

PERFORMANCE MEASURES AND ACCOUNTABILITY OF OVERSIGHT AGENCIES

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Date Tendered: Monday 20 May 2013
Hearing Number: 2
Hearing Location: Jubilee Room

Document Title: Tendered Journal Articles and Powerpoint Presentations

This article was downloaded by: [Griffith University]

On: 08 May 2013, At: 00:15

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Police Practice and Research: An International Journal

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/gppr20>

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Published online: 06 Mar 2013.

To cite this article: Tim Prenzler , Mateja Mihnjac & Louise E. Porter (2013): Reconciling stakeholder interests in police complaints and discipline systems, Police Practice and Research: An International Journal, 14:2, 155-168

To link to this article: <http://dx.doi.org/10.1080/15614263.2013.767095>

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RESEARCH ARTICLE

Reconciling stakeholder interests in police complaints and discipline systems

Tim Prenzler*, Mateja Mihinjac and Louise E. Porter

This article summarizes surveys of three key stakeholder groups in the police complaints and discipline process: the public, complainants and police. In general, public and complainant surveys showed strong support for independent processing of complaints. Complainants were generally deeply dissatisfied with police-dominated and mixed (police/independent) systems. Police experiences and views regarding complaints systems were divergent, but with high levels of satisfaction where they experienced independent processing. Overall, it appears that a much greater role for an independent agency can be managed in a way that substantially satisfies all three groups, especially with the inclusion of informal resolution and mediation options.

Keywords: complaints against police; police oversight; complaint resolution

Background

The creation of oversight agencies has largely occurred in response to the abysmal record of police internal investigations. Numerous inquiries and reviews have stridently condemned police for protecting officers and deflecting or threatening complainants (Goldsmith, 1991; Hopkins, 2009). The trend toward greater independence has occurred largely within democratic contexts, with governments obliged to give ground to lobbyists on the issue. Nonetheless, the argument that only police have the expertise and understanding to manage complaints continues to dominate. Most oversight agencies engage in very limited reviews of police investigations and discipline. This is despite the ongoing record of failure, despite the generic nature of investigative skills, and despite indicators of high levels of stakeholder dissatisfaction (Hopkins, 2009).

Inquires and reviews have also frequently found that oversight agencies lacked the powers or resources to counteract the problem of bias. Consequently, there are ongoing moves for agencies to take a much greater role in directly processing complaints. Some agencies have prescribed degrees of involvement for different matters, focused on independent investigation of more serious cases. Others have discretion to independently investigate serious matters (Hopkins, 2009; Porter & Prenzler, 2012). At this stage, however, the system in Northern Ireland, established in 2000, appears to be the only one that embodies substantial independence – in terms of the institutional separation of the Police Ombudsman from the Police Service and the large scope of investigations by the Ombudsman (Criminal Justice Inspection Northern Ireland, 2011; Porter & Prenzler, 2012).

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Improved public confidence is a major goal of complaints handling bodies. Therefore, the general public, together with complainants and police, are viewed as key stakeholders in these systems. While agencies are not expected to serve a particular client base, participant satisfaction – particularly in relation to perceived impartiality and fairness – is one indicator of the effectiveness and legitimacy of a system. This article, therefore, reviews stakeholder surveys of different complaint handling systems, differentiated by the degree of independence from police. While individual views may be biased by personal perspectives or agendas, triangulation between sources minimizes these effects. Thus, if stakeholders with potentially different agendas can be satisfied by the same system, this goes some way to validating its effectiveness.

Method

A systematic review was undertaken to identify studies of the public, complainants, and police about the issue of who should process complaints; and of complainants and police about their experiences of different systems. Databases searched up to August 2012 included Criminal Justice Abstracts, CINCH, Google Scholar and Google Search. A large number of keyword combinations were employed; including ‘complaints against police,’ ‘complaint investigation,’ ‘public opinion,’ and ‘police oversight’. The reference lists of publications identified by this means were also searched, and initial sources were used to inform searches of agency websites.

A shortlist was developed of public opinion surveys that included questions about complaints against police. These surveys are generally conducted by telephone and often involve outsourcing to private survey firms. Most are careful to engage in proper sampling and report on the demographics of respondents. Surveys were included in the final list if they had a question that essentially asked, ‘who should investigate complaints against police?’ Surveys were excluded that asked questions about respondents’ views of the agency in their jurisdiction, because the questions were not sufficiently generic. A number of limitations apply to these surveys. Responses are likely to be affected by contextual factors, which may be hard to identify, such as the nature of police-community relations or particular policing scandals. The wording of questions can also restrict the range of views. For example, questionnaires tend to polarize responses between independent and internal investigations, excluding the option of mixed formats; and they usually do not ask for views about how different types of complaints should be handled.

Two shortlists were developed for the surveys of complainants and police about their experiences with complaint systems. Surveys of complainants are mainly conducted by post, with reportage of response rates and demographics. Surveys of police are conducted by various means, including internal post. Questionnaires often ask numerous specific questions about diverse aspects of the complaints process. The results reported here are focused on investigations, and responses to questions about satisfaction regarding ‘process,’ ‘outcome,’ and ‘overall’ experience; and about preferred agencies for investigations. In some cases, these categories were applied to closely related terms, such as ‘aims achieved’.

Initially, an attempt was made to identify surveys in four types of systems, including purely internal ones. However, it was apparent that most systems described in survey reports included some oversight. Consequently, three categories were included. Surveys were categorized as being in (1) ‘police-dominated’ systems, where it appeared that external involvement was probably either non-existent or highly limited and detached. For example, Queensland was categorized this way because the large majority of complaints

were managed by police, while oversight agency investigations were carried out by seconded police. Surveys were included in (2) 'mixed' systems, where it seemed that there were significant degrees of both internal and external involvement in investigations. This included cases where it appeared that the external agency conducted investigations, but using former police officers from the jurisdiction (e.g., Israel). Surveys by Sviridoff and McElroy (1989a) and Bartels and Silverman (2005) involved complaints that appeared to have been investigated independently by the Civilian Complaint Review Board in New York City. However, these were included with mixed systems because the Board lacked an adjudicative function.

The final category was (3) 'independent' and was applied only to the Police Ombudsman for Northern Ireland. The Ombudsman's Office directly investigates almost every complaint made against police, and it has a direct role in adjudication. A recent review found that some investigations into legacy cases may have been partially compromised (Criminal Justice Inspection Northern Ireland, 2011). However, the review expressed confidence in the Ombudsman's independence in relation to contemporary matters. The review did note that 'there is a substantial proportion of investigative staff (around 41%) from a former police background' (p. 32), and there was an implication that this ratio was a little too high to ensure adequate perceptions of independence. At the same time, when selection standards and 'operational protocols' were considered, the review found that, 'in the main, the necessary safeguards are in place to protect the operational independence of the Police Ombudsman' (p. 32). Finally, surveys where it was entirely unclear which agency was most involved in the investigation were excluded from the sample.

As indicated, the issues addressed in these surveys are complex. The present study was only able to provide summary data on key topics. It should also be noted that results have been rounded wherever decimal points were included, and that results for categories such as 'undecided' or 'don't know' have not been included.

The public

A final list of 12 public opinion surveys was developed. Table 1 shows variation in the results, but a large number of surveys with extremely high levels of support for external investigations. In their report on the results in the British Social Attitudes Survey, Tarling and Dowds described the average response of 91% in favor of independent investigation of 'serious' complaints as 'unusual,' representing 'near-universal support' (1997, p. 206). Only two surveys asked about a combination of internal and external agencies, with 80% support for 'review boards with both police and civilian members' in one case. Overall, there were very low levels of support for purely internal police investigations.

Of note is the fact that five of the Queensland surveys included questions about different types of complaints: 'rudeness,' 'assault,' and 'bribery'. Respondents were asked about the best agency to deal with these complaints: the Police Service or the oversight body – the Criminal Justice Commission (CJC, later the Crime and Misconduct Commission (CMC)). Other alternatives were 'Ombudsman,' 'Local MP/councillor/mayor,' 'Solicitor/lawyer/barrister,' 'Media,' and 'Other'. Table 2 shows the results averaged across the five surveys from 1999 to 2010, with the final survey year included separately. The results show a consistent preference for the police to deal with lower level complaints of rudeness, but with majority support for an external body for assault and bribery allegations.

Table 1. Summary findings of public opinion surveys on who should investigate complaints against police.

Location	Percent supporting type of investigation			Qualifier	Source (survey year where relevant)
	Independent	Mixed/both	Police		
Britain	93			'Serious complaints'	Tarling and Dowds, 1997, p. 206, 1990
	92			'Serious complaints'	Ibid., 1994
	89			'Serious complaints'	Ibid., 1996
England and Wales	59	20	16		Electoral Reform Ballot Services, 1997, p. 7
	87			'Serious corruption'	IPCC, 2008, p. 8
	47			'All complaints'	
	49			'Most serious'	
	77			'[Death] after contact with police'	
Queensland	89				CMC, 2009, p. 54, 1995
	90				Ibid., 1999
	84				Ibid., 2002
	86				Ibid., 2005
	92				Ibid., 2008
	91				CMC, 2011, p. 34, 2010
United States	15	80	4		Law Enforcement News, 1992, p. 1

Table 2. Summary results, Five public opinion surveys, Queensland, 1999–2010, 'Agency perceived to be the best to deal with a complaint involving a police officer'.

Complaint/agency	Rudeness		Assault		Bribery	
	Average	2010	Average	2010	Average	2010
Queensland Police	70	63	46	26	33	15
CMC	20	39	37	65	53	80
All other	11	7	18	10	14	5
CMC + all other	31	46	54	75	67	85

Source: CMC, 2011, pp. 36, 37 and 39.

A number of other surveys asked questions that were relevant to the topic, including in relation to terms such as 'oversee' or 'review,' rather than 'investigate':

- A New York City survey found that 76% of respondents supported the proposition that 'An independent group should oversee the Department' (McGuire Research Services, 2000, p. 7).
- A survey of 'black and minority ethnic communities' about the independent Office of the Police Ombudsman for Northern Ireland found that 76% believed the Ombudsman was 'necessary' and 59% believed it 'can help change the police' (Radford, Betts & Ostermeyer, 2006, p. 102).

- A survey in Austin, Texas, found that 87% of respondents favored ‘the creation of a citizen’s review board’ to monitor police (Schott, 2001, p. 4.5).
- A focus group study in the US found that ‘a large majority of participants expressed deep cynicism about the [police-dominated] complaint process’ (Walker, 1997, pp. 219–220).
- In a focus group study in England and Wales, ‘the majority of participants – regardless of background – were in favor of an independent body being responsible for dealing with complaints against police’ (Wake et al., 2007, p. 27).
- The US nationwide survey, shown in Table 1, found that, ‘Overall, 60 percent of respondents felt that police officers would be too lenient in judging officers accused of misconduct’ (Law Enforcement News, 1992, p. 1).

The surveys reported in this section identified minor variations in responses between different demographic groups, but with few consistent patterns. Overall, there was some evidence of a more positive view of independent investigations and greater scepticism of police among minority respondents and those in the 18–24 age bracket.

Complainants

Table 3 shows the findings for surveys of complainants in 26 police-dominated complaints systems. In 24 of these, the large majority of complainants were dissatisfied with all aspects of the process. Only a Canadian survey of ‘street-involved individuals’ – who claimed to have made a complaint against police – found that a small majority reported some satisfaction with the way the complaint was handled (Strathcona Research Group, 2006, p. F-13). The results for nine mixed systems were little different, with only one survey – from the Philippines – showing majority satisfaction (Table 4).

Only the surveys for independent systems – all for the Police Ombudsman for Northern Ireland – produced consistent majority satisfaction in any category (Table 5). The Ombudsman obtained overall satisfaction levels averaging 59% over ten years, with peaks of 67% and 65%. This is despite minority satisfaction with outcomes – 41% over eight years – although a large majority was satisfied with the process – 69%. (The figure for ‘process’ is a compilation of seven specific questions about communication, timeliness, and staff attitudes.) On average (over 10 years), 71% believed they had received fair treatment, with a similar response regarding perceived impartiality of the Ombudsman’s staff – 72% over eight years, with a score of 78% in 2010/11 (PONI, 2011a, p. 19).

Reasons for dissatisfaction across all systems were complex. In some cases, respondents with unsubstantiated complaints were less satisfied than those with substantiated complaints. However, this was not a consistent finding, and respondents with substantiated complaints were also often dissatisfied. Numerous factors were cited that did not necessarily relate to which type of agency conducted the investigation – including lack of communication and lack of timeliness. However, a common theme was distrust of investigating police. Complainants frequently referred to officers appearing to take the side of their colleague under investigation. This was the case even with investigations where some oversight was involved, including external ‘supervision.’ In many cases, it was ‘who’ handled the complaint, more than ‘how’ it was handled, that was critical. In that regard, a common finding was reported by Brown (1987, p. 37): ‘Nearly, two-thirds of the sample was dissatisfied because they felt it was wrong in principle for the police to investigate complaints against their own number’. In jurisdictions with prominent oversight agencies, complainants also reported a sense of extreme disappointment and

Table 3. summary of complainant experiences in police-dominated systems.

Location	Percent satisfied			Percent dissatisfied			% Supporting independence	Source (survey year where relevant)
	Process	Outcome	Overall	Process	Outcome	Overall		
Albuquerque					78			Luna and Walker, 1997, p. 28
Boston	4	7	14	82	82	71		McDevitt et al., 2005, pp. 60–61
British Columbia			54			42		Strathcona Research Group, 2006, p. F-14
Calgary				68	80			Calgary Police Commission, 1999, p. 92
Cincinnati	36	36		64	64			Ridgeway et al., 2009, p. 134)
Denver	8		12		86	75	68 ‘investigate’ 94 ‘monitor’	De Angelis and Kupchick, 2006, pp. 23–24, 32
England & Wales			20			60		Brown, 1987, p. 37
		3	17		97	82	90	Maguire and Corbett, 1991, pp. 162, 164, 180
		20			71	67	67	Waters and Brown, 2000, p. 629, 631
			29			71		Grace and Bucke, 2009, p. 28, 2001/02
			36			64		Ibid., 2002/03
			20			80		Ibid., 2003/04
			24			76		Ibid., 2004/05
			19			81		Ibid., 2005/06
			20			80		Ibid., 2006/07
Oakland & Berkeley				44			77	Perez, 1994, p. 112
Pasadena				78				Bobb et al., 2006, p. 80
Queensland	40	28	48	60	72	52		CJC, 1994, pp. 60–62
			39			56		CJC, 1995, p. 9
				65				CJC, 2000, p. 7
				71				CMC, 2009, p. 47
				50				CMC, 2011, p. 29
Scotland	45	12			53			Fraser, 2009, p. 36
Toronto			16					Landau, 1994, pp. 63, 64
Victoria (Australia)	23	21		62	55	84	73	Ethical Standards Department, 1999, p. 32
	30	24		59	62		78	Prenzler et al., 2010, pp. 8, 11

Table 4. Summary of complainant experiences in mixed systems.

Location	Percent satisfied			Percent dissatisfied			% supporting independence	Source
	Process	Outcome	Overall	Process	Outcome	Overall		
Denver		10	15		87	74	88 'monitor'	De Angelis, 2008, pp. 13, 16
England & Wales	11	7					82	Schaible, et al., 2012, p. 15
		4	26		96	74		Maguire and Corbett, 1991, pp. 162, 164, 180
Israel		10			70		97	IPCC, 2009b, p. 11
					77	89.2	64	Herzog, 2000, pp. 134, 136
Kansas City	22	18	7	59	75	90		Perez, 1994, p. 180, 183
New York City	43	32	36			64		Sviridoff and McElroy, 1989a, pp. 45 & 47
Philippines			32					Bartels and Silverman, 2005, p. 627
			69			32		Guzman, 2008, p. 131

Table 5. Summary of Complainant Experiences in Independent Systems (Northern Ireland).

Process	Percent satisfied		Dissatisfied Overall	Source (survey year)
	Outcome	Overall		
		56		PONI, 2011a, p. 18–19, 2002/03
		67		Ibid., 2003/04
70	40	58		Ibid., 2004/05
67	38	58		Ibid., 2005/06
74	40	62		Ibid., 2006/07
70	37	57		Ibid., 2007/08
68	42	59		Ibid., 2008/09
73	47	65		Ibid., 2009/10
69	41	59	31	Ibid., 2010/11
61	39	52	37	PONI, 2012, p. 17, 2011/12

betrayal when their complaint was referred back to police (e.g. Landau, 1994). Indeed, Tables 3 and 4 show very high levels of support for both independent investigations of complaints and monitoring of police.

Two surveys of appellants were also identified. In England and Wales, 80% of respondents were dissatisfied with the way the Independent Police Complaints Commission (IPCC) dealt with their case (May, Warburton & Hearnden, 2008, p. 20). A follow-up study found 85% were dissatisfied (IPCC, 2009a, p. 10). Although it appeared that these cases involved a capacity by the Commission to ‘uphold’ an appeal against a police finding, it was not clear – in fact it appeared unlikely – that there was any capacity to overturn a decision.

Eight surveys were also identified regarding complainants’ experience with some form of informal resolution or mediation, normally involving lower level complaints. The results were very mixed. In a Calgary survey: ‘The majority of complainants offered mediation refused it and cited ... a lack of faith that mediation would result in a positive outcome for them’ (Calgary Police Commission, 1999, p. 93). In England and Wales, under a police-managed ‘local resolution’ program, 41% of complainants were satisfied compared with 51% who were dissatisfied (May et al., 2007, p. 23). In Victoria, Australia, 72% of complainants who had their matter dealt with under a ‘Management Intervention Model’ ‘rated the process as unsatisfactory’ (Office of Police Integrity, 2008, p. 47).

In Queensland, ‘informal resolution’ – using police officers trained by civilian Alternative Dispute Resolution specialists – produced more positive results: 76% of complainants who experienced informal resolution were satisfied with the process, compared with 40% of those who experienced a ‘formal investigation’; and 60% who experienced informal resolution were satisfied with the outcome compared to 28% of the formal investigation group (CJC, 1994, pp. 60–62). In Northern Ireland, an evaluation of ‘police-led informal resolution’ found that 52% of complainants were satisfied that their complaint was ‘successfully resolved’ (PONI, 2005, p. 29).

Three studies involving mediation were also identified, all with positive outcomes. In New York City, Bartels and Silverman (2005) surveyed persons whose complaint was either investigated or mediated by the Civilian Complaint Review Board: ‘Eighty-one percent of the complainants felt that the real issues of their complaint were discussed in their mediation session, compared with 32 percent of those who participated in regular full investigation’ (2005, p. 627). A study in England and Wales compared ‘informal

resolution' cases with 'restorative' cases involving 'a face-to-face meeting between complainant(s) and police officers(s) in the presence of a trained facilitator' (Young et al., 2005, p. 285). The face-to-face encounters were described as 'restorative meetings,' while the informal resolution process, conducted by police, was described as 'a weak form of conciliation' (pp. 292 and 287). In most cases, the facilitator was a police officer, although an external person was used in a few cases where complainants objected to a police facilitator (p. 291). The main finding was that, overall, 61% of the restorative group were satisfied and 28% were dissatisfied, while only 33% of the conciliation group were satisfied and 45% were dissatisfied (p. 303). In Denver, 79% of complainants who experienced mediation – conducted through 'an independent mediation vendor' – were satisfied with the process, compared with 11% in the 'non-mediation' sample; and 63% were satisfied with the outcome in mediated cases compared with 7% in non-mediated cases (Schaible et al., 2012, pp. 8 and 15).

Dissatisfaction with informal resolution generally related to lack of information and non-receipt of an apology. There was often a feeling that officers subject to complaint did not take the process seriously and were unwilling to take responsibility for their actions. Efforts at resolution were often considered tokenistic, providing a convenient 'bureaucratic suppression of a dispute' (Young et al., 2005, p. 300). Criticisms were also directed at alleged unsupportive or biased attitudes on the part of police conducting the resolution. In Northern Ireland, 58% of complainants wanted to meet with the officer who was the subject of their complaint, and 73% of complainants thought that informal resolution 'should be handled by people who are independent of the police' (2005, pp. 27 and 29). Complainants also supported external management of informal resolution in Queensland (CJC, 1994, p. 65) and Victoria (Office of Police Integrity, 2008, p. 47).

Police

Tables 6–8 provide summaries of the available results for police experiences of the three types of complaints systems. The seven sets of findings for police-dominated systems were highly variable (Table 6). Some police were very satisfied with the experience, but most were divided – with less than a majority satisfied or dissatisfied. For the six sets of results for mixed systems, there was also considerable variance (Table 7). The Philippines system produced very high levels of satisfaction. The Israeli system, reliant on ex-police, produced very high levels of dissatisfaction. Of some note is the improvement in experiences with the complaint process by Denver Police before and after the introduction of the Office of the Independent Monitor (Tables 6 and 7).

There were six results for independent systems, all from the Police Ombudsman for Northern Ireland. Overall satisfaction averaged 71%, trending upwards slightly. Police officer satisfaction with outcomes was higher, averaging 83%. The scores for satisfaction with process were averaged from six specific criteria, and averaged 69% (2011a, p. 28; 2012, p. 18). This combined result for process was reduced by lower scores for 'Frequency of updates' and 'Time taken to investigate the complaint' – around 53% on average. Much higher scores were obtained for 'Manner of staff during interview' and 'Manner in which police officer was received' – around 83%. A separate question on fairness of treatment received an average positive score of 84%.

Six surveys of officers included general views on internal and external investigations, with highly divergent results (Table 9). For internal systems, support was reported in three studies at 'just over half,' 'a majority' and 45%. Support for mixed systems varied between 70% and 20%. Support levels for independent systems were between one-third

Table 6. summary of police experiences in police-dominated complaints systems.

Location	Percent satisfied			Percent dissatisfied			Source
	Process	Outcome	Overall	Process	Outcome	Overall	
Boston	46	27	36	45	46	64	McDevitt, et al., 2005, p. 69
Denver	46	49	12	30	35	64	De Angelis and Kupchik, 2006, p. 19
Pasadena			75			18	Bobb et al., 2006, p. 50
Queensland	76	68		24	32	30	CJC, 1994, p. 76
			70				CJC, 1995, p. A-2*
Victoria (Australia)	39	38		42	41		Ethical Standards Department, 1999, pp. 22 and 23
	36	26		40	36		CAPPE, 2008, p. 17

*Officers with complaints ‘investigated by Queensland Police Service’.

Table 7. Summary of police experiences in mixed complaints systems.

Location	Percent satisfied			Percent dissatisfied			Source
	Process	Outcome	Overall	Process	Outcome	Overall	
Denver		56	37		25	43	De Angelis, 2008, p. 15
	12	49					Schaible et al., 2012, p. 16
England & Wales		55	39		23	31	IPCC, 2009b, pp. 15–16
Israel					79	90	Herzog, 2000, P. 134
Philippines	82	81	80	17	20	20	de Guzman, 2004, PP. 372–373
Queensland			79			22	CJC, 1995, P. a-2*

*Officers with complaints ‘investigated by Criminal Justice Commission’.

Table 8. Summary of police experiences in independent complaints systems (Northern Ireland).

Percent satisfied			Percent dissatisfied		Source (survey year)
Process	Outcome	Overall	Overall		
71	84	70			PONI, 2011b, p. 28, 2006/07
72	86	70			Ibid., 2007/08
65	81	68			Ibid., 2008/09
66	80	68			Ibid., 2009/10
70	86	74	14		Ibid., PONI, 2011b, p. 18, 2010/11
70	82	73	17		PONI, 2012, pp 17 & 18, 2011/12

and just under half. Some police also supported the view that independent investigations were necessary for public confidence. This was the view of 85% of police in the survey in England and Wales by the Electoral Reform Ballot Service (1997, p. 12). Lower levels of support for this view – typically around one-third – were expressed in other surveys (e.g. Kang & Nalla, 2011; Maguire & Corbett, 1991; Perez, 1994; Reiner, 1991; Wells & Schafer, 2007).

Table 9. Police views on internal and external investigations of complaints.

Location	Percent support			Source
	Internal	External	Mixed/both	
England & Wales	‘Just over half’	‘Almost half’		Maguire and Corbett, 1991, p. 70
	‘A majority’	‘About one-third’		Ibid., p. 71**
	45	30 33	70 20	Reiner, 1991, p. 215* Electoral Reform Ballot Services, 1997, p. 9
Israel			62	Herzog, 2001, p. 451
South Korea			36	Kang and Nalla, 2011, p. 184

*Chief Constables. **Investigating Officers

A number of studies asked about officers' experiences of informal resolution of complaints. Satisfaction levels varied enormously. In Queensland, 76% of officers who experienced 'informal resolution' were satisfied with the outcome, compared to 68% who experienced a formal investigation; and 83% were satisfied with the process, compared to 76% subject to formal investigation (CJC, 1994, p. 76). However, in one study in England and Wales, only 25% of police were satisfied with informal resolution (Warburton, May, & Hough, 2003, p. 22). In another, 27% were satisfied and 54% dissatisfied with 'local resolution' (May et al., 2007, p. 20). A Cincinnati study found officers fairly evenly divided over their experiences with a complaint resolution procedure. A small majority were positive: 57% believed the outcome was fair, while 43% disagreed; and 42% were satisfied with the process, while 48% were dissatisfied (Ridgeway et al., 2009, p. 134). Across the studies, reasons for dissatisfaction were largely related to perceptions of bias in favor of the complainant, alleged triviality of complaints, delays, and lack of information.

Police, however, were much more positive about mediation. In the British study of 'restorative' and 'conciliation' cases, described earlier in the complainant section, 85% of police in the restorative group were satisfied and 5% were dissatisfied, while 69% of the conciliation groups were satisfied and 15% were dissatisfied (Young et al., 2005, p. 306). In the Denver mediation study, 81% of police participants were satisfied with the process, compared to 12% in the non-mediation sample; and 73% were satisfied with the outcome compared to 49% with non-mediated cases (Schaible et al., 2012, p. 16). In Calgary, 78% of officers accepted the offer of mediation and, of these, 83% were satisfied with the outcome (Calgary Police Commission, 1999, p. 92). A police focus group study in New York City found that 'the overwhelming majority of officers claimed that they would prefer some procedure which would permit face-to-face interaction between officers and complainants' (Sviridoff & McElroy, 1989b, p. 36). Reasons included the ability to counter 'unfounded' allegations.

Discussion and conclusions

This review of the available literature on stakeholder views of police complaints and discipline systems was limited by several factors. It was difficult or impossible to identify specific contextual factors that may have influenced responses. At times, the wording of questions or forced responses limited the expression of a full range of views. Furthermore,

of necessity, the review adopted a highly summary approach. Nonetheless, valuable findings were obtained. The most obvious is that there were very high levels of support for independent processing of complaints amongst the public and complainants, particularly for more 'serious' matters. The study also found expressions of support for external 'monitoring' or 'review'. Overall, the general direction of opinion was clearly in favor of wide-ranging independence. Complainant dissatisfaction with police-dominated systems and weak mixed models aligned with public expectations about the lack of legitimacy and potential for bias in internal investigations. Police views were much more diverse, but tending to oppose independent processes. At the same time, a sizeable proportion of police recognized that internal processing is intrinsically suspect and does not satisfy the criterion of public confidence.

Is it possible to produce a 'win-win' arrangement from the results of this research? The positive experiences of police in Northern Ireland, while only a single jurisdiction, support the view that police concerns about biased investigations can be assuaged by an external agency, while also generating majority satisfaction amongst complainants – achieved through a combination of independence and adequate attention to process criteria (communication, timelessness, fairness, thoroughness, etc.). Evidence was also found that the interests of complainants and police can be more effectively addressed through carefully managed forms of informal resolution and, especially, mediation. More generally, the evidence supports a much greater role for complainant input into how a matter is managed. Some complainants will be happy with a senior police officer quickly resolving their matter on an informal basis. Others will strongly desire a face-to-face meeting, probably facilitated by an external mediator. Others again will desire a fully independent formal investigation. These preferences may be partially dependent on the type of complaint. An approach that involves a negotiated response, including with subject officers, is certainly feasible, subject to some controls for consistency and for the seriousness of allegations. Adequate resourcing of this approach is also feasible within a general public sector integrity agency – a system that would also be fairer for police by including other public servants in its jurisdiction (Prenzler and Faulkner, 2010). Efficiency and outreach would be enhanced through the creation of regional offices, easily accessible to the public. Close monitoring of stakeholder experiences would allow for fine-tuning to optimize the system.

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Publisher: Routledge

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Police Practice and Research: An International Journal

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/gppr20>

Beyond 'oversight': a problem-oriented approach to police reform

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Published online: 11 Feb 2013.

To cite this article: Louise E. Porter (2013): Beyond 'oversight': a problem-oriented approach to police reform, *Police Practice and Research: An International Journal*, 14:2, 169-181

To link to this article: <http://dx.doi.org/10.1080/15614263.2013.767096>

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RESEARCH ARTICLE

Beyond ‘oversight’: a problem-oriented approach to police reform

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This article looks beyond the traditional compliance-based model of police oversight to discuss the emerging contributions of external oversight agencies to proactive police reform. Drawing on the approach of Problem Oriented Policing and the Scan, Analyse, Respond, Assess (SARA) problem-solving model, the article provides a framework to highlight a number of activities that identify and analyse problems in the police integrity domain, and design and implement solutions that impact positively on the police and communities. The article provides examples of agency activity for each stage of the SARA model and case studies to illustrate the whole model in practice.

Keywords: oversight; police integrity; problem-oriented; SARA; police reform

Introduction

While police oversight agencies continue to invest resources into reactive complaint handling or review functions, the role of these agencies is widening to reflect a more holistic approach to police reform. Oversight roles now frequently include education, training and consultancy/advisory services, as well as making recommendations regarding policy and practice issues, addressing systemic reform rather than simply providing case-by-case judgments. Similarly, within police agencies, what were once known as Internal Investigations (or Internal Affairs) departments are now being relabelled as Professional Standards departments, reflecting a similarly broad responsibility for standards of conduct across organisations. The widening of these respective roles has produced an interesting duality to the relationship between these agencies. While the reactive investigation and review functions of oversight agencies still conform to a compliance-based system, a more collaborative relationship has formed under the function of improving the police service more generally. This latter role implies a shared goal of reform that prescribes mutual prevention efforts to address emerging issues. This article outlines the contributions that oversight agencies can, and do, bring to police reform, with a focus on proactive activities. The article outlines how a problem-oriented approach can help to frame these efforts and promote the value of partnerships between oversight and law enforcement agencies to improve police services to the community.

Traditional purpose of oversight agencies

The tradition of external police oversight emerged in the latter part of the twentieth century in response to a number of commissions of inquiry and exposés of corruption,

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misconduct and criminal activity by police officers (Prenzler & Ronken, 2001; Smith, 2009). Examples include the Knapp Commission (1972) and Mollen Commission (1994) in the US, the Scarman Report (1981) in the UK and the Fitzgerald Inquiry (1989) and Wood Royal Commission (1997) in Australia. All called for the creation of independent agencies to increase external accountability for police. Agencies were recommended to have investigatory powers that would preclude the police from investigating their own members internally for serious misconduct. The purpose of such powers was to increase public confidence that investigations of police officers would be conducted with greater scrutiny and fairness, with suspicions that police internal investigations were biased towards subject officers, being at best too lenient and, at worst, involving intimidation of complainants and witnesses.

Traditional models of oversight

Internationally, oversight agencies have been created with differing models and powers, which are also evolving rather than static (although subject to legislation and resources). Typically, over time agencies have been provided with increased powers, as well as widened roles. However, at the same time, there is an increasing movement towards handing back the responsibility of complaint handling and investigation to the police themselves, particularly for less serious matters.

Prenzler and Ronken (2001) discuss two main models of external oversight – ‘civilian review’ and ‘civilian control’ – while in the US, Walker (2001) offered four classes of oversight models. The basic distinction between the models described by these authors lies with the amount of independent power that the oversight body has to investigate the police agency. At the lowest end of the spectrum are models that reflect an oversight agency’s ability only to review or audit police internal investigations. At the highest end of the spectrum, investigations of the police are conducted externally, with the oversight body having its own independent investigative capacity, often with significant powers and resources. While this higher level of external oversight is typically proposed as best practice, it has also been acknowledged that such a degree of external involvement can actually reduce internal organisational responsibility for integrity (Porter & Prenzler, 2012a; Prenzler & Ronken, 2001).

According to Livingston (2004), the impact of citizen oversight is deterrence-based. She states that citizen involvement in the complaint process should increase the fairness and thoroughness of investigations. Deterrence occurs where these improved investigations lead to an increased likelihood of consequences for misconduct through the enforcement of rules and disciplinary action. As Livingston explains,

With better investigations, the theory goes, more complaints will be sustained, resulting in more discipline of officers who have committed acts of misconduct. More discipline in turn will lead to greater deterrence of police abuse. (Livingston, 2004, p. 654)

Underpinning Livingston’s explanation of deterrence is a process of transactional influence on behaviour, whereby individuals are influenced externally by reward and punishment. This is in contrast to transformational influence that attempts to change behaviour internally, through instilling certain values. The latter corresponds to principles of co-operation (as opposed to compliance), where goals are shared and members behave in ways that are consistent with their own moral decision-making; this means that influence operates in the absence of surveillance (Kelman, 1958). In theory, this form of organisational influence

can, therefore, be more successful and less costly than influence that relies on instrumental inducements (reward and punishment) for employee behaviour (Tyler & Blader, 2005).

While oversight efforts may have begun with deterrence, there are a number of values-based integrity strategies that have emerged to prevent problems of misconduct and corruption. For example, codes of ethics, ethics training, support for employees who report misconduct, and integrity-based promotions criteria are increasingly in use within police agencies. External oversight agencies are also broadening their repertoire of strategies to be proactive. Moving beyond deterrence theory to transformation-based influence on police reform may increase the impact of oversight agencies on the policing environment through modifying values and increasing the investment of police in shared goals. However, the effectiveness of such efforts would likely hinge on the extent of inter-agency collaboration, trust and ownership in tackling problems.

Problem-oriented approach

Problem-oriented policing was first conceptualised by Herman Goldstein in 1979 (Goldstein, 2003) and has become increasingly popular with both academics and law enforcement agencies, predominantly in tackling particular forms of crime. The approach recognises the range of problems concerning policing and that each may require a different solution. The approach emphasises the importance of analysis to identify the problem and tailor solutions that can be implemented not just by police, but in partnership with external stakeholder agencies. Thus, problems are identified as being salient for both police and communities, and the approach is collaborative. The approach also emphasises creative solutions to identified problems and the evaluation of their impact:

The concept carries a commitment to implementing the new strategy, rigorously evaluating its effectiveness, and subsequently reporting the results in ways that will benefit other police agencies and that will contribute to building a body of knowledge that supports good practice and ultimately, thereby, will also contribute toward the further professionalization of the police. (Goldstein, 2003, p. 14)

Some authors have highlighted the potential of a ‘problem-oriented’ approach to law enforcement oversight through utilisation of complaints data to highlight key issues (Walker, 2001). Livingston (2004) asserts that, just as police have begun to embrace a problem-oriented approach with the recognition that the wide range of problems facing police requires methods beyond enforcement of the law, so too should oversight agencies expand their role beyond rule enforcement. She discusses four principles of a problem-oriented approach to citizen review: ‘triage’ of complaints, complaints ‘information gathering and analysis’, the ‘involvement of [subject-officers]’ line supervision’ in the complaints process, and ‘monitoring the complaint review process’. However, Livingston recognises that such a process requires collaboration between oversight agencies and police and that this raises questions as to the independence of the oversight agency:

Much of what is proposed here requires that participants in the citizen review process work more closely with police to see that the information contained in complaints is effectively used to better the police organization and enhance police services ... Can the citizens in citizen review processes maintain their independence (and be perceived as independent) in light of this closer collaboration? (Livingston, 2004, p. 669)

Indeed, Grabosky and Braithwaite (1986) and Prenzler (2000) discuss agency ‘capture’ as a risk of close working relationships between staff of agencies that should be

independent. However, Livingston (2004) argues that the role of civilian oversight should be broadened now beyond the ‘first generation’ of merely providing independent scrutiny, to a second generation role of ensuring that the wider problems raised in complaints are adequately addressed by police organisations.

SARA model

One method, and perhaps the best known, for undertaking problem-solving in policing is the SARA problem-solving model (Eck & Spelman, 1987). SARA represents the four stages of Scanning (identifying a problem), Analysing (collecting data to inform the scope or cause of the problem), Responding (developing and implementing solutions to the problem) and Assessing (evaluating the effectiveness of the response). The process can be cyclical, in that the results of the evaluation can be fed back into understanding the problem and monitoring the need for further intervention. However, the process is not necessarily linear (involving all stages, or in this order) and the SARA model is only one model of the problem-solving process; other variations have also been presented (for example see Ekblom, 2005; Read & Tilley, 2000). However, as a conceptualisation of the basic stages of understanding and responding to a problem, and expanding on the idea of problem-oriented oversight, SARA is presented in the current article as a guiding framework to understand the contributions (both real and potential) of oversight agencies to police problem-solving, or police reform.

Problem-oriented approach to police reform

Figure 1 depicts the stages of the SARA model and how they relate to the general process of identifying a problem, producing and implementing solutions, and evaluating the impact of those solutions. This section discusses each stage of the SARA model with



Figure 1. Representation of the SARA model.

reference to the potential contributions of oversight agencies and examples of current practices that illustrate these contributions. This is then followed by two case study examples that demonstrate the whole SARA process.

Stages of the SARA model

Scan

Many authors (including Livingston, 2004 as previously mentioned) have highlighted that oversight agencies at all levels, accumulate information about the policing environment that can be used to build a picture of potential areas of concern. At the lowest, or most basic, level of oversight, agencies may receive appeals from unsatisfied complainants, or audit police systems for complaints handling or other practices. For example, in the UK, the office of the Police Complaints Commissioner for Scotland (PCCS) has only a complaint review function but initiated an audit of the complaints handling process of one jurisdiction after a complaint handling review raised concerns (PCCS, 2008). The PCCS has also undertaken, on its own initiative, an audit of the accessibility of police complaints procedures (PCCS, 2009).

At a more detailed level, the Corruption and Crime Commission, oversight agency to the Western Australia Police, conducts in-depth 'systems-based evaluations' (Porter & Prenzler, 2012a) to audit police practices in a variety of areas (geographically based and subject/procedures-based). This audit process goes beyond dip-sampling cases for purposes of rule enforcement and involves site visits and discussions with personnel to provide a more educative presence.

At a higher level of oversight, agencies may independently receive and investigate complaints or reports of potential misconduct. Patterns may be identified between a number of cases handled by the agency that suggest systemic issues, or individual matters may be viewed as particularly serious or of significant public interest and deemed as warranting further inspection. However, while issues may be recognised by staff on such a case-by-case basis, the observance of patterns of incidents, or existence of systemic problems is more efficient with the keeping of databases that allow statistical examination of cases by a range of features, such as the subject of the complaint, location, the issues involved, and so on. To this end, some oversight agencies are tasked with compiling local or national statistics on complaints. For example, the PCCS, mentioned earlier, collects statistical information from Scottish police districts and compiles this into a report on complaint numbers, while the Independent Police Complaints Commission (IPCC) for England and Wales collects raw complaints data from the 43 police forces and produces its own statistical trend analysis for public reporting (Porter & Prenzler, 2012b).

Other oversight agencies are the sole keepers of complaints databases. In Northern Ireland, the Police Ombudsman (PONI) receives all complaints against the Police Service of Northern Ireland (PSNI) and produces large amounts of statistical outputs, both publicly on its website and in reports to PSNI units. These descriptive data allow police managers to interpret the problem areas, or indeed people, under their supervision (Porter & Prenzler, 2012b). In Australia, the States of New South Wales and Queensland have systems that allow both the police and oversight agencies real-time access to one centralised complaints database and can, therefore, utilise this information for 'intelligence-gathering' purposes (periodic scans or focussed on particular areas of concern) (Porter & Prenzler, 2012a). In Canada, the Commission for Public Complaints Against the Royal

Canadian Mounted Police (CPC) operates an early invention system – the Multiple Complaint Member Project – whereby it identifies,

RCMP [Royal Canadian Mounted Police] members who are subject to three or more public complaints, where the allegations are serious in nature (e.g. improper use of force, improper use of firearms) within a 12-month period. Once a member is identified under the current criteria, the CPC shares this information with the RCMP, which is then able to communicate the information to the relevant division and/or detachment. (CPC, 2011, p. 12)

Some oversight agencies also conduct wider environmental scans of issues to proactively seek out emerging trends in policing and to inform possible areas of focus for their own jurisdictions. These can be produced as public literature reviews or agency briefing reports. For example, The Police Integrity Commission (PIC) in Australia published a review of Early Intervention Systems (Bertoia, 2008), and the CPC in Canada produced a review of literature on in-custody deaths (CPC, 2009).

The information accessible to oversight agencies can, therefore, be extensive and an important source for recognising trends or systemic issues, or other matters of significance that may warrant further scrutiny. Thus, oversight agencies are often in a prime position for proactive problem identification.

Analyse

The section above included the scrutiny of data for identifying problems at the descriptive level and intelligence gathering. Many oversight agencies are also involved in conducting more sophisticated, targeted forms of analysis around particular identified problems. This includes analysis of data held on agency databases (described above), as well as conducting additional forms of data gathering and analysis through specific research initiatives.

There are numerous examples of oversight agencies undertaking targeted data analysis of specific problem areas. For example, in Australia, the Office of Police Integrity (OPI) in the State of Victoria (oversight agency to the Victoria Police), conducted a *Review of the Use of Force by and Against Victoria Police* (2009) incorporating analysis of data from Victoria Police's use of force reporting system. The review highlighted necessary improvements in policy, training, monitoring, and reporting practices and urged Victoria Police to utilise that data more strategically and 'demonstrate a commitment to strategically managing the risk associated with inappropriate use of force' (OPI, 2009, p. 58).

In the UK, the IPCC for England and Wales undertook analysis of all cases in their jurisdiction of deaths in or following police custody over an eleven-year period from 1998/99 to 2008/09 and reported on trends in the data that highlighted failings of police duty of care, particularly in the assessment and monitoring of persons in custody. This led to specific recommendations for both police and health care services to improve practices. Similarly, the IPCC has collated and conducted analysis of over 100 investigation reports of road traffic incidents involving the police that have resulted in a fatality or serious injury (Docking, Bucke, Grace & Dady, 2007). Recommendations of that report have resulted in revised pursuit guidelines.

Oversight agencies are increasingly engaging in primary research; that is, collecting new data for analysis. In Australia, some states have oversight agencies that are heavily involved in research, with dedicated research teams or units. In New South Wales, for example, the PIC has conducted and published reports on a range of research projects.

Recent landmark projects explored and identified potential misconduct risks of individuals (Project Odin: PIC, 2009) and work places (Project Manta: Gorta, 2011) in order to highlight a framework for proactive prevention efforts. In Queensland, the Crime and Misconduct Commission (CMC) (and its predecessor the Criminal Justice Commission) has collected survey data on the Queensland Police Service (QPS) recruits and First Year Constables yearly since 1995 to monitor ethical attitudes towards a range of scenarios. A 2010 CMC report on this data noted decreased ratings of seriousness of, and willingness to report, certain unethical behaviours in recent years as a potential area of concern for the QPS (CMC, 2010).

In the UK, the IPCC conducted a project to take stock of their early years of operation around complaints handling. The work incorporated stakeholder discussions and the collection of survey data, which identified dissatisfaction with the complaints handling system as well as under-access of the system by certain groups. The outcome of the work was a new Statutory Guidance for police complaint handling that the IPCC launched in 2010 (IPCC, 2010). The IPCC noted (see Porter & Prenzler, 2012b) that part of the success of the implementation of the Statutory Guidance was the high level of stakeholder input in its inception, with a number of police agencies/personnel engaging in discussions with the IPCC.

Indeed, in some cases, research and analysis is conducted through collaboration between police agencies and their oversight bodies. This could involve the police agency approaching the oversight agency to utilise their research resources, an oversight agency involving the police in the conduct of a project, or a fully collaborative research endeavour. In-depth analysis of identified problems enables the specific nature of problems to be explored and for possible causes to be highlighted. This allows for a more informed response.

Respond

As outlined previously, police oversight agencies were traditionally established to respond to problems of police misconduct, but typically did so on an individual case-by-case basis and in response to a particular complaint of wrongdoing. Responses in these circumstances have included investigations, reviews, targeted audits, and even adopting sophisticated covert methods such as targeted integrity testing. However, beyond a reactive ad hoc response, there are a number of more positive, proactive strategies that oversight agencies are beginning to adopt to address problems uncovered by the means outlined above.

Oversight agencies frequently have the capability of making recommendations to improve police practices at the wider level, based upon their work in assessing and analysing problems. Recommendations in these cases are typically directed towards improvements and can concern systems, policies, procedures, training, or any other area of policing. For example, the work highlighted above of the IPCC in relation to traffic incidents recommended changes to UK police pursuit policies, while the work of the OPI made recommendations to Victoria Police regarding their use of force.

However, while oversight agencies have the power to make such recommendations, they rarely have any power over police to accept and implement them. Police can be held to account publicly to explain their position, but ultimately the way the police agency 'does business' is up to the head of that agency. Thus, while public shaming can be an effective 'stick' to move an agency to change, collaborative efforts in the area of recommendations and implementation are increasingly adopted. Many oversight bodies

now involve their police agencies in discussions of the findings of their research activity and the development of recommendations (Porter & Prenzler, 2012a). Indeed, such collaboration can result in recommendations having been discussed, actioned and implemented before the oversight agency's official report is released. It is widely recognised that resources and operational issues known best to police can create barriers to oversight agency-recommended practice. Oversight agencies are often held to account for the number of recommendations they make that are implemented, as an indicator of their performance in terms of providing impact. While it is recognised that oversight bodies should not be making 'easy' recommendations to increase their performance profile, there is perhaps room for flexibility in the measurement of implementation to focus more on the intent of the recommendation rather than the specific practical operation of that intent. Thus, often it is necessary for police agencies to propose their own ways of meeting the intent of a recommendation to ensure its feasibility. Involvement of police at this level also increases police agency engagement and ownership over solutions.

Indeed, in support of police agencies implementing their own changes, many oversight bodies are developing their role in the areas of education and advice. For example, in the UK, both the IPCC and the PCCS produce publications of the lessons to be learned from particular cases that they see, in order to promote the consequences of certain wrongdoing and provide information on best practice to avoid future similar cases. Other agencies are also involved in officer training and providing toolkits for officers to use to aid decision-making. For example, in Australia, OPI has a Corruption Prevention and Education Unit that provides a range of educational and advisory services to the Victoria Police, including training sessions, consultancy and educational resources (OPI, 2012b). OPI recently published an *Ethical Health Assessment Tool* (OPI, 2012a), a self-assessment tool for law enforcement agencies to measure the strength of integrity systems. The CMC also provides guidance and toolkits to Queensland police officers (and other public sector agencies). For example, the CMC has produced a number of publications on managing conflicts of interest. These activities help to equip the police with the knowledge to tailor their own responses to problems. However, it is important that responses are targeted, informed and are followed up with appropriate evaluation to assess their impact.

Assess

The final stage of the SARA model is the assessment, or evaluation, of any response recommended or implemented. Many oversight agencies perform a compliance-oriented function of monitoring, or auditing, whether recommendations have been accepted and implemented adequately by the police. OPI in Australia, for example, maintains a database of the systemic recommendations it has made and the progress of the Victoria Police on accepting and implementing these (Porter & Prenzler, 2012a). The CPC in Canada publishes details on its website of recommendations that remain to be implemented by the RCMP (CPC, 2010). Indeed, as mentioned previously, numbers of recommendations made and accepted are reported publicly by many oversight agencies as part of their own performance framework.

Whilst this process is important, it does not provide evaluation of whether the response has actually met the intended outcomes or had the desired effect. Effectiveness needs to be measured for a number of reasons, including informing on whether the problem has been 'solved' or if an alternative intervention is necessary; informing the allocation of resources; understanding how similar problems in the agency might be

tackled; or demonstrating how other agencies could implement similar responses. Indeed, many oversight bodies publish extensively on the results of their work, particularly reports on individual investigations or complaint reviews. However, public reports of formal evaluations are much less prevalent.

In the UK, the IPCCs work on deaths in custody (IPCC, 2011) reported a marked decrease in deaths over the 11-year period of study, as well as decreases by particular causes of death and drew inferences on a number of possible influences on this decline. The report highlighted changes in laws and guidelines, improvements in cell design, hospitalisation of arrestees, assessments and closer monitoring of detainees, provision of health services to detainees and a custody visitor scheme. However, this work did not directly assess the impact of the introduction of these interventions specifically. Rather, it provided a retrospective analysis of cases.

In order to fulfil the evaluation component of the process, the impact of the response must be assessed on the basis of what was intended. In other words, there needs to be clarity at the outset regarding the purpose of the response, what the indicators of success should be and how those can be measured. Indeed, sometimes monitoring and evaluation requires the collection of specific data and so it may be wise to plan for this at the point of designing the response. For example, perhaps the gathering of appropriate data, or establishing the mechanisms to do so, should be included in the initial recommended response plan.

Case study examples of problem-oriented police reform

The section above-presented ways that oversight agency activities can contribute to each of the stages of the SARA model. The following section presents two, more in-depth, case studies that illustrate the full SARA process utilised in oversight-police partnership projects, including the evaluation of impact.

Case study: Portland, USA

The full SARA process can be illustrated with the example of the Portland Force Task Force, a joint initiative between the Portland Police Bureau (PPB) and Portland's Independent Police Review (IPR) Division. In 2006, these two organisations established a Task Force, with members from both the PPB and IPR, as well as from Portland's Citizen Review Committee. The goal of the Task Force was to review the PPB use of force activity, policies and training, with comparisons to similar jurisdictions, and to highlight potential areas of improvement.

Portland Police Bureau instigated a new use of force reporting system for its officers in 2004, reporting to be one of only a few similarly-sized police departments in the US to publicly report on this activity (Force Task Force, 2007, p. 4). The Force Task Force analysed the use of force data held by the PPB, among other sources of information. They reported their findings publicly (Force Task Force, 2007), making 16 recommendations across the areas of data collection and analysis, policy and training, supervision and management, and intra-bureau patterns of force. The recommendations were designed to improve the Bureau's management of force and reduce the number of community complaints involving force. The majority of recommendations were specifically directed towards the Police Bureau and the Chief of Police agreed to their implementation and invited a follow-up assessment. The 2008 follow-up by the reconvened Task Force assessed the implementation of the recommendations and agreed that at least the intent of

all 16 had been met. The Task Force further analysed the use of force report data of the Police Bureau to evaluate the impact of the changes. The Task Force reported decreases in uses of force and citizen complaints of excessive force, as well as decreases in both officer and citizen injuries (Force Task Force, 2009).

This case illustrates the value of collaboration between the police and external agencies using an approach similar to the SARA model. The Task Force scanned the environment (similar police departments) and analysed data to highlight specific problems of citizen complaints and agency management of force. The collaborative Task Force provided a number of recommendations, with the actual implementation left to the agencies concerned (those subject to the recommendation). The changes were assessed and evaluated collaboratively by the Task Force in order to follow not only that the response was adequate but also what impact that response was having on the problems identified at the analysis stage. Thus, the response was evaluated against the intended effects. The reports provided by the Task Force were made public. They highlight that the process was challenging but comment on the ‘maturity’ of the Portland Police to be internally critical and to accept both criticism and reform showing a commitment to improving its services to the public (Force Task Force, 2009, pp. iii-v).

Case study: Queensland, Australia

In Australia, the QPS and their oversight body the CMC jointly undertook a review of the QPS Taser policy, procedures, training and monitoring. The joint review was initiated by the Minister for Police, Corrective Services and Emergency Services in the wake of a Taser-related death in Queensland during statewide roll-out of Tasers to QPS officers. The roll-out of Tasers was put on hold while the joint review team conducted their work. The review team consisted of officers from both the CMC and the QPS who had experience and background in relevant issues such as use of force, operational skills and tactics, and risk management.

The team undertook a review of the available literature on Conducted Energy Weapons (CEWs), particularly research from the US and Canada, as well as an audit of QPS Taser data; data collected by the Taser device that records when it is activated, how many times it is deployed, and for what length of time. The literature review and audit highlighted issues and risks associated with Taser use by the QPS. The review team then conducted an assessment of the QPS Taser policy, procedures and training in the light of those findings. The review was published in 2009 (QPS-CMC, 2009) and made 27 recommendations. The report also stated ‘the paramount importance of ongoing collaboration between the CMC and QPS in monitoring both the implementation of the report’s recommendations and emerging research on the effective and safe use of CEWs’ (QPS-CMC, 2009, p. 1). The review (QPS-CMC, 2009) was followed by an evaluation by the CMC, published in 2011 (CMC, 2011). The evaluation by the CMC reported that the QPS had

... demonstrated a firm commitment to implementing the 27 recommendations from the 2009 QPS-CMC review, investing considerable time and resources to do so. To date, 24 recommendations have been implemented, including all recommendations related to Taser policy and training. Progress continues on the three recommendations related to Taser monitoring and continuous improvement processes that are outstanding. (CMC, 2011, p. xvii)

The CMC reported positive effects of the changes, including decreased Taser uses. This included a decrease in presentations and deployments, as well as ‘drive stun’ uses (where the Taser is held against the body rather than the probes being deployed). The

CMC also noted decreases in Taser use in certain circumstances, particularly against handcuffed people, and a decrease in multiple and prolonged uses. The CMC concluded that there was 'no evidence of widespread misuse' and 'no indication of mission creep in terms of officers using Tasers in less serious situations' (CMC, 2011, p. xvii). However, some concerns were raised and suggestions made for continuous improvement in the area of Taser use, particularly regarding Taser use against members of vulnerable groups and ensuring that QPS standards are consistent with suggested best practice internationally. An additional 21 recommendations were presented in the evaluation report that will require further monitoring and evaluation.

The Queensland case study illustrates a slightly different implementation of the SARA model from the Portland case study in that the final stage of assessing the implementation and impact of the recommendations was independently undertaken by the oversight body rather than in collaboration with the police agency. The independence of the evaluation by the oversight agency, rather than jointly with the QPS, may add weight to its report in terms of reassuring public confidence in the system. The case study also illustrates the circularity of the SARA model, where the assessment stage can highlight further, or outstanding, concerns that may need additional monitoring or response and further subsequent evaluation.

Conclusion

The value of a problem-oriented approach to police reform has been described through a variety of examples and case studies, with particular use of the SARA problem-solving model. It is important to note that SARA is not offered as a prescriptive model for all oversight work, but as a framework for describing a complementary suite of activity that can contribute to reform. While cases of misconduct continue to arise, and citizens continue to make complaints against the police, there is still a place for reactive oversight. Clearly, both deterrence and reform are important functions for external oversight agencies in their endeavour to increase public confidence, reduce police misconduct and improve or enhance police services. Further, in order to fully embrace the Problem-Oriented Policing philosophy, responses would need to be innovative, implementation and evaluation would be rigorous, scientific and experimental (or quasi-experimental) (see Tilley, 2010), and efforts would engage a variety of stakeholders. While there is clearly activity emerging in each of these areas, including collaborative efforts between police and oversight agencies, there is a great deal of scope for increasing these efforts, particularly in relation to conducting and publicising evaluations. Oversight agencies have much to offer, if provided with appropriate resources. The case studies presented here show that appropriate partnerships with police are possible and that they can add value to enable problem-oriented work to be undertaken that impacts positively on police service members and communities.

Notes on contributor

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Policing and Society

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/gpas20>

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Available online: 28 Jun 2011

To cite this article: Tim Prenzler (2011): The evolution of police oversight in Australia, Policing and Society, 21:3, 284-303

To link to this article: <http://dx.doi.org/10.1080/10439463.2011.570866>

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The evolution of police oversight in Australia

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(Received 27 July 2010; final version received 25 November 2010)

This paper reviews developments in police oversight in the last decade in Australia's eight jurisdictions. Significant variation remains in the structure and responsibilities of oversight agencies, but there has been an ongoing trend towards replacing an ombudsman model with a public sector-wide commission model. There has also been a general convergence in terms of increased powers and an enlarged range of anti-corruption tactics. Change has been driven by ongoing revelations of misconduct or concerns about potential misconduct by police, public servants and politicians. Despite improvements it is argued that there is considerable room for better practice, especially in enlarging the scope of independent investigations and adjudication by integrity commissions.

Keywords: police oversight; complaints against police; police corruption; police integrity

Background

'Civilian' – or 'external' or 'citizen' – oversight developed in response to concerns that police internal investigations were compromised by the tendency to protect colleagues and cover up misconduct. The repeated failures of internal investigations and discipline drove the evolution towards civilian oversight mainly from the 1950s in English-speaking countries (Finn 2001). The powers and functions of these oversight agencies often vary significantly, but two basic models have been identified: (1) a 'minimal review model' where agencies audit police complaints investigations, recommend changes to procedures or disciplinary decisions and respond to appeals from dissatisfied complainants; and (2) a 'civilian control model' where agencies conduct independent investigations, deploy a variety of advanced investigative tools (including compulsory hearings and covert surveillance), have a role in disciplinary decisions and prosecutions and evaluate police internal corruption prevention strategies (Prenzler 2000, Seneviratne 2004).

The civilian control model has frequently been resisted by police managers and police unions who wish to keep complaints processing in-house and by governments wishing to minimise costs and avoid embarrassing exposure of misconduct. Advocates typically include civil libertarians, academics, leaders of ethnic minority groups and progressive politicians concerned about police abuses. Public opinion and complainant surveys evidence strong support for a large role for independent agencies; while surveys of police show mixed opinions, including some support for

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the principle of independent investigations (Prenzler 2000). Despite this, the review model remains dominant, representing a political compromise between competing advocates. At the same time, internationally there is a slow ongoing trend towards the adoption of many features of the civilian control model.

In England and Wales, the 1981 Scarman Report into the policing of race riots led to the establishment in 1985 of the Police Complaints Authority (Maguire and Corbett 1991). The 1999 'Stephen Lawrence Inquiry' was critical of the Authority's reliance on police investigators, and weaknesses in the disciplinary process were seen as exacerbating problems of minority dissatisfaction with police (MacPherson 1999). In response to these and other criticisms, the Home Office created the Independent Police Complaints Commission (IPCC) in 2004. The IPCC has a regional presence and is obliged to carry out independent investigations of serious incidents, such as deaths or serious injuries inflicted by police. It also investigates all allegations involving senior police and all serious allegations, such as those involving 'organised corruption' or process corruption, and responds to complainants dissatisfied with the police response to their complaint. Other matters may be subject to varying degrees of IPCC direct 'management' or more detached 'supervision', depending on their seriousness (Independent Police Complaints Commission (IPCC) 2009, pp. 10–11, 2010). The Commission, however, remains a mixed model, with substantial reliance on police for investigations and limitations on input into disciplinary decisions (Seneviratne 2004, Smith 2009a). The Ombudsman for Northern Ireland, established in 2000, demonstrates most of the features of the civilian control model. It is a product of the Hayes (1997) and Patten (1999) Reports, both of which emphasised the particular need for independent scrutiny of police in a highly divided society. The Ombudsman investigates all public complaints using civilian dominated investigation teams. There is also a capacity to appeal police decisions to an independent tribunal or direct the Chief Constable to take disciplinary action (Seneviratne 2004).

In Europe, 'independent police complaints systems of any description are a rarity' (Smith 2009b, p. 262). However, The Council of Europe's Commissioner for Human Rights (2009) has placed the issue on the agenda, describing an independent and effective police complaints system as 'of fundamental importance for the operation of a democratic and accountable police service' (p. 3). Across Canada, the expansion of civilian oversight has been driven by breakdowns in police-community relations and dissatisfaction with police handling of complaints, chronicled by various government-sponsored reviews (McDonald 1981, Oppal 1994, Commission for Public Complaints Against the RCMP 2010). The Canadian Association for Civilian Oversight of Law Enforcement (2010) lists 22 police oversight agencies. In the largest province of Ontario, police are subject to scrutiny from a Special Investigations Unit, the Ontario Office of the Independent Police Review Director and the Ontario Civilian Commission on Police Services.

Two major reports by the United States Commission on Civil Rights (1981, 2000) criticised the limited powers of review boards and exposed the way police investigators subverted legitimate complaints, highlighting the need for review boards to exercise independent powers. The landmark Knapp (1972) Commission of Inquiry in New York City and the Mollen (1994) Commission recommended greater independent input into police conduct issues. New York police are now subject to the scrutiny of the Commission to Combat Police Corruption and the

Civilian Complaint Review Board. The US National Association for Civilian Oversight of Law Enforcement (2010) lists 122 police oversight agencies in the country.

In Australia, similar processes of scandal and inquiry, and public dissatisfaction with complaints handling, led to the establishment of civilian oversight in all eight jurisdictions from the 1970s. A study by Lewis and Prenzler (1999) found four police departments were oversighted by ombudsmen, two were oversighted by an ombudsman and a commission, one was subject to the scrutiny of an Ombudsman-style PCA and one was overseen by a public sector-wide commission. All agencies were mainly engaged in reviewing police investigations of complaints and only half had the power to compel testimony. The Australian case is notable for the growing inclusion of politicians and the whole public sector, alongside police, within the jurisdiction of oversight/anti-corruption agencies. This development has occurred incrementally, mainly at the state level, in response to diverse misconduct scandals (Ross 2007).

Civilian oversight of police is characterised by frequent change and almost constant debate. A recent Canadian review stated that the issue of police investigating police had 'reached a critical juncture in Canada and many other Western countries', and indicated there was an urgent need to find more effective police and oversight agency strategies 'that might better satisfy the demands of public accountability and procedural justice' (Commission for Public Complaints Against the RCMP 2010, pp. 1–2). Ongoing controversy and dissatisfaction with weak review agencies underscore the need to identify more effective, consensus-based, systems to address the problem of police misconduct and high volumes of citizen complaints.

Method

The present paper examines developments in Australia in the approximate decade from 2000 to June 2010, since Lewis and Prenzler's (1999) paper. June 2010 saw the release of a major report on anti-corruption arrangements in the state of Victoria, which represents an appropriate end date for the present study. The study is structured around the Australian policing system, which is organised primarily at the state level. Table 1 sets out the numbers of sworn officers in the eight jurisdictions. Each of these operates largely independently of the other in relation to criminal justice. Sources for the study included parliamentary reports and websites; and oversight agency reports, annual reports, websites and legislation. These constitute the substantive primary source material for the study. The sources were searched for the period from 2000 to June 2010, as was the electronic newspaper search engine *Factiva*. Key search terms used in *Factiva* were 'police corruption', 'watchdog', 'ethical standards', 'accountability', 'oversight' and 'complaints'. This dual approach was adopted to ensure systematic coverage of relevant issues dealt with both at the level of government – in public source material – and in the public arena provided by the print media.

The paper reports the findings for each of the eight jurisdictions, covering system changes, putative causes and impacts. The sub-sections deal in turn with the following aspects: (1) the system in place in 1999, with reference to Lewis and Prenzler's (1999) study, (2) critical events related to police conduct and accountability

Table 1. Sworn officers by jurisdiction, Australia 2008–2009.

New South Wales	15,394
Victoria	11,028
Queensland	10,124
South Australia	4209
Western Australia	5522
Tasmania	1212
Northern Territory	1024
Commonwealth ^a	2842

^aThe Australian Crime Commission (2009, pp. 80 and 168) had 418 staff, many of whom are seconded from other policing agencies (Australian Federal Police 2009, p. 190, Productivity Commission 2010, Tables 6A.1–6A.8).

that influenced change, (3) the main changes that occurred in the oversight system and (4) subsequent critical events and evaluative responses.

Findings

New South Wales

The New South Wales Ombudsman, established in 1974, was given jurisdiction over police in 1979, with a typical review-style brief. The Independent Commission Against Corruption (ICAC) was then set up in 1989 after decades of endemic corruption across government and the police. Although the ICAC had some successes it was unable to devote sufficient resources to adequately address police misconduct. The Wood Commission of Inquiry into the New South Wales Police ran from 1994 to 1997 and identified widespread, diverse and entrenched corruption and other abuses. An interim report (Wood 1996) led to the establishment of the powerful Police Integrity Commission (PIC) in the same year. The new system in place in 1999 left the review of minor and intermediate complaints investigations with the Ombudsman and gave responsibility for serious matters to the PIC, along with oversight of police integrity management (Lewis and Prenzler 1999).

The PIC 'can exercise covert and coercive powers not available to the Ombudsman's Office, including telecommunication interception, listening devices and controlled operations' (Committee on the Office of the Ombudsman and the Police Integrity Commission (PIC) 2006, p. 134). A distinctive feature of the PIC is that it cannot employ any present or past member of the New South Wales Police Force (Police Integrity Commission Act 1996, s.10(5)). The Wood Commission argued that the Police Service needed to retain primary responsibility for controlling misconduct, 'otherwise there was a risk that it might abandon all responsibility and interest in maintaining high standards' (1997, p. 524). Consequently, the majority of complaint investigations remains with police, and the PIC and Ombudsman can only recommend action against an officer, either by the Police Force or the public prosecutor. The PIC reports to parliament and is overseen by a parliamentary committee with access to an inspector (Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity 2009, p. 13). Since its inception the PIC has produced 26 major investigation reports primarily covering

drug-related corruption, procedural biases, improper associations, secondary employment and the release of confidential information (PIC 2010).

There have been a number of critiques of police reform in New South Wales post-1999. The final *Qualitative and Strategic Audit of the Reform Process (QSARP) of the NSW Police*, as prescribed by the Wood report, was completed in 2002 (HayGroup 2002). It criticised police management for focusing on administrative efficiency and crime fighting – or ‘business improvement’ – at the cost of integrity management (p. iv). A survey of 40 justice system stakeholders found that they were evenly split over the extent to which they were satisfied or dissatisfied with reform. The majority were highly supportive of the PIC in detecting corruption but 87% felt there had been no ‘real change’ in the police culture (pp. 104–106). The report also noted that performance measures on reform were lacking, including complainant satisfaction surveys (p. 317). A second major report, the *Ten Year Review of the Police Oversight System in New South Wales*, by the parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission (2006), supported the existing system against submissions by police management and the Police Association which sought to take back more responsibility for complaints and have the PIC and Ombudsman roles combined in one institution. The report was highly critical of inefficiencies in police handling of complaints and failures in solving problems related to complaints at the local level.

A major review of police complaints processing, conducted by the PIC in 2000, was also highly critical of weaknesses in investigations and discipline (PIC 2000). More recently, however, the PIC and the Ombudsman have stated that about 90% of police investigations are conducted to a satisfactory standard (Committee on the Office of the Ombudsman and the Police Integrity Commission 2006, p. 82, New South Wales Ombudsman 2009, p. 66). The main academic assessment of reform (Chan and Dixon 2007) involved interviews with key informants. It found that the majority supported the proposition that the PIC was successful in exposing corruption, had been somewhat effective in deterring corruption and had encouraged internal disclosures. Interviewees also placed a positive interpretation on the fact that the PIC had not identified major systematic corruption but criticised the politicisation of policing that drove the crime-fighting agenda at the expense of an ethical organisational culture.

Overall, there has been no significant restructuring of the public sector integrity system in New South Wales. The main change has been the addition of a parliamentary inspector for the ICAC in 2005 (Yeadon 2006). Around the same period, in response to frustrations with perceived delays by the public prosecutor, the ICAC attempted to obtain authority to proceed with prosecutions, but this was rejected by the parliament (Yeadon 2006). Public support for the ICAC has been high, with 93% of survey respondents on average agreeing that ‘having the ICAC is a good thing for NSW’. The number who thought corruption was ‘a major problem’ in the state declined from a high of 58% in 1995 to 26% in 2006 but was at 40% in 2009 (ICAC 2006, pp. 26 and 12, 2010, pp. 23 and 7). Despite this mixed picture, there do not appear to be any strong voices for change in New South Wales (Salusinszky 2009).

Victoria

Oversight of police complaints has had a rocky history in Victoria. In 1986, the PCA took over the police review functions of the Ombudsman, established in 1973.

However, in 1988, opposition from police and the Police Association led to the disestablishment of the PCA, with its oversight role returned to the Ombudsman (Lewis and Prenzler 1999). Since that time there has been continuous controversy about police conduct and repeated calls for a royal commission. Some of the more prominent controversial events and allegations against police across the last three decades include inappropriate political surveillance, pay-back shootings of criminals, high rates of excessive force and deadly force, sexual harassment and sex discrimination against women police, rape of women, a kick-back scheme with emergency security providers, baton charging of high school protestors, harassment of whistle-blowers, abuse of strip searching, suspicious murders involving police, drug-related corruption and disclosures of confidential information (Office of Police Integrity 2007b).

These unfolding dramas entailed growing disquiet over unresolved allegations against police, under-resourcing of the Ombudsman's Office and police subversion of the Ombudsman's recommendations (Dargan 2000, Mottram 2001, Ombudsman 2002, pp. 3–4 and 16). There was also disquiet in some instances over the Ombudsman's findings in favour of police. For example, the Ombudsman's investigation of allegations of excessive force against demonstrators at the 2000 World Economic Forum was supportive of police tactics despite the fact the Victorian government was eventually obliged to pay compensation to victims (Neal 2001, Ombudsman 2001, Tinkler and Healey 2007). In response to mounting concerns the Ombudsman was given own motions powers (Mottram 2001, Ombudsman Legislation (Police Ombudsman) Bill 2004). However, the tipping point came with the escalation of the Melbourne gangland wars in 2002–2003, with shoot outs and killings in the streets and allegations of police neglect and possible complicity. Under mounting pressure to establish a royal commission, the government instead restructured the Ombudsman's office to create the Office of Police Integrity (OPI) in 2004, with royal commission powers reviewed by the Special Investigations Monitor (Office of Police Integrity 2010, pp. 17–18).

The OPI has exposed numerous corrupt practices in the Victoria Police. Two of its more spectacular successes involved the use of a hidden camera to reveal violence by the Armed Offenders Squad in dealing with suspects, and the exposure of a high-level plot to replace the police commissioner (Office of Police Integrity 2009). Despite its extensive investigative powers, the OPI is unable to take direct disciplinary action against police. It is limited to making recommendations to the police commissioner, referring criminal matters to the public prosecutor and reporting to parliament on cooperation (Office of Police Integrity 2008). It has, however, reported that it has made approximately 330 recommendations to Victoria Police, with '90% accepted' (Office of Police Integrity 2010, p. 23). At the same time, like the Ombudsman, it has struggled to generate cultural change in the police and build primary prevention of misconduct. In addition, the large bulk of complaints are still investigated by police. A 2007 survey found that two-thirds of complainants were dissatisfied with most aspects of the way their complaint was managed, and this was related to the fact that 78% expressed a preference for the independent processing of their complaint (Prenzler *et al.* 2010). In 2009–2010 the OPI became mired in controversy after allegations were made regarding leaks of OPI telephone intercepts; claims the OPI failed to investigate allegations of police racism; and

charges against police were dropped due to inadequate evidence in a number of cases, including against two of the coup plotters (Rintoul 2010a, 2010b).

Although the work of the OPI mitigated calls for a royal commission, its successes and failures also partly motivated calls for a public sector-wide anti-corruption commission so that the powers and strategies of the OPI would be applied equally to politicians and public servants. The Leader of the Opposition in the Legislative Council in 2007 argued that:

It is clear that we have limited independent means of public scrutiny in regard to the executive – or indeed in regard to the bureaucracy – at the present time . . . as the head of the Office of Police Integrity, [the Director's] powers are confined to investigating police misconduct . . . The Ombudsman does not have power to investigate judicial bodies or politicians – that is us – and I think we should be aware that we need to be as equally subject to investigation as any other part of government. (Parliament of Victoria, Legislative Council 2007, p. 2555)

The Victoria Police Association was particularly strident in support of a comprehensive commission, because 'corruption does not, has not and will never start and stop with the police force' (Police Association Victoria 2008, p. 15). The Victorian Labor Government consistently resisted calls to establish a commission, claiming the OPI and Ombudsman had sufficient powers, and that anticorruption commissions were an unjustifiable expense (e.g. Parliament of Victoria, Legislative Council 2007, pp. 2250–2260). However, succumbing to pressure, in November 2009, Premier Brumby announced a review of all aspects of Victoria's integrity system. In June 2010, the government accepted the recommendation of the 'Proust Review' in support of a new Victorian Integrity and Anti-corruption Commission, which will involve the transfer of the OPI functions to a Police Integrity Director within the Commission (Brumby 2010, Public Sector Standards Commissioner 2010).

Queensland

The Fitzgerald (1989) Inquiry in Queensland exposed widespread corruption and led to the replacement of the ineffectual Police Complaints Tribunal (est. 1982) with the Criminal Justice Commission (CJC). The Commission was responsible for misconduct across the public sector, with a lower threshold for the investigation of police matters. From the start the CJC had own motion and inquisitorial powers, and a large research and evaluation role aimed at improving practice (Lewis and Prenzler 1999). It was also unique in being an integrity commission that was charged with coordinating the criminal justice system and combating major and organised crime. From its inception it was overseen by a cross-party parliamentary committee, which added an inspector to carry out investigations in 1997 (the Parliamentary Criminal Justice Commissioner) (Lewis 2010). The CJC had royal commission powers consistent with the civilian control model, but in practice largely undertook a review-style approach to its work. Its apparent independence was also undermined by reliance on seconded police investigators (Prenzler 2009).

During the 1990s, the CJC enjoyed something of a honeymoon period with stakeholders – with some key exceptions including the National Party and the Police Union. The CJC was widely seen as an essential institution for deterring, exposing and stopping misconduct. A public opinion survey in the mid-1990s found that 60%

of respondents believed that the CJC had been successful in improving police conduct (Criminal Justice Commission (CJC) 1997, p. 47). However, the Commission moved fairly quickly to offload many intermediate and lower level complaints back to the police, with varying degrees of supervision and auditing of investigations (1997, p. 63). One detractor, journalist Phil Dickie, whose investigations led to the Fitzgerald Inquiry, described the CJC as 'a useful repository for burying complaints' (cited Robson 1995, p. 20).

The main change to the oversight system in Queensland post-1999 was the adoption of an explicit policy of 'devolution' when a new Labor government restructured the CJC into the Crime and Misconduct Commission (CMC) in 2002, with the new commission taking an even more detached review role. Subsequently, it has been repeatedly criticised for devolving too many complaints against police and public servants back to line departments, and critics have pointed out that the Commission's jurisdiction over politicians is too narrowly confined to criminal matters (Prenzler 2009). The CMC investigates less than 2% of the ~3500 complaints it receives each year – despite a budget of AU\$37 million and a staff of 350, and despite public opinion polling showing that 91.5% of respondents believe 'complaints against the police should be investigated by an independent body not the police' (Crime and Misconduct Commission (CMC) 2008, pp. 25–26, 67, 76, 2009b, p. 54). Executive support from the CJC/CMC for devolution occurred despite the frequency of its own reports condemning police investigations and anti-corruption procedures. The Commission has frequently exposed misconduct but failed to affect adequate change in areas such as deadly police vehicle pursuits, misuse of tasers, misuse of confidential information, police involvement in the drug trade and indigenous deaths in police custody (Criminal Justice Commission (CJC) 1999, 2000, Dibben 2008).

The 2000s saw declining confidence in the CMC amongst journalists, academics, politicians, lawyers and some outspoken CMC staff (e.g. Chamberlin 2002, Koch 2009, Prenzler 2009, Lewis 2010). A 2008 survey showed that 70% of people who made complaints against police were dissatisfied with the response (Crime and Misconduct Commission 2009b, p. 47). In 2009, a former supreme court judge and leading corruption investigator called for an end to 'cops investigating cops' (cited Koch and McKenna 2009, p. 1), and in 2010 the Queensland Council for Civil Liberties called for a judicial inquiry into the handling of complaints against police. It advocated the use of non-police investigators, claiming,

We are back to the bad old pre Fitzgerald days where police investigate police and run dead on too many complaints against police... The CMC is enamoured of its crime fighting/super police force role and has seriously neglected over the last ten years its police oversight role. (2010, p. 1)

Many of these problems were crystallised in a Crime and Misconduct Commission (2009a) report about improper associations between police and criminal informants – *Dangerous Liaisons* – which documented how disclosures were made to the Commission in 2003 and 2004 that were referred back to the police, who deemed them unsubstantiated allegations. In 2005, the CMC was forced to give the case proper attention following a report from the Australian Federal Police, who stumbled across the matter in the course of a separate investigation. It took from

2003 to 2009 for a proper investigation to be completed. The period also saw escalating conflicts between the Police Commissioner and CMC Commissioner over disciplinary decisions, obliging the government to request the CMC to conduct a review of police discipline – described by the Premier as ‘a total overhaul’ (AAP 2010, Crime and Misconduct Commission 2010).

Western Australia

In 1999, the Western Australia Anti-Corruption Commission (ACC) and Ombudsman shared oversight of the Western Australia Police. The Ombudsman (est. 1971) was given jurisdiction over police in 1985. The ACC was established in 1996 after the ‘WA Inc.’ scandal, involving financially disastrous collusion between politicians and business leaders (Lewis and Prenzler 1999). The main events subsequent to the establishment of the ACC were the Kennedy Commission of Inquiry into the police and the creation of the Corruption and Crime Commission (CCC).

The ACC had been unable to dispel suspicions about police misconduct, including in relation to a series of failed prosecutions partly attributed to the police code of silence (Barton 2000, Day 2000, Mendez 2000). The Kennedy Royal Commission ran from 2002 to 2004 and uncovered police involvement in burglary, narcotics, assaults, procedural abuses and fabrication of evidence (Kennedy 2004). The Report argued that the ACC lacked adequate transparency and powers. As a result, in 2004 it was restructured as the CCC, with capacity to hold public hearings and conduct undercover operations (Kennedy 2004). A parliamentary committee and Parliamentary Inspector assumed responsibility for monitoring and responding to complaints about the Commission (Corruption and Crime Commission Act 2003, s.195).

Since its inception the CCC has been entangled in controversy, mainly in relation to investigations of public servants and politicians. However, despite allegations of ‘witchhunts’, it retains bipartisan political support and has a reputation for dogged pursuit of misconduct with some major ‘successes’:

Several ministers and numerous senior public servants have been forced to resign in disgrace. Police officers, prison wardens, council officers and elected mayors, have been named, shamed and, some instances, charged and dealt with by the courts. (Denholm and Salusinszky 2008, p. 3; see also Archer 2008)

Public opinion has also been supportive of the Commission. A 2008 survey found that 98% of respondents agreed with the statement ‘it is a good thing to have a body like the Triple C’, while 54% agreed that the CCC has increased accountability of public officials in the preceding year and 72% felt confident that a complaint to the CCC would be properly investigated (Corruption and Crime Commission 2009, pp. 41, 38, 36). Considerable controversy occurred for a period over repeated public challenges of CCC findings by the Parliamentary Inspector, with allegations that the Inspector was acting outside his authority (Denholm and Salusinszky 2008, p. 3). The Commission has also faced questions over its credibility in relation to the devolution of disciplinary decisions, which have allegedly been undermined at the departmental level, including in relation to police (Murray 2004, p. 2). Like the Queensland CMC, the CCC has a role in combating major and organised crime, but

this is a very limited function. However, in October 2009 CCC Commissioner Len Roberts-Smith warned of the risks of neglecting public sector misconduct in response to a move by the Barnett government to require the Commission to focus more on organised crime (Taylor 2009).

South Australia

In South Australia, police became subject to the oversight of the PCA in 1985. The PCA was an outcome of the Grieve Committee, which reviewed developments in other states and concluded that an oversight system was desirable as a precautionary measure, despite the absence of police corruption indicators (Lewis and Prenzler 1999, Police Complaints Authority (PCA) 2010). The PCA's role has been largely limited to monitoring police internal investigations of complaints and it can only recommend disciplinary charges. An audit of Australian police oversight agency powers by the Victorian OPI in 2007 found that the PCA lacked the power to conduct hearings and compel self-incriminating testimony (2007a, pp. 53–55). It does, however, have a wide discretion to investigate any matter it sees fit. It also

can, and usually does, conduct the primary investigation of complaints about the most senior police officers, about members of the Internal Investigation Branch, about public servants employed by SA Police and complaints which relate to policies, practices or procedures of the police force. (PCA 2010, p. 2)

The adequacy of police oversight and corruption prevention have been called into question in South Australia by a series of events including secrecy over the investigation of a police officer for selling confidential information, police cheating on exams, an officer evading a random breath test and persecution of the officer making the disclosure, and revelations that outlaw motorcycle gangs were using wives and girlfriends to obtain employment in the police (and public service) to aid illegal activities (Michael 2000, Naughton 2005, Salter and James 2006). In the 2000s, South Australia was also seen to be behind the times as other Australian jurisdictions set up anti-corruption commissions. The long-term Labor government doggedly resisted calls for reform, claiming a commission would be too expensive and 'a carnival of lawyers' (Roberts 2007). However, calls have persisted with support from the Liberal Opposition, the South Australian Law Society and the South Australian Police Union, among others (South Australia Parliament 2007, p. 811, Wiseman 2007, 2008).

Tasmania

The Tasmania Police have been subject to oversight by the state Ombudsman since 1978 (Lewis and Prenzler 1999). In 1999, the Tasmanian Bar Association recommended creation of an independent police watchdog agency following the disbanding of the Northern Drug Bureau after officers were charged with drug trafficking and perverting justice (Whinnett 1999). The case for a standing integrity commission received added impetus from an inquiry into a police shooting, which was hampered by a lack of phone tapping powers to test possible witness collusion (Commission of Inquiry 2000, Hobart Mercury 2000). Renewed calls for a

commission were made in 2003 by Whistleblowers Australia and a group called the Police Reform Alliance after a successful appeal by a sacked officer led to a review of the police commissioner's confidence power (Waterhouse 2003).

Issues of corruption in Tasmania have, however, been centred on politicians rather than police, with allegations of undue influence driving increasing demands for an anti-corruption commission from the mid-2000s. The case received some impetus from an allegation that the Police Commissioner had notified politicians of a corruption probe. In 2008, he was charged with releasing police secrets to government officials but the prosecution did not proceed (Glaetzer 2009). In 2006, the Deputy Premier was forced to resign over the appearance of favouritism in awarding a government contract, and in 2008 Premier Lennon was forced to resign over perceptions of corruption in the fast tracking of a major planning approval (Denholm 2008). The new Cabinet set up a Joint Select Committee on Ethical Conduct to review the state's integrity system. A submission to the Committee by the Police Association of Tasmania (2009) argued for an independent commission because the current system for investigating allegations against politicians and public servants was ad hoc, lacked transparency and police investigators were perceived as compromised because of their accountability to the police minister. In 2009, the final report of the Committee recommended an Integrity Commission be established, legislation was passed by the parliament and the commission was due to begin operations in mid-2010 (Joint Select Committee on Ethical Conduct 2009, Integrity Commission Act 2009).

Northern Territory

The Northern Territory Ombudsman has been responsible for overseeing complaints against police since its establishment in 1978 (Lewis and Prenzler 1999). The Territory has seen the lowest levels of debate about public sector integrity systems. According to the Minister for Public Employment, Rob Knight, this is because the Territory has 'not experienced the corruption and maladministration other jurisdictions have endured' (Knight 2009, p. 1). Nonetheless, there have been police conduct issues that have demonstrated limitations in the Ombudsman's role and its inability to address problems, some of which have been described by the Ombudsman as 'systemic and procedural' (cited ABC News 2005b). These included mistreatment of indigenous people, drunken behaviour by police and assaults (McGuirk 2000, ABC News 2005a, Toohey 2006). In 2006, concerns were expressed by the Ombudsman's Office over alleged understaffing and budgetary constraints (ABC News 2006).

The 2007 audit of Australian police oversight agency powers (Office of Police Integrity 2007a, pp. 53–55) found that the Northern Territory Ombudsman lacked the power to conduct hearings, compel self-incriminating testimony and apply for search warrants, and was the only agency without an own motion power. An unreleased review led to a new *Ombudsman Act 2009*. Described by the Chief Minister as 'the first reform of the Ombudsman in 30 years', it gave the Ombudsman own motion power to investigate issues raised by media reports and other sources outside formal complaints, a capacity to accept complaints against police from police, a requirement to investigate complaints against senior police and introduced protections for complainants (Henderson 2008, cited ABC News 2009).

Despite these changes, Ombudsman Caroline Richardson told a 2010 Parliamentary Budget Estimates hearing that her Office did not have ‘the power or the staff to investigate allegations of police misconduct’. She stated that the Office ‘has 99 open cases resulting from allegations made against police, including 14 claims of serious misconduct’. She also pointed out that ‘a lot of people believe that we do the investigation into police complaints . . . We don’t. All police conduct is investigated by a unit of the police department. All we do is monitor how they do it’ (cited Hind 2010).

Commonwealth

In 1999, the Australian Federal Police (AFP) were oversighted by the Commonwealth Ombudsman, set up in 1976. This situation persisted despite a series of Australian Law Reform Commission reports calling for a separate agency with an enlarged role in police corruption prevention and complaints investigation (Lewis and Prenzler 1999). The 1995 report argued that asking police to investigate police ‘places them in a “hopeless conflict of interest position”’ that produces inevitable pressures to disbelieve the complainant and support the officer (1995, p. 149). It concluded that ‘the model most likely to engender confidence must be one which gives as much power and responsibility as possible to an external agency’ (p. 149). This position was reinforced by the Royal Commission into the New South Wales Police which found evidence of past corruption involving AFP officers within a narcotics joint task force (Wood 1997, p. 15). The final Law Reform Commission report (1996) recommended that the Ombudsman be replaced by a National Integrity and Investigations Commission, but the move was stymied by a change of government in the same year.

The Harrison Inquiry of 1997 was established by the Commonwealth Attorney General to conduct a follow-up investigation of the Wood Commission findings. The Report has never been released, but according to available information Harrison did not find evidence of widespread corruption. Dismissal proceedings were instituted against a few officers over alleged minor isolated incidents. Some internal restructuring of AFP processes followed, including abolishing some specialist branches, tightening evidence handling procedures, better management of police informants and enhanced internal witness protection (Australian Commission for Law Enforcement Integrity 2007, pp. 6–7 and 11). However, the issue of civilian oversight of police was kept alive at the federal level by the expansion of external agencies elsewhere and by occasional claims of federal police misconduct and the need for independent investigations (e.g. Clack 1999, Canberra Times 2004). In 2004, the Howard government announced the creation of a watchdog for police with all the powers of a royal commission, including phone tapping capabilities. The move came after allegations on the investigative television programme *Four Corners* that Australian Crime Commission (ACC) officers were involved in stealing from drug dealers and picking up prostitutes in government vehicles. The government maintained this was not a factor in its decision, and that the Commission was created as a proactive ‘insurance against corruption’ (cited McIlveen 2004, p. 16).

A slow legislative process led to the establishment in 2006 of the Australian Commission for Law Enforcement Integrity (ACLEI). The Ombudsman was left with reviewing public complaints against AFP and ACC officers unrelated to corruption, while ACLEI was given responsibility for investigating and preventing corruption

(Australian Commission for Law Enforcement Integrity 2007, p. 16). The Commission has the power to conduct telecommunications intercepts, electronic and physical surveillance, controlled operations such as integrity testing and assumed identities and it has right of entry and seizure powers on all law enforcement premises. It has the authority to execute warrants to search premises and to compel individuals to attend hearings and provide documents (Australian Commission for Law Enforcement Integrity 2008, p. 12). The *Law Enforcement Integrity Commissioner Act 2006* mandated the creation of a Parliamentary Joint Committee, requiring the committee receive reports and monitor the functions of the Commission.

ACLEI appears to have settled into its role with little controversy. It has produced a number of investigative reports, mainly clearing up unfounded allegations of misconduct (e.g. Australian Commission for Law Enforcement Integrity 2010). The main area of contention concerned its budget. The Commission argued its initial budget was grossly inadequate, prompting headlines such as 'Police watchdog toothless' (Stewart 2007). A 2009 Parliamentary Committee review recommended increased funding 'as a matter of urgency' (Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity 2009, p. 69). Additional recommendations included the development of a prevention and education unit, a committee inspector and a tightening of grounds for dismissing and suspending officers (Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity 2009). The new Labor government boosted ACLEI's budget to a level considered manageable by the Commission (Australian Commission for Law Enforcement Integrity 2009, p. 22).

The 2009 Parliamentary Committee review recommended the extension of ACLEI's jurisdiction to other federal bodies 'with law enforcement powers and corruption risks associated with these powers', but it also supported the case for a public sector-wide commission (Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity 2009, p. 71). The Commonwealth Ombudsman (2004, p. 5) has stated that 'the Ombudsman should not be the chief agency responsible for investigating corruption allegations'. The Greens and the Australian Federal Police Association have also called for ACLEI's mandate to be extended to cover politicians and the public sector (Gilchrist and Colman 2004). But these calls have been quietly rejected by both the Conservative and Labor governments.

Discussion

The past decade in Australia has seen significant change in police oversight arrangements. Five of the eight jurisdictions have seen major institutional restructuring. This includes (1) in Victoria, the creation of the OPI and plans for a new integrated Victorian Integrity and Anti-Corruption Commission; (2) in Queensland, the re-organisation of the Criminal Justice Commission into the Crime and Misconduct Commission; (3) the establishment of the Corruption and Crime Commission in Western Australia; (4) legislation for a new Integrity Commission in Tasmania; and (5) a new ACLEI at the federal level. The primary drivers for these changes appear to be repeated scandals and ongoing distrust of internal investigations amongst the public and key stakeholders. This process of 'scandal and reform' is, of course, a common phenomenon observed in many jurisdictions (Smith 2009a).

In Australia the trend has taken a distinctive form in terms of a move towards public sector-wide commissions that resulted from concerns about police conduct increasingly being matched by concerns about the conduct of politicians and public servants. While incidents of misconduct amongst police, public servants and politicians appear to have been largely unrelated, 'coverage' of the whole public sector through an omnibus institution has been a primary concern.

In Western Australia, change was driven by the Kennedy Royal Commission into police corruption, where the state government was obliged to implement the Inquiry's recommendations for a more powerful commission. But the earlier 'WA Inc.' scandal and ongoing issues of public sector probity ensured the continuation of a broad commission model. Government reviews, rather than judicial inquiries, were the immediate drivers of change in Victoria and Tasmania. The situation in Victoria has been the most complex. Restructuring involved a two-stage process which saw first the creation of the OPI as a result of continuous misconduct in policing and government efforts to avoid a commission of inquiry. A combination of factors then led to the creation of a new public sector-wide commission. These factors included the successes of the OPI in uncovering police misconduct and a desire to see a similar level of accountability applied to the whole public sector. In Tasmania, change in police oversight was more the by-product of controversy over alleged misconduct by politicians and senior public servants. At the federal level there was no clear immediate trigger for change, but ACLEI – a specialist oversight agency – was the culmination of a long series of reviews and some intermediate-level misconduct issues involving police. While there have been probity issues involving federal politicians and public servants, these were of insufficient magnitude to include them in the jurisdiction of the new commission (Denholm and Salusinszky 2008).

The jurisdictions which saw major change also saw strong support for change from prominent judicial figures and legal groups, journalists, academics and police unions. Opposition parties and independent politicians also showed strong support, either from conviction or because they saw mileage in supporting improved accountability. In most cases governments were forced to take action in response to strong review or inquiry recommendations and to quieten controversy.

As noted, only three jurisdictions did not see major change. New South Wales already had coverage of the police and the public sector, and despite mixed evidence of effectiveness, there has been 'a strong "steady as you go" feeling' on the whole (Yeadon 2006, p. 27). In the Northern Territory, intermediate level police misconduct problems led to the Ombudsman obtaining greater powers, and there appears to be very little overt support for further change, especially given the absence of serious probity issues beyond the police. The South Australian government has resisted a campaign for change, but it is likely that the creation of integrity commissions in Tasmania and Victoria will increase pressure in the only remaining state without an anti-corruption commission.

The impact of institutional restructuring is difficult to assess or predict. One positive outcome is that the long-standing organised police corruption networks of the past – often involving politicians – appear to have been eliminated. Police misconduct has been forced further underground and becomes more individualistic or small group based, more opportunistic and harder to sustain. The same appears to apply to corrupt practices by politicians and public servants where they have been subject to oversight by a commission. In light of this, integrity commissions with a

broad jurisdiction may provide a useful model in many locations, given the growing recognition internationally of how corruption subverts economic growth, social equality and democratic freedoms (Transparency International 2009).

It should be noted nonetheless that much of the more evident 'success' of integrity commissions in Australia has been in secondary prevention – identifying and stopping misconduct – rather than primary prevention. This is reflected, for example, in New South Wales' public opinion surveys, where on average 78% of respondents have agreed that the ICAC is successful in 'exposing corruption' compared to 52% who agreed it is successful in 'preventing corruption' (Independent Commission Against Corruption 2006, p. 28, 2010, p. 21). Commissions have been attributed with prompting changes to procedures in government departments to reduce opportunities for corruption and affect positive cultural change (Salusinszky 2009). However, this view is strongest amongst senior public servants, whereas journalists and non-government organisations are much less positive about improvements (e.g. HayGroup 2002, Smith 2006, p. 169, Chan and Dixon 2007).

The expansion of commissions has also seen a positive extension of cross-parliamentary committee oversight and committee inspectors, which allows commissions to remain substantially independent of government but with a system of accountability to the electorate (Brown 2006). There has also been a move to adopt 'smart strategies' – including compulsory hearings; covert operations such as stings and physical and electronic surveillance; as well as risk assessments, and research and policy development (Parliamentary Joint Committee on the Australian Law Enforcement Integrity Commission 2009, p. 27). However, while integrity commissions have inquisitorial powers, they usually lack adjudicative powers and are highly selective about which cases they investigate, referring the bulk of matters to in-house processing. Public opinion surveys show strong support for commissions but this is often based on ignorance of their real workings. The few surveys of complainants who experience the system show widespread disappointment with what seems like a tokenistic response. Commissions have many of the powers of a 'civilian control model' but still operate primarily under a more limited 'review model'. The problem of insufficient independence in the investigation of police complaints is mirrored in concerns about the treatment of complaints against public servants and politicians.

There are several overseas models which provide possible or partial solutions to this problem. As noted, the Northern Ireland Ombudsman investigates all public complaints using civilian dominated investigation teams and has a strong influence on disciplinary decisions. However, Australian policy-makers have almost universally recoiled from such an extensive shift towards direct external control. With that in mind, some aspects of the IPCC for England and Wales offer a compromise. As noted, the IPCC conducts direct investigations of allegations involving senior police, serious incidents such as deaths or serious injuries inflicted by police and serious allegations. Setting clear thresholds like these would go some way to reassuring stakeholders of a minimum level of independence in investigating complaints and suspicions of misconduct – although it is most likely that the threshold would need to be set lower to include intermediate matters. The IPCC has in fact been taking on more independent investigations to ensure the appearance of impartiality. It has also acknowledged that what may appear to police to be a lower level complaint that should be handled in-house 'may be a serious, unique and often frightening event for a citizen' (2009, p. 7). There is also scope for giving complainants a much greater say

in which agency investigates their complaint and how their complaint is managed in terms of options such as local resolution and mediation. The current Australian systems are still some way from ideal, and there is likely to be ongoing agitation for further change given the reluctance to implement adequate independence. As Smith (2009a, p. 127) has observed in relation to the IPCC in England and Wales:

A consequence of unequal representation of stakeholders' interests is that, regardless of the intentions of policy makers and practitioners, the impact of reform has been limited in practice which, in turn, ensures that public demand for meaningful change continues undiminished, and the inevitability of further controversy leads to another reform cycle.

Conclusion

The decade of the 2000s in Australia in the area of police and public sector oversight has seen major institutional change – mainly in the direction of comprehensive coverage of police, politicians and public servants through powerful integrity commissions. There are, however, a number of unresolved issues. There remains a continuing over-reliance on a devolution policy that maintains the system of internal processing of complaints with very few independent investigations. This applies equally to all the groups subject to scrutiny. Coupled with this is an inability of oversight bodies to make disciplinary decisions. These issues have not been adequately addressed in the most recent plans for new commissions in Tasmania and Victoria. While it is increasingly difficult to argue against the role of integrity commissions as essential institutions, they will continue to disappoint key stakeholders and leave doubts about police (and public sector) integrity until they are much more directly involved in processing complaints.

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RESEARCH AND EVALUATION

Towards a Model Public Sector Integrity Commission

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This article examines the current debate in Australia about public sector integrity and the idea of a standing anticorruption commission. From this debate the article outlines a specific type of 'public sector integrity commission' that in principle should have the necessary powers and techniques at its disposal to minimise corruption while ensuring efficiency and fairness. The debate has been most active in jurisdictions that have not had an anticorruption commission – mainly in Victoria, South Australia and Tasmania – but debate about integrity commissions has occurred in all jurisdictions. The authors argue that anticorruption commissions are essential to ensure the integrity of the public sector and that a model commission should: cover all elements of the public sector; independently investigate serious and mid-level complaints; have own motion powers to investigate any matter; have summary authority to apply administrative sanctions; make use of a range of investigative tools; not be tasked with combating major and organised crime; and be held accountable to citizens through a parliamentary committee and a parliamentary inspector.

Key words: anticorruption commission, public sector integrity, corruption prevention

The state of public sector integrity systems in developed nations has changed significantly in the last 20–30 years. Traditional pillars—such as the separation of powers, the media, Ombudsmen and Auditor-Generals—have been supplemented by new 'watchdog agencies'—including anticorruption commissions (Brown and Head 2005; Pope 2000). Policing has been one of the lead domains, with police conduct scandals driving the introduction of powerful police commissions (Parliament of the Commonwealth of Australia 2009:84–88). The broader public sector has also been subject to enlarged forms of external oversight. Anticorruption commissions, tasked with addressing misconduct across the public sector, have been established in New South Wales (NSW), Queensland and Western Australia (WA), with new commissions due to begin operation soon in Tasmania and Victoria. While more active debate has occurred in jurisdictions without anticorruption commissions there has also been debate about the powers and operations of existing agencies (Fraser 2009). Overall, there ap-

pears to be a need to develop greater consensus and a more consistent approach to ensuring probity in the public sector.

Method

The purpose of this study was, firstly, to examine and describe the contemporary debate in Australia about public sector integrity systems and, secondly, to contribute to the debate by outlining the characteristics of a model commission in response to the key issues. In order to analyse the debate, initial searches were made of the newspaper database *Factiva* for 2004–09. The keywords used were 'corruption', 'anticorruption', 'integrity', 'oversight', 'watchdog', 'ethics', 'ethical standards', 'oversight', 'accountability', 'complaints' and 'public sector'; as well as the names of existing government oversight bodies, which were obtained from government websites. Information from *Factiva* was supplemented by searches of parliamentary debates, parliamentary reports,

and reports from oversight agencies and their inspectors. The results of this research are reported in a narrative format in Part A – ‘The Debate’ – and the issues are evaluated in Part B – ‘The Issues’. This material is then re-ordered into a summary set of key characteristics of a proposed model public sector integrity system. The results are set out in Part C – ‘A Model Commission’.

One of the problems with the issue of a model integrity commission is that there are no accurate measures of public sector misconduct and integrity which can be used to assess the impact of different systems, and there is a dearth of research on the topic. Subsequent sections in this article draw on available measures or forms of evidence, including public opinion surveys and stakeholder opinion as well findings from investigations. However, the focus is more on arguments about principles – including principles of coverage, adequacy for the task and fairness – and necessarily relies on speculation about likely effectiveness. The proposed model is designed to help focus debate and advance best practice. The model is applicable in advanced democracies, such as Australia, and it is expected that key aspects will have relevance to emerging democracies with less funds available for expenditure on public institutions.

Part A: The Debate

Victoria

The Victorian debate on public sector integrity systems has arguably been the most vigorous in Australia in the past five years. Responsibility for combating corruption in the public sector lies with the Office of Police Integrity (OPI) and the Ombudsman. The Victorian Labor government consistently resisted calls to establish a public-sector-wide commission, claiming the OPI and Ombudsman have sufficient powers and jurisdiction, and that anti-corruption commissions are an excessive and unnecessary expense which seldom produce criminal convictions (Parliament of Victoria, Legislative Council 2007:2250–2260). The Liberal/National Opposition is among a num-

ber of key actors in favour of a commission, arguing that the OPI and the Ombudsman are inadequate for the task. The Leader of the Opposition in the Legislative Council in 2007 argued that:

It is clear that we have limited independent means of public scrutiny in regard to the executive – or indeed in regard to the bureaucracy – at the present time . . . as the head of the Office of Police Integrity, [the Director’s] powers are confined to investigating police misconduct . . . The Ombudsman does not have power to investigate judicial bodies or politicians – that is us – and I think we should be aware that we need to be as equally subject to investigation as any other part of government (Parliament of Victoria, Legislative Council 2007:2555).

The Victoria Police Association has been particularly strident in support of a comprehensive commission, because ‘corruption does not, has not and will never start and stop with the police force’ (Police Association Victoria 2008:15; Davies 2008). The Greens have also been supportive, emphasising the need for a commission with a capacity for investigation as well as prevention, and education (Parliament of Victoria, Legislative Council 2007:2546). Succumbing to pressure, in November 2009 Premier Brumby announced a review of all aspects of Victoria’s integrity system. In June 2010 the government accepted the recommendation of the ‘Proust Review’ in support of a new ‘Victorian Integrity and Anti-corruption Commission’ (Brumby 2010; Public Sector Standards Commissioner 2010).

South Australia

The situation in South Australia has been similar to Victoria. Responsibility for investigating and preventing public sector misconduct largely rests with the Police Complaints Authority (PCA), the Ombudsman, an anti-corruption branch within the police force, and the Auditor-General. The South Australian Labor government has argued that existing arrangements are adequate (Parliament of South Australia 2007:834), that a commission would be too costly and ‘nothing more than a lawyers’ picnic’ (Wiseman 2008:1). The government

also claimed that commissions can ruin a politician's career by publicly investigating allegations – describing this power as 'a gift to malicious slanderers' (Parliament of South Australia 2008:3891). The Liberal Opposition, prominent legal figures, police union and high profile federal independent Nick Xenophon have all expressed support for a commission (Kemp 2009; Parliament of South Australia 2007:811; Wiseman 2008).

Tasmania

The Tasmanian debate has also been vigorous. The Liberal Opposition, Greens and Tasmanian Police Association campaigned for an anticorruption body for many years against dogged resistance from the Labor government. Pressure intensified following the resignation of former Deputy Premier, Steve Kohns, who 'admitted misleading parliament over the appointment of a magistrate' (*ABC News* 2008). After Premier Paul Lennon's resignation in May 2008 the government changed its position. A Joint Select Committee on Ethical Conduct was set up to inquire into the issue. The Attorney-General told parliament:

The Government is very much committed to having some form of ethics commission in this State . . . I do get distressed, as I have said in the House before, about the lack of trust that the public has in politicians as a whole – in all of us . . . I think we are all very keen to see the ethics committee report so that we can move forward and establish a commission in this State with the appropriate powers (Parliament of Tasmania, House of Assembly 2009:126).

In July 2009 the final report of the Select Committee recommended an 'Integrity Commission' be established, legislation was passed by the parliament and the commission is due to begin operations in mid-2010 (JSCEC 2009; *Integrity Commission Act* 2009).

New South Wales

The Independent Commission Against Corruption (ICAC) was established in 1988 following decades of controversy over corruption

that reached to the highest levels of government. The research for this article was unable to identify any political parties or other important actors opposed to the existence of the ICAC. There has, however, been some debate about specific aspects of its functioning. Most recently there has been debate about whether or not the Commission should be permitted to prosecute matters itself (NSW Parliament 2008:10304). New South Wales also has a separate Police Integrity Commission (PIC), which bifurcates the integrity commission system. The PIC was established in 1996 when the Wood Royal Commission found corruption in the Police Force that the ICAC had failed to detect (Wood 1996).

Queensland

In 2002 the Crime and Misconduct Commission (CMC) replaced the Criminal Justice Commission (CJC). The CJC was established in 1989 following findings of police and political corruption by the Fitzgerald Inquiry (1989). The debate in Queensland is characterised by a seemingly universal acceptance of the value of the CMC, with no important actors arguing against its existence. There have, however, been debates about particular aspects of the Commission's functioning, primarily concerning the policy of 'devolution' – whereby primary responsibility for investigating complaints is often put back on the relevant public sector agency, subject to review by the Commission. Devolution has drawn the ire of journalists, academics and lawyers as a return to the pre-Fitzgerald days of 'Caesar judging Caesar' (PCMC 2009:29).

Western Australia

Western Australia is the only other jurisdiction with an established anticorruption commission monitoring the whole public sector. In 2004 the Corruption and Crime Commission (CCC) replaced the Anti-Corruption Commission (ACC), introduced in 1996. The ACC was set up after the 'WA Inc.' scandal, involving financially disastrous collusion between politicians and business leaders, but the ACC was

deemed by the Kennedy Royal Commission into the Western Australia Police to have lacked adequate transparency and adequate powers – such as the capacity to hold public hearings or conduct sting operations (Kennedy 2004). The CCC also has bipartisan political support and community support. It has faced questions over its credibility in relation to the devolution of disciplinary decisions which have allegedly been undermined at the departmental level, and it has been accused of conducting ‘witch hunts’ against high profile ex-politicians (Murray 2006:2).

Northern Territory

The Northern Territory appears to have had the least amount of public debate on the topic. Issues of public-sector corruption are dealt with by ‘agency policy, investigations by the Ombudsman, or reporting by the Auditor-General’ (Northern Territory Legislative Assembly 2009). According to the Minister for Public Employment, the Territory has not ‘experienced the corruption and maladministration other jurisdictions have endured in their public sectors’ (Northern Territory Legislative Assembly 2009). The *Ombudsman Act 2009* included an ‘own initiative’ power in relation to investigating police conduct.

Australian Capital Territory (ACT)

Debate in the ACT has been very limited since 2002 when the Standing Committee on Justice and Community Safety found an anticorruption commission was beyond the means of the Territory (Australian Capital Territory Legislative Assembly 2001:14, 3742). However, the Inquiry found there was a need for the kinds of functions performed by anticorruption commissions and recommended that:

The Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity (Legislative Assembly for the Australian Capital Territory 2001:15).

The Report received bipartisan support, but since then there has been just one reference to the issue in Hansard between 2002 and September 2009 (Australian Capital Territory Legislative Assembly 2002:3730–3747).

The Commonwealth

The debate has also been very low key at the federal level. The main task of the Australian Commission for Law Enforcement Integrity (ACLEI) is to ‘detect, investigate and prevent corruption in the Australian Crime Commission and the Australian Federal Police’ (ACLEI 2009). There is no body with the same mission in relation to the entire public sector including politicians. The Commonwealth Ombudsman is able to investigate commonwealth government departments but without the same powers as ACLEI (such as applying for search warrants), and with no jurisdiction over ministers or other politicians (Parliament of the Commonwealth of Australia 2009:84–88; OPI 2007:5). The Commonwealth Ombudsman (2004:5) has stated that ‘the Ombudsman should not be the chief agency responsible for investigating corruption allegations’. The Greens and the Australian Federal Police Association have called for ACLEI’s mandate to be extended to cover politicians and the public sector, but these calls have been quietly rejected by both the Labor government and the Coalition (Gilchrist and Colman 2004). A recent review of models of police oversight by the Parliamentary Joint Committee on the ACLEI raised the issue of the need for commissions to have education and prevention functions and for the parliamentary committee on ACLEI to have access to an inspector (Parliament of the Commonwealth of Australia 2009).

Part B: The Issues

The following subsections outline the eight main areas of contention drawn from the debate, with a brief assessment of the various arguments by the authors.

1. *Are Existing Measures Sufficient?*

The governments of Victoria and South Australia have insisted that their existing integrity systems – consisting primarily of Ombudsmen, Auditors-General and police oversight bodies (the OPI and PCA) – are the ‘most appropriate models for dealing with corruption’ in their states (Parliament of Victoria, Legislative Council 2007:2551). The main rejoinder to this is that the traditional Ombudsman and Auditor-General is restricted to responding to complaints about administrative decisions deemed to be unfair or in error, or assessing financial reports, rather than conducting forensic investigations into allegations of corruption or misconduct – including investigating suspicions on an own motion basis without complaints (see Wood 1996:77).

The implication of this is that corruption can remain hidden when there is no agency with adequate powers and comprehensive coverage of the whole public sector. This was the main finding of the Proust Review in Victoria (Public Sector Standards Commissioner 2010). Critics have argued that corruption is much more likely to be exposed and stopped in jurisdictions with anticorruption commissions. For example, former South Australian Auditor-General Ken MacPherson claimed that the defence of existing institutions in Victoria and South Australia fails to recognise that ‘in those other jurisdictions [Queensland, NSW and WA]... there also exist the same institutions as we have in this state, but these have been shown to be not up to the task and a corruption body was also required’ (Parliament of South Australia 2007:811). Cases in point include systemic corruption in New South Wales, Queensland and Western Australia before the establishment of commissions. Some post-reform cases include exposés of corruption in corrective services in New South Wales and Queensland, the ‘travel rorts’ inquiry into politicians misuse of expense accounts in Queensland, the exposure of corruption in the Wollongong City Council and Railcorp, and the exposure in Western Australia of undue influence by ex-politicians turned lobbyists. In response to the allegation that commissions fail to produce results, in

2009 CCC Commissioner Len Roberts-Smith reported that in a five year period the Commission obtained 42 convictions from 51 charges (Taylor 2009).

Public opinion is also strongly supportive of the principle of an independent commission – as high as 98% in a recent survey in Western Australia (CCC 2009b:41; also CMC 2009c:54). Public confidence in existing commissions is also generally high – up to 93% in the most recent survey in New South Wales (ICAC 2006:26; also CCC 2009b:36). There is also strong support for the view that commissions improve accountability and reduce corruption (CCC 2009b:36-38; CJC 2000; ICAC 2006:12, 27).

Another area where it is alleged commissions are more successful than Ombudsmen is in research, education and prevention. The *Inquiry into Law Enforcement Integrity Models* by the federal Parliamentary Joint Committee on ACLEI recommended that ACLEI undertake ‘education of law enforcement personnel, public education and awareness-raising, corruption-risk reviews, [and] research’ (Parliament of the Commonwealth of Australia 2009:vii). The Tasmanian Joint Select Committee report on ethical conduct emphasised the need for a ‘dedicated research function to support the continual development of standards and codes of conduct’ (JSCEC 2009:9; see also Public Sector Standards Commissioner 2010:37). Government departments have also expressed support for the advice provided to them by oversight bodies (Clarke 2008; Stewart 2008).

2. *Are Anticorruption Commissions Too Expensive?*

A common charge against anticorruption commissions is that they are too expensive (*ABC News* 2008; Parliament of Victoria, Legislative Council 2007:2550). Operating expenses of commissions in 2006–07, cited by the Tasmanian government (2008:78), ‘ranged from \$16.2m (and a staffing establishment of approx 120) for the NSW ICAC, \$25.5m for the WA CCC (148 full time employees), and \$35m for the Queensland CMC, which has about 270

staff in total'. These are big ticket items for public money. Nonetheless, it has been argued that it is money well spent in terms of improving public confidence in government and improving integrity across the public sector, so long as performance measures are in place (Brereton 1999).

It has also been argued that cost-shifting should reduce the overall cost to taxpayers. The Tasmanian Department of Public Prosecutions suggested that, in relation to police integrity, funding an anticorruption commission:

does not necessarily mean a large impost to Government: since what is required is something . . . Police ought to have done, one would expect savings to be found . . . from the Police budget itself to establish a truly independent and effective investigative body (Ellis 2008:37).

Complaints and other indicators of misconduct have to be investigated, and misconduct prevention activities are essential. The work can be spread across departments or concentrated in an independent commission with greater expertise and technical capacity (Kalimnios 2008; Parliament of the Commonwealth of Australia 2009:22; Tesch 2008). The size of a jurisdiction, in terms of population, should be irrelevant to these considerations as misconduct can occur in both large and small jurisdictions. Given that 'coverage' of the public sector is often seen as a key criterion, then smaller jurisdictions would be expected to have less costly commissions and resourcing should be governed primarily by complaints and assessments about levels of misconduct and risks.

3. Should Anticorruption Commissions Conduct Independent Investigations or Devolve Responsibility Onto Government Departments?

Devolution is something of a sleeper issue that has been inadequately recognised in the debate in most locations. The term refers to the practice of integrity commissions referring complaints back to the relevant department for investigation and resolution. There is often an

assumption by proponents of anticorruption commissions that existing commissions carry out a lot more investigations than is the case. While they may have the capacity in legislation, the more common practice is to select out a small proportion of complaints for independent examination. The ICAC 'acts upon' about 15% of matters that come to its attention (ICAC 2009:33), while the OPI directly investigates only 3% of complaints that come to its notice. (OPI 2007:42). A Victoria Police survey found that two thirds of complainants were dissatisfied with most aspects of the way their complaint was managed and that this was related to the fact that 78% expressed a preference for the independent processing of their complaint (Prenzler et al. 2009).

The debate over devolution has been most intense in Queensland. The CMC and Parliamentary Crime and Misconduct Committee argued devolution 'has a crucial role to play in building the capacity within agencies to identify and avert risks of misconduct that could be peculiar to that agency' (PCMC 2009:30). The Committee has argued that devolution can work by '(a) ensuring there is adequate distance between the officers being investigated and those doing the investigating, and (b) ensuring the CMC provides oversight, review or full investigation where appropriate' (PCMC 2009:30), but failed to specify what this means in practice. Devolution is widely viewed with mistrust as 'akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused' (Walsh 2008:2). The CMC investigates 'less than two percent' of the approximately 3,500 complaints it receives each year (CMC 2008:26), despite the fact that research it commissioned in relation to complaints against police found that 91% of public respondents supported the view that 'complaints against the police should be investigated by an independent body not the police themselves' (CMC 2009c:54). The situation has prompted disillusionment among scholars, journalists and lawyers; and generated profound dissatisfaction among complainants (Chamberlin 2002; CMC 2009c:47; Koch and McKenna 2009). The issue took on renewed prominence in 2009 when a major investigation found that police

had developed improper relationships with informants in prison. Although the investigation was conducted by the CMC it had earlier passed disclosures back to the police for internal investigation (CMC 2009b).

4. Should There be a One-Stop-Shop or a Split Between Police and Public Sector Agencies?

The integrated model in Queensland and Western Australia is favoured by supporters of commissions in jurisdictions where the debate has been most intense. Police unions are particularly vocal in arguing that an integrated agency provides fairness for all public sector personnel and proper coverage of corruption risks. The Police Association of Victoria has questioned why the OPI focuses on police but not the public sector: 'Why shouldn't [the OPI] be the Office of Public Integrity? . . . The Brumby Government just doesn't get the message that corruption does not, has not and will never start and stop with the police force' (Police Association Victoria 2008:15). The Greens have put forward the same argument at the federal level: 'ACLEI does not cover the bureaucracy at large. It does not cover the parliament and it does not cover the matters that the public would want to see it cover' (Commonwealth of Australia, Senate 2009:4828).

New South Wales is unique in having an ICAC and a separate Police Integrity Commission. During the Wood Inquiry the ICAC argued it lacked the resources and full range of powers to properly uncover police misconduct. However, Commissioner Wood (1996:Chapter 5) held the view that policing in New South Wales carried a high risk profile for misconduct to the extent that a dedicated police anticorruption commission was required. The bifurcated system has strong support in New South Wales and there is no imperative for amalgamation. There might be some efficiency gains from amalgamation but the important point is that the current system provides coverage of the public sector by agencies with royal commission powers.

5. Should Oversight Agencies Have 'Own Motion' Powers to Investigate any Matter or Should They Only Investigate Formal Complaints?

Own motion investigative powers can be activated in response to media reports of possible misconduct or intelligence where there is no formal complaint. This is a standard power for integrity commissions and widely seen as an important means of exposing hidden or 'victimless' corruption and preventing the escalation of corruption (Parliament of the Commonwealth of Australia 2009:32; Parliament of Tasmania, House of Assembly 2009:Appendix 4). Proponents of integrity commissions appear to hold to a consensus position in favour of own motion powers, whereas opponents tend to be silent on the issue. A 2001 survey of integrity agencies found that the agencies that lacked own motion powers – mainly Ombudsmen – claimed they needed the power to adequately address suspected misconduct and support public confidence (Prenzler and Lewis 2005).

6. Should Oversight Agencies Have the Power to Adjudicate Matters and Prosecute Matters in the Courts?

A standard feature of anticorruption commissions in Australia is that they do not have the power to take disciplinary action against holders of public office when they believe disciplinary action is warranted. Nor do they have the power to prosecute criminal matters, although in some instances they might be able to prosecute intermediate matters before a misconduct tribunal. The issue has generated surprisingly little debate, but it lies behind widespread disillusionment when individuals found by a commission to have engaged in misconduct are 'let off' with little or no consequence (Prior and Taylor 2009; Smith 2008:2). The problem might in part be solved by granting commissions summary jurisdiction over disciplinary matters, including the power to fine, demote and sack public servants; and to make findings of unethical conduct against politicians; subject to an appeals process. Commissions have also been frustrated with delays

by public prosecutors (Committee on the ICAC 2008:2) and one option is to allow them to independently prosecute matters in the courts following excessive delays. The CMC in particular has repeatedly expressed frustration with the frequency of findings against it when prosecuting intermediate matters in misconduct tribunals (eg, CJC 1996:3.15). Suggested resolutions to this problem have included better training of tribunal members in inquisitorial administrative approaches to misconduct and greater use by commissions of mediation of complaints (Prenzler 2009:92–93).

7. Should Oversight Agencies Investigate Major Crime?

Currently both the Western Australian Corruption and Crime Commission (CCC 2009a) and the Queensland Crime and Misconduct Commission (CMC 2009a) are tasked with the responsibility of addressing major and organised crime. The idea of adding a crime fighting function to the CCC came from the CMC, although the role is more prominent in the CMC – as indicated by the order of words in their names. The CMC is tasked with dealing with major and organised crime because the Fitzgerald Inquiry found that police had failed in this area and because of the connections it identified between organised crime and police corruption. However, the Fitzgerald Report (1989:372) only saw a very limited role for the Commission in the area of criminal intelligence coordination, but this role has been significantly enlarged.

It has been alleged that the crime fighting role divides the focus of integrity commissions. It distracts it from dealing with ordinary complaints; and the task puts it at high risk of corruption given that organised crime is a major corrupter of law enforcement (Stewart 2008:2). The role also requires integrity commissions work closely with police, potentially compromising the commission's independence. It is partly for this reason that the New South Wales system gives the ICAC responsibility for dealing with corruption and the New South Wales Crime Commission responsibility for investigating major crime (NSW Crime Commission 2009). In Queensland in the mid-1990s the Bor-

bidge Coalition government put the serious and organised crime function into a new Queensland Crime Commission (QCC), but the Beattie Labor government shut down the QCC in 2001 and put its functions into the CMC. In October 2009 Western Australian CCC Commissioner Len Roberts-Smith warned of the risks of neglecting public sector misconduct in response to a move by the Barnett government to require the Commission focus more on organised crime (Taylor 2009).

8. How Should Oversight Agencies be Held Accountable to Citizens?

The current debate on integrity commissions in Australia has included the question 'who is overseeing the overseers?' In order to perform such a task, a difficult balancing act is required between independence from political interference and accountability to citizens through parliaments. A model for democratic accountability that has emerged from the development of integrity commissions in Australia, and appears to have strong consensus support, is that of a cross-party parliamentary oversight committee (Brown 2006). A parliamentary committee periodically reviews and reports on the oversight agency's performance, and responds to allegations of misconduct against the agency. Increasingly in Australia it has also been shown that it is also essential that such a committee has an executive capacity. This usually takes the form of an office of inspector – 'parliamentary inspector' or 'parliamentary commissioner' – who has many of the agency's own powers to enter property, obtain documents and require answers to questions. Although this issue is part of 'the debate' under review here, like own motion powers it appears to evince a consensus view, including support from the anticorruption commissions (NSW Parliament 2006:54; PCMC 2006:112; Public Sector Standards Commissioner 2010:36).

The Western Australian CCC has also supported the role of the Parliamentary Inspector despite tensions with its former Inspector Malcolm McCusker (JSCCCC 2009:xi-xii). These tensions arose after McCusker bypassed the Committee and tabled five reports in

parliament that were critical of the CCC's investigations and findings. The CCC Commissioner did not believe that McCusker had legal authority to table the reports and commenced action in the Supreme Court to determine legality. The dispute was settled before the Court made a ruling.

Part C: A Model Commission

The debate about integrity systems generally shows little evidence of cooling down, especially in jurisdictions that lack an anticorruption commission. In these cases the debate has been fueled by widespread distrust of existing arrangements – with an eye to successful exposés of misconduct in jurisdictions with commissions. As noted in the method section, reliable measures of public sector misconduct and integrity are in short supply, but public confidence and stakeholder opinion are important democratic criteria. These factors combined make for a strong case for a powerful integrity agency with comprehensive coverage of the whole public sector, including elected officials. It appears increasingly difficult to argue that the traditional Ombudsman model (supplemented by an Auditor-General) is adequate to address the range of misconduct risks in government, even with additional powers. The creation of a public sector integrity commission allows the other two agencies to focus on their specialist tasks of reviewing administrative complaints and scrutinising government accounts (JSECE 2009:9) – referring suspected corruption cases to an integrity commission. A properly constituted commission would need to have powers and adopt methods well beyond those of the traditional Ombudsman. It appears that the full battery of royal commission powers and a variety of additional functions are essential to allow these agencies to meet the challenge of hidden corruption. These include the capacity to:

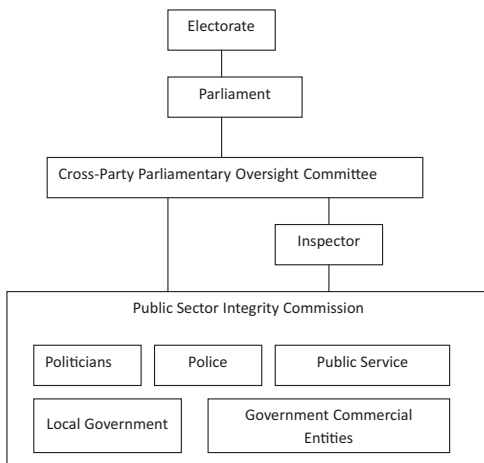
1. Conduct own motion investigations;
2. Require attendance and answers to questions;
3. Hold public hearings;

4. Apply for warrants to search properties and seize evidence;
5. Engage in covert tactics – including listening devices, optical surveillance, undercover agents and targeted integrity tests;
6. Directly investigate the most serious and intermediate matters;
7. Make disciplinary decisions and manage a mediation program;
8. Conduct research and risk reviews aimed at improving procedures and preventing misconduct;
9. Engage in public sector ethics training;
10. Prosecute complainants who are patently vexatious; and
11. Account for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports.

These features are core elements of evolving institutional arrangements internationally and in Australia. They can be seen in their most mature form in police integrity agencies – such as the Northern Ireland Police Ombudsman, established 2000, or the Independent Police Complaints Commission for England and Wales, established in 2004 (Prenzler 2009:153–172). But they are also evident in agencies with a wider brief across the public sector, such as the landmark Hong Kong Independent Commission to Combat Corruption, established in 1974 (Scott, Carstairs and Roots 1988).

Powerful integrity commissions must also be held accountable to citizens. Parliamentary oversight provides a vital cross-party mechanism for scrutiny. An inspector attached to the committee can provide a further degree of independence while giving the committee the capacity to investigate complaints and any matters deemed appropriate. In addition, while the bifurcated police/public sector model seems to work well in New South Wales, integration does offer the prospect of a fairer, more efficient, system – so long as the commission includes a dedicated police unit. An additional benefit is that the larger size of an integrated commission should allow it to develop a regional 'shop

Figure 1. Basic Structure of a Model Public Sector Integrity Commission



Source: Prenzler 2009:171.

front' presence to provide easier access for citizens outside capital cities. Figure 1 outlines the model system of accountability described above that includes police oversight within a comprehensive public sector integrity commission.

Conclusion

The debate in Australia about public sector integrity systems is ongoing, although the trend is in the direction of comprehensive coverage through a powerful integrity commission. The debate has been most vigorous in states without a commission. The South Australia government has been holding out against any review of the issue. In Victoria, the government was staunchly opposed to a commission but acceded to public pressure, allowed a review and then accepted the recommendation for a new commission. Tasmania has also moved decisively in this direction with a new Integrity Commission pending. The debate is more muted in the other jurisdictions but the issues are alive here as well. Given the numerous cases of public sector misconduct and corruption exposed by integrity commissions it is becoming increasingly difficult to argue against their role as essential institutions.

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Legislation

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**THE USE OF PERFORMANCE MEASUREMENT IN CIVILIAN OVERSIGHT
IN THE UNITED STATES**

BY

BETH ANNE MOHR

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ABSTRACT

The purpose of this study is to identify the measures and categories of performance indicators being utilized in various agencies conducting civilian oversight of law enforcement within the United States, and how those measures compare to measures identified in the literature. Civilian oversight agencies are the watchdog bodies designed to ensure that the police are operating with integrity. The oversight bodies themselves must also be shown to perform effectively. The efficacy of civilian oversight in the United States has never been systematically examined, and significant methodological difficulties may preclude such an investigation. The review of the literature on civilian oversight revealed the shared history of civilian oversight and civil rights organizations at their establishment, and demonstrates how the earliest oversight agencies contributed to the modern practice of civilian oversight.

All American civilian oversight agency practitioners were surveyed to examine the indicators and categories of performance measures currently in use. Practitioners were also surveyed regarding their perceptions of the legitimacy of particular indicators of effectiveness. This study found that a useful set of civilian oversight performance indicators is emerging, and these indicators are beginning to be used by US police oversight agencies. Furthermore, a few measures were determined to be valid indicators of civilian oversight effectiveness. These measures involved increased public confidence with the police and with the complaint investigation process. It is recommended that oversight agencies utilize every opportunity to increase public confidence in the police, and in the complaint handling process. The achievement of these goals was viewed as indicative of civilian oversight agency success.

INTRODUCTION

But who will watch the watchmen? ~ Juvenalis 60-140 CE

Civilian oversight of law enforcement has become increasingly prevalent in the United States, as well as worldwide. Police oversight agencies are the watchdog organizations designed to ensure that the police are operating with integrity (Lewis & Prenzler, 1999). However, there is a need to ensure that the citizen oversight bodies themselves are performing adequately, and are making progress towards their complex and varied goals and desired outcomes (Prenzler & Lewis, 2007; Walker, 2006a). The question of whether civilian oversight over law enforcement is effective at its various goals and objectives has never been systematically examined within the United States (Brereton, 2000; Walker, 1997). The purpose of this study is to identify the measures and categories of performance indicators being utilized in various civilian oversight agencies within the United States, and how those in use compare to measures identified in the literature.

Performance management is an organizational management style which relies on empirical evidence regarding policy and program accomplishments to connect goals and priorities to desired outcomes. Performance measurement is the process of designing and implementing quantitative and qualitative measures of results, including both outputs and, wherever possible, outcomes. Performance measurement is a useful tool which may be applied to the practice of civilian oversight, in order to aid in determining the oversight bodies' performance and effectiveness, and also in providing public accountability of the agency itself (Prenzler & Lewis, 2005). This paper identifies the measures and categories of performance indicators already in use by the various police oversight agencies in the United States, and how they compare to measures identified in the literature.

Prior to examining the use of performance management in the field of civilian oversight, the historical literature on civilian oversight is reviewed. Historical perspective provides a framework to view citizen oversight, beginning with the earliest attempts by citizens to address allegations of systemic police misconduct. During this research, it was determined that civilian oversight has a much longer history than was previously recognized. Further, it was discovered that civilian oversight and civil rights organizations share a common history, going back to the earliest origins of the civil rights movement when the National Association for the Advancement of Colored People (NAACP) was formed in 1909 (Ovington, 1911; Rudwick, 1957).

Once the history of the field has been described, modern citizen oversight and performance management are covered. Finally, the small body of literature which describes the specific application of the principles of performance management to the field of civilian oversight is reviewed.

In order to determine what performance measures are currently in use by American civilian oversight agencies, all civilian oversight agencies were surveyed regarding their use of performance measures, and also concerning their opinion of the validity of certain measures of oversight agency efficacy. The survey methodology is discussed, followed by the results of the survey. Conclusions are drawn based upon the literature and the survey results. Finally, recommendations are made for the practice of civilian oversight, along with suggestions for future research.

REVIEW OF LITERATURE

Civilian oversight of law enforcement has a long history, the earliest aspects of which have not been previously described. The first civilian oversight practitioners struggled with similar impediments to those described by modern oversight agencies, such as insufficient budgetary appropriations, lack of police cooperation and political interference (Johnson, 2003; Moss & Citizens' Protective League, 1900; Pell, 1819; Van Pelt, 1898). Similarly, the field of performance management has been actively monitoring government performance much longer than many appreciate. Interestingly, the two fields share commonality in their early histories. The early practitioners of performance management sometimes conducted direct oversight of law enforcement, or recommended the formation of civilian committees to advise the police on matters of specific concern.

Early Civilian Oversight

Civilian oversight of law enforcement is defined in this paper as an agency or procedure involving participation by persons, who are not sworn law enforcement officers, in the review or investigation of allegations of police misconduct. This definition, as used in the literature, excludes legislative or executive oversight, and is appropriately limited to oversight or review conducted by civilians outside the police department who are neither elected representatives nor government insiders, such as managers (Walker, 2006b). However, the earliest form of civilian oversight was conducted by managers internal to government or elected citizen representatives. This form of early oversight is discussed in this paper in order to provide the historical context for modern citizen oversight over law enforcement.

The very first bona fide civilian oversight was conducted completely outside the government by citizen committees or protective leagues that were not officially recognized by police departments or government officials. Despite their unofficial status, these civilian oversight groups did much to effect change within their respective police departments, and their work led to the creation of a governmentally sanctioned ad hoc civilian oversight commission in at least one instance (Johnson, 2003). Later, permanent and officially recognized civilian oversight agencies were organized. Modern civilian oversight directly descended from these early commissions.

The earliest documented instance of citizen representative oversight of law enforcement may well be the English Parliamentary Commissions, in which members of Parliament were responsible for investigating allegations of systemic police misconduct in 1770. Wholesale discharge of virtually all London police officers, in 1830, was the eventual solution for "all the unworthy ministers whose shortcomings had emboldened the lawbreakers and whose backslidings had disheartened the law abiding" (Fairlie, 1901; Lee, 1901, p. 235).

Early American police oversight followed a comparable legislative model, with similarly drastic solutions proposed. In 1810, serious allegations of police misconduct reached the New York State Legislature. Police and corrections officers were found to be "disordered and tumultuary" by an independent investigator looking into the matter at the behest of the Governor. The independent investigator termed the systemic corruption he discovered "serious mischief", and recommended mass firings (Pell, 1819, pp. 12-13). In 1817, the investigator requested the sum of \$50,000.00 to replace corrupt officers entirely, but only \$20,000.00 was granted, and the problem of police corruption and abuse continued unabated in New York.

In 1894, in responses to allegations of widespread police corruption, a New York State Senate committee conducted an investigation of New York City Police Department. The committee, known as the Lexow Commission, found systemic corruption and payoffs throughout the city (New York State Senate Committee [The Lexow Commission Report], 1895; Van Pelt, 1898).

On the morning of October 2, 1894, more than 100 uniformed officers showed up in response to subpoenas issued by the Lexow Commission. Dubbed "The Clubbers Brigade" by the press, "a spectacle absolutely without parallel, as amazing as it was unique" the assembled police became a symbol of a brutal and corrupt New York police force ("Clubbing a minor offense", 1894). Among those to testify were officers who had been collectively convicted of 56 charges of assault in the third degree, 45 counts of assault in the second degree, and assorted other charges of criminal conduct. Also among the group, virtually all of whom appeared in uniform, were officers convicted of attempted rape and other serious charges. Of the 100 officers convicted of the litany of serious crimes "some had been convicted of such assaults as many as two or three times, and yet had never been suspended from duty"; further, only four had been fired from the New York Police Department, and of those four, three had been convicted of assaulting fellow police officers, and not merely citizens (New York State Senate Committee [The Lexow Commission Report], 1895, p. 30).

In addition to the exhibit of convicted clubbers, still wearing the uniform of the police force, a stream of victims of police brutality "were brought before the committee, fresh from their punishment covered with blood and bruises, and in some cases battered out of recognition" (New York State Senate Committee [The Lexow Commission Report], 1895, p. 31). The Commission reported "It appears, therefore, that the police formed a separate and highly

privileged class, armed with the authority and the machinery for oppression and punishment, but practically free themselves from the operation of the criminal law" (New York State Senate Committee [The Lexow Commission Report], 1895, p. 31).

The very first bone fide civilian oversight entity was probably the Citizens' Protective League (CPL) of New York, formed in August of 1900 by several prominent African-American ministers, doctors, lawyers, and business people (M. L. Goldstein, 1977; Moss & Citizens' Protective League, 1900). Although not officially recognized and having no government authority, the CPL ran ads urging victims and witnesses of police violence to come forward and swear out complaints in the wake of the Tenderloin Riots, where police indiscriminately clubbed participants and bystanders alike, including some of New York's elite African-American citizens ("The Story of the Riot, 25 Cents [Advertisement, Citizens' Protective League]", 1900).

Police Commission President Bernard York stated that he did not believe the complainants. In an astounding piece of circular logic, York stated "If a man gets clubbed, its proof that he's where he has no business" and "If the Negro doesn't want to get clubbed, let him keep out of disorderly crowds" (Johnson, 2003, p. 62). Sustained protests by the CPL eventually forced the police commissioners to hold public hearings on several of the riot-related complaints, but none were sustained and the CPL dissolved (Johnson, 2003).

Jewish citizens formed the East Side Vigilance League (ESVL) after the incident of July 30, 1902, in which police clubbed mourners and bystanders paying their respects at the funeral of Chief Rabbi Jacob Joseph. The ESVL collected evidence, offered rewards for information, provided legal representation for those filing brutality complaints, and met with the mayor and other city officials to demand an official investigation. Like complaints filed by the Citizens'

Protective League before it, none of the ESVL's complaints were sustained by the Police Commission.

Displeased with the Police Commission's response, ESVL leaders claimed to speak for a block of 250,000 Jewish voters. Within two weeks of the incident, incumbent mayoral candidate Seth Low appointed a special citizens' investigation committee to investigate the riot, the first officially recognized civilian oversight commission in American history (Johnson, 2003).

The committee issued its report which found considerable fault with the police department, beginning with "gross negligence" during police planning for the parade, "marked incivility and roughness" throughout the day, and indiscriminate clubbing of the old and feeble ("The Mayor's Committee finds that the police were negligent, insulting, and brutal", 1902, p. 1). Mayor Low ordered criminal charges brought against police officials and individual officers, but all officers were acquitted and other charges were dropped ("Policemen indicted in funeral riot case", 1902). Still, the ESVL had scored a significant victory, their political pressure resulted in the appointment of the first bona fide civilian oversight commission, although the commission was ad hoc and was dissolved after their report was issued (Johnson, 2003).

In 1905, it was once again riots which brought the issue of police brutality to the forefront of the public mind. The Colored Citizens' Protective League (CCPL) was established to monitor complaints of police misconduct, including police brutality and corruption, along with other civil rights complaints filed by African-American New Yorkers (Johnson, 2003). However, the CCPL had no more success than the earlier Citizens' Protective League and was eventually disbanded.

In retrospect, these groups scored significant moral and public relations victories despite the limited success of these short-lived committees. Furthermore, the leaders of these

predecessors to modern civilian oversight were largely responsible for planting and nurturing the seeds of the civil rights movement. Louis Marshall, a member of Mayor Low's committee investigating the riot associated with Rabbi Joseph's funeral, helped found the American Jewish Committee, the oldest permanent Jewish defense organization in the United States. A few years later, he and East Side Vigilance League supporter Jacob Schiff became founders and financial supporters of the National Association for the Advancement of Colored People (NAACP) (Johnson, 2003). Gilchrist Stewart and W. H. Brooks, both Colored Citizens' Protective League veterans, would go on to join the New York branch of the NAACP shortly thereafter. Among their other undertakings, these new civil rights organizations continued the work of their police watchdog beginnings, namely monitoring and accepting complaints of police brutality (Johnson, 2003).

The problem of unabashed police corruption and brutality continued, and finally came to a head in America in 1912, when Lt. Charles Becker of the New York City Police Department conducted a raid on the gambling house owned and operated by Herman Rosenthal. In response, Rosenthal made an affidavit which was published in the *New York World* on July 14, 1912, swearing that Lt. Becker had been his partner in the operation of the gambling house, and made the raid only to collect a debt allegedly owed him (Rosenthal, 1912). Two days after publication of the affidavit, and mere hours before he was to have "given the prosecutor proof in corroboration of charges of blackmail and official oppression which he had previously made", Rosenthal was gunned down in the street by four men, who made a novel getaway using an automobile (Meloney, 1912, p. 260). Although Lt. Becker was allowed to assign Rosenthal's murder investigation to himself, and managed to destroy key pieces of evidence, he and the four

gunmen were ultimately convicted of first degree murder, and all five were sentenced to death in the electric chair (Dash, 2007; Myers, 1917).

The murder shocked the conscience of a public already sickened by serial corruption of politicians and police. The case dominated the headlines across the country for months, and not even the sinking of the Titanic completely knocked the Becker-Rosenthal story from the daily news (Becker, 1914; O'Brien, 1918). Stirred by the brutal murder, citizens demonstrated at Cooper Union, and \$25,000 was appropriated for an investigation into police conditions. The Special Committee of the Board of Aldermen, commonly known as the Citizens' Committee, was appointed under the authority of the New York City Board of Aldermen (Myers, 1917).

The Citizens' Committee reported "The [police] corruption is so ingrained that the man of ordinary decent character entering the force and not possessed of extraordinary moral fiber may easily succumb" (Special Committee of Board of Aldermen, 1912, pp. 6-7). The Committee ultimately found that corruption within the department was, in large part, due to administrative methods which made accountability impossible. In addition to systematic monthly extortion, the Committee found that the department was hostile to citizen complaints and that the most important complaints were covered up (The Knapp Commission, 1983).

Indeed, the common practice of the time was to refer virtually all citizen complaints directly to the officer complained about, requiring the officer to conduct an investigation of his own alleged misconduct; not surprisingly, the latter tended to completely absolve themselves of all wrongdoing. In a particularly absurd demonstration of the citizen complaint procedures of the day, the following written complaint, filed by Henry Williams and addressed to Mayor W. J. Gaynor, was eventually forwarded to the police commissioner: "I would like to have you investigate quietly Lieut. Becker. [His graft] is well known to everyone at Police Headquarters.

Please do this and you will be surprised at the result." The complaint was "respectfully referred to Lt. Becker for investigation and report, and the Lieutenant himself, in this case, respectfully suggested that someone else might better do the investigating" (Berdan, Schultz, & Joyce, 1922, p. 148). Lt. Becker, by the time the complaint was disposed of, was in prison for the murder of Rosenthal.

"In a test period of fourteen months, out of 301 citizen complaints 270 are found to have been politely forwarded to the accused policemen, or their immediate superiors involved by inference in the accusation, with a request to investigate themselves. As many as 190 were referred to the officers in question merely for their 'information'. When these Spartan policemen investigated, they invariably found themselves not guilty and solemnly so reported to the commissioner, who must have been immensely relieved to find his officers so sure of themselves" (Curran, 1918, p. 678).

Between the 1920's and 1950's, a few more experimental civilian oversight agencies were developed around the country, which consisted of ordinary citizens conducting review, rather than elected officials or government managers exercising oversight (Perino, 2004). The Los Angeles Bar Association organized the private Committee on Constitutional Rights to accept complaints against the police, beginning in 1928. Despite their unofficial status, the committee toiled for years publishing case facts, protesting to police commissioners, and speaking to civic groups about police mistreatment of citizens and constitutional issues such as illegal searches and seizures ("False arrests facing inquiry", 1929). On numerous occasions they convinced the Los Angeles Police Commission to hear citizen complaints, and eventually garnered some support for their causes among members of the Police Commission ("Old case to be resifted: Asserted bootlegger's charges of police brutality will be investigated by Commission", 1929).

Eventually, the Committee "shamed" the police department into making policy on some of the specific police practices with which they took exception; policies which were implemented at the prompting of the Civilian Committee included prohibitions against officers

breaking into residences to conduct warrantless searches, holding prisoners incommunicado without charges, and the use of coercion, threats and even torture to extract confessions, colloquially known as the "third-degree" (Camp, Bruce, & Hallam, 1930, p. 592).

In New York, the cries for permanent civilian oversight continued. On March 19, 1935, Lino Rivera, a teenager described as Afro-Puerto Rican by the press, was caught stealing a five-cent knife from the counter of S. H. Kress and Company on 125th Street in Harlem. The police were called, but within a short time a series of unfortunate coincidences resulted in the eruption of a riot ("The City: Harlem Riots", 1935).

In response to the riot, which lasted a single day, Mayor Fiorello LaGuardia appointed a Commission on Conditions in Harlem. The Commission was made up of leaders from both the "Negro" and white communities in Harlem, and was charged with investigating the facts and conditions that precipitated the riot ("Police are hissed at Harlem hearing", 1935, p. 35). Among the Commissions' recommendations was a civilian oversight "committee of from five to seven Harlem citizens of both races to whom people may make complaint if mistreated by the police"; it was also suggested that "this committee might well also be an advisory committee, so that the commissioner of police may know how his men are regarded by the citizens and what can be done to improve relations between citizens and their police guardians" (Mayor La Guardia's Commission on the Harlem Riot of March 19, 1936, pp. 133-134; Platt, 1971). The Mayor scuttled the report, refusing demands for its public release, and disregarded the suggestion of a permanent civilian oversight committee (Capeci, 1977; Johnson, 2003).

Ironically, although Mayor LaGuardia believed that the police could adequately investigate themselves on matters of civilian complaint, when the mayor himself wanted a matter investigated he sometimes took a different stance on the issue of independent investigations of

allegations of police misconduct. Concerned that a riot might start over allegations that a "Negro youth had been framed" for a crime, the mayor broke protocol and instructed his staff to conduct an investigation of the matter "without bothering the Police Department" (Capeci, 1977, pp. 85-86). While it eventually become a regular practice for the mayor to have independent investigations conducted into matter of concern to himself, the option of independent civilian review was not available to ordinary New Yorkers (Chevigny, 1969).

In 1948, the Complaint Review Board was created in the District of Columbia (Walker, 2006b). The Board was composed of three citizens charged with the review of citizen complaints of police misconduct, however the Board's only cases were those referred to them by the Chief of Police. In the first sixteen years of its existence, the Board was only referred fifty-four cases by the Chief, who ignored the Board's decision roughly half the time (President's Commission on Crime in the District of Columbia, 1966). The Board never explained the rationale for any of their decisions to the public, the police, or the District Commissioners, nor, evidently, did they see fit to the question the small number of cases referred to them by the Chief.

Eventually the Board came under critical scrutiny, and was deemed to provide "a mere illusion of civilian control over police proceedings" (President's Commission on Crime in the District of Columbia, 1966, pp. 218-220). Responding to the criticism, the Board reviewed 39 complaints between July 1965 and August 1966, but was granted no staff or secretarial assistance, and members were compelled to use their private resources for the work of the Complaint Review Board. The President's Commission considered recommendations that the Board supervise police investigations or independently conduct their own investigations. While a minority of the Commission members supported the suggestion, the majority sided with

recommendations of the International Association of Chiefs of Police to create an Internal Affairs Division to conduct all complaint investigations (International Association of Chiefs of Police, 1966).

In response to severely strained race relations in the 1950's, the American Civil Liberties Union (ACLU) called for the creation of a civilian oversight agency in Philadelphia. The Philadelphia Police Advisory Board (PAB) was the first officially recognized civilian oversight agency in the United States that accepted police complaints directly from citizens. The Board was intended to be permanent, although it operated actively only from 1958-1969. The Board consisted of appointed citizens who received citizen complaints, referred them to the police department for investigations, and then made recommended findings to the police commissioner after review of the complete police investigative file.

Essentially doomed from the start, the Philadelphia PAB had little political support, having been created by executive order after the City Council refused to vote on the ordinance introduced by Mayor Richardson Dilworth (Terrill, 1988). The Fraternal Order of Police subsequently filed two lawsuits which sought to enjoin the Board from functioning, and although the courts sided with the Board on both occasions, the newly elected Mayor James Tate abolished the board. Despite the brief tenure of the Board, it was seen as an important success in the history of civilian oversight and was used as a model for subsequent civilian oversight agencies (Coxe, 1965).

In the 1960's, riots broke out in many large urban centers, of which most were later determined to have been sparked by police actions in the African-American community; for example, shootings of unarmed African-American suspects sparked several riots between 1964 and 1967 (Fogelson, 1968; Grimshaw, 1963; Johnson, 2003). While some of the police actions

inciting the riots were clearly police misconduct, "most of the nineteen-sixties riots were triggered by commonplace, reasonable and trivial police actions - if anything, a more perplexing and less reassuring pattern" (Fogelson, 1968, p. 218).

Demands for civilian review of police, along with the hiring of more African-American police officers, were the mandates of civil rights leaders. Community frustration with unemployment, substandard housing, and inferior education coupled with allegations of serial police brutality and civil rights violations, served to fuel violence in many communities (Hahn & Feagan, 1970). As Robert Fogelson aptly stated, "Can anything be more infuriating to an American than to be beaten and otherwise mistreated by the very authorities who have been entrusted with a monopoly of physical force for the express purpose of protecting him?" (1968, p. 227).

Strained relations between African-American communities and police were further exacerbated by statements from high-profile police administrators which varied from the merely impolitic to comments which were inflammatory and even patently racist. Los Angeles Police Chief William Parker's infamous explanation of how the Watts riots started is a prime example, "One person threw a rock and then, like monkeys in a zoo, others started throwing rocks" ("Who's to blame?" 1965). These types of statements further fanned the fire of indignation of African-American community members who believed that their complaints were not being taken seriously by the Los Angeles Police Department.

Scholars and commentators later identified a major cause of the riots as being resentment of the police by African-American citizens who felt powerless to protest police actions or remedy their grievances, coupled with frustrations toward police authorities who were inaccessible and unsympathetic to community complaints (Obserschall, 1968). Although citizen

complaints were no longer referred directly to the officers complained about to investigate themselves, as was the early practice, in practical terms the results were precisely the same, and in some ways worse. Los Angeles police routinely arrested citizens for filing false complaints, New York charged complainants with criminal libel, and Cleveland police required citizens to take lie detector tests before a complaint would be investigated (Fogelson, 1968).

Many departments simply refused to accept any complaints at all, particularly from poor or minority community members, while others threw away complaints which were accepted (Barton, 1970; Chevigny, 1995; Collins, 1998; Coxe, 1965; Livingston, 2004). Candid police administrators of the time conceded that "it is so rare as to be an occasion when a policeman is found guilty and duly punished on the basis of a complaint by a Negro" (President's Crime Commission, 1967, p. 196).

Certainly, there were many departments who accepted citizens' complaints and conducted investigations in good faith. However, even in jurisdictions where citizen complaints were dutifully investigated, citizens were seldom interviewed and were almost never told of the outcome of their complaint; instead most were left to assume that the complaint had been thrown away or never investigated at all (Chevigny, 1995; Skolnick & Fyfe, 1993).

Chief Inspector Frank Scafidi of the Philadelphia Police Department summed up the feelings of many police administrators and confirmed the common practice during his 1979 testimony before the US Civil Rights Commission when he said,

"I object to the repetitious requirement for notification in writing [to citizens who have complained about police actions] at the completion of the investigation to notify and outline your reasons for the findings. I don't know of anybody in the police department who has that kind of writing ability that could clearly state why, in writing, certain conclusions have been reached" (US Commission on Civil Rights, 1979, Philadelphia).

Civil rights leaders and scholars called for the creation of civilian review boards to improve police-community relations, to restore civilian confidence and discourage police malpractice. They argued that independent review boards would be better qualified than internal investigative units to provide complainants and police officers alike with impartial investigation (Gellhorn, 1966). Police vigorously challenged the arguments for independent boards, stating that claims of brutality were greatly exaggerated and civilian oversight would demoralize the police, weaken their authority, and impair their efficiency, thereby raising the crime rate in America (US Commission on Civil Rights, 1966, Newark).

Even as community leaders and civil rights activists called for citizen review in some cities, police unions flexed their political muscle to rid themselves of oversight in a few municipalities where oversight agencies existed, or to ensure that civilian review was never implemented locally (Walker, 1983). The New York Civilian Complaint Review Board was initially expanded by Mayor John Lindsay in 1966, so that civilians comprised a majority of the Board. The police rank and file responded immediately and summoned all their political power and fought one of New York's bitterest political battles. The Patrolmen's Benevolent Association (PBA) joined forces with the John Birch Society, the Republican Party, the Brooklyn Bar Association, and others with considerable resources, and successfully placed the issue on the ballot. Police officers actually campaigned hard while on duty, urging local businesses and crime victims to vote against the Board; many patrol cars bore anti-review bumper stickers. Review Board supporters claimed that officers utilized selective enforcement tactics against them, while cars with anti-review stickers were virtually ticket proof (Skolnick & Fyfe, 1993).

PBA posters depicted a lone, fearful young white woman alighting from the subway with the caption "The Civilian Review Board must be stopped! Her life...Your life...May depend on

it!" (Johnson, 2003). Other posters contained a statement by J. Edgar Hoover that civilian review boards "virtually paralyzed" the police (Skolnick & Fyfe, 1993, p. 221). The National Patrolman's Benevolent Association joined in, calling pro-review sponsors communist infiltrators desiring to weaken or incapacitate the police (Barton, 1970). The scare tactics were quite successful in New York, and the newly empowered Board was abolished by voter referendum just four months after its expansion to include a majority of civilians (Chevigny, 1969).

Twenty years after the great review board battle, New York Mayor Ed Koch created within the New York Police Department a twelve-member review board comprised of six citizens and six police officers. This Board went into operation quietly, and without police opposition. However, Koch's successor, David Dinkins, New York's first African-American Mayor, proposed granting the Board full independence and staffing it entirely with civilians. In response, 10,000 off-duty New York police officers demonstrated. Many of the officers engaged in rowdy and threatening behavior, roughing up reporters, and demeaning the Mayor and passers-by in the ugliest racist terms (Manegold, 1992). Ironically, the police behavior convinced even the staunchest opponents of civilian oversight that "Dinkins is correct in his argument that the police should not be permitted to review their own conduct" (Skolnick & Fyfe, 1993, p. 223).

Despite vehement police objections to civilian oversight, or in some cases because of the vociferous objections of officers, many American municipalities added new civilian oversight mechanisms through voter referendum, executive order, or legislative ordinance. Civilian monitors were created in direct response to consent degrees between individual police departments and the Department of Justice over alleged civil rights violations. Beginning in the

1970's, citizen oversight reestablished its presence and grew quietly. By 2007, civilian oversight continues to grow in the US and worldwide (Perino, 2004; Walker, 2006b).

Modern Civilian Oversight

In 2007, many progressive law enforcement administrators and police officers see citizen review as an important part of community policing and police transparency and accountability (The International Association of Chiefs of Police, 2000). Since the 1970's, civilian oversight agencies have been generally organized around two types of models, the external civilian oversight agency, and internal citizen review (Quinn, 2004; Walker & Kriesel, 1996). Each model has its proponents and detractors, all of whom have logical, if untested, arguments for a particular oversight model being the most effective.

No matter how compelling the arguments for either civilian oversight model, however, they are meaningless in the absence of systematic empirical data. There is only a single published study attempting to scientifically evaluate the overall effectiveness of an individual civilian oversight agency (Buren, 2006). There are certainly no studies comparing the two models of citizen oversight, and few agencies have been independently evaluated (Brereton, 2000; The International Association of Chiefs of Police, 2000; Walker, 2006a). Further complicating matters is the fact that variations exist within the two models with regard to structure, authority, mandate, and activities; any study attempting to compare with two models would be fraught with formidable methodological difficulties (Brereton, 2000).

By far the most popular model is the external civilian oversight agency, sometimes referred to as the Citizen Review Board Model (Walker, 2007). The external civilian oversight agency is independent from the police department over whom they exercise oversight; their

budget, staffing, and authority typically stem from the executive or legislative body of the jurisdiction in which they operate. In this way they are the logical extension of the earliest American oversight models in which legislative bodies directly conducted oversight and investigations into systemic police misconduct.

The director of the external civilian oversight agency may be completely autonomous, or may report to the mayor, city manager, chief administrative officer, city or county clerk, auditor or some other civilian government official. The external civilian review agency may be a group, such as a Citizen Review Board, or it may be a single individual, such as an external Ombudsman or Independent Review Officer.

The second, and less prevalent, model of civilian oversight is an agency which operates internally to the police department being overseen. The internal oversight agency, commonly called the Police Auditor Model, typically consists of an individual monitor who reviews citizen complaints investigated by sworn police investigators (Walker, 2007). The auditor's budget, staffing, and authority may be granted by the police department being overseen, and the head of the civilian oversight agency usually reports, either directly or indirectly, to the chief of police. This model is the logical extension of the historical Ombudsman or the early performance managers internal to government known as the Bureau of Municipal Research (Bureau of Municipal Research of New York, 1924).

Certainly within these two models there are significant variations. There are external agencies with individual monitors, such as the Police Ombudsman in Boise, Idaho, and there are internal civilian oversight agencies consisting of a group, such as Honolulu Police Commission in Hawaii, whose authority includes the selection and termination of the Chief of Police. Further complicating matters, an agency may be combination of both models, such as the individual

Independent Review Officer (IRO) whose civilian staff investigates allegations of misconduct, as in Albuquerque, New Mexico; after review by the Chief of Police, the IRO's findings are then reviewed by the citizens comprising Police Oversight Commission.

There are potential advantages and disadvantages to each civilian oversight model. These are discussed in exhaustive detail elsewhere, and shall only be discussed briefly here (Chevigny, 1995; Perez, 1994; Perino, 2006; Prenzler & Ronken, 2001; Skolnick & Fyfe, 1993; Walker, 2001). The internal civilian oversight model has some potential disadvantages over the external model. An agency internal to the police department has a greater potential risk of being captured, that is, co-opted by the police department to the detriment of the oversight body's efficacy (Prenzler, 2000). The reliance on the police department for funding, support staff, office space, equipment and even such insignificant items as office supplies, results in casual everyday contact between the agency and the police department being overseen. The comfortable nature of these contacts can result in fine working relationships, but may also breed a familiarity which potentially threatens the impartiality of the civilian oversight agency. Just as important as the reality of impartiality is the public's perception of the review agency's independence. This public perception of the agency as part of Internal Affairs, or just another arm of the police department, threatens their efficacy and may threaten their very existence.

Furthermore, an internal monitor, a civilian who may be assigned a rank as a Deputy Chief, is likely to be considered just another police official by the general public, yet this same individual will always be viewed as a civilian outsider by rank and file police officers, particularly if that individual lacks direct experience as a local law enforcement officer (Skolnick & Fyfe, 1993). In short, the internal agency has the potential to combine the worst expectations of both police officers and the general public into a single oversight body. Still, the individual

monitor is likely to be an expert in police misconduct matters, law, and community relations, and their decisions will reflect that expertise. Additionally, the internal monitor is the model which many police administrators find least offensive, and may be the only system to which they would agree.

The external police oversight agency is clearly civilian, and obviously outside the police department. Although they rely on the police department's cooperation, they are less likely to have the kind of daily contacts which could engender capture (Prenzler, 2000). A review board comprised of a group of civilians mirrors the community around it; this diversity of representation brings a broader community perspective to help shape police policies (Skolnick & Fyfe, 1993). Still, review boards comprised entirely of a group of civilians selected for their diversity of viewpoints may lack police expertise, and police may not trust their decisions for many years, if ever. A group of civilians would require significant training in order to make proper determinations in specific use-of-force incidents, or cases requiring legal expertise. The alternative to this training, the addition of a sworn police advisor to the board, increases the risk of capture.

Models with both an individual review officer and a civilian oversight board may be gaining in popularity in an effort to leverage the best qualities of each model, while minimizing the perceived deficits of either model alone. The civilian review officer should be a civilian individual with significant expertise in the area of law enforcement, to advise the civilian board on matters requiring specialized knowledge, while the board comprised of civilians brings a breadth of diversity and community expectations to the table. This combination minimizes the possibility of agency capture, since the civilian board members are completely removed from the police department, and their professional advisor is also a civilian. The strongest oversight

models, those who independently conduct complaint investigations, are beginning to be seen as the most effective agencies, and may be a growing trend in civilian oversight in the United States, as well as worldwide (C. de Guzman & Frank, 2004; Herzog, 2002; Prenzler, 2004).

The goals and objectives of individual civilian oversight agencies are as varied as the models being employed to conduct the tasks (Brereton, 2000). There are broadly philosophical reasons to have civilian oversight in place, the arguments for which are normative in nature. These arguments include the ideal that civilian oversight agencies provide public transparency and accountability, the potential for citizen participation in government, and the means to redress grievances against a public entity with great authority and responsibility; these are the very hallmarks of democracy. The normative arguments for civilian oversight are extremely compelling, but by their very nature do not lend themselves to measurement, and are not the subject addressed in this paper.

Another set of arguments in favor of civilian oversight are potentially empirical in nature, and may be amenable to testing, measurement and observation. These arguments include the potential for civilian oversight to ensure higher quality complaint investigations, the value of investigations conducted or reviewed by civilians, greater complainant satisfaction with citizen investigated or reviewed findings, the potential deterrent effect of civilian oversight agencies against future police misconduct, the reduction in the seriousness of police use-of-force, the reduction in lawsuits against the police, increased professionalism among police officers, and increased public confidence with the police (Brereton, 2000; Chevigny, 1995; Collins, 1998; Coxe, 1965; Fletcher, 1992; Prenzler & Lewis, 2005).

While a few of these assertions have been subjected to scientific study, many have either not been studied, or the studies have been criticized as suffering from serious practical,

methodological or conceptual problems (Walker, 1997). Among those studies which attempted to quantify the efficacy of civilian oversight in achieving specific goals, some elegantly conceived examples exist. For example, one study demonstrated that the mere existence of a civilian oversight body acts as a deterrent to misconduct among the law enforcement officers overseen by the agency; this effect was most pronounced with officers who had been the subject of a complaint investigated by the civilian oversight body (C. de Guzman & Frank, 2004).

Another study determined that civilian oversight agencies may, by their very existence, promote greater public confidence in the police (Buren, 2007). This finding is particularly ironic considering that it is typically police departments themselves which aspire to preclude civilian oversight agencies from publicizing their presence and role in the community. Police departments, especially those newly subject to civilian oversight, may fear that a civilian oversight agency will "solicit complaints" against the police. Indeed, when the civilian oversight agency conscientiously accepts and counts every complaint, including those not previously accepted or investigated by the police department, it may appear to the department that the new civilian oversight agency is increasing the number of citizen complaints against the police.

Although the general public feels more confident in complaint investigations when they are conducted by an agency outside the police department, the public must first know that such an agency exists (Buren, 2007; Prenzler, 2004). Furthermore, although the general public is pleased with the concept of civilians investigating or reviewing police investigated complaints, individual complainants are no more satisfied, on average, with investigative findings completed by civilians than with Internal Affairs findings (Landau, 1996; Livingston, 2004; Perez, 1994).

The very nature of police complaints is that they are notoriously difficult to sustain, therefore, only a small percentage of complaints will result in sustained findings and discipline

against the individual officer against whom the allegation is leveled; this is true whether the investigation is conducted by an independent civilian investigator or Internal Affairs (Livingston, 2004; Walker & Kriesel, 1996). However, civilian oversight systems can improve the quality of internal investigations, and under some models, civilians themselves perform thorough and independent investigations into allegations of police misconduct (Finn, 2000; Strudwick, 2003).

Despite the worldwide growth of civilian oversight since the 1970's, some American oversight agencies have recently been abolished or their roles substantially limited (Walker, 2006b). A few oversight agencies have been scrapped in favor of mediation services or completely dissolved due to budgetary reasons. During this study, it was noted that several oversight agencies were found to no longer be in existence; as one Internal Affairs lieutenant stated during telephone follow-up, "The Mayor fired the Auditor and there are no plans to hire another. We finally got rid of civilian review" (Personal communication, July 31, 2007, confidential). Given this potential trend, the importance of determining and reporting on the effectiveness of individual civilian oversight agencies, and of civilian oversight as a practice, cannot be overstated.

Even as civilian oversight expands worldwide, there is a need to determine whether those agencies are operating effectively, and to measure their progress towards their varied goals and objectives. If the practice and growth of modern civilian oversight is to be sustained, then methodology must be developed to judge and report the efficacy of oversight mechanisms.

Performance Management

Performance management was already well developed and being systematically used by American municipalities as early as 1901. The New York Bureau of Municipal Research (BMR)

ensured transparency and accountability for public officials and department administrators through the publication of annual performance reports, along with the display of a public Budget Exhibit in City Hall (Cromwell, 1907; McDavid & Hawthorn, 2006).

By 1916, there were performance management agencies similar to the New York Bureau of Municipal Research in 20 US Cities (Kelly, 2003). Many of these municipal research agencies either proposed police boards or commissions which included civilians, or reserved for themselves limited civilian oversight of the police departments and police policies (Allen, 1912; Bureau of Municipal Research of New York, 1924; Cromwell, 1907; NY State Legislature, 1887; Pell, 1819; Porter, 1922).

In 1924, the City of Charleston, SC, contracted with the New York City Bureau of Municipal Research for a thorough examination of municipal government services. The New York Bureau conducted an extensive investigation of the Charleston Police Department. The Bureau recommended a civilian Board of Police Commission, comprised of three citizens with the Mayor and Police Chief as ex officio members. The Board's powers were limited to the review of policies being enacted by the Chief, and was designed to ensure those policies were furthering the public interest. The Bureau stated that "[The Board] cannot harm or hamper any competent police administrator, but on the contrary will serve a thoroughly useful civic purpose" (Bureau of Municipal Research of New York, 1924, p. 103).

Performance management is recognized today as an organizational management style which relies on empirical evidence regarding policy and program accomplishments to connect strategic goals and priorities to outcomes, in order to offer reasoned decisions about current and future directions (McDavid & Hawthorn, 2006). Performance measurement is the process of designing and implementing quantitative and qualitative measures of results, including both

outputs and, wherever possible, outcomes (Hatry, 1999). Although the terms performance management and performance measurement are frequently used interchangeably, in this paper performance management shall be used to include the entire management approach, and performance measurement shall be used to indicate the task of designing and utilizing measures and indicators to appraise performance, and potentially to demonstrate the impacts and outcomes of a particular endeavor.

Public officials, whether elected or managerial, need feedback to help them regulate and improve their operations; this feedback should be regular, reliable and quantifiable (Hatry, Fisk, Jr., Schaenman, & Snyder, 2006). Performance measures provide precisely that feedback when properly designed and used. Measures may take the form of input measures, output measures or efficiency measures. Where available, outcome measures are seen as the best possible measure of programmatic achievement, but outcomes can be difficult to quantify for many modern government services; other measures must serve a proxy for direct measures of outcome, particularly in the area of social services (Frederickson & Frederickson, 2006).

Performance Measurement as Applied to Civilian Oversight

"There is a serious lack of research on the activities and effectiveness of oversight agencies", wrote Samuel Walker, one of the most respected academic observers of American citizen review mechanisms (Walker, 2001, p. 184), "The spread of citizen review has not brought complete joy [to those who advocated for it]. In fact, there is a pervasive uneasy feeling that citizen review is not the panacea many expected it to be" (Walker, 1998, in Livingston, 2004, p. 653).

It is hoped that the principles of performance management, when applied to citizen oversight, will provide empirical evidence to address questions of civilian oversight effectiveness

in those aspects of the practice which are amenable to measurement. "Developing appropriate performance measures and sponsoring independent research are the most important issues facing the citizen oversight movement" (Walker, 2006a, p. 20). A small, but growing, body of literature has begun to address the application of performance management to civilian oversight.

"Why measure performance?" This question, so often asked by public managers of all types, has many answers. Arguably the most important reason to apply the principles of performance measurement to civilian oversight is to evaluate the effectiveness of the program or agency (Behn, 2004a). Other reasons to utilize systems of performance management include the issues of agency control, budgeting, motivation, learning and improvement (Behn, 2004b). While all these aspects of performance management have merit, it is the ability to judge agency effectiveness and to publicize agency performance that is most relevant to the field of civilian oversight (Prenzler & Lewis, 2007).

There is good reason to set performance targets or benchmarks for government performance generally (Ammons, 2001; Behn, 2003). However, it may be premature to consider benchmarks for civilian oversight as a practice. By 2007, the idea of using performance measurement to evaluate civilian oversight agency effectiveness is just beginning to take hold, and there is still disagreement about the suitability of particular measures for judging agency effectiveness. The one performance measure which currently could, and probably should, be set against a standard is the time required to complete complaint investigations (Prenzler & Lewis, 2005). Many jurisdictions have deadlines for the completion of citizen complaints set by civil service rules, after which substantiated complaints are precluded from resulting in discipline. At a minimum, agencies should set benchmarks to ensure that all investigations are completed within the time allotted so that disciplinary action may be administered where appropriate.

Citizen oversight agency officials, like most public managers, are loathe to set performance targets which may be misinterpreted or used to penalize the agency (Behn, 2003). Even among experts, there is disagreement about which measures are appropriate (Brereton, 2000; Livingston, 2004; Prenzler & Lewis, 2005). Findings by this Researcher indicate that the debate over suitable indicators of agency effectiveness is not the exclusive terrain of experts, but also extends to practitioners of civilian oversight at every level.

Currently, most oversight bodies monitor and report only a few basic output indicators such as numbers and types of complaints, timeliness, and the number and proportion of complaints where misconduct has been substantiated (Brereton, 2000). The search for a more complete set of valid and applicable indicators of effectiveness, and the data to populate those indicators, is the topic addressed in this study.

Some of the individual indicators of agency effectiveness that have been proposed appear instinctively contradictory. For example, it has been proposed that either an increase or a decrease in the number of complaints would both be considered an indicator of civilian oversight agency effectiveness. Despite the seeming inconsistency, there is some logical merit to the argument that either an increase or a decrease in complaint numbers might be a valid indicator of efficacy.

There are certainly plausible reasons for complaint numbers to increase substantially when a civilian oversight agency is introduced. One recognized reason is that civilian oversight agencies conscientiously receive and log every single citizen complaint filed, no matter how frivolous or bizarre (Chevigny, 1995). Reasons for the phenomenon of low complaint numbers among the police historically have fallen along a continuum from relatively minor problems such as sloppy record keeping or the dismissal of complaints determined to be without merit after a

informal investigation, to documented cases of departments refusing to accept complaints either at the line officer or supervisory level, intimidation of complainants with threats of additional criminal charges, and the outright throwing away of complaints received (Chevigny, 1995; Collins, 1998; Coxe, 1965; Livingston, 2004; Watt, 1991).

As a practical matter, modern police departments have long been under pressure to record a combined bottom-line of small complaint numbers, coupled with high substantiation percentages. The notion among police administrators has been that a high rate of sustained complaints indicates that Internal Affairs is zealously investigating complaints, while low complaint numbers indicate that the public is pleased, overall, with police performance. In order to achieve this result, departments authorize field supervisors or other complaint recipients to screen out allegations which appear to lack merit. By accepting only the most convincing, well-documented and undeniable charges, police complaint numbers are kept low, with correspondingly high rates of substantiation (Skolnick & Fyfe, 1993). Under these circumstances, when a civilian oversight agency begins receiving complaints, the numbers would be expected to be higher than documented complaints were prior to the agency's existence. Complaint numbers sometimes substantially increase, despite the fact that nothing has changed except the accurate counting of complaints which were previously not documented.

In the alternative, complaint numbers might decrease due to the oversight agency; this could be indicative of effective civilian oversight, but cannot be assumed as such. However, complaint numbers could drop because citizens have no confidence in the system of complaint investigation, whether civilian reviewed or not, so they stop filing complaints. Fewer complaints against a police department might be indicative of effective civilian oversight, but could just as

easily be evidence that the public felt that the oversight system had been co-opted by the department, and was not worthy of their trust.

There are valid reasons for complaint numbers either increasing or decreasing, and logical arguments can be made that these changes are indicative of effective civilian oversight. However, neither an increase nor a decrease in complaints may automatically be attributed to civilian oversight agency effectiveness, without longitudinal study and observation of all the variables involved. The use of performance measurement by civilian oversight is one method of providing empirical evidence, rather than mere logical argument, to the question of whether civilian oversight is effective at any of its various goals.

It has been proposed that rates of substantiated complaints should follow some predictable percentage if citizen complaints are properly investigated (Brereton, 2000). Rates of sustained cases among citizen complaints investigated by police range from ridiculously low (1-3%) to the absurdly high (50% or more). However, rates of substantiation have more to do with how conscientiously complaints are accepted than with investigative objectivity or zeal (Skolnick & Fyfe, 1993). As previously indicated, if only well-documented complaints are accepted, then substantiation rates will be extremely high. Substantiation percentages sometimes drop following civilian oversight, not because civilian oversight agencies are failing to substantiate a greater number of complaints, but because the acceptance and investigation of every single complaint results in lowered percentages of substantiation. As complaint numbers rise, the percentage of sustained complaints may fall, despite the fact that a greater overall number of complaints are being substantiated.

Even the most thorough and aggressive complaint investigations will fail to prove or disprove many allegations of police misconduct. Citizen complaints frequently involve one-on-

one encounters between an officer and citizen in what amounts to a swearing contest between the parties (Livingston, 2004). Even where witnesses do exist, they may be unknown to both the complainant and the officer; even a traffic stop on a crowded street is often virtually unobserved (H. Goldstein, 1977).

When individual complaints against an officer cannot be substantiated, patterns of complaints may still document patterns of conduct which would merit further investigation of the officer's behavior (Skolnick, 2002; Skolnick & Fyfe, 1993). The Christopher Commission, convened after the Rodney King debacle, noted that the top 5% of Los Angeles Police Officers ranked by number of excessive force complaints accounted for 20% of all such allegations, with a few officers having more than 8 complaints; one officer had 16 complaints of excessive force lodged against him in a scant four years, not including other types of citizen complaints, such as allegations of discourtesy or unprofessionalism (1991). These statistics were discovered not by the police department itself, but by a citizen commission charged with investigating allegations of systemic misconduct.

Civilian oversight has grown from humble beginnings with elected citizen representatives responding only to the worst systemic allegations of misconduct, to citizen volunteers forming unofficial bodies to accept citizen complaints against the police, and finally to modern civilian oversight with diverse citizen representation conducting reviews of complaints. Citizen oversight has grown and expanded, but studies have been unable to quantify the success of oversight agencies at achieving their various goals and objectives. In some cases, particularly when proponents of civilian oversight have unrealistic expectations regarding the ability of civilian oversight to solve community-police problems, citizens have become discouraged with

their inability to effect systemic change, and oversight agencies have dissolved or substantially changed their missions and mandates (Skolnick & Fyfe, 1993).

Despite the challenges inherent in using performance management for evaluating the effectiveness of civilian oversight, there is an emerging set of indicators that is potentially useful, and a small but growing body of literature addressing the issue (Brereton, 2000; Prenzler & Lewis, 2005). Given the complex methodological difficulties facing those who wish to study the comparative effectiveness of various models of civilian oversight and the efficacy of civilian oversight generally, performance measurement may well prove to be the best method for evaluating the progress of civilian oversight towards its diverse goals and objectives.

METHODOLOGY

The purpose of this study is to identify the measures and categories of performance indicators being utilized in various civilian oversight agencies within the United States, and how those in use compare to measures identified in the literature. This Researcher's hypothesis is that while some civilian oversight agencies are using performance indicators to demonstrate their efforts and work accomplished, few utilize indicators to assess effectiveness. This study is modeled after the study of Australian civilian oversight conducted by Tim Prenzler and Colleen Lewis (2005). Prenzler and Lewis posed only open-ended questions to the handful of agencies operating in the Australian Commonwealth. However, in the instant study, in order to obtain the highest possible response rate, this Researcher decided to use a survey consisting of structured questions, rather than open-ended questions. In addition to being straightforward for civilian oversight practitioners to complete, this format enabled the survey to be configured as an interactive web form which could be completed via the internet.

Because the population of agencies practicing civilian oversight within the United States was so small, this study attempted to survey the entire population, rather than a smaller sample. Forty-six of the fifty-nine (77%) active oversight agencies responded to the survey, therefore, the conclusions may be considered representative of the entire group. Civilian oversight agencies were identified utilizing the directory of agencies affiliated with the National Association for Civilian Oversight of Law Enforcement (NACOLE).

The survey instrument consisted of questions with short countable answers with an "other" option to allow brief open-ended responses. Fill-in-the-blank questions requested personal data, such as the respondents name, position title, telephone number and e-mail, and the

agency name, address, and web site. Respondents were also asked whether they were employed as a civilian individual or a sworn police officer and whether they were amenable to follow-up contact (see Appendix A).

NACOLE kindly posted the interactive Adobe Acrobat survey form on their website. In order to ensure that the survey responses would be limited to civilian oversight practitioners, the link was only accessible to those with the direct URL invitation, it was not available by searching the NACOLE site or the internet. The survey link was initially e-mailed to all those participating in the NACOLE moderated listserv, and also sent directly to everyone listed in the NACOLE directory with an electronic mail address. Additional web searches were conducted, seeking active agencies that were not listed on the NACOLE agency directory.

As a follow-up, the survey was sent via US postal mail to all agencies whose response was not received electronically or via US mail within two to three weeks following the initial posting. Finally, telephone calls were placed to each agency that did not respond to the survey, or whose mail was returned as undeliverable. This was done to ensure that the agencies were still in existence and actively practicing civilian oversight. All agencies found, via the above method, not to be actively practicing civilian oversight were removed from the population.

A total of 54 civilian oversight agency reports were examined to determine what categories of data were being collected and reported which could or potentially should be used as indicators of performance, regardless of whether the data was currently being so used. In some cases, annual or other reports were available despite the fact that the agency chose not to participate in the written survey.

FINDINGS

The NACOLE directory listed 70 civilian oversight agencies, but ultimately only 59 of those agencies had sufficient, correct information available to allow this Researcher to successfully initiate contact. Of the 59 agencies who were contacted, 77% (N=46) chose to participate in the study; this constituted a tremendously positive response among American civilian oversight agencies. Scholars and observers of civilian oversight are concerned about the development of appropriate performance measures and indicators of oversight efficacy. The overwhelming response rate of civilian oversight agencies, in addition to their explicit comments in support of this study, suggests that practitioners of civilian oversight share this concern. (See Appendix B.)

The Civilian Oversight Agencies

Ninety-one percent (n=42) of individuals responding to the survey indicated they practiced in civilian oversight systems which were external to, and independent from, the law enforcement agencies being overseen. This certainly speaks to the popularity of the external oversight model, which has been the fastest growing and most visible face of civilian oversight.

However, another factor may potentially be implicated. Internal civilian oversight agencies may not be directly available to the general public, particularly compared to their external counterparts. In conducting follow-up telephone calls to agencies who had not responded to mailed surveys, it was determined that several internal oversight agencies did not even have a physical address or internal city mail drop to which mail could be delivered.

Telephone calls to these agencies tended to be answered by Internal Affairs personnel who politely and dutifully took messages, but frequently stated that contact between the

department and the monitor tended to be sporadic, and they had no idea when a message might be delivered. Indeed, the function of many internal oversight agencies is merely to review or periodically audit cases investigated by Internal Affairs; they were never designed to facilitate public contact, and for some, no systems of contact exist.

Eighty-eight percent (n=41) of the participating agencies involved a group or committee of some form, with 69% (n=32) involving only a group, and another 20% (n=9) practicing oversight with both a group and an individual. Only five (11%) of the agencies who responded involved oversight conducted solely by an individual monitor or ombudsman. Volunteer board members were involved in 69.6% (n=32) of the agencies, while fewer than 9% (n=4) had paid board members. Almost half of the agencies had at least some political appointees (47.8%; n=22), while fewer than 35% (n=16) had classified employees. Classified employees are those employees with civil service protections against politically motivated removals.

The Law Enforcement Agencies Subject to Oversight

The vast majority of operating civilian oversight agencies conducted oversight over a municipal police department, only a few of the agencies provided oversight for a sheriff's department. Several other types of law enforcement agencies were subject to oversight as part of the city or county entity, including Airport Police, Housing Police, Probation Officers, Code-Enforcement Officers, and Parking Controllers.

Although all the agencies surveyed identified themselves as civilian oversight agencies, in one instance, the "civilian" oversight board was found to be chaired by a sworn police official. It is unclear whether this truly constitutes civilian oversight. No matter how good the intentions

of such an arrangement, the public is unlikely to view this as legitimate civilian oversight. At the very least, such an agency is in grave peril of succumbing to capture by the police department.

Civilian Oversight Agency Missions

Respondents from the agencies were quite clear about their missions, mandates, or functions and most shared similarities. The review or investigation of citizen complaints against the police is seen as the most basic function of civilian oversight, and it was expected that virtually all of the agencies would perform these tasks. Indeed, over 95% (n=44) of the agencies indicated that they either independently investigate complaints of police misconduct or that they review complaint investigations conducted by Internal Affairs. Only two of the agencies indicated that they currently perform neither of those functions. One agency which indicated they do not currently oversee citizen complaints commented that they would begin reviewing investigations soon; the other agency is primarily a disciplinary body that does not review the original investigation except for the purpose of administering discipline.

A large majority of the agencies (77.3%; n=33) reported that they make only recommend findings of fact in complaints of police misconduct, but indicated that their findings were not binding upon the law enforcement agency; very few civilian oversight agencies make binding findings of fact on citizen complaint cases (15.2%; n=7). A majority also stated that they recommend policy or standard operating procedure changes (80.4%; n=37), or conduct community outreach (73.9%; n=34); more than a third of the responding civilian oversight agencies responded that they recommend discipline (n=17).

There were also similarities among agencies regarding the less tangible missions of each agency. A convincing majority of the agencies felt that part of their mission or mandate was to

increase confidence with complaint investigations (76.1%; n=35), or to increase public confidence in the police department generally (69.6%; n=32). Other agency mandates with a majority of agreement included the improvement of police training or policies (58.7%; n=27), or the conducting of public hearings or outreach (52.2%; n=24). Nearly half of the agencies stated their mandates included keeping an eye on police use-of-force, conducting mediation between citizens and the police, deterring future police misconduct, or generally increasing the professionalism of their respective law enforcement officers.

Civilian Oversight Agency Performance Indicators

Rates of substantiated complaints are tracked by all but a few agencies. Eighty-nine percent of agencies stated they track the number or percent of sustained findings, while fully 80% (n=40) of the agencies track findings of all types. Eighteen of the agencies, about one-third, indicated they follow the number or percent of findings which were upheld by the Chief of Police or other final authority, or tracked discipline in sustained cases. Fewer than 11% (n=5) of the agencies failed to track complaint outcomes in any way.

A large majority of agencies indicated they track information about the complaining citizen, the officer complained about, or other complaint information, and more than half of the oversight agencies tracked complaint trends. Again, fewer than 11% (n=5) failed to track information regarding general complaint statistics.

A larger number of agencies are failing to track community engagement measures in any way; almost one-third of agencies do not track their efforts at community or stakeholder engagement (30.4%; n=14). Even so, two-thirds track their outreach efforts, and others track community participation and their efforts at education. It has been shown that citizens are more

confident in their police department when they know that the department is subject to civilian oversight. In order for this phenomenon to occur, the general public must be aware that a civilian oversight agency exists.

Interestingly, fully two-thirds of agencies are not tracking any type of stakeholder satisfaction (65.2%; n=30). Very few agencies track the satisfaction of the public at large, or even that of complaining citizens. While complaining citizens tend to be dissatisfied with the results of investigations, sometimes even when the case is found in their favor, citizen satisfaction has been shown to be higher with mediation and other forms of conciliation. Furthermore, the general public has been shown to be more confident in civilian reviewed or investigated cases than when the police investigate themselves without civilian review. As with confidence in the police, the outcome of greater confidence in complaint investigations only occurs once the general public learns that civilian oversight is in place. While stakeholder satisfaction requires the use of surveys, the data resulting from these efforts are directly indicative of civilian oversight agency performance.

Only a very small number of agencies (n=4) have attempted to examine police officer satisfaction with civilian reviewed cases. Presumably, if asked whether they would prefer to have civilian oversight or not, many officers would rather not be subject to any type oversight, least of all civilian oversight. However, satisfaction among officers who have direct experience with civilian oversight investigated cases has been higher than expected (C. de Guzman, 2004). Furthermore, even those officers who are dissatisfied with their civilian oversight experience can provide valuable feedback to citizen oversight agencies, if the right questions are asked. Civilian oversight agencies should hardly expect the police to be amenable to citizen feedback from an oversight agency which itself is disinterested in feedback from the officers subject to oversight.

Stakeholder satisfaction surveys of police officers may also be used to demonstrate whether or not the presence of oversight agencies tends to deter future misconduct among officers (C. de Guzman & Frank, 2004).

Anecdotal evidence has shown that in some cases individual officers prefer civilian investigations, particularly in cases where Internal Affairs is viewed as the tool of internal department politics, rather than a division devoted to the fair and ethical treatment of subject officers as well as citizens. Interestingly, when off-duty officers or their families are the victims of police misconduct, or when officers have disputes with other officers, they frequently prefer that an independent civilian agency be able to conduct the investigation, although the option for officers to make such a choice is specifically precluded in some civilian oversight legislation ("City of Albuquerque Police Oversight Commission Ordinance", 1994).

The survey revealed that while some civilian oversight agencies conduct data collection for potential future risk of misconduct among individual police officers, it is police departments who are responsible for most of this data collection. The law enforcement agency themselves tended to track repeat complaints against officers, and also operated any Early Warning System, a database which tracks indicators of risk for individual officers, such as complaints, use-of-force incidents, traffic accidents, and lawsuits. Only 13% (n=6) of departments which had civilian oversight failed to have an Early Warning System of some kind in operation. Law Enforcement agencies should be tracking these statistics, particularly in cases where they alone make decisions regarding discipline.

It is alarming that any of the respondents reported that neither the police department nor the civilian oversight agency tracked officers with repeat complaints. This is of great concern because examinations have shown that officers who receive the greatest number of citizen

complaints may also be those most likely to be involved in misconduct of other kinds and even outright corruption (Johnson, 2003; New York State Senate Committee [The Lexow Commission Report], 1895).

From this Researcher's perspective, it is imperative that repeat complaints against individual officers be tracked, and to ensure that the data never disappears due to computer malfunction or tampering, both the law enforcement agency and the civilian oversight agency should redundantly track officers with more than one complaint. Citizen complaints are valuable feedback for police administrators regarding individuals in a profession where direct supervision is difficult. In some cases, citizen complaints or commendations are the only feedback available regarding individual police officers (Chevigny, 1969).

Civilian Oversight Agency Indicators of Efficacy

The purpose of this study was specifically to examine measures and category of indicators which could be used to demonstrate or suggest civilian oversight effectiveness. Practitioners of civilian oversight are in strong agreement about some indicators of oversight agency effectiveness, and while they agree somewhat on others, a third set of indicators received little support.

Throughout the survey, civilian oversight respondents expressed their trepidation about the ability to prove causality with respect to the various measures. These concerns were most vociferously expressed with regard to potential indicators of civilian oversight efficacy.

Few issues of causation can be proven to a high degree anywhere in life. This is particularly true in the social sciences, and civilian oversight is no exception. The issues that surround progress towards the goals and objectives of civilian oversight agencies are complex and multifaceted. It is equally so with the police themselves; police administrators, along with

academics and observers of law enforcement, have for decades discussed the difficulty in proving whether the police cause reductions in the rate at which crimes occur in a particular jurisdiction. It is even questioned by many whether the crime rate is a valid measure of police performance (Milligan, Fridell, & Taylor, 2006; Moore, 2004). Similarly with civilian oversight, many facets of causation surrounding the effectiveness, or lack thereof, of the practice of citizen oversight may never be known. Just as police departments continue to use crime rates as an indicator of police performance until better indicators come along, civilian oversight agencies should use known and agreed upon indicators of effectiveness to the extent possible, while continuing to support research in the area of civilian oversight efficacy.

The difficulty in assigning causation should not preclude practitioners and observers of civilian oversight from attempting to measure and report effectiveness. Nor should that difficulty prevent individual civilian oversight agencies from seeking independent evaluations of their processes. Even as supporters and critics of the civilian oversight movement work to refine the definitions of civilian oversight efficacy, those already practicing civilian oversight must select indicators of effectiveness likely to be valid and begin using those measures for which data may be obtained. Additional studies should be conducted to clarify which indicators are best, and any indicators later shown to be invalid may be discarded.

Some civilian oversight survey respondents who voiced concerns regarding the inability to demonstrate causality declined to select any indicators of effectiveness which they considered to be valid. When asked which indicators of efficacy the agencies were currently using, fully 15% (n=7) stated that indicators of effectiveness were not known, despite the fact that an alternate selection would have been to state that the measures were known but simply not used (34.8%; n=16).

The indicators of civilian oversight efficacy which were strongly perceived as legitimate included the increase in the public confidence in complaint investigations (87%; n=40) whether investigations were conducted by Internal Affairs or civilians, the increase of public confidence in or satisfaction with the police (82.6%; n=38), and the increased professionalism of police officers as individuals or as a group (71.7%; n=33). These are goals which would be endorsed by any modern police administrator, as well.

Performance measures which were seen to be useful indicators of civilian oversight performance by many respondents included the increase of police officer satisfaction with complaint investigations/mediation (50%; n=23), and reduction in the use-of-force incidents (39.1%; n=18). Some respondents felt that fewer lawsuits against the police (32.6%; n=15) and a reduction in seriousness of complaints against the police (30.4%; n=14) were valid indicators of oversight agency effectiveness. Relatively few felt that simple output measures were valid indicators of agency efficacy. Output measures are the most basic indicators of work performed, such as an increase in the number of complaints (19.6%; n=9), a decrease in complaint numbers (23.9%; n=11), an increase in the number or percentage of sustained complaints (13%; n=6) or a decrease in the number and percent of sustained complaints (17.4%; n=8).

Simple output measures were used more frequently by the respondents in their civilian oversight agencies, but few of these practitioners felt that these indicators were complete measures of civilian oversight efficacy. Simultaneously, measures which were generally believed to be legitimate indicators of efficacy saw little use in the real world. The cause of the phenomenon is fairly obvious. As occurs elsewhere in government, the motivating factor surrounding the use of a particular indicator is often the availability of the supporting data. Like many government agencies, including police departments, civilian oversight practitioners tend to

use outputs as indicators of performance, not because they feel those measures are particularly valid indicators of successful outcomes, but because that data is accessible; at the very least, output indicators show that work is being performed.

Some of the indicators which a majority of the respondents perceived to be useful, such as increasing public confidence with the police, or increasing the professionalism of the police, are the most difficult and time consuming to measure. However, other indicators such as officer satisfaction, reduction in the use-of-force and fewer lawsuits against the police, have readily available data or data which would be relatively straightforward to collect. For example, many police departments already track the use-of-force by officers in the field; civilian oversight agencies could obtain and conduct longitudinal analysis of this data, and report the ongoing use-of-force trends as potential indicators of civilian oversight efficacy. As previously indicated, the agency cannot demonstrate that they directly caused any reduction in the use-of-force, merely that the officers overseen by the civilian oversight agency are using less force than was previously recorded.

Since there is such a strong agreement regarding the validity of these indicators among civilian oversight practitioners, it would behoove the civilian oversight community to begin discussion about how these indicators could be measured and how supporting data could best be collected. Furthermore, those indicators for which data could be gathered, without a significant drain on available resources, should see immediate use.

In addition to the questions regarding indicators of effectiveness, agencies were asked to describe perceived impediments to their efficacy. Over half of the civilian oversight agencies responded that budgetary limitations are impeding their effectiveness (52.2%; n=24); almost half responded that the reliance on police cooperation (45.7%; n=21) is an impediment. A few felt

that subpoena power or greater independence would improve their effectiveness, and a small number felt that their efficacy was hampered by their lack of independence from the police department. Write-in responses indicated that the inability to hold public hearings or release detailed information regarding findings was an impediment to effective police oversight in three jurisdictions. Other perceived impediments included the lack of political will by officials, inadequate training for commission members, and a lack of community awareness about the roles and functions of the oversight body. Despite these responses, 19.6% (n=9) felt that there were no known impediments to their effective function as an oversight body.

Civilian Oversight Agency Reporting Practices

Civilian oversight agency reports were examined and agencies were surveyed about their reporting practices and requirements. Most agencies produced reports of some type (91.3%; n=42), of those, most produce annual reports (73.9%; n=34), but quarterly, bi-annual, tri-annual and monthly reports are also produced. Of those producing reports, 89% produce publicly available reports (n=41).

Four of the agencies (8.6%) produced no reports whatsoever; more surprising was the fact that all four of these bodies were external agencies. One of the purposes for civilian oversight with which few could argue is the provision of at least some measure of transparency and accountability to law enforcement. Agencies that fail to produce any publicly available reports are robbing themselves of an opportunity to provide a valuable service, and also to increase community awareness of oversight. Certainly, civilian oversight agencies handle material which must remain absolutely confidential, but all agencies should produce at least a brief annual report outlining the agency's activities, roles, responsibilities, and accomplishments.

Most agencies reported complaint statistics in some form. Some agencies provided synopses of individual complaints, while others reported complaint data solely in aggregate form; most reported the number and percent of sustained complaints. A majority of agencies tracked the time from the report of an incident to complaint investigation closure (58.7%; n=27), but many did not track timeliness in any form. Stakeholder satisfaction and outreach reporting tended to describe public education efforts, although a few agencies provided stakeholder satisfaction data. A few agencies reported a comprehensive set of trend data including subject officer and citizen demographics, complaint trend analysis, use-of-force analysis and stakeholder outreach efforts, policy recommendations, disciplinary action and alternative dispute resolution methods employed.

Summary of Findings

The overall response rate of civilian oversight agencies to the survey was remarkable, with 46 of the 59 agencies participating, and is a testament to the interest shared by civilian oversight agency practitioners regarding the selection and use of suitable performance measures. The survey demonstrated that American oversight agencies are currently using several basic indicators, mostly consisting of simple measures of output or timeliness, but some agencies also track indicators of outcome and outreach.

Indicators of civilian oversight effectiveness are the most complex and sophisticated indicators which civilian oversight agencies could report, yet it is very important for civilian oversight agencies to report their own effectiveness. There was strong agreement upon one set of indicators of effectiveness, primarily those dealing with increased public confidence in the complaint process and increased confidence with the law enforcement agency overseen.

However, the discussion will continue surrounding another set of indicators about which there was less enthusiasm. These indicators include officer satisfaction with complaint resolution procedures, the reduction in overall use-of-force, and the reduction in lawsuits. Although simple output measures, such as the number of complaints received, and the number and percentage of complaints sustained, were deemed important, and should be reported, most respondents did not feel that these measures were valid indicators of civilian oversight agency effectiveness.

The response and awareness shown by survey respondents in this area, taken together with their comments, indicates their endorsement of the work required to finalize a set of universally accepted indicators as study in this area continues. Oversight agencies should utilize every opportunity to increase public confidence in the police, and in the complaint handling process. The achievement of these goals was viewed as the most valid indicators of civilian oversight agency success.

CONCLUSIONS & RECOMMENDATIONS

The early literature demonstrated that when American citizens are sufficiently unhappy with law enforcement, and when appropriate means to redress their grievances against the police are perceived as biased towards the police, these citizens have made their displeasure known with public demonstrations that sometimes include rioting. One of the earliest demands resulting from public outcry over the brutal and corrupt police of the early 1900's was the public mandate to elected officials and police administrators for the fair and impartial investigation of citizen complaints against the police. When citizens have more recently rioted over their frustration over their treatment at the hands of the police, and their perception that complaint investigations were a sham, they have clearly and unequivocally demanded civilian oversight of law enforcement.

The modern practice of civilian oversight arose from these demands. Yet civilian oversight bodies have not been able to demonstrate that they are effective at their various goals. Attempts to compare civilian oversight to police complaint investigations which do not include civilian review have been fraught with methodological difficulties. Significant differences in the way that complaints are received may preclude the direct comparison of civilian oversight with Internal Affairs processes. Similarly, attempts at comparison of different models of civilian oversight have been criticized due to methodological flaws. Studies of civilian oversight have been problematic, and few individual agencies have been independently evaluated.

However, these difficulties do not ease the need for civilian oversight agencies to show that they are effective, and are making progress towards their varied goals and objectives.

Performance management provides a means for individual oversight agencies to report their efforts and performance, and ultimately to demonstrate their effectiveness.

Conclusions

As was predicted by the literature, a potentially useful set of performance indicators is emerging for use by civilian oversight agencies. Most American oversight agencies are currently using and reporting some indicators of performance. These indicators tend to be simple measures of output and effort, such as the number and types of complaints received, the time required to complete complaint investigations, and simple outcome measures in the form of substantiation rates and other case dispositions. The measures are usually not compared to any performance benchmarks, although some agencies have maximum time frames in which investigations must be completed. Although these measures typically fail to point to particular successes or the achievement of goals, they do provide an indicator of activity and accomplishment of work.

While some agencies are utilizing community engagement measures, many are not. Given the importance of community engagement, accountability, and transparency to the work of civilian oversight, all agencies should be seeking methods to engage and educate the community. The work done in this area does not lend itself to measurement as readily as simple measures of output, yet community engagement yields benefits which may relate directly to community perception and evaluations of oversight agency efficacy.

Fewer than 20% of the oversight agencies currently use measures of stakeholder satisfaction, and this is of grave concern. Indicators of stakeholder satisfaction are the performance measures which tend to translate most directly into valid indicators of civilian oversight agency effectiveness. In neglecting their use, civilian oversight agencies are missing

the chance to collect data upon which to base indicators of their own effectiveness. In turn, reporting agency efficacy may prove vital to continued existence of individual civilian oversight agencies.

Citizens who complain about specific police interactions tend not to be satisfied with any complaint investigation, whether the case is investigated by civilians or Internal Affairs. Nevertheless, complaining citizen satisfaction data should still be collected at every opportunity. However, this data should not be made to stand alone, the satisfaction of other stakeholders must be determined. Citizen satisfaction data should be collected from the public at large, and also from the law enforcement community. When all the stakeholders have the opportunity to provide input, the picture becomes complete.

This study attempted to define measures of civilian oversight agency effectiveness. Practitioners strongly approved some indicators of efficacy, and while there was agreement on other indicators, there was disagreement as to the legitimacy of a third set of measures. Unfortunately, the measures about which the respondents were the least enthusiastic sometimes saw the most use; this is due, at least in part, to the fact that the data for these measures are readily available within the records of the oversight agency itself.

Civilian oversight agencies were most enthusiastic regarding indicators of effectiveness which involved increased public confidence. A solid majority of civilian oversight agencies viewed increased public confidence with complaint investigations, or increased public confidence in the police department as a whole, as valid measure of civilian oversight effectiveness. Practitioners were also willing to assign validity to indicators of efficacy which involved an increase in the professionalism of individual officers or the professionalization of the department as a whole. These indicators, which were strongly endorsed, should prompt a

discussion of how to best measure the trends of public confidence with the police, and with complaint investigations. Concerning those measures for which data is not currently available, additional study and discussion should determine the best way to collect such data, so that all these measures may be reported.

Recommendations

Recommendations are respectfully offered for civilian oversight agencies based on the findings of the study, as well as those suggested by the literature. Recommendations are also suggested for future research, including the repetition of civilian oversight studies previously discussed.

Every civilian oversight agency should produce at least one publicly available report per year which outlines the agencies efforts and successes. Even agencies for whom virtually all work is internal or confidential should, at minimum, report the number of complaints received, the number reviewed and the number and percent sustained. One of the undisputed values of civilian oversight is in the provision of police transparency and accountability. Every civilian oversight agency should provide some measure of transparency to law enforcement, no matter how limited their other roles.

Published reports should be made available to the public through several methods, including the internet and should be actively distributed to the local media. A study has demonstrated that the public feels more confident in their police department when they know that police actions are reviewed by civilian oversight. Oversight agencies should utilize every opportunity to increase public confidence in the police, and in the complaint handling process. The achievement of these goals was viewed as the most valid indicators of civilian oversight agency success.

Civilian oversight agencies should strive to be as independent as possible. If an oversight agency is not viewed as being independent from the police department, then civilian review will not be seen as replacing the historical system of police self-review. Once civilians are dissatisfied with police investigation of complaints, nothing short of independent civilian review will change that perception, even when the police consistently make the right decision. Like the implementation of the jury system, which arose not because judges were incompetent or incapable of making correct decisions but because citizens wanted criminal cases to be decided by average citizens, only independent civilian oversight will be perceived as being different from internal police decisions.

When citizens ask for civilian review, it is because the citizens' perception is that police are hopelessly conflicted when investigating complaints against their own. Whether consciously perceived or not, there is tremendous pressure for officers to discourage complainants at every level, and to find in favor of their fellow officers.

Police administrators argue that no other profession is judged by those outside the profession; lawyers investigate complaints against other lawyers, and doctors are judged by other physicians, many police officers feel they should be free to investigate themselves as well. There are a number of problems with this argument. First, the police are different from other professionals, in that no other profession is empowered with a monopoly of physical force to use at their discretion against fellow citizens, at times even necessitating the legally justified killing of another human being. Secondly, and more to the point, when other professionals exonerate themselves after conducting an internal investigation, the public generally doesn't believe them, either. Finally, if a particular doctor or accountant is deemed incompetent by the public, market forces will, as a practical matter, eventually expel that individual from the local profession

(Goode, 1957; Rose, 1983). No such market forces exist around law enforcement. Individual citizens are not free to choose the particular police officer responding to their need, or placing them under arrest. In point of fact, police typically provide a service which was neither requested nor desired; even the victim who is relieved to have the officer come to their aid would rather not require the assistance. There are no market forces to regulate law enforcement. Even the removal of the chief elected or appointed law enforcement official may not dramatically change the behavior of the officer on the street. History demonstrates that officers merely wait out the current administration until the chief official is replaced with someone more to their liking.

When police officers are accused of excessive force and exonerate themselves, the public will suspect that they are covering up for fellow officers, even when their decision is correct. Only independent civilian conducted investigations, or external civilian review, is likely to be trusted by the public. The police both need and deserve credibility. Instead of opposing civilian review, police administrators should ensure that civilian review is impartial and fair to officers, as well as citizens. Police administrators would be well advised to participate in the reasonable discussion around civilian review, and shaping the measures that determine oversight's efficacy, rather than waiting until a highly publicized case of police misconduct results in hurriedly cobbled together civilian oversight which ultimately pleases neither citizens nor law enforcement.

Recommendations for future research include the examination and comparison of measures and indicators determined in this paper to be in use, or perceived to be valid, by civilian oversight agencies. The ultimate goal of such research would be the suggestion of specific measures which belong in a portfolio of recommended indicators to be used by oversight

agencies. The indicators of civilian oversight effectiveness which were perceived as valid by civilian oversight practitioners deserve additional study. These measures should be confirmed as valid indicators of civilian oversight effectiveness. Additionally, the means to collect citizen perception data regarding confidence in the police should be developed and standardized for use by civilian oversight agencies. Such data collection tools would be valuable for civilian oversight agencies worldwide.

As Samuel Walker aptly stated, "Developing appropriate performance measures and sponsoring independent research are the most important issues facing the citizen oversight movement" (Walker, 2006b, p. 20). Civilian oversight agencies, along with academics, and supporters and observers of civilian oversight, should take every available opportunity to support and sponsor research concerning civilian oversight of law enforcement.

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APPENDIX A - SURVEY FORM

The use of Performance Measurement in Civilian Oversight of Law Enforcement

For each question, you may check as many boxes as apply. Aggregated survey data will be used for a Master's Thesis/Professional Paper as part of the requirements for a Master's in Public Administration at the University of New Mexico, and may also be used in subsequent publications. All publications or articles for which this data is used will be provided to NACOLE and the police oversight listserv. Once you've completed the survey, please click on the "e-mail" button to send it directly via e-mail, or you may print and mail the survey via US Mail. Please send your response by Aug 1, 2007 to ensure inclusion. If you have questions or comments, please feel free to contact me directly. -Beth A. Mohr

Civilian Oversight Agency:

Is your civilian oversight agency:

- ☐ Internal to the law enforcement agency
 ☐ External to the law enforcement agency
 ☐ Other:

Does your civilian oversight agency consist of:

- ☐ Individual monitor: Auditor, Inspector General, Independent Review Officer, Ombudsman
☐ Group monitors: Civilian Review Board, Police Oversight Commission
☐ Both individual and group: Independent Review Officer and Police Oversight Commission
☐ Other:

What are the functions of your civilian oversight agency?

- | | |
|--|---|
| <input type="checkbox"/> Reviews Internal Affairs investigations | <input type="checkbox"/> Mandates SOP or policy changes |
| <input type="checkbox"/> Conducts independent investigations of complaints/allegations of misconduct | <input type="checkbox"/> Responsible for citizen outreach/participation |
| <input type="checkbox"/> Supervises Internal Affairs Investigations | <input type="checkbox"/> Responsible for stakeholder satisfaction |
| <input type="checkbox"/> Recommends disciplinary action | <input type="checkbox"/> Responsible for criminal prosecution of officers |
| <input type="checkbox"/> Administers discipline | <input type="checkbox"/> Makes binding findings of fact |
| <input type="checkbox"/> Recommends SOP or policy changes | <input type="checkbox"/> Makes recommended findings |
| <input type="checkbox"/> Other: <input style="width: 600px;" type="text"/> | |

Considering the composition of your civilian oversight agency or process, are your members:

- | | |
|--|---|
| <input type="checkbox"/> Political appointments | <input type="checkbox"/> Paid part time employees |
| <input type="checkbox"/> Competitively selected employees | <input type="checkbox"/> Paid part-time Commissioners or Board members |
| <input type="checkbox"/> Classified full-time agency employees | <input type="checkbox"/> Volunteer part-time Commissioners or Board members |
| <input type="checkbox"/> Unclassified full-time agency employees | |
| <input type="checkbox"/> Other: <input style="width: 600px;" type="text"/> | |

Considering your Civilian Oversight Agency, over whom does the agency have authority for oversight:

- | | |
|--|--|
| <input type="checkbox"/> Municipal police department | <input type="checkbox"/> Campus police department |
| <input type="checkbox"/> County sheriff's office | <input type="checkbox"/> Airport police department |
| <input type="checkbox"/> State police department/Highway patrol agency | |
| <input type="checkbox"/> Other: <input style="width: 600px;" type="text"/> | |

What is the size of the law enforcement agency overseen:

- | | | |
|--|--|--|
| <input type="checkbox"/> Fewer than 50 sworn officers | <input type="checkbox"/> 250-500 sworn officers | <input type="checkbox"/> 1000-2500 sworn officers |
| <input type="checkbox"/> 50-250 sworn officers | <input type="checkbox"/> 500-1000 sworn officers | <input type="checkbox"/> More than 2500 sworn officers |
| <input type="checkbox"/> Other: <input style="width: 600px;" type="text"/> | | |

Civilian Oversight Agency Mission

The most important missions or mandates of the civilian oversight agency are to:

- | | |
|--|--|
| <input type="checkbox"/> Provide independent, external investigations of allegations of police misconduct/complaints | <input type="checkbox"/> Increase public confidence in complaint investigation |
| <input type="checkbox"/> Monitor/review Internal Affairs investigations | <input type="checkbox"/> Improve police training or policies |
| <input type="checkbox"/> Investigate or monitor use of force/shootings | <input type="checkbox"/> Increase professionalism among police officers |
| <input type="checkbox"/> Conduct public outreach/hearings | <input type="checkbox"/> Increase public confidence in the police |
| <input type="checkbox"/> Mediate citizen complaints | <input type="checkbox"/> Recommend or administer discipline |
| <input type="checkbox"/> Deter police misconduct | <input type="checkbox"/> Criminally prosecute law enforcement officers |
| <input type="checkbox"/> Other: <input type="text"/> | <input type="checkbox"/> Reduce complaints against the police |

Performance Measures used by your agency, or data collected/reported by the agency which could be used to measure performance:

Indicators of Timeliness:

- | | |
|---|---|
| <input type="checkbox"/> Time from incident to filing of complaint | <input type="checkbox"/> Time from complaint to completion of investigation |
| <input type="checkbox"/> Time from complaint to initiation of investigation | <input type="checkbox"/> Timeliness not tracked |
| <input type="checkbox"/> Other: <input type="text"/> | |

Indicators of complaint outcome:

- | | |
|---|--|
| <input type="checkbox"/> Sustained complaints | <input type="checkbox"/> Complaints inactivated |
| <input type="checkbox"/> Findings of all types | <input type="checkbox"/> Disciplinary action |
| <input type="checkbox"/> Findings (or recommendations) upheld by Chief of Police or authority for final disposition | <input type="checkbox"/> Indicators of complaint outcome not tracked |
| <input type="checkbox"/> Other: <input type="text"/> | |

General complaint statistics:

- | | |
|---|---|
| <input type="checkbox"/> Information regarding complainant(s) | <input type="checkbox"/> Investigations completed |
| <input type="checkbox"/> Information regarding civilian witnesses | <input type="checkbox"/> Investigations pending |
| <input type="checkbox"/> Information regarding subject officer(s) | <input type="checkbox"/> Investigations inactivated/terminated |
| <input type="checkbox"/> Information regarding witness officer(s) | <input type="checkbox"/> Trends regarding complaints |
| <input type="checkbox"/> Nature or type of complaints | <input type="checkbox"/> General complaint statistics are not tracked |
| <input type="checkbox"/> Other: <input type="text"/> | |

Community engagement measures:

- | | |
|--|---|
| <input type="checkbox"/> Information regarding community outreach | <input type="checkbox"/> Information regarding appeals or hearing conducted |
| <input type="checkbox"/> Information regarding community education | <input type="checkbox"/> Organization has no mandate/authority for community engagement |
| <input type="checkbox"/> Information regarding citizen/stakeholder participation | <input type="checkbox"/> Community engagement measures are not tracked |
| <input type="checkbox"/> Information regarding complaint outcomes | |
| <input type="checkbox"/> Other: <input type="text"/> | |

Indicators of citizen and/or stakeholder satisfaction:

- | | |
|--|--|
| <input type="checkbox"/> Citizen satisfaction (other than complainant) | <input type="checkbox"/> Law enforcement satisfaction |
| <input type="checkbox"/> Post-complaint satisfaction follow-up | <input type="checkbox"/> Citizen/stakeholder satisfaction is not tracked |
| <input type="checkbox"/> Other: <input type="text"/> | |

Indicators of potential future risk:

- | | |
|---|---|
| <input type="checkbox"/> Oversight agency responsible for early warning system (EWS) tracking of complaints | <input type="checkbox"/> Law enforcement agency tracks repeat complaints against officers |
| <input type="checkbox"/> Law enforcement agency responsible for EWS | <input type="checkbox"/> Repeat complaints against officers are not tracked |
| <input type="checkbox"/> No formal EWS is in place, or system not utilized | <input type="checkbox"/> Oversight agency tracks discipline against officers |
| <input type="checkbox"/> Oversight agency tracks repeat complaints against individual officers | <input type="checkbox"/> Law enforcement agency tracks discipline against officers |
| <input type="checkbox"/> Other: <input type="text"/> | |

Which of the following would you consider to be Indicators of civilian oversight agency effectiveness:

- | | |
|--|---|
| <input type="checkbox"/> Reduction in complaints | <input type="checkbox"/> Increase in public confidence in/satisfaction with police |
| <input type="checkbox"/> Increase in complaints | <input type="checkbox"/> Increased public confidence with Internal Affairs investigations, or citizen complaint process |
| <input type="checkbox"/> Reduction in number/percent of sustained complaints | <input type="checkbox"/> Increase in professionalism of police |
| <input type="checkbox"/> Increase in number/percent of sustained complaints | <input type="checkbox"/> Increase in officer satisfaction with complaint investigation/mediation |
| <input type="checkbox"/> Reduction in seriousness of complaints | <input type="checkbox"/> Indicators of effectiveness are unknown |
| <input type="checkbox"/> Reduction in use-of-force incidents | |
| <input type="checkbox"/> Reduction in lawsuits against police | |
| <input type="checkbox"/> Other: <input type="text"/> | |

Which of the indicators are being used and/or reported by your civilian oversight agency as measures of effectiveness?

- | | |
|--|---|
| <input type="checkbox"/> Reduction in complaints | <input type="checkbox"/> Reduction in lawsuits against police |
| <input type="checkbox"/> Increase in complaints | <input type="checkbox"/> Increased public confidence with Internal Affairs investigations, or citizen complaint process |
| <input type="checkbox"/> Reduction in number or % of sustained complaints | <input type="checkbox"/> Increase in professionalism of police |
| <input type="checkbox"/> Reduction in seriousness of complaints | <input type="checkbox"/> Increase in officer satisfaction with complaint investigation/mediation |
| <input type="checkbox"/> Reduction in use-of-force incidents | <input type="checkbox"/> Indicators of effectiveness are unknown |
| <input type="checkbox"/> Increase in public confidence in/satisfaction with police | <input type="checkbox"/> Indicators of effectiveness are not used |
| <input type="checkbox"/> Increase in number/percent of sustained complaints | <input type="checkbox"/> Indicators are used internally, but not reported |
| <input type="checkbox"/> Other: <input type="text"/> | |

Impediments to effective Civilian Oversight:

Which of the following impedes the effectiveness of your oversight agency?

- | | |
|---|---|
| <input type="checkbox"/> Reliance on police cooperation | <input type="checkbox"/> Lack of independence from law enforcement agency |
| <input type="checkbox"/> Lack of subpoena powers | <input type="checkbox"/> Limitations of budget/resources |
| <input type="checkbox"/> Other: <input type="text"/> | |

Mediation:

Is Mediation allowed as part of the complaint process?

☐ Yes ☐ No

If the civilian oversight agency is permitted to use mediation as an alternative to traditional complaint investigation, the mediation is:

- | | |
|---|---|
| <input type="checkbox"/> Voluntary mediation | <input type="checkbox"/> Police supervisors attempt mediation |
| <input type="checkbox"/> Mandatory mediation (in at least some cases) | <input type="checkbox"/> Mediation is allowed, but is not yet utilized |
| <input type="checkbox"/> Informal mediation | <input type="checkbox"/> Mediation is allowed, but officers have refused to participate, or union discouraged participation |
| <input type="checkbox"/> Formal mediation - with trained/professional mediators | |
| <input type="checkbox"/> Other: <input type="text"/> | |

If mediation is utilized, what happens to the complaint?

- | | | |
|--|---|---|
| <input type="checkbox"/> If mediation is successful, the complaint does not appear on the officer's record | <input type="checkbox"/> If mediation is successful, the complaint still appears on the officer's record, but is shown as mediated or inactivated | <input type="checkbox"/> If mediation fails, the complaint is investigated normally |
| | | <input type="checkbox"/> If mediation fails, the complaint is not investigated |

☐ Other:

☐ N/A

Is anything said during mediation allowed to be used "against" the officer, either in a subsequent investigation or for any other reason?

☐ Yes ☐ No

Civilian Oversight reporting:

The civilian oversight agency is responsible to produce:

- | | | |
|--|--|--|
| <input type="checkbox"/> Annual reports | <input type="checkbox"/> Quarterly reports | <input type="checkbox"/> No reports are produced |
| <input type="checkbox"/> Other: <input type="text"/> | | |

Reports are available to:

- | | | |
|--|---|--|
| <input type="checkbox"/> Public | <input type="checkbox"/> Law enforcement agency | <input type="checkbox"/> Elected officials |
| <input type="checkbox"/> Other: <input type="text"/> | | |
| <input type="checkbox"/> N/A | | |

If possible, please enclose copy of the most recent civilian oversight agency report, or e-mail a copy to bmohr@unm.edu

Please provide the following:

Civilian Oversight Agency Name:

Name of Law Enforcement Agency subject to oversight:

Address of oversight agency:

Name of individual completing survey:

Title of individual completing survey:

☐ Civilian

☐ Sworn

Phone number and e-mail of person completing survey

Phone

E-mail

Civilian Oversight Agency Web Site:

If there are questions regarding your survey, may I contact you with questions?

☐ Yes ☐ No

If you have questions or comments, please contact me directly:

Beth A Mohr

CABQ - OMB

PO Box 1293

Albuquerque, NM 87102

bmohr@unm.edu

505/768-3068

Submit by Email

Print Form for US Mail

Please feel free to add your comments below:

Appendix B - Aggregate Survey Results in Table Form

Agency Specifications

Civilian Oversight Agency Type	Respond	Percent
Internal to Police Dept	4	8.70%
External to Police Dept	42	91.30%

Who Conducts Oversight?	Respond	Percent
Individual	5	10.90%
Group	32	69.60%
Both	9	19.60%
Total	46	100.10%

Type of Police Dept Overseen	Respond	Percent
Municipal police	41	89.10%
Sheriff	6	13.00%
State police	0	0.00%
Other	8	17.40%
Campus police	0	0.00%
Airport police	3	6.50%
Totals	58	126.00%
(Other - Housing, Fire, Probation, all Govnt Depts)		

Size of Police Dept (Sworn Officers)	Respond	Percent
Under 50	0	0.00%
50-250	6	13.00%
250-500	8	17.40%
500-1000	10	21.70%
1000-2500	14	30.40%
Over 2500	8	17.40%

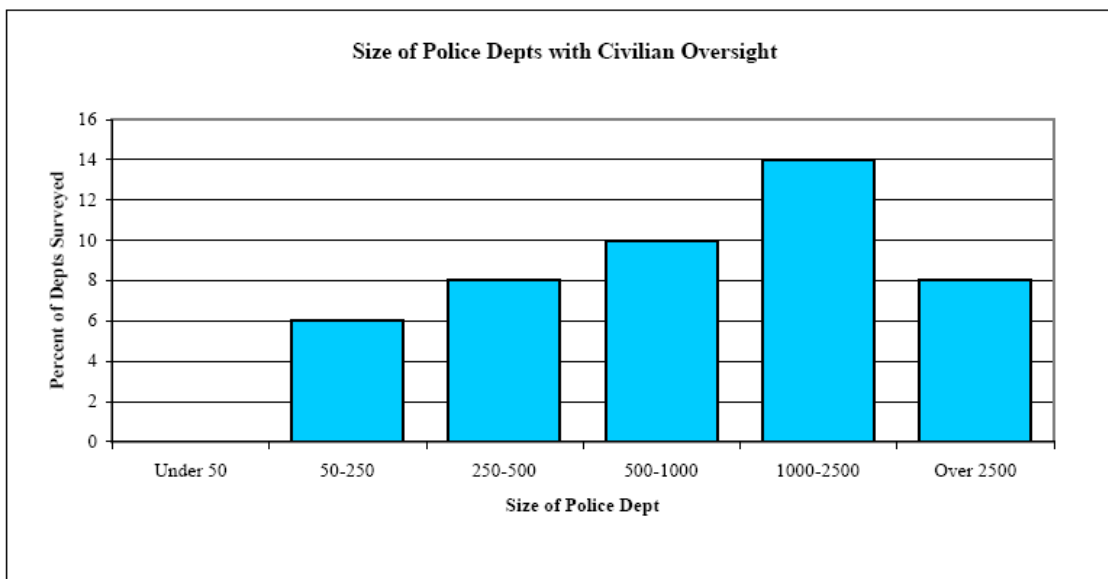
Agency Mission or Mandates	Respond	Percent
Provide independent, external investigations of allegations of police misconduct/complaints	29	63.00%
Monitor/review Internal Affairs investigations	26	56.50%
Investigate or monitor use-of-force/shootings	22	47.80%
Conduct public outreach/hearings	24	52.20%
Mediate citizen complaints	22	47.80%
Deter police misconduct	21	45.70%
Increase public confidence in complaint investigations	35	76.10%
Improve police training or policies	27	58.70%
Increase professionalism among police officers	18	39.10%
Increase public confidence in the Police	32	69.60%
Recommend or administer discipline	13	28.30%
Criminally prosecute law enforcement officers	0	0.00%
Reduce complaints against the police	10	21.70%

Functions of Agency	Respond	Percent
Review Internal Affairs investigations	31	67.40%
Conduct independent investigations of complaints	28	60.90%
Supervise Internal Affairs investigations	6	13.00%
Recommend Discipline	17	37.00%
Administer Discipline	2	4.30%
Recommend SOP or policy changes	37	80.40%
Other*	3	6.50%
Mandate SOP or policy changes	1	2.20%
Responsible for citizen outreach/participation	34	73.90%
Responsible for stakeholder satisfaction	11	23.90%
Responsible for prosecution of officers	0	0.00%
Make binding findings of fact	7	15.20%
Recommend findings of fact	33	71.70%

(*Other - Mediation, hire/fire/evaluate chief, budgetary oversight)

Survey Respondent is	Respond	Percent
Civilian employee/contractor	42	91.30%
Sworn law enforcement officer	2	4.30%
Did not answer	2	4.30%

Agency employees are	Respond	Percent
Volunteer board members	32	69.60%
Political appointees	22	47.80%
Classified employees	16	34.80%
Competitively selected employees	10	21.70%
Unclassified employees	6	13.00%
Paid board members	4	8.70%
Paid part-time employees	1	2.20%



General Civilian Oversight Performance Indicators

Indicators of Timeliness	Respond	Percent
Time from incident to filing of complaint	17	37.00%
Time from complaint to initiation of investigation	17	37.00%
Other*	2	4.30%
Time from complaint to completion of invest	27	58.70%
Timeliness not tracked	13	28.30%
(*Other - Complaint to notification of result, one agency has not yet started work)		
Indicators of Complaint Outcome		
Sustained complaints (only)	4	8.70%
Findings of all types (including sustained)	37	80.40%
Findings/recommendations upheld by Chief or authority for final disposition	18	39.10%
Complaints inactivated	10	21.70%
Disciplinary action	16	34.80%
Indicators of outcome not tracked	5	10.90%
General Complaint Statistics		
Information regarding complaining citizen	34	73.90%
Info regarding civilian witnesses	9	19.60%
Info regarding subject officer	30	65.20%
Info regarding witness officer	11	23.90%
Nature or type of complaints	38	82.60%
Other*	1	2.20%
Investigations completed	37	80.40%
Investigations pending	31	67.40%
Investigations Inactivated	22	47.80%
Trends regarding complaints	28	60.90%
General complaint stats not tracked	5	10.90%
(*Other - disciplinary action)		
Indicators of Community Engagement		
Information regarding outreach	27	58.70%
Info regarding community education	14	30.40%
Info regarding participation	6	13.00%
Info regarding complaint outcome	19	41.30%
Info regarding appeals or hearings conducted	9	19.60%
Agency has no mandate/authority for community engagement	3	6.50%
Community Engagement measures not tracked	14	30.40%

Indicators of Future Risk

Agency responsible for Early Warning System (EWS)	3	6.50%
Police responsible for EWS	33	71.70%
No EWS in place	6	13.00%
Agency tracks repeat complaints against officers	31	67.40%
Police track repeat complaints	30	65.20%
Repeat complaints against officers not tracked	2	4.30%
Agency tracks discipline	12	26.10%
Police track discipline	25	54.30%

Indicators of Stakeholder Satisfaction

Citizen satisfaction (other than complainant) tracked	8	17.40%
Post-complaint citizen satisfaction (complainant)	8	17.40%
Police officer satisfaction tracked	4	8.70%
Stakeholder Satisfaction not tracked	30	65.20%

Reporting Practices

Report Types/Frequency	Respond	Percent
Annual	34	73.90%
Other*	14	30.40%
Quarterly	13	28.30%
No reports	4	8.70%
Of Other*:		
Monthly	6	13.30%
Bi-Annual	5	11.10%
Significant Events	2	4.40%
Tri-Annual	1	2.20%
Reports Available to		
Public	41	89.10%
Police	28	60.90%
Elected officials	30	65.20%

Indicators of Civilian Oversight Effectiveness

Indicators of agency Effectiveness	Respond	Percent
Reduction in complaints	11	23.90%
Increase in complaints	9	19.60%
Reduction in number/percent sustained cases	8	17.40%
Increase in number/percent sustained cases	6	13.00%
Reduction in the seriousness of complaints	14	30.40%
Reduction in use-of-force incidents	18	39.10%
Fewer lawsuits against the police	15	32.60%
Other	0	0.00%
Increase public confidence w/Police dept	38	82.60%
Increase public confidence w/IA investigations, or with citizen complaint process	40	87.00%
Increase in professionalism of police	33	71.70%
Increase in officer satisfaction with complaints investigations/mediation	23	50.00%
Indicators of Effectiveness not known	3	6.50%

Indicators of Effectiveness actually used	Respond	Percent
Reduction in complaints	8	17.40%
Increase in complaints	8	17.40%
Reduction in number/percent sustained cases	5	10.90%
Reduction in the seriousness of complaints	4	8.70%
Reduction in use-of-force incidents	6	13.00%
Increase public confidence w/Police dept	7	15.20%
Increase in number/percent sustained cases	5	10.90%
Other	0	0.00%
Fewer lawsuits against the police	2	4.30%
Increase public confidence w/IA investigations, or with citizen complaint process	8	17.40%
Increase in professionalism of police	4	8.70%
Increase in officer satisfaction with complaints investigations/mediation	7	15.20%
Indicators of Effectiveness not known	7	15.20%
Indicators of Effectiveness not used	16	34.80%
Indicators of Effectiveness used internally only	9	19.60%

Impediments to Effectiveness	Respond	Percent
Reliance on police cooperation	21	45.70%
Lack of subpoena power	6	13.00%
Other*	4	8.70%
Lack of independence from police dept	2	4.30%
Limitations on budget/resources	24	52.20%
No known impediments to efficacy	9	19.60%

(*Other -Poor mgmt, underutilized, community awareness, police officer's bill of rights, lack of independence, lack of public hearings)

**Appendix C - University of New Mexico Research Compliance Service,
Exempted Research Institutional Review Board Evaluation and Determination**



The University of New Mexico

Research Compliance Services
Main Campus Institutional Review Board
1717 Roma NE, Room 205, MSC05 3180
Albuquerque, NM 87131-0001
(505) 277-2257

EXEMPTED RESEARCH IRB EVALUATION AND DETERMINATION

Date: April 30, 2007

PI: Beth A. Mohr Responsible Faculty: T. Zane Reeves

Phone: (505) 277-1092 E-mail: bmohr@unm.edu

Protocol #: 27112 Project Title: The use of performance measurement in civilian oversight of police

College/Department: Public Administration MSC05 3100

Mailing Address: 733 Truman St. NE Albuquerque NM 87110

IRB DETERMINATION:

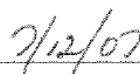
☒ Approval (no changes or revisions). Research may commence anytime and does not require a Re-approval Review. The Exemption is approved for the protocol and any attachments as submitted. No changes to procedures, instruments, or consent forms in the study can be implemented without submitting a Modification Request Form to the IRB for prior approval. Please submit a Final Report Form upon completion of the study.

☐ Conditional Approval (minor revisions per comments below)

☐ Deferral to Expedited Review (IRB Reviewer: Please conduct Expedited Review utilizing attached IRB Reviewer Checklist)

COMMENTS


IRB Reviewer Signature


Date

Informed Consent to Participate in Research

Dear Civilian Oversight Practitioner,

You are invited to participate in a research study conducted by Beth A. Mohr; the results from this study will contribute to a research project for the completion of a Master's in Public Administration at the University of New Mexico. The results will be reported to the National Association for Civilian Oversight of Law Enforcement (NACOLE), with which your agency is affiliated, and may also be used in future publications.

The purpose of this study is to determine the measures of performance currently in use by your civilian oversight agency, and also to determine what data your agency is currently collecting which could be used as a measure of performance, even if that data is not being so used.

This survey consists of questions regarding your agency and its practices, the performance measures currently in use, and data and reporting practices which could be used as measures of performance and effectiveness by your agency, even if they are not being used as such. The survey also asks for your opinions regarding which performance measures you feel are indicators of agency effectiveness in several areas, and what factors if any are impeding your agency from conducting effective civilian oversight.

The survey will take about fifteen minutes to complete. You may access the survey via the interactive web link http://www.nacole.org/Civilian_Oversight_Survey.pdf or it has been mailed to you, and you may return your response via e-mail, facsimile or US mail; you may also keep or print a copy for your records if you wish. Individual answers will remain confidential, only aggregate data will be reported to NACOLE, or in any other publication. Your survey responses will be retained by the study investigator until a reasonable time following completion and subsequent publication of the study findings, after which time the materials will be destroyed. It is hoped that this study will provide a benefit to the practice of civilian oversight; there are no foreseeable risks to participation in this study.

You can choose to participate in this study or not. If you volunteer to participate, you may withdraw your participation at any time, simply by contacting Beth A. Mohr as described below. You may also refuse to answer any questions simply by skipping the question you do not want to answer, and still remain in the study. You may also choose whether or not you are amenable to follow-up contact. By completing and returning this survey your consent to participate in this study is implied.

If you have any questions about this research, feel free to contact: Beth A. Mohr at 505/768-3068 or bmohr@unm.edu or at PO Box 1293 Albuquerque, NM 87102, or Faculty Advisor, T. Zane Reeves at the University of New Mexico, School of Public Administration, Room 3022, University of New Mexico, Albuquerque, NM 87131 or 505/277-1092. If you have other concerns or complaints, contact the Institutional Review Board at the University of New Mexico, 1717 Roma NE, Room 205, Albuquerque, NM 87313 or 1-800-844-9018.

Thank-you for your work in the important area of Civilian Oversight of Law Enforcement.

Beth A. Mohr

The University of New Mexico
Research Ethics & Compliance Services

Approved
From 7/12/07 To end of study

Performance Indicators for Police Oversight Agencies

Tim Prenzler
Criminology and Criminal Justice
Griffith University

Colleen Lewis
Criminal Justice and Criminology
Monash University

This study addresses the question of performance indicators for police oversight agencies through a survey of the directors of agencies in Australia and an analysis of annual reports. The findings show that a variety of targets and measures are in place. The majority of oversight bodies adopt fairly basic and largely quantitative measures on matters processed, supplemented by case study accounts of positive impacts.

The aim of this study was to identify the measures and categories of performance indicators in place in the different police oversight agencies in Australia and how they compare to measures identified in the literature. The study began in December 2000. Police oversight agencies across Australia were invited by correspondence to participate in a survey in which they were asked to describe 'the performance indicators you currently use to evaluate the effectiveness of your organisation in relation to the oversight of police complaints'. By January 2002, all agencies had responded. In addition, sections on performance indicators were examined from the agencies' 2002–2003 annual reports.

Performance Indicators

Police oversight agencies are citizens' watchdog bodies designed to ensure that police are operating with integrity. However, there is a need to 'ensure they are performing competently themselves' (Alexander and Burgess 1999:54). Evaluating their impact is difficult because of the number of variables involved, conflicting ways of interpreting data and the problem of hidden misconduct (Walker and Bumphus 1992). For example, reducing complaints may appear to be an obvious measurable objective but confidence on the part of citizens may lead to an increase in complaints, especially in the immediate aftermath of the creation of a new

agency (Brereton 1999). Convictions against police — driven by the oversight agency — can mask an even larger problem of undetected corruption. There is also a problem with substantiation rates as a performance measure as the majority of complaints against police lack sufficient evidence to convict or exonerate subject officers, even on a 'balance of probabilities' standard. Additionally, the powers and resources of agencies vary enormously, and many have limited capacity to conduct their own investigations or direct disciplinary decisions (Kappeler, Sluder and Alpert 1994). Despite these problems, there is an emerging set of indicators that is potentially useful. Many of these are drawn from the developing interest in measuring police integrity, and from the wider field of police and regulatory agency performance evaluation.

Complaints numbers and the disposition of complaints are inevitably linked to questions of agency performance, and are partly analogous to reported crime as a measure of police performance (Grabosky 1989). Complaints investigation and subsequent disciplinary sanctions will, therefore, be a mainstay that seeks to improve police conduct by deterring or re-educating police who err or by removing recalcitrant officers (Brereton 2002). Outcome data — including complaints that are both substantiated and resolved informally — provide a total picture of the degree to which the agency has been able to 'solve' complaints

— similar to police clearance figures (Grabosky 1989). Complaints data and complaint reduction also need to be used more creatively to judge broader compliance strategies. In the same way that police should be involved in problem oriented strategies for reducing crime, oversight agencies need to engage in research and policy development oriented towards minimising the causes of citizen complaints by attempting to change police procedures (Brereton 2000). Disaggregated complaints data will be important for this type of focused evaluation — particularly, in relation to risk areas such as use of force, strip searches, interview methods, harassment or inaction (CJC 2000b, 2000c, 2000d; Herzog 2002).

A number of other measures show potential. Surveys of police perceptions on the rigour and deterrent impact of agency processes may be of value (CJC 1997). Where agencies engage in direct investigations, attention to substantiation rates can be supplemented by case file audits, which examine sample case files to see if suitable methods have been pursued and appropriate findings and sanctions applied (Committee on the ICAC 2000; CJC 1996). Monitoring the outcomes of actions taken by agencies in complaints tribunals or courts can also be a measure of agency professionalism (CJC 1997).

Stakeholder confidence and satisfaction provide for another dimension of performance (Prenzler 2004). Complainant satisfaction surveys focus on the way complaints are handled, as well as the outcomes, and are similar to satisfaction surveys of crime victims who report to police. Here though, stakeholders should include police who are the subjects of complaints. This is necessary as police work in an environment that sometimes gives rise to vexatious complaints. Police need to feel confident that they will be given a fair and timely hearing should citizens or colleagues report against them. Opinion surveys can also provide information about the public's knowledge of, and confidence in, the work of the agency, as well as levels of general confidence in police integrity — analogous to safety surveys as a measure of police effectiveness (ICAC 2000; Grabosky 1989).

In all, a diverse set of indicators can be used to obtain different perspectives on the performance of oversight agencies. 'Indicators',

however, is the operative term. Because the complexity of the environment in which performance is being measured means, no single measure, or even group of measures, provides an objective demonstration of the effectiveness of an agency in preventing corruption or effectively adjudicating allegations of misconduct. Importantly, the more 'real' the measure, the less it will count activity and the more it will demonstrate achievement (Sparrow 2000).

Findings

The responses from each agency in relation to performance indicators are reported below, followed by the data obtained from analysing annual reports.

Commonwealth

The Commonwealth Ombudsman currently oversees integrity in the Australian Federal Police (AFP). In reply to the researchers' request for information, the main 'performance target' cited was the completion of 75 percent of reviews in relation to complaints processed by AFP Internal Investigations Unit within a three month period. The performance indicators section in the annual report focused on 'remedies' brokered with government departments. These were reported by percentages in terms of actions such as explanations provided, apologies made or financial remedies. A key measure was the uptake rate of advice to government departments on how to improve systems. This was reported primarily through case studies. A section was included on internal reviews of complaints against the Ombudsman's processes and decisions; including numbers, types and outcomes (Commonwealth Ombudsman 2003:16–18).

NSW — Ombudsman

The Ombudsman's response to the survey began by identifying 'improvements to complaint investigation outcomes' as a measure of effectiveness:

For example, last year adverse findings were made in relation to 42 percent of matters investigated. A total of 2,567 investigations were carried out. Last year investigations

led to 79 police officers being charged with criminal offences. This number is about the same as last year. We believe that this indicates that the complaints system is working effectively to identify those police officers who engage in misconduct.

In similar terms, the Ombudsman referred to the identification of deficiencies and delays in police investigations of complaints. He also emphasised outcomes of monitoring the extent to which police implemented recommendations. The response included a suggestion that quantitative data can be 'restrictive' in showing incremental changes in police practices without providing a global view of reform.

The *Annual Report 2002–2003* included a statistical summary of complaints against police and outcomes as a result of police responses. Reportage that focused on the Ombudsman's own performance included percentages of cases assessed within a given time frame, cases conciliated, and recommendations implemented by the Police; and, the number of monitored and direct investigations. There were also diverse case study reports outlining the work of the Ombudsman in successfully resolving complaints, and in correcting inadequate police investigations and sanctions. The Report also noted the number of recommendations for changes to laws, policies or procedures (NSW Ombudsman 2003).

NSW — Police Integrity Commission (PIC)

In responding to the survey, the Commissioner attached the Corporate Plan and *Annual Report*, both contained key information on performance indicators. He also reported that a major source for evaluating the PIC's work was its own review of the way the NSW Police managed complaints — titled *Project Dresden* (PIC 2000).

At the time of the survey, the PIC was developing a new performance measurement framework for the Investigations Unit. This was later enlarged into an agency-wide framework as the *Corporate Plan and Performance Measurement Framework 2003–2006* (PIC 2003b). The document set out three key objectives:

Effective Deterrence — Contribute to the effective deterrence of serious police misconduct;

Ongoing Reform — Ensure the develop-ment

and provision of high quality advice on police reform;

Improved Assurance — Improve the level of assurance in the NSW community so that there is vigilant oversight of police (PIC 2003b:23).

The rest of the document was set out in tables with language that was quite complex (PIC 2003b:46). The 2002–2003 Report incorporated the developments described above (PIC 2003a).

Northern Territory (NT)

The NT Ombudsman cited turnaround times as an important performance indicator. He also referred the researchers to measures in the *Annual Report*. The 2002–2003 report provided detailed information about categories of complaints, targets of complaints, demographics of complainants and outcomes (NT Ombudsman 2003). 'Approaches' — an umbrella term — was used to separate enquiries from complaints proper, and case studies were used to illustrate successful interventions.

Queensland Crime and Misconduct Commission (CMC)

The CMC Commissioner noted that having to report to Treasury meant that there was a concentration on 'throughput of work, timeliness, etc'. Beyond this, he argued that, 'it is extremely difficult to develop simple and reliable quantitative measures of effectiveness'. Nonetheless, he asserted that:

The Commission is acutely aware that we must be able to persuade government and the general public that we are effective in our police oversight role, if we are to continue to maintain budgetary and political support. To this end, a priority within our research area has been to develop a 'basket' of different indicators, including qualitative data, with which to monitor whether progress is being made in raising standards of behaviour within the Queensland Police Service.

As an example, the major report *Integrity in the Queensland Police Service* (CJC 1997) used a range of innovative measures of police conduct, and of the (then) CJC's impact, that included interviews with police, surveys of police, an analysis of police implementation of CJC

recommendations, analyses of complaint outcomes, public opinion surveys, a study of police reporting against other police, and a study attempting to assess any inhibiting effects the CJC's presence might have on police arrest activity.

CMC annual reports have included performance indicators across a variety of activities, with periodic reporting of the types of surveys described above, and analyses of special risk areas for police misconduct such as drug-related corruption and excessive force. Case studies of investigations and their outcomes, or of appeals against police disciplinary decisions, have also been used to illustrate the Commission's work. Earlier reports included quantitative data on complaints dispositions, process times and costs, but these were not included in 2002–2003. The Report noted the following targets:

- Percentage of audited misconduct investigations that meet quality standards ...;
- Stakeholder satisfaction with prevention and intelligence reports (CMC 2003:68).

Results were reported separately in a *Ministerial Portfolio Statement*, but in a highly cryptic form (90 percent and 95 percent respectively) without explanation of the method (Queensland Government 2004:8, 4).

SA Police Complaints Authority

The Authority identified two performance indicators:

- Time taken to finalise a file after completion of investigation; and,
- A calculated file completion rate.

He did, however, argue that 'performance indicators are at best crude indicators of poor performance and at worst are mistakenly read as indicators of worth and value'. He referred the researchers to a conference paper where he proposed a number of targets, including the need to:

- Ensure public confidence in the police force and the complaints system
- Be fair to complainants and to police and staff
- Be accessible to the community
- Promote appropriate standards of conduct [by police]
- Provide the appropriate response to the full range of complainants (Wainwright 1999:3–8).

In the paper he also indirectly questioned the value of complainant surveys:

In a complaint driven system, one might be tempted to think of complainants as clients and to operate in such a way as to obtain a benefit for them in every case. This is to be resisted. Some complainants will indeed have well founded grievances. In other cases it will appear, once the matter has been investigated, that the police have acted well and that the complainant's perceptions or expectations have been unrealistic (1999:4).

The Authority's 2002–2003 *Annual Report* focused on percentages of cases informally resolved, along with a focus on how citizens could access the Authority (PCA 2003).

Tasmania

The Ombudsman's Office reported use of the following performance indicators:

- Number of complaints against police (compared with the number of complaints received by the Police Internal Investigations Unit);
- Outcome of complaints (whether they are substantiated);
- Timeliness of complaint handling (average age of a complaint) — although this is often affected by the period of time taken by the IIU to respond to the matter.

The 2002–2003 *Annual Report* recorded changes in the number of complaints against police, the outcomes of police internal processing, the number of appeals dealt with by the Ombudsman and, data on the time taken to finalise complaints (but without targets) (Tasmania Ombudsman 2003:41). The Ombudsman noted that his office 'is not strictly a "police oversight body" as it does not oversight all police complaints, but only deals with those that come to the Ombudsman's Office in its normal functioning of investigating complaints about government departments'.

Victoria

The Victorian Ombudsman reported that over time his office had experimented with numerous performance indicators. An extensive list of abbreviated indicators was supplied. 'Efficiency' indicators included the following:

- Timeliness;
- Output;

- Cases on hand at end of reporting period
 - Number of old cases on hand
 - Total number of cases completed
 - Number of telephone enquiries
 - Efficient use of resources;
 - Use of informal handling
 - Number of own investigations
 - Accessibility to Office by complainants.
- A large number of indicators were listed under 'effectiveness', including things such as:
- Identification of ethical misconduct;
 - Complainant satisfaction — process and outcome;
 - Public confidence in/community approval rating of Police Force;
 - Outcome of cases investigated (1) by Ombudsman, (2) by Police.

The latter was divided into three areas: 'Facts ascertained', 'Punishment' and 'Remedial'. The Police Chief Commissioner's acceptance of recommendations and changes in police attitudes were also listed.

The 2002–2003 *Annual Report* described and justified the Ombudsman's review processes. It included quantitative data on complaints processes, including outcomes, percentages informally resolved, and cases where the Ombudsman instigated further action by police investigators. Data from previous years were included to show trends. There were also summaries of special investigations into major areas of alleged misconduct, such as police raids on allegedly mistaken targets. The Report set out achievements from these processes in a qualitative form, mainly in terms of changes to police management practices (Victorian Ombudsman 2003). At the time of writing, the Victorian Ombudsman's office was undergoing considerable change which may well influence the nature of future performance indicators.

WA — Ombudsman

The Ombudsman referred the researchers to the 1999–2000 *Annual Report*, where performance indicators were focused on 'efficiency', in terms of 'how quickly' the office processed complaints, and 'effectiveness', in terms of 'the extent to which the office has been able to provide assistance to complainants and have agencies improve their practices and procedures' (WA Ombudsman 2000:13). For police, 'key effectiveness indicators' were

reported as percentages of 'allegations finalised where complainants received assistance', the number of 'improvements to practices and procedures' and the number of allegations where Police 'took further investigative action at the instigation of my Office' (2000:15). 'Performance measures' that set 'target' against 'actual' were the number of allegations finalised, average finalisation times, and costs (2000:18). These were maintained in the 2002–2003 report (WA Ombudsman 2003).

Concerns, about duplication of work between the Ombudsman and the ACC and limited powers of the Ombudsman, fed into a review of external oversight of police by the WA Royal Commission in 2002. The result was that the Ombudsman's role in police oversight was taken over by the New Crime and Corruption Commission, created in late-2003 (Kennedy 2004).

WA — Anti-Corruption Commission (ACC)

The ACC respondent referred the researchers to the section on performance indicators in the annual reports. The core indicator was the extent to which Commission members [the top management group] accepted Commission recommendations. This target was broken down across assessment, investigation, review and audit reports, with a percentage figure for those accepted. Results for the current and previous years were reported. Costs per hour were also included (ACC 2003:44–46). In late 2003, the ACC was replaced by the Corruption and Crime Commission (CCC), which also took over the Ombudsman's police-related tasks. The Royal Commission review in 2002 concluded that the ACC lacked sufficient powers and accountability (Kennedy 2002, 2004). The new agency was modelled along the lines of the Queensland CMC, with own motion powers; the authority to conduct public hearings, covert investigations and integrity tests; coercive powers to obtain information; and, a more proactive role in research, education and reporting of findings.

Towards Optimum Performance Indicators

The results of this research show that performance indicators are a live issue for police oversight agencies. The format of annual reports and special reports demonstrated a definite attempt to evaluate performance. Nonetheless,

respondents saw the development of reliable indicators as problematic, with some more sceptical than others. Despite this, there was an understanding that a range of indicators was required to obtain the best possible assessment of an oversight body's performance in investigating, reducing and preventing police misconduct. There was also a clear understanding that performance indicators were an inescapable part of accountability.

As a baseline, agencies typically collect the following statistics, either in term of reviewing complaints processed by police or in direct processing of complaints:

- the number of complaints received and finalised per annum;
- time taken to finalise complaints;
- outcomes — in terms of decisions such as substantiation, referral to mediation and penalties.

In some cases, these were conceded to be measures of activity rather than achievement but they provide an important picture of agency work. Complaint finalisation times were popular. These, however, were not always set against a target. In addition, it is clear that oversight agencies judge their performance from the extent to which police achieved satisfactory performance targets in processing complaints and preventing misconduct. There were efforts to assess this by scoring the number of recommendations judged to have been implemented, and by providing narrative accounts of investigative processes leading to changed police procedures or improved outcomes for complainants. The Queensland CMC stood out for its social science based reports — including extensive stakeholder surveys, and some limited application of case file audits — and this was predominantly because it was established with a well-resourced research division with research-qualified staff (Lewis 1999).

Conclusion

Measuring the performance of police oversight agencies is not an easy matter. Basic statistics — about numbers of complaints processed, times and costs of processing, and outcomes — give a picture of the demand pressures on agencies and what they do with allocated resources. However, more sophisticated

measures are needed to assess the extent to which agencies are succeeding in their common mission as citizens' watchdog bodies. Regular surveys of stakeholders will help establish performance benchmarks and a series of 'vital signs' about deterrence, rigour, impact, fairness, timeliness, appropriateness of outcomes, and stakeholder confidence. Regular case auditing will add another dimension of independent expert review. Without such measures, there is no reliable evidence that the core business is being done as efficiently and effectively as possible.

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Performance Indicators for Police Oversight Agencies

Tim Prenzler

Colleen Lewis

**Australian and New Zealand Society of Criminology Conference, Wellington, New Zealand, 2005,
10-12 February**

Background

Corruption inquiry reports

Complaints against police

Creation of oversight agencies

Juris.	Name	Est.
C'wealth	Ombudsman	1976
NSW	Ombudsman	1975
NSW	Police Integrity Commission	1996
NT	Ombudsman	1978
Qld	Crime & Misconduct Commission	1990*
SA	Police Complaints Authority	1985
Tas	Ombudsman	1978
Vic	Ombudsman	1973
WA	Ombudsman	1972
WA	Corruption and Crime Commission	2003*

Difficulties with Performance Indicators

- Goals of oversight?
- Limited powers and resources
- Outcomes and substantiation of complaints?
- Measuring compliance?
- Stakeholder surveys?
- Case file audits?
- Focus on diverse methods

Method

1. Letters to directors:

“Performance indicators you currently use...

Factors that impede your effectiveness now, and factors (if any) that you predict could impede your future effectiveness.”

2. Analysis of annual reports:

2002-3 & 1999-2000

Findings

‘Live issue’

Perceived as problematic

Experimentation

Common ‘indicators’:

- number of complaints processed
- time taken
- outcomes
- assessment of police performance
- recommendations implemented by police
- narratives of successful investigations
- standout agency:

Qld CMC

Research and Prevention Division

Sample indicators: NT

Performance indicator	1999/2000 Target	1999/2000 Perform.	1998/99 Perform.
Acknowl. of written complaint within 48 hrs	95%	95%	—
Decision on treatment of complaint within 7 days	98%	98%	98%
Time to finalise compl. & advise complainant (b) Police			
within 3 months	30%	26%	20%
within 6 months	60%	49%	46%
within 12 months	85%	96%	87%

Sample indicator: PIC

Outcome	Measures
Identification of aspects of the nature and extent of, opportunities for, factors contributing to, and evidence of, serious police misconduct.	<p>Proportion of convictions in prosecutions that arise from investigations in which the Commission is involved. (Target: baseline of 80% set for first year).</p> <p>Proportion of Commission reports that identify aspects of the nature and extent of, opportunities for, or factors contributing to, serious police misconduct. (Target: baseline of 80% set for first year).</p>

Limited use of stakeholder surveys or independent audits

Impediments?:

- general satisfaction
- future threats to budgets and resources
- reliance on police co-operation
- need for own motion powers/power to compel testimony

Towards Optimum Performance

Indicators

1. Procedural Integrity

due process

stakeholder surveys/case file audits
outcomes of prosecutions

2. Procedural Rigour

thoroughness

case file audits/stakeholder surveys
outcomes of prosecutions

3. Timeliness

est. standards

track complaints

4. Contribution to Police Integrity

deterrence/integrity development

analysing complaints/intelligence

stakeholder surveys

Conclusion

“The grounds for retaining these bodies are philosophical as well as utilitarian – concepts such as accountability and transparency are important, even if they are not readily susceptible to measurement. ...However ...in a world in which governments are placing ever greater emphasis on the need to show “value for money”, appeals to abstract principles may not be enough to win funding arguments – evidence that external oversight has value in a concrete sense is also required”

(Brereton 1999:4).

Performance Indicators for Police Oversight Agencies

Tim Prenzler

School of Criminology

Griffith University

Office of Police Integrity Round Table

Melbourne

28 February 2007

(adapted from Lewis & Prenzler 2007)

Contents

1. The need for PIs
2. Problems and issues with PIs
3. 2003 study
4. Model PIs for oversight agencies
5. 2005/6 update
6. Conclusions

1. The Need for Oversight Agencies to use Performance Indicators

- Cost of Australian anti-corruption agencies in 2005/6: \$133m
(source: annual reports)
- Political attacks
- Independence/powers and accountability

David Brereton:

‘The grounds for retaining these bodies are philosophical as well as utilitarian – concepts such as accountability and transparency are important, even if they are not readily susceptible to measurement. ... However ... in a world in which governments are placing ever greater emphasis on the need to show “value for money”, appeals to abstract principles may not be enough to win funding arguments – evidence that external oversight has value in a concrete sense is also required’

(1999 p 4)

2. Problems and Issues with Performance Indicators

General

- Validity
- Reliability
- Responsibility

E.g., PIs for teachers

PIs for universities = \$\$

- student satisfaction/retention
- graduate employment
- publications/grants

for Oversight Agencies

- Auditing the auditors
- Goals of oversight & hidden misconduct
- Limited powers and resources
- Interpreting complaints & outcomes
- Activity vs. achievement
- Takes resources from core tasks

3. 2003 Study

1. Letters to directors:

“Performance indicators you currently use...

Factors that impede your effectiveness now, and factors (if any) that you predict could impede your future effectiveness.”

2. Analysis of annual reports:

2002-3 & 1999-2000

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- narratives of successful investigations
- standout agency:

Qld CMC

Research and Prevention Division

Limited use of:

stakeholder surveys
independent audits

Sample indicators: NT

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Impediments?:

- general satisfaction with resources & powers
- future threats to budgets and resources
- reliance on police co-operation
- need for own motion powers/power to compel testimony

4. A Four Part Model of Performance Indicators for Oversight Agencies

1. Goals
2. Fields
3. Methods

1. Procedural Integrity

due process

stakeholder surveys/case file audits
outcomes of prosecutions

2. Procedural Rigour

thoroughness

case file audits/stakeholder surveys
outcomes of prosecutions

3. Timeliness

promptness

est. standards, track complaints

4. Contribution to Police Integrity

deterrence/integrity development

analysing complaints/intelligence

stakeholder surveys/interviews

5. 2005/6 Update

Extended measures, annual reports 2005/6, 9 agencies, provisional findings

- Time taken
- Time benchmark
- Complaints benchmark
- Stakeholder feedback
- Public survey
- Prosecution outcomes
- Appeals
- Case file audits
- Case studies
- Implementation of recommendations
- Analysis of complaints/intel.
- Time series
- Inspector/monitor reports

• Time taken	3	• Case file audits	0
• Time benchmark	2	• Case studies	8
• Complaints benchmark	0	• Implementation of	
• Stakeholder feedback	1?	recommendations	5
• Public survey	1	• Analysis of complaints/intel.	5?
• Prosecution outcomes	0	• Time series	5?
• Appeals	2?	• Inspector/monitor reports	2

6. Conclusions

- PIs problematic
- Accountability requires PIs
- Mix of quantitative & qualitative measures
- Uptake needs improvement
- Common national standard

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Lewis, C and Prenzler, T (2007) Police Oversight Agencies: Measuring Effectiveness. In Head, B, Connors, C and Brown, A (eds.) *Promoting Integrity: Evaluating and Improving Public Integrity Institutions* London: Ashgate.

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Brian Head, A.J. Brown and Carmel Connors have asserted their right under the Copyright, Designs and Patents Act, 1988, to be identified as the editors of this work.

Published by
Ashgate Publishing Limited
Wey Court East
Union Road
Farnham
Surrey GU9 7PT
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

www.ashgate.com

British Library Cataloguing in Publication Data

Promoting integrity : evaluation and improving public institutions - (Law, ethics and governance series)

1. Public interest law - Australia 2. Public interest law - Australia - Evaluation
 - I. Head, Brian II. Brown, A. J. (Alexander Jonathan) III. Connors, Carmel
- 342.9'4068

Library of Congress Cataloging-in-Publication Data

Promoting integrity : evaluating and improving public institutions / edited by Brian Head, A.J. Brown, and Carmel Connors.

p. cm. -- (Law, ethics and governance)

Includes bibliographical references and index.

ISBN 978-0-7546-4986-1 (hardcover) 1. Public administration--Moral and ethical aspects. 2. Public administration--Moral and ethical aspects--Australia. I. Head, Brian II. Brown, A. J. (Alexander Jonathan) III. Connors, Carmel.

JF1525.E8P77 2008
352.35--dc22

ISBN 978-0-7546-4986-1

2008029515

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Chapter 11

Police Oversight Agencies: Measuring Effectiveness

Colleen Lewis and Tim Prenzler

Introduction

This chapter focuses on an often neglected aspect of police oversight: what performance indicators should be used to best measure the effectiveness of independent, civilian agencies established, among other things, to monitor, review and/or investigate complaints against police and enhance police integrity. In attempting to address this question the authors wrote to the heads of agencies which oversight complaints against police in all Australian states and at the federal level. They also analysed the annual reports of the oversight agencies to identify which performance indicators they use when measuring their effectiveness. The findings show that the majority adopt a fairly basic and largely quantitative approach that focuses primarily on matters processed. This method is supplemented by self-selected, qualitative case studies that highlight the positive impact of the civilian oversight process. A very limited number of agencies also use stakeholder surveys and independent audits. The chapter concludes by recommending that police oversight agencies adopt a broader, multi-faceted approach when measuring their effectiveness. The authors suggest a four-part model that draws together notions of 'procedural integrity', 'procedural rigour', 'timeliness' and 'contribution to police integrity'.

Background

Repeated police corruption and abuse of power scandals and evidence of police bias when responding to citizens' complaints against police meant that by 1986 all Australian states and the Commonwealth had created an independent, civilian agency to oversee the complaints against police process (Lewis and Prenzler 1999). Table 11.1 shows the institutions responsible for police oversight in Australia from 1973 to 2004. The South Australian (SA) Police Complaints Authority, the New South Wales (NSW) Police Integrity Commission and the newly formed Office of Police Integrity in Victoria are the only agencies that currently deal exclusively with police related matters. Table 11.1 also shows that NSW has, and Western Australia (WA) had, a tiered system of oversight, split between an

Ombudsman dealing with the majority of complaints and a Commission dealing with the most serious types of misconduct. Other states have adopted what is commonly referred to as a 'one stop shop' approach.

Table 11.1 Police oversight agencies

Jurisdiction	Name	Responsibility for police
Commonwealth	Ombudsman	Since 1976
New South Wales	Ombudsman	Since 1979
	Independent Commission Against Corruption	1988-1996
Northern Territory	Police Integrity Commission	Since 1996
Queensland	Ombudsman	Since 1978
	Police Complaints Authority	1982-1989
	Criminal Justice Commission	1989-2001
	Crime and Misconduct Commission	Since 2002
South Australia	Police Complaints Authority	Since 1985
Tasmania	Ombudsman	Since 1978
Victoria	Ombudsman	1973-1986
	Police Complaints Authority	1986-1988
	Deputy Ombudsman (Police Complaints)	1988-2004
	Police Ombudsman	2004
Victoria	Office of Police Integrity	Since November 2004
Western Australia	Ombudsman	1985-2003
	Anti-corruption Commission	1996-2003
Western Australia	Crime and Corruption Commission	Since 2003

Traditionally, there has been a distinction between the role and functions of an Ombudsman's Office and Commissions.¹ When the Ombudsman's office first became involved in the police complaints process its role was largely confined to a paper review of police investigations. Commissions were seen as more powerful bodies that had greater coercive powers and the capacity to engage in independent investigations. But over time these differences have blurred with some Ombudsmen gaining greater coercive powers and investigative capacities and Commissions

¹ The term Commissions in this chapter does not refer to *ad hoc* royal commissions or commissions of inquiry established for a limited period of time to address a specific problem. It is used to denote standing independent, external, civilian bodies that have an on-going oversight function.

increasingly undertaking review functions (Lewis and Prenzler 1999). But despite the blurring of the roles between Ombudsmen and Commissions and the creation of some form of civilian oversight in all Australian jurisdictions, the bulk of complaints investigation and adjudication is still performed by police internal investigation units. Independent oversight agencies audit, monitor and/or review the police investigations and only conduct their own independent investigation in the most serious of cases, following a public scandal, or at the request of a complainant.

Performance Indicators

Police oversight agencies are in effect citizens' watchdog bodies. Their role is to ensure that police complaints are properly investigated and that police departments operate with integrity. However, there is also a need to 'ensure' that oversight agencies are 'performing competently themselves' (Alexander and Burgess 1999, 54). Evaluating their impact is difficult because of the number of variables involved, conflicting ways of interpreting data (Lewis 1999) and the problem of hidden misconduct (Walker and Bumphus 1992). For example, an increase in complaints appears to be an obvious way to measure effectiveness, and it can reflect citizen and police confidence in the independent complaints process (Brexton 1999). But an increase in complaints received could also be the result of a legislative amendment that compels an oversight agency to be involved in all complaints against police, even those of a minor nature.

Resources and powers, which vary enormously between agencies (Lewis 2004a), are also an important factor when evaluating performance. Even if an oversight agency has the power to conduct its own investigation it may not have the resources to do so (Lewis 1999). Lack of resources also impacts on the time it takes agencies to process complaints, which in turn can negatively affect police and citizens' satisfaction with the complaints process. Some complainants and the public may be dissatisfied with sanctions imposed on police, but may not be aware that it is the police and not the oversight agency that determines disciplinary decisions (Kappeler et al. 1994). Also, just because there is a large increase in the number of complaints against police it does not automatically follow that an even larger problem of undetected corruption does not exist.

Despite these and other problems, there is an emerging set of indicators that are potentially useful in measuring effectiveness. Many are drawn from the growing interest in measuring police integrity, and from the wider field of police and regulatory agency performance evaluation. The number of complaints received and the nature of those complaints are inevitably linked to issues of agency performance, in the same way that reported crime is viewed as a measure of police performance (Grabosky 1989). The number of complaints monitored, reviewed and investigated and the subsequent disciplinary sanctions imposed can act as a guide for determining the ethical culture of a police organization and for devising strategies to improve police behaviours by deterring or re-educating erring officers or by punishing or dismissing recalcitrant officers (Brexton 2002). Outcome data, which includes complaints that are both substantiated and resolved informally,

provide a complete picture of the extent to which an oversight agency has been able to 'solve' complaints and is similar to the way police crime clearance figures are used to determine how effectively police are dealing with the crime problem (Grabosky 1989). But complaints data and any reduction in complaints received should also be used more creatively to judge broader compliance strategies. In the same way that police need to be involved in problem-oriented, proactive strategies when trying to reduce crime, oversight agencies need to engage in research and preventive strategies to minimize the causes of citizen complaints. In other words they need to also concentrate on changing police behaviour and procedures where possible (Breerton 2000). Disaggregated complaints data is important for this type of focused evaluation – particularly in relation to high risk areas such as police use of force, strip searches, interview methods, harassment or inaction (CJC 2000a; 2000c; 2000e; Herzog 2002).

A number of other performance measures show potential. Surveys designed to gauge police perceptions about the fairness, rigour and deterrent effect of the oversight processes can offer valuable insights into effectiveness (CJC 1997). Where agencies undertake their own investigations, substantiation rates can be supplemented by case file audits, where a group of experts – including judicial officers and experienced investigators – examine randomly chosen case files to see if appropriate methods have been pursued, if findings are appropriate and if recommended sanctions have been imposed by the police (Committee on the ICAC 2000; CJC 1996). This applies to the oversight agency an audit review similar to what the oversight agencies apply to police. Monitoring the outcomes of actions taken by oversight agencies in complaints tribunals, appeal tribunals or courts can also be a measure of agency effectiveness. Because not all people with a legitimate grievance against police will make complaints, anonymous surveys of detainees, crime victims and the general public can be used to assess the nature of people's interactions with police. Longitudinal studies also allow any change to be measured over time (Breerton 2002). 'Ethical climate surveys', in which police respond anonymously to scenario-based ethical dilemmas, can also be valuable when trying to gain insight into whether the culture, which can support or inhibit misconduct, has changed (CJC 1997).

Stakeholder confidence and satisfaction with the complaints process provides another dimension to performance evaluation. Complainant satisfaction surveys focus on the way complaints are handled and their outcomes and are similar to the satisfaction surveys of crime victims used by police. Here though, stakeholders should include police who are the subjects of complaints. This is necessary as police work in an environment that sometimes gives rise to vexatious complaints. As a result, police need to feel confident that they will be given a fair and timely hearing by the oversight agency should citizens or colleagues report against them. Opinion surveys can also provide information about the public's knowledge of, and confidence in, the work of the oversight agency, as well as levels of general confidence in police integrity. This is analogous to the way in which safety surveys are used to measure police effectiveness (ICAC 2000; Grabosky 1989).

Part of the problem with using substantiation rates as a performance measure is that the bulk of complaints against police typically lack sufficient evidence to convict or exonerate officers, even when the 'balance of probabilities' standard is

applied. An important mission, therefore, is to reduce grievances through a variety of resolution strategies other than prosecution (Barnes and Ede 2002). This task addresses what many argue should be the primary goal of oversight agencies: 'to invoke public confidence in the police and thereby ensure good police-community relations' (Laudau 1996, 294). It also addresses the concern of most complainants who frequently express the view that what they most want is an opportunity to be heard, an apology, or a behavioural or procedural change that will prevent the alleged misconduct being repeated. They do not complain just so that the officer(s) involved will be punished (Maguire and Corbett 1991).

The complexity of the environment in which performance is measured means that no one measurement or cluster of measures provides an objective demonstration of the effectiveness of an oversight agency in terms of changing behaviour, preventing corruption or effectively adjudicating allegations of misconduct. A diverse set of indicators needs to be used to gather different perspectives. As Sparrow (2000) points out, the more 'real' the measure, the less it will count activity and the more it will reflect achievement.

Research Methodology

The aim of this study was to identify and discuss the measures and categories of performance indicators used by police oversight agencies in Australia and to identify their perceptions of factors that do and could impede effectiveness. The study began in December 2000, when police oversight agencies across Australia were invited, by letter, to participate in a survey. They were asked to describe two aspects of their work:

- 1 what performance indicators they used to evaluate the effectiveness of their organization when overseeing complaints against police; and
- 2 the identification of factors that currently impede effectiveness and those (if any) that could impact negatively on effectiveness in the future.

By 2002 all agencies had responded. Sections on performance indicators taken from the agencies annual reports 1999–2000 and 2002–2003 were also examined. As the Crime and Corruption Commission was not established until 2003 its first annual report (2003–2004) was examined. At the time of writing, the Office of Police Integrity, established in late 2004, had not tabled an annual report. It will do so for the first time in 2005.

The responses in relation to performance are reported below by agency. This is followed by an analysis of annual reports and responses from agencies in relation to obstacles affecting performance.

Commonwealth

The Commonwealth Ombudsman has responsibility for overseeing complaints against police and police integrity in the Australian Federal Police (AFP). The

main 'performance target' cited in the annual reports is the Ombudsman's ability to finalize the review of 75 percent of complaints processed by the AFP's Internal Investigations unit within a three month period. In the annual report for 1999-2000 a figure of 70 per cent of matters concluded within four weeks is cited. The performance indicators section also focuses on 'remedies' negotiated with government departments. These are reported by percentages in terms of actions such as 'explanation given', 'apology/error admitted' or 'financial remedy'. (Commonwealth Ombudsman 2000, 16-17). Another key measure which addresses the degree to which government departments acted on the Ombudsman's advice, is reported primarily through case studies. In the 2002-2003 report, remedies are broken down with separate figures noted for complaints against the AFP and a slightly modified version of the timeliness standards being retained along with advice reports. There is also a section on internal reviews of complaints against the Ombudsman's processes and decisions, including numbers and type of complaints received and their outcomes. (Commonwealth Ombudsman 2003, 16-18).

In response to the question about matters that impede effectiveness, the obligation to review 'minor complaints' was cited as a drain on resources and a misuse of expertise. The requirement that the Ombudsman 'obtain the agreement of the AFP Commissioner before commencing investigation of most types of complaints', is seen to create problems in relation to 'controversial matters' and one that also has the potential to raise 'conflicts of interest' issues. The matter of police informing or complaining about other police is also identified as a particular problem as it remains outside the Ombudsman's jurisdiction.

A 2004 television documentary, which exposed corruption problems in the recently formed Australian Crime Commission (ACC), led to the Federal Government announcing the establishment of a new oversight body to take over the Ombudsman's role in relation to the oversight of the ACC, AFP and Customs (*Four Corners* 2004; McIlveen 2004). The *Law Enforcement Integrity Commissioner Act* 2006 commenced operation on 30 December 2006 and established ACLIE's jurisdiction over the AFP and ACC.

NSW - Ombudsman

The Ombudsman's response to the authors' survey begins by identifying 'improvements to complaint investigation outcomes' as a measure of effectiveness:

For example, last year adverse findings were made in relation to 42 percent of matters investigated. A total of 2,567 investigations were carried out. Last year investigations led to 79 police officers being charged with criminal offences. This number is about the same as last year. We believe that this indicates that the complaints system is working effectively to identify those police officers who engage in misconduct.

In similar terms, the NSW Ombudsman refers to the identification of deficiencies and delays in police investigations of complaints and notes outcomes from monitoring the extent to which police implement Ombudsman's

recommendations. The response also includes a suggestion that quantitative data can be 'restrictive' in showing incremental changes to police practices and on its own does not provide a macro perspective on reform.

The *Annual Report 1999-2000* includes a statistical summary of complaints against police and outcomes which resulted in a police response. Reportage that focuses on the Ombudsman's own performance is noted. This includes percentages of cases assessed within a given time frame; cases conciliated and recommendations implemented by the Police; as well as the number of monitored and direct investigations undertaken (NSW Ombudsman 2000, 10). Diverse case studies outlining the work of the Ombudsman in successfully resolving complaints, and in correcting inadequate police investigations and sanctions are also reported. In addition, the Annual Report notes the number of recommendations for changes to laws, policies or procedures. The 2002-2003 Report maintains this approach but enlarges on explanations about how the monitoring process is carried out (NSW Ombudsman 2003).

On the question of impediments to effectiveness, the Ombudsman notes the importance of police cooperation and the gradual improvement in police implementation of recommendations.

NSW - Police Integrity Commission (PIC)

In responding to the survey, the then Commissioner enclosed the Corporate Plan and Annual Report, both of which contain key information on performance indicators. The Commissioner notes that a major source for evaluating the PIC's work is its own review of the way the NSW Police manage complaints - titled *Project Dresden*. This report represents the first detailed review by the PIC of the operations of the NSW Police Internal Affairs. It is highly critical of police investigations and notes a lack of will by police in terms of implementing reform. It also provides a detailed account of weaknesses in police processes (PIC 2000b).

At the time of the survey the PIC was developing a new performance measurement framework for its Investigations Unit. This was later enlarged into an agency-wide framework as the *Corporate Plan and Performance Measurement Framework 2003-2006* (PIC 2003b). The document sets out three key objectives:

1. Effective Deterrence - Contribute to the effective deterrence of serious police misconduct.
2. Ongoing Reform - Ensure the development and provision of high quality advice on police reform.
3. Improved Assurance - Improve the level of assurance in the NSW community that there is vigilant oversight of police. (PIC 2003b: 2-3)

The rest of the document is set out in tables with language that is somewhat complex. Table 11.2 below presents a sample of categories. The 1999-2000 *Annual Report* uses performance indicators in a fairly rudimentary form largely in terms of goals. The 2002-2003 Report reflects the developments described above in roughly the same format as Table 11.2 (PIC 2000a, 2003a).

Table 11.2 Sample 'outcomes' and 'measures' from the PIC

Outcome	Performance framework Measures
Identification of aspects of the nature and extent of, opportunities for, factors contributing to, and evidence of, serious police misconduct.	Proportion of convictions in prosecutions that arise from investigations in which the Commission is involved. (Target: baseline of 80% set for first year). Proportion of Commission reports that identify aspects of the nature and extent of, opportunities for, or factors contributing to, serious police misconduct. (Target: baseline of 80% set for first year).
Identified serious police misconduct is addressed.	The proportion of recommendations relating to disciplinary action that are accepted by the NSW Police. (Target: baseline of 80% set for first year). Proportion of convictions that arise from investigations in which the Commission is involved. (Target: baseline of 80% set for first year).
Increased community and other stakeholder awareness of the nature and extent of aspects of, opportunities for, and factors contributing to, serious police misconduct.	Number of references in media to Commission investigations/projects. (Target: baseline of 80% set for first year). Proportion of Category 1 [most serious] complaints which are made directly to the Commission. (Target: baseline of 80% set for first year). Number of public hearing days. (Target: baseline of 40% set for first year).

Source: PIC 2003b: 4-6.

At the time of responding, the Commissioner reports that there are no significant factors impeding the PIC's effectiveness. He notes, however, that reductions in funding or the curtailing of investigative powers would impede future effectiveness, as could an adverse change in relations with the Police Service. For example, there had been problems with police implementation of the reform process as detailed in *Project Dresden*, which have since been overcome.

Northern Territory (NT)

The NT Ombudsman cites turnaround times as an important performance indicator. He also refers the researchers to measures in the *Annual Report*. Under the heading 'Performance Indicators and Targets', targets are listed with 'actual performance' in a parallel column, including figures for the preceding year which

allow for comparisons. These are set out in a summary form in Table 11.3 as an example of this type of reportage.

Table 11.3 Summary of performance indicators and targets, NT Ombudsman 1999-2000

Performance Indicator	1999/2000 target	1999/2000 performance	1998/99 performance
Acknowledgement of written complaints within 48 hours	93%	93%	—
A decision will be made on how a complaint will be treated within 7 days	98%	98%	98%
Time taken to finalize complaint and advise complainant			
(a) General			
Within 3 months	75%	62%	72%
Within 6 months	85%	76%	81%
Within 12 months	95%	91%	90%
(b) Police			
Within 3 months	30%	26%	20%
Within 6 months	60%	49%	46%
Within 12 months	85%	96%	87%
Reduce the number of current complaints outstanding at year end			
General	120	80	115
Police	50	62	63
Conduct visits to Centres outside of Darwin and Alice Springs	8	8	6

Source: NT Ombudsman 2000: 53.

The *Annual Report 2002-2003* uses a different format with more detailed information about categories, targets, demographics and outcomes of complaints (NT Ombudsman 2003). A new umbrella term 'approaches' is utilized to separate enquiries from complaints proper. Case studies are used in both reports to illustrate successful interventions by the Ombudsman. The following is an abbreviated example of the case study approach to reporting performance:

A woman bystander reported observing a police officer assault and racially abuse an Aboriginal man being apprehended in Alice Springs. When she attempted to speak to the officer about the incident he became threatening and offensive. The matter was thoroughly investigated by a senior police officer under the supervision of the Joint Review Committee. ... The JRC considered that the evidence of the complainant and her partner, as disinterested bystanders, was sufficient to warrant the commencement of disciplinary proceedings against the officer of excessive force and offensive language. (Northern Territory Ombudsman 2000, 176)

When responding to the question about impediments, the Ombudsman argues that a legislated six months completion time for disciplinary matters is too restrictive, especially when the legislation states that a matter lapses after that date. Investigations are conducted by police (with the most serious complaints being supervised by a joint Ombudsman/Police Committee) but treated as a performance standard for the Ombudsman. The Ombudsman also notes that a recent court case determined that his Office did not have own motion powers in relation to police conduct issues other than for 'administrative' matters. The implications of this are spelt out by the Ombudsman as follows:

If serious allegations are made against the NT Police and are the subject of media speculation, unless there is a complaint made directly to the Commissioner or the Ombudsman about the matter, it cannot be the subject of an own motion investigation.

Furthermore, there is some ambiguity about whether police can approach the Ombudsman directly with an allegation. Resources are also identified as a major factor impeding effectiveness. The Ombudsman notes that police matters amount to approximately one third of complaints dealt with by his office but can account for up to 50 per cent of its workload:

With limited resources and the staff available to me, I am not able to initiate many investigations in my own right. This is an important area as it would enable me to respond to the criticism of police investigating in their own right most complaints and thus the outcomes being viewed suspiciously.

Political factors also impact to constrain the Ombudsman's work. For example, the six month limit on disciplinary matters is thought to be the result of negotiations between the Government and the Police Association.

Queensland Crime and Misconduct Commission (CMC)

The then Commissioner notes that the requirement to report to Treasury means a concentration on 'throughput of work, timeliness etc.' Beyond this, he argues that, 'it is extremely difficult to develop simple and reliable quantitative measures of effectiveness'. Nonetheless, he asserts that:

The Commission is acutely aware that we must be able to persuade government and the general public that we are effective in our police oversight role, if we are to continue to maintain budgetary and political support. To this end, a priority within our research area has been to develop a 'basket' of different indicators, including qualitative data, with which to monitor whether progress is being made in raising standards of behaviour within the Queensland Police Service.

As an example, the major report *Integrity in the Queensland Police Service* (CMC 1997) uses a range of innovative measures in relation to police conduct and the Commission's impact on police behaviour. These include interviews with police,

surveys of police, an analysis of police implementation of the Commission's recommendations, analyses of complaint outcomes, public opinion surveys, a study of police reporting against other police, and a study attempting to assess any inhibiting effect the Commission's presence might have on police arrest activity (see also *Reform Update*, CJC 2001).

CMC annual reports include performance indicators across a variety of activities, including an analysis of special risk areas for police misconduct such as drug-related corruption and excessive force. There is extensive use of the types of surveys described above. Under 'investigations' there is a mix of activity and achievement reports, with data on things such as:

- number of standard complaints assessed and finalised;
- number of investigations conducted or reviewed;
- percentage and number of complainants and subject officers satisfied with the process ...;
- substantiation rate ...;
- percentage and number of standard complaints finalised within 12 weeks...; and
- cost per complaint assessed. (CJC 2000a: 23)

There are also several case studies outlining investigations and their outcomes that are used to illustrate the achievement of the Commission. An example of this type is provided below:

Operation Craven

This covert investigation began in late 1998 after we received allegations that police officers in a regional Queensland town were involved in the protection of drug offenders.

The investigation, which closed in February 2000, resulted in the arrest of three police officers on drug and corruption charges. Three civilians were also charged with serious drug offences. One of these men pleaded guilty to trafficking dangerous drugs and was sentenced to a term of imprisonment; the remainder await trial. (CJC 2000a: 28)

Performance indicators for 'research, prevention and reform' include a similar mix of activity and achievement measures, including:

- number of reports;
- number of presentations ...;
- number and significance of instances in which agencies adopt changes; and
- qualitative evaluation using peer review. (CJC 2000a, 35)

Of particular note in the 2002–2003 Report is the inclusion of the following targets:

- Percentage of audited misconduct investigations that meet quality standards ...; and
- Stakeholder satisfaction with prevention and intelligence reports. (CMC 2003, 68)

Results are reported separately in a *Ministerial Portfolio Statement*, but in a somewhat cryptic form (90 per cent and 95 per cent respectively) without explanation of the method (Queensland Government 2004, 8, 4).

The Commissioner did not identify any major impediments to the Commission's work, but did note the following as having the potential to cause difficulties in the future:

- a reduction in resources. This would be particularly detrimental given the broad jurisdiction of the CJC;
- effectiveness in reducing misconduct being seen as a reason for reducing the CJC's responsibility to oversee all levels of police misconduct. Such action could cause conduct problems to reappear;
- a change in police leaderships that might be less cooperative.

SA Police Complaints Authority

The Authority identifies two performance indicators:

- time taken to finalize a file after completion of investigation; and
- a calculated file completion rate.

He does, however, argue that 'performance indicators are at best crude indicators of poor performance and at worst are mistakenly read as indicators of worth and value'. The Authority referred the researchers to a conference paper he delivered at the 1999 conference of the International Association of Civilian Oversight of Law Enforcement, in which he proposed a number of targets, including the need to:

- Ensure public confidence in the police force and the complaints system;
- Be fair to complainants, police and staff;
- Be accessible to the community;
- Promote appropriate standards of conduct [by police]; and
- Provide the appropriate response to the full range of complainants. (Wainwright 1999, 3-8)

In the conference paper the Authority also indirectly questions the value of complainant surveys:

In a complaint driven system, one might be tempted to think of complainants as clients and to operate in such a way as to obtain a benefit for them in every case. This is to be resisted. Some complainants will indeed have well founded grievances. In other cases it will appear, once the matter has been investigated, that the police have acted well and that the complainant's perceptions or expectations have been unrealistic (1999, 4).

The Authority's 1998-2000 *Annual Report* focuses on completion times for investigations as a measurable performance indicator. This is not included in the 2002-2003 Report, but percentage of cases informally resolved is included; along with a focus on how citizens can access the Authority (PCA 2000, 2003).

The Authority argues that the time taken to process complaints is the biggest obstacle to effectiveness: 'In the vast majority of cases, the sooner a complaint is answered the better the chance of achieving a satisfactory outcome and maintaining or restoring confidence in the police force'. Related to this was 'thoroughness', which he argues can be lacking in initial investigations by police which in turn leads to complainant dissatisfaction.

Tasmania

The Ombudsman's Office reports use of the following performance indicators:

- number of complaints against police, (compared with the number of complaints received by the Police Internal Investigations Unit);
- outcome of complaints (whether they are substantiated); and
- timeliness of complaint handling (average age of a complaint) - although this is often affected by the period of time taken by the Internal Investigations Unit to respond to the matter.

The 1999-2000 *Annual Report* records changes in the number of complaints against police, the outcomes of police internal processing, and the number of appeals dealt with by the Ombudsman. The 2002-2003 Report also covers this ground. In addition there is data on the time taken to finalize complaints (but without targets) (Tasmania Ombudsman 2000, 40, 2003, 41).

The Ombudsman reports three factors that impede his effectiveness:

- power being limited to recommendations not determinations;
- delays affected by the requirement to deal with most matters in writing; and
- budget constraints that 'affect officer workload and the ability to engage consultants or technical experts in investigations'.

More generally, though, the Ombudsman notes that his office 'is not strictly a 'police oversight body' as it does not oversight all complaints against police. Rather, it only handles those complaints 'that come to the Ombudsman's Office in its normal functioning of investigating complaints about government departments'.

Victoria

The former Victorian Ombudsman, in his role as Deputy Ombudsman (Police Complaints), reports that over time his office has experimented with numerous performance indicators and supplied an extensive list of abbreviated indicators:

'Efficiency' indicators include:

- timeliness;
- output;
- cases on hand at end of reporting period;

- number of old cases on hand;
- total number of cases completed;
- number of telephone enquiries;
- efficient use of resources;
- use of informal handling;
- number of own investigations;
- accessibility to Office by complainants.

A large number of indicators are listed under 'effectiveness', and include such things as:

- identification of ethical misconduct;
- complainant satisfaction – process and outcome;
- public confidence in/community approval rating of police force;
- outcome of cases investigated (1) by Ombudsman, (2) by police.

The latter is divided into three areas: 'Facts ascertained', 'Punishment' and 'Remedial'. The acceptance of recommendations by the Chief Commissioner of Police and changes in police attitudes is also listed.

The 1999–2000 *Annual Report* describes and justifies the Ombudsman's review processes; and includes quantitative data on complaints processes, their outcomes, the percentage informally resolved, and cases where the Ombudsman instigated further action by police investigators. It also provides summaries of special investigations into major areas of alleged misconduct, such as police raids on allegedly mistaken targets. The Report sets out achievements from these processes in a qualitative form, mainly in terms of changes to police management practices. The 2002–2003 Report follows the same model, but with the inclusion of data from previous years to show trends (Victorian Ombudsman 2000, 18–19; 2003, 76).

There has recently been a major overhaul of the complaints against police process in Victoria. In response to a staggering number of gangland killings and allegations of organized crime, police corruption and links between the two, the Deputy Ombudsman Police Complaints was replaced by a Police Ombudsman in 2004. In a classic example of policy on the run (Lewis 2004b) the Police Ombudsman was then replaced by the Director Police Integrity in an Office of Police Integrity in the same year. However, the Ombudsman fulfils both roles: he is simultaneously the Ombudsman and the Director Police Integrity, a situation, which in Australia at least, is peculiar to Victoria.

The Office of Police Integrity has not been in operation long enough to have tabled an Annual Report to the Parliament. Consequently, which performance indicators it will use to measure effectiveness and what methods it will use in the measurement process are unknown. However, given the extensive powers bestowed on the Director, Police Integrity, and the controversy surrounding the establishment of the office, the performance indicators selected will be of great interest to all who have an interest in the effectiveness of the civilian oversight process.

WA – Ombudsman

The Ombudsman referred the researchers to the 1999–2000 *Annual Report*, where performance indicators focus on 'efficiency', in terms of 'how quickly' the Office processes complaints, and 'effectiveness', in terms of 'the extent to which the Office has been able to provide assistance to complainants and have agencies improve their practices and procedures' (WA Ombudsman 2000, 13). For police, 'key effectiveness indicators' are reported as percentages of 'allegations finalized where complainants received assistance', the number of 'improvements to practices and procedures' and the number of allegations where Police 'took further investigative action at the instigation of my Office' (2000, 15). 'Performance measures' that set 'target' against 'actual' are the number of allegations finalized, average finalization times, and costs (2000, 18). These are maintained in the 2002–2003 report (WA Ombudsman 2003).

A number of impediments to effectiveness are identified:

- a lack of defined powers in legislation;
- the probable absence of own motion powers;
- a requirement that police be allowed 42 days to investigate a complaint before the Ombudsman could conduct his own investigation;
- inadequate resources for carrying out independent investigations;
- reliance on review that meant matters often devolved into disagreements with police about how complaints had been investigated rather than focusing on the complaint itself;
- the enormous geographic size of WA further limited the capacity for independent ('primary') investigations;
- a possible duplication of work under the 'three-tier system' involving police, the Ombudsman and the Anti-Corruption Commission.

These concerns fed into a review of external oversight of police by the WA Royal Commission in 2002. It resulted in the Ombudsman's role in police oversight being taken over by a Crime and Corruption Commission (CCC), which was created in late 2003 (Kennedy 2004).

WA – Anti-Corruption Commission (A-CC)

The A-CC respondent referred the researchers to the section on performance indicators in its annual reports. The core indicator being the extent to which Commission members (the top management group) accepted Commission recommendations. This target is broken down across 'assessment and investigation reports', 'review reports' and 'audit reports', with a standard of 'accepted first time: 90%'. Results for the current and previous year are reported and include costs per hour (A-CC 2000, 34–5; 2003, 44–5).

In terms of impediments, the A-CC referred to its inability to hold public hearings. It referred the researchers to the Royal Commission for further information.

The Royal Commission review in 2002 concluded that the A-CC lacked sufficient powers and accountability (Kennedy 2002: 2004). In late 2003 the A-CC was replaced by the Crime and Corruption Commission which, as mentioned above, also took over the Ombudsman's police-related tasks.

Crime and Corruption Commission

The new agency, the CCC, is similar to Queensland's CMC. It has own motion powers; the authority to conduct public hearings, covert investigations and integrity tests; coercive powers to obtain information; and a proactive role in research, education and the reporting of findings.

In its first Annual Report (2003–2004) the CCC identifies the performance indicators it will use in 2004–2005. It also notes that they were developed before the recruitment of Directors was complete and consequently may have to be modified to 'better reflect the Commission's strategic plan' (CCC 2004, 54).

The performance indicators are located in the following 'outcome statements':

1. Improved integrity and reduced incidence of misconduct in the public sector.
2. Appropriate use of powers to address organised crime. (CCC 2004, 53)

The CCC's achievements in meeting these outcomes will be measured through the following three output based performance indicators:

1. Investigations into misconduct in the public sector
2. Corruption prevention reviews and education
3. Investigations facilitated into organised crime. (CCC 2004, 53)

What is not clear at this early stage is how the measurement will take place.

Towards Optimum Performance Indicators

The results of this research show that performance indicators are of concern to police oversight agencies. The format of annual reports and special reports demonstrate a definite attempt to evaluate performance. Nonetheless, respondents see the development of reliable indicators as problematic, with some more sceptical than others. Despite this, there is an understanding that a range of indicators is required to obtain the best possible assessment of an oversight body's performance in monitoring, reviewing and investigating complaints, and reducing and preventing police misconduct. It is also clearly understood that performance indicators are an inescapable part of accountability.

As a baseline, oversight agencies typically collect the following statistics, either in term of reviewing complaints processed by police or in direct processing of complaints:

- the number of complaints received and finalized per annum;
- time taken to finalize complaints; and
- outcome in terms of decisions such as substantiation, referral to mediation and penalties.

In some cases it is conceded that these are measures of activity, rather than achievement. Despite this, they do provide an important picture of agency work. Complaint finalization times are popular indications of effectiveness, but they are not always set against a target. In addition, it is clear that, in part, oversight agencies judge their performance based on the extent to which police achieve satisfactory performance targets in processing complaints and preventing misconduct. There are efforts to assess this by scoring the number of recommendations judged to have been implemented, and by providing narrative accounts of investigative processes leading to changes in police procedures or improved outcomes for complainants.

The Queensland CMC stood out for its more comprehensive, social science based reports – including extensive stakeholder surveys, and some limited application of case file audits. This can be attributed in large part to the fact that it was established with a well-resourced research division with research-qualified staff (Lewis 1999).

The most commonly identified issue impeding effectiveness is budgets and their impact on resources. Ombudsmen are most likely to complain that insufficient funding constrains their capacity to properly oversee police. Other impediments to effectiveness, identified by some agencies, relate to legislative capacity and include lack of own motion powers, the inability to compel testimony and determine sanctions. Some respondents also emphasize how reliant they are on police co-operation, which could change when police leadership changes.

Taking these diverse practices and opinions into account, the following section provides a set of performance targets and indicators, using four larger categories that cut across issues of inputs and outcomes, and efficiency and effectiveness. The model is not put forward as the optimum in performance measurement; rather it is designed to stimulate discussion and advance the development of fair and meaningful performance indicators.

Procedural Integrity

Procedural integrity is concerned about compliance with procedural standards in the areas of complaints investigation techniques, the development of appropriate intelligence and the application of sanctions. It is designed, among other things, to prevent interviewees feeling intimidated, to ensure the appropriate communication of rights, and to prevent discrimination toward or against accused persons and complainants. This is where surveys of complainants, witnesses, subject police officers and others involved in the process can be useful. Through their feedback, perceptions of impartiality and professionalism are able to be measured. The process can be triangulated by analysis of sample case files by an expert audit panel. Performance can also be judged in terms of outcomes, or 'forensic

integrity', through the success of a brief and any positive or adverse comments from judicial officers.

Procedural Rigour

'Rigour' refers to the thoroughness of investigations in terms of properly following leads and asking the appropriate questions, while quality can be examined through the stakeholder surveys mentioned above. The independent case audit process is a vital component of this performance indicator. Performance can also be judged here in terms of successful prosecutions, judicial comments on briefs, and reviews of failed prosecutions.

Timeliness

Heads of oversight agencies identify the quick resolution of matters as an indicator of agency effectiveness. It is a very important issue for all stakeholders including police and complainants. However, timeliness needs to be balanced against procedural thoroughness. How quickly complaints or referrals are processed and resolved is easily measured by tracking a complaint. Fair turn-around times can be established by benchmarking with similar agencies and through surveys, which include questions about expectations of what is a reasonable time for the resolution of matters. Resources are an important factor as inadequate resources will result in an overburdened oversight agency. Regardless of how efficient the oversight agency is in processing complaints, without appropriate resources it will not have the capacity to keep pace with complaints received.

Contribution to Police Integrity

This can be understood in terms of both deterring police corruption and the agency's contribution to wider integrity maintenance. Deterrence can be measured, in part, by surveys of police, with direct questions covering perceptions about the probability of officers being 'caught' and sanctioned for misbehaviour. Other sources will include surveys of the public and police regarding perceptions of corruption levels. Changes in the volume, seriousness and types of complaints, and intelligence about misconduct, which draw in some of the findings from 'procedural integrity indicators', would assist in measuring the agency's contribution to police integrity. Ethical climate surveys will also have relevance, as will surveys of the public regarding their confidence in, and knowledge of, the oversight agency and its processes. Complainant satisfaction surveys can also be useful here. The appropriateness of outcomes (including sanctions) is important for ensuring a productive balance between punishment, remedial interventions and reconciliation of complainants. Complainants data will need to be disaggregated in order to monitor specific areas of risk – such as inactivity, false arrest and excessive force – and outcomes. Separate studies will need to be done on potential problem areas where complaints may not be a good indicator

of the magnitude of a problem. Special surveys or incident data collection will be required here.

The above constitutes a list of tasks that is potentially very expensive. However, many of the more ambitious surveys only need to be conducted every few years to provide useful time-series measures. In some instances it may be more economical to subcontract surveys to commercial firms who specialize in such matters. But the need for an investment of resources away from core business to evaluation of business cannot be denied. Commenting on the general neglect of performance measures for oversight agencies world-wide, David Breerton, a long-term Director of the Queensland CMC's Research and Prevention Division, emphasized that:

The grounds for retaining these bodies are philosophical as well as utilitarian – concepts such as accountability and transparency are important, even if they are not readily susceptible to measurement. ... However ... in a world in which governments are placing ever greater emphasis on the need to show 'value for money', appeals to abstract principles may not be enough to win funding arguments – evidence that external oversight has value in a concrete sense is also required. (1999, 4)

Conclusion

Measuring the performance of police oversight agencies is not an easy matter. Basic statistics about numbers of complaints processed, times and costs of processing, and outcomes give a picture of the demand pressures on agencies and how they prioritize and spend the resources allocated to them. However, more sophisticated measures are needed to assess the extent to which agencies are succeeding in their common mission as citizens' watchdog bodies. Regular surveys of stakeholders will help to establish performance benchmarks and a series of vital indicators about deterrence, rigour, impact, fairness, timeliness, appropriateness of outcomes, and stakeholder confidence. Regular case auditing will add another dimension to independent expert review. Without such measures there is no reliable evidence that the core business of independent, civilian oversight agencies is being done as efficiently and effectively as possible.

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