

The President's Task Force on 21st Century Policing: Citizen Oversight Supports Fair, Firm and Consistent Policing

I. Introduction

Citizen oversight of law enforcement exists to enable a community's law enforcement officers to

1. Provide fair, firm and consistent policing;
2. Build or re-build trust between officers and the communities they serve; and
3. Prevent avoidable deaths and injuries to citizens and police.

Commonly, a use of force incident occurs that the community perceives as unjust, unreasonable or clearly avoidable, damaging the community's trust in police. Often communities then call for the establishment citizen oversight. However, the establishment of robust oversight faces resistance:

- From the jurisdiction's political leaders for its costs;
- From the subject department's leadership, who resist the idea of an outside body examining and analyzing their decisions; and,
- From the law enforcement unions who contend the public can not understand nor judge officer actions.

Policing fails its community when it is not constitutional, if it lacks integrity, a clear mission and is not conducted by unbiased and adequately trained officers, supervisors, managers and executives. It fails its community most profoundly when officer actions cause avoidable deaths or injuries.

Oversight fails the community if it is not adequately funded, if it lacks integrity, a clear mission and is not conducted by unbiased and adequately trained staff and /or citizens volunteers. It fails if boards, commissions, monitors, auditors or ombudsmen over-identify with either the police or the community. And it fails if oversight is under-resourced or otherwise constrained from conducting the detailed work oversight requires. Like policing, oversight is hard, unglamorous and painstaking work.

II. Oversight that Monitors Internal Affairs Investigations: Its Strength; Its Challenges

Monitoring models provide civilian oversight by conducting reviews of Internal Affairs investigations; such monitoring is conducted inside the law enforcement agency. Monitors can be individual persons, or boards or commission.

This model functions to identify adequate or inadequate Internal Affairs investigations. Thus, it prompts Internal Affairs investigators to conduct more thorough and unbiased investigations, knowing citizen representative(s) will examine, analyze and comment on IA's work product; this is the monitoring model's strength. A monitoring model may also face challenges, such as these:

- It may be inadequately trained or untrained in oversight. The subject department may attempt to control the oversight agency's training. If the subject department provides most of the monitor's training, the monitor will not be trained to recognize

flawed IA investigations; flawed departmental policies or poor supervision and/or management.

- It may not recognize insufficiency of evidence relied on in an IA investigation, and thus not require IA to further investigate and explain why the evidence IA relied on is sufficient to make a recommended finding;
- It may have to rely on the same legal department that defends the subject department in criminal, civil and administrative litigation. If a jurisdiction's legal department—city attorney, county counsel, state attorney-- defends the actions of the subject department in criminal, civil and administrative processes, and provides legal services to the oversight agency, a conflict of interest exists. The legal department's integrity is compromised. A conflicted legal department's priority will first be to shield the jurisdiction from criminal, civil or administrative sanctions. With such a priority, the legal department cannot provide unbiased, uncompromised legal services to the oversight agency. Nor will the oversight agency recognize it has received compromised legal advice;
- Its implementation regulations may state a "preponderance of evidence" is to be used in making its determinations, but in fact, it may actually use "beyond a reasonable doubt;"
- It may not have the authority to make policy or discipline recommendations;
- Finally, the law enforcement agency may co-opt the individual monitor, the board or commission with flattery: some examples are
 - Including the monitor, the board / commission in internal departmental events, or engaging with them in social or sporting events;
 - Recommending board / commission members for service in other positions or otherwise shaping the board / commission which may lead to the board / commission's decisions mirroring the department decisions due to the board's overly close relationship with the subject department. Flattered boards / commissions are vulnerable to giving undue deference to the subject department, to assuming what they are told by the subject department is unequivocally true; to identifying with department executives, managers and Internal Affairs, even as the oversight body proclaims unbiased independence.

III. Oversight that Conducts Independent Investigations: Its Strengths; Its Challenges

Independent investigative models conduct investigations outside the law enforcement agency.

The model functions to give citizens confidence in knowing an investigation will take place outside the subject department. This is its strength. But an independent investigative model also faces challenges:

- It has the same risk of inadequate training, as outlined above regarding monitoring models,
- Its investigations are potentially hostile and lengthy processes, since subject officers are apt to fiercely resist investigation conducted outside their department;
- Its implementation regulations may state a "preponderance of evidence" is to be used in making determinations, but in fact, it may actually use "beyond a reasonable doubt;"

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- It may be unable to compel the subject department and its officers to provide necessary evidence; without such evidence, it may be unable to fully investigate;
- It may not have the authority to make policy or discipline recommendations;
- It has the same risk of conflicts of interest if its legal advisers also defend the subject department and law enforcement officers;
- It, too, may be co-opted by the subject department, as outlined above regarding monitoring models.

IV. Avoiding Inadequate, Co-opted or Diluted Oversight

Oversight agencies can be effective as long as communities maintain the political will to make their chosen model work with integrity. These conditions must be avoided:

- If the subject department controls who is appointed to oversight positions, the subject department controls the oversight.
- If the subject department controls the budget of the oversight agency, the subject department controls the oversight. The budget of the oversight agency must be sufficient and independent from the subject department.
- If the subject department controls the training of the oversight agency, the subject department controls the oversight. The training of the oversight model must be sufficient and not dictated and provided by the subject department.
- If the same legal department that advises and defends the subject department also advises and defends the oversight agency, a conflict of interest exists. Oversight agencies require independent legal staffs and advice.

Any oversight agency must also avoid three critical errors:

- Failure to be adequately prepared and informed on the relevant case details and governing policies and laws;
- Over-identification with the community or complainant; and
- Over-identification with the police.

If the oversight agency avoids these errors, maintains thoughtful curiosity in examining statements, policies and procedures; is ethical and unafraid to follow the evidence, then and only then can it help law enforcement departments provide fair, firm and consistent policing, maintain or regain community trust, and avoid preventable deaths or injuries to citizens and officers.

And communities contribute to fair, firm and consistent policing by recognizing their law enforcement departments need the community's engaged, clear oversight all the time, not merely when a critical incident, a "lawful but awful" event has shocked the community. Oversight must be maintained over time to help law enforcement maintain the progress it achieves toward more firm, fair and consistent policing.

V. Recommendations Regarding Civilian Oversight for the Task Force on 21st Century Policing

That in Consent Decrees related to Pattern and Practice Investigations, the Department of Justice

1. Require the jurisdiction establish and maintain civilian oversight, and that the oversight model have

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- a. Authority to examine deaths, injuries and critical incidents occurring in connection with peace officer actions;
 - b. Authority to compel production of evidence in the conduct of its duties; and
 - c. Authority to make policy and discipline recommendations.
2. Require that the jurisdiction
 - a. Adequately fund the oversight agency including funding for legal counsel separate from legal counsel representing the subject department and / or subject officers in criminal, civil or administrative proceedings;
 - b. Provide balanced, unbiased training such as the Recommended Training for Boards and Commission Members outlined by the National Association for Civilian Oversight of Law Enforcement (NACOLE); and that the agency staff obtain balanced, unbiased training in police conduct investigations.
 3. Require the oversight agency annually produce a public report that includes:
 - a. A summary the reason(s) oversight was established;
 - b. The work the agency has performed during the year, including its findings and recommendations;
 - c. The subject department's responses;
 - d. The tracking and trends in respect to complaints;
 - e. An analysis of progress the subject department made.
 4. Monitor the oversight agency's effectiveness during the length of the Consent Decree.

Respectfully submitted,

Sue Quinn

First Elected President (2000-2002), and Board Member (1997-2007) National Association for Civilian Oversight of Law Enforcement NACOLE,
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