

POLICE OVERSIGHT PROJECT
CITY OF ALBUQUERQUE

RICHARD JEROME, P.C.

POLICE ASSESSMENT
RESOURCE CENTER

May 2002

Table of Contents

Executive Summary	Page 1
Chapter 1	
Introduction	Page 7
Chapter 2	
Overview of Police Oversight Mechanisms	Page 8
Chapter 3	
Methodology	Page 11
Chapter 4	
Early Contest for POC and IRO	Page 14
Chapter 5	
Citizen Complaint Process	Page 16
A. Receipt and Acceptance of Complaints	Page 16
B. Verbal/Unofficial Complaints, and Discouragement	Page 19
C. Complaint Documentation and Tracking	Page 22
D. Assignment	Page 22
E. Mediation	Page 22
F. Notification	Page 24
G. Investigation	Page 24
H. Time Frame for Investigation	Page 25
I. Disposition	Page 28
J. IRO Review; Concurrence/Non-concurrence	Page 30
K. POC Appeal	Page 30
L. CAO Appeal	Page 30
M. Discipline	Page 30
Chapter 6	
Internal Affairs Unit	Page 32
A. Staffing	Page 32
B. Workload	Page 32
C. Sustain Rate and Discipline	Page 32
Chapter 7	
Consultants Review of a Sample Investigations	Page 34
Chapter 8	
Independent Review Office	Page 41
A. Appointment of IRO	Page 41
B. Duties of the IRO	Page 42
C. CPC File Review	Page 44

Table of Contents (Continued)

D. IRO CPC Investigations.....	Page 46
E. Review of I's – Shootings and Other Uses of Deadly Force ...	Page 46
F. Recommendations from CPC Review	Page 47
G. Statistical Review of Non-concurrences	Page 48
H. Audit Function/Police/Long Term Planning.....	Page 51
I. Tort Claim Review	Page 52
J. Supporting the POC	Page 53
K. Outreach and Reporting	Page 53
L. Outside Views of the IRO	Page 55
Chapter 9	
Police Oversight Commission	Page 56
A. Appointment	Page 56
B. Training	Page 58
C. CPC Appeals	Page 59
D. Statistical Analysis of Appeals	Page 66
E. Public Comment.....	Page 68
F. Police Function	Page 69
G. Outside Views of the POC	Page 70
Chapter 10	
Shootings	Page 73
A. Shooting Investigations	Page 73
B. Police Developments	Page 77
C. Crisis Intervention Team	Page 78
Chapter 11	
Other APD Accountability Mechanisms	Page 79
A. Early Warning System	Page 79
B. Use of Force Reporting	Page 82
C. Risk Management	Page 85
Chapter 12	
Public Confidence in the Police Oversight Process.....	Page 87
Chapter 13	
Conclusion	Page 88
Acknowledgements	Page 89

Appendices

- Appendix 1 – Qualification of Consultants
- Appendix 2 – Albuquerque Police Department Citizen Police Complaint Form and Brochure
- Appendix 3 – Chart of Sanctions
- Appendix 4 – Comparative Information About Staffing
- Appendix 5 – Albuquerque Police Department Internal Affairs Unit Use-of-Force Report Form
- Appendix 6 - Annual Reports from 2000 and 2001 on APD's Use of Force

POLICE OVERSIGHT PROJECT

CITY OF ALBUQUERQUE

RICHARD JEROME, P.C.

THE POLICE ASSESSMENT RESOURCE CENTER

EXECUTIVE SUMMARY

In 1998, the Albuquerque City Council, with the goal of enhancing public confidence in the Albuquerque Police Department and in the fairness and integrity of procedures for investigating citizen complaints, approved the Police Oversight Ordinance, which established new ways to address those complaints and augment public input into their resolution. The Ordinance required that an independent study be undertaken at a later date to evaluate the success of those efforts and “recommend any necessary changes or amendments that would appropriately improve the process.” This Report is that independent study.

We conclude that Albuquerque’s oversight system has enhanced the quality of internal police investigations and thus has achieved, although only in part, the goals set out for it. To eliminate the oversight functions now would be a mistake. By the same token, to fail to reform and substantially to improve them would also be an error.

The system has two principal components – the Independent Review Office (IRO) and the Police Oversight Commission (POC). We believe the IRO has served as an important check and balance on the Internal Affairs Unit (IA) within the police department. This is evidenced by the fact that the former Chief of Police occasionally sided with the IRO over his

own IA unit to sustain misconduct violations. The IRO is directly involved in the complaint process, rather than just monitoring the process as is the case in many other systems, and the IRO can agree or disagree with IA's initial findings. In this way, it influences both the outcome of the individual investigation and the way IA investigates complaints generally. In addition, by conducting its own investigations of about half the citizen complaints, it builds public confidence that the police are being held accountable for their activities. The quality of the IRO's own investigations, while not perfect by any means, was good in general. In those instances where the IRO chose to review the investigation performed by IA, the quality of the IRO review fell below our expectations and raised concerns.

There has been significant criticism of how the IRO has been administered. Some believe the IRO has not asserted itself adequately in challenging the police department. Others, particularly within the APD, are concerned that the Independent Review Officer does not have an adequate grounding in police practices. However, the Albuquerque Police Department (APD) leadership, IA commanders, other city officials, and civil rights advocates all agree that the IRO office plays an important and positive role in the citizen complaint process.

We conclude that the Office has not reached its full potential. Part of this is due to limitations of time and budget. Part of it surely is due to the need to handle the Office's first priority, which is investigating citizen complaints and reviewing investigations performed by IA. But ultimately the IRO should have wider ambitions and, as it gains experience and confidence, it should exercise its authority to perform systematic evaluation of APD policies and procedures, especially as they relate to the use of force. The IRO has not exercised the

important authority it has to identify trends and patterns of police misconduct by using its monitoring and audit powers more aggressively.

The POC is the seven member body that hears appeals of citizen complaints and provides a forum for public comment and discussion of APD policy issues. Similar to the IRO, the POC has not achieved its potential and has been subject to vocal and frequent criticism. At times, unfortunately, the POC has had a polarizing effect on relations between police and the community, rather than functioning as a bridge. The POC is viewed, incorrectly in our view, as “anti-police” by many members of the police force. In sharp contrast, the POC is considered ineffective by civil rights advocates and community activists. Unquestionably, the POC had a tumultuous beginning, requiring the fledgling organization not only to function without an IRO, but also to tackle legal challenges and abide a series of disruptive and emotional early public meetings. Things have now settled down, and the POC functions more smoothly with the assistance of the IRO.

Nonetheless, structural impediments built into the rules and practices of the POC prevent it from functioning effectively as part of the appeals process for citizen complaints. These include the POC’s lack of access to the investigative file and officers’ statements, the failure of officers to appear at POC hearings, and the apparent rule that discipline may not be imposed if investigations take longer than 90 days to complete.

The POC, at a minimum, must have access to completed IA files. Also, POC proceedings are broadcast on public TV, and the highly visible and public nature of its workings chills participation by police officers. To build trust and confidence within the police community, while still permitting full public knowledge of its operations, we recommend that the appeals portion of POC meetings be held in closed session, with the

important caveat that the results of any closed sessions be reported in full in the public portion of POC meetings. To speed things along, it might be well for the POC to use smaller, rotating panels to hear appeals. These changes, if adopted, will require amendments to the Police Oversight Ordinance and potentially to the Memorandum of Agreement (MOA) with the police union.

In addition to its responsibilities as an appeals panel on citizen complaints, the POC plays an important role educating the public about APD practices and procedures and providing a forum for public comment. Both the IRO and POC could benefit from more outreach to the public to publicize their activities and the complaint process. We also recommend that the POC enhance its focus on APD policies, practices and training, particularly in trying to identify patterns or trends in police use of force and misconduct. The POC also should invest its time and resources to improve its relations with the police department and rank and file officers. It would be helpful if the members of the POC participated in and observed Academy training, went on ride-alongs, and reached out affirmatively to get to know APD officers

The POC is caught between two polarizing perspectives. The police think it is biased; the advocacy community thinks it is ineffective. Neither the POC, nor the APD, nor the advocacy community, has done enough to meet the other two halfway. We are particularly disturbed by the failure of officers to participate at POC appeal hearings. It is useful in this regard to keep in mind that the POC has more modest powers than some cities have given their civilian review boards. Its recommendations to the Chief of Police are just that – recommendations that are not binding. We think it is thus in the interest of APD officers to affirmatively cooperate with the POC. Lack of cooperation by APD officers could ultimately

lead to demands that the POC be given subpoena power and final authority over police discipline, two dramatic steps we do not endorse at this time.

The APD itself has made significant efforts to improve its accountability mechanisms. It needs to build on those efforts. To its credit, the APD has an early warning system, a use of force reporting system, a Crisis Intervention Team for dealing with emotionally disturbed individuals, and a tort disposition system for alerting the APD chain of command of potential problems. This Report suggests improvements in each of these systems to more closely approximate best practices in the police profession, particularly with respect to the early warning system and the analysis of use of force data. The APD has also commendably instituted policy changes regarding officers' discharging their weapons at cars and has introduced a greater array of less-than-lethal weapons, such as tasers and bean bag projectiles. On the other hand, our review of the APD's Internal Affairs Unit (IA) produced mixed results. Although the quality of the investigations generally was good, there were a number of files in our review of closed cases that raised concerns about the thoroughness of IA investigations. We also recommend a number of changes to the complaint process to enhance its openness and integrity.

In summary, while the institutions created by the Police Oversight Ordinance have begun to enhance the fairness and integrity of internal police investigations, the IRO and the POC have not reached their full potential. Both require substantial reform and improvement. Both have only achieved in part what they are capable of doing. The same holds true of the APD. Neither the IRO nor the POC should be abolished. Each can do much to build cooperative relationships with the APD and improve community confidence and satisfaction with its policing services. To put an end to Albuquerque's experiment so early on would be a

serious error. At the same time, it would also be a serious mistake not to reform and substantially improve both the IRO and the POC.

POLICE OVERSIGHT PROJECT

CITY OF ALBUQUERQUE

RICHARD JEROME, PC,

THE POLICE ASSESSMENT RESOURCE CENTER

Chapter 1. Introduction

Richard Jerome, PC, and the Police Assessment Resource Center (PARC) were retained by the City of Albuquerque to prepare an independent and detailed assessment of the effectiveness of the City of Albuquerque’s police oversight mechanisms. In enacting a new ordinance in 1998 establishing the Police Oversight Commission (POC) and the Independent Review Office (IRO), the City Council also directed that after the ordinance was in effect for 18 months, the City should hire an independent consultant “to undertake a complete evaluation and analysis of the entire Police Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process.” Section 9-4-1-11. This is that study.¹

To measure the effectiveness of the any police oversight system, it is first necessary to examine the goals for which it was created. The purpose of the City’s police oversight system, as stated in the City’s Police Oversight Ordinance, “is to provide a means for prompt, impartial, and fair investigation of all citizen complaints brought by individuals against the Albuquerque Police Department, and to provide for community participation in setting and reviewing department policies, practices and procedures.” Section 9-4-1-2.

¹ The qualifications of the consultants are described in Appendix 1 to this report.

Stated in a somewhat different fashion, the goals of police oversight generally are:

1) To reduce police misconduct by identifying improper officer behavior and imposing appropriate discipline on individual officers, and supervisors where appropriate; to identify any patterns or trends of misconduct or improper behavior, which in turn can be used to develop improvements in training and tactics; and to identify potentially problematic behavior by officers so that such behavior can be addressed before discipline is warranted.

2) To strengthen the relationship between the community and the police, by providing an accessible and credible complaint review process, and by increasing the confidence of residents that police officers will act properly and will be held accountable for improper behavior. Citizens should view the police department as committed to public service, open to criticism and determined to correct itself. Citizen oversight should also provide a forum for public comment and concerns.

In this report, we include a description of the policies, practices and procedures of the main entities in Albuquerque's police oversight system, our conclusions and observations about how well those entities meet the goals of police oversight, and our recommendations for improvements. We measure Albuquerque's system against (a) the requirements of the Police Oversight Ordinance, (b) "best practices" in the professional policing, and (c) the comparative experience of other cities with citizen oversight systems.

Chapter 2. Overview of Police Oversight Mechanisms

There are three major players involved in police oversight in the City of Albuquerque.

The Internal Affairs Unit (IA) of the APD investigates citizen complaints against police officers (known as Citizen Police Complaints or CPC's) and allegations of misconduct initiated by other APD officers and supervisors (known as Internal Investigations or "I's"). These investigations are administrative investigations (as opposed to criminal investigations) to determine whether APD officers violated the rules and regulations governing APD officers. These rules and regulations are contained in the APD Standard Operating Procedures (SOP's). I's include investigations of misconduct reported by APD officers, firearms discharges (other than at the training range), accidents, missed court dates and procedural violations of SOP's reported by APD commanders. Allegations of criminal misconduct are referred to the District Attorney for investigation and potential prosecution, and are not investigated by IA. When an allegation has been sustained by IA – i.e., it has been determined that a violation did occur – the matter is then referred up the APD's chain of command for a recommendation for discipline. Recommendations of discipline of over five days suspension must be approved by the Chief of Police.

The second major player in the City's police oversight system is the Independent Review Office (IRO). The IRO acts as a monitor and auditor and in some cases as an independent investigator of allegations of police misconduct. Under the Police Oversight Ordinance, the IRO reviews all CPC investigations conducted by the APD as well as IA investigations of shootings and other uses of deadly force. As part of that review, the Independent Review Officer determines whether she agrees with the findings of IA, and if not, advises the APD of her "non-concurrence." If there is still a disagreement between the IRO and the APD after discussions of the case with the IA staff and the Deputy Chief, the IRO will arrange a non-concurrence meeting with the Chief of Police. The Chief then either concurs or

disagrees with the IRO recommended finding. For some CPC's, the Independent Review Officer uses investigators from her office or hires an outside investigator to conduct the investigation. In those cases, the IRO's findings are forwarded to IA for their concurrence or non-concurrence, and a similar non-concurrence meeting with the Chief will be held for cases not worked out at the staff level. The IRO also prepares appeals of CPC decisions to the POC and acts as staff for the POC.

The POC, consisting of seven volunteer commissioners, has at least three major functions. First, it hears appeals of CPC decisions where the complainant is unhappy with the determinations of the Chief and the IRO. These appeals are heard by the POC at regular monthly meetings. Second, the POC invites public comment on the APD at its monthly meetings. Third, the POC is charged with reviewing the APD's policies and practices and making recommendations to the Chief of Police for improvements.

In addition, as described in more detail in the following sections, there are other offices within the APD and the City of Albuquerque that play a role in addressing police accountability. These include the Chief Administrative Officer (CAO), City Attorney, the City's Risk Management Office, and the Operations Review Section of the APD under the Deputy Chief for Administrative Support. Also, of particular relevance is the Personnel Board, which rules on city employees' appeals of discipline. While the Chief of Police determines what discipline is appropriate for sustained violations, officers may appeal the Chief's decision to the Personnel Board, which provides the affected employee with a hearing before an examiner. As a result, the discipline imposed by the Chief of Police is often reversed or significantly reduced.²

² A review of the operations of the Personnel Review Board was beyond the scope of this report. However, for a discussion of the importance of examining what happens after the police disciplinary

Chapter 3. Methodology

This project entailed gaining a thorough understanding of the APD's practices and procedures for receiving and investigating citizen complaints and other allegations of police misconduct. This included a review of:

- The APD's general orders and SOP's regarding complaint investigations and IA procedures;
- any protocols or manuals for complaint investigations;
- IA practices and procedures regarding receipt of complaints, public outreach, complaint investigation and disposition, record keeping, and training of investigators;
- The APD's practices and procedures regarding the imposition of discipline;
- Albuquerque's procedures for recording, investigating and analyzing tort claims and lawsuits alleging police misconduct; and
- Quarterly reports of IA activities.

We conducted interviews of the Police Chief, the former Police Chief, a Deputy Chief, the commander of IA, APD Captains, and selected rank and file officers and union representatives. We examined the APD's early warning system, and how that system is used by the APD to manage the risk of police misconduct and evaluate and audit the performance of the APD officers.

We also examined policies and procedures for the review and investigation of officer-involved shootings. We reviewed who rolls to the scene in police shootings, which entities are

system through the personnel system, see Iris, Mark, "Police Discipline in Chicago: Arbitration or Arbitrary?" in 89 *Journal of Criminal Law and Criminology*, 215 (1998).

responsible for investigating such incidents, how decisions are made regarding whether the firearms discharge was within policy or a violation of the APD policy, whether training and tactical issues are addressed in the investigation and disposition, and how aggregate data from firearms discharges are reported and analyzed. This review also examined the role of the IRO and the POC in shooting investigations.

Second, we analyzed the activities of the IRO, including whether the IRO is acting in accordance with the provisions of the Police Oversight Ordinance. We looked at both how the IRO conducts original investigations of citizen complaints and how the IRO reviews and analyzes the investigations of citizen complaints conducted by IA. This included:

- a review of the procedures and protocols governing IRO activities;
- a review of the training of IRO investigators;
- a review of the quarterly and annual reports of the IRO;
- an evaluation of IRO public outreach and educational activities relating to the police complaint process;
- an examination of policy and training recommendations made by the IRO as a result of its review of complaint investigations, excessive force claims and officer involved shootings, and an examination of the APD actions taken as a result of those recommendations; and
- an examination of whether the IRO conducted audits of the APD, including any audits to determine if all citizen complaints are being documented by the APD and referred to the IRO, or any audits of citizen access to IA and of information provided to citizens by APD officers about the complaint process.

As part of our analysis, we reviewed a sample of closed complaint investigations, including both allegations that were sustained and those that were not. We looked at whether those investigations meet national standards for both procedural and substantive measures, including whether the file contained all of the relevant documentation, whether the investigation was begun and completed promptly, whether the investigation was thorough, identifying the relevant witnesses and leads to investigate, and whether the investigation reached sound conclusions.

Our review of IRO activities also assessed the staff assistance provided to the POC, the support provided for POC meetings and hearings, and the relationship generally between the IRO and the POC. In addition, we reviewed the role of the IRO in monitoring claims for excessive force and police-involved shootings.

Third, we reviewed the POC's procedures and organizational structure. This included a review of POC minutes, and sample tapes of POC meetings. It also involved interviews of POC commissioners, to ascertain their views of the POC process and the effectiveness of the IRO and other police oversight mechanisms. The issues examined included:

- the timeliness of POC hearings and dispositions;
- confidentiality of materials in IA files and of IA findings;
- whether the IRO is providing sufficient information to the POC;
- whether officers should be required to participate in appeals hearings;
- the role of the POC in police shooting investigations; and
- whether the POC is sufficiently concentrating on policy and training issues, in addition to processing appeals.

Fourth, we interviewed the City Attorney, city council staff and a city council member, and the former CAO for their views of the effectiveness of Albuquerque's police oversight system. Finally, we interviewed citizen stakeholders and a variety of community leaders and organizations who have been involved in Albuquerque's police oversight system.

Chapter 4. Early Context for POC and IRO

Prior to 1998, the City of Albuquerque's police oversight system consisted of an Independent Council, whose functions were similar to, though slightly less broad than, today's IRO, and the Public Safety Advisory Board (PSAB). The PSAB, made up of 11 members, was authorized to conduct studies, gather information and make recommendations about the policies and practices of the police, fire, corrections and detention departments.

In a 1997 report prepared for the Albuquerque City Council, Professors Sam Walker and Eileen Luna concluded that Albuquerque's system "was ineffective, risk management settlements were excessive, and... the Public Safety Advisory Board was dysfunctional." Legislative Findings, Police Oversight Ordinance, Section 9-4-1-3C. Following the Walker/Luna study, the City Council established an Ad Hoc Public Safety Committee, which in turn set up a citizens' Task Force on Police Oversight. The outcome of these evaluations was the Police Oversight Ordinance establishing the POC and the IRO.

The POC got off to a rocky start. The first several meetings in early 1999 were devoted to POC start-up, but the remaining meetings in 1999 were dominated by discussions of what procedures should govern POC activities, including POC appeals, whether public comments should be limited to two minutes, and heated disputes over the process for selecting IRO candidates to recommend to the mayor. The POC attempted to evaluate and interview

IRO candidates in a closed hearing, rather than in an open meeting broadcast live on public TV. This decision, as well as the time limitation on public comment, was taken to court by an APD officer. The result was a court decision requiring that interviews of IRO candidates take place in open session, and a delay in the selection of IRO candidates to forward to the Mayor until January 2000. Ann Steinmetz, the first IRO, was selected in February, 2000.³

As a result of these events, the POC developed a significant backlog of appeals. The first appeals were heard at the POC's March 2000 hearing, 11 months after the POC's first meeting.

Ann Steinmetz, the Independent Review Officer, also had difficulty hitting the ground running. As she states in her 2000 Annual Report, no office, supplies or staff were provided to the IRO initially, and she was temporarily located in the public library until June 2000. Her first full time staff assistant started in August 2000. For these reasons, the IRO did not begin reviewing IA investigations of citizen complaints, and concurring or not with IA findings, until the second half of the year. Another stumbling block occurred when it was discovered that the first two investigators that the IRO sought to hire for her office had criminal backgrounds and thus could not be hired. The two IRO investigators now working for the IRO began in September 2001. In addition, there initially was a dispute about whether officers were required to give compelled statements to the IRO and to IRO investigators. The union contract and the Police Oversight Ordinance have now been changed to clarify that officers are required to provide statements to the IRO and the IRO investigators.

³ Fred Abramowitz, the Independent Counsel when the POC was established, continued until September 30, 1999, when his contract expired. The City Council refused to extend his contract, and there was no IRO or its equivalent from September 1999 to February 2000.

Chapter 5. Citizen Complaint Process

Citizen Police Complaints, or CPC's, are the heart of the City's police oversight system. For this reason, we start with a description of the process by which citizens can file complaints about police behavior, and how those complaints are handled.

A. Receipt and Acceptance of Complaints. Complaints about police misconduct may be made by citizens in person at the IRO office, at IA headquarters, at police headquarters, or at any of the APD's substations. Complaints may also be submitted by mail, by fax, over the phone, by a third party (such as the witness to an incident or the parent of a juvenile) or anonymously (although, as noted below, oral complaints are treated differently from written complaints). In addition, a complaint form is available on the IRO's website. According to the ADP's SOP's, "[i]t is the policy of this Department to accept all complaints of alleged officer misconduct." SOP 3-43.

The IRO office is open from 8:30 am to 5:30 pm. After hours, an answering machine provides information on the office and takes messages. IA is open from 7:30 am to 5:00 pm. After hours, complaint forms are available outside the door to the IA office, although the office is in a government building with limited after-hours access. During evening hours, complaint forms are available at public libraries and at police substations, as well as on the IRO web site. Persons wishing to make a complaint at police headquarters after hours might be provided with a written complaint form or a supervisor might take the information to pass on to IA. More likely, however, they would be asked to come back to the IA or IRO offices during business hours.

Complainants who come in to IA or the IRO office are asked to fill out and sign a "Written Complaint Form." There is also an explanatory brochure describing the complaint

process (both attached in Appendix 2). The explanatory brochures are supposed to be available at city libraries, fire stations and the Mayor's office. Uniformed officers are required to carry copies of the brochure, in English and Spanish. SOP 3-43-2. In 2000, a volunteer for the IRO delivered materials describing the IRO office and the complaint process to homeless shelters, women's shelters, and to the city's neighborhood associations. The IRO staff investigators report that they periodically check at the police substations for complaint brochures and forms when they visit the stations for interviews of officers. However, there is no formal process at the IRO office to audit the availability of complaint forms or access to the complaint process.

- We recommend that the IRO periodically audit the availability of complaint forms, as well as auditing the information given to persons seeking to make citizen complaints.⁴
- We also recommend making changes to the complaint form. The current form asks for information about the complainant, has several lined blank pages for a narrative statement, and asks for witness information. We would add more specific questions about the location of the incident, the identification of the officers involved, if known, and any injuries alleged. We would also add how the complaint was received and by whom.
- The APD website has information about the complaint process and where a complaint form can be obtained. It would be helpful if the APD website also had the complaint form available to be downloaded. Also, the APD website

⁴ In many police departments around the country, audits of citizen access to the complaint system have revealed that citizens are often not provided with information about how to make complaints, provided with misinformation, or actively discouraged from making a complaint. See, for example, "Failing the Test: Oakland's Police Complaint Process in Crisis," (ACLU/PUEBLO Report, 1996); Warren Christopher, Report of the Independent Commission on Los Angeles Police Department, 158-159 (1991); investigations of the Police Complaint Center, Diop Kamou, executive director, at www.policeabuse.com.

should include information about the IRO and the POC, and the APD website and the IRO website should have “hot links” to each other.

For citizens who do not speak English, IA has a staff person who speaks Spanish and the IRO has a part time assistant who is Spanish-speaking, but there is no formal bilingual process at either office. We reviewed at least one complaint file where the complaint was in Spanish and the complainant’s interview was conducted in Spanish through a translator. For other languages, the citizen would need to bring in his or her own translator.

- We recommend that the IRO examine recent Census data and perhaps conduct a survey to determine if forms and assistance should be available in other languages.
- The IRO should examine whether there are additional locations at which complaint forms should be available.

By ordinance, citizen complaints must be made within 90 days of the incident about which the citizen is complaining. While there are other jurisdictions that have a similarly short time period for filing complaints,⁵ many jurisdictions have a longer period. For example, in Las Vegas and San Diego, individuals have up to a year to bring complaints to the police department. In Chicago there is no limit. Neither the IRO nor the IA Commander felt that the 90 day limitation prevented a significant number of complaints, and the IA commander noted that if the allegations of misconduct were serious enough and credible, IA could turn the complaint into an Internal investigation (or “T”) and go forward with the investigation. Internal investigations are not subject to the 90 day limitation. The IRO’s

⁵ Complaints in Berkeley, CA, also must be filed within 90 days of the incident, although that period can be extended for an additional 90 days by the review board. Boise, Idaho, also has a 90 day limit, which can be waived by Internal Affairs or the city’s ombudsman. Indianapolis has a 60 day time limit. Washington, D.C., has one of the shortest periods in which a complaint must be filed – 45 days. Tucson has a 180 day filing period, but IA can waive this requirement.

annual reports for 2000 and 2001 did note, however, at least seven cases where the complaint was filed more than 90 days after the incident, and the investigation was inactivated as a result.

- Albuquerque should consider implementing a longer period in which complaints can be filed.

B. Verbal/unofficial complaints, and discouragement. For a complaint to be investigated as a CPC, it has to be in writing. Individuals who want to make a complaint in the field or at a substation, or those who call in to IRO or IA, are supposed to be given the option of making a formal written complaint. Otherwise, their complaint will be treated as a “verbal” complaint and an attempt will be made to resolve the complaint informally.

According to the APD SOP’s, verbal complaints can be documented on a “Verbal Complaint Form” (PD-1113), but it is up to the individual officer handling the complaint to “use his/her discretion in determining the level of documentation necessary.” SOP 3-43-3(F). The SOP’s also state that any verbal complaint alleging a serious violation of department policy or a criminal violation must be documented (on a PD-1113), and IA notified. Again, the officer receiving the complaint makes this decision. If IA determines that the complaint does not merit investigation, this decision is supposed to be forwarded to the IRO for review.

In practice, however, it appears that verbal complaints are rarely, if ever, documented on the Verbal Complaint Form. Indeed, we were told that IA has not seen such a form come in to IA for some years. Instead, IA noted that an informal complaint could become a formal complaint if the citizen was not satisfied with the resolution in the field and fills out a written complaint form; or it could become an “I” investigation if it were reported by an APD supervisor and IA believed it to be serious enough to investigate. Both the IA lieutenant and

the APD captains with whom we met stated that informal complaints are handled on a case-by-case basis. For “minor” complaints (e.g., failure to wear a seatbelt or rudeness), the complaining citizen will be asked what he or she would like done – i.e., would the citizen like to talk to the officer’s supervisor, have the supervisor talk to the officer, or file a complaint. A serious complaint (e.g., theft) will be treated as a formal complaint. None of the captains believed complaints were discouraged. As one said: “I don’t know of a sergeant or lieutenant who wants to risk getting into trouble by covering for an officer.” However, there is no program for monitoring or auditing citizen access to the complaint system, either by IA or by the IRO. On the other hand, we did not encounter community members or organizations complaining about access to IA, or discouragement of complaints. While an officer’s failure to accept a complaint could be subject to discipline, the IRO was unaware of that issue arising in her tenure.

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. It appears inconsistent for the APD to have a written policy that it “accept[s] all complaints” but then to treat a category of complaints separately, that are not documented and cannot be audited. Neither the IRO nor the APD can evaluate whether the complainant was satisfied, whether the complaint involved issues of discourtesy or more serious misconduct (for example, use of force), or how the situation was resolved. This is an area of risk for the department.⁶

⁶ See, generally, United States Department of Justice, “Principles for Promoting Police Integrity,” 7 (January, 2001) found at <http://www.ncjrs.org/pdffiles1/ojp/186189.pdf>.

- For these reasons, APD should document all informal resolutions of complaints in the field. IA and the IRO should be notified of the complaint and of the resolution, so they can be sure that serious complaints are appropriately handled. Otherwise, it becomes more difficult to identify (1) officers with multiple instances of minor complaints, or (2) officers or supervisors who might be discouraging complaints. Once informal complaints and their resolution are being documented, APD and the IRO should review the results of this process. If this review indicates that misconduct is being inappropriately handled informally, APD should consider eliminating the distinction between formal and informal complaints.
- Where complaints are called in to the IRO or IA Unit, the person fielding the call should complete the written complaint form, which should then be treated as any other complaint and investigated as appropriate.

In many larger police departments, the Internal Affairs section maintains a confidential hotline for complaints, for either citizens or officers. This ensures that officers can bring misconduct allegations to the department's attention without fear of retaliation. Albuquerque does not have a complaint hotline. The APD suggests, however, that the number of Internal investigations indicates that officers and supervisors are willing to bring allegations to IA. Anonymous complaints are evaluated by IA, and will result in an "T" investigation if IA determines there is merit to the allegations. IA does not keep statistics on how frequently that occurs.

- We recommend that the APD consider a confidential IA hotline.

C. Complaint Documentation and Tracking. Written citizen complaints are logged in by IA and assigned a CPC number; they are then sent to the IRO for assignment either to an IRO investigator or back to IA. Complaints made directly to the IRO office are date stamped, logged and sent to IA for a CPC number, and then returned for assignment. At the IRO offices, the staff assistant inputs data about the complaint into a Microsoft Access database, including a summary of the allegations. Similarly, IA has a computer database into which information about the complaint is inputted. As the complaint moves through the CPC process, additional information is added to the IRO and IA database.

D. Assignment. The IRO makes the decision as to whether a CPC will be investigated by an IA investigator or an IRO investigator. IRO staff investigators began work in September 2001, and now investigate approximately half of the CPC's. Prior to September 2001, the IRO could investigate a CPC only by hiring an outside investigator, which was done on an infrequent basis. According to Ann Steinmetz, a CPC will be kept for IRO investigation if she believes the complainant would be more comfortable discussing the case with a non-police department investigator. She will assign the CPC to IA if there is any potential criminal liability on the part of the officer, or if there is an element of an internal violation (e.g., if there is an allegation of theft from the property room). If a CPC is assigned to IA, it will either be investigated by an IA sergeant or, for less serious allegations, assigned to the field command for investigation. The new IRO may wish to assess whether more formal standards for assigning the CPC's is desirable.

E. Mediation. The IRO also has the option of designating a CPC for mediation. Both the officer and the complainant must agree to the mediation; if not, the CPC will be investigated. Mediation has been used infrequently. According to the IRO annual reports,

mediation was used in only four cases in 2000 and four cases in 2001. The IRO opts for mediation when she believes a meeting between the involved officer and the citizen will resolve the citizen's concerns; for example, where an explanation of police procedures may satisfy the citizen that the officer acted properly, or where the citizen wants an opportunity to discuss the incident face-to-face. Mediation in these cases is similar to what other agencies label "conciliation," as there is no independent mediator used. Generally, it has consisted of a meeting between the citizen and the officer, facilitated by the Area Command captain, either at an APD facility or sometimes the citizen's home. The IRO has not attended any mediation. If mediation successfully resolves the citizen's concerns, the CPC will not be investigated; if the mediation is not successful, the complainant has the option of asking that the investigation of the CPC continue. According to the IRO and IA reports, all eight mediations in 2000 and 2001 were successful. However, this has not been independently verified.

A number of oversight agencies use outside mediators as part of their complaint resolution process. In Las Vegas, a county agency conducts mediation at no charge for the Las Vegas Sheriff's Department. In Minneapolis, the civilian review authority contracted with a private, nonprofit organization to provide unlimited mediation services under a \$1,500 per year contract. Certified mediators typically conducted 40-50 sessions per year, with the parties reaching agreement in about 90 percent of the cases.⁷ In Rochester, New York, certain categories of cases (excluding excessive force cases) are eligible for a conciliation option, and these cases are mediated by the Center for Dispute Settlement, a non-profit dispute resolution center founded by the American Arbitration Association. (Rochester also contracts with the Center to conduct its civilian review panels of IA findings. The Center trains and provides the

⁷ Finn, Peter, "Citizen Review of Police: Approaches and Implementation," National Institute of Justice (March 2001), p. 72.

panelists and arranges for the reviews.) In Albany, New York, the Government Law Center of the Albany Law School will be running a mediation program for the Citizen Police Review Board. The San Diego Review Board uses the San Diego Mediation Center.

- We recommend that the IRO consider using mediation to a greater extent than is done presently, and set up a system whereby the success of mediators can be empirically evaluated and tracked. In addition, the IRO should investigate the availability of outside mediators who could be used for this purpose.

F. Notification. Once a complaint has been filed, the officer who is the subject of the complaint is notified of the complaint and given copy of the complaint to review (SOP 3-42-2). The officer's supervisors are also provided with a copy of the letter. The complainant is also notified which IA or IRO investigator has been assigned to the case.

G. Investigation. The procedures for conducting the investigation are the same for IA and IRO investigators. The investigator identifies the police department's SOP's that were potentially violated, and writes those up as "Issues of Concern." It is also a best practice in policing that if, in the course of investigation, the investigator identifies other misconduct not initially alleged in complaint, these violations also are supposed to be investigated.

According to IA, in conducting the investigation, investigators will obtain copies of police reports (crime reports, incident reports, traffic citations, arrest reports, field investigation ["FI"] and supplemental reports), communications records (CAD, dispatch, 911, belt tapes), medical records, photos, shift line-up sheets, or any other documentary evidence. Investigators will also interview the complainant, the subject officer, citizen witnesses and other officers on the scene. These interviews are taped, but are not transcribed. After

compiling this information, the investigator writes up a summary of the investigation and his or her findings.

While there is a standard format that investigators use in preparing the results of the investigation, there is no written manual for conducting the investigations. Nor does IA appear to use a checklist of investigative activities or case control sheet to ensure that all appropriate investigative steps have been taken. IRO investigators do use an activity log to document their case-related activities, but the files we reviewed that were investigated by IA investigators did not include any such logs.

- IA should draft an investigative manual that addresses the significant activities that should be undertaken in an administrative misconduct investigation. This manual should include the use of investigative activity logs and checklists (e.g., were photos taken and dated, were medical records obtained, was there a canvass of witnesses, etc.).

H. Time frame for investigation. The City’s contract, or Memorandum of Agreement (MOA), with the police union states that administrative investigations are to be completed in 90 days, which can be extended by the Chief of Police for an additional 30 days. This 90 (or 120) day period for investigation “shall not include the time for review.” The review period stated in the MOA is an additional 30 days.⁸ The APD’s SOP’s are slightly different. They require that within 60 days from the filing of a written complaint, the Chief of Police or his designee “shall take any action necessary, including disciplinary action, to

⁸ Section 23P of the MOA states: “Any administrative investigation will be completed within 90 days. The 90 day period shall not include time for review. An extension of up to 30 days may be granted but will only be obtained in writing and approved by the Chief of Police. A copy of the approval will be sent to the APOA. The review process shall be completed within 30 days.”

complete the review of the complaint.” Under the SOP’s, the APD may request an additional 30 days from the Chief Administrative Officer. SOP 3-43-2.⁹ It is our impression that the city resolves these conflicting deadlines by requiring that **both** the investigation and the process for imposing discipline in sustained cases be completed within 90 days.

Neither IA nor the IRO uses an automated system for tracking the time taken to complete an investigation. Instead, both offices use a “grease board” to track the status of investigations. The Walker/Luna study noted that the City did not meet the time deadlines for complaint investigations in about half of the cases they reviewed. Completing investigations within the 90 day time deadlines continues to be a problem, noted by both IA and the IRO. In the early tenure of the IRO in 2000, some of that delay apparently was due to the time it took for the IRO review, given a backlog of files for review, no staff, and the fact that the Independent Review Officer was still familiarizing herself with APD procedures. Now, however, it appears that IRO reviews of IA files take place rather quickly; moreover, investigations by IRO investigators have been completed within the 90 day deadline. The lieutenant in charge of IA noted several reasons for IA investigations going beyond the 90 day deadline, including officers not being available for the IA interview, supervisors not deciding on discipline recommendations in a timely manner, and requests for reinvestigation by the IRO. Moreover, the 90 day deadline will almost always have elapsed by the time a case appealed to the POC is heard by the POC, the POC makes its recommendations, and the Chief of Police acts on the POC recommendation.

⁹ SOP 3-43-2 states that “**Within 60 days of the filing of a written complaint, or the completion of the Internal Affairs investigation, whichever is sooner, the Chief of Police or his designee shall take any action necessary, including disciplinary action,** to complete the review of the complaint. The Chief of Police may request that the [CAO] grant an extension of up to 30 days.” (Emphasis added.)

There is some dispute over the consequences of not meeting the 90 deadline for investigations. As noted in the Walker/Luna Report, it appears that the APD uses only verbal counseling for sustained violations where the investigations take longer than 90 days to complete. The APD justifies this result by saying that if it imposed more severe discipline (such as suspensions) in such cases, the discipline would be overturned if the officer challenged the discipline before the Personnel Board. The IRO, however, believes that the reviews by the chain of command and IRO, as well as the POC appeals process, should not be included in the 90 day time period for completing investigations.¹⁰

The 90 day limit for completion of the investigation **and** the imposition of discipline hinders appropriate discipline in certain cases, particularly cases sent back to IA by the IRO for reinvestigation and those appealed to the POC. IA quarterly reports cite 11 sustained SOP violations in 2000 and 2001 CPC's where no discipline was taken because the time deadlines were not met. There were also three sustained SOP violations in 2000 and 2001 I's where no discipline was imposed due to untimely completion of the investigation. Other police departments, while requiring timely investigation of complaints, do not have time frames quite so short or do not include the disciplinary process in their investigative time limits.¹¹ In California, for example, a state statute requires that the investigation and discipline be imposed within one year of the discovery of the misconduct, although the one year period is tolled during the pendency of any criminal or civil proceeding, and can be extended for various reasons. CA Penal Code Section 3304(d). In Illinois, disciplinary action against officers for excessive force must be imposed within five years of the incident. We recognize the importance of timely investigation and review for both complainants and subject officers. The

¹⁰ It should also be noted that the former CAO stated he was unaware that discipline (other than verbal counseling) would not be imposed for investigations taking more than 90 days.

¹¹ For example, Boise, Idaho has no time limit for investigation and discipline.

APD needs to try to meet its deadlines for investigations; however, discipline should still be imposed if a violation is sustained after IRO review or a POC appeal.

- The City needs to clarify its policies with respect to the timelines for investigating misconduct and imposing discipline. At a minimum, the APD SOP's should be changed to be consistent with the MOA, allowing 90 days for an investigation, with the availability of a 30 day extension from the Chief of Police, and another 30 days for the review process. The City should also clarify whether the IRO review or a POC appeal is counted in the 30 day review process. As we discuss in Chapter 9, excluding POC appeals from the 30 day review process would be the better outcome; otherwise the POC has little chance of affecting the decision on the case.
- Albuquerque should strive to negotiate changes to the MOA, clarifying that discipline can still be imposed in sustained investigations that take longer than the 90 (or 120) day deadline for investigation.

I. Disposition. After conducting the investigation, the investigator writes a summary of the investigation and recommends a finding for each alleged SOP violation.¹²

Findings are based on a “preponderance of evidence” standard, including the investigator’s assessment of the credibility of the complainant and the involved officer. The finding will be one of the following dispositions:

Sustained: The alleged act occurred and it was a violation of APD policies or SOP’s.

¹² This is a change from prior years. In the previous system, investigators prepared a factual summary of the investigation, but the file was then sent to the Area Command captains who then made findings on the SOP violations. Now, IA makes the findings, which the Area Command cannot change. We believe the current system is preferable.

Not Sustained: The evidence fails to prove or disprove that the alleged acts occurred. This is often the outcome where it is the officer's word against the citizen's word and there are no witnesses or corroborating physical evidence.

Exonerated: An "exonerated" finding is generally defined to mean that the alleged act did occur, but there was no misconduct because the act did not violate any policy or procedure. However, APD's SOP's define "exonerated" more narrowly as "the incident that occurred or was complained against was lawful and proper."

Unfounded: The alleged act did not occur (or did not occur in the way it was alleged), or the subject officer was not involved in the action. Thus, the officer did nothing wrong.

Inactivated: This determination will be used where the complainant cannot be located or refuses to cooperate, where the complainant has a mental health problem and his or her allegations are clearly not true, or where the complaint does not allege any violation of APD policies or procedures. It is also used if the complaint was made more than 90 days after the incident, or if the subject officer works for another jurisdiction other than the APD.

J. IRO Review; Concurrence/Non-concurrence. After the IA investigation is complete, the IRO reviews IA's findings. If there is a non-concurrence, there will be a review of the IRO's views by IA and the chain of command. If, after this review, there is still a disagreement, the IRO will set up a "non-concurrence meeting" with the Chief of Police. The Chief then either concurs or not with the IRO and makes the final determination. For files

that are investigated by the IRO, IA reviews the IRO's findings. Where IA does not concur with the IRO findings, a similar non-concurrence meeting will be held.

After a decision is made by the Chief, a letter is sent to the complainant noting the findings and disposition of the complaint. If the complainant is not satisfied with the disposition, the citizen can appeal to the POC, which will review the decision of the Chief of Police.

K. POC Appeal. A complainant may request an appeal to the POC within 10 days of receiving the Chief's disposition letter. The IRO will then schedule the appeal for an upcoming POC meeting and prepare a summary of case for the POC. At the POC hearing, the IRO will present a synopsis of the case, the complainant will be given 20 minutes to present his or her views, and the POC will ask questions. As noted below, the officers who are the subject of the allegations have an opportunity to appear, but none has done so. The POC will then make a recommendation to the Chief of Police regarding whether they agree or disagree with the IRO's and Chief's initial determination. The Chief of Police then decides whether to agree or not with the POC's recommendation.

L. CAO Appeal. If the complainant is not satisfied with the POC's recommendation or the Chief's decision, he or she can appeal to the Chief Administrative Officer. The CAO makes the final determination on the complaint.

M. Discipline. After the IRO reviews IA's findings (or after the Chief makes a determination in the case of a non-concurrence), CPC files with sustained findings are sent to the Area Command for a recommendation on discipline. The APD's policy on discipline, according to the APD's General Orders is to "ensure that disciplinary action be taken in a prompt, resolute, fair, and consistent manner." SOP 1-09. For this purpose, the APD has

established a “Schedule of Sanctions” to “provide a framework for the fair and consistent administration of discipline.” Id. (See Chart of Sanctions, SOP 1-09-20, attached as Appendix 3.) Each SOP has a pre-established level of discipline for violations of the SOP. In recommending discipline, supervisors are to determine, from the Chart of Sanctions, the minimum sanction applicable to the act or omission, and then consider the seriousness of the violation and the disciplinary record of the officer. Discipline is progressive, so that discipline for the second offense is greater than for the first, and greater for the third offense than for the second. Deviations from the use of the sanctions must be justified by the recommending supervisor/commander by listing mitigating or aggravating circumstances involved in the incident. SOP 1-09-7D.

The types of discipline used in the APD include verbal reprimands, written reprimands, suspensions, and termination. In addition, APD employs counseling and retraining. Counseling is used to “quickly deal with inappropriate behavior by an employee at the lowest level in order to modify that employees behavior positively.” SOP 1-09-11. Discipline over a 5-day suspension must be approved by the Chief of Police; otherwise, it can be determined by the chain of command. According to the lieutenant in charge of IA, if he has concerns about the discipline recommended by the Area Command, he would raise those with the Deputy Chief, who generally makes the final decision.

- APD created the schedule of sanctions to serve a laudable goal – to ensure the “fair and consistent” application of discipline. We recommend that the APD conduct a study to determine if the schedule of sanctions has achieved this goal.

- IA should develop standards and forms for documenting CPC activities occurring after IA finishes its investigation, e.g., IRO review, POC appeal, discipline imposed, Personnel Board appeal and disposition. The IA files we reviewed did not clearly reflect activity on the CPC beyond IA’s initial determination.

Chapter 6. Internal Affairs Unit

A. Staffing. The Internal Affairs Unit is commanded by a lieutenant and staffed with 6 sergeants when at full strength. There are four administrative support staff, and one volunteer who comes in part time to maintain and enter data in the early warning system. See Appendix 4 for comparative information about staffing of other IA departments.

B. Workload. According to IRO and IA reports, IA handles approximately 350-400 Internal and CPC investigations per year. Each IA sergeant completes about four investigations per month.

	I’s	Inactivations	CPC’s	Inactivations
1999	187	24	196 [from IA report]	79
2000	185	12	200 [from IRO reports]	33
2001	164	14	186 [from IRO reports]	52

C. Sustain Rate and Discipline. According to the IRO 2001 Annual Report, 19.9% of CPC allegations were sustained for investigations completed in 2001.¹³ According to the

¹³ There were 186 complaints filed in 2001. Of those, 52 were inactivated, 4 were mediated, and 26 remained pending at the end of 2001, leaving 104 completed investigations. These 104 complaints involved 261 alleged SOP violations. Fifty two of these allegations, or 19.9% were sustained. IA calculated figures in a slightly different fashion, counting all of the CPC completed in each year, rather than

IA 2001 Quarterly Reports, 78% of Internal investigations (263 of 339 allegations of SOP violations) were sustained in that year, not counting cases that were inactivated.¹⁴

The high sustain rate for Internal investigations may be partly explained by the types of cases handled as I's. These include avoidable accidents, failure to appear for court, and procedural violations about which the facts may not be much in dispute. CPC's tend to be allegations of low levels of force, abuse and discourtesy. In these types of cases, the determinations often come down to competing stories between the citizen and the officers that are harder to resolve.

The discipline meted out for I's and CPC's also differ. Discipline for SOP violations in I's included more severe penalties than in CPC investigations. Most discipline for sustained CPC's entailed verbal reprimands or written letters of reprimand. For CPC's, there have been no terminations in the last two years and about six to ten suspensions, of varying lengths, per year. However, it would not be correct to say that the APD does not discipline its officers for wrongdoing, just based on CPC's. As a result of Internal investigations, in 2000-2001, there have been nine officers terminated and 6 who resigned during the investigations,¹⁵ and about 25 to 35 suspensions per year. Written reprimands were also used frequently in I's.

We did note one pattern relating to investigations of alleged unnecessary force that did raise concerns. The 2000 IRO annual report lists 21 allegations of excessive force in citizen complaints, with one sustained.¹⁶ The 2001 IRO Annual report lists 48 allegations of use of

those filed in that year. For 2001, the IA Annual Report lists 426 SOP violations, of which 120, or 28%, were sustained.

¹⁴ For 2000, 76% of SOP allegations investigated in I's were sustained (315 of 412 SOP allegations sustained). In 1999, the figure was 79% (279 of 355 SOP allegations sustained).

¹⁵ It cannot be determined from the IA quarterly reports whether these terminations reflect actions taken after appeals to the Personnel Board are completed. If not, it would be important to know how many of these officers' terminations were reversed, and how many were rehired.

¹⁶ Because of the IRO's late start, the 2000 statistics on SOP violations includes data from only 99 of the 200 complaints in 2000.

force SOP violations, with two sustained and five still pending.¹⁷ We also noted that in many instances of force investigations, the force allegations were not sustained, but instead the officer was found to have violated various procedural SOP's, such as failing to use a belt tape or failing to properly report the incident. Conclusions should not be drawn just from the numbers, as these cases may rightly have been exonerated or unfounded. However, in our review of investigative files, at least two use of force investigations raised serious questions about the soundness of the determinations. As a counterpoint, several community members and city officials told us that serious cases of use of force tend to go straight to litigation rather than being filed as CPC cases.

Chapter 7. Consultants Review of a Sample of Investigations

As part of our evaluation, we reviewed a sample of the following types of files; (1) citizen complaints investigated by IA and then reviewed by the IRO; (2) citizen complaints investigated by the IRO itself; and (3) officer-involved shootings investigated by IA and then reviewed by the IRO.

Our review was not intended to be comprehensive; rather, our goal was to get a sense of the quality of the IA investigations, the IRO's review of those investigations and the IRO's own investigations. Several files reflected thorough, documented investigations and well-organized files. Nevertheless, we did note the following areas of concern. With such a small sample, it cannot be said whether these concerns reflect systemic problems or isolated ones.

Both IA and the IRO did not always conduct a thorough interview of witnesses, seek out additional potential witnesses who might support the complainant's allegations,

¹⁷ IA's statistics are slightly different. IA reports investigating 51 force SOP allegations in 2001, stemming from 31 incidents, and sustaining one allegation of excessive force.

or obtain all appropriate records. In some of the files we reviewed, witnesses were either not asked the right questions or not asked any questions at all.

- In one case investigated by the IRO and involving an alleged use of force during the search of a house, it appears that there were several other potential witnesses to the incident, but the IRO apparently did not attempt to interview them. In the same case, the complainant also alleged that the officer used an ethnic slur and profanity; however, there is nothing in the IRO's investigative file to indicate that the IRO asked the officer if the allegations were true. (It should be noted that we did not listen to tape of the interview of the officer in this case. However, even if that tape reflects the officer's answer to this question, the question and answer should be documented in the investigative file.)
- In a shooting case investigated by IA, the officer admitted to discharging his firearm into the front windshield of an occupied car; the only issue was whether the shooting was accidental (as the officer claimed) or intentional. While IA interviewed the driver of the car, he was not asked any questions that might have shed light on the officer's intent (e.g., the driver may have alleged that the officer pointed the gun at him or his passenger in a threatening manner), and IA didn't interview the passenger in the car at all. The IRO did not comment on this deficiency.
- In another case, the complainant alleged that he witnessed an officer repeatedly use OC spray on a handcuffed suspect from only 8-10 inches away.

This incident occurred in a driveway. The complainant gave IA the name of the owner of the house, and IA contacted him. The man denied seeing anything, but made comments suggesting that he feared retaliation by the police. However, it does not appear that the IRO tried to contact him to see if he would speak more freely with the civilian oversight agency.

- A complainant alleged that he was improperly stopped by officers on his bike, arrested, searched, treated rudely and made to stand by the roadside without his shoes or socks, resulting in frostbite, and then released. The officer who conducted the search could not be identified by IA, but a finding against the sergeant on scene was sustained for not properly requiring written reports of the arrest. The IA investigation did not include medical records or photos, even though those records and photos were provided to the City of Albuquerque's Risk Management office by the injured individual as part of a tort claim filed before the investigation was complete. Because the case was appealed to the POC, these materials were provided to the POC by the complainant's lawyer. The complainant's attorney also noted that IA did not interview other officers relevant to identifying the target officer. In the same case, the IA summary of the case stated that the sergeant did not recall seeing the complainant with his shoes removed, although the sergeant stated he did see the complainant without his shoes according to the investigator's summary of the sergeant's statement.
- A homeless man alleged harassment by an officer on two occasions, and that when he ran from the officer in the second incident, the officer "manhandled

him” and shoved his face into the hood of a car. IA interviewed other officers present at the two incidents, but did not attempt to interview other witnesses the complainant identified.

- Finally, and perhaps most disturbingly, we reviewed a case in which the complainant suffered bruises and cuts to his head (requiring stitches in two places). The complainant alleged that the officer punched and kicked him at the scene of his arrest, and then beat him again in jail. During their interviews with IA, the subject officer and a witness officer said that the complainant’s injuries were self inflicted, having occurred when he banged his head against the back window of the patrol car while sitting unaccompanied in the back seat. However, neither officer mentioned such “head banging” in the reports that they filled out contemporaneously with the incident. Yet, there is nothing in the file suggesting that either IA or the IRO asked the officers to explain this discrepancy.

Both IA and the IRO appear willing to pass judgment on the credibility of complainants but not on the credibility of officers. In the cases we reviewed, the IRO and IA commented on the credibility of complainants. There is nothing wrong with doing so, of course. However, the credibility of officers appears to get lighter scrutiny from both IA and the IRO.

- For example, in a case discussed above, the complainant suffered bruises and cuts to his head (requiring stitches in two places), allegedly as a result of beatings that he received at the scene of his arrest and at the jail. As previously mentioned, there appeared to be a discrepancy between what the

officers told IA (the complainant's injuries were self inflicted, having occurred when he banged his head against the back window of the patrol car while sitting unaccompanied in the back seat) and what they wrote on the reports that they filled out contemporaneously with the incident. This discrepancy goes to the credibility of the officers. Moreover, it appears to be customary at the APD to call emergency personnel to the scene when a suspect has sustained visible injury; however, in this case, the officers took him straight to the jail. This deviation from custom – which appears to not have been addressed by either IA or the IRO – also goes to credibility. Finally, when the subject officer was asked if he had tape recorded the incident, he stated that he had done so, but that he had not tagged the tape and hence could not find the incident on the tape. This, too, goes to credibility, but neither IA nor the IRO addressed the credibility of the officers at all.

IA did not always identify or investigate all the SOP violations alleged in the complaint, or investigate “misconduct not alleged in the complaint.”

- In the case described above where the complainant alleged he had been improperly stopped, arrested and his shoes removed, IA identified only potential SOP violations relating to profane language and failure to prepare appropriate police reports. IA did not thoroughly review the allegations that the stop and arrest were improper, and did not identify those SOP's as issues of concern.

While most files contained the necessary photographs, they were often not dated or adequately marked. As appropriate, the APD routinely takes photographs when there is

an allegation of force or injury. However, none of the photographs in the IA files that we reviewed was dated. The date, and even the time, of a photograph, can be critical.

- For example, in a case discussed above, the complainant alleged that he witnessed an officer repeatedly OC spray a handcuffed suspect from only 8-10 inches away. Both IA and the IRO noted that photos of the suspect's face showed that his eyes were clear, rather than red as one would expect if he had been repeatedly sprayed from a close distance. However, given that the photograph did not show the time or even the date on which it was taken, the probative value of this photograph was suspect.
- In addition, the photographs in the files were missing other information that might prove useful or even crucial in building (or defending) a case. For example, in one case involving two officers, it was alleged that one of the officers suffered cuts to his hands during a struggle with the suspect. The file contained photographs of a hand replete with cuts. However, it was impossible to tell from the photographs whose hands had been photographed.

The IRO use of the “exonerated” finding is inconsistent with the standard definition of “exonerated.” A finding of “exonerated” means that the acts alleged by the complainant occurred, but that the actions of the officer did not violate police procedures. However, we found a number of cases in which the IRO recommended a finding of “exonerated” even though the officer's alleged conduct would, if true, be criminal.

- In one case, the IRO recommended a finding of “exonerated” even though the complainant alleged that he had been beaten both at the scene of his arrest and at the jail.
- In another instance, the complainant alleged, among other things, that the officer made false statements in the incident report filled out contemporaneously with the arrest. Even though the relevant SOP provides that it is a violation for an officer to file any false statement in any report filled out in the course of duty, the IRO recommended a finding of “exonerated” on the grounds that the incident reports were “merely factual descriptions left up to a court to decide.” Under these circumstances, a finding of “exonerated” was inappropriate. If the IRO did not believe the complainant’s allegations, the appropriate finding would have been “unfounded.” If the IRO could not choose between the competing version of events offered by the complainant and the officer, the appropriate finding would have been “not sustained.” The distinction between “exonerated” and “not sustained” is not a trivial one; the former suggests that the officer acted fully within departmental policy, whereas the latter suggests that actual wrongdoing was alleged but the evidence is inconclusive.
- In the case of the homeless person (described earlier) alleging harassment and unnecessary force in two incidents, IA determined the force allegation was unfounded, based on questions of the complainant’s veracity and inability to fully describe the incidents (though the interviews were through a translator) and the fact that other officers stated they saw no battery or force used. IA,

however, did not account for a photo of the complainant showing an apparent injury to his eye in the second incident, nor did IA investigate the complainant's allegation of a broken tooth in the first incident. The IRO changed the force finding to "exonerate" because the officer admitted some force, but the IRO stated the force "appeared reasonable." However, she did not explain why the force was reasonable, or reconcile this finding with the statements of the witness officers.

Some of the confusion over the use of the "exonerated" finding may stem from the ambiguous definition contained in IA's quarterly reports and other materials, which define exonerated as "the actions of the officer were lawful and proper." The APD should adopt the more common definition.

Chapter 8. Independent Review Office

A. Appointment of IRO. The Police Oversight Ordinance establishes the process for appointing the Independent Review Officer. The candidate search is undertaken by the POC, which screens, interviews and then selects three candidates to forward for the Mayor's consideration. The Mayor nominates the Independent Review Officer, with the approval of City Council. The Independent Review Officer is a full-time contractual city employee, but the Ordinance does not state the term of the contract, or whether that contract may be extended. The Ordinance also does not specify whether this same process must be used again at the end of the first Independent Review Officer's contract term.

As noted in Chapter 3, the original Independent Review Officer appointment process was engulfed in controversy over whether the Independent Review Officer selection and

interviews must be done in an open meeting. Unfortunately, because the Independent Review Officer replacement process is not spelled out, additional uncertainty has resulted in 2002.

The POC recommended renewing the contract of the current Independent Review Officer, but the Mayor declined to do so. The Mayor also declined to extend the Independent Review Officer's term beyond three months for a transition to a new Independent Review Officer, and he declined to change the term of the Independent Review Officer contract, which is one year.

- We recommend that the Independent Review Officer term be specifically defined in the Police Oversight Ordinance, and that it be at least two years. For a new Independent Review Officer, learning the procedures of the office and of the APD will take time, and changing Independent Review Officer's each year would be extremely disruptive.
- We also recommend that the Ordinance specify that the Mayor may (but is not required to) extend the contract of any existing Independent Review Officer upon the recommendation of the POC, rather than having to start the selection process from scratch.

B. Duties of the IRO. As specified in the Police Oversight Ordinance, the IRO's duties are to:

- receive all complaints and claims against the APD and its officers; review complaints and assign them for investigation either to the APD or IRO;
- “oversee, monitor and review” all such investigations and make findings for each;

- make recommendations and give advice regarding Departmental policies and procedures to the POC, City Council, and Mayor, regarding these investigations;
- establish an “impartial system of mediation” for certain complaints, which, if successful, would take the place of investigation;
- “monitor all claims of excessive force and police shootings,” serve as an ex-officio member of Claims Review Board, and be notified of all APD-related settlements of over \$25,000;
- maintain the information necessary for quarterly reports;
- make recommendations to the APD on specific training, changes in policy or duty manuals, and to follow up and monitor the implementation of those recommendations;
- provide staff assistance to the POC; and
- provide outreach to the community and publicize the complaint process.

The IRO is staffed by the Independent Review Officer, two investigators, a staff assistant and a part time computer assistant. One of the investigators was an officer with the San Diego, CA, police department, including assignments to patrol, in internal affairs, as a union representative and a detective. The other was an investigator for the State of New Mexico and the State Attorney General’s Office. After hiring, the investigators were trained for two weeks by the Independent Review Officer on the APD’s IA process, the IRO office and the Police Oversight Ordinance, and the APD SOP’s.

- We recommend that the IRO staff investigators (and the Independent Review Officer) be eligible for and included at the APD's expense in any investigative training that the APD conducts or to which it sends its IA sergeants.
- Albuquerque should consider establishing minimum criteria for hiring the IRO and IRO investigators. This would, among other things, increase the credibility of the individuals in these positions.

C. CPC File Review. Where the IRO believes that IA has not adequately investigated a complaint, the IRO either sends it back for additional investigation, or has its investigators do the additional work. There have been numerous cases in 2000 and 2001 where the IRO has asked IA to follow up on certain aspects of the investigation. This has included instances where the complainant was not interviewed by IA, in some cases because IA was unable to find the complainant; IRO has either sent the files back to IA for an interview, or found the complainant and conducted the interview itself. In several instances, the IRO has not concurred with the inactivation of a file, which has resulted in additional efforts to investigate the complaint. In one file we reviewed, the APD was unable to identify the subject officers, and the IRO hired an independent investigator (this was prior to the hiring of staff investigators) to help identify the officers involved and details of the incident. The investigator was able to interview the complainant and neighbors, and describe the incident so that IA was able to identify the officers and continue the investigation.

In cases in which the file appears complete, the IRO investigator reviews the IA file, listens to the tapes and prepares a draft review letter to the Chief for the IRO's signature. The IRO then reviews the file, listens to the tapes and makes any changes she deems necessary in the review letter. The review letter includes a summary of the investigation, including a

summary of officer and complainant statements and any statements recorded by the officer's belt recorder, the IRO's concurrence or non-concurrence, and any recommendations on policy, procedures or training stemming from the IRO's review. The review letter also identifies any additional SOP violations that the IRO believes should have been identified by IA, and contains her recommended findings on those SOP's.

In our examination of IRO files, we noted that most of these files contain very little documentation of the IRO's review activities. They sometimes included handwritten notes, a copy of the complaint and the IRO review letter.

- We recommend that the IRO complete a checklist for each IA file reviewed. Such a checklist would note whether the complainant was interviewed, whether all other relevant witnesses were interviewed, whether the IA file contained the necessary reports and documents, and the IRO's conclusions regarding the soundness of IA's findings. This would make analysis of IA's work much easier, and would document the thoroughness with which the IRO is reviewing IA files.

D. IRO CPC Investigations. The IA lieutenant and the Area Command captains are complimentary of the IRO investigators and IRO investigations. The IA lieutenant stated that the investigations are thorough, thoughtful and well documented. The IA lieutenant has had non-concurrences with IRO investigations, though he stated they were mostly where the IRO disagreed with the recommendations of her own investigators, and the IA lieutenant agreed with the IRO. The APOA union president also stated that the IRO investigators were very professional, though he still thought IA was best equipped to investigate misconduct allegations. Our review of a small sample of the investigations indicated a fair and thorough

process, including documentation of the activities of the investigators, something that was sometimes missing from the IA files. In one case, however, as discussed above, we noted witnesses who had not been contacted.

E. Review of I's – Shootings and Other Uses of Deadly Force. The IRO's review of Internal investigative files, which is limited to shootings or any in-custody death, and a few additional uses of force investigations, is similar to the IRO review of CPC files.¹⁸ The staff reviews the IA file and prepares a draft review letter, which the IRO then finalizes. However, there is no additional investigation undertaken by the IRO, and we are unaware of any cases sent back to IA for additional investigation. IRO activity appears to be limited to preparing the review letter, with the concurrence or non-concurrence with IA's findings.

In 2000, the IRO reviewed 14 shooting investigations, two internal use of force investigations and one in-custody death investigation. IA found three of the shootings unjustified and sustained SOP violations in those cases, and exonerated in the other shootings. IA sustained two force violations in the other three cases, and exonerated in the third. The IRO concurred in all of the findings in the 2000 I's, with the exception of one shooting case ruled justified by IA, but in which the IRO "remained neutral."¹⁹ In 2001, the IRO reviewed 7 I's of officer-involved shootings. IA exonerated in all seven, and the IRO concurred in each case.

¹⁸ The Police Oversight Ordinance language is ambiguous regarding the IRO review of IA shooting investigations and other I's. The city should clarify in the Ordinance and in APD SOP's exactly which I investigations the IRO should review. The current practice of reviewing firearms discharges, in-custody deaths and other uses of deadly force makes sense.

¹⁹ In this case, the IRO felt that she could not "second guess the reasonable belief of the officers" that they were faced with an immediate threat of harm, and stated that "[t]he Chief of Police should make the decision as to whether or not the officers acted lawfully and properly."

- As noted below in Chapter 10, in addition to a criminal and administrative investigation of each officer-involved shooting, the APD convenes a Shooting Investigation Review Team for each shooting to examine policy, tactics and training issues relating to the shooting. The IRO has not participated in the SIRT process or reviewed the recommendations of these boards. We believe the IRO should place greater focus on whether there are any tactical concerns related to shootings rather than solely focusing on whether the shooting was legally justified. One way of doing so is to have the IRO review the findings and recommendations of the SIRTs.

F. Recommendations from CPC review. The IRO's recommendations from her review of citizen complaints are contained in the review letters to the Chief. The IRO identified several recommendations for us. They included:

- (1) officers should activate their belt tape whenever a citizen is agitated or upset, whenever consent to search is requested, whenever an officer conducts any search (not just when executing a search warrant), and until the search is completed;
- (2) juveniles should be handled differently (from adults?) during traffic stops;
- (3) belt tapes should not be reused for 90 days;
- (4) reports should be required whenever firearms are drawn, a search is conducted, or whenever property is taken, including vehicles, even if the property is returned;
- (5) a "display of taser" should be reported as a use of force;
- (6) procedures for tagging evidence and money in SID should be revised; and
- (7) all injuries to either suspect or victim should be photographed, regardless of whether the incident is a misdemeanor or a felony.

Some of these changes were implemented by the APD, but many were not. Aside from going through each of the review letters, there was no way for the IRO to compile and analyze her recommendations and keep track of which ones were acted upon by the APD.

- We recommend that when the IRO recommends policy changes as a result of CPC reviews, such recommendations be documented in a separate file, and specifically track the APD's response. In addition, the IRO should include a discussion of these recommendations, and the APD's response to them, in her presentations to the POC during regular POC meetings.

G. Statistical Review of Non-concurrences. We examined all of the non-concurrences that occurred on complaints filed in 2001 to determine if any patterns existed. The IRO and IA did not concur on 28 of the 160 complaints (17.5%) completed in 2001 (186 complaints minus the 26 complaints pending at the end of 2001). Just from the numbers, it is hard to conclude whether the IRO has been sufficiently active in its review of investigations performed by IA, but they do suggest that the IRO has not been entirely passive in this regard.

Many of these "non-concurrence" cases involved allegations of multiple SOP violations, and thus many involved multiple disagreements between the IRO and IA. In fact, the 28 non-concurrence cases represent disagreements over 55 alleged SOP violations. The 55 non-concurrences were out of a total of 261 alleged SOP violations (21%). A closer examination of these disagreements reveals that:

- On 19 of the SOP allegations about which the IRO and IA disagreed, the IRO recommended that the finding be "sustained" rather than "not sustained" or "unfounded" as recommended by IA. **On 13 of those**

SOPs, the Chief agreed with the IRO rather than IA, and the violation was sustained.

- The other disagreements between the IRO and IA focused on which of the various findings that do not implicate an officer (“not sustained, “unfounded” and “exonerated”) was appropriate.
- In no case did the IRO recommend that an IA finding of “sustained” be changed to a finding that did not implicate the officer.

We discerned no pattern either in the types of alleged SOP violations that were the subject of a disagreement between the IRO and IA, or in the way the Chief resolved such disagreements. It does appear, however, that the IRO has been fairly active in its review of IA investigations and that the Chief has occasionally sided with the IRO over his own IA unit.

We believe that the IRO review of CPC files has had several positive results. First, it is a double check on IA investigations. The IRO has frequently identified additional SOP violations in CPC files that IA had not identified, requested additional investigation where she believed the IA investigation was incomplete, or disagreed with the findings of IA. Second, as a result of the IRO review, the IA investigations have become more careful and complete. As stated by both the current and former commander in IA, having an independent person evaluating IA’s performance makes the IA process better. They also noted that the IRO often has a different perspective on interpreting the SOP’s, and the IRO process makes IA look at the case from the citizen’s point of view. Third, in conducting its own investigations, the IRO adds to citizen confidence in the oversight system and provides a measure against which IA investigations can be held. Fourth, the IRO has identified policy and training issues of

concern for the APD from its review of CPC's, even if it has not tracked such recommendations as carefully as it might.

We also believe that the Albuquerque system compares favorably to oversight systems in other cities in which the citizen oversight body has overlapping jurisdiction with IA and conducts investigations parallel to the IA investigations. These systems duplicate work and run the risk of inconsistent findings. In such cases, the competing findings (or differing discipline recommendations) are often used against the department by officers in their appeal of discipline to the civil service or personnel board.

Some have suggested that the IRO should investigate all CPC's so that IA will only have to investigate I's. This might be a viable option if the IRO budget and staff were larger, but given the present allocation of resources between IA and the IRO, we believe that shifting more than half of the CPC investigations to the IRO would likely prevent the IRO from undertaking any of the other policy/monitoring functions of the office. It might also be used as a rationale for reducing the size of IA.

A related question is whether the IRO should have more responsibility in reviewing I's. Currently, the IRO reviews the most serious internal investigations – officer involved shootings, in-custody deaths, and certain use of force incidents, but these are only a small percentage of IA's internal investigation. Our recommendations on this score are similar. If the staff and budget of the IRO were significantly greater, there would be benefits to having an independent review of additional I's. However, given the constraints on the office, we believe the current system addresses those cases that cause the greatest public concern – officer involved shootings and serious uses of force. We therefore limit our recommendations in this

area to a greater role for the IRO in reviewing the policy and training implications of shootings, by reviewing the findings of the Shooting Investigation Review Teams.

H. Audit Function/Policy/ Long Term Planning. The Walker/Luna report noted that one of the failings of the prior Independent Counsels was that they made limited use of their policy review function. This continues to be a problem for the IRO as well. The bulk of the IRO's time and effort is put into review of CPC's and preparation of POC appeals. Despite the authority to do so, the IRO has not established any programs for systematic monitoring or auditing of the APD, or for analysis and study of the APD policies and procedures, or trends in complaints or the APD's use of force.

- While the review of individual IA files has allowed the IRO to impact IA procedures, there has been no effort to perform additional audits of the IA process. This might include determining if the APD were making complaint forms available where required; assessing whether persons asking about how to make a complaint are provided the correct information; and determining whether informal complaint resolution is resulting in any discouragement of citizen complaints.
- The IRO has not conducted any review of the APD training;
- The IRO has not collected and analyzed use of force information from the APD or evaluated the APD's efforts itself to analyze use of force statistics;
- The IRO has not audited, or asked the IA unit to audit, the use of force reporting system or the early warning system (see Chapter – below);

- The IRO has not attempted any systematic analysis of the APD tort claims, nor has it reviewed the Risk Management report prepared by the risk management personnel assigned to the APD; and
- The IRO has not done any surveys or focus groups of complainants after disposition of their complaints to assess their satisfaction with the process.
- We recommend that the IRO develop plans for more systematically addressing and identifying these and other APD policy issues.

I. Tort Claim Review. The IRO receives notices of all tort claims related to the APD. She also sits on the Claims Review Board, which meets weekly to review litigation and provide settlement authority to the City Attorney's office. The Independent Review Officer told us that she sorts the torts claim notices by officer and includes them in the officer files that she keeps in the IRO office. She has on occasion orally communicated concerns about individual officers arising from tort claims to the Chief of Police, and cited the example of a dog trainer against whom multiple tort claims were filed. Other than this informal mechanism, however, she does not undertake any analysis of the claims. As noted below (Section 10), the risk management staff at the APD prepares Risk Management reports for the APD leadership and the Risk Management Office. However, these reports are not shared with the IRO.

- The Risk Management Reports should be provided to the IRO for its review, along with individual notices of tort claims. With this information, the Independent Review Officer will be in a better position to participate on the Claims Review Board and to address any trends in police misconduct reflected in the tort claims.

J. Supporting the POC. The IRO prepares the agendas for POC meetings, sets hearings for POC appeals and prepares a packet of materials for POC members for each appeal. The current members of the POC expressed satisfaction with the work of the IRO and the support provided to the POC. Indeed, in December 2001, the POC recommended that the Independent Review Officer's contract be extended. Two former members of the POC were more critical, however. One stated that the IRO was difficult to supervise, that the member would always have to ask for information, and that the IRO's reports were "user unfriendly." The other stated that the IRO was not sufficiently helpful in obtaining information from the APD, or answering questions about incomplete IA files. The Independent Review Officer herself stated that she does not view her role as directing the POC, or setting the POC agenda.

- As noted in Chapter 9, we recommend that the IRO participate to a greater extent in developing the POC agenda on policy matters.

K. Outreach and Reporting. One of the responsibilities of the IRO is to publicize the citizen complaint system to the public and conduct outreach so that residents in the community are aware of how the police oversight system works. The IRO has accomplished this goal in a limited fashion.

The IRO has utilized a volunteer to distribute material about the IRO and complaint process to homeless shelters, women's shelters and libraries. The IRO has mailed material to neighborhood associations in Albuquerque and published articles in neighborhood association publications. The IRO has also visited high schools,²⁰ produced at least one video on the office that has aired on Channel 16, the public television station, and put up an IRO web site. Recognizing the limits of both time and budget, we believe these efforts meet the minimum

²⁰ One criticism is that the IRO has visited high schools in more affluent neighborhoods rather than in poorer areas.

requirements of the Ordinance, although we believe that further efforts to publicize the office should be undertaken.

It is difficult to measure public knowledge of and understanding of the IRO office, other than through surveys, which have not been done. We asked several members of the general public whether they had heard of the IRO, most had not; in fact, some young APD officers we met through ride-alongs were not aware of the office. On the other hand, the number of citizen complaints that are now coming in through the IRO office as opposed to IA has increased significantly from 2000 to 2001, and now almost half of complainants come directly to the IRO. This is at least one indication that more persons seeking to make a police complaint are aware of the IRO.

The IRO does publish quarterly and annual reports regarding its activities. These are disseminated to the POC, City Council, the mayor, several other city officials, and the APD. It is unclear whether the IRO distributes the reports to media outlets. It is not included on the IRO's web site, which is an additional way the reports could be publicized. These reports contain a significant amount of information, but the information is not in a form that is easily digested by public. This appeared to be a widely held view. The individual summaries of CPC allegations certainly give the reader a flavor of the types of cases IA and the IRO handle. However, these summaries only present the allegations, and if the case is unfounded or exonerated, the reader is not given any information as to why. Moreover, there is very little aggregated analysis of the complaints. For example, there is no compilation of concurrences versus non-concurrences; how many complaints result in appeals; or the aggregate results of the appeals. Readers have to add them up. Nor is there any attempt to describe trends or patterns of misconduct that the IRO has identified, or whether complaints or misconduct

appear to be increasing or decreasing. There is no discussion of the IRO's views on IA's investigations, the number of files the IRO sent back for additional investigation; or whether recommendations made to the APD by the IRO or the POC have been acted upon.

- There should be a link to the IRO on the APD's website.
- The IRO should utilize the media in disseminating quarterly reports, and any studies or other analyses it undertakes.
- The IRO should put its quarterly and annual reports on its web site.

L. Outside Views of the IRO. Almost all of the organizations and individuals we contacted are supportive of the IRO and the role it plays in Albuquerque's police oversight system. As might be expected, however, there are differing views on how well the Independent Review Officer has performed in the job. IA and APD managers have stated that relations with the IRO, while rocky at first, have improved considerably over time. They expressed the view that her review of IA and her decisions have gotten better, once she got over a learning curve. Area Command captains have questioned her knowledge of police procedure and some of her explanations of her decisions, but they also noted improvement over time. The former Chief of Police felt that having a full-time IRO has had an impact, and that the IRO brought problem officers to his attention.

On the other hand, some community members felt that the Independent Review Officer "is not an advocate for the community," and that she does not have the personality "to take on the police department." In this view, she has tried to get along with everyone, and has been co-opted by the police department. While she does the day-to-day job, she lacks a vision for the office and doesn't facilitate the policy review and agenda of the POC. In addition, one

former city official stated that the IRO was buffeted by politics, and pressured by the City Council.

Our most critical observation is that in our view the current Independent Review Officer has regarded her role as too limited. She has spent the large majority of her time on the citizen complaint process and has not taken advantage of the IRO's authority to do more systematic evaluation of the APD policies and procedures, especially as they relate to the use of force. We understand that the limitations of time and budget may restrict the next Independent Review Officer in undertaking this additional role, but we would have the IRO focus on improving APD performance and identifying trends and patterns of misconduct by using its monitoring and audit authority to a greater extent.

Chapter 9. Police Oversight Commission

A. Appointment. The POC's seven members are appointed by the Mayor, with the advice and consent of the City Council. Each Council member nominates one individual, and the Mayor appoints five POC members from among the nine nominations, plus two additional members. Nominees may not have been employed in law enforcement for two years prior to their appointment. POC members serve two year staggered terms, and may be reappointed. There appears to be a significant turnover of members since 1999, and the current POC has four of seven members whose terms expired in February, 2002. POC members have included an employee of Wackenhut (a private security and prison corporation), a minister, the director of an organization providing health care for homeless, an attorney, a former police officer and a former employee of the U.S. Marshals Service.

The Police Oversight Ordinance establishes the following duties of the POC:

- hear appeals of decisions of the IRO and Chief of Police on CPC's;²¹
- oversee the investigation and mediation of all citizen complaints;
- audit and monitor all investigations of police shootings under investigation by IA;
- review the work of the IRO;
- solicit public input by holding regularly scheduled meetings with a public comment period;
- submit quarterly reports;
- engage in a "long term planning process through which [the POC] identifies major problems and establishes a program of policy suggestions and studies each year;" and
- recommend three IRO candidates to the Mayor.

B. Training. Initially, the Police Oversight Ordinance required POC members to participate in the Citizen-Police Academy, a training held over the course of 12 weeks to orient members of the public to the job of a police officer. While at least one POC member did attend this training, the Ordinance was amended to remove the requirement. Several POC members viewed the Citizen Police Academy as "propaganda" and felt the time commitment was burdensome. POC members are required by the Ordinance to attend four hours of training per year conducted by a civil rights attorney. These training sessions are now done in hourly sessions during the POC regular meetings. Three civil rights training sessions were completed in 2000; only one session was presented in 2001. Other than this civil rights

²¹ The Ordinance states that all findings of the IRO should be forwarded to the POC, and suggests that the POC should review all CPC findings, not just those appealed. ("After the investigation and a review of the findings of the POC, the Chief shall consider the investigation and all other relevant and material evidence offered by the person investigated.") However, the practice has been for the POC only to consider those CPC's that have been appealed by the complainant.

training requirement, there is no formal training program. In addition, one new POC member noted that there was no program for new POC members to familiarize themselves with the APD, POC and IRO procedures. There are, however, presentations by the APD during POC meetings on various aspects of the APD.

- We believe that POC members would benefit from additional training, as well as from an orientation for new POC members. While we do not believe that participation in the APD's police-citizen academy is a necessity, we do believe that POC members should observe Police Academy use of force training and participate in a firearms simulation training session. In addition, POC members, especially new members, should be invited to IA for a presentation on IA procedures and the APD SOPs. The IRO should also brief new POC members on IRO procedures and the IRO office.
- POC members should also go on APD ride-alongs. This serves two purposes: outreach to rank and file officers, and education of POC members. The elimination of the requirement to attend the citizen-police academy was mentioned by numerous APD officers as demonstrating a POC bias against the APD. Attending Academy training sessions and going on police ride-alongs hopefully will reduce the friction between the POC and APD officers.

C. CPC Appeals. There are several aspects of the POC appeals process that raise questions regarding its effectiveness.

(1) POC members do not have access to the actual IA file with the subject officers' statements and belt tapes. They do receive the complaint, any police reports (with the officer's name redacted), medical records, and a redacted copy of the IRO's review letter,

which contains a summary of the case, including a summary of the officer's statement and any belt tapes. The Police Oversight Ordinance states that the hearing process shall be open to the public to the extent legally possible, so that it doesn't conflict with state or federal law.

However, certain aspects of the investigation are to be kept privileged and confidential. In particular, the Ordinance states that the compelled statement of an officer will be used only for the IA/IRO investigation, and will not be made public. According to the Ordinance, such statement "will remain confidential and will not be included in a final report or be forwarded to the POC. The IRO may summarize conclusions reached from a compelled statement for the report to the POC and the Chief."

It is unclear why the officer's name cannot be disclosed to the POC members; when officers appeal their discipline to the Personnel Board, their hearings are also open, without any redactions. Moreover, at the POC meeting, the complainant is free to state the officer's name and discuss the incident without restrictions. However, it is understandable why police officers would not want unfounded allegations disclosed publicly, given that POC meetings are broadcast live on public TV.

(2) The second impediment to the POC appeals process is that the subject police officers do not appear for the hearings. Under the union MOA with the city, officers are not required to come to POC hearings. This has been a consistent frustration for POC members and community activists. POC members have stated that they have questions about the incidents on appeal that they cannot answer, especially given the incomplete IA file. Generally, their view is that officers have a responsibility to the public to explain their actions, and that it would benefit the officers if they are able to clear their names. The officers' perspective, however, has generally been that the POC is biased against them, that they

already have provided a statement, and that the POC hearing gives the complainant an opportunity to embellish the allegations without consequences. As expressed by APOA's president, appearing before the POC would "be just another gauntlet for the officer."²² Community activists in Albuquerque have sought subpoena power for the POC to compel an officer's testimony. This change would require both an amendment to the Ordinance and to the union MOA.

(3) Appeals hearings are open to the public and broadcast live on public TV. Perhaps no other aspect of the POC process has generated as much discussion and division as the public broadcast of POC meetings, particularly the appeals hearings. While public TV provides an opportunity for public education on the APD processes, and adds transparency to a complaint process about which some in the community are inherently suspicious, it has significant downsides. Open hearings discourage the attendance of subject officers, and may also discourage some complainants who do not want to appear on public TV, but who might otherwise have appealed or shown up. (See CPC's 049-1999 and 113-1999.) It also publicly airs a personnel issue. This is especially troubling where the allegation is unfounded, and officers feel that negative and false information about them has been given to the public.

The Ordinance states that the regularly scheduled monthly meetings of the POC (and meetings held in response to a petition) are required to be broadcast on live TV. Other specially called meetings do not have to be on live TV, but they are required by the Ordinance to be videotaped and aired on the government access channel.

POC meetings are also subject to the New Mexico Open Meetings Law, and the Albuquerque City Charter provisions relating to public meetings of boards and commissions.

²² The fact that the POC rarely rules against APD officers (see below) can be viewed from either of two angles – that there is little risk to officers in appearing before the POC; or that there is not much to gain, as a favorable decision is likely anyway.

The Open Meetings Law does have an exception for personnel matters, but given the fact that the POC's recommendations are only advisory to the Police Chief, there may be some question regarding whether this exemption would apply. Some POC members have also expressed frustration that because of the requirements of the Open Meetings Law, their ability to ask questions about and discuss the cases before the POC meeting is limited. The procedures of other citizen review boards are mixed: For example, in Minneapolis, Rochester and St. Paul, appeals hearings are closed to the public; in Berkeley, Orange County, Chicago and Portland, appeals hearings are open.

- We recommend that appeals hearings portion of POC meetings not be broadcast on public television.
- We also recommend that appeals hearings be closed, but that the results of the appeals be reported at a regular POC meeting. We believe that this would foster more candid discussion of the incidents and would accommodate the personal privacy interests of the complainants and the officers. It would also encourage officers to attend the hearings. We understand that some will view this recommendation as counter to a public interest in transparency and disclosure of police department practices. However, our view is that the primary function of the POC appeal process is fair and effective decision-making on individual appeals. We believe the POC will improve police-community relations and enhance public confidence more if it is more effective in handling individual appeals and works better with the APD rank and file. We also recognize that hearing appeals in a closed session will

require an amendment to the Police Oversight Ordinance, as well as a review of the legal parameters of the City Charter.

- Some oversight agencies use rotating panels of three members of the oversight board to hear individual appeals, rather than the full board. This allows more appeals to be heard more quickly and reduces the time commitment of individual board members. On the other hand, it means that the appeal does not get the full panoply of views and perspectives represented on the POC. Albuquerque may want to consider this type of process if the number of POC appeals increases significantly.
- Third, we believe that the POC should have access to the complete IA/IRO investigative file, including the statements of APD officers, complainants and witnesses. Credibility determinations are often critical to evaluating a citizen complaint, and such determinations are made much more difficult without having the statements and tapes of the persons involved in the complaint. It is also difficult to assess inconsistencies among parties without the actual statements and reports. The IRO review letter, with its summaries, is helpful, but not a substitute. Also, the POC is supposed to review the work of both IA and the IRO; doing so is much more difficult without the entire file. If the appeals hearings are closed, as we recommend, there would be no need to limit the information to which POC members are privy. Moreover, one of the rationales for officers not appearing at POC appeals is that they should only have to give a compelled statement once. This rationale loses its relevance,

however, if the POC does not have access to the officer's statement. This change would also require an amendment of the Ordinance.

Several civilian oversight bodies do have subpoena power, including the Berkeley Police Review Commission, the Chicago Police Board, and the Orange County Citizen Review Board (never used). Others, such as the Rochester Civilian Review Board, the Tucson Citizen Police Advisory Review Board, and the San Diego Police Review Board do not. The Boise Ombudsman does not have subpoena power, but does have the authority to require officers to submit to interviews under threat of discipline. While we believe the appearance of officers at POC hearings would benefit both the POC and the APD, and we believe the APD and the APOA should encourage officers to appear before the POC, we do not recommend amending the Ordinance to add subpoena authority at this time.

In our view, the POC appeal process should be a review of the investigation, an opportunity for the complainant to provide input to the POC and answer questions, and a second opportunity to bring citizen input and perspective to the process. But it should not be an adversarial mini-trial with witnesses. Adding subpoena power moves it in that direction. The changes recommended above are designed to provide the POC with more complete information about individual appeals and remove impediments to officers appearing before the POC. Subpoena power does not come without costs, in terms of opposition from rank and file officers. Therefore, we recommend that the changes suggested in this report be given an opportunity to work, and that the issue of subpoena power be evaluated at a later date if necessary.

- Albuquerque should consider giving POC the authority to remand an appeal to IA with the direction that IA gather statements that the POC would otherwise subpoena.

(4) The POC's authority to make recommendations regarding discipline is unclear.

According to the Police Oversight Ordinance, the POC may modify or change the recommendation of the IRO “and make further recommendations to the Chief regarding the findings **and any discipline imposed** by the Chief or proposed by the Chief” (emphasis added). In addition, the “Rules for Appeals on Citizen Complaints” adopted by the POC in February 2000 state that the POC may “[m]ake further recommendation to the [Chief of Police] in regard to imposed or proposed discipline.” However, it is generally acknowledged by city officials that the POC does not address individual discipline in POC appeals. Rather, discipline is governed by the Schedule of Sanctions, and is left to the discretion of the Chief. In three 1999 CPC's heard in 2000, the POC recommended that the Police Chief add and sustain SOP violations not identified by IA, and also made discipline recommendations for those SOP violations. There have also been at least two cases where sustained SOP violations were appealed, in part, it appears, over the level of discipline imposed. In one, the POC commented that it could not go beyond the discipline set out in the SOP's; in the second, the POC questioned whether the discipline assigned to that SOP category was sufficient and recommended that the Chief examine that issue, but the POC did not recommend changing the discipline imposed in that individual case.

- While the Police Chief retains authority over the imposition of discipline (correctly in our view), there is no disadvantage to allowing the POC to make

recommendations to the Chief on discipline, consistent with the APD's Schedule of Sanctions, as the Ordinance now allows.

(5) POC appeals and decisions invariably occur after the 90 days for investigation and the APD action has been completed. Because of the way that the City has interpreted its MOA and SOPs, even if the Chief of Police concurs with a POC recommendation that an SOP violation be sustained, the only discipline that would be imposed would be verbal counseling. For this reason, the city should address the 90 day limit for investigations as recommended in Chapter 5.

(6) Many complainants do not show up. This was a particular problem for 1999 complaints, but it was still evident in 2001. The IRO suggests that some of the complainants withdraw their appeal or do not appear because once they receive the IRO review letter, they understand that the complaint has been reviewed carefully. (The Independent Review Officer contrasts her letters with the Chief's disposition letters, which usually do not provide the complainant with much detail about the basis for the disposition.) Another potential reason for "no shows" is that complainants were reluctant to appear on live TV. There is no way to know why complainants did not appear for POC hearings without trying to find out from some of the complainants.

- We recommend that the IRO periodically contact complainants who do not show up at their POC appeals, to find out why they did not appear.

D. Statistical Analysis of Appeals. To get a better understanding of the POC appeals process, we attempted to answer the following three questions: (1) How many citizen

complaints filed in the last two years were appealed? (2) Was there any pattern in the nature of those appeals? and (3) What was the outcome of those appeals?

(1) The number of complaints filed in the last two years that were appealed²³

Of the 200 citizen complaints filed in 2000, 20 (10%) were appealed. Of the 186 complaints filed in 2001, 15 (8%) were appealed. In eight appeals (four of the complaints filed in 2000 and four of the complaints filed in 2001), the complainant either withdrew his or her complaint or failed to appear at the POC hearing. This represents 22% of the appeals of complaints filed in 2000-2001. This is a sufficiently high number to warrant further investigation of this issue.

(2) The nature of the appeals

Over half (18) of the appeals involved an allegation that the officer violated SOP Section 1-04, which prohibits conduct such as rudeness, profane language and harassment. This is consistent with the percentage of rudeness and language allegations among all complaints filed. Twenty percent (7) of the appeals involved an allegation of improper use of force. This also appears to be consistent with the general complaint trends.²⁴ Thus, it does not appear that any particular type of alleged misconduct is more likely to give rise to an appeal.

As would be expected, almost all of the appeals were of a finding of “not sustained” or “exonerated;” i.e., most appeals were of a finding that the officer was not at fault. There were, however, a few instances in which the complainant filed an appeal in a case where an allegation of wrongdoing had been sustained; in those cases, the complainant was either not

²³ The analysis that follows does not include appeals of 1999 complaints that were heard in 2000. In those cases, of the nine that were heard, the POC recommended a finding of sustained in three cases in which IA did not, and requested additional investigations in three other cases. The Chief disagreed with the POC on two of the three sustained recommendations, and in the third issued instructions to all officers on public interactions.

²⁴ It should be noted that we did not have information on four of the appeals made on complaints filed in 2001.

satisfied with the discipline imposed on the officer, or there were additional allegations that were not sustained.

(3) The outcome of the appeals

Of the 23 appeals (from 2000-2001 CPC's) actually heard by the POC, the POC disagreed with the APD's finding in only two cases.²⁵ The Chief declined to adopt the POC's recommendations in both cases. In another 8 cases, the POC either requested more information from the Chief or made recommendations or comments regarding policy and procedures. Thus, it appears that the POC has seldom taken issue with the APD with respect to the individual appeals. Nine cases involved non-concurrences between the IRO and the APD.

In 11 cases, the complainant appealed the outcome to the Chief Administrative Officer. In two such cases, the CAO requested a review of policy and training. It is unclear whether the Chief acted upon these recommendations. In another case, the CAO sided with the POC over the APD, concluding that the findings should have been sustained, but, because the deadline for discipline had already passed, no discipline could be imposed. Rather, the CAO directed the APD to issue a "letter of instruction" to the subject officer regarding interactions with the public and the use of offensive hand gestures.

E. Public Comment. One of the principal functions of the POC is to allow public comment on the operations of the APD, and each POC meeting opens with a public comment period. While comments initially were limited to 2 minutes (as are comments to the City Council) the POC abandoned that limitation after considerable acrimony from persons who wished to comment for longer periods. Not surprisingly, the officer and union view of this

²⁵ Of the 35 appeals of complaints filed in 2000-2001, eight did not result in POC hearings because the complainant failed to appear at the hearing or the appeal was withdrawn, and 4 were pending at the time this report was drafted.

aspect of the POC differs greatly from that of the community activists. Officers view the public comment period as “gripe sessions” that allow individuals to exaggerate allegations of police misconduct on public TV. Activists view it as an essential opportunity for airing concerns and grievances. We see both sides. For example, over the course of two years, one individual has come to POC meetings for public comment on 19 occasions, only missing 4 meetings. Many of her statements did not pertain to the APD, police misconduct or any other aspect of POC functioning. Other persons also have come repeatedly. On the other hand, the POC would not be fulfilling its responsibilities under the Ordinance if it did not allow public comment.

- The public comment feature of POC meetings should be retained, but the POC chairperson should have greater discretion to limit comments to a reasonable time period, and to limit comments to those that directly relate to the APD and the POC.

F. Policy Function. At each POC meeting, the POC hears from the IRO, a representative of the City Council and the Mayor, and the APD. The POC has heard presentations on such APD programs and policies as the APD’s early warning system (EWS), its Crisis Intervention Team (CIT), shooting investigations, SWAT team, belt tapes, the APD’s Code Enforcement Team, the Vice Unit, the Maintenance of Effort program (an in-service training program), school resource officers, roll call training, and in-car cameras. These presentations are one of the public’s few windows into the APD’s operations. They also provide important information to the POC on policy matters. The POC also held one special meeting in 1999 on lie detector tests for IA investigations, based on a citizen petition. This appears to be the only time the POC called a special meeting on a policy issue.

The POC has also asked for specific information about the APD policies and practices in response to POC members' concerns. For example, the POC queried the APD on traffic stop procedures and whether a motorist should be informed why she had been stopped before the officer requests the motorist's license and registration. Often, these policy issues are raised as a result of a CPC appeal. One particular issue the POC has emphasized at several meetings has been the APD's use of belt tape recorders, particularly the issue of when officers are required to tape their activities. The POC has advocated for greater use of belt tapes, and for upgrading equipment so that tapes are more reliable and understandable. The POC has also addressed the use of SWAT "ruses," the APD's policies on tagging evidence in the Narcotics Bureau, whether Albuquerque should have allowed taping by the TV show "COPS," and the APD's vehicle take-home policy.

While the Chief of Police responds to POC recommendations in letters to the POC, the impact of the POC on APD policy appears quite limited. This may be due to a number of factors. First, the POC has not taken advantage of its authority to evaluate APD policy in any systematic way. For example, the Police Oversight Ordinance requires the POC to undertake a "long term planning process;" however, this item has been on the POC agenda for numerous meetings and been continued each time. Nor has the POC undertaken any in-depth studies of particular aspects of APD operations.²⁶ Second, the POC and the IRO have not effectively tracked POC recommendations and the APD's response to them. Recommendations and motions are listed in the IRO quarterly reports in the summaries of individual POC appeals or in shorthand fashion in the description of POC meetings. However, the POC has not compiled these recommendations or issued any reports on the APD's response. Certainly, it

²⁶ The POC does have subcommittees on various topics, including policy, budget, investigations, public outreach, and long range planning. While some of these subcommittees did meet in 1999 and 2000 to work on POC procedures, it does not appear that they have been active since 2000.

should be noted that POC members are volunteers who do not have an unlimited amount of time to devote to police oversight matters. However, the POC has not utilized the IRO to the extent it might have in developing its agenda on policy matters and examining issues of interest. Nor has the IRO taken on this responsibility itself; rather, the Independent Review Officer has stated that it is not her job to tell the POC what it should be evaluating.

- The POC should increase its emphasis on policy evaluation, including analyses of police training, and patterns or trends in complaints or use of force. We also recommend that the IRO prepare a list of topics to evaluate and a schedule for evaluation, e.g., use of force training, citizen complaint trends, less than lethal force, discipline studies.

G. Outside Views of the POC. One of the reasons for the controversy over the POC is disagreement over the role the POC should play. Different stakeholders have differing perspectives and objectives for citizen review. Community advocates seek of a body with investigative authority and resources, and with the authority to discipline and fire officers. Essentially, they would make the POC the Personnel Board for the APD. They are convinced that there is an inherent conflict of interest in having the police chief and police department investigating its own officers and disciplining them for force or shootings. This view is reinforced when IA defends officers at POC meetings. (Although of course IA is simply defending its own decisions; sustained IA decisions generally don't get to the POC.) Many believe the POC as now constituted is ineffective.

On the other hand, police rank and file and union representatives are very protective of their due process rights under the MOA and their rights to appeal to the Personnel Board. They do not believe the POC has any authority over discipline, and believe it should remain

advisory only. Officers believe the POC is a venue for unsubstantiated allegations against the police, with no rebuttal, which gives the public a skewed view of the police and undermines the morale of officers. (One officer described it as a “Jerry Springer atmosphere,” with an open forum for activists and no ground rules. Another stated that the POC has “reached its natural level of irrelevance.”) Many also question the make up of the POC, and believe it is biased against officers. The Area Command captains generally would not encourage officers to appear before the POC, although one stated he would not discourage an officer from appearing if the officer wanted to. There is also the belief that the POC lacks knowledge of APD procedures and the pressures facing a patrol officer.

One problem, as pointed out by one former city official, is that when the POC created it was given “responsibility without the requisite authority.” From a personnel standpoint, the POC does not fit neatly into the organizational chart. It does not have Personnel Board’s authority, yet the public views it as having that authority. According to this official, the POC was created as a “placebo so the politicians could say we did something.”

There is clearly a gap between the perceptions of the POC’s role and its actual activities. Some members of the public think the POC is an investigative body; it isn’t. Others want the POC to investigate officer-involved shootings; but it doesn’t have the resources to do that. Some complainants who are dissatisfied with the discipline imposed want the POC to have the officer fired, but the POC does not have that authority.

We believe the POC does play an important role in educating the public about APD practices and procedures, and in providing an opportunity for public comment. We believe that these functions can be improved. We have recommended that the POC enhance its focus on APD policies, practices and training, particularly on trying to identify patterns or trends in

police use of force and misconduct. The POC also needs to repair its relations with the APD and rank and file officers. One POC member stated that officers' antagonism towards the POC is the "elephant in the living room" that can't be ignored. It should address this by participating in and observing Academy training, going on ride-alongs, and through outreach to the APD officers.

In our examination of the POC, we have encountered two extremes of recommendations for the POC. Some have suggested eliminating the POC entirely, and focusing on the IRO. We believe it is too early in process to go this route. Moreover, the risk of further polarization and the potential blow to public confidence in the APD would be too great. Instead, the City should concentrate on improving the POC and enhancing its effectiveness. On other side, community activist recommend that the POC be given subpoena power, as well as final authority over discipline, making it the "personnel board" for the APD. We disagree. We believe the authority to discipline officers should remain with the Chief of Police. However, to the extent that Albuquerque can negotiate with the police union for officers to appear at POC hearings, that would improve the process and enhance public confidence in the police.

Chapter 10. Shootings

It was community concern over officer-involved shootings that prompted the Walker Report, the Task Force and the changes in the Ordinance that created the POC. Three recent police shootings have again raised the issue to a heightened level of attention and concern.

Professors Walker and Luna noted a high level of shootings based on the size of Albuquerque. Police officers respond that the level of violence in Albuquerque is very high,

with the 4th highest crime rate in the country per capita. They also suggest that the level of police shootings has gone down in the last several years, with the introduction of the Crisis Intervention Team (CIT), changes to the way the SWAT team is deployed, and the increased use of less-than-lethal weapons such as tasers and bean bag rifles. According to an IRO compilation, there have been 35 fatal police shootings from 1989-1999. In 2000, there were 19 firearms discharges, three of which were fatal, and in 2001, there were 15 firearms discharges, five of which were fatal.

A. Shooting investigations. Investigations of police-involved shootings are among the most serious investigations a police department undertakes, and they need to be thorough, comprehensive and unbiased. According to the APD, the following officials are notified of a firearms discharge and roll out to the scene of the shooting: homicide investigators, a Police Shooting Team sergeant, representatives of the DA's office, IA, and the assistant city attorney assigned to the APD. The IRO is also notified of officer-involved shootings.

S.O.P. 2-31 governs the procedures for investigating police shootings, including the responsibilities and duties of the personnel involved. A Police Shooting Team and the Criminalistics Section are responsible for the criminal investigation of all uses of deadly force involving APD personnel, where a person is injured or killed. The Police Shooting Team, consisting of detectives in the homicide unit, are responsible for the investigation; the Criminalistics Section is responsible for processing the scene and collecting evidence. Internal Affairs also rolls to the shooting scene and has discretion to monitor the criminal investigation, with the exception of the interview of the principal officer/officers (officers who discharged their firearms). For Garrity²⁷ purposes, the IA interview of the principal officer occurs at a

²⁷ An officer can be compelled to write a police report to make a statement to police investigators about a police incident, with a penalty of termination if the officer does not comply with the request to make such a

later date, separate from the criminal investigation. APD policies dictate that initial interviews of witnesses and APD personnel will be done without delay. These interviews are to take place before the interview of the officer that used deadly force. This officer is to be brought back to a police facility, given an opportunity to consult with a police psychologist and an attorney if desired, and then requested to provide a statement, after being provided Miranda warnings. According to the APD and the IRO, officers have given statements and have not taken the 5th or otherwise refused to cooperate with the shooting investigation. Investigations will include, as appropriate, ballistics analysis, photos, a canvass and interviews of witnesses, and other investigative techniques.

In a recent revision to shooting investigations, the APD has formed a joint shooting team with the New Mexico State Police and the Bernalillo County Sheriff's Department. The purpose of the joint team, according to the APD, is to ensure objectivity in the investigations and draw on additional expertise. The joint shooting team has just gotten underway, and is establishing a standard protocol, governing, for example, which office takes the lead in the investigation.

Once the criminal investigation is complete, the results of the investigation are referred to the District Attorney. Fatal police shootings are presented by the DA to the grand jury, which evaluates whether criminal charges are warranted. Over the course of the last 5 years, no police shooting has resulted in a criminal indictment.

After the criminal process has been completed, the APD continues with its internal investigation by the IA Unit. This is an administrative investigation to determine if any SOP's

statement. In Garrity v. New Jersey, 385 U.S. 511 (1967), the Supreme Court held that information learned in such compelled statements cannot be used in a criminal prosecution of the officer. Use of that information would violate the officer's 5th Amendment right against self-incrimination. For this reason, administrative investigations relying on compelled statements and criminal investigations, where an officer may remain silent, need to be separate.

were violated and if the shooting was justified or not. If IA sustains SOP violations, discipline is determined in the same fashion as for other I investigations.

In addition to the IA investigation, the APD also convenes a Shooting Investigation Review Team to examine the incident from a policy, tactics and training perspective. The SIRT determines whether any changes in APD policies, training or tactics should be made to reduce the potential for future shooting incidents and increase the safety of officers and the public. The APD's acquisition of tasers, a less-than-lethal weapon, resulted from the recommendations of a SIRT review, according to the APD.

As noted in Chapter 8, the IRO reviews I investigations of shooting cases. The IRO's review letter informs the APD whether she concurs with IA or whether there is a non-concurrence. In 2000-2001, the IRO issued a non-concurrence in one case, "remaining neutral" on the finding that the shooting was justified. Even though police shootings are a significant reason why the POC was formed, the POC plays very little role in the examination of police shootings. The POC does not review completed investigations of shootings, nor does the IRO report to the POC on her review of shooting investigations.

We reviewed two shooting cases investigated by the APD. In one investigation, the criminal investigation and the IA administrative investigation appeared quite thorough. Roll out was extremely quick, the Shooting Team commander effectively took control of the scene and the investigation, and officers canvassed the neighborhood for witnesses. Investigators interviewed the involved officers separately, within five hours of the shooting, and asked thorough questions, including follow-up questions. The investigative file contained incident reports, supplemental reports, field investigation supplemental reports, photos and drawings of the scene, the 911 transcript, and belt tapes. The investigation also included latent

fingerprints, criminalistics, blood tests, ballistics analysis, and an autopsy report. The IA investigation included additional interviews with the involved officers and a number of witnesses.²⁸

- Some community activists have suggested that shooting investigations should be conducted by the POC or the IRO, instead of the APD. We recommend against this. The APD has the technical capabilities and expertise to conduct shooting investigations; the IRO and POC do not. The IRO currently reviews the IA investigations of shootings and can ask the APD to conduct additional interviews, tests or other investigation if she believes it is warranted.
- The IRO should present its conclusions on shooting reviews to the POC. This would allow the POC to monitor shooting investigations as required by the Police Oversight Ordinance.
- The IRO should review the reports of the Shooting Incident Review Team, and report to the POC its conclusions regarding the recommendations of the SIRT's.
- As part of its policy function, the POC should address APD's policies and practices relating to the use of deadly force, including officers' training, the types of weapons officers use and any patterns or trends in firearms discharges.

²⁸ In this case, IA exonerated the officers after determining that the citizen, who was armed with a knife, and who had called 911 saying that he wanted to kill a police officer, had continued toward the officers even after being shot twice with a beanbag shotgun. Interestingly, the IRO deferrd to the Chief on this case and did not make a recommendation.

B. Policy Developments. The APD has made a number of recent changes to its deadly force policies, training and tactics in response to shooting incidents. For example, all three 2000 officer-involved shootings that the APD determined were unjustified involved officers shooting at or into vehicles. Several shootings in 2001 also involved officers discharging their weapons at persons in cars. Because of the danger to members of the public when officers shoot at vehicles (from ricochet bullets or from the car if the driver becomes incapacitated), the unlikelihood that shooting at a vehicle will stop the vehicle, and the number of shootings into cars that have not been justified, a number of police departments have modified their deadly force policies to prohibit shooting from or at a moving or fleeing vehicle.²⁹ In July 2000, the APD issued a roll call training bulletin regarding deadly force issues and shooting at motor vehicles. The bulletin noted the dangers of shooting into cars and the limitations of trying to disable the driver and vehicle by shooting at cars. The APD SOP on deadly force states:

When the ONLY means of an assault on an officer is by motor vehicle, officers:

1. Will not fire upon the vehicle, but simply move out of the vehicle's path.
2. Must place themselves in the most tactically safe position possible.
3. Will not purposely place themselves in the path of a fleeing/aggressively driven vehicle to justify the use of deadly force.

²⁹ For example, Chicago's deadly force police now reads "Officers are not authorized to fire at or into a vehicle if the vehicle is the only means of force being used against them or another person. When confronted with an oncoming vehicle, officers will move out of its way." General Order 86-08A, 10/17/00, Item IV.E. See also Philadelphia Police Department Directive 10 (1/10/01); Boston Police Department Rule 303 (8/3/00).

SOP 2-52-3E (emphasis in original). The APD also has addressed the number of shootings involving emotionally disturbed and mentally ill persons over the past several years by the creation of the Crisis Intervention Team.

C. Crisis Intervention Team. In 1997, the APD established and implemented a Crisis Intervention Team, whereby APD officers are specially trained to intervene with the mentally ill or other citizens in crisis who are at risk of injuring themselves or APD officers. The CIT team has an authorized strength of 25% of officers in the field, or 125 officers. In April 2002, there were 89 CIT officers, with a new training class to be conducted before the end of the summer. CIT training is held once a year and consists of 40 hours of instruction, as well as yearly updates training for current CIT officers. The CIT team also conducts training for police recruits at the Academy, involving such topics as de-escalation, pharmacology of mental illness, and role-playing exercises. CIT officers are called to the scene by other APD officers when they encounter an emotionally disturbed person or a situation that calls for crisis negotiations. During 2000, the CIT responded to 3,187 crisis situations. The CIT program has garnered widespread praise from persons inside the APD, civil rights advocates and mental health professionals in reducing deadly confrontations between mentally ill citizens and APD officers.

Chapter 11. Other APD accountability mechanisms

A. Early Warning System

In 1997, the Walker/Luna Report stated that a system for tracking potential problem officers – a so-called “early warning system” – was “[o]ne of the most important advances in police accountability,” and it “*strongly urge[d] the APD to give top priority to the development of an early warning system in the weeks and months ahead*” (emphasis in original) (Walker/Luna, p. 30).

Five years later, the APD has a functioning, but rudimentary, early warning system. According to IA commanders, the APD initially purchased early warning system software from an outside vendor, but this software was fraught with problems and was abandoned. The APD then turned to a part-time volunteer, who has been working over the past few years to create a Microsoft Access-based system. The system now tracks uses of force incidents, tort claims, lawsuits, firearm discharges, citizen complaints and internal investigations. The early warning system also tracks so-called “informal matters” (i.e., matters that don’t result in a formal citizen complaint or internal investigation but that will nonetheless be reflected on the officer’s employee card). The early warning system is being used to generate a monthly report that shows all officers who have had five entries (of any kind) on the early warning system in the preceding twelve months. The Deputy Chief overseeing IA uses this list to send letters to the various area commanders, notifying them of any officers under their command who are on the list. It is the responsibility of the area commander to interview those officers and determine whether any additional remedial action is needed.

Based on conversations with APD management and the area commanders, the overall impression of the early warning system within the top levels of the APD is a positive one. Initial concern on the part of rank and file officers and the APOA regarding unwarranted scrutiny also appears to have been overcome.

It also appears that the part-time volunteer who has created, and continues to maintain and modify, the system, has done an excellent job under difficult circumstances. However, serious concerns remain:

- The volunteer is responsible for all data input into the system. Given that the volunteer is working part-time, the risk of untimely entry of incidents or an input back log is a serious one. Indeed, it appears that there is a backlog with respect to at least the input of use of force incidents, as well as historical data dating before 2000.
- The early warning system is accessible through only one computer located in IA. This also creates the risk of a backlog, as well as the risk of system unavailability as a result of a computer malfunction. Moreover, it means that access to the information in the early warning system is not readily available to APD commanders and managers, except through requests for reports to the volunteer.
- It does not appear that the delivery of supporting documentation (e.g., use of force forms) to the volunteer has been systemized in any way, thus further compromising the reliability of the data entry.
- The generation of the monthly list has not been fully automated; i.e., in order to generate the list, the volunteer must run separate, multiple queries of the early warning system and then manually compile the monthly list from the output of those queries. This manual process increases the risk of error.

- It appears that no one within the APD has been fully trained to assist or take over from the volunteer in the event that he is unavailable.
- It is unclear whether area commanders are required to meet with officers on the early warning list and document the actions they have taken with respect to those officers. Most of the area commanders stated that they document an early warning review on the officers' employee retention cards. One captain, however, stated that if he determines that no action is necessary, he would not bring the officer in for a meeting. This captain thought that documenting an EWS review where no action was necessary would negatively affect officer morale.
- The early warning system keeps track of incidents by individual officer, but it does not track complaints, use of force incidents or other criteria, by supervisor, shift or other APD unit. More advanced EWS systems allow department management to monitor potentially problematic behavior of groups of officers, supervisors, or the APD as a whole, in order to spot patterns that can then be addressed.

In fairness to the APD, it should be pointed out that the APD management recognizes, and appears to want to address, these (and other) shortcomings of the early warning system. In addition, IA would like to add data on commendations and training to the system. In this view, the system's shortcomings reflect not a lack of commitment but a lack of resources. While we recognize the significant financial strains being felt by the APD at this time, we note that the financial costs that might result from a failure to adequately track potentially

problematic officers could produce a great deal more strain on the APD and the City as a whole. Moreover, given that early warning systems are now widely seen as a crucial element of police accountability, a failure to adequately fund the early warning system might be seen by some in the community as a lack of commitment to accountability.

B. Use of Force Reporting

It is now an established “best practice” in police departments around the country to collect information on incidents in which officers use force.³⁰ By collecting use of force information on reports and in a database, the agency can keep track of when officers use force, which officers use force, and in what type of circumstances force is being used. From this information, the agency can identify patterns and trends, and adjust policies, tactics, and training as appropriate. Are canine deployments going up? As tasers and OC spray are used more, are shootings going down? How often do officers use force when effecting an arrest? When engaging in a traffic stop? Are there units that use less force than others when effecting arrests? There is also a benefit to having the chain of command review individual reports of officer use of force; it provides an opportunity to review the appropriateness of the force used, as well as the training and tactics of the officer, and evaluate the need for a referral to IA for an investigation of any potential misconduct.

In 1999, the APD established a new use of force reporting system. When officers are involved in a use of force, their supervisors are required to complete a Use of Force form. See Appendix 5. This is a “bubble” form, with categories and questions relating to the incident (similar to an SAT form), which is designed to be run through and read by a Scantron machine. Information that is required to be captured on this form includes the date, time,

³⁰ See “Principles for Promoting Police Integrity,” *infra* n. 6, at 5; IACP National Law Enforcement Policy Center, “Model Policy – Reporting Use of Force” (1997).

location of the incident, the subjects' name, ethnicity, and actions, and the reporting officer's name, ethnicity, actions and their result. The lieutenant in charge of IA noted some discrepancies among area commanders in their interpretations of what actions constituted a use of force and were required to be reported. He also noted initial problems with canine deployments not being reported as a use of force, and mace not being entered unless there was an injury. IA does a limited review of whether forms are completed – for example, if there is a resisting arrest charge, there should be a corresponding use of force form; and IA periodically checks FI reports against use of force forms.

A completed use of force form goes through the chain of command, and then from the area command to the Deputy Chief's office. There, it is reviewed by the assistant city attorney assigned to the APD, the APD's risk management officer and by the Operations Review staff. The form then goes to IA, which maintains the Scantron machine and retains the forms. The intent was to build a data base of force incidents. Unfortunately, although the forms were fed into the database, IA was not able to retrieve information from the system in any usable form. According to the IA lieutenant, the Scantron system could not generate reports without significant additional work from the vendor company. Thus, IA was collecting data, but had no way of analyzing or using them.

When IA began developing its own early warning system, IA began inputting use of force information from the use of force forms into the EWS. Thus, the APD now does track use of force incidents for each officer (see Section A above). However, there is a backlog in the inputting of historical use of force data. In addition, while the EWS has the capability to do analyses and reports on use of force statistics, its use has generally been limited to tracking individual officer use of force.

The APD has only begun to keep aggregate statistics on use of force by APD officers. Attached as Appendix 6 are annual reports from 2000 and 2001 on APD's use of force. Just from these aggregate statistics, it appears that dog bites were significantly reduced in 2001 (to two from 24 in 2000) and that the use of less than lethal weapons, such as tasers, pepper spray and bean bags, rose significantly.

While these compilations provide useful information, it does not appear that others in the APD or outside the APD are aware of these statistics. IA did not know if aggregate use of force statistics were being kept or analyzed; the risk management staff at the APD also was not aware of use of force statistics other than from tort claims. The IRO did not have copies of the reports, and was not aware of the statistics, nor were the POC members we asked (although apparently, the APD provided a copy of the 2000 use of force report at the June, 2001, POC meeting). In February 2002, the APD was preparing a comparative analysis of the 2000 and 2001 force statistics. It is unclear, however, what analysis was done to compare 2000 data with 1999 data, or to identify other multiple-year trends.

C. Risk Management

The City of Albuquerque has a Risk Management Office which oversees the handling of tort claims filed against the City, including those resulting from alleged police misconduct. The City Attorney's office handles litigation arising from those claims that cannot be settled before litigation. The Walker/Luna report concluded that the Risk Management Office and the City Attorney's office needed to take a more active role in monitoring patterns of police misconduct alleged in tort claims and lawsuits, and providing additional feedback to the APD regarding problematic police behavior. Our review suggests that in several respects, these offices have begun implementing this recommendation.

For a number of years, the Risk Management Office did not directly communicate the filing and disposition of tort claims alleging misconduct to the APD command staff. In early 2000, however, the risk management officer assigned to the APD implemented a “disposition system” whereby an officer’s chain of command is notified of all tort claims filed against the officer and provided a synopsis of the claim and its resolution. Tort claims are also entered into the early warning system. In this way, the APD learns if there are officers with multiple tort claims filed against them. In addition, the APD’s risk management officer also prepares quarterly and annual reports containing aggregate data and analyses of tort claims against APD officers. The claims are broken down by type (e.g., civil rights, improper search, false arrest, use of force, stolen property, auto damage), and by location (i.e., by Area Command). The data are also compared over time. The risk management officer also reviews use of force forms and pursuits, and provides recommendations regarding tactics and training to the Deputy Chief in the Administrative Bureau.

- The preparation of Risk Management reports is a very positive step for identifying trends in potentially problematic police behavior. However, the consultants were not able to review these reports. Despite repeated phone calls to the Risk Management Officer, and requests of the City Attorney and Director of City Council Services, we were not able to obtain copies of these reports. Nor are they made available to the IRO or POC. We recommend that these reports be provided to the IRO and POC.

Another positive aspect of the APD’s risk management is that it has consolidated several functions related to policy, accountability and training under a single deputy chief in

the Administrative Bureau of the department. The deputy chief oversees IA, Selection and Training, Risk Management, Operations Review and the Professional Standards Division (including the SOP detail, accreditation, internal audit and inspections). According to the deputy chief, his office reviews all use of force forms, pursuits, shootings, and lawsuits, and can initiate research on policies, training or police tactics. Additional recommendations relating to risk management include the following:

- The APD should establish a liaison with the District Attorney's office and the courts to track criminal cases that are dropped due to bad reports, misconduct, or illegal searches. We understand that one of the Assistant District Attorneys has now begun notifying officers when their criminal complaints are dismissed at Metro arraignment, and providing advice on refileing their complaints. The APD and the District Attorney's office should expand and institutionalize this practice. It should be used not only for training purposes from the individual officer perspective, but also to spot trends and patterns that may need to be corrected.
- The APD should also track resisting arrest and assault on police officer charges to ensure that the use of force involved in such incidents are appropriately reported and investigated. Several agencies include this information to their early warning systems.

Chapter 12. Public Confidence in the Police Oversight Process

Our evaluation of Albuquerque's police oversight system was limited in the extent to which we could assess (1) whether the POC and IRO have helped to strengthen the relationship between the community and the police; (2) public confidence in the police and police oversight; and the (3) the satisfaction of complainants and officers in the police complaint process. Our review did not include any surveys or focus groups of the public, complainants, or officers.

- We believe that the APD, in conjunction with the POC and perhaps with a local university or research organization, should conduct such surveys. Police agencies around the country are increasingly relying on such methods to assess their performance, and to solicit input regarding their activities.
- Surveys of complainants should examine whether they feel their complaints were fairly investigated and addressed; whether they are satisfied that they were able to express concerns in person to the involved officer; and whether they believe they contributed to holding the APD accountable for officers' behavior.
- The City of Albuquerque should consider whether all complainants, and not just complainants who appeal their cases to the POC, should receive the IRO's review letter. The IRO's review letter provides significantly more information about the investigation and the basis for the APD's findings than does the Chief's notification letter. Providing complainants with the IRO review letter should increase the confidence of complainants that their complaint was carefully considered.

Chapter 13. Conclusion

The police oversight system in the City of Albuquerque has had some problems in implementation, but the promise of effective oversight is still there. While the institutions created by the Police Oversight Ordinance have begun to enhance the fairness and integrity of internal police investigations, the IRO and the POC have not reached their full potential. Both require substantial reform and improvement. Both have only achieved in part what they are capable of doing. The same holds true of the APD. The IRO and the POC can do much to build cooperative relationships with the APD and improve community confidence and satisfaction with its policing services.

The APD, the POC and the IRO have undergone many changes in the last two years, some of which are still unfolding. There is a new police chief, there will be a new IRO, and there are a number of new POC members. We believe it is in the public's interest to maintain the general

IRO and POC structure, and to focus the City's efforts on improving their practices and procedures to make them more effective.

ACKNOWLEDGMENTS

We were hired by the Albuquerque City Council. We would like to thank City Council staff, and, in particular, Mark Sanchez and Patricia Galindo, for their support. In effect, they acted as our liaisons to the people of Albuquerque.

We spoke to many individuals within the Albuquerque Police Department, and they were uniformly cooperative and forthright. In particular, we would like to thank Chief Gilbert Gallegos, Deputy Chief Raymond Shultz, IA Lieutenant Steven Tate, and APOA president Paul Pacheco for their time and insight. In addition, we would like to thank the officers with whom we rode along as well as the other officers we met while on our ride-alongs.

Ann Steinmetz, the Independent Review Officer, was extremely generous with both her time and her comments, as was her entire staff. Similarly, current and former members of the Police Oversight Commission – Hart Guenther, Jennie Lusk, Jill Marron, Lino Martinez, Sig Olson, Valerie Webb Jaramillo and the Reverend M.G. McPherson – were very helpful in efforts to understand the Commission.

Finally, we met with or spoke to many others, both within and outside of the City government, whose cooperation made this study possible and whose graciousness made this study a pleasure.

Appendix 1

Qualification of Consultants

Richard B. Jerome

From 1997 to January, 2001, Richard Jerome coordinated the Department of Justice's efforts to promote police reform. He served as Deputy Associate Attorney General from 1997-2001, during which time he oversaw the work of the Civil Rights Division and the Community Relations Service. This work included review of the Department's police misconduct "pattern or practice" program, as well as criminal civil rights prosecutions for excessive force and other constitutional deprivations. As Counsel to the Assistant Attorney General for Civil Rights, he coordinated the efforts of the National Church Arson Task Force in 1996, and reviewed the Civil Rights Division's Title VII and other employment discrimination litigation in 2001.

At the Justice Department, Mr. Jerome:

- Compiled and drafted the Department of Justice publication "Principles for Promoting Police Integrity," which the Attorney General announced in January 2001. This document reflects best practices for enhancing police accountability, and is accompanied by examples of promising police practices and policies being implemented by police departments around the country.

- Organized the June 1999 “Strengthening Police Community Relationships” conference and a series of follow-up meetings. These meetings brought together federal, state and local law enforcement agencies, law enforcement organizations, including police labor organizations, civil rights advocates and community groups, to identify best practices on police integrity topics.
- In conjunction with the COPS Office, established the “Police as Peacemakers and Problem Solvers” grants to support pilot projects on police accountability.
- Oversaw publication of “A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned.”

Mr. Jerome also has an extensive background in civil rights litigation. In his 12 years with the Department of Justice, Mr. Jerome was the lead counsel for the United States in several statewide redistricting lawsuits, and appeared on behalf of the United States in cases litigated under the Voting Rights Act of 1965.

Mr. Jerome is a consulting expert for the City of Oakland, where he reviewed the Oakland Police Department’s policies, practices and procedures regarding use of force, citizen complaints and Internal Affairs investigations, and other accountability measures. The results of this review form the basis of police reforms that will be incorporated into a settlement of civil litigation.

Mr. Jerome’s other projects include the development of a web-based computer training course on racial profiling for local law enforcement, and working with the COPS Office in developing training curricula on several police accountability topics (Citizen Complaint Intake and Investigation; Early Identification and Intervention Systems; Use of Force; Racial Profiling – Issues and Dilemmas).

Police Assessment Resource Center (PARC)

The Police Assessment Research Center (PARC) was formed in 2001 under the auspices of the Vera Institute of Justice with funding from the Ford Foundation. Vera is a nonprofit organization based in New York City that works closely with government leaders to improve the services people rely on for safety and justice.

PARC's mission is to support the oversight of police departments to advance effective, respectful, and publicly accountable law enforcement. Through its assistance, PARC helps monitors and others charged with oversight, including police officials, to evaluate police systems to identify problem officers and stations, document and investigate the use of force, detect racial profiling, review disciplinary decisions, measure community satisfaction, assess the risk of litigation, and track, analyze, and respond to citizen complaints. By assisting monitors and others involved in police oversight around the country, PARC is developing a better sense of the emerging field of police oversight than anyone could acquire independently and is therefore in a position to share and adapt the most promising techniques.

Merrick Bobb is PARC's Director. He has served as Special Counsel to the County of Los Angeles with responsibility for monitoring the Los Angeles Sheriff's Department (LASD) since 1993. In addition to serving as Special Counsel, Mr. Bobb has worked with numerous police agencies across the country, and has participated in investigations of the Detroit Police Department, the Washington, DC, Metropolitan Police Department, and the Prince George's County Police Department.

PARC's Director of Operations, Nicolas Miller, holds both a law degree and a master's degree with an emphasis on criminology. Immediately before joining PARC, he

headed the major anti-fraud unit of a Fortune 500 company. He has worked closely with Merrick Bobb for nearly eight years, assisting in the monitoring and investigation of law enforcement agencies. In May 1996, at the instance of then Los Angeles Police Commission President Ray Fisher, Mr. Bobb and Mr. Miller co-authored a report entitled *Five Years Later: A Report to the Los Angeles Police Commission on the LAPD's Implementation of the Independent Commission Recommendations*.

PARC's Board is chaired by John Dunne, the former Assistant Attorney General for Civil Rights in the first Bush administration. In addition, PARC's Board has noted police leaders, including Ray Kelly, the former New York City Police Commissioner; Betsy Watson, the former Chief of Police of Houston and Austin; and Mike Graham, the former Assistant Sheriff of the Los Angeles County Sheriff's Department. PARC's Board also includes leaders of the civil rights community, including the head of the Urban League in a large city whose police department has been the subject of federal monitoring, the head of a New York-based civil rights advocacy organization, and the Executive Director of the Leadership Conference on Civil Rights. The Board also includes the Dean of the Annenberg School for Communication at the University of Southern California, the former Senior Vice President of Community Relations for the *Los Angeles Times*, and a former United States Attorney.

PARC's current assignments include supporting the monitoring of the LASD and the police department in Wallkill, New York, and evaluating the internal affairs department of a medium-sized law enforcement agency in Southern California.

(Statement continued)

WITNESSES:

Name: _____

Address: _____

Phone Number: _____

Name: _____

Address: _____

Phone Number: _____

Name: _____

Address: _____

Phone Number: _____

Name: _____

Address: _____

Phone Number: _____

(If more, please list on a separate sheet.)

End of Statement

The information provided in this statement is true and factual to the best of my knowledge. I understand that I may be required to appear in the Independent Review Office or the Internal Affairs Office for further interview or to provide other investigative assistance as necessary.

Complainant's Signature

ALBUQUERQUE POLICE DEPARTMENT

MEDICAL RECORDS RELEASE

(Date)

(Name of Medical Facility)

I, _____, DOB _____, SSN _____

do hereby authorize the above-named medical facility to release to the bearer of this document any and all records of my medical treatment and/or diagnosis on _____

I do hereby waive my rights to privacy normally maintained between doctor and patient. I do hereby release the above-named medical facility and/or the attending physician from any and all liability.

(Signature of Patient)

(Signature of Party Receiving Said Record)

(Date Received)

BERNALILLO COUNTY JUVENILE DETENTION CENTER

RELEASE OF INFORMATION

I, (Parent/Legal Guardian) _____, hereby give permission on behalf of myself and my child, _____, DOB: _____ to the Bernalillo County Juvenile Detention Center to release the following information concerning my child to (Agency/Individual) _____.

Medical Records

Other

I hereby release Bernalillo County and its officers, employees, agents, contractors and all others associated with Bernalillo County Juvenile Detention Center from any liability for the furnishing of this information.

The information that is requested covers the following time periods:

_____ to _____
(Date) (Date)

_____ to _____
(Parent/Legal Guardian) (Date)

_____ to _____
(Parent/Legal Guardian) (Date)

_____ to _____
(Director/Assistant Director) (Date)

**ALBUQUERQUE POLICE DEPARTMENT
INTERNAL AFFAIRS UNIT
STATISTICAL FORM**

The Internal Affairs Unit is asking the complainant to fill out information requested below.

NOTE: This particular information will not become a part of your complaint. The Albuquerque Police Department is requesting this information for statistical purposes only.

The information contained on this form may be incorporated into the Internal Affairs Quarterly and Yearly Reports. It may also be used to conduct studies or respond to surveys.

STATISTICAL INFORMATION

RACE: White: _____ Native American: _____
 Hispanic: _____ Oriental: _____
 Black: _____ Other: _____

GENDER: Male: _____ Female: _____

AGE: _____

ALBUQUERQUE POLICE DEPARTMENT

Chief of Police Gerald T. Galvin
400 Roma NW, Albuquerque, New Mexico 87102

GUIDELINES FOR FILING A CITIZEN COMPLAINT INVOLVING THE ALBUQUERQUE POLICE DEPARTMENT

To the Citizens of Albuquerque:

The Albuquerque Police Department would like you to know the process for handling complaints you may have with an officer or the department. Complaints are investigated to determine whether there has been a violation of a law, a rule, a policy or procedure of the department, or a procedural defect in the way service was provided. The result will be to determine if there should be a change in policy or procedure or discipline of the officer/employee. In most instances, complaints will be investigated by the Internal Affairs Unit. However, a complaint may be investigated by the Independent Review Office, a separate City office from the police department.

A complaint may be made by going to any location listed in this brochure, which include the Independent Review Office located at 500 Copper NW, Room 323 or the Internal Affairs Unit, located at the Old City Hall Building at Fourth and Marquette NW, on the first floor, Room 102. The procedures for filing complaints are explained in this brochure. A thorough and objective investigation will be conducted and the issues complained of will be addressed. The process usually takes an average of 60 days. Some complaints take longer. At the end of the investigation, the citizen will receive a dispositional letter from the Chief of Police. Appeals of the disposition may be made to the Police Oversight Commission. That procedure will be described in the final letter from the Chief to the citizen.

It is policy of the Albuquerque Police Department to investigate all valid complaints and take whatever action is necessary to maintain the integrity of the department and of the community.

Sincerely,

Gerald T. Galvin
Chief of Police

“IN STEP WITH OUR COMMUNITY”

DEPARTAMENTO POLICIAL DE ALBUQUERQUE

Jefe de Policía Gerald T. Galvin
400 Roma NW, Albuquerque, Nuevo México 87102

GUIA PARA LLENAR UNA QUEJA CONTRA EL DEPARTAMENTO DE POLICIA DE ALBUQUERQUE

A los Ciudadanos de Albuquerque:

El departamento de Policía de Albuquerque le gustaría que usted supiera el proceso a llevar en una queja contra un oficial o el departamento. Las quejas son investigadas para determinar si se ha cometido una violación a la ley, a una regla, a una norma o un procedimiento de el departamento, o un defecto en la forma donde el servicio fue entregado. El resultado será determinar si debería haber un cambio en la norma, procedimiento o disciplina de el oficial/ empleado. En la mayoría de los casos, las quejas son investigadas por la Unidad de Asuntos Internos (Internal Affairs Unit). Sin embargo, la queja puede ser investigada por la Oficina de Revisión Independiente (Independent Review Office), una oficina de la Ciudad que trabaja aparte de el departamento de policía.

La queja puede realizarse en cualquiera de los lugares listados en este folleto, el que incluye la Oficina de Revisión Independiente ubicada en 500 Copper NW(Noroeste), oficina 323 o en la Unidad de Asuntos Internos ubicada en el edificio Old City Hall en la calle cuarta y Marquette NW, en el primer piso, oficina 102. Los procedimientos para llenar una queja están explicados en este folleto. Se efectuará una investigación objetiva y detallada enfocándose en los asuntos de la queja. El proceso demora un promedio de 60 días. Algunas quejas demoran más tiempo. Al final de la investigación, la persona recibirá una carta de el Jefe de Policía. Apelaciones a la decisión pueden hacerse a la Comisión de Supervisión Policial. Ese procedimiento será descrito en una carta final por el Jefe de Policía a el ciudadano.

Es una norma de el Departamento Policial de Albuquerque el investigar todas las quejas válidas y hacer lo que sea necesario para mantener la integridad de el departamento y de la comunidad.

Sinceramente,

Gerald T. Galvin
Jefe de Policía

“EN CONJUNTO A NUESTRA COMUNIDAD”

STEPS IN THE COMPLAINT PROCESS

Citizens should feel free to bring any problem or question about police procedures to the attention of the police department, at any of the locations listed in this brochure. An attempt to formally address concerns will be made by a supervisor or commander (of the officer/employee) or with the Independent Review Officer. All written complaints which warrant further investigation, will be assigned for investigation by the Independent Review Officer to either the Internal Affairs Unit or to an outside investigator.

1. **A citizen must file the formal written complaint within ninety (90) calendar days from the date the incident occurred at any of the listed locations.** All written complaints where a person claims to be aggrieved by actions of the Albuquerque Police Department will be forwarded to the Independent Review Office for case management and investigative assignment. A copy of the written complaint will be sent to the officer/employee against whom the complaint was filed, within seven (7) working days after receipt of the complaint, unless doing so might jeopardize the investigation.

2. In accordance with the applicable City Ordinance and Albuquerque Police Department Standard Operating Procedure, it will be determined if the complaint warrants investigation. This means there will be a preliminary screening to determine: whether there would be a violation of the law or APD Standard Operating Procedures if the allegations in the complaint were true. The Independent Review Officer participates in and reviews this determination. As indicated above, if an investigation is conducted, the Independent Review Officer will assign the case to either the Internal Affairs Unit or an outside investigator for investigation. If warranted, the investigation may be conducted by an Area Command Supervisor in which the incident occurred. The investigation may include interviews of the complainant, witnesses and officer(s)/employee(s).

3. After completion of the investigation, Internal Affairs will determine the findings with regard to the issues of concern. The Independent Review Officer will review those findings. If there is a nonconcurrence by the Independent Review Officer, there will be a review by the Chain of Command which can result in a meeting with the Chief of Police. The findings and recommendations will be forwarded to the Chief of Police for final determination and appropriate action. All investigations shall be conducted in a manner which assures objectivity, fairness, impartiality and freedom from influence.

4. Approximately sixty (60) days after receipt of a written complaint, or after completion of the investigation, the Chief of Police or his designee will take necessary action, including any disciplinary action, to complete the disposition of the complaint. An extension of the investigative process may be granted by the Chief Administrative Officer of the City.

5. The citizen and officer/employee will receive a copy of the findings and disposition of the complaint by letter from the Chief of Police, sent by certified mail. Mailing of the letter is the responsibility of the Internal Affairs Unit.

6. If the citizen is not satisfied with the disposition of the complaint, according to Ordinance, the citizen can appeal to the Police Oversight Commission which will review the decision of the Chief of Police. The request for appeal must be in writing and sent to the Police Oversight Commission c/o the Independent Review Officer within ten (10) calendar days of receipt of the dispositional letter from the Chief of Police. The letter will explain how to appeal.

"IN STEP WITH OUR COMMUNITY"

PASOS A SEGUIR EN EL PROCESO DE LLENAR UNA QUEJA

Los ciudadanos deben sentirse libres de traer cualquier problema o pregunta acerca de los procedimientos policiales a el departamento de policía, a cualquiera de los lugares listados en este folleto. Un intento de formalizar estos asuntos por escrito se harán por el supervisor o el comandante (de el oficial/empleo) o por el Oficial de Revisión Independiente. Todas las quejas escritas, que justifiquen una investigación, serán asignadas para investigación a el Oficial de Revisión Independiente ya sea de la Unidad de Asuntos Internos o a un investigador privado.

- 1. El ciudadano debe hacer una queja formal por escrito dentro de noventa (90) días desde el día en que ocurrió el incidente en cualquiera de los lugares listados.**
Todas las quejas escritas donde la persona dice haber sido lastimada por las acciones de el Departamento Policial de Albuquerque serán mandadas a la Oficina de Revisión Independiente para ser investigadas. Una copia de la queja escrita será enviada a el oficial/empleo acusado, dentro de siete(7) días desde cuando se recibió la queja escrita, a menos que ésto pueda afectar la investigación.
- 2. De acuerdo con la Ordenanza de la Ciudad aplicable y el Procedimiento Estandard de Operativo de el Departamento Policial de Albuquerque, se determinará si la queja justifica una investigación. Esto significa que habrá un estudio preliminar para determinar: si hubo una violación a la ley o el Procedimiento Estandard de Procedimiento Operativo de el DPA y si las alegaciones en la queja son reales. El oficial de Revisión Independiente participa en la determinación y lo revisa. Como es indicado anteriormente, si se conduce una investigación, el Oficial Independiente de Revisión asigna el caso a la unidad de Asuntos Internos o un investigador privado. Si la investigación es autorizada puede ser dirigida por el Supervisor del Area en que ocurrió el incidente. La investigación puede incluir entrevistas a la persona que está haciendo la queja, a testigos y a oficiale(s)/ empleado(S).**
- 3. Una vez finalizada la investigación, Asuntos internos determina las conclusiones con respecto al asunto citado. La Oficial de Revisión Independiente revisa esas conclusiones. Si la Oficial de Revisión Independiente no está de acuerdo en algo, la Cadena de Comandantes lo revisará lo que puede resultar en una reunion con el Jefe de Policía. Las conclusiones y recomendaciones serán enviadas a el Jefe de Policía para una determinación final y acción apropiada. Todas las investigaciones deben ser conducidas de una manera que asegure objetividad, justicia, imparcialidad y libre de influencias.**
- 4. Aproximadamente sesenta (60) días después de recibir la queja por escrito, o después de finalizar la investigación, el Jefe de Policía o su persona designada tomará la acción necesaria, incluyendo cualquier acción disciplinaria, para completar la disposición de la queja. Puede que el Jefe Oficial Administrativo de la Ciudad otorge una extensión al proceso de investigación.**
- 5. El Jefe de Policía mandará una carta a el ciudadano y el oficial/empleo con una copia de las conclusiones y plan a seguir por la queja. El envío por correo de la carta es una responsabilidad de la Unidad de Asuntos Internos.**
- 6. Si el ciudadano no está conforme con la disposición de la queja, de acuerdo con la Ordenanza, el ciudadano puede apelar a la Comisión de Supervisión Policial quién revisará la desición de el Jefe de Policía. Si se quiere apelar, se debe hacer por escrito y enviarla a la Comisión de Supervisión Policial o a la Oficial de Revisión Independiente dentro de los diez (10) días de calendario previos a el recibimiento de la carta con las determinaciones de el Jefe de Policía. La carta le explicará como apelar.**

“EN CONJUNTO A NUESTRA COMUNIDAD”

**LUGARES DONDE SE PUEDEN ENCONTRAR
FORMAS PARA FORMALIZAR UNA QUEJA**

Oficina de Revisión Independiente	Edificio Copper Square Avenida Copper N.O. #500 Sala 323 (tercer piso) 8:30 am- 5:30 pm 764-3275
Estación Policial John Carrillo	Camino Ozuna NE #8201 (Wyoming/Osuna) 7:30 am-10:30 pm 823-4455
Estación Policial Phil Chacon	Louisiana Blvd SE #800 (Louisiana/Kathryn) 7:30 am-10:30 pm 256-2050
Estación Policial Shawn McWethy	Los Volcanes NO #6404 (Norte de Coors/Los Volcanos) 7:30 am-10:30 pm 831-4705
Estación Policial Gerald Cline	Second Street N. O. (Calle 2) #5408 (Second/ Montano) 7:30 am- 10:30pm 761-8800
Jefe de Policía	Law Enforcement Center (Centro de Refuerzo de la Ley) Roma #400, N.O. (quinto piso) 8:00 am- 5:00pm 768-2200
Unidad de Asuntos Internos de APD	Old City Hall Marquette N.O. #400 Sala 102 (Primer piso) 7:30 am- 4:30 pm 768-2880
Mayor de Albuquerque	City/County Building (Edificio de la Ciudad) Plaza Civica N. O. (Piso 11) (calle 5 y Marquette) 8:00 am-5:00 pm 768-3000
Todas las Bibliotecas Públicas	

**LOCATIONS WHERE COMPLAINT
FORMS CAN BE OBTAINED**

Independent Review Office	Copper Square Building 500 Copper Avenue NW Room 323 (3 rd Floor) 8:30 am – 5:30 pm 764-3275
John Carrillo Memorial Substation	8201 Osuna Road NE (Wyoming /Osuna) 7:30 am – 10:30 pm 823-4455
Phil Chacon Memorial Substation	800 Louisiana Blvd SE (Louisiana/Kathryn) 7:30 am – 10:30 pm 256-2050
Shawn McWethy Memorial Substation	6404 Los Volcanos NW (N. Coors/Los Volcanos) 7:30 am – 10:30 pm 831-4705
Gerald Cline Memorial Substation	5408 Second Street NW (Second /Montano) 7:30 am – 10:30 pm 761-8800
Chief of Police	Law Enforcement Center 400 Roma, NW (5 th Floor) 8:00 am – 5:00 pm 768-2200
Internal Affairs Unit of APD	Old City Hall 400 Marquette NW Room 102 (1st Floor) 7:30 am – 4:30 pm 768-2880
Mayor of Albuquerque	City/County Building One Civic Plaza NW (11 th Floor) (Fifth and Marquette) 8:00 am – 5:00 pm 768-3000
All Public Library Branches	

Appendix 3
 ALBUQUERQUE POLICE DEPARTMENT
 * GENERAL ORDERS*

Effective: 03/01/95; Still In Effect

1-09-20 CHART OF SANCTIONS

CHART OF SANCTIONS

CLASS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
1	SUSPENSION/ DISMISSAL	N/A	N/A
2	SUSPENSION 21 - 30 DAYS	SUSPENSION/ DISMISSAL	N/A
3	SUSPENSION 11 - 20 DAYS	SUSPENSION 21 - 30 DAYS	SUSPENSION/ DISMISSAL
4	SUSPENSION 5 - 10 DAYS	SUSPENSION 11 - 20 DAYS	SUSPENSION 21 - 30 DAYS
5	SUSPENSION 1 - 4 DAYS	SUSPENSION 5 - 10 DAYS	SUSPENSION 11 - 20 DAYS
6	WRITTEN REPRIMAND	SUSPENSION 1 - 4 DAYS	SUSPENSION 5 - 10 DAYS
7	VERBAL REPRIMAND	WRITTEN REPRIMAND	SUSPENSION 1 - 4 DAYS

To impose appropriate disciplinary action, supervisors will, per section 1-09-7:

- A. Determine the minimum disciplinary action applicable to the act or omission from the Chart of Sanctions.
- B. Consider the seriousness of the act or omission.
- C. Consider the disciplinary record of the individual involved.

Appendix 4

City	Population	Sworn Staff	Civilian Staff	Internal Affairs
Fresno, CA	427,600	688	347	4 Sergeants, 1 Lieutenant, 1 Support
Kansas City, MO	441,545	1213	613	1 Captain, 2 Sergeants, 10 detectives, 3 Support
Long Beach, CA	461,522	913	546	2 Detectives, 7 Sergeants, 1 Commander, 2 Support
New Orleans, LA	484,674	1,645	354	1 Major, 3 Captains, 4 Lieutenants, 18 Sergeants, 2 Officers, 3 Support
Sacramento, CA	407,018	660	362	1 Captain, 5 Sergeants, 3-4 Support
Virginia Beach, VA	425,257	777	162	6 Officers including Command Staff

ALBUQUERQUE POLICE DEPARTMENT

Internal Affairs Unit Use-of-Force Report Form

MARKING INSTRUCTIONS

- ✓ Use black ink or a number 2 pencil.
- ✓ Make dark marks that fill the oval completely.
- ✓ Do not use pens with ink that soaks through the paper.
- ✓ Make no stray marks.
- ✓ Print legibly.

Correct Mark



Incorrect Marks



DATE

MO.	DAY	YEAR
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9

TIME

LOCATION

AREA COMMAND

N.E. N.V. S.E. F.H. W.S.

APD CASE

INCIDENT REPORT

SHIFT

Day Swing Graveyard

SUBJECT CODES

- D - Displayed
- F - Threatened Use
- A - Attempted Use
- C - Carried Action Out/Used

SUBJECT #1 NAME

AKA

OTHER IDENTIFIER

ETHNICITY

- White, Non-Hispanic
 Hispanic/Latino
 African American
 Asian
 Native American
 Other

SUBJECT #1 ACTIONS

<input type="checkbox"/> hands/fists/elbows/arms	<input type="checkbox"/> blunt instrument
<input type="checkbox"/> feet/knees/legs	<input type="checkbox"/> edged weapon
<input type="checkbox"/> head/teeth/spit	<input type="checkbox"/> firearms
<input type="checkbox"/> flight	<input type="checkbox"/> motor vehicle
<input type="checkbox"/> physical resistance	<input type="checkbox"/> other
<input type="checkbox"/> words/actions	

DATE OF BIRTH

MO.	DAY	YEAR
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9

SEX

- Male Female

SUBJECT CODE

- D A
 F C

ARRESTED?

- Yes No

INTERNAL AFFAIRS UNIT

USE OF FORCE 2001

	FIREARM DISCHARGE	BEAN BAG	ASP/ BATON	PHYSICAL FORCE	TASER	MACE	DOG BITE	TOTAL
JANUARY	1	0	3	9	0	8	0	21
FEBRUARY	2	0	0	10	2	10	0	24
MARCH	1	0	3	5	5	15	0	29
APRIL	2	0	2	12	3	9	0	28
MAY	1	0	1	10	5	12	0	29
JUNE	0	0	0	16	7	7	0	30
JULY	0	0	0	8	7	11	0	26
AUGUST	0	0	0	7	5	9	1	22
SEPTEMBER	2	1	1	9	8	4	0	25
OCTOBER	1	0	0	9	5	4	0	19
NOVEMBER	2	1	2	9	6	10	0	30
DECEMBER	1	0	0	7	5	3	1	17
TOTAL	13	2	12	111	58	102	2	300