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INSPECTOR GENERAL

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June 30, 2014

TO: SUPERVISOR DON KNABE, Chairman  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR MARK RIDLEY-THOMAS  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: MAX HUNTSMAN  
Inspector General 

RE: **Inspector General Board Report, Supplemental**

### **Purpose of Memorandum**

This is to transmit to the Board the supplemental report of the Inspector General on a potential Sheriff's Department civilian oversight commission and structure.

Enclosed are the following attachments:

- A. Enabling statutes for County of San Diego Citizens Law Enforcement Review Board.
- B. Enabling statutes for City of Albuquerque, New Mexico, Police Oversight Commission
- C. Enabling statutes for City and County of Denver, Colorado, Office of the Independent Monitor
- D. Enabling statutes for City of Portland, Oregon, City Auditor's Independent Police Review Division
- E. Enabling statutes for City of Claremont Police Advisory Commission
- F. Enabling statutes for City of San Jose Office of the Independent Police Monitor
- G. Fact sheet for City of Santa Cruz Independent Police Auditor
- H. U.S. Department of Justice, Civil Rights Division, April 10, 2014 letter to the City of Albuquerque, re: Albuquerque Police Department

## Summary

On February 25, 2014, the Board of Supervisors "directed the Inspector General and requested the Sheriff, in consultation with County Counsel, to provide the Board with a recommendation as to whether a citizens oversight commission would be appropriate and to collaborate in providing input on the alternative potential structures of a Sheriff's Department Oversight Commission, and/or propose any alternative structure(s) for an oversight body, to the Board in writing by June 30, 2014."

In preparing this report, the Office of the Inspector General (OIG) met with and spoke to community activists, civic leaders, civil rights attorneys and advocates, representatives of law enforcement labor organizations and members of the academic community. The OIG consulted with members of the Los Angeles County Sheriff's Department command staff, reviewed civilian oversight entities in other jurisdictions, the statutory schemes which empower them, spoke to members and stakeholders in those civilian oversight entities and reviewed social media, news media and governmental reports and commentary as to their efficacy. The OIG has submitted a joint letter with the Sheriff's Department and delivers this supplemental report to provide additional information which may be helpful to the Board of Supervisors in its decision-making process.

The Inspector General recommends that the Board delay a decision on the creation of a civilian oversight commission. The OIG is not fully staffed or empowered by ordinance. As the Board is aware, efforts to establish a legal framework for OIG access are not complete. Regardless of the choices made in that process, it will take time to establish a positive working relationship with the Sheriff's Department that is consistent with the Board's direction and all applicable laws. There may be litigation of the legal questions involved. Because the Board will likely wish to consider the outcome of this process in deciding whether to create a commission and what sort of characteristics to give any such commission, it would be best to complete the first process before beginning the second.

If this process were to result in an OIG that could more fairly be characterized as an *internal* monitor, then a civilian commission would serve as an important external voice for the public. If the OIG is denied total access to Sheriff's Department operations and records, either by decision of the Department or by decision of a court, then a civilian commission could become an absolutely necessary part of additional reform efforts. It is our intention that the OIG will ultimately be established as a strong and effective external monitor with complete access to Sheriff's Department activities.

Should the Board elect to immediately create a civilian commission, this report contains some general suggestions for creating a commission that is within the Board's lawful authority without external authorization, such as a charter amendment or state statute. Without external authorization, the commission would be primarily advisory and its success would depend upon its composition and the relationship it established with the OIG and the Sheriff's Department.

## Discussion

### **POSSIBLE CHARACTERISTICS OF A CIVILIAN OVERSIGHT COMMISSION CREATED BY ORDINANCE**

The Citizens' Commission on Jail Violence (CCJV) recommended that the Board establish the Office of the Inspector General to provide comprehensive oversight of the Sheriff's Department and its jails. The CCJV identified three primary functions of the proposed OIG: (1) to monitor jail conditions and the Sheriff's Department's response to inmate and public complaints; (2) to review the Sheriff's Department's use of force statistics, its investigations of force incidents and allegations and the resulting disciplinary decisions; and (3) to review the quality of the Sheriff's Department's own audits and inspections.<sup>1</sup>

The CCJV considered whether additional civilian oversight of the Sheriff's Department should be provided by a civilian oversight commission and concluded that such a civilian commission would not be necessary so long as there exists a well-structured adequately staffed OIG and the Board continues to keep the conditions in the jails in the public view.<sup>2</sup>

The effectiveness of the Board in keeping the condition of the jails in public view and providing oversight of the Office of the Inspector General cannot be evaluated until such time as the OIG is fully functional and begins to report its findings to the Board publicly. Because the Board has responsibility over so large a government apparatus, and because public interest and the political process generally tend to be crisis driven, it has been historically difficult to maintain effective County reform efforts over the long term. The Board does have the legal authority to create a civilian commission to fulfill the role envisioned for the Board by the CCJV -- keeping the spotlight on jail violence. Ultimately it is the Board's responsibility to supervise county officers regardless of the mechanism used.

It is the opinion of the OIG that such a civilian commission could provide the following valuable services to the community:

- Gather community concerns about Sheriff's Department services, policies and procedures
- Provide a public forum at which:
  - The Office of the Inspector General presents findings
  - Civilians voice concerns about Sheriff's Department policies, procedures and services
  - The Commission addresses community concerns about the Sheriff's Department
  - The Commission educates the community about civilians' rights, the role of the Sheriff's Department and the complaint process

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<sup>1</sup> *Report of the Citizens' Commission on Jail Violence*, September 2012, pp. 190-193.

<sup>2</sup> *Report of the Citizens' Commission on Jail Violence*, *supra*, pp. 190-193.

- Receive general complaints about the Sheriff's Department from members of the community
- Receive and forward to the OIG specific complaints about the Sheriff's Department
- Research and provide recommendations regarding Sheriff's Department –related issues
- Advise the OIG and the Sheriff's Department of community concerns and patterns of problems
- Recommend to the OIG specific areas of investigation
- Evaluate the effectiveness of the OIG
- Make policy recommendations to the OIG and the Sheriff's Department
- Facilitate mediation of some complaints if both the complainant and subject officer agree to participate

Such a commission would be most likely to be effective if it were comprised of highly respected members of the community with varying viewpoints. Such individuals, who are often willing to serve on temporary commissions, would be most likely to join if the time commitment were not onerous and the likelihood of positive results were present. One of the strongest arguments against the creation of a commission is that commissions can be a drain on public funds without having much impact. The involvement of high-profile and highly experienced people would increase the chances of having such an impact. Running a lean administrative operation would reduce the expense of such a commission in order to keep a higher ratio of benefit to cost. Accordingly, we recommend that any such commission should use the already existing Office of the Inspector General as its investigative and administrative staff.

In order to ensure that the Office of the Inspector General meets the public's expectation that it conduct impartial investigations, make findings which are uninfluenced by power or politics and make those findings public, the OIG recommends that there be sufficient safeguards in place which prevent the civilian commission from: (1) limiting or dictating the investigations conducted by the OIG; (2) censoring, suppressing or altering public reports by the OIG; or (3) requiring the disclosure by the OIG of any confidential or privileged information. The commission could be given the power to hire and fire the Inspector General or that power could remain with the Board. If the Board elected to turn over that power to a commission, a term of office for the Inspector General would be advisable to ensure reports are not self-censored to avoid controversy.

### **ROLE OF THE OFFICE OF THE INSPECTOR GENERAL**

The effectiveness of the OIG in fulfilling the functions envisioned for it by the CCJV cannot be evaluated until the OIG has become fully staffed and operational. The OIG has been created to fulfill the functions recommended by the CCJV and its proposed structure includes three branches. The Monitoring and Community Outreach branch of the OIG is tasked with: (1) monitoring the jails and the Sheriff's Department's responses to complaints which originate from within the jails; (2) identifying problematic issues in

Sheriff's Department's custody operations; and (3) conducting the community outreach programs of the OIG. The Review and Analysis branch is tasked with reviewing: (1) the Sheriff's Department's use of force statistics; (2) the Sheriff's Department's investigations of use of force incidents and misconduct allegations; and (3) the Sheriff's Department's disciplinary decisions. The Audits and Investigations branch is tasked with: (1) reviewing the Sheriff's Department's audits and investigations; and (2) in some circumstances, conducting its own audits and investigations of custody operations.

Critical to the effectiveness of the OIG is the degree of access the OIG secures to the Sheriff's Department's facilities, records and staff. The CCJV recommended "unfettered" access by the OIG to Sheriff's Department personnel, records and facilities.<sup>3</sup> Much of the information within the Sheriff's Department which is necessary for the OIG to perform its function is privileged<sup>4</sup> and exempt from the disclosure requirements of the Public Records Act.<sup>5</sup> The California Supreme Court has ruled in one case that an external government body that fulfilled a legal obligation could receive confidential information that could not be lawfully disclosed to the general public.<sup>6</sup> There is not yet a Los Angeles County ordinance that delineates the scope and conditions of the access the OIG will have to Sheriff's Department's records, personnel and facilities. There is no California case law which directly addresses the legal issues regarding access to Sheriff's Department's records by the OIG when the OIG is acting as legal counsel to the Board while the Board is acting within its statutory supervisory capacity over the Sheriff's Department.<sup>7</sup> There is no memorandum of understanding between the Sheriff and the Board establishing a protocol for granting the OIG access to the Sheriff's Department's records, personnel and facilities.

The CCJV recommendations will be much more difficult to implement if the Sheriff declines to share information with the OIG. While current Sheriff John Scott and his entire command staff have been extremely cooperative and forthcoming with the OIG while we work to establish protocols, this fundamental legal issue remains unresolved. Furthermore, there will be a new Sheriff on December 1, 2014. The new Sheriff will need to make his own assessment of the proper procedure for working with the OIG.

The Professional Peace Officers Association and the Association of Los Angeles Deputy Sheriffs are particularly concerned about protecting information containing the identities of police officers and disciplinary information. While the circumstances are not the same, attempts to obtain such information in the past have resulted in extensive litigation.<sup>8</sup> It would be best to resolve the legal issue of what information may be lawfully accessed by the OIG before considering additional action.

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<sup>3</sup>Report of the Citizens' Commission on Jail Violence, *supra*, p. 191.

<sup>4</sup>See Evidence Code, sections 1040 *et seq* and Penal Code, sections 832.5 *et seq*. (all citations are to California codes unless otherwise noted).

<sup>5</sup>Government Code, sections 6250 *et seq*.

<sup>6</sup>*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.

<sup>7</sup>Government Code, section 25303.

<sup>8</sup>*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59.

## CIVILIAN OVERSIGHT COMMISSION MODELS AND FUNCTIONS

The California Constitution provides that the sheriff of each county is supervised by the attorney general (Cal. Const., art V, § 13), and that in each county the sheriff shall be an elected position (Cal. Const., art V, § 1(b) and § 4(c)). Statute gives to the attorney general direct supervision of each sheriff's law enforcement functions (Cal. Gov. Code, § 12560) while leaving to each county's board of supervisors the responsibility of supervising the official conduct of, among other county officers, the sheriff. A board's supervisory authority over official conduct does not extend to or affect a sheriff's independent investigative functions. (Cal. Gov. Code, § 25303.) According to the California Supreme Court, when a sheriff is performing law enforcement functions the sheriff is functionally independent of county control. (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 834.)

### Models of Civilian Oversight Bodies

The models of civilian oversight that are available to Los Angeles County within the current constitutional and statutory framework are considered "external," meaning that the oversight body is independent of the law enforcement agency it oversees and is staffed and compensated by the legislative body that created it.<sup>9</sup> There are four basic models of civilian oversight that may be adopted by the County within the current constitutional and statutory framework.

#### **MODEL ONE**

Civilian commission to which an investigative body similar to the OIG reports. Examples of such a model are found in San Diego County,<sup>10</sup> and Albuquerque, New Mexico.<sup>11</sup>

San Diego County The San Diego Sheriff's Department and the San Diego County Probation Department are "advised" by the Citizens Law Enforcement Review Board ("CLERB"). The CLERB is comprised of eleven civilian electors from within the county who are nominated by the county's Chief Administrative Officer and appointed by its Board of Supervisors. The CLERB's functions include community outreach and receiving, investigating and adjudicating civilian complaints.

Reporting to San Diego County's CLERB is the Executive Director and a staff of complaint investigators. The CLERB makes recommendations to the Sheriff and the Chief Probation Officer. County ordinance provides that the CLERB is advisory only and has no authority to manage or direct the activities of either the Sheriff's Department or the Probation Department.

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<sup>9</sup>*Citizens Oversight Committees in Law Enforcement*, Calderon, Eduardo L. and Hernandez-Figueroa, Maria, California State University Fullerton, Center for Public Policy, January 2013.

<sup>10</sup> See Attachment A

<sup>11</sup> See attachment B

**Albuquerque** The Albuquerque Police Department is subject to oversight by the Police Oversight Commission ("POC"). The POC is comprised of nine non-law enforcement residents appointed by the mayor from a slate of two persons from each council district who are nominated by the district's council member. Within the POC is the Independent Review Office ("IRO"), which serves as the investigative arm of the POC.

The POC's functions include: (1) community outreach; (2) receiving, investigating and adjudicating civilian complaints; and (3) monitoring all police shootings and claims of excessive force. The POC also is tasked with evaluating operations within the police department and making policy recommendations.

The IRO includes a staff of three investigators who investigate civilian complaints. The IRO reports its findings to the POC and to the command staff of the police department, including the Chief of Police.

### **MODEL TWO**

Civilian commission which is separate and apart from an independent investigative body similar to the OIG. Examples of such a model are found in Denver, Colorado,<sup>12</sup> and Portland, Oregon.<sup>13</sup>

**Denver** The Office of the Independent Monitor ("OIM") oversees the Denver (City) Police Department and the Denver (County) Sheriff's Department. The Independent Monitor is appointed by the mayor from a list of three nominees who are presented by a five member selection committee, one member of which is selected by the city council president. The OIM has a professional staff, including attorneys, a Community Relations Ombudsman and a Research Analyst. The OIM reports to the mayor.

The OIM's functions include: (1) community outreach, including publicly reporting its findings and recommendations; (2) receiving and monitoring the investigations of civilian complaints and recommending findings and discipline; (3) mediation and alternative resolution of complaints; and (4) monitoring law enforcement operations. The OIM also makes policy and procedure recommendations.

Also in Denver is the Citizen Oversight Board ("COB"). The COB is comprised of seven persons from the City and County of Denver who are appointed by the mayor and approved by the city council. Members of the COB cannot be employees of either the City or the County and they cannot be closely related to employees of the police or sheriff's departments.

The COB's functions include: (1) assessing the effectiveness of the OIM; (2) making policy recommendations regarding the complaint process, discipline, use of force, and other policies; (3) making recommendations in specific cases; and (4) addressing any other issues of concern to the community, members of the Board of Supervisors, the Monitor, the

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<sup>12</sup> See attachment C

<sup>13</sup> See attachment D

Manager of Safety, the Chief of Police, the Undersheriff, or the Fire Chief. The COB does not supervise or direct the activities of the OIM.

Portland The Independent Police Review Division ("IPRD") is part of the City Auditor's office. The IPRD's Director is selected by and reports to the City Auditor. The IPRD serves the function of receiving and screening civilian complaints and either dismissing them or referring them to the police department's internal affairs division or for mediation.

Portland also has the Citizen Review Committee ("CRC"). The CRC is comprised of eleven volunteers who are appointed by the city council. The CRC's functions include: (1) community outreach; (2) reviewing and advising the police department's internal affairs section on its complaint handling processes; (3) assisting and advising the IPRD regarding complaints and policy recommendations; and (4) hearing appeals from complainants and officers and publicly reporting its findings.

### ***MODEL THREE***

Civilian commission with no investigative arm. An example of such a civilian commission is found in Claremont.<sup>14</sup>

Claremont's Police Advisory Commission ("PAC") is comprised of seven city council appointees. The PAC's functions include: (1) community outreach; (2) monitoring some police conduct as identified in its enabling ordinance; (3) reviewing police handling of complaints, the recruitment and hiring of police department personnel; and (4) reviewing and recommending policies and procedures.

### ***MODEL FOUR***

There is a model of civilian oversight which does not include a civilian commission component. Examples of such a model are found in San Jose<sup>15</sup> and Santa Cruz.<sup>16</sup>

San Jose The Independent Police Auditor ("IPA") oversees the San Jose Police Department. The IPA is appointed by the city council to a four-year term. The IPA employs a staff of five, including an auditor and an ombudsman. The IPA is completely independent of any political entity.

The IPA's functions include: (1) community outreach, including reporting to the public its findings and the results of its auditing activities; (2) participating with the police department in the review of officer involved shootings; and (3) reviewing the police department's investigations of complaints against police officers.

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<sup>14</sup> See attachment E

<sup>15</sup> See attachment F

<sup>16</sup> See attachment G



**Santa Cruz** The Independent Police Auditor oversees the Santa Cruz Police Department. The IPA reports to the Public Safety Committee of the city council.

The IPA's functions include; (1) reviewing police department internal affairs investigations; (2) reviewing officer involved shootings; (3) reviewing police department policies and procedures; (4) the investigation of civilian complaints; and (5) community outreach.

There are numerous entities throughout the nation and the state which have implemented one of these four models.<sup>17</sup> Within each of these four models there are innumerable variations in the functions which these entities serve, the composition of the civilian commissions and the civilian entities charged with investigation, the method by which individuals are selected and appointed to serve, the length of the terms which they serve, and the compensation the individuals receive.

### **Functions Of Civilian Oversight Bodies**

It appears that civilian oversight bodies charged with concrete and specific responsibilities and provided the authority or jurisdiction to carry out those responsibilities are much more successful than similar entities given little more than undefined aspirations and no tools. In keeping with that preference, we outline below the most significant COB functions selected from several cities and counties we have observed, describe the function and comment upon its utility and applicability to Los Angeles County.

**Adjudication** Civilian oversight bodies (COBs) can perform a lay adjudicative function for misconduct allegations following internal investigation by the Sheriff's Department. COBs that do this usually function as an "appeals court" for civilians who are dissatisfied with the outcome of the complaint investigation and decision-making performed by the law enforcement department. In Portland, either the civilian or the subject officer may appeal from the Police Bureau's decision and take the case to the "Citizens Review Committee," which is composed of civilian appointees who serve a set term and receive substantial training in police procedures. Like most civilian appeal boards, the CRC issues advisory opinions to the decision-making authority but cannot dictate the final outcome.

It is also important to note that Oregon's confidentiality laws for police disciplinary documents are less stringent than those in California and that the culture and community expectations in Portland have produced a tradition of relatively high transparency in police matters. The CRC is allowed to review the entire internal affairs investigation file – as any meaningful appeal review would require. Two additional factors assist the CRC in being effective. 1) Police disciplinary decisions are ultimately made by the Mayor of Portland, in his or her capacity as Police Commissioner, so when the CRC issues recommendations, it is making them to a civilian elected official. 2) The CRC is able to draw upon the expertise

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<sup>17</sup> See the National Association of Civilian Oversight of Law Enforcement web site at [www.nacol.org/nacole-resources/oversight-agencies](http://www.nacol.org/nacole-resources/oversight-agencies)

and guidance of the full time professionals in the office of the Independent Police Review within the City Auditor's office.

A civilian review board in Los Angeles County could serve an important function by providing such a forum for appeal, but implementing this structure would require the following changes:

- An agreement with the Sheriff's Department and the Sheriff's employee unions that the COB could have access to the investigative file.
- A change in the union memoranda of understanding (MOUs) that the COB, in the case of a founded allegation, could be used as an alternative to the existing appeal venues – the Civil Service and Employee Relations Commissions – and that, in the case of an unfounded allegation appealed by the civilian, subject deputies would have access to the COB process and be able to participate if they chose to.
- A change in Civil Service/Employee Relations commissions' rules to provide for COB review as an authorized alternative.

The Seattle Community Police Commission has acknowledged similar obstacles to the establishment of an appeals function and is urging its city to negotiate for a collective bargaining agreement "re-opener" to address the need for a civilian structure to satisfy "substantial community interest in an avenue for complainants to appeal the outcome of the complaint investigation process."

When case volume is high and the civilian review board is based on an all-volunteer model, this can be a formula for failure. The City of Inglewood instituted a review model that was unsuccessful because it was unable to keep pace with the statute of limitations imposed by the Public Safety Officers' Bill of Rights.

**Investigation** Some COBs perform or direct initial investigations of allegations of misconduct. In those jurisdictions that authorize such investigations, the subject matter of the allegations in question is almost always confined to civilian complaints as opposed to internally generated complaints brought by supervisors and managers within the law enforcement agency. The daunting challenge of this function is the time and resource commitment necessary to do effective investigations. Any type of misconduct investigation is labor intensive and requires experienced investigators. In almost any anticipated arrangement, a large number of salaried investigators would be required. New York City's newly established Inspector General's office, for instance, plans to hire 25 full-time investigators to handle civilian complaint investigations. The San Diego Citizens Law Enforcement Review Board takes a different approach, employing only 2 ½ full-time investigators<sup>18</sup> to complete upwards of 100 cases per year. CLERB investigations, however, are somewhat abbreviated. Deputies are not interviewed face-to-face but rather respond in writing to a written questionnaire; investigators have access to police reports but not to Internal Affairs reports.

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<sup>18</sup> The CLERB Director assists the two investigators as one of his many duties.

Another problem is the narrow scope of subject matter. Most investigations arising from civilian complaints focus on discourtesy, unfair treatment including bias, confiscation of property and low level use of force. These incidents represent a very important community/police nexus, but they very rarely result in significant discipline in contrast to cases instigated by supervisors and executives within the law enforcement agency. If there is a correlation between discipline level and effect on behavior and policy, then confining COB investigations to civilian complaints tends to limit the impact of those investigations on the law enforcement agency.

Practical problems of independent investigation include obtaining authority to question officers (sometimes requiring an MOU negotiated with the officers' union) or getting their voluntary cooperation. Subpoena power does not alleviate all of these constraints and is a highly inefficient tool for standard cases. It would also require legal action beyond the direct authority of the Board of Supervisors.

**Outreach and Intake of Complaints** Civilian oversight bodies have recognized a need to encourage civilians with a specific grievance against their law enforcement agency to enter into the available complaint process and to explain the process and its outcomes to those complainants and to the public. They acknowledge that this effort requires time and resources but that it can benefit individuals and community police relations. Sometimes this process requires extensive screening and explanation of the process even before a complaint is referred to the law enforcement agency.

The Seattle Community Police Commission is proposing to increase its professional civilian staff of three full-time employees in order to provide complainant advocates available to assist complainants in navigating the complaint process and who keep complainants updated on the progress and outcomes of investigations and appeal processes. The San Jose Independent Police Auditor (IPA) already performs this function with its staff of ten. The Auditor also places a strong emphasis on community outreach and concludes that keeping the public informed at frequent community meetings has been a key to the effective restoration of public confidence in her agency. It may also have inspired higher rates at which the public takes advantage of the complaint process. Currently approximately 350 complaints per year are filed on the San Jose Police Department, about half of which come directly to the IPA.

Because of the demands placed on staff time and the good prospects for general agreement on objectives and procedures, this function presents an opportunity for full-time professional staff of an agency such as the OIG to share tasks with COB staff and volunteers.

**Audits and Operations Evaluations** Civilian oversight bodies, even those without large full-time staffs sometimes perform informal audits or operations evaluations which can bring to light police functions that are rarely scrutinized by a detached group of trained civilians. These can include law enforcement operations where the contact between police and the general public is most frequent such as calls for service and complaints lodged at station desks, activities in the visiting areas at detention facilities, and interactions between court services deputies and the public. This function may be especially pertinent to the

challenge of maintaining consistently courteous, constitutional and unbiased policing over the huge geographic and demographic spectrum served by the LA Sheriff's Department through its 23 patrol stations, 8 major jails and 42 contract cities.

The Los Angeles County Probation Commission, for instance, performs analogous inspections and operations evaluations on the Probation Department's juvenile camps. They report their observations and conclusions about, among other things, living conditions, educational and recreational activities and condition of the physical plant directly to a Department executive at the Commission's monthly meetings. This Commission also receives periodic updates on the progress of reforms from the Sheriff's Department, the Los Angeles County Office of Education, which staffs the schools in the juvenile institutions, and from the attorneys of the Office of Independent Review assigned to Probation Department.

**Policy Reform** Civilian oversight bodies almost universally express frustration over their limited time and opportunity to engage their law enforcement agencies on the issue of revising policies or developing new policies altogether. We believe the perspective and priorities of a COB are a valuable potential source of proposed policy reform, especially if the COB is engaged in complaint intake, the review of misconduct cases and/or vigorous community outreach. Policy proposals can be most persuasive when they arise from these activities and the recognition of problem trends in the interaction between police and the public. San Diego's CLERB, for instance, relates that all of its policy recommendations are rooted directly in its investigations of civilian complaints and its review of officer-involved deaths. The San Jose IPA's recommendations for changes in policies and procedures, included in its annual report, also arise from its review of the police department's investigations into civilian complaints, police shootings, and deaths in custody.

**Agenda Setting for Professional Staff** The Coalition to End Sheriff Violence in L.A. Jails recently recommended that a civilian review board be responsible for establishing the priorities for scrutiny and reform of the LA Sheriff's Department by the Office of the Inspector General. We have not encountered this function as a current capability of any of the COB type entities we reviewed in California, Portland and Seattle. The Seattle Community Police Commission(SCPC), however, has recommended that it add this function to its duties by serving as an advisory council to the other two entities concerned with civilian oversight of the Seattle Police Department, the Office of Police Accountability an entity within the police department, and the Monitor for the federal consent decree. There is a persuasive logic to the idea that, at the present time, the city's COB can provide needed guidance to unify the priorities of an integrity office inside the department and a federal agency's monitor outside the department. The SCPC also aspires to represent the interests of the public and to identify ways in which the complaint and accountability system can be more accessible and transparent to the public.

This structure is still untried and its theoretical relevance depends in part on the existence of a federal consent decree. In light of those circumstances, it would be prudent for Los Angeles County to see if this proposed structural change in Seattle comes to fruition proves useful.

### ISSUES AND CONCERNS IN CIVILIAN OVERSIGHT

The structure of a civilian oversight entity is not a predictor of its effectiveness. As cited above, San Diego County has a civilian commission, the CLERB. The CLERB has within its scope of authority an investigative body with a professional staff which conducts independent investigations of civilian complaints. A speaker at the International Human Rights Clinic, presented at the University of California at Los Angeles School of Law on May 23, 2014, observed that San Diego County's CLERB provided a promising model for robust civilian oversight of law enforcement. However, some members of the civil rights bar in San Diego County do not think the CLERB is effective. A representative of the San Diego-Imperial Counties Chapter of the American Civil Liberties Union expressed to the OIG the opinion that the reputation of the CLERB among the region's civil rights attorneys is that the CLERB acts as a "rubber stamp" for the Sheriff.

Albuquerque, New Mexico, also cited above, has a structure similar to that of San Diego County. Yet, in spite of Albuquerque's efforts to provide effective civilian oversight, a United States Department of Justice investigation found that Albuquerque's "external oversight is broken and has allowed the department to remain unaccountable . . . ." The USDOJ investigation determined that "structural and systemic deficiencies – including insufficient oversight, inadequate training, and ineffective policies – contribute to the use of unreasonable force," including 20 fatal shootings in a four year period, the majority of which the USDOJ concluded were unconstitutional.<sup>19</sup>

While the San Diego County and Albuquerque models are believed by some not to be achieving the objectives for which they were created, Denver, Claremont and San Jose have experienced more positive outcomes.

Denver's Office of the Independent Monitor has been in place since 2005. As discussed above, the Independent Monitor reports to the mayor and is charged with: (1) community outreach, including publicly reporting its findings and recommendations; (2) receiving and monitoring the investigations of civilian complaints and recommending findings and discipline; (3) mediation and alternative resolution of complaints; (4) monitoring law enforcement operations; and (5) making policy and procedure recommendations. A review of the internet blogs and press archives covering the Denver area reveals that while there has been some tension between the Independent Monitor and the police agencies it oversees, there does not appear to be a presence of significant community dissatisfaction with the OIM's performance.

Claremont's Police Advisory Commission was formed in 2001. As discussed above, Claremont's PAC serves the functions of: (1) community outreach; (2) monitoring some police conduct as identified in its enabling ordinance; (3) reviewing police handling of complaints, the recruitment and hiring; and (4) reviewing and recommending policies and procedures. Both the police department and members of the community have expressed the view that the PAC is a positive force in police community relations.

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<sup>19</sup> Attachment H

San Jose's Office of the Independent Police Auditor has been in place since 1993. As discussed above, the IPA is appointed by the city council to a four year term and is charged with: (1) community outreach, including reporting to the public its findings and the results of its auditing activities; (2) participating with the police department in the review of officer involved shootings; and (3) reviewing the police department's investigations of complaints against police officers. A review of blogs and media archives from the San Jose area does not yield any recent public expression of dissatisfaction with the IPA.

The current Independent Police Auditor is Judge Ladoris Cordell, retired. Judge Cordell believes the San Jose model has been particularly effective in fulfilling its functions and credits much of that success to extensive community outreach by the IPA. Judge Cordell also opined that the IPA could be even more effective if the IPA had the ability to evaluate complaints generated from within the police department.

As previously stated, there does not appear to be any outcome study evaluating or comparing the effectiveness of any particular model of civilian oversight of law enforcement in the United States. The anecdotal evidence adduced in the OIG's review of these and other external models of civilian oversight bodies which have been established throughout the country suggests that there are four important components to the success of a civilian oversight model:

- Structure. How is the civilian oversight body organized?
- Composition. Who serves and how are they selected?
- Transparency. How public is the civilian oversight body's work?
- Access. How much access does the civilian oversight body have to law enforcement personnel, records and facilities?

Brian Buchner, President of the National Association for Civilian Oversight of Law Enforcement (NACOLE) has pointed out that the degree of access the civilian oversight body has to law enforcement records, personnel and facilities and the cooperation of the law enforcement agency with the civilian oversight body may be more determinative of the body's effectiveness than its structure or its composition. An example of that is found in the Los Angeles Police Department.

In the city of Los Angeles, the Los Angeles Police Department ("LAPD") is subject to the authority of the Board of Police Commissioners, comprised of civilians appointed by the Mayor. The Police Commission has full access to confidential police records and extensive powers including the ability to set policy for the LAPD and to having a say in the hiring and firing of the Chief of Police. The Police Commission also supervises its own Office of the Inspector General, which investigates civilian complaints, reviews internal affairs investigations and evaluates critical incidents and major uses of force cases and policy issues.<sup>20</sup> Yet, a review of LAPD history reveals that there are practical issues in gaining

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<sup>20</sup> *Policies and Authority Relative to the Inspector General*, Los Angeles Board of Police Commissioners, adopted November 21, 2000.

access which cannot be resolved without the cooperation of the Department, even with the presence of an empowered civilian commission.

Since 1999, the City has mandated that the LAPD cooperate fully with the OIG and provide the OIG full access to all LAPD records, personnel and facilities.<sup>21</sup> However, the LAPD OIG did not fully comply with that mandate until 2002, when the Chief and the Inspector General forged a cooperative relationship.

In a more one recent example, the Chief overruled the decision of the Department's disciplinary board, which had unanimously agreed to recommend firing an officer. The Chief decided to spare the officer, imposing a lengthy suspension instead. The Police Commission expressed concern over possible preferential treatment in the relatively lenient discipline of the officer, the son of a retired LAPD Deputy Chief who is a long-time associate of the Chief.

The Police Commission questioned the disciplinary decision and expressed concern that it would cause officers to believe that Department discipline was not fair or free from favoritism. The Chief did not change his decision and the Commission did not have the authority to change the discipline.

In these situations, the Commission has one very blunt tool -- declining to renew the Chief's contract. The Commission is unlikely to wield this tool for an individual disciplinary case or policy issue, especially when otherwise satisfied with the Chief's performance.<sup>22</sup>

Although there are many opinions about the appropriate structure and functions of civilian commissions, it appears clear that the effectiveness of civilian oversight is dependent upon the spirit of cooperation that exists between the law enforcement agency and the civilian oversight entity and the access the agency provides the civilian oversight entity to its records, personnel and facilities.

### **COMMUNITY AND STAKEHOLDER INPUT**

Since the inception of the OIG, the Inspector General has engaged in community outreach and continues to do so. He and his staff have met with and scheduled future meetings with community activist groups such as the Coalition to End Sheriff Violence in L.A. Jails and the National Association for Equal Justice. He has made himself available for discussion with community based groups, law enforcement labor representatives and community advocates representing many viewpoints. In researching this report, the OIG also sought and received input from community activists, civic and government leaders, civil rights attorneys and advocates, members of law enforcement and representatives of law enforcement labor organizations and members of the academic community.

The views expressed to the OIG ran the gamut, from those who did not believe that any civilian oversight was necessary or desirable, to those who believed that the Sheriff

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<sup>21</sup> Los Angeles City Charter, section 573.

<sup>22</sup> The account of this disciplinary case is based in part on information in newspaper accounts.

should not be an elected official, but rather report to a civilian oversight body which would have the power to set policy, hire and fire the Sheriff and impose discipline on Sheriff's Department's personnel.

Almost all of the persons with whom the OIG spoke are in agreement that the OIG's office is an established entity and should be incorporated in some fashion into whatever form of civilian oversight of the Sheriff's Department is implemented. Most agree that: (1) the public expectation for the OIG is that the OIG conduct impartial investigations, make findings which are uninfluenced by power or politics and make those findings public; and (2) to fulfill this mandate, the OIG should be independent from political pressures from the Sheriff's Department, labor organizations, advocacy groups and the Board of Supervisors.

The view was expressed to the OIG that this independence can be achieved by having the OIG report to an empowered civilian commission instead of to the Board. In this context, an empowered commission is one that has the power to compel the sheriff and sheriff's personnel to: (1) appear and answer questions under oath; (2) produce documents; and (3) provide access by the OIG to sheriff's department facilities. There are some with whom the OIG met who advocate that a civilian commission also be empowered to set Sheriff's Department policy and procedures, impose discipline on Sheriff's Department personnel and hire and fire the Sheriff.

Among the advocates of an empowered civilian commission, there is some disagreement about what, if any, limits should be placed on the OIG. Some believe, as proposed by the Coalition to End Sheriff Violence in L.A. Jails, that the civilian commission should have the power to: (1) determine what investigations are initiated; (2) terminate investigations; and (3) control the public release of findings by the OIG. Others support limitations on the civilian commission's authority over the OIG. These persons believe the OIG should have the power to initiate its own investigations and that the commission should not have the power to: (1) mandate that the OIG initiate investigations; (2) mandate that the OIG terminate an investigation; (3) prohibit the OIG from initiating an investigation; or (4) mandate the release or suppression of a report by the OIG of its findings.

Most of the persons with whom the OIG spoke agree that the OIG should NOT be supervised by the civilian commission if the commission's primary function is to engage in public outreach and it has none of the powers of an empowered commission. Many express the view that such a commission would still fulfill an important function in that it could provide a public forum at which OIG reports could be delivered and at which the community could publicly air its complaints about the Sheriff's Department. A civilian commission, they reason, could keep allegations of abuse by the Sheriff's Department in the public spotlight in a way that they believe the Board would not.

Some caution that a civilian commission without the powers held by an empowered civilian commission might slow the political momentum for a more robust commission because of a public perception that the problem with the Sheriff's Department had been resolved or that, if problems with the Sheriff's Department continued, a civilian commission was not effective.



Although there are those who consider an empowered civilian commission necessary for the success of civilian oversight, there are those who disagree. The model of civilian oversight implemented by San Jose and Santa Cruz -- the Independent Police Auditor -- had its advocates. The advocates for this model believe that it is the best structure for ensuring that the OIG conducts impartial investigations and makes findings which are uninfluenced by power or politics and makes those findings public. There are advocates of the empowered commission model who believe that, if the empowered commission is not implemented, the IPA model would be the preferred alternative.

The model implemented by the city of Claremont also has its advocates. These individuals believe such a commission could provide a public forum at which the community could publicly air its complaints about the Sheriff's Department. Most of the advocates of this model are of the opinion that the OIG should make its reports to this commission, as the Denver Office of the Independent Monitor does, not the Board of Supervisors. But there are supporters of this model who do not think the OIG should view such a commission as a vehicle through which to publicize its work. Additionally, there were those who oppose all of the other models, but who state that, while they would not advocate for civilian oversight, they would not oppose this particular model.

A few expressed opposition to, not only civilian oversight commissions, but any type of civilian oversight, including that of the OIG.

There is disagreement among persons of all views about the method proposed by the Coalition to End Sheriff Violence in L.A. Jails for selecting the members of the civilian commission. Some object to the District Attorney having an appointment because, they argue, the District Attorney is too close to the law enforcement community. Some counter that someone needs to be on the commission who understands the requirements of prosecuting criminal cases. There are also objections to nominations by the community advocacy organizations. These organizations were described as transitory. Most agree that the size of the commission should be at least nine. The reason most commonly given was that nine votes would be needed to ensure that the Board did not control the commission.

All of those with whom the OIG spoke believe that, whether they support civilian oversight of the Sheriff's Department or not, civilian oversight in some form is inevitable.

## CONCLUSION

It is the position of the OIG that the structure of any civilian commission should be designed to fulfill the functions which that commission is expected to fulfill. The necessity for a civilian commission and the authority, the structure, the composition and the functions of a civilian commission are all significantly impacted by the effectiveness of the OIG. The effectiveness of the OIG cannot be evaluated until the OIG has become fully staffed and operational. It is therefore recommended that the Board of Supervisors defer action on the creation of a civilian commission until after the Office of the Inspector General becomes fully staffed and operational, the new Sheriff takes office and the issues of access to the Sheriff's Department's records, personnel and facilities are resolved.

If you have any questions concerning this report, please contact me at (213) 974-6100.

**Attachments**

c: John Scott, Sheriff

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Chief Executive Officer

Sachi A. Hamai, Executive Officer  
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