

INVESTIGATING CITIZEN COMPLAINTS
IS DIFFERENT

The Special Challenges of Investigating
Citizen Complaints Against Police Officers

By

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ABOUT THIS REPORT

This report is designed to initiate discussion and policy development related to the investigation of citizen complaints against police officers. All law enforcement agencies accept and investigate citizen complaints. In addition, there are now more than 100 citizen oversight agencies in the U.S. which have some input into the investigation of citizen complaints. As this report argues, citizen complaints are different from complaints or allegations in other areas of life. This report discusses those differences and suggests several ways in which complaint investigations can be improved.

This report is one of a series of reports and policy papers sponsored and published by the Police Professionalism Initiative (PPI) at the University of Nebraska at Omaha. Professor Samuel Walker is the Coordinator of the PPI. The PPI website is www.policeaccountability.org. Professor Walker can be reached at 402-554-3590 or samwalker@mail.unomaha.edu.

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INVESTIGATING CITIZEN COMPLAINTS IS DIFFERENT:

The Special Challenges of Investigating Citizen Complaints Against Police Officers

EXECUTIVE SUMMARY

All types of investigations present challenges requiring specialized knowledge, skills, and experience. Investigations of citizen complaints against police officers present unique challenges not found in other types of investigations and, in many ways, are more difficult than criminal, civil, or regulatory investigations.

1. Allegations of police misconduct are emotionally charged. Complainants may feel deeply violated and expect the complaint investigator to provide them with justice.
2. The subjects of the investigation -- police officers-- are individuals who by their status are normally respected, obeyed, and believed.
3. The complaint investigators serve multiple constituents: the complainant; police management; the officers accused of misconduct; the police department as an institution; and the community at large. Each has a significant but differing interest in the outcome of the investigation, and actions taken as a result.
4. Investigations are structurally different from civil and criminal investigations: they are inquisitorial rather than adversarial, and demand a broader perspective and approach, and an absolutely unimpeachable standard of independence, objectivity, and fairness.
5. Properly selecting and training investigators is crucial for both citizen oversight agencies and police internal affairs units.

This paper describes the unique challenges involved in the investigation of citizen complaints against police officers. While the primary focus of the paper is on investigations by citizen oversight investigators, the issues also apply to police internal affairs unit investigators. It concludes with suggestions for improving the recruitment, training and supervision of complaint investigators.

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I: THE SPECIAL NATURE OF POLICE COMPLAINT INVESTIGATIONS

Investigations of citizen complaints about police misconduct present unique challenges not found in other types of investigations and in many ways are more difficult than criminal, civil or regulatory investigations.

Elected officials, managers of civilian oversight agencies, oversight agency staff members, and members of the public must recognize the special nature of this work, and address it by properly recruiting, training, and supervising investigators.

While this paper specifically addresses citizen oversight investigations, it is also relevant to complaint investigations by officers working in police internal affairs units.

A. THE CHALLENGES OF DEALING WITH COMPLAINANTS

A complaint against a police officer is very different from a complaint against almost any other type of worker in the public or private sector.

Police officers are the most immediate symbol of the power of the state. They exercise what sociologist Egon Bittner calls exclusive rights to the use of non-negotiable force. Mainstream white culture in America views police officers as protectors deserving of respect. Victims of police misconduct can therefore feel especially violated, because the government agent expected to behave protectively, professionally, and fairly has victimized them, or has behaved in an unfair and unprofessional way.

Individuals who file complaints against police officers can be highly emotional because of the injustice they feel they have suffered, and may bring much of that emotion into the intake interview. They may feel outrage and anger, confusion, fear and suspicion. Police investigators encounter these same emotions when interviewing crime victims, and civil attorneys and investigators see them in their clients who believe they have been wronged. But they can tell the interviewee that they are on his or her side, and can offer judgmental reassurance that the internal police misconduct investigator cannot.

Citizen oversight agencies are by definition impartial, neutral fact gatherers. Consequently, the investigator cannot embrace the complainant's perspective and outrage the way an investigator in the civil and criminal arena can.

The police misconduct investigator must sometimes walk a tightrope, being open, empathetic, and reassuring to the complainant while not offering any opinion or judgment about the substance of their allegations.

This can be difficult. Few complainants work in the legal system, and they rarely understand accurately the nature of an internal misconduct investigation and the laws and regulations controlling it.

The benefits of effective investigation

The adversary system has defined redress or justice for many people as something they will receive to right a wrong. At the intake stage of a civilian complaint, the investigator cannot guarantee much besides a thorough investigation. Mediation or conciliation may be an option, but its delivery is often dependent on factors that may not be known at the time (i.e. the officer's complaint history; the seriousness of allegations not raised by the complainant). But if the allegations are sustained, the benefit comes not directly to the complainant, but to the police department (which hopefully will remediate the misconduct) and to the community at large.

For the complainant, the perception of having been wronged is what is at stake. If the internal misconduct investigation vindicates the officer or results in a "not sustained" or "insufficient evidence" finding, it contradicts the complainant's perceptions of what took place. Some people can accept such a finding. Others cannot, and may doubt the competence, impartiality, or judgment of the fact finder. The investigator with a citizen oversight agency must be able to respond to such feedback in a non-defensive manner.

B. THE CHALLENGES OF DEALING WITH POLICE OFFICERS

Many police officers view citizen investigators as suspect, because they believe that someone who is not a police officer lacks the experience and credentials to understand the demands on an officer.

Complaint investigators who work for citizen oversight agencies are not members of the closed society of law enforcement professionals, and therefore are often viewed by the officers he or she investigates as unable to fully appreciate what police officers do and the conditions under which they work.

Police departments generally have a closed, paramilitary culture that emphasizes loyalty and is distrustful and often disdainful of outsiders who judge it. This is the basis for the "code of silence" that comes into play in many police misconduct investigations.

The oversight agency investigator can try to overcome these obstacles by learning about police procedures and culture, by being scrupulously fair, and by focusing on how the investigator's independent, outsider status counters favoritism or bias and supports impartiality.

These experiences take a toll on civilian oversight investigators, who often feel isolated and beleaguered. Strong, supportive management at the civilian oversight agency helps ameliorate these feelings, and can persuade the police department to adopt rules requiring officers to behave professionally during interviews.

Complaint investigators with police internal affairs units, on the other hand, are members of the police department and share the culture and associations of the officers under

investigation. This creates a different problem, involving maintaining a posture of independence toward the officers under investigation and the perception of independence on the part of the complainant. Even so, police officers have traditionally regarded internal affairs unit officers with suspicion, feeling that they have abandoned their loyalty to the rank and file and taken the side of the chief.

C. SERVING MULTIPLE CONSTITUENCIES

Citizen oversight agencies have multiple constituencies, each with a different perspective and goal: the complainant, police managers, involved officers, the police agency, and the community at large. This places multiple demands on oversight personnel and pressure by constituents for conflicting outcomes.

1. The Complainant

The objectives of the complainant (as well as their level of cooperation and credibility) are factors that the oversight investigator must evaluate in approaching the case and its investigation.

Complainants obviously have a significant interest in the outcome of the investigation. They may feel that their reputation has been impugned, that they were unfairly criminalized or selectively treated, or may have suffered physical injuries. African Americans, Latinos, Native Americans and members of other communities often feel they have been mistreated because of their race or ethnicity. *While most civil disputes such as divorces often involve bitter feelings, police misconduct complaints are qualitatively different: perceived abuse at the hands of the official representatives of the state reinforces a sense of exclusion from society.*

Complainants may hope that the investigation will exonerate them (morally and / or legally) of actual criminal charges or a suspicion of criminal activity, that it will prove them right concerning a disputed encounter with police, or that it will buttress a civil lawsuit. Their goal may be to stop a recurring police practice in their community (such as selective detentions based on race, or searches exceeding the scope of authority), or to see specific officers disciplined, transferred, or terminated.

Complainants come forward for a variety of reasons, seeking different things. These include:

- Being listened to in an active, non-judgmental manner about their experience with police
- Having the incident noted on the officer's record
- Receiving an apology
- Obtaining mediation or achieving reconciliation with the involved officer or one of

the officer's supervisors

- Desiring an official investigation that could result in disciplinary action
- Producing a change in department practices

The complaint investigator must therefore possess a variety of skills since he or she may be called upon to play multiple roles, depending on the complainant's motivation and objective.

The investigator cannot have a "just the facts, Ma'am" approach to interacting with complainants. He or she needs to establish a positive rapport and provide appropriate reassurance to the complainant without indicating any bias. The investigator should actively listen in order to elicit a full **factual** and **emotional understanding** of what the complainant experienced. This sense of "being heard" in an open and non-judgmental way is what many complainants primarily seek (but often do not obtain from police officers receiving complaints).

The complaint investigator needs to be able to sort through facts that are often recounted in a non-chronological or disjointed manner without impatience. He or she must evaluate the complainant's credibility and the accuracy of his or her account without appearing judgmental. The investigator may need to explain the role of the oversight agency and related agencies, and the complainant's rights and responsibilities concerning the investigation and possible criminal and civil litigation. The investigator may also need to refer the complainant to outside agencies that can provide legal advice and social services.

During the intake interview, the complainant should be asked what he or she would like to see happen as a result of their complaint. The answer may provide a partial framework for the subsequent actions of the investigator.

For instance, a complainant who is amenable to mediation could have their complaint quickly directed to a mediation program (although other factors, such as the seriousness of the alleged misconduct, prior complaints against the accused officer, and possible patterns of behavior involving specific police units or activities may determine whether mediation is appropriate).

The complaint investigator should explain the results of the investigation so that the complainant will understand and appreciate it, even if he or she does not agree with the outcome.

Some findings are easier to explain than others:

- Some complaints describe police actions that on their face are illegal or improper, such as beating a prisoner to obtain a confession or using a racial slur. Proving misconduct in such cases depends on obtaining adequate corroboration.
- Other complaints involve actions that may or may not be appropriate, depending on

the circumstances. Factors that are unknown at the outset of the investigation (i.e. the actions of the suspect and others at the scene; information received by the officer; the setting; the officer's account) will determine whether police actions were appropriate. Perception is extremely important in police complaints. Citizens often believe the officer used excessive force, while the officer believes his or her actions were justified by the circumstances. Explaining why such a complaint was not sustained requires the investigator to interpret laws, department regulations, and police procedures to the complainant. In those instances, the investigator plays the role of educator.

Complaint procedures –whether an oversight agency or an internal affairs unit-- need to view complainants like dissatisfied customers: even if the oversight agency cannot give them everything they want, it should try to leave with positive feelings about the complaint process.

2. Police Managers

Police managers use complaint investigation findings to remediate and discipline officers who violate laws and regulations, to identify patterns of misconduct, to evaluate supervision and training, and to revise practices and policies in order to prevent similar misconduct from reoccurring.

To address management needs, the investigation needs to be broadly, rather than narrowly focused. It should address not only misconduct raised by the complainant, but related misconduct as well, including the actions of supervisors. Improper actions by a police officer do not occur in a vacuum. The investigation should not merely pose the question, “Did this officer do what the complainant alleged?” but should examine all of the officer's actions in connection with the incident, and the explicit or implicit reasons those actions took place. The answer to the question “Why did this happen?” is often overlooked in police misconduct investigations.

The investigation must also evaluate whether the misconduct constituted a mistake in interpreting or applying laws or regulations, or an intentional transgression.

3. Involved Officers

The officer who is the subject of a complaint investigation has an immediate and personal stake in its outcome:

- It could result in disciplinary action: loss of income or rank or even termination.
- It could result in being barred from desirable assignments or promotion.
- It could impugn the officer's reputation within the agency, community of residence, or communities policed.

- It calls into question the quality of judgment, which is an officer's most important asset: peers, supervisors, the criminal justice system, and the public expect a police officer's judgment to be sound and correct.

Police officers are given great powers (to detain and arrest, to use force, including deadly force) and broad discretion in the use of those powers. Their work is usually not formulaic. Their ability to incisively assess people and situations, and to quickly choose appropriate actions under stressful conditions is their most important attribute. To work effectively, they must feel self-confident in their skills and judgment. The oversight investigation represents a challenge to that judgment, often by an investigator who is not a law enforcement peer, and who may have no law enforcement experience at all. This can be quite threatening, and is one reason why civilian oversight has been resisted by so many police employee organizations.

Properly conducted investigations can be extremely beneficial for the involved officer, if the department uses them properly. Police officers are the recipients of expensive and carefully planned training, and represent significant investments of time, money, and resources. Misconduct findings often represent mistakes in an officer's actions that can be corrected. It is usually preferable to correct an errant officer's behavior than to hire and train a replacement. The corrective action may involve supervisory intervention, additional training, or enhanced monitoring. If the department acts professionally and responsibly, the oversight investigation can be beneficial to the officer in the long run, deterring future, and possibly more serious acts of misconduct.

4. The Law Enforcement Agency

Police managers will come and go, but the agency remains, and advancing its professionalism should be one goal of the oversight investigation.

- The police culture tends to be resistant to change, and outsiders can often identify unproductive or outmoded practices and initiate change more readily than those immersed and invested in the current system. (The community policing movement, it must be said, has brought a new culture of openness and acceptance of change in many police departments.)
- Because they are outsiders, citizen oversight investigators have less to lose by challenging accepted or long-standing values and mores.
- A good citizen oversight agency does more than identify a single act of misconduct. It examines the causes of the inappropriate behavior with a focus on preventing its recurrence. Focusing only on individual acts makes police officers scapegoats for problems that are really the responsibility of high ranking managers.
- If citizen oversight investigators are truly committed to their work, they look beyond the misconduct to its cause: the institutional, legal, and cultural dynamics that legitimize or reinforce such actions. Their curiosity does not halt once they establish

the *what, when, where* and *how*; it demands also an understanding of the *why*. They examine the underlying assumptions and cultural values of the police department and ask, “Are these values appropriate and valuable in this time and place, and in the future? If not, how can they be changed, and what can we do to foster that change?”

For instance, in the late 1960s and early 1970s, the New York City Police Department was rocked by corruption scandals. Previous investigations of officers accepting bribes had focused on individual wrongdoing while ignoring institutional corruption and failure and a culture that allowed acceptance of payoffs to cops. It was only when investigations shifted to the failures of police managers that meaningful change even began.

5. The Community At Large

Citizen oversight agencies and police departments alike cannot function effectively without the trust of the community at large. Maintaining that trust is an ongoing task.

Investigators must be as open and as forthcoming as the law allows. Perceptions of secrecy lead to suspicion and distrust. Every complainant and every witness contacted is a member of the community served, and should be treated with dignity and respect.

This can be challenging. Many complainants have strong grievances, and many civilians, especially those who have had negative encounters with police, believe that oversight agencies are weak, ineffective, or powerless. Community members frequently expect oversight agencies to provide justice, and to address long-simmering problems and resentments within a short time. They may have conflicting and unrealistic expectations about what the oversight agency can deliver, especially if it is new. Sometimes these sentiments will be expressed strongly, making the oversight investigator feel defensive or personally attacked.

Oversight investigators must continually strive to build bridges to the communities their police agencies serve through thoughtful and systematic public outreach and education, openness about their procedures, and, above all, a willingness to listen. Oversight agencies should explain their procedures, including their powers and their limitations under the law, through brochures (published in multiple languages), web sites, appearances at community forums and public events. Their findings should be as accessible as possible to complainants and the public, since openness is a key to establishing trust and building positive relationships. Community representatives should be invited to train oversight staff about their history and culture, and about their interactions with the police. The focus should be on how the oversight agency can understand and address this community’s needs and concerns.

D. STRUCTURAL DIFFERENCES IN COMPLAINT INVESTIGATIONS

Citizen complaint investigations are structurally different from the criminal and civil investigations that law enforcement investigators and private investigators conduct.

Criminal and civil investigations often begin with a theory or a scenario of the case, while oversight investigations must explore and counter-balance at least two different theories, those of the complainant and the police.

Criminal and civil investigations take place within an adversarial system, where truth and justice are supposed to emerge after two opposing sides gather and present facts supporting the strengths of their cases. The system assumes that a weakness in either side's case will be identified and highlighted by the opposition. This can limit the scope of an investigation, since neither side is required to advance or substantiate the scenario favorable to its adversary.

Police complaint investigations, in contrast, are an inquisitorial investigation, where one investigator is expected to gather and rigorously evaluate **all the facts and evidence** in a dispassionate and objective manner. The investigator must "play both sides of the board," subjecting each fact to the scrutiny an adversary would. Adversarial proceedings occur only in those agencies where there is a formal hearing, or if an officer appeals a disciplinary action to a civil service agency, other appeal board, or in court.

1. Citizen complaint investigations should be both reactive and proactive

As suggested previously, complaint investigations should do more than identify a single act of misconduct. It should examine the causes of the inappropriate behavior, with a focus on preventing its recurrence. Some oversight agencies take this proactive approach. Unfortunately, some do not. If civilian oversight investigators are truly committed to their work, they look beyond the misconduct to the institutional, legal and cultural dynamics that legitimize such actions.

2. Going beyond fact gathering: reaching findings

Complaint investigators often must determine whether police misconduct occurred, a dramatic step that moves beyond fact-gathering.

This process of evaluation of evidence, and analysis and application of laws and regulations is very different from mere fact-gathering. The investigator must now play the role of fact-finder, weighing the evidence, interpreting the relevant laws and regulations, and reaching a decision that can have far-reaching ramifications, and that may be challenged and re-examined.

This can be the most difficult part of the process for many investigators, for a variety of reasons:

- Analyzing the evidence to reach a finding can expose gaps in the investigation and unanswered questions of facts and law.

Experienced investigators look ahead like skilled chess players, anticipating how any set of facts could be challenged and “boxing in” evidence so it is solidly supported. This is especially important during interviews, where following a narrative flow can prevent an investigator from seeking a crucial clarification. Some investigators feel a temptation in these situations to “go with what they have,” rather than conduct further investigation, especially when the likely result is a finding of “insufficient evidence” or “not sustained.”

- Decision-making is easier for some individuals than others.

The ideal investigator will not reach findings too hastily, but will not be inhibited about reaching a decision. For many, the process of summarizing and analyzing the evidence in writing clarifies their thinking. This is one reason why oversight investigators should have excellent writing skills.

- Investigators may be hesitant to reach a finding of misconduct against a police officer.

Overcoming a bias in favor of the police runs against many individuals’ cultural expectations and values. The investigator may feel that a finding of guilt will result in adverse consequences for an officer whose intentions were good, who has a positive work record, or whose actions, while improper, addressed a laudatory goal (i.e., conducting an illegal search which takes an automatic weapon off a gang member).

The investigator may consider the officer’s infraction to be a minor one or a “technicality,” and may confuse fact-finding with the administration of discipline. The latter is the province of police managers, and the investigator should not attempt to short-cut the authority of police managers by dismissing a proven complaint to avoid what he believes is unwarranted disciplinary action.

The investigator may fear being held personally accountable for an adverse finding by the accused officer’s colleagues, which can be especially troubling if the investigator lives within their jurisdiction and has occasion to require police services, or comes to the attention of police -- for instance during a traffic stop.

E. THE DIFFERENCES BETWEEN PROCESSING AND INVESTIGATING COMPLAINTS

Processing complaints and investigating complaints are two very different, but overlapping activities.

Processing Complaints

Processing complaints involves the basic tasks of receiving and logging the complaint so it

becomes an official department record. It involves documenting information such as the date, time and location of the incident, identifying the officers and police units involved, and obtaining information about the characteristics and activities of the complainant and the officers at the time of the police encounter (i.e. race and ethnicity of officers and complainants; length of officer's service; whether the officer was operating alone, or with a partner; whether the complainant was intoxicated, was disabled, was driving or on foot; whether a consent search was involved).

All this information is relevant for documenting when, where and how complaints are generated, identifying specific officers, units and police activities generating complaints, and highlighting patterns of behavior and other factors that police and civic managers, and civilian oversight agencies use to analyze patterns of behavior. The information should be entered into a database that will provide a snapshot of this incident, and will allow compiling and analyzing all other complaints received by the agency. This data is also essential for use in early warning systems that identify officers who generate a certain number of complaints within a set time period.

Processing the complaint can also involve interviewing the complainant and explaining the investigative process to them, obtaining signed releases for their records, and determining the complainant's goals in lodging the complaint. Obtaining basic records, such as the police or arrest report, police communications records, jail records, the complainant's mug shots and evidence of injuries the complainant suffered (such as contemporaneous photographs or medical records) may also be part of the complaint intake process, and may be necessary to properly categorize the complaint for statistical and early warning system needs. These latter tasks may overlap with the **complaint investigation**.

Investigating Complaints

Investigating complaints involves a diligent fact-finding inquiry to determine:

1. Whether the conduct alleged by the complainant took place
2. Whether such conduct was warranted under relevant laws and police department regulations
3. Whether the accused officers engaged in any other misconduct in connection with the incident under investigation
4. Whether department policies, practices or training needs to be re-evaluated in light of issues raised by this complaint, and similar complaints

The complaint investigation requires conducting fieldwork and detailed interviews with the complainant, witnesses and involved police officers, obtaining and analyzing police, jail, medical and other records, creating event chronologies and matrices, studying department procedures and training materials, and analyzing laws and department regulations. It is complex, often difficult work that requires a committed, diligent and impartial investigator intent on ferreting out the truth.

Complaint processing can often be conducted by clerical personnel, trainee investigators or

even by community members. Complaint investigation requires more complex, sophisticated and nuanced skills. Oversight practitioners must be able to recognize where one set of tasks ends and the other begins, and must ensure that the personnel carrying out each is qualified and committed to their work.

Many police departments have been criticized for merely processing complaints rather than aggressively investigating them. Citizens often feel that such agencies handle complaints in a formulaic manner, logging them and preparing relevant paperwork but conducting a half-hearted investigation. Because the overwhelming majority of citizen complainants are resolved with findings of “insufficient evidence” or “not sustained,” misconduct investigators – whether sworn or civilian – may be tempted to let the anticipated finding drive the investigation.

Managers of oversight agencies and internal affairs units and civilian monitors and auditors must be vigilant in identifying investigators who are lapsing into a “complaint processing mode,” failing to identify and analyze potential misconduct, to aggressively pursue relevant witnesses and evidence, or to act dismissively towards the complainant’s claims without justification.

All misconduct investigative agencies should have clear written standards for conducting investigations, including “due diligence” procedures for locating and contacting witnesses. These specify what attempts (such as canvassing an area, or posting flyers) should be made to identify witnesses, what public and other records must be checked in order to locate a witness, and how many attempts should be made, in person, by telephone, and by letter, to contact a witness before efforts are abandoned and the case is closed. These standards exist in the civil litigation and legal investigation fields, and can be readily adapted to police misconduct investigations.

II: IMPROVING COMPLAINT INVESTIGATIONS

A. UNDERSTANDING POLICE STANDARDS AND PRACTICES

Citizen oversight investigators must know and understand current police practices, techniques, and standards, both on the formal and the informal, operational level.

As outsiders, citizen oversight investigators face a special challenge regarding concerns by officers that they do not understand police work. The best way for them to overcome this obstacle is to gather as much knowledge as possible about patrol practices, laws of detention, arrest and search and seizure, booking procedures, and use of force guidelines and instruction. Oversight investigators must be familiar with the many ways officers’ actions are documented in paper and computerized records. They must know the standards officers in their department are held to in a wide range of areas, from crowd control practices to handling of domestic violence incidents to investigation of hate crimes.

This level of knowledge and understanding exceeds what most criminal defense or civil investigators need to know. The legal issues that most civil and criminal investigators encounter are clearly delineated in statutes and case law, and the investigator rarely has to interpret independently how a law should be applied. In contrast, the police oversight investigator is applying department regulations that may be subject to multiple interpretations, with no case law as guide.

Interviewing

This understanding is crucial throughout the oversight investigation, but especially during interviews with the complainant and with accused and witness officers.

Any interviewer can take a complaint from a citizen. The complainant will describe his or her encounter with the police, and will usually highlight the actions or inactions that led to the complaint. The interviewer will ask follow up questions, but without an understanding of police practices, will probably miss significant evidentiary and legal issues.

In contrast, when a skilled complaint investigator interviews a complainant, the investigator views the police encounter through the prism of someone who understands police practices and procedures, mentally checking off what he or she knows officers are required to do in such a situation.

For instance, if the complainant was alone and two officers were present, the investigator immediately knows that standard procedure is for one officer to make “contact” with the complainant, while the second officer stands by as “cover.” If the complainant says he or she was handcuffed but not arrested, the investigator (in California) knows that the officer is required to issue a Certificate of Release from detention, a legally mandated form, and will ask the complainant if the officer ever issued a piece of paper. If not, the investigator will add this allegation, of which the complainant had no knowledge and did not raise.

This level of familiarity with police practices and procedures is extremely beneficial during officer interviews. The trained investigator will more easily spot gaps, inconsistencies, and departures from established police practice, and can assess whether an officer’s account of an incident is plausible and consistent with what a reasonable police officer would do. During interviews with police officers, I often ask about their standard practice concerning certain procedures, or about what they and other officers have done in similar situations in the past. This allows me to identify departures from the norm.

Understanding police work does not require that the citizen oversight investigator have prior law enforcement experience. It does require that oversight investigators be actively inquisitive and committed to learning. The oversight investigator does not have to undergo the lengthy and rigorous training to **be** a police officer; he or she needs enough training and information to **understand what police officers do**, and the **legal and regulatory framework in which they do it**.

Police practices and techniques change as laws, regulations and training changes. The

successful investigator can never assume that he or she knows everything. Formal and informal training must be ongoing. But it will have little benefit if the recipient of the training is not eager to learn: to add more knowledge and understanding to his or her storehouse of information about criminal law, laws of search and seizure, police practices and training, and the communities the police force serves.

B. THE NEED FOR ENGAGING THE COMMUNITY

The oversight agency must be independent and impartial. Unfortunately, this can isolate it from the communities it serves.

Citizen oversight agency staff members may lack the support, shared history and sense of community that criminal and civil investigators (and others who judge and evaluate evidence) enjoy.

Because citizen oversight agencies must remain independent, there is often no defined community or constituency that supports, reinforces, and promotes its goals and mission. There is usually no recognition or tangible reward for high quality work or significant achievement.

The findings in many oversight investigations leave one or both parties displeased. Oversight personnel face expressions of dissatisfaction from police officers, complainants and community members; opposition from individual officers and their unions; and from police managers and agencies. Harsh criticism, sometimes delivered in public forums (such as government or community meetings) or in the press, can tarnish the reputation of the individual investigator and the agency itself. Enduring such criticism, when it is unwarranted, is demoralizing.

This often challenges the resolve and commitment of citizen oversight personnel. The lack of a defined and accessible local support network can make this work isolating, and can undermine the investigator's commitment and resolve.

Oversight investigators receive no rewards and little recognition for exemplary work, while criminal and legal investigators may earn praise, monetary bonuses, and recognition from colleagues and professional organizations, as well as the prestige and satisfaction of being part of a winning team when their side prevails in a trial or hearing.

The oversight agency's achievements, however, are often long-term and may not be immediately (or ever) recognized or credited. A difficult case that results in a sustained complaint against an officer may be ignored or treated lightly by police managers, undercutting the authority of the oversight agency and encouraging officers to treat it frivolously.

The oversight agency often occupies of sort of "no man's land," serving, but separate from the constituencies it serves. The oversight investigation is "*process focused*" rather than "*goal focused*," and is concerned with maintaining the integrity of the process and of the

police agency rather than with a specific outcome.

To address this sense of isolation and lack of community, government officials and managers of civilian oversight agencies need to create a work environment where oversight personnel feel valued, where quality work is recognized and rewarded, and where the values of the agency are emphasized on a day-to-day basis. Each oversight agency should have a mission statement (as many police agencies and professions do), clearly describing its goals and values. Personnel should be selected, retained, and promoted based on a commitment to excellence and to the tenets of that mission statement.

C. DEVELOPING PROFESSIONAL STANDARDS

Citizen oversight of police is a small and comparatively new field, and lacks the history, formal training, and certification criteria and professional recognition from which other types of investigation have long benefited.

Law enforcement has a long institutional history and storehouse of knowledge and techniques. Police science is a recognized academic discipline, and sophisticated training is available at many professional levels to educate criminal investigators. They have a wide range of colleagues throughout the United States and the world whom they can draw upon for expertise, advice, and assistance. They typically share common training, experience, and goals, and have recognized professional associations that advance knowledge and professionalism.

Private investigators also have professional associations, training programs, and communities of attorneys upon whom they can draw, and which reinforce their goals and ethics. In the course of my career I have drawn extensively upon many of these to advance my skills.

Judges, hearing officers, and arbitrators have recognized accreditation bodies, clearly established operating procedures and codes of ethics, ongoing training, and a community of peers.

The practice of civilians conducting investigations of police misconduct is comparatively new, and even though there are now more than 100 oversight agencies in the United States, the number of practitioners is comparatively small. Organizations like The National Association for the Civilian Oversight of Law Enforcement (NACOLE), founded in 1993, and its predecessor, the International Association for the Civilian Oversight of Law Enforcement (founded in 1985) have made excellent strides in providing support, resources and training for oversight practitioners. But there are no well-established standards of practice, codes of ethics, recognized training programs, or an accreditation process for citizen oversight as there are for other professions.

Developing such standards will enhance the professionalism and credibility of these agencies, as it has for other professions including law enforcement. It will also provide badly-needed guideposts for municipalities seeking to establish such agencies in their

communities, or to improve existing civilian oversight mechanisms.

Additionally, it will help establish criteria for the appointment of individuals to civilian oversight agencies. A well-intentioned oversight mechanism can be undermined by the appointment or hiring of unqualified or untrained administrators and personnel. San Francisco offers an excellent example.

D. STANDARDS FOR INVESTIGATORS

Recognized standards exist for innumerable occupations and professions, which describe required levels of experience, skills, and training and certification. These standards help ensure that individuals have a certain level of competence and ability to perform their jobs properly, and that they adhere to recognized standards of performance and ethical conduct. Standards become more important as the level of trust in the performance of the practitioner increases: we expect surgeons, engineers, airline pilots, and police officers to have passed rigorous certification procedures. The individuals who investigate, report on, and evaluate police misconduct should also meet recognized professional standards.

I believe that a journeyman-level investigator should have at least five years of investigative experience, and that a civilian oversight agency should require this of all applicants for such positions. The applicant for a journeyman-level position should have extensive experience conducting evidentiary investigations, locating witnesses, gathering evidence and writing detailed, accurate and coherent reports.

This model can work well in citizen oversight agencies. It gives investigators seeking to advance to a higher level an incentive for good performance and accumulation of new skills. It allows the hiring of motivated applicants for entry-level positions who have little or no specific investigative experience but have some understanding of legal or criminal justice issues. As these individuals gain experience, they become eligible to advance to job classifications with greater responsibility.

The law enforcement profession has not adopted national standards for internal affairs unit investigators. Generally, police departments assume that officers with criminal investigation experience will be qualified to function as investigators. This assumption, however, ignores the issues raised in this paper: that citizen complaint investigations are *different*, and that dealing with citizen complainants and investigating fellow officers requires poses special challenges.

E. RECRUITMENT AND HIRING

Managers of new citizen oversight agencies must frequently re-invent the wheel when determining recruiting, hiring, and training criteria. Here are some guidelines for recruiting, hiring, and training based on my observations and experience as both a line investigator and a manager at OCC, and on my experiences working with, and hiring and training numerous investigators in the private sector.

What qualities should a successful oversight investigator possess?

- Inquisitiveness
- Diligence
- Inventiveness
- Optimism tempered by skepticism
- Independence
- Objectivity
- Empathy
- Commitment to civilian oversight

1. Inquisitiveness

An inquisitive nature and a desire for knowledge for its own sake are hallmarks of the successful investigator, who recognizes that learning is ongoing and that each investigation presents a new world to explore and understand.

Investigators are open to new ideas and information. Most people claim that they are, so you need to examine the applicant's life, work and academic experience, and to present them with hypothetical scenarios designed to test their flexibility, their analytical skills and their judgment. We live in a culture where everyone has a quick and often resolute opinion, often based on minimal information. A good investigator reserves judgment until all the facts are known. They view a set of facts like a multi-faceted stone that must be examined from every angle: each facet is different and alters the shape and appearance of the stone depending on how it is viewed.

In addition to trying to view things from many different perspectives, a good internal misconduct investigator is always reaching to see, learn, and understand more tomorrow than he or she did today.

These qualities are important for several reasons.

- a. As stated earlier, the internal misconduct investigator has very different priorities than does the civil or criminal investigator. The primary goal of the internal misconduct investigator is carrying out the investigative process itself: a careful, thorough, and fair investigation and evaluation of facts. There are many obstacles in the way, and it is easy to become disillusioned. Managers and those responsible for organizing and overseeing civilian oversight agencies must ask, "**What** is this investigator's motivation for doing an excellent job? **How** and **why** will they surmount the obstacles they encounter?"

The same forces that motivate a good journalist, historian, or scientific researcher will also motivate an excellent investigator. The investigator who finds joy in the process of discovery itself, who gets satisfaction from unearthing facts, locating difficult to find witnesses, and analyzing evidence will have the motivation to do a difficult and

often unrewarding job. The individual who merely wants a secure civil service position will likely become disheartened and will merely go through the motions, processing complaints in a formulaic fashion rather than aggressively investigating them with a zeal for ferreting out the truth.

- b. An internal misconduct investigator cannot pre-judge a set of facts. Individuals who see things in black and white terms or who are quick to offer an opinion and take a side will not make fair and effective civilian oversight investigators. These attributes may work well for advocates but can cloud an internal misconduct investigator's thinking, diminish his or her analytical ability and render him or her unable to evaluate facts fairly and impartially.
- c. Citizen oversight is a comparatively new and innovative field. One of its most important functions is making policy change recommendations to police agencies. A creative and innovative investigator will be quick to identify potential policy changes, and will seek out best practices in other agencies. Someone less likely to embrace new ideas will be more willing to go along with whatever is in place.

2. Diligence

A good complaint investigator possesses zeal not just to **obtain**, but to **understand** all the relevant facts.

For instance, experienced and insightful investigators understand the difference between **an event** and an individual's **perceptions of that event**. The first is **objective**, the second **subjective**. A person's emotions derive from their **perception** of the event.

Those perceptions -- how that individual understands what happened -- are affected by what they saw, heard, smelled, etc. They may also be affected by many other factors, such as conversations with other witnesses, observations of evidence after the event has ended, information gleaned from media accounts, assumptions and conclusions they draw, prior life experiences, and cultural and community values and opinions. A skilled investigator attempts to clarify the source of a witness' perceptions, and to gain insight into the emotions underlying them. This requires diligence, patience, sensitivity and cultural understanding that goes far beyond the "Just the facts, Ma'am" approach of many police investigators.

The impetus to make an additional trip to a dingy residential hotel seeking a witness, to extend an interview with a difficult subject until all necessary information is obtained, to try additional steps to locate someone comes from that serious commitment. If your investigators don't have it, your investigations, your agency, and your police department will suffer for it.

3. Inventiveness

Investigative work is not formulaic and often requires improvisation.

Good investigators are inventive, using their skills and tools in a wide variety of ways. They

are like musicians who have mastered their instruments and can improvise at will. For them, each case can be a challenge, a new opportunity to assemble and disassemble a set of facts, to solve a problem. When obstacles appear, they think of how best to go around, over, or under them. They seek out the shortest, most expeditious path to a given piece of information.

The screening process for civilian oversight investigators should include several hypothetical scenarios designed to gauge the applicant's ability to approach problems inventively.

4. Optimistic yet skeptical

A good investigator must approach each investigation with the appropriate balance of optimism and skepticism.

Investigators must be optimistic about their ability to use their skills and training successfully in order to surmount the many obstacles they will encounter.

Bureaucratic delays, difficulties locating and contacting witnesses, resistance from officers under investigation, and the failure of police managers to take appropriate action can lead to feelings of frustration, discouragement, anger, and even depression.

The lack of immediate rewards for quality work can compound this. An optimistic individual can persevere in the face of adversity and can see beyond immediate frustrations, placing those setbacks in proper perspective and focusing on the larger missions and goals of the agency.

The vast majority of complaints are resolved with findings of "insufficient evidence" or "not sustained" and will essentially "go nowhere." A pessimistic investigator may make premature assumptions about a complaint's likely disposition, creating a self-fulfilling prophecy, and dooming provable complaints to "insufficient evidence" findings because they are not viewed as meriting serious attention.

An investigator must be realistic enough to recognize that many people will lie to him or her, that police officers will violate the law, and that respected institutions sometimes betray their values and fail the people they are designed to serve.

A good investigator must be intelligently skeptical, able and willing to see through a veneer of falsehood. As stated earlier, most of us have a serious investment in believing that our essential institutions--the legal system and law enforcement prominent among them--act fairly, rationally, and effectively. Finding that an officer committed misconduct may mean acknowledging that this officer (and possibly witness officers as well) lied during the internal misconduct investigation, and that they lied convincingly and plausibly. This recognition can shake one's faith in an institution we all must rely upon at one time or another, and some people would prefer not to make this realization.

The internal misconduct investigator must be equipped to deal with unpleasant realities without becoming cynical, for civilian oversight work should be viewed as a positive,

proactive response to the problem of police misconduct.

5. Independence

The investigator must be open-minded, willing to accept information, but able to think independently. Investigators need to assess and analyze complex and inconsistent information and arrive at a conclusion supported by facts, but not influenced by emotion, bias, favoritism, or concerns about expediency or politics. They must be willing to withstand opposition and criticism from officers, administrators, complainants, politicians, and community members who disagree with their findings.

Thinking independently is a key ingredient in **investigating complaints** as opposed to merely **processing complaints**. It involves challenging assumptions, not accepting things at face value, and not taking a rote or formulaic approach to one's work.

As mentioned earlier, challenging a police officer's account of an incident during an investigative interview requires the investigator to overcome psychological and cultural barriers. It involves a reversal of the usual role, in which the officer holds the authority and asks the questions. It is easy for an investigator to accept, or be co-opted by an officer's explanation; but the investigator must have the independence and perseverance to actively question and challenge it when necessary, to separate the individual's explanation from the enforcer's role.

The oversight investigator must be confident in his or her skills and the validity of their mission. He or she must maintain a singular focus on conducting a fair and independent investigation. This requires strong character and commitment, and agency management willing and able to resist outside interference.

6. Objectivity

The oversight investigator must be aware of his or her potential biases, limitations, and preferences, and must step back and try to hold them in check when conducting investigations and evaluating facts. When a potential bias is so pronounced that it jeopardizes the integrity of the investigation, the investigator must recuse himself.

No one is free from bias. We all have preferences, likes, and dislikes. We all find certain things annoying, are frustrated by certain experiences. The choices we make in life are usually influenced by these factors.

Conducting objective investigations starts with an awareness of one's biases, then attempts to step back from them and observe how and when they crop up in our work.

Maintaining objectivity is an ongoing endeavor. Discussing cases with colleagues and absorbing feedback from case reviews is a good way to identify areas where one's objectivity may have slipped.

7. Empathy

Empathy enables the investigator to step into another's shoes. Investigators must recognize that they deal not with sterile facts but with emotionally charged encounters.

Showing empathy goes a long way towards making complainants feel that they are being listened to and taken seriously. It is also important to appreciate the effect of the incident and the complaint investigation process upon the involved police officer.

It is easy for oversight investigators to become jaded and cynical, since they deal with conflicting accounts of an event, and often encounter deceit and misrepresentation. Maintaining an empathetic approach is difficult. Being empathetic towards someone means accepting the **validity of their emotions** concerning an incident, while reserving judgment about the **validity of their factual account** of the incident.

8. A commitment to citizen oversight

Because it offers fewer tangible rewards and greater obstacles than other types of investigative work, oversight investigators should have a strong interest in, and commitment to citizen oversight.

As stated earlier, this type of work is difficult on a professional and personal level. It can be frustrating, stressful, and intimidating. It offers few immediate rewards. However, done effectively over time, it helps maintain the professionalism of a police agency and maintains the trust of the community in their police force.

But those are long-term goals, and the investigator -- mired in a heavy caseload, with demanding complainants, uncooperative police officers, and innumerable difficulties in resolving cases -- may have trouble seeing the forest for the trees.

Citizen oversight investigations can seem routine, involving familiar scenarios of misconduct, similar legal issues, and the same catalogue of police, jail, and medical documents. In all oversight agencies and internal affairs units, most complaints are resolved with the neutral finding of insufficient evidence to prove or disprove the allegation. An investigator lacking serious commitment to the process can fall into the habit of assuming that most cases will fall into this category, and will therefore devote insufficient time and effort to them.

An investigator who believes in citizen oversight, and who is invested in the process will deal with these challenges and frustrations more effectively than someone who is merely doing a job.

F. EVALUATING APPLICANTS

The best way to gauge an applicant's suitability for citizen oversight work is to use a multi-faceted application process:

- A written application, with essay questions designed to flesh out the applicant's work and life experiences and to demonstrate how they approach problems, analyze information and present ideas.
- An "in-basket" exercise, in which the applicant must review and analyze evidence and relevant laws, prepare a written report, and discuss the material reviewed, and the investigation that would be undertaken in response.
- A role-playing exercise (such as a mock interview) designed to gauge the applicant's oral communication skills, ability to elicit specific information, and ability to overcome obstacles by thinking inventively.
- A detailed interview in which the applicant is presented with several hypothetical scenarios (some of them involving ethical issues), and is asked how he or she would approach each one. This is designed to gauge an individual's knowledge of investigative techniques, ability to evaluate and analyze facts, to plan a course of action and to weigh and consider alternatives. It also evaluates commitment to professional ethics and to fair and effective oversight. Applicants should also be questioned about their emotional reaction to each scenario, in order to gauge their awareness of their own psychological processes, which impact their ability to be fair and objective.

This process is time-consuming, but will help avoid hiring people lacking the requisite skills, experience, and temperament to do a difficult and challenging job effectively.

G. MINIMUM STAFFING LEVELS

Across the country, there are wide variations in staffing levels for oversight agencies. The Office of Citizen Complaints in San Francisco, which regularly receives between 1000 and 1100 complaints a year, is mandated by law to have one investigator for every 150 police officers. I think a better yardstick might be a combination of the activity level of a police agency (the number of calls for service and police-civilian encounters) combined with the total number of complaints (bearing in mind that the latter number may increase when a civilian oversight agency is established, or becomes more visible).

H. MINIMUM TRAINING REQUIREMENTS FOR OVERSIGHT PRACTITIONERS

Mandatory training for new investigators, auditors, administrators, and hearing officers should include:

- The role of their police agency in the criminal justice system: procedures relating to

arrest, arraignment, incarceration, and prosecution

- Laws and agency policies governing stops, detentions, searches, arrests, booking, and use of force
- Patrol practices and procedures
- Organization, history, and cultural evolution of the law enforcement agency
- Understanding the history, culture, and concerns of communities served by the law enforcement agency, especially those in which problematic encounters have occurred
- Practices and procedures for internal misconduct investigations, including interviewing and report writing, collection and preservation of evidence, sources of information, and due diligence standards for locating witnesses
- Communicating effectively and empathetically with complainants
- Evaluating evidence and the credibility of witnesses
- Social and psychological factors involved in decision-making in police misconduct cases

Ongoing training should be mandatory, since laws change constantly, and the field of civilian oversight is evolving and refining its practices. All practitioners need yearly updates on legal issues and changing police and civilian oversight practices. Refining communication skills, improving cultural awareness and reinforcing personal and institutional ethics is an ongoing process, and should be addressed with regular trainings and discussions. Oversight practitioners also need ongoing interaction with members of the communities served so they can identify and deal proactively with problems and trends that impact their mission and that of the police department.

I. INVESTIGATOR TRAINING PROGRAMS

Each agency should have a formal training program for oversight investigators to teach (or reinforce): interviewing; utilizing information sources; locating witnesses; writing reports; organizing and analyzing evidence; cultural awareness and sensitivity; criminal law and procedure; laws of search and seizure; police patrol procedures, and related skills. Training designed for police agencies may be one-sided. The oversight agency should also look to training programs offered to defense investigators, such as the Defense Investigator Training Academy, a series of college-credit courses offered by the California Defense Investigator Association.

Most important, the skilled investigator needs to learn how his or her police agency operates, both on a formal basis, and in its day-to-day interactions with the community. Investigators

need to understand the rules and structure of the agency and the laws that govern its action, the expectations of how officers will respond in certain situations and how the officers are organized, trained and supervised.

Documentation often forms the framework for oversight investigations, establishing the *who*, *what*, *when*, *where* and *how* of a civilian-police encounter. The investigator must master the agency's documentation system, knowing what documents to seek, how they are generated, where they are maintained, and what they mean.

Focused ride-alongs

Perhaps the best way for a new investigator to gain expertise about a department, its records, and the communities it serves is through "focused ride-alongs" with officers from as many units, and on as many shifts as possible. The investigator will be present on the ride-along as an observer only, but should be allowed to witness as much of the officers' official activities as possible, including responses to calls for service, on-view encounters, detentions, arrests, searches, administration of field sobriety tests, and booking of prisoners.

Following each ride-along, the investigator should obtain and analyze all accessible documents prepared in connection with the officers' activities during that shift, including:

- Communication records
- Watch and equipment reports
- Police reports
- Arrest reports
- Booking documents
- Property records for individuals arrested

This will allow the investigator to see how police actions are reflected in the many official records and documents generated by police and related agencies. Understanding which documents to obtain and how to interpret them is one of the most fundamental skills a civilian oversight investigator requires.

The investigator should also review the actions the officers took in relation to relevant law and department policies and regulations. This provides a type of case-law approach, similar to the way law students study the law. The investigator will take a real life scenario witnessed B a detention, a search, an arrest B and use it as a basis for understanding how what is written in law books and department manuals is translated into actions on the street.

The ride-alongs offered other significant benefits as well. Seeing a victim or a witness to a crime interviewed, a foot-chase, an arrest, a search, or the use of force cannot compare to having it described. The ride-alongs gave me a tremendous appreciation for the many challenges faced by police officers, and the variety of personalities and skills they brought to meet them. I also learned about my city's myriad communities, their special needs, and the challenges (language and cultural barriers, for instance) that they presented to law enforcement.

Interacting with officers during ride-along was an important outreach tool to a rank-and-file that was skeptical about a new oversight agency. My willingness to learn about police work first-hand gained me, and the agency, badly needed credibility. Lacking information and understanding, many officers assumed that the oversight investigators were biased against police. By demonstrating open-mindedness, I corrected their assumptions. Ride-alongs also gave me an opportunity to interact with officers on an informal level, where I was not in my role of complaint investigator, but was instead a student of police work.