

A Report on the Oversight Mechanisms of the Albuquerque Police Department

“Walker Luna Report”

February 28, 1997

*Prepared for the Albuquerque City Council by Eileen Luna and Samuel Walker
University of Arizona University of Nebraska at Omaha*

Table of Contents

- [Executive Summary](#)
- [I. Introduction](#)
- [II. Acknowledgments](#)
- [III. Methodology](#)
- [IV. Current Process](#)
- [V. Independent Counsel](#)
- [VI. Public Safety Advisory Board](#)
- [VII. APD Internal Affairs](#)
- [VIII. Other Oversight](#)
- [IX. Alternative Models](#)
- [X. Recommendations](#)

Executive Summary

The existing mechanisms for oversight of the Albuquerque Police Department (APD) are not functioning effectively.

The City of Albuquerque suffers from serious problems related to fatal shootings by APD officers, extremely high annual payments for tort claims involving police officers, a citizen complaint system that is not adequately open to citizens, and a high level of tension between the APD and segments of the community.

The Independent Counsel provides an important measure of citizen oversight of the APD . The Independent Counsel, however, has not fully utilized existing authority to review the policies and procedures of the APD and make recommendations for change. More seriously, the Independent Counsel plays no public role and, as a consequence, has undermined the positive contributions the office does make.

The Public Safety Advisory Board has failed to effectively utilize its authority to conduct studies and make recommendations regarding policies and procedures of the APD. In certain respects the PSAB has become dysfunctional.

The Internal Affairs Unit of the APD has failed to adequately publicize the complaint process. In addition, there are problems related to the quality of complaint investigations.

The City Attorney and the Risk Management office have failed to exercise needed oversight of the APD. Payments for tort claims involving APD officers are unacceptably high. The City Attorney's office does not provide feedback to APD command officers about serious and/or recurring problems.

Over the years, a succession of City Council members and mayors have failed to address adequately the continuing problems associated with the APD.

We recommend that the Independent Counsel utilize its authority more than it has in the past. We also recommend that the Independent Counsel play a more active public role, in order to inform the public about the oversight process and receive input from the public.

We recommend that the Public Safety Advisory Board utilize its authority to conduct studies and make recommendations regarding APD.

We also recommend that the Public Safety Advisory Board be given direct authority over the Independent Counsel. This will help increase the public visibility and accountability of the Independent Counsel.

We recommend that the Albuquerque Police Department immediately undertake an outreach program to publicize the complaint process.

We recommend that the City Attorney, in conjunction with Risk Management, develop a formal program to reduce tort claim payments involving police officers, and to provide feedback to the APD regarding police problems.

We recommend that the City Council and the Mayor take a more active interest in problems associated with the APD, particularly fatal shootings, tort claims, and the openness of the complaint process.

We recommend that public officials examine both the provision of mental health services in the City and the County and APD policies regarding the response to mentally ill persons.

I. Introduction

The Purpose of This Study

The authors of this report were retained by the City Council of Albuquerque to evaluate the tripartite system of oversight of the Albuquerque Police Department (APD). This system consists of the Independent Counsel (IC), the Public Safety Advisory Board (PSAB), and the Internal Affairs (IA) unit of the police department.

The contract for this study did not call for an evaluation of the APD as a whole, or any particular aspect of APD policy and procedures (apart from the Internal Affairs Unit), or any other aspect of government in Albuquerque or Bernalillo County. Nonetheless, in order to fully evaluate the oversight of the APD we found it necessary to investigate and comment on other factors that affect policing in Albuquerque. In particular we have found it necessary to comment on other parts of city government which also have some responsibility for oversight of the APD. These include the City Attorney's office, the Risk Management office, City Council, and the Mayor's office. We also found it necessary to discuss the use of deadly force by APD officers, the handling of mentally ill persons by APD, and the provision of mental health services in Bernalillo County.

We should also caution readers that this study was not intended to investigate particular incidents involving Albuquerque police officers. It is not an inquest or the equivalent of a grand jury investigation. It contains no discussion of specific incidents involving the use of force by APD officers. Our mission, as defined by City Council, is to examine the effectiveness of the oversight mechanisms for the Albuquerque Police Department.

The Context of the Study

This study was undertaken in the context of a serious and on-going community crisis regarding the performance of the APD, particularly with reference to the fatal shootings of citizens. This controversy has continued for at least a decade. The months immediately preceding the initial work on this study in late 1996 were marked by public protests over fatal shootings by APD officers, including candlelight vigils on behalf of persons shot and killed. There were also several extremely stormy meetings of the Public Safety Advisory Board (PSAB) over the issue of police shootings. These meetings left all of three major parties involved -- community representatives, the police chief, members of the PSAB itself -- feeling angry and bitter. Significantly, the two principal antagonists -- the community representatives and the police chief -- were both equally angry and frustrated over the failure of the PSAB to effectively deal with the problem.

The bad feelings about the performance of the PSAB were only one manifestation of the situation that gave rise to this study: the feeling among many people in the Albuquerque community that the existing mechanisms for oversight of the police department were not working effectively.

There were many other indications of problems related to the perceived performance of both the APD and the various oversight mechanisms.

First, as this study began, the PSAB was in the process of undertaking a study of the use of force by the APD. In fact, the composition of the so-called "Blue-Ribbon Committee" was a matter of considerable controversy.

Second, the City Attorney's office had already contracted with other consultants for a study of the APD SWAT Team. This was evidently prompted by the involvement of the SWAT team in a number of the fatal shootings over the years.

Third, the City Attorney's office had also contracted for a separate study of the use of force the APD officers.

Fourth, the fact that City Council sought outside consultants for this study is a manifestation of a perceived problem with the existing police oversight mechanisms.

Fifth, we found that public attitudes about the APD are affected by the legacy of several past controversies. Among other things, this includes a controversy over allegations that the APD Intelligence Unit improperly maintained files on law-abiding citizens. We take no position on the merits of the allegations in this case. But we did find that the memory of that case and others was alive in the minds of many citizens and it affected their perceptions of the APD. The arrest on criminal charges of the commander of the APD Internal Affairs unit a few years ago has also damaged the credibility of the APD and the Internal Affairs unit in particular in the minds of many people.

As our research progressed, we were struck by the strong feelings many people had about the APD and the oversight mechanisms. A number of people contacted us, having heard about our presence in Albuquerque only second or third hand. They desperately wanted to talk to us about their concerns.

Our study also coincided with a separate controversy over salaries for APD officers. Current salaries are low in comparison with comparable cities in the southwest, and there are reports of a number of officers leaving for better paying jobs with other departments. To correct this problem the mayor had promised APD officers a 14 percent raise over and above whatever was negotiated in the contract with the Albuquerque Police Officers Association. At the time of our extended research trip to Albuquerque there was much controversy over the 14 percent raise, and some question as to whether it would be forthcoming. All of these factors contributed to an apparent morale crisis among APD officers.

In short, this evaluation began in the context of a strong sense of community crisis over both the APD and the three oversight mechanisms.

Not everyone will agree with our characterization of the state of police-community relations in Albuquerque. Periodically, the Institute for Social Research at the University of New Mexico surveys Albuquerque residents regarding their attitudes toward the Albuquerque Police Department. The survey has been directed by Professor Gary LaFree, a nationally recognized expert in the field of criminal justice.

The 1996 survey found that Albuquerque residents give the APD high ratings. Nearly 60 percent of those surveyed felt that the APD is doing a "very good" or "good job" in preventing crime. Only about 10 percent felt that the APD is doing a "poor" or "very poor" job. Additionally, the percentage who feel that the APD is doing a "very good" or "good" job was substantially higher in 1996 compared with the 1990, 1992, and 1993 surveys.⁽¹⁾

The 1993 survey, however, found a difference in attitudes toward the police with respect to ethnicity. Hispanic residents were less likely than Anglo respondents to agree with the statement that the APD "treats suspects in custody firmly but fairly." Hispanics were even less likely to agree with the statement that the APD "treats minorities

the same as they treat others." Additionally, the 1993 report stated that "the gap between Anglos and Hispanics on this issue has been widening in the past three years."⁽²⁾ Curiously, these questions about fairness and equality were either not asked or not reported in the 1996 survey.

Several comments are in order about the results of the citizen satisfaction surveys. First, as we have already noted, they are consistent with national and local surveys conducted over the past thirty years.⁽³⁾ The police consistently receive favorable ratings from between 60 and 80 percent of the overall public. Second, racial and ethnic minorities consistently rate the police less favorably than whites or Anglos. Most important, general surveys of public attitudes do not necessarily explore the nature of police problems. The average citizen has only infrequent contact with the police and very rarely has conflict with a police officer. It is a truism that the police have a disproportionate amount of contact with a relatively small percentage of the community, and that incidents involving conflict (e.g., use of force) are heavily concentrated among low-income, racial and ethnic minority males. The average person hardly ever is involved in a shooting incident with the police. Thus, a general public opinion survey does not necessarily explore the dimensions of specific police problems, particularly shooting incidents.

The results of the citizen satisfaction surveys notwithstanding, we believe there is persuasive evidence of serious problems related to APD policies and practices. We turn now to the issue of fatal shootings.

The Issue of Fatal Shootings

The focus of the controversy surrounding the APD for many years has been the issue of fatal shootings of citizens by APD officers. Within hours of arriving for our initial visit to Albuquerque, we were confronted with a newspaper article on the use of deadly force by APD officers. The article indicated that there had been 30 fatal shootings in the previous ten years.⁽⁴⁾ We immediately and intuitively sensed that this was an extremely high figure for a police department the size of the APD.⁽⁵⁾ Moreover, since that initial visit, there have been two additional fatal shootings, both of which were surrounded by controversy.

Although we were not charged with responsibility for investigating the use of deadly force by APD officers, this issue demanded investigation on our part. A comparative perspective on the fatal shooting rate in Albuquerque would set the parameters of our evaluation of the oversight mechanisms. If, for example, we found that the rate of fatal shootings in Albuquerque is not unusually high, this would suggest that the oversight mechanisms may be working reasonably well and that much of the controversy over shootings is exaggerated. If, on the other hand, we found that the rate of fatal shootings is unusually high, then we would be led to the conclusion that the oversight mechanisms may not be functioning properly and that many of the criticisms of the APD (and the oversight mechanisms) are justified.

The issue of police use of deadly force has been extensively and intensively studied over the past twenty years. We brought this body of knowledge to bear on the situation in Albuquerque.⁽⁶⁾

We collected data on fatal shootings from a number of cities across the country. We avoided both those cities that are much larger than Albuquerque (e.g., New York, Chicago) and those that are much smaller. The relevant data were not always available for a ten-year period, and so in some cases we have used data for six or four years periods. The data are presented in Table 1-1.

Based on our analysis of data, we conclude that the rate of fatal shootings by APD officers over the past decade is unusually and unacceptably high. Police departments in other cities, some of which have more sworn officers and some of which are in cities with comparable or higher crime rates, shoot and kill citizens at a far lower rate than in Albuquerque.

Some people suggested to us that the high rate of fatal shootings is due to a high crime rate in Albuquerque. Yet, the official figures published by the APD indicate that the crime rate for Albuquerque is very close (and in some years slightly lower than) the national average for cities of the same size. Table 1-3 reproduces the relevant page from the APD Annual Report.

TABLE 1-1

We are not aware of any plausible reason why cities such as San Jose, Seattle, and Charlotte, which have larger police forces than Albuquerque, shoot and kill significantly fewer citizens. To dramatize the contrast, we estimated the hypothetical number of shootings in these other cities adjusted for the size of the Albuquerque Police Department. These estimates are presented in Table 1-2. Nor are we aware of any reason for the dramatic contrast between the number of shootings in Albuquerque compared with the southwestern cities of Tulsa and Austin. Finally, the figures from Buffalo suggest that it is possible to police a large city with a serious crime problem with no fatal shootings for several years.

One of the most important findings of research on police use of deadly force is that shooting rates are heavily determined by the deadly force policies and practices of each department.⁽⁷⁾ The development of the restrictive "defense of life" policy as a replacement for the more permissive "fleeing felon" rule is responsible for much of the reduction in the number of persons shot and killed at the national level.

If anyone disagrees with our conclusion that the rate of fatal shootings is unusually and unacceptably high, the burden of proof is on them to present systematic comparative data that suggests a different conclusion.

Table 1-2

TABLE 1-3

The recent evaluation of the APD SWAT team concluded that there was nothing unusual about shooting practices.⁽⁸⁾ We find two problems with this report, however. First, it only focused on SWAT team incidents, leaving aside the many fatal shooting incidents that involved non-SWAT officers. Second, even though the authors of that

report claim to have conducted a comparative study of other police departments, the data from that survey are not included in their report.⁽⁹⁾ Thus, it is impossible for anyone reading the report to determine whether the authors drew the proper conclusion from the data.

It is still possible to find differences in fatal shooting rates between departments that have similar official policies. These differences are in part attributable to department practices, which are shaped by such factors as traditional local practices, the nature of departmental supervision and discipline. These latter factors all contribute to the distinct "organizational culture" of a police department. We find no persuasive evidence to indicate that the high fatal shooting rate is related to anything other than the practices of the APD.

One aspect of the controversy in Albuquerque is the fact that a number of fatal shootings have involved mentally disturbed persons. Several people referred to this in terms of a gruesome joke about "police assisted suicide." A mentally disturbed person is not the same as an armed robber. We find it difficult to believe that Albuquerque and Bernalillo County have more mentally ill people than comparable cities. We did, however, find serious deficiencies in the provision of mental health services in both the city and the county.⁽¹⁰⁾ This aspect of the fatal shooting problem, then, may be the combined result of a failure on the part of the County to provide adequate mental health services and the failure of the APD to develop adequate procedures for handling the mentally ill.

We are pleased to note that the APD is currently taking steps to reduce the number of fatal shootings. First, it is implementing a new Crisis Intervention Team (CIT) to respond to incidents involving mentally disturbed persons. We believe that the CIT is appropriate and long overdue. The effectiveness of the program needs to be carefully monitored in the months and years ahead. Second, it has implemented the use of "bean bag" technology as a less than lethal alternative for police officers. Third, Police Chief Joseph Polisar is working closely with mental health officials to develop a secure facility for mentally disturbed persons.

The Question of Citizen Review of Police

Our study of the oversight mechanisms for the APD took place in the context of some debate over the question of whether there should be a "civilian review board." A number of the community leaders we talked with argued strongly in favor of this approach. Enabling legislation related to civilian review boards has been introduced in the state legislature over the years, and a bill is pending during the current session. A number of police officers, meanwhile, expressed strong opposition to the idea.

There is much misunderstanding about this subject. Chapter Nine of this report describes five models of citizen review in detail, including commentary on the strengths and weaknesses of each model. We hope that the material in Chapter Nine clarifies the alternatives that are possible with respect to oversight of the police.

It is important to stress, however, that Albuquerque currently has citizen review or oversight of the APD. In fact, it has two different forms of citizen review, and has had both for a number of years.

The question facing the citizens of Albuquerque, then, is not whether to have citizen review. That question was answered affirmatively several years ago. The question now is whether or not the existing forms of citizen review are working effectively, and whether some different form would be more effective. That is the specific question the City Council of Albuquerque asked us to address.

-
1. Institute for Social Research, *Albuquerque Police Department: Citizen Satisfaction Survey, June 1996* (Albuquerque: University of New Mexico, 1996).
 2. Statistical Analysis Center, *Albuquerque Police Department: Citizen Satisfaction Survey, November 1993* (Albuquerque: University of New Mexico, 1993), pp. 7-8.
 3. The most recent and most comprehensive national survey is W. S. Wilson Huang and Michael S. Vaughn, "Support and Confidence: Public Attitudes Toward the Police," in T. J. Flanagan and Dennis R. Longmire, eds., *Americans View Crime and Justice* (Thousand Oaks: Sage Publications, 1996), pp. 31-45. The bibliography includes citations to earlier studies.
 4. "Police Force," *The Weekly Alibi* (December 11-17, 1996), pp. 12ff.
 5. In 1995 the size of the APD had increased to 928 sworn officers: *Albuquerque Police Department, Annual Report 1995* (Albuquerque, 1995).
 6. The definitive work on the subject is William A. Geller and Michael S. Scott, *Deadly Force: What We Know* (Washington: Police Executive Research Forum, 1992).
 7. Geller and Scott, *Deadly Force: What We Know*.
 8. R. M. McCarthy & Associates, *Independent Report to the City of Albuquerque Legal Department on the Albuquerque Police Department's Special Weapons and Tactics Unit* (January 1997).
 9. *Ibid.*, pp. 84-88.
 10. This point was made to us most effectively by Police Chief Joseph Polisar and APD Psychologist Donn Hubler.

II. Acknowledgments

We would like to express our appreciation for the help we received from many people in Albuquerque. Everyone we met was gracious, cooperative, and helpful.

Our immediate employer was the City Council of Albuquerque. The staff of Council Services, led by Mark Sanchez, were extremely helpful. Their efforts included obtaining official documents, arranging meetings with members of City Council and others, and suggesting the names of people we should contact.

The Albuquerque Police Department was completely open and cooperative. We would like to express special appreciation to Chief Joseph Polisar for establishing a degree of openness that can serve as a national model. As he stated at a PSAB meeting, every door was open at the police department. The complaint files of the Internal Affairs unit were fully available to us, subject only to a confidentiality agreement we negotiated with the City Attorney. Captain Carl Ross and Lieutenant William Weiland answered every question and provided every document we requested. Few police departments in this country have ever granted such complete access to a team of independent investigators.

One part of our evaluation involved a survey of the perceptions and attitudes of APD officers. Chief Polisar cooperated fully with this effort. Under the direction of Deputy Chief Tim Bourgoine, the APD arranged a special City Wide Briefing for the purposes of administering the questionnaires. This involved a certain amount of disruption of the normal routine of operations in the APD. We would like to express our enormous appreciation for the cooperation of Chief Polisar, Deputy Chief Bourgoine, and other members of the APD command staff in this regard. We would also like to thank the staff of the Training Academy for being very gracious hosts at the Briefings.

During the course of administering the surveys we had an opportunity to talk informally with a number of APD officers. These conversations gave us additional insight into the operations of the APD. We would like to thank all of those officers who took the time to talk with us.

Many people in the community assisted us in our study. A number of people went to great lengths to put us in contact with other people and/or to organize meetings with groups. We are extremely grateful to them. Many of these people shared their experiences and impressions about the APD and the oversight mechanisms. For some of these individuals the experience of talking with us was extremely painful as it brought back extremely unpleasant memories of their own experiences or the experience of members of their family. We wish to thank those people for making the difficult effort of talking with us.

Because we want to respect the confidentiality of their observations, we have chosen not to mention individuals by name. We hope that no one feels slighted by not being mentioned. Given the sensitivity of the subject, however, we felt that a general policy of confidentiality was the best course of action.

III. Methodology

Qualifications of Consultants

Eileen Luna

Eileen Luna is Assistant Professor of American Indian Studies/Law and Policy at the University of Arizona, Tucson. She is an attorney who directed police misconduct agencies in California from 1981 to 1995, and has been appointed by Attorney General Reno to a position on the national Citizens Advisory Panel for the Immigration and Naturalization Service.

Professor Luna was awarded both the Christian A. Johnson Endeavor Foundation Native American Fellowship and the John B. Pickett Fellowship in Criminal Justice from the National Institute of Justice for study at the Kennedy School of Government at Harvard University from which she received an M.P.A. in 1996.

She is an enrolled member of the Chickamauga Cherokee Nation of Arkansas and Missouri and has recently received a grant from the National Institute of Justice to evaluate tribal government programs aimed at reducing violence against women on reservations.

Professor Luna's vita is included in the Appendix to this report.

Samuel Walker

Samuel Walker is Professor of Criminal Justice at the University of Nebraska at Omaha. He is the author of nine books and many articles on the subjects of policing, criminal justice policy, race relations, and civil liberties.

Professor Walker has been invited to lecture on different aspects of policing by the National Institute of Justice, the Federal Bureau of Investigation, the Police Executive Research Forum, and many local community organizations.

Professor Walker's principal research interests involve citizen review of the police. He is the author of several reports and articles on the subject. He compiled and edited the Citizen Review Resource Manual , a collection of documents on the subject, which is published by the Police Executive Research Forum (PERF).

Professor Walker's vita is included in the Appendix to this report.

Assistants

Betsy Kreisel is a graduate student in the Ph.D. program at the University of Nebraska at Omaha. She is completing a dissertation on the subject of citizen review of the police. In August, 1997 she will become Assistant Professor at Murray State University in Kentucky.

Adrienne King is a graduate student in American Indian Studies at the University of Arizona.

Methodology

The methodology for this study of the oversight mechanisms of the Albuquerque Police Department involved a multi-phased research effort that developed five different sources of data. We believe that this multi-phased approach provided us with the widest possible range of perspectives on the subject.

We made a special effort to obtain all possible points of view. Thus, we spoke to the leading critics of the APD and to members of the APD, including the chief, the top command staff, and ranks and file officers.

We took a skeptical approach toward all statements made to us, and checked statements made to us against other sources of information. Statements were checked against official documents wherever possible. Statements by one person were also checked against the statements of other individuals. In the course of our research a number of statements were made to us that, upon investigation, proved to be incorrect. We feel that by casting the widest net possible we have caught all such misstatements.

One unique feature of this study is the survey of rank and file officers. In public debates over citizen oversight the rank and file officer is often the forgotten person. We feel that our survey of over 300 APD officers provides unique insight into policing in Albuquerque. Much of the information obtained in this survey is not directly relevant to this study but may be highly useful for the APD. We intend to make this information available to the APD.

Review of Official Documents

This study examined the following official documents produced by various agencies of government in the City of Albuquerque.

1. Independent Counsel Quarterly Reports
2. Public Safety Advisory Board Minutes
3. Internal Affairs Quarterly Reports
4. Albuquerque Police Department Annual Reports
5. Risk Management Reports
6. Finance and Government Operations Committee Minutes
7. Other Documents
 - a. 1991 PSAB Deadly Force Report
 - b. 1997 SWAT Team Study
 - c. Contract Between Albuquerque Police Officers Association and APD.

d. Official APD Complaint Brochure

e. Correspondence Between City Officials and private citizens.

Personal Interviews

This study also conducted personal interviews with a wide range of people in the Albuquerque community. Because we wish to protect the privacy of many of these individuals, some of whom provided sensitive information, we have decided not to list individuals by name. The various categories of individuals we interviewed are listed below.

1. Community Representatives

a. Leaders and members of Human Rights, Civil Rights, Civil Liberties, and Neighborhood Organizations

b. Spokespersons for the Hispanic, Native American, and African American Communities

c. Spokespersons for the Business Community

d. Families of Persons Fatally Shot by APD

e. Attorneys in Private and Public Practice

2. Police Officers

a. Police Chief

b. Other Command Officers

c. Internal Affairs Commanders and Staff

d. APOA President

e. Past president, Chicano Police Officers Association

f. Other Rank and File Officers

g. APD Staff Psychologist

3. Public Officials

a. Mayor

b. City Council Members

c. City Council Staff

d. City Attorney and Staff

e. Current and Past Independent Counsel. Public Safety Advisory Board Chair and Members

g. Other officials in the Criminal Justice System of Albuquerque and Bernalillo County

Audit of APD Internal Affairs Unit

We also conducted an audit of the APD Internal Affairs Unit. This audit was conducted under the provisions of a confidentiality protocol approved by the City Attorney. The protocol acknowledged that the Consultants would not disclose to any person confidential information about private citizens or police officers contained in these files. The purpose of the audit was to evaluate general patterns and practices. The audit consisted of the following activities.

1. A general review of IA Citizen Police Complaint (CPC) files for 1994, 1995, 1996.
2. An intensive audit of the quality of a random sample of 10 percent of all CPC files for 1994, 1995, 1996.
3. A Review of the activities of the Independent Counsel relative to citizen complaints.
4. A consumer satisfaction survey of all persons who had filed complaints in the past three years.

Police Officer Survey

The objective of the police officer survey was to obtain the perceptions of rank and file APD officers about the tripartite system of police oversight of the APD along with their attitudes toward their job. Generally, the perceptions and attitudes of rank and file officers are ignored in such studies. We are not aware of any similar study of officer perceptions of both internal and external oversight procedures.

The survey consisted of five modules, with seventy closed-ended questions and several open-ended questions. Module One investigated officers' perceptions of each of the three oversight mechanisms. Module Two investigated each officer's experience with the oversight mechanisms. Module Three explored officers' actual knowledge of the oversight mechanisms. Module Four examined the officers' attitudes toward their work as police officers. A fifth section includes a series of open-ended questions comments where officers have an opportunity to give their observations about the oversight mechanisms.

The response format for the first four modules the questions consisted of a seven-point Likert type scale anchored at the end points with "strongly disagree" to "strongly agree." Other questions requested specific yes/no responses and opened responses were used to elicit comments and observations.

The survey was administered by the consultants and their assistants at a City-wide Briefing called by Chief Joseph Polisar and held at the APD training facility. The survey was administered at a total of eight briefings over a three day period. The focus of administering the survey to line officers only is to capture the officers who have the greatest number of contacts with citizens, and are therefore most likely to generate citizen complaints. Prior to administration

of the survey, officers were briefed by project personnel about the study and the purposes of the survey. The officers were assured complete anonymity.

Three hundred and fifty-seven Albuquerque police officers completed the survey. This represents 44% of the total sworn officer force and an even larger percentage of the field officers. As Table 4-1 indicates, the sample of officers completing the questionnaire is representative of the Albuquerque Police Department (APD) in relation to ethnicity. Female officers are slightly underrepresented; females represent eight percent of the survey sample and 13.17% of the department. The demographic breakdown of the survey sample and police department is detailed in the chart that follows.

Table Four - Survey Sample Demographic Information

Demographic Information	Sample Frequency	Sample Percentage	APD Percentage
Gender			
Female	28	7.8	13.17
Male	318	89.1	86.8
Didn't Indicate	11	3.1	
Ethnicity			
White	197	55.2	56.9
Black	7	2.0	1.98
Hispanic	126	35.3	39.66
Native American	5	1.4	1.13
Other	11	3.1	0.28
Age			
24 or under	23	6.4	
25-29	67	18.8	
30-34	99	27.7	

35-39	84	23.5	Not Available
40-44	44	12.3	
45-49	21	5.9	
50+	12	3.4	
	7	2.0	
Highest Level of Education			
Not a HS Graduate	1	0.3	Not Available
HS Graduate	59	16.5	
Some College	153	42.9	
Associate Degree	38	10.6	
Bachelor Degree	69	19.3	
Some Graduate Work	20	5.6	
Graduate Degree	10	2.8	
Other	2	0.6	
Didn't Indicate	5	1.4	

National Survey of Citizen Oversight

At the request of City Council this study compares the Albuquerque system of oversight with systems in other jurisdictions. As part of their professional interest in the subject of citizen oversight, both of the Consultants have collected a wide range of official documents related to oversight mechanisms in other jurisdictions. Professor Walker has in his possession a near-complete collection of ordinances, policies and procedures, and annual reports related to these mechanisms.

In addition, both Consultants in the course of their careers have talked with many citizen review officials, police department officials, and other public officials in other jurisdictions. This information was also utilized in this study.

IV. Current Process

The Citizen Complaint Process

The process for investigating citizen complaints in the Albuquerque Police Department (APD) represents a mix of internal and external features.

The ordinance establishing the Independent Counsel authorizes the IC to "direct" the complaint process. Pursuant to this authority, the two individuals who have served as ICs have issued a series of Directives and Memoranda of Understanding establishing the complaint investigative process. The role of the IC is described in greater length in Chapter Five.

Figure 4-1 provides a schematic description of the complaint investigative process.

There are several aspects of this process that should be noted. First, responsibility for investigating complaints lies with the Internal Affairs Unit of the APD (Step 2). The IC provides citizen input into this process by reviewing IA investigative files. The IC has the authority to require additional investigation where necessary. The IC also has authority to conduct an independent investigation, and to hire outside investigators for that purpose.

Responsibility for imposing discipline on an officer found guilty of misconduct lies with the APD Chain of Command, specifically the Captain who serves as the officer's Area Commander.

The IC has the authority to disagree with the Chain of Command officers. Such disagreement results in a Nonconcurrency Meeting with the Chief of Police (Step 5B). If the disagreement is not resolved, the case is sent to the Chief Administrative Officer (CAO of the City for resolution (Step 7).

Aspects of the APD Disciplinary Process

The complaint investigation and disciplinary process in the APD is different from many other police departments. In many other departments, internal affairs investigates complaints and makes a recommendation for discipline directly to the chief of police. In the APD, however, Internal Affairs investigates complaints, subject to the review of the Independent Counsel, and then refers a case to the chain of command for the actual determination of discipline. Thus, the Captain of each Area Command imposes discipline. Internal Affairs does not itself "discipline" officers. Each case then proceeds up the chain of command within APD. Although the Chief of Police is ultimately responsible for all disciplinary actions, in practice the real work of determining the appropriate discipline resides with Area Commander Captains.

We discovered that this disciplinary process creates certain problems. Because responsibility for imposing discipline is decentralized among the Area Commanders there is a problem of consistency. A number of officers we spoke with informally identified this as a problem. The problem of fairness surfaced in our survey of the rank and file. We learned that consistency and fairness has been a problem for some time. One attempt to correct the problem is the Chart of Sanctions which is designed to specify the appropriate discipline, given the seriousness of the case and the officer's

past record. (The Chart of Sanctions functions much like the sentencing guidelines that currently exist in the federal criminal courts and a number of states). A copy of the Chart of Sanctions is included in the Appendix.

It is our impression that consistency and fairness continue to be matters of concern among officers. The leaders of both the Albuquerque Police Officers Association (APOA) and the Chicano Police Officers Association presented us with proposals for changes in the disciplinary system. It appears that rank and file officer concern is directed not at the external forms of oversight, or even the top command of the department, but primarily at mid-management, including sergeants, lieutenants, and captains.

Oversight Mechanisms

The City of Albuquerque has two forms of citizen review or external oversight (the terms are interchangeable) of the APD: the Independent Counsel and the Public Safety Advisory Board.

The Independent Counsel has the authority to "direct" the overall manner of the complaint investigation process. The activities of the IC pursuant to this authority are examined in detail in Chapter Five.

The Public Safety Advisory Board (PSAB) has the authority to "conduct studies" and make recommendations regarding the policies and procedures of the APD. The activities of the PSAB pursuant to that authority are examined in detail in Chapter Six.

As we mentioned in the Introduction to this report, Albuquerque has had two forms of citizen review for many years. The question before the citizens of Albuquerque is not whether to have citizen review, but how well the current mechanisms are working and whether some changes are needed.

V. Independent Counsel

The Role of the Independent Counsel

The Independent Counsel (IC) represents the principal form of citizen oversight of the Albuquerque Police Department (APD). The office of Independent Counsel was established by ordinance in 1987 (see Appendix), and has functioned continuously since then.

The enabling ordinance provides that the IC shall be an attorney, retained under contract for a period of no longer than one year. The IC is not considered an employee of the City of Albuquerque. Finally, the IC is required to report to the Mayor and City Council on a quarterly basis, or upon request of the Mayor or Council. Two individuals have served as IC since its inception. The two IC's have been employed on the basis of a sole source contract without competitive bidding on the basis of an RFP.

The mandate of the IC, as defined by ordinance, is extremely broad (see Appendix). Its purpose is " to ensure a fair, objective and impartial investigation " of investigations by the internal affairs unit of the APD [emphasis added]. This is designed to " enhance the credibility of this process " and to ensure " public confidence " that there is proper review of "the conduct of members of the Albuquerque Police Department" [emphasis added].

Pursuant to this basic purpose, the IC has been granted very broad authority. The enabling ordinance states that "The Independent Counsel shall direct the overall manner in which the internal affairs investigations of the Albuquerque are conducted..." [emphasis added]. Immediately upon being hired, the first IC, Mr. William Riordan, drafted a Memorandum (Directive #2) outlining the complaint review process for APD, and defining the IC's role in that process.⁽¹¹⁾ The process is outlined in Figure 4-1 in Chapter Four.

The ordinance establishing the IC defines many specific duties. It provides that the IC " shall review all Albuquerque Police Department Internal Affairs Unit investigations for the purpose of making recommendations to the Chief of Police as to whether disciplinary action should be taken...."[emphasis added].

Further, the IC " may supplement investigations " and is " authorized to employ such investigators as are necessary to provide an objective, fair and impartial review" [emphasis added].

In addition, the IC is granted general oversight authority over the APD. The ordinance provides that the IC " shall also make recommendations to the Chief Administrative Officer, the City Attorney, the Chief of Police, and where appropriate, the City Council " on procedures to be changed or any other matter the Independent Counsel deems appropriate " [emphasis added]. This authority represents the policy review function of citizen review, which is discussed in detail in Chapter Nine of this report. The policy review activities of the Albuquerque IC are discussed below.

Evaluation Methodology

Our evaluation of the Albuquerque IC consisted of five parts. First, we reviewed all of the official Quarterly Reports filed by Independent Counsel since its inception.

Second, we personally interviewed the two individuals who have served as IC, Mr. William Riordan and Mr. Patrick Apodaca.

Third, we interviewed a wide range of private citizens and public officials (see Chapter Three, Methodology), and specifically asked them about their experiences with and perceptions of the IC. This included police officials who interact with the IC on a regular basis and individuals who have an interest in police problems but have never met the current IC.

Fourth, as part of the audit of Internal Affairs files, we audited the activities of the IC as reflected in individual citizen complaint files.

Fifth, we included questions about the IC in our surveys of both rank and file APD officers and citizen complainants.

Summary of Findings

Our findings regarding the Independent Counsel fall into three general categories: (1) The IC review of citizen complaints; (2) the policy review activities of the IC; (3) the public perception of the IC.

We conclude that the IC does in fact direct the complaint investigation process and adds an important element of citizen oversight of the process. We also conclude, however, that the IC is not fully utilizing his authority to review the policies and procedures of the APD. Most seriously, the IC plays no public role and as a consequence has undermined much of the positive accomplishments related to oversight of the APD.

Review of Internal Affairs Investigations

As noted above, the Independent Counsel has very broad authority with respect to reviewing investigations by the APD Internal Affairs Unit. The IC is authorized to "direct the overall manner" of internal affairs investigations, and directed to "review all... investigations." Additionally, the IC may "initiate investigations" and employ other investigators as deemed necessary.

On the basis of our research we find that the Independent Counsel has complied with the minimal terms of his mandate.

We find that the IC does direct the overall operations of internal affairs investigations. Immediately upon taking office, the first IC drafted a Directive outlining the complaint process.⁽¹²⁾ There was some initial resistance by the then-police chief based on conflicting interpretation of the meaning of the ordinance. These differences were eventually resolved and a harmonious working relationship appears to exist between the IC and the APD.⁽¹³⁾

Some of the initial conflict was undoubtedly the result of a natural learning process as both the IC and the APD sought to define the scope of this new office's activity and its working relationship with the APD. We note, for example, that the first report of the new Inspector General (IG) for the Los Angeles Police Department (LAPD) indicates some initial conflict with the LAPD over the scope of the IG's responsibility.⁽¹⁴⁾ At the same time, some of the initial conflict between the IC and the APD appears to have been related to the personality of the initial IC and that person's concern about a particular controversy over APD activities.

The current IC continues to direct the overall operations of internal affairs investigations. The IC issued a new Memorandum of Understanding (MOU) defining the scope of his activities in August, 1996. A copy of this MOU is

attached in the Appendix. This new MOU indicates that the IC continues to think about and refine the scope of the IC's responsibilities.⁽¹⁵⁾

We find that the IC has issued Quarterly Reports of his activities as mandated by ordinance. We also find, however, that these reports are extremely short and provide the public with little detail about the complaint process or the activities of the IC. Quarterly Reports for recent years are typically four pages long and follow a standardized format. For illustrative purposes, one Quarterly Report is included in the Appendix.

The lack of detail in these reports, along with other factors discussed later, have weakened the credibility of the IC in the eyes of the public. The brevity of the IC reports contrasts sharply with the scope of reports filed by citizen review procedures in other cities (see Chapter Nine). This problem is discussed in more detail below, with respect to the policy review function of the IC. Our audit of the internal affairs files indicates that the IC does review every internal affairs investigation as mandated by ordinance. In this regard, then, the current IC is fully and conscientiously fulfilling this part of his role.

In short, the IC is complying with the formal terms of the enabling ordinance with respect to directing the complaint process of the APD. We now turn our attention to the question of the effectiveness of the IC's activities.

Effectiveness of the Independent Counsel

The important question involves the effectiveness of the IC with respect to the review of internal affairs investigations. This is an extremely difficult question, and one that cannot be answered in any purely objective, quantifiable way. Answers to this question inevitably involve subjective matters, including primarily an individual's overall level of trust in the police department and city government.

Command officers with the APD indicated to us that the presence of the IC does make a difference, and that it contributes to more objective and fairer investigation of complaints. One command officer stated that the IC " helps us see things from a citizen's point of view " [emphasis added]. He then illustrated the point with reference to a particular case, the details of which are confidential. Another command officer indicated that his perspective on interactions with citizens had changed as he had risen to higher rank in the department and that the IC had contributed to this learning process.

In this respect, the IC has fulfilled one of the basic functions of citizen review. The presence of the IC has helped to "open up" the traditionally closed complaint process and provided APD investigators with a citizen's perspective on individual complaints.

Several of the people we interviewed, including police officials, private attorneys, and citizens indicated that the operations of Internal Affairs has improved over the years. They indicated that in the past IA was run very badly, and influenced by favoritism toward certain groups of officers. We believe that the IC has contributed to this improvement.

The IC has the authority to disagree with Internal Affairs investigations. This authority is the critical part of the oversight process, representing the introduction of a citizen's perspective on the operations of internal affairs. As Figure One indicates, the IC can disagree at two different stages of the complaint investigation process.

The IC reviews a complaint file after the citizen's complaint has been investigated by IA. At this point, the IC has the authority to request additional investigation (Figure 4-1, Step #4). The Quarterly Report for the period ending March 31, 1995, for example, includes the following statement:⁽¹⁶⁾

"In some cases reviewed during the quarter, I determined that the investigations submitted to me by the IAU required follow-up investigation in order to insure a fair, objective and impartial investigation. In such instances, I returned the investigation to the IAU with a request for follow-up investigation on specific points. In each instance, the IAU conducted the requested follow-up and the investigation was then resubmitted to me for final review."

Other Quarterly Reports contain identical or nearly identical language. Our audit of the Internal Affairs files indicate that these requests for further investigation do in fact occur. This process represents an important check and balance on the operations of Internal Affairs.

Our interviews found that the disagreements between the IC and the APD command staff involve give and take on both sides. Both the current IC and APD command officers independently indicated to us that they "won" about half of the time and "lost" the other half. That is to say, about half the time, APD command officers were able to convince the IC that his disagreement was not justified, and about half the time, the IC refused to change his mind.

Both the current IC and members of the APD command staff indicate that they have established a good working relationship, characterized by mutual respect for each other's point of view.

If after additional investigation the IC still disagrees with the investigation conducted by Internal Affairs, he has the authority to issue a "nonconcurrency" memorandum (Step 5B). This results in a "nonconcurrency" meeting with the Chief of Police. If the nonconcurrency meeting results in a resolution of the disagreement, the case is then sent back to the normal disciplinary process in the APD (Step #6B). If the disagreement is not resolved at the nonconcurrency meeting, the IC issues a formal nonconcurrency statement and the case is sent to the Chief Administrative Officer (CAO) for resolution (Step #7).

Nonconcurrences are rare. The IC Quarterly Reports indicate a total of two nonconcurrences in 1995 and one in 1994.⁽¹⁷⁾

The data on disagreements and nonconcurrences need to be interpreted with great care. As with other data on complaints, these data do not speak for themselves.⁽¹⁸⁾ Some critics might interpret the low number of disagreements as evidence that the IC is not performing his duties adequately. On the other hand, the low number might mean that over time the IC has established certain minimum standards for Internal Affairs investigations and that IA investigators generally meet those standards, resulting in little week-to-week conflict.

The important question is whether the IC is truly "independent" of the APD, or has he been "co-opted" into seeing things from the APD perspective. There is no way to answer this question definitively.⁽¹⁹⁾ Our prior research and experience with citizen review indicates that evaluations are heavily influenced by a person's race and general level of trust of the police department. Nonetheless, our research provides some objective bases for evaluating the performance of the IC.

First, there are the results of our audit of the Internal Affairs files, which are discussed in Chapter Seven. Second, there is the comparison of the activities of the IC with those of equivalent agencies in other cities. This is discussed in detail in Chapter Nine.

The Policy Review function of the Independent Counsel

The Policy Review Function

The Independent Counsel has statutory authority to "direct the overall manner in which the internal affairs investigations of the Albuquerque Police Department are conducted." Pursuant to this authority, the Independent Counsel is charged with the responsibility to "make recommendations to the Chief Administrative Officer, the City Attorney, the Chief of Police, and where appropriate, the City Council, on procedures to be changed or any other matter the Independent Counsel deems appropriate [emphasis added]."

The scope of the Independent Counsel's authority to oversee the Albuquerque Police Department is extremely broad. The phrase "any other matter" is, on its face, without limit.

The authority granted the Independent Counsel falls within the policy review function of citizen review of police which is discussed in Chapter Nine. Policy review can serve two important purposes. First, it can play a preventive role, by identifying problems and initiating corrective action that will reduce the number of citizen complaints and prevent major crises from developing in the future. Second, it can serve as a practical means of receiving citizen concerns about police practices and translating them into meaningful corrective action. This process can reduce police-community tensions by establishing both the fact and the perception that the police department is responsive to citizen concerns.

The Policy Review Activities of the Independent Counsel

Despite the broad mandate authorized by statute, the Independent Counsel has made limited use of the policy review function. This conclusion is based on a review of all the Quarterly Reports filed by Independent Counsel.

The policies recommended by the Independent Counsel fall into two general categories: Those related to the complaint process itself and those related to general police practices. A review of the Quarterly Reports filed by the Independent Counsel between 1989 and 1996 indicates a total of six (6) policy recommendations related to the

complaint process and seventeen (17) related to general police policies and procedures. This represents a total of twenty-three recommendations in eight years, or an average of between two and three per year.

With respect to the complaint process, the Independent Counsel issued a Directive outlining the complaint process in 1989.⁽²⁰⁾ A few subsequent recommendations or directives were issued to clarify or modify the original directive. In 1990 the IC clarified the procedures for submitting use of force complaints to the IC.⁽²¹⁾ In 1991 the IC revised the complaint procedures to prevent a supervisor investigating a complaint that involved the supervisor's own dealing with the officer who is subject to the complaint.⁽²²⁾ Also in 1991 the IC recommended that APD officers be specially trained in how to properly inform citizens about how and when to file a complaint.⁽²³⁾

With respect to general policies and procedures of the APD, the IC has addressed a number of different issues. In 1990 he recommended that the APD attempt to assign more experienced officers to street duty in late evenings as a way of reducing citizen complaints.⁽²⁴⁾ In 1991 the IC recommended a review of training in the handling of mentally ill persons. In 1993 the IC recommended a review of APD policies and procedures related to warrantless arrest incidents.⁽²⁵⁾ In 1994 the IC recommended a review of policies and procedures related to the SWAT team.⁽²⁶⁾ Also in 1994 the IC recommended that the APD review its training related to the use of nondeadly force.⁽²⁷⁾

On the positive side, these recommendations indicate that the Independent Counsel has to a certain extent utilized his statutory authority to oversee the operations of the APD and to make recommendations for changes in policy. Some of the police recommendations address important issues that have been matters of great concern to the community, particularly the use of force and the accessibility of the complaint process.

On the negative side, however, the level of policy review activity by the Independent Counsel is low compared with that of other citizen review procedures. Even more serious, much of the positive value of the policy review activity has been lost because of the low-visibility of the Independent Counsel in the eyes of the community. Citizens, including those who are most concerned about police practices, are not aware of the policy review activities of the IC. Additionally, the low-visibility has contributed to a lack of monitoring of the implementation of IC recommendations.

We now turn our attention to the issue of the public visibility of the IC.

Public Visibility of the Independent Counsel

One of the most serious problems with the Independent Counsel is its low-visibility in the eyes of the community. The current IC plays no public role and is not widely known in the community. As a consequence, the substantive contributions to police oversight that the IC has made are not generally known. This has undermined public confidence in the existing oversight mechanism. Additionally, the potential value of the IC as a mechanism for addressing community concerns has been lost.

Most of the people we interviewed were unable to provide any detailed information about the activities of the IC. Some could not identify the present IC by name. Most of the officers in our survey of rank and file APD officers could not identify the current IC by name. In one of the more remarkable instances, an individual who knows the current IC on a social basis, and who holds a position in government, stated that he/she did not know that he served as the IC.

Those few individuals who indicated some familiarity with the work of the IC spoke favorably about him as an individual. Several people feel that he is sincere, dedicated, and hard-working. Our personal interview with the current IC led us to concur with this judgement. He appears to take his job very seriously and to do a competent job in the tasks he undertakes. As we indicated above, the IC does direct the complaint process, reviews all complaint files, and issues quarterly reports as mandated by ordinance.

The problem with the IC is not related to the character or work habits of the person currently holding that position. The problem is that IC, partly in conjunction with City Council, has defined the role of the office in the narrowest terms possible. The IC has defined his role in terms of an "attorney-client" relationship with the City of Albuquerque, involving privileged confidential information which he cannot share with the public. The current IC is not solely responsible for this role definition. The contract for services between the City and the IC specifically defines the role in terms of attorney-client relationship.

We believe that both the IC and the City have unnecessarily limited the role of IC, with unfortunate consequences. The statute creating the office of Independent Counsel mandates only that the IC be an attorney. It does not define the role in terms of an attorney-client relationship.

Other cities have created citizen review procedures that are roughly similar to the Albuquerque IC but where the role of the top staff person is not defined in terms of an attorney client relationship. These cities include Portland, San Francisco, San Jose, and Los Angeles County. (See Chapter Nine for a detailed discussion of these and other citizen review procedures). The staff members of all of these agencies have access to confidential files on citizen complaints. They fully understand that this material is confidential and that they cannot discuss the specifics of complaints with members of the public. Nonetheless, the staff of these other procedures engage in active programs of community outreach. As is explained in Chapter Nine, community outreach serves to (1) inform the public about the complaint process; (2) provide a mechanism for hearing community concerns about police practices; and (3) cultivate community confidence that the police department and the city is responsive to their concerns.

Sole Source Contract

The Independent Counsel is employed on the basis of a one-year contract. As the records of the October 10, 1996 FGO Committee note, the IC has always been employed through a sole source contract rather than the RFP process required by the Purchasing Ordinance.⁽²⁸⁾ The current IC has been employed and reemployed on this basis since 1991. This practice has been justified on the basis of the current IC's "prior experience." The initial IC, William Riordan, was employed on a similar basis.

We believe that this is an unwise practice. It contributes to the low visibility of the IC in the community. We recommend that the position of IC be selected on the basis of the standard RFP process. We believe that an open competitive process would permit the application of individuals with different and more creative ideas about how the IC should function. Among other things, it would permit applications from individuals who have taken the trouble to study oversight mechanisms in other cities and have adopted the best practices and rejected the worst practices. We do not feel that an open competitive process will lead to abuse. The City has full power to reject any proposal that is unwise or illegal.

Police Officer Perceptions of the IC

There is a certain amount of misunderstanding about the role of the IC among rank and file APD officers. About a third of the officers (34.5%) believe that the IC investigates complaints. Slightly more than half (53.1%) believe that the IC recommends discipline. About a third (34.5%) do not know that the IC reviews policy, while almost 40 percent (39.7%) do not know that the IC makes recommendations regarding APD policies and practices.

Most officers have a negative view of the IC. Forty percent believe that the IC has a negative effect on police officer actions, while 60 percent believe that the IC has had a negative effect on police officer morale. Almost forty percent (38.6%) believe that the Independent Counsel is biased toward certain officers; 20.3 percent, however, disagree with that statement. Meanwhile, 17.5 percent believe that the IC is more sensitive toward citizens, while 57 percent disagree. Slightly more than one quarter (27.5%) of the officers believe that the IC has made a positive contribution to the professionalism of the ADP. Only 13 percent believe that the IC should be abolished.

Table 5-1

The results of the police officer survey are generally consistent with prior research on police officers and citizen review, although surprising in some other respects. Rank and file police officers have been strongly opposed to all forms of citizen review over the past forty years.⁽²⁹⁾ Police officer associations and unions have been the leading opponents of specific proposals or ordinances for citizen review. It is not surprising, therefore, to find that the APD officers have generally negative views of the IC.

The surprising finding in our survey is that about one quarter of the officers feel that the IC makes a positive contribution to police professionalism. Along the same lines, very few officers believe that the IC should be abolished. Together with our findings on officer views of Internal Affairs which are discussed in Chapter Seven, we believe that there exists within the ranks of the APD a solid core of officers who do not fit the traditional stereotype of rank and file officers as being opposed to all external scrutiny.⁽³⁰⁾ This core of officers wants more discipline, not less, along with fairer administration of discipline. They are not opposed to citizen review of the police, and in fact believe that some form of citizen input can enhance police professionalism. We believe that this core of officers represent a foundation of support for the development of higher levels of professionalism in the APD.

Summary

We reach the following conclusions about the effectiveness of the Albuquerque Independent Counsel.

First, as already noted, we believe that the involvement of someone who is not a sworn police officer in the complaint process has contributed to a more professional level of complaint investigation.

Second, as we explain in detail in our discussion of Internal Affairs, there are some questions about the quality of complaint investigations, for which both the IC and Internal Affairs share some responsibility.

Third, much of the effectiveness of the IC has been undermined by the low visibility of the office and consequent lack of its credibility in the eyes of the community.

Fourth, the IC should not be employed on the basis of a sole source contract.

We believe that these problems can be overcome. As we explain in the following chapter, the IC should have a formal relationship with the Public Safety Advisory Board (PSAB). This would help to overcome the low visibility of the IC and provide a channel for public input into the oversight functions performed by the IC.

-
11. Attachment to *Report of Independent Counsel Through September 30, 1989*.
 12. *Report of Independent Counsel Through July 31, 1989* (August 15, 1989).
 13. *Report of Independent Counsel Through September 30, 1989* (October 9, 1989), With Directive #2 attached.
 14. Los Angeles Board of Police Commissioners, *Office of the Inspector General - Six-Month Report* (January 1997).
 15. Patrick V. Apodaca, *Operation of the Office of Independent Counsel: Memorandum of Understanding* (August 30, 1996).
 16. Independent Counsel, *Report For the Quarter Ended March 31, 1995*.
 17. Independent Counsel, *Report For the Quarter Ended December 31, 1995; Report For the Quarter Ended December 31, 1994*.
 18. See the discussion of complaint data in the section of this report on the Internal Affairs Unit.
 19. Richard J. Terrill, "Alternative Perceptions of Independence in Civilian Oversight," *Journal of Police Science and Administration*, 17 (1990): 77-83.
 20. *Report of Independent Counsel Through September 30, 1989*.
 21. *Report of Independent Counsel Through March 30, 1990*

22. *Report of Independent Counsel for the Quarter Ended December 31, 1991.*
23. Ibid.
24. Report of Independent Counsel Through December 31, 1989.
25. *Report of Independent Counsel for the Period Ended March 31, 1993.*
26. *Report of Independent Counsel for the Period Ended March 31, 1994.*
27. *Report of Independent Counsel for the Period Ended September 30, 1994.*
28. FGO Committee Agenda, October 10, 1996.
29. Samuel Walker, *Citizen Review Resource Manual* (Washington: Police Executive Research Forum, 1995).
30. The basic sources on the police subculture are William A. Westley, *Violence and the Police* (Cambridge: MIT Press, 1970) and Jerome Skolnick, *Justice Without Trial*, 3rd ed. (New York: Macmillan, 1994).

VI. Public Safety Advisory Board

The Role of the Public Safety Advisory Board

The Public Safety Advisory Board (PSAB) is the second form of citizen review or oversight of the APD. Unlike the Independent Counsel, the PSAB has no direct involvement in the complaint process. Instead, the PSAB is designed to provide citizen oversight of general policies and procedures. In this regard it is designed to implement the policy review function of citizen review of the police which is discussed in Chapter Nine.

The PSAB consists of eleven members appointed by the mayor with the advice and consent of City Council. One member is appointed from each Council district, and the mayor appoints the remaining two members. The Mayor appoints the Chair of the PSAB. Members serve three year terms.

The PSAB is authorized by statute " to conduct studies, receive information, and make recommendations " regarding the "policies, practices, and procedures" of the police, fire, and corrections and detention departments [emphasis added]. Its jurisdiction includes but is not limited to such issues as the "treatment of victims of crime, police, fire and corrections community relations, staffing, training, equipment and other concerns that may be specified from time to time by the Mayor or Council." The PSAB is also directed to " seek information from all sectors of the community ," including the three departments under its jurisdiction. Finally, the PSAB is directed to meet regularly with the heads of the three departments.

The mandate of the PSAB is extremely broad . The enabling ordinance sets no limits on what "policies, practices, and procedures" it may investigate and make recommendations about. Moreover, the PSAB is designed to be a proactive rather than a merely reactive agency. It is authorized "to conduct studies" and directed to "seek information from all sectors of the community."

Evaluation Methodology

Our study of the PSAB consisted of six different activities. First, we reviewed all of the minutes of PSAB meetings from 1989 to the present. We also reviewed the report on police use of force produced by the PSAB in 1991.

Second, we interviewed several current members of the PSAB, including the current Chairperson.

Third, we interviewed a wide variety of community representatives who have an interest in police problems about their experiences with and perceptions of the PSAB.

Fourth, we interviewed the Chief of Police and other members of the APD command staff regarding their experiences with and perceptions of the PSAB.

Fifth, we included several questions about the PSAB in our survey of rank and file police officers.

Sixth, we attended the January, 1997 meeting of the PSAB.

Summary of Findings

On the basis of our research, we conclude that the Public Safety Advisory Board (PSAB) has failed in its mission to provide oversight of the Albuquerque Police Department . The PSAB has not effectively utilized its statutory powers. Indeed, it has hardly used its powers at all . The PSAB is almost universally criticized by the leaders of community groups and leaders of the police department.

In many respects the PSAB is dysfunctional in that instead of resolving tensions between the community and the police and providing an avenue for addressing problems it tends to aggravate existing tensions . The problem is that it promises citizens an avenue of redress for their grievances but fails to deliver on that promise. The result is that PSAB meetings are the scene of angry confrontations that do not lead to meaningful changes in police practices and leave virtually everyone feeling worse about police-community relations and about the PSAB itself.

Perceptions of the PSAB

by people we interviewed. Community representatives, including the leaders of local civil rights organizations and attorneys in both private and public practice, characterized the PSAB as "worthless," "useless," and "a paper tiger."

These individuals expressed much emotion when making this judgment. Many conveyed a strong feeling of betrayal. As we explain below, there is a strong sense that the PSAB has promised a remedy for police-related problems and then failed to deliver on those promises.

Leaders of the police department were also highly critical of the PSAB, expressing the feeling that it was "dysfunctional" and not a useful mechanism for addressing concerns about police practices. The experience of police officials has been, ironically, very similar to that of their critics. Police officials also regard PSAB meetings as a forum for public criticism of the APD without providing a meaningful process for addressing problems and resolving grievances.

Our survey of rank and file police officers found that many officers do not have a correct understanding of the role of the PSAB. Nearly half (44.5%), for example, incorrectly believe that the PSAB reviews the investigations of citizen complaints by Internal Affairs (Table 6-1). About a quarter (22.8%) incorrectly believe that the PSAB itself investigates citizen complaints. About thirty percent (29.5%) incorrectly believe that the PSAB recommends discipline in citizen complaints.

On the positive side, almost all of the officers (94%) correctly believe that the PSAB does not administer discipline to police officers. Most of the officers (69.8%) correctly understand that the PSAB reviews police department policy, and 65.8 percent believe that it makes policy recommendations. On both issues, however, about a third of the officers are not aware of the PSAB's policy review mission. Finally, most of the officers (86.1%) correctly understand that the PSAB does not actually make policy for the police department.

Table 6-1

The substantial level of misunderstanding about the role of the PSAB among rank and file officers is cause for concern. One of the hallmarks of police professionalism is that officers know what is expected of them, along with the processes for reviewing possible misconduct. Both the PSAB and the APD have failed to adequately inform rank and file officers about the PSAB's role.

Virtually the only person we interviewed who spoke favorably about the PSAB was the Mayor, although he did concede that things were far from perfect. When asked to list the accomplishments of the PSAB, however, the Mayor cited only two specific items. We discuss these two items below, and explain why in our judgment they are evidence of the failure of the PSAB.

Policy Review Activities of the PSAB

The PSAB is charged with the responsibility to "conduct studies" and make recommendations regarding the policies and procedures of the police, fire, and detention departments. With respect to the APD, the PSAB has failed to utilize this authority to any significant extent. Since it was established in 1989 (replacing the previous Police Advisory

Board), the PSAB has produced one substantive report on police practices, a 1991 report on deadly force, and made recommendations on only a few other issues.⁽³¹⁾ It made a recommendation for an "on-lookers" policy that was adopted in 1996.⁽³²⁾ The PSAB also conducted a study of APD pursuit policy in 1995.⁽³³⁾

Several things are notable about these activities. First, the 1991 study of deadly force was undertaken at the request of Mayor Saavedra. The report opens with the statement that "On May 12, 1991, Mayor Louis Saavedra requested the Albuquerque Public Safety Advisory Board to conduct a special review of the use of deadly force by the Albuquerque Police Department."⁽³⁴⁾ In other words, the PSAB did not initiate the study itself, despite the fact that there was considerable community controversy over a rash of shootings in recent months. This is but one example of the extent to which the PSAB has failed to use its authorized power "to conduct studies."

Second, the report on deadly force has had little apparent impact. As one community leader pointed out to us, with much emotion, seventeen people have been shot and killed by the APD since the report was issued. The lack of impact is confirmed by the fact that an air of crisis currently surrounds the APD use of deadly force. Our report is only one of four studies of various aspects of police use of force that were initiated or completed in the last year. The PSAB itself undertook a new study of the use of force in 1996 (the so-called "Blue Ribbon Committee").⁽³⁵⁾ The City Attorney's office, meanwhile, commissioned separate studies of the SWAT team and the use of force by officers other than those on the SWAT team.⁽³⁶⁾

Third, with respect to the on-looker policy, the PSAB cannot legitimately claim credit for it, since the idea originated with the Independent Counsel.

In other words, the two main products of the PSAB over the past six years were both initiated by others. This is dramatic evidence of the failure of the PSAB to utilize its statutory authority in a proactive way.

This dismal record contrasts sharply with the activities of citizen oversight bodies in other cities. The San Diego Citizens Law Enforcement Review Board made a total of eleven policy recommendations in 1993 alone.⁽³⁷⁾ The most recent semi-annual report of the Los Angeles County Special Counsel [Auditor] is 88 pages long and contains substantive discussion of eight separate issues related to on-the-street practices of Sheriffs' Deputies along with three other sections related to use of force data, and three sections related to gender, sexual orientation, and training issues. Most important, the report contains an update of progress regarding the implementation of prior recommendations.⁽³⁸⁾ This issue is discussed in detail in Chapter Nine of this report.

State Representative Pauline Gubbels spoke to the PSAB at its August 7, 1996 meeting. She introduced herself as someone who is "concerned with public safety," and stated that she believes "there is something seriously wrong," particularly with respect to the fatal shooting of citizens by APD. She urged the PSAB to "take up a challenge and get really serious about trying to effect some change."⁽³⁹⁾ Her comments reflect the same frustration with the failure of the PSAB to adequately fulfill its mandate that is felt by many other people in the community.

The Responsibility of Other Agencies of Government

The failure of the PSAB to conduct studies and make recommendations is not completely the fault of the PSAB itself. As already noted, the PSAB is authorized to address issues "as may be specified from time to time by the Mayor or Council." The 1991 report on police use of deadly force was in fact initiated by Mayor Saavedra. The records, however, do not indicate a consistent effort by mayors or city council members over the years to utilize the PSAB to address concerns about police practices.

Along these lines, the failure of the 1991 PSAB report of police use of deadly force to affect policy does not lie with the PSAB itself. The report contains a total of 40 specific recommendations for action. It is not our purpose here to provide a complete review of the response to each and every one of those recommendations. We do take special note, however, of Recommendation 3.2 which calls for establishing specially trained teams to "handle incidents involving individuals who are mentally handicapped or emotionally distraught." Several other recommendations also relate to the handling of mentally ill persons.

Action to implement the substance of Recommendation 3.2 of the 1991 report was initiated in 1996, and is now in progress. The Crisis Intervention Teams (CIT) based on the program in the Memphis Police Department are in the process of being developed. It does not appear, however, that the current CIT initiative is a direct outgrowth of the 1991 PSAB report. It appears to be an ad hoc response to the current crisis in police-community relations. In short, nothing was done to implement Recommendation 3.2 for five years. During this period there were a number of fatal shootings involving mentally ill persons.

Responsibility for the failure to implement Recommendation 3.2 must be shared, in varying degrees, with the individuals who served as police chief, mayor, and members of city council over this period .

Of course, the PSAB itself shares some of the responsibility for this failure by failing to monitor implementation of the many recommendations in the 1991 report. The PSAB did give some attention to the issue of handling the mentally disturbed in 1995, and the APD was then in the process of implementing a new policy.⁽⁴⁰⁾ As we explain in Chapter Nine, one of the most important activities of citizen review procedures in Los Angeles County, San Jose, and Portland is their role in monitoring the implementation of their own recommendations. This process of follow-up monitoring does not appear to be operating with the PSAB.

Long Range Planning by the PSAB

The current chair of the PSAB expressed to us, with considerable frustration, her efforts to establish a long-range planning process for the PSAB during 1996. Apparently, however, nothing resulted from her efforts, primarily because of the lack of response by other PSAB members.

The attempt to establish a long-term planning process for the PSAB is to be commended. The PSAB's mandate to "conduct studies ... and make recommendations" requires some kind of process that will identify problems, establish priorities among them, and set an agenda for conducting the necessary studies.

With respect to long-term planning, we were struck by the fact that at the January PSAB which we attended, one member asked each of the three department heads to provide a list of his goals for the coming year. We believe that this was a very legitimate request, and a proper request for the PSAB to make with respect to its oversight mission. The PSAB, however, does not appear to apply the same standard to itself. It does not appear to have a list of priorities for the year. As a result, it is a reactive rather than a proactive agency. This reactive response accounts in large part for the meager list of recommendations over the past eight years.

In 1994, at the request of the Mayor Martin Chavez, the PSAB submitted a Mission Statement, which also included a set of Goals and Objectives.⁽⁴¹⁾ This Mission Statement is included in the Appendix to this report.

Upon closer inspection, however, the Mission Statement proves to be a disappointing document. The "Mission" portion of the statement simply restates in different language the statutory authority of the PSAB ("To serve as a CIVILIAN OVERSIGHT COMMITTEE over the Public Safety Sector ensuring that the needs of our respective districts are addressed." "To CONDUCT SPECIAL STUDIES as necessary to determine underlying factors impacting upon unfavorable trends of public safety."). The "Goals" section, meanwhile, is expressed in very general terms ("Goal II - Develop and maintain a pro-active communication linkage with the community at large.").

Nowhere in the Mission Statement is there any reference to specific problems related to the APD or the other two departments under the PSAB's jurisdiction.

PSAB Meetings

Our observation of the January, 1997 PSAB meeting, coupled with a review of PSAB minutes, confirmed a change in meeting procedures that deserves comment.

Prior to 1996, the first substantive business at PSAB meetings (following the call to order and approval of the minutes of the previous meeting) was the "public comment" session. Reports from the three department heads (police, fire, detention) then followed.⁽⁴²⁾ In the summer of 1996, however, the order of business was reversed. Reports from the department heads were moved to the early part of the meeting and the public comment session moved to the end.⁽⁴³⁾

A number of citizens complained to us that PSAB meetings had been converted into a public relations process for the three departments it oversees. It is, of course, entirely proper for the three department heads to make formal reports to the PSAB, just as they report to the mayor and city council. Hearing from the department heads is one aspect of the PSAB's oversight function. Nonetheless, it is our impression that the balance has been shifted in an unhealthy manner. As an agency established for the purpose of citizen oversight, the PSAB should give special emphasis to

hearing from citizens. Moving the public comment session to the end conveys the impression that it is being relegated to a second class status.

Should the PSAB Investigate Individual Complaints?

The minutes of PSAB meetings in recent years indicate that there has been some controversy over the question of whether the PSAB should investigate individual complaints. Several community representatives have asked the PSAB to undertake this activity.⁽⁴⁴⁾ In response, PSAB members have generally expressed doubt as to whether the PSAB is in fact authorized to do this.

Our review of the enabling legislation indicates that the PSAB is not authorized to review individual citizen complaints. Citizen oversight of individual complaints is specifically granted to the Independent Counsel. The role of the PSAB is clearly defined in terms of addressing general policies and procedures. To that end, it is directed to "conduct studies," and so on.

Our conclusion is that citizens have requested the PSAB to examine individual complaints because they feel they have no other avenue for redress. The minutes of the September 4, 1996 PSAB meeting note that "Citizens at this meeting feel that the PSAB is the only place they have left to turn to make a difference in the system"⁽⁴⁵⁾ A major part of this problem is the low public visibility of the Independent Counsel (IC). This has created a lack of awareness of the IC's activities and lack of confidence in the IC's oversight role.

We believe there is a solution to this problem. The IC provides direct citizen input into the complaint investigation process. The problem, as we noted in Chapter Four, is that the IC has almost no public visibility. The solution to this problem is to establish a formal link between the PSAB and the IC . This would involve the IC reporting directly to the PSAB about his or her activities and permit members of the PSAB to ask questions and make recommendations for action by the IC.

We conclude with some observations on one particular problem related to citizen dissatisfaction with the PSAB. The demand that the PSAB review complaint investigations reflects a hunger for more information about how complaints are handled. To our surprise, we discovered that considerable information is already being provided in the Quarterly reports from the Internal Affairs Unit of APD . In additions to summary data, the reports include narrative descriptions of all complaints along with the disposition of each complaint.⁽⁴⁶⁾ This is precisely the kind of information that helps to answer citizen questions about the complaint investigation process, and at the same time highlight problems and possible changes in the process. We understand that these Internal Affairs Quarterly reports are public documents. The problem is that they are made public but not adequately disseminated to either the PSAB or the public.

Conclusion

We conclude that the PSAB has failed to fulfill its mission to provide oversight of the APD. It has not engaged in a systematic program of conducting studies and making recommendations about APD policies and procedures. In many respects the PSAB has become dysfunctional, contributing to community tensions rather than resolving them.

We believe that the PSAB needs to be restructured. In certain important respects the problems of the PSAB are related to the problems of the IC discussed in Chapter Five. We believe that the PSAB and the IC need to be formally linked. The IC should report to the PSAB and the PSAB should provide specific input into the activities of the IC. This change will both overcome the low visibility of the IC and provide a more focused role for the PSAB with respect to the complaint process.

-
31. Public Safety Advisory Board, Report to Mayor Louis E. Saavedra on Police Use of Deadly Force (September 4, 1991).
 32. PSAB Minutes, February 7, 1996.
 33. PSAB, Minutes, April 5, 1995, July 5, 1995.
 34. PSAB, *Report to Mayor Saavedra* (September 4, 1991).
 35. PSAB, Minutes, September 4, 1996.
 36. R. M. McCarthy & Associates, *Independent Report to the City of Albuquerque Legal Department on the Albuquerque Police Department's Special Weapons and Tactics Unit* (January 1997).
 37. San Diego County Citizens Law Enforcement Review Board, 1993 Annual Report (San Diego: February 23, 1994).
 38. Special Counsel, the *Los Angeles County Sheriff's Department - 6th Semiannual Report* (Los Angeles: September 1996).
 39. PSAB, Minutes, August 7, 1996.
 40. PSAB, Minutes, February 8, 1995.
 41. Public Safety Advisory Board, *Mission Statement to the Mayor* (July 25, 1994).
 42. See, for example, PSAB, Minutes, December 6, 1995.
 43. PSAB, Minutes, August 7, 1996.

44. See, for example, comments by Andres Valdez, PSAB Minutes, May 3, 1995, June 7, 1995; comments by Shay Cozart, PSAB Minutes, March 6, 1996,

45. PSAB, Minutes, September 4, 1996.

46. APD, Internal Affairs, Quarterly Reports, 1995, 1996.

VII. APD Internal Affairs

The Role of the Internal Affairs Unit

The Internal Affairs Unit of the Albuquerque Police Department has the stated mission "(t)o insure that investigations by the Internal Affairs Unit are conducted in a manner conducive to public confidence, good order, discipline and good management practices."

Internal Affairs investigates both citizen police complaints (CPCs) and internal complaints that are initiated by APD supervisory officers. The former group of complaints is the focus of this study. There are two types of citizen complaints. Official complaints are those made by a citizen where the complainant provides her or his name, address, telephone number and signs a completed written statement. Complaints can also be official where the complainant refuses to complete a signed statement but the charge is serious enough to warrant investigation or is of a criminal nature. Unofficial complaints are those of a non-criminal nature made by a citizen who refuses to complete a signed statement.

Summary of Findings

We conclude that Internal Affairs has failed in its stated mission. Many citizens of Albuquerque are unaware of the existence or function of the unit. There is a widespread lack of confidence in the operations of the unit and it has failed to provide the citizens of Albuquerque with the possibility of meaningful discipline of officers found culpable of misconduct. The following problems which were found in the IA process serve to reduce public confidence in the citizen complaint process:

- a failure to adequately publicize the complaint process
- a failure to meet required time deadlines for completing investigations
- a failure to hold some officers responsible for admitted misconduct
- bias against some complainants
- a failure to completely and thoroughly investigate allegations of misconduct
- maintenance of an often uncomfortable atmosphere for complainants

- a failure to maintain high quality complaint files

Evaluation Methodology

Our evaluation of the APD Internal Affairs Unit consisted of seven different parts.

First, we reviewed all citizen complaint (CPC) files for 1994, 1995, and 1996. (IA purges all files after three years). This review included an in-depth audit of every tenth CPC for the three year period.

Second, we surveyed by mail every citizen who had filed a complaint with IA in the past three years (1994-1996).

Third, we interviewed the top command of the APD, including Police Chief Joseph Polisar, Deputy Chief Tim Bourgoine, Captain Carl Ross and Lieutenant Weiland about the operations of IA.

Fourth, we interviewed community leaders and public officials regarding their perception of IA.

Fifth, we interviewed the current Independent Counsel, Patrick V. Apodaca, regarding his working relationship with IA.

Sixth, we included questions about IA in our survey of the rank and file police officers.

Seventh, we arranged unannounced visits to APD Substations to obtain copies of the official brochure explaining the complaint process.

Our review of the IA files was conducted under a confidentiality protocol approved by the City Attorney. We agreed that our review was to focus on general patterns and practices and that no sensitive confidential information about citizens who had filed complaints or police officers was to be disclosed.

The Number of Citizen Complaints

According to the official reports from the APD Internal Affairs Unit, the APD received a total of 82 Citizen Police Complaints (CPCs) in 1995 and 89 in 1996. The Chief of Police and other APD officials cited these figures as being relatively low and as evidence that APD officers are doing a professional job in dealing with citizens.⁽⁴⁷⁾

To put the APD complaint data in perspective, we have computed the complaint rate, expressed as complaints per 100 officers per year, and compared the APD complaint rate with that of other cities. For the year 1995 the APD complaint rate was 10 per 100 officers, and for 1996 the rate was 10.9. As Table 7-1 indicates, the APD complaint rate is low compared with other cities.

Table 7-1 also indicates that there are tremendous variations in official complaint rates.⁽⁴⁸⁾ Complaint rate data may lead to very different interpretations. A low number of complaints could be interpreted to mean that police officers in the field are doing a very professional job and engaging in relatively little activity that is likely to generate a citizen complaint. At the same time, however, a low number of complaints could mean that citizens do not file complaints even when they feel they have cause to do so. Citizens may not file complaints because they are not informed about the complaint process, it is inaccessible and difficult to use, they are fearful of retaliation, or they are actively discouraged from filing complaints.

As Table 7-1 indicates, The Police Foundation's "Big Six" study found enormous variation in complaint rates, ranging from a low of 5.5 in Philadelphia to a high of 36.9 in Houston.⁽⁴⁹⁾ No one seriously suggests that Houston police officers are six times worse than officers in Philadelphia. Similarly, in the aftermath of the 1991 Rodney King incident, the New York Times reported that the complaint rate in San Francisco was five times higher than in Los Angeles.⁽⁵⁰⁾ It is unlikely that San Francisco police officers are five times worse than Los Angeles officers. Along the same lines, the number of complaints filed in New York City increased ten-fold from the mid-1960s to the mid-1970s (at which point the number stabilized).⁽⁵¹⁾ The performance of New York City Police officers could not have deteriorated by a factor of ten in that time period.

Given the possibility of completely contradictory interpretations, it is important to emphasize that the data do not speak for themselves. The official complaint rate, standing by itself and taken out of the context of other relevant factors, cannot be regarded as a reliable measure of the quality of a police department relative to other departments.

The Police Foundation study of police use of force, the first national survey of the subject, concluded that "the rate of complaints received by a jurisdiction may be as much a product of citizen confidence in the complaint process as any other factor."⁽⁵²⁾

Los Angeles has a very low complaint rate. Not only does Los Angeles not have any form of citizen oversight, but the Christopher Commission found evidence of police officer indifference and/or hostility to citizens attempting to make

Albuquerque 1996	10.9
Albuquerque 1995	10.0
Buffalo, 1996	47.8
Charlotte, 1996	27.4
Buffalo, 1996	47.8
Charlotte, 1996	27.4
Minneapolis, 1995	17.1**
Omaha, 1994	14.9
Portland, 1995	60.0**
San Jose, 1995	13.1
San Jose, 1994	17.8
** See the discussion of these figures below.	

complaints.⁽⁵³⁾ Although the LAPD established an 800 number "hot line" to receive citizen complaints, a phone survey by the ACLU found that district police stations gave the number to very few callers.⁽⁵⁴⁾ The San Francisco complaint rate is probably five times higher than Los Angeles because it has an independent citizen review procedure (the OCC) which engages in an active program of community outreach (see Chapter Nine). By the same token, the ten-fold increase in the number of complaints filed in New York City was probably due to a series of changes in the complaint process that publicized the process and made it more accessible.⁽⁵⁵⁾

The official number of complaints is also a function of how complaints are recorded by the police department or the citizen review procedure. The number of complaints in Portland is high because they have a policy of recording all complaint inquiries without any screening. Similarly, the number of complaints in San Jose increased significantly after the new Independent Police Auditor recommended a reorganization of the records system. The Minneapolis Civilian Review Authority takes a somewhat different approach. It records formal complaints but also records additional inquiries and contacts with citizens who express a grievance but choose not to fill out a formal complaint. In 1995, for example, there were 146 official complaints and 956 "Contacts Regarding Potential Complaints."⁽⁵⁶⁾

The Complaint Brochure

Our conclusion that the complaint rate in Albuquerque is artificially low is supported by our investigation of the official APD brochure describing the complaint process. We obtained copies of the APD complaint brochure in the offices of the Internal Affairs unit and found copies displayed at the police training facility. English and Spanish language versions exist. Copies are reproduced in the Appendix to this report.

Our interviews with a wide range of community representatives led us to conclude that few if any people are aware of the existence of this brochure. These interviews included individuals one would expect to be most informed about the complaint process: the leaders of community civil rights groups and neighborhood groups, persons who had themselves filed complaints, attorneys in private practice who handle police misconduct cases, and members of City Council. At one point we began directly asking individuals if there was a brochure, without telling them we knew that one existed. In every case, people said they had never seen a brochure. We visited one community center that serves a low-income neighborhood. The center maintains a display case with informational material about a wide range of social services. No copies of the complaint brochure were displayed.

Our interviews with citizens found that most incidents of dissatisfaction with the actions of Albuquerque Police Officers go unreported. This failure apparently results from a lack of information about the existence or function of IA or because, as some community members stated, it is "frustrating" and "a waste of time". Many members of the community appear to be disillusioned with the IA process and disaffected. There is a widespread belief that nothing will happen even if a complaint is filed.

The APD Substation Site Visits

To further investigate this issue we conducted unannounced site visits of four APD Substations. We hired a resident of Albuquerque to visit the four Substations and to ask for a copy of the brochure explaining the complaint process. This person was instructed to give no information about why he/she wanted a copy, and later to make notes about the response of personnel at each Substation (e.g., were any questions asked, was the response prompt, polite, hostile, etc.). The site visits were conducted on February 19, 1997.

A copy of the brochure was available at only two of the four APD Substations. At the McWethy Substation, the brochure was readily available on the counter, and our investigator spoke to no one. At the Carillo Substation the brochure was provided in a prompt, courteous, and polite manner. At both the Cline and Chacon Substations, however, our investigator was told that there was no brochure. Our investigator described the reception at the Cline Substation as "hostile."

The results of the Substation site visits are especially disturbing. Displaying copies of the complaint brochure at Substations represents the minimal amount of organizational effort that could be expended. Moreover, the APD has been advised on several occasions to take the necessary steps to ensure that citizens are informed about the complaint process. In 1992, for example, the IC "recommended that the substations be stocked with an adequate supply of the leaflet [describing the complaint process]." The APD assured the IC that "Brochures were available at the substations" and "in all patrol cars."⁽⁵⁷⁾

The Substation site visits raise serious questions about whether rank and file officers in the field adequately inform citizens about the complaint process, as they are required to do.

Ideally, we would have liked to have investigated this issue. We concluded, however, that adequately researching police field practices was not practical. It would have required a large number of citizen-initiated contacts with APD officers in the field in order to get a representative sample. We decided that it was not advisable to consume APD officers's time for this purpose. Serious questions remain, however, about whether officers are informing citizens about the complaint process.

The Responsibility of Other Officials

Responsibility for the failure to properly publicize the complaint process does not lie entirely with the APD. The Public Safety Advisory Board (PSAB) should have studied this problem over the years and recommended corrective action. The Independent Counsel (IC), under its authority to "direct" the complaint investigation process in the APD should have monitored this problem and recommended corrective action.

The APD needs to take immediate steps to see that the public is adequately informed about the complaint process. The IC and the PSAB need to monitor this situation very closely.

We would like to add the cautionary note that publicizing the complaint process will probably lead to an increase in the number of citizen complaints. This should be regarded not as a sign of failure but as a sign of progress. More

complaints would mean not that police conduct has worsened but that public confidence has improved. Additionally, it is likely to require more officers for Internal Affairs.

The Sustain Rate

The APD does sustain a relatively high rate of the citizen complaints it receives. In 1996 the APD sustained 22 percent of all citizen complaints, and 17.9 percent in 1995. (The official reports for 1995 give a figure of 16 percent, but our computations indicate that it is actually 17.9 percent [48/268]). According to the Police Foundation the national average for city police departments is 10 percent.⁽⁵⁸⁾ The APD is to be commended for this sustain rate.

We would point out, however, that the sustain rate is a function of the total number of complaints. The number of complaints is very low. If the recommendations in this report are implemented, the number of complaints is likely to increase and this may lower the sustain rate in the future.

The command staff also provided us with figures on the number of officers terminated from the APD. Three officers were terminated in 1996 and four officers in 1995. In addition, six officers resigned while disciplinary actions were in process.⁽⁵⁹⁾ Thus, it is fair to count them among the total number of officers leaving the APD as a result of the disciplinary process. These numbers indicate that the APD is serious about discipline and is not afraid to terminate officers who are found guilty of misconduct. This effort is to be commended.

Internal Affairs Quarterly Reports

The Quarterly Reports submitted by Internal Affairs contain summary data on the number of CPCs, nature of the charges (e.g., "Attitude," "Unnecessary/Excessive Force,"), the area in which they occurred, and the dispositions (e.g., "unfounded," "sustained"). There is also a chronological list of all complaints. These reports are clear, detailed and easy to read.

We also found that each Quarterly Report contains a narrative description of each complaint, including a summary of the incident, the nature of the charge or charges against the officer, and the disposition of the complaint. The APD is to be commended for making this information available to the public. It represents the kind of "window" into the complaint investigation process that citizen oversight is designed to achieve. In fact, it provides much of the information that citizens have been demanding through the PSAB.

It appears, however, that most people are not aware of the detail in the IA Quarterly Reports. We believe that some of the tension between the APD and the community can be reduced if these reports were more widely disseminated and in particular made the basis of review and discussion by the PSAB. It is not the function of the PSAB to reopen investigations, but the PSAB has the clear mandate to review these reports in order to identify possible problems in the complaint process.

The Quality of Internal Affairs Investigations

We audited IA complaint files to evaluate the quality of complaint investigations. The audit consisted of two parts. First, we conducted a general review of CPC files. Second, we conducted an in-depth evaluation of every tenth citizen complaint for the years of 1994, 1995 and 1996. The criteria for this evaluation included:

(1) whether all citizen and officer witnesses were interviewed; (2) whether Comm/CAD tapes were reviewed; (3) whether there was a focus on procedural and/or legal issues; (4) whether there was any evidence of bias against either citizens or police officers; (5) whether investigations were completed within the required time deadlines, and whether extensions of deadlines were properly requested and observed.

The audit was conducted by Professor Luna who has over twelve years of professional experience with citizen complaint investigations. Professor Luna was the Chief Investigator and Executive Officer in three different complaint review agencies. In these capacities she was Custodian of Record and responsible for the maintenance of

Quality	Number	Percent
High	4	17.3
Good	13	56.5
Inadequate	6	26

investigative files.

As Table 7-2 indicates, our sample involved a total of 23 complaint investigations. Of these, four (17.3%) were of very high quality, with much apparent effort made to obtain statements and evidentiary material. Thirteen investigations (52.1%) were of good or adequate quality. In these investigations there appeared to be adequate efforts to obtain information from witnesses and evidentiary material, and a fair assessment of such information obtained. In both of these categories there was no apparent bias against citizen complainants nor was there any failure to consider corroborative statements by officers.

In six cases (26%), however, the investigations were seriously inadequate. The problems included failure to fully investigate the complaint and/or apparent bias against complainants. In three of these six cases, the officer under investigation made statements

that corroborated the complaint, in whole or in part, the allegations of misconduct alleged by the complainant. Yet, these statements were apparently ignored by the IA investigator. In two of the six, the investigator made adverse references about the complainant that were unrelated to the merits of the complaint. In four of the six there was an obvious failure to conduct a thorough investigation of the allegations.

It is not clear to us why admissions of wrongdoing should be ignored when rendering sustained dispositions against subject officers. In the above referenced cases, the admitted misconduct involved discourteous statements and/or profanity by the subject officer. It is exactly this type of behavior which can result in negative community attitudes toward police and may even turn a routine police-citizen contact into a violent one. Failure to consider such behavior in the investigation of misconduct may cause a lack of confidence in the impartiality of the investigation.

The Problem of Timely Complaint Dispositions

The IA Unit operates under a set of time deadlines for completing complaint investigations. These deadlines are set forth in a Memorandum Of Agreement (MOA) between the City of Albuquerque and the Albuquerque Police Officers Association. Section 20 Q of the Agreement states "Any Internal Investigation will be completed within 90 days unless extenuating circumstances can be shown for extending this limit. An extension must be obtained in writing and approved by the Chief of Police. An extension will be for a 30 day period." Although a later section denotes that language in Section 20 will not "prohibit the Department from taking discipline for justifiable cause," it is unclear what effect this language would have on discipline resulting from citizen complaints.

Our audit indicates that the IA Unit is not meeting the required deadlines. A review of complaint time lines was conducted for all citizen complaints received during 1996. Out of a total of 83 complaints, the investigations had been completed in 55. The deadlines established by the MOA were not met in 29 or 53% of these cases. Moreover, in four cases where an extension was obtained pursuant to the MOA, the extended deadline was not met in three.

Although some delay may be attributed to the IC process, this delay does not seem to be a determinative factor in most of the reviewed cases. Of the 29 cases which did not adhere to the disciplinary deadline, only three were apparently attributable to a failure of the IC to respond in a timely manner. In four instances, both the IC and IA failed to address the cases in a manner which would allow them to meet the 90 or 120 day deadline. However in 22 of the 29 cases (76%) the delay appeared to be directly attributable to the failure of the IA Unit to complete their investigation and forward the case to the IC in a timely way. In several instances, the failure to observe the prescribed deadlines could be seen to impact the potential discipline of the subject officer(s). Of the 55 cases reviewed which were received in 1996, 18 had allegations sustained amounting to a 33 percent overall sustained rate. However, in 12 of these 18 cases the disciplinary deadlines were apparently not met. If this number is accurate, the 33 percent sustained rate becomes 11 percent where allegations sustained can actually result in effective discipline. It appears that the department handles those cases not meeting the deadlines through verbal counseling. Although it is not clear

that this correlates absolutely, in five of the cases where verbal counseling was deemed appropriate four of these had not met the disciplinary deadline.

Delay in completing complaint investigations was confirmed by other sources representing very different positions with respect to APD. The representatives of three different community organizations told us that the lack of timeliness in complaint disposition was a major problem. The failure to complete investigations quickly was also reflected in our mail survey of complainants. Of 40 survey respondents who reported being unsatisfied with the IA process, 30 (75%) reported that the investigation of their complaints had not been conducted efficiently.

The Finance and Government Operations (FGO) Committee of City Council noted the problem of timeliness at its October 25, 1996 meeting. In 1995 more than half of the complaints received during that year (43 of 82) were not completed and were carried forward into 1996. During the first quarter of 1996, 19 citizen complaints were received but only 9 were completed, leaving a cumulative total of 53 complaints uncompleted.⁽⁶⁰⁾ The FGO minutes note that "This Internal Affairs Report is discussing incidents that date back to August of 1995. It appears that there is a backlog of work. They received twice as many claims as are processed in this period."⁽⁶¹⁾

Finally, the problem of timely disposition of complaints is acknowledged by police officials. Both Chief Polisar and Deputy Chief Bourgoine specifically discussed the failure of IA to complete investigations in a timely manner. Deputy Chief Bourgoine stated to us that the investigative process takes "way too long".

We conclude that the APD needs to take immediate steps to speed up the investigation of citizen complaints and establish goals and timetables for complying with the existing time requirements.

The Quality of Complaint Files

We also evaluated the quality of the IA complaint files in terms of their completeness and degree of organization. This evaluation was based on Professor Luna's twelve years of experience with complaint review procedures in other cities.

We found that the contents of the files were not in any particular order, nor were they bound in any way. Given the condition of the files it is not possible for us to make absolute statements regarding the filing system. However some observations may be of use.

The files consisted of loose papers and documents, with audio tapes in envelopes. In some instances the envelopes were fixed to the file folder but in other instances they were simply loose in the file. Given the condition of the files it is not possible for us to make absolute statements regarding the filing system. However some observations may be of use.

There does not appear to be any face sheet or log used in each file to keep a record of when documents are requested or obtained, when investigations are sent or received from the Independent Counsel, other units of APD, or

of upcoming deadlines. There is no apparent system in the file to alert an investigator of the need to request an extension, which may account for the many instances when cases do not meet the disciplinary deadlines. Further, there did not appear to be any notes or other communications from supervisory personnel which indicated that there was any routine oversight of the investigative process.

As indicated by Figure 1 Retention Cards are not present in every IA file. These cards are the permanent record of all discipline and/or commendations received by an APD officer. According to IA personnel, the cards should be included in the IA files.

Although the mandated taping of police-citizen contacts is appropriate and helpful in some instances, the tapes are stored in a somewhat haphazard manner. In some instances the envelopes containing the tapes were fixed to the file folder but in other instances they were simply loose in the file.

FIGURE 7-1

The Complainant Satisfaction Survey

As an additional means of evaluating the quality of IA investigations, we sent a mail survey to every person who had filed a complaint in the past three years (1994-1996). This represented the equivalent of a consumer satisfaction survey, designed to determine the attitudes of people who actually use a particular service.

We mailed surveys to a total of 205 complainants. There were 56 responses, for a response rate of 27 percent. This response rate is far from ideal, but previous attempts to conduct similar surveys have also encountered low response rates.⁽⁶²⁾

Forty-three percent of the survey respondents were Caucasian/White and 41 percent were Mexican-American/Hispanic. Four percent of the respondents were Black/African-American. This distribution approximates the demographics of the population of Albuquerque. Only two percent of the respondents identified themselves as Native American, which is significantly less than the community population. Approximately 56 percent were male and 40 percent female, with 4 percent omitting this information. The greatest percentage (40%) were in the 30 to 40 age range.

Overall, 61 percent of survey respondents reported that they were treated fairly and with respect during the complaint process. Over 75 percent of those who responded to the survey reported that IA did not try to discourage them from filing their complaints. Meanwhile, over 54 percent reported that they felt comfortable when they filed their complaint. This changes with respect to gender, however. Approximately 55 percent of the male respondents reported feeling uncomfortable during the filing period compared with 44 percent of the female respondents.

Correspondingly, 78 percent of the respondents reported that they were unsatisfied with the results of the investigation of their complaint. Of the 14 percent of the complainants who appealed the decision of the complaint process, over 86 percent were not satisfied with the result.

Interestingly enough, there appears to be little correlation between the feeling of dissatisfaction and the ultimate disposition. Of those six complainants with sustained allegations who responded to the survey, half were satisfied with the IA investigation and half were unsatisfied. Timeliness in completing investigations seems to have more impact of feelings of satisfaction with the process.

One of the most remarkable aspects of our survey was that eight people made long-distance calls to the Consultants upon receiving the questionnaire. (Our telephone numbers were given in the letter explaining the survey). These unsolicited calls were marked by dissatisfaction with the IA process and some anger. We found it remarkable that this number of people would incur the cost to phone in order to give their input into the study. One caller had read a newspaper report during the fall that such a study was being contracted and had contacted City Hall at that time to volunteer himself as a contact. He was particularly irate that no one had followed up on this information and transmitted his name to us.

The Issue of "Problem" Officers

One of the most important advances in police accountability in recent years involves early warning systems (EWS) for problem officers. Research on citizen complaints has consistently found that in every department a small number of officers receive a disproportionate number of all complaints. This issue is discussed in detail in Chapter Nine.

A number of the people we interviewed indicated that a similar pattern exists within the ranks of the APD. When we asked them if the names of certain officers continued to appear in use of force or complaint incidents, all said yes. One criminal defense attorney maintains an informal list of officers whose names repeatedly appear in controversial incidents. One community activist estimated that there were about 30 really bad officers in the APD. Command officers in the APD estimated that about 2 percent of the officers (or about 16 total) had recurring problems. We regard this as a remarkable consensus of opinion.

The APD is in the process of establishing an early warning system. The commanders of Internal Affairs indicated that they had been researching the concept and would welcome any suggestions we might have. We strongly urge the APD to give top priority to the development of an early warning system in the weeks and months ahead. With respect to the intervention aspect, we advise against the system prevailing in some cities where the officer meets privately with his or her immediate supervisor. We recommend considering the San Jose system under which the officer meets with the Chief of Police, the commander of Internal Affairs, and his or her immediate supervisor.

Police Officer Perceptions of Internal Affairs

The survey of APD officers revealed mixed opinions regarding the operations of internal affairs (IA) and IA relative to the existing external oversight mechanisms.

Half (50.2%) of the officers surveyed had a citizen complaint filed against them in the last three years. About half of these officers had only one complaint filed against them. A very small number of officers had received multiple complaints. Two reported eight complaints, one reported nine complaints, and four officers reported receiving ten citizen complaints in the last three years. These data are consistent with the pattern found in other police departments across the country. Many police officers do not receive citizen complaints, and most of those who do receive a complaint receive only one.

Only 12.4 percent of the officers had a citizen complaint sustained against them. This is consistent with national data indicating that about 10 percent of all complaints are sustained. Officers have mixed feelings about the impact of a citizen complaint. About a third of the officers (36.8%) feel that a citizen complaints can affect their chances for promotion, while 42.2% feel that they do not. Most officers (61.2%) feel that citizen complaints affect their actions on the street, while 36.3% feel that they do not.

In terms of the specific impact of a citizen complaint, officers expressed concern about three consequences: a civil suit, a reprimand, and a tarnished reputation. A minority of officers (9.7%) felt that a complaint is "no big deal."

One of the serious problems affecting police departments in the United States today is racial and ethnic conflict among rank and file police officers. Such conflict undermines the morale of officers and is a barrier to professional policing. In some departments this conflict has risen to the level of physical violence. A common source of conflict is the perception of African American or Hispanic officers of bias in the department's disciplinary process. Because of its potential seriousness, we made an effort to determine whether such a problem exists within the APD.

Our survey, together with informal discussions with rank and file officers and people outside the APD, leads us to conclude that there is not a serious problem of racial and ethnic conflict within the department. Many people we talked with stated that it is just "not a problem." The exception to this rule was one veteran officer who claimed that Hispanic officers are disproportionately subjected to discipline by the APD command staff. We could not find any substantial evidence to support this allegation, however. There were no significant differences in responses to the questions on our survey based on race or ethnicity. For example, there were no significant differences in whether white, Hispanic, or African American officers felt satisfied with their job, or how they perceived Internal Affairs.

We believe that this is a significant achievement, and that the APD is to be commended for maintaining a diverse work force and an atmosphere of racial and ethnic harmony.

We did, however, hear many comments from officers and people outside the APD that there is a pattern of favoritism in complaint investigations. There were many comments about the existence of an "old boy" network within the department. This problem does not seem to involve ethnic or racial divisions, however. A significant number of officers did indicate that they wanted fairer investigations.

Our survey indicates that there is a solid group of APD officers who actually want more rather than less discipline. As Table 7-3 indicates, of the 103 officers who answered the open-ended question on improvements in Internal Affairs, 79 percent indicated that they wanted more discipline. Meanwhile, 88 percent of those answering the question indicated that they wanted fairer discipline.

We regard these officers as a particularly significant group. They represent a cadre of officers who have a distinctly professional attitude. Unlike most of their colleagues, they have thought about the issue of discipline, took the trouble to express their opinion, and indicated that they want more discipline. In short, they want the Albuquerque Police Department to be a better police department.

Table 7-3

Summary

The Internal Affairs Unit of the APD is in need of significant improvement in several areas. The APD receives a low number of complaints because the complaint process is not adequately publicized. There are a number of problems with complaint investigations, as revealed by our audit of the quality of the files and our complainant satisfaction survey.

On the positive side Internal Affairs does sustain a relatively high rate of the complaints it does receive. IA also publishes detailed information about individual complaints in its Quarterly Reports. Although citizens have been demanding more information about complaint investigations, neither the PSAB nor other officials have utilized the information that IA is presently making available.

Also on the positive side, there does not appear to be a pattern of ethnic or racial bias in IA investigations. There is some indication of a pattern of favoritism, involving an "old boy" network, but this does not appear to reflect race or ethnicity.

Finally, there are a significant number of officers who want more discipline, fairer discipline, and are not opposed to citizen oversight. This is a promising indicator of a professional attitude among a core group of APD officers. We believe that these officers provide the foundation for future efforts to correct the problems we have identified with Internal Affairs.

47. APD Internal Affairs, Quarterly Reports, 1995, 1996.
48. Kenneth Adams, "Measuring the Prevalence of Police Abuse of Force," in W. A. Geller and H. Toch, eds., *And Justice For All: Understanding and Controlling Police Abuse of Force* (Washington: Police Executive Research Forum, 1995), pp. 61-97. Anthony M. Pate and Lorie A. Fridell, *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences*, 2 Vols. (Washington: The Police Foundation, 1993), pp. 34-36.
49. Anthony M. Pate and Edwin E. Hamilton, *The Big Six: Policing America's Largest Cities* (Washington: The Police Foundation, 1991).
50. "Police Attacks: Hard Crimes to Uncover, Let Alone Stop," *The New York Times* (March 24, 1991): IV, 4.
51. Ronald Kahn, "Urban Reform and Police Accountability in New York City, 1950-1974," in R. Lineberry and L. Masotti, eds., *Urban Problems and Public Policy* (Lexington: Lexington Books, 1975).
52. Pate and Fridell, *Police Use of Force*, V. I, p. 35.
53. Independent Commission on the Los Angeles Police Department [Christopher Commission], Final Report (Los Angeles, 1991).
54. ACLU- Southern California, *The Call for Change Goes Unanswered* (Los Angeles: ACLU-SC, 1992).
55. Kahn, "Urban Reform and Police Accountability in New York City, 1950-1974."
56. Minneapolis Civilian Review Authority, *1995 Annual Report* (Minneapolis, 1996).
57. Independent Counsel, *Report for the Quarter Ended June 30, 1992*, pp. 6-7.
58. Anthony M. Pate and Lorie M. Fridell, *Police Use of Force* (Washington: The Police Foundation, 1993).
59. Personal communication from Deputy Chief Tim Bourgoine, APD.
60. FGO Minutes, October 25, 1996.
61. Ibid .
62. A similar survey in Kansas City produced a response rate of 32 percent (65 responses from 201 surveys). Kansas City, Office of the City Auditor, *Preliminary Review - Kansas City, Missouri Police Department* (Kansas City: June 1996), p. 194.

VIII. Other Oversight

Introduction

Our contract with City Council for this study asked us to evaluate the tripartite system of oversight of the Albuquerque Police Department. This refers specifically to the Independent Counsel, the Public Safety Advisory Board, and the Internal Affairs Unit of the Albuquerque Police Department.

In the course of our research, however, it became clear that several other agencies of city government have substantial direct and indirect oversight authority over the APD. We felt that we could not fulfill our mission without some investigation of and comment on these other agencies. They include the City Attorney, the Risk Management office, City Council, and the Mayor.

City Attorney and Risk Management

Both the City Attorney and the Risk Management (RM) office have important oversight responsibilities related to the Albuquerque Police Department. The City Attorney advises the APD on legal matters and defends the city in law suits involving actions by APD officers. The Risk Management (RM) office oversees the claims against the city arising from law suits or other potential liabilities. Many of these claims are not of concern here (e.g., workmen's compensation). Tort claims based on allegations of misconduct by APD officers are of direct concern here.

We conclude that Neither the City Attorney nor the Risk Management office are fulfilling their responsibilities with respect to oversight of the APD.

Settlements for Tort Claims

The City of Albuquerque is consistently paying out an extraordinary amount of money per year for tort claims involving APD officers. In Fiscal Years 1995, 1996, and 1997 the APD budget included between \$4 and \$5 million for tort claims.⁽⁶³⁾ There were a total of 107 APD-related tort claims in FY 1995, and 97 in FY 1996. As the minutes of the Finance and Government Operations (FGO) Committee for October 25, 1996 indicate, "Tort claims against the Police Department have a significant impact on the City spending " [emphasis added].⁽⁶⁴⁾

There is some ambiguity as the precise total of the annual payments for tort claims for actions by APD officers. In response to a specific request for such information by an Albuquerque citizen, Mr. John H. Burkhard of the Risk Management office reported settlements of \$2.3 million for 1995 and \$3 million for 1996.⁽⁶⁵⁾ We understand the fact that some of the ambiguity may result from different systems of classifying cases. Nonetheless, Mr. Burkhard's figures indicate that the average annual payment for the ten year period from 1987 to 1996 is \$2 million.

FGO records indicate that the total cost to the City for employing an APD officer for his or her second year is \$42,940 (see Appendix). (The first year costs are higher due to non-recurring recruitment and training costs). According to the document made available to us, this \$42,940 includes \$4,500 for "Tort Transfer." This figure is consistent with a total tort claims payout of about \$4 million per year for the APD as a whole. In other words, slightly more than 10 percent of the total cost of employing each officer goes to tort claims.

Comparative Data

The relevant question, of course, is whether average payments of \$4 million or \$2 million is unusually and unacceptably high. We accept the fact that we do not live in a perfect world and some settlements for mistakes by police officers are inevitable. No one reasonably expects that there will be no money paid out in any year.

Obtaining comparative data on tort claims is, unfortunately, extremely difficult. No private or public agency collects and publishes systematic data on this subject. As a result, we are forced to rely on selective data. We obtained data from two sources: data published by citizen review agencies, and data provided through telephone inquiries to officials in other cities. The Christopher Commission found that between 1986 and 1990 the City of Los Angeles paid out a total of \$20 million in lawsuits alleging excessive force by LAPD officers.⁽⁶⁶⁾ This represents an average of \$4 million per year. Yet, the LAPD is ten times larger than the Albuquerque Police Department, with over 8,000 sworn officers. Thus, if we adjust for the relative size of the department and assume that the performance of APD officers is the same as LAPD officers, we estimate that Albuquerque should be paying about \$400,000 per year for tort claims. In short, Albuquerque appears to be paying ten times more than it should be for tort claims.

Similarly, the reports of the Special Counsel [Auditor] for the Los Angeles County Sheriffs Department (LASD) indicate total payments of \$3 million in FY 9992-93 and \$3.9 million in FY 1994-95.⁽⁶⁷⁾ Like the LAPD, the Los Angeles County Sheriffs Department is nearly ten times larger than the APD, with over 7,000 sworn officers. An adjusted annual rate of payments for Albuquerque, based on the relative size of the LASD would be about one eighth

1990	\$41,900
1991	64,800
1992	48,000
1993	28,300
1994	4,100
1995	4,100

or one tenth of the current annual rate.

The January 1996 report of the Seattle Police Auditor indicates that the City of Seattle paid out a total of \$218,000 in 1994 and \$180,000 in 1995.⁽⁶⁸⁾ The Seattle police department has about 1,200 sworn officers, or about 30 percent

more than Albuquerque. Annual tort claims payments in Charlotte, North Carolina are even lower. The figures for the last six years are as shown at right:(69)

It is clear that the total payments in Charlotte for some years are less than what Albuquerque pays out in individual cases.

The figures indicate a significant increase in payments in 1995 due to a new policy on the part of a new city attorney to settle rather than fight many claims. The Charlotte Police Department disagrees with that policy. We discuss the prevailing "pro-settlement" policy in Albuquerque below.

Officials we talked with in these other cities expressed astonishment and disbelief that the figures for Albuquerque are as high as they are. Their reactions clearly indicated that an equivalent figure would be unacceptable in their respective communities.

The Costs to the City

To put the issue of tort claims in perspective we would like to offer some observations on what the high level of tort claims cost the City, the APD, and the Albuquerque community. The City budgets for \$4 million per year for tort claims (see the document indicating the budget of \$4,500 per officer). We believe that this figure is at least ten times higher than it should be, and perhaps even more than that. If we assume that an acceptable figure is about \$400,000, consider the various costs to the city and its citizens:

(1) The estimated \$3.6 million in excessive tort claims could provide between 80 and 90 additional sworn officers for the APD, with the benefit of additional police protection for the citizens of Albuquerque.⁽⁷⁰⁾

(2) The estimated \$3.6 million in excessive tort claims could provide a reduction in taxes in exactly that amount.

(3) The excessively high tort claims represent violations of individual rights of the citizens of Albuquerque that should not occur.

Oversight Failure

Our research indicates that few if any people in positions of responsibility are aware of the dimensions of the tort claims problem in Albuquerque. The notable exception to this rule seems to be some person or persons associated with the Finance and Government Operations (FGO) Committee of the Albuquerque City Council.

The records of the June 24, 1996 meeting of the FGO describe a series of tort claim cases.

- The City paid a settlement of \$40,000 where an APD officer was "deliberately indifferent to the physical limitation of a DWI arrestee" who had a knee injury.
- The City paid \$50,000 in a case where an APD officer failed to accommodate an arrested deaf person in violation of the Americans With Disabilities Act.

- The City paid \$50,000 in a case where an arrestee "was beaten and *had his shoes taken away* and was interrogated by officers though he requested an attorney" [emphasis added].⁽⁷¹⁾

To be blunt about it, we are astonished by these cases. On the one hand they involve clear and blatant violations of established law (the ADA and the Miranda decision). At the same time, two of the cases represent deliberate indifference to citizens with special needs. Finally, the case where APD officers took away a citizen's shoes represents a petty and malicious act that is wholly inconsistent with standards of professional police work.

These cases raise serious questions about the quality of training in the APD and the level of on-the-street supervision within the department. They appear to reflect a breakdown in the oversight responsibilities of both the Risk Management office and the City Attorney's office. It seems inconceivable to us that information about the behavior reflected in these three cases --and the resulting cost to Albuquerque taxpayers-- is not being communicated directly and forcefully to the APD command staff, along with recommendations for corrective action.

Some person or persons associated with the FGO is to be commended for asking the right questions. For example, the records of the June 24, 1996 meeting include the following "Questions:"

"1. Does the City have a reputation on the street as being an easy target for lawsuits?"

"2. How can the Legal Department better keep APD informed about the outcome of lawsuits?"

"3. Are there many lawsuits in which the conduct of an officer should be investigated by APD internal affairs - but cannot because they were not tracked by internal affairs and a civilian or internal complaint was not filed within the 90-day limit?"⁽⁷²⁾

The Comments of the June 24, 1996 FGO meeting indicate that the issue of repeated lawsuits against a particular police officer was discussed. It is noted that a routine IA investigation is not opened in this instance and that there is "(n)o automatic referral procedure is in place."

Unfortunately, we find little evidence that the questions being raised in FGO meetings is being translated into corrective action by the responsible officials. The FGO Agenda for October 25, 1996 include the following statement: "Lawsuits filed by citizens citing excessive force often do not get referred to internal affairs unless a complaint is filed within 90 days of the incident."⁽⁷³⁾ The June 24, 1996 FGO minutes note that " the outcome of lawsuits naming APD officers are not communicated to their commanding officers."⁽⁷⁴⁾ We regard this as a serious failure on the part of both Risk Management and the City Attorney's office. Participants in the FGO committee meeting are to be commended for pointing out this problem. Immediate corrective action is needed.

It is worth noting that the Los Angeles County Special Counsel was established as a form of citizen review in large part because of concern about the size of tort claims. The semi-annual reports of the Special Counsel give this issue continued and detailed attention.⁽⁷⁵⁾ This is a function that is well within the authority of the Albuquerque Independent

Counsel, the Public Safety Advisory Board, the Risk Management office, the City Attorney's office, the City Council, the Mayor's office, and the APD itself. Yet, none of these agencies of government appear to be undertaking this responsibility in a consistent and effective fashion.

The Role of the City Attorney

The heart of the problem is the role of the City Attorney's office with respect to cases and controversies involving the APD.

The Legal Department produces quarterly litigation reports which note all lawsuits filed against the City of Albuquerque during a given quarter. We reviewed two of these reports. The report for October 1, 1995 through December 31, 1995 indicates that thirty-three lawsuits were filed against the City during that period. Of these, six were for violations of civil rights or use of excessive force. The report compared this number with thirteen lawsuits for those same violations which were filed during the previous quarter. Eighty-eight tort claims were filed with the City Attorney's Office. Of these, thirty-three (37%) alleged Excessive Force or Police Misconduct against the Albuquerque Police Department.

Twenty-eight cases were disposed of during this time period. Eight involved violation of civil rights; four were settled for a total of \$201,002. Two others were tried, resulting in settlements of \$29,000 against the City; two cases resulted in rulings in favor of the city.

The report for the Quarter January 1, 1996 through March 31, 1996 cited a total of forty seven lawsuits filed against the City. Of these, eight were for violation of civil rights, or damages, or excessive force; one involved a wrongful death claim. These numbers were compared with thirteen and zero respectively for the previous quarter. Seventy-nine tort claims were acknowledged by the City Attorney during this quarter. Of these, thirty (37.9%) were filed against the Albuquerque Police Department alleging Excessive Force or Police Misconduct.

These reports provide bare bones statistical data, but with no commentary representing meaningful oversight of the APD. This is in stark contrast to the commentary provided by citizen review procedures in other jurisdictions.

The Informal Policies of the City Attorney's Office

Our research indicates that the tort claims problem is the result of the informal policies and practices of the City Attorney's office. This consists of three distinct elements. First, City Attorney's office appears to be too quick to settle claims involving police misconduct. Second, the City Attorney's office provides no feedback to command officers of the APD. Third, the City Attorney's office does not alert the Mayor and City Council to seriousness of the current problem.

One member of the City Attorney's office explained the prevailing philosophy in the office He believes that the role of the legal system was to "resolve disputes," and that settling cases without trial was an effective means of fulfilling that role. We are not opposed to a policy of settling legitimate claims. Citizens have a right to compensation for wrongs. It

is a mistake, however, to routinely settle claims without addressing chronic problems in the behavior of police officers on the street. The data from other cities suggests that officials there have succeeded in reducing conduct that leads to suits.

The second problem involves a failure to provide feedback to command officers in the APD. One assistant city attorney explained that he discusses cases with the individual officers who are the subject of suits, explaining to them the nature of any settlement and the reasons for it. The City Attorney's office, however, does not appear to provide feedback to APD command officers. This is a serious omission. Feedback from the City Attorney's office can and should identify:

- (1) practices that need to be corrected through training and/or changes in APD policy;
- (2) particular officers who seem to be involved in repeated law suits (this could supplement the early warning system which the APD is exploring);
- (3) exceedingly high annual tort claims involving APD officers which might call for inquiry by City Council of the Mayor.

City Council and Mayor

Both the mayor and the city council of Albuquerque have substantial oversight authority over the Albuquerque Police Department, the Independent Counsel, and the Public Safety Advisory Board. The mayor is ultimately responsible for the activities of all executive departments of city government. The mayor and city council have ultimate authority of the budgets of the police department and all other city agencies. The mayor appoints the members of the PSAB with the advice and consent of city council.

The City Council

We interviewed several current members of City Council, but were generally disappointed in the level of their knowledge and concern about police problems. We were particularly disappointed by our inability to interview several members of City Council despite repeated requests. Most of the Council members we interviewed seemed detached from police issues, preferring to focus on other issues. Given the fact that there have been four studies (including this one) of various aspects of police use of force initiated or completed in the last year, and the public attention to the number of police shootings, this lack of interest by Council members is disturbing.

The council members we interviewed had little information about the complaint investigative process, the PSAB, of the Independent Counsel. One stated that very little information came to the Council from either the IA or PSAB. This member stated that the IC has attempted to provide some information to the Council but that relatively little is provided.

The City Council members were generally unfamiliar with the IA investigative process. Some members of City Council were aware that there is an Independent Counsel but were not clear about the functions of the office. Several members of City Council function as informal ombudsmen with respect to police problems. If a constituent has a complaint about police misconduct they contact the Chief of Police or the IC. Some Council Members, however, told us that constituents had little faith in the police complaint system. One stated that constituents contend that the police investigative system "has no teeth." Another stated that a constituent had difficulties with IA and that the Council member had staff call the Chief of Police directly in order to solve the problem, rather than trying to resolve it with IA.

We asked several members about the existence of an official brochure describing the APD complaint process. No member was aware of the existence of this brochure.

City Council members are generally aware of the PSAB but know little about the manner in which it conducts its business. With one exception, City Council members interviewed did not have an on-going relationship with the PSAB member appointed from their Council District. This exception reported having frequent conversations regarding the work of the board.

Although members of the PSAB are appointed by district, the members of the City Council stated that they have little, or no, role in their selections. Instead they state that the Mayor decides on candidates from among his political supporters, and this name is then forwarded to the Council for approval. Some Council members stated that in some instances they were not even notified about the nominee for the PSAB from their district. Some City Council members stated to us that they had attempted to make recommendations for appointments to the PSAB, but that their suggestions had not been followed by the Mayor.

Given the widespread dissatisfaction with the PSAB reported by members of both the community and the PSAB itself, the apparent disinterest of City Councilors from the process is of particular concern. The PSAB has been ignored and left to flounder.

The Mayor

We interviewed Mayor Martin Chavez regarding the performance of the APD, the Independent Counsel, and the Public Safety Advisory Board. While the mayor did acknowledge that problems existed, he felt that the oversight mechanisms were working fairly well.

We feel that this is an overly optimistic view of the current situation. Our research indicates that (1) the number of fatal shootings by APD is unacceptably high; (2) annual tort claims for actions by APD officers is unacceptably high; (3) the PSAB has failed to carry out its oversight responsibilities; (4) the Independent Counsel has failed to make adequate use of the authority of the office; (5) there is an unacceptable level of conflict and distrust in the community between citizens and the APD. All of these are matters under the purview of the mayor.

Conclusion

We conclude that a major part of the current problems with the APD are the result of the failure of other city officials to exercise their oversight authority. We believe that the City Attorney should develop a policy of examining chronic problems in police behavior and providing the appropriate feedback to command officers in APD. Together with Risk Management the City Attorney's office should develop specific goals and timetables for reducing tort claims against the city. We believe that both the mayor and members of City Council need to take a more active role in overseeing the APD.

63. *Ibid.*

64. FGO Agenda Comments, October 25, 1996.

65. John H. Burkhard, letter to Ms. Shay Cozart, December 2, 1996.

66. Christopher Commission, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. 56.

67. Special Counsel, *The Los Angeles County Sheriff's Department - Sixth Semiannual Report* (September 1996).

68. Seattle, Internal Investigations Auditor, *Report, January 1996; Report, June 1995*.

69. Figures provided by Ms. Stephanie Webster, staff attorney, Charlotte Police Department.

70. Tort claims savings would reduce the annual cost for each officer.

71. *Ibid.*

72. FGO June 24, 1996.

73. FGO Agenda, October 25, 1996.

74. FGO, June 24, 1996.

75. Special Counsel, *The Los Angeles County Sheriff's Department - 6th Semiannual Report* (September 1996), and all previous reports.

IX. Alternative Models

Introduction

Our contract with the Albuquerque City Council asked us to describe five models of police oversight, to discuss the strengths and weaknesses of each one, and to compare the current system in Albuquerque with these other models.

Citizen Oversight of Police in the United States

The Growth of Citizen Oversight

Citizen oversight of the police has grown tremendously over the past fifteen years. In 1980 there were an estimated 13 oversight agencies or procedures; by the end of 1996 there were more than 80.⁽⁷⁶⁾ About three-quarters of the police departments in the largest cities of the United States have some form of citizen oversight. It is now an established part of American policing and is virtually universal in other parts of the English-speaking world.⁽⁷⁷⁾

As a result of this rapid growth, there are many different varieties of citizen oversight. There is no single model, and it is difficult to find two oversight agencies that are identical. This report is designed to identify different models of citizen oversight and to discuss the advantages and disadvantages of each .

Making sense of the rapidly changing subject of citizen oversight of the police is complicated by several factors. First, there is no consensus on the proper terminology. The terms "citizen oversight," "citizen review," and "civilian review" are commonly used. Different kinds of oversight are referred to as "procedures," "mechanisms," "systems," and "agencies."⁽⁷⁸⁾ Although the term "civilian review board" is used by many people, not all forms of citizen oversight involve a multi-member board. Some are municipal agencies headed by a single executive director. Some are auditing systems involving an attorney on contract. This report uses the term citizen review procedure throughout.

Second, there are important variations among oversight procedures with respect to organizational structure, mission, and function.⁽⁷⁹⁾ Two oversight procedures may have the same formal organizational structure but have very different missions and perform different functions. As this report explains below, the functions of citizen oversight agencies are at least as important (and possibly more important) as the formal organizational structure. This report uses a five-part classification system for citizen oversight adapted from the work of different experts in the field.⁽⁸⁰⁾

The Issue of Independence

The issue of "independence" is extremely complex and controversial. One of the basic purposes of citizen oversight is to provide an independent review of citizen complaints -- in the sense of being independent of the internal police department procedures. Independence is designed to enhance the credibility or legitimacy of the complaint process in the eyes of the community.⁽⁸¹⁾

Whether or not a particular procedure is in fact independent is a highly subjective matter.⁽⁸²⁾ A procedure may be independent of the police department in terms of its formal organizational structure, but not be perceived by community leaders as truly independent. Some existing procedures are less independent than they appear to be to

many citizens.⁽⁸³⁾ Conversely, some procedures may be more independent than they appear to be.⁽⁸⁴⁾ The perceived independence of a citizen oversight procedure is often dependent upon the personality of the person who holds the key office (for example, the executive director of a citizen oversight procedure may be independent in a formal organizational sense, but be perceived to be overly sympathetic to the police).⁽⁸⁵⁾ Much depends on the nature of the political leadership in the community. If the mayor and city council (or county commissioners) are strongly committed to controlling police misconduct, and appoint oversight personnel who are competent and committed to that mission, an oversight mechanism is likely to be independent in fact and by perception.

The inescapable problem is that, in the area of citizen oversight, "independence" is a highly subjective phenomenon. There is no mechanical formula for defining or measuring independence.

Five Models of Citizen Oversight

In terms of structure and mission, there are five basic models of citizen oversight of the police. These models are referred to here as Classes IA, IB, II, III, and IV.⁽⁸⁶⁾

(1) & (2). In Class IA and IB models of citizen oversight, individual citizen complaints are received and investigated by persons who are not sworn police officers. These investigators are generally full-time, paid professional employees of the city or county government. Because the initial fact-finding is done by persons who are not sworn police officers, Class IA and IB systems are generally regarded as the most independent form of citizen oversight. In Class IA procedures the investigative reports are reviewed by a board which then votes on the merits of the case and sends a report and recommendation to the police chief executive. The San Francisco Office of Citizen Complaints (OCC) is an example of a Class IA procedure.

Class IB procedures involve a separate municipal agency with a single executive director who reviews the investigative reports and forwards a recommendation to the police chief executive. The Cincinnati Office of Municipal Investigation (OMI) is an example of a Class IB procedure. Because there is so much public misunderstanding on this subject, it is important to note that Class I procedures have only the power to make recommendations to the police chief executive. They do not have the power to fire or otherwise discipline police officers. This important issue is discussed in more detail below.

(3). In Class II systems, citizen complaints are investigated by sworn police officers assigned to the department's internal affairs (IA) unit or office of professional standards (OPS). The investigative reports are then forwarded to the citizen oversight procedure which reviews the reports, makes a determination about the merits of the complaint, and forwards a recommendation to the police chief executive. Some Class II oversight procedures consist of a board, while others involve only a single executive. Because the initial fact-finding is done by sworn police officers, Class II procedures are regarded as less independent than Class I procedures. The Kansas City Office of Citizen Complaints (OCC) is an example of a Class II procedure.

(4). Class III procedures represent a form of appellate review of citizen complaints. Individual citizen complaints are received, investigated and disposed of by the police department . If the complainant is not satisfied with the final decision by the police chief executive, he or she may appeal that decision to the citizen oversight procedure. Because the input by non-sworn persons occurs after an initial disposition of the complaint, Class III procedures are regarded as less independent than either Class I or Class II procedures. The Omaha Citizen Complaint Review Board is an example of a Class III procedure

(5). Class IV procedures are known as "auditor" approaches to citizen oversight. Individual citizen complaints are received, investigated, and disposed of by the police department. The auditor conducts regular audits or investigations of the operations of the police department's complaint process and makes periodic public reports. The auditing function in Los Angeles County, San Jose, Portland, and Albuquerque includes the authority to review the tape recordings of complaint investigations. This process can serve to identify investigations that are not thorough (e.g., the investigator fails to ask obvious follow-up questions; or fails to interview witnesses who have been identified), or possible bias in the interviews (e.g., hostile questions for the complainant, leading questions for the police officer). The Albuquerque Independent Counsel is an example of a Class IV procedure.

The employment status of auditors varies considerably. In Portland, Oregon, the auditor is a full-time paid staff member of the mayor's office, but also reports to an independent Police Internal Investigations Auditing Committee (PIIAC), a board of citizens with responsibility for oversight of the police department. In San Jose, the Independent Police Auditor (IPA) is a separate municipal agency which reports directly to the city council. The Seattle Auditor, Los Angeles County Special Counsel, and Albuquerque Independent Counsel are private attorneys working under fixed term contracts.

There is some disagreement among the experts on citizen oversight over whether Class IV procedures are more or less independent of the police department than Class I procedures.

The Different Functions of Citizen Oversight

Citizen oversight procedures engage in a number of different functions. These functions are not necessarily related to the formal organizational structure of the oversight procedure.⁽⁸⁷⁾

Independent Investigations

As discussed above, some (Class IA and Class IB) citizen oversight procedures conduct their own independent investigation of complaints. An estimated 34 percent of citizen oversight procedures have this responsibility.⁽⁸⁸⁾ Other types of citizen oversight provide either some input (Class II) or provide appellate review (Class III).

There is considerable variation regarding the nature and scope of these investigations, however, particularly with respect to subpoena power and public hearings. An estimated 38 percent of citizen review procedures have subpoena power. About half (46 percent) conduct (or at least have the power to conduct) public

hearings.⁽⁸⁹⁾ Subpoena power is particularly important. Thorough investigation requires a full investigation of the facts surrounding a complaint. If a police officer or citizen refuses to cooperate the investigation will be thwarted.⁽⁹⁰⁾

The important point is that some citizen oversight procedures may have nominally independent investigative authority, but not have sufficient power to conduct meaningfully thorough investigations.

Policy Review

About two-thirds of all citizen oversight procedures have the formal authority to examine the policies and procedures of the police department and to make recommendations for new policies. This function is referred to as policy review.⁽⁹¹⁾

Although it is not widely publicized, many experts regard the policy review function as an extremely important aspect of citizen oversight. Policy review is designed to serve a preventive function by identifying problems and recommending corrective action that will improve policing and reduce citizen complaints in the future.⁽⁹²⁾ Douglas Perez refers to this process as the "learning" function of citizen oversight. Ideally, a police department uses complaints as a way of identifying problems and initiating corrective action.⁽⁹³⁾

Some citizen oversight procedures engage in extensive policy review. In 1993, for example, the San Diego County Citizens Law Enforcement Review Board (CLREB) made a total of eleven policy recommendations, with 9 related to the sheriff's department and 2 related to the county probation department.⁽⁹⁴⁾ Some examples of policy review by other procedures including the following.

(a) The San Francisco OCC drafted and recommended a new policy on crowd control by the San Francisco police department. This was in response to several incidents where police officers used excessive force in attempting to disperse large demonstrations. The recommended policy was adopted, and is regarded as an excellent balance between the need for maintaining public order and the legitimate First Amendment rights of citizens.⁽⁹⁵⁾

(b) The Denver Public Safety Review Commission (PSRC) raised the issue of the Denver Police Department's "gang list," which had an estimated 3,747 names (which was down from 6,567 a year earlier). Citizens were concerned about the criteria used to place young people on the list, and the opportunities for a person whose behavior had changed to be removed from the list. As a result of the PSRC's involvement, the number of names on the gang list was drastically reduced and several reforms were made in the procedures of the gang unit. The PSRC was not completely satisfied with these changes, and continued to monitor the issue.⁽⁹⁶⁾

(c) The San Jose Independent Police Auditor discovered that the San Jose police department was classifying many citizen complaints as minor "administrative complaints," with the result that they were not officially recorded as complaints. A recommendation by the IPA resulted in a new recording system that more accurately reflects citizen concerns.⁽⁹⁷⁾

(d) The Albuquerque Independent Counsel recommended the development of an "on-lookers" policy for the Albuquerque Police Department that allows citizens to observe the arrest of other persons without themselves being arrested or ordered to leave the scene.⁽⁹⁸⁾ (The policy was based on a similar on-lookers policy that had been adopted in San Jose at the recommendation of the Independent Police Auditor).⁽⁹⁹⁾

Public Information

Many experts believe that one of the most important functions of citizen oversight is to provide information to the public about the police department and the complaint process. By itself, this information serves as a form of oversight and accountability, providing voters, elected officials, and the news media with relevant information about police activities. Information serves to "open" police departments to the public. Historically, police departments have been "closed" organizations, with a quasi-military structure and culture and a strong resistance to external scrutiny.⁽¹⁰⁰⁾ Departments traditionally provided little information about citizen complaints. The lack of information tends to breed distrust and suspicion among citizens.

Police departments increasingly provide information about complaints and discipline. Many include data on the number of complaints, the number of complaints sustained, and disciplinary actions in their annual report.⁽¹⁰¹⁾ The St. Petersburg Police Department, for example, publishes an annual internal affairs report in addition to the normal departmental annual report. This report is extremely detailed and serves as a model of openness.⁽¹⁰²⁾

As official government agencies with a mandate to oversee police departments, citizen oversight procedures are able to collect and publish information about police activities that is not otherwise available to the public. All citizen oversight procedures publish some form of public report. The size and scope of these reports varies considerably. Some are much longer and more detailed than others. The annual report of the Kansas City Office of Citizen Complaints (OCC) is an extremely short "bare bones" document, with little more than summary data on the number of complaints.⁽¹⁰³⁾ The reports of the Los Angeles County Special Counsel, on the other hand, are extremely lengthy and filled with detailed information about issues that the Special Counsel has addressed.⁽¹⁰⁴⁾ The quarterly reports of the Albuquerque Independent Counsel are among the shortest and least detailed the Consultants have seen.⁽¹⁰⁵⁾

There are many different kinds of data that citizen review procedures can collect and publish.

1. Disposition of Complaints . Most citizen review agencies, and many police departments, publish summary data on the disposition of citizen complaints. These include the number of complaints received, the number in different categories (i.e., use of force), and the percentage of complaints sustained.

There is great variation in the level of detail about the disposition of complaints. The San Francisco OCC, for example, publishes a chronological listing of the disposition of its recommendations by the police chief.⁽¹⁰⁶⁾ The 1993 Annual Report of the San Diego Citizens Law Enforcement Review Board (CLERB) contains a chronological list of

individual complaints, including the nature of the allegation, the name of the officer (with badge number), and the disposition of each complaint.⁽¹⁰⁷⁾

The Aurora, Colorado, Police Department publishes a list of all disciplinary actions on a quarterly basis. A U.S. Justice Department report on Police Integrity cited this as a "Model Practice," stating that it "has minimized the media sensationalism often associated with disciplinary cases," and that it "provides a mechanism for the public to see the department's willingness to police itself...." (108)

2. Patterns of Complaints . Some citizen oversight procedures provide very detailed data on the patterns of citizen complaints. These include patterns by (a) type of complaint (e.g., use of force, verbal abuse, etc.); (b) geographic area (e.g., precinct, city council district); (c) race, ethnicity, and gender of complainants; (d) characteristics of the officers (race, ethnicity, gender, assignment, seniority, etc.); (e) interaction of complainants and officers with respect to the race of both parties. The New York City Civilian Complaint Review Board (CCRB) and the San Diego County Citizens Law Enforcement Review Board (CLERB) publish data on the race and ethnicity of officers who receive complaints compared to their presence in their respective departments.⁽¹⁰⁹⁾ These figures are useful in identifying possible patterns of racial and ethnic discrimination in complaint situations. The New York CCRB also publishes data on the gender of officers who are subject to complaints. This information is useful in identifying possible patterns of sexism in complaint situations. One of the most important patterns involves officers who receive repeated complaints. Because of its importance, this subject is discussed below (see "Early Warning Systems").

3. Policy Review Recommendations . Most of the citizen oversight procedures that engage in policy review publish descriptions of their recommendations and the underlying problem. The nature of this information varies considerably. The San Francisco OCC, for example, includes their recommendations in its regular reports. There is usually little explanatory material, however. The Los Angeles County Special Counsel and the San Jose Independent Police Auditor, however, often include lengthy narrative discussions of problems they have identified along with their formal recommendations. This information serves an important function in terms of educating the public and providing a basis for public discussions of policy.

Early Warning Systems

One of the most important new developments in the control of police misconduct has been the creation of "early warning systems" (EWS) designed to identify officers who receive large numbers of complaints. These officers are often referred to as "problem-prone" officers.

Substantial research has found that in virtually every police department a small percentage of officers receive a disproportionate share of all complaints. In Kansas City, for example, 2 percent of the officers were responsible for 50 percent of all complaints.⁽¹¹⁰⁾ In Boston, 11 percent of the officers were responsible for 61.5 percent of all complaints.⁽¹¹¹⁾ The Christopher Commission identified 44 "problem officers" in the Los Angeles Police Department.

The Commission pointed out, moreover, that these officers were "readily identifiable" from data already on file with the police department.⁽¹¹²⁾

In 1981 the U. S. Civil Rights Commission made the first recommendation for the development of early warning systems to identify problem officers.⁽¹¹³⁾ Since then, a number of police departments have put systems in place.

Existing early warning systems differ in terms of both the factors that "trigger" the system and the department's response to officers who have been identified. In San Jose, for example, the early warning system identifies officers who receive three or more complaints in a 12 month period.⁽¹¹⁴⁾ The San Francisco EWS identifies officers who receive three or more complaints in a six month period or four or more within a year.⁽¹¹⁵⁾

Departmental response to officers who have been identified as receiving repeated complaints also varies. Most EWS systems involve some form of counselling or retraining by supervisory officers. In Berkeley, California intervention includes crisis intervention counselling by professionals for the officer, changes of assignment, and closer supervision.⁽¹¹⁶⁾ In Portland an officer has a mandatory Administrative Intervention session with his or her immediate supervisor.⁽¹¹⁷⁾ In San Jose, however, the Intervention Counselling involves a meeting with the Police Chief, the head of internal affairs, and the officer's immediate supervisor.⁽¹¹⁸⁾ Kansas City requires the 25 officers with the most complaints in any period to attend a regularly scheduled Strategic Communication School (which also involves other officers not identified by the EWS).⁽¹¹⁹⁾

In most instances, EWS counselling is designed to be informal, non-punitive, and separate from the normal disciplinary process. Typically, no formal record of the counselling is made in the officer's personnel file. Most EWS systems include complaints that have not been sustained. As the San Francisco EWS policy explains, the purpose of the counselling is to both "reinforce good performance, improve poor performance, and correct behaviors that precipitate or contribute to complaints." (120)

There have been no evaluations of early warning systems to date, however. Therefore, it is not known how many exist, how they operate, or whether they are effective.

A citizen oversight procedure can play an important role with respect to early warning systems in two respects. First, it can take the lead in recommending the adoption of an early warning system where one does not already exist. The Denver Public Safety Review Commission (PSRC) initiated a discussion of this issue with police and other city officials in 1994.⁽¹²¹⁾ Second, it can establish and maintain its own EWS, by virtue of its access to complaint data. The Minneapolis Civilian Police Review Authority has "provided the Minneapolis Police Department with a 'tracking system' designed to help the department be "proactive in dealing with suspected behavior problems." (122)

It should be noted that, to protect the privacy rights of officers --because it often involves unsubstantiated complaints-- this information does not need to include individual officers' names. It can, however, include information on the geographic location and shift assignment of officers who receive multiple complaints. This information can be

provided to the police department, in a more complete document which includes identifying information, for appropriate action.⁽¹²³⁾ This information serves an important public accountability function. Merely publishing the information puts great pressure on the responsible police officials to take appropriate action regarding these officers.

Community Outreach

Some citizen oversight agencies define their mission in terms of active outreach to the community. This outreach includes a program of speaking to community groups to (a) inform the public about the complaint process and (b) receive information about citizen concerns. The oversight procedures that engage in active outreach programs generally publish detailed information about these activities in their regular reports.

The 1995 Annual Report of the San Francisco OCC, for example, reported on staff member interviews with local and national radio and television programs, presentations at five community meetings, presentations at the Citizens' Police Academy and a local high school, and staff involvement with both one community organization and the local bar association.⁽¹²⁴⁾ The Minneapolis Civilian Police Authority reported in 1995 that it "made efforts to inform citizens, neighborhoods and community organizations" about the complaint process.⁽¹²⁵⁾

One important aspect of community outreach involves contact with racial and ethnic minority communities. Minorities are generally over-represented among persons who have problems with or complaints about the police. Language barriers create additional problems for residents who do not speak English. Finally, among many recent immigrant groups there are high levels of distrust and fear of the police. Addressing these problems is one of the major functions of citizen oversight. To address these problems, some citizen oversight procedures distribute brochures and complaint forms in as many as four different languages other than English.⁽¹²⁶⁾

An active program of community is critically important to the effectiveness of any citizen oversight mechanism. First, it is essential that citizens be fully informed about the complaint process. This facilitates the filing of complaints by individuals who feel aggrieved, and it contributes to the openness that builds public confidence in the complaint and the oversight procedures. Second, the outreach process is a mechanism for bringing community concerns to the police department and the oversight procedure, both of which may then respond by considering changes in police department policies. In short, it is an important part of the policy review function discussed above.

Advantages and Disadvantages of the Different Models of Citizen Oversight

The following section discusses the advantages and disadvantages of different aspects of citizen oversight.

Class IA and IB Procedures

Advantages - Class IA and IB oversight procedures conduct their own independent review of complaints by non-sworn investigators. This approach has the advantage of being genuinely independent of the police department, and thereby enhancing public confidence that complaints will receive a thorough and objective investigation. Class IA procedures have the special advantage of being directed by a multi-member board. This approach can ensure broad

representation of the diverse elements of the local community and an avenue for communicating community concerns to the police department and other city officials.

Disadvantages - Independent review of complaints is resented by rank and file police officers and may cause morale problems. Independent review of complaints introduces the problem of the quality of the staff and adequacy of the resources available to it. High standards with respect to the selection, training, and supervision of investigative staff are necessary to ensure maximum effectiveness.⁽¹²⁷⁾ Procedures that do not have sufficient power to conduct investigations (e.g., subpoena power) are not likely to succeed in terms of either providing thorough investigations or maintaining credibility with the public. Procedures that do not engage in policy review, publish information about the complaint process, maintain an active program of community outreach, or help to establish and maintain an early warning system are not likely to be fully effective.

Class II Procedures

Advantages - Class II procedures provide a certain limited degree of citizen input into the complaint process. In this respect, they provide more oversight than a completely internal form of review. Class II procedures that engage in policy review, published detailed information about police activities, and have an active community outreach program can make a positive contribution to improved police-community relations.

Disadvantages - Because they do not conduct their own investigations, Class II procedures are less independent than Class I procedures. In certain respects, Class II procedures promise more independence than they can in fact deliver, with the result that they do not fully resolve community concerns about the complaint process. Class II that do not engage in policy review, publish information, and have an active community outreach program are particularly weak.

Class III Procedures

Advantages - Class III procedures provide some very limited degree of citizen oversight, offering a form of appellate review for dissatisfied complainants.

Disadvantages - Class III procedures are far less independent than either Class I or Class II procedures. They do not conduct independent investigations or provide input prior to the final disposition by the chief executive. As a result, Class III procedures deliver far less in the way of oversight than they appear to promise, with the result that they do not fully resolve community concerns about the complaint process. Class III procedures that do not engage in policy review, provide detailed information about the complaint process, conduct community outreach, or help to establish and maintain an early warning system are particularly weak.

Class IV Procedures

Advantages - Class IV procedures can monitor the internal affairs unit of the police department, identify problems, and recommend improvements in the complaint process. If a Class IV procedure publishes extensive reports about its activities, it can help to "open" up a police department, contributing to public dialogue about police problems, and enhancing public confidence in the oversight process.

Disadvantages - Because Class IV procedures leave the primary responsibility for investigating complaints with the police department, some community leaders may perceive them to be not fully independent. There is also the potential problem that the auditor will become "co-opted" by the police department and not provide a meaningful form of oversight.

Policy Review

Advantages - The policy review function can play an extremely important role in identifying problems with police practices, providing a forum for public discussion of these problems, and a formal mechanism for recommending changes in policy. It is highly recommended.

Disadvantages - The Consultants are not aware of any serious disadvantages with or criticisms of the policy review function. Some police officials might argue that members of a citizen oversight body do not have the necessary understanding of police practices to make recommendations. The policy review function, through the process of public debates, gives police officials an opportunity to present their point of view on particular issues. The policy recommendations are, after all, only recommendations and do not have to be accepted if police officials feel that they are unwise or illegal.

Public Information

Advantages - Providing detailed information about the police department and the complaint process is extremely valuable. It is highly recommended that citizen oversight procedures provide the most detailed information possible.

Disadvantages - The Consultants are not aware of any disadvantages with or criticisms of providing public information. The only caution is that public reports need to be sensitive to the privacy rights of both complainants and police officers where this information is potentially damaging and has not been otherwise publicly disclosed.

Early Warning Systems

Advantages - An early warning system offers the advantage of providing an effective response to the problem of those officers who appear to have a problem dealing with citizens in a professional manner. It is highly recommended.

Disadvantages - The authors of this report are not aware of any disadvantages with an early warning system. As noted earlier, there have been no evaluations of early warning systems and the Consultants are not at this time prepared to recommend a particular form.

Community Outreach

Advantages - An active program of community outreach is one of the most important functions of citizen oversight. It is strongly recommended.

Disadvantages - The Consultants are not aware of any serious disadvantages of community outreach. The only potential problem would arise if community meetings are conducted only for the purpose of criticizing the police without any constructive program for investigating community concerns and recommending changes in policy where appropriate.

A Common Misunderstanding About "Civilian Review Boards"

Some people who advocate "civilian review boards" want a procedure where an independent board of citizens would have the power to fire or otherwise discipline police officers and to set policies for the police department.

With a few exceptions, this approach to citizen oversight is not found in the United States. The exceptions are Detroit, Milwaukee, San Francisco, and a few other cities where, by city charter or state law, the local police departments are governed by a Police Commission consisting of appointed officials. These commissions have general authority over the police department and are not limited to the handling of complaints.

There is considerable variation in how the police commissions in these cities deal with the question of citizen complaints. The Milwaukee Fire and Police Commission "can suspend, demote, or discharge [police] department members for conduct in violation of department rules and regulations." (128) The Commission itself determines the proper method of disposing of individual complaints (e.g., mediation, referral to the police chief), and in some instances conducts a trial over a specific complaint. The Detroit Board of Police Commissioners established an Office of the Chief Investigator which employs a staff of investigators who are not sworn officers. In 1996 the Los Angeles Police Commission, which previously had played no role in the handling of complaints, appointed an Inspector General with broad responsibility regarding complaints and discipline.

There are several problems with the idea of giving a civilian review board the power to discipline officers.

First, in most jurisdictions such a procedure would violate either state law, or city charter, or both. It might also violate existing collective bargaining agreements with police associations. The creation of the Detroit Police Commission required a revision of the city charter by referendum of the voters.⁽¹²⁹⁾

Second, the Consultants do not believe it is advisable to undermine the power and responsibility of the police chief executive for discipline. The principle of accountability means that the public should hold the police to highest standards of professional conduct and that responsibility for maintaining those standards should be clearly focused on the chief executive. The worst possible scenario is one where a police chief is able to escape responsibility, and for example say "yes, there is a problem with police misconduct here, but I cannot do anything about it." Citizen oversight is designed to enhance the accountability of the police chief executive for standards of police conduct. It

contributes to this process by providing additional input into the discipline process, representing a citizen's perspective. Command officers in the Albuquerque Police Department, for example, stated that the Independent Counsel helped them "see an incident from a citizen's point of view."⁽¹³⁰⁾

Many advocates of a completely "independent" citizen review board also have not thought through the problem of how the members of such a board would be chosen.⁽¹³¹⁾ One method would be to have the mayor appoint all members. This approach, however, would concentrate too much power in the hands of one person. Another approach would be to have members elected. There are two problems with this. It is not clear how this elected board would be different from the existing city council which is also elected. Second, there is a good chance that the police association or union would actively campaign and succeed in electing a majority of the board members. The result would be a board that is not independent of the police department and, therefore, contrary to the goals of citizen oversight. The Consultants believe that the proper balance is achieved by having an appointed citizen oversight body, where the appointment process is shared by the mayor and members of the city council (or county commission).

A Comparison of the Albuquerque Oversight Mechanisms with Alternative Models

Albuquerque has in place two forms of citizen oversight or citizen review, the Independent Counsel and the Public Safety Advisory Board, and has had both for several years. The question before the citizens of Albuquerque is not whether there should be citizen oversight, but how well the existing mechanisms are functioning.

The existing mechanisms for oversight of the Albuquerque police department suffer in comparison with the mechanisms that exist in other jurisdictions.

Positive Aspects

The current system of oversight has three important positive features. The Independent Counsel does direct the complaint investigation process, as mandated by ordinance. By reviewing complaint investigations, the IC serves as a check and balance on Internal Affairs. The IC also makes recommendations for changes in APD policies and procedures.

All three of these activities embody the basic concept of citizen oversight of police. They serve to open up the traditionally closed complaint process and provide an independent citizen's perspective on complaints.

Negative Aspects

The current system of oversight in Albuquerque suffers from a number of limitations, most of which are self-imposed.

(1) The Independent Counsel has failed to engage in an active program of community outreach similar to that undertaken in other jurisdictions. This failure has contributed to the lack of public information about the complaint process and the low number of citizen complaints. Even more important, it has undermined the credibility of the

oversight process itself, and undermined the positive contributions made by the IC. Citizens of Albuquerque are not aware of the work of the IC. As we note in Chapter Five, this limitation on the role of the IC is largely self-imposed and not dictated by ordinance.

(2) The Independent Counsel has made limited use of its policy review function. As we discuss in Chapter Five, the IC has made some very good recommendations for changes in APD policy, on issues of great concern to the public. The sheer volume of recommendations, however, is very small when compared with equivalent oversight mechanisms in other jurisdictions. At the same time, the lack of a public outreach program has meant that the public is not aware of the policy review activities of the IC and feels it has no effective avenue for addressing its concerns.

(3) The Public Safety Advisory Board has failed to systematically use its authority to conduct studies regarding the policies and practices of the APD. The few studies it has undertaken, notably the 1991 deadly force report, are a pathetically small number. Moreover, there are serious questions about whether the PSAB monitored implementation of its own 1991 report, or the few other recommendations it has made.

(4) By failing to provide adequate oversight of the APD, the Public Safety Advisory Board has become dysfunctional. At present, it tends to aggravate tensions between the APD and the community rather than resolve them. Equivalent oversight mechanisms in other jurisdictions have established good working relationships with the police departments they oversee.

(5) The APD has failed to adequately publicize the complaint process throughout the community.

Conclusion

Albuquerque presently has two forms of citizen review or oversight of the police. They have not been working effectively, however. They fail to perform many of the beneficial functions that are being performed by equivalent mechanisms in other jurisdictions. The problem is not one of statutory authority. The Independent Counsel and Public Safety Advisory Board have failed to use the authority they already have.

76. Samuel Walker and Betsy Wright, *Citizen Review of the Police, 1994: A National Survey* (Washington: Police Executive Research Forum, 1995). A 1996 update is in the process of being completed.

77. Andrew Goldsmith, *Complaints Against the Police: The Trend to External Review* (Oxford: Clarendon Press, 1991).

78. These issues are discussed in Samuel Walker, *Citizen Review Resource Manual* (Washington: Police Executive Research Forum, 1995).

79. Samuel Walker and Betsy Wright Kreisel, "Varieties of Citizen Review," *American Journal of Police*, XV (No. 3, 1996): 65-88.
80. Wayne Kerstetter, "Who Disciplines the Police? Who Should?," in W. A. Geller, ed., *Police Leadership in America: Crisis and Opportunity* (New York: Praeger, 1985). Andrew J. Goldsmith, "New Directions in Police Complaints Procedures: Some Conceptual and Comparative Departures," *Police Studies*, 11 (Summer 1988): 60-71. Douglas W. Perez, *Common Sense About Police Review* (Philadelphia: Temple University Press, 1994). Walker and Wright, *Citizen Review of the Police - 1994: A National Survey*.
81. See the discussion of "legitimacy" in Douglas W. Perez, *Common Sense About Police Review* (Philadelphia: Temple University Press, 1994), pp. 74-76.
82. Richard J. Terrill, "Alternative Perceptions of Independence in Civilian Oversight," *Journal of Police Science and Administration*, 17 (1980): 77-83.
83. The Kansas City Office of Citizen Complaints (OCC), for example, is a separate agency independent of the police department, but the actual investigation of citizen complaints is conducted by sworn officers in the police department.
84. Complaints in Detroit are investigated by the staff of the Office of the Chief Investigator (OCI). Both the OCI and the police department are under the direction of the Board of Police Commissioners. Thus, in a formal organizational sense the OCI is not independent of the police; but because complaint investigators are not sworn police officers, the complaint process is independent in another sense.
85. This conclusion is based on the consultant's field research regarding the Flint, Michigan Ombudsman.
86. Walker and Wright, *Citizen Review of the Police - 1994: A National Survey*.
87. Walker and Kreisel, "Varieties of Citizen Review."
88. Walker and Kreisel, "Varieties of Citizen Review," Table 1, p. 72.
89. Walker and Kreisel, "Varieties of Citizen Review."
90. Prior to the enactment of a new ordinance in the summer of 1996, Oakland, California police officers could refuse to participate in up to 40 percent of all investigations by the Oakland Citizens' Police Review Board: "Memorandum of Understanding Between City of Oakland and Oakland Police Officers' Association" (March 24 1993). For criticisms of this system and a discussion of the 1996 changes, see PUEBLO and ACLU of Northern California, *Failing the Test: Oakland's Police Complaint Process in Crisis* (December 10, 1996).
91. Walker and Kreisel, "Varieties of Citizen Review."

92. This point was made thirty years ago by Walter Gellhorn, *When Americans Complain* (Cambridge: Harvard University Press, 1966), pp. 185-186. Walker and Kreisel, "Varieties of Citizen Review."
93. Perez, *Common Sense About Police Review*, pp. 76-81.
94. San Diego County, Citizens Law Enforcement Review Board, *1993 Annual Report* (San Diego: February 23, 1994).
95. San Francisco Police Department, General Order 8.03 (August 3, 1994). Interviews: Staff, San Francisco, OCC; John Crew, staff attorney, ACLU of Northern California.
96. Denver, Public Safety Review Commission, *Semi-Annual Report* (June 1994), pp. 4-5; *Annual Report* (1994), pp. 5-8. Personal conversation, Joseph G. Sandoval, member PSRC Board.
97. San Jose, Independent Police Auditor, *First Quarterly Report* (9/13/93 to 12/13/93), pp. 8-13. Personal communication, Teresa Guerrero-Daley, Director, IPA.
98. Albuquerque, Independent Counsel, *Report For the Quarter Ending June 30, 1995* (Albuquerque: December 4, 1995).
99. San Jose Independent Police Auditor, *Third Quarterly Report* (4/1/94 to 6/30/94), pp. 23-26.
100. William A. Westley, *Violence and the Police* (Cambridge: MIT Press, 1970). Egon Bittner, *The Functions of the Police in Modern Society* (Washington: NIMH, 1970).
101. Omaha Police Division, *Annual Report*, annual.
102. St. Petersburg Police Department, Internal Affairs Unit, *Annual Report, 1994* (St. Petersburg, 1994). The report is over 50 pages long and includes a copy of the official departmental order describing the complaint process, along with a statement of the departments "Discipline Philosophy."
103. Kansas City, Office of Citizen Complaints, *1993 Annual Report* (1993).
104. Special Counsel Merrick Bobb and Staff, *5th Semiannual Report* [on the Los Angeles County Sheriff's Department] (Los Angeles, 1996).
105. Independent Counsel, *Quarterly Report for the Period Ending June 30, 1996* (November 20, 1996).
106. San Francisco, Office of Citizen Complaints, *1996 Third Quarter Statistical Report* (October 25, 1996).
107. San Diego County, Citizens Law Enforcement Review Board, *1993 Annual Report* (San Diego, February 23, 1994).

108. U.S. Department of Justice, *Police Integrity: Public Service With Honor* (Washington: Government Printing Office, 1997), p. 57.
109. New York Civilian Complaint Review Board, *Status Report, July - December 1993*, p. 51. San Diego Citizens Law Enforcement Review Board, Annual Report, 1993 .
110. "Kansas City Police Go After Their 'Bad Boys'," *The New York Times* (September 10, 1991).
111. "Wave of Abuse Claims Laid to a Few Officers," *Boston Globe* (October 4, 1992).
112. *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. 35.
113. U.S. Commission on Civil Rights, *Who is Guarding the Guardians? A Report on Police Practices* (Washington: Government Printing Office, 1981).
114. San Jose Independent Police Auditor, *Year End Report - 1996* (February 1997).
115. San Francisco Police Department, General Order #3.19, "Counselling of Members/Early Warning System" (April 5, 1995).
116. Consultant Eileen Luna was a staff member with the Berkeley Police Review Commission.
117. Personal conversation, Lisa Botsko, Portland, OR.
118. Personal conversations, San Jose Police Chief and San Jose Independent Police Auditor.
119. Personal communication, Captain, Kansas City Police Department.
120. San Francisco Police Department, General Order #3.19.
121. "Concern Over Officers With Frequent Complaints," City and County of Denver Public Safety Review Commission, *Annual Report, 1994* (Denver: PSRC, 1995).
122. Minneapolis Civilian Police Authority, *1995 Annual Report* (Minneapolis: CPRA, 1996), p. 2.
123. The San Francisco OCC "reports to the police department on a quarterly basis a list of officers who have received three or more complaints within a six months period or four or more within a year. San Francisco, Office of Citizen Complaints, *1995 Annual Report* (1996), pp. 2-3.
124. San Francisco, Office of Citizen Complaints, *Annual Report 1995* (San Francisco: February 20, 1996).
125. Minneapolis Civilian Police Review Authority, *1995 Annual Report* (Minneapolis: CPRA, 1996), p. 1.
126. Examples are cited in Walker, *Citizen Review Resource Manual*.

127. The New York Civil Liberties Union (NYCLU), a strong advocate of citizen oversight, has been extremely critical of the performance of the existing CCRB in New York. New York Civil Liberties Union, *A Third Anniversary Overview of the Civilian Complaint Review Board, Jul 5, 1993 - July 5, 1996* (New York: NYCLU, 1996).

128. Richard S. Jones, "Processing Civilian Complaints: A Study of the Milwaukee Fire and Police Commission," *Marquette Law Review*, 77 (1994): 505-519.

129. Edward Littlejohn, "The Civilian Police Commission: A Deterrent of Police Misconduct," *University of Detroit Journal of Urban Law*, 59 (Fall 1981): 5-62.

130. Interview with Consultants.

131. This issue is discussed in Walker and Kreisel, "Varieties of Citizen Review.

X. Recommendations

Independent Counsel

1. The Independent Counsel Should Make More Use of its Present Authority to Oversee the APD.

Commentary. The Independent Counsel currently has very broad authority with respect to oversight of the APD. The IC has not fully utilized that authority with respect to reviewing the policies and procedures of the APD. The IC should also become a more active participant in complaint investigations. As is the case in other jurisdictions, this participation should include being present at interviews and being able to suggest questions. The IC should conduct investigations after IA if necessary, and also when a complainant has appealed to the oversight board. The IC should appoint an assistant to assist in participation and conduct of investigations.

2. The Independent Counsel Should Play an Active, Public Role in the Community.

Commentary. The Independent Counsel has played almost not public role. As a result there is little community awareness of the IC. This has undermined the positive work that the IC has done in providing citizen input into the complaint process. The IC should be part of a more active program of outreach to the community.

3. The Position of Independent Counsel Should Be Filled Through Competitive Bid.

Commentary. The current practice of employing the Independent Counsel on the basis of a sole source contract is unwise. Competitive public bidding would facilitate hiring decisions based on comparative competency and the presentation of innovative ideas about how the IC should function. Among other things, the City would be able to choose applicants committed to playing a more active public role as recommended above.

Public Safety Advisory Board

4. The PSAB Should Make Full Use of its Authority to Conduct Studies and Make Recommendations.

Commentary. The PSAB has not effectively utilized its existing authority to conduct studies and make recommendations about the APD. No new legislation is required to accomplish this. Political leadership is all that is required. The PSAB should engage in a long-term planning process through which it identifies major problems and establishes a program of studies.

Along the same lines, PSAB meetings should begin with public comment. There should also be an established agenda which is sent to police department personnel with requested reports on specific subjects set for a designated time on the agenda.

5. The PSAB Should Oversee the Activities of the Independent Counsel.

Commentary. The PSAB should be restructured so that it oversees the work of the Independent Counsel. This would address the current problems with both the PSAB and the IC. It would give the PSAB a clearer focus in terms of overseeing the APD. It would also help to overcome the low visibility of the IC.

The PSAB should have the authority to review the work of the IC with respect to the quality, thoroughness and impartiality of investigation. The PSAB should have the authority to hear complainants' appeals of dispositions and then, where appropriate, direct the IC to conduct more investigation. This additional information would then be forwarded to the Police Chief and/or Mayor for their use in making their decisions on the appeal of a complaint disposition.

Internal Affairs

6. The Internal Affairs Unit of the APD Must Immediately Begin an Active Outreach Program to Publicize the Complaint Process.

Commentary. The failure of APD to adequately publicize the complaint process is unacceptable. This failure occurs despite several recommendations in the past that it take the proper steps. Both the IC and the PSAB should closely monitor compliance with this recommendation.

This program should include outreach to all segments of the Albuquerque community, particularly those such as the Native American community which seem particularly disaffected from the complaint process. This program should include in-person presentations, wide distribution of the official APD brochure, and steps to ensure that officers on the street are properly informing citizens about the complaint process.

The program of outreach should also include adding locations where complaints may be filed. This should include locations separate from the police department which are staffed by non-police personnel. The IC and IA should conduct training sessions for the personnel of community organizations who wish to make this service available to their clientele.

7. Internal Affairs Should Reorganize its Citizen Police Complaint (CPC) filing system.

Commentary. This reorganization should include a filing system which includes face sheets, an early warning system, and a formal process for requests to waive the time deadlines. Waivers should be automatically requested and granted whenever needed by IA or when the IC and/or the new board are handling an appeal investigation.

Internal Affairs should give top priority to meeting the established time deadlines for investigating complaints. Both the IC and the PSAB should monitor this problem.

Internal Affairs should also proceed quickly with its current plans to develop an early warning system (EWS) to identify problem officers. It should consult widely with police departments that already have such systems and determine which form of intervention is the most effective.

City Attorney and Risk Management

8. The City Attorney and Risk Management Should immediately Seek to Reduce Tort Claim Payments and Provide More Feedback to APD.

Commentary . The current level of tort claim payments for police misconduct is unacceptable. Immediate steps should be taken reduce these payments. This should include (1) a policy on settling tort claims against the city that addresses the underlying behavior of APD officers; (2) the establishment of specific goals and timetables for reducing tort claims based on payments from comparable cities; (3) a formal system of feedback to APD command officers regarding problems that might require additional training and/or changes in APD policy.

Both the IC and the PSAB should monitor the implementation of this recommendation.

9. Both the City Council and the Mayor Need to Take a More Active Role in Overseeing the APD.

Commentary. Problems with the APD have been allowed to fester for too long. These problems include the high number of fatal shootings, the extremely high annual tort claim payments, and the continuing tensions between the APD and segments of the community. Both the City Council and the Mayor need to take a more active role in addressing these problems. They should utilize their current authority to request the PSAB to conduct studies of problems they identify.

10. 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.

Commentary. A high percentage of fatal shootings by APD officers involve mentally ill persons. The APD is currently taking steps to address this problem. We commend the development of the Crisis Intervention Teams (CIT) and the implementation of the Bean-bag technology as a form of less than lethal force. We are concerned about the apparent inadequacies of programs and facilities for the care and treatment of the mentally ill. In particular there appears to be no secure facility for persons who are an immediate danger to themselves or someone else. We were not asked to

investigate this matter in detail and we are not experts on this subject. Nonetheless, there appears to be a serious problem here that has direct impact on the APD and its relations with the community.