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# Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out

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# Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out

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The civilian oversight of law enforcement movement in the United States is expanding and evolving. In conjunction with human rights and human relations commissions, oversight organizations work to ensure that community members' civil rights are respected, probing issues of disparate treatment, racial profiling, and excessive use of force in the law enforcement agencies they oversee.

Oversight is becoming integrated into the fabric of our society and government; there is recognition that oversight is beneficial and here to stay. Community members are calling for independent oversight and a voice in policing. In increasing numbers, police chiefs, sheriffs and government officials are recognizing that oversight is "not about bad cops, but about good government."[1] More and more police officials are realizing that internal investigations are controversial and thankless. An oversight agency decreeing that a shooting or use of force was within acceptable policy guidelines has more credibility than an internal investigation making the same pronouncement. A negative ruling bolstered by an independent investigation helps to take the sting out of a contentious disciplinary action. Oversight in its many forms provides accountability and transparency for police issues that are otherwise inaccessible to the larger community.

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1. A phrase coined by John Crew, former Acting Director and Police Practices Director, Northern California Chapter of the American Civil Liberties Union (NC ACLU). The NC ACLU has been instrumental in advocating for and establishing oversight and promoting police accountability in northern California for many decades.

This article presents information about the current status of the oversight movement, gives an overview of the models of oversight in the United States, discusses the benefits and essential elements of oversight, and provides an insight into the work being done by the National Association for Civilian Oversight of Law Enforcement (NACOLE) to establish standards and further the oversight profession.

## I. Oversight of Policing

The models of civilian oversight in the United States vary greatly. There are no federal or state standards to guide local governments seeking to establish oversight. The genesis of oversight varies as well and can influence the type of program developed. Oversight can be established as a response to problems within a law enforcement agency or to community demand for independent civilian review, or a city or law enforcement agency can proactively develop a model that it believes is appropriate for its jurisdiction. Oversight has become an integral part of municipal governments in most large cities in the United States, with some smaller municipalities and counties developing agencies to allow community members to weigh in on policing as well.[2] County agencies with jurisdiction over sheriff's offices have authority to review incidents that take place in custodial as well as patrol settings.

Scholars and researchers in the field state that there are between two and four general models of oversight,[3] although more and more agencies developed in the last ten years employ hybrid models, encompassing the "best attributes" of several models. The authority of oversight agencies ranges from

2. The resource page on the website for the National Association for Civilian Oversight of Law Enforcement (NACOLE), http://nacole.org/resources (last visited Sept. 9, 2010), contains a list with 114 links to cities and counties in the United States that have oversight, as well as one university, UC Berkeley Police Review Board. *See also* CITIZEN OVERSIGHT OF LAW ENFORCEMENT xiii, 4 (Justina Cintron Perino ed., 2007) [hereinafter CITIZEN OVERSIGHT].

3. PETER FINN, U.S. DEP'T OF JUSTICE, CITIZEN REVIEW OF POLICE: APPROACHES & IMPLEMENTATION vii (2001), *available at* http://www.ncjrs.gov/pdffiles1/nij/184430.pdf. *See also* CITIZEN OVERSIGHT, *supra* note 2, at 11.

appeal panels, to investigative agencies, to auditor/monitor organizations, to civilian boards that have the ability to weigh in on misconduct and discipline. Based on my experience, there are three basic forms of oversight: (1) investigative; (2) boards and commissions; and (3) auditor/monitor agencies. Many cities have variations on two or three of the models incorporated into their "accountability systems."

In some cities, appointed monitors have been installed by the Department of Justice or through a consent decree. Appointed monitors work to solve problems in law enforcement agencies with extreme issues of excessive force, death cases, or corruption. The appointed monitors work in conjunction with the established oversight body or independently to focus on specific issues and problems.[4]

The efficacy of oversight organizations is difficult to measure—this may be due in part to the many goals of oversight, some of which may be conflicting. A tension exists between the two objectives of impartially evaluating complaints and responding to community interests.[5] Focus points for evaluating oversight cover a wide range, from "sustained case" rates, to increasing community confidence in the police service, to making policy recommendations that can effect organizational change.[6] Visibility is important; some agencies are relatively unknown to the communities they serve, while others are at the forefront, conducting active outreach and public relations programs. Again, there is no standard for measurement.

### A. *Investigative Agencies*

Many oversight programs in large cities are investigative models. These agencies generally have original jurisdiction of complaints, have the authority to collect evidence, interview witnesses—including officers and deputies—and make

4. The NACOLE website lists four current appointed monitors in the cities of Detroit, Cincinnati and Oakland, and the New Jersey State Police, and four past appointed monitors in the cities of Los Angeles and Pittsburgh, the Metropolitan District of Columbia Police and Prince George's County.

5. CITIZEN OVERSIGHT, *supra* note 2, at 22.

6. SAMUEL WALKER, THE NEW WORLD OF POLICE ACCOUNTABILITY 135, 144 (2005).

findings. In jurisdictions that include a board or commission as the adjudicatory body, investigations are conducted by civilian staff and findings are ruled on by a commission or review board following a hearing.

Investigative authority greatly strengthens an oversight body. Investigative agencies "frame" the investigation by determining the allegations, witnesses to be interviewed, and questions to be asked. Witnesses may be more forthcoming or even willing to be involved in an investigation if it is being conducted by an independent agency separate from the law enforcement agency. Investigative methods, skill level, and creative, attentive vigor influence the thoroughness and, in many instances, the outcome of the case.

### B. *Civilian Review Boards and Commissions*

Police review boards and commissions were some of the earliest models of oversight developed in the United States, some dating back to the civil rights and free speech movements of the 1950s and 60s.[7] Authority of police review commissions varies, ranging from appeal boards that review cases brought by disgruntled complainants or officers, to boards that hear evidence and make findings in misconduct investigations conducted by their staff or an internal affairs bureau.

Usually political appointees, commissioners are generally selected by mayors, elected city councils or county supervisors. A challenge presented by the board and commission form of oversight is that there are usually no standards for appointment of members of the oversight body; they often have a wide array of skills and analytical ability. It is incumbent upon the staff and the agency to ensure that board members receive training regarding their authority, police practices, investigative procedures, and ethics involved in their positions,

7. The Kansas City Office of Citizen Complaints recently celebrated 40 years of continuous oversight; the Berkeley Police Review Commission was established through a voter initiative in 1973; the San Francisco Police Commission, established in 1856, has broad authority over the Office of Citizen Complaints and the Police Department, and holds hearings on serious misconduct cases (the role and the makeup of the commission has evolved over the years and continues to change).

as well as ample documentation and information upon which to base their decisions.[8]

Boards and commissions can greatly enhance community confidence in a law enforcement agency; members of the public are empowered to hear cases and weigh in on policy recommendations, which engenders public trust and provides an avenue of access to those who may otherwise feel disenfranchised.

One powerful aspect of boards and commissions is that historically they have conducted their hearings and business in public, providing transparency and accountability. In California, this valuable public process has been eliminated due to the California Supreme Court decision in *Copley Press v. Superior Court.*[9] Oversight boards must now hold their hearings behind closed doors and the information that can be made public is now restricted. Some other states have more transparency regarding police officer discipline and misconduct.[10]

### C. *Auditor/Monitor Model*[11]

Auditor/monitor oversight agencies review and analyze internal affairs investigations of police misconduct and have broad authority to evaluate policies and procedures of law enforcement organizations with an eye toward preventing future misconduct. It is a newer form of oversight, developed since the 1990s, and it involves auditors typically overseeing

8. CITIZEN OVERSIGHT, *supra* note 2, at 29.

9. On August 31, 2006, the California Supreme Court, in *Copley Press, Inc. v. Superior Court*, 141 P.3d 288 (Cal. 2006), held that records of an administrative appeal of sustained misconduct charges are confidential and may not be disclosed to the public. The decision prevents the public from learning the extent to which police officers have been disciplined as a result of misconduct.

10. Philadelphia's Police Advisory Commission posts its hearing findings, including officers' names, on its website. Police Advisory Commission, Hearings and Opinions, http://www.phila.gov/pac/Hearings_and_Opinion.html (last visited Mar. 27, 2010).

11. The use of the term monitor in this context does not refer to a DOJ or court-appointed monitor. In this article the description "appointed monitor" will be used when referring to such an entity.

the internal complaint process to ensure that misconduct investigations are conducted in a fair and thorough manner. In many jurisdictions the auditor may sit in on officer or witness interviews and present questions to be asked. Disagreements between the auditor and internal affairs can be appealed, but in most organizations the police chief or the city manager has final authority.

A strength of the auditor model is the ability to review all complaints and analyze trends and patterns of misconduct. Effective agencies utilize this information to generate reports and effect change in the police agency or in dealing with problematic officer/unit conduct. The more effective auditor/monitor oversight agencies have been fortified with the authority to delineate allegations, classify investigations, and conduct investigations in cases that internal affairs either refuses to investigate or investigated in a less than thorough manner.

## II. Oversight of Policing in Contrast to Oversight of Correctional Institutions

Oversight of jails and prisons has much in common with oversight of law enforcement. Correctional institutions have some of the same power over inmate's lives as sheriff's deputies and police officers have over the lives of members of the public. Both law enforcement officers and correctional officers have enforcement authority and are empowered to use force.

Prison and jail officials have the added insulation of ultimate authority behind closed doors. The "code of silence" that keeps misconduct issues from coming to light can be even stronger in closed institutions.[12] Our society grants law enforcers and officers who maintain our prison and jail systems awesome powers to keep our streets safe and our society in check. By the same token, oversight has emerged as one of the checks and balances to ensure that our police, sheriffs, and correctional institutions do not exceed or abuse the authority

12. JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS 94 (2006), *available at* http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf.

granted to them.

There are some obvious differences in the two related professions, which impact oversight of the respective fields. Officials in custodial settings are responsible for health care, housing, and classification in addition to keeping the peace. Thus, oversight in the custodial setting has wider jurisdictional authority and challenges. The custody context includes issues related to housing inmates that are not as common in oversight of law enforcement—including housing decisions and classification of inmates, inmate-on-inmate violence, violence by guards against prisoners, and inmate suicides.

Because prisons by their nature are closed institutions, for the most part with few non-prison employees walking through them, to be effective, those who have oversight authority of correctional institutions must have the "golden key"—the ability to conduct regular, non-routine inspections of the facilities. The overseers must have access to prisoner grievances and all areas of the prisons.[13] Because it is important to have regular access and non-prison eyes and ears inside the institution, some oversight officials actually house their investigators in the custodial setting rather than in an office outside of the institution.[14]

Both external law enforcement and custodial officers are often resistant to oversight. Many officers feel that unless someone has "walked in my shoes" they do not have the proper perspective or knowledge to question them or fairly evaluate their work. Yet, as oversight of law enforcement becomes an integral part of government in the United States, the benefits of oversight are being acknowledged. Those in policing are recognizing that allowing independent oversight and community access to this information leads to increased confidence in the process and the law enforcement

13. *Id.* at 80.

14. The Los Angeles Office of Independent Review (OIR) monitors investigations of misconduct by the Los Angeles Sheriff's Department (LASD). The OIR was created by the Board of Supervisors at the request of Sheriff Lee Baca, and has been given the tools to effectively evaluate the LASD response to misconduct allegations, including resources, complete access to Department records and personnel, and the full support of LASD management. The OIR has investigator offices inside the county jail facility. *See* OFFICE OF INDEP. REVIEW, COUNTY OF LOS ANGELES, FIRST REPORT, *available at* http://www.laoir.com/report1.pdf.

organization.

## III. The National Association for Civilian Oversight of Law Enforcement (NACOLE)

NACOLE is a national organization that serves the oversight community in the United States. A "virtual" organization, NACOLE's board of directors, with members representing oversight agencies across the nation, works to further the goals of the organization—to support oversight practitioners and improve policing and police accountability. NACOLE's website (www.nacole.org) contains resource documents and links providing information to those establishing or researching oversight issues. An email group delivers multiple articles daily regarding policing and oversight issues in the United States and internationally.

NACOLE's annual professional development conferences provide training, certification, and credentialing opportunities, offer panel discussions and workshops to keep attendees up to date on developments in the field and programs in other agencies, and feature inspirational keynote speakers who make presentations on best practices and critical issues related to the work of oversight. The conferences invite dialogue and networking, and challenge attendees to see their work with new insights and ideas.

In addition to training and certification, NACOLE has worked to move the field of oversight beyond the developmental stage in which each agency and organization must create policies and practices from whole cloth. The NACOLE Code of Ethics for Oversight, ratified by the membership at the 2006 NACOLE Conference, has been adopted by many oversight agencies. The professional standards committee has developed standards for executive directors and investigators in the field. NACOLE has recently launched a mentoring program to assist those new in the field to develop one-on-one relationships with experienced practitioners, in order to enhance their careers and advance the ideals of the profession and the association.

NACOLE's strategic plan includes "growing" the organization by securing funding to open a national office to better serve the oversight constituency. NACOLE receives calls and inquiries on a regular basis from community groups

and government officials on all levels seeking assistance to set up an oversight agency or restructure an agency that is no longer effective. In order to meet these needs NACOLE is working to develop capacity to conduct research on best practices and assemble technical assistance teams to respond to inquiries and calls for information from jurisdictions working to start up or redefine their oversight programs.

## IV. What is Needed for Effective Oversight Programs

Oversight faces many challenges. As mentioned previously, there are no set standards for models or procedures. Oversight practitioners work in a minefield of stakeholders who often have conflicting interests: law enforcement officials who do not want to give up their authority to rule on complaints and discipline their members; outwardly hostile police unions; city and county attorneys that see independent oversight and transparency as a liability; government officials who want the image of accountability but are reluctant to back the agency with adequate authority and funding; and community members who often do not understand the limitations of oversight. In order to succeed, regardless of the model of oversight, there are key factors that must be present to enable the oversight agency to overcome the challenges it will inevitably meet and to credibly do its job.

### A. *Political Will*

Without the political will to support independent oversight, the agency will flounder and fight a constant uphill battle to make the changes needed to correct problems in the law enforcement agency it oversees. Oversight is most often created in a time of crisis. Whether it is the result of public outrage over a questionable police shooting, or a response to the sustained action of a particular community group that feels victimized by disparate treatment, it usually takes political pressure to move government officials to establish independent oversight. Public safety is most important for politicians; they do not want to appear soft on crime or not supportive of law enforcement. Oversight agencies and their recommendations can sometimes be portrayed as anti-police in efforts to

undermine their authority. The backing of courageous politicians who value independence, accountability, and transparency is necessary for the survival of oversight.

### B. *Authority*

The organization must have ample authority to provide a credible service to the community it serves. Agencies that have investigative authority must have the ability to interview all witnesses, including officers, and have access to all documents needed to complete their investigations. Auditor/monitor agencies must have the ability to correct deficient investigations either by requiring further investigation or having the authority to conduct an independent investigation. Boards and commissions must have the ability to initiate change within the department it oversees. The creation of an oversight agency is usually a process that involves community support and action, and with it community expectations are raised. In order for the oversight agency to be effective and maintain the support of the community it serves, it must have ample authority to make a change, when needed, in the law enforcement agency under its jurisdiction.

### C. *Funding*

Oversight programs must have adequate funding and spending authority to complete the work outlined in the enabling legislation.

Oversight agencies must have funding and authority to hire staff at a level that allows timely and thorough investigation (or review). If there is an appeals process, the staff must be able to analyze the investigation and prepare documentation for the appellate body in a timely manner. Some agencies have staffing ratios written into the enabling legislation.[15]

The agency must have funding to purchase and utilize databases to track all aspects of complaints. Complaints are

15. FINN, *supra* note 3, at 89. A San Francisco voter initiative in 1996 amended the S.F. Charter to require the San Francisco Office of Citizen Complaints to have one investigator for every 150 police officers.

important quality-control indicators, and the statistical information they provide, if properly gathered and analyzed, provides invaluable tools for police managers and government officials to identify potential areas for remediation. This data can identify specific police practices, such as "stop and frisk" detentions, consent searches, and discretionary arrests, which give rise to complaints, along with police units or commands where patterns of police-civilian interactions merit closer examination. Complaints should be seen as one factor in the assessment of an officer or a working unit or team—a factor that is taken seriously as an indicator in how an officer is handling interactions with those with whom he or she comes into contact.

Oversight agencies should have the authority and funding to hire outside consultants, including independent counsel. At times policy recommendations must be supported by outside consultants to be effectively presented. City and county counsel offices, who represent the larger jurisdiction and may be defending the law enforcement agency against law suits, often have a conflict of interest and do not independently represent the oversight agency—particularly in times of controversy. Inadequate legal representation can result in decisions being made without all of the relevant issues being vetted.

### D. *Policy Recommendations*

Policy review is widely seen as one of the most important aspects of an oversight program in that it can effect organizational change in the law enforcement agency. It is imperative that the changes are adopted by the agency and that there is ongoing monitoring to ensure that there is follow through and training in the new procedures.[16]

### E. *Outreach*

Outreach to the community is essential. Members of the public, possible complainants, and all stakeholders must be aware of the program and its benefits. Through outreach the

16. WALKER, *supra* note 6.

organization can inform the community of the authority and limitations of the program. Outreach should include both the larger community as well as members of the law enforcement agency and labor organizations—this will help establish and maintain the credibility of the program to all involved.

### F. *Reporting*

A benefit of oversight is shining a light on otherwise closed institutions. Investigations of police misconduct were historically the purview only of internal investigators and were handled by the department brass. Jails and prisons have historically been closed institutions with little or no oversight. The growth in oversight has, through periodic reporting, increased the amount of available information about the organization or facility under scrutiny. Annual reports provide a level of transparency and accountability to the community, as they give insight into their law enforcement organization. Reporting also increases public confidence in the oversight agencies, as much of the work that they do is protected and must be kept confidential. While privacy laws prohibit the reporting of names or specific case information in many jurisdictions, information on complaint numbers, trends, types of complaints, policy recommendations and follow-up go a long way to providing information about the process and establishing a historical context and baseline for future research and reporting.

### G. *Mediation*

More and more oversight agencies are establishing mediation as a method of resolving complaints. While programs differ in determining types of cases that can be mediated, traditional misconduct investigations can have limited efficacy in complaints that are one-on-one and relate to discourtesy or a poor attitude. The majority of such cases result in a finding of "not sustained" (insufficient evidence), an outcome that is not satisfactory to either party and has no value in modifying conduct. In successfully mediated complaints, both the complainant and the officer can gain an understanding of why the other person acted as he or she did.

This understanding can change behavior in a more meaningful and effective way than is possible in the disciplinary process.

## V. Oversight – A Changing Profession in a Changing World

Oversight of law enforcement has blossomed, emerging as a strong force for change, accountability, and transparency in the last forty years. The proliferation of oversight agencies is, in part, the result of increased information and communication disseminated via the media and the Internet—bringing issues of police misconduct, civil rights, and disparate treatment of members of the community into our homes on a daily basis.

Changes in our culture resulting from the advent of the Internet are dramatically impacting the world of oversight. The transparency and support provided by strong investigative journalism departments has traditionally worked to strengthen oversight. The evening news and daily newspapers have historically delved deep into police issues—investigative reporters have been at the forefront, with breaking news stories about use of force, unwarranted shootings or corruption within a police agency. Today newspapers are fading, in numbers and span of influence; the internet is taking the place of the daily news, particularly for those under the age of thirty.

What is emerging is Twitter, cell phone cameras, blogs, and the internet. Word travels fast—across the country and around the world. Oversight agencies are stepping up and putting the word out on Twitter to find witnesses. Cell phone camera videos of police use of force, even shootings, are posted and broadcast world wide. Police departments are now placing video cameras in police vehicles and officers' lapels. Surveillance cameras are posted on many storefronts and intersections. There is more evidence—and real-time documentation of incidents. It is a new world, maybe one that will be more attuned to transparency and accountability. Oversight agencies must be keenly aware of and adapt to the changes in the global landscape.

The goals of oversight—improving policing and increasing accountability—are laudable and congruent with those of modern policing and community values. While it can be difficult to navigate between stakeholders, all of the constituencies weighing in on oversight serve an important

function in maintaining a balance. Layers of review, both internal and independent, and input and vigilance from the community, work together to ensure that law enforcement is responsive to the needs of the community it serves.

In the end it is political will that will determine whether oversight is successful. An agency can have the ultimate authority, yet if it does not have the support of those in power, it will not succeed. Oversight can be undermined by appointments of ineffective or inept directors or commissioners, cuts in funding, inadequate authority, or failure to obtain support for its recommendations and findings. In order for the civilian oversight movement to succeed in transforming law enforcement, it must be backed by legislators on all levels who are not afraid to confront issues of police misconduct and who embrace the values of independent oversight.