



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Barbara Attard

**SUBJECT:** SUPPLEMENTAL IPA REPORT

**DATE:** June 18, 2007

**Summary of Testimony of Consultant**

Approved

Date 06/18/07

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**SUMMARY OF TESTIMONY OF CONSULTANT RICHARD JEROME BEFORE THE  
SAN JOSE CITY COUNCIL**

I would like to thank the City Council for this opportunity to testify about police accountability, civilian oversight and San Jose's Independent Police Auditor (IPA).

As I understand it, the purpose of the IPA is to improve police integrity and accountability, and to enhance trust between the community and the police. Effective police oversight can both strengthen police community relations and advance effective policing.

What I would like to do today is discuss some national best practices regarding police oversight, describe some of the models that have been established around the country, and address a number of the issues raised by the IPA's 2006 report and recommendations. In addition, to the extent that there is time, I would like to make a few comments about the issue of bias-free policing and concerns regarding racial profiling that are front and center in practically every major city in the country.

**I. Qualifications**

The issues that the City Council is addressing today are directly related to the work I do. At the Department of Justice, I was Attorney General Reno's point person on police accountability and racial profiling issues, and helped oversee the Civil Rights Division's "pattern or practice" program. Since 2001, I have been in private practice working on police reform and civil rights issues. I am currently the court-appointed special master and Deputy Monitor in two police reform agreements in Cincinnati, Ohio. Included in those agreements are provisions relating to the police department's investigations of use of force incidents and citizen complaints, as well as the creation and operation of the Citizen Complaint Authority. In addition to my work in Cincinnati, I have conducted a number of reviews of police department internal affairs units and civilian oversight entities. Recent projects include reviews of the Farmington, NM, Citizen Police Advisory Committee, the Milwaukee Fire and Police Commission, and the police oversight system in Albuquerque, NM, as well as participating with the Police Assessment Resource Center in the review of officer-involved shootings at the Denver

Police Department and the Portland, Oregon, Police Bureau. I have also worked directly with the police departments in Detroit and Oakland. In Oakland, I audited the Department's Internal Affairs Unit with James Fyfe, and then developed reform recommendations that formed the basis for the settlement decree under which the Department is now operating.

## **II. Police Oversight**

### **A. Need for Oversight and Accountability**

Police accountability requires internal systems for holding officers accountable when they engage in misconduct, including better systems for investigating citizen complaints, and risk management systems for identifying officers who have engaged in "at risk" behavior. For accountability to take hold, these police "best practices" need to be adopted by the agency, reviewed by appropriate oversight entities, and embraced by both police leaders and the political leadership of the jurisdiction.

There is increasingly broad agreement that law enforcement's business, in general, is the public's business, and therefore must be open and transparent. The privilege of the police to self-regulate comes with an obligation to open the agency's records to public representatives such as monitors and oversight bodies, and certainly elected bodies such as the City Council.

The goals for entities engaged in civilian oversight of law enforcement agencies – and the IPA is definitely considered a civilian oversight entity - include the following:

- To reduce misconduct by providing an objective review of citizen complaints and identifying improper behavior and ensuring appropriate discipline is imposed;
- To identify patterns of or trends in misconduct;
- To recommend or develop improvements in police policies, procedures, tactics, and training that will serve to increase police integrity and improve the performance of the police department;
- To help create systems that identify and address potentially problematic behavior before discipline is warranted;
- To increase public trust in the police and strengthen the relationship between the community and the police;
- To foster officer trust in the integrity and fairness of complaint investigations and the disciplinary process;

- To provide a forum for public concern and comment regarding the police department, and bring transparency and outside scrutiny to an agency often viewed as insular.

Each of these responsibilities comes with challenges. Police Departments traditionally are insular and suspicious of outsiders; department members have legitimate procedural rights and protections for their actions; and stakeholders and groups in the community often have widely different views of the police.

Key factors that are critical to the success of a citizen oversight entity include: (1) ensuring sufficient authority for the agency and the organizational capacity to carry out that authority; (2) establishing the agency's credibility and impartiality; (3) managing the stakeholders' expectations of the agency; and (4) effectively conducting outreach to the public.

## **B. Models of Oversight**

There are a variety of models of law enforcement oversight around the country, and I will address some of the principle types of entities and their pros and cons. There is no one "best" model, and decisions regarding the authority and responsibilities of the civilian oversight entity should be made in the context of the needs of the jurisdiction. Having said that, however, there are best practices and professional standards with respect to both police oversight and internal affairs and accountability.

One type of civilian oversight is a **civilian review board** or commission. Generally, their members work on a voluntary basis, and their findings and recommendations are advisory. Most of these boards focus their efforts on reviewing citizen complaint investigations, or act as an appellate review of complaints where the citizen is not satisfied with the findings of the police department's internal affairs bureau.<sup>1</sup>

A second variant of the civilian review board is where the board or commission has a professional staff, and itself undertakes the investigation of citizen complaints. Examples include the CCRB in New York City, the Citizen Complaint Authority in Cincinnati, the Office of Police Complaints in Washington, DC, and the Office of Citizen Complaints in San Francisco.

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<sup>1</sup> Many review boards were enacted with very limited powers. While some boards were given authority to consider matters of policy and to make recommendations, few boards were given the resources to meaningfully exercise that authority. Also, board members' lack of training in police procedures, tactics, and strategy has prevented many review boards from effectively overseeing the police. Additionally, many review boards have lacked adequate staff, leading to a large backlog of unresolved cases. As a result, many review boards have had difficulty providing meaningful oversight.

San Jose's IPA is a third model of civilian oversight that is fairly recent -- a paid position where the entity is responsible for assessing and evaluating the work of the police department's internal affairs bureau and reviewing the department's policies, practices and training. These entities are generally called a **monitor, auditor, Inspector General or ombudsman**. In addition to San Jose, examples of this type of oversight include the Inspector General for the Los Angeles Police Department, Tucson's Independent Police Auditor, Boise's Ombudsman, Portland, Oregon's Office of Independent Police Review, and Denver's Office of Independent Monitor. In Los Angeles County, for the past nine years, the County Commission has hired a Special Counsel, Merrick Bobb, to monitor the LA Sheriff's Department policies and practices, and recently, the County also created the Office of Independent Review, which audits the Sheriff's internal investigations.

One goal of the monitor oversight model is to look at the Department in its entirety to make judgments over time regarding how well the Department minimizes the risk of police misconduct, identifies and corrects patterns and practices of unconstitutional and illegal behavior, and finds solutions to systemic failures.

There have also been hybrid models, such as the police oversight system in Albuquerque, New Mexico. There, the Independent Review Office determines whether a citizen complaint will be investigated by its office or by the Police Department's Internal Affairs unit, and the findings of each agency are reviewed by the other before being sent to the Chief. If the citizen is dissatisfied with the Chief's decision, he or she may appeal the decision to the Police Oversight Commission, a volunteer review board.

A principal strength of the monitor/auditor model is the ability to address systemic issues and to seek accountability within the police department for eliminating problems and abuses. Monitors are focused on systemic change more than on resolution of specific cases. Many do, however, also have the ability to require the police department to conduct additional investigation in specific cases, if they determine that the initial investigation was insufficient. For instance, the Denver Office of the Independent Monitor has full access to police department records, subpoena power, and the right to attend police interviews. The Denver Monitor also can conduct an independent investigation if he finds the departmental investigation insufficient. The Monitor in Austin and the Auditor's office in Portland have similar powers.

### **III. Citizen Complaint Process:**

Let me move now to more specific issues here in San Jose, particularly the citizen complaint process. Let me start by saying that my review and opinions are based on a limited examination of the San Jose Police Department's policies and IA guidelines, the IPA procedures and reports, and the other reports before the City Council. I have not conducted a full review of IA and field investigations, or of specific IPA audits. Also, I want to acknowledge a number of positive aspects of the San Jose Police Department's policies on investigations of employee misconduct. The general

provisions in the Duty Manual's IA procedures were used in crafting the Department of Justice's 2001 publication Principles for Promoting Police Integrity:

C 1700

"The Police Department has a continuing obligation to serve the community. One aspect of this obligation is to ensure that Department procedures and actions are reasonable and effective. To fulfill this obligation, the Department provides a readily available process in which community and Department members can have confidence that complaints against Department procedures and actions will be given efficient and fair attention. Such investigations will not only provide for corrective action when appropriate, but will also protect against unwarranted criticism when procedures or actions are proper."

C 1702, Purpose of Investigations

"The thorough investigation of all complaints received serves to protect the public and Department against procedures or acts which result in misconduct by Department members. A thorough investigation further serves to protect the community, Department and its personnel from complaints which are based on misunderstanding or invalid information."

Having said that, the IPA's 2006 Report raises significant issues regarding the intake, documentation, and investigation of misconduct allegations, particularly the Police Department's distinction between "misconduct complaints" and "inquiries." Through its audits and review of the Police Department's complaint process, the IPA concludes that there have been a significant number of misconduct allegations that have been classified as inquiries, and because of this classification, the allegations have not been thoroughly investigated, documented and tracked.

**A. Definition of Complaint, Inquiries**

Generally, the definition of a complaint is an allegation that, if true, would be a violation of police department policy or law, and would subject the officer to corrective action or discipline.<sup>2</sup> The SJPd defines "complaint" in four places:

**Duty Manual C1703, Complaint Defined**

"A complaint is an act of expressed dissatisfaction which relates to Department operations, personnel conduct or unlawful acts."

**Duty Manual C1725, Misconduct Complaint – Defined**

"After the initial investigation, it is determined that the facts of the allegation are such that, should they be sustained, the allegations would amount to a significant violation of the law or the Department policies, procedures, rules or regulations."<sup>3</sup>

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<sup>2</sup> Appendix 1 includes the definition of "complaint" in other jurisdictions.

<sup>3</sup> The Duty Manual also defines other categories of complaints other than misconduct complaints (procedure, informal, and policy complaints)

**IA Guidelines:**

**Misconduct [Complaint]**

“If, after the initial investigation, it is determined that the facts of the allegation are such that, should they be sustained, the allegation would amount to a violation of the law or of Department policies, procedures, rules, or regulations.”<sup>4</sup>

**SJPD website:**

**What is a complaint?**

“A complaint is an allegation by a member of the public in which the complainant is dissatisfied with a department member’s actions or the San Jose Police Department itself. The allegation must involve violations of law or of the SJPD policies and procedures. A complaint involves an administrative process where discipline may be imposed by the SJPD. This must not be confused with criminal charges, which are filed by the District Attorney’s office or a civil suit, which is brought against the City of San Jose for damages.”

Many different police departments distinguish between different kinds of complaints or levels of seriousness of complaints. In doing so, they also often implement different ways of handling various types of complaints. In this way, serious complaints (for example, excessive force) would be investigated by the internal affairs unit, while less serious complaints – such as discourtesy – might be investigated by a line supervisor. Other agencies use mediation, or corrective action and performance improvement, for low level complaints or service complaints, rather than formal investigations. However, for complaints that allege serious misconduct, such as excessive force, discrimination, unlawful conduct, improper search and seizure, all police departments should document and track the complaints, and conduct thorough, fair and objective investigations.

In San Jose, in addition to the definition of a misconduct complaint, the SJPD also has a definition for what is called an “inquiry.” The current definition of inquiry relies not on the type of allegation or level of concern, but on what is done at the time of the initial intake, and the decision of the person bringing the concern or allegation (and the reporting of the intake officer) that the person’s concern has been satisfied.

**Duty Manual C1703**

**Inquiry Defined**

“Citizen contact with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint.”

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<sup>4</sup> The IA guidelines also define categories other than a misconduct complaint, including “procedural” and “policy” complaints and “Command Review.”

**IA Guidelines  
Inquiry (IQ)**

“Any contact with a citizen in reference to any issue of concern that is immediately resolved to the satisfaction of the citizen which does not give rise to a complaint. Any concern that is not immediately resolved to their satisfaction can become a complaint.

Or

The complainant alleges he/she was issued a traffic citation and he/she did not commit the infraction alleged. The complainant should be referred to Traffic Court as the proper venue to address the complainants concerns.”

There are a number of problems with this definition of an “inquiry,” as the IPA notes in its 2006 Report. First, the Department is stating that these inquiries are not complaints. Second, if the individual’s concern is indeed a serious misconduct allegation (such as unnecessary force), it should be investigated thoroughly, with a disposition, and tracked. How can an excessive force allegation be “immediately resolved” to the complainant’s satisfaction? Even if the intake officer believes that the allegation does not have merit, it should be up to the investigation to determine if the complaint is unfounded or exonerated. Third, if the individual’s concern is not a serious misconduct allegation, and it is resolved informally (e.g., because the supervisor meets with the individual and explains police procedure, or makes an apology), it is more akin to mediation, Command Review or a procedural complaint. Fourth, without full documentation, it will not be clear that the complainant’s concern was resolved to his or her satisfaction; instead, it may be the result of discouragement in making a formal complaint or a lack of information about the complaint process. Last, without documenting the type of allegation raised, and the officer against whom the allegation is made, the Police Department will not be able to examine trends or patterns of behavior and identify potential at-risk officers.

There is certainly merit to resolving citizen concerns quickly and informally when they are not serious and when the citizen is satisfied with the outcome. However, there have been a number of police departments where this “informal” process has been used to discourage complaints or steer serious misconduct allegations into a non-disciplinary process. (Oakland was one example of this problem).

In the San Jose Internal Affairs Peer Review Study, the Macias Consulting Group concluded that the SJPD’s classification and handling of complaints and inquiries was consistent with “best professional practices” because six of the nine other “peer” agencies had an “inquiry” category or similar classification, and because its complaint handling process meets the standards issued by the Commission on Accreditation for Law Enforcement Agencies (CALEA). For several reasons, I do not believe these conclusions are correct. While there are peer agencies that treat low level allegations through an informal complaint process, including resolution in the field, none of the agencies use this process for allegations that could include serious misconduct (e.g., Denver has an informal complaint category, but it is only for minor, or service

complaints, and it is documented and the officer's identity is tracked to evaluate any potential trends or patterns; Detroit is similar). Second, there are other agencies that attempt to resolve citizen dissatisfaction immediately and do not characterize these concerns as complaints, but only if the dissatisfaction does not involve an allegation of misconduct (e.g., Cincinnati, see Macias Report, p. 65; Honolulu, *id.*, at 81; Miami Dade, *id.*, at 102).<sup>5</sup>

With respect to the CALEA standards, CALEA requires that "all complaints against the agency or its employees be investigated" (Standard 52.1.1). While the Macias Report states that all San Jose complaints are investigated, if there are allegations of serious misconduct that are dealt with as inquiries, than this would not be the case. There is no investigation (for example, interviews of the involved officer and witnesses) for inquiries. Documentation of all complaints is required by CALEA Standard 52.1.10 and implied by CALEA Standard 52.1.9 (which requires a "conclusion of fact" for each investigation). Not only do the CALEA Standards require documentation of all complaints, including less serious ones, but so do the various consent decrees and memoranda of agreement the United States Department of Justice has obtained with various jurisdictions whose police practices raised constitution concerns. See, e.g., the LAPD final consent decree (United States v. City of Los Angeles, et al, Civil No. 00-11769 [CD Cal. 2001], paragraphs 16 and 74); and the Detroit Police Department consent decree (United States v. City of Detroit, et al, No. 03-72258 [ED Mich. 2003], paragraph 64). The Department of Justice agreements are widely recognized as following good police practice.

The International Association of Chiefs of Police (IACP) Model Policies on "Investigation of Employee Misconduct" (1990, revised 2001, 2007), also address this issue. The model policy notes that an agency should "accept and investigate fairly and impartially all complaints of employee conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner." In its Concepts and Issues Paper supporting the model policy, the IACP states:

All public complaints should be documented upon receipt and forwarded to the office of professional standards [OPS] and the agency CEO. Even where the supervisor has seemingly resolved the matter by way of explanation of departmental policy or other actions, the complaint should still be documented and forwarded to OPS. The documentation should note any actions that were taken by the supervisor to resolve the complaint and the citizen's reaction. A copy of the complaint should go to the sheriff or chief of police if for no other reason than to keep him or her apprised of the nature of complaints on a daily basis.

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<sup>5</sup> Cincinnati uses Citizen Complaint Resolution Process for low level complaints, but these are included in the complaint figures, and involves an investigation by field supervisors.

*Distinguish between Service vs. Personnel Complaints.* Some police departments classify complaints as either "service" or "personnel" depending on the issue(s) involved. Service complaints or concerns are those associated with the way police services are provided. A common example is a citizen complaint over police response time. Many of these types of public complaints may be handled in the internal investigative process somewhat differently from those involving personnel action or inaction directly with a citizen. But each type of complaint should receive a unique tracking number and be screened for pertinent information and potential violations of departmental policy and procedures. Even complaints involving misunderstandings may contain information of value to a police agency.

### **B. Procedural Complaints**

A second concern raised by the IPA was the increasing number of complaints that have been characterized, perhaps inappropriately, as "procedural complaints." The SJPD definition of a procedural complaint is below:

#### **IA Guidelines Procedural (PR)**

"If, after the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident, then despite the allegation of misconduct, there is no factual basis to support the allegation.

Examples of procedure complaints:

- Towing vehicles for violation of section 14601 CVC
- Citizen's Arrest (10-50 or 849B).
- TABS detention/arrest
- Curfew detention/arrest
- High risk vehicle stops
- Domestic Violence arrests

Or

The allegation is a dispute-of-fact case wherein there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complainant."

To the extent that the complaints characterized as "procedural" are of the type listed in the IA guidelines, the SJPD complaint process is acceptable. However, to the extent that a complainant's allegations include misconduct issues, the complaint should be fully investigated, including interviews of the involved officers and witnesses, and the investigation should be thorough, objective and fair.<sup>6</sup>

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<sup>6</sup> Appendix 2 contains a list of criteria for reviewing citizen complaint investigations.

#### **IV. Role of IA and IPA in In-custody Deaths, Use of Force Critical Incidents.**

Currently, the SJPd subjects officer-involved shootings to a criminal investigation and an administrative investigation. In addition, after IA completes the administrative investigation, the incident is reviewed by a Shooting Review Board. The IPA also has a role in officer-involved shootings, auditing the administrative investigation and participating in the Shooting Review Board. The IPA has recommended that similar procedures apply to in-custody deaths and certain critical incidents.

One particularly important aspect of oversight is the evaluation of administrative (as opposed to criminal) investigations of officer-involved shootings, in-custody deaths, and other serious uses of force, regardless of whether a related complaint is filed. These cases elicit significant community concern, given that they may involve incidents resulting in loss of life. Investigations of officer-involved shootings and in-custody deaths involve three perspectives.

- The first is the criminal investigation that seeks to determine whether the involved parties, police and civilian, should be charged with a crime.
- The second perspective for analyzing officer-involved shootings, in-custody deaths and serious uses of force is administrative—i.e., whether the involved officers violated the department's policies and procedures and should therefore be subject to discipline.
- The third perspective is tactical—whether the involved officers followed their training and performed in a tactically sound way.

Experience has shown that a focus on tactical and training issues is the most productive way to try to change police responses to critical incidents and to lessen the use of deadly force by the police. This is where the strength of the monitor/auditor model comes into play. The Monitor can both push behind the scenes to have the Police Department improve its policies and practices with the goals of lessening the incidence of uses of deadly force, and can shine public light on the need for such changes in a public report. For this reason, applying this authority to in-custody deaths and police-involved critical incidents is both reasonable and recommended. Other oversight agencies that have similar review authority include Denver, Sacramento, Portland, Oregon, and Boise.

#### **V. Role of IPA in Policy Review**

As I noted at the beginning of this testimony, one of the main purposes of a civilian oversight entity is to engage in policy review, and to assist the law enforcement agency in making changes to its policies, procedures and practices that advances effective policing, improves accountability, and enhances police-community relations. As part of the Code of Ethics of the National Association for Civilian Oversight of Law Enforcement (NACOLE), an oversight agency shall:

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities it

serves. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

In addition, the San Jose Municipal Code Chapter 809 states that the IPA's powers and duties shall include: "Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigation of complaints against police officer."

For this reason, I disagree fundamentally with the view stated in the City Manager's and Police Chief's Response that the IPA should not be involved in policy and procedural issues such as the definition of what is a complaint and what is an inquiry. There is absolutely no conflict between the IPA's role of auditing and monitoring complaints and the IPA's role in working with the Police Department on the procedures and policies that govern the Police Department's handling of citizen complaints. Instead, that is at the crux of being a police monitor, and is one of its most essential functions. It is also entirely consistent with the work that other entities around the country - police auditors, monitors, ombudsman, and inspector generals.

## **VI. Racial Profiling/Problem Oriented Policing**

Let me now turn to race and policing. The sentiment against racial profiling is universal, but there is little consensus on its definition. Many police agencies at the start of the racial profiling debate defined racial profiling as when an officer took a police action "solely" on the basis of race. This is the definition in San Jose's policy. This definition, however, misses the point. No officer, even the most biased, uses race as the only basis for his or her action. At the other end of the spectrum, a definition that says that any use of race, in any context, is racial profiling, is too broad.

The principle lesson is that officers cannot use a person's race, ethnicity, or national origin as a shortcut for suspecting them of criminal activity. A person's race or ethnicity by itself should not be a reason that officers heighten their suspicion of that person. Instead, the officer's actions must be based on the behavior of the individual, or on reliable information that leads the officer to believe that the person he is encountering has committed, or is in the process of committing, a crime. An important question for the officer to ask is: "Would I be stopping this person, if he or she were white?" This is the "but for" test for assessing bias-free policing.

Police agencies must deal – harshly – with those officers who are intentionally discriminatory. Often, however, it is unconscious bias and institutional pressures that influence police actions. The police are often dealing with the dangerous offenders in high crime neighborhoods; but they cannot assume the worst when dealing with others.

Cincinnati is an interesting example. As part of the Collaborative Agreement, the parties brought in the RAND Corporation to conduct a comprehensive evaluation of the

impact of the agreement and assess progress towards its goals. In RAND's 2005 and 2006 reports, while RAND did not find evidence of a pattern of bias in policing, it did find that blacks and whites in Cincinnati experience two very different styles of policing. Black residents in the City are more likely to live in neighborhoods characterized by crime and disorder. Residents in high-crime neighborhoods are more likely to see, and experience, "aggressive policing," such as more invasive traffic stops, and individuals being stopped and patting down on the street corner. While neighborhood crime rates rather than race may be the rationale for these actions, if the message from police leadership to the street cop is simply to make more stops in high crime neighborhoods, and those neighborhoods are predominantly black or Hispanic, law abiding black and Hispanic residents will bear a heavier burden.

Many jurisdictions have used a data collection process with high expectations that it will answer "bottom line" questions regarding the existence, or not, of officer bias and racial profiling. Collecting data on the race of persons stopped by the police is not a panacea, however, and these expectations are often disappointed. Communities around the country have found that the analysis of traffic stop and pedestrian stop data is more complicated and ambiguous than they anticipated. The results can be helpful, but they are never definitive. The general experience in many jurisdictions is that there have been racial disparities in stops, with blacks and Hispanics stopped at a higher percentage than whites, compared to their population percentage.<sup>7</sup> But at least some of this disparity can be explained by non-racial factors. For example, high crime neighborhoods are generally correlated with poverty, and correlated with minority populations. If there are more police deployed in minority neighborhoods, they will be stopping more minorities.

In addition to examining stops, data collection efforts have also reviewed what happened after the stop – which motorists get searched, or are asked for consent to search, which are cited, what was the duration of stop, and what was the result of the stop (e.g., citation, arrest, or warning). Here too, many jurisdictions have identified racial disparities in police action.

A significant benefit of data collection is that it leads to a larger public discussion about how policing should be conducted in the jurisdiction. The issues of community distrust and concerns over biased policing go well beyond just traffic stops. These concerns extend to arrests, use of force, who goes to jail, and disproportion in the criminal justice system as a whole. In this light, it is necessary for us to examine what we are asking our police to do.

Police agencies are faced with conflicting expectations. On the one hand, many residents of high crime neighborhoods express concerns about the lack of police

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<sup>7</sup> One of the difficulties in traffic stop analysis is determining what the appropriate benchmark is against which the racial percentage of traffic stops should be compared. Different studies have used Census data, traffic observation surveys, accident data and other measures, each of which has significant limitations.

visibility and demand more police services and protections. We respond to these concerns by increasing police deployment in these neighborhoods. Emphasis on crime “hot spots” and other efforts to target criminal activity have similar effects. This can lead to even greater disproportionality in stops. Police departments need to openly discuss their deployment decisions and strategies so that their actions do not lead to increased complaints about police activity from the very same communities that are seeking greater police presence. Are traffic and pedestrian stops being used in the inner city as a crime suppression tool? Are pedestrian and traffic stops being done at officers’ discretion for legal, but often pretextual reasons, to dampen crime in high crime neighborhoods? If so, how well are they working? Are there modifications that should be made to an agency’s search policies or practices? Police departments cannot successfully address racial profiling and community distrust of police unless they forthrightly engage the community and examine how their police strategies impact community members, particularly persons of color. The right police strategy is one that effectively reduces crime, makes people feel safer, and reduces perceptions of police unfairness and bias.

I think it is important to note that there are different policing strategies and approaches that have been evaluated over the past ten years, and those evaluations show that some approaches are more effective than others. Traditional policing is reactive – officers are dispatched to locations on radio runs, mostly in response to calls for service. Between these runs, officers conduct random patrols in their cars. National research has shown that the effectiveness of this standard reactive model of policing is weak. Added to this, some agencies have adopted misguided incentives rewarding the greater number of arrests, without really looking at whether the enforcement actions that are being taken are making a difference in crime and disorder.

Police will be more effective in controlling crime and disorder if their efforts are more tailored to the problems they seek to address (problem-oriented policing). And community distrust and tensions will decrease where police leaders are truly willing to collaborate with the community in developing policies, strategies and programs. For example, if the concern in a neighborhood or city is violent gun-related crime, targeted enforcement against repeat offenders (for example, the “pulling levers” approach) is going to be more effective than the decision to use broad, unfocused sweeps and “zero-tolerance” saturation patrols.

Once again, I would like to thank the Council for the opportunity to testify, and I would welcome any questions that Council members may have.

## **Appendix 1**

### **Definitions of “Complaint”**

#### 1. Cincinnati Memorandum of Agreement

"Complaint" means an allegation (excluding any criminal investigation) from any source, of any action or inaction by CPD personnel which the source considers to be contrary to law, proper procedure, good order, or in some manner prejudicial to the individual, the CPD or to the community.

#### 2. Oakland Police Department Complaint Brochure

What is a complaint? An allegation from any source regarding a specific act or omission by a member or employee which would amount to misconduct; or An allegation from any source regarding an improper policy, procedure, practice, service level or legal standard of the Department. Note: If your complaint concerns a disagreement over the validity of a traffic ticket or parking citation please contact the court system. The Police Department does not resolve such disputes.

#### 3. Oakland Settlement Agreement

Complaint: Any complaint regarding OPD services, policy or procedure, claim for damages (which alleges member/employee misconduct); any allegation of possible misconduct by an OPD member or employee. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination.

#### 4. Denver Police Department

#### 5. LAPD Consent Decree

The term “complaint” means any complaint by the member of the public regarding Department services, policy or procedure, claims for damages (which allege employee misconduct) or employee misconduct; and any allegation of possible misconduct made by an LAPD employee. All complaints shall be recorded on Complaint Form 1.28. A complaint may be initiated by any of the methods set forth in paragraph 74. For purposes of this Agreement, the term “complaint” does not include any allegation of employee discrimination.

## **Appendix 2**

### **Standards for Reviewing Citizen Complaint Investigations**

1. Did the proper entity investigate the allegation?
2. Was the complaint investigated by an investigator/supervisor who was not involved in the incident, and who did not authorize the conduct being investigated?
3. Were the relevant witnesses (including officers and supervisors if relevant) identified and interviewed? Was there a witness canvass, if appropriate? For serious misconduct investigations, the interviews should be tape-recorded.
4. Does the investigative file contain all the relevant documents and evidence – complaint form, police reports, supervisor logs, communications tapes and CAD reports, photos, medical records, witness statements, and any follow-up investigative reports?
5. Was the file properly logged, categorized and tracked?
6. Was the investigation begun and completed promptly?
7. Was the investigation organized and managed effectively?
8. Was the investigation thorough, identifying the relevant witnesses and leads to investigate? Was all police activity investigated and evaluated, including identifying and investigating potential misconduct that was not alleged in the initial complaint?
9. Were credibility determinations made and the correct burden of proof used?
10. Were material inconsistencies among witnesses and evidence identified and explored?
11. Did the investigative report comport with sound investigative principles and were the conclusions supported factually?
12. Were any policy or training implications addressed?
13. Was the complainant afforded unimpeded access to the complaint filing process?