised in a petition;
- Increase public disclosure on investigations and discipline imposed on officers; and
- Televise commission meetings.

### **The POC is created**

After carefully reviewing the recommendations provided by the Walker-Luna report and those made by the Task Force on Police Oversight and the Albuquerque Citizens on Police Accountability, the city took action. In 1998, the city council overhauled the oversight system by passing the Police Oversight Ordinance (the ordinance). The ordinance included many but not all of the aforementioned recommendations. The ordinance created the Albuquerque Police Oversight Commission (POC) to provide civilian oversight of the APD and to oversee all citizen complaints of the police department. The POC was established to promote a spirit of accountability and communication between the citizens and the APD while improving

community relations and enhancing public confidence. Powers and duties of the POC are established in Section 9-4-1-5 of the ordinance and include: to oversee the full investigation and/or mediation of all citizen complaints; to audit and monitor all investigations and police shootings under investigation by APD's Internal Affairs (IA); to submit all findings to the Chief of Police, who has final disciplinary authority; to conduct regularly scheduled televised public meetings with a prepared agenda and to begin each meeting with public comment; and to engage in a long-term planning process for the purpose of identifying major problems and establishing a program of policy suggestions and studies each year.

The ordinance established an Independent Review Office to be directed by an Independent Review Officer (IRO). The Independent Review Office is to receive all citizen complaints and claims directed against the APD and its officers. The IRO is to review the citizen complaints and assign them for investigation to either the APD for internal investigations or to an independent investigator; the IRO is to oversee, monitor, and review all investigations and make findings for each; all findings are to be forwarded to the POC, which reviews the investigative work of the IRO and submits all findings to the Chief of Police, who has final disciplinary authority.

In addition, the IRO is to monitor all claims of excessive force and police shootings and be an ex-officio member of the Claims Review Board, which is a panel of city officials established to review lawsuits against the city and make recommendations to the city council on claims presented. The IRO is to maintain and compile all information necessary for the POC to prepare its quarterly report. The position of Independent Review Officer is required to be filled by a person with a law degree and five years of experience in criminal investigations. The IRO reports directly to the POC and acts as lead investigator and manager of the office.

The ordinance requires the IRO to submit findings and prepare a public record letter to the POC for review and approval. The public record letter is sent to the complainant upon POC approval. The ordinance provides a process to be followed when the IRO and the Chief of Police

disagree on findings. When this occurs they treat the complaint as a “non-concurrence” issue and conduct a hearing. When there is still disagreement after the POC hearing, the city’s Chief Administrative Officer (CAO) is to review the investigation and render a final decision. Findings of the POC/IRO are placed with the chief’s findings on the Internal Affairs disciplinary status sheet and are to be filed in a Citizen Police Complaint file and the police officer’s retention file. The Chief of Police may take whatever action is necessary, including disciplinary action, to complete disposition of the compliant.

If a complainant is not satisfied with the findings of the IRO, he or she may appeal the decision to the POC within ten business days of the receipt of the public record letter. The POC upon appeal may modify or change the findings and/or recommendations of the IRO and may make further recommendations to the Chief of Police regarding the findings, recommendations, or discipline imposed or proposed by the chief. In addition, a complainant who is not satisfied with the final decision of the Chief of Police on any matter related to the complaint may request the CAO review the complaint, the findings of the IRO and the POC, and the actions of the Chief of Police. The CAO, upon completion of the review, shall take any action necessary including overriding the decision of the chief regarding disciplinary actions to complete the final disposition of the complaint.

The POC is required to prepare quarterly reports that contain information on the number, kind, and status of all complaints received including those sent to mediation; discussions on issues of interest undertaken by the POC; POC findings and Chief of Police’s issuance of discipline on those findings; ongoing police department disciplinary trends; information on public outreach initiatives undertaken by the IRO or the POC; and the status of the long-term planning process identifying major problems and policy suggestions.

Passage of this ordinance was a tremendous stride for the city in improving police accountability and communications. To help ensure the ordinance was accomplishing what it was

intended to, the ordinance as passed in 1998 required a complete evaluation and analysis of the oversight process after the ordinance was in effect for 18 months. To fulfill that requirement, a study was undertaken in 2002 by another leading expert in police accountability, Richard Jerome of the Police Assessment Resource Center (PARC). Again, the City of Albuquerque is commended for hiring a leading expert who provided a detailed and objective account of the system as it stood in 2002.

### ***2002 Jerome Report***

Prior to a study conducted in 2002, resulting in what is now known as the “Jerome Report”, the city council established a Public Safety Committee, which in turn set up the Citizens’ Task Force on Police Oversight, which ultimately led to the codification of the Police Oversight Ordinance establishing the POC and the IRO. By the time of the Jerome Report, police oversight had three components, or “players” as Jerome established in his report. The first of the three major components of police oversight in Albuquerque was the APD’s Internal Affairs section (IA), which *investigated* citizen complaints (Citizens Police Complaints or CPCs) against officers and allegations of misconduct initiated by other APD officers and supervisors. At the time of the Jerome Report, IA handled approximately 350 to 400 investigations per year.

The second major player was the IRO, who acted as an auditor and independent investigator of allegations of police misconduct. The IRO *reviewed* all CPC investigations conducted by the APD as well as IA investigations of shootings and other uses of deadly force. The IRO conducted some investigations of CPCs using investigators from his office or outside investigators. In those cases, the IRO’s findings were sent to IA for its concurrence or non-concurrence.

The third player was the Police Oversight Committee (POC), which had seven volunteer commissioners. They heard appeals of CPC decisions where the complainant was not satisfied with the findings of the Chief of Police or the IRO. They also invited public comment at monthly

meetings, and reviewed APD policies and practices and recommended improvements as established in the ordinance.

Jerome's report concluded that the oversight system had "enhanced the quality of internal police investigation" and had partially achieved the goals that had been established, but there was substantial room for improvement. He implored the city not to abandon what it had started. Some of the significant findings and recommendations are provided below.

### **Citizen Complaint Process**

Regarding the complaint form and process, Mr. Jerome suggested that changes be made to the complaint form by adding more specific questions about the location of the incident, the identification of the officer(s) involved, injuries, and about how and by whom the complaint had been received. He went on to recommend the complaint form be available on the APD's website and there be links between the IRO and the APD websites. He recommended that the IRO conduct a survey to determine if forms and assistance should be available in other languages and that the IRO examine whether there were additional locations where the form should be available.

The ordinance requires citizen complaints to be filed within 90 days of the incident. Mr. Jerome recommended the time limit be extended, although he did not suggest a more appropriate length of time. Internal investigations by IA have no similar time constraint.

One component of the complaint process he considered very important involved informal complaints and informal resolutions. For a complaint to be investigated as a CPC, it had to be in writing, otherwise it was treated as an informal "verbal" complaint. These, however, were then and still are rarely, if ever, documented or investigated. Jerome recommended that the APD document all informal resolutions of complaints in the field. The IA and the IRO should be notified of the complaint and of the resolution, so they can be sure that serious complaints are appropriately handled. The APD and the IRO should review this process and depending on the results, should consider eliminating the distinction between formal and informal complaints. He

went on to suggest the person fielding the complainant's telephone call should complete the written complaint form, which should then be treated as any other complaint and investigated as appropriate. He also suggested the APD install a confidential hotline for complainants to call.

The Police Oversight Ordinance permits the use of mediation to resolve complaints, but this was rarely used then as a tool to resolve complaints. Mr. Jerome recommended the IRO use mediation to a greater extent and set up a system whereby the success of mediators can be evaluated and tracked.

### **The IRO**

The ordinance created the Independent Review Office and the position of Independent Review Officer (IRO). The Jerome Report made a dozen recommendations about the IRO. The more significant among them being that the IRO should have a term of at least two years and the term be extendable by the mayor upon recommendation by the POC; the IRO should place more focus on whether there are tactical concerns related to police shootings rather than focusing on whether a shooting was legally justified; and when the IRO comments on specific APD policies as a result of a CPC, they should be separately documented and APD's responses should be tracked. A briefing of these policy comments and APD's responses should be included in presentations made during regular POC meetings.

Jerome thought the IRO review of CPC files had several positive results: it is a double check on IA investigations. As a result of the IRO review, the IA investigations had become more careful and complete. By conducting its own reviews, the IRO added to citizen confidence in the oversight system and provided a benchmark by which IA investigations could be measured. From its CPC reviews, the IRO had identified policy and training issues of concern for the APD. However, similar to prior issues with the Independent Counsel, the Jerome report asserted that the IRO had made only limited use of their policy review function. Moreover, the report suggested the IRO develop plans for more systematically identifying and addressing APD policy issues.

### **The POC**

The major concerns expressed by Mr. Jerome regarding the POC involved three main issue areas: training, appeals hearings, and policy analysis. He thought members would benefit from additional training and an orientation for new members, which went beyond the required four hours of training per year on civil rights. He felt strongly that members also would benefit from participating in “ride-alongs” with APD officers.

In an effort to promote public awareness and in accordance to the police oversight ordinance, appeals hearings were (as they are today) open to the public and broadcast live on public access TV. Jerome had concerns about that policy and recommended the appeals hearing portion of the POC meeting not be televised and only the results be reported on television. He believed this policy discouraged officers from appearing at POC appeals hearings and reduced the effectiveness of the entire process.

Each POC meeting opened (and still does) with a public comment period. Comments were initially limited to two minutes but the POC abandoned that limitation after opinions were voiced by persons who wished for longer periods to comment. Jerome recommended the POC chairperson have greater discretion to limit comments to those related to the APD and the POC and to limit public comments to a reasonable time.

Mr. Jerome recommended the POC increase its emphasis on policy evaluation, analysis of police training, and patterns or trends in complaints or use of force. He went on say that there is disagreement over the role the POC should play and there is a clear gap between the perceptions of the POC’s role and its actual activities.

### **The APD**

After a shooting investigation is complete it is referred to the District Attorney’s Office (DA). The APD also convenes a Shooting Investigation Review Team (SIRT) to examine the incident from a policy, tactic, and training perspective. Mr. Jerome recommended limiting the

IRO and POC roles in shooting investigations to reviewing investigations rather than conducting investigations because the APD has the capabilities and expertise to conduct shooting investigations while the others do not. The IRO would review and provide conclusions to the POC as required in the ordinance. Also, the IRO should review SIRT reports and report to the POC on the findings and recommendations. The Jerome Report cited a concern about the thoroughness of IA investigations.

The report pointed out that the police department had made significant strides in identifying and tracking potential problem officers. It had a “functioning, but rudimentary early warning system” that included the use of a part-time volunteer who created a Microsoft Access-based tracking system and was entering data. He pointed out additional concerns about the reporting of use of force and the lack of analysis of use of force data.

The Jerome Report stated that city’s the Risk Management Office and the City Attorney’s Office were responding to recommendations made in the Walker-Luna report by taking a more active role in monitoring patterns of police misconduct alleged in tort claims and lawsuits and by providing feedback to the APD regarding certain police behaviors. There was a risk management officer assigned to the APD who implemented a system to notify an officer’s chain of command of all tort claims filed against an officer and was to prepare quarterly and annual reports containing aggregate data and analysis of tort claims against APD officers. However, the reports were not made available to Jerome or others. The report recommended that the Risk Management Office reports be made available to the IRO and POC.

The report also recommended that APD establish a liaison with the DA’s office and the courts to track criminal cases that are dropped due to bad reports, misconduct, or illegal searches and that the APD track resisting arrest and assault on police officer charges to ensure that the use of force involved in such incidents are appropriately reported and investigated.

The Jerome Report concluded that although there had been some problems with the implementation of the ordinance, the “promise of effective oversight is still there.” He was concerned that the IRO and the POC had “not reached their full potential.” Nevertheless, he believed it was in the city’s best interest to maintain the general structure the ordinance created and focus on improving practices and procedures of the IRO and the POC to make them more effective organizations.

***2006 MGT Report***

As required by city ordinance MGT was retained in 2006 to follow up the Jerome Report with another review of the police oversight system. In addition to a review of the process, generally, MGT reviewed the oversight system by its three major components: Albuquerque Police Department (APD), Independent Review Officer (IRO), and the Police Oversight Commission (POC). The first of the three components was the APD’s Internal Affairs (IA) whose primary responsibility was to handle internal (I) complaints; however, IA also handled a sizeable portion of the citizen police complaints (CPC).

The second major player was the Independent Review Officer (IRO), who acted as an independent investigator of allegations of police misconduct. In addition to reviewing and providing findings of all CPC investigations conducted by IA, the IRO reviewed the completed investigations of IA involving a shooting and other uses of deadly force and provided an account to the POC as to the thoroughness of IA’s investigations. The primary role of the IRO was, and still is, to conduct thorough and complete investigations of CPCs using investigators from his office.

The third player was the Police Oversight Committee (POC). In addition to approving the IRO’s finding letters and hearing appeals of CPC decisions, the Commission also invited public comment at monthly meetings, and reviewed APD policies and practices so as to recommend changes to the department policy or other improvements, as established in the ordinance. While a

review of policies and practices is an explicit role of the POC, it was and still is not commonly practiced by the POC.

As had the previous reports, the 2006 MGT report found that that the oversight system had achieved many of the goals established early on by the city, but there was substantial room for improvement. Some of the more significant findings are provided below.

### **Citizen Complaint Process**

To initiate the process, a complainant must first complete a complaint form. The MGT report suggested changes to the format of the complaint form to ensure that more information is captured and readily available to the investigator so as to reduce the need to conduct time and labor intensive research using APD records or through interviews with the complainant. Given the volume of citizen complaints, it was thought that the capture of additional information would help streamline the process; therefore, allowing investigators the time and resources to conduct more investigations. Moreover, the complaint form required a signature. The MGT report propounded that this requirement violated the spirit of the law and suggested that at least a preliminary investigation be held for an anonymous complaints if the allegations warranted such and a minimum of facts could be established.

The ordinance requires citizen appeals to be filed within 10 days of receipt of findings letter. However, the average appeal time for other oversight processes was 30 days; therefore, the MGT report recommended the time for appeal be extended to 30 days.

Lastly, the ordinance permitted the use of mediation to resolve complaints; however, mediation was rarely used as a tool to resolve complaints. MGT recommended the continued and expanded use of mediation through various changes to the process. One of these changes would include a clear and distinct notation of “successful mediation” in the summary of a complaint, as provided in the quarterly and annual reports issued by the IRO’s office. Another recommended

change was the creation of a standard operating procedure (SOP) that established a formal process and criteria for early identification of those CPCs appropriate for mediation.

### **The IRO**

The ordinance created the Independent Review Office and the position of Independent Review Officer (IRO). MGT's previous report made numerous recommendations about the IRO. The more significant among them being that the IRO should hire an additional investigator to allow for all CPCs to be handled by the IRO's office; the IRO should have a term of at least three years to guarantee the best possible pool of applicants; the IRO should plan for and engage in more community outreach; and seek ways to increase the number of responses and provide a more in-depth analysis of the results of the complainant survey.

### **The POC**

The major concerns expressed by MGT regarding the POC involved two primary issues: training and term limits. MGT determined that POC members would benefit from additional training, including an orientation for new members. In addition to new training, the tracking and monitoring of on-going training requirements was necessary to ensure POC members remained engaged, and therefore integral to the process.

Along with training, MGT found the term limits of POC members to be counter-productive. In light of the nuanced and complicated relationship between law enforcement and citizenry, it takes new members a year or better to become comfortable with their role and become productive members of the Commission. By limiting a POC members terms to two, the city is denied the benefit of institutional knowledge.

### **The APD**

MGT report cited concerns regarding the quality and number of IA personnel, the on-going practice of IA conducting investigations for citizen complaints, and the process, or lack thereof, for integrating complaints into the early warning system (EWS).

Because the early warning system is meant as a tool for “training and counseling” it would benefit the overall effectiveness of the system to include informal complaints, currently tracked on an employee card, but not integrated into the EWS database. (The system used to track and identify individual officer and department-wide trends.)

Given the sensitive nature of the assignment and the need for some level of stability within the unit, MGT also recommended that formal criteria be developed to establish a minimum and maximum amount of time a commander should oversee the IA unit. In addition to the IA commanders, MGT noted the common practice of filling investigator position with newly promoted sergeants, citing the challenging nature of the assignment as a reason to have more seasoned sergeants in the role.

Lastly, MGT’s review of the data revealed a rise in the number of CPCs being investigated by IA. This gave rise to a recommendation for an additional investigators to help absorb the workload of the unit.

### **This Report’s Structure**

As with our 2006 report, this report will also be organized by the three major components of the oversight system: APD, POC, and the IRO. This first chapter includes an introduction, the study’s background, and a brief history of police oversight in Albuquerque. Chapter 2 briefly describes the approach and methodology for this review. Chapter 3 provides some general information on civilian oversight of police agencies. Chapter 4 captures the findings and recommendations of the consultant team related to the overall police oversight process in Albuquerque. Chapters 5, 6 and 7 present the findings and recommendations related to the Police Oversight Commission, the Independent Review Officer, and the APD’s Internal Affairs section, respectively. Chapter 8 includes additional findings and recommendations that are related to other accountability measures in place in Albuquerque. Chapter 9 contains a summary and any conclusions born of MGT’s review. In light of the recent review by Police Executive Research

Forum (PERF) in response to the numerous police shootings, MGT omitted any direct findings and recommendations regarding police shootings from this report. After careful review, MGT finds the PERF report to be thorough and well supported with many solid recommendations. However, many of the recommendations in the report are likely to touch and concern issues involving use of force and the department's ability to remain accountable to the public it serves.

Also, there are three appendices following Chapter 9. Appendix A is an account of civilian oversight models from across the country. Appendix B is a table of the recommendations made in the 2006 MGT report and the status of those recommendations. Appendix C is a table of all recommendations contained in this report.

### **Acknowledgments**

The consultant team thanks the City of Albuquerque for the opportunity to conduct this study. The team thanks specifically those who agreed to be interviewed including: the mayor, city councilors, the Chief of Police, city and police department staff, the APD union, Police Oversight Commissioners, the Independent Review Officer and his staff, other city departments including Risk Management and the City Attorney's office, and various local citizen groups. The insight provided by each of the above participants was invaluable to the successful completion of this study.

## 2 PROJECT APPROACH AND METHODOLOGY

MGT of America, Inc., a multi-disciplinary consulting firm specializing in public sector management, planning, and organizational studies for a variety of federal, state, and local government agencies, was selected to conduct the “Evaluation and Analysis of the Police Oversight Ordinance and Police Oversight System” for the City of Albuquerque. The primary MGT staff assigned to this project is Mr. Bob Lauder and Mr. Chad Lersch. Two independent consultants have also played a significant role on this project. They are Bruce Mills and Dr. Ron Glensor. The consultant team members are very experienced in law enforcement operations and conducting numerous reviews of law enforcement agencies.

### **Project Approach**

MGT developed a detailed work plan for the study with work tasks that would serve to guide and direct the review.

In June and July of 2011 MGT spent time on-site collecting information and conducting interviews with various stakeholders. MGT’s approach was to obtain input from as many stakeholders in the police oversight process as possible. Team members interviewed city officials including the mayor, city council members, city staff from the Risk Management Office, and the City Attorney’s Office. From the APD, team members interviewed the Chief of Police, the Internal Affairs Lieutenant and other command staff. In addition, the team interviewed the president of the police union, members of the Police Oversight Commission, the Independent Review Officer (IRO), IRO investigators, and administrative staff. The team also interviewed representatives of various community organizations.

To gain a more thorough understanding of the oversight process in Albuquerque, the team reviewed policies and procedures, dozens of documents, reports, summaries, and investigations including the following:

- Relevant APD Standard Operating Procedures (SOPs), Administrative Orders, Procedural Orders, and General Orders;
- Quarterly and annual reports prepared by the IRO on behalf of the POC;
- Internal Affairs Quarterly Reports;
- The 1997 Walker-Luna Report;
- The 2002 Jerome Report;
- The 2006 MGT Report;
- The 2011 PERF Report;
- Information provided by the National Association for Civilian Oversight of Law Enforcement – NACOLE;
- Complaint forms and letters sent by the IRO to complainants; and
- The “Agreement between the City of Albuquerque and the Albuquerque Police Officers Association.”

MGT examined the APD Early Warning System (EWS) and procedures and protocols of the IA and IRO for their investigations, along with procedures related to police shooting investigations.

The team attended or viewed two POC meetings to observe the appeals process and the reporting process used by the IRO for securing the approval of his investigations from the POC, and letters sent to complainants.

The team evaluated the POC/IRO’s public outreach activities including its website and the complaint form and distribution procedure. As the consultant team began to formulate its findings and draft recommendations, additional requests for information were made, as needed.

Interviews, data review and analysis, and follow-up questions and discussions were completed in August and September 2011. A draft report was provided to the city on September 22, 2011.

# 3 BACKGROUND OF POLICE OVERSIGHT

## Background

The concept of civilian oversight of police began back in the 1960s as the concern over abuse of civil rights and violations of civil liberties by police reached critical levels as civil rights demonstrations and riots spread across the country. At first, “it was dismissed as radical and dangerous by virtually everyone outside the civil rights communities,” but by the beginning of the 21st Century more than 80 percent of the largest cities had some form of civilian oversight.<sup>3</sup>

Along with the rise of citizen oversight, law enforcement professionals across the country are striving for a new professionalism. To do so, law enforcement leaders are committing themselves and their agencies to a higher level of accountability while bolstering their legitimacy. The commitment to accountability includes an “acceptance of an obligation to account for police actions not only up the chain of command within the police departments but also to civilian review boards, city councils and county commissioners, state legislatures, inspectors general, government auditors, and courts.”<sup>4</sup>

Holding law enforcement agencies and officers accountable for their actions was previously only an internal police function. However, with the advent of civilian oversight, this has become a shared responsibility. While some of the more serious investigations, including use of force and officer involved shootings, are still largely handled internally, many of the citizen complaints toward individual officers and departments are now handled by an outside civilian oversight.

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<sup>3</sup> Samuel Walker, *Police Accountability: The Role of Citizen Oversight* 6 (2001).

<sup>4</sup> Christopher Stone and Jeremy Travis, *Toward a New Professionalism in Policing*, New Perspectives in Policing, Harvard Kennedy School and National Institute of Justice, March 2011, at 1-2.

There are essentially four purposes for police oversight:

1. Holding officers accountable for misconduct;
2. Keeping a record, recognizing complaints as vital sources of information about a department;
3. Identifying patterns and problems related to policies and supervision rather than misconduct; and
4. Building public trust and community cohesion by allowing complainants a voice.<sup>5</sup>

Most civilian oversight agencies operate by receiving complaints about law enforcement officers from the public and responding to them after conducting investigations when possible. This system is designed to hold individual officers accountable for their actions. However, more enlightened organizations are now recognizing that the information provided by and through these complaints provides an opportunity to analyze broader trends and systemic issues by which departments can be held accountable and policy changes can be made when necessary.

An alternative approach to a civilian investigative model involves appointing a liaison or auditor to work with police departments to resolve systemic problems related to organizational management, supervision, procedures, and policies by analyzing trends and other information, while letting Internal Affairs (IA) conduct investigations.

While there still remains very little information on the overall effectiveness of civilian oversight, there is a great deal of information on what communities around the country are doing and why each of them holds civilian oversight as a key to improving relationships between the community and the police. In a 2002 paper published by the Vera Institute of Justice, “Building Public Confidence in Police Through Civilian Oversight” the authors concluded:

*Civilian oversight can never substitute for good police leadership or displace internal methods of fostering accountability and responsibility. By exposing police practice, pointing out the shortcomings in how police regulate themselves, reporting honestly on the depth and pace of police reform, and engaging the*

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<sup>5</sup> Ms. Debra Livingston, Professor of Law, Columbia University, comments made at the Eight Annual Conference of NACOLE, Cambridge, Massachusetts (November 2002).

*public and the police in a dialogue, however, civilian oversight is a vital part of democratic policing.*<sup>6</sup>

Although most of the civilian oversight agencies vary somewhat from city to city, there are essentially three types of civilian involvement in the review of police:

1. Investigative and Quality Assurance: Civilians outside of the police conduct investigations of citizen complaints;
2. Review and Appellate: Civilians are empowered only to *review* how the police department itself has adjudicated individual citizen complaints without access to internal police documents or the investigatory file; and
3. Evaluative and Performance-based: Civilians *audit, investigate, monitor* and report on the competence and effectiveness of the police managing misconduct *as a whole but do not review or investigate individual complaints.*<sup>7</sup>

## **Models of Police Oversight**

In an Investigative and Quality Assurance Model, individual complaints are received and investigated by persons who are not sworn police officers, making it the most independent form of police oversight. Investigative reports are then reviewed by either an independent board that votes on the merits of the case and sends a recommendation to the chief of police or a separate municipal agency with a single director who reviews the reports and forwards a recommendation on to the chief of police.

This approach is the most independent of the police department. With an independent board's input, diverse elements from the community can be involved. However, poor investigations that lead to weak findings can quickly breed contempt amongst the officers and give rise to morale problems; therefore, this model requires a qualified staff to conduct the investigations and well-defined procedures.

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<sup>6</sup> Emma Phillips and Jennifer Trone, Building Public Confidence in Police Through Civilian Oversight, Vera Institute of Justice, September 2002, p. 12.

<sup>7</sup> Samuel Walker, *Varieties of Citizens Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police*. American Journal of Police, Vol. XV, No. 3, 1996, pp. 72-73 and *Review of National Police Oversight Models for the Eugene Police Commission*, Police Assessment Resource Center, February 2005, pgs. 11-21. (*emphasis added*)

In a Review and Appellate Model, citizen complaints are investigated by sworn police officers assigned to the department's IA unit or office of professional standards. Reports are then forwarded to a citizen oversight entity for a review of the findings on the merits and then a recommendation is forwarded to the police chief executive. Some oversight entities consist of a board while others are just an individual. This model provides more oversight than a completely internal form of review; however, it is less independent than the previously discussed model. Frequently, this model promises independence that it often cannot deliver and, therefore, may not fully resolve community concerns about the complaint process. This model, while not intended to be deployed in Albuquerque, is currently employed to some extent, as many of the citizen complaints are being reviewed by IA. MGT has, and continues to, recommend that all citizen complaints be investigated by an outside civilian oversight entity so as to comply with the letter of the law as set forth in the ordinance.

The third model, an Evaluative and Performance-based model, is an "auditor" approach. Individual citizen complaints are received, investigated, and disposed of by the police department. An auditor conducts regular audits of department complaint processes and makes public reports. This system can monitor the internal affairs unit of the police department and recommend improvements. Some community leaders may perceive these audits as not fully independent from the department.<sup>8</sup>

Appendix A provides information on the types of models used by cities across the country. Often cities' oversight systems are a combination of two or more of the above models, borrowing various elements of each of the above model. The Albuquerque model is a hybrid, combining elements of the investigative and quality assurance model and, at least in theory, evaluative and performance-based model.

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<sup>8</sup> Walker, Samuel, Geoffrey P. Alpert, and Dennis J. Kenney. *Early Warning Systems: Responding to the Problem Police Officer*, National Institute of Justice: Research in Brief, August 2000.

Lastly, while it is true that an effective citizen oversight process lends well to increased accountability on the part of the department, the citizen oversight process should be viewed as but one tool among several that can be used to ensure true accountability. If jurisdictions fail to appreciate this and rely too heavily on the police oversight process to ensure accountability, this over-reliance is sure to breed disappointment among community members.<sup>9</sup> However, along with the increasing drumbeat of accountability, law enforcement leadership must pay increasing attention to citizen oversight and commit to the increased engagement of the public and community leaders.<sup>10</sup>

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<sup>9</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, Nov. 2000, at 3.

<sup>10</sup> *Id.* at 4

## 4 FINDINGS AND RECOMMENDATIONS FOR THE POLICE OVERSIGHT PROCESS

This section of the report provides the results of MGT’s overall evaluation and analysis of the City of Albuquerque’s police oversight system and process.

Albuquerque’s police oversight process begins with a citizen’s complaint. Complaint forms are available at numerous locations throughout the city and on the IRO’s website at [www.cabq.gov/iro](http://www.cabq.gov/iro). When a written complaint about an APD officer or the police department is received by the IRO, it is entered into the IRO’s case management database, a case number is assigned, and the case is reviewed by the IRO to determine if it meets the timely filing requirement and the criteria for mediation. If timely filed and the parties are unwilling to mediate, the case is assigned for investigation. The IRO will assign the complaint to one of the three IRO investigators or to APD’s Internal Affairs Section (IA) for investigation, depending upon the type of complaint and the IRO’s current caseload.

Upon completion of the investigation, the IRO reviews the investigation report for thoroughness, impartiality, and fairness, and identifies which APD Standard Operating Procedure(s) (SOP) were alleged to have been violated and makes a “Finding” based on the preponderance of the evidence contained in the investigation. The complaint may have one or more possible outcomes. The types of possible complaint outcomes are:

Sustained:	The allegation is supported by sufficient proof.
Not Sustained:	The evidence is not sufficient to prove or disprove the allegation.
Unfounded:	The allegation is false or otherwise not based on valid facts.
Exonerated:	The incident that occurred or was complained about was lawful and proper.
Inactivated:	The investigation was inactivated by either the citizen or by internal review. The complaint was determined to not merit further investigation, there was no alleged violation of an SOP, submitted more than 90 days from the date of the incident, was not against APD member(s), the APD member cannot be identified, or the case was successfully mediated.

The IRO's findings are then shared with the Chief of Police who may concur or issue a non-concurrence; however, the Chief of Police has sole disciplinary authority. If there is a concurrence, then the POC is provided the public record letter for approval; after which the letter is sent to the complainant via certified mail. The POC may only overturn a concurrence in a very narrow set of circumstances, including findings of fraud, misrepresentation, or misconduct. If there is a non-concurrence between the IRO and Chief of Police, the POC can either agree with the Chief of Police or send the non-concurrence to the city's Chief Administrative Officer for a final ruling.

If the complainant is dissatisfied with the findings, he or she may appeal that decision to the POC. Appeals must be made within ten business days of receipt of the public record letter. Appeals are heard at the regularly scheduled monthly televised public meeting of the POC. The POC may uphold or modify the recommendations of the IRO and may make additional recommendations to the Chief of Police regarding discipline. A citizen still dissatisfied with the action of the POC or the Chief of Police may request a review by the city's Chief Administrative Officer (CAO). The POC may also appeal the Chief of Police's decisions to the CAO.

The IRO's summary of the investigation, the findings, and a draft of the public letter of record are provided to POC commissioners prior to the commission's monthly meeting for their review. This is generally provided approximately ten days before the scheduled meeting to provide adequate time for commissioners to review the material so they are prepared to rule on IRO recommendations or, in a case where the Chief of Police and the IRO disagree on the findings, to conduct a hearing and make findings on the case.

#### **FINDING**

The public letter record sent to a complainant advising him/her of the findings of their complaint contains the technical/legal terms without any explanation of the meaning of the terms.

Terms such as exonerated or not-sustained are somewhat technical and deserve further explanation so the complainant completely understands the outcome of his or her complaint.

Moreover, a successful oversight process is built upon extensive community outreach. The public letter record and any accompanying literature sent to the complainant is a simple, but effective way to accomplish community outreach without taxing the resources of the process.

**RECOMMENDATION 4-1:**

**Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.**

Community outreach is a powerful tool for improving police-citizen relationships. The brochure is an opportunity for additional public outreach and can include information on how one might complete a survey. Along with additional explanation on the process, how the outcome was achieved, the POC, and the IRO, an explanation of the appeals process should be provided in the brochure. The brochure should be two sided with English on one side and Spanish on the other. This recommendation was also made in MGT's 2006 report.

**FINDING**

There are two ways police oversight can be achieved, either retroactively or proactively. A heavy focus on complaint disposition, with little policy review, restricts the role of the citizen oversight process by narrowly focusing on after-the-fact investigations.<sup>11</sup> Moreover, too much focus on individual complaints results in misguided practice of turning the “lowest-ranking members of the department into scapegoats” while ignoring larger organizational problems.<sup>12</sup>

As such, data compiled from individual complaints can be used to proactively address and improve department performance. More importantly, data can be used to shed light on more

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<sup>11</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO. ST. J. CRIM. L. 653, 655-656 (Spring 2004), see also Reenah L. Kim, *NOTE: Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 505 (Summer 2001).

<sup>12</sup> SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* 145 (2005).

systemic issues concerning training, recurrent supervisory lapses, or unclear or ineffective policy.<sup>13</sup>

Prior to 2007, the annual report issued by the IRO's office provided summaries of historical data on sustained complaints as well as rate of discipline and an account of the number of complaints successfully mediated. In addition, the reports provided an account of the policy considerations undertaken by the POC and IRO. While the analysis was limited, it was far more than has been provided since 2007, in which the reports have either omitted this information or buried it in the details.

**RECOMMENDATION 4-2:**

**Provide analysis of meaningful data that will help to reveal systemic issues that may have given rise to the original complaints. Provide a summary of the details, including rate of mediation and sustained cases, both current and historical in clear and concise charts and tables.**

Many individuals intimate to the oversight process admitted to either not reading or providing only a cursory glance at the annual reports disseminated by the IRO's office. The reports are cumbersome and require a time commitment to identify relevant data that provides a solid level of trend analysis. At a minimum, the IRO's office should provide a summary of the pertinent details in tables and charts at the beginning of the report. To achieve a truly meaningful report, the detail should be provided in a historical context so as to allow for a level of trend analysis that would prove enlightening as to the oversight system's overall effectiveness.

Moreover, thorough data analysis will allow for the proactive oversight thought to achieve real and pervasive change in departments. Again, too much focus on the individual complaints provides only superficial results in which the bigger picture is lost for the detail. A careful analysis of the information provided by the individual complaints can shed light on broader police management issues. In doing such, APD will experience an increased level of accountability that will ultimately bolster its legitimacy with the citizens it serves. As was stated by Livingston in her

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<sup>13</sup> *Supra* note 1, at 658.

2004 article, “[a]ccountability in policing . . . may sometimes be better promoted by an approach to complaints that is less concerned with individual culpability and more concerned with using complaints to enhance police performance.”<sup>14</sup>

**FINDING**

Conciliation or mediation is the informal resolution of a dispute or complaint through face-to-face interaction between parties where a professional mediator typically is a neutral facilitator there to help the parties reach resolution. The mediation process is voluntary and emphasizes dialog in a safe environment where participants can air their views and develop a mutual understanding of their conflict. The mediation process in Albuquerque uses mediators that are police officers, rather than an independent third-party.

As established in the ordinance, citizen complaints about police may be resolved through mediation. The use of mediation in the police oversight process in Albuquerque increased to unprecedented levels in 2005 (13 percent of CPC) and then dropped significantly for the next four years to around four percent. In 2010, the rate of mediation again increased to around ten percent. The success of mediation in 2005 was attributed to the, then new, Chief of Police’s enthusiasm for the process. In this same time period, the Chief of Police established a mediation program by which selected lieutenants and sergeants were trained in mediation. To be eligible for mediation a complaint must not involve use of force or a criminal charge.

The goals of mediation are consistent with the goals of community policing. They both emphasize the values of cooperation and collaboration, the goals of learning and understanding, and the process of problem solving. Therefore, mediation can help to strengthen these values. Problem solving is addressed in that the officer sits down with the complainant, discusses events that led to the complaint, and works out an acceptable understanding. (Often times this is no more than an apology.)

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<sup>14</sup> *Supra* note 1, at 657.

Albuquerque's previous success with the use of mediation to resolve CPCs is an anomaly when compared to what is generally found across the country. A previous national survey identified 16 citizen complaint resolution mediation programs. Of these programs, the activity level was extremely low and only three or four had successfully mediated a substantial number of cases. These programs were operated by citizen oversight agencies, community mediation centers, or police departments.

Because mediation is "out of step with the highly polarized nature of citizen complaints . . . and the traditional adversarial, legalistic style of complaint procedures," mediation is used infrequently for citizen oversight process across the nation.<sup>15</sup> However, when used, it can be a highly effective way in bridging the gap between law enforcement and citizen while minimizing the use of resources required to responds to citizen complaints.

**COMMENDATION 4-1:**

**The continued use of mediation as a way to resolve police complaints in Albuquerque is commendable.**

A successful mediation program is a result of supportive communities and police departments who are willing to participate in mediation. Throughout the country, there are common factors cited that contribute to the failure of mediation programs. One of the most frequently cited issues is opposition from police officers and their unions. Officers may oppose mediation for fear that any admission may be used against them in a formal proceeding. There also may be a lack of understanding regarding mediation or a lack of resources to support the program. Mediation is less costly than investigations, especially in Albuquerque where there are no outside mediators used.

**RECOMMENDATION 4-3:**

**Enhance outreach efforts to complainants and officers alike to encourage the use of mediation.**

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<sup>15</sup> *Supra* note 1, at 664.

Stepping outside the culpability focused, punishment driven regime of the formal complaint process through mediation or conciliation represents the true meaning of the oversight process. APD and the POC should continue working toward increasing the number of cases resolved through mediation. To do such, a brochure or other information should be developed and disseminated widely educating both the complainant and officer to the option and merits of mediation. This information should explain how the mediation process works and why it may lead to more beneficial outcomes for all parties. By increasing the use of mediation, the number of complaints requiring investigation could be reduced, which would allow the IRO's office to reduce the number of CPCs investigated by IA and allows the IRO to engage in more proactive police oversight. This recommendation was also made in MGT's 2006 report.

In addition to increasing public awareness of the process and its merits, the use of outside third-party independent mediators should be explored as an alternative to the current practice of using trained police department mediators. Experts on the field of police oversight have often sighted that one of the primary elements of a successful mediation program is the "need for a level playing field in mediation and an atmosphere of equality among the parties."<sup>16</sup> To achieve the level playing field, it may be necessary that the mediator be a truly independent third party rather than a member and employee of the police department from which one of the parties to the complaint is from. Several citizen oversight programs are attempting to utilize mediation to resolve the less severe complaints and in doing such are contracting with outside professional mediators that will provide the ability to remain objective, both real and perceived.<sup>17</sup> To ensure the success of its mediation efforts, APD and the POC should review its current outreach efforts along with the use of APD mediators to ensure both the communities knowledge of mediation as

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<sup>16</sup> Walker, Samuel, et. al., *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders Web Version* (Washington, DC: Government Printing Office (2002) at 27.

<sup>17</sup> See Portland, Oregon's Citizen Police Mediation Program at <http://www.portlandonline.com/auditor/index.cfm?c=29387>; District of Columbia's Office of Police Complaints at <http://occr.dc.gov/occr/cwp/view,a,3,q,603921,occrNav,%7C31081%7C.asp>; and Seattle, Washington's Office of Professional Responsibility Mediation Program at <http://www.cityofseattle.net/police/OPA/mediation.htm> (last viewed October 28, 2011)

an option for resolution and a belief that this option will, in-fact, produce a beneficial outcome by which all parties are satisfied.

**RECOMMENDATION 4-4:**

**Include “successfully mediated” as a complaint disposition category.**

Currently, complaints that are resolved through mediation are classified as inactivated. Complaints can be classified as inactivated cases for several reasons including: if an allegation is not a violation of SOP, is submitted more than 90 days from the date of the incident, is not against an APD member, or the APD member cannot be identified or the complaint was successfully mediated. By categorizing complaints resolved through mediation as inactivated fails to give full credit to the success of the mediation process. Although a notation of “Resolved in Mediation” is made in the SOP field, the fact that the case has been disposed of through successful mediation is unclear barring the creation of a specific disposition category. A successful mediation is an outcome that merits its own finding category because it indicates resolution through collaboration and communication. In fact, the summary of the successfully mediated cases should be separated and grouped ahead of the other cases to further highlight the process and its benefits. This recommendation was also made in MGT’s 2006 report.

**FINDING**

Albuquerque’s citizen police complaint process offers more opportunity for citizens to appeal than many other oversight systems. In Albuquerque, any person who files a citizen complaint and is dissatisfied with the findings of the IRO or of the Chief of Police response may appeal the decision to the POC within ten days of receipt of the public letter of record. The POC may modify or change the IRO’s findings or make further recommendations to the Chief of Police regarding the findings or the discipline imposed. Additionally, any person who filed a citizen complaint who is not satisfied with the final decision by the Chief of Police may request the Albuquerque Chief Administrative Officer (CAO) review the complaint, the findings of the

IRO and POC, and the action of the Chief of Police. This second appeal in Albuquerque to the CAO, also due within ten days of receipt of the chief's letter, is unique among the cities the consultant team reviewed.

Historically, there have been few cases that have been appealed to the POC and even fewer to the CAO.

**RECOMMENDATION 4-5:**

**Extend the deadline for citizens to file appeals from 10 business days to 30 calendar days.**

The consultant team is still unable to conclude whether the relatively small number of appeals and even fewer secondary appeals were the result of a good process in which citizens, who while they may not have been completely satisfied with the results of their complaint, felt they were heard and their claims were thoroughly and impartially investigated. Or is the deadline for appeals too short. Our review of other city appeals processes indicated times ranging from 7 to 90 days, 30 days being the most frequent deadline allowed for appeals. This recommendation was also made in MGT's 2006 report.

**FINDING**

The overall success of the police oversight process depends on a number of players, including the IRO, APD officials, POC members, and elected officials. POC members represent the nine city council districts. As such, each councilor is required to nominate two qualified candidates, from which the mayor must choose one to appoint, with the advice and consent of council. Although the IRO is ultimately appointed by the mayor, he/she must first be chosen as one of three candidates by the POC. Moreover, because the IRO works at the direction of the POC and the POC is a body of community members, the importance of selecting and appointing the POC members must be fully appreciated by the responsible parties.

**RECOMMENDATION 4-6:**

**City Council members must be fully engaged in the process. As such, each member must fulfill his/her duty to provide the Mayor with qualified nominees and maintain a level of oversight into the process by keeping in frequent communication with their appointee.**

The IRO should operate at the direction of the POC, including the level and type of analysis to be conducted by the IRO's for the quarterly and annual reports. The POC should also actively review and monitor APD policy and the type and amount of complaints heard on a regular basis. The success of the oversight process is in large part derived from the success of the POC. Therefore, each councilor should exercise utmost care and judgment in selecting their POC nominees. This begins with careful thought as to the type of individuals that should populate the commission, as even the most promising oversight processes can fail if the citizens chosen to lead are ill-equipped to handle complex and nuanced matters.<sup>18</sup> Moreover, when appointments are expired, each councilor should also be diligent in reappointing, where appropriate, or thoughtfully selecting new nominees. Lastly, to ensure continued success, each councilor should maintain some level of oversight regarding their POC appointment. This includes regular discussions regarding the process and monitoring outcomes of the process.

**FINDING**

The overarching purpose of citizen oversight is to ensure that the law enforcement agency of which it oversees remains accountable to the public it serves. However, given what is required of the citizen oversight process, many experts on the subject believe it is imperative that the citizen oversight process should also be accountable. Monitoring the complaint process is vital to the on-going success of the process. This includes monitoring the independent review agency's performance to ensure that complaints are received by courteous and professional staff and processed in a timely manner.

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<sup>18</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000.

In addition to reviewing the process to ensure satisfactory performance on behalf of the citizen, the very law enforcement agency that is being monitored should also be afforded an opportunity to provide feedback and insight regarding the process. By providing an opportunity for citizens and officers to provide feedback and possibly shape and change the process, the city will be ensuring the on-going success of the process.

**COMMENDATION 4-2:**

**The ordinance provides an automatic review of the oversight process every four years.**

The requirement of the ordinance shows the commitment of the community in ensuring that Albuquerque's police oversight process is and remains as effective as possible. While there are always ways in which a process can be improved, the on-going monitoring of the process itself goes a long way in ensuring the continued success of the Albuquerque oversight process by allowing it to grow with the changing needs of the community it serves, both citizens and law enforcement personnel alike.

## 5 FINDINGS AND RECOMMENDATIONS - THE POLICE OVERSIGHT COMMISSION

This section of the report provides findings, and where necessary, recommendations arising from MGT's evaluation of the Police Oversight Commission (POC).

### **Police Oversight Ordinance**

Through the adoption of Ordinance 31 – 1998, Part I of Article 4 of the Health, Safety and Sanitation Chapter of the Albuquerque city ordinance created Albuquerque's police oversight system. The ordinance has been amended eight times since its initial adoption, with the most recent amendments occurring in 2008 and 2009. All of the amendments since 2004 concern the POC and its structure, including the qualifications for its members. At the time the commission was formed, the city council held the belief that a properly conceived and functional police oversight system was necessary to promote accountability of police professionals and ensure the rights of the citizens. And while this is still true today, city and citizens have varying ideas on how to achieve an acceptable level of accountability without impeding the efforts of the police professionals in ensuring the on-going safety of Albuquerque's citizens.

The POC is composed of nine members who, as defined by the ordinance; "broadly represent the diversity of this community."<sup>19</sup> To help achieve the desired diversity, the commission is composed of one member from each of the nine council districts. While the members are ultimately appointed by the mayor and confirmed by the city council, the city councilor from each district is required to put forth at two nominees.

There are six minimum qualifications to serve on the commission. The qualifications are:

1. Not have been employed by a law enforcement agency for one year prior to appointment;
2. Have problem-solving and conflict resolution skills;
3. Attend a yearly four-hour civil rights training session;

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<sup>19</sup> Albuquerque, New Mexico, Municipal Code Sec.9-4-1-4 (2011).

4. Be willing to commit the necessary time each month and read all materials distributed prior to the monthly meeting;
5. Participate in *a minimum* of two “ride-alongs” with APD officers per year; and
6. Attend a yearly firearms training simulator at the APD academy.

As previously stated, the purpose of the commission is “[t]o promote *a spirit* of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.<sup>20</sup> To realize its purpose the POC is responsible for overseeing the full investigation and/or mediation of all citizen complaints (CPC) and auditing or monitoring investigations and police shootings under investigation by the APD’s Internal Affairs (IA); however, the POC does not investigate internal police complaints filed by police officers (I) as this is handled by IA. Among its other responsibilities is the recommendation of candidates for the position of IRO and the on-going review of his or her work with respect to the quality, thoroughness, and impartiality of the investigations; the submission of quarterly and annual reports regarding the CPC’s received and completed by the IRO to the mayor and the city council. While the POC does not have disciplinary authority over those officers for cases in which citizen complaints were sustained, it does hold appeal hearings for those complainants dissatisfied with the initial outcome of their complaint, where the complaints and the evidence are heard by the POC anew. Lastly, the POC is tasked with engaging in a long-term planning through which it is to identify major problems and establish a program of policy suggestions and studies.

#### **FINDING**

Despite its role in the process, leadership by the POC is not adequate to achieve the objectives of the ordinance. The POC’s failure to lead is born of two primary issues, failure to train and educate members of the POC and a lack of participation. Despite requirements for some annual training of POC members in the ordinance, training is neither sufficient nor monitored to

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<sup>20</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-5 (2011). (*emphasis added*)

ensure POC members are able to accomplish their duties as a member of the POC. Ride-alongs and range simulation (FATS) attendance is not tracked. This is further supported by comments from some commissioners suggesting that it has been more than a year since he or she conducted a ride-along or attended a FATS training. Similarly, completion of the civil rights training is not tracked; however, the civil rights training is conducted at the POC meetings and is televised and recorded, therefore attendance to this training can be loosely monitored.

Many oversight participants, including some POC members, expressed concern about the lack of knowledge for new members and the desire for more substantial training than is currently required. Members are appointed and expected to contribute immediately without fully understanding the ordinance, the process and the importance of their role in the process, and how it impacts Albuquerque's citizens and the department. Although some have attended the annual NACOLE conference, attendance is not required and the city no longer provides funding. Many participants felt more training would be helpful in ensuring the POC accomplishes its mission.

Lastly, many commented on the lack of power or purpose with regard to the POC. However, as the ordinance establishes, the IRO is actually an arm of the POC and therefore, given the citizen nature of the POC, the POC is only as useful or as powerful as its IRO, which in turn, is largely directed by the POC. A greater familiarity with the ordinance may provide a level of insight regarding the extent to which the POC can direct the activities and reporting activity of the IRO.

**RECOMMENDATION 5-1:**

**Create a training program that ensures all members of the POC are fully informed of their responsibilities and have a level of knowledge regarding police operations to allow each member of the POC to accomplish his or her role as a commissioner.**

Among law enforcement's most significant objections and/or concerns to a police oversight process is that citizen participants may not have a sufficient understanding of law

enforcement policy and procedure.<sup>21</sup> An improved training program would help to alleviate this concern and ensure newly appointed members can become effective members of the POC immediately through frequent and relevant engagement by way of questions, comments, and *overall direction of the IRO's office*. Many of the newer members' actions and comments seem to suggest a lack of familiarity with the process to allow them to be wholly functional members of the commission. An in-depth and comprehensive orientation would provide them with a level of familiarity and purpose necessary to ensure all members are, and remain, actively engaged in the process.

For example, in addition to a minimum residency requirement, the City of Austin, Texas, requires the following of their seven volunteers for their citizen review panel:

- 6 hours of Internal Affairs training
- 3 to 4 day training by Austin Police Department tailored for its panel members and to include training by the special investigations unit, officer involved shootings, response to resistance, the police training academy, the crisis intervention team, firearms training including FATS, and ride-outs on at least two shifts in different parts of the city.<sup>22</sup>

Another example is that of the City of Milwaukee, Wisconsin. Milwaukee's citizen oversight process is comprised of seven part-time board members and a full-time professional staff led by an executive director. Similar to Albuquerque, Milwaukee's board members hail from various backgrounds. To ensure its members are adequately trained to accomplish their duties and achieve the mission of the oversight process each new member is required to attend the Milwaukee police citizen police academy and participate in the department ride along program.<sup>23</sup>

The Milwaukee citizen police academy is a ten-week program consisting of a series of weekly three hour courses which include: classroom academics and practical application in law, police procedure, defense and arrest tactics, firearms training, and exposure to the most state-of-

<sup>21</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000 at 7.

<sup>22</sup> See City of Austin, Office of the Police Monitor, Citizen Review Panel Qualifications at <http://www.ci.austin.tx.us/opm/crpanel.htm>

<sup>23</sup> Milwaukee, Wisconsin, Municipal Code chpt. 314 § 2 (b-2) at [http://cctv25.milwaukee.gov/netit-code81/volume3\\_ch314/CH314.pdf](http://cctv25.milwaukee.gov/netit-code81/volume3_ch314/CH314.pdf)

the-art technology the department employs to combat crime. In addition, tours of various police facilities and demonstrations of equipment are also provided.<sup>24</sup> Although Albuquerque mentions a citizen police academy on its website, there is no information regarding upcoming class dates. By all appearance, the academy seems to exist in name only. In addition to providing for an adequate level of training for its POC members, an active citizen police academy would also help to provide for the on-going need for community outreach, helping to build a stronger relationship between the APD and Albuquerque citizens.

**RECOMMENDATION 5-2:**

**Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance. To ensure proper oversight, the city ordinance should be amended to require the annual report to contain an account of the annual training undertaken by members of the POC commission. For those members who fail to comply with annual training requirements, the ordinance should be amended to provide for the removal of a non-compliant POC member.**

The IRO should develop and maintain a system by which the POC members' required training can be tracked and monitored for compliance. In addition to allowing for the notification of non-compliant members of the POC, the system should also provide an automated mechanism by which the IRO can notify commissioners if they are deficient in meeting their annual training requirements and allowing the non-compliant member to come into compliance prior to removal.

In addition to requiring all new members to complete the Police Citizen Academy, Milwaukee citizen oversight process requires its commission to submit an annual report to the council in which an account of the training taken by each of its members is given.<sup>25</sup> The IRO should include data regarding each member's initial and on-going training in its annual report to the council. For those members who fail to comply with on-going training requirements, the POC Chair should be required by law to coordinate with the City Attorney and remove any non-

<sup>24</sup> See City of Milwaukee, Citizen Academy at <http://city.milwaukee.gov/CitizensAcademy112300.htm>

<sup>25</sup> Milwaukee, Wisconsin, Municipal Code chpt. 314 § 2 (b-3) at [http://cctv25.milwaukee.gov/netit-code81/volume3\\_ch314/CH314.pdf](http://cctv25.milwaukee.gov/netit-code81/volume3_ch314/CH314.pdf)

complaint members. A recommendation to track the annual training requirements of each POC member was also made in MGT's 2006 report.

**RECOMMENDATION 5-3:**

**Monitor and track POC member attendance at monthly meetings and require adequate proof for excused absence by members.**

The ordinance requires the “appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire.”<sup>26</sup> For those members not providing adequate evidence of an excused absence for a POC meeting, the POC should ensure that the record properly reflects the unexcused absence. By doing such, all members with habitual unexcused absences will be automatically eligible for replacement and assist the POC in ensuring an engaged, active, and therefore, effective POC.

**RECOMMENDATION 5-4:**

**All city councilors should ensure their respective position on the Commission is filled with a qualified appointee who will be mindful of the overall mission of the POC.**

The ordinance requires the councilor representing the district to “nominate two members to the POC” from which the mayor will then appoint one of these members to the POC with the advice and consent of the council.<sup>27</sup> Moreover, if the mayor fails to deliver a recommendation from the two names submitted, the councilor may appoint one of the two with the advice and consent of council. The POC may only act as intended with nine engaged members representing the nine districts of Albuquerque. Therefore, it is incumbent upon the city council to be mindful of their responsibilities in this respect by making solid recommendations in a timely manner. Moreover, if the member's appointment has expired, it is incumbent upon a councilor to reappoint or replace his/her member so as to ensure a full, active, and engaged POC.

**FINDING**

<sup>26</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-4 (E) (2011).

<sup>27</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-4(C) (2011).

A citizen review process, if implemented properly and given the necessary resources, is a powerful tool for data gathering, analysis, and sharing, with regard to misconduct in the department and management issues.<sup>28</sup> Moreover, a careful review of the detailed complaint information should be a regular process, by which attention to the context in which the complaint occurred is carefully reviewed and supervisors are held accountable for any role they may have had in the occurrence leading to the complaint.<sup>29</sup> Recognizing this, as written, the Police Oversight Ordinance tasks the POC to “engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.”<sup>30</sup> The POC created a sub-committee in 2003 called the Long-Term Planning Committee (LTPC). The LTPC consists of three members and meets once a month. These meetings are open to the public, but unlike the POC meetings, not televised. The 2003 annual report published by the POC suggests that that LTPC was “extremely active in identifying problems and making policy suggestions.”<sup>31</sup>

Today’s LTPC spends a great deal of its monthly meeting fielding input from the public and reviewing the full body of evidence for high-priority or critical cases so to provide a summary to the full POC at its next monthly meeting. The current members of the LTPC confirmed that very little discussion regarding trends or systematic problems, or for that matter policy, occurs. The LTPC does not review analysis or trends of citizen complaints or potential changes to police policy that make curb systematic issues or improve the overall effectiveness of the department in terms of community relations.

**RECOMMENDATION 5-5:**

**Being one of its expressed objectives, the POC should identify major problems and identify a program of policy suggestions and studies through the use of its LTPC.**

<sup>28</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO ST. J. CRIM. L. 653, 665 (Spring 2004).

<sup>29</sup> *Id.* at 666.

<sup>30</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-5(G) (2011).

<sup>31</sup> Albuquerque, New Mexico, Police Oversight Commission, Annual Report, 2003.

The structure of the current police oversight system allows for both reactive and proactive oversight on behalf of the citizens of Albuquerque. By and through the IRO's investigation of specific citizen complaints, the POC can react to specific or isolated issues that arise between the APD and select citizens. By using the LTPC to review analysis of complaint information and identify trends, the POC can work with the APD to suggest policy changes so as to be proactive to reoccurring or systemic issues that arise between the APD and the community at-large. However, to achieve a proactive stance, the POC must return to the way the LTPC was used in 2003, when the POC's annual report suggested the LTPC was "extremely proactive in identifying problems and making policy suggestions."

A report published in 2005 by the Police Assessment Resource Center suggested that there were three overarching models for police oversight; one of which, the report called "evaluative and performance based model."<sup>32</sup> The model is deemed to be evaluative in the sense that it allows for a review of the department in its entirety, *over time*, regarding how well the department minimizes the misconduct through the identification and corrections of patterns through solutions to systemic failures. By requiring the POC, through the IRO's annual reports, to provide useful analysis of both current and historical data and re-aligning the focus of the LTPC, the POC can be both reactive and proactive through the identification of systemic problems and the resulting recommendations of changes to department policy in an effort to curb and or eliminate reoccurring problems.

This is most important in terms of police shootings and serious use-of-force cases, where the POC, through its IRO, can engage in trend analysis of the circumstances surrounding police shootings and the outcomes of individual investigations to reduce its numbers going forward. Today many oversight agencies are engaging in more detailed analysis of the circumstances surrounding an officer involved shooting. For example, Portland, Oregon's police oversight,

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<sup>32</sup> *Review of National Police Oversight Models for the Eugene Police Commission*, Police Assessment Resource Center, February 2005.

which in response to a rash of officer involved shootings that had eroded the community's trust of the Portland Police Department, is now by law required to monitor and observe the entire investigative process of an officer involved shooting.<sup>33</sup> This includes a review of *all parties involved* (i.e., fellow officers on the scene, immediate supervisors, witnesses), not just the shooter; developing profiles of the shooter and the scenario in which the shooting occurred. Through this holistic approach, correlations can be made by which levels of culpability outside the shooter may be determined. In doing this, Portland is able to better understand where training, supervision, and current policies may have been to blame, at least in part, for the incident. The POC, through its LTPC and IRO, should engage in more detailed data analysis, especially regarding officer involved shootings, to ensure that systematic factors that may have been a cause for the incident, are both identified and remedied.

Police oversight scholars have often cited a civilian advisory council as a mechanism by which civilian participation could be promoted to assist in the development and implementation of local police policy.<sup>34</sup> Just like a civilian advisory council, Albuquerque's Long Term Planning Committee could, by allowing civilians to be directly involved in critical decisions, drive accountability and bolster the department and the oversight process' legitimacy by "opening the system to community input and thus allow[ing] for public scrutiny of policing decisions and justifications."<sup>35</sup>

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<sup>33</sup> Maxine Bernstein, *Police Oversight Official to Respond to Portland Police Shootings, deaths in Custody Cases*, *OregonLive.com*, June 9, 2011 at

[http://www.oregonlive.com/portland/index.ssf/2011/06/police\\_oversight\\_official\\_to\\_r.html](http://www.oregonlive.com/portland/index.ssf/2011/06/police_oversight_official_to_r.html)

<sup>34</sup> Reenah L. Kim, *NOTE: Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 509 (Summer 2001).

<sup>35</sup> *Id.*

**RECOMMENDATION 5-6:**

**In addition to identifying major systemic problems by and between the APD and the community, Section 9-4-1-11 of the Police Oversight Ordinance should be amended to require the LTPC to monitor the status of recommendations resulting from those evaluations required by ordinance through regular updates to the full commission and designated city staff and/or agencies.**

As is evidenced by Appendix B of this report, there was no action taken on many of the previous recommendations born of prior reviews of the city's police oversight system. To ensure the value envisioned by and through the enactment of Section 9-4-1-11 is realized, the city should amend the statute to require the POC, through its LTPC, to monitor the implementation of those recommendations accepted by the city. To ensure full compliance and participation by all parties affected by the recommendations, the Council should first establish a study session in which all relevant actors are invited to participate and evaluate the recommendations provided by this and all subsequent reports. From this study session, agreements should be reached on which recommendations will be accepted and which will not. After which, the LTPC should routinely monitor the status of implementing those recommendations and provide routine quarterly updates to the POC and designated city staff and/or department members during the regularly scheduled monthly POC meetings and include status updates in quarterly and annual reports.

**FINDING**

Many members of the POC suggested that they had not reviewed a quarterly or annual report from the IRO in some time. The IRO's office recently completed a software change and as a result, impeded the office's ability to produce timely quarterly reports. While a reason for the POC members' failure to read reports may be a result of this delay, another reason may be the perceived low value of the quarterly and annual reports.

By ordinance, the reports generated must contain the following:

- Data relating to the number, kind and status of all complaints received, including mediating complaints;

- Discussion of issues of interest undertaken by the POC which may include suggested policy and/or procedural changes, a listing of complaints and allegations by council district, statistical ethnicity of subject officers, statistical ethnicity of complainants, and updates on prior issues and/or recommendations;
- The POC's findings and the APD's issuance of discipline on those findings and the ongoing disciplinary trends of the department;
- Information on all public outreach initiatives undertaken by the POC or the IRO; and,
- The status of the long-term planning process in identifying major problems, policy suggestions, and studies as required by Section 9-4-1-5.

Although the reports generally contain most of what is required by the ordinance, the data provided is minimal with very little analysis completed. Moreover, there is very little in the way of long-term trend analysis regarding types of complaints, procedures and policies violated, and departmental responses to sustained complaints.

In addition to past omissions of the department's disciplinary decisions in the POC reports complaint summaries, the POC does not provide its own guidance on disciplinary measures for sustained complaints. While most citizen review entities are authorized to recommend disciplinary action to the police chief executive, Albuquerque's ordinance is silent on this matter and the consultant was unable to ascertain the POC's ability to do such.<sup>36</sup>

**COMMENDATION 5-1:**

**Before the annual 2010 report, the IRO's annual reports did not provide detail on discipline for sustained complaints; however, the most recent annual report does provide discipline for approximately 85 percent of all sustained complaints.**

An effective police oversight process provides a high degree of accountability. A useful measure as to how seriously the department views any given violation of policy is the degree of discipline issued for said violation(s). To achieve a higher level of accountability, while satisfying a complainant, it is helpful to publish the discipline provided for a sustained complaint. To this end, the recent practice of reporting the discipline issued for each sustained complaint provides an

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<sup>36</sup> *Id.* at 477.

increased level of accountability and will go a long way in satisfying the citizen complainants served by the POC and IRO.

**RECOMMENDATION 5-7:**

**Amend the language of the ordinance to require the POC, through the IRO, to consider the published chart of sanctions and recommend discipline for all sustained complaints, separate from the discipline imposed by the APD.**

As was previously stated, an effective police oversight process should provide a high degree of accountability. In terms of individual complaints, the level of accountability can be most easily measured by the action taken by the department in terms of sustained complaints. To maximize its accountability and provide the highest level of community involvement, the POC, through its IRO, should recommend discipline. The discipline should be considered in the context of the published chart of sanctions.

While many individuals would argue that because of their experience and knowledge, police executives are in the best position to recommend and/or impose discipline. However, the Milwaukee Fire and Police Commission, one of the oldest and arguably most successful police oversights in the country, not only recommends discipline, but is the final authority to impose discipline directly to the officer.<sup>37</sup> Recognizing the limitations of the POC in terms of imposing discipline, the legitimacy of the POC and its role in the process would be greatly improved if it were to recommend discipline, through its IRO, for all sustained complaints.

Police oversight scholars citing the lack of authority of many oversight bodies to directly discipline officers and modify departmental policies, warn that an oversight body that is unable to exert pressure to ensure that its recommendations are followed runs the risk of reverting to ways to appease the department it is overseeing in order to enjoy cooperation by the department.<sup>38</sup> Many participants of the current oversight system, including the IRO, argue this is occurring. And

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<sup>37</sup> *Id.* at 506-07.

<sup>38</sup> Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 11-12 (Fall 2009).

while the consultant does not hold this opinion, it does recognize that without means by which the POC, and its IRO, can exert pressure upon the department, it could quickly become irrelevant to the process, leaving only the department to oversee its activities.

**RECOMMENDATION 5-8:**

**Amend the language of the ordinance to require additional analysis and data, including specific disciplinary outcomes of sustained complaints and long-term trend analysis.**

The current quarterly reports provide a snapshot of the POC's activities with limited historical content. In addition to the investigation of citizen complaints by and through the IRO, the POC must provide a level of oversight that requires real accountability from the APD in order to remain relevant. By doing so, Albuquerque's police oversight system should become more evaluative in the sense that it oversees the department as a whole and provides real insight as to how the department is minimizing the risk of police misconduct by identifying and correcting individual problems as well as systemic failures through discipline and policy changes.

Notwithstanding the previous recommendation, the POC, through its IRO, should provide an account of the discipline available to the department, as established by the departmental procedure, and the actual discipline taken by department with respect to *every* sustained complaint. For those cases unsubstantiated, more detail as to the actions taken to investigate the case should be provided. In providing the level of data and analysis suggested, the POC would be able to address systemic issues and create real accountability within the APD for eliminating problems and real or perceived abuses.

**RECOMMENDATION 5-9:**

**The APD's Standard Operating Procedures (SOP) provide a standard range for discipline for violations of each SOP. The language of the ordinance should be amended to require the reporting of this to further provide the highest level of accountability.**

To achieve the true spirit of the ordinance, the POC, through its IRO, should report the range of discipline allowed for a given violation as set forth in the SOP Chart of Sanctions alongside the actual discipline for violations of SOP. Moreover, trends in both discipline and rate

of violation of particular SOPs year over year should be reported in the annual reports in order to highlight systemic issues, where appropriate, and create a level of accountability within the department for identifying and eliminating reoccurring or habitual problems.

**FINDING**

Although the Chief of Police and/or many of his executives often attend the POC monthly meetings, there is very little public interaction, either private or public, between the POC and police executives. However, the IRO and the Chief meet privately, on a weekly basis, to discuss individual complaints and the details of the disposition of each case.

**RECOMMENDATION 5-10:**

**The POC and the Albuquerque Chief of Police should hold joint public sessions bi-annually to discuss policy issues and concerns and allow for public input.**

New York City's Civilian Complaint Review Board (CCRB) reportedly meets with the New York City Police Commissioner twice a year in an open forum to discuss policy issues and concerns. While the IRO and the Chief both report regular meetings with one another, as the public face of the oversight process, the POC and the Chief of Police should hold joint open meetings regularly to allow direct and open dialogue between citizens and the police department. This joint session could help in fostering good will between the two bodies and creating the perception and the reality of open and frequent communication by and between the POC and the APD.

## 6 FINDINGS AND RECOMMENDATIONS – CITY OF ALBUQUERQUE –INDEPENDENT REVIEW OFFICER

This section of the report presents the results of MGT’s evaluation and analysis of the City of Albuquerque’s Independent Review Office and the Independent Review Officer (IRO), who works at the direction of the Police Oversight Commission (POC).

### Background

As established in the Police Oversight Ordinance, the IRO is a full-time city employee who *works at the direction* of the Police Oversight Commission (POC). Currently, the IRO has an office staff of three full-time investigators and one office assistant. In addition to serving as a New Mexico District Judge, the current IRO is the former Federal Public Defender for the District of New Mexico and a retired United States Magistrate Judge. His body of experiences leaves him well equipped to make sound decisions based on facts, following a thorough investigation. In addition, his staff of three investigators also possesses a body of experience that provides the office with the requisite knowledge to conduct thorough investigations.

The primary responsibilities of the IRO as outlined in the most recent annual report available include<sup>39</sup>:

- Receipt of all citizen complaints directed against APD and any of its officers;
- The assignment of all citizen complaints to either IRO investigators or Internal Affairs;
- Oversight, monitoring, and review of all investigations born of citizen complaints;
- Make findings based on thorough, fair, and impartial investigations free from political influence (using an impartial system of mediation, where appropriate);
- Give advice and make recommendations regarding APD policies and procedures;

<sup>39</sup> Albuquerque, New Mexico, Police Oversight Commission, Annual Report, 2010.

- Monitor all claims of excessive force and police shootings (acting as an ex officio member of the Claims Review Board);
- Maintain and compile information sufficient to satisfy the POC's quarterly reporting requirements; and
- Play an active public role in the community, providing appropriate outreach to the community, including the advertising of the citizen complaint process and the locations throughout the city where a citizen complaint may be filed.

Based on discussions with APD, the Albuquerque Police Officers Association (APOA) president, and POC members, the IRO and his staff are competent at their work. Moreover several participants noted a much improved relationship between the IRO and the APD and APOA.<sup>40</sup> Those interviewed communicated confidence and respect for the IRO's experience and his ability.

#### **FINDING**

The 2006 review of the police oversight process revealed an increasing number of citizen complaints being referred to the IA for investigation due to insufficient staff to handle the workload. The IRO has since been provided with an additional full-time investigator. With three full-time investigators, the workload is now more manageable. Of the few citizen complaints that are referred to IA, they usually are referred based on a belief by the IRO's office that IA can resolve the claim much more expeditiously or during brief spikes in the IRO's workload. While the low number of citizen complaints referred to the IA is satisfactory to all parties involved, the process for resolution for those that are is cumbersome.

#### **RECOMMENDATION 6-1:**

**For the few citizen complaints referred to the IA's office, the process for final disposition should be streamlined to avoid undue burden on the actors. This could be accomplished by requiring IA to make a finding and disciplinary recommendation for claims sustained.**

Though down from approximately 27 percent in 2006, IA investigated approximately 15 percent of the citizen complaints received in 2010. This represents a significant increase from

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<sup>40</sup> See the summaries of the Walker Luna and Jerome Reports, chapter 1 of this report.

2007 and 2008 when IA handled 5 and 4 percent of the citizen complaints, respectively. For those complaints investigated by the IA, the process for final disposition is overly cumbersome. The case is referred to IA. After investigation, but prior to issuing a finding the IA transfers the case back to the IRO's office for finding. This often requires at least some investigation anew and additional analysis of the data gathered during the investigation. Moreover, once a finding is made by the IRO's office, the complaint must be re-reviewed by IA and the chain of command for disciplinary action, if necessary. After which, the case is moved back to the IRO for a final disposition letter and submission to the POC for its review.

The IRO should work with the IA to establish a more streamlined approach to those cases investigated by the IA's office. Because the APD and IRO regularly agree on final disposition, the IA should make a finding based on its investigation and identify appropriate discipline, where necessary, prior to removal to the IRO for generation of a final disposition letter and POC review. Therefore, of the few complaints investigated by the IA, the chance for delay due to systemic inefficiencies would be minimized or removed unless a disagreement between the APD and the IRO arises.

**RECOMMENDATION 6-2:**

**The IRO and IA should work toward a complete separation of responsibility, where IA handles only internal cases (I) and the IRO handles all citizen complaints (CPC).**

Although the IRO and IA should take steps to reduce the level of inefficiency found in the shared investigation of citizen complaints, the ultimate goal should be to arrive at a total separation between the IRO's office and IA so that the IRO handles all citizen complaints and IA handles only internal complaints. As noted in the Jerome Report, this would "enhance the public's perception of impartiality" and "ensure complaints are handled in a [sic] timely manner."

**FINDING**

The IRO has not established formal criteria for the referral of CPCs to IA. With the addition of an investigator, the IRO handles a majority of the citizen complaints, only referring a

small percentage of the annual citizen complaints to the IA. Of those cases, some are referred for efficiency sake, with the belief that the complaint can be more quickly resolved through the internal channels of the APD. Otherwise, during times when the IRO is experiencing a heavier than usual workload, complaints are forwarded to IA to relieve the IRO investigators of an overly burdensome workload. However, because of the inefficient process which occurs when cases are referred to the IA, there is an overall increase in workload for all parties involved.

**RECOMMENDATION 6-3:**

**Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.**

It is important that the IRO, IA, and the public know who is responsible for investigating certain complaints. Moreover, strict criteria regarding which cases will be referred to IA should eliminate needless inefficiencies experienced when citizen complaints are referred to IA. The POC was created on the premise that it would provide an independent and fair review of citizen complaints about police conduct. Referring citizen complaints to the IA for investigation defeats, or at least dilutes, the purpose of the POC and IRO. With IA conducting periodic citizen complaints, an undue risk of the perception of lack of independence in the investigations may compromise the integrity of the complaint review process. A documented policy or procedure, or comment in his report to the POC, explaining the criteria or rationale behind said removal will help to avoid the potential for questions regarding the overall integrity of the process as it was identified in the ordinance. This recommendation was also made in MGT's 2006 report.

**FINDING**

The IRO's efforts to play an active role in the community and provide outreach are limited. POC Ordinance 9-4-1-6 (G) requires that the IRO play an active role in the community, and whenever possible provide outreach including the identification of non-police locations suitable for citizens to file complaints. This was also a recommendation in previous reports.

Specifically, the following represents the IRO's response to recommendations in the Jerome report:

- A volunteer was assigned to distribute complaint forms to senior citizen centers, libraries, and homeless shelters throughout Albuquerque.
- The IRO personally distributed forms to various groups including Vecinos United, NAACP, ACLU, and the Center for Justice.
- The IRO developed a survey in 2003 that was sent to all complainants.
- 2002 Census data was reviewed and as a result complaint forms were published in English and Spanish.
- A Spanish translator was contracted to assist the IRO during investigations that involve non-English speaking complainants.

While notable, the IRO indicated these efforts took place when he was first appointed and his interaction with community groups since that time has been limited. While the website is an important communication tool, it is not readily and easily accessible to everyone.

**RECOMMENDATION 6-4:**

**Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and city staff.**

The purpose of the LTPC, as explained in POC ordinance 9-4-1-5, G, is "to engage in long-term planning through which it identifies major problems and establishes a program of policy suggestions and studies each year." The LTPC is the appropriate venue to develop a community outreach strategic plan and evaluate its outcomes. At the direction of the LTPC, the IRO should work with city staff to identify groups in the community that would benefit from learning more about the oversight process and how community members can help to foster good relations with the department. In addition, increased contact with the APD, including periodic information presentations regarding the purpose of the IRO and POC, would also help to foster continued good relations with the department. Frequent communications of this nature can only help to limit the number occurrences and/or complaints henceforth and ensure an efficient process when occurrences do arise. This recommendation was also made in MGT's 2006 report.

**RECOMMENDATION 6-5:**

**Conduct complainant and police officers satisfaction surveys on an on-going basis, and seek ways to increase the number of citizen responses and increase the depth of analysis.**

Once citizen oversight is in place, it is important to monitor how all key constituents view its work, whether it's functioning effectively, and are those involved in the process reasonably satisfied in the outcomes.<sup>41</sup> The IRO is commended for his initiative in implementing a process to survey complainants once the process has been completed; although the number of responses continues to be low. Feedback from the IRO's office suggest that mail surveys net the lowest response rate; while telephone and face-to-face interviews net the highest participation rate. However, telephone and face-to-face interviews are expensive. In accordance with the ordinance, the duties of the POC include "promoting a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence."<sup>42</sup>

A survey of both the complainant and the officer would provide useful insight as to how the oversight process is accomplishing this stated goal, both as a process and specific to the individual contributors, including the investigators that handled a given case. The POC (LTPC) should review the current survey process, its results and encourage its continued development through direction of the IRO and staff. This recommendation was also made in MGT's 2006 report.

**FINDING**

As a result of a recent study conducted by Police Executive Research Forum (PERF) in response to the high number of officer involved shootings, the APD has *agreed to allow* the IRO to personally monitor the crime scene of the shooting. Either the IRO officer or one of his

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<sup>41</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000.

<sup>42</sup> Albuquerque, New Mexico, Municipal Ordinance Sec. 9-4-1-5(A) (2011).

investigators is called to the scene as the initial investigation is unfolding and monitor the investigation in real-time.

**COMMENDATION 6-1:**

**The department's willingness to involve the IRO in its initial investigation of an officer involved shooting reveals a commitment to reversing the upward trend.**

“[T]he most important aspect regarding the use of force relates to how and under what circumstances the local police department conduct investigations.”<sup>43</sup> The close involvement of the IRO, and by relation the POC, will help relay to the public and the department that the function of the police oversight has now moved beyond simple citizen complaints and is actively involved in the oversight of more critical incidents. As such, when officers know that there will be an increasing need and likelihood that use of force and officer involved shootings will have to be justified to an outside panel or board, an officer may be more reluctant in the future to resort to such means when excessive force, especially deadly force, is not warranted or can be avoided.<sup>44</sup>

While the consultant is not suggesting this will be a major factor in reducing the rate of officer involved shootings, it will be but a piece of the larger solution to successfully curtail excessive force.

**RECOMMENDATION 6-6:**

**While the APD has agreed to allow the IRO to monitor the crime scene of an officer involved shooting, the police oversight ordinance should be amended to require that the IRO or his/her representative be present at all officer involved crime scenes and be required to conduct a concurrent, independent investigation of each officer involved shooting.**

While the current Chief has agreed to allow the IRO on the scene of officer involved shootings, without legislation, there is nothing to guarantee that future law enforcement administration will agree to the same. Therefore, the ordinance should be amended to require the IRO, or his/her representative, to be present at all crime scenes in which an officer involved shooting occurred.

<sup>43</sup> Kami Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U.L. REV. 373, 397-98 (Winter 2010).

<sup>44</sup> *Id.* at 398.

Moreover, as was previously stated, the knowledge that one's actions will be reviewed by an outside, independent body, and any actions requiring excessive force or deadly force will require explanation to said body should likely go a long way in forcing an officer to think more critically before deciding to use such force. Therefore, similar to a recent amendment to Portland's oversight process, Albuquerque's police oversight ordinance should be amended to allow for the IRO to monitor and observe the entire investigative process.

Chicago, Illinois's oversight body, long heralded as one of the most open agencies in the country, recently codified a requirement that its oversight process generate and publish a separate report explaining the details of all critical incidents, including the circumstances surrounding the incident, the decision as to whether the use of force was appropriate and why, and in the case that said use of force was deemed inappropriate or excessive, the resulting discipline.

By requiring the IRO to monitor and observe the original crime scene and the full investigation, the POC, through its IRO, will be empowered to disseminate a similar report that will lend credibility to the processes, enhance the level of accountability by the department, and ultimately bolster the legitimacy of the process. Moreover, while the Portland amendment was heralded by many to be an important step in furthering the mission of police oversight, an action by Albuquerque similar to the above recommendation would establish the city and the APD as trailblazers in the field of police oversight and lend real credibility to the professed desire to end the rise in officer involved shootings and regain the trust of the public it serves.

#### **FINDING**

As discussed in this and previous chapters, the IRO by law, is required to deliver quarterly and annual reports on behalf of the POC. Among other things, the reports should include a discussion on policy and practices of the department and any necessary changes to such. This discussion can only be born of a detailed analysis of the information extracted from complaints

and any other useful tools available to the IRO, including access to the department's records and its early warning system (EWS).

As it stands, the current reports disseminated by the IRO's office do not seem to generate much interest or excitement. In fact, many key players in the oversight process confessed to a failure to read the more recent reports. Moreover, it is well accepted that the most meaningful method of police oversight and achieving true accountability is to be less concerned with individual culpability and more concerned with using complaints as a way to enhance overall police performance.<sup>45</sup> To accomplish such, a system should be created by which data is carefully gathered, analyzed so as to spot pervasive, systemic problems that can then be shared with the law enforcement officials and the community alike to effect necessary changes to policies and procedures of the department.

**RECOMMENDATION 6-7:**

**The IRO's office should be provided an auditor/analyst whose task it is, not to investigate complaints, but rather enjoy open access to the police department's records and given wide-ranging authority to report on all aspects of departmental policy and advocate for systemic reform, where necessary.**

It is long held that a successful oversight abstains from placing too heavy of an emphasis on control mechanisms and viewing control in terms of identifying and acting upon instances of wrongdoing.<sup>46</sup> Rather, to be successful as an oversight body, a city must engage in both reactive and proactive activity. Reactive oversight is being accomplished through the hundreds of complaints investigated by the IRO. However, there is currently very little proactive oversight occurring. To accomplish such, the IRO's office must be provided with a skilled analyst who will monitor the complaints and other data available to him/her to answer the larger questions regarding who, what, where, when, and how.

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<sup>45</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO. ST. J. CRIM. L. 653, 657 (Spring 2004).

<sup>46</sup> *Id.* at 654.

The current ordinance provides that the “IRO shall make recommendations to the POC and APD on specific training, changes in policy or duty manuals.”<sup>47</sup> A previous proposed amendment allowed the IRO to “have a policy review function, have the authority to conduct audits . . .”<sup>48</sup> While the proposed amendment was eventually eliminated, the city should provide additional funding to retain a full-time auditor or analyst.

An analyst could audit the complaints to extract relevant data on what the “officer” committing the offenses looks like, what type of offenses are being committed, what part of the city are the complaints generating from, and what time of day are the alleged offenses being committed. By looking at these questions on a broader scale, the city’s oversight process will cause real change through defensible recommendations regarding departmental policy, practices, and training. Moreover, by committing to a closer review of the underlying complaint information, attention can also be focused on the context that gave rise to the complaint, including failings of the department and supervisors in preventing the behavior that resulted in legitimate complaints.<sup>49</sup>

By doing such, the POC and its long-term planning function would provide the level of oversight necessary to allow for real change and allow for the level of accountability the community expects and the ordinance was intended to provide. However, with an appreciation for the current economic climate of many of the cities across the United States, the consultant recommends that if the city’s budget is unable to support the addition of a full-time analyst to the IRO’s office, the city should inquire as to the willingness of local universities to partner with the agency to conduct data analysis and the resulting policy review. If this is not an option, the city could also consider an intern at the Ph.D. level who could conduct thorough analysis in exchange for useful real-world experience in which the individual is allowed the opportunity to affect real

<sup>47</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-6(E) (2011).

<sup>48</sup> Albuquerque, New Mexico, Council Bill. No. 0-04-14, ver. 1, February 2, 2004.

<sup>49</sup> *Id.* at 666.

change. However, the need for a skilled analyst should not be overlooked for want of funds. Albuquerque must be careful to not fall prey to the trap in which once the crisis that gave rise to the creation of the process has passed, the government ignores the needs of the process by depriving it of the resources and political support necessary to continue achieving the goals set forth in its enabling ordinance.<sup>50</sup>

**RECOMMENDATION 6-8:**

**The IRO's office should be allowed full, real-time access to the APD's early warning system (EWS).**

In light of the diffuse nature of police work there are relatively limited opportunities for supervisors to engage in direct observation of officers. This is why citizen complaints can be a valuable source for managers and supervisors in terms of training needs and policy changes. The close examination of complaints can reveal the need for various changes, like training for use of force in which force is unnecessarily, but not maliciously used.<sup>51</sup> Oversight systems can use information from sustained, unsustained, and unsubstantiated complaints to compile useful data in EWS. Moreover, by allowing the input of this data into the EWS, the APD does not have to wait for the civilian oversight process to tell it of its problems, but rather the department will now have the enhanced capability to be proactive in its policy analysis and identify areas where additional training or changes in current training practices are necessary.

**FINDING**

The IRO is selected by the city council based upon a nomination by the mayor. The position is a full-time contractual city employee. The contract is for two years. Based on the substantial minimum qualifications and on the somewhat unique skills that experience in the position will develop, it does not serve the city to limit the term to only two years.

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<sup>50</sup> Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 3 (Fall 2009).

<sup>51</sup> *Supra* note 7, at 658.

A substantial investment would be required by a new IRO to relocate to Albuquerque, or even for a local attorney to give up their current position to take the IRO position when there is only a two-year commitment from the city.

**RECOMMENDATION 6-9:**

**Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.**

It is not clear what, if any, purpose such a restrictive limitation has or how the city benefits from it. To help ensure the city can attract the best possible candidates for this position, the contract period should be extended to at least three years. The current IRO's contract was extended once and that contract is now expired. As such, the IRO is currently employed on a month-to-month basis, despite language that requires "negotiations to renew or extend the contract be completed 3 months *prior* to the contract expiring."<sup>52</sup> This lapse should be remedied quickly, as the office of the IRO is critical to the public's trust in the oversight process. Moreover, stability in this position is critical to accomplishing the goals of the office. This recommendation was also made in MGT's 2006 report.

**FINDING**

APD's new records management system (RMS) is not fully functional. IRO investigators note that they are often unable to locate police reports, which creates undue hardship and possible delays in the investigation. The IRO is mandated to complete an investigation of a citizen complaint within 90 days. Although extensions can be requested, this is not preferred and great efforts are taken to ensure this does not have to occur.

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<sup>52</sup> Albuquerque, New Mexico, Municipal Ordinance Sec. 9-4-1-7(E) (2011). (*emphasis added*)

**RECOMMENDATION 6-10:**

**The IRO should work with the Chief of Police and department officials to reduce the delays in obtaining case information from the police department's records system.**

There are two issues that should be addressed. One concerns the IRO investigators' complaints that they cannot access cases electronically from the department's new records management system as it is intended to provide. The other issue concerns the difficulty that records personnel have in locating cases in the records section for investigators. Both of these issues may result in unnecessary delays in the investigation of citizen complaints or officer initiated complaints and should be reviewed by the police department staff. If the issue is a user error in terms of working in the RMS, IRO staff should be properly trained to enable them to efficiently locate all necessary and available records.

**FINDING**

Currently, the system allows for third party complaints by concerned citizens, including city staff, regarding perceived wrongs or injustices perpetrated by the APD to other citizens or the citizenry at-large. While some of the complaints have merit, others do not. However, each complaint requires a full investigation with a finding. The IRO and its investigators have limited time to accomplish the volume of citizen complaints as is and are unable to perform the analyses or community outreach desired given these time constraints.

**RECOMMENDATION 6-11:**

**The IRO's office should develop a truncated review process by which third party complaints can be addressed, when appropriate, without the full use of resources to conduct a full investigation.**

While the primary objective of the IRO's office is to investigate citizen complaints, many of the third-party complaints are born of meritless claims made by disgruntled citizens. Despite this known outcome, the IRO is still required to conduct a full investigation and deliver a finding. While the addition of an investigator in the IRO's office has allowed for the office to complete most of the citizen complaints received in the time allotted by city ordinance, there is little time to

accomplish other tasks, such as community outreach and in-depth analysis. The mission of the Police Oversight Ordinance would be better served if the IRO's office was afforded the time to conduct community outreach and detailed analyses of data, including trends. Therefore, the IRO's office should work with the POC to develop a system or standard by which third-party claims are reviewed by the IRO and fully investigated at his/her discretion; therefore, allowing meritless complaints to be quickly disposed. By doing such, limited resources could be redirected so as to allow the office and the system to achieve its desired mission, which is to "promote a spirit of accountability and communication between the citizens and APD."

**COMMENDATION 6-2:**

**In response to the recent recommendations from the PERF report<sup>53</sup>, and in-line with MGT's previous recommendations, the Albuquerque Chief of Police acknowledged that the IRO will now be permitted to conduct an investigation of an un-signed and/or anonymous complaint.**

Similar to the system proposed for third party complaints, the Chief of Police has suggested that the IRO will be permitted to conduct *preliminary* investigations of un-signed and/or anonymous complaints. Where merit is found and a complaint can be substantiated, the IRO's office, per the current labor agreement, may elevate an anonymous, unofficial complaint to an official complaint and conduct a full investigation, pending the IRO's ability to provide the name of the complainant to the officer being investigated upon completion of the investigation. It is accepted that some citizens may fear coming forward and issuing a complaint towards a police officer. Therefore, the previous routine of automatically discarding unsigned, unofficial complaints failed the spirit of the process and may have helped perpetuate poor behavior. This new approach suggests the department is committed to identifying poor behavior before it leads to critical incidents. The current labor agreement may need to be discussed and modified to ensure it is consistent with this policy.

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<sup>53</sup> See Police Executive Research Forum (PERF), Review of Use of Force In The Albuquerque Police Department, at 28 (June 2011).

# 7 FINDINGS AND RECOMMENDATIONS – CITY OF ALBUQUERQUE POLICE DEPARTMENT – INTERNAL AFFAIRS

This section of the report presents the results of MGT’s evaluation and analysis of the City of Albuquerque’s police oversight system as it relates to the Albuquerque Police Department’s Internal Affairs section.

## **Background**

The Internal Affairs (IA) section is commanded by a lieutenant and staffed by three sergeants (a fourth position is approved to begin August 2011 according to the IA lieutenant), one “rehire” officer (retired officer hired on salary but with no further contributions to retirement system) to handle overflow cases, and two administrative assistants, one of which handles data entry into an early warning system (EWS).

IA reports directly to the Chief of Police and is responsible for investigating any allegations of misconduct, violations of the Constitution and laws of the United States, state of New Mexico or City of Albuquerque, and any allegations related to potential defects in policy, procedures, rules, or the service delivery system by department personnel. It is also responsible for conducting trend analysis of unacceptable behavior and training needs (see SOP 3-41).

Investigations fall into two categories: citizen complaints (CPC’s) and internal complaints (I’s). A CPC is a complaint made by a citizen outside the department or visitor to the city and an “I” is a complaint that originates from within the department. For example, an “I” would be initiated if a supervisor filed a complaint against an officer for a violation of APD SOP. Officer involved shootings are also handled as “I”s. IA is responsible for all “I” investigations.

All CPCs are directed to the IRO who assigns them to his office (see IRO section for an explanation of the criteria used) or IA for investigation. The following chart shows the number of internal investigations and citizen complaints handled by the IRO and IA between 2006 and 2010.

**EXHIBIT 7-1  
INTERNAL INVESTIGATIONS AND CITIZEN COMPLAINTS  
2006-2010**

<b>Year</b>	<b>Is Received</b>	<b>CPCs Received</b>	<b>CPCs Investigated by IA</b>	<b>CPCs Investigated by IRO</b>
2006	338	324	87	237
2007	341	283	14	269
2008	291	270	12	258
2009	328	295	36	259
2010	297	272	41	231

*Source: APD Internal Affairs, 2011.*

The data suggest an overall decrease in CPCs and “I”s since 2006. However, the percent of CPCs investigated by Internal Affairs has decreased significantly over this same five-year period. The APD completes quarterly and annual reports on the status of investigations, early warning system (EWS) data, and SOPs related to IA for city council review.

**FINDING**

The IA lieutenants tend to rotate out of this assignment after a short period of time. Many law enforcement agencies establish a minimum and maximum number of years that a person may work in special assignments. A range of two to five years in a special assignment is common. Special assignments typically include such jobs as detectives, internal affairs, narcotics, gang units, traffic, and training. The more stressful and high risk assignments like narcotics and gangs are often limited to two years. Most agencies establish criteria and tenure for special assignments in a department SOP or negotiate duration of tenure in labor contracts.

As opposed to sergeants who are selected to the position for two years, the IA lieutenant is appointed by the Chief and there is no established duration for the assignment. The current IA lieutenant indicated that 1½ to 2 years is the average tenure for an IA lieutenant.

**RECOMMENDATION 7-1:**

**Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.**

An SOP that ensures the IA commander position is filled by the same individual for a set period of time will benefit the department by ensuring the lieutenant holds the assignment long enough to attain the requisite knowledge and skills for the assignment as well as establish stability of command in the unit. The frequent rotation of a commander in any unit, especially one that deals with such critical issues as IA, is very disruptive. However, setting time limits for these assignments is important and limits the stress and “burn out” that often accompany these jobs. In addition, so as to ensure stability in the unit and quality of investigations, APD should consider staggering the rotation of experienced Sergeants and the IA Lieutenant so to maintain management stability and investigative experience in the unit. This recommendation was also made in MGT’s 2006 report.

**FINDING**

The IA lieutenant indicates the IA Sergeant assignment is the only "exempt" position in the department. This means the Lieutenant can select a person to fill an open IA investigator’s position without allowing others to apply. Typically, the IA lieutenant calls for applications of interested sergeants and conducts an oral board before making a selection. Newly promoted sergeants are permitted to apply for the position and the IA lieutenant indicates that few senior sergeants show any interest. This results in newly promoted sergeants being selected quite frequently. This situation creates a number of potential problems, not the least of which is the appointee’s lack of experience as a supervisor.

**RECOMMENDATION 7-2:**

**Develop job criteria for sergeants selected to work in IA that requires experience as a supervisor.**

Typically, law enforcement agencies evaluate the performance of newly promoted sergeants during a probation period (typically one year) in a field assignment. This ensures that the new sergeant develops the basic knowledge, skills, and abilities for the position prior to selection to the IA position. Field experience also provides new sergeants the opportunity to deal with a number of personnel issues including discipline, which may later benefit them in an IA assignment.

An assignment in IA is challenging. Investigative and supervisory experience should be prerequisites for holding such a position. The IA lieutenant indicated that the requirements for sergeants assigned to IA may be discussed in the next labor negotiations. Regardless, the APD should be proactive and take the initiative to establish job criteria for an investigative position in IA that requires some minimal experience as an investigator and supervisor. This recommendation was also made in MGT's 2006 report.

**FINDING**

In 2010, the IRO shifted 41 of its 272 complaints (CPCs), approximately 15 percent, to the IA for investigation. The IRO suggested this was done for one of two reasons: (1) to assist the IRO investigators during peaks in complaint intake, and (2) there are certain complaints that can be more easily handled and expedited by the IA. However, as discussed in Chapter 6, the process of shifting the investigation of certain CPCs creates additional inefficiencies and impedes the resolution of the complaint. Moreover, by allowing the IA to handle the investigation of certain citizen complaints, the IRO's level of impartiality is likely to be questioned.

**RECOMMENDATION 7-3:**

**Consider limiting IA's investigations to Is only.**

With the addition of an investigator in the IRO's office, the IRO can handle all CPCs in the time allocated by city ordinance, allowing the IA to handle only Is. This will only help to enhance the level of impartiality while ensuring the timely investigation and resolution of complaints. This recommendation was also made in MGT's 2006 report.

**FINDING**

Internal Affairs currently generates three different reports: an annual EWS (early warning system), a UOF (use of force) report, and a report on all IA investigations. The EWS and UOF reports are provided in memo form to the Chief of Police, while the report on IA investigations is provided to city council. The quarterly and annual UOF reports to the Chief contain adequate data, a thorough discussion of said data, and a trend analyses. The SOP required annual EWS report is a two page memo to the Chief with a generalized discussion of EWS data. The report of IA investigations is limited to data and does not currently comply with the requirements of the SOP, which include trend analysis. Moreover, SOP requires that IA notify the training section of any training needs born of these reports and while this is done on an informal basis, there is no formal mechanism for this to occur.

While these reports provide a great deal of information on cases, similar to the reports provided to the city council by the Police Oversight Commission, they lack the requisite amount of analyses and discussion to fully inform the reader; therefore, leaving the readers to conduct their own analysis or go without.

**RECOMMENDATION 7-4:**

**Modify the quarterly and annual report format to address all IA reporting requirements as delineated in SOPs.**

Internal Affairs quarterly and annual reports to the Chief of Police and city council provide an excellent opportunity for analysis, education and identification of ways to limit the city's overall exposure to risk. Moreover, passing on the chance for transparency creates a lack of faith which in turn, breeds distrust, leading to Albuquerque citizens becoming more

uncomfortable with the concept of allowing or trusting that the APD will effectively police itself.<sup>54</sup> IA should consider revising the report format to address the following areas of responsibility: CPCs, “I”s, EWS data, UOF reporting, training needs, and SOP recommendations. Each section should provide a data table followed by analysis and a discussion of the information presented. This would greatly improve the comprehensiveness and readability of the report and make it a more useful management tool.

The report of all IA investigations lacks trend analysis and therefore does not satisfy the requirements of the SOP. The report should contain trend analyses and serve as a formal mechanism for identifying and tracking all training needs. Although this is done on a periodic, informal basis, the inclusion of a trend analysis in the report will provide for a way of tracking and monitoring the department’s progress in attending to these needs. The IA lieutenant indicated they are currently working on revamping the report to address this recommendation and the requirements of the SOP.

An annual evaluation of the EWS is required by SOP. Statistics suggest that relatively few officers account for a high percentage of complaints in a department. EWS is founded on the idea that early intervention may correct officer behavior before the issues escalate to a more serious disciplinary issue. The EWS report should include EWS data in the form of graphs and basic trend analysis to assist the Chief and staff in addressing habitual behavior of individual officers or worse, systemic issues.

The IA provides the Chief quarterly and annual UOF reports. As a result of the department's last accreditation with CALEA, this report now contains a discussion of data, graphs of various types of UOF, and trend analysis. Additional training needs and any SOP issues should also be included in this report.

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<sup>54</sup> *Police Accountability and Citizen Review*, The International Association of Police Chiefs, 6, November 2000.

## 8 OTHER APD ACCOUNTABILITY MECHANISMS

This section of the report presents the results of MGT's evaluation and analysis of the City of Albuquerque's police oversight system as related to other accountability mechanisms implemented by the Albuquerque Police Department.

### Early Warning System

The APD employs a number of accountability mechanisms to help ensure that officer performance and behavior comply with requirements of the U.S. Constitution, state and local laws, and department rules and regulations. While the APD is commended for addressing many recommendations provided in previous reports, there are issues still in the process of resolution that require attention.

Conventional wisdom suggests that 10 percent of officers give rise to 33 percent of a department's public relations problems.<sup>55</sup> This notion of the "problem officer" led to the development of police early warning systems (EWS) across the nation. APD, like most large city police departments, has an EWS to help identify problem officers as early as possible. Early warning systems are data-driven management tools used to identify police officers whose behaviors have been problematic and to intervene in order to correct these behaviors. They serve to prevent further actions by officers that may later warrant disciplinary actions. These systems are able to alert the department to its problem officers, warn officers of their behaviors, and provide them with counseling or training to help in rectifying the behavior. In general, a record is kept on an officer participating in the EWS; however, this information is not placed in his/her personnel file.

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<sup>55</sup> Kami Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U.L. REV. 373, 395 (Winter 2010). This is further supported by the recent finding by PERF that 22 percent of APD's officers account for 60 percent of APD's Use of Force reports.

Intervention is one of the primary goals of an EWS as it provides an opportunity to help change the behaviors of a problem officer. These systems often operate under the idea that the training and education of officers will help to improve their performance. In most systems, intervention consists of counseling sessions between the offending officer and his or her supervisor, but can also include training classes for groups of identified officers. The informal monitoring of an officer's performance after the intervention is typically conducted by their supervisor. Some departments implement a more formal process of monitoring its officers through observation, evaluation, and reporting.

One of the basic goals of an early warning system is to create a closer relationship between the departments and the communities they serve, putting these systems in line with the goals of Community-Oriented Policing (COP). Some studies suggest that an effective EWS can reduce the number of citizen complaints in a department as well as the number of problem officers. In order for an early warning system to have an impact on a department, there must be a universal commitment to the accountability of the organization. It must also be noted that this is one of many tools used to raise the standards of an organization.<sup>56</sup>

## **FINDING**

The APD's new Multi-Relational Internal Affairs Database (MRAID) program was developed to track UOF and IA data for the department's EWS system. This program is a significant improvement over the previous database program which had limited functionality and analysis capabilities. The MRAID program was developed by a contract employee of the city's IT department. According to the IA lieutenant, this program collects data required in the department's EWS SOP; however, it does not provide trend analysis.

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<sup>56</sup> Walker, Samuel, Geoffrey P. Alpert, Dennis J. Kenney. *Responding to the Problem Police Officer: A National Study of Early Warning Systems, Final Report*, National Criminal Justice Reference Service (NCJRS), September 25, 2000.

**RECOMMENDATION 8-1:**

**Use software that assists with the comprehensive analysis of data, especially trends, and the generation of reports.**

Notwithstanding the previous recommendation (*see Recommendation 6-8*) in which it was recommended that the IRO's office has full, real-time access to the EWS, the department has made significant improvements in tracking EWS incidents using the new MRIAD program. While MRIAD collects data required in the EWS SOP it does not provide trend analysis which is critical to any EWS program. The IA lieutenant is currently working with the city's IT department to update MRIAD so it can provide trend analysis. It is recommended that this update be completed as soon as possible.

**RECOMMENDATION 8-2:**

**Include the tracking of resisting arrest and assault on police officer data in the EWS.**

Currently the use of force "bubble sheet," which is completed by officers to document UOF incidents, does not include resisting arrest or assault on police officer incidents. Any analysis of this information would require that IA review crime reports which is time consuming and impractical. It is recommended that the APD include resisting arrest and assault on police officer incidents on the UOF "bubble sheet" so the department is able to track and analyze this information. This recommendation was also made in MGT's 2006 report.

**FINDING**

The APD's EWS review panel, as described in SOP 3-49-2, has not been used as intended. The EWS review panel is designed to examine and discuss EWS analysis with employees, recommend retraining or remedial action, schedule stress counseling, or consider reassignment. An EWS panel hearing may be convened by the Deputy Chief of Administration at the request of the EWS coordinator (IA lieutenant) or anyone in the employee's chain of command. The SOP requires that the EWS coordinator attend all EWS review panel meetings.

**RECOMMENDATION 8-3:**

**Review the function of the EWS review panel (SOP 3-49) to ensure it is being used as required by the SOP.**

The EWS review panel is used infrequently according to the IA lieutenant. A recent change in the EWS threshold, based on the previously mentioned PERF report of 2011, has resulted in it being used when an employee has three EWS incidents reported within a year. This panel provides a potential forum for periodic review of the departments EWS data (recommended to be called Early Intervention System (EIS) in the PERF report) and trend analysis. It is recommended that the department review its utilization of the EWS review board to determine if there is merit in it convening on a monthly, quarterly, or annual basis to discuss EWS trends or remain on an "as needed" basis. Such meetings would provide an opportunity to make policy and training recommendations as well. This recommendation was also made in MGT's 2006 report.

**FINDING**

The use of a set number of entries or "hits" in the EWS as a threshold for intervention requires reconsideration. Many officers thought the present system was unfair. The consultant team agrees that it does not take into account the different environments where officers are assigned and as a result, may reduce the effectiveness of the system. One officer put it simply, "If I don't do any work, I won't get in trouble."

Once an officer is the subject of three EWS entries, the officer has reached a threshold that requires notification of his deputy chief. SOP 3-49 provides guidance on supervisors' responsibilities for handling EWS notifications. As pointed out by officers, the EWS threshold (was five entries in 12 months, now three) is an arbitrary number and does not take into account the location or shift they work. Officers who work the downtown district on weekends, for example, will respond to a significantly higher number of incidents that are reportable to EWS than those who work in the suburbs on the day shift. Therefore, the number of reportable EWS

incidents can be more of a product of the area and shift than of an officer's response to a situation or to a citizen. Officers who work downtown felt they get an unfair mark by just doing their job.

**RECOMMENDATION 8-4:**

**Modify the number of EWS entries which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.**

Although the department has changed the EWS threshold as a result of a recent study conducted by the Police Executive Research Forum, the IA lieutenant indicates the EWS threshold is under on-going review. Under consideration is another revision of the threshold that is more consistent with NIJ research that suggests agencies consider adjusting thresholds based on deviations from a standard norm for areas and shifts each officer works. It is recommended the department continue its review of thresholds based on the research by NIJ. A single threshold for the entire city does not take into account differences in assignments relating to number of contacts, violent incidents, and other factors related to EWS incidents. This recommendation was also made in MGT's 2006 report.

**Use of Force Reporting**

The APD's use of force SOP directs that an officer use "only that force which is reasonable and necessary to protect the sanctity of human life, preserve and protect individual liberties and to affect lawful objectives." Officers are required to provide detailed documentation in a supplemental report of any actions that result in an injury or alleged injury. An officer's immediate supervisor is responsible for completing a use of force form (required on all incidents involving hand-to-hand action resulting in an injury, baton strike, canine bite, mace, taser, less lethal, and lethal munitions), which is reviewed by the officer's chain of command to ensure the action was within department SOP. Copies of the reports are sent to IA, risk management, legal, and other appropriate divisions. An officer's commander is responsible for documenting the incident on the officer's employee card, which is a permanent file kept in all employees'

personnel file to document incidents that involve disciplinary action, corrective training, counseling, and complaints that were sustained.

**FINDING**

Use of force reporting continues to be inconsistent. APD officers are required to fill out a report for each occurrence of a UOF incident. In previous years, according to IA’s review of UOF reporting, only 86 percent of UOF incidents had a report. While the APD is commended for improving UOF reporting from a low of 40 percent nearly a decade ago, less than 100 percent compliance is not acceptable.

The SOP is clear and requires use of force incidents be reported “immediately.” However, at issue is an officer or supervisor’s interpretation of the requirement to “immediately” report the incident. Some officers interviewed stated their supervisors appear on the scene of UOF incidents, while other officers assumed their report of the incident was adequate notification.

**COMMENDATION 8-1:**

**In response to recent events, Internal Affairs has increased its efforts to help ensure 100 percent compliance on UOF reporting.**

Responsibility of auditing UOF reporting rests with the IA lieutenant. In a recent review of the department's shootings by PERF, a recommendation was made that supervisors complete UOF reports by the end of each shift. It is critically important that this occurs so that all use of force incidents receive proper and timely review. According to the IA lieutenant, the department has stressed this requirement with supervisors over the past year during trainings and SOP reviews. In light of recent events, the department should continue its emphasis on this requirement and monitor and report on progress to the Chief of Police and the POC.

**RECOMMENDATION 8-5:**

**Issue the “APD Sergeant Reference Guide” in training for all lieutenants and sergeants and task the Training Committee to ensure training requirements in this guide are met.**

The IA lieutenant indicates that he has taken the initiative to ensure that all newly promoted supervisors have completed the IA requirements in the *Sergeant's Reference Guide*. While this is noteworthy, it should not be the responsibility of the IA lieutenant to ensure this occurs; rather, the Training Committee should schedule appointments with IA to conduct the appropriate training necessary to satisfy requirements in the Sergeants Reference Guide. We further recommend that the training committee review this issue and coordinate the OJT program for sergeants and lieutenants. Records should be maintained in the supervisors training file. This recommendation was also made in MGT's 2006 report.

### **Risk Management**

The City of Albuquerque's Risk Management Office (RMO) oversees the handling of tort claims and lawsuits filed against the city, including police misconduct. A claims adjuster, who is an RMO employee, is assigned to the APD and handles all claims against the department. Risk Management contracts with two outside companies to investigate claims involving excessive use of force and false arrest by officers. Any litigation arising from claims is handled by the City Attorney's Office or by contract with an outside legal firm. In the past, attorneys were encouraged to file lawsuits as a result of the city's practice of settling what was described as "nuisance claims" to avoid the cost of litigation; however, a "no settlement" was adopted by the prior administration for claims involving officer misconduct in an effort to discourage frivolous lawsuits. Today, all claims decisions, including decisions to settle, are made by a review board, which meets weekly and is attended by the IA commander and IRO.

### **FINDING**

Tort claim and lawsuit data related to alleged officer misconduct are being collected and entered into the EWS but are not being analyzed to identify SOP or training needs. All tort claims and lawsuit data are sent to the IRO and IA by the City of Albuquerque's Risk Manager. The data

in turn is entered into the EWS by IA and reviewed by the IRO, but there is no indication of any trend analysis, or extensive data analysis for that matter.

**RECOMMENDATION 8-6:**

**Work with City Attorney's Office, IRO, and IA to develop a process and/or implement software by which the monitoring and analysis of claims data can be accomplished.**

On average, the city has taken a reactive approach to police misconduct. This is no different in Risk Management, where there is no review of data and trends in an effort to be proactive. The analysis of current and previous claims and lawsuits would assist the APD in evaluating SOP and training needs going forward. It may also help to reduce the city's exposure through the early identification of poor policies and procedures or officers or vehicles that have higher than average rates of incidents. The previous reports suggested that the City Attorney's Office and Risk Management take a more active role with the APD and IRO in monitoring patterns of officer misconduct alleged in tort claims and lawsuits. Interviews with the representatives from the City Attorney's Office, Risk Management, IA commander, and IRO reveal this is not being done. At a minimum, Risk Management should provide quarterly or annual reports to APD and the IRO's office on the type of lawsuits being filed, the disposition of filed lawsuits, and the amount of money being paid for final disposition of lawsuits. This recommendation was also made in MGT's 2006 report.

**Policy Review Board**

The APD's Policy Review Board (SOP 3-65) was established to initiate, review, and evaluate department SOPs and procedures upon request. Board representatives include the department's planning manager, accreditation/inspections supervisor, bureau deputy chiefs, field services supervisor and officer, payroll manager, legal advisor, and APOA representative. Anyone in the department may bring a recommendation before the board to change existing SOPs or create a new policy. All policy recommendations to the board must be coordinated with the

APD's Inspections Unit/SOP detail to ensure compliance with the Commission on the Accreditation for Law Enforcement Agency (CALEA) standards.

**FINDING**

Interviews with the IRO and APD personnel revealed considerable confidence in the policy review board process. However, there is currently no effort to widely disseminate the SOP's or any changes department-wide.

**RECOMMENDATION 8-7:**

**Distribute SOP's electronically and automate the process to automatically notify all employees of any SOP changes.**

Many police agencies have discontinued issuing SOPs in hard copy due to the amount of time and effort required to manage the distribution process, not to mention the considerable cost. The APD has an employee intranet that is well-suited for the electronic distribution of SOPs. The issuance of SOPs electronically is more timely and efficient than distributing hard copies.

Moreover, in making the SOP available online, employees will have ample opportunity to re-familiarize themselves with the SOP of the department. Lastly, automated notification of updates and required proof of review will ensure that employees remain familiar with SOP's in their most current version.

## 9 CONCLUSION

With each subsequent review of the police oversight system, Albuquerque comes closer to having an outstanding police oversight system that could someday prove to be a model for cities across the country. Albuquerque's on-going commitment to the program, which includes a recent commitment to allow the IRO an increased involvement in an officer involved shooting investigations, modifying the IRO's CPC tracking software, and the regular review of the program, serves as evidence of its commitment to achieving such. However, to continue toward this goal of achieving a world class police oversight system, by which the monitored feel justly treated and the citizens feel as though the process is worthwhile, the system must continue to grow and change as the needs of the city grow and change. The system was born out of a critical period in which citizens experienced a deep distrust of its police department. With the twenty officer-involved shootings that have occurred in the past two years, the city is once again running the risk of disenfranchising its citizens and relegating its law enforcement personnel to a department with a lack of the legitimacy necessary in obtaining the trust of its citizens.

However, the city's willingness to invite both PERF and MGT to review its use of force and police oversight system suggests an on-going desire to achieve a level of accountability and legitimacy that is necessary to have a law enforcement agency embraced by its citizens. As such, the city, through its police department and police oversight system, must make some changes to its current process to ensure the on-going success of the system. Among these changes is the need to better train its Police Oversight Commissioners, engage in a more proactive form of monitoring, and allow the oversight system to share the burden of both investigating the use of force cases realized by the city and arriving at a proper discipline to ensure that law enforcement professionals are held accountable for their actions.

To accomplish this, the city should revise its current training practices to ensure that its POC members are adequately trained to allow each of the commissioners to be an engaged and useful participant in the process. The current level of training is failing to produce commissioners that are properly prepared for the complexities of the process, leaving members to learn as they go. This hampers the effectiveness of the process and discredits the POC and its mission.

The oversight body was given the power to suggest meaningful change but has failed to do such to the extent envisioned by the creators of the system. Through extensive analysis and thoughtful consideration, the process and its participants can not only suggest, but are able to effect meaningful change. The city needs to engage in a more proactive form of oversight. This means collecting and analyzing data born of the complaint system in order to identify systemic issues and ineffective policies and procedures that, if addressed early, might avoid an increased level of complaints in the future and lead to meaningful change going forward. While the complaint process is a useful tool in many ways, an overreliance on such will only serve to marginalize the process as more officers become resentful and Albuquerque citizens become increasingly suspicious of the process. Moreover, it is not enough to hold officers involved in an incident accountable, a truly effective system will hold his/her supervisors, the training received, and the police department leadership accountable for those failures realized in the system. The addition of an auditor/analyst position for the POC would provide the means to achieve this recommended level of data analyst to help ensure the POC is able to fulfill its mission and affect meaningful change.

Lastly, to achieve a true level of accountability, when discipline is issued for sustained complaints, the oversight process should allow for input by the POC. While this may not necessarily include final discipline, it should at a minimum, include the ability to suggest discipline; therefore, allowing the public, through its citizen complaint process, to exert pressure on change where change is needed. To be deprived of this ability can only lead to the desperate

act of appeasement by those who are monitoring to ensure the on-going cooperation of those that are being monitored.

In addition, as a response to the officer involved shootings in the last two years, the city should allow the oversight process real access to the resolution of these very serious issues. This means allowing them to be active and engaged from the moment the shooting is reported until the incident has reached its resolution. By doing this, the department and the process itself would attain a higher level of accountability, which ultimately leads to a truer sense of legitimacy from all participants.

The on-going leadership exhibited by the IRO and the Chief of Police is a remarkable opportunity for the city. And while the police oversight process continues to evolve and change, with each review and resulting changes comes a more fully realized dream envisioned by the community and city leaders that embarked upon this process more than thirty years ago. Moreover, the on-going leadership by the current IRO and Chief of Police, along with increased engagement by the POC members and the city leaders who appointed the POC members, is critical to the successful evolution of the process. The IRO, the Chief of Police, and city leaders need to make tough decisions and commit to real change to ensure that its current oversight system is not relegated to mediocrity. The recommendations set forth in this report are born of thoughts and ideas of the individual participants of the process. To implement them and others, and continue to think big and strive for continuous improvement will serve to help ensure that Albuquerque's police oversight system will one day become a model to others and ultimately be an important partner in realizing solid relations between law enforcement professionals and the citizens they serve.

# APPENDIX A: NATION-WIDE POLICE OVERSIGHT SYSTEMS<sup>57</sup>

## Albany, New York

Agency: Citizens' Police Review Board

Jurisdiction: Albany Police Department

Population: 95,658

Department Size: 340

Annual Budget: The Board has no independent budget of its own. The City of Albany has appropriated money in its budget to contract with the Government Law Center at the University of Albany Law School to provide the services necessary to staff and operate the Board, including an allocation to pay the Board's independent monitors/investigators.

Staff: 5 part-time staff; one (primary) attorney, the Director of the Government Law Center, two administrative Government Law Center staff, and one law student intern.

Structure: The Citizens' Police Review Board (CPRB) consists of nine members. Board members are appointed by the Mayor and Common Council. Members of the Board serve three-year, staggered terms and cannot serve more than two consecutive terms, but may be considered for reappointment after one year of non-membership. The Common Council has the authority to remove Board members with a two-thirds vote.

Subpoena power: No.

### Complaint Process

Intake: Complaints about police misconduct must be in writing using the City of Albany Police Department complaint form and can be filed two ways: with the CPRB which then forwards the complaint to the Department within two working days; or with the Department, which then forwards the complaint to the CPRB within two working days. Complaints must be filed within six months of the date of the incident unless a majority of the Board's members votes to accept a complaint more than six months old.

Informal Resolution: Mediation may be used at any point during the complaint process and can be requested by either the complainant or the officer. Mediation may proceed only upon agreement of the officer with approval of the Department. Mediation suspends investigation of a complaint. If a resolution is reached, the CPRB renders a finding of "mediated" and the allegations are deleted from the officer's CPRB history. If a resolution is not reached, the complaint continues through the complaint review process until conclusion.

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<sup>57</sup> Review of National Police Oversight Models for The Eugene Police Commission, Police Assessment Resource Center (PARC), February 2005.

**Formal Investigation:** Within the Police Department, the Professional Standards unit investigates each complaint. The Chief provides the Board with quarterly updates on investigations. If the complaint alleges excessive force or a violation of civil rights, the Board observes and monitors the investigation and critically analyzes the investigation process.

The investigation should be concluded within 60 days of receiving the complaint. If not, Professional Standards updates the Board every 30 days until the conclusion of the investigation. Within ten working days of the conclusion of its investigation, Professional Standards submits a preliminary report of the Department's findings to the CPRB. The Board may then make its finding, request further investigation, request further case specific information, including written materials, audio or video tapes, and related documents, or refer the complaint to mediation. On complaints of excessive force or civil rights violations, the Board, if dissatisfied with the additional investigative effort and quality of review by the Chief or Mayor, may seek authorization from the Council, for an investigation by an outside investigator. The independent investigator is chosen from a panel of investigators recommended by the Government Law Center and approved by the Common Council and the Mayor.

**Findings:** The Board may make one of the following findings on the case: sustained, not sustained, exonerated, unfounded, ineffective policy or training, no finding, or mediated. After the review process, the CPRB notifies the Chief, the officer and the complainant of its findings. The Chief makes the final determination and disciplinary disposition and notifies all involved parties. If the Chief's findings and discipline are inconsistent with the CPRB findings, the CPRB may request a written explanation of the Department's final disposition.

**Appeals:** No appeals process is provided for.

**Agency History:** Created in 2000.

**Working Relationship with police department, city officials, community members, etc.:** According to a Board staff member, since its establishment in 2000, the Board has enjoyed a very good working relationship with the Department, and a good, though sometimes strained, working relationship with the union. Members of the Department attend CPRB monthly meetings, and the Board regularly meets with members of the Department. One hot button issue is mediation. The union is concerned about the protection of officer rights under the current mediation program, and has advised its officers not to participate until the union's concerns are addressed.

The Board staff member also indicated that the Board has enjoyed a very good working relationship with City officials, community members, and community organizations. The Board regularly meets with the Mayor and/or Deputy Mayor. Several community groups regularly attend the Board's monthly meetings, and these groups are actively involved in supporting the Board's policy review and recommendation efforts.

**Additional Information:** The Board holds regular monthly public meetings and issues quarterly and annual reports.

## **Berkeley, California**

Agency: Police Review Commission

Jurisdiction: Berkeley Police Department

Population: 102,743

Department Size: 200

Annual Budget: Approximately \$280,000

Staff: 4

Structure: The Berkeley Police Review Commission (PRC) consists of nine members. Each City Council member appoints one Commissioner. Commissioners must be residents of the City. Members serve two-year terms. Commissioners receive \$3 per hour to a maximum of \$200 per month.

Subpoena power: Yes.

### **Complaint Process**

Intake: Complaints must be written, signed by the aggrieved person, and filed within 90 days of the incident. The Commission must forward a complaint to Internal Affairs within 30 days. The Commission may grant a 90-day extension period. When an extension is granted, however, the findings of the Commission will not be considered in any disciplinary actions; nor are the subject officers required to testify. While the Commission is required to forward all complaints to IA, IA is not required to send all complaints it receives to the PRC.

Informal Resolution: Mediation may be used for all complaints except those involving the death of an individual. The Department, PRC, complainant, and subject officer all must agree to mediation before mediation is attempted. Mediation sessions are held before one Commissioner and involve the complainant and subject officer. Either party can appeal the mediator's decision within ten days. Five Commissioners must vote to review the appeal. If granted, the Commission can reinstitute mediation, dismiss the complaint, or order a formal investigation.

Formal Investigation: The Commission and IA investigate complaints independent of one another and often at the same time. Officers are required to participate in a Commission investigation.

Hearings: The Commission may dismiss any or all allegations in a complaint in one of five ways: allegations are found to be without merit after reviewing the investigative file, by a unanimous vote to dismiss, recommendation by the investigator to dismiss, a Commission motion to dismiss, or a motion by the subject officer to dismiss. Involved parties are notified of a dismissal; however, dismissed complaints are not referred to the Chief or City Manager. If a complaint is not dismissed after a completed Commission investigation, a Board of Inquiry is held. The Board, made up of three Commission members, hears testimony, allows for questioning of complainants, officers, and witnesses, and reviews evidence.

Findings: The Board may find as follows: unfounded, exonerated, not sustained, and sustained. Board findings are forwarded to the City Manager and the Chief of Police. The Chief, however, may have already made a final disposition based upon IA's investigation. While the City Manager has final authority over discipline, in reality the Chief decides whether or not to follow findings from the internal investigation.

Appeals: A complainant or officer may appeal within 15 days of receiving notification from the Commission of its resolution of the complaint. Appeals are granted if new evidence has been discovered.

Other Functions: The PRC reviews and makes recommendations on BPD policies and also holds public forums allowing Berkeley citizens to voice concerns relating to BPD policies and procedures. The Commission issues quarterly reports to the City Council and City Manager.

Agency History: The PRC was created in 1973 after community outcry relating to allegations of excessive force in handling street people.

## **Boise, Idaho**

Agency: Office of the Community Ombudsman

Jurisdiction: Boise Police Department; Boise Airport Police; Boise Parking Enforcement; Boise Code Enforcement

Population: 181,711

Department Size: 280

Annual Budget: \$250,000

Staff: 3

Structure: The Boise Ombudsman is appointed by the Mayor and confirmed by the City Council. The Ombudsman may be removed from office upon a recommendation from the Mayor and a majority vote of the Council. The Ombudsman reports directly to the Mayor and City Council.

Subpoena power: No, but can compel officers to give testimony that can only be used in administrative proceedings.

Events/conditions precipitating creation of oversight mechanism: During 20 months from 1996 to 1997, eight fatal police shootings occurred. The shootings led to demands for oversight and the community reaction caused unhappiness in the police union over perceived lack of support. The police also had a very strained relationship with young people in the community. These events and conditions coincided with the rapid growth of the city and the Police Department that led to recruiting officers from other communities where they had been trained in a different style of policing.

### **Complaint Process**

Intake: Complaints can be filed with the Ombudsman by mail, telephone, facsimile, in person, or online. Complaints can also be filed with the Boise Police Department. Complaints must be filed within 90 days of the incident. Once filed, complaints are classified by the seriousness of the alleged offense. The Office of the Community Ombudsman classifies complaints as either Class I or Class II. Class I complaints are complaints which, if sustained, constitute a serious violation that could result in criminal charges and/or serious discipline. Class II complaints include lesser offenses such as general demeanor or selective enforcement.

Informal Resolution: Class II complaints may be investigated by the officer's immediate supervisor in lieu of a formal investigation. The Ombudsman may issue findings based on the report from the officer's supervisor. Alternatively, the Ombudsman may conduct further investigation and then issue findings.

Formal Investigation: Investigations are conducted by the entity that received the complaint. The Ombudsman, if appropriate, may refer a complaint to Internal Affairs for investigation and case management. All interviews during a Class I investigation must be recorded. Class

II complaints, not referred to the officer's supervisor, are handled in the same manner except that interviews are not required to be recorded. However, as a practical matter, the Ombudsman's office records all interviews, regardless of classification. Investigations generally will be completed within 30 days. The Ombudsman reviews all Class I investigations and at least half of the Class II investigations conducted by the police. The Ombudsman may also review any ongoing or completed internal investigation.

Findings: Findings are: exonerated, no finding, not sustained, sustained, and unfounded.

Appeals: Appeals of completed Internal Affairs investigations must be filed with the Office of the Community Ombudsman within 30 days. The Ombudsman may conduct further investigation and issue findings. Investigations initiated by an appeal are conducted in accordance with the same guidelines as those governing primary investigations conducted by the Ombudsman. Dispositions of appeals are reviewed by the Chief of Police.

Other Functions: If during the course of a formal investigation new allegations unrelated to the original allegations are discovered, a new investigation, independent of the original investigation, will be conducted. The Ombudsman can reopen and further investigate any complaint filed with his office or the Boise Police Department. The Ombudsman submits semi-annual reports to the City Clerk, the City Council, and the Mayor. The Ombudsman also makes policy recommendations, analyzes trends in complaints, reviews completed internal investigations, and monitors ongoing internal investigations.

Working Relationship with police department, city officials, community members, etc.: The relationship between the Office of the Community Ombudsman and the Department has been professional and functional from the start; however, the degree of collaboration between them has been somewhat dependent on the approach taken by the particular Chief in office at the time. While both the Department and the union publicly opposed the creation of the Ombudsman, the Ombudsman reports that all parties involved are able to work together effectively. The Ombudsman meets on a monthly basis with the mayor and two members of the City Council to keep lines of communication open. In addition, the City Attorney's Office provides legal support to the Ombudsman, except in cases where a conflict exists. An outside law firm is under contract to provide legal counsel to the ombudsman when a conflict is declared. The Ombudsman reports that he has found it particularly challenging to maintain contacts and sustained relationships with the broader Boise community. He identified this as an area where he felt improvement could be made.

Additional Information: Because the office is completely independent, the Ombudsman perceives it as isolated, having neither a constituency to answer to nor to advocate for it. The Ombudsman stated that he would like to have a small group of residents who are very familiar with the work of the Ombudsman and able to engage in the public debate in the interest of the Ombudsman. The Ombudsman also noted that the office is under-funded and under-staffed, precluding investigation of less serious complaints.

## **Cambridge, Massachusetts**

Agency: Cambridge Police Review and Advisory Board

Jurisdiction: Cambridge Police Department

Population: 101,355

Department Size: 271

Annual Budget: \$85,000

Staff: 2, an executive secretary to the Board and a Board investigator

Structure: The PRAB consists of five civilian members appointed by the City Manager for five-year terms. Board members are not compensated and must be residents of the City. The PRAB consults with the Chief in establishing policies, rules, and regulations for the Cambridge Police Department, (with the City Council) reviews the Department budget before it is reviewed by the City Manager, receives and reconciles complaints of police misconduct, and makes disciplinary recommendations to the Chief and City Manager.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: There was a controversial incident involving the police approximately 20 years ago that resulted in public outcry and support for oversight of the Cambridge Police Department.

### **Complaint Process**

Intake: Formal complaints must be filed within 60 days of the incident in person, by mail, or telephone with the PRAB. Complaints may also be filed with the Quality Control section of the Cambridge Police Department in person, by telephone, by mail, or e-mail. Where a complaint is filed dictates the agency that will investigate it. Complaints filed with the Quality Control must be forwarded immediately to the PRAB. Copies of the complaint must be given to each PRAB member, the PRAB investigator, and the Chief of Police. The Chief and Quality Control are given copies of formal complaints filed with the Board within five working days. Complaints filed with the PRAB are preliminarily investigated within ten days to determine if sufficient evidence exists to warrant a full investigation. At the completion of the preliminary investigation the PRAB either orders a full investigation or dismisses the complaint.

Informal Resolution: After a full PRAB investigation, the Board may suggest mediation.

Formal Investigations: The Board investigator interviews the subject officer(s), complainant, witnesses, gathers evidence, reviews reports and Department policies. Complaints filed with the Department are investigated by the Quality Control section. Upon conclusion of a departmental investigation, the Chief files a report of findings with the PRAB.

**Findings:** The Board may dismiss a complaint at several stages of the complaint process: after reviewing a preliminary investigative report prepared by the Board investigator, after a full investigative report prepared by the Board investigator, after a fact-finding hearing conducted by the City Solicitor's Office, or after a public Board hearing. If the Board sustains a complaint, it recommends discipline to the City Manager. Findings are classified as follows: sustained, or dismissed for lack of jurisdiction, lack of probable cause, insufficient evidence.

**Appeals:** If a complaint investigated by the PRAB is not resolved to the satisfaction of the complainant, the respondent employee, or a member of the Board, the aggrieved person(s) may request that the full Board hear the case or review the investigative file further. If a hearing or review is requested, a majority of the Board members must vote to hear or review the case. The Board may also order a hearing or review of a dismissed complaint. The Board has the same options for disposition on appeal as it does on an original complaint. The PRAB cannot hear appeals of Quality Control complaint investigations.

**Other Functions:** The Board reviews Department policies, procedures, and practices and makes recommendations to the City Manager, Chief of Police, and City Council. Additionally, the Board along with the City Council reviews the Cambridge Police Department's budget before it goes to the City Manager. The Board issues quarterly reports regarding the activities of the police department, including the management of complaints.

**Oversight/IA Interaction:** The Board has a good relationship with Quality Control, which presently is very open. In the past, however, access to information was difficult, in part because Quality Control viewed the Board as having a pro-complainant attitude.

**Agency History:** The Board was created in 1984 to improve community confidence in city government and to strengthen police-community relations.

**Additional Information:** Several years ago the Board was essentially defunct as all of its positions were left vacant and the governing ordinance had no provision for operations in such a situation. A policy currently in draft would allow the Board to function in such circumstances. The pending policy would also grant the Board the authority to hear appeals of Quality Control complaint investigations. Additionally, the Board is also debating the desirability of residency requirements for Board members.

## **Charlotte, North Carolina**

Agency: Citizens Review Board

Jurisdiction: Charlotte-Mecklenburg Police Department

Population: 540,828

Department Size: 1,363

Annual Budget: \$3,500

Staff: 3 – City Clerk, Administrative Assistant to the City Clerk, and the Boards and Commissions Clerk. The staff members are part-time as their primary duties involve other aspects of the City Clerk’s Office.

Structure: The Board reviews appeals of dispositions imposed by the Chief. The Board may hear appeals of alleged violations of the following rules: use of force, unbecoming conduct, and arrest, search and seizure. In addition, any firearms discharge by an officer which results in the death or injury of a person may be appealed to the Board. The Board is made up of 11 members. Five members are appointed by the City Council, three are appointed by the Mayor, and three are appointed by the City Manager. Members serve three-year terms and cannot serve more than two consecutive terms.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: The Citizens Review Board was formed in 1997 after several officer-involved shootings during a several-year period. Citizens in Charlotte wanted more access and input into the internal review of police officers relating to police conduct generally.

Appeals: Complainants must file an appeal with the Clerk’s Office within seven days of receiving written notification from the Department of its findings regarding a complaint. The Board then reviews the case summary within 14 days. The Board can dismiss the appeal or hold a due process hearing within 30 days. After the hearing, the Board sends findings of fact and recommendations for discipline to the Chief and City Manager.

Oversight/IA Interaction: As the Review Board only hears appeals of dispositions, the only interaction with IA is on a formal basis similar to the functioning of a courtroom.

Agency History: The Board was created in 1997 and has not changed since its inception.

Working Relationship with police department, city officials, community members, etc.: The Board has a good working relationship with IA, the Department, and the City Attorney’s office.

## **Dayton, Ohio**

Agency: Dayton Citizens Appeal Board

Jurisdiction: Dayton Police Department

Population: 166,179

Department Size: 558

Staff: 1 Internal Affairs Commander and 2 legal staff

Structure: The Board consists of five voting members and two non-voting ex officio members. The Chief of Police and one assistant City Manager are non-voting members of the Board and one staff member of the Board is the Internal Affairs Bureau Commander. Board members are appointed by the City Manager. Members must be residents of the City. Members serve two-year terms and may not serve more than three consecutive terms. The Board reports to the City Manager.

Subpoena power: Yes.

### **Complaint Process**

Appeals: Appeals of complaints must be filed in writing within 30 calendar days of notification of the Department's findings regarding the original complaint. Appeals may be taken over the phone; however, the complaint must be signed by the appellant before it is reviewed by the Board.

Hearings: Board hearings are public. Prior to the hearing, the Board conducts an executive session. During the executive session, the Board reviews the Department's investigation of a complaint with a legal advisor hired by the City and a representative of Internal Affairs. During the public hearing, Board members hear testimony and question witnesses. After the hearing, the Board may request further investigation by Internal Affairs or issue findings which are forwarded to the City Manager. A summary of the findings is forwarded to the City newspaper, "The Dayton Update."

Findings: Findings are as follows: unfounded, exonerated, not sustained, sustained, no finding, and mediated.

Other Functions: The Board files a public annual report with the City Manager.

Oversight/IA Interaction: The Board has little interaction with the Dayton-Montgomery County Ombudsman, another layer of oversight for the Dayton Police Department. The Board also does not have much interaction with the Internal Affairs Bureau as complaints are filed after completed IA investigations.

Agency History: The Citizens Appeal Board was created by ordinance in 1990.

## **Dayton, Ohio**

Agency: Joint Office of Citizen Complaints (Ombudsman's Office)

Jurisdiction: Dayton Police Department, along with all Montgomery County departments, City of Dayton departments, and all other government agencies within Montgomery County

Population: 166,179

Department Size: 558

Annual Budget: \$176,000 (general jurisdiction); \$268,000 (long-term care)

Staff: 12 (3 executive positions including the Ombudsman and Assistant Ombudsman and 9 assigned to the Long Term Care Ombudsman Program), plus volunteers and interns

Structure: The Ombudsman's Office is part of the Joint Office of Citizen Complaints. The Office is a corporation and is governed by a Board of Trustees. The Ombudsman is a public official elected by the Board to act as the Chief Executive Officer of the corporation. The Ombudsman is retained under contract. This contract allows for the Ombudsman to operate without interference from elected officials and government agencies. The Ombudsman can only be removed from office by a two-thirds vote of the Board. The Joint Office of Citizen Complaints oversees all government offices and also specializes in receiving and investigating complaints from residents of nursing homes, county homes, residential care facilities, group homes, and private residences.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: The Dayton-Montgomery County Ombudsman was created because of distrust of the police and general unrest in the community after the Vietnam War and school desegregation.

### **Complaint Process**

Intake: Complaints can be filed at the Ombudsman office, by telephone, mail, or e-mail.

Complaints can also be filed with the Department. The Ombudsman has jurisdiction over complaints filed with the Joint Office of Citizen complaints. The Ombudsman either investigates complaints herself or refers them to Internal Affairs if an internal investigation is more appropriate.

Informal Resolution: The Ombudsman offers mediation as an option, usually during the initial complaint intake process/interview. Mediators are provided by a separate Montgomery County department.

Formal Investigation: The Ombudsman reviews evidence, including police reports and recorded interviews, and can also interview officers, witnesses, and complainants.

**Findings:** The Ombudsman does not make findings or recommendations to the Chief or City Commission. The Ombudsman does make recommendations to the District Commanders (supervisors) and/or Chief of Police about whether a complaint is justified or unjustified.

**Appeals:** There is no appeal of Ombudsman recommendations. Complainants that filed with the Ombudsman's Office and are dissatisfied with the result can then file with Internal Affairs. Likewise, those who file initially with Internal Affairs can turn to the Joint Office of Citizen Complaints if dissatisfied.

**Other Functions:** The Ombudsman reviews policies, makes policy recommendations to the Chief and City Commission, and reviews existing policies and procedures being implemented.

**Oversight/IA Interaction:** Other than attending hearings of the Appeal Board, the Ombudsman has little interaction with Internal Affairs or with the Dayton Citizen Appeal Board.

**Agency History:** The Dayton-Montgomery County Ombudsman Office was created in 1972. The Ombudsman has not changed structurally since it was established.

**Working Relationship with police department, city officials, community members, etc.:** The Ombudsman has a good relationship with the elected officials (city and county) and also with the directors of the local agencies that they are charged with overseeing. Those relationships increase the effectiveness of the Ombudsman's interventions. Most policy recommendations made by the Ombudsman are received favorably.

**Additional Information:** The Ombudsman sees her principal strength lying in her independence from other government officials. While the Ombudsman can be fired, officials cannot interfere with her investigations. The Ombudsman perceives that the breadth of the subject matter covered by the office as both a strength and a weakness (as investigators do not specialize in police misconduct issues). The Ombudsman sees the office's lack of subpoena power as a definite weakness.

## **District of Columbia**

Agency: Office of Police Complaints

Jurisdiction: Metropolitan Police Department (MPD) and District of Columbia Housing Authority Police Department (DCHAPD)

Population: 563,384

Department Size: 3800 (MPD) and 75 (DCHAPD)

Annual Budget: \$1,756,000

Staff: 20 – Executive Director, Deputy Director, Chief Investigator, Assistant Chief Investigator, 10 Investigators, Public Affairs Specialist, and 4 Administrative Positions

Structure: The Office of Police Complaints (OPC) is overseen by the Police Complaints Board (PCB). The five-member PCB board consists of four members who are private citizen volunteers and one member is an MPD employee. All are appointed by the Mayor and approved by the District Council. PCB has general oversight authority over OPC and has the authority to hire and remove OPC's executive director. One member of PCB must concur in dismissal determinations made by OPC's executive director. PCB also must approve members of OPC's mediator and complaint examiner pool and can make recommendations to the Mayor, the Council, and the Chief of Police.

Subpoena power: Yes.

### **Complaint Process**

Intake: The public initiates the complaint process, which begins only after a person has filed a written, signed complaint form with the agency. OPC has the authority to investigate complaints that are received within 45 days of the alleged misconduct and that allege abuse or misuse of police powers by MPD or DCHAPD officers, including: (1) Harassment; (2) Use of language or conduct that is insulting, demeaning, or humiliating; (3) Retaliation for filing a complaint with OPC; (4) Use of unnecessary or excessive force; or (5) Discriminatory treatment. The office is physically located away from MPD, DCHAPD, and other government offices to provide the public with a less intimidating environment in which to file a complaint. To make it as convenient as possible to file a complaint, complainants may file in person at OPC's office or at any MPD district station, or they may initiate a complaint by mail, telephone, fax, or e-mail.

After a complaint is received, the Executive Director reviews it to confirm that it is in OPC's jurisdiction, and to determine how to proceed with the processing of the complaint. If a complaint is outside OPC's jurisdiction, the Executive Director refers it to MPD's Office of Professional Responsibility, DCHAPD, or the appropriate agency for investigation. Also, if the complaint alleges conduct by an officer that may be criminal in nature, the Executive Director refers the complaint to the U.S. Attorney for the District of Columbia for possible criminal prosecution of the officer. For the remaining complaints, the Executive Director determines whether they should be investigated or mediated.

**Formal Investigation:** When a complaint is investigated, it is assigned to one of OPC's staff investigators. The investigator interviews the complainant, subject officer, and any witnesses the complainant identifies, in addition to attempting to locate and interview any other police or non-police witnesses who may be able to provide relevant information. The investigator also collects and reviews other evidence, including MPD documents, hospital records, materials from other sources, the scene of the incident, and any other relevant information. When the investigation is complete, the investigator drafts an investigative report, which, along with all the evidence gathered in the investigation, is reviewed by a supervisor. The Executive Director then reviews the report of the findings of the investigation, and determines if the complaint should be dismissed, which requires the concurrence of one PCB member, or referred to a complaint examiner for review and a decision on the merits of the complaint. OPC's three principal methods of resolving complaints – dismissal, mediation, and complaint examination – are discussed in more detail below.

**Dismissal:** The statute and regulations governing OPC allow for the dismissal of complaints under three sets of circumstances: (1) the complaint is deemed to lack merit; (2) the complainant refuses to cooperate with the investigation; or (3) if, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process. Based on information gathered during OPC's investigation of a complaint, and with the concurrence of one PCB member, the Executive Director may dismiss a complaint when these circumstances arise.

**Informal Resolution:** A mediation service, the Community Dispute Resolution Center (CDRC), administers OPC's mediation program, assigning complaints to be mediated by a pool of well-trained, experienced, and diverse mediators. There is no cost to the complainant or the subject officer to participate in mediation, but both parties must sign a confidentiality agreement that provides that anything said by either party during the mediation session will not be disclosed outside of the session.

The decision to refer a complaint to mediation is made by the Executive Director, and not by the parties. If the Executive Director refers a complaint to mediation, both the complainant and the subject officer are required to participate in the mediation process in good faith. Failure to participate in good faith constitutes cause for discipline of the subject officer and grounds for dismissal of the complaint. However, even though participation of the parties is required, the outcome of the mediation is completely voluntary because neither the complainant nor the officer is required to reach an agreement or settle the dispute during mediation.

There are some restrictions as to which complaints may be referred to mediation. OPC will not refer complaints involving allegations of the use of unnecessary or excessive force that results in physical injury. In addition, an officer may not mediate a complaint if he or she has mediated a complaint alleging similar misconduct or has had a complaint sustained by OPC for similar misconduct in the past 12 months.

**Complaint Examination:** The complaint examination process is used to resolve complaints where the Executive Director determines that there is "reasonable cause to believe" that police misconduct occurred. When the Executive Director reaches this determination, the

complaint is referred to a complaint examiner who reviews it, along with OPC's investigative report, and issues a written decision regarding the merits of the complaint. The complaint examiner may resolve the complaint based on OPC's investigative report alone, or, if necessary, may conduct an evidentiary hearing to further develop the factual record. In practice, complaints that are neither dismissed nor successfully mediated are resolved through complaint examination, which is the only means by which OPC can issue a decision sustaining a complaint against an officer, although not all complaints that are referred to complaint examination are sustained.

If a complaint examiner sustains any allegation in a complaint, the Executive Director forwards the complaint examiner's decision to the Chief of Police for review and imposition of discipline. Under certain limited circumstances, the Chief may send a decision back to OPC for further review, but, otherwise, the Chief is bound by the decision and must impose discipline on the officer as a result of the decision. If the complaint examiner does not sustain any allegation in a complaint, the Executive Director dismisses the complaint based on the decision.

**Other Functions:** The statute creating PCB places an obligation on it to, "where appropriate, make recommendations" to the Mayor, the Council, and the Chief of Police "concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." To date, PCB has issued two detailed policy recommendations regarding racial profiling and disorderly conduct arrests.

**Agency History:** The Civilian Complaint Review Board, OPC's predecessor agency, was established in 1982 and abolished in 1995 after it proved ineffective. The current office, originally known as the Office of Citizen Complaint Review, and now known as the Office of Police Complaints, was established in 1999.

**Working Relationship with police department, city officials, community members, etc.:** OPC has a good working relationship with the MPD. OPC investigators receive training from MPD instructors regarding MPD policies and procedures. OPC is in regular communication with the police union and different branches of the MPD. The Chief has been supportive of OPC. Because of the small size of the DCHAPD, OPC has received only a small number of complaints regarding DCHAPD officers, and has had relatively limited contact with the agency.

## **Flint, Michigan**

Agency: Flint Ombudsman

Jurisdiction: Flint Police Department

Population: 124,943

Department Size: 340

Annual Budget: Total \$540,744; Complaints against police \$173,811

Staff: Total 7; Complaints against police 3 (2 full-time, 1 part-time)

Structure: The Flint Ombudsman is appointed by the City Council. The Ombudsman is appointed to a seven-year term and cannot be reappointed. The Ombudsman can be removed by a three-fourths vote of the Council.

Subpoena power: Yes.

### **Complaint Process**

Intake: Complaints filed with Ombudsman are assigned to an investigator.

Informal Resolution: An investigator may informally resolve a complaint by including Internal Affairs in the process and providing an explanation of Department policy to the complainant. Additionally, IA may ask a shift commander to conduct an informal investigation. If a complaint is not resolved using either of these two methods, an investigator may offer mediation. Both the officer and complainant must agree to mediation. The officer is not directly involved in mediation. The officer's supervisor meets with the complainant and attempts to resolve the matter. If no solution can be reached, the complainant may request a formal investigation by the Ombudsman.

Formal Investigation: Once a complaint has been filed and a formal investigation initiated, the investigator mails the complaint to the Chief. The Department has seven days to respond. This usually results in the Chief forwarding the complaint down the chain of command to the subject officer. The investigator also interviews the complainant and reviews evidence. When the investigation has been completed, the investigator prepares a report for the Ombudsman.

Findings: The Ombudsman can either sustain or not sustain each allegation in a complaint. The final investigation report is then sent to the Chief. The Ombudsman can recommend only that discipline be imposed, not what type of discipline should be imposed. The Chief can then conduct another investigation through Internal Affairs or the subject officer's commander.

Oversight/IA Interaction: The Ombudsman does not have much interaction with IA. The only interaction is for specific reasons such as gathering information (not sharing information) or referring specific complaints to IA for investigation.

Agency History: The Flint Ombudsman was created in 1974 as a check and balance on executive power when a charter revision created a strong mayoral form of government.

*Appendix A: Nation-wide Police Oversight Systems*

Working Relationship with police department, city officials, community members, etc.:  
The Ombudsman has a wary relationship with the police department.

## **Hawaii County, Hawaii**

Agency: County of Hawaii Police Commission

Jurisdiction: Police Department of the County of Hawaii

Population: 158,423

Department Size: 369

Annual Budget: \$99,995

Staff: 1 secretary/office manager

Structure: The Police Commission reviews the annual budget prepared by the Chief and makes budgetary recommendations to the Mayor. The Commission also has the authority to hire and fire the Chief. The Commission consists of nine Commissioners from each council district in the County. Commissioners are appointed by the Mayor and confirmed by the Council.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints can be filed in writing with the Commission. The complaint must be signed and dated by the complainant under oath before a notary public, and must be filed within 60 days of the date of the incident.

Informal Resolution: None.

Formal Investigation: An initial investigation is done by the Commission. The Commission reviews all police reports related to the incident, interviews the subject officer and complainant, and can issue findings based on this initial investigation. The complainant may give testimony in a meeting open to the public. The subject officer can request a closed session. The Commission may refer the complaint to the Police Department or a private investigator, who will work under the Commission's direction, for a full investigation. The Commission may investigate allegations of misconduct, other than the original allegations, arising from the investigation of a complaint.

Findings: The Commission makes the following findings: unfounded, exonerated, not sustained, and sustained. The Commission gives written notice of its findings to the Chief. The Commission's findings are not binding on the Chief. The Chief retains final disciplinary authority.

Appeals: An action taken by the Commission may be reconsidered only upon a motion made at the same or the next meeting by a commissioner who voted on the prevailing side.

Other Functions: The Commission submits an annual report to the Mayor and Council.

*Appendix A: Nation-wide Police Oversight Systems*

Oversight/IA Interaction: The Commission has monthly meetings during which Internal Affairs representatives report on cases, both referred from the Police Commission and being investigated internally, independent of the Commission.

Agency History: Since the Commission's founding, the number of commissioners has increased from seven to nine. Additionally, in the early 1990's, the Commission was given investigative power and its location was moved away from the Department.

## **Kansas City, Missouri**

Agency: Board of Police Commissioners Office of Community Complaints

Jurisdiction: Kansas City (MO) Police Department

Population: 441,545

Department Size: 1,215

Annual Budget: \$400,000

Staff: 7

Structure: The Office of Community Complaints (OCC) is overseen by the Board of Police Commissioners (Board). The OCC is in a separate location from the Kansas City, Missouri Police Department. The Director of the OCC reports to the Board and supervises all OCC staff.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints can be filed at the OCC, KCPD, other non-police facilities, or by mail within 90 days of the incident. Complaints cannot be filed over the telephone. Complaints submitted in a manner other than in person must be verified by the complainant; unverified complaints are not investigated, nor are complaints that are related to a lawsuit. The OCC is immediately notified of all complaints filed with the Department.

Informal Resolution: If a complaint is filed at the Police Department, a commander or supervisor will attempt to resolve the complaint without a formal investigation. If a complaint filed at the Department cannot be resolved informally, the original complaint form is forwarded to the OCC. The OCC has the authority to close a complaint prior to an Internal Affairs investigation. The OCC can also close a complaint if the complainant does not cooperate. The OCC encourages conciliation or mediation at several points during the process.

Formal Investigation: The OCC conducts an initial interview with the complainant in order to correctly categorize each complaint. This can include reviewing medical records, taking photographs, or a request that an Internal Affairs detective take the initial formal statement. Once a complaint has been classified, it is forwarded to Internal Affairs for further investigation. OCC reviews each completed internal investigation. An OCC analyst prepares a memorandum which summarizes and recommends findings for each allegation raised in the complaint. This Summary is reviewed by the OCC Director and is forwarded to the Chief of Police and the Board of Police Commissioners. If the Chief and the Board of Police Commissioners agree with the analysis, the recommendation becomes the final determination. However, if the Chief and the Board of Commissioners disagree, the analysis is referred back to the OCC for reconsideration. The OCC provides the final determination for returned analyses except in cases where the Board of Police Commissioners has the authority to review and consider impasses between the OCC and the Department.

**Findings:** The OCC classifies findings as follows: sustained, not sustained, unfounded, and exonerated. If a complaint is sustained, it is forwarded to the Chief who can impose discipline or training.

**Appeals:** Within 30 days of the discovery of new evidence, complainants and officers may request the OCC Director to reconsider a decision. The appeal is limited to OCC's findings, not actions taken by the Chief.

**Other Functions:** The OCC submits monthly reports on the status of active complaints and an annual report to the Board and Chief of Police. The OCC can also audit internal investigations. The OCC has the authority to refer an investigation back to IA for further investigation but cannot recommend discipline.

**Agency History:** The Office of Community Complaints was created in 1969 by the Board of Police Commissioners to receive and review complaints against the KCPD. The original title of the OCC (Office of Citizen Complaints) was changed to the Office of Community Complaints in 2003.

**Additional Information:** The Fraternal Order of Police in Kansas City views the OCC as an inconvenience. The union president stated that "OCC, to us, is kind of a necessary evil." He continued, "Nobody likes it. Nobody wants it. But our department and the community believe it is necessary politically." Denver Post July 4, 2004

## **Knoxville, Tennessee**

Agency: Police Advisory and Review Committee

Jurisdiction: Knoxville Police Department

Population: 173,890

Department Size: 414

Annual Budget: \$73,000 (expenditures 2001)

Staff: Executive Director who may hire additional staff as funded

Structure: The Committee is composed of seven volunteer members. Members must be qualified to vote in Knox County. Members of the Committee are appointed by the Mayor and confirmed by Council. Committee members serve three-year terms and cannot serve more than two consecutive terms. The Committee is served by an Executive Director (ED). The ED is designated by the Mayor and approved by the City Council. Once confirmed by the City Council, the ED becomes a non-exempt employee of the Department of Community Relations of the City of Knoxville. The Committee has the authority to make policy recommendations to the Chief. The Committee does not have the ability to direct the Chief to impose or change a disciplinary disposition.

Subpoena power: Yes, and the Committee can compel witnesses to appear before Internal Affairs or the Executive Director and, if necessary, provide statements during the course of an investigation.

### **Complaint Process**

Intake: Complaints can be filed by telephone, mail, or in person with the ED. The ED must forward complaints to the commander of the Internal Affairs Unit within three working days. The ED may accept non-sworn or anonymous complaints. The ED can attempt to informally resolve non-sworn or anonymous complaints or refer them to Internal Affairs for investigation. Complaints can also be filed with Internal Affairs.

Informal Resolution: Mediation is encouraged.

Formal Investigation: The ED does not have primary investigative authority. When the ED is notified by Internal Affairs that an investigation has been closed, the ED reviews the closed case file and determines if the investigation was complete. The ED reports her findings to the Committee at the Committee's next regularly scheduled meeting. After a finding by the ED that an investigation was incomplete, the Committee, by a majority vote, refers the case to the Chief for further investigation, or, if the Chief fails to conduct further investigation, requests that the ED conduct an investigation.

Findings: The ED determines if an internal investigation was thorough, complete, and fair. After any additional investigation by the Chief or ED, the Committee reports its findings and conclusions to the Chief, the Mayor, and City Council.

Other Functions: The Committee can make policy recommendations to the Chief. The Committee issues an annual report and this report is included in the ED's annual report to the Chief, the Mayor, and the City Council.

Agency History: The Police Advisory and Review Committee was created by the Mayor in 1998 and adopted by city ordinance in 2001.

Working Relationship with police department, city officials, community members, etc.: According to the Committee's Executive Director, the Committee has an excellent relationship with the Department, the Mayor, and the community. The relationship has been strengthened over the years by support from elected officials and various Chiefs.

## **Los Angeles County, California**

Agency: Office of Independent Review

Jurisdiction: Los Angeles County Sheriff's Department

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$1,200,000

Staff: 6 full-time attorneys; 3 support staff

Structure: The Office of Independent Review, together with the Office of the Ombudsman and Special Counsel to the County Board of Supervisors, is one of three levels of oversight for the Los Angeles County Sheriff's Department. With full access to files, interviews, and all stages of the process, OIR monitors the internal investigations conducted by LASD and makes recommendations of how those investigations should proceed, if such recommendations are warranted. OIR makes recommendations to the Department regarding the dispositions of internal investigations and, when founded, the level of discipline to be imposed. OIR, which operates out of the building that houses LASD's internal investigators, also makes recommendations for improvements in broader policies, practices, and procedures.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: Sheriff Baca, seeing the value of ongoing oversight, provided the principal impetus for the creation of OIR.

### **Complaint Process**

OIR audits ongoing and completed IA investigations and may recommend discipline. It does not process civilian complaints.

Oversight/IA Interaction: The Office of Independent Review has a close working relationship with LASD's Office of Internal Affairs and Office of Internal Criminal Investigations and is able to participate in ongoing investigations as desired.

Agency History: OIR was created by the Los Angeles County Board of Supervisors in 2001 at the request of the Sheriff and with input from Special Counsel.

Working Relationship with police department, city officials, community members, etc.: According to OIR, it has an excellent close working relationship with the leadership of the Sheriff's Department, in particular the leadership of the internal investigatory units. The Sheriff's role in the creation of OIR is a major factor in the close relationship. OIR seeks to keep a low profile and to avoid conflicts with the union. OIR also maintains an effective working relationship with the LA County Board of Supervisors.

Additional Information: OIR attributes its effectiveness to real-time monitoring of internal investigations and the internal decision-making process with regard to decisions. Through its public reports on systems and individual cases, OIR has provided transparency to the internal working of the Sheriff's Department.

## **Los Angeles County, California**

Agency: Office of the Ombudsman

Jurisdiction: Los Angeles County Sheriff's Department and any other department responsible to the Los Angeles County Board of Supervisors

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$780,000

Staff: 8 full-time, 1 part-time (5 full-time employees review citizen complaints)

Structure: The Los Angeles County Office of Ombudsman, together with the Office of Independent Review and Special Counsel to the County Board of Supervisors, is one of three levels of oversight over the Los Angeles County Sheriff's Department. The Ombudsman's office only reviews service and personnel complaints not sustained by LASD's internal investigations. The Ombudsman is appointed by the Sheriff and the Los Angeles County Board of Supervisors.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism:

In 1991 several highly publicized acts of excessive force and ongoing large payouts of judgments and settlements by the County led to a blue ribbon investigation of the LASD headed by retired Superior Court Judge James G. Kolts. Among the recommendations of the Kolts Report that sought to minimize the use of injurious force and to reduce the associated financial liability to County taxpayers was the establishment of an ombudsman function within the County. The office began operations in 1994.

### **Complaint Process**

Intake: The Ombudsman reviews unfounded or unresolved citizen service or personnel complaints against LASD members. Service and personnel complaints are complaints of a less serious nature. When a complainant is dissatisfied with a finding of not sustained or unfounded or believes the investigation was incomplete, the complainant may contact the Ombudsman. Inquiries with the Ombudsman can be filed in person at the Office of Ombudsman, by telephone, e-mail, or facsimile. Unresolved complaints are monitored until they have been closed.

Informal Resolution: Inquiries made with the Ombudsman may be settled informally and will not be referred for further action or review. The Ombudsman offers mediation.

Formal Investigation: The Ombudsman reviews LASD internal investigations and does not have independent investigative authority. The Ombudsman cannot initiate or conduct interviews and cannot interview witnesses. He also cannot review criminal investigations.

Findings: The Ombudsman may find that the internal investigation is sufficient and the findings are appropriate or that the investigation is deficient and may refer the complaint to the LASD for further review or investigation. LASD makes the final determination concerning whether to pursue further review or investigation.

Appeals: The Office of Ombudsman is the appeals process.

Other Functions: The Ombudsman offers mediation services, information, and assists citizens in filing complaints.

## **Los Angeles County, California**

Agency: Special Counsel to the Board of Supervisors

Jurisdiction: Los Angeles County Sheriff's Department

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$200,000

Staff: 3 to 15 (depending upon complexity of assignment), working on a consultant basis

Structure: Special Counsel is a lawyer engaged pursuant to a contract with the Board of Supervisors to provide semiannual reports to the Board, Sheriff, and the general public on the Department's implementation of recommendations to reduce the risk of police misconduct and illegal or unconstitutional behavior. Special Counsel's communications to and from the Board of Supervisors are confidential and privileged.

Subpoena power: Yes (must be requested from the Board of Supervisors).

Events/conditions precipitating creation of oversight mechanism: Four controversial shootings of African-American and Latino men in the summer of 1991 created public pressure for a blue ribbon investigation of the Sheriff's Department that came to be known as the Kolts Report. The current Special Counsel was selected in 1992 to oversee implementation of the Kolts recommendations.

### **Oversight/Evaluation Process**

Special Counsel has unfettered access to all records, data, and personnel within the Department and may investigate and report on any topic bearing upon potential liability or risk for the County from the actions of the Sheriff's Department. Special Counsel reviews data and files to identify patterns and practices of police misconduct and systemic failures which caused these patterns to persist.

## **Minneapolis, Minnesota**

Agency: Minneapolis Civilian Police Review Authority

Jurisdiction: Minneapolis Police Department

Population: 382,618

Department Size: 850

Annual Budget: \$375,000

Staff: 4

Structure: The Civilian Police Review Authority consists of 11 members, six appointed by the City Council and five appointed by the Mayor, subject to approval by a majority of the City Council. Members serve four-year terms and may be removed by a majority vote of the City Council if ratified by the Mayor. Members must be residents of Minneapolis and are compensated \$50 for each day that they attend one or more meetings or hearings.

Subpoena power. No.

### **Complaint Process**

Intake: A complaint can be filed with the Review Authority or Internal Affairs, not both.

Informal Resolution: Mediation may be offered anytime after a formal complaint has been filed.

Formal Investigation: After intake, a Review Authority investigator conducts a preliminary investigation which involves an interview with the complainant and the filing of a signed complaint. The investigator interviews witnesses, collects and reviews evidence, and interviews charged and witness officers. Once the investigation is completed the investigator makes a recommendation to sustain or not sustain the allegations contained in the complaint based on a preponderance of the evidence. The summary and file are reviewed by the Review Authority's Manager who, in cooperation with the Board Chair, schedules the complaint for hearing. All complaints, regardless of the investigative findings, are scheduled for hearing.

Hearings: A panel of three board members hears each complaint. The complainant is invited, but not required to attend the hearing. At present, officers are required to attend the hearing. At the hearing, the officer and the complainant are invited to address the board panel for 10 minutes and to sit for questions. Upon conclusion of the hearing and review of the case file, the panel determines whether or not to sustain the complaint.

Findings: The panel can either sustain or not sustain a complaint. If sustained, the Police Department's disciplinary panel recommends discipline to the Chief. The Chief has final authority over disciplinary recommendations. The Chief cannot reverse a Review Authority finding.

Appeals: Decisions not to sustain a complaint by the hearing panel can be appealed by the complainant in writing to the Review Authority within 30 days. Appeals are heard by the full board of eleven members. Both the complainant and subject officer(s) are allowed to address the Review Authority concerning the appeal. If the Review Authority determines that credible new evidence has been discovered, the complaint will be assigned for investigation to a Review Authority investigator. After completing the investigation, the Review Authority can sustain or reject the decision not to sustain a complaint. After the appeal, the complaint is forwarded to the Chief who will make the final disciplinary disposition.

Other Functions: The Review Authority provides a public forum during its monthly meetings for citizens to voice concerns regarding police activity/behavior. The Review Authority participates in reviewing the Chief and can make policy and training recommendations. It also submits quarterly reports to the Council's Public Safety and Regulatory Services Committee

Agency History: The current form of the Review Authority was created in 2003, a number of months following the dissolution of the prior oversight process.

## **New Haven, Connecticut**

Agency: Civilian Review Board

Jurisdiction: New Haven Department of Police Services

Population: 119,491

Department Size: 469

Annual Budget: no stand-alone budget (funded through Chief Administrator's Office)

Staff: 1 full-time coordinator

Structure: The Civilian Review Board consists of 16 members: two appointed by the Mayor, one appointed by the President of the Board of Aldermen, one appointed by the Chair of the Board of Police Commissioners, and one appointed by each of the 12 Community Management Teams. Review Board members, who must be residents of the City, serve three-year terms.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: Malik Jones, a young African-American man was shot and killed by a police officer from neighboring East Haven in 1997. His mother created an organization that advocated for police accountability, leading to the creation of the Civilian Review Board in 2001.

### **Complaint Process**

Intake: All complaints must be filed with the New Haven Police Department within one year of the incident. Complaints can be filed in person, by telephone, or mail.

Informal Resolution: Mediation is offered at intake.

Formal Investigation: Complaints are investigated by the Internal Values and Ethics Unit (IVE). An investigator interviews the complainant, officer, and all witnesses. The Civilian Review Board reviews all completed IVE investigations. Completed internal investigations are reviewed by a Review Board panel of two or three members. Panel members change monthly. The full Review Board does not regularly review completed internal investigations; however, a Review Board panel can bring a case before the full Review Board at any time.

Findings: The Review Board can recommend further investigation, or agree or disagree with the IVE investigation and findings. If misconduct is found, the Review Board recommends disciplinary action. The Review Board reports its recommendations and findings to the Chief and Board of Police Commissioners. The Chief issues the final disposition and notifies the complainant of the outcome.

Appeals: Within 90 days of notification from the Chief of the disposition of a complaint, a complainant may file an appeal, in writing with the Review Board. Appeals are heard by the full Review Board. After reviewing the appeal and original investigation, the

Review Board may agree with the IVE findings, refer the complaint to IVE for further investigation, or conclude that the investigation was incomplete or biased and refer the case to the Chief for action.

Working Relationship with police department, city officials, community members, etc.:  
Staff of the Review Board indicated that they have a cooperative relationship with the Police Department, and the Internal Values and Ethics Unit specifically.

## **New York, New York**

Agency: New York Civilian Complaint Review Board

Jurisdiction: New York City Police Department

Population: 8,008,278

Department Size: 37,000

Annual Budget: \$10,035,235

Staff: 178 – 136 investigative staff, 37 administrative staff, 5 on leave

Structure: The Civilian Complaint Review Board consists of 13 members. Five members are designated by the City Council and appointed by the Mayor, three – with law enforcement experience – are designated by the Police Commissioner and appointed by the Mayor, and the remaining five are appointed solely by the Mayor. The Board establishes policy, reviews all CCRB investigations, makes findings on all allegations in every complaint, and recommends discipline. Complaints are reviewed by Board Panels, consisting of one Board member designated by the Mayor, one designated by the City Council, and one designated by the Commissioner. Board members serve three-year terms and receive compensation on a per-diem basis. The Board hires the Executive Director.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: The current all-civilian review board was created in 1993 in response to an incident involving the Department's enforcement of a city curfew that led to significant violence by the police against curfew violators in a park and bystanders. A report that demonstrated that an inadequate effort was made by the NYPD to limit the use of force led to moving the review board outside the Police Department and requiring that all its members be civilians.

### **Complaint Process**

Intake: Complaints can be filed by telephone, in person at the CCRB office or the NYPD, online, by mail, or by calling 311, a city non-emergency number for governmental queries. The CCRB's jurisdiction is limited to allegations of excessive or unnecessary use of force, abuse of authority, discourtesy, and offensive language. Complaints about corruption or neglect of duty are investigated by the NYPD. Complaints filed with the NYPD that are within the CCRB's jurisdiction are referred to the Board. Conversely, the CCRB refers complaints outside its jurisdiction to the NYPD.

Informal Resolution: The CCRB offers mediation, for the following types of complaints: allegations of improper stops, frisks and searches, mild physical force, threats, refusal to identify, improper stops, and discourteous or offensive language. A supervisor, upon review of the complaint, may instruct the investigator to offer mediation.

**Formal Investigation:** Once a complaint is received by the Team Manager or supervisor, it is assigned to an investigator. Investigators locate and interview the complainant, victims, and all witnesses. Complainants are contacted within 24 hours of filing a complaint and are interviewed in person. If a complainant or victim(s) cannot be contacted, are uncooperative, will not make a formal statement, or the complaint is withdrawn, a complaint can become a truncated case. Truncated cases are those which are closed before a full investigation is completed. Truncated cases can be re-opened for full investigation. Investigators also review all documentary evidence including court-related records and police reports. If necessary, investigators can subpoena medical records. Subject officers are required to appear and answer questions during a CCRB investigation. After the investigation is complete, investigators write a closing report that includes a summary and analysis of the complaint. The report is submitted to Team management which then forwards the case to the Case Management Unit. The Case Management Unit assigns the case to a Board Panel. A Board Panel consists of three Board members who read the investigatory file, and vote on the disposition of every allegation. Substantiated cases are forwarded to the Police Commissioner for discipline.

**Findings:** The CCRB classifies findings in the following manner: substantiated, exonerated, unfounded, unsubstantiated, officer unidentified, mediated, mediation attempted, referred to other (City) agency, or miscellaneous. Officers named in substantiated complaints must be disciplined or served with disciplinary charges within 18 months of the date of the incident.

**Appeals:** After being notified of a complaint's resolution, a complainant may present new information, new witnesses, or new evidence regarding the allegations to the CCRB staff. The original management team that investigated the complaint then reviews the case and makes recommendations to the full Board.

**Other Functions:** The Board is responsible for reporting to the Commissioner patterns of misconduct uncovered through complaint investigations, for making and issuing policy recommendations, and for developing an outreach program to educate the public on the CCRB's purpose and services provided. The Board issues semiannual reports to the Mayor, City Council, and the public.

**Oversight/IA Interaction:** The Board's principal interaction with IA is through document requests. This is sometimes an efficient process and other times laborious. The Board generally, however, has developed a good working relationship with the NYPD.

## **Omaha, Nebraska**

Agency: Office of the Public Safety Auditor

Jurisdiction: Omaha Police Department

Population: 390,007

Department Size: 764

Annual Budget: \$150-200,000 (privately funded)

Staff: 1 auditor, 1 staff auditor assistant (position funded by the Mayor's Office), and 1 administrative assistant

Structure: The Public Safety Auditor (PSA) reports to the Auditing Committee – the Mayor, Chief of Police, Chief of Fire, and the City Council – which can hire and fire the Auditor. The city-funded portion of the PSA's budget is included in the Police and Fire Departments' budgets. The Auditor's Advisory Committee helps the Auditor by gathering information, facilitating public outreach, and otherwise supporting the PSA's work.

Subpoena power: No. However, the Police Department's Professional Standards Office must cooperate with the Auditor and must make all records, reports, evidence, and investigation activities available to the Auditor.

### **Complaint Process**

Intake: Complaints can be filed at the Police Department. Complaint forms must be signed in the presence of a police investigator. All complaints are immediately forwarded to both the Professional Standards Office and the Auditor.

Informal Resolution: None.

Formal Investigation: Professional Standards investigates all civilian complaints. The Auditor reviews live interviews, tapes and reports of interviews, investigative reports, tests, employment records, and all other material generated during an investigation. During interviews the Auditor may put questions to witnesses through the Professional Standards investigator, so long as the investigator finds the questions relevant.

Findings: Professional Standards forwards completed investigations to the Chief. The Chief may find as follows: unfounded, exonerated, not sustained, sustained, and policy failure.

Appeals: The Public Safety Auditor reviews all complaints. The Auditor, after reviewing a completed internal investigation, may submit a written request for further investigation. The Auditor may also address her concerns by conducting an internal investigation that the Auditing Committee will review during an executive session.

Other Functions: The Auditor may issue reports on policy issues.

Oversight/IA Interaction: According to the Auditor, she has a good day-to-day working relationship with Internal Affairs.

Agency History: The Office of the Public Safety Auditor was created by ordinance in 2000 and began functioning in 2001.

Working Relationship with police department, city officials, community members, etc.: The Auditor indicated that her relationship with the Department began with uncertainty. The PSA has made significant progress in developing a relationship with the community, especially the minority community in Omaha. There has not been a great deal of success in developing a relationship with the City Council or police union.

## **Portland, Oregon**

Agency: Citizen Review Committee

Jurisdiction: Portland Police Bureau

Population: 529,121

Department Size: 1,043

Annual Budget: no budget (under IPR's budget)

Staff: Volunteers; Director of the Independent Police Review Division of the City Auditor's Office serves as coordinator to the CRC.

Structure: The CRC is part of the Independent Police Review Division of the City Auditor's Office. Committee members are appointed by the City Council after a nomination process that involves the IPR Director and a selection committee. The Committee reports to the City Council regarding appeals of citizen complaints and reports to IPR and the Portland Police Bureau regarding Bureau policies and procedures.

Subpoena power: No.

### **Complaint Process**

The Civilian Review Committee does not process civilian complaints, but rather hears appeals.

Appeals: If a complainant or officer is dissatisfied by the resolution of a complaint, either can file a request within 30 days for review by IPR and the Citizen Review Committee. IPR will review the appeal and IA investigation and can order further investigation. If no further investigation is needed, the case proceeds to a public CRC pre-hearing. The CRC can deny the appeal or vote to hold a full hearing. The CRC can close a case by agreeing with the Police Bureau findings or by recommending changed findings to the Police Bureau. If the Police Bureau does not accept the recommendations, a complaint can be resolved through a conference between the CRC and Police Bureau or a hearing before the City Council.

The CRC holds public appeal hearings. The CRC reviews the case and holds a public meeting where all involved parties will be heard. The CRC determines whether the IA's finding is supported by the evidence. If the CRC agrees with IA, the case is closed. If the CRC determines that the IA finding is not supported by the evidence, and the Police Bureau does not accept that recommendation, a hearing will be set before the City Council. The City Council will then make the final decision as to whether or not the allegations against the officer(s) should be sustained. If they are sustained, then the Chief of Police will make a decision as to the appropriate discipline. If the City Council does not sustain the allegations, then the case will be closed.

Working Relationship with police department, city officials, community members, etc.: According to IPR, the general perception in the community is that the CRC is more legitimate and credible because every member is a citizen who is not a government employee. Conversely, police and other agencies see IPR as more credible because they are professionals, not volunteers like the CRC. As such, IPR has developed stronger working relationships with the Department and other city agencies. This has created tension between IPR and the CRC. During the investigation of a controversial officer-involved shooting last year, public disagreement between the CRC and IPR led to half of the CRC resigning in protest. IPR indicated that the CRC wanted to act outside of its authority and the CRC members were unhappy with the lack of support from IPR. According to IPR, the CRC viewed itself as the governing body of IPR. IPR and the CRC have had a good relationship since the new CRC members were appointed.

Additional Information: The Committee reviews Police Bureau policies and procedures and makes policy recommendations to the Bureau and IPR.

## **Portland, Oregon**

Agency: Independent Police Review Division

Jurisdiction: Portland Police Bureau

Population: 529,121

Department Size: 1,043

Annual Budget: \$843,835

Staff: 7

Structure: The Independent Police Review Division (IPR) of the Portland City Auditor operates under the authority of the elected City Auditor, who selects the IPR Director. IPR receives and screens citizen complaints, refers complaints to Internal Affairs for investigation, reviews the investigations, and facilitates appeals by dissatisfied parties.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: Following a split in a commission created to recommend how to replace a discredited civilian review board, the City Council in 2001 asked the City Auditor to propose changes to strengthen the system of complaints against the police.

### **Complaint Process**

Intake: Complaints can be filed with IPR in person, by telephone, facsimile, mail, or internet. Complaints are assigned to an IPR intake investigator who conducts a preliminary investigation. The preliminary investigation involves reviewing documents, interviewing complainants, and classifying the complaint. The case is then forwarded to the IPR Director. The Director can decline the complaint (if the complaint is obviously false, without merit, or the complainant is pursuing another remedy, such as a tort claim), refer to the Internal Affairs Division, offer mediation, refer to a different agency or jurisdiction, or refer to PPB Command Staff.

Informal Resolution: A case may be referred to mediation only with the consent of the complainant, the subject officer, the precinct commander, and the Captain of Internal Affairs. Outside mediators are provided.

Formal investigation: When a complaint has been referred to IA, the Captain can order a full investigation, refer to a precinct as a service complaint, decline the complaint, or administratively close. If a complaint is referred to a precinct as a service complaint, the complaint is reviewed by a precinct supervisor. Service complaints are treated as personnel management tools, not discipline, and are not recorded in an officer's file. The results of the IA investigation are forwarded to the officer's commanding officer, and then to a managerial review board, and finally to the Chief for final disposition and discipline, if the complaint is sustained. IPR monitors the complaint throughout the process and keeps the complainant informed as appropriate.

Findings: The Police Bureau may issue findings as follows: sustained, unfounded, exonerated, and insufficient evidence.

Appeals: If a complainant or officer is dissatisfied with the resolution of the complaint, either can file a request within 30 days for review by IPR and the Citizen Review Committee (CRC). The IPR will review the appeal and IA investigation and can order further investigation. If no further investigation is needed, the case proceeds to a public CRC pre-hearing. The CRC can deny the appeal or vote to hold a full hearing. The CRC can close a case by agreeing with the Police Bureau findings or by recommending changed findings to the Police Bureau. If the Police Bureau does not accept the recommendations, a complaint is resolved through a conference between the CRC and Police Bureau or a hearing before the City Council.

Other Functions: IPR reviews, monitors, and documents all IA actions and meets weekly with IA supervisors. IPR reviews and comments on Bureau policies, procedures, and training. In addition, IPR hires outside experts to perform an annual review of closed officer-involved shooting cases.

Oversight/IA Interaction: IPR gathers and forwards information from the complainant to Internal Affairs, and then monitors IA's actions and investigations on complaints.

## **Richmond, California**

Agency: Police Commission

Jurisdiction: Richmond Police Department

Population: 101,373

Department Size: 203

Annual Budget: \$200,000

Staff: 1 investigator, 1 support staff

Structure: The Police Commission consists of nine Commissioners. Commissioners are appointed by the Mayor who consults with the City Council on all appointments. Commissioners serve a term of three years and do not receive compensation.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: Two African-American males were killed during incidents with police in the early 1980's. Additionally, several lawsuits filed by the NAACP led to a consent decree and the creation in 1984 of the Police Commission. All major stakeholders had input into the specific form, powers, and duties of the Commission.

### **Complaint Process**

Intake: Only complaints of unnecessary or excessive force or racially abusive treatment by a Richmond police officer can be filed with the Commission. The Commission does not have original jurisdiction, but does have appellate jurisdiction, over non-force or other misconduct complaints. All other complaints must be filed with Professional Standards or will be referred to PS by the Commission. Complaints must be filed with the Commission in writing, signed by the complainant, within 45 days of the incident. Copies of complaints filed with the Commission are immediately forwarded to the Chief.

Formal Investigation: Complaints are investigated by an Investigative Officer, who interviews the complainant, subject officer(s), and all witnesses.

Findings: The Investigative Officer submits findings and recommendations to the Commission. Upon receiving oral or written findings and recommendations from the Officer, the Commission can order further investigation by the Officer, forward the findings and recommendations to the Chief, or conduct a hearing. Findings are as follows: sustained, not sustained, exonerated, and unfounded.

Hearings: Commission hearings are public. During hearings, complainants, police officers, and witnesses are questioned by the Commission without cross-examination. The Commission submits its findings and recommendations to the Chief within 30 days of the hearing.

Appeals: Appeals of dispositions by the Department for all complaints, except excessive or unnecessary force or racially abusive treatment, may be filed with the Commission within ten days of receiving notification from the Chief of the final disposition. Appeals are investigated by the Investigative Officer who submits findings and recommendations to the Commission either orally or in writing. The Commission can either order further investigation or forward its findings and recommendations for discipline based upon the report of the investigator to the Chief. The Commission is not bound by the investigator's recommendations. Findings for appeals are as follows: sustained, not sustained, exonerated, and unfounded.

Other Functions: The Commission reviews the policies, practices, and procedures of the Department and makes recommendations to the Chief. The Chief must respond to the Commission's recommendations within 30 days. If the Commission is unsatisfied with the Chief's response, it can submit its recommendations to the City Manager. The City Manager must respond within 30 days. If the Commission is dissatisfied with the City Manager's response, it can submit its recommendations directly to the City Council for action.

Agency History: Established in 1984 as an independent body separate from the Richmond Police Department.

Working Relationship with police department, city officials, community members, etc.: The Investigative Officer indicated that the Commission has a good relationship with the rank and file officers of the Department and a cohesive relationship with the city officials. It, however, does not have a good relationship with the Police Officers Association. In contrast to his immediate predecessor, the current Chief is very supportive of the Commission and civilian oversight in general. Some on the City Council are more supportive of the union than of the Commission. The Commission does, however, have the support of the community.

Additional Information: The investigator believes that it is crucial to have the City Attorney involved in the process of drafting of the enabling legislation for an oversight agency.

## **Salt Lake City, Utah**

Agency: Police Civilian Review Board

Jurisdiction: Salt Lake City Police Department

Population: 181,743

Department Size: 404

Annual Budget: \$100,000

Staff: 1 investigator

Structure: The Police Civilian Review Board consists of 14 members, two from each of the seven City Council districts. Board members serve three-year terms, with a two-term maximum. The Board can investigate all types of misconduct complaints but investigates all complaints of excessive force concurrently with Internal Affairs. Additionally, the Board can audit and review internal investigations.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints must first be filed with Internal Affairs and then must be filed with the Board within four business days. The Board does not have jurisdiction over complaints that do not meet those filing requirements. Complaints may be filed over the telephone, in person, online (in the near future), or by mail. The Board automatically receives all complaints alleging excessive force, even if a complaint has not been filed with the Board. The Board will always conduct an investigation of excessive force complaints. Complaints are categorized as Category I (more serious allegations, including use of force, harassment, threats, civil rights violations, and criminal conduct) or Category II (complaints of profanity, inconsiderate behavior, dispatch-related complaints, improper vehicle impounds, and traffic/parking violations). Requests for the audit or review of internal investigations must be filed within 30 days of notification of the Department's findings. The request must be filed in person, in writing, or by mail to the Office of the Mayor.

Informal Resolution: Mediation is not offered.

Formal Investigation: An investigation is initiated if at least five Board members vote for one. A full-time investigator is responsible for conducting the investigation and reporting to a panel of the Board. Investigations conducted by the Board are concurrent with internal investigations. The Board investigator has access to all IA information related to complaints. The investigator can conduct interviews of complainants, witnesses, or officer(s) independent of IA; however, the investigator can also attend IA interviews and record them whenever possible.

Findings: After the investigation has been concluded, the Board panel, based on the recommendations of the investigator, issues findings. The Board classifies findings as follows: unfounded, exonerated, no determination is possible, and sustained. If sustained, the

Board also makes a recommendation to the Chief regarding appropriate discipline. Officers' complaint histories may be considered by the Board, but only in regard to recommending discipline, training, etc. to the Chief. Since IA also investigates complaints, the Board's findings are advisory and the Chief is not required to accept the Board's recommendations.

Appeals: There are no appeals from the Board's advisory decisions.

Other Functions: The Board reviews completed IA investigations and produces quarterly reports. For this purpose, the Board can only review redacted files (i.e., with names removed).

Oversight/IA Interaction: According to the Board Investigator, the Board has a close, positive working relationship with IA, with which it does side-by-side investigations.

Agency History: The Board was created in 2001 and began functioning in 2003. When it was originally created the Board did not have investigative power. The current form of the Board does have independent investigative power. Additionally, the past form of the Board was able to review internal investigations if the complaint was not sustained. The Board (and the union) found this to be in violation of the Memorandum of Understanding between the union, the Department, and the Board. That portion of the ordinance was repealed.

Working Relationship with police department, city officials, community members, etc.:  
The Board Investigator indicated that the Mayor supports the Board and the Board has a good relationship with the Police Department.

## **San Francisco, California**

Agency: Office of Citizen Complaints

Jurisdiction: San Francisco Police Department

Population: 776,733

Department Size: 2,200

Annual Budget: \$2,907,712

Staff: 32 – 16 line investigators (the City Charter requires one investigator for every 150 sworn officers), Director, Chief Investigator, three senior investigators, two attorneys, policy/outreach specialist, eight clerical, accounting and database/statistical personnel.

Structure: The OCC has sole jurisdiction over citizen-initiated complaints relating to misconduct. The Office of Citizen Complaints (OCC) reports to the Police Commission. The Commission is comprised of five members, appointed by the Mayor and confirmed by the Board of Supervisors. The Commission appoints the Director of the OCC with approval of the Mayor and Board of Supervisors. The Director can be removed by the Commission. The Commission has the principal disciplinary authority for the SFPD. The Chief, however, has the authority to impose discipline not more serious than a ten-day suspension. The OCC has exclusive jurisdiction over civilian-initiated complaints of misconduct. The OCC issues special policy recommendation reports.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: The OCC was created by the voters in 1983 after a community coalition placed the initiative on the ballot. Subsequent ballot initiatives strengthened the OCC. In 1996, the charter was amended to guarantee minimum funding for the OCC. In 2003, a high-profile altercation involving off-duty officers and an alleged cover-up that led to criminal charges (many dismissed) against much of the Department's hierarchy led to the adoption of new rules governing the Police Commission and the Office of Citizen Complaints.

### **Complaint Process**

Intake: Complaints can be filed with the OCC in person, by mail, telephone, or facsimile. Complaints may also be filed at Management Control Division (Internal Affairs) and at community locations. MCD has sole jurisdiction over officer-initiated complaints. Once a complaint has been filed with the OCC it is assigned to an intake investigator who interviews the complainant by telephone or in person.

Informal Resolution: The OCC offers mediation.

Formal Investigation: The investigator interviews officers, witnesses, and reviews reports and other evidence. A team of OCC supervisors reviews all completed OCC investigations to make certain of the accuracy and compliance with Police Commission standards. It is San

Francisco Police Department policy that officers cooperate with OCC investigations. The investigator sends a preliminary disposition letter to the complainant and officer(s). The complainant and officer(s) have a right to meet with the investigator to review the investigative process.

Hearings: There are two levels of hearings, a Chief's hearing and a Police Commission hearing. Police Commission hearings involve officer appeals, cases forwarded by the Chief, cases that involve harsher discipline than a ten-day suspension, cases involving a difference in the findings of the OCC and the Chief, and DUI and domestic violence cases from MCD. Chief's hearings handle the balance of hearings on complaints. A Chief's hearing is informal and involves an OCC attorney, the subject officer, a union representative, and the officer's captain. Chief's hearings are run by the Management Control Division. Police Commission hearings are formal hearings where an OCC trial attorney prosecutes and a union or private attorney defends. Discipline is imposed if an allegation is sustained.

Findings: OCC findings are as follows: sustained, not sustained, proper conduct, unfounded, policy failure, supervision failure, training failure, information only, no finding, or mediated. OCC's findings cannot be overturned by the Department but can be overturned by the Commission. OCC's findings are reviewed by MCD. If MCD disagrees with the findings and no consensus between MCD and OCC is reached, the sustained finding remains in the officer's file; however, no discipline is imposed. Discipline can be imposed if the Chief submits the case to the Commission for a hearing.

Appeals: The officer can appeal a Chief's hearing decision to the Police Commission.

Other Functions: The OCC acts as an early warning system by reporting to the SFPD every three to six months concerning officers who compile three or more OCC complaints within the previous six months or four or more complaints within a year. Additionally, the OCC reviews and makes recommendations regarding SFPD policies and procedures.

Working Relationship with police department, city officials, community members, etc.: The Commission and union (Police Officers Association) have a tense and volatile relationship. Union members and the Commission are at times publicly antagonistic and this relationship seems unlikely to improve in the near future. San Francisco Chronicle October 4, 2004.

## **San Jose, California**

Agency: Office of the Independent Police Auditor

Jurisdiction: San Jose Police Department

Population: 926,200

Department Size: 1,450

Annual Budget: \$660,000

Staff: 6 full-time employees – Auditor, Assistant Auditor, Citizen Complaint Examiner, Public and Community Relations, Data Analyst, Office Specialist

Structure: The Independent Police Auditor reports directly to the Mayor and City Council. The Council may remove the Auditor upon a resolution of ten of its 11 members. The IPA monitors IA's investigations of complaints, both throughout the process and upon their completion. If the Auditor does not agree with the Police Department's findings and cannot reach a resolution with the Department, the Auditor can have the case referred to the City Manager. The Auditor has formed an IPA Advisory Committee – which has no official status – to obtain community input.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints can be filed with the IPA or Internal Affairs. All complaints are investigated by IA and monitored by the IPA. IPA intake investigators take the initial statements for complaints filed with the IPA. Complainants are encouraged to sign a required Department form within 30 days of the incident before a complaint can be investigated. However, if the complainant does not sign the form within 30 days, it does not preclude an IA investigator from conducting a preliminary investigation that includes reviewing all documents or evidence. As long as the form is signed within one year of the incident, complaints will be investigated fully.

Formal Investigation: Complaints are classified in one of five categories; formal, command review, policy, procedural, and inquiry. Inquiries are cases that were resolved before becoming a complaint. Facesheets containing information about each complaint are forwarded to the IPA within three days of classification by Internal Affairs. The IPA reviews IA classifications to ensure that complaints receive the proper level of review. The IPA monitors all ongoing investigations. The IPA is involved in many of the interviews conducted by IA. Internal Affairs sends its completed investigations to the Chief who makes the Department's findings on the case.

Findings: Findings are as follows: sustained, not sustained, exonerated, unfounded, and no finding. For procedural complaints the findings are as follows: within procedure or no misconduct determined. The IPA is notified of all completed investigations within five days of action by the Chief. If IPA agrees with the findings, the complainant is notified. If IPA disagrees with the findings, it can request further investigation and/or meet with Internal

Affairs and the Chief to resolve the matter in issue. If IPA and the Department cannot reach agreement, the unresolved issues are sent to the City Manager for final resolution (after which the complainant is notified).

Other Functions: The IPA makes policy recommendations and conducts community outreach.

Working Relationship with police department, city officials, community members, etc.: Over the past 11 years the Auditor says that the focus of the IPA has shifted from having to defend its right to exist to working in collaboration with the Department toward addressing problems and implementing solutions. To help establish trust, the Auditor makes a point never to surprise the Department with her findings. According to the Auditor, there has been strong resistance to the IPA from the union, particularly in the IPA being present during an interview with an officer who has been involved in an officer-involved shooting.

Additional Information: The IPA uses the Independent Police Auditor Advisory Committee (IPAAC) to publicly advocate on its behalf and to address the needs and problems of the various communities in San Jose. The IPA believes that the strength of San Jose's model lies in the IPA's ability to make policy recommendations that provide a broader scope than a case-by-case analysis can.

## **Seattle, Washington**

Agency: Office of Professional Accountability

Jurisdiction: Seattle Police Department

Population: 563,374

Department Size: 1,240

Staff: Director, Captain, Lieutenant, and six Sergeants

Structure: The Office of Professional Accountability, which handles the intake and investigation of complaints, is a part of the Police Department. The civilian OPA Director is appointed by the Mayor and confirmed by the City Council. The OPA Director reports to the Chief of Police, and also reports to the Mayor and City Council about OPA and Department activities, policies, and procedures.

### **Complaint Process**

Intake: Complaints may be filed either with the OPA or with the Citizen Services Bureau at City Hall. After intake the OPA Director classifies complaints as follows:

- Contact Logs – inquiries about policies, referrals, or requests for information not assigned for investigation.
- Supervisory Referral – complaints that indicate a training failure instead of misconduct. These are assigned to the subject officer’s immediate supervisor for review or provision of additional training.
- Line Investigations – minor misconduct complaints assigned to the subject officer’s chain of command for investigation.
- OPA-IS (Investigation Section) investigation –more serious complaints including all use-of-force complaints that are investigated by the Office of Professional Accountability Investigation Section.

Informal Resolution: None.

Formal Investigation: Complaints classified as OPA-IS investigations are investigated by sergeants in the OPA investigation unit. Complaints otherwise classified are investigated by line supervisors. The completed investigation is forwarded to the Director who may agree with the findings, direct further investigation, or recommend different findings. The Director makes the final departmental decision on all complaints other than those which are sustained, which are sent to the Chief for discipline. The OPA Auditor reviews redacted files of complaints and OPA investigations after the Director has acted on them. The OPA Review Board (OPARB) reviews closed, redacted files following final action by the Department.

Agency History: The OPA was created in 1999 by the Seattle City Council and its first civilian Director was appointed in 2001.

## **Seattle, Washington**

Agency: Office of Professional Accountability Review Board

Jurisdiction: Office of Professional Accountability, Seattle Police Department

Population: 563,374

Department Size: 1,240

Annual Budget: \$48,000 (from Seattle Legislative Department budget)

Staff: No paid staff

Structure: The three members of the Board are appointed by the City Council. Members receive a \$400 monthly stipend.

Subpoena power: No.

### **Complaint Process**

OPARB does not process civilian complaints. OPARB reviews closed and redacted Office of Public Accountability (Internal Affairs) complaint investigations, as well as the application and effectiveness of OPA standards and procedures. Redacted case files are files that have identifying characteristics such as names removed from the complaint.

Agency History: The Office of Accountability Review Board was established in 2002.

Working Relationship with police department, city officials, community members, etc.: According to a Board member, OPARB has a strained working relationship with the City of Seattle. Indicative of those problems, the City has refused to protect the Board members from personal civil liability arising out of OPARB reports.

## **Seattle, Washington**

Agency: Office of Professional Accountability Civilian Auditor

Jurisdiction: Office of Professional Accountability; Seattle Police Department

Population: 563,374

Department Size: 1,240

Staff: 1

Structure: The Auditor is an independent contractor appointed by the Mayor and confirmed by the City Council, who reviews all complaints and Office of Professional Accountability (OPA) completed investigations. The Auditor serves a two-year term and can serve no more than three terms. The Auditor can be removed from office by the Mayor. The Auditor must be an attorney with at least five years experience practicing law.

### **Complaint Process**

The Auditor is a part-time appointee, who is not an employee of the City. In reviewing OPA investigations, the Auditor has access to all files and information. The Auditor, who is required to review all complaints both at the time of classification and upon completion of the OPA investigation, has authority only to make recommendations to OPA and/or the Chief.

Oversight/IA Interaction: The Auditor confers frequently with the OPA Director about specific recommendations. According to the Auditor, lines of communication with the OPA are open and frequently and productively used.

Agency History: The Auditor position was created in 1992.

## **St. Paul, Minnesota**

Agency: Police-Civilian Internal Affairs Review Commission

Jurisdiction: St. Paul Police Department

Population: 287,151

Department Size: 555

Annual Budget: \$37,160

Staff: 1 civilian coordinator (from the PD)

Structure: The Police-Civilian Internal Affairs Review Commission consists of seven members, two of whom are SPPD officers. Members are jointly appointed by the Mayor and Chief of Police. The Internal Affairs Unit of the St. Paul Police Department is the investigative arm of the Commission. The Commission has a civilian coordinator employed by the Police Department who processes complaints from the public.

Subpoena power: Yes.

### **Complaint Process**

Intake: Complaints can be filed with the Commission. Once filed, the coordinator gathers information about the complaint and forwards the complaint to Internal Affairs for investigation.

Informal Resolution: If the complaint contains an allegation of relatively minor misconduct such as discourtesy or an explanation of Department policy, Internal Affairs refers the complaint down the chain of command to the supervisory level for resolution. These resolutions are not sent to the Commission for review.

Formal Investigation: Internal Affairs investigates almost all complaints. Once an investigation is complete, it is sent to the Commission for review. The Commission reviews all IA investigations alleging excessive force, use of firearms, discrimination, poor public relations, and other complaints at the Chief's discretion. The commissioners, commission coordinator, IA commander, IA investigators, and a secretary are the only parties allowed to attend the case review. The commissioners, after being presented information about the case from an IA investigator, vote on the outcome.

Findings: The Commission may find as follows; sustained, not sustained, exonerated, or unfounded. If a majority of the commissioners votes to sustain a complaint, the Commission must also vote on a recommendation for discipline. The commissioners may also determine that further investigation by either IA or an independent investigator is needed. The IA and Commission findings are forwarded to the Chief along with the Commission's disciplinary recommendations if the complaint is sustained.

Appeals: There are no appeals of the Commission's and Chief's findings/dispositions.

Other Functions: The Commission hears all cases involving the discharge of an officer's firearm even in cases where no complaint is filed.

## **St. Petersburg, Florida**

Agency: Civilian Police Review Committee

Jurisdiction: St. Petersburg Police Department

Population: 248,232

Department Size: 524

Annual Budget: \$157,000

Staff: 1 coordinator and 1 administrative secretary

Structure: The Civilian Police Review Committee reviews internal investigations and reports results to the public. The Committee is comprised of 23 members appointed by the Mayor. Members, who must be City residents, serve three-year terms.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism:

The Review Committee was created after community groups and individual citizens voiced concern over the legitimacy and fairness of the complaint process.

### **Complaint Process**

The Civilian Police Review Committee does not process civilian complaints. According to Florida law, the Review Committee cannot change the findings of IA investigations. The Committee can only make policy recommendations to the Police Department.

Formal Investigation: Every complaint, regardless of its nature, is investigated. Serious allegations (such as, unnecessary force, falsifying records) are investigated by the Internal Affairs Division and are referred to as Internal Affairs Investigations. The results of Internal Affairs Investigations are referred to the Chief. Minor breaches of Police Department regulations (such as discourtesy) are investigated by the police officer's supervisor and are referred to as Bureau Investigations. Any discipline arising out of Bureau Investigations is imposed by the officer's supervisor.

Appeals: Once an investigation becomes a public record (which occurs after final administrative disposition, including appeals, and the disposition of any associated criminal case), the Civilian Police Review Committee reviews the determination made and the discipline imposed, if any. The Committee only reviews internal investigations. The Committee does not have investigatory authority.

Agency History: The Board was created in 1991. The structure was chosen so as to conform to the Police Officer's Bill of Rights and existing ordinances.

Working Relationship with police department, city officials, community members, etc.:

*Appendix A: Nation-wide Police Oversight Systems*

According to an employee of the Board, the Board has a good working relationship with the Chief, Mayor, and the Department. Most of the Board's policy recommendations are implemented.

# APPENDIX B: 2006 MGT REPORT RECOMMENDATIONS

## *Chapter 4: The Police Oversight Process*

### **RECOMMENDATION 4-1:**

Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 4-1** of this report.*

### **RECOMMENDATION 4-2:**

Enhance outreach efforts to complainants and potential complainants to encourage the use of mediation.

*See **Commendation 4-1** and **Recommendation 4-3** of this report.*

### **RECOMMENDATION 4-3:**

Include “successfully mediated” as a complaint disposition category.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 4-4** of this report.*

### **RECOMMENDATIONS 4-4:**

Develop a SOP in collaboration with IA that establishes a process and criteria for mediation.

*This recommendation was accepted in part as there is an informal process by which the IRO works with IA for certain identified complaints that are deemed to be appropriate for mediation.*

### **RECOMMENDATION 4-5:**

Change the CPC form to include more “forced blocks” to provide additional detailed information about the location, officers, and injuries involved in the alleged conflict.

*While there is no data to support a finding that this recommendation was accepted, the recommendation has been omitted from the current report.*

### **RECOMMENDATION 4-6:**

The IRO should not dismiss (inactivate) unsigned complaints and at a minimum should conduct a preliminary investigation if the allegations are serious and the facts can be established.

*Following the recent study conducted by PERF, this recommendation was accepted. See **Commendation 6-2**.*

**RECOMMENDATION 4-7:**

Extend the deadline for citizens to file appeals from ten business days to 30 calendar days.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 4-5** of this report.*

**Chapter 5: The Police Oversight Commission**

**RECOMMENDATION 5-1:**

Amend the Police Oversight Ordinance to include any language that was unintentionally omitted during the amendment process.

*This recommendation was accepted as subsequent amendments were made to clarify the appointment process of POC members.*

**RECOMMENDATION 5-2:**

Remove term limits on POC members.

*This recommendation was accepted as the language of the Police Oversight Ordinance does not limit the terms of POC members.*

**RECOMMENDATION 5-3:**

Create an orientation program for new members.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 5-1** of this report.*

**RECOMMENDATION 5-4:**

Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 5-2** of this report.*

**RECOMMENDATION 5-5:**

Amend the Police Oversight Commission's Rules and Regulations to clarify if the references to the IRO in sections 8 and 9 include the IRO staff.

*While there was no evidence to suggest that this recommendation was accepted, the recommendation has been omitted from the current report.*

## ***Chapter 6: Independent Review Officer***

### **RECOMMENDATION 6-1:**

Hire additional investigators.

*This recommendation was accepted. Since the 2006 Report, the IRO's office has acquired an additional full-time investigator.*

### **RECOMMENDATION 6-2:**

Assign all CPC's to the IRO to investigate.

*While data suggest fewer CPC's are assigned to the IA Unit, the IA unit does still investigate some CPC's. See **Recommendation 6-2** of this report.*

### **RECOMMENDATION 6-3:**

Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 6-3** of this report.*

### **RECOMMENDATION 6-4:**

Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and provide updates in quarterly and annual reports to the POC.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 6-4** of this report.*

### **RECOMMENDATION 6-5:**

Team up with the city's Vietnamese Task Force to evaluate the community's understanding of the POC and IRO processes, and determine outreach needs.

*There was no evidence to suggest that this recommendation was accepted; however, an on-going effort for community outreach is recommended. See **Recommendation 6-4** of this report.*

### **RECOMMENDATION 6-6:**

Conduct complainant surveys on an on-going basis, but seek ways to increase the number of responses and increase the depth of analysis.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 6-5** of this report.*

**RECOMMENDATION 6-7:**

The Chief of Police and the Chair of the POC should take advantage of existing resources to request legal reviews of public letters of record as needed.

*There is a city attorney that attends the regularly scheduled monthly meetings of the POC and the monthly meetings of the LTFC.*

**RECOMMENDATION 6-8:**

Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 6-9** of this report.*

**Chapter 7: APD Internal Affairs**

**RECOMMENDATION 7-1:**

Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 7-1** of this report.*

**RECOMMENDATION 7-2:**

Develop criteria for sergeants selected to work in IA that requires experience as a supervisor.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 7-2** of this report.*

**RECOMMENDATION 7-3:**

Document informal complaints in the EWS.

*This recommendation was accepted and the process has since changed. Internal Affairs now audits the informal complaint system annually and enters informal complaints into the EWS; however, if there are no similar events, the information is purged from the EWS after a year.*

**RECOMMENDATION 7-4:**

Move the responsibility of auditing of informal complaints from IA to the Inspections Unit and include in the audit program a review of SOPs, supervisors' reporting, and documentation by IA.

*This recommendation is no longer appropriate, as the Inspection's Unit responsibility is now the coordination of CALEA accreditation.*

**RECOMMENDATION 7-5:**

Reexamine the need for additional investigators in IA.

*This recommendation is no longer necessary as the current caseload of each IA investigator is manageable as reported by the IA Lieutenant. Moreover, the recently approved addition of an investigator will assist the unit in times of higher than usual complaints.*

**RECOMMENDATION 7-6:**

Consider limiting IA's investigations to "I's only.

*While the number of CPC's investigated by IA has decreased, the IA unit does still handle a certain number of CPC's, see **Recommendation 7-3** of this report.*

**RECOMMENDATION 7-7:**

Change the quarterly and annual report format to address all IA reporting requirements as delineated in SOP's.

*This recommendation remains, but has been modified for the current report, see **Recommendation 7-4** of this report.*

**RECOMMENDATION 7-8**

Ensure the process for investigating captains and above is included in the department's SOP's.

*This recommendation was accepted. The IRO's office now has the responsibility of investigating all complaints involving the rank of captain and above.*

**Chapter 8: APD Accountability Mechanisms**

**RECOMMENDATION 8-1:**

Replace IA's EWS tracking spreadsheet software with "off-the-shelf" IA software that assists with the comprehensive analysis of data and the generation of reports.

*The APD's new Multi-Relational Internal Affairs Database (MRIAID) program was developed to track Use of Force and IA data for the department's EWS. This program collects data required in the department's EWS SOP and is a significant improvement over the previous software.*

**RECOMMENDATION 8-2:**

Include the tracking of resisting arrest and assault on police officer data in the EWS.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 8-2** of this report.*

**RECOMMENDATION 8-3:**

Review the function of the EWS review panel (SOP 3-49) to ensure it is being utilized as required by the SOP.

*The EWS review panel continues to be used infrequently. This panel provides a potential forum for periodic review of the department's EWS data and trend analysis, as is now capable with the MRIAID System, see **Recommendation 8-3** of this report.*

**RECOMMENDATION 8-4:**

Modify the number of EWS entries, which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.

*As a result of a recent review performed by PERF, this recommendation has been amended. The threshold has been reduced from five to three; however, an on-going study of the appropriate threshold is underway, see **Recommendation 8-4**.*

**RECOMMENDATION 8-5:**

Assign the APD's Inspections Unit to audit UOF reporting.

*In light of the Inspection Unit's responsibilities being limited to managing the department's CALEA accreditation, this recommendation is no longer applicable. Responsibilities to audit UOF reports remains with the IA Unit; however, the recent PERF report suggest appropriate changes to the UOF reporting process.*

**RECOMMENDATION 8-6:**

Issue the "APD Sergeant Reference Guide" in training for all lieutenants and sergeants.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 8-5** of this report.*

**RECOMMENDATION 8-7:**

The APD should task the training committee to review this issue and coordinate in-service training for all supervisors (lieutenants and sergeants) that addresses information contained in the Sergeant Reference Guide and IA section of the OJT program.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 8-5** of this report.*

**RECOMMENDATION 8-8:**

Develop a process for monitoring and analyzing tort claim and lawsuit data that involves the City Attorney's Office, Risk Management Office, IRO, and IA.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 8-8** of this report.*

**RECOMMENDATION 8-9:**

Assign the Inspections Unit to conduct an audit of officers' SOP manuals.

*As a result of the re-alignment of the Inspection Unit responsibilities by which its sole responsibility is now managing CALEA accreditation, this recommendation was accepted.*

**RECOMMENDATION 8-10:**

Distribute SOPs electronically to all APD staff.

*There was no evidence to suggest that this recommendation was accepted; see **Recommendation 8-7** of this report.*

**RECOMMENDATION 8-11:**

Assign the Inspections Unit to audit briefing training to ensure that the training developed is being distributed properly to the field.

*As a result of the re-alignment of the Inspection Unit responsibilities by which its sole responsibility is now managing CALEA accreditation, this recommendation was accepted.*

**RECOMMENDATION 8-12:**

Include training about civilian oversight of policing agencies in the APD curriculum.

*This recommendation has been amended; see **Recommendation 6-4** of this report.*

***Chapter 9: APD Police Shootings***

**RECOMMENDATION 9-1:**

Revise APD SOPs to include the multi-agency task force and protocols identified in the "Law Enforcement Involved Fatalities/Great Bodily Harm" MOU.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such.*

**RECOMMENDATION 9-2:**

Establish a process and time that that officers will be placed on administrative leave following a shooting incident.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 5 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-3:**

Include a discussion of the Behavioral Sciences Division Staff Psychologist protocol for officer involved shootings in SOP 2-31.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendations 12-15 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-4:**

Expand the Critical Incident Review Board to conduct inquiries and make recommendations for officer involved incidents resulting in death or great bodily injury.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 11 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-5:**

Reduce the time it takes APD detectives and the DA take to investigate officer involved shootings and make a legal determination.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 6 of the PERF report for further detail on this recommendation.*

# APPENDIX C: 2011 MGT REPORT RECOMMENDATIONS

## *Chapter 4: The Police Oversight Process*

### **RECOMMENDATION 4-1:**

Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.

### **RECOMMENDATION 4-2:**

Provide analysis of meaningful data that will help to reveal systemic issues that may have given rise to the original complaints. Provide a summary of the details, including rate of mediation and sustained cases, both current and historical in clear and concise charts and tables.

### **COMMENDATION 4-2:**

The continued use of mediation as a way to resolve police complaints in Albuquerque is commendable.

### **RECOMMENDATION 4-3:**

Enhance outreach efforts to complainants and officers alike to encourage the use of mediation.

### **RECOMMENDATION 4-4:**

Include “successfully mediated” as a complaint disposition category.

### **RECOMMENDATION 4-5:**

Extend the deadline for citizens to file appeals from 10 business days to 30 calendar days.

### **RECOMMENDATION 4-6:**

City Council members must be fully engaged in the process. As such, each member must fulfill his/her duty to provide the Mayor with qualified nominees and maintain a level of oversight into the process by keeping in frequent communication with their appointee.

### **COMMENDATION 4-3:**

The ordinance provides an automatic review of the oversight process every four years.

## ***Chapter 5: The Police Oversight Commission***

### **RECOMMENDATION 5-1:**

Create a training program that ensures all members of the POC are fully informed of their responsibilities and have a level of knowledge regarding police operations to allow each member of the POC to accomplish his or her role as a commissioner.

### **RECOMMENDATION 5-2:**

Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance. To ensure proper oversight, the city ordinance should be amended to require the annual report to contain an account of the annual training undertaken by members of the POC commission. For those members who fail to comply with annual training requirements, the ordinance should be amended to provide for the removal of a non-compliant POC member.

### **RECOMMENDATION 5-3:**

Monitor and track POC member attendance at monthly meetings and require adequate proof for excused absence by members.

### **RECOMMENDATION 5-4:**

All city councilors should ensure their respective position on the Commission is filled with a qualified appointee who will be mindful of the overall mission of the POC.

### **RECOMMENDATION 5-5:**

Being one of its expressed objectives, the POC should identify major problems and identify a program of policy suggestions and studies through the use of its LTTPC.

### **RECOMMENDATION 5-6:**

In addition to identifying major systemic problems by and between the APD and the community, Section 9-4-1-11 of the Police Oversight Ordinance should be amended to require the LTTPC to monitor the status of recommendations resulting of those evaluations required by ordinance through regular updates to the full commission and designated city staff and/or agencies.

### **COMMENDATION 5-1:**

Before the annual 2010 report, the IRO's annual reports did not provide detail on discipline for sustained complaints; however, the most recent annual report does provide discipline for approximately 85 percent of all sustained complaints.

**RECOMMENDATION 5-7:**

Amend the language of the ordinance to require the POC, through the IRO, to consider the published chart of sanctions and recommend discipline for all sustained complaints, separate from the discipline imposed by the APD.

**RECOMMENDATION 5-8:**

Amend the language of the ordinance to require additional analysis and data, including specific disciplinary outcomes of sustained complaints and long-term trend analysis.

**RECOMMENDATION 5-9:**

The APD's Standard Operating Procedures (SOP) provide a standard range for discipline for violations of each SOP. The language of the ordinance should be amended to require the reporting of this to further provide the highest level of accountability.

**RECOMMENDATION 5-10:**

The POC and the Albuquerque Chief of Police should hold joint public sessions bi-annually to discuss policy issues and concerns and allow for public input.

***Chapter 6: Independent Review Officer***

**RECOMMENDATION 6-1:**

For the few citizen complaints referred to the IA's office, the process for final disposition should be streamlined to avoid undue burden on the actors. This could be accomplished by requiring IA to make a finding and disciplinary recommendation for claims sustained.

**RECOMMENDATION 6-2**

The IRO and IA should work toward a complete separation of responsibility, where IA handles only internal cases (I) and the IRO handles all citizen complaints (CPC).

**RECOMMENDATION 6-3:**

Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.

**RECOMMENDATION 6-4:**

Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and city staff.

**RECOMMENDATION 6-5:**

Conduct complainant and police officers satisfaction surveys on an on-going basis, and seek ways to increase the number of citizen responses and increase the depth of analysis.

**COMMENDATION 6-1:**

The department's willingness to involve the IRO in its initial investigation of an officer involved shooting reveals a commitment to reversing the upward trend.

**RECOMMENDATION 6-6:**

While the APD has agreed to allow the IRO to monitor the crime scene of an officer involved shooting, the police oversight ordinance should be amended to require that the IRO or his/her representative be present at all officer involved crime scenes and be required to conduct a concurrent, independent investigation of each officer involved shooting.

**RECOMMENDATION 6-7:**

The IRO's office should be provided an auditor/analyst whose task it is, not to investigate complaints, but rather enjoy open access to the police department's records and given wide-ranging authority to report on all aspects of departmental policy and advocate for systemic reform, where necessary.

**RECOMMENDATION 6-8:**

The IRO's office should be allowed full, real-time access to the APD's early warning system (EWS).

**RECOMMENDATION 6-9:**

Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.

**RECOMMENDATION 6-10:**

The IRO should work with the Chief of Police and department officials to reduce the delays in obtaining case information from the police department's records system.

**RECOMMENDATION 6-11:**

The IRO's office should develop a truncated review process by which third party complaints can be addressed, when appropriate, without the full use of resources to conduct a full investigation.

**COMMENDATION 6-2:**

In response to the recent recommendations of the PERF report, and in-line with MGT's previous recommendations, the IRO is now permitted to investigate un-signed and/or anonymous complaints.

***Chapter 7: APD Internal Affairs***

**RECOMMENDATION 7-1:**

Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.

**RECOMMENDATION 7-2:**

Develop job criteria for sergeants selected to work in IA that requires experience as a supervisor.

**RECOMMENDATION 7-3:**

Consider limiting IA's investigations to Is only.

**RECOMMENDATION 7-4:**

Modify the quarterly and annual report format to address all IA reporting requirements as delineated in SOPs.

***Chapter 8: APD Accountability Mechanisms***

**RECOMMENDATION 8-1:**

Use software that assists with the comprehensive analysis of data, especially trends, and the generation of reports.

**RECOMMENDATION 8-2:**

Include the tracking of resisting arrest and assault on police officer data in the EWS.

**RECOMMENDATION 8-3:**

Review the function of the EWS review panel (SOP 3-49) to ensure it is being used as required by the SOP.

**RECOMMENDATION 8-4:**

Modify the number of EWS entries which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.

**COMMENDATION 8-1:**

In response to recent events, Internal Affairs has increased its efforts to help ensure 100 percent compliance on UOF reporting.

**RECOMMENDATION 8-5:**

Issue the “APD Sergeant Reference Guide” in training for all lieutenants and sergeants and task the Training Committee to ensure training requirements in this guide are met.

**RECOMMENDATION 8-6:**

Work with City Attorney’s Office, IRO, and IA to develop a process and/or implement software by which the monitoring and analysis of claims data can be accomplished.

**RECOMMENDATION 8-7:**

Distribute SOP’s electronically and automate the process to automatically notify all employees of any SOP changes.



**As prepared by:**

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**Interview List**  
**Evaluation and Analysis of the Police Oversight Ordinance and Police Oversight System**  
**City of Albuquerque, New Mexico**

<b>Police Oversight Commission (POC)</b>	
Bambi Folk	Chair
Bob Francis	Vice Chair
Mathew Archuleta	Commissioner
Linda Martinez	Commissioner
Richard Sobien	Commissioner
Steve Smitherman	Former POC Commissioner
<b>Independent Review Office (IRO)</b>	
William Deaton	Independent Review Officer
Francis Garcia	Senior Administrative Assistant
Trey Flint	Investigator
Diane McDermott	Investigator
Paul Skotchdopole	Investigator
<b>Albuquerque Police Department (APD)</b>	
Ray Schulz	Chief of Police
Doug West	Commander
Joey Sigala	Union Representative
Mike Miller	APD Lieutenant/Internal Affairs
<b>City Officials</b>	
Richard Berry	Mayor
Dan Lewis	City Councilor
Trudy Jones	City Councilor
Rey Garduno	City Councilor
Ken Sanchez	City Councilor
Ike Benton	City Councilor
Brad Winter	City Councilor
Michael Cook	City Councilor
Don Harris	City Councilor
<b>City Staff</b>	
Tito Madrid	POC representative, Mayor's Office
Doris Duhigg	City Attorney for the POC
Peter Ennen	City Risk Management
<b>Other Stakeholders</b>	
Andres Valdez	Vencino United
Ralph Arellanes	LULAC New Mexico
Gilbert	Citizen
Hank	Citizen



# City of Albuquerque

## Mayor/CAO's Office

Richard J. Berry, Mayor

### Interoffice Memorandum

January 27, 2012

**To:** Trudy Jones, President, City Council  
**From:** Robert J. Perry, Chief Administrative Officer *RJP*  
**Subject:** Police Oversight Recommendations

As part of the police oversight ordinance, the City Council commissioned MGT of America to review and evaluate the city's current police oversight system. In November, MGT issued its findings, which included several recommendations for the Police Department, the Independent Review Office the Administration and the City Council. Since the report was issued, the Mayor, myself, the City Attorney's Office and the Chief of Police have worked to analyze the issues and identify changes and improvements that we believe could provide a good foundation for positive change in the oversight system. I wanted to bring forth several ideas as a starting point in our discussions on this important matter.

The report noted, "The POC's failure to lead is born of two primary issues, failure to train and educate members of the POC and a lack of participation. Despite requirements for some annual training of POC members in the ordinance, training is neither sufficient nor monitored." Specifically, the report noted that many members of the Police Oversight Commission are not properly trained and educated in police oversight. In addition, due to a lack of attendance at meetings, the POC has, at times, had difficulty even forming a quorum. If we are going to have an effective commission who's task it is to hold others accountable, we feel they too should be accountable for the important role they play in the oversight process.

To be effective, the system needs to make sure that potential commission members are vetted pertaining to their ability, willingness and commitment to attend regular meetings and we need to insure as a city that members receive the appropriate training needed for them to have a good understanding of civil rights and basic Albuquerque Police Department standard operating procedures.

With these two primary issues in mind we are making the following recommendations to improve the police oversight process. I have noted the corresponding MGT report number next to each recommendation:

1. The Mayor is committed to budgeting \$15,000 a year for members of the Police Oversight Commission to attend the National Police Oversight Conference and other pertinent training. We request your support for this appropriation. (5-1)

2. Amend the rules so that if a member of the Police Oversight Commission does not attend the required training or police ride alongs within a year of being appointed, the Administration or the City Council can move for their removal and replacement on the commission. (5-2)
3. Amend the rules so that if attendance becomes an issue for any member, the Administration or the City Council can move for their removal and replacement on the commission. (5-3)
4. Require members of the Police Oversight Commission to attend the Albuquerque Police Citizens Academy within a year of their appointment. Costs for the training will be paid by the City. (5-1)
5. Amend the rules so that if a member of the City Council fails to make a nomination to the commission, which has been the case for a number of appointments, the Mayor shall be permitted to nominate someone in his or her place. (4-6, 5-4)
6. Amend the rules to establish a mandatory prep session prior to each meeting for the purpose of reviewing cases with members.
7. Revamp the Police Oversight Commission's Web Site to allow citizens to file, follow and track complaints. (6-4)
8. When the Independent Review Officer position becomes open, conduct a national search for a new Independent Review Officer.
9. Amend the rules to create a new disposition category for mediated cases on citizen police complaints. (4-4)
10. Amend the rules to require the Police Chief, the Independent Review Officer and the Police Oversight Commission to hold joint public sessions bi-annually to discuss policy issues, concerns and allow for public input. (5-10)
11. Resources permitting, require the Independent Review Officer to handle all citizen complaints and Internal Affairs to handle internal cases, thereby clarifying the responsibility for the investigation of these two types of complaints. (6-2, 7-3)
12. Develop a community outreach plan to educate the public on the police oversight process. (6-4)
13. Conduct satisfaction surveys of the complainant and the involved police officer. (6-5)
14. Conduct a study to determine the optimum tenure of an Independent Review Officer. (6-9)
15. Request the Independent Review Officer to develop a system to handle third-party complaints and expedite the process to determine which ones have merit. (6-11)
16. Develop/purchase software that will allow the Internal Affairs Division to better analyze trends in citizen police complaints. (8-1)
17. Issue an "APD Supervisor Reference Training Guide" for all lieutenants and sergeants. This reference guide will assist sergeants and lieutenants in the performance of their supervisory duties regarding resolutions of citizen complaints. (8-5)

The MGT Report also recommends giving the POC much more authority over discipline. We do not believe this is a recommendation that we can support at this time for several reasons. Primarily, the board was never designed to be a disciplinary board. Under the ordinance, the commission is a fact finding and oversight board. To require a politically appointed volunteer citizen committee to direct officer discipline would be unfair to the commission and potentially detrimental to the community and the officers of the Albuquerque Police Department.

We believe that these recommendations enclosed will strengthen the trust between the community and the Albuquerque Police Department and will lead to a much improved oversight system.

We look forward to working with Council on this important issue.

1/27/12

*Memo to Councilor Jones*

*Police Oversight Recommendations*

*Page 2 of 2*

**FOR IMMEDIATE RELEASE**  
**CONTACT: Dayna Gardner, 414-3438**



January 27, 2012

### **Mayor Berry Recommends Changes to Police Oversight Process**

Albuquerque - Mayor Richard J. Berry sent seventeen recommendations to the City Council Friday that if adopted would significantly enhance the city's police oversight process.

The recommendations come after Mayor Berry and his public safety team spent the past three months reviewing a report that was issued by MGT of America. The report, which was commissioned by the City Council as part of the police oversight ordinance, made several recommendations for the Police Department, the Independent Review Office, the Administration and the City Council to change the city's police oversight process.

The MGT report noted, "The Police Oversight Committee's (POC) failure to lead is born of two primary issues, failure to train and educate members of the POC and a lack of participation. Despite requirements for some annual training of POC members in the ordinance, training is neither sufficient nor monitored."

The changes recommended by Mayor Berry's administration would ensure that members of the Police Oversight Commission attend meetings and that they receive appropriate training. The recommendations also call for bi-annual sessions with the public, a community outreach plan to educate the citizens on how they can file complaints and surveys to be conducted for people who file complaints as well as police officers who were investigated.

"The current police oversight process needs to be improved," Mayor Berry said. "This is a vital community service and we need to ensure that commission members have the proper training and are held accountable for attendance and participation in this vital oversight capacity."

The MGT Report also recommended giving the POC much more authority over officer discipline. The administration does not believe this is a recommendation that should be implemented for a number of reasons. "The board was never designed to be a disciplinary board," said Mayor Berry. "Under the ordinance, the commission is a fact finding and oversight board. To require a politically appointed volunteer citizen committee to direct officer discipline would be unfair to the commission and potentially detrimental to the community and the officers of the Albuquerque Police Department."

The Mayor's recommendations include:

1. The Mayor is committed to budgeting \$15,000 a year for members of the Police Oversight Commission to attend the National Police Oversight Conference and other pertinent training. We request your support for this appropriation.
2. Amend the rules so that if a member of the Police Oversight Commission does not attend the required training or police ride alongs within a year of being appointed, the Administration or the City Council can move for their removal and replacement on the commission.
3. Amend the rules so that if attendance becomes an issue for any member, the Administration or the City Council can move for their removal and replacement on the commission.

4. Require members of the Police Oversight Commission to attend the Albuquerque Police Citizens Academy within a year of their appointment. Costs for the training will be paid by the City.
5. Amend the rules so that if a member of the City Council fails to make a nomination to the commission, which has been the case for a number of appointments, the Mayor shall be permitted to nominate someone in his or her place.
6. Amend the rules to establish a mandatory prep session prior to each meeting for the purpose of reviewing cases with members.
7. Revamp the Police Oversight Commission's Web Site to allow citizens to file, follow and track complaints.
8. When the Independent Review Officer position becomes open, conduct a national search for a new Independent Review Officer.
9. Amend the rules to create a new disposition category for mediated cases on citizen police complaints.
10. Amend the rules to require the Police Chief, the Independent Review Officer and the Police Oversight Commission to hold joint public sessions bi-annually to discuss policy issues, concerns and allow for public input.
11. Resources permitting, require the Independent Review Officer to handle all citizen complaints and Internal Affairs to handle internal cases, thereby clarifying the responsibility for the investigation of these two types of complaints.
12. Develop a community outreach plan to educate the public on the police oversight process.
13. Conduct satisfaction surveys of the complainant and the involved police officer.
14. Conduct a study to determine the optimum tenure of an Independent Review Officer.
15. Request the Independent Review Officer to develop a system to handle third-party complaints and expedite the process to determine which ones have merit.
16. Develop/purchase software that will allow the Internal Affairs Division to better analyze trends in citizen police complaints.
17. Issue an "APD Supervisor Reference Training Guide" for all lieutenants and sergeants. This reference guide will assist sergeants and lieutenants in the performance of their supervisory duties regarding resolutions of citizen complaints.

"We believe these recommendations will strengthen the trust between the community and the Albuquerque Police Department," Mayor Berry said. "We look forward to working with the City Council to improve the police oversight process."

###

OC-11-34

**Mason, Laura J.**

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**From:** Bob Lauder [blauder@mgtamer.com]  
**Sent:** Monday, February 06, 2012 2:31 PM  
**To:** Mason, Laura J.  
**Subject:** RE: Final Report  
**Attachments:** Albuquerque NM Police Oversight Evaluation Report FINAL.pdf

Regarding the recommendations that we mentioned we would revisit during the presentation of 1/27.

**Recommendations 5-7:**

The recommendation does not need to be changed. We do, however, want to make it clear that the POC may recommend or suggest a discipline for a sustained CPC (within the SOP's Chart of Sanctions) but that the Chief of Police has the ultimate say, and his recommendation of discipline is the sanction that is to be imposed.

What we would like is in the annual or quarterly report, where sustained complaints are detailed (see REC 5-9), there should be a side by side comparison of the actual discipline imposed, the POC suggested discipline, and the range of discipline as outlined in the SOP sanctions.

We believe this will help ensure all parties understand one another and all stakeholders including city leaders, community groups, and citizens can see how the chief of police is indeed holding officers accountable for their actions.

**Recommendation 6-6**

After revisiting REC 6-6 we are changing it to read as follows:

**While the APD has agreed to allow the IRO to monitor the crime scene of an officer involved shooting, the police oversight ordinance should be amended to require that the IRO or his/her representative be present at the scene of an officer involved shooting.**

We recognize an additional investigation requires an experienced investigator, which although the IRO has at this time, it may not always have which could create a problem down the road. We also understand our original recommendation would impose another investigation on these cases, which are already investigated by outside agencies and internal affairs. Therefore we are changing our recommendation in the final report so as not to require another investigation.

We are also deleting all paragraphs after the recommendation other than the first paragraph.

**Recommendation 6-8**

After revisiting REC 6-8 we believe it should be changed to read:

**The IRO's office should be allowed full, real-time access to be able to input relevant citizen complaint data into the APD's early warning system (EWS).**

Laura, I have attached a revised final report to reflect what is mentioned above in Chapter 6 and relevant changes in the summary of RECs in appendix C.

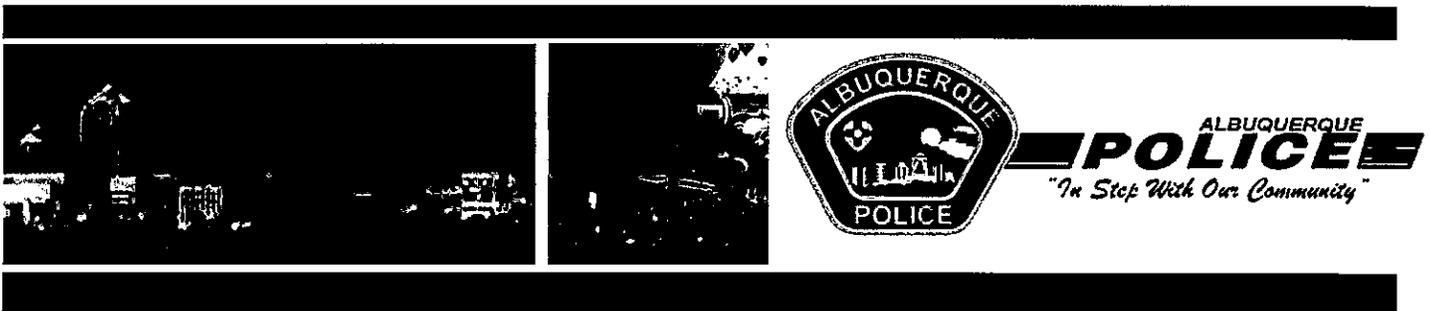
Call me if I need to at any time 512-731-8795

2/6/2012

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# City of Albuquerque, New Mexico Evaluation of the Police Oversight Ordinance and the Police Oversight System

**MGT**   
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# 1 INTRODUCTION AND BACKGROUND

## Introduction

In November of 2010, the City of Albuquerque released a Request for Proposals (RFP) for an "Evaluation and Analysis of the Police Oversight Ordinance and Police Oversight System." This evaluation and analysis will be the fourth of its kind since 1997. The Police Oversight Ordinance, adopted in 1998, requires an independent consultant to complete an evaluation and analysis of the entire police oversight process every four years and to recommend changes or amendments that would improve the process.

MGT of America, Inc. (MGT) responded to the RFP and was selected by the city in early 2011 to conduct the evaluation and analysis (the study). The contract between MGT and the City of Albuquerque was executed in June of 2011 and work on the project began soon after.

The MGT consultant team consisted of the partner-in-charge and project manager, Bob Lauder, MGT staff consultant Chad Lersch from MGT's Austin, Texas office and two independent consultants, both of whom have more than 30 years experience as police officers and commanders. Ron Glensor and Bruce Mills regularly team with MGT to conduct law enforcement reviews. Ron Glensor enjoyed a career of more than 35 years in law enforcement and retired as the assistant chief of police of the Reno, Nevada, Police Department. Bruce Mills also enjoyed a lengthy career in law enforcement and since his retirement as the assistant chief of police of the Austin, Texas Police Department, Bruce has served the city of Austin in various capacities, including his tenure as the Chief of Austin's Bergstrom International Airport and Director of the city's Public Safety Department. Both Bob and Chad have extensive experience conducting program evaluations, management reviews, and performance audits, with most of their experience focused on law enforcement and corrections departments.

MGT relied on a rigorous project work plan to guide the project. The work plan served as a guide for the consultant team to help ensure the project remained on track. The project approach and methodology are more fully described in the next chapter of this report.

## **Background**

After years of only internal police oversight and investigations of citizen complaints of members of the City of Albuquerque's Police Department (APD), a Police Advisory Board (PAB) was created by the Albuquerque City Council in June 1978. This was the city's first foray into civilian oversight of its law enforcement agency. In 1987, the Independent Counsel was created. After numerous reviews by committees, boards, task forces, independent counsels, and two major external consulting firms, civilian oversight of the police department has been in its present form since the passage of the Police Oversight Ordinance in 1998.

The 1998 ordinance created the Police Oversight Commission (POC) "to provide oversight of the Albuquerque Police Department and oversee all citizen complaints..." The specific model created by the Albuquerque ordinance was not taken from any particular city but is more of a compilation of many of the best practices found in other cities. While the unique oversight process created by this ordinance represents no single model or type of oversight body, rather it is largely an external investigative model with the framework for a mutation of the civilian auditor model.

### ***A Brief History***

Prior to 1978 oversight of the police department was strictly an internal matter. In June 1978, based on growing concern over civil liability for actions of some APD members, especially those involving officer shootings, the Albuquerque City Council created the Police Advisory Board (PAB). Its purpose was to provide some civilian oversight over certain police actions. About the same time, a six-month long investigation into allegations of police brutality at APD began.

Because the PAB proved to be largely ineffective, in 1987 the city council created the Office of Independent Counsel (IC) and it adopted the Independent Counsel Ordinance to provide civilian review of police internal affairs investigations, which was beyond the PAB's role. The City Council amended the ordinance in 1989 to rename the PAB the Public Safety Advisory Board, which expanded the role of the PAB to include oversight of the fire and corrections departments and continued the Independent Counsel oversight role over APD internal affairs investigations.

Concerns over insufficient civilian oversight remained. In March 1996, the City Council ordered a study be conducted regarding civilian oversight of the police. The council approved a contract for an independent review by consultants Sam Walker and Eileen Luna of the University of Nebraska at Omaha. They issued the Walker-Luna report in February 1997. The report concluded that the existing oversight process and mechanisms were "not functioning effectively." Later Walker discussed Albuquerque's failed Independent Counsel citing the primary reasons for its failure as the failure of the individuals holding the office to *fully utilize its existing authority to review the policies and procedures of the APD and make recommendations for change* and the IC failure to *engage with the community*; therefore, resulting in a failure to build the necessary public confidence in the system.<sup>1</sup>

City leadership exhibited wisdom and courage by hiring Mr. Walker to conduct the study. He is at the top of a list of experts in this subject area and he and Ms. Luna provided a detailed report that listed findings and recommendations describing the current system's deficiencies.

### ***The Walker-Luna 1997 Report***

In 1997, the Albuquerque Police Department was facing problems. This study concluded that the rate of fatal shootings by APD officers over the past decade was unusually high, while the crime rate in Albuquerque was very close to the national average. There were also problems of

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<sup>1</sup> SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* 166 (2005). (*emphasis added*)

high annual payments for tort claims involving police officers, an inadequate citizen complaint system, and much tension between the APD and parts of the city's community. To conduct this study, consultants reviewed official documents, conducted personnel interviews, performed an audit of the Internal Affairs section, and conducted a survey of police officers. The consultants also compared Albuquerque with other jurisdictions.

### **Citizen Complaint Process**

Prior to the Police Oversight Ordinance, the responsibility for investigating citizen complaints had been with the Internal Affairs (IA) section of the APD. As such, the APD recognizes that the public's trust depends upon "the personal integrity and discipline of all personnel *and* on the effectiveness of the Internal Affairs Unit."<sup>2</sup> IA investigated both citizen complaints (CPC) and internal complaints (I) that were initiated internally by APD. Official complaints were made when a citizen provided his or her name and contact information and signed a completed written statement. Unofficial complaints were of a non-criminal nature made by a citizen who refused to complete a signed statement. The Walker-Luna study found that IA did sustain a high rate of the complaints and it did receive and publish detail information about complaints in its quarterly report.

In addition, the Walker-Luna study found no pattern of racial or ethnic bias in IA's investigations and there were a large number of officers who wanted **more** discipline in the department and were not opposed to citizen oversight. Where IA was failing in terms of oversight was its efforts and/or ability to reach out to the community as many in the community were unaware of its existence or purpose. The low volume of complaints received by the IA unit in 1995 and 1996, as compared to other jurisdictions, reflected the communities' lack of awareness regarding the oversight function. In short, citizens were not filing complaints when they should because citizens were unaware of a mechanism to do such. Moreover, the literature advertising

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<sup>2</sup> Albuquerque Police Department, Standard Operating Procedure 3-41, March 16, 2011. (*emphasis added*)

and explaining the mechanism by which they could file a formal citizen complaint was not widely available.

Prior to the current system police oversight system, the city had created the office of Independent Counsel (IC) by ordinance in 1987. Similar to the current ordinance, the 1987 ordinance required the IC be an attorney. In addition, the ordinance limited the term of the IC to no longer than one year and required the IC to report to the mayor and city council on a quarterly basis or upon request. The ordinance further defined the purpose of the Independent Counsel was to “ensure a fair, objective and impartial investigation” and to “review all Albuquerque Police Department Internal Affairs section investigations for the purpose of making recommendations to the Chief of Police as to whether disciplinary action should be taken.” The IC had the authority to conduct an independent investigation with hired outside investigators.

The IC also had a policy review function in which it could recommend policies related to the complaint process and general police practices. The Walker-Luna study found that the IC directed the complaint investigation process and added an element of professional citizen oversight to the process, but it was not fully utilizing its authority to review policies and procedures of the APD. Furthermore, there were questions about the overall quality of the complaint investigations, for which the IC and Internal Affairs shared some responsibility. Moreover, the IC engaged in no public outreach and this lack of visibility undermined the positive accomplishments related to oversight of the APD.

The report found the Public Safety Advisory Board (PSAB) was not being directly involved in the complaint process; but rather, was only providing citizen oversight of general policies and procedures. Its 11 members were appointed by the mayor with advice and consent from the city council. The PSAB was authorized “to conduct studies, receive information, and make recommendations” regarding “policies, practices, and procedures” of the police, fire, and corrections and detention departments and was designed to be proactive rather than just reactive.

The study found the PSAB generally failed in its mission to provide oversight of the APD. The board had hardly used any of its powers and was universally criticized by community groups and leaders of the police department for not giving citizens a platform to address their complaints. The Walker-Luna report recommended the IC report to the PSAB and the PSAB provide input into activities of the IC. The report concluded that the PSAB needed to be restructured and a formal reporting structure should be established for the IC.

**Others dealing with police oversight**

At the time of the Walker-Luna report, the city attorney advised APD on legal matters and defended the city in lawsuits involving actions by APD officers. The city's Risk Management Office oversaw claims against the city arising from lawsuits or other liabilities. Tort claims were of concern because Albuquerque was consistently paying out significant sums for tort claims. The Walker-Luna report suggested the city was too quick to settle claims involving police misconduct and the city attorney and risk management functions provided no feedback to APD leadership. The mayor and city council had substantial oversight of the APD, the IC, and the PSAB because they had ultimate authority over the budgets and the mayor appointed the members of the PSAB. The report noted that at that time the city council showed little interest or knowledge of the problems in the police department, while the mayor had an overly optimistic view of the situation.

The Walker-Luna report included many recommendations to improve the overall police oversight process. Several of them are listed below.

- The independent counsel should make more use of its authority to oversee the APD and should be a more active participant in investigations and be present at interviews as well as conduct investigations.
- The independent counsel should play an active public role in the community.
- The position of independent counsel should be filled through competitive bid, which would facilitate hiring decisions based on comparative competency and the presentation of innovative ideas about how the IC should function.

- The Public Safety Advisory Board should make full use of its authority to conduct studies and make recommendations and participate in long-term planning in order to identify major problems.
- The PSAB should oversee the activities of the IC, giving the PSAB a clearer focus and help elevate the low visibility of the IC.
- The Internal Affairs section of the APD should begin an active outreach program to publicize the complaint process, including outreach presentations to the community and distribution of the APD brochure.
- Internal Affairs should reorganize its citizen police complaint (CPC) filing system and include face sheets (brief one-page summary of each CPC), an early warning system, and a formal process for requests to waive time deadlines.
- The City Attorney and Risk Management Office should reduce tort claim payments and provide more feedback to APD.
- Steps should include a policy on settling tort claims against the city that addresses the underlying behavior of APD officers, the establishment of specific goals and timetables for reducing tort claims based on payments from comparable cities, and a formal system of feedback to APD officers regarding problems that might require additional training.
- The city council and the mayor should take a more active role in overseeing the APD.
- All public officials need to work closely with mental health professionals to examine both the range of services for the mentally ill and APD policies for handling mentally ill persons.

In July 1997, the city council held town hall meetings on the Walker-Luna report and committed to evaluate the report's recommendations and revise the oversight system. In November 1997, a Task Force on Police Oversight began meeting to review and analyze the report and consider overhauling the existing oversight system. The task force completed its report in May 1998 and made the following recommendations:

- Accept citizens complaints at police and non-police sites;
- Monitor and track all citizen complaints;
- Improve analysis of complaints and the timeliness of investigations;
- Implement an early warning system;
- Establish a civilian board or commission for oversight of police matters only;
- Include an active program of community outreach by the oversight body; and
- Provide full-time staff and adequate funding to ensure civilian oversight of the APD.

The task force discussed five different civilian oversight models and ranked them, but did not recommend any of the models. The Albuquerque Citizens on Police Accountability recommended a model that included a commission or board with the ability to conduct independent investigations leaving discipline to the Chief of Police. The task force also made nine recommendations on the oversight system. Based on a system that included a police oversight board or commission, it recommended:

- Members of an oversight board or commission be appointed by the mayor after being recommended by the city council and with advice and consent of the city council or appointed by the city council without mayoral involvement;
- Provide mediation as an alternative to investigations;
- Hold public hearings after all fatal incidents involving police;
- Re-examine oversight commission after 18-months;
- Citizens should have appeal right that include cross-examination of police officers;
- Selected the Independent Counsel by competitive bid and there should not be an attorney client privilege between the IC and the city;
- Investigate and respond to citizens upon receipt of a petition of 75 residents on issues raised in a petition;
- Increase public disclosure on investigations and discipline imposed on officers; and
- Televisе commission meetings.

**The POC is created**

After carefully reviewing the recommendations provided by the Walker-Luna report and those made by the Task Force on Police Oversight and the Albuquerque Citizens on Police Accountability, the city took action. In 1998, the city council overhauled the oversight system by passing the Police Oversight Ordinance (the ordinance). The ordinance included many but not all of the aforementioned recommendations. The ordinance created the Albuquerque Police Oversight Commission (POC) to provide civilian oversight of the APD and to oversee all citizen complaints of the police department. The POC was established to promote a spirit of accountability and communication between the citizens and the APD while improving

community relations and enhancing public confidence. Powers and duties of the POC are established in Section 9-4-1-5 of the ordinance and include: to oversee the full investigation and/or mediation of all citizen complaints; to audit and monitor all investigations and police shootings under investigation by APD's Internal Affairs (IA); to submit all findings to the Chief of Police, who has final disciplinary authority; to conduct regularly scheduled televised public meetings with a prepared agenda and to begin each meeting with public comment; and to engage in a long-term planning process for the purpose of identifying major problems and establishing a program of policy suggestions and studies each year.

The ordinance established an Independent Review Office to be directed by an Independent Review Officer (IRO). The Independent Review Office is to receive all citizen complaints and claims directed against the APD and its officers. The IRO is to review the citizen complaints and assign them for investigation to either the APD for internal investigations or to an independent investigator; the IRO is to oversee, monitor, and review all investigations and make findings for each; all findings are to be forwarded to the POC, which reviews the investigative work of the IRO and submits all findings to the Chief of Police, who has final disciplinary authority.

In addition, the IRO is to monitor all claims of excessive force and police shootings and be an ex-officio member of the Claims Review Board, which is a panel of city officials established to review lawsuits against the city and make recommendations to the city council on claims presented. The IRO is to maintain and compile all information necessary for the POC to prepare its quarterly report. The position of Independent Review Officer is required to be filled by a person with a law degree and five years of experience in criminal investigations. The IRO reports directly to the POC and acts as lead investigator and manager of the office.

The ordinance requires the IRO to submit findings and prepare a public record letter to the POC for review and approval. The public record letter is sent to the complainant upon POC approval. The ordinance provides a process to be followed when the IRO and the Chief of Police

disagree on findings. When this occurs they treat the complaint as a “non-concurrence” issue and conduct a hearing. When there is still disagreement after the POC hearing, the city’s Chief Administrative Officer (CAO) is to review the investigation and render a final decision. Findings of the POC/IRO are placed with the chief’s findings on the Internal Affairs disciplinary status sheet and are to be filed in a Citizen Police Complaint file and the police officer’s retention file. The Chief of Police may take whatever action is necessary, including disciplinary action, to complete disposition of the complaint.

If a complainant is not satisfied with the findings of the IRO, he or she may appeal the decision to the POC within ten business days of the receipt of the public record letter. The POC upon appeal may modify or change the findings and/or recommendations of the IRO and may make further recommendations to the Chief of Police regarding the findings, recommendations, or discipline imposed or proposed by the chief. In addition, a complainant who is not satisfied with the final decision of the Chief of Police on any matter related to the complaint may request the CAO review the complaint, the findings of the IRO and the POC, and the actions of the Chief of Police. The CAO, upon completion of the review, shall take any action necessary including overriding the decision of the chief regarding disciplinary actions to complete the final disposition of the complaint.

The POC is required to prepare quarterly reports that contain information on the number, kind, and status of all complaints received including those sent to mediation; discussions on issues of interest undertaken by the POC; POC findings and Chief of Police’s issuance of discipline on those findings; ongoing police department disciplinary trends; information on public outreach initiatives undertaken by the IRO or the POC; and the status of the long-term planning process identifying major problems and policy suggestions.

Passage of this ordinance was a tremendous stride for the city in improving police accountability and communications. To help ensure the ordinance was accomplishing what it was

intended to, the ordinance as passed in 1998 required a complete evaluation and analysis of the oversight process after the ordinance was in effect for 18 months. To fulfill that requirement, a study was undertaken in 2002 by another leading expert in police accountability, Richard Jerome of the Police Assessment Resource Center (PARC). Again, the City of Albuquerque is commended for hiring a leading expert who provided a detailed and objective account of the system as it stood in 2002.

### ***2002 Jerome Report***

Prior to a study conducted in 2002, resulting in what is now known as the “Jerome Report”, the city council established a Public Safety Committee, which in turn set up the Citizens’ Task Force on Police Oversight, which ultimately led to the codification of the Police Oversight Ordinance establishing the POC and the IRO. By the time of the Jerome Report, police oversight had three components, or “players” as Jerome established in his report. The first of the three major components of police oversight in Albuquerque was the APD’s Internal Affairs section (IA), which *investigated* citizen complaints (Citizens Police Complaints or CPCs) against officers and allegations of misconduct initiated by other APD officers and supervisors. At the time of the Jerome Report, IA handled approximately 350 to 400 investigations per year.

The second major player was the IRO, who acted as an auditor and independent investigator of allegations of police misconduct. The IRO *reviewed* all CPC investigations conducted by the APD as well as IA investigations of shootings and other uses of deadly force. The IRO conducted some investigations of CPCs using investigators from his office or outside investigators. In those cases, the IRO’s findings were sent to IA for its concurrence or non-concurrence.

The third player was the Police Oversight Committee (POC), which had seven volunteer commissioners. They heard appeals of CPC decisions where the complainant was not satisfied with the findings of the Chief of Police or the IRO. They also invited public comment at monthly

meetings, and reviewed APD policies and practices and recommended improvements as established in the ordinance.

Jerome's report concluded that the oversight system had "enhanced the quality of internal police investigation" and had partially achieved the goals that had been established, but there was substantial room for improvement. He implored the city not to abandon what it had started. Some of the significant findings and recommendations are provided below.

### **Citizen Complaint Process**

Regarding the complaint form and process, Mr. Jerome suggested that changes be made to the complaint form by adding more specific questions about the location of the incident, the identification of the officer(s) involved, injuries, and about how and by whom the complaint had been received. He went on to recommend the complaint form be available on the APD's website and there be links between the IRO and the APD websites. He recommended that the IRO conduct a survey to determine if forms and assistance should be available in other languages and that the IRO examine whether there were additional locations where the form should be available.

The ordinance requires citizen complaints to be filed within 90 days of the incident. Mr. Jerome recommended the time limit be extended, although he did not suggest a more appropriate length of time. Internal investigations by IA have no similar time constraint.

One component of the complaint process he considered very important involved informal complaints and informal resolutions. For a complaint to be investigated as a CPC, it had to be in writing, otherwise it was treated as an informal "verbal" complaint. These, however, were then and still are rarely, if ever, documented or investigated. Jerome recommended that the APD document all informal resolutions of complaints in the field. The IA and the IRO should be notified of the complaint and of the resolution, so they can be sure that serious complaints are appropriately handled. The APD and the IRO should review this process and depending on the results, should consider eliminating the distinction between formal and informal complaints. He

went on to suggest the person fielding the complainant's telephone call should complete the written complaint form, which should then be treated as any other complaint and investigated as appropriate. He also suggested the APD install a confidential hotline for complainants to call.

The Police Oversight Ordinance permits the use of mediation to resolve complaints, but this was rarely used then as a tool to resolve complaints. Mr. Jerome recommended the IRO use mediation to a greater extent and set up a system whereby the success of mediators can be evaluated and tracked.

### **The IRO**

The ordinance created the Independent Review Office and the position of Independent Review Officer (IRO). The Jerome Report made a dozen recommendations about the IRO. The more significant among them being that the IRO should have a term of at least two years and the term be extendable by the mayor upon recommendation by the POC; the IRO should place more focus on whether there are tactical concerns related to police shootings rather than focusing on whether a shooting was legally justified; and when the IRO comments on specific APD policies as a result of a CPC, they should be separately documented and APD's responses should be tracked. A briefing of these policy comments and APD's responses should be included in presentations made during regular POC meetings.

Jerome thought the IRO review of CPC files had several positive results: it is a double check on IA investigations. As a result of the IRO review, the IA investigations had become more careful and complete. By conducting its own reviews, the IRO added to citizen confidence in the oversight system and provided a benchmark by which IA investigations could be measured. From its CPC reviews, the IRO had identified policy and training issues of concern for the APD. However, similar to prior issues with the Independent Counsel, the Jerome report asserted that the IRO had made only limited use of their policy review function. Moreover, the report suggested the IRO develop plans for more systematically identifying and addressing APD policy issues.

### **The POC**

The major concerns expressed by Mr. Jerome regarding the POC involved three main issue areas: training, appeals hearings, and policy analysis. He thought members would benefit from additional training and an orientation for new members, which went beyond the required four hours of training per year on civil rights. He felt strongly that members also would benefit from participating in “ride-alongs” with APD officers.

In an effort to promote public awareness and in accordance to the police oversight ordinance, appeals hearings were (as they are today) open to the public and broadcast live on public access TV. Jerome had concerns about that policy and recommended the appeals hearing portion of the POC meeting not be televised and only the results be reported on television. He believed this policy discouraged officers from appearing at POC appeals hearings and reduced the effectiveness of the entire process.

Each POC meeting opened (and still does) with a public comment period. Comments were initially limited to two minutes but the POC abandoned that limitation after opinions were voiced by persons who wished for longer periods to comment. Jerome recommended the POC chairperson have greater discretion to limit comments to those related to the APD and the POC and to limit public comments to a reasonable time.

Mr. Jerome recommended the POC increase its emphasis on policy evaluation, analysis of police training, and patterns or trends in complaints or use of force. He went on say that there is disagreement over the role the POC should play and there is a clear gap between the perceptions of the POC’s role and its actual activities.

### **The APD**

After a shooting investigation is complete it is referred to the District Attorney’s Office (DA). The APD also convenes a Shooting Investigation Review Team (SIRT) to examine the incident from a policy, tactic, and training perspective. Mr. Jerome recommended limiting the

IRO and POC roles in shooting investigations to reviewing investigations rather than conducting investigations because the APD has the capabilities and expertise to conduct shooting investigations while the others do not. The IRO would review and provide conclusions to the POC as required in the ordinance. Also, the IRO should review SIRT reports and report to the POC on the findings and recommendations. The Jerome Report cited a concern about the thoroughness of IA investigations.

The report pointed out that the police department had made significant strides in identifying and tracking potential problem officers. It had a “functioning, but rudimentary early warning system” that included the use of a part-time volunteer who created a Microsoft Access-based tracking system and was entering data. He pointed out additional concerns about the reporting of use of force and the lack of analysis of use of force data.

The Jerome Report stated that city’s the Risk Management Office and the City Attorney’s Office were responding to recommendations made in the Walker-Luna report by taking a more active role in monitoring patterns of police misconduct alleged in tort claims and lawsuits and by providing feedback to the APD regarding certain police behaviors. There was a risk management officer assigned to the APD who implemented a system to notify an officer’s chain of command of all tort claims filed against an officer and was to prepare quarterly and annual reports containing aggregate data and analysis of tort claims against APD officers. However, the reports were not made available to Jerome or others. The report recommended that the Risk Management Office reports be made available to the IRO and POC.

The report also recommended that APD establish a liaison with the DA’s office and the courts to track criminal cases that are dropped due to bad reports, misconduct, or illegal searches and that the APD track resisting arrest and assault on police officer charges to ensure that the use of force involved in such incidents are appropriately reported and investigated.

The Jerome Report concluded that although there had been some problems with the implementation of the ordinance, the “promise of effective oversight is still there.” He was concerned that the IRO and the POC had “not reached their full potential.” Nevertheless, he believed it was in the city’s best interest to maintain the general structure the ordinance created and focus on improving practices and procedures of the IRO and the POC to make them more effective organizations.

***2006 MGT Report***

As required by city ordinance MGT was retained in 2006 to follow up the Jerome Report with another review of the police oversight system. In addition to a review of the process, generally, MGT reviewed the oversight system by its three major components: Albuquerque Police Department (APD), Independent Review Officer (IRO), and the Police Oversight Commission (POC). The first of the three components was the APD’s Internal Affairs (IA) whose primary responsibility was to handle internal (I) complaints; however, IA also handled a sizeable portion of the citizen police complaints (CPC).

The second major player was the Independent Review Officer (IRO), who acted as an independent investigator of allegations of police misconduct. In addition to reviewing and providing findings of all CPC investigations conducted by IA, the IRO reviewed the completed investigations of IA involving a shooting and other uses of deadly force and provided an account to the POC as to the thoroughness of IA’s investigations. The primary role of the IRO was, and still is, to conduct thorough and complete investigations of CPCs using investigators from his office.

The third player was the Police Oversight Committee (POC). In addition to approving the IRO’s finding letters and hearing appeals of CPC decisions, the Commission also invited public comment at monthly meetings, and reviewed APD policies and practices so as to recommend changes to the department policy or other improvements, as established in the ordinance. While a

review of policies and practices is an explicit role of the POC, it was and still is not commonly practiced by the POC.

As had the previous reports, the 2006 MGT report found that that the oversight system had achieved many of the goals established early on by the city, but there was substantial room for improvement. Some of the more significant findings are provided below.

### **Citizen Complaint Process**

To initiate the process, a complainant must first complete a complaint form. The MGT report suggested changes to the format of the complaint form to ensure that more information is captured and readily available to the investigator so as to reduce the need to conduct time and labor intensive research using APD records or through interviews with the complainant. Given the volume of citizen complaints, it was thought that the capture of additional information would help streamline the process; therefore, allowing investigators the time and resources to conduct more investigations. Moreover, the complaint form required a signature. The MGT report propounded that this requirement violated the spirit of the law and suggested that at least a preliminary investigation be held for an anonymous complaints if the allegations warranted such and a minimum of facts could be established.

The ordinance requires citizen appeals to be filed within 10 days of receipt of findings letter. However, the average appeal time for other oversight processes was 30 days; therefore, the MGT report recommended the time for appeal be extended to 30 days.

Lastly, the ordinance permitted the use of mediation to resolve complaints; however, mediation was rarely used as a tool to resolve complaints. MGT recommended the continued and expanded use of mediation through various changes to the process. One of these changes would include a clear and distinct notation of “successful mediation” in the summary of a complaint, as provided in the quarterly and annual reports issued by the IRO’s office. Another recommended

change was the creation of a standard operating procedure (SOP) that established a formal process and criteria for early identification of those CPCs appropriate for mediation.

### **The IRO**

The ordinance created the Independent Review Office and the position of Independent Review Officer (IRO). MGT's previous report made numerous recommendations about the IRO. The more significant among them being that the IRO should hire an additional investigator to allow for all CPCs to be handled by the IRO's office; the IRO should have a term of at least three years to guarantee the best possible pool of applicants; the IRO should plan for and engage in more community outreach; and seek ways to increase the number of responses and provide a more in-depth analysis of the results of the complainant survey.

### **The POC**

The major concerns expressed by MGT regarding the POC involved two primary issues: training and term limits. MGT determined that POC members would benefit from additional training, including an orientation for new members. In addition to new training, the tracking and monitoring of on-going training requirements was necessary to ensure POC members remained engaged, and therefore integral to the process.

Along with training, MGT found the term limits of POC members to be counter-productive. In light of the nuanced and complicated relationship between law enforcement and citizenry, it takes new members a year or better to become comfortable with their role and become productive members of the Commission. By limiting a POC members terms to two, the city is denied the benefit of institutional knowledge.

### **The APD**

MGT report cited concerns regarding the quality and number of IA personnel, the on-going practice of IA conducting investigations for citizen complaints, and the process, or lack thereof, for integrating complaints into the early warning system (EWS).

Because the early warning system is meant as a tool for “training and counseling” it would benefit the overall effectiveness of the system to include informal complaints, currently tracked on an employee card, but not integrated into the EWS database. (The system used to track and identify individual officer and department-wide trends.)

Given the sensitive nature of the assignment and the need for some level of stability within the unit, MGT also recommended that formal criteria be developed to establish a minimum and maximum amount of time a commander should oversee the IA unit. In addition to the IA commanders, MGT noted the common practice of filling investigator position with newly promoted sergeants, citing the challenging nature of the assignment as a reason to have more seasoned sergeants in the role.

Lastly, MGT’s review of the data revealed a rise in the number of CPCs being investigated by IA. This gave rise to a recommendation for an additional investigators to help absorb the workload of the unit.

### **This Report’s Structure**

As with our 2006 report, this report will also be organized by the three major components of the oversight system: APD, POC, and the IRO. This first chapter includes an introduction, the study’s background, and a brief history of police oversight in Albuquerque. Chapter 2 briefly describes the approach and methodology for this review. Chapter 3 provides some general information on civilian oversight of police agencies. Chapter 4 captures the findings and recommendations of the consultant team related to the overall police oversight process in Albuquerque. Chapters 5, 6 and 7 present the findings and recommendations related to the Police Oversight Commission, the Independent Review Officer, and the APD’s Internal Affairs section, respectively. Chapter 8 includes additional findings and recommendations that are related to other accountability measures in place in Albuquerque. Chapter 9 contains a summary and any conclusions born of MGT’s review. In light of the recent review by Police Executive Research

Forum (PERF) in response to the numerous police shootings, MGT omitted any direct findings and recommendations regarding police shootings from this report. After careful review, MGT finds the PERF report to be thorough and well supported with many solid recommendations. However, many of the recommendations in the report are likely to touch and concern issues involving use of force and the department's ability to remain accountable to the public it serves.

Also, there are three appendices following Chapter 9. Appendix A is an account of civilian oversight models from across the country. Appendix B is a table of the recommendations made in the 2006 MGT report and the status of those recommendations. Appendix C is a table of all recommendations contained in this report.

### **Acknowledgments**

The consultant team thanks the City of Albuquerque for the opportunity to conduct this study. The team thanks specifically those who agreed to be interviewed including: the mayor, city councilors, the Chief of Police, city and police department staff, the APD union, Police Oversight Commissioners, the Independent Review Officer and his staff, other city departments including Risk Management and the City Attorney's office, and various local citizen groups. The insight provided by each of the above participants was invaluable to the successful completion of this study.

## 2 PROJECT APPROACH AND METHODOLOGY

MGT of America, Inc., a multi-disciplinary consulting firm specializing in public sector management, planning, and organizational studies for a variety of federal, state, and local government agencies, was selected to conduct the “Evaluation and Analysis of the Police Oversight Ordinance and Police Oversight System” for the City of Albuquerque. The primary MGT staff assigned to this project is Mr. Bob Lauder and Mr. Chad Lersch. Two independent consultants have also played a significant role on this project. They are Bruce Mills and Dr. Ron Glensor. The consultant team members are very experienced in law enforcement operations and conducting numerous reviews of law enforcement agencies.

### **Project Approach**

MGT developed a detailed work plan for the study with work tasks that would serve to guide and direct the review.

In June and July of 2011 MGT spent time on-site collecting information and conducting interviews with various stakeholders. MGT’s approach was to obtain input from as many stakeholders in the police oversight process as possible. Team members interviewed city officials including the mayor, city council members, city staff from the Risk Management Office, and the City Attorney’s Office. From the APD, team members interviewed the Chief of Police, the Internal Affairs Lieutenant and other command staff. In addition, the team interviewed the president of the police union, members of the Police Oversight Commission, the Independent Review Officer (IRO), IRO investigators, and administrative staff. The team also interviewed representatives of various community organizations.

To gain a more thorough understanding of the oversight process in Albuquerque, the team reviewed policies and procedures, dozens of documents, reports, summaries, and investigations including the following:

- Relevant APD Standard Operating Procedures (SOPs), Administrative Orders, Procedural Orders, and General Orders;
- Quarterly and annual reports prepared by the IRO on behalf of the POC;
- Internal Affairs Quarterly Reports;
- The 1997 Walker-Luna Report;
- The 2002 Jerome Report;
- The 2006 MGT Report;
- The 2011 PERF Report;
- Information provided by the National Association for Civilian Oversight of Law Enforcement – NACOLE;
- Complaint forms and letters sent by the IRO to complainants; and
- The “Agreement between the City of Albuquerque and the Albuquerque Police Officers Association.”

MGT examined the APD Early Warning System (EWS) and procedures and protocols of the IA and IRO for their investigations, along with procedures related to police shooting investigations.

The team attended or viewed two POC meetings to observe the appeals process and the reporting process used by the IRO for securing the approval of his investigations from the POC, and letters sent to complainants.

The team evaluated the POC/IRO’s public outreach activities including its website and the complaint form and distribution procedure. As the consultant team began to formulate its findings and draft recommendations, additional requests for information were made, as needed.

Interviews, data review and analysis, and follow-up questions and discussions were completed in August and September 2011. A draft report was provided to the city on September 22, 2011.

# 3 BACKGROUND OF POLICE OVERSIGHT

## Background

The concept of civilian oversight of police began back in the 1960s as the concern over abuse of civil rights and violations of civil liberties by police reached critical levels as civil rights demonstrations and riots spread across the country. At first, “it was dismissed as radical and dangerous by virtually everyone outside the civil rights communities,” but by the beginning of the 21st Century more than 80 percent of the largest cities had some form of civilian oversight.<sup>3</sup>

Along with the rise of citizen oversight, law enforcement professionals across the country are striving for a new professionalism. To do so, law enforcement leaders are committing themselves and their agencies to a higher level of accountability while bolstering their legitimacy. The commitment to accountability includes an “acceptance of an obligation to account for police actions not only up the chain of command within the police departments but also to civilian review boards, city councils and county commissioners, state legislatures, inspectors general, government auditors, and courts.”<sup>4</sup>

Holding law enforcement agencies and officers accountable for their actions was previously only an internal police function. However, with the advent of civilian oversight, this has become a shared responsibility. While some of the more serious investigations, including use of force and officer involved shootings, are still largely handled internally, many of the citizen complaints toward individual officers and departments are now handled by an outside civilian oversight.

<sup>3</sup> Samuel Walker, *Police Accountability: The Role of Citizen Oversight* 6 (2001).

<sup>4</sup> Christopher Stone and Jeremy Travis, *Toward a New Professionalism in Policing*, *New Perspectives in Policing*, Harvard Kennedy School and National Institute of Justice, March 2011, at 1-2.

There are essentially four purposes for police oversight:

1. Holding officers accountable for misconduct;
2. Keeping a record, recognizing complaints as vital sources of information about a department;
3. Identifying patterns and problems related to policies and supervision rather than misconduct; and
4. Building public trust and community cohesion by allowing complainants a voice.<sup>5</sup>

Most civilian oversight agencies operate by receiving complaints about law enforcement officers from the public and responding to them after conducting investigations when possible. This system is designed to hold individual officers accountable for their actions. However, more enlightened organizations are now recognizing that the information provided by and through these complaints provides an opportunity to analyze broader trends and systemic issues by which departments can be held accountable and policy changes can be made when necessary.

An alternative approach to a civilian investigative model involves appointing a liaison or auditor to work with police departments to resolve systemic problems related to organizational management, supervision, procedures, and policies by analyzing trends and other information, while letting Internal Affairs (IA) conduct investigations.

While there still remains very little information on the overall effectiveness of civilian oversight, there is a great deal of information on what communities around the country are doing and why each of them holds civilian oversight as a key to improving relationships between the community and the police. In a 2002 paper published by the Vera Institute of Justice, "Building Public Confidence in Police Through Civilian Oversight" the authors concluded:

*Civilian oversight can never substitute for good police leadership or displace internal methods of fostering accountability and responsibility. By exposing police practice, pointing out the shortcomings in how police regulate themselves, reporting honestly on the depth and pace of police reform, and engaging the*

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<sup>5</sup> Ms. Debra Livingston, Professor of Law, Columbia University, comments made at the Eight Annual Conference of NACOLE, Cambridge, Massachusetts (November 2002).

*public and the police in a dialogue, however, civilian oversight is a vital part of democratic policing.*<sup>6</sup>

Although most of the civilian oversight agencies vary somewhat from city to city, there are essentially three types of civilian involvement in the review of police:

1. Investigative and Quality Assurance: Civilians outside of the police conduct investigations of citizen complaints;
2. Review and Appellate: Civilians are empowered only to *review* how the police department itself has adjudicated individual citizen complaints without access to internal police documents or the investigatory file; and
3. Evaluative and Performance-based: Civilians *audit, investigate, monitor* and report on the competence and effectiveness of the police managing misconduct *as a whole but do not review or investigate individual complaints.*<sup>7</sup>

### **Models of Police Oversight**

In an Investigative and Quality Assurance Model, individual complaints are received and investigated by persons who are not sworn police officers, making it the most independent form of police oversight. Investigative reports are then reviewed by either an independent board that votes on the merits of the case and sends a recommendation to the chief of police or a separate municipal agency with a single director who reviews the reports and forwards a recommendation on to the chief of police.

This approach is the most independent of the police department. With an independent board's input, diverse elements from the community can be involved. However, poor investigations that lead to weak findings can quickly breed contempt amongst the officers and give rise to morale problems; therefore, this model requires a qualified staff to conduct the investigations and well-defined procedures.

<sup>6</sup> Emma Phillips and Jennifer Trone, Building Public Confidence in Police Through Civilian Oversight, Vera Institute of Justice, September 2002, p. 12.

<sup>7</sup> Samuel Walker, *Varieties of Citizens Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police*. American Journal of Police, Vol. XV, No. 3, 1996, pp. 72-73 and *Review of National Police Oversight Models for the Eugene Police Commission*, Police Assessment Resource Center, February 2005, pgs. 11-21. (*emphasis added*)

In a Review and Appellate Model, citizen complaints are investigated by sworn police officers assigned to the department's IA unit or office of professional standards. Reports are then forwarded to a citizen oversight entity for a review of the findings on the merits and then a recommendation is forwarded to the police chief executive. Some oversight entities consist of a board while others are just an individual. This model provides more oversight than a completely internal form of review; however, it is less independent than the previously discussed model. Frequently, this model promises independence that it often cannot deliver and, therefore, may not fully resolve community concerns about the complaint process. This model, while not intended to be deployed in Albuquerque, is currently employed to some extent, as many of the citizen complaints are being reviewed by IA. MGT has, and continues to, recommend that all citizen complaints be investigated by an outside civilian oversight entity so as to comply with the letter of the law as set forth in the ordinance.

The third model, an Evaluative and Performance-based model, is an "auditor" approach. Individual citizen complaints are received, investigated, and disposed of by the police department. An auditor conducts regular audits of department complaint processes and makes public reports. This system can monitor the internal affairs unit of the police department and recommend improvements. Some community leaders may perceive these audits as not fully independent from the department.<sup>8</sup>

Appendix A provides information on the types of models used by cities across the country. Often cities' oversight systems are a combination of two or more of the above models, borrowing various elements of each of the above model. The Albuquerque model is a hybrid, combining elements of the investigative and quality assurance model and, at least in theory, evaluative and performance-based model.

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<sup>8</sup> Walker, Samuel, Geoffrey P. Alpert, and Dennis J. Kenney. *Early Warning Systems: Responding to the Problem Police Officer*, National Institute of Justice: Research in Brief, August 2000.

Lastly, while it is true that an effective citizen oversight process lends well to increased accountability on the part of the department, the citizen oversight process should be viewed as but one tool among several that can be used to ensure true accountability. If jurisdictions fail to appreciate this and rely too heavily on the police oversight process to ensure accountability, this over-reliance is sure to breed disappointment among community members.<sup>9</sup> However, along with the increasing drumbeat of accountability, law enforcement leadership must pay increasing attention to citizen oversight and commit to the increased engagement of the public and community leaders.<sup>10</sup>

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<sup>9</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, Nov. 2000, at 3.

<sup>10</sup> *Id.* at 4

## 4 FINDINGS AND RECOMMENDATIONS FOR THE POLICE OVERSIGHT PROCESS

This section of the report provides the results of MGT's overall evaluation and analysis of the City of Albuquerque's police oversight system and process.

Albuquerque's police oversight process begins with a citizen's complaint. Complaint forms are available at numerous locations throughout the city and on the IRO's website at [www.cabq.gov/iro](http://www.cabq.gov/iro). When a written complaint about an APD officer or the police department is received by the IRO, it is entered into the IRO's case management database, a case number is assigned, and the case is reviewed by the IRO to determine if it meets the timely filing requirement and the criteria for mediation. If timely filed and the parties are unwilling to mediate, the case is assigned for investigation. The IRO will assign the complaint to one of the three IRO investigators or to APD's Internal Affairs Section (IA) for investigation, depending upon the type of complaint and the IRO's current caseload.

Upon completion of the investigation, the IRO reviews the investigation report for thoroughness, impartiality, and fairness, and identifies which APD Standard Operating Procedure(s) (SOP) were alleged to have been violated and makes a "Finding" based on the preponderance of the evidence contained in the investigation. The complaint may have one or more possible outcomes. The types of possible complaint outcomes are:

Sustained:	The allegation is supported by sufficient proof.
Not Sustained:	The evidence is not sufficient to prove or disprove the allegation.
Unfounded:	The allegation is false or otherwise not based on valid facts.
Exonerated:	The incident that occurred or was complained about was lawful and proper.
Inactivated:	The investigation was inactivated by either the citizen or by internal review. The complaint was determined to not merit further investigation, there was no alleged violation of an SOP, submitted more than 90 days from the date of the incident, was not against APD member(s), the APD member cannot be identified, or the case was successfully mediated.

The IRO's findings are then shared with the Chief of Police who may concur or issue a non-concurrence; however, the Chief of Police has sole disciplinary authority. If there is a concurrence, then the POC is provided the public record letter for approval; after which the letter is sent to the complainant via certified mail. The POC may only overturn a concurrence in a very narrow set of circumstances, including findings of fraud, misrepresentation, or misconduct. If there is a non-concurrence between the IRO and Chief of Police, the POC can either agree with the Chief of Police or send the non-concurrence to the city's Chief Administrative Officer for a final ruling.

If the complainant is dissatisfied with the findings, he or she may appeal that decision to the POC. Appeals must be made within ten business days of receipt of the public record letter. Appeals are heard at the regularly scheduled monthly televised public meeting of the POC. The POC may uphold or modify the recommendations of the IRO and may make additional recommendations to the Chief of Police regarding discipline. A citizen still dissatisfied with the action of the POC or the Chief of Police may request a review by the city's Chief Administrative Officer (CAO). The POC may also appeal the Chief of Police's decisions to the CAO.

The IRO's summary of the investigation, the findings, and a draft of the public letter of record are provided to POC commissioners prior to the commission's monthly meeting for their review. This is generally provided approximately ten days before the scheduled meeting to provide adequate time for commissioners to review the material so they are prepared to rule on IRO recommendations or, in a case where the Chief of Police and the IRO disagree on the findings, to conduct a hearing and make findings on the case.

#### **FINDING**

The public letter record sent to a complainant advising him/her of the findings of their complaint contains the technical/legal terms without any explanation of the meaning of the terms.

Terms such as exonerated or not-sustained are somewhat technical and deserve further explanation so the complainant completely understands the outcome of his or her complaint.

Moreover, a successful oversight process is built upon extensive community outreach. The public letter record and any accompanying literature sent to the complainant is a simple, but effective way to accomplish community outreach without taxing the resources of the process.

**RECOMMENDATION 4-1:**

**Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.**

Community outreach is a powerful tool for improving police-citizen relationships. The brochure is an opportunity for additional public outreach and can include information on how one might complete a survey. Along with additional explanation on the process, how the outcome was achieved, the POC, and the IRO, an explanation of the appeals process should be provided in the brochure. The brochure should be two sided with English on one side and Spanish on the other. This recommendation was also made in MGT's 2006 report.

**FINDING**

There are two ways police oversight can be achieved, either retroactively or proactively. A heavy focus on complaint disposition, with little policy review, restricts the role of the citizen oversight process by narrowly focusing on after-the-fact investigations.<sup>11</sup> Moreover, too much focus on individual complaints results in misguided practice of turning the "lowest-ranking members of the department into scapegoats" while ignoring larger organizational problems.<sup>12</sup>

As such, data compiled from individual complaints can be used to proactively address and improve department performance. More importantly, data can be used to shed light on more

<sup>11</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO ST. J. CRIM. L. 653, 655-656 (Spring 2004), see also Reenah L. Kim, *NOTE: Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 505 (Summer 2001).

<sup>12</sup> SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* 145 (2005).

systemic issues concerning training, recurrent supervisory lapses, or unclear or ineffective policy.<sup>13</sup>

Prior to 2007, the annual report issued by the IRO's office provided summaries of historical data on sustained complaints as well as rate of discipline and an account of the number of complaints successfully mediated. In addition, the reports provided an account of the policy considerations undertaken by the POC and IRO. While the analysis was limited, it was far more than has been provided since 2007, in which the reports have either omitted this information or buried it in the details.

**RECOMMENDATION 4-2:**

**Provide analysis of meaningful data that will help to reveal systemic issues that may have given rise to the original complaints. Provide a summary of the details, including rate of mediation and sustained cases, both current and historical in clear and concise charts and tables.**

Many individuals intimate to the oversight process admitted to either not reading or providing only a cursory glance at the annual reports disseminated by the IRO's office. The reports are cumbersome and require a time commitment to identify relevant data that provides a solid level of trend analysis. At a minimum, the IRO's office should provide a summary of the pertinent details in tables and charts at the beginning of the report. To achieve a truly meaningful report, the detail should be provided in a historical context so as to allow for a level of trend analysis that would prove enlightening as to the oversight system's overall effectiveness.

Moreover, thorough data analysis will allow for the proactive oversight thought to achieve real and pervasive change in departments. Again, too much focus on the individual complaints provides only superficial results in which the bigger picture is lost for the detail. A careful analysis of the information provided by the individual complaints can shed light on broader police management issues. In doing such, APD will experience an increased level of accountability that will ultimately bolster its legitimacy with the citizens it serves. As was stated by Livingston in her

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<sup>13</sup> *Supra* note 1, at 658.

2004 article, “[a]ccountability in policing . . . may sometimes be better promoted by an approach to complaints that is less concerned with individual culpability and more concerned with using complaints to enhance police performance.”<sup>14</sup>

**FINDING**

Conciliation or mediation is the informal resolution of a dispute or complaint through face-to-face interaction between parties where a professional mediator typically is a neutral facilitator there to help the parties reach resolution. The mediation process is voluntary and emphasizes dialog in a safe environment where participants can air their views and develop a mutual understanding of their conflict. The mediation process in Albuquerque uses mediators that are police officers, rather than an independent third-party.

As established in the ordinance, citizen complaints about police may be resolved through mediation. The use of mediation in the police oversight process in Albuquerque increased to unprecedented levels in 2005 (13 percent of CPC) and then dropped significantly for the next four years to around four percent. In 2010, the rate of mediation again increased to around ten percent. The success of mediation in 2005 was attributed to the, then new, Chief of Police’s enthusiasm for the process. In this same time period, the Chief of Police established a mediation program by which selected lieutenants and sergeants were trained in mediation. To be eligible for mediation a complaint must not involve use of force or a criminal charge.

The goals of mediation are consistent with the goals of community policing. They both emphasize the values of cooperation and collaboration, the goals of learning and understanding, and the process of problem solving. Therefore, mediation can help to strengthen these values. Problem solving is addressed in that the officer sits down with the complainant, discusses events that led to the complaint, and works out an acceptable understanding. (Often times this is no more than an apology.)

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<sup>14</sup> *Supra* note 1, at 657.

Albuquerque's previous success with the use of mediation to resolve CPCs is an anomaly when compared to what is generally found across the country. A previous national survey identified 16 citizen complaint resolution mediation programs. Of these programs, the activity level was extremely low and only three or four had successfully mediated a substantial number of cases. These programs were operated by citizen oversight agencies, community mediation centers, or police departments.

Because mediation is "out of step with the highly polarized nature of citizen complaints . . . and the traditional adversarial, legalistic style of complaint procedures," mediation is used infrequently for citizen oversight process across the nation.<sup>15</sup> However, when used, it can be a highly effective way in bridging the gap between law enforcement and citizen while minimizing the use of resources required to responds to citizen complaints.

**COMMENDATION 4-1:**

**The continued use of mediation as a way to resolve police complaints in Albuquerque is commendable.**

A successful mediation program is a result of supportive communities and police departments who are willing to participate in mediation. Throughout the country, there are common factors cited that contribute to the failure of mediation programs. One of the most frequently cited issues is opposition from police officers and their unions. Officers may oppose mediation for fear that any admission may be used against them in a formal proceeding. There also may be a lack of understanding regarding mediation or a lack of resources to support the program. Mediation is less costly than investigations, especially in Albuquerque where there are no outside mediators used.

**RECOMMENDATION 4-3:**

**Enhance outreach efforts to complainants and officers alike to encourage the use of mediation.**

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<sup>15</sup> *Supra* note 1, at 664.

Stepping outside the culpability focused, punishment driven regime of the formal complaint process through mediation or conciliation represents the true meaning of the oversight process. APD and the POC should continue working toward increasing the number of cases resolved through mediation. To do such, a brochure or other information should be developed and disseminated widely educating both the complainant and officer to the option and merits of mediation. This information should explain how the mediation process works and why it may lead to more beneficial outcomes for all parties. By increasing the use of mediation, the number of complaints requiring investigation could be reduced, which would allow the IRO's office to reduce the number of CPCs investigated by IA and allows the IRO to engage in more proactive police oversight. This recommendation was also made in MGT's 2006 report.

In addition to increasing public awareness of the process and its merits, the use of outside third-party independent mediators should be explored as an alternative to the current practice of using trained police department mediators. Experts on the field of police oversight have often sighted that one of the primary elements of a successful mediation program is the "need for a level playing field in mediation and an atmosphere of equality among the parties."<sup>16</sup> To achieve the level playing field, it may be necessary that the mediator be a truly independent third party rather than a member and employee of the police department from which one of the parties to the complaint is from. Several citizen oversight programs are attempting to utilize mediation to resolve the less severe complaints and in doing such are contracting with outside professional mediators that will provide the ability to remain objective, both real and perceived.<sup>17</sup> To ensure the success of its mediation efforts, APD and the POC should review its current outreach efforts along with the use of APD mediators to ensure both the communities knowledge of mediation as

<sup>16</sup> Walker, Samuel, et. al., *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders Web Version* (Washington, DC: Government Printing Office (2002) at 27.

<sup>17</sup> See Portland, Oregon's Citizen Police Mediation Program at <http://www.portlandonline.com/auditor/index.cfm?c=29387>; District of Columbia's Office of Police Complaints at <http://occr.dc.gov/occr/cwp/view,a,3,q,603921,occrNav,%7C31081%7C.asp>; and Seattle, Washington's Office of Professional Responsibility Mediation Program at <http://www.cityofseattle.net/police/OPA/mediation.htm> (last viewed October 28, 2011)

an option for resolution and a belief that this option will, in-fact, produce a beneficial outcome by which all parties are satisfied.

**RECOMMENDATION 4-4:**

**Include “successfully mediated” as a complaint disposition category.**

Currently, complaints that are resolved through mediation are classified as inactivated. Complaints can be classified as inactivated cases for several reasons including: if an allegation is not a violation of SOP, is submitted more than 90 days from the date of the incident, is not against an APD member, or the APD member cannot be identified or the complaint was successfully mediated. By categorizing complaints resolved through mediation as inactivated fails to give full credit to the success of the mediation process. Although a notation of “Resolved in Mediation” is made in the SOP field, the fact that the case has been disposed of through successful mediation is unclear barring the creation of a specific disposition category. A successful mediation is an outcome that merits its own finding category because it indicates resolution through collaboration and communication. In fact, the summary of the successfully mediated cases should be separated and grouped ahead of the other cases to further highlight the process and its benefits. This recommendation was also made in MGT’s 2006 report.

**FINDING**

Albuquerque’s citizen police complaint process offers more opportunity for citizens to appeal than many other oversight systems. In Albuquerque, any person who files a citizen complaint and is dissatisfied with the findings of the IRO or of the Chief of Police response may appeal the decision to the POC within ten days of receipt of the public letter of record. The POC may modify or change the IRO’s findings or make further recommendations to the Chief of Police regarding the findings or the discipline imposed. Additionally, any person who filed a citizen complaint who is not satisfied with the final decision by the Chief of Police may request the Albuquerque Chief Administrative Officer (CAO) review the complaint, the findings of the

IRO and POC, and the action of the Chief of Police. This second appeal in Albuquerque to the CAO, also due within ten days of receipt of the chief's letter, is unique among the cities the consultant team reviewed.

Historically, there have been few cases that have been appealed to the POC and even fewer to the CAO.

**RECOMMENDATION 4-5:**

**Extend the deadline for citizens to file appeals from 10 business days to 30 calendar days.**

The consultant team is still unable to conclude whether the relatively small number of appeals and even fewer secondary appeals were the result of a good process in which citizens, who while they may not have been completely satisfied with the results of their complaint, felt they were heard and their claims were thoroughly and impartially investigated. Or is the deadline for appeals too short. Our review of other city appeals processes indicated times ranging from 7 to 90 days, 30 days being the most frequent deadline allowed for appeals. This recommendation was also made in MGT's 2006 report.

**FINDING**

The overall success of the police oversight process depends on a number of players, including the IRO, APD officials, POC members, and elected officials. POC members represent the nine city council districts. As such, each councilor is required to nominate two qualified candidates, from which the mayor must choose one to appoint, with the advice and consent of council. Although the IRO is ultimately appointed by the mayor, he/she must first be chosen as one of three candidates by the POC. Moreover, because the IRO works at the direction of the POC and the POC is a body of community members, the importance of selecting and appointing the POC members must be fully appreciated by the responsible parties.

**RECOMMENDATION 4-6:**

**City Council members must be fully engaged in the process. As such, each member must fulfill his/her duty to provide the Mayor with qualified nominees and maintain a level of oversight into the process by keeping in frequent communication with their appointee.**

The IRO should operate at the direction of the POC, including the level and type of analysis to be conducted by the IRO's for the quarterly and annual reports. The POC should also actively review and monitor APD policy and the type and amount of complaints heard on a regular basis. The success of the oversight process is in large part derived from the success of the POC. Therefore, each councilor should exercise utmost care and judgment in selecting their POC nominees. This begins with careful thought as to the type of individuals that should populate the commission, as even the most promising oversight processes can fail if the citizens chosen to lead are ill-equipped to handle complex and nuanced matters.<sup>18</sup> Moreover, when appointments are expired, each councilor should also be diligent in reappointing, where appropriate, or thoughtfully selecting new nominees. Lastly, to ensure continued success, each councilor should maintain some level of oversight regarding their POC appointment. This includes regular discussions regarding the process and monitoring outcomes of the process.

**FINDING**

The overarching purpose of citizen oversight is to ensure that the law enforcement agency of which it oversees remains accountable to the public it serves. However, given what is required of the citizen oversight process, many experts on the subject believe it is imperative that the citizen oversight process should also be accountable. Monitoring the complaint process is vital to the on-going success of the process. This includes monitoring the independent review agency's performance to ensure that complaints are received by courteous and professional staff and processed in a timely manner.

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<sup>18</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000.

In addition to reviewing the process to ensure satisfactory performance on behalf of the citizen, the very law enforcement agency that is being monitored should also be afforded an opportunity to provide feedback and insight regarding the process. By providing an opportunity for citizens and officers to provide feedback and possibly shape and change the process, the city will be ensuring the on-going success of the process.

**COMMENDATION 4-2:**

**The ordinance provides an automatic review of the oversight process every four years.**

The requirement of the ordinance shows the commitment of the community in ensuring that Albuquerque's police oversight process is and remains as effective as possible. While there are always ways in which a process can be improved, the on-going monitoring of the process itself goes a long way in ensuring the continued success of the Albuquerque oversight process by allowing it to grow with the changing needs of the community it serves, both citizens and law enforcement personnel alike.

## **5 FINDINGS AND RECOMMENDATIONS - THE POLICE OVERSIGHT COMMISSION**

This section of the report provides findings, and where necessary, recommendations arising from MGT's evaluation of the Police Oversight Commission (POC).

### **Police Oversight Ordinance**

Through the adoption of Ordinance 31 – 1998, Part I of Article 4 of the Health, Safety and Sanitation Chapter of the Albuquerque city ordinance created Albuquerque's police oversight system. The ordinance has been amended eight times since its initial adoption, with the most recent amendments occurring in 2008 and 2009. All of the amendments since 2004 concern the POC and its structure, including the qualifications for its members. At the time the commission was formed, the city council held the belief that a properly conceived and functional police oversight system was necessary to promote accountability of police professionals and ensure the rights of the citizens. And while this is still true today, city and citizens have varying ideas on how to achieve an acceptable level of accountability without impeding the efforts of the police professionals in ensuring the on-going safety of Albuquerque's citizens.

The POC is composed of nine members who, as defined by the ordinance; "broadly represent the diversity of this community."<sup>19</sup> To help achieve the desired diversity, the commission is composed of one member from each of the nine council districts. While the members are ultimately appointed by the mayor and confirmed by the city council, the city councilor from each district is required to put forth at two nominees.

There are six minimum qualifications to serve on the commission. The qualifications are:

1. Not have been employed by a law enforcement agency for one year prior to appointment;
2. Have problem-solving and conflict resolution skills;
3. Attend a yearly four-hour civil rights training session;

<sup>19</sup> Albuquerque, New Mexico, Municipal Code Sec.9-4-1-4 (2011).

4. Be willing to commit the necessary time each month and read all materials distributed prior to the monthly meeting;
5. Participate in *a minimum* of two “ride-alongs” with APD officers per year; and
6. Attend a yearly firearms training simulator at the APD academy.

As previously stated, the purpose of the commission is “[t]o promote *a spirit* of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence.<sup>20</sup> To realize its purpose the POC is responsible for overseeing the full investigation and/or mediation of all citizen complaints (CPC) and auditing or monitoring investigations and police shootings under investigation by the APD’s Internal Affairs (IA); however, the POC does not investigate internal police complaints filed by police officers (I) as this is handled by IA. Among its other responsibilities is the recommendation of candidates for the position of IRO and the on-going review of his or her work with respect to the quality, thoroughness, and impartiality of the investigations; the submission of quarterly and annual reports regarding the CPC’s received and completed by the IRO to the mayor and the city council. While the POC does not have disciplinary authority over those officers for cases in which citizen complaints were sustained, it does hold appeal hearings for those complainants dissatisfied with the initial outcome of their complaint, where the complaints and the evidence are heard by the POC anew. Lastly, the POC is tasked with engaging in a long-term planning through which it is to identify major problems and establish a program of policy suggestions and studies.

#### **FINDING**

Despite its role in the process, leadership by the POC is not adequate to achieve the objectives of the ordinance. The POC’s failure to lead is born of two primary issues, failure to train and educate members of the POC and a lack of participation. Despite requirements for some annual training of POC members in the ordinance, training is neither sufficient nor monitored to

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<sup>20</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-5 (2011). (*emphasis added*)

ensure POC members are able to accomplish their duties as a member of the POC. Ride-alongs and range simulation (FATS) attendance is not tracked. This is further supported by comments from some commissioners suggesting that it has been more than a year since he or she conducted a ride-along or attended a FATS training. Similarly, completion of the civil rights training is not tracked; however, the civil rights training is conducted at the POC meetings and is televised and recorded, therefore attendance to this training can be loosely monitored.

Many oversight participants, including some POC members, expressed concern about the lack of knowledge for new members and the desire for more substantial training than is currently required. Members are appointed and expected to contribute immediately without fully understanding the ordinance, the process and the importance of their role in the process, and how it impacts Albuquerque's citizens and the department. Although some have attended the annual NACOLE conference, attendance is not required and the city no longer provides funding. Many participants felt more training would be helpful in ensuring the POC accomplishes its mission.

Lastly, many commented on the lack of power or purpose with regard to the POC. However, as the ordinance establishes, the IRO is actually an arm of the POC and therefore, given the citizen nature of the POC, the POC is only as useful or as powerful as its IRO, which in turn, is largely directed by the POC. A greater familiarity with the ordinance may provide a level of insight regarding the extent to which the POC can direct the activities and reporting activity of the IRO.

**RECOMMENDATION 5-1:**

**Create a training program that ensures all members of the POC are fully informed of their responsibilities and have a level of knowledge regarding police operations to allow each member of the POC to accomplish his or her role as a commissioner.**

Among law enforcement's most significant objections and/or concerns to a police oversight process is that citizen participants may not have a sufficient understanding of law

enforcement policy and procedure.<sup>21</sup> An improved training program would help to alleviate this concern and ensure newly appointed members can become effective members of the POC immediately through frequent and relevant engagement by way of questions, comments, and *overall direction of the IRO's office*. Many of the newer members' actions and comments seem to suggest a lack of familiarity with the process to allow them to be wholly functional members of the commission. An in-depth and comprehensive orientation would provide them with a level of familiarity and purpose necessary to ensure all members are, and remain, actively engaged in the process.

For example, in addition to a minimum residency requirement, the City of Austin, Texas, requires the following of their seven volunteers for their citizen review panel:

- 6 hours of Internal Affairs training
- 3 to 4 day training by Austin Police Department tailored for its panel members and to include training by the special investigations unit, officer involved shootings, response to resistance, the police training academy, the crisis intervention team, firearms training including FATS, and ride-outs on at least two shifts in different parts of the city.<sup>22</sup>

Another example is that of the City of Milwaukee, Wisconsin. Milwaukee's citizen oversight process is comprised of seven part-time board members and a full-time professional staff led by an executive director. Similar to Albuquerque, Milwaukee's board members hail from various backgrounds. To ensure its members are adequately trained to accomplish their duties and achieve the mission of the oversight process each new member is required to attend the Milwaukee police citizen police academy and participate in the department ride along program.<sup>23</sup>

The Milwaukee citizen police academy is a ten-week program consisting of a series of weekly three hour courses which include: classroom academics and practical application in law, police procedure, defense and arrest tactics, firearms training, and exposure to the most state-of-

<sup>21</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000 at 7.

<sup>22</sup> See City of Austin, Office of the Police Monitor, Citizen Review Panel Qualifications at <http://www.ci.austin.tx.us/opm/crpanel.htm>

<sup>23</sup> Milwaukee, Wisconsin, Municipal Code chpt. 314 § 2 (b-2) at [http://cctv25.milwaukee.gov/netit-code81/volume3/\\_ch314/CH314.pdf](http://cctv25.milwaukee.gov/netit-code81/volume3/_ch314/CH314.pdf)

the-art technology the department employs to combat crime. In addition, tours of various police facilities and demonstrations of equipment are also provided.<sup>24</sup> Although Albuquerque mentions a citizen police academy on its website, there is no information regarding upcoming class dates. By all appearance, the academy seems to exist in name only. In addition to providing for an adequate level of training for its POC members, an active citizen police academy would also help to provide for the on-going need for community outreach, helping to build a stronger relationship between the APD and Albuquerque citizens.

**RECOMMENDATION 5-2:**

**Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance. To ensure proper oversight, the city ordinance should be amended to require the annual report to contain an account of the annual training undertaken by members of the POC commission. For those members who fail to comply with annual training requirements, the ordinance should be amended to provide for the removal of a non-compliant POC member.**

The IRO should develop and maintain a system by which the POC members' required training can be tracked and monitored for compliance. In addition to allowing for the notification of non-compliant members of the POC, the system should also provide an automated mechanism by which the IRO can notify commissioners if they are deficient in meeting their annual training requirements and allowing the non-compliant member to come into compliance prior to removal.

In addition to requiring all new members to complete the Police Citizen Academy, Milwaukee citizen oversight process requires its commission to submit an annual report to the council in which an account of the training taken by each of its members is given.<sup>25</sup> The IRO should include data regarding each member's initial and on-going training in its annual report to the council. For those members who fail to comply with on-going training requirements, the POC Chair should be required by law to coordinate with the City Attorney and remove any non-

<sup>24</sup> See City of Milwaukee, Citizen Academy at <http://city.milwaukee.gov/CitizensAcademy112300.htm>

<sup>25</sup> Milwaukee, Wisconsin, Municipal Code chpt. 314 § 2 (b-3) at [http://cctv25.milwaukee.gov/netit-code81/volume3/\\_ch314/CH314.pdf](http://cctv25.milwaukee.gov/netit-code81/volume3/_ch314/CH314.pdf)

complaint members. A recommendation to track the annual training requirements of each POC member was also made in MGT's 2006 report.

**RECOMMENDATION 5-3:**

**Monitor and track POC member attendance at monthly meetings and require adequate proof for excused absence by members.**

The ordinance requires the "appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire."<sup>26</sup> For those members not providing adequate evidence of an excused absence for a POC meeting, the POC should ensure that the record properly reflects the unexcused absence. By doing such, all members with habitual unexcused absences will be automatically eligible for replacement and assist the POC in ensuring an engaged, active, and therefore, effective POC.

**RECOMMENDATION 5-4:**

**All city councilors should ensure their respective position on the Commission is filled with a qualified appointee who will be mindful of the overall mission of the POC.**

The ordinance requires the councilor representing the district to "nominate two members to the POC" from which the mayor will then appoint one of these members to the POC with the advice and consent of the council.<sup>27</sup> Moreover, if the mayor fails to deliver a recommendation from the two names submitted, the councilor may appoint one of the two with the advice and consent of council. The POC may only act as intended with nine engaged members representing the nine districts of Albuquerque. Therefore, it is incumbent upon the city council to be mindful of their responsibilities in this respect by making solid recommendations in a timely manner. Moreover, if the member's appointment has expired, it is incumbent upon a councilor to reappoint or replace his/her member so as to ensure a full, active, and engaged POC.

**FINDING**

<sup>26</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-4 (E) (2011).

<sup>27</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-4(C) (2011).

A citizen review process, if implemented properly and given the necessary resources, is a powerful tool for data gathering, analysis, and sharing, with regard to misconduct in the department and management issues.<sup>28</sup> Moreover, a careful review of the detailed complaint information should be a regular process, by which attention to the context in which the complaint occurred is carefully reviewed and supervisors are held accountable for any role they may have had in the occurrence leading to the complaint.<sup>29</sup> Recognizing this, as written, the Police Oversight Ordinance tasks the POC to “engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.”<sup>30</sup> The POC created a sub-committee in 2003 called the Long-Term Planning Committee (LTPC). The LTPC consists of three members and meets once a month. These meetings are open to the public, but unlike the POC meetings, not televised. The 2003 annual report published by the POC suggests that that LTPC was “extremely active in identifying problems and making policy suggestions.”<sup>31</sup>

Today’s LTPC spends a great deal of its monthly meeting fielding input from the public and reviewing the full body of evidence for high-priority or critical cases so to provide a summary to the full POC at its next monthly meeting. The current members of the LTPC confirmed that very little discussion regarding trends or systematic problems, or for that matter policy, occurs. The LTPC does not review analysis or trends of citizen complaints or potential changes to police policy that make curb systematic issues or improve the overall effectiveness of the department in terms of community relations.

**RECOMMENDATION 5-5:**

**Being one of its expressed objectives, the POC should identify major problems and identify a program of policy suggestions and studies through the use of its LTPC.**

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<sup>28</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO ST. J. CRIM. L. 653, 665 (Spring 2004).

<sup>29</sup> *Id.* at 666.

<sup>30</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-5(G) (2011).

<sup>31</sup> Albuquerque, New Mexico, Police Oversight Commission, Annual Report, 2003.

The structure of the current police oversight system allows for both reactive and proactive oversight on behalf of the citizens of Albuquerque. By and through the IRO's investigation of specific citizen complaints, the POC can react to specific or isolated issues that arise between the APD and select citizens. By using the LTPC to review analysis of complaint information and identify trends, the POC can work with the APD to suggest policy changes so as to be proactive to reoccurring or systemic issues that arise between the APD and the community at-large. However, to achieve a proactive stance, the POC must return to the way the LTPC was used in 2003, when the POC's annual report suggested the LTPC was "extremely proactive in identifying problems and making policy suggestions."

A report published in 2005 by the Police Assessment Resource Center suggested that there were three overarching models for police oversight; one of which, the report called "evaluative and performance based model."<sup>32</sup> The model is deemed to be evaluative in the sense that it allows for a review of the department in its entirety, *over time*, regarding how well the department minimizes the misconduct through the identification and corrections of patterns through solutions to systemic failures. By requiring the POC, through the IRO's annual reports, to provide useful analysis of both current and historical data and re-aligning the focus of the LTPC, the POC can be both reactive and proactive through the identification of systemic problems and the resulting recommendations of changes to department policy in an effort to curb and or eliminate reoccurring problems.

This is most important in terms of police shootings and serious use-of-force cases, where the POC, through its IRO, can engage in trend analysis of the circumstances surrounding police shootings and the outcomes of individual investigations to reduce its numbers going forward. Today many oversight agencies are engaging in more detailed analysis of the circumstances surrounding an officer involved shooting. For example, Portland, Oregon's police oversight,

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<sup>32</sup> *Review of National Police Oversight Models for the Eugene Police Commission*, Police Assessment Resource Center, February 2005.

which in response to a rash of officer involved shootings that had eroded the community's trust of the Portland Police Department, is now by law required to monitor and observe the entire investigative process of an officer involved shooting.<sup>33</sup> This includes a review of *all parties involved* (i.e., fellow officers on the scene, immediate supervisors, witnesses), not just the shooter; developing profiles of the shooter and the scenario in which the shooting occurred. Through this holistic approach, correlations can be made by which levels of culpability outside the shooter may be determined. In doing this, Portland is able to better understand where training, supervision, and current policies may have been to blame, at least in part, for the incident. The POC, through its LTPC and IRO, should engage in more detailed data analysis, especially regarding officer involved shootings, to ensure that systematic factors that may have been at cause for the incident, are both identified and remedied.

Police oversight scholars have often cited a civilian advisory council as a mechanism by which civilian participation could be promoted to assist in the development and implementation of local police policy.<sup>34</sup> Just like a civilian advisory council, Albuquerque's Long Term Planning Committee could, by allowing civilians to be directly involved in critical decisions, drive accountability and bolster the department and the oversight process' legitimacy by "opening the system to community input and thus allow[ing] for public scrutiny of policing decisions and justifications."<sup>35</sup>

<sup>33</sup> Maxine Bernstein, *Police Oversight Official to Respond to Portland Police Shootings, deaths in Custody Cases*, *OregonLive.com*, June 9, 2011 at [http://www.oregonlive.com/portland/index.ssf/2011/06/police\\_oversight\\_official\\_to\\_r.html](http://www.oregonlive.com/portland/index.ssf/2011/06/police_oversight_official_to_r.html)

<sup>34</sup> Reenah L. Kim, *NOTE: Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 509 (Summer 2001).

<sup>35</sup> *Id.*

**RECOMMENDATION 5-6:**

**In addition to identifying major systemic problems by and between the APD and the community, Section 9-4-1-11 of the Police Oversight Ordinance should be amended to require the LTPC to monitor the status of recommendations resulting from those evaluations required by ordinance through regular updates to the full commission and designated city staff and/or agencies.**

As is evidenced by Appendix B of this report, there was no action taken on many of the previous recommendations born of prior reviews of the city's police oversight system. To ensure the value envisioned by and through the enactment of Section 9-4-1-11 is realized, the city should amend the statute to require the POC, through its LTPC, to monitor the implementation of those recommendations accepted by the city. To ensure full compliance and participation by all parties affected by the recommendations, the Council should first establish a study session in which all relevant actors are invited to participate and evaluate the recommendations provided by this and all subsequent reports. From this study session, agreements should be reached on which recommendations will be accepted and which will not. After which, the LTPC should routinely monitor the status of implementing those recommendations and provide routine quarterly updates to the POC and designated city staff and/or department members during the regularly scheduled monthly POC meetings and include status updates in quarterly and annual reports.

**FINDING**

Many members of the POC suggested that they had not reviewed a quarterly or annual report from the IRO in some time. The IRO's office recently completed a software change and as a result, impeded the office's ability to produce timely quarterly reports. While a reason for the POC members' failure to read reports may be a result of this delay, another reason may be the perceived low value of the quarterly and annual reports.

By ordinance, the reports generated must contain the following:

- Data relating to the number, kind and status of all complaints received, including mediating complaints;

- Discussion of issues of interest undertaken by the POC which may include suggested policy and/or procedural changes, a listing of complaints and allegations by council district, statistical ethnicity of subject officers, statistical ethnicity of complainants, and updates on prior issues and/or recommendations;
- The POC's findings and the APD's issuance of discipline on those findings and the ongoing disciplinary trends of the department;
- Information on all public outreach initiatives undertaken by the POC or the IRO; and,
- The status of the long-term planning process in identifying major problems, policy suggestions, and studies as required by Section 9-4-1-5.

Although the reports generally contain most of what is required by the ordinance, the data provided is minimal with very little analysis completed. Moreover, there is very little in the way of long-term trend analysis regarding types of complaints, procedures and policies violated, and departmental responses to sustained complaints.

In addition to past omissions of the department's disciplinary decisions in the POC reports complaint summaries, the POC does not provide its own guidance on disciplinary measures for sustained complaints. While most citizen review entities are authorized to recommend disciplinary action to the police chief executive, Albuquerque's ordinance is silent on this matter and the consultant was unable to ascertain the POC's ability to do such.<sup>36</sup>

**COMMENDATION 5-1:**

**Before the annual 2010 report, the IRO's annual reports did not provide detail on discipline for sustained complaints; however, the most recent annual report does provide discipline for approximately 85 percent of all sustained complaints.**

An effective police oversight process provides a high degree of accountability. A useful measure as to how seriously the department views any given violation of policy is the degree of discipline issued for said violation(s). To achieve a higher level of accountability, while satisfying a complainant, it is helpful to publish the discipline provided for a sustained complaint. To this end, the recent practice of reporting the discipline issued for each sustained complaint provides an

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<sup>36</sup> *Id.* at 477.

increased level of accountability and will go a long way in satisfying the citizen complainants served by the POC and IRO.

**RECOMMENDATION 5-7:**

**Amend the language of the ordinance to require the POC, through the IRO, to consider the published chart of sanctions and recommend discipline for all sustained complaints, separate from the discipline imposed by the APD.**

As was previously stated, an effective police oversight process should provide a high degree of accountability. In terms of individual complaints, the level of accountability can be most easily measured by the action taken by the department in terms of sustained complaints. To maximize its accountability and provide the highest level of community involvement, the POC, through its IRO, should recommend discipline. The discipline should be considered in the context of the published chart of sanctions.

While many individuals would argue that because of their experience and knowledge, police executives are in the best position to recommend and/or impose discipline. However, the Milwaukee Fire and Police Commission, one of the oldest and arguably most successful police oversights in the country, not only recommends discipline, but is the final authority to impose discipline directly to the officer.<sup>37</sup> Recognizing the limitations of the POC in terms of imposing discipline, the legitimacy of the POC and its role in the process would be greatly improved if it were to recommend discipline, through its IRO, for all sustained complaints.

Police oversight scholars citing the lack of authority of many oversight bodies to directly discipline officers and modify departmental policies, warn that an oversight body that is unable to exert pressure to ensure that its recommendations are followed runs the risk of reverting to ways to appease the department it is overseeing in order to enjoy cooperation by the department.<sup>38</sup> Many participants of the current oversight system, including the IRO, argue this is occurring. And

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<sup>37</sup> *Id.* at 506-07.

<sup>38</sup> Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 11-12 (Fall 2009).

while the consultant does not hold this opinion, it does recognize that without means by which the POC, and its IRO, can exert pressure upon the department, it could quickly become irrelevant to the process, leaving only the department to oversee its activities.

**RECOMMENDATION 5-8:**

**Amend the language of the ordinance to require additional analysis and data, including specific disciplinary outcomes of sustained complaints and long-term trend analysis.**

The current quarterly reports provide a snapshot of the POC's activities with limited historical content. In addition to the investigation of citizen complaints by and through the IRO, the POC must provide a level of oversight that requires real accountability from the APD in order to remain relevant. By doing so, Albuquerque's police oversight system should become more evaluative in the sense that it oversees the department as a whole and provides real insight as to how the department is minimizing the risk of police misconduct by identifying and correcting individual problems as well as systemic failures through discipline and policy changes.

Notwithstanding the previous recommendation, the POC, through its IRO, should provide an account of the discipline available to the department, as established by the departmental procedure, and the actual discipline taken by department with respect to *every* sustained complaint. For those cases unsubstantiated, more detail as to the actions taken to investigate the case should be provided. In providing the level of data and analysis suggested, the POC would be able to address systemic issues and create real accountability within the APD for eliminating problems and real or perceived abuses.

**RECOMMENDATION 5-9:**

**The APD's Standard Operating Procedures (SOP) provide a standard range for discipline for violations of each SOP. The language of the ordinance should be amended to require the reporting of this to further provide the highest level of accountability.**

To achieve the true spirit of the ordinance, the POC, through its IRO, should report the range of discipline allowed for a given violation as set forth in the SOP Chart of Sanctions alongside the actual discipline for violations of SOP. Moreover, trends in both discipline and rate

of violation of particular SOPs year over year should be reported in the annual reports in order to highlight systemic issues, where appropriate, and create a level of accountability within the department for identifying and eliminating reoccurring or habitual problems.

**FINDING**

Although the Chief of Police and/or many of his executives often attend the POC monthly meetings, there is very little public interaction, either private or public, between the POC and police executives. However, the IRO and the Chief meet privately, on a weekly basis, to discuss individual complaints and the details of the disposition of each case.

**RECOMMENDATION 5-10:**

**The POC and the Albuquerque Chief of Police should hold joint public sessions bi-annually to discuss policy issues and concerns and allow for public input.**

New York City's Civilian Complaint Review Board (CCRB) reportedly meets with the New York City Police Commissioner twice a year in an open forum to discuss policy issues and concerns. While the IRO and the Chief both report regular meetings with one another, as the public face of the oversight process, the POC and the Chief of Police should hold joint open meetings regularly to allow direct and open dialogue between citizens and the police department. This joint session could help in fostering good will between the two bodies and creating the perception and the reality of open and frequent communication by and between the POC and the APD.

## 6 FINDINGS AND RECOMMENDATIONS – CITY OF ALBUQUERQUE –INDEPENDENT REVIEW OFFICER

This section of the report presents the results of MGT’s evaluation and analysis of the City of Albuquerque’s Independent Review Office and the Independent Review Officer (IRO), who works at the direction of the Police Oversight Commission (POC).

### Background

As established in the Police Oversight Ordinance, the IRO is a full-time city employee who *works at the direction* of the Police Oversight Commission (POC). Currently, the IRO has an office staff of three full-time investigators and one office assistant. In addition to serving as a New Mexico District Judge, the current IRO is the former Federal Public Defender for the District of New Mexico and a retired United States Magistrate Judge. His body of experiences leaves him well equipped to make sound decisions based on facts, following a thorough investigation. In addition, his staff of three investigators also possesses a body of experience that provides the office with the requisite knowledge to conduct thorough investigations.

The primary responsibilities of the IRO as outlined in the most recent annual report available include<sup>39</sup>:

- Receipt of all citizen complaints directed against APD and any of its officers;
- The assignment of all citizen complaints to either IRO investigators or Internal Affairs;
- Oversight, monitoring, and review of all investigations born of citizen complaints;
- Make findings based on thorough, fair, and impartial investigations free from political influence (using an impartial system of mediation, where appropriate);
- Give advice and make recommendations regarding APD policies and procedures;

<sup>39</sup> Albuquerque, New Mexico, Police Oversight Commission, Annual Report, 2010.

- Monitor all claims of excessive force and police shootings (acting as an ex officio member of the Claims Review Board);
- Maintain and compile information sufficient to satisfy the POC's quarterly reporting requirements; and
- Play an active public role in the community, providing appropriate outreach to the community, including the advertising of the citizen complaint process and the locations throughout the city where a citizen complaint may be filed.

Based on discussions with APD, the Albuquerque Police Officers Association (APOA) president, and POC members, the IRO and his staff are competent at their work. Moreover several participants noted a much improved relationship between the IRO and the APD and APOA.<sup>40</sup> Those interviewed communicated confidence and respect for the IRO's experience and his ability.

#### **FINDING**

The 2006 review of the police oversight process revealed an increasing number of citizen complaints being referred to the IA for investigation due to insufficient staff to handle the workload. The IRO has since been provided with an additional full-time investigator. With three full-time investigators, the workload is now more manageable. Of the few citizen complaints that are referred to IA, they usually are referred based on a belief by the IRO's office that IA can resolve the claim much more expeditiously or during brief spikes in the IRO's workload. While the low number of citizen complaints referred to the IA is satisfactory to all parties involved, the process for resolution for those that are is cumbersome.

#### **RECOMMENDATION 6-1:**

**For the few citizen complaints referred to the IA's office, the process for final disposition should be streamlined to avoid undue burden on the actors. This could be accomplished by requiring IA to make a finding and disciplinary recommendation for claims sustained.**

<sup>40</sup> See the summaries of the Walker Luna and Jerome Reports, chapter 1 of this report.

Though down from approximately 27 percent in 2006, IA investigated approximately 15 percent of the citizen complaints received in 2010. This represents a significant increase from 2007 and 2008 when IA handled 5 and 4 percent of the citizen complaints, respectively. For those complaints investigated by the IA, the process for final disposition is overly cumbersome. The case is referred to IA. After investigation, but prior to issuing a finding the IA transfers the case back to the IRO's office for finding. This often requires at least some investigation anew and additional analysis of the data gathered during the investigation. Moreover, once a finding is made by the IRO's office, the complaint must be re-reviewed by IA and the chain of command for disciplinary action, if necessary. After which, the case is moved back to the IRO for a final disposition letter and submission to the POC for its review.

The IRO should work with the IA to establish a more streamlined approach to those cases investigated by the IA's office. Because the APD and IRO regularly agree on final disposition, the IA should make a finding based on its investigation and identify appropriate discipline, where necessary, prior to removal to the IRO for generation of a final disposition letter and POC review. Therefore, of the few complaints investigated by the IA, the chance for delay due to systemic inefficiencies would be minimized or removed unless a disagreement between the APD and the IRO arises.

**RECOMMENDATION 6-2:**

**The IRO and IA should work toward a complete separation of responsibility, where IA handles only internal cases (I) and the IRO handles all citizen complaints (CPC).**

Although the IRO and IA should take steps to reduce the level of inefficiency found in the shared investigation of citizen complaints, the ultimate goal should be to arrive at a total separation between the IRO's office and IA so that the IRO handles all citizen complaints and IA handles only internal complaints. As noted in the Jerome Report, this would "enhance the public's perception of impartiality" and "ensure complaints are handled in a [sic] timely manner."

**FINDING**

The IRO has not established formal criteria for the referral of CPCs to IA. With the addition of an investigator, the IRO handles a majority of the citizen complaints, only referring a small percentage of the annual citizen complaints to the IA. Of those cases, some are referred for efficiency sake, with the belief that the complaint can be more quickly resolved through the internal channels of the APD. Otherwise, during times when the IRO is experiencing a heavier than usual workload, complaints are forwarded to IA to relieve the IRO investigators of an overly burdensome workload. However, because of the inefficient process which occurs when cases are referred to the IA, there is an overall increase in workload for all parties involved.

**RECOMMENDATION 6-3:**

**Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.**

It is important that the IRO, IA, and the public know who is responsible for investigating certain complaints. Moreover, strict criteria regarding which cases will be referred to IA should eliminate needless inefficiencies experienced when citizen complaints are referred to IA. The POC was created on the premise that it would provide an independent and fair review of citizen complaints about police conduct. Referring citizen complaints to the IA for investigation defeats, or at least dilutes, the purpose of the POC and IRO. With IA conducting periodic citizen complaints, an undue risk of the perception of lack of independence in the investigations may compromise the integrity of the complaint review process. A documented policy or procedure, or comment in his report to the POC, explaining the criteria or rationale behind said removal will help to avoid the potential for questions regarding the overall integrity of the process as it was identified in the ordinance. This recommendation was also made in MGT's 2006 report.

**FINDING**

The IRO's efforts to play an active role in the community and provide outreach are limited. POC Ordinance 9-4-1-6 (G) requires that the IRO play an active role in the community, and whenever possible provide outreach including the identification of non-police locations suitable for citizens to file complaints. This was also a recommendation in previous reports. Specifically, the following represents the IRO's response to recommendations in the Jerome report:

- A volunteer was assigned to distribute complaint forms to senior citizen centers, libraries, and homeless shelters throughout Albuquerque.
- The IRO personally distributed forms to various groups including Vecinos United, NAACP, ACLU, and the Center for Justice.
- The IRO developed a survey in 2003 that was sent to all complainants.
- 2002 Census data was reviewed and as a result complaint forms were published in English and Spanish.
- A Spanish translator was contracted to assist the IRO during investigations that involve non-English speaking complainants.

While notable, the IRO indicated these efforts took place when he was first appointed and his interaction with community groups since that time has been limited. While the website is an important communication tool, it is not readily and easily accessible to everyone.

**RECOMMENDATION 6-4:**

**Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and city staff.**

The purpose of the LTPC, as explained in POC ordinance 9-4-1-5, G, is "to engage in long-term planning through which it identifies major problems and establishes a program of policy suggestions and studies each year." The LTPC is the appropriate venue to develop a community outreach strategic plan and evaluate its outcomes. At the direction of the LTPC, the IRO should work with city staff to identify groups in the community that would benefit from learning more about the oversight process and how community members can help to foster good

relations with the department. In addition, increased contact with the APD, including periodic information presentations regarding the purpose of the IRO and POC, would also help to foster continued good relations with the department. Frequent communications of this nature can only help to limit the number occurrences and/or complaints henceforth and ensure an efficient process when occurrences do arise. This recommendation was also made in MGT's 2006 report.

**RECOMMENDATION 6-5:**

**Conduct complainant and police officers satisfaction surveys on an on-going basis, and seek ways to increase the number of citizen responses and increase the depth of analysis.**

Once citizen oversight is in place, it is important to monitor how all key constituents view its work, whether it's functioning effectively, and are those involved in the process reasonably satisfied in the outcomes.<sup>41</sup> The IRO is commended for his initiative in implementing a process to survey complainants once the process has been completed; although the number of responses continues to be low. Feedback from the IRO's office suggest that mail surveys net the lowest response rate; while telephone and face-to-face interviews net the highest participation rate. However, telephone and face-to-face interviews are expensive. In accordance with the ordinance, the duties of the POC include "promoting a spirit of accountability and communication between the citizens and the Albuquerque Police Department while improving community relations and enhancing public confidence."<sup>42</sup>

A survey of both the complainant and the officer would provide useful insight as to how the oversight process is accomplishing this stated goal, both as a process and specific to the individual contributors, including the investigators that handled a given case. The POC (LTPC) should review the current survey process, its results and encourage its continued development through direction of the IRO and staff. This recommendation was also made in MGT's 2006 report.

<sup>41</sup> *Police Accountability and Citizen Review*, The International Association of Chiefs of Police, November 2000.

<sup>42</sup> Albuquerque, New Mexico, Municipal Ordinance Sec. 9-4-1-5(A) (2011).

**FINDING**

As a result of a recent study conducted by Police Executive Research Forum (PERF) in response to the high number of officer involved shootings, the APD has *agreed to allow* the IRO to personally monitor the crime scene of the shooting. Either the IRO officer or one of his investigators is called to the scene as the initial investigation is unfolding and monitor the investigation in real-time.

**COMMENDATION 6-1:**

**The department's willingness to involve the IRO in its initial investigation of an officer involved shooting reveals a commitment to reversing the upward trend.**

"[T]he most important aspect regarding the use of force relates to how and under what circumstances the local police department conduct investigations."<sup>43</sup> The close involvement of the IRO, and by relation the POC, will help relay to the public and the department that the function of the police oversight has now moved beyond simple citizen complaints and is actively involved in the oversight of more critical incidents. As such, when officers know that there will be an increasing need and likelihood that use of force and officer involved shootings will have to be justified to an outside panel or board, an officer may be more reluctant in the future to resort to such means when excessive force, especially deadly force, is not warranted or can be avoided.<sup>44</sup> While the consultant is not suggesting this will be a major factor in reducing the rate of officer involved shootings, it will be but a piece of the larger solution to successfully curtail excessive force.

**RECOMMENDATION 6-6:**

**While the APD has agreed to allow the IRO to monitor the crime scene of an officer involved shooting, the police oversight ordinance should be amended to require that the IRO or his/her representative be present at the scene of an officer involved shooting.**

<sup>43</sup> Kami Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U.L. REV. 373, 397-98 (Winter 2010).

<sup>44</sup> *Id.* at 398.

While the current Chief has agreed to allow the IRO on the scene of officer involved shootings, without legislation, there is nothing to guarantee that future law enforcement administration will agree to the same. Therefore, the ordinance should be amended to require the IRO, or his/her representative, to be present at all crime scenes in which an officer involved shooting occurred.

**FINDING**

As discussed in this and previous chapters, the IRO by law, is required to deliver quarterly and annual reports on behalf of the POC. Among other things, the reports should include a discussion on policy and practices of the department and any necessary changes to such. This discussion can only be born of a detailed analysis of the information extracted from complaints and any other useful tools available to the IRO, including access to the department's records and its early warning system (EWS).

As it stands, the current reports disseminated by the IRO's office do not seem to generate much interest or excitement. In fact, many key players in the oversight process confessed to a failure to read the more recent reports. Moreover, it is well accepted that the most meaningful method of police oversight and achieving true accountability is to be less concerned with individual culpability and more concerned with using complaints as a way to enhance overall police performance.<sup>45</sup> To accomplish such, a system should be created by which data is carefully gathered, analyzed so as to spot pervasive, systemic problems that can then be shared with the law enforcement officials and the community alike to effect necessary changes to policies and procedures of the department.

**RECOMMENDATION 6-7:**

**The IRO's office should be provided an auditor/analyst whose task it is, not to investigate complaints, but rather enjoy open access to the police department's records and given wide-ranging authority to report on all aspects of departmental policy and advocate for systemic reform, where necessary.**

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<sup>45</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO. ST. J. CRIM. L. 653, 657 (Spring 2004).

It is long held that a successful oversight abstains from placing too heavy of an emphasis on control mechanisms and viewing control in terms of identifying and acting upon instances of wrongdoing.<sup>46</sup> Rather, to be successful as an oversight body, a city must engage in both reactive and proactive activity. Reactive oversight is being accomplished through the hundreds of complaints investigated by the IRO. However, there is currently very little proactive oversight occurring. To accomplish such, the IRO's office must be provided with a skilled analyst who will monitor the complaints and other data available to him/her to answer the larger questions regarding who, what, where, when, and how.

The current ordinance provides that the "IRO shall make recommendations to the POC and APD on specific training, changes in policy or duty manuals."<sup>47</sup> A previous proposed amendment allowed the IRO to "have a policy review function, have the authority to conduct audits . . ."<sup>48</sup> While the proposed amendment was eventually eliminated, the city should provide additional funding to retain a full-time auditor or analyst.

An analyst could audit the complaints to extract relevant data on what the "officer" committing the offenses looks like, what type of offenses are being committed, what part of the city are the complaints generating from, and what time of day are the alleged offenses being committed. By looking at these questions on a broader scale, the city's oversight process will cause real change through defensible recommendations regarding departmental policy, practices, and training. Moreover, by committing to a closer review of the underlying complaint information, attention can also be focused on the context that gave rise to the complaint, including failings of the department and supervisors in preventing the behavior that resulted in legitimate complaints.<sup>49</sup>

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<sup>46</sup> *Id.* at 654.

<sup>47</sup> Albuquerque, New Mexico, Municipal Code Sec. 9-4-1-6(E) (2011).

<sup>48</sup> Albuquerque, New Mexico, Council Bill. No. 0-04-14, ver. 1, February 2, 2004.

<sup>49</sup> *Id.* at 666.

By doing such, the POC and its long-term planning function would provide the level of oversight necessary to allow for real change and allow for the level of accountability the community expects and the ordinance was intended to provide. However, with an appreciation for the current economic climate of many of the cities across the United States, the consultant recommends that if the city's budget is unable to support the addition of a full-time analyst to the IRO's office, the city should inquire as to the willingness of local universities to partner with the agency to conduct data analysis and the resulting policy review. If this is not an option, the city could also consider an intern at the Ph.D. level who could conduct thorough analysis in exchange for useful real-world experience in which the individual is allowed the opportunity to affect real change. However, the need for a skilled analyst should not be overlooked for want of funds. Albuquerque must be careful to not fall prey to the trap in which once the crisis that gave rise to the creation of the process has passed, the government ignores the needs of the process by depriving it of the resources and political support necessary to continue achieving the goals set forth in its enabling ordinance.<sup>50</sup>

**RECOMMENDATION 6-8:**

**The IRO's office should be allowed full, real-time access to be able to input relevant citizen complaint data into the APD's early warning system (EWS).**

In light of the diffuse nature of police work there are relatively limited opportunities for supervisors to engage in direct observation of officers. This is why citizen complaints can be a valuable source for managers and supervisors in terms of training needs and policy changes. The close examination of complaints can reveal the need for various changes, like training for use of force in which force is unnecessarily, but not maliciously used.<sup>51</sup> Oversight systems can use information from sustained, unsustained, and unsubstantiated complaints to compile useful data in EWS. Moreover, by allowing the input of this data into the EWS, the APD does not have to

<sup>50</sup> Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 3 (Fall 2009).

<sup>51</sup> *Supra* note 7, at 658.

wait for the civilian oversight process to tell it of its problems, but rather the department will now have the enhanced capability to be proactive in its policy analysis and identify areas where additional training or changes in current training practices are necessary.

**FINDING**

The IRO is selected by the city council based upon a nomination by the mayor. The position is a full-time contractual city employee. The contract is for two years. Based on the substantial minimum qualifications and on the somewhat unique skills that experience in the position will develop, it does not serve the city to limit the term to only two years.

A substantial investment would be required by a new IRO to relocate to Albuquerque, or even for a local attorney to give up their current position to take the IRO position when there is only a two-year commitment from the city.

**RECOMMENDATION 6-9:**

**Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.**

It is not clear what, if any, purpose such a restrictive limitation has or how the city benefits from it. To help ensure the city can attract the best possible candidates for this position, the contract period should be extended to at least three years. The current IRO's contract was extended once and that contract is now expired. As such, the IRO is currently employed on a month-to-month basis, despite language that requires "negotiations to renew or extend the contract be completed 3 months *prior* to the contract expiring."<sup>52</sup> This lapse should be remedied quickly, as the office of the IRO is critical to the public's trust in the oversight process. Moreover, stability in this position is critical to accomplishing the goals of the office. This recommendation was also made in MGT's 2006 report.

<sup>52</sup> Albuquerque, New Mexico, Municipal Ordinance Sec. 9-4-1-7(E) (2011). (*emphasis added*)

**FINDING**

APD's new records management system (RMS) is not fully functional. IRO investigators note that they are often unable to locate police reports, which creates undue hardship and possible delays in the investigation. The IRO is mandated to complete an investigation of a citizen complaint within 90 days. Although extensions can be requested, this is not preferred and great efforts are taken to ensure this does not have to occur.

**RECOMMENDATION 6-10:**

**The IRO should work with the Chief of Police and department officials to reduce the delays in obtaining case information from the police department's records system.**

There are two issues that should be addressed. One concerns the IRO investigators' complaints that they cannot access cases electronically from the department's new records management system as it is intended to provide. The other issue concerns the difficulty that records personnel have in locating cases in the records section for investigators. Both of these issues may result in unnecessary delays in the investigation of citizen complaints or officer initiated complaints and should be reviewed by the police department staff. If the issue is a user error in terms of working in the RMS, IRO staff should be properly trained to enable them to efficiently locate all necessary and available records.

**FINDING**

Currently, the system allows for third party complaints by concerned citizens, including city staff, regarding perceived wrongs or injustices perpetrated by the APD to other citizens or the citizenry at-large. While some of the complaints have merit, others do not. However, each complaint requires a full investigation with a finding. The IRO and its investigators have limited time to accomplish the volume of citizen complaints as is and are unable to perform the analyses or community outreach desired given these time constraints.

**RECOMMENDATION 6-11:**

**The IRO's office should develop a truncated review process by which third party complaints can be addressed, when appropriate, without the full use of resources to conduct a full investigation.**

While the primary objective of the IRO's office is to investigate citizen complaints, many of the third-party complaints are born of meritless claims made by disgruntled citizens. Despite this known outcome, the IRO is still required to conduct a full investigation and deliver a finding. While the addition of an investigator in the IRO's office has allowed for the office to complete most of the citizen complaints received in the time allotted by city ordinance, there is little time to accomplish other tasks, such as community outreach and in-depth analysis. The mission of the Police Oversight Ordinance would be better served if the IRO's office was afforded the time to conduct community outreach and detailed analyses of data, including trends. Therefore, the IRO's office should work with the POC to develop a system or standard by which third-party claims are reviewed by the IRO and fully investigated at his/her discretion; therefore, allowing meritless complaints to be quickly disposed. By doing such, limited resources could be redirected so as to allow the office and the system to achieve its desired mission, which is to "promote a spirit of accountability and communication between the citizens and APD."

**COMMENDATION 6-2:**

**In response to the recent recommendations from the PERF report<sup>53</sup>, and in-line with MGT's previous recommendations, the Albuquerque Chief of Police acknowledged that the IRO will now be permitted to conduct an investigation of an un-signed and/or anonymous complaint.**

Similar to the system proposed for third party complaints, the Chief of Police has suggested that the IRO will be permitted to conduct *preliminary* investigations of un-signed and/or anonymous complaints. Where merit is found and a complaint can be substantiated, the IRO's office, per the current labor agreement, may elevate an anonymous, unofficial complaint to an official complaint

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<sup>53</sup> See Police Executive Research Forum (PERF), Review of Use of Force In The Albuquerque Police Department, at 28 (June 2011).

and conduct a full investigation, pending the IRO's ability to provide the name of the complainant to the officer being investigated upon completion of the investigation. It is accepted that some citizens may fear coming forward and issuing a complaint towards a police officer. Therefore, the previous routine of automatically discarding unsigned, unofficial complaints failed the spirit of the process and may have helped perpetuate poor behavior. This new approach suggests the department is committed to identifying poor behavior before it leads to critical incidents. The current labor agreement may need to be discussed and modified to ensure it is consistent with this policy.

# **7 FINDINGS AND RECOMMENDATIONS – CITY OF ALBUQUERQUE POLICE DEPARTMENT – INTERNAL AFFAIRS**

This section of the report presents the results of MGT's evaluation and analysis of the City of Albuquerque's police oversight system as it relates to the Albuquerque Police Department's Internal Affairs section.

## **Background**

The Internal Affairs (IA) section is commanded by a lieutenant and staffed by three sergeants (a fourth position is approved to begin August 2011 according to the IA lieutenant), one "rehire" officer (retired officer hired on salary but with no further contributions to retirement system) to handle overflow cases, and two administrative assistants, one of which handles data entry into an early warning system (EWS).

IA reports directly to the Chief of Police and is responsible for investigating any allegations of misconduct, violations of the Constitution and laws of the United States, state of New Mexico or City of Albuquerque, and any allegations related to potential defects in policy, procedures, rules, or the service delivery system by department personnel. It is also responsible for conducting trend analysis of unacceptable behavior and training needs (see SOP 3-41).

Investigations fall into two categories: citizen complaints (CPC's) and internal complaints (I's). A CPC is a complaint made by a citizen outside the department or visitor to the city and an "I" is a complaint that originates from within the department. For example, an "I" would be initiated if a supervisor filed a complaint against an officer for a violation of APD SOP. Officer involved shootings are also handled as "I"s. IA is responsible for all "I" investigations.

All CPCs are directed to the IRO who assigns them to his office (see IRO section for an explanation of the criteria used) or IA for investigation. The following chart shows the number of internal investigations and citizen complaints handled by the IRO and IA between 2006 and 2010.

**EXHIBIT 7-1  
INTERNAL INVESTIGATIONS AND CITIZEN COMPLAINTS  
2006-2010**

<b>Year</b>	<b>Is Received</b>	<b>CPCs Received</b>	<b>CPCs Investigated by IA</b>	<b>CPCs Investigated by IRO</b>
2006	338	324	87	237
2007	341	283	14	269
2008	291	270	12	258
2009	328	295	36	259
2010	297	272	41	231

*Source: APD Internal Affairs, 2011.*

The data suggest an overall decrease in CPCs and “I”s since 2006. However, the percent of CPCs investigated by Internal Affairs has decreased significantly over this same five-year period. The APD completes quarterly and annual reports on the status of investigations, early warning system (EWS) data, and SOPs related to IA for city council review.

**FINDING**

The IA lieutenants tend to rotate out of this assignment after a short period of time. Many law enforcement agencies establish a minimum and maximum number of years that a person may work in special assignments. A range of two to five years in a special assignment is common. Special assignments typically include such jobs as detectives, internal affairs, narcotics, gang units, traffic, and training. The more stressful and high risk assignments like narcotics and gangs are often limited to two years. Most agencies establish criteria and tenure for special assignments in a department SOP or negotiate duration of tenure in labor contracts.

As opposed to sergeants who are selected to the position for two years, the IA lieutenant is appointed by the Chief and there is no established duration for the assignment. The current IA lieutenant indicated that 1½ to 2 years is the average tenure for an IA lieutenant.

**RECOMMENDATION 7-1:**

**Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.**

An SOP that ensures the IA commander position is filled by the same individual for a set period of time will benefit the department by ensuring the lieutenant holds the assignment long enough to attain the requisite knowledge and skills for the assignment as well as establish stability of command in the unit. The frequent rotation of a commander in any unit, especially one that deals with such critical issues as IA, is very disruptive. However, setting time limits for these assignments is important and limits the stress and "burn out" that often accompany these jobs. In addition, so as to ensure stability in the unit and quality of investigations, APD should consider staggering the rotation of experienced Sergeants and the IA Lieutenant so to maintain management stability and investigative experience in the unit. This recommendation was also made in MGT's 2006 report.

**FINDING**

The IA lieutenant indicates the IA Sergeant assignment is the only "exempt" position in the department. This means the Lieutenant can select a person to fill an open IA investigator's position without allowing others to apply. Typically, the IA lieutenant calls for applications of interested sergeants and conducts an oral board before making a selection. Newly promoted sergeants are permitted to apply for the position and the IA lieutenant indicates that few senior sergeants show any interest. This results in newly promoted sergeants being selected quite frequently. This situation creates a number of potential problems, not the least of which is the appointee's lack of experience as a supervisor.

**RECOMMENDATION 7-2:**

**Develop job criteria for sergeants selected to work in IA that requires experience as a supervisor.**

Typically, law enforcement agencies evaluate the performance of newly promoted sergeants during a probation period (typically one year) in a field assignment. This ensures that the new sergeant develops the basic knowledge, skills, and abilities for the position prior to selection to the IA position. Field experience also provides new sergeants the opportunity to deal with a number of personnel issues including discipline, which may later benefit them in an IA assignment.

An assignment in IA is challenging. Investigative and supervisory experience should be prerequisites for holding such a position. The IA lieutenant indicated that the requirements for sergeants assigned to IA may be discussed in the next labor negotiations. Regardless, the APD should be proactive and take the initiative to establish job criteria for an investigative position in IA that requires some minimal experience as an investigator and supervisor. This recommendation was also made in MGT's 2006 report.

**FINDING**

In 2010, the IRO shifted 41 of its 272 complaints (CPCs), approximately 15 percent, to the IA for investigation. The IRO suggested this was done for one of two reasons: (1) to assist the IRO investigators during peaks in complaint intake, and (2) there are certain complaints that can be more easily handled and expedited by the IA. However, as discussed in Chapter 6, the process of shifting the investigation of certain CPCs creates additional inefficiencies and impedes the resolution of the complaint. Moreover, by allowing the IA to handle the investigation of certain citizen complaints, the IRO's level of impartiality is likely to be questioned.

**RECOMMENDATION 7-3:**

**Consider limiting IA's investigations to Is only.**

With the addition of an investigator in the IRO's office, the IRO can handle all CPCs in the time allocated by city ordinance, allowing the IA to handle only Is. This will only help to enhance the level of impartiality while ensuring the timely investigation and resolution of complaints. This recommendation was also made in MGT's 2006 report.

**FINDING**

Internal Affairs currently generates three different reports: an annual EWS (early warning system), a UOF (use of force) report, and a report on all IA investigations. The EWS and UOF reports are provided in memo form to the Chief of Police, while the report on IA investigations is provided to city council. The quarterly and annual UOF reports to the Chief contain adequate data, a thorough discussion of said data, and a trend analyses. The SOP required annual EWS report is a two page memo to the Chief with a generalized discussion of EWS data. The report of IA investigations is limited to data and does not currently comply with the requirements of the SOP, which include trend analysis. Moreover, SOP requires that IA notify the training section of any training needs born of these reports and while this is done on an informal basis, there is no formal mechanism for this to occur.

While these reports provide a great deal of information on cases, similar to the reports provided to the city council by the Police Oversight Commission, they lack the requisite amount of analyses and discussion to fully inform the reader; therefore, leaving the readers to conduct their own analysis or go without.

**RECOMMENDATION 7-4:**

**Modify the quarterly and annual report format to address all IA reporting requirements as delineated in SOPs.**

Internal Affairs quarterly and annual reports to the Chief of Police and city council provide an excellent opportunity for analysis, education and identification of ways to limit the city's overall exposure to risk. Moreover, passing on the chance for transparency creates a lack of faith which in turn, breeds distrust, leading to Albuquerque citizens becoming more

uncomfortable with the concept of allowing or trusting that the APD will effectively police itself.<sup>54</sup> IA should consider revising the report format to address the following areas of responsibility: CPCs, "I"s, EWS data, UOF reporting, training needs, and SOP recommendations. Each section should provide a data table followed by analysis and a discussion of the information presented. This would greatly improve the comprehensiveness and readability of the report and make it a more useful management tool.

The report of all IA investigations lacks trend analysis and therefore does not satisfy the requirements of the SOP. The report should contain trend analyses and serve as a formal mechanism for identifying and tracking all training needs. Although this is done on a periodic, informal basis, the inclusion of a trend analysis in the report will provide for a way of tracking and monitoring the department's progress in attending to these needs. The IA lieutenant indicated they are currently working on revamping the report to address this recommendation and the requirements of the SOP.

An annual evaluation of the EWS is required by SOP. Statistics suggest that relatively few officers account for a high percentage of complaints in a department. EWS is founded on the idea that early intervention may correct officer behavior before the issues escalate to a more serious disciplinary issue. The EWS report should include EWS data in the form of graphs and basic trend analysis to assist the Chief and staff in addressing habitual behavior of individual officers or worse, systemic issues.

The IA provides the Chief quarterly and annual UOF reports. As a result of the department's last accreditation with CALEA, this report now contains a discussion of data, graphs of various types of UOF, and trend analysis. Additional training needs and any SOP issues should also be included in this report.

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<sup>54</sup> *Police Accountability and Citizen Review*, The International Association of Police Chiefs, 6, November 2000.

## 8 OTHER APD ACCOUNTABILITY MECHANISMS

This section of the report presents the results of MGT's evaluation and analysis of the City of Albuquerque's police oversight system as related to other accountability mechanisms implemented by the Albuquerque Police Department.

### Early Warning System

The APD employs a number of accountability mechanisms to help ensure that officer performance and behavior comply with requirements of the U.S. Constitution, state and local laws, and department rules and regulations. While the APD is commended for addressing many recommendations provided in previous reports, there are issues still in the process of resolution that require attention.

Conventional wisdom suggests that 10 percent of officers give rise to 33 percent of a department's public relations problems.<sup>55</sup> This notion of the "problem officer" led to the development of police early warning systems (EWS) across the nation. APD, like most large city police departments, has an EWS to help identify problem officers as early as possible. Early warning systems are data-driven management tools used to identify police officers whose behaviors have been problematic and to intervene in order to correct these behaviors. They serve to prevent further actions by officers that may later warrant disciplinary actions. These systems are able to alert the department to its problem officers, warn officers of their behaviors, and provide them with counseling or training to help in rectifying the behavior. In general, a record is kept on an officer participating in the EWS; however, this information is not placed in his/her personnel file.

<sup>55</sup> Kami Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U.L. REV. 373, 395 (Winter 2010). This is further supported by the recent finding by PERF that 22 percent of APD's officers account for 60 percent of APD's Use of Force reports.

Intervention is one of the primary goals of an EWS as it provides an opportunity to help change the behaviors of a problem officer. These systems often operate under the idea that the training and education of officers will help to improve their performance. In most systems, intervention consists of counseling sessions between the offending officer and his or her supervisor, but can also include training classes for groups of identified officers. The informal monitoring of an officer's performance after the intervention is typically conducted by their supervisor. Some departments implement a more formal process of monitoring its officers through observation, evaluation, and reporting.

One of the basic goals of an early warning system is to create a closer relationship between the departments and the communities they serve, putting these systems in line with the goals of Community-Oriented Policing (COP). Some studies suggest that an effective EWS can reduce the number of citizen complaints in a department as well as the number of problem officers. In order for an early warning system to have an impact on a department, there must be a universal commitment to the accountability of the organization. It must also be noted that this is one of many tools used to raise the standards of an organization.<sup>56</sup>

#### **FINDING**

The APD's new Multi-Relational Internal Affairs Database (MRAID) program was developed to track UOF and IA data for the department's EWS system. This program is a significant improvement over the previous database program which had limited functionality and analysis capabilities. The MRAID program was developed by a contract employee of the city's IT department. According to the IA lieutenant, this program collects data required in the department's EWS SOP; however, it does not provide trend analysis.

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<sup>56</sup> Walker, Samuel, Geoffrey P. Alpert, Dennis J. Kenney. *Responding to the Problem Police Officer: A National Study of Early Warning Systems, Final Report*, National Criminal Justice Reference Service (NCJRS), September 25, 2000.

**RECOMMENDATION 8-1:**

**Use software that assists with the comprehensive analysis of data, especially trends, and the generation of reports.**

Notwithstanding the previous recommendation (*see Recommendation 6-8*) in which it was recommended that the IRO's office has full, real-time access to the EWS, the department has made significant improvements in tracking EWS incidents using the new MRIAD program. While MRIAD collects data required in the EWS SOP it does not provide trend analysis which is critical to any EWS program. The IA lieutenant is currently working with the city's IT department to update MRIAD so it can provide trend analysis. It is recommended that this update be completed as soon as possible.

**RECOMMENDATION 8-2:**

**Include the tracking of resisting arrest and assault on police officer data in the EWS.**

Currently the use of force "bubble sheet," which is completed by officers to document UOF incidents, does not include resisting arrest or assault on police officer incidents. Any analysis of this information would require that IA review crime reports which is time consuming and impractical. It is recommended that the APD include resisting arrest and assault on police officer incidents on the UOF "bubble sheet" so the department is able to track and analyze this information. This recommendation was also made in MGT's 2006 report.

**FINDING**

The APD's EWS review panel, as described in SOP 3-49-2, has not been used as intended. The EWS review panel is designed to examine and discuss EWS analysis with employees, recommend retraining or remedial action, schedule stress counseling, or consider reassignment. An EWS panel hearing may be convened by the Deputy Chief of Administration at the request of the EWS coordinator (IA lieutenant) or anyone in the employee's chain of command. The SOP requires that the EWS coordinator attend all EWS review panel meetings.

**RECOMMENDATION 8-3:**

**Review the function of the EWS review panel (SOP 3-49) to ensure it is being used as required by the SOP.**

The EWS review panel is used infrequently according to the IA lieutenant. A recent change in the EWS threshold, based on the previously mentioned PERF report of 2011, has resulted in it being used when an employee has three EWS incidents reported within a year. This panel provides a potential forum for periodic review of the departments EWS data (recommended to be called Early Intervention System (EIS) in the PERF report) and trend analysis. It is recommended that the department review its utilization of the EWS review board to determine if there is merit in it convening on a monthly, quarterly, or annual basis to discuss EWS trends or remain on an "as needed" basis. Such meetings would provide an opportunity to make policy and training recommendations as well. This recommendation was also made in MGT's 2006 report.

**FINDING**

The use of a set number of entries or "hits" in the EWS as a threshold for intervention requires reconsideration. Many officers thought the present system was unfair. The consultant team agrees that it does not take into account the different environments where officers are assigned and as a result, may reduce the effectiveness of the system. One officer put it simply, "If I don't do any work, I won't get in trouble."

Once an officer is the subject of three EWS entries, the officer has reached a threshold that requires notification of his deputy chief. SOP 3-49 provides guidance on supervisors' responsibilities for handling EWS notifications. As pointed out by officers, the EWS threshold (was five entries in 12 months, now three) is an arbitrary number and does not take into account the location or shift they work. Officers who work the downtown district on weekends, for example, will respond to a significantly higher number of incidents that are reportable to EWS than those who work in the suburbs on the day shift. Therefore, the number of reportable EWS

incidents can be more of a product of the area and shift than of an officer's response to a situation or to a citizen. Officers who work downtown felt they get an unfair mark by just doing their job.

**RECOMMENDATION 8-4:**

**Modify the number of EWS entries which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.**

Although the department has changed the EWS threshold as a result of a recent study conducted by the Police Executive Research Forum, the IA lieutenant indicates the EWS threshold is under on-going review. Under consideration is another revision of the threshold that is more consistent with NIJ research that suggests agencies consider adjusting thresholds based on deviations from a standard norm for areas and shifts each officer works. It is recommended the department continue its review of thresholds based on the research by NIJ. A single threshold for the entire city does not take into account differences in assignments relating to number of contacts, violent incidents, and other factors related to EWS incidents. This recommendation was also made in MGT's 2006 report.

**Use of Force Reporting**

The APD's use of force SOP directs that an officer use "only that force which is reasonable and necessary to protect the sanctity of human life, preserve and protect individual liberties and to affect lawful objectives." Officers are required to provide detailed documentation in a supplemental report of any actions that result in an injury or alleged injury. An officer's immediate supervisor is responsible for completing a use of force form (required on all incidents involving hand-to-hand action resulting in an injury, baton strike, canine bite, mace, taser, less lethal, and lethal munitions), which is reviewed by the officer's chain of command to ensure the action was within department SOP. Copies of the reports are sent to IA, risk management, legal, and other appropriate divisions. An officer's commander is responsible for documenting the incident on the officer's employee card, which is a permanent file kept in all employees'

personnel file to document incidents that involve disciplinary action, corrective training, counseling, and complaints that were sustained.

**FINDING**

Use of force reporting continues to be inconsistent. APD officers are required to fill out a report for each occurrence of a UOF incident. In previous years, according to IA's review of UOF reporting, only 86 percent of UOF incidents had a report. While the APD is commended for improving UOF reporting from a low of 40 percent nearly a decade ago, less than 100 percent compliance is not acceptable.

The SOP is clear and requires use of force incidents be reported "immediately." However, at issue is an officer or supervisor's interpretation of the requirement to "immediately" report the incident. Some officers interviewed stated their supervisors appear on the scene of UOF incidents, while other officers assumed their report of the incident was adequate notification.

**COMMENDATION 8-1:**

**In response to recent events, Internal Affairs has increased its efforts to help ensure 100 percent compliance on UOF reporting.**

Responsibility of auditing UOF reporting rests with the IA lieutenant. In a recent review of the department's shootings by PERF, a recommendation was made that supervisors complete UOF reports by the end of each shift. It is critically important that this occurs so that all use of force incidents receive proper and timely review. According to the IA lieutenant, the department has stressed this requirement with supervisors over the past year during trainings and SOP reviews. In light of recent events, the department should continue its emphasis on this requirement and monitor and report on progress to the Chief of Police and the POC.

**RECOMMENDATION 8-5:**

**Issue the "APD Sergeant Reference Guide" in training for all lieutenants and sergeants and task the Training Committee to ensure training requirements in this guide are met.**

The IA lieutenant indicates that he has taken the initiative to ensure that all newly promoted supervisors have completed the IA requirements in the *Sergeant's Reference Guide*. While this is noteworthy, it should not be the responsibility of the IA lieutenant to ensure this occurs; rather, the Training Committee should schedule appointments with IA to conduct the appropriate training necessary to satisfy requirements in the Sergeants Reference Guide. We further recommend that the training committee review this issue and coordinate the OJT program for sergeants and lieutenants. Records should be maintained in the supervisors training file. This recommendation was also made in MGT's 2006 report.

### **Risk Management**

The City of Albuquerque's Risk Management Office (RMO) oversees the handling of tort claims and lawsuits filed against the city, including police misconduct. A claims adjuster, who is an RMO employee, is assigned to the APD and handles all claims against the department. Risk Management contracts with two outside companies to investigate claims involving excessive use of force and false arrest by officers. Any litigation arising from claims is handled by the City Attorney's Office or by contract with an outside legal firm. In the past, attorneys were encouraged to file lawsuits as a result of the city's practice of settling what was described as "nuisance claims" to avoid the cost of litigation; however, a "no settlement" was adopted by the prior administration for claims involving officer misconduct in an effort to discourage frivolous lawsuits. Today, all claims decisions, including decisions to settle, are made by a review board, which meets weekly and is attended by the IA commander and IRO.

### **FINDING**

Tort claim and lawsuit data related to alleged officer misconduct are being collected and entered into the EWS but are not being analyzed to identify SOP or training needs. All tort claims and lawsuit data are sent to the IRO and IA by the City of Albuquerque's Risk Manager. The data

in turn is entered into the EWS by IA and reviewed by the IRO, but there is no indication of any trend analysis, or extensive data analysis for that matter.

**RECOMMENDATION 8-6:**

**Work with City Attorney's Office, IRO, and IA to develop a process and/or implement software by which the monitoring and analysis of claims data can be accomplished.**

On average, the city has taken a reactive approach to police misconduct. This is no different in Risk Management, where there is no review of data and trends in an effort to be proactive. The analysis of current and previous claims and lawsuits would assist the APD in evaluating SOP and training needs going forward. It may also help to reduce the city's exposure through the early identification of poor policies and procedures or officers or vehicles that have higher than average rates of incidents. The previous reports suggested that the City Attorney's Office and Risk Management take a more active role with the APD and IRO in monitoring patterns of officer misconduct alleged in tort claims and lawsuits. Interviews with the representatives from the City Attorney's Office, Risk Management, IA commander, and IRO reveal this is not being done. At a minimum, Risk Management should provide quarterly or annual reports to APD and the IRO's office on the type of lawsuits being filed, the disposition of filed lawsuits, and the amount of money being paid for final disposition of lawsuits. This recommendation was also made in MGT's 2006 report.

**Policy Review Board**

The APD's Policy Review Board (SOP 3-65) was established to initiate, review, and evaluate department SOPs and procedures upon request. Board representatives include the department's planning manager, accreditation/inspections supervisor, bureau deputy chiefs, field services supervisor and officer, payroll manager, legal advisor, and APOA representative. Anyone in the department may bring a recommendation before the board to change existing SOPs or create a new policy. All policy recommendations to the board must be coordinated with the

APD's Inspections Unit/SOP detail to ensure compliance with the Commission on the Accreditation for Law Enforcement Agency (CALEA) standards.

**FINDING**

Interviews with the IRO and APD personnel revealed considerable confidence in the policy review board process. However, there is currently no effort to widely disseminate the SOP's or any changes department-wide.

**RECOMMENDATION 8-7:**

**Distribute SOP's electronically and automate the process to automatically notify all employees of any SOP changes.**

Many police agencies have discontinued issuing SOPs in hard copy due to the amount of time and effort required to manage the distribution process, not to mention the considerable cost. The APD has an employee intranet that is well-suited for the electronic distribution of SOPs. The issuance of SOPs electronically is more timely and efficient than distributing hard copies.

Moreover, in making the SOP available online, employees will have ample opportunity to re-familiarize themselves with the SOP of the department. Lastly, automated notification of updates and required proof of review will ensure that employees remain familiar with SOP's in their most current version.

## 9 CONCLUSION

With each subsequent review of the police oversight system, Albuquerque comes closer to having an outstanding police oversight system that could someday prove to be a model for cities across the country. Albuquerque's on-going commitment to the program, which includes a recent commitment to allow the IRO an increased involvement in an officer involved shooting investigations, modifying the IRO's CPC tracking software, and the regular review of the program, serves as evidence of its commitment to achieving such. However, to continue toward this goal of achieving a world class police oversight system, by which the monitored feel justly treated and the citizens feel as though the process is worthwhile, the system must continue to grow and change as the needs of the city grow and change. The system was born out of a critical period in which citizens experienced a deep distrust of its police department. With the twenty officer-involved shootings that have occurred in the past two years, the city is once again running the risk of disenfranchising its citizens and relegating its law enforcement personnel to a department with a lack of the legitimacy necessary in obtaining the trust of its citizens.

However, the city's willingness to invite both PERF and MGT to review its use of force and police oversight system suggests an on-going desire to achieve a level of accountability and legitimacy that is necessary to have a law enforcement agency embraced by its citizens. As such, the city, through its police department and police oversight system, must make some changes to its current process to ensure the on-going success of the system. Among these changes is the need to better train its Police Oversight Commissioners, engage in a more proactive form of monitoring, and allow the oversight system to share the burden of both investigating the use of force cases realized by the city and arriving at a proper discipline to ensure that law enforcement professionals are held accountable for their actions.

To accomplish this, the city should revise its current training practices to ensure that its POC members are adequately trained to allow each of the commissioners to be an engaged and useful participant in the process. The current level of training is failing to produce commissioners that are properly prepared for the complexities of the process, leaving members to learn as they go. This hampers the effectiveness of the process and discredits the POC and its mission.

The oversight body was given the power to suggest meaningful change but has failed to do such to the extent envisioned by the creators of the system. Through extensive analysis and thoughtful consideration, the process and its participants can not only suggest, but are able to effect meaningful change. The city needs to engage in a more proactive form of oversight. This means collecting and analyzing data born of the complaint system in order to identify systemic issues and ineffective policies and procedures that, if addressed early, might avoid an increased level of complaints in the future and lead to meaningful change going forward. While the complaint process is a useful tool in many ways, an overreliance on such will only serve to marginalize the process as more officers become resentful and Albuquerque citizens become increasingly suspicious of the process. Moreover, it is not enough to hold officers involved in an incident accountable, a truly effective system will hold his/her supervisors, the training received, and the police department leadership accountable for those failures realized in the system. The addition of an auditor/analyst position for the POC would provide the means to achieve this recommended level of data analyst to help ensure the POC is able to fulfill its mission and affect meaningful change.

Lastly, to achieve a true level of accountability, when discipline is issued for sustained complaints, the oversight process should allow for input by the POC. While this may not necessarily include final discipline, it should at a minimum, include the ability to suggest discipline; therefore, allowing the public, through its citizen complaint process, to exert pressure on change where change is needed. To be deprived of this ability can only lead to the desperate

act of appeasement by those who are monitoring to ensure the on-going cooperation of those that are being monitored.

In addition, as a response to the officer involved shootings in the last two years, the city should allow the oversight process real access to the resolution of these very serious issues. This means allowing them to be active and engaged from the moment the shooting is reported until the incident has reached its resolution. By doing this, the department and the process itself would attain a higher level of accountability, which ultimately leads to a truer sense of legitimacy from all participants.

The on-going leadership exhibited by the IRO and the Chief of Police is a remarkable opportunity for the city. And while the police oversight process continues to evolve and change, with each review and resulting changes comes a more fully realized dream envisioned by the community and city leaders that embarked upon this process more than thirty years ago. Moreover, the on-going leadership by the current IRO and Chief of Police, along with increased engagement by the POC members and the city leaders who appointed the POC members, is critical to the successful evolution of the process. The IRO, the Chief of Police, and city leaders need to make tough decisions and commit to real change to ensure that its current oversight system is not relegated to mediocrity. The recommendations set forth in this report are born of thoughts and ideas of the individual participants of the process. To implement them and others, and continue to think big and strive for continuous improvement will serve to help ensure that Albuquerque's police oversight system will one day become a model to others and ultimately be an important partner in realizing solid relations between law enforcement professionals and the citizens they serve.

# APPENDIX A: NATION-WIDE POLICE OVERSIGHT SYSTEMS<sup>57</sup>

## Albany, New York

Agency: Citizens' Police Review Board

Jurisdiction: Albany Police Department

Population: 95,658

Department Size: 340

Annual Budget: The Board has no independent budget of its own. The City of Albany has appropriated money in its budget to contract with the Government Law Center at the University of Albany Law School to provide the services necessary to staff and operate the Board, including an allocation to pay the Board's independent monitors/investigators.

Staff: 5 part-time staff; one (primary) attorney, the Director of the Government Law Center, two administrative Government Law Center staff, and one law student intern.

Structure: The Citizens' Police Review Board (CPRB) consists of nine members. Board members are appointed by the Mayor and Common Council. Members of the Board serve three-year, staggered terms and cannot serve more than two consecutive terms, but may be considered for reappointment after one year of non-membership. The Common Council has the authority to remove Board members with a two-thirds vote.

Subpoena power: No.

### Complaint Process

Intake: Complaints about police misconduct must be in writing using the City of Albany Police Department complaint form and can be filed two ways: with the CPRB which then forwards the complaint to the Department within two working days; or with the Department, which then forwards the complaint to the CPRB within two working days. Complaints must be filed within six months of the date of the incident unless a majority of the Board's members votes to accept a complaint more than six months old.

Informal Resolution: Mediation may be used at any point during the complaint process and can be requested by either the complainant or the officer. Mediation may proceed only upon agreement of the officer with approval of the Department. Mediation suspends investigation of a complaint. If a resolution is reached, the CPRB renders a finding of "mediated" and the allegations are deleted from the officer's CPRB history. If a resolution is not reached, the complaint continues through the complaint review process until conclusion.

<sup>57</sup> *Review of National Police Oversight Models for The Eugene Police Commission*, Police Assessment Resource Center (PARC), February 2005.

**Formal Investigation:** Within the Police Department, the Professional Standards unit investigates each complaint. The Chief provides the Board with quarterly updates on investigations. If the complaint alleges excessive force or a violation of civil rights, the Board observes and monitors the investigation and critically analyzes the investigation process.

The investigation should be concluded within 60 days of receiving the complaint. If not, Professional Standards updates the Board every 30 days until the conclusion of the investigation. Within ten working days of the conclusion of its investigation, Professional Standards submits a preliminary report of the Department's findings to the CPRB. The Board may then make its finding, request further investigation, request further case specific information, including written materials, audio or video tapes, and related documents, or refer the complaint to mediation. On complaints of excessive force or civil rights violations, the Board, if dissatisfied with the additional investigative effort and quality of review by the Chief or Mayor, may seek authorization from the Council, for an investigation by an outside investigator. The independent investigator is chosen from a panel of investigators recommended by the Government Law Center and approved by the Common Council and the Mayor.

**Findings:** The Board may make one of the following findings on the case: sustained, not sustained, exonerated, unfounded, ineffective policy or training, no finding, or mediated. After the review process, the CPRB notifies the Chief, the officer and the complainant of its findings. The Chief makes the final determination and disciplinary disposition and notifies all involved parties. If the Chief's findings and discipline are inconsistent with the CPRB findings, the CPRB may request a written explanation of the Department's final disposition.

**Appeals:** No appeals process is provided for.

**Agency History:** Created in 2000.

**Working Relationship with police department, city officials, community members, etc.:** According to a Board staff member, since its establishment in 2000, the Board has enjoyed a very good working relationship with the Department, and a good, though sometimes strained, working relationship with the union. Members of the Department attend CPRB monthly meetings, and the Board regularly meets with members of the Department. One hot button issue is mediation. The union is concerned about the protection of officer rights under the current mediation program, and has advised its officers not to participate until the union's concerns are addressed.

The Board staff member also indicated that the Board has enjoyed a very good working relationship with City officials, community members, and community organizations. The Board regularly meets with the Mayor and/or Deputy Mayor. Several community groups regularly attend the Board's monthly meetings, and these groups are actively involved in supporting the Board's policy review and recommendation efforts.

**Additional Information:** The Board holds regular monthly public meetings and issues quarterly and annual reports.

## **Berkeley, California**

Agency: Police Review Commission

Jurisdiction: Berkeley Police Department

Population: 102,743

Department Size: 200

Annual Budget: Approximately \$280,000

Staff: 4

Structure: The Berkeley Police Review Commission (PRC) consists of nine members. Each City Council member appoints one Commissioner. Commissioners must be residents of the City. Members serve two-year terms. Commissioners receive \$3 per hour to a maximum of \$200 per month.

Subpoena power: Yes.

### **Complaint Process**

Intake: Complaints must be written, signed by the aggrieved person, and filed within 90 days of the incident. The Commission must forward a complaint to Internal Affairs within 30 days. The Commission may grant a 90-day extension period. When an extension is granted, however, the findings of the Commission will not be considered in any disciplinary actions; nor are the subject officers required to testify. While the Commission is required to forward all complaints to IA, IA is not required to send all complaints it receives to the PRC.

Informal Resolution: Mediation may be used for all complaints except those involving the death of an individual. The Department, PRC, complainant, and subject officer all must agree to mediation before mediation is attempted. Mediation sessions are held before one Commissioner and involve the complainant and subject officer. Either party can appeal the mediator's decision within ten days. Five Commissioners must vote to review the appeal. If granted, the Commission can reinstitute mediation, dismiss the complaint, or order a formal investigation.

Formal Investigation: The Commission and IA investigate complaints independent of one another and often at the same time. Officers are required to participate in a Commission investigation.

Hearings: The Commission may dismiss any or all allegations in a complaint in one of five ways: allegations are found to be without merit after reviewing the investigative file, by a unanimous vote to dismiss, recommendation by the investigator to dismiss, a Commission motion to dismiss, or a motion by the subject officer to dismiss. Involved parties are notified of a dismissal; however, dismissed complaints are not referred to the Chief or City Manager. If a complaint is not dismissed after a completed Commission investigation, a Board of Inquiry is held. The Board, made up of three Commission members, hears testimony, allows for questioning of complainants, officers, and witnesses, and reviews evidence.

**Findings:** The Board may find as follows: unfounded, exonerated, not sustained, and sustained. Board findings are forwarded to the City Manager and the Chief of Police. The Chief, however, may have already made a final disposition based upon IA's investigation. While the City Manager has final authority over discipline, in reality the Chief decides whether or not to follow findings from the internal investigation.

**Appeals:** A complainant or officer may appeal within 15 days of receiving notification from the Commission of its resolution of the complaint. Appeals are granted if new evidence has been discovered.

**Other Functions:** The PRC reviews and makes recommendations on BPD policies and also holds public forums allowing Berkeley citizens to voice concerns relating to BPD policies and procedures. The Commission issues quarterly reports to the City Council and City Manager.

**Agency History:** The PRC was created in 1973 after community outcry relating to allegations of excessive force in handling street people.

## **Boise, Idaho**

Agency: Office of the Community Ombudsman

Jurisdiction: Boise Police Department; Boise Airport Police; Boise Parking Enforcement; Boise Code Enforcement

Population: 181,711

Department Size: 280

Annual Budget: \$250,000

Staff: 3

Structure: The Boise Ombudsman is appointed by the Mayor and confirmed by the City Council. The Ombudsman may be removed from office upon a recommendation from the Mayor and a majority vote of the Council. The Ombudsman reports directly to the Mayor and City Council.

Subpoena power: No, but can compel officers to give testimony that can only be used in administrative proceedings.

Events/conditions precipitating creation of oversight mechanism: During 20 months from 1996 to 1997, eight fatal police shootings occurred. The shootings led to demands for oversight and the community reaction caused unhappiness in the police union over perceived lack of support. The police also had a very strained relationship with young people in the community. These events and conditions coincided with the rapid growth of the city and the Police Department that led to recruiting officers from other communities where they had been trained in a different style of policing.

### **Complaint Process**

Intake: Complaints can be filed with the Ombudsman by mail, telephone, facsimile, in person, or online. Complaints can also be filed with the Boise Police Department. Complaints must be filed within 90 days of the incident. Once filed, complaints are classified by the seriousness of the alleged offense. The Office of the Community Ombudsman classifies complaints as either Class I or Class II. Class I complaints are complaints which, if sustained, constitute a serious violation that could result in criminal charges and/or serious discipline. Class II complaints include lesser offenses such as general demeanor or selective enforcement.

Informal Resolution: Class II complaints may be investigated by the officer's immediate supervisor in lieu of a formal investigation. The Ombudsman may issue findings based on the report from the officer's supervisor. Alternatively, the Ombudsman may conduct further investigation and then issue findings.

Formal Investigation: Investigations are conducted by the entity that received the complaint. The Ombudsman, if appropriate, may refer a complaint to Internal Affairs for investigation and case management. All interviews during a Class I investigation must be recorded. Class

II complaints, not referred to the officer's supervisor, are handled in the same manner except that interviews are not required to be recorded. However, as a practical matter, the Ombudsman's office records all interviews, regardless of classification. Investigations generally will be completed within 30 days. The Ombudsman reviews all Class I investigations and at least half of the Class II investigations conducted by the police. The Ombudsman may also review any ongoing or completed internal investigation.

Findings: Findings are: exonerated, no finding, not sustained, sustained, and unfounded.

Appeals: Appeals of completed Internal Affairs investigations must be filed with the Office of the Community Ombudsman within 30 days. The Ombudsman may conduct further investigation and issue findings. Investigations initiated by an appeal are conducted in accordance with the same guidelines as those governing primary investigations conducted by the Ombudsman. Dispositions of appeals are reviewed by the Chief of Police.

Other Functions: If during the course of a formal investigation new allegations unrelated to the original allegations are discovered, a new investigation, independent of the original investigation, will be conducted. The Ombudsman can reopen and further investigate any complaint filed with his office or the Boise Police Department. The Ombudsman submits semi-annual reports to the City Clerk, the City Council, and the Mayor. The Ombudsman also makes policy recommendations, analyzes trends in complaints, reviews completed internal investigations, and monitors ongoing internal investigations.

Working Relationship with police department, city officials, community members, etc.: The relationship between the Office of the Community Ombudsman and the Department has been professional and functional from the start; however, the degree of collaboration between them has been somewhat dependent on the approach taken by the particular Chief in office at the time. While both the Department and the union publicly opposed the creation of the Ombudsman, the Ombudsman reports that all parties involved are able to work together effectively. The Ombudsman meets on a monthly basis with the mayor and two members of the City Council to keep lines of communication open. In addition, the City Attorney's Office provides legal support to the Ombudsman, except in cases where a conflict exists. An outside law firm is under contract to provide legal counsel to the ombudsman when a conflict is declared. The Ombudsman reports that he has found it particularly challenging to maintain contacts and sustained relationships with the broader Boise community. He identified this as an area where he felt improvement could be made.

Additional Information: Because the office is completely independent, the Ombudsman perceives it as isolated, having neither a constituency to answer to nor to advocate for it. The Ombudsman stated that he would like to have a small group of residents who are very familiar with the work of the Ombudsman and able to engage in the public debate in the interest of the Ombudsman. The Ombudsman also noted that the office is under-funded and under-staffed, precluding investigation of less serious complaints.

## Cambridge, Massachusetts

Agency: Cambridge Police Review and Advisory Board

Jurisdiction: Cambridge Police Department

Population: 101,355

Department Size: 271

Annual Budget: \$85,000

Staff: 2, an executive secretary to the Board and a Board investigator

Structure: The PRAB consists of five civilian members appointed by the City Manager for five-year terms. Board members are not compensated and must be residents of the City. The PRAB consults with the Chief in establishing policies, rules, and regulations for the Cambridge Police Department, (with the City Council) reviews the Department budget before it is reviewed by the City Manager, receives and reconciles complaints of police misconduct, and makes disciplinary recommendations to the Chief and City Manager.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: There was a controversial incident involving the police approximately 20 years ago that resulted in public outcry and support for oversight of the Cambridge Police Department.

### Complaint Process

Intake: Formal complaints must be filed within 60 days of the incident in person, by mail, or telephone with the PRAB. Complaints may also be filed with the Quality Control section of the Cambridge Police Department in person, by telephone, by mail, or e-mail. Where a complaint is filed dictates the agency that will investigate it. Complaints filed with the Quality Control must be forwarded immediately to the PRAB. Copies of the complaint must be given to each PRAB member, the PRAB investigator, and the Chief of Police. The Chief and Quality Control are given copies of formal complaints filed with the Board within five working days. Complaints filed with the PRAB are preliminarily investigated within ten days to determine if sufficient evidence exists to warrant a full investigation. At the completion of the preliminary investigation the PRAB either orders a full investigation or dismisses the complaint.

Informal Resolution: After a full PRAB investigation, the Board may suggest mediation.

Formal Investigations: The Board investigator interviews the subject officer(s), complainant, witnesses, gathers evidence, reviews reports and Department policies. Complaints filed with the Department are investigated by the Quality Control section. Upon conclusion of a departmental investigation, the Chief files a report of findings with the PRAB.

**Findings:** The Board may dismiss a complaint at several stages of the complaint process: after reviewing a preliminary investigative report prepared by the Board investigator, after a full investigative report prepared by the Board investigator, after a fact-finding hearing conducted by the City Solicitor's Office, or after a public Board hearing. If the Board sustains a complaint, it recommends discipline to the City Manager. Findings are classified as follows: sustained, or dismissed for lack of jurisdiction, lack of probable cause, insufficient evidence.

**Appeals:** If a complaint investigated by the PRAB is not resolved to the satisfaction of the complainant, the respondent employee, or a member of the Board, the aggrieved person(s) may request that the full Board hear the case or review the investigative file further. If a hearing or review is requested, a majority of the Board members must vote to hear or review the case. The Board may also order a hearing or review of a dismissed complaint. The Board has the same options for disposition on appeal as it does on an original complaint. The PRAB cannot hear appeals of Quality Control complaint investigations.

**Other Functions:** The Board reviews Department policies, procedures, and practices and makes recommendations to the City Manager, Chief of Police, and City Council. Additionally, the Board along with the City Council reviews the Cambridge Police Department's budget before it goes to the City Manager. The Board issues quarterly reports regarding the activities of the police department, including the management of complaints.

**Oversight/IA Interaction:** The Board has a good relationship with Quality Control, which presently is very open. In the past, however, access to information was difficult, in part because Quality Control viewed the Board as having a pro-complainant attitude.

**Agency History:** The Board was created in 1984 to improve community confidence in city government and to strengthen police-community relations.

**Additional Information:** Several years ago the Board was essentially defunct as all of its positions were left vacant and the governing ordinance had no provision for operations in such a situation. A policy currently in draft would allow the Board to function in such circumstances. The pending policy would also grant the Board the authority to hear appeals of Quality Control complaint investigations. Additionally, the Board is also debating the desirability of residency requirements for Board members.

## **Charlotte, North Carolina**

Agency: Citizens Review Board

Jurisdiction: Charlotte-Mecklenburg Police Department

Population: 540,828

Department Size: 1,363

Annual Budget: \$3,500

Staff: 3 – City Clerk, Administrative Assistant to the City Clerk, and the Boards and Commissions Clerk. The staff members are part-time as their primary duties involve other aspects of the City Clerk's Office.

**Structure:** The Board reviews appeals of dispositions imposed by the Chief. The Board may hear appeals of alleged violations of the following rules: use of force, unbecoming conduct, and arrest, search and seizure. In addition, any firearms discharge by an officer which results in the death or injury of a person may be appealed to the Board. The Board is made up of 11 members. Five members are appointed by the City Council, three are appointed by the Mayor, and three are appointed by the City Manager. Members serve three-year terms and cannot serve more than two consecutive terms.

Subpoena power: No.

**Events/conditions precipitating creation of oversight mechanism:** The Citizens Review Board was formed in 1997 after several officer-involved shootings during a several-year period. Citizens in Charlotte wanted more access and input into the internal review of police officers relating to police conduct generally.

**Appeals:** Complainants must file an appeal with the Clerk's Office within seven days of receiving written notification from the Department of its findings regarding a complaint. The Board then reviews the case summary within 14 days. The Board can dismiss the appeal or hold a due process hearing within 30 days. After the hearing, the Board sends findings of fact and recommendations for discipline to the Chief and City Manager.

**Oversight/IA Interaction:** As the Review Board only hears appeals of dispositions, the only interaction with IA is on a formal basis similar to the functioning of a courtroom.

**Agency History:** The Board was created in 1997 and has not changed since its inception.

**Working Relationship with police department, city officials, community members, etc.:**  
The Board has a good working relationship with IA, the Department, and the City Attorney's office.

## Dayton, Ohio

Agency: Dayton Citizens Appeal Board

Jurisdiction: Dayton Police Department

Population: 166,179

Department Size: 558

Staff: 1 Internal Affairs Commander and 2 legal staff

Structure: The Board consists of five voting members and two non-voting ex officio members. The Chief of Police and one assistant City Manager are non-voting members of the Board and one staff member of the Board is the Internal Affairs Bureau Commander. Board members are appointed by the City Manager. Members must be residents of the City. Members serve two-year terms and may not serve more than three consecutive terms. The Board reports to the City Manager.

Subpoena power: Yes.

### Complaint Process

Appeals: Appeals of complaints must be filed in writing within 30 calendar days of notification of the Department's findings regarding the original complaint. Appeals may be taken over the phone; however, the complaint must be signed by the appellant before it is reviewed by the Board.

Hearings: Board hearings are public. Prior to the hearing, the Board conducts an executive session. During the executive session, the Board reviews the Department's investigation of a complaint with a legal advisor hired by the City and a representative of Internal Affairs. During the public hearing, Board members hear testimony and question witnesses. After the hearing, the Board may request further investigation by Internal Affairs or issue findings which are forwarded to the City Manager. A summary of the findings is forwarded to the City newspaper, "The Dayton Update."

Findings: Findings are as follows: unfounded, exonerated, not sustained, sustained, no finding, and mediated.

Other Functions: The Board files a public annual report with the City Manager.

Oversight/IA Interaction: The Board has little interaction with the Dayton-Montgomery County Ombudsman, another layer of oversight for the Dayton Police Department. The Board also does not have much interaction with the Internal Affairs Bureau as complaints are filed after completed IA investigations.

Agency History: The Citizens Appeal Board was created by ordinance in 1990.

## Dayton, Ohio

Agency: Joint Office of Citizen Complaints (Ombudsman's Office)

Jurisdiction: Dayton Police Department, along with all Montgomery County departments, City of Dayton departments, and all other government agencies within Montgomery County

Population: 166,179

Department Size: 558

Annual Budget: \$176,000 (general jurisdiction); \$268,000 (long-term care)

Staff: 12 (3 executive positions including the Ombudsman and Assistant Ombudsman and 9 assigned to the Long Term Care Ombudsman Program), plus volunteers and interns

Structure: The Ombudsman's Office is part of the Joint Office of Citizen Complaints. The Office is a corporation and is governed by a Board of Trustees. The Ombudsman is a public official elected by the Board to act as the Chief Executive Officer of the corporation. The Ombudsman is retained under contract. This contract allows for the Ombudsman to operate without interference from elected officials and government agencies. The Ombudsman can only be removed from office by a two-thirds vote of the Board. The Joint Office of Citizen Complaints oversees all government offices and also specializes in receiving and investigating complaints from residents of nursing homes, county homes, residential care facilities, group homes, and private residences.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: The Dayton-Montgomery County Ombudsman was created because of distrust of the police and general unrest in the community after the Vietnam War and school desegregation.

### Complaint Process

Intake: Complaints can be filed at the Ombudsman office, by telephone, mail, or e-mail. Complaints can also be filed with the Department. The Ombudsman has jurisdiction over complaints filed with the Joint Office of Citizen complaints. The Ombudsman either investigates complaints herself or refers them to Internal Affairs if an internal investigation is more appropriate.

Informal Resolution: The Ombudsman offers mediation as an option, usually during the initial complaint intake process/interview. Mediators are provided by a separate Montgomery County department.

Formal Investigation: The Ombudsman reviews evidence, including police reports and recorded interviews, and can also interview officers, witnesses, and complainants.

**Findings:** The Ombudsman does not make findings or recommendations to the Chief or City Commission. The Ombudsman does make recommendations to the District Commanders (supervisors) and/or Chief of Police about whether a complaint is justified or unjustified.

**Appeals:** There is no appeal of Ombudsman recommendations. Complainants that filed with the Ombudsman's Office and are dissatisfied with the result can then file with Internal Affairs. Likewise, those who file initially with Internal Affairs can turn to the Joint Office of Citizen Complaints if dissatisfied.

**Other Functions:** The Ombudsman reviews policies, makes policy recommendations to the Chief and City Commission, and reviews existing policies and procedures being implemented.

**Oversight/IA Interaction:** Other than attending hearings of the Appeal Board, the Ombudsman has little interaction with Internal Affairs or with the Dayton Citizen Appeal Board.

**Agency History:** The Dayton-Montgomery County Ombudsman Office was created in 1972. The Ombudsman has not changed structurally since it was established.

**Working Relationship with police department, city officials, community members, etc.:** The Ombudsman has a good relationship with the elected officials (city and county) and also with the directors of the local agencies that they are charged with overseeing. Those relationships increase the effectiveness of the Ombudsman's interventions. Most policy recommendations made by the Ombudsman are received favorably.

**Additional Information:** The Ombudsman sees her principal strength lying in her independence from other government officials. While the Ombudsman can be fired, officials cannot interfere with her investigations. The Ombudsman perceives that the breadth of the subject matter covered by the office as both a strength and a weakness (as investigators do not specialize in police misconduct issues). The Ombudsman sees the office's lack of subpoena power as a definite weakness.

## District of Columbia

Agency: Office of Police Complaints

Jurisdiction: Metropolitan Police Department (MPD) and District of Columbia Housing Authority Police Department (DCHAPD)

Population: 563,384

Department Size: 3800 (MPD) and 75 (DCHAPD)

Annual Budget: \$1,756,000

Staff: 20 – Executive Director, Deputy Director, Chief Investigator, Assistant Chief Investigator, 10 Investigators, Public Affairs Specialist, and 4 Administrative Positions

Structure: The Office of Police Complaints (OPC) is overseen by the Police Complaints Board (PCB). The five-member PCB board consists of four members who are private citizen volunteers and one member is an MPD employee. All are appointed by the Mayor and approved by the District Council. PCB has general oversight authority over OPC and has the authority to hire and remove OPC's executive director. One member of PCB must concur in dismissal determinations made by OPC's executive director. PCB also must approve members of OPC's mediator and complaint examiner pool and can make recommendations to the Mayor, the Council, and the Chief of Police.

Subpoena power: Yes.

### Complaint Process

Intake: The public initiates the complaint process, which begins only after a person has filed a written, signed complaint form with the agency. OPC has the authority to investigate complaints that are received within 45 days of the alleged misconduct and that allege abuse or misuse of police powers by MPD or DCHAPD officers, including: (1) Harassment; (2) Use of language or conduct that is insulting, demeaning, or humiliating; (3) Retaliation for filing a complaint with OPC; (4) Use of unnecessary or excessive force; or (5) Discriminatory treatment. The office is physically located away from MPD, DCHAPD, and other government offices to provide the public with a less intimidating environment in which to file a complaint. To make it as convenient as possible to file a complaint, complainants may file in person at OPC's office or at any MPD district station, or they may initiate a complaint by mail, telephone, fax, or e-mail.

After a complaint is received, the Executive Director reviews it to confirm that it is in OPC's jurisdiction, and to determine how to proceed with the processing of the complaint. If a complaint is outside OPC's jurisdiction, the Executive Director refers it to MPD's Office of Professional Responsibility, DCHAPD, or the appropriate agency for investigation. Also, if the complaint alleges conduct by an officer that may be criminal in nature, the Executive Director refers the complaint to the U.S. Attorney for the District of Columbia for possible criminal prosecution of the officer. For the remaining complaints, the Executive Director determines whether they should be investigated or mediated.

**Formal Investigation:** When a complaint is investigated, it is assigned to one of OPC's staff investigators. The investigator interviews the complainant, subject officer, and any witnesses the complainant identifies, in addition to attempting to locate and interview any other police or non-police witnesses who may be able to provide relevant information. The investigator also collects and reviews other evidence, including MPD documents, hospital records, materials from other sources, the scene of the incident, and any other relevant information. When the investigation is complete, the investigator drafts an investigative report, which, along with all the evidence gathered in the investigation, is reviewed by a supervisor. The Executive Director then reviews the report of the findings of the investigation, and determines if the complaint should be dismissed, which requires the concurrence of one PCB member, or referred to a complaint examiner for review and a decision on the merits of the complaint. OPC's three principal methods of resolving complaints – dismissal, mediation, and complaint examination – are discussed in more detail below.

**Dismissal:** The statute and regulations governing OPC allow for the dismissal of complaints under three sets of circumstances: (1) the complaint is deemed to lack merit; (2) the complainant refuses to cooperate with the investigation; or (3) if, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process. Based on information gathered during OPC's investigation of a complaint, and with the concurrence of one PCB member, the Executive Director may dismiss a complaint when these circumstances arise.

**Informal Resolution:** A mediation service, the Community Dispute Resolution Center (CDRC), administers OPC's mediation program, assigning complaints to be mediated by a pool of well-trained, experienced, and diverse mediators. There is no cost to the complainant or the subject officer to participate in mediation, but both parties must sign a confidentiality agreement that provides that anything said by either party during the mediation session will not be disclosed outside of the session.

The decision to refer a complaint to mediation is made by the Executive Director, and not by the parties. If the Executive Director refers a complaint to mediation, both the complainant and the subject officer are required to participate in the mediation process in good faith. Failure to participate in good faith constitutes cause for discipline of the subject officer and grounds for dismissal of the complaint. However, even though participation of the parties is required, the outcome of the mediation is completely voluntary because neither the complainant nor the officer is required to reach an agreement or settle the dispute during mediation.

There are some restrictions as to which complaints may be referred to mediation. OPC will not refer complaints involving allegations of the use of unnecessary or excessive force that results in physical injury. In addition, an officer may not mediate a complaint if he or she has mediated a complaint alleging similar misconduct or has had a complaint sustained by OPC for similar misconduct in the past 12 months.

**Complaint Examination:** The complaint examination process is used to resolve complaints where the Executive Director determines that there is "reasonable cause to believe" that police misconduct occurred. When the Executive Director reaches this determination, the

complaint is referred to a complaint examiner who reviews it, along with OPC's investigative report, and issues a written decision regarding the merits of the complaint. The complaint examiner may resolve the complaint based on OPC's investigative report alone, or, if necessary, may conduct an evidentiary hearing to further develop the factual record. In practice, complaints that are neither dismissed nor successfully mediated are resolved through complaint examination, which is the only means by which OPC can issue a decision sustaining a complaint against an officer, although not all complaints that are referred to complaint examination are sustained.

If a complaint examiner sustains any allegation in a complaint, the Executive Director forwards the complaint examiner's decision to the Chief of Police for review and imposition of discipline. Under certain limited circumstances, the Chief may send a decision back to OPC for further review, but, otherwise, the Chief is bound by the decision and must impose discipline on the officer as a result of the decision. If the complaint examiner does not sustain any allegation in a complaint, the Executive Director dismisses the complaint based on the decision.

**Other Functions:** The statute creating PCB places an obligation on it to, "where appropriate, make recommendations" to the Mayor, the Council, and the Chief of Police "concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." To date, PCB has issued two detailed policy recommendations regarding racial profiling and disorderly conduct arrests.

**Agency History:** The Civilian Complaint Review Board, OPC's predecessor agency, was established in 1982 and abolished in 1995 after it proved ineffective. The current office, originally known as the Office of Citizen Complaint Review, and now known as the Office of Police Complaints, was established in 1999.

**Working Relationship with police department, city officials, community members, etc.:** OPC has a good working relationship with the MPD. OPC investigators receive training from MPD instructors regarding MPD policies and procedures. OPC is in regular communication with the police union and different branches of the MPD. The Chief has been supportive of OPC. Because of the small size of the DCHAPD, OPC has received only a small number of complaints regarding DCHAPD officers, and has had relatively limited contact with the agency.

## Flint, Michigan

Agency: Flint Ombudsman

Jurisdiction: Flint Police Department

Population: 124,943

Department Size: 340

Annual Budget: Total \$540,744; Complaints against police \$173,811

Staff: Total 7; Complaints against police 3 (2 full-time, 1 part-time)

Structure: The Flint Ombudsman is appointed by the City Council. The Ombudsman is appointed to a seven-year term and cannot be reappointed. The Ombudsman can be removed by a three-fourths vote of the Council.

Subpoena power: Yes.

### Complaint Process

Intake: Complaints filed with Ombudsman are assigned to an investigator.

Informal Resolution: An investigator may informally resolve a complaint by including Internal Affairs in the process and providing an explanation of Department policy to the complainant. Additionally, IA may ask a shift commander to conduct an informal investigation. If a complaint is not resolved using either of these two methods, an investigator may offer mediation. Both the officer and complainant must agree to mediation. The officer is not directly involved in mediation. The officer's supervisor meets with the complainant and attempts to resolve the matter. If no solution can be reached, the complainant may request a formal investigation by the Ombudsman.

Formal Investigation: Once a complaint has been filed and a formal investigation initiated, the investigator mails the complaint to the Chief. The Department has seven days to respond. This usually results in the Chief forwarding the complaint down the chain of command to the subject officer. The investigator also interviews the complainant and reviews evidence. When the investigation has been completed, the investigator prepares a report for the Ombudsman.

Findings: The Ombudsman can either sustain or not sustain each allegation in a complaint. The final investigation report is then sent to the Chief. The Ombudsman can recommend only that discipline be imposed, not what type of discipline should be imposed. The Chief can then conduct another investigation through Internal Affairs or the subject officer's commander.

Oversight/IA Interaction: The Ombudsman does not have much interaction with IA. The only interaction is for specific reasons such as gathering information (not sharing information) or referring specific complaints to IA for investigation.

Agency History: The Flint Ombudsman was created in 1974 as a check and balance on executive power when a charter revision created a strong mayoral form of government.

Working Relationship with police department, city officials, community members, etc.:  
The Ombudsman has a wary relationship with the police department.

## **Hawaii County, Hawaii**

Agency: County of Hawaii Police Commission

Jurisdiction: Police Department of the County of Hawaii

Population: 158,423

Department Size: 369

Annual Budget: \$99,995

Staff: 1 secretary/office manager

Structure: The Police Commission reviews the annual budget prepared by the Chief and makes budgetary recommendations to the Mayor. The Commission also has the authority to hire and fire the Chief. The Commission consists of nine Commissioners from each council district in the County. Commissioners are appointed by the Mayor and confirmed by the Council.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints can be filed in writing with the Commission. The complaint must be signed and dated by the complainant under oath before a notary public, and must be filed within 60 days of the date of the incident.

Informal Resolution: None.

Formal Investigation: An initial investigation is done by the Commission. The Commission reviews all police reports related to the incident, interviews the subject officer and complainant, and can issue findings based on this initial investigation. The complainant may give testimony in a meeting open to the public. The subject officer can request a closed session. The Commission may refer the complaint to the Police Department or a private investigator, who will work under the Commission's direction, for a full investigation. The Commission may investigate allegations of misconduct, other than the original allegations, arising from the investigation of a complaint.

Findings: The Commission makes the following findings: unfounded, exonerated, not sustained, and sustained. The Commission gives written notice of its findings to the Chief. The Commission's findings are not binding on the Chief. The Chief retains final disciplinary authority.

Appeals: An action taken by the Commission may be reconsidered only upon a motion made at the same or the next meeting by a commissioner who voted on the prevailing side.

Other Functions: The Commission submits an annual report to the Mayor and Council.

Oversight/IA Interaction: The Commission has monthly meetings during which Internal Affairs representatives report on cases, both referred from the Police Commission and being investigated internally, independent of the Commission.

Agency History: Since the Commission's founding, the number of commissioners has increased from seven to nine. Additionally, in the early 1990's, the Commission was given investigative power and its location was moved away from the Department.

## **Kansas City, Missouri**

Agency: Board of Police Commissioners Office of Community Complaints

Jurisdiction: Kansas City (MO) Police Department

Population: 441,545

Department Size: 1,215

Annual Budget: \$400,000

Staff: 7

Structure: The Office of Community Complaints (OCC) is overseen by the Board of Police Commissioners (Board). The OCC is in a separate location from the Kansas City, Missouri Police Department. The Director of the OCC reports to the Board and supervises all OCC staff.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints can be filed at the OCC, KCPD, other non-police facilities, or by mail within 90 days of the incident. Complaints cannot be filed over the telephone. Complaints submitted in a manner other than in person must be verified by the complainant; unverified complaints are not investigated, nor are complaints that are related to a lawsuit. The OCC is immediately notified of all complaints filed with the Department.

Informal Resolution: If a complaint is filed at the Police Department, a commander or supervisor will attempt to resolve the complaint without a formal investigation. If a complaint filed at the Department cannot be resolved informally, the original complaint form is forwarded to the OCC. The OCC has the authority to close a complaint prior to an Internal Affairs investigation. The OCC can also close a complaint if the complainant does not cooperate. The OCC encourages conciliation or mediation at several points during the process.

Formal Investigation: The OCC conducts an initial interview with the complainant in order to correctly categorize each complaint. This can include reviewing medical records, taking photographs, or a request that an Internal Affairs detective take the initial formal statement. Once a complaint has been classified, it is forwarded to Internal Affairs for further investigation. OCC reviews each completed internal investigation. An OCC analyst prepares a memorandum which summarizes and recommends findings for each allegation raised in the complaint. This Summary is reviewed by the OCC Director and is forwarded to the Chief of Police and the Board of Police Commissioners. If the Chief and the Board of Police Commissioners agree with the analysis, the recommendation becomes the final determination. However, if the Chief and the Board of Commissioners disagree, the analysis is referred back to the OCC for reconsideration. The OCC provides the final determination for returned analyses except in cases where the Board of Police Commissioners has the authority to review and consider impasses between the OCC and the Department.

**Findings:** The OCC classifies findings as follows: sustained, not sustained, unfounded, and exonerated. If a complaint is sustained, it is forwarded to the Chief who can impose discipline or training.

**Appeals:** Within 30 days of the discovery of new evidence, complainants and officers may request the OCC Director to reconsider a decision. The appeal is limited to OCC's findings, not actions taken by the Chief.

**Other Functions:** The OCC submits monthly reports on the status of active complaints and an annual report to the Board and Chief of Police. The OCC can also audit internal investigations. The OCC has the authority to refer an investigation back to IA for further investigation but cannot recommend discipline.

**Agency History:** The Office of Community Complaints was created in 1969 by the Board of Police Commissioners to receive and review complaints against the KCPD. The original title of the OCC (Office of Citizen Complaints) was changed to the Office of Community Complaints in 2003.

**Additional Information:** The Fraternal Order of Police in Kansas City views the OCC as an inconvenience. The union president stated that "OCC, to us, is kind of a necessary evil." He continued, "Nobody likes it. Nobody wants it. But our department and the community believe it is necessary politically." Denver Post July 4, 2004

## **Knoxville, Tennessee**

Agency: Police Advisory and Review Committee

Jurisdiction: Knoxville Police Department

Population: 173,890

Department Size: 414

Annual Budget: \$73,000 (expenditures 2001)

Staff: Executive Director who may hire additional staff as funded

**Structure:** The Committee is composed of seven volunteer members. Members must be qualified to vote in Knox County. Members of the Committee are appointed by the Mayor and confirmed by Council. Committee members serve three-year terms and cannot serve more than two consecutive terms. The Committee is served by an Executive Director (ED). The ED is designated by the Mayor and approved by the City Council. Once confirmed by the City Council, the ED becomes a non-exempt employee of the Department of Community Relations of the City of Knoxville. The Committee has the authority to make policy recommendations to the Chief. The Committee does not have the ability to direct the Chief to impose or change a disciplinary disposition.

**Subpoena power:** Yes, and the Committee can compel witnesses to appear before Internal Affairs or the Executive Director and, if necessary, provide statements during the course of an investigation.

### **Complaint Process**

**Intake:** Complaints can be filed by telephone, mail, or in person with the ED. The ED must forward complaints to the commander of the Internal Affairs Unit within three working days. The ED may accept non-sworn or anonymous complaints. The ED can attempt to informally resolve non-sworn or anonymous complaints or refer them to Internal Affairs for investigation. Complaints can also be filed with Internal Affairs.

**Informal Resolution:** Mediation is encouraged.

**Formal Investigation:** The ED does not have primary investigative authority. When the ED is notified by Internal Affairs that an investigation has been closed, the ED reviews the closed case file and determines if the investigation was complete. The ED reports her findings to the Committee at the Committee's next regularly scheduled meeting. After a finding by the ED that an investigation was incomplete, the Committee, by a majority vote, refers the case to the Chief for further investigation, or, if the Chief fails to conduct further investigation, requests that the ED conduct an investigation.

**Findings:** The ED determines if an internal investigation was thorough, complete, and fair. After any additional investigation by the Chief or ED, the Committee reports its findings and conclusions to the Chief, the Mayor, and City Council.

Other Functions: The Committee can make policy recommendations to the Chief. The Committee issues an annual report and this report is included in the ED's annual report to the Chief, the Mayor, and the City Council.

Agency History: The Police Advisory and Review Committee was created by the Mayor in 1998 and adopted by city ordinance in 2001.

Working Relationship with police department, city officials, community members, etc.: According to the Committee's Executive Director, the Committee has an excellent relationship with the Department, the Mayor, and the community. The relationship has been strengthened over the years by support from elected officials and various Chiefs.

## Los Angeles County, California

Agency: Office of Independent Review

Jurisdiction: Los Angeles County Sheriff's Department

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$1,200,000

Staff: 6 full-time attorneys; 3 support staff

**Structure:** The Office of Independent Review, together with the Office of the Ombudsman and Special Counsel to the County Board of Supervisors, is one of three levels of oversight for the Los Angeles County Sheriff's Department. With full access to files, interviews, and all stages of the process, OIR monitors the internal investigations conducted by LASD and makes recommendations of how those investigations should proceed, if such recommendations are warranted. OIR makes recommendations to the Department regarding the dispositions of internal investigations and, when founded, the level of discipline to be imposed. OIR, which operates out of the building that houses LASD's internal investigators, also makes recommendations for improvements in broader policies, practices, and procedures.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: Sheriff Baca, seeing the value of ongoing oversight, provided the principal impetus for the creation of OIR.

### Complaint Process

OIR audits ongoing and completed IA investigations and may recommend discipline. It does not process civilian complaints.

**Oversight/IA Interaction:** The Office of Independent Review has a close working relationship with LASD's Office of Internal Affairs and Office of Internal Criminal Investigations and is able to participate in ongoing investigations as desired.

**Agency History:** OIR was created by the Los Angeles County Board of Supervisors in 2001 at the request of the Sheriff and with input from Special Counsel.

**Working Relationship with police department, city officials, community members, etc.:** According to OIR, it has an excellent close working relationship with the leadership of the Sheriff's Department, in particular the leadership of the internal investigatory units. The Sheriff's role in the creation of OIR is a major factor in the close relationship. OIR seeks to keep a low profile and to avoid conflicts with the union. OIR also maintains an effective working relationship with the LA County Board of Supervisors.

Additional Information: OIR attributes its effectiveness to real-time monitoring of internal investigations and the internal decision-making process with regard to decisions. Through its public reports on systems and individual cases, OIR has provided transparency to the internal working of the Sheriff's Department.

## Los Angeles County, California

Agency: Office of the Ombudsman

Jurisdiction: Los Angeles County Sheriff's Department and any other department responsible to the Los Angeles County Board of Supervisors

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$780,000

Staff: 8 full-time, 1 part-time (5 full-time employees review citizen complaints)

Structure: The Los Angeles County Office of Ombudsman, together with the Office of Independent Review and Special Counsel to the County Board of Supervisors, is one of three levels of oversight over the Los Angeles County Sheriff's Department. The Ombudsman's office only reviews service and personnel complaints not sustained by LASD's internal investigations. The Ombudsman is appointed by the Sheriff and the Los Angeles County Board of Supervisors.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism:

In 1991 several highly publicized acts of excessive force and ongoing large payouts of judgments and settlements by the County led to a blue ribbon investigation of the LASD headed by retired Superior Court Judge James G. Kolts. Among the recommendations of the Kolts Report that sought to minimize the use of injurious force and to reduce the associated financial liability to County taxpayers was the establishment of an ombudsman function within the County. The office began operations in 1994.

### Complaint Process

Intake: The Ombudsman reviews unfounded or unresolved citizen service or personnel complaints against LASD members. Service and personnel complaints are complaints of a less serious nature. When a complainant is dissatisfied with a finding of not sustained or unfounded or believes the investigation was incomplete, the complainant may contact the Ombudsman. Inquiries with the Ombudsman can be filed in person at the Office of Ombudsman, by telephone, e-mail, or facsimile. Unresolved complaints are monitored until they have been closed.

Informal Resolution: Inquiries made with the Ombudsman may be settled informally and will not be referred for further action or review. The Ombudsman offers mediation.

Formal Investigation: The Ombudsman reviews LASD internal investigations and does not have independent investigative authority. The Ombudsman cannot initiate or conduct interviews and cannot interview witnesses. He also cannot review criminal investigations.

**Findings:** The Ombudsman may find that the internal investigation is sufficient and the findings are appropriate or that the investigation is deficient and may refer the complaint to the LASD for further review or investigation. LASD makes the final determination concerning whether to pursue further review or investigation.

**Appeals:** The Office of Ombudsman is the appeals process.

**Other Functions:** The Ombudsman offers mediation services, information, and assists citizens in filing complaints.

## Los Angeles County, California

Agency: Special Counsel to the Board of Supervisors

Jurisdiction: Los Angeles County Sheriff's Department

Population: 10,103,000

Department Size: 8,500

Annual Budget: \$200,000

Staff: 3 to 15 (depending upon complexity of assignment), working on a consultant basis

Structure: Special Counsel is a lawyer engaged pursuant to a contract with the Board of Supervisors to provide semiannual reports to the Board, Sheriff, and the general public on the Department's implementation of recommendations to reduce the risk of police misconduct and illegal or unconstitutional behavior. Special Counsel's communications to and from the Board of Supervisors are confidential and privileged.

Subpoena power: Yes (must be requested from the Board of Supervisors).

Events/conditions precipitating creation of oversight mechanism: Four controversial shootings of African-American and Latino men in the summer of 1991 created public pressure for a blue ribbon investigation of the Sheriff's Department that came to be known as the Kolts Report. The current Special Counsel was selected in 1992 to oversee implementation of the Kolts recommendations.

### Oversight/Evaluation Process

Special Counsel has unfettered access to all records, data, and personnel within the Department and may investigate and report on any topic bearing upon potential liability or risk for the County from the actions of the Sheriff's Department. Special Counsel reviews data and files to identify patterns and practices of police misconduct and systemic failures which caused these patterns to persist.

## **Minneapolis, Minnesota**

Agency: Minneapolis Civilian Police Review Authority

Jurisdiction: Minneapolis Police Department

Population: 382,618

Department Size: 850

Annual Budget: \$375,000

Staff: 4

**Structure:** The Civilian Police Review Authority consists of 11 members, six appointed by the City Council and five appointed by the Mayor, subject to approval by a majority of the City Council. Members serve four-year terms and may be removed by a majority vote of the City Council if ratified by the Mayor. Members must be residents of Minneapolis and are compensated \$50 for each day that they attend one or more meetings or hearings.

Subpoena power. No.

### **Complaint Process**

**Intake:** A complaint can be filed with the Review Authority or Internal Affairs, not both.

**Informal Resolution:** Mediation may be offered anytime after a formal complaint has been filed.

**Formal Investigation:** After intake, a Review Authority investigator conducts a preliminary investigation which involves an interview with the complainant and the filing of a signed complaint. The investigator interviews witnesses, collects and reviews evidence, and interviews charged and witness officers. Once the investigation is completed the investigator makes a recommendation to sustain or not sustain the allegations contained in the complaint based on a preponderance of the evidence. The summary and file are reviewed by the Review Authority's Manager who, in cooperation with the Board Chair, schedules the complaint for hearing. All complaints, regardless of the investigative findings, are scheduled for hearing.

**Hearings:** A panel of three board members hears each complaint. The complainant is invited, but not required to attend the hearing. At present, officers are required to attend the hearing. At the hearing, the officer and the complainant are invited to address the board panel for 10 minutes and to sit for questions. Upon conclusion of the hearing and review of the case file, the panel determines whether or not to sustain the complaint.

**Findings:** The panel can either sustain or not sustain a complaint. If sustained, the Police Department's disciplinary panel recommends discipline to the Chief. The Chief has final authority over disciplinary recommendations. The Chief cannot reverse a Review Authority finding.

**Appeals:** Decisions not to sustain a complaint by the hearing panel can be appealed by the complainant in writing to the Review Authority within 30 days. Appeals are heard by the full board of eleven members. Both the complainant and subject officer(s) are allowed to address the Review Authority concerning the appeal. If the Review Authority determines that credible new evidence has been discovered, the complaint will be assigned for investigation to a Review Authority investigator. After completing the investigation, the Review Authority can sustain or reject the decision not to sustain a complaint. After the appeal, the complaint is forwarded to the Chief who will make the final disciplinary disposition.

**Other Functions:** The Review Authority provides a public forum during its monthly meetings for citizens to voice concerns regarding police activity/behavior. The Review Authority participates in reviewing the Chief and can make policy and training recommendations. It also submits quarterly reports to the Council's Public Safety and Regulatory Services Committee

**Agency History:** The current form of the Review Authority was created in 2003, a number of months following the dissolution of the prior oversight process.

## **New Haven, Connecticut**

Agency: Civilian Review Board

Jurisdiction: New Haven Department of Police Services

Population: 119,491

Department Size: 469

Annual Budget: no stand-alone budget (funded through Chief Administrator's Office)

Staff: 1 full-time coordinator

**Structure:** The Civilian Review Board consists of 16 members: two appointed by the Mayor, one appointed by the President of the Board of Aldermen, one appointed by the Chair of the Board of Police Commissioners, and one appointed by each of the 12 Community Management Teams. Review Board members, who must be residents of the City, serve three-year terms.

**Subpoena power:** No.

**Events/conditions precipitating creation of oversight mechanism:** Malik Jones, a young African-American man was shot and killed by a police officer from neighboring East Haven in 1997. His mother created an organization that advocated for police accountability, leading to the creation of the Civilian Review Board in 2001.

### **Complaint Process**

**Intake:** All complaints must be filed with the New Haven Police Department within one year of the incident. Complaints can be filed in person, by telephone, or mail.

**Informal Resolution:** Mediation is offered at intake.

**Formal Investigation:** Complaints are investigated by the Internal Values and Ethics Unit (IVE). An investigator interviews the complainant, officer, and all witnesses. The Civilian Review Board reviews all completed IVE investigations. Completed internal investigations are reviewed by a Review Board panel of two or three members. Panel members change monthly. The full Review Board does not regularly review completed internal investigations; however, a Review Board panel can bring a case before the full Review Board at any time.

**Findings:** The Review Board can recommend further investigation, or agree or disagree with the IVE investigation and findings. If misconduct is found, the Review Board recommends disciplinary action. The Review Board reports its recommendations and findings to the Chief and Board of Police Commissioners. The Chief issues the final disposition and notifies the complainant of the outcome.

**Appeals:** Within 90 days of notification from the Chief of the disposition of a complaint, a complainant may file an appeal, in writing with the Review Board. Appeals are heard by the full Review Board. After reviewing the appeal and original investigation, the

Review Board may agree with the IVE findings, refer the complaint to IVE for further investigation, or conclude that the investigation was incomplete or biased and refer the case to the Chief for action.

Working Relationship with police department, city officials, community members, etc.:  
Staff of the Review Board indicated that they have a cooperative relationship with the Police Department, and the Internal Values and Ethics Unit specifically.

## **New York, New York**

Agency: New York Civilian Complaint Review Board

Jurisdiction: New York City Police Department

Population: 8,008,278

Department Size: 37,000

Annual Budget: \$10,035,235

Staff: 178 – 136 investigative staff, 37 administrative staff, 5 on leave

Structure: The Civilian Complaint Review Board consists of 13 members. Five members are designated by the City Council and appointed by the Mayor, three – with law enforcement experience – are designated by the Police Commissioner and appointed by the Mayor, and the remaining five are appointed solely by the Mayor. The Board establishes policy, reviews all CCRB investigations, makes findings on all allegations in every complaint, and recommends discipline. Complaints are reviewed by Board Panels, consisting of one Board member designated by the Mayor, one designated by the City Council, and one designated by the Commissioner. Board members serve three-year terms and receive compensation on a per-diem basis. The Board hires the Executive Director.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: The current all-civilian review board was created in 1993 in response to an incident involving the Department's enforcement of a city curfew that led to significant violence by the police against curfew violators in a park and bystanders. A report that demonstrated that an inadequate effort was made by the NYPD to limit the use of force led to moving the review board outside the Police Department and requiring that all its members be civilians.

### **Complaint Process**

Intake: Complaints can be filed by telephone, in person at the CCRB office or the NYPD, online, by mail, or by calling 311, a city non-emergency number for governmental queries. The CCRB's jurisdiction is limited to allegations of excessive or unnecessary use of force, abuse of authority, discourtesy, and offensive language. Complaints about corruption or neglect of duty are investigated by the NYPD. Complaints filed with the NYPD that are within the CCRB's jurisdiction are referred to the Board. Conversely, the CCRB refers complaints outside its jurisdiction to the NYPD.

Informal Resolution: The CCRB offers mediation, for the following types of complaints: allegations of improper stops, frisks and searches, mild physical force, threats, refusal to identify, improper stops, and discourteous or offensive language. A supervisor, upon review of the complaint, may instruct the investigator to offer mediation.

**Formal Investigation:** Once a complaint is received by the Team Manager or supervisor, it is assigned to an investigator. Investigators locate and interview the complainant, victims, and all witnesses. Complainants are contacted within 24 hours of filing a complaint and are interviewed in person. If a complainant or victim(s) cannot be contacted, are uncooperative, will not make a formal statement, or the complaint is withdrawn, a complaint can become a truncated case. Truncated cases are those which are closed before a full investigation is completed. Truncated cases can be re-opened for full investigation. Investigators also review all documentary evidence including court-related records and police reports. If necessary, investigators can subpoena medical records. Subject officers are required to appear and answer questions during a CCRB investigation. After the investigation is complete, investigators write a closing report that includes a summary and analysis of the complaint. The report is submitted to Team management which then forwards the case to the Case Management Unit. The Case Management Unit assigns the case to a Board Panel. A Board Panel consists of three Board members who read the investigatory file, and vote on the disposition of every allegation. Substantiated cases are forwarded to the Police Commissioner for discipline.

**Findings:** The CCRB classifies findings in the following manner: substantiated, exonerated, unfounded, unsubstantiated, officer unidentified, mediated, mediation attempted, referred to other (City) agency, or miscellaneous. Officers named in substantiated complaints must be disciplined or served with disciplinary charges within 18 months of the date of the incident.

**Appeals:** After being notified of a complaint's resolution, a complainant may present new information, new witnesses, or new evidence regarding the allegations to the CCRB staff. The original management team that investigated the complaint then reviews the case and makes recommendations to the full Board.

**Other Functions:** The Board is responsible for reporting to the Commissioner patterns of misconduct uncovered through complaint investigations, for making and issuing policy recommendations, and for developing an outreach program to educate the public on the CCRB's purpose and services provided. The Board issues semiannual reports to the Mayor, City Council, and the public.

**Oversight/IA Interaction:** The Board's principal interaction with IA is through document requests. This is sometimes an efficient process and other times laborious. The Board generally, however, has developed a good working relationship with the NYPD.

## Omaha, Nebraska

Agency: Office of the Public Safety Auditor

Jurisdiction: Omaha Police Department

Population: 390,007

Department Size: 764

Annual Budget: \$150-200,000 (privately funded)

Staff: 1 auditor, 1 staff auditor assistant (position funded by the Mayor's Office), and 1 administrative assistant

**Structure:** The Public Safety Auditor (PSA) reports to the Auditing Committee – the Mayor, Chief of Police, Chief of Fire, and the City Council – which can hire and fire the Auditor. The city-funded portion of the PSA's budget is included in the Police and Fire Departments' budgets. The Auditor's Advisory Committee helps the Auditor by gathering information, facilitating public outreach, and otherwise supporting the PSA's work.

**Subpoena power:** No. However, the Police Department's Professional Standards Office must cooperate with the Auditor and must make all records, reports, evidence, and investigation activities available to the Auditor.

### Complaint Process

**Intake:** Complaints can be filed at the Police Department. Complaint forms must be signed in the presence of a police investigator. All complaints are immediately forwarded to both the Professional Standards Office and the Auditor.

**Informal Resolution:** None.

**Formal Investigation:** Professional Standards investigates all civilian complaints. The Auditor reviews live interviews, tapes and reports of interviews, investigative reports, tests, employment records, and all other material generated during an investigation. During interviews the Auditor may put questions to witnesses through the Professional Standards investigator, so long as the investigator finds the questions relevant.

**Findings:** Professional Standards forwards completed investigations to the Chief. The Chief may find as follows: unfounded, exonerated, not sustained, sustained, and policy failure.

**Appeals:** The Public Safety Auditor reviews all complaints. The Auditor, after reviewing a completed internal investigation, may submit a written request for further investigation. The Auditor may also address her concerns by conducting an internal investigation that the Auditing Committee will review during an executive session.

**Other Functions:** The Auditor may issue reports on policy issues.

**Oversight/IA Interaction:** According to the Auditor, she has a good day-to-day working relationship with Internal Affairs.

**Agency History:** The Office of the Public Safety Auditor was created by ordinance in 2000 and began functioning in 2001.

**Working Relationship with police department, city officials, community members, etc.:** The Auditor indicated that her relationship with the Department began with uncertainty. The PSA has made significant progress in developing a relationship with the community, especially the minority community in Omaha. There has not been a great deal of success in developing a relationship with the City Council or police union.

## Portland, Oregon

Agency: Citizen Review Committee

Jurisdiction: Portland Police Bureau

Population: 529,121

Department Size: 1,043

Annual Budget: no budget (under IPR's budget)

Staff: Volunteers; Director of the Independent Police Review Division of the City Auditor's Office serves as coordinator to the CRC.

Structure: The CRC is part of the Independent Police Review Division of the City Auditor's Office. Committee members are appointed by the City Council after a nomination process that involves the IPR Director and a selection committee. The Committee reports to the City Council regarding appeals of citizen complaints and reports to IPR and the Portland Police Bureau regarding Bureau policies and procedures.

Subpoena power: No.

### Complaint Process

The Civilian Review Committee does not process civilian complaints, but rather hears appeals.

Appeals: If a complainant or officer is dissatisfied by the resolution of a complaint, either can file a request within 30 days for review by IPR and the Citizen Review Committee. IPR will review the appeal and IA investigation and can order further investigation. If no further investigation is needed, the case proceeds to a public CRC pre-hearing. The CRC can deny the appeal or vote to hold a full hearing. The CRC can close a case by agreeing with the Police Bureau findings or by recommending changed findings to the Police Bureau. If the Police Bureau does not accept the recommendations, a complaint can be resolved through a conference between the CRC and Police Bureau or a hearing before the City Council.

The CRC holds public appeal hearings. The CRC reviews the case and holds a public meeting where all involved parties will be heard. The CRC determines whether the IA's finding is supported by the evidence. If the CRC agrees with IA, the case is closed. If the CRC determines that the IA finding is not supported by the evidence, and the Police Bureau does not accept that recommendation, a hearing will be set before the City Council. The City Council will then make the final decision as to whether or not the allegations against the officer(s) should be sustained. If they are sustained, then the Chief of Police will make a decision as to the appropriate discipline. If the City Council does not sustain the allegations, then the case will be closed.

Working Relationship with police department, city officials, community members, etc.: According to IPR, the general perception in the community is that the CRC is more legitimate and credible because every member is a citizen who is not a government employee. Conversely, police and other agencies see IPR as more credible because they are professionals, not volunteers like the CRC. As such, IPR has developed stronger working relationships with the Department and other city agencies. This has created tension between IPR and the CRC. During the investigation of a controversial officer-involved shooting last year, public disagreement between the CRC and IPR led to half of the CRC resigning in protest. IPR indicated that the CRC wanted to act outside of its authority and the CRC members were unhappy with the lack of support from IPR. According to IPR, the CRC viewed itself as the governing body of IPR. IPR and the CRC have had a good relationship since the new CRC members were appointed.

Additional Information: The Committee reviews Police Bureau policies and procedures and makes policy recommendations to the Bureau and IPR.

## Portland, Oregon

Agency: Independent Police Review Division

Jurisdiction: Portland Police Bureau

Population: 529,121

Department Size: 1,043

Annual Budget: \$843,835

Staff: 7

Structure: The Independent Police Review Division (IPR) of the Portland City Auditor operates under the authority of the elected City Auditor, who selects the IPR Director. IPR receives and screens citizen complaints, refers complaints to Internal Affairs for investigation, reviews the investigations, and facilitates appeals by dissatisfied parties.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism: Following a a split in a commission created to recommend how to replace a discredited civilian review board, the City Council in 2001 asked the City Auditor to propose changes to strengthen the system of complaints against the police.

### Complaint Process

Intake: Complaints can be filed with IPR in person, by telephone, facsimile, mail, or internet. Complaints are assigned to an IPR intake investigator who conducts a preliminary investigation. The preliminary investigation involves reviewing documents, interviewing complainants, and classifying the complaint. The case is then forwarded to the IPR Director. The Director can decline the complaint (if the complaint is obviously false, without merit, or the complainant is pursuing another remedy, such as a tort claim), refer to the Internal Affairs Division, offer mediation, refer to a different agency or jurisdiction, or refer to PPB Command Staff.

Informal Resolution: A case may be referred to mediation only with the consent of the complainant, the subject officer, the precinct commander, and the Captain of Internal Affairs. Outside mediators are provided.

Formal investigation: When a complaint has been referred to IA, the Captain can order a full investigation, refer to a precinct as a service complaint, decline the complaint, or administratively close. If a complaint is referred to a precinct as a service complaint, the complaint is reviewed by a precinct supervisor. Service complaints are treated as personnel management tools, not discipline, and are not recorded in an officer's file. The results of the IA investigation are forwarded to the officer's commanding officer, and then to a managerial review board, and finally to the Chief for final disposition and discipline, if the complaint is sustained. IPR monitors the complaint throughout the process and keeps the complainant informed as appropriate.

**Findings:** The Police Bureau may issue findings as follows: sustained, unfounded, exonerated, and insufficient evidence.

**Appeals:** If a complainant or officer is dissatisfied with the resolution of the complaint, either can file a request within 30 days for review by IPR and the Citizen Review Committee (CRC). The IPR will review the appeal and IA investigation and can order further investigation. If no further investigation is needed, the case proceeds to a public CRC pre-hearing. The CRC can deny the appeal or vote to hold a full hearing. The CRC can close a case by agreeing with the Police Bureau findings or by recommending changed findings to the Police Bureau. If the Police Bureau does not accept the recommendations, a complaint is resolved through a conference between the CRC and Police Bureau or a hearing before the City Council.

**Other Functions:** IPR reviews, monitors, and documents all IA actions and meets weekly with IA supervisors. IPR reviews and comments on Bureau policies, procedures, and training. In addition, IPR hires outside experts to perform an annual review of closed officer-involved shooting cases.

**Oversight/IA Interaction:** IPR gathers and forwards information from the complainant to Internal Affairs, and then monitors IA's actions and investigations on complaints.

## **Richmond, California**

Agency: Police Commission

Jurisdiction: Richmond Police Department

Population: 101,373

Department Size: 203

Annual Budget: \$200,000

Staff: 1 investigator, 1 support staff

Structure: The Police Commission consists of nine Commissioners. Commissioners are appointed by the Mayor who consults with the City Council on all appointments. Commissioners serve a term of three years and do not receive compensation.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: Two African-American males were killed during incidents with police in the early 1980's. Additionally, several lawsuits filed by the NAACP led to a consent decree and the creation in 1984 of the Police Commission. All major stakeholders had input into the specific form, powers, and duties of the Commission.

### **Complaint Process**

Intake: Only complaints of unnecessary or excessive force or racially abusive treatment by a Richmond police officer can be filed with the Commission. The Commission does not have original jurisdiction, but does have appellate jurisdiction, over non-force or other misconduct complaints. All other complaints must be filed with Professional Standards or will be referred to PS by the Commission. Complaints must be filed with the Commission in writing, signed by the complainant, within 45 days of the incident. Copies of complaints filed with the Commission are immediately forwarded to the Chief.

Formal Investigation: Complaints are investigated by an Investigative Officer, who interviews the complainant, subject officer(s), and all witnesses.

Findings: The Investigative Officer submits findings and recommendations to the Commission. Upon receiving oral or written findings and recommendations from the Officer, the Commission can order further investigation by the Officer, forward the findings and recommendations to the Chief, or conduct a hearing. Findings are as follows: sustained, not sustained, exonerated, and unfounded.

Hearings: Commission hearings are public. During hearings, complainants, police officers, and witnesses are questioned by the Commission without cross-examination. The Commission submits its findings and recommendations to the Chief within 30 days of the hearing.

Appeals: Appeals of dispositions by the Department for all complaints, except excessive or unnecessary force or racially abusive treatment, may be filed with the Commission within ten days of receiving notification from the Chief of the final disposition. Appeals are investigated by the Investigative Officer who submits findings and recommendations to the Commission either orally or in writing. The Commission can either order further investigation or forward its findings and recommendations for discipline based upon the report of the investigator to the Chief. The Commission is not bound by the investigator's recommendations. Findings for appeals are as follows: sustained, not sustained, exonerated, and unfounded.

Other Functions: The Commission reviews the policies, practices, and procedures of the Department and makes recommendations to the Chief. The Chief must respond to the Commission's recommendations within 30 days. If the Commission is unsatisfied with the Chief's response, it can submit its recommendations to the City Manager. The City Manager must respond within 30 days. If the Commission is dissatisfied with the City Manager's response, it can submit its recommendations directly to the City Council for action.

Agency History: Established in 1984 as an independent body separate from the Richmond Police Department.

Working Relationship with police department, city officials, community members, etc.: The Investigative Officer indicated that the Commission has a good relationship with the rank and file officers of the Department and a cohesive relationship with the city officials. It, however, does not have a good relationship with the Police Officers Association. In contrast to his immediate predecessor, the current Chief is very supportive of the Commission and civilian oversight in general. Some on the City Council are more supportive of the union than of the Commission. The Commission does, however, have the support of the community.

Additional Information: The investigator believes that it is crucial to have the City Attorney involved in the process of drafting of the enabling legislation for an oversight agency.

## **Salt Lake City, Utah**

Agency: Police Civilian Review Board

Jurisdiction: Salt Lake City Police Department

Population: 181,743

Department Size: 404

Annual Budget: \$100,000

Staff: 1 investigator

Structure: The Police Civilian Review Board consists of 14 members, two from each of the seven City Council districts. Board members serve three-year terms, with a two-term maximum. The Board can investigate all types of misconduct complaints but investigates all complaints of excessive force concurrently with Internal Affairs. Additionally, the Board can audit and review internal investigations.

Subpoena power: No.

### **Complaint Process**

Intake: Complaints must first be filed with Internal Affairs and then must be filed with the Board within four business days. The Board does not have jurisdiction over complaints that do not meet those filing requirements. Complaints may be filed over the telephone, in person, online (in the near future), or by mail. The Board automatically receives all complaints alleging excessive force, even if a complaint has not been filed with the Board. The Board will always conduct an investigation of excessive force complaints. Complaints are categorized as Category I (more serious allegations, including use of force, harassment, threats, civil rights violations, and criminal conduct) or Category II (complaints of profanity, inconsiderate behavior, dispatch-related complaints, improper vehicle impounds, and traffic/parking violations). Requests for the audit or review of internal investigations must be filed within 30 days of notification of the Department's findings. The request must be filed in person, in writing, or by mail to the Office of the Mayor.

Informal Resolution: Mediation is not offered.

Formal Investigation: An investigation is initiated if at least five Board members vote for one. A full-time investigator is responsible for conducting the investigation and reporting to a panel of the Board. Investigations conducted by the Board are concurrent with internal investigations. The Board investigator has access to all IA information related to complaints. The investigator can conduct interviews of complainants, witnesses, or officer(s) independent of IA; however, the investigator can also attend IA interviews and record them whenever possible.

Findings: After the investigation has been concluded, the Board panel, based on the recommendations of the investigator, issues findings. The Board classifies findings as follows: unfounded, exonerated, no determination is possible, and sustained. If sustained, the

Board also makes a recommendation to the Chief regarding appropriate discipline. Officers' complaint histories may be considered by the Board, but only in regard to recommending discipline, training, etc. to the Chief. Since IA also investigates complaints, the Board's findings are advisory and the Chief is not required to accept the Board's recommendations.

Appeals: There are no appeals from the Board's advisory decisions.

Other Functions: The Board reviews completed IA investigations and produces quarterly reports. For this purpose, the Board can only review redacted files (i.e., with names removed).

Oversight/IA Interaction: According to the Board Investigator, the Board has a close, positive working relationship with IA, with which it does side-by-side investigations.

Agency History: The Board was created in 2001 and began functioning in 2003. When it was originally created the Board did not have investigative power. The current form of the Board does have independent investigative power. Additionally, the past form of the Board was able to review internal investigations if the complaint was not sustained. The Board (and the union) found this to be in violation of the Memorandum of Understanding between the union, the Department, and the Board. That portion of the ordinance was repealed.

Working Relationship with police department, city officials, community members, etc.: The Board Investigator indicated that the Mayor supports the Board and the Board has a good relationship with the Police Department.

## San Francisco, California

Agency: Office of Citizen Complaints

Jurisdiction: San Francisco Police Department

Population: 776,733

Department Size: 2,200

Annual Budget: \$2,907,712

Staff: 32 – 16 line investigators (the City Charter requires one investigator for every 150 sworn officers), Director, Chief Investigator, three senior investigators, two attorneys, policy/outreach specialist, eight clerical, accounting and database/statistical personnel.

Structure: The OCC has sole jurisdiction over citizen-initiated complaints relating to misconduct. The Office of Citizen Complaints (OCC) reports to the Police Commission. The Commission is comprised of five members, appointed by the Mayor and confirmed by the Board of Supervisors. The Commission appoints the Director of the OCC with approval of the Mayor and Board of Supervisors. The Director can be removed by the Commission. The Commission has the principal disciplinary authority for the SFPD. The Chief, however, has the authority to impose discipline not more serious than a ten-day suspension. The OCC has exclusive jurisdiction over civilian-initiated complaints of misconduct. The OCC issues special policy recommendation reports.

Subpoena power: Yes.

Events/conditions precipitating creation of oversight mechanism: The OCC was created by the voters in 1983 after a community coalition placed the initiative on the ballot. Subsequent ballot initiatives strengthened the OCC. In 1996, the charter was amended to guarantee minimum funding for the OCC. In 2003, a high-profile altercation involving off-duty officers and an alleged cover-up that led to criminal charges (many dismissed) against much of the Department's hierarchy led to the adoption of new rules governing the Police Commission and the Office of Citizen Complaints.

### Complaint Process

Intake: Complaints can be filed with the OCC in person, by mail, telephone, or facsimile. Complaints may also be filed at Management Control Division (Internal Affairs) and at community locations. MCD has sole jurisdiction over officer-initiated complaints. Once a complaint has been filed with the OCC it is assigned to an intake investigator who interviews the complainant by telephone or in person.

Informal Resolution: The OCC offers mediation.

Formal Investigation: The investigator interviews officers, witnesses, and reviews reports and other evidence. A team of OCC supervisors reviews all completed OCC investigations to make certain of the accuracy and compliance with Police Commission standards. It is San

Francisco Police Department policy that officers cooperate with OCC investigations. The investigator sends a preliminary disposition letter to the complainant and officer(s). The complainant and officer(s) have a right to meet with the investigator to review the investigative process.

**Hearings:** There are two levels of hearings, a Chief's hearing and a Police Commission hearing. Police Commission hearings involve officer appeals, cases forwarded by the Chief, cases that involve harsher discipline than a ten-day suspension, cases involving a difference in the findings of the OCC and the Chief, and DUI and domestic violence cases from MCD. Chief's hearings handle the balance of hearings on complaints. A Chief's hearing is informal and involves an OCC attorney, the subject officer, a union representative, and the officer's captain. Chief's hearings are run by the Management Control Division. Police Commission hearings are formal hearings where an OCC trial attorney prosecutes and a union or private attorney defends. Discipline is imposed if an allegation is sustained.

**Findings:** OCC findings are as follows: sustained, not sustained, proper conduct, unfounded, policy failure, supervision failure, training failure, information only, no finding, or mediated. OCC's findings cannot be overturned by the Department but can be overturned by the Commission. OCC's findings are reviewed by MCD. If MCD disagrees with the findings and no consensus between MCD and OCC is reached, the sustained finding remains in the officer's file; however, no discipline is imposed. Discipline can be imposed if the Chief submits the case to the Commission for a hearing.

**Appeals:** The officer can appeal a Chief's hearing decision to the Police Commission.

**Other Functions:** The OCC acts as an early warning system by reporting to the SFPD every three to six months concerning officers who compile three or more OCC complaints within the previous six months or four or more complaints within a year. Additionally, the OCC reviews and makes recommendations regarding SFPD policies and procedures.

**Working Relationship with police department, city officials, community members, etc.:** The Commission and union (Police Officers Association) have a tense and volatile relationship. Union members and the Commission are at times publicly antagonistic and this relationship seems unlikely to improve in the near future. San Francisco Chronicle October 4, 2004.

## San Jose, California

Agency: Office of the Independent Police Auditor

Jurisdiction: San Jose Police Department

Population: 926,200

Department Size: 1,450

Annual Budget: \$660,000

Staff: 6 full-time employees – Auditor, Assistant Auditor, Citizen Complaint Examiner, Public and Community Relations, Data Analyst, Office Specialist

Structure: The Independent Police Auditor reports directly to the Mayor and City Council. The Council may remove the Auditor upon a resolution of ten of its 11 members. The IPA monitors IA's investigations of complaints, both throughout the process and upon their completion. If the Auditor does not agree with the Police Department's findings and cannot reach a resolution with the Department, the Auditor can have the case referred to the City Manager. The Auditor has formed an IPA Advisory Committee – which has no official status – to obtain community input.

Subpoena power: No.

### Complaint Process

Intake: Complaints can be filed with the IPA or Internal Affairs. All complaints are investigated by IA and monitored by the IPA. IPA intake investigators take the initial statements for complaints filed with the IPA. Complainants are encouraged to sign a required Department form within 30 days of the incident before a complaint can be investigated. However, if the complainant does not sign the form within 30 days, it does not preclude an IA investigator from conducting a preliminary investigation that includes reviewing all documents or evidence. As long as the form is signed within one year of the incident, complaints will be investigated fully.

Formal Investigation: Complaints are classified in one of five categories; formal, command review, policy, procedural, and inquiry. Inquiries are cases that were resolved before becoming a complaint. Facesheets containing information about each complaint are forwarded to the IPA within three days of classification by Internal Affairs. The IPA reviews IA classifications to ensure that complaints receive the proper level of review. The IPA monitors all ongoing investigations. The IPA is involved in many of the interviews conducted by IA. Internal Affairs sends its completed investigations to the Chief who makes the Department's findings on the case.

Findings: Findings are as follows: sustained, not sustained, exonerated, unfounded, and no finding. For procedural complaints the findings are as follows: within procedure or no misconduct determined. The IPA is notified of all completed investigations within five days of action by the Chief. If IPA agrees with the findings, the complainant is notified. If IPA disagrees with the findings, it can request further investigation and/or meet with Internal

Affairs and the Chief to resolve the matter in issue. If IPA and the Department cannot reach agreement, the unresolved issues are sent to the City Manager for final resolution (after which the complainant is notified).

**Other Functions:** The IPA makes policy recommendations and conducts community outreach.

**Working Relationship with police department, city officials, community members, etc.:** Over the past 11 years the Auditor says that the focus of the IPA has shifted from having to defend its right to exist to working in collaboration with the Department toward addressing problems and implementing solutions. To help establish trust, the Auditor makes a point never to surprise the Department with her findings. According to the Auditor, there has been strong resistance to the IPA from the union, particularly in the IPA being present during an interview with an officer who has been involved in an officer-involved shooting.

**Additional Information:** The IPA uses the Independent Police Auditor Advisory Committee (IPAAC) to publicly advocate on its behalf and to address the needs and problems of the various communities in San Jose. The IPA believes that the strength of San Jose's model lies in the IPA's ability to make policy recommendations that provide a broader scope than a case-by-case analysis can.

## Seattle, Washington

Agency: Office of Professional Accountability

Jurisdiction: Seattle Police Department

Population: 563,374

Department Size: 1,240

Staff: Director, Captain, Lieutenant, and six Sergeants

Structure: The Office of Professional Accountability, which handles the intake and investigation of complaints, is a part of the Police Department. The civilian OPA Director is appointed by the Mayor and confirmed by the City Council. The OPA Director reports to the Chief of Police, and also reports to the Mayor and City Council about OPA and Department activities, policies, and procedures.

### Complaint Process

Intake: Complaints may be filed either with the OPA or with the Citizen Services Bureau at City Hall. After intake the OPA Director classifies complaints as follows:

- Contact Logs – inquiries about policies, referrals, or requests for information not assigned for investigation.
- Supervisory Referral – complaints that indicate a training failure instead of misconduct. These are assigned to the subject officer's immediate supervisor for review or provision of additional training.
- Line Investigations – minor misconduct complaints assigned to the subject officer's chain of command for investigation.
- OPA-IS (Investigation Section) investigation – more serious complaints including all use-of-force complaints that are investigated by the Office of Professional Accountability Investigation Section.

Informal Resolution: None.

Formal Investigation: Complaints classified as OPA-IS investigations are investigated by sergeants in the OPA investigation unit. Complaints otherwise classified are investigated by line supervisors. The completed investigation is forwarded to the Director who may agree with the findings, direct further investigation, or recommend different findings. The Director makes the final departmental decision on all complaints other than those which are sustained, which are sent to the Chief for discipline. The OPA Auditor reviews redacted files of complaints and OPA investigations after the Director has acted on them. The OPA Review Board (OPARB) reviews closed, redacted files following final action by the Department.

Agency History: The OPA was created in 1999 by the Seattle City Council and its first civilian Director was appointed in 2001.

## **Seattle, Washington**

Agency: Office of Professional Accountability Review Board

Jurisdiction: Office of Professional Accountability, Seattle Police Department

Population: 563,374

Department Size: 1,240

Annual Budget: \$48,000 (from Seattle Legislative Department budget)

Staff: No paid staff

Structure: The three members of the Board are appointed by the City Council. Members receive a \$400 monthly stipend.

Subpoena power: No.

### **Complaint Process**

OPARB does not process civilian complaints. OPARB reviews closed and redacted Office of Public Accountability (Internal Affairs) complaint investigations, as well as the application and effectiveness of OPA standards and procedures. Redacted case files are files that have identifying characteristics such as names removed from the complaint.

Agency History: The Office of Accountability Review Board was established in 2002.

Working Relationship with police department, city officials, community members, etc.: According to a Board member, OPARB has a strained working relationship with the City of Seattle. Indicative of those problems, the City has refused to protect the Board members from personal civil liability arising out of OPARB reports.

## **Seattle, Washington**

Agency: Office of Professional Accountability Civilian Auditor

Jurisdiction: Office of Professional Accountability; Seattle Police Department

Population: 563,374

Department Size: 1,240

Staff: 1

Structure: The Auditor is an independent contractor appointed by the Mayor and confirmed by the City Council, who reviews all complaints and Office of Professional Accountability (OPA) completed investigations. The Auditor serves a two-year term and can serve no more than three terms. The Auditor can be removed from office by the Mayor. The Auditor must be an attorney with at least five years experience practicing law.

### **Complaint Process**

The Auditor is a part-time appointee, who is not an employee of the City. In reviewing OPA investigations, the Auditor has access to all files and information. The Auditor, who is required to review all complaints both at the time of classification and upon completion of the OPA investigation, has authority only to make recommendations to OPA and/or the Chief.

Oversight/IA Interaction: The Auditor confers frequently with the OPA Director about specific recommendations. According to the Auditor, lines of communication with the OPA are open and frequently and productively used.

Agency History: The Auditor position was created in 1992.

## St. Paul, Minnesota

Agency: Police-Civilian Internal Affairs Review Commission

Jurisdiction: St. Paul Police Department

Population: 287,151

Department Size: 555

Annual Budget: \$37,160

Staff: 1 civilian coordinator (from the PD)

Structure: The Police-Civilian Internal Affairs Review Commission consists of seven members, two of whom are SPPD officers. Members are jointly appointed by the Mayor and Chief of Police. The Internal Affairs Unit of the St. Paul Police Department is the investigative arm of the Commission. The Commission has a civilian coordinator employed by the Police Department who processes complaints from the public.

Subpoena power: Yes.

### Complaint Process

Intake: Complaints can be filed with the Commission. Once filed, the coordinator gathers information about the complaint and forwards the complaint to Internal Affairs for investigation.

Informal Resolution: If the complaint contains an allegation of relatively minor misconduct such as discourtesy or an explanation of Department policy, Internal Affairs refers the complaint down the chain of command to the supervisory level for resolution. These resolutions are not sent to the Commission for review.

Formal Investigation: Internal Affairs investigates almost all complaints. Once an investigation is complete, it is sent to the Commission for review. The Commission reviews all IA investigations alleging excessive force, use of firearms, discrimination, poor public relations, and other complaints at the Chief's discretion. The commissioners, commission coordinator, IA commander, IA investigators, and a secretary are the only parties allowed to attend the case review. The commissioners, after being presented information about the case from an IA investigator, vote on the outcome.

Findings: The Commission may find as follows; sustained, not sustained, exonerated, or unfounded. If a majority of the commissioners votes to sustain a complaint, the Commission must also vote on a recommendation for discipline. The commissioners may also determine that further investigation by either IA or an independent investigator is needed. The IA and Commission findings are forwarded to the Chief along with the Commission's disciplinary recommendations if the complaint is sustained.

Appeals: There are no appeals of the Commission's and Chief's findings/dispositions.

Other Functions: The Commission hears all cases involving the discharge of an officer's firearm even in cases where no complaint is filed.

## St. Petersburg, Florida

Agency: Civilian Police Review Committee

Jurisdiction: St. Petersburg Police Department

Population: 248,232

Department Size: 524

Annual Budget: \$157,000

Staff: 1 coordinator and 1 administrative secretary

Structure: The Civilian Police Review Committee reviews internal investigations and reports results to the public. The Committee is comprised of 23 members appointed by the Mayor. Members, who must be City residents, serve three-year terms.

Subpoena power: No.

Events/conditions precipitating creation of oversight mechanism:

The Review Committee was created after community groups and individual citizens voiced concern over the legitimacy and fairness of the complaint process.

### Complaint Process

The Civilian Police Review Committee does not process civilian complaints. According to Florida law, the Review Committee cannot change the findings of IA investigations. The Committee can only make policy recommendations to the Police Department.

Formal Investigation: Every complaint, regardless of its nature, is investigated. Serious allegations (such as, unnecessary force, falsifying records) are investigated by the Internal Affairs Division and are referred to as Internal Affairs Investigations. The results of Internal Affairs Investigations are referred to the Chief. Minor breaches of Police Department regulations (such as discourtesy) are investigated by the police officer's supervisor and are referred to as Bureau Investigations. Any discipline arising out of Bureau Investigations is imposed by the officer's supervisor.

Appeals: Once an investigation becomes a public record (which occurs after final administrative disposition, including appeals, and the disposition of any associated criminal case), the Civilian Police Review Committee reviews the determination made and the discipline imposed, if any. The Committee only reviews internal investigations. The Committee does not have investigatory authority.

Agency History: The Board was created in 1991. The structure was chosen so as to conform to the Police Officer's Bill of Rights and existing ordinances.

Working Relationship with police department, city officials, community members, etc.:

According to an employee of the Board, the Board has a good working relationship with the Chief, Mayor, and the Department. Most of the Board's policy recommendations are implemented.

# APPENDIX B: 2006 MGT REPORT RECOMMENDATIONS

## *Chapter 4: The Police Oversight Process*

### **RECOMMENDATION 4-1:**

Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 4-1 of this report.*

### **RECOMMENDATION 4-2:**

Enhance outreach efforts to complainants and potential complainants to encourage the use of mediation.

*See Commendation 4-1 and Recommendation 4-3 of this report.*

### **RECOMMENDATION 4-3:**

Include “successfully mediated” as a complaint disposition category.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 4-4 of this report.*

### **RECOMMENDATIONS 4-4:**

Develop a SOP in collaboration with IA that establishes a process and criteria for mediation.

*This recommendation was accepted in part as there is an informal process by which the IRO works with IA for certain identified complaints that are deemed to be appropriate for mediation.*

### **RECOMMENDATION 4-5:**

Change the CPC form to include more “forced blocks” to provide additional detailed information about the location, officers, and injuries involved in the alleged conflict.

*While there is no data to support a finding that this recommendation was accepted, the recommendation has been omitted from the current report.*

### **RECOMMENDATION 4-6:**

The IRO should not dismiss (inactivate) unsigned complaints and at a minimum should conduct a preliminary investigation if the allegations are serious and the facts can be established.

*Following the recent study conducted by PERF, this recommendation was accepted. See Commendation 6-2.*

**RECOMMENDATION 4-7:**

Extend the deadline for citizens to file appeals from ten business days to 30 calendar days.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 4-5 of this report.*

**Chapter 5: The Police Oversight Commission**

**RECOMMENDATION 5-1:**

Amend the Police Oversight Ordinance to include any language that was unintentionally omitted during the amendment process.

*This recommendation was accepted as subsequent amendments were made to clarify the appointment process of POC members.*

**RECOMMENDATION 5-2:**

Remove term limits on POC members.

*This recommendation was accepted as the language of the Police Oversight Ordinance does not limit the terms of POC members.*

**RECOMMENDATION 5-3:**

Create an orientation program for new members.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 5-1 of this report.*

**RECOMMENDATION 5-4:**

Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 5-2 of this report.*

**RECOMMENDATION 5-5:**

Amend the Police Oversight Commission's Rules and Regulations to clarify if the references to the IRO in sections 8 and 9 include the IRO staff.

*While there was no evidence to suggest that this recommendation was accepted, the recommendation has been omitted from the current report.*

## ***Chapter 6: Independent Review Officer***

### **RECOMMENDATION 6-1:**

Hire additional investigators.

*This recommendation was accepted. Since the 2006 Report, the IRO's office has acquired an additional full-time investigator.*

### **RECOMMENDATION 6-2:**

Assign all CPC's to the IRO to investigate.

*While data suggest fewer CPC's are assigned to the IA Unit, the IA unit does still investigate some CPC's. See Recommendation 6-2 of this report.*

### **RECOMMENDATION 6-3:**

Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 6-3 of this report.*

### **RECOMMENDATION 6-4:**

Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and provide updates in quarterly and annual reports to the POC.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 6-4 of this report.*

### **RECOMMENDATION 6-5:**

Team up with the city's Vietnamese Task Force to evaluate the community's understanding of the POC and IRO processes, and determine outreach needs.

*There was no evidence to suggest that this recommendation was accepted; however, an on-going effort for community outreach is recommended. See Recommendation 6-4 of this report.*

### **RECOMMENDATION 6-6:**

Conduct complainant surveys on an on-going basis, but seek ways to increase the number of responses and increase the depth of analysis.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 6-5 of this report.*

**RECOMMENDATION 6-7:**

The Chief of Police and the Chair of the POC should take advantage of existing resources to request legal reviews of public letters of record as needed.

*There is a city attorney that attends the regularly scheduled monthly meetings of the POC and the monthly meetings of the LTPC.*

**RECOMMENDATION 6-8:**

Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 6-9 of this report.*

**Chapter 7: APD Internal Affairs**

**RECOMMENDATION 7-1:**

Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 7-1 of this report.*

**RECOMMENDATION 7-2:**

Develop criteria for sergeants selected to work in IA that requires experience as a supervisor.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 7-2 of this report.*

**RECOMMENDATION 7-3:**

Document informal complaints in the EWS.

*This recommendation was accepted and the process has since changed. Internal Affairs now audits the informal complaint system annually and enters informal complaints into the EWS; however, if there are no similar events, the information is purged from the EWS after a year.*

**RECOMMENDATION 7-4:**

Move the responsibility of auditing of informal complaints from IA to the Inspections Unit and include in the audit program a review of SOPs, supervisors' reporting, and documentation by IA.

*This recommendation is no longer appropriate, as the Inspection's Unit responsibility is now the coordination of CALEA accreditation.*

**RECOMMENDATION 7-5:**

Reexamine the need for additional investigators in IA.

*This recommendation is no longer necessary as the current caseload of each IA investigator is manageable as reported by the IA Lieutenant. Moreover, the recently approved addition of an investigator will assist the unit in times of higher than usual complaints.*

**RECOMMENDATION 7-6:**

Consider limiting IA's investigations to "I"s only.

*While the number of CPC's investigated by IA has decreased, the IA unit does still handle a certain number of CPC's, see Recommendation 7-3 of this report.*

**RECOMMENDATION 7-7:**

Change the quarterly and annual report format to address all IA reporting requirements as delineated in SOP's.

*This recommendation remains, but has been modified for the current report, see Recommendation 7-4 of this report.*

**RECOMMENDATION 7-8**

Ensure the process for investigating captains and above is included in the department's SOP's.

*This recommendation was accepted. The IRO's office now has the responsibility of investigating all complaints involving the rank of captain and above.*

**Chapter 8: APD Accountability Mechanisms**

**RECOMMENDATION 8-1:**

Replace IA's EWS tracking spreadsheet software with "off-the-shelf" IA software that assists with the comprehensive analysis of data and the generation of reports.

*The APD's new Multi-Relational Internal Affairs Database (MRLAID) program was developed to track Use of Force and IA data for the department's EWS. This program collects data required in the department's EWS SOP and is a significant improvement over the previous software.*

**RECOMMENDATION 8-2:**

Include the tracking of resisting arrest and assault on police officer data in the EWS.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 8-2 of this report.*

**RECOMMENDATION 8-3:**

Review the function of the EWS review panel (SOP 3-49) to ensure it is being utilized as required by the SOP.

*The EWS review panel continues to be used infrequently. This panel provides a potential forum for periodic review of the department's EWS data and trend analysis, as is now capable with the MRLAID System, see Recommendation 8-3 of this report.*

**RECOMMENDATION 8-4:**

Modify the number of EWS entries, which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.

*As a result of a recent review performed by PERF, this recommendation has been amended. The threshold has been reduced from five to three; however, an on-going study of the appropriate threshold is underway, see Recommendation 8-4.*

**RECOMMENDATION 8-5:**

Assign the APD's Inspections Unit to audit UOF reporting.

*In light of the Inspection Unit's responsibilities being limited to managing the department's CALEA accreditation, this recommendation is no longer applicable. Responsibilities to audit UOF reports remains with the IA Unit; however, the recent PERF report suggest appropriate changes to the UOF reporting process.*

**RECOMMENDATION 8-6:**

Issue the "APD Sergeant Reference Guide" in training for all lieutenants and sergeants.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 8-5 of this report.*

**RECOMMENDATION 8-7:**

The APD should task the training committee to review this issue and coordinate in-service training for all supervisors (lieutenants and sergeants) that addresses information contained in the Sergeant Reference Guide and IA section of the OJT program.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 8-5 of this report.*

**RECOMMENDATION 8-8:**

Develop a process for monitoring and analyzing tort claim and lawsuit data that involves the City Attorney's Office, Risk Management Office, IRO, and IA.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 8-8 of this report.*

**RECOMMENDATION 8-9:**

Assign the Inspections Unit to conduct an audit of officers' SOP manuals.

*As a result of the re-alignment of the Inspection Unit responsibilities by which its sole responsibility is now managing CALEA accreditation, this recommendation was accepted.*

**RECOMMENDATION 8-10:**

Distribute SOPs electronically to all APD staff.

*There was no evidence to suggest that this recommendation was accepted; see Recommendation 8-7 of this report.*

**RECOMMENDATION 8-11:**

Assign the Inspections Unit to audit briefing training to ensure that the training developed is being distributed properly to the field.

*As a result of the re-alignment of the Inspection Unit responsibilities by which its sole responsibility is now managing CALEA accreditation, this recommendation was accepted.*

**RECOMMENDATION 8-12:**

Include training about civilian oversight of policing agencies in the APD curriculum.

*This recommendation has been amended; see Recommendation 6-4 of this report.*

**Chapter 9: APD Police Shootings**

**RECOMMENDATION 9-1:**

Revise APD SOPs to include the multi-agency task force and protocols identified in the "Law Enforcement Involved Fatalities/Great Bodily Harm" MOU.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such.*

**RECOMMENDATION 9-2:**

Establish a process and time that that officers will be placed on administrative leave following a shooting incident.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 5 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-3:**

Include a discussion of the Behavioral Sciences Division Staff Psychologist protocol for officer involved shootings in SOP 2-31.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendations 12-15 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-4:**

Expand the Critical Incident Review Board to conduct inquiries and make recommendations for officer involved incidents resulting in death or great bodily injury.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 11 of the PERF report for further detail on this recommendation.*

**RECOMMENDATION 9-5:**

Reduce the time it takes APD detectives and the DA take to investigate officer involved shootings and make a legal determination.

*In response to the recent review conducted by PERF, there was no additional review conducted concerning officer involved shootings and/or use of force issues or the implementation of recommendations concerning such. However, refer to Recommendation 6 of the PERF report for further detail on this recommendation.*

# APPENDIX C: 2011 MGT REPORT RECOMMENDATIONS

## *Chapter 4: The Police Oversight Process*

### **RECOMMENDATION 4-1:**

Develop a brochure to include with the public letter record that defines in plain language the terms used to explain the outcome of the investigation of the CPC to the complainant.

### **RECOMMENDATION 4-2:**

Provide analysis of meaningful data that will help to reveal systemic issues that may have given rise to the original complaints. Provide a summary of the details, including rate of mediation and sustained cases, both current and historical in clear and concise charts and tables.

### **COMMENDATION 4-2:**

The continued use of mediation as a way to resolve police complaints in Albuquerque is commendable.

### **RECOMMENDATION 4-3:**

Enhance outreach efforts to complainants and officers alike to encourage the use of mediation.

### **RECOMMENDATION 4-4:**

Include “successfully mediated” as a complaint disposition category.

### **RECOMMENDATION 4-5:**

Extend the deadline for citizens to file appeals from 10 business days to 30 calendar days.

### **RECOMMENDATION 4-6:**

City Council members must be fully engaged in the process. As such, each member must fulfill his/her duty to provide the Mayor with qualified nominees and maintain a level of oversight into the process by keeping in frequent communication with their appointee.

### **COMMENDATION 4-3:**

The ordinance provides an automatic review of the oversight process every four years.

## ***Chapter 5: The Police Oversight Commission***

### **RECOMMENDATION 5-1:**

Create a training program that ensures all members of the POC are fully informed of their responsibilities and have a level of knowledge regarding police operations to allow each member of the POC to accomplish his or her role as a commissioner.

### **RECOMMENDATION 5-2:**

Monitor and track POC member attendance at all training and ride-along events to ensure compliance with the ordinance. To ensure proper oversight, the city ordinance should be amended to require the annual report to contain an account of the annual training undertaken by members of the POC commission. For those members who fail to comply with annual training requirements, the ordinance should be amended to provide for the removal of a non-compliant POC member.

### **RECOMMENDATION 5-3:**

Monitor and track POC member attendance at monthly meetings and require adequate proof for excused absence by members.

### **RECOMMENDATION 5-4:**

All city councilors should ensure their respective position on the Commission is filled with a qualified appointee who will be mindful of the overall mission of the POC.

### **RECOMMENDATION 5-5:**

Being one of its expressed objectives, the POC should identify major problems and identify a program of policy suggestions and studies through the use of its LTTPC.

### **RECOMMENDATION 5-6:**

In addition to identifying major systemic problems by and between the APD and the community, Section 9-4-1-11 of the Police Oversight Ordinance should be amended to require the LTTPC to monitor the status of recommendations resulting of those evaluations required by ordinance through regular updates to the full commission and designated city staff and/or agencies.

### **COMMENDATION 5-1:**

Before the annual 2010 report, the IRO's annual reports did not provide detail on discipline for sustained complaints; however, the most recent annual report does provide discipline for approximately 85 percent of all sustained complaints.

**RECOMMENDATION 5-7:**

Amend the language of the ordinance to require the POC, through the IRO, to consider the published chart of sanctions and recommend discipline for all sustained complaints, separate from the discipline imposed by the APD.

**RECOMMENDATION 5-8:**

Amend the language of the ordinance to require additional analysis and data, including specific disciplinary outcomes of sustained complaints and long-term trend analysis.

**RECOMMENDATION 5-9:**

The APD's Standard Operating Procedures (SOP) provide a standard range for discipline for violations of each SOP. The language of the ordinance should be amended to require the reporting of this to further provide the highest level of accountability.

**RECOMMENDATION 5-10:**

The POC and the Albuquerque Chief of Police should hold joint public sessions bi-annually to discuss policy issues and concerns and allow for public input.

***Chapter 6: Independent Review Officer***

**RECOMMENDATION 6-1:**

For the few citizen complaints referred to the IA's office, the process for final disposition should be streamlined to avoid undue burden on the actors. This could be accomplished by requiring IA to make a finding and disciplinary recommendation for claims sustained.

**RECOMMENDATION 6-2**

The IRO and IA should work toward a complete separation of responsibility, where IA handles only internal cases (I) and the IRO handles all citizen complaints (CPC).

**RECOMMENDATION 6-3:**

Establish criteria for CPCs that will be handled by the IRO and those that will be referred to IA.

**RECOMMENDATION 6-4:**

Develop a strategic plan for community outreach in collaboration with the long-term planning committee (LTPC) and city staff.

**RECOMMENDATION 6-5:**

Conduct complainant and police officers satisfaction surveys on an on-going basis, and seek ways to increase the number of citizen responses and increase the depth of analysis.

**COMMENDATION 6-1:**

The department's willingness to involve the IRO in its initial investigation of an officer involved shooting reveals a commitment to reversing the upward trend.

**RECOMMENDATION 6-6:**

While the APD has agreed to allow the IRO to monitor the crime scene of an officer involved shooting, the police oversight ordinance should be amended to require that the IRO or his/her representative be present at the scene of an officer involved shooting.

**RECOMMENDATION 6-7:**

The IRO's office should be provided an auditor/analyst whose task it is, not to investigate complaints, but rather enjoy open access to the police department's records and given wide-ranging authority to report on all aspects of departmental policy and advocate for systemic reform, where necessary.

**RECOMMENDATION 6-8:**

The IRO's office should be allowed full, real-time access to be able to input relevant citizen complaint data into the APD's early warning system (EWS).

**RECOMMENDATION 6-9:**

Revise the ordinance to extend the IRO contract time-period to more than a two-year contract as currently required.

**RECOMMENDATION 6-10:**

The IRO should work with the Chief of Police and department officials to reduce the delays in obtaining case information from the police department's records system.

**RECOMMENDATION 6-11:**

The IRO's office should develop a truncated review process by which third party complaints can be addressed, when appropriate, without the full use of resources to conduct a full investigation.

**COMMENDATION 6-2:**

In response to the recent recommendations of the PERF report, and in-line with MGT's previous recommendations, the IRO is now permitted to investigate un-signed and/or anonymous complaints.

***Chapter 7: APD Internal Affairs***

**RECOMMENDATION 7-1:**

Develop criteria that establish the minimum and maximum length of time the IA commander may work in that assignment.

**RECOMMENDATION 7-2:**

Develop job criteria for sergeants selected to work in IA that requires experience as a supervisor.

**RECOMMENDATION 7-3:**

Consider limiting IA's investigations to Is only.

**RECOMMENDATION 7-4:**

Modify the quarterly and annual report format to address all IA reporting requirements as delineated in SOPs.

***Chapter 8: APD Accountability Mechanisms***

**RECOMMENDATION 8-1:**

Use software that assists with the comprehensive analysis of data, especially trends, and the generation of reports.

**RECOMMENDATION 8-2:**

Include the tracking of resisting arrest and assault on police officer data in the EWS.

**RECOMMENDATION 8-3:**

Review the function of the EWS review panel (SOP 3-49) to ensure it is being used as required by the SOP.

**RECOMMENDATION 8-4:**

Modify the number of EWS entries which an officer may receive before recommending intervention from an arbitrary set number to more a statistically valid number based on the deviation from a standard or norm for the area and the shift each officer works.

**COMMENDATION 8-1:**

In response to recent events, Internal Affairs has increased its efforts to help ensure 100 percent compliance on UOF reporting.

**RECOMMENDATION 8-5:**

Issue the "APD Sergeant Reference Guide" in training for all lieutenants and sergeants and task the Training Committee to ensure training requirements in this guide are met.

**RECOMMENDATION 8-6:**

Work with City Attorney's Office, IRO, and IA to develop a process and/or implement software by which the monitoring and analysis of claims data can be accomplished.

**RECOMMENDATION 8-7:**

Distribute SOP's electronically and automate the process to automatically notify all employees of any SOP changes.

**MGT**   
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